

THE CUSTOMALS OF THE CINQUE PORTS
c.1290 – c.1500

Studies in the Cultural Production of the Urban Record

A thesis submitted by
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ABSTRACT

This thesis is a study of the cultures of writing and record production in the medieval English town. Its source material is the corpus of surviving customals from the Cinque Ports, produced between c. 1290 - c. 1500. Through the examination of the customal manuscripts, this study seeks to understand both the practice of record production and the social, political and ideological context in which it took place. It engages with arguments which have sought to explain the relationship between literate practices and the societies in which they are found, and recognises the need to see the act of writing as an agency in the ordering and negotiation of social relations. A corpus of customal texts has been located, and the characteristics of the manuscripts from the period c. 1290 - c. 1500 are described in Chapter 2. Chapters 3 and 4 are case-studies of the customals of Sandwich and Faversham (Kent), and pursue the detailed codicological and textual analyses of customals produced c. 1300 - c. 1415. Dating for production is suggested in each case, and is used to enable the reconstruction of closely defined contexts for record production. External evidence is used in order to understand the political, social and cultural environment in which such records were made. Consideration is given to the motivation of urban governments in the making of record. Chapter 5 addresses the implications of the evidence of the Cinque Port customals for the study of the relationship between literacy and orality, and for the further consideration of customary law. It also considers the production of books (as a special type of record). Finally, it assesses the evidence for the emergence of a book-culture in the administration of fourteenth century towns, and its relationship to the construction of social and cultural identities.

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ABBREVIATIONS

The following abbreviations are used in this study:

CCA Canterbury Cathedral Archives

CKS The Centre for Kentish Studies, Maidstone

CCR *Calendar of Close Rolls* (full citation in bibliography)

CPR *Calendar of Patent Rolls* (full citation in bibliography)

DNB *Dictionary of National Biography* (full citation in bibliography)

OED *Oxford English Dictionary* (full citation in bibliography)

VCH *Victoria County Histories* (full citations in bibliography)

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Chapter 1

Introduction

1.1 The culture of writing in the administration of the English medieval town

This study of the customs of the Cinque Ports examines the culture of writing in the administration of English medieval towns. It explores the practice of textual production, by examining evidence for the making of manuscripts, and considers the varieties of use to which such manuscripts were put. In exploring documentary production and use within a closely defined context (the medieval town) it seeks to understand the uses and consequences of a particular type of literacy within a particular social, political and ideological context. While a large part of this study is devoted to the study of practice, in its close consideration of the techniques and methods of medieval document production, it considers also the social, political and ideological imperatives which were associated with the urban literate production in the period under consideration (c. 1290 - c. 1500). In so doing, it acknowledges that the act of writing is not merely a technology through which societies reflect themselves, but that it is, in itself, an agency in the ordering and negotiation of human social relations.

This overall approach to the history of literacy is by no means new, and the investigation and arguments presented in this study draw inspiration from the example of Michael Clanchy's *From Memory to Written Record; England 1066-1307*.¹ Clanchy's analysis of the expansion of the uses of literacy in England in the period considered in this work not only charted the course of this expansion at all levels of society, but also identified specific reasons for its occurrence, stemming ultimately from the need of the Norman and Angevin monarchs to consolidate their political power through the exercise of bureaucratic authority. The record-making activities of the royal office of the Exchequer and of the royal courts of law were of primary importance in stimulating the need for bureaucracy below the level of royal government. Clanchy writes, 'The main contention of *From Memory to Written*

¹ M.T. Clanchy, *From Memory to Written Record; England 1066-1307* (London: Edward Arnold, 1979; second edn., Oxford: Blackwell, 1993)

Record is that lay literacy grew out of bureaucracy, rather than from any abstract desire for education or literature.² The use of literacy in the specific context of the administration of medieval towns, however, receives only limited attention in Clanchy's work, perhaps partly because of the limited space which can be allotted to specific cases in a survey of such breadth, but more importantly, because the survival of large numbers of records produced by urban administrations is principally (with notable exceptions) a feature of the period *after* 1300.³

The study of urban documentary production, as a cultural phenomenon in its own right (rather than as a starting point for the empirical analysis of the information contained in the text of such documents) has in fact received little previous attention. This is surprising in view of the very large quantities of urban documentary evidence which survives from the later medieval period. G. H. Martin, in his survey 'The English Borough in the Thirteenth Century' (first published in 1963) noted that, 'Because they are numerous, borough records have received only spasmodic

² *Ibid.*, p. 19. This contention is developed throughout the book, but is introduced in detail in ch. 1 'Memories and Myths of the Norman Conquest', pp. 25-43.

³ Clanchy does, however, describe a number of surviving thirteenth century town records in ch. 3, 'Types of Record', pp. 81-113. See in particular the discussion of financial accounts (pp. 92-94), in which is noted the earliest series of known extant town account rolls, from Shrewsbury (beginning in 1256), and in his discussion of legal records (pp. 96-98) in which is noted the early guild rolls of Leicester (beginning in 1196) and early customals of Northampton (of the late twelfth century, but not extant in its original form) and Exeter (probably compiled in the 1230s), together with the earliest extant court rolls of Wallingford (beginning 1231). This evidence was partly drawn by Clanchy from surveys by G.H. Martin of thirteenth century borough records presented in 'The English Borough in the Thirteenth Century', *Transactions of the Royal Historical Society*, 5th series, 13 (1963), pp. 123-144, reprinted in Richard Holt and Gervase Rosser, eds., *The Medieval Town; a Reader in English Urban History, 1200-1540* (London and New York: Longman, 1990), pp. 29-48; and 'The Origins of Borough Records', *Journal of the Society of Archivists*, 2 (1960-64), pp. 147-153. Clanchy also notes early records on paper (of the early fourteenth century) from King's Lynn, Lyme Regis, and London (p. 120), and the existence of town clerks at Oxford in the early thirteenth century. He also illustrates rolls of tradesmen from early thirteenth century Wallingford (plates IX, X)

attention, and little of that for their own sake.’⁴ There has been a tremendous upsurge in interest in borough records as raw-material for the writing of the history of the English medieval town since 1963, but still, the study of the records ‘for their own sake’ has not been widely pursued. Martin’s own work on the surviving borough materials of the thirteenth century has done much to emphasise that the limited survival of records from that century is not indicative of a lack of record-making and record-using at that time, and that the occasional survival of pre-1200 material must indicate the origins of borough record-making in the twelfth century, if not before. He suggests that the survival of early borough records ‘...is likely to be the wreckage of a sophisticated system of archives, rather than the first indications of a practice that was not established and perfected until a much later time.’⁵ Martin was also astute in suggesting that we should ask of these records, ‘...who wrote them and for what purpose?’, and in beginning to draw a correlation between the production of records by townsmen and the emergence of the corporate identity of towns.⁶ He was also interested to know more of the urban office of ‘town clerk’ in the medieval period, since it was these town clerks who were responsible for the production of the early records considered, but he was forced to admit that knowledge on this matter, at the time of writing, was very limited.⁷ Despite these interesting questions, Martin’s analysis of early borough records is perhaps, however, overly-determined by the long-standing ‘constitutional’ approach to the study of forms of administration, and the need to produce written documents is directly associated with the ever-increasing participation of towns in national affairs (through representation in parliament, for example), and this determinism may serve to obscure the particularity of some of the

⁴ Martin, ‘The English Borough in the Thirteenth Century’, in Holt and Rosser, *The Medieval Town*, p. 34. All references to Martin’s ‘The English Borough’ in the current study refer to the version printed in Holt and Rosser’s *The Medieval Town*.

⁵ *Ibid.*, p. 34.

⁶ *Ibid.*, p. 37. The association of borough record with corporate identity and organisation is made p. 34 and elsewhere *passim*.

⁷ *Ibid.*, p. 46.

contexts for document production which he explores.⁸ It might be noted that although Martin's article is still seen as an important analysis of the English borough in the thirteenth century, his investigations into literate production (for its own sake) in those boroughs have not been developed by others.⁹

Martin was dealing with relatively small quantities of surviving urban record material when examining the period before c.1300. The surviving records for the fourteenth century and after are, by comparison, huge in number. This relative abundance of primary evidence for the study of the culture of writing in the administration of towns is not, however, reflected by a corresponding abundance of studies which consider in detail the practice and culture of record-making and record-use in towns. Susan Reynolds, in introducing the evidence for the later middle ages in her *Introduction to the History of English Medieval Towns* noted the correspondence between the fourteenth century increase in the volume of sources and the abundance of secondary studies concerned with this period.¹⁰ These studies have, for the most part, used the *contents* of records as a means of reconstructing aspects of urban economies, societies, and cultures, while the study of the records, and the culture associated with them has apparently remained of tangential interest to urban historians. This notable gap in the historiography of medieval towns is partly filled by a number of earlier printed editions of primary sources (principally compiled in the latter years of the last

⁸ Martin generalises the specific examples he provides when he comments, 'As each town becomes articulate it has a right to be heard, and the municipal chorus of the fourteenth and fifteenth centuries is ragged but hearty, each of its many voices proclaiming the same theme in different words.' (p. 34)

⁹ The editorial introduction to 'The English Borough in the Thirteenth Century' as presented in Holt and Rosser's *The Medieval Town* is indicative of the selective manner with which the article has been considered by urban historians. There is a general recognition, in this introduction, of the correlation between the production of written record and changes in the character of towns themselves, but Martin's study of the records themselves is addressed thus: 'These first urban records merit close attention; though couched in the form of dry legal documents, they *contain a great deal of vivid information* about the life of towns in the thirteenth century and before.' (p. 29, emphases mine). The challenge offered by Martin's article as to the further exploration of the nature of literate production in towns is clearly overlooked.

¹⁰ Susan Reynolds, *An Introduction to the History of English Medieval Towns* (Oxford University Press, 1977), p. 140.

century and the earlier years of the present century) from the archives of towns, and some of these editions include introductions endeavouring to explore the making and use of the documents presented.¹¹ It may well be, however, that the sheer bulk of archival material from the later medieval town has made the systematic or detailed analysis of the methods and techniques of record-keeping appear a daunting and thankless task. Mary Bateson wrote, in 1904, that ‘The time is still far off when it will be possible to have even a superficial knowledge of the contents of the English borough archives.’¹² While very large advances have been made since that time in the cataloguing and understanding of those archives, it is still true to say that the means by which those archives were produced and assembled are only superficially understood.

It is significant that some of the most informative and enduringly useful work on the culture of writing in urban administration is found outside the discipline of urban history, among the work of those who pursue, in a wider field, the study of book and manuscript production. An example of such detailed manuscript work which has implications for the urban historian is an article by Graham Pollard, ‘The Medieval

¹¹ These editions are listed in the bibliography of Susan Reynolds’, *Introduction to the History of Medieval Towns*, in the sequence of references to works concerning individual towns, pp. 214-223. Among the most substantial of these are (listed in the order in which they appear in Reynolds’ bibliography): *Beverley Town Documents*, ed. by A.F. Leach, Selden Society, 14 (1900); *The Coventry Leet Book*, ed. by M.D. Harris, Early English Text Society, 134-136, 146 (1907-1913); *The Records of the Borough of Leicester*, ed. by M. Bateson, 1 (Cambridge: University Press, 1899); *Calendar of the Letter-Books preserved among the archives of the City of London, 1275-1498, Books A-L*, ed. by R.R. Sharpe, 11 vols. (London: John Edward Francis, 1899-1912); *Calendar of Plea and Memoranda Rolls preserved amongst the archives of the Corporation of London at the Guildhall*, ed. by A.H. Thomas, (Cambridge: University Press, 1926); *De Antiquis Legibus Liber: Chronica Maiorum et Vicecomitum Londoniarum*, ed. by T. Stapleton, Camden Society, 1st series, 24 (1846); *Munimenta Gildhallae Londoniensis; Liber Albus, Liber Custumarum, et Liber Horn*, ed. by H. T. Riley, 4 vols., Rolls Series (1859-1860); *The Records of the City of Norwich*, ed. by W. Hudson and J.C. Tingey, 2 vols. (London and Norwich: Jarrold, 1906-10); *The Records of the Borough of Nottingham*, ed. by W.H. Stevenson, 1 (London and Nottingham: Bernard Quaritch and Thomas Forman, 1882).

¹² Mary Bateson, *Borough Custom*, 1, Publications of the Selden Society, 18 (1904), p. xvii.

Town Clerks of Oxford'.¹³ In this article Pollard explored (in great detail) the origin and history of the town clerks of Oxford, and also presented a careful codicological and palaeographical analysis of a book (the Oxford *Liber Albus*) in which the work of successive town clerks is found, in a period from the early fourteenth to the late fifteenth century. Through the combined evidence of this book and the consideration of other medieval Oxford records, Pollard produced an astonishing biographical list of the Oxford town clerks from c. 1225-1522. Through this list it is possible to understand a great deal of the work of the medieval town clerk, of the nature of the urban administration for which he wrote, and of the social and cultural context from which such writers emerged. Once again however, the implications of this work for the continued study of literate production in medieval towns, or of literacy in general, have been largely neglected, and no comparable studies of urban administrative writing have appeared which might enlarge the field of enquiry, since the publication of Pollard's article in 1966.

1.2 The sources: the medieval customals of the Cinque Ports

The medieval customals of the south-eastern English towns collectively known as 'the Cinque Ports' provide a large, but closely definable body of urban administrative writing falling within the period c. 1290-1500. The towns of the Cinque Ports are usually considered to include the Kent and Sussex ports of Hastings, New Romney, Hythe, Dover, Sandwich (the original five ports of the confederation), Rye and Winchelsea (towns described as 'ancient towns' associated with the confederation), together with the 'member' towns affiliated to the original confederation, namely Pevensey, Seaford, Lydd, Folkestone, Faversham, Fordwich and Tenterden.¹⁴ Of these, Hastings, New Romney, Hythe, Dover, Sandwich, Rye, Winchelsea, Pevensey, Lydd, Faversham and Fordwich have medieval customals surviving either as

¹³ Graham Pollard, 'The Medieval Town Clerks of Oxford', *Oxoniensia*, 31 (1966), pp. 43-76.

¹⁴ The origins, institutions and history of the Cinque Ports' confederation is treated in K.M.E. Murray, *The Constitutional History of the Cinque Ports* (Manchester: University Press, 1935).

contemporary manuscripts, or as later copies of texts known to have existed in the medieval period.¹⁵

The term 'custumal' refers to texts in which are codified the borough customs of a given town. Borough 'customs' here are taken to mean the procedures and regulations by which the administration of the town was governed. As the term custom indicates, many of these procedures and regulations may be of considerable antiquity, but the question of the antiquity of custom is not straightforward, and will be examined in some detail in the course of this study. Borough customs have occasionally been described as 'municipal by-laws' for convenience of expression, but this terminology indicates an *a priori* relationship between borough custom and other forms of legislation which may be misleading.¹⁶ While the function of recording the customs of a town in writing was a primary motivation for the making of custumal manuscripts, the description of customs frequently form only a part of the material contained within the custumals. These custumals, in fact, became a location for the recording of many other aspects of urban administration, and so they frequently give the impression of accretions of contemporary knowledge of urban administration. In addition to description of borough custom itself, they often include copies of borough charters, memoranda of important events and decisions, and much incidental biographical information concerning inhabitants of the town. The overall characteristics of the borough customs recorded in the Cinque Ports' custumals are described below, in chapter 2.2 ('Borough Custom in the Cinque Ports' custumals). The more miscellaneous material is harder to generalise, but its consideration forms a large part of the discussions presented in chapters 3 and 4.

It should be noted that records of borough custom are not confined to the codified form of custumals, and that much more may be learnt of custom from the

¹⁵ A complete descriptive list of the extant Cinque Port custumals is presented in this study as Appendix 1. The corpus as whole is discussed below in chapter 1 'The custumals of the Cinque Ports'.

¹⁶ Clanchy writes of 'custumals summarizing municipal by-laws' in *From Memory to Written Record*, p. 96.

consideration of urban court rolls or other systematic records (where they survive).¹⁷ However, the unit to be considered in this study is the corpus of texts known as customals, rather than the vast topic of borough custom itself. While there will be cause to examine the nature of borough custom in this study, the primary interest remains the written cultures which produced the records in which it is recorded.

The Cinque Port customals are a promising starting-point for the examination of the culture of writing in medieval towns for a number of reasons. Where they survive as contemporary manuscripts, these manuscripts, as objects, represent considerable bodies of evidence for the reconstruction of the processes of documentary production. The evidence of handwriting, of textual embellishment (illumination), of page preparation, of the organisation of leaves and quires, and of binding, all have much to tell us about the way in which the administrations of towns may have produced or procured their manuscripts. Furthermore, the format of these manuscripts, together with traces indicating use, may be informative of the ways in which manuscripts were perceived and used by those responsible for their production. The texts of the customals, being descriptive of administrative process, also contain a large amount of information regarding the use of other types of documents used in town government. Indeed, many of the customals contain transcripts of other documents made or kept by the town, which can be used to construct an impression of the totality of document forms and types used in urban administration. This textual evidence is of particular value in the earlier part of the period considered here, where the survival of other town records is either inconsistent, or in some cases, almost non-existent. Since the customals represent codifications, or compilations, of a large body of urban knowledge (some of which may previously have existed in writing, and some which probably had not) they also provide valuable evidence for sophisticated editorial and compositional exercises embarked upon by town governments, with the obvious assistance of a variety of writers and other textual specialists, such as those learned in the law. They thus allow an insight to be gained of the extent to which documentary practice (by which is meant the totality of actions associated with the

¹⁷ Bateson, *Borough Custom*, 1, p. xvi.

production and use of written texts) was absorbed into the administration of the medieval town.

The value of considering a single class of document lies in the possibility of making comparison across both time and space between qualitatively similar documents, and this is a particular value of the surviving corpus of Cinque Port customals. It is evident that the perception of writing as a technology changed over time, and that there was an associated change (not simple 'development') in the techniques and methods of writing and documentary practice. The consideration of these associated changes over a period of roughly two centuries may go some way towards achieving a closer understanding of the dynamics of medieval writing culture. The existence of customals for a number of different towns within a defined region also makes possible the comparison of contemporary manuscripts and texts, and the identification of common features in their physical and textual form, as well as in the contexts of their production. Such comparison makes it possible to examine the extent to which writing is stimulated or influenced by the social, cultural, and political context in which it occurs. There may also be evidence for the way in which texts and manuscripts may have been transmitted between urban administrations.

The study of English town customals has received some (though surprisingly little) previous attention, and one study in particular, Mary Bateson's *Borough Customs* has provided a valuable starting point for the current enquiry.¹⁸ Although this pioneering work was undertaken as an enquiry into early legal forms, it surveyed an enormous body of previously uncollected evidence for the codification of English borough custom. Bateson relied principally upon the work of others for her knowledge of this evidence, and, as has been noted, admitted that at the time of writing the knowledge of the contents of urban archives was limited. However, through the careful collation of secondary work, and, no doubt, a degree of primary investigation, Bateson was able to list a large number of customals from English, Scottish, Welsh and Irish towns produced within the medieval and early-modern period.¹⁹ Included in this list are a

¹⁸ Bateson, M., *Borough Customs*, 2 vols., Selden Society, 18 and 21 (1904 and 1906).

¹⁹ This list of borough customals is presented in *Borough Customs*, 1, pp. xviii-lvi.

number of customals from the Cinque Ports, and this has proved useful in the initial location of texts in manuscript and print, and of secondary material in which they are considered. As a result of the activities of the archivists of this century, several additional manuscripts have now been found, and so it has been decided to produce a new catalogue of surviving customal texts from the Cinque Ports, which includes these new discoveries, and this catalogue is presented here as Appendix 1. Two recently-discovered manuscripts, which are additional to the corpus as described by Bateson, are considered in Chapters 2 and 3, and these chapters are thus presented not only as case-studies of the context of manuscript production but also as systematic description and analysis of previously little-studied manuscripts. Bateson's objective consisted of more than the location and cataloguing of the texts of borough custom, and her interest lay in the examination of customary law as an aspect of the history of law as a whole.²⁰ She was concerned to trace, as far as possible, the origins of British law in local and customary procedures, recognising that the common law contained within it a large amount of material derived from these procedures.²¹ In this search for origins and subsequent development, Bateson was working within the established framework of constitutional history, current at the time at which she worked, and sought to pursue from a legal stand-point the reconstruction of developments in national institutions. In undertaking this reconstruction, Bateson adopted the methodology of comparison of legal forms and procedures in geographical and chronological terms. This comparison was used to demonstrate what she perceived as the gradual 'spread of uniformity'²² of customary practice in the medieval borough. The validity of this perception will itself be considered in this study. The presentation of material in *Borough Customs* is reflective of Bateson's comparative methodology. Codifications of custom are deconstructed and material presented thematically under headings indicating types of customary procedure. This method allows the comparison of elements of customal texts, but ultimately serves to generalise the contents of those texts, and to take insufficient account of material considered by Bateson to be incidental to the theme of legal history. The approach

²⁰ *Borough Customs*, 1, p. xi.

²¹ *Borough Customs*, 1, p. x.

²² *Borough Customs*, 1, p. xiv.

which has been adopted in the present study of the Cinque Port customals is fundamentally different from that adopted by Bateson, as will be indicated below.

Borough Customs remains the only single work devoted to the texts of customary law, and subsequent considerations of the subject have been made within the context of urban history. In particular, there have been a number of works which investigate the nature of urban 'freedom' and the nature of urban franchises and liberties.²³ Susan Reynolds notes that there is still much more work to be done in the study of urban custom.²⁴ She also recognises that Bateson's pioneering work 'needs to be used with care if chronology and variation are to be understood'.²⁵

It might be objected that to take the customals of the Cinque Ports as representative examples of urban administrative culture in medieval England would be to underestimate the peculiarities of Cinque Port administration. It is true that the towns of the confederation were endowed with juridical and other administrative franchises arising from their historical role in providing ships for the king's navy, but it is now recognised that these franchises (as expressed in their charters and customals) are no more extensive than those of other contemporary English towns. K. M. Elizabeth Murray's *Constitutional History of the Cinque Ports*, published in 1935, examined the origins and development of the confederation, and concluded that the constitutions of the individual towns (as expressed in the customals) did not fundamentally contrast with those of 'normal English boroughs'.²⁶ The exercise of government and administration, the nature of office-holding, and court procedure in these towns is comparable with other towns, as Bateson's comparisons of borough customs had earlier shown. Murray states that, 'An examination of the privileges granted both individually and generally to the Ports and their corporate Members, and embodied in their customals at once dispels the illusion that the majority of their

²³ The study of urban franchise has recently been surveyed by S. H. Rigby in his *English Society in the Later Middle Ages; Class, Status and Gender* (London: Macmillan, 1995), ch. 4.iii., 'Borough privileges and town government', pp. 160-165.

²⁴ Reynolds, *An Introduction to the Study of English Medieval Towns*, p. 101-102.

²⁵ *Ibid.*

²⁶ Murray, *The Constitutional History of the Cinque Ports*, p. 5.

franchises were exceptional.²⁷ The Cinque Ports as a confederation possessed certain additional franchises (which will be explored in the course of this study), but it is no longer possible to make close comparison with the special privileges granted to the Palatinate franchises, as had been claimed in the past.²⁸ It is possible that the sophistication of writing culture may have been unusual in the towns of the Cinque Ports, but this may not have arisen so much from a special level of administrative independence as from factors such as their coastal position, and the influence of powerful and highly-literate lordships such as the great monastic and abbatial houses of Christchurch and St. Augustine's, Canterbury and, in some cases, the crown itself. Each of these factors might also have applied to other non-confederated English boroughs.²⁹

1.3 Analysis in practice

The conviction that writing culture and document production can only be understood first within closely defined parameters has suggested the need for an account of such culture and production within context. This careful consideration of the sources themselves, coupled with the reconstruction of the context of the production of these sources forms the core of the analyses which have been pursued in this study. In the case of this study, the primary context has been that of the town itself, though the town is also considered here as a social formation within the structures of English medieval society and politics. Primacy has been given to the close consideration of

²⁷ *Ibid.*, p. 5.

²⁸ *Ibid.*, pp. 4-5.

²⁹ An observation made in Clanchy's *From Memory to Written Record* suggests the possibility that English sea-ports may have been affected by changes to writing culture rather earlier than inland towns. It is noted that the earliest records on paper made in England come from the ports of King's Lynn and Lyme Regis (p. 120). While it is not intended to suggest purely geographical determinants for the development of writing culture, or that such development took place on account of continental influence, it is notable that England's ports had highly developed administrative cultures. This is likely to have been associated with the demands of trade and the frequent presence of royal and other officials in such towns. The influence of lordship and crown administration upon literate culture in urban administration is explored in the discussions of towns of Sandwich and Faversham in Chapters 2 and 3 below.

the corpus of manuscripts and texts, and to selected manuscripts within that corpus, but consideration has also been given to evidence for the societies in which they were produced, which is both internal to the custumal texts themselves and found externally in other primary and secondary sources.

An attempt has been made to locate, examine, and describe all surviving texts of the medieval Cinque Port customals.³⁰ This has been a necessary first task, in view of the limitations, noted above, in Bateson's *Borough Customs* catalogue. An interpretative account and description of the corpus is given as Chapter 1. The large number of surviving texts has made it essential to be selective in the more detailed analysis, and in view of the need to give due regard to context, the manuscripts of two towns, Sandwich and Faversham, have been selected as case-studies. These case-studies are presented as Chapters 3 and 4. In making these more detailed studies close attention has been given to the description of physical form. This has taken into account codicological structure, page preparation, textual format, palaeography, techniques of embellishment, and the nature of binding. It is this evidence which provides the basis for the reconstruction of writing culture, and so a certain amount of close description is presented in the discussion of the customals, and in the form of appendices.

The methods of manuscript description and analysis have been derived partly from the work of specialists working in other areas of medieval manuscript culture. The work of Graham Pollard has been noted above, since it is directly concerned with urban manuscripts.³¹ In addition, a number of imaginative investigations of manuscript production have been made by Claire Donovan, Janet Backhouse, Derek Pearsall, Carol Meale and John Thomson, presented as monographs or in collections of essays or conference proceedings.³² These studies have involved, to varying degrees, the

³⁰ See Appendix 1

³¹ Pollard, 'The Medieval Town Clerks of Oxford', *loc. cit.*

³² A recent monograph which has used the careful analysis of codicological evidence is Claire Donovan's *The de Brailes Hours; Shaping the Book of Hours in Thirteenth-Century Oxford* (London: British Library, 1991). Collections of essays or conference papers which have been influential in shaping analytical methods and descriptive terms include Jeremy Griffiths and Derek Pearsall eds., *Book Production and Publishing in Britain 1375-1475* (Cambridge: University Press, 1989); Linda .L.

technical consideration of the physical forms of manuscripts, and have gone some way towards establishing methodologies for manuscript analysis. They have also established a common vocabulary for manuscript description, and the descriptions offered of the custumal manuscripts in this study (especially in the appendices) draw generally upon this.

A close correspondence is drawn in this study between the physical aspects of manuscripts and the texts which are contained within them. The texts of the custumals, and the sub-components of those texts are considered in their own right, but also as evidence for the use and transmission of manuscripts. As has been noted, some of the custumal texts contain direct or indirect evidence of the existence of other manuscripts. Sometimes these other manuscripts may have existed in the past (as is indicated, for example, in cases where custumals include copies of earlier texts), and sometimes it is clear that these manuscripts still exist (as in the case where reference is made within a custumal to a text located outside the town). Evidence for composition, editing, compilation, and codification is considered then, not as an end in itself, but as a means of understanding the culture associated with documents in medieval urban administration.

The evidence which is used for the reconstruction of context has been drawn from the custumals themselves, from surviving primary evidence, and from the examination of comparative or secondary sources. The dating of custumal production has been considered with some care. Mary Bateson, in pursuing a generalised approach to the sources was sometimes unable to apply a closely-defined date range to Cinque Port

Brownrigg, ed., *Making the Medieval Book: techniques of production, Proceedings of the Fourth Conference of the Seminar in the History of the Book to 1500, Oxford, July 1992* (Los Altos, Ca., U.S.A: Anderson-Lovelace, 1995); Linda L. Brownrigg ed., *Medieval Book Production: Assessing the Evidence, Proceedings of the Second Conference of the Seminar in the History of the Book to 1500, Oxford, July 1986* (Los Altos, Ca., U.S.A: Anderson-Lovelace, 1990). The interest in medieval manuscripts reflected in these studies has been responsible also for the recent appearance of more general syntheses of evidence such as Christopher DeHamel, *A History of Illuminated Manuscripts* (Phaidon, 1986, 2nd edn. 1994) and Barbara Shailor, *The Medieval Book, illustrated from the Beinecke Rare Book and Manuscript Library* (Toronto: University Press, 1991).

customals, and recognised that dating could only be established through closer criticism of the sources. In some cases, there has been cause to suggest new dates for customals, which differ from Bateson's suggestions, and where this is the case, reasons are outlined. Having established dates, it becomes possible to consider more closely-defined contexts for production.

Evidence for the nature of town society and government used in the reconstruction of context has been drawn, where possible, from surviving manuscript sources. However, since much of this study concerns the late thirteenth and the fourteenth centuries, the use of archival material from towns themselves has been necessarily limited. In most cases, little systematic or sequential record survives for the towns considered in this period, though chance-survivals have been valuable. Extensive use has been made of the calendars of records such as the Close, Patent and Parliament rolls, which contain much useful information concerning urban government in the towns considered.³³ A number of secondary studies of the region and of its towns have also been used for comparative purposes.³⁴ Much material concerning urban society in the wider English context has been drawn from studies of other English towns.³⁵ Since the production of customals appears to have been influenced not only by local considerations, but also by the relationship of localities to central

³³ *Calendar of Close Rolls, 1272-1509*, 47 vols. (London: H.M.S.O., 1900-1963); *Calendar of Patent Rolls, 1272-1509*, 47 vols. (London: H.M.S.O., 1901-1916); *Rotuli Parliamentorum* [Rolls of Parliament, 1278-1503], 6 vols. [no place or date given, but printed according to an order of the House of Lords, 1767; index vol. 1832].

³⁴ Studies of urban society based on Kentish evidence by A.F. Butcher have been extensively used, especially 'Sandwich in the Thirteenth Century', *Archaeologia Cantiana* 93 (1977) and 'English Urban Society and the Revolt of 1381' in *The English Rising of 1381*, ed. by R.H. Hilton and T.S. Aston (Cambridge: University Press, 1984) pp. 84-111. The survey of the economy and society of the south eastern region given by I.M.W. Harvey as an introduction to her *Jack Cade's Rebellion of 1450* (Oxford: Clarendon, 1991) has also been used.

³⁵ Susan Reynolds, *Introduction to the Study of English Medieval Towns*; Richard Holt and Gervase Rosser, eds., *The English Medieval Town; a Reader in English Urban History, 1200-1540* (London and New York: Longman, 1990); R.H. Hilton, *English and French Towns in feudal society; a comparative study*, Past and Present Publications (Cambridge: University Press, 1992 reprinted 1995); and others noted and referenced *passim*.

government, a number of primary and secondary sources have been considered which reflect this relationship. The influence of royal administration on town governments has been explored by examining the records of the Chancery and Exchequer in the Public Record Office, and in considering references to particular towns in printed versions and calendars of the records of the royal courts.³⁶ Considerable use has also been made of monographs which have examined the exercise of royal administration and justice in the localities.³⁷

1.4 Literacy and society

In the past three decades, numerous studies into the relationship between literacy and society have been carried out, particularly within the field of social anthropology. While Michael Clanchy has pursued the question of literacy within the historical field, his work has been influential outside its own discipline, and has come to be central to many studies seeking to understand the effects of literacy upon social organisation. The current study, while being based firmly within the context of the medieval English town, is also intended to consider the wider implications of literacy and of the technology of writing. It thus engages with theories of literacy, and considers the evidence of the Cinque Port customary sources in the light of these theories.

The social anthropologist Jack Goody has been a central figure in the development of theories of literacy. In works such as *The Logic of Writing and the Organisation of Society* (1986), Goody has attempted to synthesise evidence from a variety of disciplines, and to identify the specific effects of literacy upon the organisation of

³⁶ PRO Chancery and Exchequer Miscellanea; *Records of the General Eyre*, ed. by David Crook, Public Record Office Handbooks, 20 (London: HMSO, 1982); *Select Cases in the Court of the King's Bench under Edward I*, ed. by G.O. Sayles, 3 vols., Selden Society, 55, 58, 57 (1936, 1938, 1939); *Brevia Placitata*, ed. by G.J. Turner and T.F.T. Plucknett, Selden Society, 66 (1951).

³⁷ D.W. Sutherland, *Quo Warranto Proceedings in the Reign of Edward I, 1278-1294* (Oxford: Clarendon, 1963); Edward Powell, *Kingship, Law and Society; Criminal Justice in the Reign of Henry I* (Oxford: Clarendon Press, 1989).

society.³⁸ He recognises general differences between societies with writing and those without, and seeks to understand the specific properties of writing (the ‘Logic of Writing’) which may be at the root of these differences. In addition to the polarity drawn between societies with and without literacy, Goody implies the existence of ‘transitional’ states of society, where literacy is in the process of development, and in which there is evidence both of orality and of literacy in forms of social organisation. The example of medieval England has been used by Goody as a case-study in the effects of writing upon the organisation of society, principally by considering the development of written law.³⁹ The model drawn by Goody for the relationship between law and custom in a period seen by him to represent a transitional phase in shifts from orality and literacy, clearly has implications for a study which considers ‘written custom’ (as found in the customals), and will be discussed within specific contexts.

Goody has not been alone in the development of ‘literacy theories’ and others have developed models for transitions between orality and literacy, and have sought to apply them to a number of different contexts.⁴⁰ Extreme determinist positions have been adopted in some cases for the effects of literacy upon human psychology by writers such as Walter Ong, though perhaps few would now accept the rationale or the evidence upon which Ong’s own model was based.⁴¹

In spite of the value of comparative work in the field of literacy in understanding common features in widely differing social formations in different periods of time, the theories and models which have been suggested for the effects of literacy on society have more recently been seriously challenged from several directions. Brian Street has

³⁸ Jack Goody, *The Logic of Writing and the Organisation of Society*, Studies in Literacy, Family, Culture and the State Series (Cambridge: University Press, 1986, reprinted 1988).

³⁹ *Ibid.*, pp. 159-165.

⁴⁰ Surveys of this work are given in Brian V. Street, *Literacy in theory and practice*, Cambridge Studies in Oral and Literate Culture 9 (Cambridge: University Press, 1984, reprinted 1993), pp. 1-16 and Joyce Coleman, *Public Reading and the Reading Public in Late Medieval England and France*, Cambridge Studies in Medieval Literature 26 (Cambridge: University Press, 1996), pp. 1-33.

⁴¹ Walter Ong, *Orality and Literacy: The Technologizing of the Word* (London: Methuen, 1982).

been instrumental in subjecting these theories to scrutiny, and in testing them in the light of new studies into the practice of literacy.⁴² Street's work, has highlighted the difficulty of making generalisation about the effects of literacy as a technology without considering it within the particular social, and ideological and political contexts in which it is used. A recent study of an aspect of literacy (namely reading) within a European medieval context by Joyce Coleman, *Public reading and the reading public in late medieval England and France* (1996) has also recognised the importance of context to literacy theories. In the context of English and French medieval literature, she also dismantles some of the central tenets of the literacy thesis as expounded by Ong and Goody, and demonstrates the extent to which polarities drawn between the literate and the oral in this thesis generalise and distort the subtleties of literate practice in medieval society.⁴³

This introduction has identified three major areas of enquiry, for which the study of the making of urban records, such as the Cinque Port customals, may have implications. Firstly, urban administrative writing itself, has been identified as a potentially fruitful area of enquiry, which is perhaps only understood in limited ways. In examining existing work in the area of borough custom, the consideration of the place of custom in the broader field of legal and political history has been acknowledged. Finally, the now well-established enquiry into the nature of oral and literate culture in societies has been considered. It would appear that these areas of enquiry, which have, in the past, only been considered together to a limited degree, may intersect with each other in numerous and informative ways. In pursuing the detailed analysis of the manuscripts of the Cinque Port customals in this study, there will be cause to further examine these intersections.

⁴² Street, *op. cit.* and Street, ed. *Cross-cultural approaches to literacy*, Cambridge Studies in Oral and Literate Culture 23 (Cambridge: University Press, 1993, reprinted 1995).

⁴³ Coleman, *op. cit.*, ch. 1 'On beyond Ong: the bases of a revised theory of orality and literacy'. pp. 1-33.

Chapter 2

The customals of the Cinque Ports

2.1 Introduction

The current study has identified 33 extant customal texts relating to Cinque Port members, the majority surviving in manuscript form.¹ Customals survive for each of the head ports of the confederation (Hastings, New Romney, Hythe, Dover and Sandwich); for the so-called ‘ancient towns’ of Winchelsea and Rye; and for the ‘limbs’ of Faversham (limb of Dover), Fordwich (limb of Sandwich), Lydd (limb of New Romney), Pevensey (limb of Hastings). While some of these texts survive only as later copies of medieval versions, 16 manuscripts may be considered to be pre-1500 productions, and all of the considered texts can be seen as copies of medieval originals. The earliest of the manuscripts (comprising customals from New Romney, Sandwich and Fordwich) date from the mid- to late-fourteenth century, and there is credible internal evidence from the Sandwich customal that it is a copy or re-working of a now-lost manuscript of 1301. While this date of 1301 is the earliest date that can be ascribed to a Cinque Port customal, it is clear that the customs of Cinque Port communities had existed for several centuries before that date, and may in some instances have pre-dated the Conquest.² The detailed examination of the production of the Sandwich and Faversham customals presented here as case-studies demonstrates that codification of borough custom within the towns of the confederation may have begun as a response to particular political and legal stimuli in

¹ A descriptive catalogue of the extant manuscripts and texts forms Appendix 1 in this study. The discussion of the current chapter relates closely to this catalogue, and frequent reference is made to it. References to customals will be given according to the classification of this catalogue [e.g. ‘Dover customal (app.) 1’ or ‘Sandwich customal (app.) 4’] in order to avoid continual repetition of bibliographical or manuscript references. Full references for the cited sources are found in the catalogue.

² The antiquity of the customs associated with the communities of the Cinque Port confederation is discussed in K.M.E. Murray, *The Constitutional History of the Cinque Ports* (Manchester: University Press, 1935), pp. 16-19 and in Mary Bateson, *Borough Customs*, 1, Selden Society, 18, 1904), introduction and in description of customals of individual ports.

the later-thirteenth century. Thus, even the earliest of the surviving manuscripts probably represent copies or re-workings of previously existing written codes.

It is proposed in this chapter to consider the extant corpus of the medieval customals of the Cinque Ports as a whole. Such a survey is necessary because the evidence suggests that all of these texts are in some way interconnected: their production in one town on occasion being undertaken in common with other towns of the confederation, and with textual material frequently being shared between these towns. The towns of the Cinque Port confederation, and hence their administrations were linked not only by the political structures of Cinque Port administration, but also as regional communities linked by parities of economic interest. Bateson's pioneering study of British borough custom demonstrates that the 'force of example', which she saw as fundamental in the shaping of borough charters of liberties, was apparent in the various texts of the Cinque Port customals and that '...some neighbouring members of the Cinque Port organisation worded the privileges they enjoyed in common in precisely similar terms...'³

In the first instance, a survey, is to be offered here of the types of borough custom apparent in the Cinque Port texts, and an attempt made to characterise these customs and to compare them to borough custom of English towns as a whole. They principally consist of: the rights of communities in the choosing of officials as leaders (mayors, jurats, serjeants, clerks); the definition of the rights of these officials and of their relation to the rights of other (often seigneurial) officials acting within the town; the description of the operation of the town courts in the hearing of pleas and in the regulation of the transfer of land and property; and other material, less easily generalised, relating to specific provisions for administration in certain towns or describing events. Some preliminary consideration will also be given to the modes of expression in which this information is couched, through which the intentions of the

³ Mary Bateson, *Borough Customs*, 1, p. xiv. Bateson's comment on the parity of borough custom in the Cinque Ports is given as a qualification to her general remark that the borough custom of other English towns give less evidence of transmission between towns than might be expected from the similarities of borough charters. Thus, in this respect, the Cinque Ports are in some way exceptional in their development of borough custom.

customal-makers can be glimpsed. This consideration will be extended in the detailed discussion of customals considered in the case-studies.

The second part of this chapter will then consider, in a chronological scheme, the variety of manuscripts and texts of the extant corpus. In doing this it is intended to introduce one of the principal objects of this study: the examination of the 'events' of codification of borough custom in the thirteenth, fourteenth and fifteenth centuries. It is possible to recognise certain critical periods in the codification of custom, when there appears to have been especially intense activity, involving collection of material, copying and manuscript production. The likely context of these bursts of writing activity is to be considered, with a view to better understanding contemporary perceptions of customary codes and of the manuscripts in which they were presented. Since it is apparent that at certain periods codification was made in a number of towns of the confederation, in a manner which suggests common influence and purpose, it is possible also to make some remarks as to the way in which administrations were connected and their writings transmitted between them. There is, for example, evidence that such common productions occurred in the mid- to late-fourteenth century, and again in the late-fifteenth century. Where possible, the physical features of extant pre-1500 manuscripts will be described as evidence, in themselves, of the context and intention of the production of customals. Again, this physical description and consideration of the evidence it yields, will be pursued in greater detail throughout the case-studies of specific texts in the following two chapters.

2.2 Borough custom in the Cinque Ports customals

In spite of the difficulty in satisfactorily characterising the totality of borough customs as described in customals, the constitutional, political and economic affinities of the Cinque Ports have resulted in their customals betraying considerable similarities. This makes possible a limited survey of typical texts and of the arrangements they describe. In making such a survey, it is inevitable that arrangements peculiar to certain towns and texts be sometimes overlooked at the expense of coherence, and so the following survey represents only a very imperfect characterisation. The conviction

that it is frequently in particularities and anomalies that lie the most valuable indicators of meaning stands behind the concentration of this study, as a whole, upon detailed study of selected texts and manuscripts rather than attempts to reduce manifest variety to generalities. Nevertheless, it is necessary to make preliminary description of types of text found within the customals, by way of introduction.

A near-universal feature of the borough customs presented in the customals of the Cinque Port towns is the description of the yearly choosing of civic officials. Almost without exception, clauses containing this description are placed at the beginning of the customals.⁴ The descriptions themselves are varied, reflecting the variety of constitutional arrangements of individual towns.⁵ The fact that such description opens the customals of almost all of the ports is significant, and is an indication that the composition of customals may be linked. While it would seem natural enough to begin a customal with an explanation of the fundamental offices of the town, this is by no means a universal feature of the customals of English towns as a whole, and it is thus striking to find such unity among the Cinque Port customals.⁶ It is evident that even though members of the confederation had differing jurisdictional arrangements (largely resulting from differing degrees of freedom from seigneurial control), their

⁴ The only notable exception is the customal of Hythe [Hythe customal (app.)1] which contains no such description. As noted in the catalogue, however, this text may only be a fragment of the Hythe customal.

⁵ At Dover a mayor, 12 jurats, a clerk and serjeants are chosen on the feast of the Nativity of the Virgin; at Faversham the abbot of St. Saviour's abbey chooses a mayor from 3 candidates put forward by the town on the Monday after Michaelmas, and jurats are chosen the following Sunday; at Fordwich a mayor and 12 jurats are chosen on the Monday after the feast of St. Andrew; at Hastings a bailiff, jurats, a clerk and serjeants are chosen on the Sunday after Hockday; at Lydd a bailiff, jurats, a clerk and sub-bailiff are chosen at an unspecified time; at New Romney jurats are chosen at an unspecified time; at Pevensey a bailiff (called a 'receiver') is chosen on the Monday after Michaelmas; at Rye the mayor and jurats are chosen on the Sunday after the feast of St. Bartholomew; at Sandwich a mayor is chosen on the Monday after the feast of St. Andrew and jurats, clerk and other officials chosen the following Thursday; and at Winchelsea the mayor and jurats are chosen on the Monday after Easter.

⁶ Bateson does not include provision for election of officers in her detailed discussions in *Borough Customs*, since it falls outside the legal focus of the study, but a glance at her reference list (vol. 1, pp. xviii-lvi, in which the contents of a number of English borough customals are listed, shows that many customals do not describe the mode of election of officials.

customals express these arrangements in a remarkably similar way. The authority of long-used custom is frequently referred to, and in some cases the description represents a detailed rehearsal of yearly ceremony. At Dover, the mayor was chosen '*by usage of prescription of old time*'; the choosing of the Faversham mayor in the prescribed way had been carried out '*a deprimes*' ('from the first'); at Lydd the mode of election was simply '*ordeyned*'; while at New Romney the elections of jurats was done according to '*use*'.⁷ The texts of Dover, Faversham, Fordwich, Hastings, Lydd and Pevensey provide detailed descriptions of the ceremonies surrounding the election, and provide the form of oaths to be made by each of the elected officials. The description of the Sandwich mayoral election is particularly detailed, with its emphasis on correct place, the use of symbolic objects (the common horn, books and keys) and the form of oath-making, and will be examined in some detail in the discussion of the Sandwich customals. What is notable among all these texts is the reliance on extra-textual authority for the institutions and procedures outlined. Authority here does not rest so much in the verbal description as in the repeatedly and supposedly immemorially performed ceremonies to which the words refer. The words of the customals are in a sense merely a reflection of a series of performative actions and speeches, the knowledge of which constitutes political authority within the towns.

The need for recourse to the authority of custom and immemorial usage in these matters is immediately understandable in the light of the frequent and long-standing disputes which characterised holding of jurisdiction in the government of medieval towns, particularly those towns which were seigneurial possessions.⁸ This conflict is frequently manifest in the customals, and often created the need for close (and wordy) definition of urban institutions, as will be seen. It is likely that it is precisely the insecurity arising from such conflict that was responsible for the evident value placed upon 'customary' provisions for the choice of officers by urban governments in the

⁷ Dover customal (app.) 1; Faversham customal (app.) 1; Lydd customal (app.) 1; New Romney customal (app.) 1.

⁸ For the discussion of urban conflict in seigneurial boroughs see Susan Reynolds, *An Introduction to the History of English Medieval Towns* (Oxford: University Press, 1977, reprinted and revised 1982), pp. 114-117.

Cinque Ports when codifying administrative procedure. A particularly illuminating example of this value is provided by differing versions of the Fordwich customal. Fordwich, a member of the Cinque Ports by association with the port of Sandwich, was a seigneurial possession of the Abbot of St. Augustine's Abbey, Canterbury and its inhabitants were engaged in repeated and often violent conflict with its lord.⁹ As the catalogue of extant customals shows, various versions of the Fordwich customal survive. Only one of these texts (Fordwich customal 4) can be shown to have been produced on behalf of the community of Fordwich, while at least two others (Fordwich customals 1 and 3) were clearly drafted in the interest of the lord. The town's version (probably of the fourteenth century) begins, in common with most other Cinque Port customals, with clauses describing in detail the town's right to elect its own mayor and the ceremony associated with election. The versions produced for the lord, while sharing much of the material of the town's version, are conspicuous for their silence on the subject of the election of Fordwich's own officials. While it could be argued that the relative functions of these differing versions (as reference sources for government) would naturally affect their content: with the lord not needing to know about the town's internal affairs, this ignores the obvious symbolic status of the texts. The Fordwich texts seem not so much to be neutral recorders of objective fact concerning the community, but highly partial accounts of rival jurisdictions, in which information is either emphasised or ignored according to its acceptability to their various writers. The evidence for Fordwich and of its 'conflicting customals' draws attention to the highly political nature of the customal form, which will become increasingly apparent as the texts are examined.

The town officers described in these texts are themselves invested with symbolic significance, being the guardians of each town's liberties and franchises. As elsewhere, this is particularly true in those towns which had attained the right to elect a mayor, but even in those towns which were subject to the officials of an overlord (usually a bailiff), the town's own officials (such as its jurats) are invested with the

⁹ The relationship between Fordwich and its lord is partly described in C.E. Woodruff, *A History of the Town and Port of Fordwich, with a transcription of the XVth Century Copy of the Customal* (Canterbury: Cross and Jackman, 1895), pp.6-35

powers of the franchise.¹⁰ This is most clearly seen in the forms of oaths made on election which are found in almost all of the custumals, embedded in the descriptions of the elections themselves. In those towns where the head officer was chosen by the community (Dover, Fordwich, Hastings, Lydd, Pevensey, Sandwich, Rye), he is required to speak an oath, which is broadly similar in each of these ports: to be true to the king and his successors; to rightfully maintain the franchise, to do justice to rich and poor according to the use and custom of the town. In most cases, the jurats are required to make a similar oath, promising also to give good and honest counsel. In choosing these officers, and in requiring them to perform these oaths, the town yearly re-asserts its franchise as an extension of the king's own rule and following from immemorial custom. In those towns where the right to elect a chief officer was not fully in the hands of the community (Faversham, New Romney), oath-taking is carried out rather differently with special emphasis being laid upon the importance of the jurats. At Faversham, where the mayor was ultimately appointed by the lord, only the jurats are given an oath in the custumal, in a form very similar to those of the mayors and jurats of the other towns given above. At New Romney, the custumal lays particular stress on the role of the jurats, as a counterpoise to the power of the lord's bailiff.¹¹ The jurats are given a written commission stating that they have been chosen in the common house to maintain the liberties of the port, to reform the town's statutes, to punish offenders according to the magnitude of their crime, and to take collections, maltotes, shares arrearages and fines, giving honest account for each. A form of acquittance is also provided, to be issued to each jurat at the end of a year of rightful service. Extending the sense of power invested in the persons of the jurats is the bailiff's commission, in which he is charged by one of the jurats to maintain the franchise and usages of the port and to give loyal judgement according to the advice of the jurats.¹²

¹⁰ For the significance of a mayoralty as symbolic of urban autonomy see Reynolds, *op. cit.*, p. 120.

¹¹ The stress laid on the duties of the jurats in the fourteenth-century seignorial borough of New Romney is discussed in the introduction to 'The Register of Daniel Rough', ed. by K.M.E. Murray, *Kent Records* 16 (1945), pp. ix-lxviii (lii-lv). This stress has been interpreted as an attempt by the towns own elite to subject the bailiff of the Archbishop of Canterbury to their own jurisdiction.

¹² Since Bateson does not reproduce versions of the oaths of civic officials in *Borough Customs*, it is of value to rehearse the contents of these forms here, since many contain extra detail in addition to their

In some cases, the custumals extend this careful boundary-making between officials in specific enactments, further suggesting that these texts were intended to be symbolic of the sanctity of their respective franchises, created as a defence against franchisal intrusion. In some cases such enactments are predictably found in the custumals of

general similarities. At Dover in the early-sixteenth century the mayor and jurats were charged by the outgoing mayor to be true and lawful to the king and his successors, and to rightfully maintain the franchise, doing right to rich and poor. The bailiff was to bring a commission under the Great Seal of the king [Dover custumal (app.) 1]. At Faversham c. 1400, no mayoral oath is given, but the jurats swore to aid the mayor in keeping the king's peace within the town, in giving loyal judgement both to residents and strangers according to *droite* and *equite*, and to maintain the laws and customs of the town [Faversham custumal (app.) 1]. At Fordwich in the fourteenth century the mayor and jurats swore to be true to the king and his heirs, to do justice according to use and custom to residents and strangers, and to rich and poor, and to give good and honest counsel [Fordwich custumal (app.) 1]. At Hastings in the fourteenth century the bailiff (elected) and jurats swore to be faithful to the king and his heirs, to rightfully maintain the franchises and usages of the town, to maintain the common profit, and to do right to rich and poor [Hastings custumal (app.) 2]. At Hythe no oaths are recorded in the surviving fragment [Hythe custumal (app.) 1]. At New Romney in the fourteenth century the jurats were given written commission described in the above text [New Romney custumal (app.) 1], the bailiff was charged by one of the jurats as described above in the fourteenth and fifteenth centuries [New Romney custumals (app.) 1 and 2]. At Lydd in the fifteenth century the bailiff (elected) swore to maintain the franchise and usages of the town and of the Cinque Ports, to give true judgement to rich and poor, and to keep the king's counsel, while the jurats were to give true counsel to the bailiff, to maintain the franchise of the town and of the Cinque Ports, to be ready when required at the common place, to keep the king's counsel, and to set scots and lots [Lydd custumal (app.) 1]. At Pevensey in the fourteenth century the bailiff (elected and called a *ressevour*) wore to be true to the town, to maintain its franchise, to truly dispense the common charges and to give honest account, while the jurats swore to be true to the town, to make just taxation according to the ability to pay and to not oppress the poor [Pevensey custumal (app.) 1]. At Rye in the sixteenth century the mayor swore to be faithful to the king, and to the town of Rye, and to rightfully keep the franchises and usages, and to do right to rich and poor [Rye custumal (app.) 2]. At Sandwich in the fourteenth and fifteenth centuries the mayor and jurats swore to be true to the king and his heirs, to the customs and liberties of the town, to give judgment according to the use and custom of the town to rich and poor, disregarding wealth, love, hatred or affection, with the jurats additionally swearing to give counsel to the mayor [Sandwich custumals (app.) 1 and 2]. At Winchelsea in the fifteenth century the mayor swore to be faithful to the king, the town of Winchelsea, and to maintain the usages and franchises, to guard the common profit, and to do right to rich and poor, while the jurats swore to be faithful to the king and commons.

towns under strong seignorial control. The New Romney customals give two additional clauses concerning the powers of the jurats, who are able to make distrains or attachments on their own account *without* the interference of the lord's bailiff. At Sandwich, Fordwich and Dover the lord's bailiffs (of the crown, the abbot of St. Augustine's, and the crown, respectively) are specifically barred from entering the house of a freeman to make distraint without express permission of the mayor and jurats, and this enactment seems highly symbolic of the intruding character given to external officials in these texts.¹³

In common with most English towns, and with most medieval franchise holders, self-government within the Cinque Port towns was exercised through the institutions of their courts. Government and administration were inextricably linked with legal jurisdiction.¹⁴ It is then unsurprising that large proportions of all of the Cinque Port customals are devoted to descriptions of these courts, their jurisdiction and their processes. These descriptions served partly as a practical guide to process in the borough courts for the benefit of future governments, and this assumption underlies the analysis of borough custom offered by Bateson, who sought to chart the previously little known operation of courts outside the immediate sphere of the royal courts or of the common law.¹⁵ This function is abundantly evident in the present texts, whose frequent later annotation and amendment provide evidence of repeated consultation as reference sources for those involved in borough jurisdiction. However, it is the contention of this current study that the act of making these descriptions and of codifying court procedures, in itself frequently had an immediate political purpose, usually in the context of conflict over rights of jurisdiction.¹⁶ This use of custom is primarily suggested by the evidence for the contexts of custumal production which are to be considered in some detail below, but it is also apparent in

¹³ New Romney customals (app.) 1 and 2; Sandwich customals (app.) 1 and 2 ; Fordwich custumal (app.) 3; Dover custumal (app.) 1. All described or transcribed in Bateson, *Borough Customs*, 2, Selden Society, 21 (1906), pp. 31-33.

¹⁴ Reynolds, *op. cit.*, p.119.

¹⁵ Bateson, *Borough Customs*, 1. In particular see the Introduction, pp. ix-xv.

¹⁶ The potential of borough customals as sources from which deductions could be made concerning conflict was recognised by Reynolds, *op. cit.*, p. 130.

the nature of the texts themselves. The descriptions of courts and procedures found in these texts seek to define, often in minute detail, the boundaries and limits of potentially conflicting jurisdictions. The courts over which the mayor and jurats had full power (usually the borough court) are described as part of an interlocking system of other courts presided over by other officials representing other sources of authority, which in many of the Cinque ports included royal courts (the eyres and associated courts); the courts of the warden of the Cinque Ports (the courts of Shepway and of St. James, Dover); and the seigneurial courts of their lords (usually the hundred courts), each with carefully delineated jurisdictional boundaries. In describing usage in the town's own courts, reference is also made to its longevity, and to rationalised procedures born out of repetition, in a way which seeks to sanction and protect the town's jurisdictional liberties from external interference or the encroachment of other courts, by recourse to long-held custom.

It is not proposed here to give a full account of the variety of actions and procedures in the courts of the Cinque Port towns as described in their customals. Such a task is an undertaking beyond the scope of this chapter, and has already been attempted by Bateson, whose major aim in the collections for her *Borough Customs* was to give an account of those actions and processes in town courts of the British Isles. Her account, with its numerous customal extracts, includes the courts of the Cinque Port towns, and demonstrates that these Cinque Port courts were comparable to those of other towns in most respects, with certain notable exceptions. The case-studies of the Sandwich and Faversham customals below will describe the operation of courts and demarcations of jurisdiction in those particular towns. Like other English boroughs the Cinque Port towns' central organs of administration were the weekly borough courts and the less frequent (usually three-weekly) hundred courts, together with courts convened from day to day for the purpose of hearing cases between visiting merchants (akin to courts of piepowder found in other towns), and the procedures of summons, the jurisdictional scope, the systems of deferments (essoins and delays) available, and methods of pleading are all dealt with in detail. The division of business transacted in the borough and hundred courts depended primarily on the jurisdictional and constitutional peculiarities of each town, with the borough court having greater authority in non-seigneurial boroughs. This division also appears to have changed in

the course of time, and the gradual appropriation by the burgesses of Faversham of rights formerly in the hands of the abbot's courts will be discussed, as an example of this process of change, in the chapter dealing with that town. In general, the borough courts of the Cinque Ports, as in other towns, had custody of personal pleas (such as trespass, debt, and covenant), together with the recording and examination of land transactions, and increasingly in the fourteenth century judgment of petty crime.¹⁷ The hundred courts dealt with more serious crimes ('pleas of the crown'), and in some cases (as at Sandwich) also had custody of land transactions.¹⁸ The Cinque Port towns are notable for their rights as agents of the crown in the trial of these major pleas, held by virtue of franchise, which were usually heard at a special summons of the hundred courts.¹⁹ Such major pleas (including the felonies of rape; robbery; larceny; arson; and breach of prison) were an area of jurisdiction that had from an early period been claimed solely by the crown, and rights to their trial outside of the king's own court were granted only exceptionally.²⁰ They thus represent a particular responsibility of Cinque Port town governments, and it is a notable feature of many of the extant customals that clauses describing major pleas are often placed near to the beginning of the text, immediately following the description of the election of town officials, and before the descriptions of the more commonly used processes of borough and hundred courts. Clauses describing the rights of town officials as coroners in the case of death (where they act directly as agents of the crown) within the franchise appear in this privileged position in the customals of Dover, Faversham,

¹⁷ For rights and procedures in personal actions and in the transfer of land see *Borough Customs* 1, where entries for Cinque Port towns appear in the index under the name of individual towns. The suggestion that the customal of Faversham saw the addition of clauses concerning the rights of the mayor and jurats in the borough courts after 1356, see the discussion of that customal below, Chapter 4.

¹⁸ Pleas of the crown (also called 'real actions') are considered in *Borough Customs*, 1, pp. 231-320. References to the Cinque Port customals are given in the index listed under the names of individual towns. For the summons of the hundred courts and for their jurisdictions, see *Borough Customs*, 2, pp. 16, 42-2, 48-9. For pleas of land in the Sandwich hundred court held in St. Clement's church see Sandwich customals 1 and 2, portion transcribed in *Borough Customs*, 2, pp. 41-42.

¹⁹ Murray, *Cinque Ports*, p. 16.

²⁰ Edward Powell, *Kingship, law, and Society; Criminal Justice in the Reign of Henry V* (Oxford: Clarendon, 1989), pp. 50-51.

Hastings, Hythe, Pevensey, and also towards the end of the Fordwich customal.²¹ The right of most towns to the ancient customs of mainprise and compurgation in these major cases, by which a defendant may prove his good name in court by pledges is also described in their customals and has been discussed by Bateson and Murray.²² Most ports possessed also the right to execute indicted felons, and the modes of execution are usually described in the customals.²³ The existence of the Court of Shepway as a higher court, to which pleas not terminated (or wrongly terminated) in the town courts could be taken is noted in all of the customals, and is a particular feature of the special jurisdiction of the Cinque Ports confederation. Its operation has been considered in detail by Murray, who notes that despite its unusual constitution, its function was very closely connected with that of the eyres, acting both in the interest of the king and, as a court of appeal, in the interest of town administrations.²⁴

A further fundamental area of borough custom which finds expression in the Cinque Port customals is that of the control of the holding of land and property. All boroughs were equipped with the right of free alienation of property among the community of freemen, and this was the fundamental urban liberty of the medieval period.²⁵ A good deal of each of the customals is concerned with the provisions made for the alienation of land and property, and of the duties of the borough court in overseeing and recording this, and in this respect the Cinque Port customals are similar to those of most English towns.²⁶ A particular provision, however, existed for the protection of

²¹ Dover customal (app.) 1; Faversham customal (app.) 1; Hastings customal (app.) 1; Hythe customal (app.) 1 (where the clause is the first of this customal fragment); Pevensey customal (app.) 1; Fordwich customal (app.) 4. Transcripts of the clauses from Pevensey, Romney, Fordwich and Hythe are found in *Borough Customs*, 1, pp. 15-17

²² These processes are described in *Borough Customs*, 2, and referred to in the index under the individual towns; Murray, *Cinque Ports*, p. 17.

²³ Murray, *Cinque Ports*, p. 17.

²⁴ Murray, *Cinque Ports*, pp. 60-76.

²⁵ 'Burgage tenure' is discussed in Susan Reynolds, *An Introduction to the History of Medieval English Towns* (Oxford: Clarendon, 1977), pp. 93-94, 98-102.

²⁶ The treatment of land and property transactions appears in *Borough Customs*, 2, pp. lxxxv - c, c - cxv, cxv - cxxvii, cxxvii - cxxxv, and numerous transcripts from Cinque Port customals appear, indexed under the name of individual ports.

the property rights of women in the Cinque Ports, and most of the customals contain a lengthy clause describing the manner in which an enquiry was to be made by officers of the borough court as to whether the woman was intending to alienate her land of her free-will, without the exertion of undue pressure by a husband.²⁷

2.3 The codification of the Cinque Port customals

The production of manuscript texts containing the range of materials considered above was clearly a major undertaking. The act of codification, which will be closely examined in the case-studies below, involved a very considerable process of gathering, editing, composing and copying of texts. It will be shown that such codification involved not only the compositional skill of a clerk, but also the searching of existing town records and the collection of copies of documents held elsewhere, perhaps in the archives of other neighbouring towns or even among the legal archives of royal departments such as the chancery. It is intended here to consider on what occasions such codifications were made on the account of Cinque Port towns, and in what circumstances. Such consideration is crucial to the understanding of the perceived purpose and value of these customal texts. This dating of codification is fraught with difficulty for the reason (noted by Bateson) that writers frequently assigned dates to their texts which would enhance their authority rather than serve the historian.²⁸ The survey of texts carried out in this present study, together with its case-studies, is offered in part as an attempt to begin the ‘closer criticism’ hoped for by Bateson in 1904 which would help to fix more clearly the likely occasions of codification of borough custom.²⁹

²⁷ *Borough Customs*, 2, pp. c - cxv.

²⁸ *Borough Customs*, 1, pp. xvi.

²⁹ Bateson said of her own survey: ‘...the dates which we have affixed to most of the customals are speculative: a closer criticism of each customal’s contents might lead to more secure results, but the features which would fix dates are not very readily identifiable.’ (*Borough Customs*, 1, p.xvi.)

Bateson was able to draw-out several general features surrounding the production of British customals, and these are applicable also to the Cinque Port texts.³⁰ She made the association between the production of customals and the existence, within individual towns, of a clerk or other borough officer of ‘unusually methodical habits’. This association, which emphasises the personality of certain clerks in the causation for such textual production, certainly finds support from within the Cinque Port corpus. The Sandwich clerk, Adam Champneys, who codified the Sandwich customal in 1300/01; the peculiarly document-conscious writer of the New Romney customal found in a register of c.1382; and the highly skilled and well-connected Thomas Caxton who produced a version of the Lydd customal in 1476, might each be cited as examples of such clerks.³¹ Nevertheless, the considerable evidence for the association with Cinque Port customal production with social tension and political event suggests that the existence of these clerks was formative of the types of texts produced, but not necessarily causative of their production. Bateson also notes the possibility that what she termed ‘local’ event gave rise to codification, such as the purchase of new privileges; a royal enquiry (and here she makes particular reference to the case of the Cinque Ports); the offer of payment from another borough enfranchised with similar liberties by charter.

A ‘royal enquiry’ (a term which may need some deconstruction, in itself) of 1356 has come to be seen as the first point at which the customals of the Cinque Ports were codified.³² Certainly, there is evidence that a confederation-wide production of

³⁰ *Borough Customs*, 1, pp. xv-xvi.

³¹ See Sandwich customal (app.) 1; New Romney customal (app.) 1; Lydd customal (app.) 1. The work and career of Adam Champneys is considered in the section of this thesis concerning the customals of Sandwich. The work of the New Romney clerk is discussed in the ‘Register of Daniel Rough’ ed. by K.M.E. Murray, *Kent Records*, 16 (1945). The work and family connections of Thomas Caxton (who is likely to have been a relation of the printer William Caxton, and who moved from Lydd to become clerk of Sandwich later in 1476) is discussed in *HMC Fifth Report*, pp. xxxviii-xxxix.

³² Bateson noted the date of 1356 associated with customals of Hastings and Pevensey and suggested the connection between their production and the royal enquiry of the same year (*Borough Customs*, 1, pp. xxx and xlv. This connection has earlier been pointed out in the discussion of the Pevensey customal by Lambert L. Larking in ‘The Customal of Pevensey, as delivered to the Lord Warden at Dover Castle, in

customals did occur in 1356, and that a royal enquiry had preceded it, though there will be cause to question the links between these two phenomena. The history of codified custom in the towns of the confederation, however, surely begins much earlier than the mid-fourteenth century. The diversity found within the overall parity of texts in the different ports has occasionally been noted, and has been taken as evidence that each port developed individually in constitutional terms and may have had peculiar customs, before the confederation-wide production of 1356.³³ This diversity of custom has largely been seen as evidence of informal (and uncodified) development, presumably transmitted orally and through the procedures of the borough courts themselves. There is, however, textual and manuscript evidence to suggest that written codifications of custom were being made in certain ports at least 50 years before the traditionally recognised event of 1356. This evidence suggests that it is to the late-thirteenth century, or the turn of the thirteenth and fourteenth centuries, that we should look for early texts of Cinque Port customals.

The case-studies carried out here into the customals of Sandwich and Faversham have both resulted in the finding of manuscripts of the late-thirteenth century or the opening of the fourteenth century, which are written claims of customs and liberties, presented as clauses on single skins of parchment, apparently presented in response to royal enquiry into the respective franchises of those towns.³⁴ Both have the character of practical documents drawn up for use within the court, or as a result of the court session, which have then been kept as a record. Each can in some way be considered a 'proto-customal'. The Sandwich text was almost certainly produced as a result of the eyre of 1293/4, which made a circuit of Kent making '*quo warranto*' enquiry into the holding of liberties and franchises.³⁵ It was this same circuit to which was probably presented a codification of what has come to be known as the 'Customal of

1356', *Sussex Archaeological Collections*, 4 (1851). It was also adopted by L.F. Salzman in his discussion of the customal in *VCH (Sussex)*, 9, p. 35.

³³ Murray, *Cinque Ports*, p. 16.

³⁴ PRO MS E 163/2/26; CKS MS Fa/ZB 7. Discussed below in the context of the early development and administration of Faversham (Chapter 4. 2)

³⁵ For the sessions of this circuit see David Crook ed., *Records of the General Eyre*, Public Record Office Handbooks, 20 (London: HMSO, 1982), pp. 176-177.

Kent', a text which claimed for the commons of Kent the peculiarly Kentish customs of partible inheritance and also certain immunities from landlord exactions.³⁶ The Faversham text was probably produced by a civic government of Faversham in response to articles issued in a *quo warranto* session of a central royal court: this time at the suit of the abbot of Faversham in a king's bench session of 1304.³⁷ In both documents, the respective town governments make recourse to custom and long-held usage in defence of their franchises. While these documents, in their rather unsophisticated manuscript form appear makeshift and ephemeral in comparison with the more self-consciously produced customals and customal books later produced by the Cinque Ports, it is in these texts that we can trace the beginnings of an urban culture in these towns which increasingly came to use petitionary writing in defence of their liberties. It might be pointed out that if the study of two towns reveals the existence of such documents, the further study of the other towns of the confederation, and of the activities of courts such as the eyre in this locality, is very likely to reveal similar texts, confirming that custom was in the process of codification within the towns of the Cinque Ports by at least 1300, if not before.

It was in this context of intense scrutiny and of widespread attempts at the definition of the rights of communities to franchises and liberties which characterised the later years of Edward I's reign that the first true town-customal from a Cinque Port was produced: the 1300/01 customal of Sandwich. As the list of extant customals shows, no manuscript survives for this production, but its text survives within the later-fourteenth century version of the Sandwich customal.³⁸ Our knowledge of the 1300/01 text is chiefly drawn from a preamble given by its writer Adam Champneys, which states that the text was written up in a small book (*libello*), for the benefit of those to come in the government of the town.³⁹ If the statement that this customal was produced as a book can be taken at face-value, then this codification represents something rather more sophisticated than the production of short memoranda of

³⁶ The codification of the Customs of Kent, and its association with the Kent circuit of the 1293/4 eyre is discussed in *VCH (Kent)*, 3, p. 324.

³⁷ PRO C 260/74 no. 27 (Chanc. Misc.).

³⁸ CKS Sa/LC 1.

custom for the purpose of its defence in court. The production of such a book, with its stated intention of enduring for use in the future is an early manifestation of a culture of custumal-book production in the towns of the Cinque Ports which becomes apparent in the later-fourteenth century. Such an early date for this production, in the context of the surviving corpus, suggests that Sandwich, with its close royal and London connections may have been at the forefront of the development of this culture. As the analysis of this production will demonstrate, this early Sandwich custumal was also produced for a specific purpose: the appearance of the mayor and jurats of the town before session of the king's bench in 1301 for their violent repulsion of an attempt by royal justices to make enquiries within the liberty of Sandwich.⁴⁰

While the evidence of these early codifications indicate custumals were made and used in Cinque Port towns by c.1300, it is true to say that it was in the climate of the later-fourteenth century that the custumals became ubiquitous features of the administration of Cinque Port towns. It was from the 1350s onwards that such custumals took on truly 'Cinque Port' characteristics and were apparently developed not only by the individual towns, but in consultation with other towns of the confederation. This development closely corresponds to a renewal of interest by town governments in the notion of the confederation and in its political potential.

As has been noted there is evidence that a royal enquiry into Cinque Port liberties in 1356 was responsible for a production of custumals throughout the ports, but this evidence is not as straightforward as earlier writers have implied. Larking, in his edition of the Pevensey custumal stated that on the complaint of the ports concerning the oppressions of the warden of the Cinque Ports, Roger Mortimer, in the operation of his own franchisal courts, the crown ordered the warden to desist from such oppression. He cites a reference from the Fine Rolls of 29 Edward III, but a search for the original has revealed nothing. He suggests that Mortimer consequently

³⁹ Discussed below in the examination of the Sandwich custumal of 1301 (Chapter 3. 2)

⁴⁰ See discussion of the Sandwich custumals below and Justin Croft, 'An assault on the royal justices and the production of the Sandwich custumal', forthcoming vol. of *Archaeologia Cantiana*.

ordered the administrations of each town to submit a copy of its custumal to him at Dover castle.⁴¹ Lyon, in his account of the history of Dover states that Mortimer ordered the presentation of custumals to assist him in the judgement of cases in the court of Shepway.⁴² Once again there is no obvious evidence for this. The problem is compounded by the fact that no manuscript custumal can certainly be assigned to the year 1356. Two custumals appearing in later versions, however, do appear to originate from a presentation of custumals at Dover in 1356. The lost fourteenth-century Hastings custumal, now existing only in a nineteenth-century printed version, is headed by the statement that it was produced in the time of John Reade, bailiff, in the 30th year of Edward III [1356], and contains a document, included as a precedent, dated 1356.⁴³ The physical form in which this custumal was presented (if presented it was) is not known. The version of the Faversham custumal surviving in a town-book of that town (probably of the later-fourteenth century) contains an initial section headed with the assertion that it is the custumal as kept at Dover castle, which seems also to indicate that this custumal was presented in the 1356 'enquiry'.⁴⁴ Once again, there is no indication of the manuscript form of this original document. A version of the New Romney custumal produced in the later-fifteenth century concludes with a note that these customs were those enrolled, in common with other ports to Roger Mortimer at Dover castle in 1356.⁴⁵ This statement appears, however, to have been made retrospectively at New Romney, since neither of the fourteenth-century texts of the New Romney custumal contain that statement.⁴⁶

⁴¹ Larking, *op. cit.*, p.209.

⁴² John Lyon, *History of the town and port of, and of Dover Castle; with a short account of the Cinque Ports*, 2 (Dover and London: Ledger and Shaw, pp. 266 and 343.

⁴³ Hastings custumal 2.

⁴⁴ Faversham custumal (app.) I, discussed in detail below.

⁴⁵ New Romney custumal (app.) 3, f. 17v: *'Item it is forto wyte that these usages all in the maner as they befor here wrytten where thus returned in the Castell of Dover under the Common Seale of Romene. Ande that was by the commandment of sir Roger Mortymer the Constable of Dover And wardeyn of the V Portes the morow after Seynt Myghell tharchangell the yere of Kyng E. the iije. After the Conquest of Engelond xxxe. And att same day returned euery towne of the V. Portez ther usages the whych they clayme forto use within them selfes among...'*

⁴⁶ New Romney custumals (app.) 1 and 2.

While the surviving evidence for a 1356 enquiry is now scant, it is likely that the 1350s as a whole did mark an important period in the administrative and documentary history of the Cinque Ports, and was also important in the history of their customals. It is clear that during this decade, the individual towns of the confederation were engaged in close correspondence concerning the issues of their jointly held privileges and franchises, and that these witnessed a particular crystallisation of the mode of such correspondence, in the form of the court of Brodhull.⁴⁷ This court had existed in an informal sense since the thirteenth century, and was the occasional meeting of leading members of Cinque Port towns for matters of mutual interest. It was, however, in the year 1357 that the court was adopted as the general assembly of the confederation and provision made for regular, twice-yearly summons.⁴⁸ The re-establishment of this court in 1357 has been seen as a response to the need to obtain confirmation of Cinque Port rights at the Yarmouth herring fair and to administer the provision of bailiffs for this fair, and this does seem to have been the immediate stimulus. However, the near-coincidence of this establishment with the presentation of customals of the previous year suggests a much broader effort towards communal organisation for the defence of liberties and franchises. As in other English localities the issue of franchisal jurisdiction was under considerable royal scrutiny, comparable to that of the late-thirteenth century. The motivation for this scrutiny appears to have been in part the dislocation consequent to the mortality of the Black Death, and involved special judicial measures being taken to combat what was seen to be the dangerous break-down in established social relations.⁴⁹ The most well-known result of this was the passing and subsequent enforcement of the Statute of Labourers, which involved the commissioning of special justices and officials to hear cases

⁴⁷ The Cinque Ports' court of Brodhull is considered at some length in Murray, *Cinque Ports*, pp. 139-189 (ch. 9 'The origin of the court of Brodhull' ; ch. 10 'The Constitution of the Brodhull'; ch. 11 'The Function of the Brodhull').

⁴⁸ Murray, *Cinque Ports*, p. 154.

⁴⁹ For judicial developments of the mid-fourteenth century, including the establishment of the office of Justice of the Peace, see Edward Powell, *Kingship, Law, and Society; Criminal Justice in the Reign of Henry V* (Oxford: Clarendon, 1989), pp. 16-7.

arising from the articles of the statute.⁵⁰ The delegation of special powers to royal officials had begun in the Cinque Ports as early as 1354, where the warden of the ports, Bartholomew de Burgharrsh had been given a commission of oyer and terminer to enquire into felonies and defaults of justice in Kent.⁵¹ While the Cinque Ports were technically exempt from the operation of such commissions (their franchises giving them freedom from such royal courts), their privileged position seems not to have been secure. Representatives of the Cinque Port towns appeared before Burgharrsh at Canterbury in 1354, though they did so of their own will, hoping for the warden's assistance in the grievances of inhabitants of New Romney against the exactions of the Archbishop of Canterbury. In the course of this Canterbury meeting, Burgarssh claimed to hold his commission of oyer and terminer to do justice in the county of Kent, and in each of the towns of the Cinque Ports. Such a claim is likely to have given rise to confusion (or conflict) over jurisdictional rights which characterised the royally-inspired legal innovations of the 1350s. The articles of enquiry given to Burgharrsh in his commission are recorded in a later fourteenth century book associated with New Romney, which also contains a version of that town's custumal. They consist of seventeen points relating to criminal activity, and most importantly to corruption and malpractice among officials with power to control such activity.⁵² It begins with an initial clause giving power to make enquiry into all crimes considered felonies (homicide, arson and rape are specified), the trial of which was reserved to agents acting directly for the crown. This first clause is followed by short clauses concerning enquiry into a number of strategies for the perversion of justice, including: the assaulting of jurors; coming armed to court; officials sparing the guilty while punishing the innocent; the malpractice of keepers of prisons; the binding together of individuals by oath or under livery (two clauses); the corruption of officers in cities and boroughs in the custody of assizes of wine and food; the taking of other false extortion by officials; the malpractice of forestallers of the market and crown purveyors; the taking of fees by collectors of subsidies; the false weighing of wool;

⁵⁰ B. H. Putnam, *The Enforcement of the Statute of Labourers during the first decade after the Black Death, 1349-59* (New York: Columbia University Press, 1908).

⁵¹ For Burgharrsh's commission and the involvement of the Cinque Port towns see 'The Register of Daniel Rough', *loc cit.*, pp. xxx-xxxii.

the uncustomed export of wool; the making of false alliance and confederacy ('...*des champertours, confederatours, ambidextours...* '); the false collection of penalties under the statute of labourers; and the charging for protection. The articles amount to a declaration of war not only on criminals but also on the activities of local officials, including town or port officials who cannot show themselves to act lawfully and effectively against crime, disorder and corruption. The very fact that the articles appear among the documents (principally from the New Romney archive) later to be written-up in the New Romney book may indicate that the administrations of Cinque Port towns did not believe that their immunity from such commissions was at all secure.

The right given to the warden to try felonies (pleas of the crown) by this commission, to enquire into judicial and administrative malpractice, and his claim that this commission ran both in Kent and within the towns of the Cinque Ports are highly significant in the discussion of the production of customals in the 1350s. In the first instance, the pleas of the crown outlined in the commission are largely correspondent with the pleas of the crown claimed as part of the Cinque Port towns' own franchises. As has been seen these pleas are given particular attention in most of the customals, being placed in a prominent position as though they were to be considered fundamental franchises of those towns' administrations. The warden's jurisdiction as extended in his commission of oyer and terminer was potentially an infringement of the towns' own liberties. Furthermore, the detailed and careful description of administrative and judicial processes in each of the towns' customals takes on considerable significance in the light of the other articles of the commission, and seems to be presented as justificatory evidence that administration within these franchises was both lawful and effective.

Beyond the manifest connection between the production of customals and the imperatives of royal enquiry, it is likely that town governments (whether of the Cinque Ports or elsewhere) had more deep-seated reasons for the re-assertion of customary arrangements for urban government and jurisdiction in the 1350s. This is

⁵² 'The Register of Daniel Rough', *loc. cit.*, pp. 290-294 (discussed in the introduction pp. xxx-xxxii).

suggested both by comparative evidence from other towns of the region at this time, and by the nature of the custumal texts themselves. The dislocations attendant to the mortality of the Black Death which were felt among the personnel and in established administrative and economic networks of the Kentish towns of Rochester and Canterbury has been examined and described by Butcher, and suggests that the immediate post-Black Death period witnessed disorientation and confusion in the techniques of administration and record-keeping.⁵³ A response to this appears to have been the production of new types of record intended to stabilise knowledge of the methods of administration.⁵⁴ Of particular interest is a series of articles describing the customary actions of civic officials drawn up in 1353 at Canterbury, which might legitimately be called a custumal, and which can be compared to the production of such texts in the neighbouring towns affiliated to the Cinque Ports under consideration here.⁵⁵

A major preoccupation of administration at all levels appears to have been the provision for land and property transfer (by alienation or inheritance) in an environment where such transfer took place with increasing and alarming frequency. The evidence of the Cinque Port custumals suggests that this was of particular concern to their makers. It has been noted that substantial portions of all of the texts concern the transfer of land and property as supervised by the borough courts, and the reiteration of these provisions in the 1350s may in itself be evidence of a desire of civic elites to maintain control of the burgage-tenure and of freeman-owned property within their jurisdictions. The later-fourteenth century Sandwich custumal gives explicit evidence of the concerns of a civic government in the immediate post-Black Death period over potential disintegration of the possessions of freemen of the town upon their death. As in almost all of the custumals, the Sandwich text contains

⁵³ A. F. Butcher, 'English Urban Society and the Revolt of 1381', ed. by R.H. Hilton and T.S. Aston (Cambridge: University Press, 1984) pp. 84-111.

⁵⁴ At Rochester the prior's properties in the town were written up in a new book of extracts from the manor court materials. The making of this book has been interpreted as a response to 'confusion brought about by the mortalities and the disorder of the property market', Butcher, 'English Urban Society and the Revolt of 1381), p. 94.

⁵⁵ Butcher, 'English Urban Society and the Revolt of 1381', p. 96.

detailed provision for the wardship of property falling to minors on the death of their parents, setting out that the mayor and jurats should have custody of that property until the minor reaches the age of majority, thus keeping it within the freeman community of the town.⁵⁶ However, at Sandwich, the mayor went to the length of having this usage confirmed by royal letters patent, which were issued in 1348, and are included in the custumal clause.⁵⁷ The fact that these concerns were not limited to Sandwich is indicated by the appearance of the same letters patent in the custumal of Fordwich (a limb of Sandwich), and also among a collection of Sandwich documents appended to the Faversham custumal. The Sandwich custumal, however, gives further evidence of the significance of these provisions in a memorandum concerning the year 1351, in which year it is recorded that there was a great mortality of children among all towns, and consequently the death of many of these orphans with property in the wardship of the town. It is stated that at this time, the mayor William Ive took custody of this property, and that the subsequent mayor Stephen Espilon, expended a third of this property for the memory of their souls.⁵⁸ It is not stated what became of the remaining two-thirds, but the implication is that it remained with the town government, which seems to be a clear indication of a strategy devised by a town government to prevent the disintegration of capital accumulated by its freemen.

These examples are intended to demonstrate that while a royal enquiry of 1356 may have been the occasion of a confederation-wide production of custumals, this production may have been done on the initiative of the town-governments themselves as much as in simple response to the demand of the warden. This initiative appears also to stand behind the existence of an important group of surviving late-fourteenth century custumals which may not be linked directly to any particular royal enquiry. The group consists of four custumals from: Faversham, Fordwich, New Romney, and Sandwich, each presented in small manuscript register-books on parchment, presented together with other records and instruments relating to the respective

⁵⁶ Sandwich custumal (app.) 1, ff. 21-22.

⁵⁷ Sandwich custumal (app.) 1, f. 22.

⁵⁸ Sandwich custumal (app.) 1, f. 28.

towns.⁵⁹ They each represent a major reorganisation, or re-archiving of existing urban administrative knowledge, with texts previously being kept (probably in the common-chests of these towns) as separate manuscripts being drawn together, within the covers of a single book. As the catalogue of extant custumal texts shows, all can be considered productions of the late-fourteenth century: the Faversham book was probably begun in or soon after 1382; the Fordwich book at some time between 1364 and 1402; the New Romney book soon after 1381; and the Sandwich book between 1351 and 1381. All of these books have affinities with each other, both in terms of content and physical appearance. While there will be cause to recognise certain unique characteristics of each of these books, it is true to say that they form part of a wider scribal and urban administrative culture of the fourteenth century, in which town governments (or elements within them) caused to have made registers (often 'Red Books') of their administration in the form of compilations of civic and other documents both of the present and of the historical past. Such registers survive notably for London, Bristol and Southampton, and also in the other English towns, and contain (as do the present Cinque Port examples): charters; custumals; ordinances; memoranda; and formulae of document types.⁶⁰

The consideration of these books and their custumals is to be a major part of the current study, and the custumals themselves are to be considered in the light of the scribal and urban-administrative cultures represented by these books. It is usually the case that in the course of the production of these books, the opportunity was also taken to re-write or to modify an existing custumal text for presentation in its new context, and so this process and its motivation needs to be examined closely if the resulting custumal forms are to be understood. At Faversham, the custumal of 1356 was modified through addition; at New Romney an existing custumal (of uncertain

⁵⁹ Faversham custumal (app.) 1; Fordwich custumal (app.) 4; New Romney custumal (app.) 1; Sandwich custumal (app.) 1.

⁶⁰ London: *Liber Custumarum compiled in the early part of the fourteenth century*, ed. by Henry Thomas Riley, *Munimenta Gildhallae Londoniensis*, 2 (two parts) (Rolls Series, 1860). Bristol: *The Little Red Book of Bristol*, 2 vols., ed. by Francis B. Bickley (Bristol and London: Crofton Hemmings and Sotheran, 1900). Southampton: *The Oak Book of Southampton of c. A.D. 1300*, 3 vols., ed. by Paul Studer (Southampton: Southampton Record Office, 1910-11).

date) appears to have been interpolated with document formulae; at Fordwich, a version of the Sandwich custumal was copied and worked-upon, and at Sandwich itself the town government interpolated the earlier 1300/01 text with memoranda of their own acts of government and made further additions.⁶¹ The examination of these processes of modification will be carried-out in the case studies of Sandwich and Faversham.

The importance attached to the production of these books, both in the Cinque Port examples and elsewhere, is indicated by the employment or commissioning of book-craftsmen of considerable skills. This is particularly true of the scribes used in the Cinque Port books, whose hands are of high quality, and of great sophistication in each of the four books of this recognised group. While these hands are varied, indicating the use of different types of scribes, none save perhaps that attributed to Daniel Rough at Romney, can be attributed to the town-clerks of these towns. It seems probable that urban governments sought to commission writers from elsewhere to produce these books. At Faversham, it will be argued, the book shows strong signs of production in London or by a London scribe, at Fordwich the text of the book is likely to be that of an ecclesiastical scribe and other book-artists, and at Sandwich the existence of three sophisticated hands producing separate quires in a system unified by a system of signatures and catchwords may suggest commercial production. The attribution of the New Romney book is problematical, and will be discussed, but the hand contained in that book is not the work of an ordinary fourteenth-century town-clerk. All of the books were intended for greater or lesser illumination or rubrication, which is most spectacular in the Fordwich book, and this again confirms the impression that these books were considered by their commissioners as writings distinct from the everyday writing of town-clerks producing rolls and deeds in the borough court, even though the ultimate sources for these books were in the work of these town writers.

⁶¹ For discussions of these custumal texts and their precursors see the following works. Faversham: discussed below. New Romney: 'The Register of Daniel Rough', *loc. cit.*, pp. 1-27, discussed pp. xvi-xviii. Fordwich: C.E. Woodruff, *A History of the Town and Port of Fordwich, with a transcription of the XVth Century Copy of the Custumal* (Canterbury: Cross and Jackman, 1895), pp. 213-281.

The Sandwich and Faversham books will be examined as case studies, and so it is proposed to briefly discuss here the Fordwich and New Romney books, as manifestations of this particular book-culture of the late-fourteenth century Cinque Ports. Such discussion is valuable also because my own interpretation of the context of these two books differs substantially from that of their earlier editors, and so is presented partly by way of revision. Such revision is essential to the understanding of the history of the custumal form.

The fourteenth-century Fordwich custumal book⁶² begins, most unusually, with the remnants of an illuminated fourteenth-century calendar, which would have consisted of one month to each side of a folio, giving feasts and saints-days.⁶³ The close affinities of this calendar-form with contemporary prayer-books, and the fact that the hand here is different to that of the custumal proper, initially suggested that these leaves may mark an addition of leaves to the custumal book, perhaps taken from a prayer book. This is, however, by no means proven, and it is quite possible despite

⁶² The catalogue of extant custumals shows that the Fordwich custumal, and its book, were dated by Woodruff, who described the manuscript in 1895, to the later-fifteenth century. Despite the unlikelihood of the hand of the manuscript being this late, this date was seemingly advanced because of the manifest connection between the Fordwich custumal and the custumal of Sandwich (the head-port to which Fordwich belonged). In Woodruff's time the earliest known manuscript of the Sandwich custumal was the fifteenth-century version (now CKS Sa/LC 2), which was then ascribed to town-clerk John Serles c. 1440, and so it seems that this Fordwich version was seen as a reworking of that manuscript and so must belong to the late-fifteenth century. The catalogue of the extant Sandwich custumals demonstrates that these assumptions must now be considered false. Firstly, the fifteenth-century Sandwich custumal is not in the hand of Serles, and was probably produced c.1414. Secondly, there is now also a fourteenth-century custumal manuscript for Sandwich (MS Sa/LC 1), which was unknown to Woodruff, demonstrating that any reworking of a Sandwich text by Fordwich could have taken place in the fourteenth century. Thirdly, there is now considerable evidence for the production of a Sandwich custumal c.1300/01, which again could have been the source for a Fordwich custumal. These three points remove the need to see the Fordwich custumal (app.) 4 as a late-fifteenth century production. A more likely dating is given in my catalogue entry, of between 1368 and 1401.

⁶³ Only two leaves remain of the fourteenth-century calendar (ff. 3-4 and 13-14, the manuscript being foliated with a number to each side of a leaf), bearing the calendar for January, February, November and December. The remainder of the calendar consists of replacement leaves of the sixteenth century.

the rarity of such juxtaposition, that the Fordwich custumal-book was intended from the first to begin with just such a calendar. The appropriation of such a form is interesting in the light of the reliance of early portions of the custumals (describing yearly mayor-making rituals) on saints days as reference-points in the urban year.⁶⁴ The first leaf of the custumal proper is an object of considerable display. The heading '*Hae sunt consuetudines leges et libertates in Villa de Fordewyco tam per prescriptionem a tempore quo non extat memoria habite et usitate quam a diversis regibus Anglie concesse et confirmate*' is almost entirely enclosed by a ten-line illuminated letter 'H' (the first letter of 'Hae'), which occupies the left-hand side of the written area, and which is extended by pen-work borders running along the top of the title and down its right hand side, and a border running from its foot, down the left margin and occupying a large part of the lower margin of the page with pen-work scrolls and flourishes. Following this title begins a copy of a charter of Henry II to Fordwich, which is commenced with a 5-line illuminated initial 'H'. In symbolic terms, this first leaf, with its interplay between a heading making recourse to the authority of time out of mind, continuous use, and royal confirmation, and its heavy enclosure by illumination is indicative of an intention to conserve and protect the substance of the custumal.⁶⁵ The hand of the text itself is a large, cursive, and substantially contracted book-hand, which has little affinity with contemporary urban-administrative book-hands, and appears to have more in common with the hands used in the records of the church, an impression which is strengthened by the frequent appearance of red and blue rubrics and the highlighting of words with spots of red.

It has been noted that the text of the Fordwich custumal represents a re-working of the existing Sandwich custumal, and much of the text is directly copied from the Sandwich model.⁶⁶ While its early editor suggested that the Fordwich version may have been taken from an early copy of the Sandwich text (presumably the 1300/01

⁶⁴ The mayor-making ceremony at Fordwich took place each year on the Monday following the feast of St. Andrew (30 November).

⁶⁵ The relation between margin and text in medieval manuscripts has been explored recently by Michael Camille, *Image on the Edge; The Margins of Medieval Art* (London: Reaktion, 1992). The importance of the margin to the intention of the text is introduced in ch. 1 (pp. 11-55) 'Making Margins'.

⁶⁶ Woodruff, *op. cit.*, pp. 213-214.

Champneys text), the evidence points rather to a development in parallel in both ports, or a copy made specifically for the later-fourteenth century custumal-book. The Fordwich text includes charters and letters patent (in the same hand as the custumal) granted to Sandwich in 1342 and 1348, which also appear in the Sandwich custumal, together with a confirmation of the general charter of the Cinque Ports of 1364.⁶⁷ These documents suggest that the custumal was re-worked, from the exemplar of the fourteenth-century Sandwich custumal specifically for presentation in this manuscript. As such it is further evidence of close communication and sharing of knowledge between town-governments in the conservation of customs and franchises in the later-fourteenth century.

The later-fourteenth century New Romney book which has come to be known as 'The Register of Daniel Rough' is comparable with the Fordwich book in that it contains both a copy of the town-custumal, together with the presentation of a copy of a general charter to the Cinque Ports (in the form of its original 1278 grant by Edward I). These materials, however, are presented in a rather different textual context. A large proportion of the book is occupied by a register of town documents from the time at which Daniel Rough was town-clerk of New Romney, and by a formulary of document types, together with other administrative documents not closely related to the town-government of New Romney. The first leaf of the register is headed '*Registrum Danielis Roughe de tempore quo ipse fuit clericus juratorum de Romene videlicet anno regni regis Edwardi Tercii a conquestu' xxvijo.*' and subsequent year-headings are a slightly abbreviated form of this, retaining in each case the name of Daniel Rough.⁶⁸ As a result, the manifest association of the book with the town of New Romney is intersected by a more personal association in a manner which begs some consideration.

The first leaf of the first quire of the book has been excised, but the first surviving leaf (now f. 1) begins with the heading: '*Ceis sont les usages de Romene de dount*

⁶⁷ 1342 letters patent giving immunity from the jurisdiction of the king's Marshall and Clerk of the Market, a 1348 confirmation of charters giving rights to the mayor and jurats in the custody of the possessions of orphans, and a 1364 general charter to the Cinque Ports.

memorie ne court ilokis uses'. This is followed by the text of the New Romney custumal, which commences with the clause outlining the election, the first letter of which ('E' for '*En primes*') has been omitted for the purpose of later rubrication or illumination, the expectation of which was not to be fulfilled.⁶⁹ This signals an intention that this opening page should be an object of some display, though it would not be comparable in scale with the Fordwich book. The quality of the hand on this and subsequent pages is of notably high quality, which suggests that this is a fair-copy record of some status. If this is the hand of Daniel Rough, common-clerk of New Romney (and there will be cause to examine this assumption), then he was clearly a rather exceptional town-clerk. The hand is a sophisticated, cursive administrative hand, which has its closest affinities with the hands of ecclesiastical record, and in particular with hands found in contemporary Canterbury Archbishop's registers.⁷⁰ This affinity must demonstrate that whoever wrote the New Romney book was a highly experienced and trained scribe, whose experience of writing before (and perhaps during) his time as town-clerk of Romney may have been shaped by work in the writing departments of ecclesiastical administration. Certainly the evidence of the formulary section of the book, which includes a treatise on estate management, seems to indicate that this writer had a variety of administrative interests.

The modern editor of the New Romney book advanced the opinion that it was the work of the Daniel Rough named in the text, and that it represented a series of productions and additions, corresponding to the period that Rough held the town-

⁶⁸ f. 17r. And see ff. 27r, 39r etc.

⁶⁹ Such a space also appears at the opening of the register portion of the book (f. 17r). The fact that rubrication or illumination was not carried out is by no means uncommon, and is the case also in the Faversham book.

⁷⁰ There is a close correspondence with the hands found in the Register of Simon Langham, 1366-1368 (World Microfilms, in association with Lambeth Palace Library, 1974). Early folios of this register include comparable hands to that of the New Romney book. The methods of page-organisation and layout are strikingly similar: with use of two sizes of script (large for headings, and smaller for the body of text. The former with looped ascenders.) and the use of marginal headings as sub-headings. Comparison of the word '*Registrum*' as found on f. 68v of the New Romney Book (illustrated on p. 38 of 'The Register of Daniel Rough', *loc. cit.*) and in a heading added (probably in 1368) to the first leaf of Langham's Register demonstrates the remarkable similarity of letter forms.

clerkship.⁷¹ The custumal; the register for 1354 to 1359; and most of the formulary she sees as a single enterprise of 1359, with the remainder of the years of the register, a table of maltolt levies, and copies of charters written ‘at irregular intervals’ up to the year 1380. However, while there are clearly changes in ink throughout the manuscript, these do not necessarily indicate large time-lapses between additions, and in fact as Murray notes herself the hand is ‘strikingly uniform’ throughout.⁷² Such uniformity hints at production over a much shorter period of time than the twenty-one years (1359-1380) envisaged by Murray. A further objection to Murray’s interpretation is raised by the context in which the name Daniel Rough appears in the register: that is, always in the third person and in the past tense, as in: ‘*Registrum Danielis Roughe de tempore quo ipse fuit clericus juratorum de Romene...*’.⁷³ Such a form for this naming would be most unusual in the context of a register produced by Rough himself in the consecutive manner envisaged by Murray. Two alternative theses present themselves as possibilities for the interpretation of the production of the New Romney book, which appear to fit the manuscript and textual evidence rather better. Firstly, it may be that the book represents a retrospective copying of documents originally drafted by Daniel Rough, common clerk of New Romney, produced after May 1380, the date of the latest dateable document, by another clerk, commissioned to re-present the documents of the Romney archive in book-form. Such an interpretation would explain the particular mode of presentation of the name ‘Daniel Rough’, which is left unrecognised and unexplained in Murray’s interpretation. A second interpretation could be advanced, namely that Rough himself, in the last years of his life, worked-over the documents he had produced in his time as town-clerk. It is known that Rough paid taxes in New Romney until 1384, thereafter disappearing from the records in a manner suggestive of his death, which would leave him four years from his last recorded year as town-clerk to draw together documents for this register.⁷⁴ This interpretation accounts for the past-tense used to describe his office, but does not fully explain the use of the third-person.

⁷¹ K.M.E. Murray, ‘The Register of Daniel Rough’, *loc. cit.*, pp. xv-xvi.

⁷² *Ibid.*, p.xv.

⁷³ f. 17 r.

⁷⁴ ‘The Register of Daniel Rough’, ed. Murray, *loc. cit.*, p.x.

The alternative interpretations offered of the New Romney book here are only suggestive, rather than conclusive, but they appear to fit the evidence of the manuscript rather better than Murray's own interpretation. If either of my alternatives can be accepted, then they force a rather different impression of the production of the manuscript to be formed to that offered in her edition. Contrary to the assumption that the book represents the progressive addition of materials as years pass, these alternatives imply the retrospective collection of materials and a quasi-historical interest in the period in which Rough was clerk in New Romney. In common with the other later-fourteenth custumal books of the Cinque Ports it appears to be a concerted re-archiving of documents from the existing New Romney (and other) records, presenting them in a new format upon the leaves of a single, small parchment book.

The late-fourteenth century corpus of custumal texts is completed by three further manuscripts which fall outside the recognised group of town-books discussed so far. The first is the short version of the Fordwich custumal written into the thirteenth-century register known as the Black Book of Saint Augustine's in the later-fourteenth century.⁷⁵ The second is also an abbreviated version of the Fordwich text existing as a late-fourteenth century roll (in two hands) in the *Chartae Antiquae* class of Canterbury Cathedral archive.⁷⁶ The third is also a late-fourteenth century roll among the same *Chartae Antiquae*, and is a full text of the custumal of New Romney.⁷⁷ Both the version of the Fordwich custumal included in the Black Book and the New Romney roll appear to be examples of the retention by seigneurial officials of the copies of claims of customs and liberties made by communities within their jurisdiction. The Black Book Fordwich text is a heavily edited version of the text as written-up by the community of Fordwich itself, and is more an assertion of those rights which the lord had in the government of Fordwich rather than the assertion of the community's own rights of jurisdiction. As its description in the catalogue of

⁷⁵ Fordwich custumal (app.) 1.

⁷⁶ Fordwich custumal (app.) 2.

⁷⁷ New Romney custumal (app.) 2.

extant texts notes, it does not contain detail of the town's own officers, but contains full detail of the courts and officials of the abbot. The context in which it appears is also indicative of this function, since much of the remainder of the Black Book, as written in the thirteenth century is a record of Saint Augustines' claims to rights, services and dues among its estate possessions. The New Romney custumal is an identical copy to that found in the Register of Daniel Rough. Furthermore, its hand is so similar to the hand of that Register as to suggest that it was written by the same person, perhaps at the same time as the production of the register. Its appearance among the early records of Canterbury Cathedral may indicate that it was delivered by the community of New Romney to its lord (the Archbishop of Canterbury), perhaps at his request or by way of petition but this can only be suggestion, since the manuscript itself tells us nothing of the occasion of its production. It is difficult to reconstruct the context of production of the remaining version of the Fordwich custumal among Canterbury Cathedral archive's *Chartae Antiquae*, but its numerous markings indicating sections of the text concerning the rights of the abbot's bailiff in Fordwich suggest that it was a working text used in specific negotiations or dispute concerning this bailiff's office.

The apparent density in the incidence of production of custumal manuscripts in the later-fourteenth century, and the forms which this production took are worthy of careful consideration, and this consideration will be offered in the specific case-studies of the Sandwich and Faversham evidence, and will be developed in the concluding chapter of this study. It is perhaps necessary here though to some make preliminary observations as to the causation and significance of this phenomenon. There is undoubtedly a strong correspondence between the extensions of royal justice with the scrutiny of local and franchisal justice, which were effected in the post-Black Death period and the production of codification of custom in the Cinque Ports. The re-assertion of such custom may partly be a response to the threat to franchisal jurisdiction offered by the commissioning of new judicial officials and of local

enquiries of the 1350s and after.⁷⁸ It is likely, however, that attempts to re-codify urban custom was equally a response to the immediate problems of the exercise of authority within each of these towns. It has been pointed out that plague mortality in itself may have produced its own anxieties and necessities in urban administration, particularly in the transfer of land and property. The evidence for Canterbury has further been interpreted as indicative of an increasing threat to established modes of urban authority rendered by the intense fluidity of the composition of the urban social-structure and by the apparent demise of many of the leading office-holding families.⁷⁹ The reactionary response of urban governments to the threat of rapid social change in the post-Black Death period is a major context within which the production of customary and legal texts in the Cinque Ports must be considered.

The first three-quarters of the fifteenth century are represented in the surviving corpus of customals by only two productions: a copying of the Sandwich customal of c.1415, and the inclusion of a copy of the Fordwich customal in a register of St. Augustine's abbey, Canterbury.⁸⁰ A major group of Cinque Port customals, however, was produced in the last part of the fifteenth century, of which most can be dated to its last quarter (1475-1500). It comprises seven texts (in complete or fragmentary form) and includes customals from Hastings, Hythe, Lydd (two texts), New Romney, Sandwich and Winchelsea.⁸¹ All except one (Hastings) exist as contemporary copies. Examination of this group, taking account of dating and of context of production, suggests that their production can be seen as an enterprise shaped by mutual influence, in which the town-governments of most of the towns participated. External evidence indicates further that this production of customals was part of a larger movement in which these governments sought to assert or conserve their political

⁷⁸ For discussion of the development of judicial offices in the later fourteenth century see Edward Powell, *Kingship, Law, and Society: Criminal Justice in the Reign of Henry V* (Oxford: Clarendon, 1989), pp. 16-17.

⁷⁹ A. F. Butcher, 'English Urban Society and the Revolt of 1381' in R.H. Hilton and T.H. Aston, *The English Rising of 1381* (Cambridge: University Press, 1984, reprinted 1987), pp. 84-111 (93-106).

⁸⁰ Sandwich customal (app.) 2; Fordwich customal (app.) 3.

⁸¹ Hastings customal (app.) 3; Hythe customal (app.) 1; Lydd customals (app.) 1 and 2; New Romney customal (app.) 3; Sandwich customal (app.) 3; Winchelsea customal (app.) 1.

influence, and in which the consideration of Cinque Port records, and the concerted production of new records played a major part.

Probably the earliest of the custumals of this group survives as a later (sixteenth-century) copy, in which certain clues to the nature of the original production are found.⁸² The copy exists in a sixteenth-century manuscript compilation, perhaps compiled by a lawyer or attorney, in which are included documents relating to the customs and rights of the Cinque Ports and other Kentish communities. The copy of the Hastings custumal itself is headed with the statement that it is the book of laws, customs and usages, now ratified by Edward IV in recognition of the services of the Cinque Ports.⁸³ This heading is of value in that it gives indirect evidence of the date of the original manuscript (probably soon after the confirmation of the Cinque Ports' general charter in 1465) and also tells us that this original manuscript was probably written-up as a book.⁸⁴ Nothing more can be said of the precise nature of this book, but it appears to be an early manifestation of a remarkable late-fifteenth century culture of book-production among the Cinque Port towns, of which the following manuscripts are surviving examples.

The earliest extant manuscript of the group is a custumal of Lydd, presented as a parchment book, in the hand of Thomas Caxton, at the time of writing being the common clerk of Lydd.⁸⁵ The book is currently bound in covers made from the

⁸² Hastings custumal (app.) 3.

⁸³ Hastings custumal (app.) 3, f.7r: *'Here begynneth the boke of the lawes usages and customes graunted unto the poorte of Hastynge of Kynges that were of England sythens the conquest hitherto and nowe ratysied exemplified and confirmed by the moste excellent cristen prynce kyng Edwarde of England the iijth and more wer the sayd Kyng oure souerayne lorde hathe of his mellyfluus grace and of verie loue had unto his Barons of the.5. Portes ffor the verie and tru alygeance that the sayd barons shewed unto his most royal person and his treu lordes of his nobill realme as well showed in rebukyng of oure sayd souerayne lorde his adversaries and his greate enemyesin redmcion [sic] of his Reame and graunted certayne privelages and libertees of new for the ease and profyte of the sayd Barons his tru suvientes as in the Chartuar to the seyde Baronns by oure seyde lorde Kyng and graunted opynly aperyth.*

⁸⁴ For the 1465 confirmation of the Cinque Ports general charter see Murray, *Cinque Ports*, p. 71.

⁸⁵ Lydd custumal (app.) 1.

coarse parchment leaves of a fourteenth-century service book, but there is no evidence that this was its original binding.⁸⁶ The Lydd accounts demonstrate that the book was made in 1476, in which year Thomas Caxton was paid 13s 4d (presumably in addition to his annuity) for making the book, from the custumal of New Romney (Lydd's head-port).⁸⁷ The immediate reason for this production has not been reconstructed, but it seems likely that Caxton's own clerical concerns for the records of the Cinque Ports may have been a motivation, apparently supporting Bateson's observation cited above that such texts were often the product of clerks of unusually methodical habits.⁸⁸ Caxton's work at Lydd seems only to have been the beginning of a phase in his career in which he later became common-clerk to Sandwich (a fitting descendant to the pioneering custumal-writer, Adam Champneys) and the first common-clerk to the Cinque Ports confederation as a whole.⁸⁹ In view of this latter appointment, it is justifiable to say that Caxton's influence may have stood behind the production of the whole of the recognised later-fifteenth century group of custumals. Aside from Caxton's clerical skills as motivation for his custumal production at Lydd, it should also be noted that he was in no way a politically neutral character, and that in common with many leading members of Cinque Port (and other Kentish) towns, he played a part in the Kentish rising against Edward IV led by Thomas Fauconberg in May 1471.⁹⁰ His production of a custumal in 1476, in which the franchises of Lydd are so clearly stated, takes on considerable significance in the light of the confiscation of liberties and concerted judicial and fiscal punishments which marked Edward's response to the Kentish towns involved in the rising.⁹¹ While it might be objected that five years elapsed between the rising and the making of the custumal book, it is clear

⁸⁶ Such a binding is more likely to date from after the 1530s, when religious books frequently came to be dismembered and re-used for book-binding. See Christopher De Hamel, *A History of Illuminated Manuscripts* (London: Phaidon, 1986, 2nd edn. 1994), p. 204-205 (pl. 186).

⁸⁷ *HMC Fifth Report*, 1, p. 530.

⁸⁸ *Borough Customs*, 1, pp. xv-xvi.

⁸⁹ For Thomas Caxton's career see *HMC Fifth Report*, 1, pp. 522, 526-530, 545. His affinities with townsmen of other Cinque Ports, and his implication in the Fauconberg Rebellion of 1471 are discussed in Colin Richmond, 'Fauconberg's Kentish rising of May 1471', *The English Historical Review*, 75 (1970), pp. 673-692 (687-688).

⁹⁰ Richmond, *op. cit.*, *loc. cit.*, pp. 687-688.

from the documentary and custumal productions of the 1480s, that serious concern for the safety of the Cinque Port franchises in an unstable political climate was not merely confined to the immediate aftermath of that rising.

The survival of a short custumal from Hythe written-up on the early leaves of a large paper book which was to become the account and memoranda book of the jurats of Hythe, and of several other contiguous texts in this manuscript, provide evidence that the year 1483 saw a great density of writing activity associated with the customs and franchises of the Cinque Ports perhaps comparable to the production of custumal texts in 1356.⁹² The relative abundance of external evidence for this activity of 1483 makes its examination valuable as an example of the processes by which texts came to be produced simultaneously in several different towns of the confederation, of the sharing of books and texts of common-interest, and of the activities associated with such textual production. In addition to the evidence it provides of a particular urban response to the instability of national politics, it seems also to offer some trace of the way in which the confederation-wide custumal productions of the previous century may have been effected.

Immediately following the Hythe custumal in Hythe MS 1061,⁹³ in the same late-fifteenth century hand, is a memorandum describing the customary rights of representatives of the Cinque Port towns to attend the king and queen at coronations; to bear over them an ornate canopy; to sit at their right hand at the coronation feast; and to divide the canopy between them after the event.⁹⁴ This right had probably been held by ancient custom and was confirmed in the general charter of 1278.⁹⁵ Its exercise had also come to be claimed and described in the custumal of New Romney

⁹¹ Richmond, *op. cit.*, *loc. cit.*, pp. 681-688.

⁹² Hythe custumal 1. The comments on the custumal of Hythe and on the writing activity of 1483 are drawn from Justin Croft, *Hythe MS. 1061: The making of an urban register* (unpublished MA thesis: University of Kent, 1992).

⁹³ Hythe MS 1061, kept at the offices of the town council of Hythe.

⁹⁴ Hythe MS 1061, f. 6r.

⁹⁵ Murray, *Cinque Ports*, pp. 6 and 142.

from the fourteenth century and is found in all surviving versions of that text.⁹⁶ It represents an almost sacramental location of the power of the Cinque Port towns at the heart of the medieval state at its most crucial moment: the transmission of authority to the new monarch. The symbolism of the canopy carrying seems evocative of the ports' traditional role as protectors of the realm (through their naval service and as guardians of the sea) and their claim to eat beside the new monarch at the coronation feast draws them into the intimacy of the royal circle, in a way which mirrors the realities of the Cinque Ports' privileged political representation in government.⁹⁷ Consideration of the location of this customal-appendix within the Hythe book, and of external evidence, demonstrates that it was almost certainly written, together with the customal itself, in the second half of the year 1483, and that it originates from the coronation of Richard III and his queen in July of that year.⁹⁸ The role of the Cinque Ports in that coronation had apparently been considered in jeopardy, partly because of the uneasy political atmosphere of the period following Edward IV's death (in which the mayor of Dover twice set-off to planned coronations of Edward V), and also because of the speed with which Richard's coronation was finally organised, which resulted in the Cinque Ports not being given their customary forty days notice to appoint representatives to attend.⁹⁹ The fact that

⁹⁶ New Romney customals 1-6.

⁹⁷ The military service of the Cinque Ports was the likely origin of the right of each of the towns of the confederation to return members to parliament, thus giving this group of towns extraordinary representation. This right, and its origin in the provision of military service has been interpreted as the reason for the ports claims to be termed barons, and to be considered as peers to the other earls and barons of the realm. J.S Roskell, ed. *The House of Commons 1386-1421*, 1, History of Parliament Series (Stroud: Sutton, 1992), pp. 750-752.

⁹⁸ The text represents a version of a petition made by the Cinque Ports to the king's steward in 1483, cited and transcribed in Anne F. Sutton and P.W. Hammond, *The Coronation of Richard III; the Extant Documents* (Gloucester and New York: Sutton and St. Martin's Press, 1983), pp. 190-199. In the manuscript Hythe 1061, it precedes the jurats' accounts for 22 Edward IV- 1Richard III, drawn-up at the feast of the Purification: i.e. February 1484. This dating further discussed in Croft, *Hythe 1061*, pp. 65-66.

⁹⁹ Sutton and Hammond, *op. cit.*, pp. 192, 195. The Cinque Port towns recorded in their new 'White Book' '*...quod ad istam coronacionem venerunt Barones subscripti, eo quod non haberunt debitam monicionem.*', transcribed and translated in Sutton and Hammond, *op. cit.*, 197 and 198; see also 'A

such jeopardy was taken with the greatest seriousness within the administrations of the Cinque Ports is indicated by the entry of a version of the coronation document found with the Hythe custumal into the new common book of the confederation: the 'White Book'. The coronation document was included in the White Book together with an admonition that it is included as a precedent, and so that it should not '*be put into oblivion*', it should be entered into the '*comen boke*' of each of the ports and read out each year by their common-clerks as part of their oath of office. This admonition is a valuable indication of the possible uses to which statements of custom were put after the time of their committal to writing. It seems that despite this committal, such texts did not cease to exist in an oral or performative context, but that on the contrary, the text was envisaged as a trigger for oral performance. It appears that the fact that a written record was made was not perceived (even in 1483) as a guarantee that it would not '*be put into oblivion*', and that yearly oral performance was recommended as a means of retaining and transmitting vital knowledge of urban government. Together with the evidence of the oaths of officials which are found in almost all of the custumals, this suggests that written texts, including the custumal-books and other 'common books' are not to be considered simply as repositories of knowledge for reference, but as ritual objects for use within the practice of urban ceremony. The recitation of texts from these books (in the form of these precedents and oaths) in the context of the ceremony surrounding the yearly choosing of officials indicates that they were intended for performance or 'out-loud' presentation rather than merely silent consideration by specialists in urban government. The codification of urban custom (even at this advanced stage) must not then be seen as sure indication of the displacement of oral modes of communication by committal to writing, as has been suggested of the wider development of law in the medieval period.¹⁰⁰ In the instance of the coronation precedent, the text is envisaged, from the start, as a trigger to oral performance, and it is in this performance that its efficacy as a record is seen to lie.

Calendar of the White and Black Books of the Cinque Ports', ed. by Felix Hull, *Kent Records*, 19 (1966), 641-642

¹⁰⁰ For consideration of the relationship between orality and literacy in the history of law see Jack Goody, *The Logic of Writing and the Organization of Society*, Studies in Literacy, Family, Culture and the State Series (Cambridge: University Press, 1986), Ch. 4, 'The Letter of the Law', pp. 127-170.

The White Book record also states that certain other records concerning these coronation rights are contained in a book currently at Winchelsea (presumably a forerunner of the 'White Book') which will soon be returned to the seat of the court of Brodhull at New Romney, and these records should be copied by each of the towns.¹⁰¹ Surviving texts of this precedent exist among the records of Rye and Winchelsea, and here in the jurat's memoranda book at Hythe.¹⁰² It must be envisaged, then, that the year 1483, witnessed considerable activity by writers and administrators: with clerks travelling between ports of the confederation for the purpose of consulting and copying records, the movement of books themselves between ports and purchase of new materials for the making of new books. The Hythe custumal was almost certainly entered into its location in the jurats' book when it was a new blank book, representing a considerable investment by the government of Hythe in new record materials.¹⁰³ The correspondence of the production of this Hythe book and of the new common-book for the Cinque Ports as a whole: the White Book, is striking and indicates that the impetus for the making of new records, which included the writing-up of the Hythe custumal was a confederation-wide phenomenon.

It is possible to explain the activity of 1483 in terms of the expectations and uncertainties of the accession of Richard III. That the issue of kingship and of the rightful holder of the crown was very much on the minds of Cinque Port town-governments is indicated by a manuscript fragment from the town of Lydd, on which is recorded (in a late-fifteenth century hand) a list of names of kings from Alfred to

¹⁰¹ Sutton and Hammond, *op. cit.*, p. 197; 'Calendar of the White and Black Books', pp. 641-2

¹⁰² Rye accounts 6/3; Winchelsea Court Book beginning 7 March 1 Elizabeth I, East Sussex record office Winchelsea MS 52, ff. 3r-4v (sixteenth-century copy); cited in Sutton and Hammond, *op. cit.*, 193n.

¹⁰³ Hythe 1061 consists of a book of 162 leaves, of which 160 are of a homogenous late-fifteenth century paper stock, bearing a bull's-head water mark, closely corresponding to Briquet's type 15080, suggesting that the book (or at least a large paper stock for the making of a book) was purchased at this time. See C.M. Briquet, *Les Filigranes*, (Amsterdam, 1907, new edition ed. by Allan Stevenson, The

Edward IV, together with the date of the beginning and end of their reigns. Close palaeographical analysis of this fragment has led one historian to believe that this list was almost certainly written in 1483, immediately following the death of Edward IV.¹⁰⁴ The fact that it is found together with fragments of a late-fifteenth century custumal of Lydd (included in a later compilation) may be further (though un-proven) evidence of the association of custumal-writing and the accession of Richard III.¹⁰⁵ The uncertainties surrounding the event of the coronation have also been seen as a cause for the production of a shared Cinque Port precedent concerning such events, but it is likely that the seizure of power by Richard of Gloucester in particular was seen with a degree of expectation of a new era of government by the towns of the confederation. This expectation seems to be linked to their production of new records. In the early-summer of 1483, Richard had sent his minstrels into Kent, where they performed successively at Dover, Hythe, New Romney, Lydd, and Rye.¹⁰⁶ It is probable that this tour was by no means simply for the purpose of entertainment, but that these minstrels were acting as apologists or ambassadors for Richard, gathering vital favour in these strategically important towns.¹⁰⁷ In view of the ill-will which had been held towards Edward IV in the Cinque Ports (largely as a result of his punitive reaction to the Fauconberg rebellion) it would seem that Richard may simply have been encouraging an existing feeling, and that his overtures were not unwelcome.¹⁰⁸ If the manifest production of new administrative record books and of custumals (as at Hythe and possibly Lydd) can be seen as evidence of guarded expectation among Cinque Port governments, it seems that these minstrels succeeded in their task. A further indication of this feeling may well be provided by the actions of the

Paper Publications Society, 1968), 2, no. 15080 and 4, p.756. The composition of Hythe 1061 discussed in Croft, *Hythe 1061*, pp. 30-32.

¹⁰⁴ Paul Lee, 'The Compilation of a Seventeenth-Century Manuscript Book, its Authorship, Ownership and Purpose', *Archaeologia Cantiana*, 115 (1995), pp. 389-411 (397 and 411: appendix C). Lee notes that both the accession date and death of Edward IV are recorded in the same late-fifteenth century hand, and that the list is subsequently continued in later hands.

¹⁰⁵ Lydd custumal (app.) 2, in 'Thomas Godfrey's book of Lydd' bound into CCA Literary MS B. 2. (ff. 219-228). Discussed in Lee, *op. cit.*, pp. 396-397.

¹⁰⁶ Sutton and Hammond, *op. cit.*, p. 191.

¹⁰⁷ *Ibid.*, p. 192.

government of New Romney in the following year (1484), who attempted to assert their independence from seigneurial interference by the Archbishop of Canterbury, by an abortive attempt to establish (for the first time) the office of the mayoralty.¹⁰⁹

The particular evidence of 1483 must, however, be set in the context of the late-fifteenth century in general. In addition to the customals already described, three additional texts from the late-fifteenth century group survive (from New Romney, Sandwich and Winchelsea) which cannot be assigned to 1483, and so it would be unwise to see the event of the coronation of Richard III as a sole motivation for production. The late-fifteenth century New Romney text, which represents a translation and reworking of the fourteenth century versions, by the common-clerk Thomas Bell, is considerably later than this date, dating from 1496.¹¹⁰ It is necessary therefore to give some explanation of the possible reasons for the enthusiasm for the Cinque Port customal-form in the late-fifteenth century as a whole.

A major causative factor must be the renewed royal scrutiny under the Tudor monarchs of all forms of liberties and franchises which threatened to conflict with or limit the power of the crown.¹¹¹ This began under Richard III (ironically, in view of the optimism with which his accession was held in the Cinque Ports) and ultimately resulted in the production of successive versions of a common customal for the Cinque Ports, in which their limited customs were reduced to uniformity.¹¹² Under Henry VII, the late-fifteenth century equivalents of the general eyre were holding inquest arising from articles comparable to the oldest articles of the general eyre from county to county, and crown lawyers (Edmund Dudley, in particular) were articulating new and stricter interpretations of the notion of *quo warranto* in relation

¹⁰⁸ Richmond, *op. cit.*

¹⁰⁹ 'The Register of Daniel Rough', p. li.

¹¹⁰ New Romney customal (app.) 3.

¹¹¹ The Tudor campaign against franchise has been examined by Helen Cam in 'The Decline and Fall of English Feudalism', *Liberties and Communities in Medieval England; Collected Studies in Local Administration and Topography* (London: Merlin Press, 1963), pp. 205-222 (214-218).

¹¹² Common customals were produced in 1504 and 1527. The common customals are discussed in Murray, *Cinque Ports*, pp. 92 and 95.

to franchise.¹¹³ In view of the previous experience of the Cinque Ports at the hands of these inquests (the *quo warranto* proceedings of Edward I, and the mid-fourteenth century commissions), this alone may account for the re-presentation of codes of custom among the records of urban governments.

There is substantial evidence that the last twenty years of the fifteenth century witnessed very extensive attempts by the Cinque Port towns in the negotiation of their liberties and franchises. The relatively abundant urban-account material surviving for this period is likely to yield a great deal of information as to the personnel involved in this negotiation, and of the activities of these people in the royal courts or in consultation with London lawyers.¹¹⁴ The court of Brodhull, which appears to have undergone an overhaul associated with the production of the new White Book became at this time a forum not only for the choosing of common officials for the ports, but for the discussion of the maintenance and conservation of franchise. Included in the early part of the Hythe book described are a number of memoranda of meetings of the Brodhull, in the same hand as the custumal and coronation document.¹¹⁵ They date from 1430 to 1485, but were probably entered from the year 1483.¹¹⁶ All represent resolutions taken in the defence and confirmation of the Cinque Ports' franchises. The pre-1483 memoranda concern the election of bailiffs for the herring fair of Yarmouth and of members of parliament, but those dating from between 1483-1485 concern respectively: the limitation of the warden's rights within the towns and in particular, the denial of his rights over personal pleas arising within those towns (1483); the setting of fines for those seeking to plead actions outside the courts of the confederation (1483); the commissioning of two men to ride to London on behalf of the ports to confirm the new charter and to sue for a

¹¹³ Cam, *op. cit.*, p.215; D.M. Brodie, 'Edmund Dudley: Minister of Henry VII, *Transactions of the Royal Historical Society*, 4th series, 15 (1932), pp. 133-161 (156-158).

¹¹⁴ Limited surveys of the accounts of towns of Hythe, Dover and Lydd have revealed the frequent mention of ridings to London on account of the franchises and of payments to lawyers working on behalf of the ports.

¹¹⁵ Hythe 1061, ff. 13r-14v. Their visit to Hythe is recorded, and their payment of five shillings, is recorded in the earliest of the jurats accounts in Hythe 1061 (f. 10r)

¹¹⁶ Croft, *Hythe 1061*, pp. 73-83.

general pardon (1484); money to be set aside from a common fine for the defence of the liberties of the confederation (1484); the right of a freeman of any of the ports to be considered free in all others of the confederation (1485).

Finally, in relation to these late customals, there is a manifest need to understand how they related to the profound economic and social shifts apparent in the urban environment in the late-fifteenth century. There is abundant evidence that Cinque Port towns could be said to have contracted or ‘declined’ in this period, but also that groups within them successfully maintained or extended their personal prosperity and that of their immediate kin.¹¹⁷ Emerging evidence from towns such as Lydd suggests that the latter years of the fifteenth century represented a period of profound conflict within these towns. Lines of conflict appear between emerging families, whose basis of wealth appears to have been in the accumulation of land within and around the towns, and older-established families associated with urban government. It is likely that urban custom, especially in relation to the composition of the governing elites, was a major point of contention. At Lydd, the common-clerk Thomas Caxton may have been a dissenting voice representing the older Lydd families in a series of disputes between them and a group of engrossing farmers in the 1470s, the study of which may reveal more of the motivation behind his production of a new customal in 1476.

This survey of the surviving corpus of the Cinque Ports customals has suggested the longevity of the customal form in the Cinque Ports. The earliest customal dates from 1301 (the Sandwich customal of Adam Champneys) and numerous customals were produced by Cinque Port towns in the following two centuries. However, the variety of forms which these customals took, and the apparently differing contexts in which they were produced suggest that they should not all be considered as qualitatively similar. While Bateson’s work in *Borough Customs* sought to draw comparisons and affinities between the customals of Britain and Ireland in a manner which assumed a

¹¹⁷ The towns of New Romney and Lydd have been studied by A.F. Butcher and S. Dimmock, and I am grateful to them for discussing with me the nature of late fifteenth century economy and society of these towns.

similarity of intention in their production, the current evidence suggests that this approach may be reductive. Even such a small and apparently homogeneous sample as the corpus of Cinque Port texts, in which one might expect to find a unity, indicates the varieties of circumstances in which customals might be produced. This suggests that if we are to fully understand the production of records such as these, we need to examine productions in closely defined contexts. Such examination will be offered here, for the cases of customals from the towns of Sandwich and Faversham, in the following two chapters.

Chapter 3

The medieval customals of Sandwich

3.1 Introduction

The survival of contemporary manuscripts of customals from the port of Sandwich is especially good, and makes possible a study of their production and development in the period c. 1290-c. 1500.¹ The extant manuscripts provide evidence for a particularly detailed examination of textual and manuscript production in the earlier part of that period: c. 1290-c.1415. Such a detailed examination for this period will be offered here. It is intended in this chapter to discuss the extant customal manuscripts for Sandwich and associated manuscripts; to explore their methods of production; to offer explanations for production on the basis of the consideration of context; to consider the texts of the customals; and to draw conclusions about contemporary perceptions of customary codifications and of the manuscripts in which they were presented.

The earliest of these surviving manuscripts dates from the second half of the fourteenth century, and consists of a small, finely-produced book on parchment.² This manuscript has received no previous scholarly attention, since it had disappeared from the town's archive at least as early as the later-eighteenth century, resting in private hands until its return in 1953.³ It provides important evidence for the context of

¹ The extant texts are described in Appendix 1: Sandwich customals (app.) 1-5.

² CKS Sandwich MS Sa/LC 1. Described in Appendix 1, Sandwich customal (app.) 1.

³ The book was not available to William Boys in the preparation of his *Collections for an History of Sandwich in Kent, with notices of the other Cinque Ports and Members and of Richborough*, (Canterbury: Simmons, Kirkby and Jones, 1892 [*recte* 1792]) (hereafter referred to as 'Boys'). He used the surviving fifteenth-century version (now CKS MS Sa/LC 2) for his transcriptions and discussions. It was apparently not available either to Dorothy Gardiner in the preparation of her monograph *Historic Haven; the Story of Sandwich* (Derby: Pilgrim Press, 1954) (hereafter referred to as 'Gardiner'). The fourteenth-century book was bought by Kent County Council in 1953 from Messrs. Maggs Bros. of Berkeley Square, London, and the CKS catalogue states that Maggs believed that they had bought it at Sotheby's c. 1946 (a book-seller's mark in pencil on the rear paste-down confirms that it was in Maggs' possession in 1946). An exhaustive search of Sotheby's auction catalogues for the 1940s (for which I

customal-production; of editorial methods used in codification; of the mechanics of the physical production; and of subsequent use. This evidence was not previously recoverable from the surviving later texts. Within the text of this fourteenth-century version (which will be called here by its archival name 'MS Sa/LC 1') are also traces of an earlier customal produced in 1301 by Adam Champneys, town clerk of Sandwich, and probably also of the text of a late thirteenth-century *quo warranto* enquiry. Both of these earlier texts are to be considered in detail, through close study of the text of MS Sa/LC 1, with a view to the understanding of the processes involved in the committal to writing of customs previously unwritten.

Having reconstructed something of the early history of the Sandwich customal c.1290-1301 through textual analysis, it is then intended to explore the ways in which this text was re-codified in the later-fourteenth century in the surviving form of the manuscript MS Sa/LC 1. The re-codification provides considerable evidence for the personnel of Sandwich government of the fourteenth century and allows consideration to be made of their perception of the customs of their town, and of their own relation to these customs. In examining this evidence there will be cause to introduce external evidence for the lives of these people, of their families, and of their experience of contemporary social upheaval. The production of the manuscript book MS Sa/LC 1 will be examined in the context of this experience.

The codicological evidence of MS Sa/LC 1 suggests that certain changes to it were intended after initial production, and this evidence will be considered. Some of these changes, however, were never carried out and the evidence for the production of a new customal in the early-fifteenth century suggests that attention was then diverted towards this new manuscript. The new manuscript (MS Sa/LC 2) represents an exact copy of the earlier book, and is also in the form of a book on parchment. Despite its textual similarity to the former copy, this book has particular physical characteristics which suggest that its envisaged function was rather different to that of its forerunner, and this will be considered. It is also possible, from the correlation of internal and

am grateful to Felix Pryor) reveals no trace of the sale in that decade, and hence no further detail of earlier provenance. It is possible that the sale was by private treaty, and that no record thus survives.

external evidence to reconstruct the immediate context of production of this book in 1413 or 1414, and this context will be considered in order to draw conclusions as to the motivation for the production of a new custumal-book at this time. No further Sandwich custumals survive for the remainder of the fifteenth century, except for a copy of selected clauses made at the very end of the century, surviving among the records of the Cinque Port of Winchelsea.⁴ Nevertheless, the custumal book MS Sa/LC 2 appears to have experienced extensive use in this century as evidenced by later annotation and some account will be offered of this.

The value of such an examination of successive copies of a custumal, in which can be traced both changes and continuities (in the text and in the contexts of production) lies in part in the investigation of new ways of examining borough customs as presented in custumals. This is particularly true of the Sandwich custumal. When Mary Bateson considered the custumal of Sandwich in the early years of this century for her *Borough Customs*, she recognised that it must contain a depth of compositional history, but made the editorial decision that for the purpose of her collection it should be ‘treated as a fifteenth-century production.’⁵ All subsequent extracts from the custumal presented as examples in her thematic account of British borough custom are thus labelled ‘15th century’.⁶ The recognition of this compression of evidence is not a criticism of Bateson’s attempt to attach dates to manuscripts for the purpose of comparison, and to make such a criticism would in any case be unfair on account of the recent discovery of a Sandwich custumal manuscript (now MS Sa/LC 1) dating from earlier than the fifteenth century. It is, however, to recognise the continuing need for the ‘closer criticism’ that was suggested by Bateson herself.⁷ In the case of Sandwich, a custumal which previously could not be confidently dated outside the fifteenth century, now betrays a depth of history of composition and use over at least two centuries, if not more.

⁴ Found in the manuscript compilation formerly belonging to Winchelsea, BL Cotton MS Julius B.iv, ff. 74 r-94v, custumal described in Appendix 1, Winchelsea custumal (app.) 1.

⁵ Mary Bateson, ed., *Borough Customs*, 1 (Publications of the Selden Society, 18, 1904), p. 1.

⁶ *Ibid.* pp. 28, 43, 45, 50, 74, 96, 131, 143, 171; *Borough Customs*, 2, Selden Society, 21 (1906), pp. 3, 7, 24, 33, 34, 41-2, 59, 128, 137, 148, 151, 163, 178-9, 200-201.

⁷ *Borough Customs*, 1, p. xvi

The history of a port of such national importance as Sandwich has attracted considerable previous attention, and two works provide substantial accounts of the town's lordship and government, its economic development, and its role in national politics. William Boys produced an invaluable antiquarian account of the town and its principal institutions in his *History of Sandwich*, which includes extensive transcripts and translations of documents from the Sandwich archive, including its charters and custumal.⁸ On account of the relative accessibility of this work and its accurate transcription of the primary sources, I have chosen to give references to its custumal transcripts in my discussion, in addition to manuscript references. In the cases where he also provides a translation of transcribed passages, this is also referred to. Dorothy Gardiner provided a general history of the town from prehistory to the present day in her *Historic Haven*, and despite the breadth of her account, this work has proved valuable in the location of manuscript evidence beyond the Sandwich archive.⁹ Frequent reference is made to her detailed accounts of medieval Sandwich, since although her interpretations are sometimes questionable, she presents considerable evidence for the exercise of town government, of the economic base, and of the biographical aspects of the careers of prominent individuals.

3.2 The custumal of Adam Champneys (1300/1301)¹⁰

While the first surviving custumal of Sandwich (MS Sa/LC 1) is certainly a production of the later fourteenth century, containing references throughout to events of that century,¹¹ it opens with a preamble referring to the production of a Sandwich custumal in the year 1301 by one Adam Champneys.¹² The original text of this

⁸ William Boys, *op. cit.*

⁹ Dorothy Gardiner, *op. cit.*

¹⁰ The following discussion of Adam Champneys' custumal and of the context of its production is a development of my article 'An assault on the Royal Justices and the making of the Sandwich custumal', *Archaeologia Cantiana* (forthcoming).

¹¹ These fourteenth-century references are listed in Appendix 6 (Later fourteenth century additions to the Sandwich custumal) and are discussed in the context of the production of MS Sa/LC 1 below.

¹²MS Sa/LC 1, f.1r; Boys, p. 495; translated and discussed in Gardiner, pp. 56-57.

preamble is likely to have been the work of Champneys himself, and to have formed the opening clause to an early custumal drafted by him. Despite the total absorption of this early custumal into the later fourteenth century version, through the copying of the later fourteenth century scribes, it is possible to make some informed speculation as to its contents. Most of the specifically later fourteenth century texts within the custumal are of a particular character (usually being dated memoranda, or references to the acts of certain individuals). By editorially extracting these parts of the text from the later fourteenth century custumal as a whole, it is likely that the remaining text represents something close to that produced by Adam Champneys. A calendar of the possible contents of Champneys' 1301 custumal, produced by this method is presented in this study as Appendix 2 ('Suggested contents of the Sandwich custumal of Adam Champneys') It must be admitted that this editorial method cannot be considered fail-safe, since undated or undateable documents which were actually added after Champneys' time may have slipped through the 'editorial net', and so its conclusions must be suggestive of the earlier text rather than conclusive of its actual contents. Nevertheless, this resulting suggested text does appear to contain the description of the fundamental institutions of the town, and numerous dated or dateable documents from the years immediately preceding 1301, which suggests that it does represent a near-approximation of the contents of Adam Champneys' custumal.

To briefly characterise these contents, before examining their component parts in more detail, it can be seen from the calendar that they consist of the above mentioned preamble; the extensive description of the yearly ceremonies surrounding the election of the mayor and civic officers; the definition of the rights and duties of these officers in the administration of the town; the corresponding definition of the seigneurial (crown) bailiff; the detailed description of the operation of town courts (especially of the division of business between the borough and hundred courts); the assertion of the right to try pleas of the crown within the town; the description of the town's relationship to the Cinque Ports' confederation and its resultant privileges; the definition of the area of the liberty; the further definition of the rights of mayor and jurats within the town; the definition of the extent of the king's rights within the town; and a copy of the general charter granted to the Cinque Ports in 1278. Into this

basic structure are inserted numerous details. A particular feature is the extensive use of documents and memoranda referring to the period c.1290-1300, and this use will be considered in detail. There is also evidence of different types of descriptive techniques. On the one hand, much of the text (particularly that relating to the mayor-making ceremony) directly describes physical action or event, while other parts (particularly those describing the modes of pleading in the courts) relies on a more abstract and scholarly appreciation of legal principle. These types of description also need to be considered in order to understand the mental processes involved in the codification of borough custom. Furthermore, since this putative text may represent a trace of the first systematic committal to writing of the customs of the community of Sandwich, it might be considered in the light of comparative work, which has considered in anthropological terms the nature of the committal of unwritten custom to a written code.¹³ The early Sandwich custumal presents the opportunity to consider the conclusions and implications of such work in the context of specific case.

In order to begin to understand the motivation for the production of a Sandwich custumal in 1301, and to understand the role of the clerk, Adam Champneys, in this process, it is valuable to consider first Champneys' own explanation of his enterprise in his preamble. This preamble reads as follows:

'Quoniam multa dubia solent inueniri in libertatibus portus Sandwici: cum nichil hucusque de predictis scriptum fuerit, et labilis sit humana recordacio, ego, Adam Champeneys, videns errorem magnum, et periculum, proueniens ab errore, ex eo quod dominus michi tribuit vidisse, intellexisse, et a predecessibus meis ac parentibus audiuisset, scribam; qui a litera scripta manet, in auditorium et consilium eorum qui villam predictam fuerint postmodum gubernaturi; rogans ut ea, que forte per negligenciam, ignoranciam, vel presumpcionem fuerint in hoc libello non debito modo, siue non satis plane vel plene, edita, per discreti correctoris industriam suppleantur; quia secundum poetas nostros proferentes huiusmodi dicta, dimidium facti, qui bene cepit, habet. Debile principium melior fortuna sequetur. Est quoddam prodire tenus si non datur ultra. Leuius si quidem est rem inceptam

¹³ Jack Goody, *The logic of writing and the organisation of society*, Studies in Literacy, Family, Culture and the State (Cambridge: University Press, 1986, reprinted 1988). The transition from custom to law, which Goody sees as a corollary of the application of techniques of writing to unwritten custom, is a theme of much of this work but is particularly treated (and with reference to developments of law in medieval England and Europe) in chapter 4 'The letter of the law', pp. 127-170.

terminare, quam totaliter ipsam incipere et finaliter promouere. Actum mense aprilis, anno gracie millesimo cccmo primo, regni regis Edwardi vicesimo nono.¹⁴

This preamble is expressed with a sense of rhetoric and historical moment, with its implicit emphasis on the error of the recent past. It also shows a preoccupation with the need to commit previously unwritten knowledge to writing. Despite Champneys' apparently personal exhortations it is likely that this text is not entirely original, since it seems to have close affinities with the prologues which had habitually come to be attached to legal and customary collections of the later-thirteenth century. The consideration of the fallibility of human memory and the relative permanence of the written record is a motif which is found also in earlier monastic chronicles and books recording the possessions of monastic houses.¹⁵ The request that the task begun might be completed by writers of the future also has parallels, particularly with the later thirteenth century London and royal lawbooks. The unknown late thirteenth century compiler of the lawbook known as *Fleta* introduced his work with a preamble explaining that he has resolved to set down as many as possible of the laws of the realm, but acknowledges that to complete such a task by himself would be

¹⁴ MS Sa/LC 1 f.1r. The following is a translation of the passage, based upon that given by Gardiner (p. 56) in which modern punctuation has been inserted for the sake of clarity: 'Whereas many doubtful points have been met with in the liberties of Sandwich, when nothing concerning them has been written down, and human memory is apt to fail, I, Adam Champneys, realising the great uncertainty and danger resulting from uncertainty, shall put in writing what the lord has suffered me to perceive and to understand and to have heard from my predecessors and my relations, because the written word remains for counsel of those who in times to come shall govern this town, begging that such things as perhaps by negligence or ignorance or presumption are not set out in this little book in proper manner, neither clearly nor fully enough, may be supplemented by careful correction, because according to our poets, who repeat such sayings 'well begun is half done', 'may better fortune follow on this poor beginning' and 'It is something to make a history up to a certain point, even if it is not permitted one to go further. If it is indeed an easier matter to conclude an unfinished work than to start it and continue it on to its end.' Completed in the month of April, in the year of grace 1301, 29th of the reign of King Edward I.'

¹⁵ cf. M.T. Clanchy, *From Memory to Written Record; England 1066-1307* (London: Edward Arnold, 1979; second edn., Oxford: Blackwell, 1993), pp. 146-147. Clanchy cites the endpiece (of 1250) to Matthew Paris' *Cronica Majora* in which Matthew claims to have written his work lest age or oblivion destroy the memory of modern events; and the *apologia* attached to Barnwell Priory's *Liber Memorandum* (1290) which notes the efficacy of writing as an instrument against the frailty of memory.

impossible.¹⁶ He also requested in the same preamble the hope that his work might be amended in the future where it is found to be in error. Adam Champneys' preamble clearly has important resonances with this earlier text. It is likely that such preambles were in fact variations of a widespread textual form, the knowledge of which appears to have been shared by clerks and other administrators both in England and further afield. In northern France, around the year 1280, Philippe de Beaumanoir had made a collection of *Coutumes de Beauvaisis*, for which he composed a preamble which is thematically remarkably similar to Champneys' text.¹⁷ De Beaumanoir wrote of the fallibility of human memory, of the transience of things not committed to writing, and of his resolve to make a record of customs so that his work might be continued or amended by those to come. It is of great significance, in the light of evidence to be considered for the context in which this Sandwich text was produced, that both of these earlier collections appear to have been made in the spirit of petitions, presented by their makers in the hope that ancient laws might be respected by those with responsibility for government. The compiler of *Fleta* claimed to have made his collection in the Fleet prison of London, where he had been imprisoned through some miscarriage of justice.¹⁸ De Beaumanoir's collection has a more immediately feudal character, being addressed to the overlord of the Beauvais region, the Count of Clermont. The resonances of these texts in Adam Champneys' preamble might suggest that the Sandwich custumal was also drawn up in defence of anciently established custom, and this suggestion will be examined in greater detail. The extent to which Champneys' claim to be countering frailty of memory with the power of writing, as a trope indicative of a movement from the oral to the written, can be accepted in the light of his custumal text will also be considered.

The indication of Champneys' knowledge of contemporary writing culture raises, furthermore, very interesting questions as to the education and cultural *mieu* of a late thirteenth/early fourteenth century town clerk. The Sandwich custumal is the only pre-fifteenth century text of a Cinque Port custumal which gives any clue as to

¹⁶ *Fleta*, ed. by H.G. Richardson and G.O. Sayles, 2, Selden Society, 72 (1955), pp. 1-3.

¹⁷ A transcription and translation of portions of the *Coutumes de Beauvaisis*, including the preamble are to be found in D. Herlihy, *The History of Feudalism* (London: Macmillan, 1970), pp. 187-196.

authorship, and so it is worth considering who Adam Champneys was, and how he may have gained his learning and literate skills. Most of the evidence for his life is found for the period after 1301, so can only be suggestive of his possible earlier experience. His name is perhaps indicative of origins overseas, and certainly there is no evidence for the existence of his family at Sandwich before the writing of the custumal, which may strengthen the view that he was a recent immigrant to the town. There is no evidence that he had previously attended an English university, but the fact that he was rector of St. Peter's church at Sandwich indicates his clerical background.¹⁹ On two occasions, after his production of the Sandwich custumal, (probably in 1304 and 1314) he was granted dispensation from his rectorship of St. Peter's to study in '*studium generale*' at a University for three years, but there is no evidence that he ever took-up these opportunities.²⁰ In 1321, Champneys, styled Adam 'of Sandwich', was granted the Archdeaconry of Worcester, in a politically motivated appointment on behalf of both the crown and the bishop of Worcester, engineered to avoid the appointment of a papal nominee to that office.²¹ The record of this appointment is of particular interest, because Champneys is referred to as 'king's clerk'. No evidence has yet been found to indicate the reason for this appellation, but a more extensive search of the contemporary royal records might reveal whether Champneys was actually employed as a royal clerk, as implied by this record. The bishop of Worcester who nominated Adam was the Kentishman, Thomas de Cobham, whose family owned substantial estates in Kent. This local connection is of great interest, and it does seem likely that Champneys and Cobham were acquainted before the time of their positions at Worcester.²² The possibility of this prior acquaintance may serve to give us some indication of a literate and learned

¹⁸ *Fleta*, 2, pp. 1-3.

¹⁹ His cure of St Peters is noted in the dispensations cited in the following footnote.

²⁰ I. J. Churchill, *Canterbury Administration: the Administrative Machinery of the Archbishop of Canterbury, Illustrated from the original records*, 2 (London: SPCK, 1933) pp. 116-117; Lambeth Palace Library, Register of Archbishop Robert Winchelsey, f. 23v and f. 295r and Register of Archbishop Walter Reynolds, f. 107v, 166r.

²¹ E.H. Pearce, *Thomas de Cobham: Bishop of Worcester, 1317-1327* (London: SPCK, 1923), pp. 46-48. *The Register of Thomas de Cobham, Bishop of Worcester, 1317-1327*. ed. by E.H. Pearce, Worcester Historical Society, 40 (Worcester, 1930), pp. 29, 30. *CPR 1321-24*, p. 4 (July 20 1321).

circle in Kent, to which Champneys may have belonged, since Cobham is known for his literate tastes and for his collection of books, granted on his death to the University of Oxford.²³

While the possible sources for the preamble are comparatively evident and may have resulted more from Champneys' own knowledge than from the knowledge of Sandwich town government, those for the body of custumal itself are often more difficult to find. The material of the custumal is largely specific to Sandwich, or in some cases to the towns of the Cinque Ports. It is thus local knowledge, and appears to be based upon the experience of the institutions of the town. Although there will be cause to examine the various ways in which it is articulated by Champneys, it is probably the combined and accumulated knowledge of members of the Sandwich town government both past and present, together with the knowledge of other administrations (particularly the town governments of other Cinque Ports). It is valuable to make suggestions as to possible origins or affinities of different parts of the custumal text in order to understand just what mental and physical activity Adam Champneys was engaged in when producing the text of the Sandwich custumal. It is valuable to test Champneys' assertion in his preamble that he seeks to reduce the liberties of Sandwich, which were previously unwritten, to the written word, and to ask in what ways was he acting as author, editor, copyist or compiler?

The calendar of Champneys' text immediately indicates the presence within his custumal of direct copies of previously-existing documents, which suggest that part of his enterprise lay in the location and compilation in a single text of important town and Cinque Port documents. These copied documents comprise a commission appointing Robert of Sturry as an attorney for Sandwich in the king's courts for ten years from September 1300; a copy of a royal letter patent brought to Sandwich by Hugh of Helpestone in 1299, confirming his appointment as king's bailiff to the town; royal letters patent granted to the Cinque Ports in 1298; a memorandum of Cinque

²² Pearce, *op. cit.*, p. 47.

²³ *DNB*. I am grateful to Paula Simpson, of the University of Manchester, for drawing my attention to the evidence for Champneys' connections with Cobham.

Ports naval service taken from what is described as a 'domesday' '*per manus William Burle*' of 1297; an undated letter from the king upon the appointment of a new warden of the Cinque Ports; a copy of a record of a perambulation of the Sandwich liberty by Stephen Pencester c.1290; and the general charter of Edward I to the Cinque Ports of 1278.²⁴ All of these individual documents may have already been in the possession of the civic government of Sandwich, perhaps among those kept in the common chest referred to in the custumal, and so a large part of his enterprise appears to be the enregistering or the codification of existing town records, placing them together on the leaves of a single small book.²⁵ Some of the documents (especially the charters) seem intended as historical records or precedents, while others (notably the document issued in the name of the mayor and jurats appointing Robert of Sturry) have the character of document formulae recorded for the purpose of future example. The fact that these portions of Champneys' text are copies of existing documents means that his claims made in the preamble to be setting down in writing that which he has *seen, understood and heard*²⁶, does not necessarily mean that he is always committing the previously unwritten to writing. The suggestion that these documents were already kept by the town is actually evidence of a highly literate, and document-conscious urban government at Sandwich in this early period. Further evidence of the extent to which the town government (probably through the agency of clerks like Champneys) participated in the culture of document use is provided by a note appended to the rehearsal of the general charter of 1278: '*Sunt etiam quedam carte veteres apud Hastings et alibi que prevalent ista carta quia ubi dicitur salva nobis et heredibus nostris regia &c multum est disputabile*'.²⁷ This is an indication of Champneys' knowledge of the particular holdings of documents in other

²⁴ ff. 10v-11r, Boys, pp. 432-434; ff. 28r-28v, Boys, p. 441; ff. 31r-32r, Boys, pp. 519-521; ff. 90v-91v, Boys, pp. 528-529; f. 103r, Boys, pp. 532-533; ff. 105r-107r, Boys, pp. 533-536; ff. 115r-116v, Boys, p. 545.

²⁵ The keys to the common chest (*'claves communis arche'*) are referred to in the context of the mayor-making ceremony in the church of St. Clements, where they are delivered to the new mayor following his taking of an oath. (f. 1v, Boys, p. 429). Champneys refers to his work as *'hoc libello'* in his preamble (f. 1r).

²⁶ He uses the words *'vidisse'*, *'intelixisse'* and *'audisse'*

Cinque Port towns perhaps arising from a shared knowledge among clerks and legal specialists in the Cinque Ports. It also demonstrates the awareness of dispute arising from the particular wording of a charter. The reference to the general *caveat* in the 1278 charter, that all grants are made subject to them not conflicting with the crown's own rights, appears to be a reflection of the particular conflicts between localities and the king in the reign of Edward I over the division between local franchise and royal power, as articulated in the *quo warranto* proceedings.²⁸

Another of these documents which sheds further light on Champneys' claim to be reducing unwritten material to writing is that describing the perambulation made of the boundaries of the liberty by the warden of the Cinque Ports, Stephen de Pencester '*pro statu domini regis salvando et eciam ad certitudinem habendum quanta esset area contenta infra limites dicte ville*'.²⁹ This text describing the boundaries of the liberty is drafted in terms almost entirely suggestive of non-literate modes of memory and description: using as its reference points the physical form and position of ditches, watercourses, marshes, tide-marks, and a stone cross. As such, it has the apparent character of being reduced to writing for the first time, as suggested by Champneys' own statement of his enterprise in the preamble. However, a note added to the text, probably by Champneys himself, tells us once more that he was probably working from a written record of the event. The note states: '*De certo die nescio, quia non intersui, nec eciam apparent scripta*'³⁰ which indicates that Champneys' source was likely to have been a written record, rather than his own memory or the memory of others.

²⁷ f.116v, Boys p. 545: 'There are some ancient charters at Hastings which are preferable to this charter since when it is said "saving for us and our heirs our royal power &c" there is much to dispute.'

²⁸ Donald W. Sutherland, *Quo Warranto Proceedings in the Reign of Edward I: 1279-94* (Oxford: Clarendon, 1963)

²⁹ f. 107r, Boys, pp. 533, 535: '...in salvation of the estate of the rule of the king, and to ascertain what might be the area contained within the bounds of the said town.' The record of a perambulation of the liberty of Faversham commissioned by Stephen de Pencester survives in the Faversham custumal (Faversham MS Fa/LC 1, ff. 14v-15r), suggesting the possibility of a more general enquiry into the boundaries of liberties of the Cinque Ports in the last decade of the thirteenth century).

³⁰ 'The date is not certain, since I was not there, and it does not appear in the writing'.

Having established the extent to which Champneys' text is reliant upon the evidence of written records, in spite of his assertion of the doubt which has arisen on account of them not having been written down, it is possible also to examine certain portions of the text which can be seen as intensely 'literate' creations. These portions are probably not copied, being descriptive of processes which are specific to Sandwich, and they may represent, as Champneys implies in his preamble, the first occasion upon which they were written down. Nevertheless, they demonstrate considerable drafting skills, demonstrate considerable appreciation of the techniques used in the organisation of multiple texts, which suggest the work of one steeped in literate legal culture. If the writer of these portions of the text can be identified as Adam Champneys then we must envisage him to be a skilled specialist in the drafting and codification of law.

The section of the text describing the operation of the borough and hundred courts and the modes of pleading within them deserves particular attention, since it seems to represent a carefully planned and self-referential whole.³¹ Following the copying of the letter patent brought by a new bailiff of the king, and a note of the bailiff's right to appoint a sub-bailiff, there appears a series of short clauses, each describing which types of actions are to be heard by which officials, and in which court. The bailiff is to hear pleas of all freemen and strangers in all cases arising within the town.³² The mayor, bailiff and jurats are to hold pleas if either plaintiff or defendant are strangers, on any day of the week.³³ Suits between freemen are to be heard, according to the '*consuetudines dicte libertatis*', on a Thursday (or exceptionally on other days).³⁴ All pleas may be heard at this Thursday court except pleas of land and of the crown, which are heard in courts held at St. Peter's church. Pleas of land can only be held in a full hundred court, held every third Monday, except in vacation time '*ut dicetur postea*', 'as will be spoken of hereafter'. This court is held in St. Clement's church

³¹ ff. 49v-89r, Boys, pp. 443-471.

³² f. 49v, Boys, p. 443.

³³ f. 49v, Boys, p. 443.

³⁴ f. 50r, Boys, p. 443.

and in it all manner of pleas may be determined.³⁵ Pleas of the crown are terminated at Sandown, at a place called '*lez mastez*', on a Monday, and it is stated that it not usual to do any business in the town courts after dinner, or to fine anyone '*ante horam diei primam*'.³⁶ The bailiff is to receive pleas, and do everything pertaining to his office and to the pleas within his jurisdiction: '*Quod si facere noluerit debet maior ipsum redarguere, ut dicetur postea*'.³⁷ The last of these short clauses states: '*Omne placitum aut est inter querentem extraneum et defendentem similiter extraneum, aut inter querentem extraneum et defendentem liberum, aut inter querentem liberum et defendentem extraneum, aut inter duos liberos*.'³⁸ The ensuing text, which represents the detailed description of process in the courts, suggests that these preceding short clauses are intended as an introductory digest of this detailed description. The full rehearsals of process follow the order in which they are introduced in this digest, describing methods of making pleas and the processes used in the borough court; the hundred court; and the court of '*lez mastez*'.³⁹ The detailed description of methods of pleading in the courts, of provisions for bringing defendants to court, of adjournments which are allowable, and of methods of pledging is remarkable for the level of legal knowledge which is brought to bear upon the custom of the town.

As has been seen there is no evidence for the career of Adam Champneys before the making of his custumal in 1301, save for the fact that he was almost certainly a cleric. It is clear, however, from this text that he either had substantial legal expertise himself or had access to people with such knowledge. The latter proposition is perhaps likely in view of the evidence that the government of Sandwich employed legal counsel in 1300 contained in the text of the custumal itself. One of the copied documents noted above is the record of the appointment for ten years of the lawyer Robert of Sturry as

³⁵ ff. 50r-50v, Boys, p. 443.

³⁶ f. 50v, Boys, p. 443.

³⁷ f. 50v, Boys, p. 443.

³⁸ ff. 50v-51r, Boys p. 443.

³⁹ Description of pleas and process in the borough court is found on ff. 51r-64r, Boys, pp. 444-457; in the hundred court, ff. 64r-69r, Boys, pp. 457-462; at the court of '*lez mastez*', 85r-89r, Boys, pp. 462-470, followed by a precedent.

an attorney and adviser to the community of Sandwich. Sturry, for the annuity of four pounds and a fee of eighteen pence for every day laboured on behalf of the town, was to come on horseback whenever required and to give advice in the king's courts.⁴⁰ As will be discussed later, the particular events in which Sandwich was involved in 1300 may have been the ultimate motivation for the employment of such a lawyer, but this appointment provides evidence of the ability and will of the government of a town such as Sandwich to purchase the expertise of lawyers, and this may well explain the high level of legal discourse apparent in the Sandwich custumal.⁴¹ While Adam Champneys may have collated the final text of his custumal, it is likely that its clauses represent the combined wisdom of a variety of other specialists.

The text of Champneys' custumal is not however merely a description of borough custom as expressed through the discourse of national and centralised law, since much of its material, in contrast to this legalistic material, is specifically local and expressed in terms not drawn from the literate discourse of legal specialists. This is especially true of the large portion of the text which describes the civic officers and their duties, which seem to represent the direct description of an event.⁴² The whole of this portion is articulated in terms of the yearly four-day ceremony held from the Monday to Thursday after the feast of St. Andrew in which new officers, including the mayor, are chosen and the administration of the town handed over into their custody. It contrasts with the legalistic description of the courts in that it has all the appearance of being composed by Champneys from his own experience of the event, with the assistance of his peers within the town government, who had themselves been central players in its performance. It is carefully descriptive of matters of timing, of physical space, of actions, and of speeches. The mayor is to be chosen by the community in St. Clement's church on the Monday following the feast of St. Andrew

⁴⁰ ff. 10v-11r, Boys, pp. 432-434.

⁴¹ There is comparative evidence for payments to legal retainers for Faversham, where the royal justice Edmund Passelewe was granted an annuity in 1301, and where Robert of Sturry himself was granted an annuity in 1310, see J.R. Maddicott, *Law and Lordship: Royal Justices as Retainers in thirteenth and fourteenth century England*, Past and Present Supplement 4 (1978), p. 29; CKS MS Fv/13 (Faversham 1310).

⁴² ff. 1r-10v, Boys, pp. 428-432

(30th November). This is preceded by the sounding of the common horn at fourteen customary places around the town, with the wardman proclaiming: '*Ech man of twelf yer other more guo to seint Clemantis Cherche, ther oure commune haith niede, an haste, an haste.*'⁴³ The election ceremony is described in detail with the old mayor making an address, with the mayoral staff ('*baculum suum*'), the common horn, and the keys to the common chest ('*claves communis arche*'⁴⁴) beside him. The form of the address is given:

'Veri fratres, bene scitis qualiter steti in servicio vestro communi per annum unum iuxta modum eleccionis vestre, et si bene et fidelitur officium exercui bene placet michi, sive autem, penitet me: et rogo vos, ut, siquid aliquem verbo vel opere deliquerim, dicat, et ecce ego paratus at satisfaciendum et ut vos alium eligatis qui officium illud sciat, possit et velit in anno presenti, savente Deo feliciter excercere &c'⁴⁵

The election is made following the withdrawal of the old mayor and a speech by '*aliquis bonis vir*':

'Viri probi ecce quatuor combarones nostri quos elegistis perceteris dignos officio maioratus exierunt, dicatis in nomine Domini quem de hiis habere volueritis'⁴⁶

from four candidates (one being the out-going mayor) who are stated to be chosen by the '*communitatis*' and the newly chosen mayor makes his oath (the form of which is recorded) along with the jurats. The keys of the common chest are handed to the new mayor and to two jurats appointed keepers, and a procession is made to the house of the new mayor.⁴⁷ In the afternoon, or on the following day, the previous mayor sends the common chest, and the weights and measures of the town to the new mayor.⁴⁸ The performance continues on the following Thursday, and the text runs on to describe the appointments and oaths of the other civic officials, that is to say the sergeants, jurats appointed as wardens for orphans, jurats appointed to divide inheritances between heirs, the common weigher, the public brokers and the porters.

⁴³ f. 1v, Boys, p. 429

⁴⁴ f. 1v, Boys, p. 429

⁴⁵ f. 1v, Boys, p. 429.

⁴⁶ f. 1v, Boys p.429.

⁴⁷ ff. 2r-2v, Boys p. 430-431

Oaths in given forms are made.⁴⁹ It is also within this ceremony that common ordinances are proclaimed, and thus they are recorded within the context of the ceremony, immediately following the election of the porters, and immediately preceding the election of the common serjeants. It is stated that the ordinances should be read by the town clerk at the Thursday gathering, and if necessary proclaimed again on the following Saturday by the serjeant in the market-place and in fourteen *'locis usitatis'* within the town. As in the case of the provisions for the mayoral election, the nature of this performance is described: *'In primis clamet serviens alta et longa voce Pees a godys half, pees et intervallo facto iterum clamet eodem modo et tercio'*⁵⁰ Following this acclamation, fourteen ordinances are proclaimed.⁵¹

While this text fulfils the function of describing all of the officers of the town and their modes of election or appointment, it does so in the terms of the physical and oral performances of the post-St. Andrew's day ceremonies. There is no recourse here to the terminology or phraseology of the law, and the account is not structured in abstract or conceptual legal terms, but is given as a chronological account of the ceremony. The emphasis is on calendrical time, the physical location of elements of the ceremony, its spatial organisation, the ritual use of objects symbolic of urban authority, and the words of speeches and oaths to be read out loud by townsmen. Even the form of the wardman's summons to St. Clements church is given, in a highly evocative vernacular, which contrasts with the careful Latin of much of the custumal

⁴⁸ f. 2v, Boys p. 431

⁴⁹ ff. 2v-4v, Boys p. 431

⁵⁰ f. 8v, Boys, pp. 498 and 500

⁵¹ The ordinances consist of the stipulations that no brewer, baker or other tradesmen lend to the spinners of wool upon the surety of their wool, or tailors upon the surety of their cloth; bakers must brew according to the assize; animals are not to run free in the streets; that iron cart-tyres are forbidden, save in autumn; the streets are to be kept clear of dung and other obstructions; butchers are not to kill in the street, and are to dispose of offal cleanly; butchers are to sell only fresh produce; no fishmonger is to buy from foreign fishermen until the freemen have had their share; no poulterer to buy poultry until the 'better sort' (*'probi homines'*) have had their choice; no fish to be sold in Lent for re-sale; no market women are to buy from the haven; no women who make *'lussellos'* (bundles of spun yarn?) to make them of less than twenty-pounds weight; no weapons are to be drawn, and scolding and quarelling are forbidden.

text as though to present its pre-literate and pre-legal origins. So although the account is presented as a text, it is a special sort of text in which authority lies only in the actual performance of the described ceremony. It is in sections of the custumal text such as this that are glimpsed the non-literate aspects of urban custom, and in which we can take at face value Adam Champneys' claim to be committing the formerly-unwritten liberties of Sandwich to writing. This description of ceremony is also strongly suggestive of the methods by which knowledge and experience of urban government and institutions was perpetuated before (and probably well after) the reduction of such events to written codifications. By staging this annual event of considerable display, in which the '*communitas*' participated to a limited degree, the town government were re-inventing the institutions of their town and holding them up for consideration and remembrance, while at the same time reasserting the location of authority within the town. It is highly likely that it was first committed to writing in Adam Champneys' custumal of 1301, having formally only existed in the memory of its yearly performance.

At this point it is worth reconsidering the range of literate activities represented in the making of the custumal. It has been seen that Champneys' suggestion that doubt has arisen concerning the liberties of Sandwich because nothing of them has been written down, expressed in his preamble, is a rhetorical fiction. The text which he goes on to produce contains copies, or other evidence, of numerous other documents which must have existed in the Sandwich common chest or in the hands of other Cinque Port administrations and clerks. In these cases, Champneys is not engaged in composition, but in compilation or enregistering, transposing documents into a new context. The chief transposition he appears to have made is from the existence of texts in individual and self contained documents (charters, letters patent, commissions) to a new existence within a single document, probably in the form of a book.⁵² Together with these compiled documents he also includes a large number of texts which do not have any obvious precursors: such are the descriptions of administrative ritual and legal procedures (the mayor-making, the procedure of courts, the methods of pleading), and these are likely to have been composed specifically for the custumal. Within the basic activity of composition is found the use

of a variety of discourses, represented by description of physical action (as in the mayor-making) and by a type of writing derived from the knowledge of the forms of legal writings. As well as being composed, all of these texts must have been carefully organised into a considered and pre-planned whole, since it seems that documents were not simply added as the need arose over a period of time.

These different types of discourse, represented by the legal/literate mode on the one hand and the local/non-literate mode on the other, within Adam Champneys' codification have been explored here because they appear to represent the particular characteristics of previously unwritten customary law when received into literate modes, which has been recognised in anthropological work.⁵³ This work has described the general characteristics of this moment in a variety of different cultures, but has sought to use western medieval evidence to consider how changes in modes of communication (such as is represented by the transition from the oral to the literate apparent in the codification of custom) fundamentally alter the nature of the society in which it takes place. More specifically it has considered a perceived shift from the primacy of custom to the primacy of (national) law in medieval England as a consequence of the transition from the oral to the literate.⁵⁴ In some way the codification of custom is perceived to be a step along the way to its ultimate absorption into generalised national law, and that this occurred in the establishment of the English Common Law '...in the thirteenth century by means of the determined application of writing to create a law common to the whole country.'⁵⁵ There will be cause to examine these assumptions further when the background to the production of Champneys' customal is considered, but in the context of the aspects of the

⁵² He calls his creation '*libello*' in the preamble.

⁵³ Goody, *op. cit.*, pp. 127-170.

⁵⁴ Goody, *op. cit.*, 127-130;159-165.

⁵⁵ Goody, *op. cit.*, p.130. Goody cites the work of L.A. Fallers, who suggests that the difference between law and custom has a hierarchical dimension, and suggests that 'customary law' develops as a result of the partial recognition of local, customary procedures by dominant political and legal systems. Fallers claims that 'Customary law is folk law in the process of reception.' (L.A. Fallers, *Bantu Bureaucracy: A Study of Integration and Conflict in the Political Institutions of an East African People* (Cambridge: University Press, 1969), p.3. cited in Goody, pp. 130-131).

customal considered so far, it is proposed to make some initial observations from the evidence of the customal text.⁵⁶

The evidence of this customal suggests, in the first instance, that it would be unwise to draw a clear distinction between the unwritten in local custom and the written in national law. If the materials contained within it can be considered to represent customary law, then it would appear to be a highly sophisticated variety of such custom, which is certainly not unwritten and which bears considerable evidence of developed, literate/legal modes of expression alongside its more truly customary features. Within the customal, there is in fact evidence of the simultaneous application of both modes of communication: in the obvious importance attached to the performative ceremonies associated with the mayor-making on the one hand, and in the careful description of the principles governing the operation of the borough courts which relies upon a knowledge of literate legal discourse on the other. The fact that the description of the mayor-making ceremony came to be copied in two subsequent customals (of the later-fourteenth century and of the early fifteenth century)⁵⁷ and that there is abundant evidence that performative urban ceremony flourished (frequently being elaborated) as a mode of expression of authority well into the fifteenth century and beyond,⁵⁸ suggests that in no way were these thoroughly localised modes of expression of authority subjected to a national authoritative code

⁵⁶ The claims associated with the 'literacy thesis', of which Jack Goody has been the principle exponent, has recently been seriously challenged from within the anthropological discipline. See Brian V. Street, *Literacy in theory and practice*, Cambridge Studies in Oral and Literate Culture 9 (Cambridge: University Press) in which a chapter is devoted to the consideration of the literacy thesis, ch. 2 'The "Autonomous" Model: II, Goody, pp. 44-65; also see John Halverson, 'Goody and the implosion of the literacy thesis', *Man*, 27 no.2 (1992). The question of the perceived development of literate ability in the medieval period, and its consequences, has most recently been scrutinised from a literary perspective by Joyce Coleman, *Public Reading and the Reading Public in Late Medieval England and France* (Cambridge: University Press, 1997). Coleman challenges the assumptions made by other writers (notably Walter Ong) on the subject of orality and literacy as to the fundamental changes wrought by a perceived shift from one mode to another within societies.

⁵⁷ MS Sa/LC 1 and MS Sa/LC 2

⁵⁸ See especially Charles Phythian-Adams, 'Ceremony and the Citizen: The communal Year at Coventry 1450-1550' in Richard Holt and Gervase Rosser, *The Medieval Town: A Reader in English Urban History, 1200-1540* (London and New York: Longman, 1990), pp. 238-264.

developed through the determined application of writing. These activities, which involved the continued oral performance of words and actions existed alongside the manifest developments in the uses of writing in urban government. It would appear that the literate and the oral are no more than two modes of expression, not bearing any necessary developmental relationship, each with its own peculiar characteristics and value according to circumstances. It is also apparent, from the evidence of the custumal text that the boundary between the literate and unwritten modes is frequently blurred. This is true of the way in which writing and writings are used as components of the non-literate modes of expression found in urban customary ceremony. Books and writing are subordinated in the mayor-making ceremony to the status of objects for swearing on. They are then, in a sense, part and parcel of the ritual processes of urban government, and the ritual use of writings and books in urban culture is a theme which will be developed in this study, particularly in relation to the emerging 'urban book culture' of the later-fourteenth century.⁵⁹

The evidence for the production of this Sandwich custumal also seems to challenge the uni-directional approach apparent in the work of Goody and his sources to transitions between custom and law. In this instance, it is likely that that legal pressure exerted upon the community of Sandwich by a legally and politically superordinate power (the crown) did not have the effect of receiving its customs into a uniform, national, legal system (though this may have been its intention) but stimulated instead a determined assertion of customary law in the ultimate production of a custumal in 1301. Once produced, this custumal was used and developed by the inhabitants of Sandwich as evidence of the existence and authority of its customs for several hundred years, suggesting that notions of custom and customary law may ultimately have been strengthened rather than weakened through the exertion of this legal pressure.

3.3 Sandwich and the *quo warranto* enquiries of the thirteenth century

It is true to say that the liberties and customs of Sandwich, in common with those of most other franchised communities, were subject to repeated scrutiny by the crown in

⁵⁹ See the discussion of the making of MS Sa/LC 1 below in this chapter, and the discussion of the Faversham custumal book (MS Fa/LC 1) in the following chapter.

the thirteenth century. While this scrutiny seems to have had more to do with the protection of the crown's sources of revenue and with the vigorous assertion of royal authority under Edward I than with the intentional nurturing of a national system of law, it does seem to have ultimately stimulated the emergence of written custumal forms in the Cinque Ports and, in particular, at Sandwich. But before seeing this stimulation in simple terms as an attempt to reduce local custom to uniformity, the events from which it resulted, and their consequences need to be considered in this particular context.

The thirteenth century (especially the latter part of it) had witnessed repeated negotiation between the crown and members of the Cinque Ports, concerning the nature of granted or assumed liberties and franchises.⁶⁰ This was largely dictated by the crown's constant vigilance over its sources of revenue (especially in times of special financial need) in order to prevent encroachment. This vigilance resulted in a number of nation-wide enquiries, which were to develop into the *quo warranto* proceedings of the last quarter of the century.⁶¹ Although it is known, from the records of the crown, that the Cinque Ports witnessed a number of enquiries at this time, direct references to them amongst the records of the ports themselves is hard to find. As a result, it is to the royal records, including the close and patent rolls, and more especially, to the records of the Exchequer that we need to turn for evidence of the relationship between the community of Sandwich and the crown in the thirteenth century.

It appears that, as early as 1218, the liberties of the Cinque Ports were intended to be scrutinised in the Kent and Sussex eyres, but that in 1227 a separate eyre for the ports was summoned to be held at Shepway, probably because the ports had claimed immunity from the general eyres. However, this eyre was postponed until the next year and thereafter was indefinitely postponed.⁶² After this last deferral it seems that no systematic enquiries were attempted until later in the century. A second major

⁶⁰ Murray, *Cinque Ports*, pp. 63-70.

⁶¹ A detailed examination of the *quo warranto* proceedings is found in Sutherland, *op. cit.*

⁶² David Crook ed., *Records of the General Eyre*, Public Record Office Handbooks, 20 (London: HMSO, 1982), pp. 78-79.

period of enquiry began in the 1270s and, as has been convincingly argued, represented a widely recognised campaign by the crown to safeguard and to extend its income in a period of financial crisis.⁶³ The enquiry was intended to cover the whole country and developed specific procedures, in which franchise holders were to come to court with details of what they thought their liberties consisted of, and by what warrant they claimed them. This process, it has been suggested, was particularly aggressive in its summary procedure and its virtual reversal of the usual legal position of plaintiff and defendant.⁶⁴ The plaintiff was usually the party who had to issue allegations to which the defendant answered in court. In the *quo warranto* proceedings, however, the plaintiff (in this case the crown) issued no allegations, and the onus was on the defendant (the franchise holder) to present a case when summoned. It may be that this legal innovation may have encouraged franchise holders to gather together evidence before appearing in court. This is significant, since the particular strength of will thus demonstrated on the crown's behalf may have been responsible for the rather extraordinary long-term results of the campaign, which can be traced in the case of Sandwich.

It has been seen how the Cinque Ports had previously claimed exemption from general eyres, and it is of great significance that, in the *quo warranto* campaigns of the later thirteenth century, they were nonetheless summoned to appear before the eyres. Once again, this demonstrates a particularly forceful approach to the proceedings on the part of the crown. The earliest mention of a member of the Cinque Ports in this campaign relates to Fordwich (a limb of Sandwich) which was given respite from inquisition in 1275/6.⁶⁵ Around Easter 1276, seven parties claiming liberties under these proceedings had their case adjourned to Michaelmas 1276, including the port of New Romney and the abbot of Battle (lord of the port of Lydd) so that charters might be inspected and considered.⁶⁶ It appears that the revolt in Wales diverted attention away from the examination of the franchises and it is recorded that the cases of the men of Sandwich, Fordwich, New Romney, Hastings

⁶³ Sutherland, *op. cit.*, pp. 2-24.

⁶⁴ *Ibid.*, p. 7.

⁶⁵ Sutherland, *op. cit.*, p. 21n.

⁶⁶ Sutherland, *op. cit.*, pp. 21-22.

and Faversham were adjourned until the end of the next parliament, which would have been Easter of 1277. Postponement was again made until Easter 1278, because of war, when a decision was made to adjourn all cases for the time being and to allow all franchise holders to remain in possession of their liberties for the time being whilst a new strategy was developed.⁶⁷ This decision is recorded in the Statute of Gloucester.⁶⁸

It was in 1278, presumably as a result of this charter scrutiny and of the desire to produce some form of definition, that the Cinque Ports were granted their 'general Charter' in which the privileges previously granted to individual towns of the confederation were amalgamated and granted to all of the Cinque Ports in general. This charter, as has been seen, was probably presented as part of Champneys' 1301 customal.⁶⁹ It has been suggested that this charter is a confused document, with liberties 'thrown somewhat indiscriminately into the charter, so that each port received not only the privileges already granted to it, but all the liberties which had been granted to each of the other ports, causing some confusion and repetition'.⁷⁰ This may be the result of summary treatment of an unprecedented amount of documentary material. We know that postponement had been made for the examination of charters, and we must envisage a period in which towns sought out (or perhaps even wrote up) their charters from their own records or from elsewhere, as well as a period of collation, cross-referencing and editing which must have taken place in a royal department.

The Statute of Gloucester effectively set up the huge machinery of the *quo warranto* campaign proper, which relied on circuits of the eyre hearing all the liberties and

⁶⁷ Sutherland, *op. cit.*, pp. 22-23.

⁶⁸ 'In our last parliament at Westminster [Easter 1278] we and our council decided and proclaimed that prelates, earls, barons, and others of our kingdom who claim to have those various liberties for the examination and judgement of which (*'ad quas examinandas et judicandas'*) we had assigned them a day in that parliament, should use those liberties: so that they should not increase them by usurpation or encroachment and so that they should not encroach on our rights.' Cited in Sutherland, *op. cit.*, pp. 190-193.

⁶⁹ MS Sa/LC 1 ff.115r-116v.

⁷⁰ L.F. Salzman ed., *VCH Kent*, 9, pp. 37-38.

franchises as it made its way around the country. The eyres apparently visited Kent and Sussex in 1279 but no business relating to the Cinque Ports survives.⁷¹ A second circuit visited Sussex nearly ten years later, in 1288, and Kent in 1293, but once again there is no systematic record surviving of urban pleas.⁷² However, the 1293 Kent circuit appears to have represented a general survey of franchises held in the county. It is particularly significant that this circuit appears to have been the stimulus for the codification of the '*Customs of Kent*', which is demonstrative of the close connection between pressure exerted by the crown upon communities and the production of written codes of previously unwritten custom.⁷³ It is also probable that the justices responsible for this circuit, under John de Berwick, attempted to take enquiries within the liberty of the Cinque Ports, since a writ survives directing that justice to allow the barons of Faversham to enjoy all the liberties which had been granted to them by charter.⁷⁴ It is also very likely that the circuit took an inquisition into the liberties of Sandwich.

A small parchment roll surviving in the public records (among the records of the Exchequer), written in a late-thirteenth century hand, relates to liberties claimed by the mayor and community of Sandwich in the form of a *quo warranto* enquiry taken some time after 1290, which suggests that it may form a record of the enquiries of 1293.⁷⁵ The text of this roll is of great importance to the understanding of Adam Champneys' custumal, and of the processes and motivations involved in its production.⁷⁶ It is to be discussed here as an example of the way in which local custom was scrutinised by the crown in the *quo warranto* enquiries, but also as a likely factor in the formation of Sandwich's own custumal produced in 1301. A

⁷¹ Sutherland, *op. cit.*, p. 28; Crook ed., *op. cit.*, p. 159.

⁷² Sutherland, *op. cit.*, pp. 28-29.

⁷³ The codification of the custumal of Kent and its relation to the 1293 eyre is discussed in two articles offering rather different analyses: Felix Hull, 'John de Berwyk and the Consuetudines Kancie', *Archaeologia Cantiana* 96 (1980), pp. 1-15 and in C.L. Sinclair-Williams, 'The Codification of the Customs of Kent', *Archaeologia Cantiana* 95 (1979), pp. 65-79.

⁷⁴ Hull, *op. cit.*, p. 3.

⁷⁵ PRO MS E 163/2/26.

⁷⁶ A transcript of this document is presented in Appendix 3 ('A late thirteenth century enquiry into the liberties of Sandwich')

number of affinities between the texts suggests that Champneys' custumal can only be properly understood in the light of the earlier *quo warranto* production, and that the custumal may specifically address the disputed points of the *quo warranto* enquiry.

The enquiry text of the Exchequer roll opens with two clauses which outline the history of the lordship of Sandwich.⁷⁷ They mention the original grant of the lordship to the monks of Christchurch Priory by King Cnut in 1023 and the expulsion of the Priory by king John (as a result of the disputed elections of the successor to Archbishop Hubert Walter). It is stated that, at the time of the expulsion, before the institution of the office of mayor at Sandwich, the community had usurped certain rights and liberties. In 1290, the prior of Christchurch had made an exchange of the lordship of Sandwich, relinquishing all his rights in the town to the king. Thus, the enquiry seeks to restore the rights now held by the king in the town to the form of the charter originally granted by Cnut, and to disqualify all those liberties claimed by the mayor and community of Sandwich which cannot be substantiated by sufficient warrant. Following the two introductory clauses, there appear 23 clauses representing claims made by the mayor, or the mayor and community (beginning '*maior asserit*'; '*Maior et Tota communitas*'; '*maior de assensu communitas*'⁷⁸) to a variety of liberties and franchises in the government and administration of the town. The fact that the document is the result of an enquiry is underlined by the way in which the clauses are terminated. The first five claims receive the response characteristic of the *quo warranto* proceedings: '*Nescitur quo waranto*'.⁷⁹ Others are not directly refuted, but receive comment such as '*in prejudiciam et exheredicionem &c.*', which is the commonly found abbreviation for those claims which run contrary to the king's interest.⁸⁰ Some others are directly contradicted, such as that clause which describes the mayor, without the bailiff ('*per se absque ballivus*'⁸¹) overseeing the taking of

⁷⁷ Appendix 3, clauses [1] and [2]. The clauses have been numbered in the appendix for the purpose of reference in this discussion.

⁷⁸ 'The mayor claimed'; 'the mayor and the whole community'; 'the mayor by the assent of the community'.

⁷⁹ 'It is not known by what warrant [the franchise is held].' Clauses [3-7]

⁸⁰ 'to the prejudice and loss [of the crown's possessions or dignity].' Clause [9]

⁸¹ 'by himself without the bailiff'.

distraints on the goods of foreign merchants and which receives the comment that in this town this should be the right of the bailiff, the servant of the crown (*'Ita quod quilibet de villa predicta in hoc casu est ballivus'*).⁸² Other clauses still seem to receive no comment at all.⁸³

Although the Exchequer document is undoubtedly a royal production, it does represent something of a prototype for the much more extensive custumal compiled by Adam Champneys in 1301. When Champneys wrote up his custumal, he may well have been elaborating the claims made by his peers or predecessors in the last decade of the thirteenth century. He tells us in his preamble that among his sources is the wisdom of his predecessors, which must suggest that he was able to consult already existing documents. It is just possible that he used a text of the thirteenth century enquiry, since there do seem to be connections between it and his own custumal text. This possibility is worth considering in some detail, since if it can be substantiated it would seem to be an important clue to the sources used by an urban government in the production of a custumal text. There is, in addition, evidence to be discussed in detail later, that the government of Sandwich may have participated in the violent appropriation of royal documents in the period between the making of the *quo warranto* enquiry and the writing of the custumal in 1301, which strengthens the possibility of this direct relationship between the two texts.

Several of the clauses of the Exchequer document (at least 9 of them) appear to be directly addressed in Champneys' custumal. This is suggested by both the similarity of subject matter in both versions, and also the style of the relevant part of Champneys' text. Two of the enquiry's clauses, ([9] & [22], relating to distraints and to '*deodand*' exactions⁸⁴) are addressed in clauses which begin with the emphatic '*Sciendum est...*', which is an occasional form in custumal texts and represents a degree of insistence, suggesting that in the past some doubt had been cast on the claim. Three of the enquiry's clauses are addressed and the claims strengthened by recourse to custom,

⁸² Clause [8].

⁸³ Clauses [14-16].

⁸⁴ An exaction made following the death of an inhabitant. Originally, the exaction was in the form of the object (or weapon) which caused the death. By the time of this, document however, this exaction would have been in the form of a money fine.

usage or other historical justification ([5], [6] & [7]). It is significant that two of these clauses ([5] & [6]) are amongst those terminated '*Nescitur quo waranto*' in the enquiry.

The first of these clauses [5], relates to the assize of bread and punishments for its breaking, and receives a very interesting treatment in Champneys' custumal. In the enquiry, the mayor had claimed that no baker dwelling in the town suffer punishment at the pillory in the town ('*quod nullus pistorem commorans in villa predicat judicium pilorii debet subire*'), but no warrant could be produced for this liberty. When we find the issue raised in the custumal, this is the wording:

'Et iste est usus libertatis. Quia non debent pati collistrigium necusque solent, nec castigarium, vel huiusmodi tormenta, que sunt in forinseco ordinata. Et tunc temporibus, in dicta villa non nominatur ballivus, set prepositus, anglice, portreve; quando, videlicet, custuma ipsius ville erat prioris et conventus ecclesie Christi Cantuariensis'⁸⁵

Champneys thus asserts that this is the usage of the liberty, and that it is on this custom that the authority of his assertion rests. It is apparently strengthened by going on to refer to the period before the overlordship of the crown, to the time when Christchurch had held the town of Sandwich, by referring to the reeve whose office predated that of the king's bailiff. In this way, he seems to be using the history of the town and its offices to confer authority on a claimed liberty.

The issue raised in the second of these two clauses [6] relating to the custody of weights and measures in the town, which is stated to have been claimed without knowledge of by what warrant, receives attention in Champneys' custumal thus: '*et ballivus nichil se debet interponere, quia communitas habuit ipsam custodiam ab*

⁸⁵ MS Sa/LC 1, f. 114v; Boys, pp. 542, 544. 'And this is the custom of the liberty, because none here ever suffer the pillory or whipping-post, or other such like punishments as are inflicted in the foreign [i.e. *outside* the liberty]. At that time when the custom was in the hands of the prior and convent of Christchurch Canterbury, we had no officer here under the name of bailiff but a *prepositus*, or in English, *portreve*.'

antiquo’, which directly denies any right in this matter of the bailiff, through recourse to anciently established practice.⁸⁶

In addition to this sort of customary or historical justification, Champneys makes repeated references to royal grants and charters in order to strengthen and justify the claims of the custumal. One particular reference is applicable here, since it refers to a clause terminated ‘*Nescitur quo waranto*’ (Clause [7]). The clause in the enquiry text states that the mayor ‘*ad opera communitatis*’ has appropriated the escheats of tenements in cases of failed heirs, of bastards, and of felons. The custumal addresses the same issue:

‘Item maior et communitas tenent aream illam a domino rege, una cum alii libertatibus suis per quoddam certum servicium ei reddendum in guerra sua, prout dictum est, et propter hoc habent ipsi omnes escaetas terrarum et tenementorum in eadem villa accidentes. Habent eciam terras et tenementa feloniorum et fugitorum ultra unum annum et unum diem, quod domino regi pertinet per ballivum suum’⁸⁷

The ‘*prout dictum est*’ seems to relate to the citation of a letter patent of 1290 earlier in the custumal text, which specifically grants this franchise to the community of Sandwich.⁸⁸ It therefore seems extraordinary that when the assertion was made in the enquiry of this franchise, the community was not able to produce sufficient warrant to prove the claim, even though the franchise had been confirmed only a few years earlier. This is surprising, but may in fact be a genuine reflection of the inability of defendants to counter the crown’s strength of will in *quo warranto* proceedings. It also demonstrates the emerging need for franchise holders to be able to have in their possession written copies of grants and confirmations, in order that they may be

⁸⁶ ‘and the bailiff shall in no way interfere, since the community have the same custody from ancient times’

⁸⁷ MS Sa/LC 1 f. 104v; Boys, pp. 534, 537. ‘Also the mayor and community hold the area of their liberty and all their privileges of the king by a certain service rendered to him in his war, as is mentioned before; in consideration of which they have all escheats of lands and tenements happening within the town; also the lands and tenements of felons and fugitives after a year and a day, during which time they are taken for the king’s use by his bailiff.’

⁸⁸ Contained within the *inspeximus* charter of 1348, ff. 22r-28r.

presented as proof when required. This goes some way to explaining the desire to collect and codify such grants in written customals.

A further strategy which appears in the customal, which suggests its connection with the claims made in the earlier *quo warranto* enquiry, is that of turning around implicit accusations made in that enquiry. This is demonstrated in clause [8]. This states that the mayor, without the bailiff, has encouraged the freemen of the town to make distrains on foreign traders (presumably under the custom of '*withernam*'), and this right is to be disallowed. Furthermore the text states that only the bailiff has the right to make such distrains ('*Ita quod quilibet de villa predicta in hoc casu est ballivus*'). The mayor is thus denied the right to profit from these distrains. In the customal, the same issue is addressed (the distraint of foreign merchants) as though to suggest that the bailiff had in fact been abusing his power, and that the mayor and jurats claim, in this instance, to represent the king's best interests in the borough:

'Debent eciam maior et jurati servare et custodire mercatores extraneos ad villam venientes, pro posse suo, et eciam tam peregrinos quam omnes bonos et fideles homines. Ita quod, si ballivus domini regis accipere velit de ipsius vel eorum mercimoniis costumam nimis amplam, vel forte aliam duriciam eis facere voluerit, ibunt ad ballivum, et rogabunt eum ut huiusmodi mala non faciat ad ville regis detrimentum'⁸⁹

It is, ultimately, impossible to know whether these manifest links between a royal document, produced by royal justices probably in the early 1290s and the Sandwich customal as produced in 1301 were the result of the makers of the customal (including Adam Champneys) having access to the earlier text, or whether they simply indicate that the customal was written with the knowledge of the disputed points of the 1290s enquiry. Nevertheless, the evidence presented here for the experience of Sandwich in the *quo warranto* enquiries, together with the suggested

⁸⁹ MS Sa/LC 1 folio number; Boys, pp. 434-435. 'The mayor and jurats should endeavour to protect from injury all merchant strangers resorting to the town, and all honest men whether foreigners or subjects; and if the bailiff should exact from them higher duties for their goods than he ought, or in any other respects oppress them, the mayor and jurats should remonstrate against his proceedings as prejudicial to the king's borough.'

links between texts or events is an indication of the extent to which the codification of custom was connected to the incidence of royal enquiry.

This might at first sight be seen to confirm Goody's model of a transition from custom to law, effected through the 'determined application of writing' to local custom. However, it appears from the Sandwich evidence that such a model seriously compresses and generalises the processes of such transition to the point where they do not truly correspond to the actual situation. Certainly, the royal enquiry document of the 1290s could be seen to indicate the desire to absorb the local customs of Sandwich into national law, by disqualifying certain liberties which conflicted with the crown's power. Certainly also, this enquiry influenced the codification of the Sandwich custom in the suggested ways. A major objection to the thesis is, though, that the actual codification of the custom, which occurred in 1301 was not simply the intended result of the crown's attempts. It was in fact, the opposite. The 'determined application of writing' was not in this case in the hands of the crown, but in the hands of a local community who caused this application to be exerted in direct opposition to the crown, as an act of resistance. This becomes apparent when the immediate occasion of the custom's codification is considered.

3.4 An assault on the royal justices and the production of the Sandwich custom

On the 14th August 1300, Ralph Sandwich, Roger de Hegham and John Abel, itinerant justices of the king, were making their way towards the port of Sandwich when they were met, in the neighbouring village of Ash, by a group of men from Sandwich including John de Hoo the mayor, Adam Champneys, the town clerk, and at least twenty-five others.⁹⁰ The men of Sandwich proceeded to:

⁹⁰ In addition to John of Hoo and Adam Champneys the party included: Nicholas 'the Ironmonger', Robert Monyn, Michael Young, Walter 'the Draper', Thomas Gilote, Salcock Large, Jordan Peny, Stephen 'the Falconer', Stephan Scorthals, John atte Hole, Adam Wyberd, junior, Thomas Edward, John of London, Adam Charles 'of Sandwich', senior, Stephen Wyberd, Walter 'the Taverner', Thomas Absalon, Thomas of Romney, Ralph 'the Goldsmith', Salcock Loverik, Pontius Wibert (Wyberd), Andrew Peny, John Loverik, and Robert Morlek. PRO Coram Rege Roll no. 164 (Easter Term 1301), membrane 61v; transcribed and translated in G.O. Sayles ed. *Select Cases in the Court of the King's Bench under Edward I*, 3, Selden Society, 58 (1939), pp. 111-112.

‘in prefatos iusticiarios regis vi et armis apud Asshe insultum fecerunt et ipsos malectractauerunt, non permittendo eos villam regis de Sandwyco intrare nec officium quod eis per regem fuit iniunctum facere et bursam cum rotulis regis sciderunt et arcus et sagittas hominum predictorum iusticiarorum fregerunt et alia enormia eis intulerunt, in contemptum regis et lesionem corone et dignitatis regie manifestum’,⁹¹

The record of this extraordinary event is found among the rolls of the court of the King’s Bench for the Easter term of 1301, which probably sat between the 17th April and the 12th of May.⁹² At this court, John of Hoo, Nicholas the Ironmonger, Robert Monyn, Michael Jeune, Walter the Draper, Thomas Gilote, Salecok Large, Adam Champneys, Jordan Peny, Stephen the Falconer, Stephen Scorthals, John atte Hole, Adam Wyberd junior, Thomas Edward, John of London, Adam Charles senior, and Stephen Wyberd, who had been involved in the assault at Ash, were attached to answer to the king. These men were by no means a mere rabble. They represented the leading families of Sandwich, and at least some of them held office within that town.⁹³ The fact that the mayor, the town clerk and probably several jurats were amongst them suggests that the encounter at Ash was officially sanctioned and made

⁹¹ ‘...assault the aforesaid justices of the king with force and arms at Ash and ill-treat them, not permitting them to enter the king’s town of Sandwich or to do the duty that was enjoined upon them by the king, and cut open the pouch with the king’s rolls and break the bows and arrows of the men of the aforesaid justices and inflict other outrages upon them, in contempt of the king and the obvious hurt of the crown and royal dignity’.

⁹² This dating has been deduced from the determination of legal chronology in C.R. Cheney, *Handbook of Dates for students of English History*, Royal Historical Society Guides and Handbooks, 4 (London: Royal Historical Society, 1945, reprinted 1991), p. 68.

⁹³ John of Hoo had been mayor also in 1287; Robert Monyn is probably the Robert Monkyn (or Mundekyn) who was mayor in 1283 and 1285, Michael Jeune’s son, Michael Yonge, was probably mayor in 1341; Adam Champneys was town-clerk and rector of St. Peter’s church, another member of the Peny family, Jacob, was mayor in 1295; the Wibert family had been prominent in civic office from as early as 1268 and 1269, when Simon Wibert held the mayoralty. A partial list of Sandwich mayors was compiled by Boys, p. 416. John of Hoo, Walter Draper, Walter Taverner and Adam Charles are found as signatories to Robert of Sturry’s commission (ff. 10v-11r), suggesting their membership of the urban government in 1300. John of Hoo was likely to still have been mayor, while the other three were probably jurats.

in the interest of the community of Sandwich. The appearance of Adam Champneys is of particular interest to the current discussion. It is important to recognise that despite the rhetoric of the King's Bench proceedings, the attack at Ash does not constitute mindless violence, but seems to have had very specific intentions. The men of Sandwich must have set out for the village of Ash (situated just outside the Sandwich liberty) on that Sunday of the Assumption of the Blessed Virgin Mary with the intention of intercepting the king's justices and of preventing them from entering the bounds of the liberty of Sandwich. The records suggest a degree of planning and foresight, determining the time, place and people to be involved. The careful description of the facts of the event tell us that the bag containing the king's rolls was cut open, and that the bows and arrows of the justices' retinue were broken, and that 'other outrages' were committed. This may to some extent be a formulaic description of the event as produced by a recording clerk (notably the addition of 'other outrages'), but the precise details suggest that the attackers knew what they wanted to achieve: to *disarm* the justices in order to prevent them from doing their office. The record also appears to show a keen awareness of the symbolic significance of their actions. The bows and arrows, and the documents in the bag both appear to have been considered potential weapons against the inhabitants of Sandwich. The fact that the bag containing the king's rolls was cut open suggests that the contents were removed and perhaps carried away. A second record of the event, which names a further participant, John, son of Giles the Paviour, also mentions the king's rolls as an object of the attack and that he (Giles) had himself seized (*'rapuit'*) the rolls.⁹⁴ The fact that both of the extant records of the event mention the documents carried by the justices as a focus of the attack suggests that the men of Sandwich were also doing something rather more than simply disarming the justices.

The justices' purpose in attempting to enter the liberty of Sandwich is not certain, and so we cannot be sure of the precise reason that a substantial group of men, with apparently so much to lose should perpetrate such an attack upon them, necessitating the summons of the Sandwich men before the king's court. It is known, however, that they had attempted also to enter the liberty of Dover at this time, but were resisted by

⁹⁴ PRO MS C260/ 18 no. 23.

its inhabitants. The implication is that the event at Ash represents a part of the combined resistance of members of the Cinque Ports, apparent in the late-thirteenth century, to the intrusion of royal justices into the liberty and their persistent declaration that they were not subject to the jurisdiction of itinerant justices such as those associated with the General Eyre.⁹⁵ Within the liberty of the Cinque Ports, it was claimed that inhabitants were subject only to their own town courts, and the warden's court of Shepway. Such resistance appears to have existed at Sandwich from at least the 1280s, where men of that town resisted a royal bailiff attempting to execute a royal writ in the neighbouring town of Stonor which they claimed as part of the franchise, attacking him and tearing up the writ which he had brought.⁹⁶ They were summoned to the *curia regis* for this act, but claimed that they were not bound to answer to the king in this court, but only in court of Shepway. It is of interest that at least one of the party who had torn the king's writ in 1281, Solomon Loveryk, was also among the group who seized the king's rolls in 1300. The manifest links between the two events suggest that the targeting of royal justices and their documents as a focus for violence had become an established and perhaps a symbolic mode of expression among those seeking to resist royal justice.⁹⁷ In considering the possible motivation for the attack it may be relevant to suggest that the particular justices attacked in 1300 were considered to be particularly intolerable. Ralph Sandwich, as his name attests actually had origins in the town, but by 1300 he had become prominent in the service of the crown. In 1285 he had been installed by the king as a keeper of the city of London in an unprecedented royal intrusion into long established urban franchises, in which position he issued new ordinances and carried out a

⁹⁵ Murray, *Cinque Ports*, pp. 68-71.

⁹⁶ *Brevia Placitata*, ed. by G.J. Turner and T.F.T. Plucknett, Selden Society, 66 (1951), p. 273; cited in Murray, *Cinque Ports*, p.70.

⁹⁷ The destruction of documents later came to be a central feature of popular protest, and constituted a major part of the activities of the rebels of the Rising of 1381: see Christopher Dyer, 'The Social and Economic Background to the Rural Revolt of 1381' *The English Rising of 1381*, ed. by R.H. Hilton and T.S. Aston (Cambridge: University Press, 1984), pp. 9-42 (12). A continuity between the early and late fourteenth centuries in the resistance to representatives of royal justice is drawn in the same collection by Alan Harding, 'The Revolt against the Justices', pp. 165-193.

complete overhaul of the city's customs and courts.⁹⁸ This history would almost certainly have been common knowledge amongst the inhabitants of Sandwich, particularly those involved in its administration, and may have influenced the attack on an individual rendered a symbol of the crown's intractable approach to anciently-established franchises and liberties.

Less than a month after the incident at Ash, on the 9th of September, John of Hoo (still mayor of Sandwich), Adam Steffan, Thomas Schelvyng, Walter Draper, William Mor, Michael of Romney, Walter Taverner, Adam Charles and others put their names to a document (which was later to be included in the text of the Sandwich custumal) appointing Robert of Sturry as attorney and adviser to the community of Sandwich.⁹⁹ As has been noted Robert of Sturry was a lawyer who acted as an attorney and adviser not only to Sandwich, but also later to Faversham. Adam Champneys, was later to describe him in the custumal as '*virum sapientum et circumspectum*'.¹⁰⁰ This appointment suggests that the mayor and jurats of Sandwich perceived the need for professional legal advice, at this precise time, almost certainly because they expected to have to appear in the king's courts to defend their actions of the previous month. The ten-year period of the appointment suggests also that the government expected to make a much more extensive use of Robert's legal expertise in the administration of the town.

It is at this point that the correlation between the date which Adam Champneys gave to his custumal compilation in his preamble: '*...mense aprilis anno gracie millesimo ccc^{mo} primo regni regis Edward vicesmo nono*' (April 1301) and the likely date of the session of the Easter term of the court of the King's Bench (17th April - 13th May 1301) becomes of interest. The date attached to Champneys' preamble tells us that he claims to have made his survey and codification of the liberties of Sandwich in precisely the month of the appearance of the government of Sandwich before the King's Bench. We cannot be sure whether the date of Adam Champneys' preamble

⁹⁸ Gwyn A. Williams, *Medieval London: from Commune to Capital* (London: Athlone Press, 1963), pp. 243-263.

⁹⁹ MS Sa/LC 1, ff. 10v-11r; Boys, p. 432.

represented the beginning or the end of his work, whether he had completed the writing of the custumal before the sitting of the King's Bench (suggesting that it was intended to be used at that court) or whether he began it after the event (suggesting that the experience of that court had demonstrated the need for such a text). However, in either case, Champneys clearly connects the writing of the custumal with the King's Bench session in his own mind, and this is very important evidence for the precise context of the production of the Sandwich custumal. This would seem to have implications for any model which seeks to explain the movement from orality to literacy, since it demonstrates the extent to which literate production is occasion-specific. It appears to confirm the need to interpret literate production within its immediate social and ideological context, as has been suggested by Brian Street, rather than by seeking to interpret it as part of an ever on-going development of literacy at the expense of oral modes.¹⁰¹ Champneys' preamble also serves to link the motivation behind the production of this earliest of Cinque Port custumals to a violent act of resistance to royal justice in 1300. In view of the possible connection between the text of an earlier *quo warranto* enquiry and that of the custumal ultimately produced by Champneys in 1301, it may even be possible to suggest a more direct link between the custumal and the attack of 1300. It will be remembered that a primary target of the attack was the bag of documents being carried by the royal justices. While the symbolic significance of this act has been emphasised, it is possible that the documents may have had a more practical value to the government of Sandwich. If the documents carried in the bag were (as seems likely) related to the commissions issued to the justices, then they are likely to have included articles of enquiry, or evidence of the crown's right to hear pleas within the franchise. The careful delineation of the functions of Sandwich's own courts in the hearing of pleas, including pleas of the crown, and the assertions of the exclusion of royal officers, may well have been designed to counter the very evidence of the king's own rolls carried by his justices. The government of Sandwich may have affected a rather more

¹⁰⁰ f.10v; Boys, p. 432.

¹⁰¹ Street has used the work of Michael Clanchy as expressed in *From Memory to Written Record*, (together with the work of numerous others) to demonstrate the extent to which the nature of literacy practice is highly ideological, and to question the 'autonomous' model of the transition from orality to literacy as expressed by Jack Goody, Street, *op. cit.*, p. 10.

extensive appropriation than simply the taking of the king's rolls if they later used them, as seems possible, in the creation of their custumal produced in defence of the customs of the town in the king's courts.

Whether or not this suggestion is accepted, it is true to say that all of those activities which Champneys has been seen to have engaged in, that is to say copying, compiling, describing, editing and organising, seem to have arisen as a result of the event of 1300 or of the needs which became apparent when the governing body of the town was summoned to justify itself before the king's court. This is evidence of an apparently close and direct link between the activities of composing, compiling and enregistering urban documents and a particular kind of urban crisis. This relation between such crisis and literate activity will be examined in a number of other contexts in this study as a whole.

It also suggests that this production was perceived to have a very specific function, that of presenting, in written form, a complete survey of the civic government, courts and other institutions of the town of Sandwich, as evidence of the distinctness of its customs from the law and administration of the crown as represented by its justices and courts. Champneys' survey, with its emphasis on what is particular to Sandwich might be considered a symbolic construction of the community made for the purpose of the defence of its customs and franchises.¹⁰² The extent of the community is carefully defined in the custumal, not least in the use of a text describing the bounds of the liberty.¹⁰³ Within these bounds, the customary nature of social relations is described in a manner which insists on the primacy of customary local usage. The evidence presented here thus encourages a rather different interpretation of the

¹⁰² The use of symbolic constructions of community at times of stress or flux have been considered, in anthropological terms, by Anthony Cohen *The Symbolic Construction of Community* (London and New York: Routledge, 1985, reprinted 1989). Cohen recognises that 'community' is a mental construct, and that its invocation is frequently found where communities are threatened the the pressures of social or political change. See in particular ch. 2, 'The boundary and social change', pp. 44-49 and ch. 3, 'Symbolism and social change', pp. 75-85. Such construction of community is often made with reference to the past, to history, and to tradition, see pp. 98-103.

¹⁰³ MS Sa/LC 1, ff. 105r-107r

consequences of the crown's attempts in the late-thirteenth century to strengthen its own political power through the systematic exertion of legal and judicial pressure in the localities and on the holders of franchises to that which is usually offered. In addition to the partial creation of a uniform system of law emanating from the crown itself, based upon the authority of writing, it appears also to have stimulated in this particular instance a vigorous culture of localism and of local custom. Such localism was expressed by the community of Sandwich both through selective, perhaps symbolic acts of violence directed against agents of the crown and the writings in which their authority was embodied, and later, through the creation of a complete customary code. This code made use of a variety of sources of authority (spanning both the written *and* the oral), and was expressed by the governing body of Sandwich through the writing of at least one highly sophisticated writer, Adam Champneys, working probably with the assistance of the lawyer, Robert of Sturry. Through the combined local and legal knowledge of these men, expressed through the technology of writing, the community of Sandwich was not only resisting the threat offered by the crown's judicial activities of the late-thirteenth century through recourse to ancient custom, but also with the very weapons being used by the crown, writing and law.

3.5 Remaking the Sandwich custumal in the later-fourteenth century: the production of Sandwich MS Sa/LC 1

Having considered the evidence of the reconstructed custumal of Adam Champneys, it is now intended to examine more closely the nature of the later fourteenth century manuscript in which it is to be found (Sandwich MS Sa/LC 1). In doing this it is possible to identify another stage in the history of the Sandwich custumal, its overhaul and re-writing carried out in the second half of the fourteenth century and its presentation in a new book. The fact that this book survives in the form of MS Sa/LC 1 is of considerable historical value, since the manuscript provides evidence which can be subjected to codicological analysis. This can be used to extend the analysis of the textual evidence, on which we have had to rely so far in this survey of the Sandwich material. The manuscript evidence not only gives important clues as to dating, but also allows consideration of the likely modes of production of the new

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custumal and of the significance which was attached to this new enterprise by contemporaries.

MS Sa/LC 1 is small manuscript book on fine parchment now containing 151 leaves, each measuring c. 100mm x 170mm. As the collation given in Appendix 4 ('Collation of Sandwich MS Sa/LC 1') demonstrates, some of these leaves are later additions, and it is likely that the book originally consisted of 128 leaves.¹⁰⁴ It is neatly bound in calf, the spine with six raised sewing-bands, and there are traces of the former existence of three ties, or more likely, clasps, though these traces are no more than marks, or cuts to the edges of the binding. It is uncertain whether this can be considered an 'original' binding, but its style might easily indicate a fourteenth century production. In view of the later addition of leaves which probably occurred not later than c.1413,¹⁰⁵ the binding is more likely to be of fifteenth-century date. It also shows signs of modern repair where edges have been worn.

The hands in which the custumal are written are of great interest, and are accordingly described in detail in Appendix 5 ('Hands and scribes in Sandwich MS Sa/LC 1') As the appendix shows, there are three principal hands, and all can be considered book-hands of some quality. The finest of the hands (hand 'a') is of particular quality and represents the sort of advanced '*textura*' form found in contemporary literary, scholarly and legal works, which had developed from the long-established *textura* form existing from at least the thirteenth century.¹⁰⁶ The minute size of this hand (minims no more than 2mm high), together with the accomplished calligraphic embellishment of many initials, suggest the work of a highly skilled professional scribe. The other two hands, while being generally less exquisite, are both examples of the rapid and cursive descendant of the *textura* form: styled by Parkes '*anglicana*

¹⁰⁴ Quires 3-18 as listed in Appendix 4.

¹⁰⁵ The dates of memoranda found on quire 18.

¹⁰⁶ Affinities with hands illustrated in M.B. Parkes, *English Cursive Book Hands, 1250-1500* (Oxford: Clarendon, 1969) are noted in the appendix. Numerous illustrations of earlier forms of 'textura', which give a good impression of the overall appearance of the hand MS Sa/LC 1 hand 'a' are found in Christopher De Hamel, *A History of Illuminated Manuscripts* (London: Phaidon, 1986, 2nd edn. 1994), chapter 4 'Books for Students', pp. 108-141.

formata'.¹⁰⁷ Despite the rapidity of this form, this text style still represents an affinity with the earlier 'book hands' and contrasts with the more business-like hands being developed for the purpose of everyday administration, which are found in most later-fourteenth century urban documentation. They also make use of calligraphic embellishments which are suggestive also of the work of professional scribes. The overall impression is of a book prepared with special care, probably at some expense. It may not necessarily represent the work of town-clerks of Sandwich, since there is no evidence for the makers of the book. The hands appear to represent the work of scribes whose experience of writing was in more literary, scholarly, or legal work. It might be said that Sandwich appears to have been rather out-of-the-ordinary in the quality of its town-clerks, in the light of the evidence for Adam Champneys, the royal lordship of the town, and the proximity of Sandwich to Dover castle, an administrative centre of considerable importance. With this in mind, it might not be unexpected to find such scripts in a fourteenth century town book.

The fact that there are three hands begs consideration, and may perhaps be taken as evidence of cumulative production over a period of time. This possibility will be considered. However, the combined work of the three hands also possesses a unity in the presence of a uniform and coherent system of page signatures, in a single hand of the fourteenth century. 16 quires (quires 3-18), representing the totality of the fourteenth century material of the book (before its later augmentation),¹⁰⁸ bear page signatures at their feet running from letter 'a' to 'q'. The first four leaves in each gathering are marked 'ai', 'aii', 'aiii', 'aiiii' or 'bi', 'bii', 'biii', 'biiii' and so on, and the remaining four leaves are blank. Each scribe additionally uses catchwords at the foot of each page *verso* that forms the last page of a quire, indicating the first word of the next quire.¹⁰⁹ The whole system is unified by further signatures applied to each of the groups of quires worked upon by each hand: each group being labelled respectively 'a.' (lower right f.34v), 'b.' (upper right f. 35r), 'c.' (upper right f.

¹⁰⁷ Parkes, *op. cit.*, pp. xvi-xvii.

¹⁰⁸ For later addition to Ms Sa/LC 1, see below 3. 11 'The use and re-use of MS Sa/LC 1'.

¹⁰⁹ The use of signatures and catchwords is described in: Barbara A. Shailor, *The Medieval Book; illustrated from the Beinecke Rare Book and Manuscript Library* (Toronto: University of Toronto Press, 1991), pp. 53-55.

85r). The existence of these signatures, probably made by or for the binders of the book suggests the definitive making of a book (as opposed to the gradual accumulation of loose quires) not long after the writing itself was carried out. In view of the evidence for dating considered below, the textual material of MS Sa/LC 1 may have been gathered and collated over a period of years, but it seems certain that this material was put together in the form of a book relatively soon after the writing was completed. Since the text is clearly a reworking of Champneys' 1301 text, the mechanics of this enterprise must have been complex, perhaps involving scribes or clerks working from an emended or annotated version of the original 1301 manuscript and inserting larger new texts upon instruction from the town's officials. In view of the existence of material additional to Champneys' text, the activity of collection and collation of manuscript materials may have been comparable in scale to Champneys' own enterprise over fifty years earlier.

The evidence for dating (aside from the approximate later fourteenth century date suggested by the hands) is principally internal to the custumal text itself. The documents contained within the custumal which can be dated to post-1301 are listed and calendared in Appendix 6 ('Later fourteenth century additions to the Sandwich custumal'). The date range represented runs from 1344 (the date of letters patent granting exemption from the jurisdiction of the king's clerk of the market, ff. 12r-12v) to 1368 (the memorandum of a royal court, ff. 126r-126v). The manuscript is highly unlikely to have been produced after 1413 (the date of the added memorandum, ff. 137r-139v), and it is probable that it was produced prior to 1381. The letters patent of 1344 already noted (ff. 12r-12v) were confirmed by an *inspeximus* of 1381, but the copy in MS Sa/LC 1 makes no mention of this, suggesting completion before that date. The range of possible dates for the collection and writing of MS Sa/LC 1 becomes 1344-1381.

This can be refined by consideration of the work of the individual scribes. The existence of three hands within the manuscript might theoretically indicate either the apportionment of the work of writing to three contemporary scribes at a single point in time (which would imply a date of production towards the end of the suggested period (closer to 1381) or, that the manuscript is the result of three successive stages

of production. In the latter case, each stage would be represented by the work of one of the hands 'a', 'b' and 'c'. The overall writing enterprise might then be considered to have taken several years, and perhaps decades to complete. This would not be unsurprising in view of the editorial task which apparently confronted the makers of MS Sa/LC 1. By looking more closely at the date range of post-1301 documents in each of the three sections (as presented in Appendix 6) made by scribes 'a', 'b', and 'c' the possibility of a production over a period of time becomes the more likely proposition. The section written by hand 'a' (ff. 1r-34v) contains letters patent of 1344; memoranda of mayoralities of the 1340s; memoranda concerning the advowson of St. Peter's church of 1350; an *inspeximus* charter of 1348, and a memorandum concerning plague mortality of 1351. Hand 'a's section could then have been completed in or after 1351. The only dated documents in the section written by hand 'b' (ff. 35r-69v) are pre-1300, though reference is given to letters patent of Edward III (presumably referring to 1344 or 1348). The section written by hand 'c' (ff. 85r-133v) contains a memorandum of 1357/8; the description of a chantry, which may have been written after 1368; memoranda of cases relating to the liberty of Stonor of 1368; and memoranda of the proceedings of the court of 'Brodhull' of 1357. This section must then have been completed in or after 1368. The fact that the record of the Stonor case cites the King's Bench roll number, implying retrospective searching, suggests actual composition some time after the case rather than immediately after it.¹¹⁰ In view of the difference in possible completion dates between the first and last sections, that is, 1351, and in or after 1368, this may indicate production of the whole book over a period of time, which could have begun at any time after 1351.

Such a margin for dating (1351-c. 1381) clearly places the production of the Sandwich customal as presented in MS Sa/LC 1 close to the time of the royal enquiry of 1356, which has traditionally been seen to be the point at which the Cinque Ports, as a whole, wrote up versions of their customals for presentation to the warden at Dover castle.¹¹¹ It may then be possible to see 1356 as a likely year for the commencement of work upon the new Sandwich customal (in view of the dating of

¹¹⁰ f. 126r

¹¹¹ See above, Chapter 2. 3 'The codification of the Cinque Port customals'.

the earlier parts of the text). However, the presence of documents later than 1356 in the text make it clear that even if work were begun in 1356, the text was not to be completed until after 1368 at the earliest. This custumal cannot therefore be seen simply as a text prepared and presented for a specific function in a single year. The evidence of the contents of the custumal suggest a far more complex causation, with the text addressing a multitude of issues and expressing deeper cultural preoccupations than the mere fulfilment of a royal command.

3.6 Editorial methods in the production of MS Sa/LC 1

While the custumal as presented in the manuscript MS Sa/LC 1 can be seen as a complete overhaul of the previous version of the custumal, the bulk of its text is probably a direct copy of Adam Champneys' text. It is impossible to be certain of the contents of that earlier text despite the reconstruction of its likely contents previously attempted and thus impossible to be certain of the way in which it was worked upon in the fourteenth century prior to and during its overhaul. Nevertheless, since the new text contains material which must be additional to the 1301 text, it is possible to make some informed speculation as to the manner in which the new text was produced. The addition of material would have been entirely within the spirit of the custumal as envisaged by Adam Champneys since he had asked in his preamble that: '*...que forte per negligenciam, ignoranciam vel presumpcionem fuerint in hoc libello non debito modo siue non satis plane vel plene edita per discreti correctoris industriam suppleantur....*'¹¹² It might be suggested that the makers of the later version were, in fact, simply following the editorial instructions of their learned forebear when they had the new manuscript produced.

Some of the noted additions are short, and have the character of additions originally made to the interstices of an original text, making use of margins or of gaps between

¹¹² '...such things as perhaps by negligence or ignorance or presumption are not set out in this little book in proper manner, neither clearly nor fully enough, may be supplemented by careful correction...'

clauses in the earlier manuscript. Examples of these might be the memorandum to the effect that Stephen Yok was paid £18 for his mayoralty of two years and Nicholas Champneys was paid £9 for one year added to the description of officers (f.8v); the memorandum describing the actions of the successive mayors, William Yve and Stephen Espilon, in dealing with property left by orphans in the plague-outbreaks of 1351 (f. 23v); and the claim that the mayor and community might order collections in the town, by virtue of letters patent of Edward III (f.69r). In this way the work of annotators may have been absorbed into the main body of the text when it came to be copied into the new book. This may also explain the generally earlier dates of the additions made to the earlier part of the text, since these additions are usually short, suggesting their former existence as annotations to the previous custumal manuscript. There are also larger additions, which must either have been made to an earlier text by insertion of new leaves, or the filling of larger spaces, or have been given to the scribes as separate documents to include at specified points. All of the remaining additions noted in Appendix 6 must have been of this nature. Two of these represent the addition of substantial new materials to the earlier custumal compilation and are worth examining in some detail, since they may even be considered as important factors in the decision to produce a new manuscript rather than simply continue adding to the old. They comprise: the collection of documents relating to franchisal dispute over rights in the neighbouring port of Stonor (ff. 117-126v); and a copy of the proceedings of the Brodhull court of 1357 (ff. 130r-133v). Both are described in some detail in Appendix 6.

3.7 Franchisal dispute and the Sandwich custumal

The collection of documents headed *'De libertatibus et priveligiis que barones de Sandwico habent in villa de Stonor'*¹¹³ relating to rights claimed by Sandwich in the port of Stonor (a settlement lying opposite Sandwich across the haven) can perhaps be considered a custumal within a custumal, since it sets out those customs used in Sandwich which are also applicable in the port of Stonor. Added to these customs are a charter, an agreement and a precedent, all of which document types also appear

¹¹³ f.117r; Boys, pp. 545 and 547.

throughout the Sandwich custumal as a whole. While it is possible that elements within it formed part of Champneys' earlier custumal, it is likely that most of this section was compiled from other evidences for a specific series of disputes of the late 1360s and early 1370s, involving the crown, the government of Sandwich, and the abbot of St. Augustine's, Canterbury in which conflicting views of the status of the port of Stonor were expressed. Part of the text records a case heard before the abbot and is found, in similar form in the St. Augustine's chronicle written by William Thorne, as an entry for the year 1368.¹¹⁴ This may indicate that the writer or writers of the Sandwich custumal had access to the records of the abbot's court, or that both parties (Sandwich and St. Augustine's) made their own records of the case as heard in the court. The text of the custumal goes on to record the continuing dispute as heard before justices of the court of King's Bench in 1368, which is also recorded by William Thorne in the same year.¹¹⁵ The collection of texts relating to Stonor in the Sandwich custumal provides a clear example of the political nature of the writing up of custom in a custumal, and suggests that such activity is closely linked to the incidence of dispute, and in particular, to dispute over conflicting franchises.

The first item in this collection, as the appendix describes, is a list of all those customs used in Sandwich which also are claimed in Stonor.¹¹⁶ The mayor and barons of Sandwich claim to make a visitation of Stonor each year, crossing over the haven by boat in the week following the mayoral election, and appointing deputies in the port. Through these deputies, the government of Sandwich claims the right to hear pleas of the crown, of land, and of others, except those claimed by the warden of the Cinque Ports. It claims also the profits of distrains taken in that town (as contribution to the burden of Sandwich's ship-service); the custody of the property of orphans and intestates; recognisances of land, tenements and debts; and the procedure in cases of rent-arrears (*'stakement'*). In apparent justification of these liberties, the ancient

¹¹⁴ *William Thorne's Chronicle of St. Augustine's Abbey, Canterbury*, ed. A.H. Davis (Oxford: Blackwell, 1934), pp. 594 - 595

¹¹⁵ *Ibid*

¹¹⁶ ff. 117r-120r; Boys, pp. 545 and 547.

charter of Cnut is then presented, as evidence of the fact that Stonor is to be considered an appurtenance of the liberty of Sandwich.¹¹⁷

The Cnut charter is not only remarkable for its antiquity, but also for its inclusion of an ‘anathema’ at its end on the nature of the permanence of the truth of writing. While such anathemae are a regular feature of Saxon charters, this particular text has considerable resonance in the context of the fourteenth-century customal. It might also be noted here that the use of Saxon materials in customals is apparent also in the fourteenth-century Faversham customal to be discussed in the following chapter, where the invocation of Saxon origins for particular institutions and ideas is a major preoccupation, and represents a source of authority from which fourteenth-century writers claimed to be working. The 1023 charter of Cnut at Sandwich grants the town with its surrounding liberty (including Stonor) to Christchurch Priory, Canterbury. As has been noted Christchurch’s possession of Sandwich was given-up in the 1290s, when it was returned to the crown in an exchange of liberties,¹¹⁸ and so the charter is not used in the customal as evidence of the possession of the Sandwich franchise, but of the fact that the community of Stonor had always been considered part of that franchise. As in the case of most Saxon Charters, there has been dispute over whether this document can be considered ‘genuine’, and there is now some consensus that it is probably to be considered a substantial and skilful elaboration of a genuine early grant.¹¹⁹ The existence of numerous earlier copies of the text demonstrates however, that if the charter were elaborated or ‘forged’ this occurred long before the fourteenth century. The anathema, which might be seen as partial or complete invention runs:

‘Quod si aliter deinceps quilibet codicellus emerit, qui, priscae temmodi literaturae membranula suricum morsibus corrodenda, aut certe potius igniuomi vaporis incendio comburenda, adnichiletur; eiusque presentator cuiusque extiterit persone, pro purgamento fauille deputetur, et

¹¹⁷ ff. 120r-120v; Boys, pp. 545-548.

¹¹⁸ Gardiner, pp. 46-64.

¹¹⁹ The charter and its various copies are considered in P.H. Sawyer, *Anglo-Saxon Charters: an annotated list and bibliography* (London: Royal Historical Society, 1968), pp. 288-289, no. 959.

ignominiosissima confusione subfannetur et ab omnibus in circuitu presentibus unanimo detestetur.¹²⁰

This text must have had an obvious appeal to the editors and writers of the Sandwich customal, since their intention was identical to that expressed in the charter: that a situation should be committed to writing as direct and incontrovertible evidence.

Having presented this pre-Conquest evidence of the antiquity of the association of Stonor with Sandwich, the text then presents evidence of the continuity of this association by citing and reproducing the record of a twelfth-century royal enquiry (of 1127) which reasserted the right of Christchurch to the whole liberty.¹²¹ This enquiry is a remarkable piece of historical writing, describing the recent emergence of Stonor as a significant settlement and port and an attempt by the Abbot of St. Augustine's, Canterbury to take toll and custom there.¹²² The decision of the enquiry is reproduced, which firmly asserts the rights of Christchurch over Stonor, with the names of numerous men who made an oath to this effect. Once again, use has been made of a text which can be considered a historical document in the later-fourteenth century customal in order to justify and prove the specific terms of the customal. The authority of written history is very clearly being used here in the service of a specific fourteenth century political or legal enterprise.

This enterprise appears to be the re-assertion of rights of the government of Sandwich to profit from their jurisdiction in Stonor and to demand the contribution of this community to charges levied upon Sandwich. This was evidently an issue of great importance to the government of later fourteenth century Sandwich, and can be examined from the evidence of the customal and from external evidence. The final item among the collection of Stonor-related documents is the record of proceedings of the court of king's bench in 1368, apparently taken from a copy of the royal records themselves, being described as *'De termino trinitatis anno xliij rotulo*

¹²⁰ ff. 122r; Boys pp. 548-552. 'If any writing shall hereafter appear, which under a show of antiquity shall seem in any way contrary to this our grant, let it be left to be eaten by mice, or rather let him who shall exhibit it, whoever he be, do penance in ashes and be made a laughing stock to all his neighbours'.

¹²¹ ff. 122r-126r; Boys, pp. 548-552.

lxxxiiij^o regis Edwardi tercii'.¹²³ This describes a case in which one Thomas Crabber, and others of Stonor, had distraint made upon them by the abbot of St. Augustine's, Canterbury, for unpaid customs and services owed to him. It is stated that the case was subsequently brought before the sheriff acting as a justice of the King's Bench, who found by a jury of twelve that the town was a possession of St. Augustine's and thus subject to the abbot's exactions, and that Crabber and his associates were seized. This decision clearly contradicts the evidence of the documents preceding this record in the Sandwich custumal, which demonstrate the antiquity of the association of Stonor and Sandwich. It is difficult at first sight to see why such a precedent should have been written into the custumal, other than as a humble admission of defeat by the government of Sandwich in their claim to jurisdiction in Stonor. A possible explanation, however, may lie in the anathema reproduced as part of the charter of Cnut, which as has been seen, predicts the fate of any who exhibits any written evidence contradicting its terms, and suggests that that writing itself should be left to be eaten by mice. In this way, a document such as that recording the Crabber case, which in another circumstance would come to be considered a precedent, is actually rendered an 'anti-precedent'. Its authority is dismantled by the earlier, and more venerable evidence of a Saxon charter. Such an interpretation is not at all far-fetched in the light of the manifest interest betrayed in the custumals in the authority of antiquity as contrasted with the abuses of more recent ages. The evidence and the idea of the Saxon past as a source of truth and just law is a major pre-occupation of the writers of custumals in the later fourteenth century, and is particularly evident in the texts of the Faversham custumal book to be considered in the following chapter.¹²⁴ The specific use of the Crabber case in the Sandwich custumal appears to be a sophisticated attempt to manipulate the comparative authority of documentary evidence through careful editorial presentation. In the light of the anathema of the

¹²² see the description in Appendix 6.

¹²³ f. 126r; Boys, p. 553.

¹²⁴ See below Chapter 4. 8 'The contents of the Faversham quires c. 1382-c.1405. The use of Saxon written evidence in legal contest was apparently widespread in the fourteenth century, and the Cinque Port evidence might be considered in the light of the contemporary use of Saxon authority in Abingdon (Oxon.) as discussed by Gabrielle Lambrick, 'The Impeachment of the Abbot of Abingdon in 1368, *EHR* 82 (1967), pp. 250-276.

Cnut charter, the document '*De termino trinitatis anno xliij rotulo lxxxiiij^o regis Edwardi tercii*' appears fundamentally flawed as evidence.

It is likely that in the course of the Crabber case, Sandwich also presented a version of its claimed customs in Stonor to the abbot of St. Augustine's, as evidence of its rights, since William Thorne includes a memorandum of these customs in his chronicle, as an entry for the year 1368.¹²⁵ This list is identical to the list of rights in Stonor presented in the Sandwich custumal. (ff. 117r-120r), suggesting its drafting not by Thorne, but by the government of Sandwich and the subsequent presentation of a copy to the abbey. This likely presentation is evidence of the use of a code of custom in the course of franchisal negotiation or dispute. Not only did the collection of Stonor-related documents come to be written up in a new custumal book, but part of it came to be written into the records (in this case a chronicle) of another power with interest in the matter. This suggests that such texts were not simply reflective of the circumstances of dispute, but were actively used and transmitted in the course of such dispute. With this in mind, the potential value of compiling such evidence and its recording among the materials of the custumal book, becomes apparent in the light of subsequent enquiries into the relative franchisal position of Sandwich and Stonor.

Notwithstanding the claim that the inhabitants of Stonor had made in 1368 to be part of the liberty of Sandwich, an enquiry of 1373 into the non-payment of subsidy by Stonor heard that the men of Stonor now claimed to be *outside* the liberty of Sandwich, and thus not liable to contribute to their burden of the subsidy.¹²⁶ The evidence which the men of Stonor used was none other than the precedent of Thomas Crabber's King's Bench case. Stonor had petitioned the crown, stating:

'...that the said constable or lieutenant [of the Cinque Ports, William Latimer] has assessed them [to the subsidy] with the men of the town of Sandwich as if the town of Stonor were within the said liberty which it is not, and is unlawfully causing them to be distrained and troubled for a second payment of the portion assessed upon

¹²⁵ *William Thorne's Chronicle of Saint Augustine's Abbey, Canterbury* (Oxford: Blackwell, 1934), p. 595.

¹²⁶ The case, which was ultimately considered in Chancery is referred to among the records of the *Close Rolls 1369-1374*, p. 541 (March 24 1373)

them, although in the forty-second year of the reign in a plaint before the justices of the Bench between the abbot of Saint Augustine, Canterbury and Thomas Crabbere and others concerning an alleged trespass at the town of Stonor, it was found that the same town is in the County of Kent and parcel of the barony of St. Augustine's Canterbury and without the limit of the Cinque Ports, and although the men thereof have paid the portion of the subsidy falling upon them with the commons of Kent...'¹²⁷

The community of Stonor had clearly used the unfavourable outcome of the 1368 case to their future advantage, citing it as a precedent to avoid the apparent extortion perpetrated by the notorious Latimer of a double subsidy payment.¹²⁸ The position of Sandwich itself in this case is unclear, but the evidence that the case gives for potential conflict over the interpretation of precedent is very suggestive of reasons for the manifest care which the government of Sandwich took in the recording of the Crabber case. In view of the likely dating of the manuscript MS Sa/LC 1, the case of the disputed subsidy may well have been under way at precisely the time that this part of the manuscript was being prepared. The case raised the fundamental question of the right of Sandwich to expect contributions from the neighbouring port, which had become of paramount importance in the light of the difficulties experienced by Sandwich in paying its own fee-farm in the preceding decades, which may themselves have been indicative of the wider problems of the government of Sandwich at this time.¹²⁹

The memoranda recording the proceedings of the 1357 Brodhull court must have been copied into MS Sa/LC 1 after 1357, since they are found after the c.1368

¹²⁷ *CCR 1369-1374*, p. 541

¹²⁸ William Latimer together with Richard Lyons was accused, in the so-called 'Good Parliament' of 1376 of being one of the '...certain councillors and servants who are not loyal or profitable to [the king] or the kingdom and they have made gains by subtlety thus deceiving our lord king'. The accusations made against him concerned his activities as a minister of the crown as far back as the last years of the 1360s. See George Holmes, *The Good Parliament* (Oxford: Clarendon, 1975), pp. 101-107.

¹²⁹ The economy of Sandwich and its reductions in fee-farm payments are discussed below in this Chapter 3. 9 'Sandwich in the Fourteenth Century'.

material described above.¹³⁰ In common with the Stonor material, they too address anxiety for the maintenance of the franchise, but in this case the franchise concerned is the wider franchise of the Cinque Ports confederation. They seem also comparable to the Stonor material in intention, however, in that the issue of the franchise had come to be threatened because of conflict with another community: in this case the port of Yarmouth, where the Cinque Ports claimed rights of jurisdiction at the annual herring fair.¹³¹ As in the case of Stonor (where, as has been seen, Sandwich claimed to hear pleas of the crown), the jurisdiction claimed at Yarmouth was also an extension of royal justice, since the Cinque Port bailiffs had responsibilities associated with the prison, for keeping the peace and doing royal justice.¹³² The memoranda found in MS Sa/LC 1 record the meeting of the Brodhull court at which new provisions were made for the election of Cinque Port bailiffs to attend the autumn herring fair and to account for their actions in a subsequent meeting of the Brodhull. They are followed by a memorandum of the subsequent choosing of bailiffs from Sandwich, Nicholas and Stephen Espelon, effected in a Sandwich hundred court of the Monday following the feast of the Assumption 1357.

These texts are of particular interest because of they demonstrate the extent to which franchisal dispute and its consequences were an issue of importance not only to Sandwich at this time, but to all of the towns of the Cinque Ports. They also provide evidence of joint action by leading members of all of the ports to defend franchisal privilege. Murray has demonstrated that the Brodhull meeting of 1357 to which these memoranda refer was perhaps the first occasion at which procedures for its meeting were regularised and its functions as regards the Yarmouth bailiff defined, and that this was almost certainly part of the same enterprise as the seeking of royal confirmation of the Yarmouth privileges, which was granted also in 1357.¹³³ The activities surrounding the consequent establishment of regular Brodhull meetings

¹³⁰ ff. 130r-133v; Boys, pp. 560-562.

¹³¹ These rights, together with an account of the consequent long-running disputes with the community of Yarmouth are discussed in Murray, *Cinque Ports*, pp. 147-155.

¹³² These provisions had been awarded in 1277: *CPR 1272-1281*, pp. 203-4; cited in Murray, *Cinque Ports*, p. 150.

¹³³ *CPR 1354-1360*, p. 357.

included not only the meeting of representatives, but also the sharing and transmission of texts in a manner which indicates a concerted effort to create a common and consistent administration among the Cinque Port towns. With this in mind it is interesting that the recording of the appointment of Nicholas Espelon as a document formula in MS Sa/LC 1 was clearly intended not only for the benefit of Sandwich administrators but for those of each of the ports.¹³⁴ A document drafted in precisely similar terms, appointing John Francis of New Romney, as a bailiff appears in the fourteenth-century Romney book associated with Daniel Rough (previously discussed in Chapter 2. 3 ‘The codification of the Cinque Port customals’) as an entry for 1357, where it is stated that:

‘...alia commissio de dictamine Nicholai Espeloun tunc maioris Sandwici quam idem Nicholaus dictavit et transmisit per omnes villas quinque portuum...’¹³⁵

This type of documentary transmission, in which Nicholas Espelon of Sandwich was a major participant should stand behind the consideration of all those customals which have been suggested as productions of the 1350s. The Brodhull court must have been used by these substantial citizens of Cinque Port towns as a means of bringing their town administrations into close contact, for the purpose of the defence of common interest, principally in the maintenance of franchisal privilege.

3.8 The Sandwich customal and the authority of a civic elite: personal names in MS Sa/LC 1

In addition to the evidence which becomes available for the context of the production of MS Sa/LC 1 in the later fourteenth century from the consideration of new documents entered into it, the manuscript is also valuable in the reconstruction of the culture associated with contemporary urban government. A special feature of the later fourteenth century parts of the Sandwich customal is a particular use of personal naming. While other customals give clues to the personnel of urban government, none

¹³⁴ f.133r; Boys, pp. 562.

¹³⁵ ‘The Register of Daniel Rough’ ed. by K.M.E. Murray, *Kent Records* 16 (1945), p. 104.

is so expressive as the Sandwich custumal in naming individuals and giving account of their actions. This particular characteristic thus begs consideration.

It has been seen that the earlier custumal of Adam Champneys also contains names, but there is a contrast to be drawn between the types of people named and those named in the later-fourteenth century additions. The first person named by Adam Champneys in his 1301 version is himself.¹³⁶ Following this, his text is scattered with references to other people, usually in conjunction with the record of an event. These include Robert of Sturry (appointed an attorney for Sandwich in 1300);¹³⁷ Sirs Nicholas and Henry Sandwich (who were associated with the foundation of St. Bartholomew's Hospital);¹³⁸ Adam de Liminge, Roger Cosyn, and Hugh of Helpestone (king's bailiffs);¹³⁹ John de Berwick, (king's justice, who had witnessed the bailiff's oath of Adam de Liminge to the community of Sandwich);¹⁴⁰ Stephen Pencester (who witnessed the same oath and who is also named elsewhere in the text as having ordered the perambulation of the liberty);¹⁴¹ William de Burle (who had written a version of the Ports' 'Domesday', that is, a record of the ship-service owed by each of the towns of the confederation);¹⁴² and Ralph Sandwich (also a royal justice) who attended the coronation of Edward I.¹⁴³ Apart from Adam Champneys (who has a special reason for naming himself), all these names represent people who were in some way *external* to the mayor and jurat's administration of the town. They represent local lords, justices, and royal officials including the Warden of the Cinque Ports and the king's bailiffs in the town. On only two occasions are mayors or jurats mentioned. They appear firstly in the signatories to the appointment of Robert of Sturry, who were: John atte Hoo, Adam Steffan, Thomas Schelvyng, Walter Draper,

¹³⁶ f. 1r.

¹³⁷ ff. 10v-11r, Boys, pp. 433-434.

¹³⁸ ff. 15v-20r; Boys, pp. 17-21.

¹³⁹ ff. 28r-28v; Boys, p. 441.

¹⁴⁰ f.28v; Boys p. 441.

¹⁴¹ *Ibid.* and ff. 105r; Boys p. 535.

¹⁴² ff. 90v-91v.

¹⁴³ ff. 105r.

William Mor, Michael of Romney, Walter Taverner, Adam Charles 'and others';¹⁴⁴ and secondly, in the note recording that Hugh of Helpstone made his oath in the house of Andrew Peny.¹⁴⁵

By contrast the names found in the later fourteenth century additions are almost entirely those of mayors or jurats of Sandwich, as well as several more who represent the same stratum of urban society in other Cinque Port towns. Furthermore, the contexts in which these names are found suggests a deliberate attempt to record the acts of the people to whom they refer among the customs and usages of the town. In the clause setting out the mayor's salary it is noted that Stephen Yok (mayor 1346) and Nicholas Champneys (mayor 1339) received salaries for their service to the town.¹⁴⁶ In a memorandum describing the contingencies resorted to in dealing with possessions of orphans in time of pestilence, William Yve (mayor 1348) and Stephen Espelon (mayor 1349, 1351) are noted as the instigators of these contingencies.¹⁴⁷ Michael Yonge (mayor 1341) is mentioned (amongst other inhabitants) as having land through which a watercourse passed.¹⁴⁸ The father and son: John and William Condy are named in relation to a chantry set up by John and maintained by William (John Condy had been mayor in 1326 and 1338, and bailiff from 1339-40; whilst William Condy was bailiff from 1346-1355).¹⁴⁹ Finally in the memoranda of the 1357 Brodhull decisions concerning the choosing of the bailiffs for the Yarmouth herring fair, Nicholas Espelon (mayor 1356, 1357) and the already mentioned Stephen Espelon are chosen.¹⁵⁰ It is in these memoranda that are also recorded the names of leading

¹⁴⁴ ff. 10v-11r, Boys, pp. 433-434.

¹⁴⁵ f. 28v; Boys, p. 441.

¹⁴⁶ f. 8v; Boys, p. 432. The dates given for the holding of the mayoralty, here, and in the following list, are taken from the partial list given by Boys (pp. 416-422). Since Boys' list is drawn only from the inference of scattered records, rather than from any contemporary listing of the incumbents (such as would be provided by systematic court-records or yearly accounts), it is likely that each of these men may have also served as mayor in other, unrecorded years.

¹⁴⁷ ff. 22r-23v; Boys pp. 514-515.

¹⁴⁸ ff. 109-110r; Boys pp. 538-539.

¹⁴⁹ f. 115r; Boys, p. 184 (described but not transcribed).

¹⁵⁰ ff. 133r-133v; Boys pp. 561-562.

members of the other ports elected as bailiffs for Yarmouth at the same time.¹⁵¹ The only names cited in these additions which do not refer to sometime mayors are Simon Islip (archbishop of Canterbury 1349-1366) and Stephen Gravele, both noted in the memoranda of an appointment to St. Peter's Church.¹⁵² It will be recalled that the advowson of this church, in which much of the business of the mayor and jurats was transacted, was held, in consecutive turns by the abbot of Saint Augustine's and the community of Sandwich. Stephen Gravele was the choice of the community, and hence a quasi-civic official. Archbishop Simon Islip is thus noted only for his confirmation of the appointment.

In the first instance it should be pointed out that some of these 'namings' are the result of a particular method of dating events. '*Tempore maioratis Stephen Espelon*',¹⁵³ for example, refers to a year in which Espelon was mayor, allowing a date to be fixed to the event described (in this case the great mortality of infants recorded for 1351),¹⁵⁴ and it probably also refers a future reader to the relevant records in the Sandwich archive; since urban accounts and court records were usually headed with the name of the mayor officiating at that time. This point is in itself significant, since it suggests not only that the custumal forms part of an inter-referential town archive, but also that certain activities and events in the fourteenth century were associated in these writings with the person of the mayor. On one level this is not at all surprising, since we are after all looking at records produced by the civic elite, but on another, the contrast with the types of names found in the earlier version of the custumal suggests that we are seeing an assertion of a very particular

¹⁵¹ f. 130r-133v; Boys p. 562. '*...electi sunt de Hastinge Robert Goldwyne, Andreas Sakeham, et de Wynchelsee, Johannes Fynch maior, Vincensius Fynch, Robertus Arnold; et de Ria Willielmus Tailleur maior, Paulus Portesmuth, et de Romene Hugo Colebron, Willielmus Holyngbroke, Johannes Fraunceys, Johannes Skapper, Johannes Bret, et de Heth Willelmus Hampton, Gilbertus de Sende, et de Douorre, Petrus Reade maior, Nicholaus Attehalle; et de Sandwico Nicholaus Espelon et Stephanus Espelon.*' (emphasis of 'maior' mine).

¹⁵² ff. 13r-15v

¹⁵³ f. 22r; Boys p. 514.

¹⁵⁴ The text refers to this mortality of infants in 1351, though the outbreak of plague which has come to be known as the '*mortalite des enfants*' occurred in 1361-1362. See John Hatcher, *Plague, Population and the English Economy 1348-1500* (London: Macmillan, 1977), pp. 58-9.

type of civic identity in the later-fourteenth century. The names refer to a relatively small group of people, and to an even smaller group of families who seem to have shared amongst them the various internal offices of the town: the Champneys, the Yoks, the Yves, the Condys and the Espelons. Even more interestingly, external material suggests that these families (perhaps with the exception of the Champneys) endured into the later second half of the century, and perhaps also beyond, despite the incidence of plague, and continued to wield influence through trade and office-holding. In this way those who were involved in the reworking of the custumal in the 1360s or 70s were writing about the activities of their own fathers and their familial connections which were still at least partially intact.

The Condy family appear to have been office-holders from the early part of the century. A William Condy had been mayor in 1310 and 1311 and his son John, as has been noted, was mayor in 1326 and 1338.¹⁵⁵ Gardiner describes the events which led to the appointment of John Condy to the bailiwick of Sandwich (granted exceptionally in this case as a hereditary office) in 1339 by the king in recognition of his naval services.¹⁵⁶ Condy occupied this position until his death in 1345, and after a short intermission his son William took over in 1346, even though he may have only just reached majority, a fact which seems to explain his initial sharing of the office with two (probably older) other men.¹⁵⁷ He held the post until 1355, when he resigned it on very favourable terms: being granted £30 per annum from the Canterbury fee-farm, for himself and his heirs.¹⁵⁸ It might be noted that after 1356, the bailiwick ceased to be a local appointment, and was granted to favoured members of the royal household as a profitable office.¹⁵⁹ It might be said that the Condys were perhaps the last of the great Sandwich bailiffs in the eyes of their peers. After resigning the office, William Condy continued to hold offices within the town, and

¹⁵⁵ All references the holding of the mayoralty in this paragraph are drawn from the list of the Sandwich mayors given by Boys, pp. 416-422.

¹⁵⁶ Gardiner, *op. cit.*, p. 105. *CPR 1341-1343*, p. 69.

¹⁵⁷ *Ibid.*, p. 106.

¹⁵⁸ *Ibid.*, p. 106.

¹⁵⁹ *Ibid.*, p. 106.

was appointed controller of customs in 1363.¹⁶⁰ He died, as has been noted in 1368, but his memory, and that of his father was perpetuated in their chantry in St. Mary's church, maintained by the mayor and jurats, as set out in one of the later fourteenth century additions to the custumal.¹⁶¹ No further members of the Condy family held the mayoralty after 1363, but several later member (sons and grandsons) acted as members of parliament for the town in the later years of the century, and also in the next.¹⁶² The significance of this chantry will be examined in more detail. The Yve (or Ive) family appears also to have been prominent both before and after the advent of the Black Death. William Yve had contributed to a £200 loan to the crown in 1342, which is suggestive of his merchant activity, and he became mayor in 1348.¹⁶³ It was probably his son who became mayor in 1366 and who held the office again in the later 1370s. The family was apparently prominent amongst Sandwich vintners, as both a John and Richard Ive are noted as vintners in letters patent of 1364. No members of the Ive family held the mayoralty after the 1370s, but a William Ive represented the town as a member of parliament in 1386 and 1387, which provides an interesting parallel to the Condy family's experience.¹⁶⁴ The Yok family were also prominent in both halves of the century. Stephen had been mayor in 1346, whilst John (perhaps a brother) had participated in the loan to the crown of 1342.¹⁶⁵ The Stephen Yok who was mayor in 1373 was probably the son of one of these men.

In a sense, Adam Champneys' custumal had presented a 'version' of the town characterised by a diversity of personnel, with a wide range of people having some claim to power in its governance: even though the intention of his custumal may have been to limit the power of some of them. This may actually say something about Champneys' own connections and ambitions, since it has been suggested that he attained a certain mobility through his connections. By contrast, in the version found

¹⁶⁰ *CPR 1361-1364*, p. 410.

¹⁶¹ MS Sa/LC 1, f.115r.

¹⁶² A Lawrence Condy was M.P. in 1378/9; a Peter Condy in 1388 and 1397; and a Lawrence Condy in 1406-1408. Boys, p. 406.

¹⁶³ *CPR 1340-1343*, p. 518;

¹⁶⁴ Boys, p. 406.

¹⁶⁵ *CPR 1340-1343*, p. 518.

in MS Sa/LC 1, these diverse characters are consigned to the past, and represent a sort of history, whilst the characters closer to the time of production seem to form a rather tight and socially homogenous group of merchants and officials. The attachment of names of members of the town government to the text of the custumal, through the addition of documents and memoranda almost lends the custumal the air of a town chronicle in which certain families are identified as important in government. The mayor and jurats of c.1350-1370 appear to have 'inscribed' themselves and their acts upon a previously existing and putatively ancient body of town customs. In this way these men were making a deliberate attempt to associate themselves and their families with the very essence of the town: to the point where they might be seen to claiming the town as their own. The evidence from the town and port of New Romney for the corresponding period provides an interesting parallel in this case. It has been seen that a parchment register containing the New Romney custumal (among other civic documents) was written up shortly after 1381, and that this register was made in the name of Daniel Rough, common clerk of the town, even though there is doubt as to whether he could have written the work himself.¹⁶⁶ This again may be seen as an act of 'inscription' of prominent personnel upon the identity of the town. The probability that this was much more than mere chance is suggested by the evidence that in 1383/4, leading townsmen sought to apply their names not just to a book, but to the administrative topography of the town itself. The survival of fragments of a parchment assessment book begun in 1383/4 (which may be evidence of a reassertion of urban government following the 1381 risings) shows that several of the wards into which the town was divided for the purpose of assessment were named after prominent townsmen.¹⁶⁷ Among the 13 named wards (some of which bear descriptive titles such as 'Bocherie', 'Hospital' and 'Millward') are three, named 'Holyngbroke', 'Colbrond' and 'Hope': all named after members of the civic elite who were substantial merchants and who had represented the town as

¹⁶⁶ St. Catharine's College, Cambridge, MS G.V 69 ; 'The Register of Daniel Rough, Common Clerk of New Romney, 1353-1380', ed. by K.M.E. Murray, *Kent Records*, 16 (1945), described in this study in Appendix 1, New Romney custumal (app.) 1.

¹⁶⁷ *HMC Fifth Report*, p.439.

members of parliament.¹⁶⁸ Such self-conscious, and consciously conservative acts take on great significance in the light of the profound social and economic processes at work in English towns which rendered the exercise of authority by established groups increasingly difficult in the half-century following 1348. The particular evidence of Sandwich indicates that the town saw serious economic problems in the post-plague period, but that these problems may actually have had their roots quite some time before 1348. The evidence for problems in the exercise of civic government is less clear, but needs to be examined.

3.9 Sandwich in the Fourteenth Century

The economic base of Sandwich in the medieval period as a whole has been described in some detail by Dorothy Gardiner,¹⁶⁹ and so the following consideration seeks not to duplicate her material but to provide some idea of possible dynamics or changes in emphasis in the economic life of Sandwich. This is then to be related to the likely experience of the members of the town's government in the later-fourteenth century, with a view to better understanding the production of the custumal as found in MS Sa/LC 1.

Overseas trade clearly played a large part in the economy of fourteenth century Sandwich. While Sandwich's status as a port may have declined since the latter years of the thirteenth century, its economy was still reliant upon overseas trade in the later fourteenth century.¹⁷⁰ This trade, as in other towns, was largely under the control of wealthier merchant inhabitants, and so we might expect to gain some insight into the

¹⁶⁸ These 'chief families' are described in 'The Register of Daniel Rough', ed. Murray, *loc. cit.*, pp xliii-xliv.

¹⁶⁹ Gardiner, *op. cit.*, chapters 10 and 13, pp. 77-97 and 124-132.

¹⁷⁰ For thirteenth century overseas trade in Sandwich see T.H. Lloyd, *The English Wool Trade in the Middle Ages* (Cambridge: University Press, 1977), pp. 50, 64, 71, 89 and table of wool exports from English ports p. 123, table 12; A.F. Butcher, 'Sandwich in the Thirteenth Century', *Archaeologia Cantiana* 93 (1977), pp. 25-31. Butcher suggests that the overseas trade of Sandwich may have begun to decline as early as the last quarter of the thirteenth century. Also see tables for Sandwich in E. M. Carus-Wilson and Olive Coleman, *England's Export Trade 1275-1547* (Oxford: Clarendon, 1963).

experience of the civic elite through its examination. However, in Sandwich overseas trade did not necessarily mean long-distance, large scale, or purely luxury trade. The proximity of the coast of Flanders meant that trade with this area might justifiably be considered 'regional trade'. As will be seen this involved the town and port of Sandwich acting on the one hand as a focus for production in the surrounding Kentish countryside, and on the other as a market for the inhabitants of the Flanders coast (especially those involved in fishing). Thus overseas trade, and its control probably affected a socially and geographically diverse sector of the town's population.¹⁷¹ The civic elite of Sandwich was particularly involved in the wine and wool trades, especially in the early part of the century, as Gardiner has indicated.¹⁷² We might also envisage a wide range of other traded goods in the hands of this elite. Names such as Ironmonger, Draper, Falconer, Taverner and Goldsmith suggest this diversity, denoting relatively high status individuals, and may imply their participation in merchant activity over and above the occupation implied by their name.¹⁷³ Walter Draper, for example, was a major exporter of wool at the turn of the thirteenth and fourteenth centuries.¹⁷⁴

The prominent traders of Sandwich almost invariably occupied themselves also as officials, both on behalf of the town itself and of the crown. Sandwich, as a port, provided a wide range of such official positions. There is evidence, however, that such avenues of advancement and profit became increasingly limited from the middle of the fourteenth century. Officials elected on behalf of the town, as the custumal shows included a mayor, twelve jurats, a common clerk; serjeants; weighers; brokers and porters, and each of these provided remuneration from the common purse or from 'gifts' made by the '*probis viris*' (freemen) of the town or others making use of their services.¹⁷⁵ In the early part of the century members of the elite might expect to

¹⁷¹ CCR 1360-1364, p.482 and discussion of this below.

¹⁷² Gardiner, *op. cit.*, pp. 77-97 and 124-132.

¹⁷³ These men were involved in the assault on the Royal Justices in 1300, see above in this chapter, 3. 4 ('An assault on the royal justices and the production of the Sandwich custumal')

¹⁷⁴ Lloyd, *English Wool Trade*, p. 71.

¹⁷⁵ ff. 7-8; Boys, p. 505;.

take on extra responsibility (and financial favour) as officers of the crown acting as bailiffs; deputy bailiffs, deputy butler; customs collectors or inspectors and weighers.¹⁷⁶ It possible to suggest however that in the latter part of the century the upper ranks amongst these offices ceased to be open to townsmen. The last Sandwich dweller to take up the royal appointment of bailiff, John Giboun, who held the bailiwick briefly in 1355 was soon required to surrender it (probably on royal insistence) to one John de Haddon, who was already a royal Serjeant at Arms, and from this time onwards bailiffs of Sandwich ceased to be local men, but were rather men associated with the royal household.¹⁷⁷ As has been noted, the Condy family were the last inhabitants of Sandwich to have held the bailiwick for any length of time. Following the instalment of De Haddon, Sandwich men could from this time only hope to take up the office of deputy bailiff or 'verger'.

The evidence for trades and crafts below the level of the elite is rather scant because of the lack of surviving systematic evidence from the town. A list of maltotes which forms part of MS Sa/LC 1 may give an indication of the range of crafts within the town, though it might only give an indication of an ideal, or possible range.¹⁷⁸ As might be expected, some are associated with shipping, including: master ships-carpenters, boat-builders (who, it is implied may have also found work as house-carpenters by the fact that both these crafts are assessed together), ships-masters, mariners, and pilots. Other mentioned crafts include: tilers, thatchers, coopers, shoemakers, cobblers, pastry cooks, cooks (assessed with poulterers), bakers, millers, cobblers, barbers, dyers and dyers of tapestry (assessed at different rates), cloth-shearers, master skinnners, master goldsmiths, master cutlers, and furriers. A limitation of interpretation lies in the fact that it is not certain how old the copy of this list found in the later-fourteenth century custumal was, or whether it existed in the 1301 text so no sense of changes in emphasis or importance of named occupations in the course of the fourteenth century should be deduced from it.

¹⁷⁶ Gardiner, *op. cit.*, pp. 77-97, 124-132, *passim*.

¹⁷⁷ Gardiner, p. 106

¹⁷⁸ ff. 126v-130v; Boys, pp.555-559;.

It is probable that Sandwich as a trading centre experienced problems long before the more obvious dislocations of the post-1348 Black Death period. It has been suggested that Sandwich was one of those ports which benefited from the coming of foreign merchants from Southern Europe in the early part of the century,¹⁷⁹ and this may have been the basis of the wealth amassed by merchant contemporaries of Adam Champneys. However, detailed study of the trajectory of changes in customs income from the port of Sandwich, as collected by the prior of Christchurch, Canterbury in the period before 1290 (at the time that the town was still a Christchurch possession) has suggested that prosperity may have been waning as early as the last decades of the thirteenth century.¹⁸⁰ It is certainly the case that merchant-prosperity was in jeopardy by the 1330s. A yearly fair had been set up in 1317 by royal warrant (perhaps to boost an already dwindling trade), to run for forty days from the morrow of the feast of the Epiphany (January 6), to which foreign merchants brought goods for sale.¹⁸¹ However in 1337 several orders are found amongst the Close Rolls issued to the mayor and bailiffs of Sandwich to allow merchants who had brought goods to the fair to take their unsold wares elsewhere for sale, suggesting that demand for goods brought to Sandwich was no longer brisk. In January, Peter de Seseles of Aragon, James Skamilica, Aubertinus Maukesole of Plesaunce and Conrad de Velesario of Ast petitioned the king to allow them to take goods to Brabant, since although they had sold most of their wares, 75 tuns of honey, 3,000 oxhides and other merchandise still remained to be sold.¹⁸² Later that month Sanceius Ferandi de Frier of Spain was allowed to take 25 tuns of honey, 1,000 hides of Seville and 8 pipes of grain away, since he had been unable to sell them 'for lack of buyers'.¹⁸³ In July 1337 Dominic Pierres and Peter Nicholas of Spain were permitted to take their

¹⁷⁹ Susan Reynolds, *An Introduction to the Study of English Medieval Towns* (Oxford: Clarendon, 1977), p. 148.

¹⁸⁰ A.F. Butcher, 'Sandwich in the Thirteenth Century', *Archaeologia Cantiana* 93 (1977), pp. 25-31 (28-30). For the subsequent reduction in quantities of wool exported by via Sandwich see Lloyd, *English Wool Trade*, p. 123, table 12.

¹⁸¹ *CCR 1313-1318*, p. 415.

¹⁸² *CCR 1333-1337*, p. 643

¹⁸³ *Ibid.*, p. 643.

honey, hides, fells, cinnamon and fat away from Sandwich 'which they cannot sell there.'¹⁸⁴

It is from this year too that we might expect to find a more general disruption of the overseas trade of Sandwich, being the year in which land war broke out in Gascony permanently damaging the production of wines there and their trade to England.¹⁸⁵ Precisely how this affected the vintners who formed a large part of the merchant body of Sandwich is difficult to gauge, but there are signs from this period that prosperity in the town was at least considered to be endangered. Gardiner notes that the early years of the conflict which was to become the Hundred Years War were marked by heavy demands by the king's purveyors in Kent for goods to be brought to Sandwich for provisioning of the fleet, and that the government of Sandwich took this opportunity to assert their right to admit aliens to the freedom of Sandwich, which had been questioned by the crown.¹⁸⁶ This insistence on the part of the town government probably foreshadows the fee-farm reductions of the following years and suggests that difficulty was experienced in meeting the requirements of the farm. These problems seem to have been exacerbated in these years by heavy charges laid upon coastal communities for defence of the realm. In 1339 letters close were issued commanding that inhabitants of Sandwich who had 'eloined' themselves and their possessions from the town should return without delay.¹⁸⁷ It is recorded that '... the king is informed that some men eloin themselves from the town and dwell in parts more remote from the sea to avoid the charges for the defence of the town against hostile invasions.'¹⁸⁸ Gardiner interpreted this as a result of the fear of invasion, but the record clearly states the motive of avoidance of the common charges. Just how extensive these movements of people and goods from the town were is impossible to tell, but the record suggests that at this time a town such as Sandwich was not seen as an ideal place to live and trade, for the very fact of its Cinque Port and urban status, which involved financial responsibility on behalf of its inhabitants as well as privilege.

¹⁸⁴ *CCR 1337-1339*, p. 85.

¹⁸⁵ Gardiner, *op. cit.*, p. 101

¹⁸⁶ Gardiner, *op. cit.*, p. 101

¹⁸⁷ *CCR 1337-1339*, p.237.

The manner in which the crown was informed of this outward movement is of interest, since it is likely that only the government of Sandwich could have effected this, and it probably constitutes evidence of petitionary activity in which there was a conceptual alignment of their interests (in raising money from the town's inhabitants) with those of the crown (in the defence of the realm). If this is the case, an authoritarian response to personal mobility in which the crown and leading townsmen co-operated can be envisaged for Sandwich over a decade before the more obvious examples of such responses in other English towns and localities associated with the enforcement of the Statute of Labourers in the 1350s, and thus *before* the threshold of 1348 Black Death which is usually seen as a fundamental determinant in the explanation of reactionary responses to personal freedom.¹⁸⁹ The manifest problems of urban government at Sandwich were crystallised in 1341, in which year was seen the first reduction of the Sandwich fee-farm payable to the Exchequer: from £70 to £40.¹⁹⁰ The record of the *Close Rolls* states that '...on account of war, merchandise, of which the greater part of the farm arose, is prevented from coming to the town from parts beyond...', and that the reduction was to hold until peace was restored. The restoration of peace was not to be, and the farm was reduced a further £10 to £30 in 1355.¹⁹¹

The discussion of the experience of the civic elite of Sandwich in the second half of the fourteenth century must be set within the context of the mortality consequent to the Black Death and subsequent outbreaks of plague, especially since the custumal itself records contingencies made in response to these outbreaks. Reconstruction of the effects of plague on Sandwich is, however, difficult since systematic urban records which have been so valuable in reconstructions elsewhere do not survive. Nevertheless, the Sandwich custumal itself, in its later *fourteenth century* form provides subjective, cultural information as to how the plague was perceived within the town and what contingencies were made in urban government in response to

¹⁸⁸ *Ibid.*

¹⁸⁹ B. H Putnam, *The Enforcement of the Statute of Labourers during the first decade after the Black Death, 1349-59* (New York: Columbia University Press, 1908)

¹⁹⁰ *CCR 1341-1343*, p. 69.

it.¹⁹² Furthermore, it is possible to consider comparative material, particularly from the Kentish towns of Canterbury and Rochester, where surviving evidence is richer as evidence of possible effects of high mortality on urban society and government.

It is possible that the mayor and jurats of Sandwich exercised considerable foresight in their responses to the Black Death. It has been noted that the custumal as found in MS Sa/LC 1 contains a body of material relating to provisions for the property of orphans, dating from 1348 and after.¹⁹³ Amongst these is the copy of an *inspeximus* dated 20 January 1348 of letters patent issued by Edward I, which sets out the manner in which properties devolving to minors in the town are to be administered by the mayor and jurats.¹⁹⁴ Following the receipt of this *inspeximus* a set of ordinances framed in French was drawn up in the town to further clarify the presiding role of the mayor and jurats in these cases. These follow the *inspeximus* text in the custumal, as does a document formula for indentures to be drawn up recording individual provisions. The *inspeximus* having been issued before the month of 1348 in which Black Death is usually considered to have reached England (August 1348),¹⁹⁵ suggests that it is possible also that the Sandwich ordinances were drawn up and proclaimed before then or very shortly afterwards.¹⁹⁶ This implies that the Sandwich

¹⁹¹ *CFR 1347-1356*, p. 440; *CPR 1354-1358*, p. 300.

¹⁹² For discussion of the later-fourteenth century situation in Canterbury and Rochester see A.F. Butcher, 'English Urban Society and the Revolt of 1381', in R.H. Hilton and T.H. Aston eds. *The English Rising of 1381* (Cambridge University Press, 1984 (reprinted 1987)), pp. 84-111.

¹⁹³ ff. 22r-23v.

¹⁹⁴ *CPR 1345-1348*, p. 453.

¹⁹⁵ M.H. Keen, *England in the Later Middle Ages*, pp. 169-170

¹⁹⁶ The ordinances are found in this form in MS Sa/LC 1: '*Ordinaciones communitatis supra cartam predictam lingua Gallica. Est a parformer le comandement nostre seignour le roy auaunt dit luy mair et lez juretz du Sandwyz orount prow et establiez lez articles de soubz escriptz. A de primes sy tost come ils poent sauoir quas enfans de deins age soient escheuir rentes terres meisons par decente par doner ou par deuyz meigtenant lez deuiet arester si ycel quiques sachent come bien lez terrez rentez et meisons vedrunt par an et come amountera dun part et daultre si en prenderont et arde quantes enfans ylya et de quele terrez meisons et rentes et moeblez en la forme que nostre seignour le roy aid comande. Cest assauoir a pluis prochein amy a qui le heritage ne poet descendre sy ency ne soit. Et le maior et lez iuretz prendront teele seurte dez gardeins qui lez enfantz soyent gardenz lour age saunz*

government took pains to ensure that it was provided with adequate administrative procedures and powers to deal with an expected heavy mortality: a response which can only have been based upon intelligence from Continental Europe as to the effects of plague on government.

Precisely what effects the earlier outbreaks had on Sandwich is impossible to tell, but if any comparison can be made with the state of affairs in Canterbury and Rochester, or in other English towns, we might justifiably envisage mortality across the social strata of between a third and a half of the total population.¹⁹⁷ The probable rapid influx of outsiders willing to take up urban freedom in the place of deceased townsmen which has been noted at Canterbury and Rochester may have also occurred at Sandwich, but the evidence for migration *from* the town in the late 1330s suggests that this is not to be taken for granted at Sandwich. Nevertheless, a comparable situation of discontinuity and confusion, felt particularly among the urban elite, as a result of the threat which high levels of mortality posed to 'traditional relationships between wealth, status, age and office', should be envisaged also for Sandwich.¹⁹⁸ As

assent du mair et dez iuretz et dez prochein amyces dez enfauntz et de ceo sount faitz deux escritez cirographez dount liy soit enseale dez seales du dit gardeyn et de cez pleggez se quele soyt mys en la comune huche [the form of the indenture then follows]. Boys provides the following translation: 'The ordinances of the community upon the preceding charter in the French language. In obedience to the commands of our said lord the king, the mayor and jurats of Sandwich have framed and established the articles written below. As soon as it comes to their knowledge that any rents, lands, tenements or moveables have fallen to a minor by descent, grant or devise, they should immediately take possession of them, and enquire what is the annual produce of the real estate, and what the value of the personal; and then take an account of the number of children and their age, and put them and their property in ward, agreeably to the king's order, under their next akin to whom the inheritance cannot descend; provided the ancestor has made no specific appointment of trustees by will. The mayor and the jurats taking such security of the guardians that the children may be safe from injury and the town from blame. Nor shall it be allowable for the guardians to give their wards in marriage while under age without the consent of the mayor and jurats and of the relations. Indentures are to be drawn on the occasion, one of which is to be sealed with the seals of the guardian and the sureties, and deposited in the 'common huche'. ff. 23r-23v; Boys, pp. 514-517.

¹⁹⁷ This estimate of likely plague mortality is drawn from those suggested for Canterbury and Rochester by A.F. Butcher, *op. cit.*, pp. 93-95.

¹⁹⁸ Butcher, *op. cit.*, p. 95.

in Canterbury and Rochester, a principal concern of government in Sandwich was for the administration of complex problems of land inheritance created by such mortality, and the prevention of the disintegration of capital held by freemen in the form of land and property. The series of ordinances found in MS Sa/LC 1 relating to the goods of those who had died without an heir in majority, and the possible foresight of the town-government in obtaining royal confirmation of their rights in the administration of inheritance may have succeeded in averting any major, immediate disintegration of accumulated capital. However, as elsewhere, it may have been later outbreaks of plague which seem to have had the greatest long-term effect on the social composition and the administration of Sandwich. If the contents of additions to the custumal found in MS Sa/LC 1 can be taken as indicators of the preoccupations of urban government then the further provision for the disposal of property in the hands of minors (subsequent to their parents' death) who subsequently also died is testimony to the great concern over the disintegration of capital. A clause in addition to the provisions already noted appears, which specifically addresses the issue of this subsequent death of orphans, and allows for the devise of their property to the mayor and jurats, who divide the proceeds, setting some apart for the provision of masses for the souls of the late owners, some for the town's hospitals of St. Bartholomew and St. John, some for the lepers residing beside the road to Ash, some for the mending of the highways, and for other works of charity.¹⁹⁹ Firstly this may demonstrate a genuine concern for the souls of the departed and for Christian acts of

¹⁹⁹ *'Si vero contigerit aliquem orphanum infra etatem suam viam uniuerse carnis ingredi catalla et omnia mobilia sua solent esse ad ordinacionem et disposicionem maioris et iuratorum quia apud nos catalla et bona mobilia non accidunt hereditarie heredibus defuncti prout accidunt tenementa redditus et possessiones solet eniam de talibus catallis aliqua ordinari ad celebracionem missarum pro animabus illorum a quibus euenerunt aliqua ad domos religiosas aliqua fratribus et sororibus hospitalis sancti Bartholomei et quedam fratribus et sororibus domus sancti Johannis et eciam infirmis leprosis super wallam qua itur ad Echee et quedam ad vias emendendas et ad similia opera caritatis.'* Translated thus: 'If any orphan happen to die under age, all his goods and chattels devolve to the management and disposal of the mayor and jurats for with us goods and chattels do not descend to the heir like tenements, rents and possessions; some portion of them being set apart for the celebration of masses for the souls of the late owners, some for the use of the hospitals of St. Bartholomew and St. John, some for the lepers upon the wall by the road leading to Ech, some for the mending of the highways, and for other works of charity.' f.23v; Boys pp. 515 and 517.

charity which can only have been sharpened in the minds of many by the apparently indiscriminate striking down of townsmen and their families at this time. Secondly, it appears to represent a desire, in cases where a family line had failed, to ensure that at least a proportion of any remaining property was used for the benefit of the town. The invocation of such a manifestly fluid concept of charity as is found here (which by implication includes such causes as the maintenance of the streets) suggests that the town-government was prepared to use the proceeds of such failures of lineage as contributions to their own interests.

The implication of the deaths of second generation family members in these provisions is also notable for their apparently early date: at least a decade before the more generally recognised '*mortalite des enfauntz*' of the 1360s.²⁰⁰ The further addition of a memorandum of the 24th year of Edward III (1351) states that in that year '*...vero maxima mortalitas generatur per universam civitatem fuit, inter nos plurimi orphani moriebantur.*'²⁰¹ Their chattels devolved to William Yve, then mayor, and in the time of Stephen Espelon (presumably the subsequent mayor) with the assent and advice of the jurats, were distributed in the stipulated manner. A third part went to any remaining heirs, whilst the rest was distributed for the deceased souls presumably in the acts of prayer, charity and public works indicated above.

The extent to which the plague affected the actual composition of urban government cannot be reconstructed in detail, but there is suggestive evidence of a particular crisis reached by the 1380s. It has already been indicated that the later fourteenth-century custumal and the personal names found within it, along with the list of known Sandwich mayors, suggest that the families who had been prominent in the town-government in the earlier and middle part of the century (such as the Yoks, Yves, and Condys) are still represented in the government of the 1370s. This would appear to reflect the situation in the same period at Canterbury, where members of the civic elite were able to keep control of their position throughout the 1350s, 1360s and

²⁰⁰ Hatcher, *op. cit.*, pp. 58-59. The dating for the deaths of children in the Sandwich custumal is unlikely to be an error on behalf of the scribe, in view of the ensuing documents.

²⁰¹ f. 23v; Boys, pp. 514 and 517.

1370s.²⁰² It has been suggested though that in the case of Canterbury this can only have been achieved with difficulty ‘... at a time of rapid social mobility and the collapse of traditional means of social control when new and unfamiliar social groupings emerged within the city’.²⁰³ In this light it is striking that by the end of the 1370s the names of the long-established families in Sandwich government no longer appear amongst those holding the mayoralty, and that there appear amongst the mayors of Sandwich individuals who did not come from families who had been associated with high office in the immediately preceding period. These include: John Goderde (mayor 1379, 1383-86, 1392-94, 1403-1406.); John Paynes (mayor 1381); William Jordan (mayor 1388); Stephen Reyner (mayor 1390-91).²⁰⁴ The reconstruction of the origins of these men has not been possible from the limited surviving sources for the period, but further biographical enquiry into their careers and kin from scattered references would be extremely valuable. It is highly unlikely that they represent newcomers to the town, since the custom states that candidates for the mayoralty are to have been born within the town.²⁰⁵ It is more likely therefore that they were members of resident families who had not been associated with high office, but with lesser office-holding or not with office-holding at all. This evidence should not, however be taken as evidence of the universal extinction of leading families, or any simple usurpation of power by lesser groups. *It has already been* noted that members of the families of Yve and Cundy may not have held the mayoralty after the 1370s, but they went on to represent the town in the office of M.P. in the late fourteenth and fifteenth centuries. This seems to indicate that the change in the holding of the mayoralty evident in the late 70s and 80s may not have been the result of challenge by lesser groups, but of a ‘devaluation’ of the prestige of the office of mayor. Certainly the manifest problems in meeting the fee-farm indicate that the office may have become onerous and unprofitable.

²⁰² Butcher, *op. cit.*, pp. 97-99.

²⁰³ *Ibid.*, p. 97.

²⁰⁴ See mayoral list in Boys, pp. 416-422

²⁰⁵ ‘...*et tamen quod isti iij^{or}* [the four candidates standing yearly for the mayoralty] *electi nati fuerint infra libertatem ville predictae, quia de alienigenensis non potest elegeri maior...*’ Boys, *op. cit.* p. 429; MS Sa/LC 1, f.2.

In addition to this possibility of a change in the personnel, the economic evidence of the second half of the fourteenth century also suggests that this was not a favourable time, at least in Sandwich, for those who engaged in overseas trade. While this may have affected a wide section of the urban population (as will be shown), a general decline in trade and prosperity must have been particularly detrimental to an urban government, which, as has been seen, was already experiencing severe difficulty in the raising of the necessary funds for the payment of the fee-farm and the royal demands for defensive provision. The continuing war and its associated political and commercial strategies made these years a particularly difficult period for the varieties of trade carried out in and around Sandwich. A letter close of July 6 1363 points to the nature of the problems experienced.²⁰⁶ The mayor, bailiff and customs collectors of Sandwich are instructed to allow the men of Flanders and other parts to come to the realm to trade. These men had hitherto brought fish (turbot being specifically mentioned) and other victuals to sell in Sandwich, in order to buy there chalk, lime, brushwood, tan, bacon pigs, honey, bread and beer to take to their own parts. Lately however, because of the king's proclamation that merchants must take all goods coming out of England to Calais for sale, the men of Flanders have ceased to come to Sandwich. This is stated to be to the great damage of the inhabitants of the English coast: '...as by the coming of the men of Flanders great advantage and profit arose, whereof the whole country of the said coast had great part of their living.' Consequently the king instructs that these 'goods of small value' were not intended to be amongst those required to pass through the Staple at Calais. We do not know whether this trade which linked the Kent coast with Flanders as a single region recovered in the light of this instruction. If it did, recovery may well have been short-lived since the 1370s saw further breaches in commercial contact between Flemish and English towns as a result of national foreign policies. It was these breaches which were to lead to the widespread avoidance of the Calais Staple by many merchants (under licence from the king) in their trade with the continent, and which appear to have had an adverse effect on the share which Sandwich had of the declining wool trade. At this time, the small amount of wool which was shipped via Sandwich seems to have dropped to almost nothing and the trade was not to recover, if at all until the

²⁰⁶ *CCR 1360-1364*, p. 482.

last decade of the century. Furthermore, if cloth was now the more important export from England, almost none of it appears to have been shipped via Sandwich until at least the 1380s.²⁰⁷

The sum of this evidence paints a gloomy picture of the prosperity of Sandwich at this time, suggesting that dislocation and outright decline was not confined to any particular level of trade, but was endemic to the economy of the town as a whole. If there were signs of short-lived prosperity amongst lesser groups taking advantage of new opportunities, as may be indicated by evidence from Canterbury,²⁰⁸ these are hard to find amongst the available evidence for Sandwich. As far as may be inferred from the Sandwich evidence, the problems of the town government seem to have resulted less from specific challenge from below to authority (although coercive measures such as were taken in the 1330s may indicate that this was an undercurrent) than from a general down-turn in prosperity which adversely affected the long-established status of members of urban government. While in the early fourteenth century prominent Sandwich men may have been both active in merchant trade and in the service of the crown (as both mariners and port officials), the combined effects of declining prosperity and the shifts and interruptions of trade, coupled with the discontinuities wrought in family lines, appear to have rendered their successors in government in the latter half of the century far less prosperous and secure.

3.10 The making of the book of the Sandwich custumal in context

In suggesting that the custumal MS Sa/LC 1 was produced between c.1351 and c.1381,²⁰⁹ this production occurred at precisely the time of probably complex shifts in the governance of the town, and possibly also outright decline, which has been examined in the preceding section. Such contextualisation clearly demands some interpretation. The production of such a manifestly fine book was an enterprise which

²⁰⁷ E.M. Carus-Wilson and Olive Coleman, *England's Export Trade 1275-1547* (Oxford: Clarendon, 1963) pp.136-7; 154-5.

²⁰⁸ Butcher, *op. cit.*, p. 99.

²⁰⁹ See above in this chapter, 3. 5 ('Remaking the Sandwich custumal in the later fourteenth century: the production of Sandwich MS Sa/LC 1')

potentially involved considerable expense (in terms of time and money), foresight, editorial endeavour and discussion between writers and administrators. It is perhaps surprising that such a production should be made at a time when at a time when resources, including money, were evidently in short supply.

In this light, the commissioning or making of the book must have been seen in some way as beneficial to the interests of a town government, and there are a number of possible explanations for this. In the first instance, the book and its text can be considered alongside the implied expenditure on legal and political negotiation pursued by, and in the interest of the town government, among which can be included the petitioning of the crown,²¹⁰ the defence of urban liberties in the royal courts,²¹¹ and the common defence of Cinque Port liberties (notably in Yarmouth) emanating from the court of Brodhull.²¹² The existence of documents arising from such negotiations within the custumal text as written-up in MS Sa/LC 1 suggests that a major intended function of the book was the location of the principal evidence of the franchises of Sandwich in a single book. The size of the book clearly suggests portability and, in common with other legal-texts, its text may have been intended as a record for presentation as evidence in the types of negotiation already described. There is, thus, a primary, functional explanation for the production of the book, at precisely the time when such negotiation was crucial to the continued authority and prestige of the Sandwich town government. The outcome of the Crabber case, concerning the jurisdiction of that government in the port of Stonor, is a particularly clear illustration of the way in which defeat in a court case might directly affect civic income from the profits of jurisdiction.

²¹⁰ As in the obtaining of confirmations of royal letters patent (as in the 1348 confirmation of the town-government's rights in the administration of orphans' property copied onto f.22), and in the case of the letters patent secured in 1339 to demand the return of people and property removed from the town in 1339, *CCR 1337-1339*, p. 237.

²¹¹ As in the 1368 case of Thomas Crabber in the court of King's Bench, see above discussion of the case.

²¹² See the memoranda of the proceedings of the court of Brodhull copied onto MS Sa/LC 1 ff. 130r-133v.

However, the variety of materials found within this late fourteenth century custumal, and the methods by which they are presented (by which is meant both textual composition and the physical appearance of the words upon the pages of the book), indicate that there may be much to add, in the interpretation of the custumal, to such a simplistic functional interpretation. A more meaningful interpretation would seem to be the consideration of the actual production of the book as an end in itself, rather than simply as an accessory to the activities of government. There appears to be a more symbolic and ritual explanation of the custumal-writing activity of the late fourteenth century; in particular, the manner in which members of the town governments 'inscribed' their own acts upon a body of customary text, thereby identifying themselves with urban government in Sandwich as it had existed from a distant past. The value of this presentation of the continuity of government may have become apparent to members of the town's government as their families faced the threat of extinction through simple mortality or through deeper social processes which threatened their authority and primacy in the town and beyond. In addition to the manifest identification with the past, there is also an identification of the town government with law and legitimacy in a variety of forms from custom on the one hand (through the careful description of administrative and customary-legal procedures in the town courts) to the justice of the crown (through the copying of the numerous royal letters patent and charters, and the descriptions of the rights of the town government in pleas of the crown).

Furthermore, there is, in the Sandwich custumal, a uniquely expressed concern for remembrance or perpetuation of the deeds of leading members of the town, usually the holders of the mayoralty. The addition of names to memoranda and documents of these men suggests that the custumal represents an attempt to record for posterity their actions in relation to the town and its ancient franchises. The book remains to this day, not only as the custumal of Sandwich, but also as a series of traces of the lives of these individuals. It is perhaps appropriate here to draw a parallel between the activity represented by the custumal and the creation of another source of remembrance, that of the chantry of the Condy family set up in St. Mary's church,

Sandwich, and administered by the mayor and jurats of the town.²¹³ Daily masses were to be said in this chantry for the good of John Condy's estate, for his soul, and for the faithful departed. Condy's own illustrious past, and the fact that the chantry was placed in the care of the mayor and jurats, suggests that this foundation was a carefully conceived and nurtured source of perpetuation of the name and reputation of this leading member of the town community. It might be pointed out here that one of the leading New Romney families, the Hopes, were responsible for the foundation of a chantry in St. Martin's church, New Romney in 1352 or 1353, suggesting again that a desire for the perpetuation of the memories of ruling families was not simply a trait peculiar to Sandwich at this time.²¹⁴

For such acts of remembrance as are represented by both the making of the custumal and the founding and operation of the Condy chantry to be carried out in such problematic circumstances as have been suggested for Sandwich at this time may need some explanation. It would seem that these acts are likely to have occurred at a time when the institutions of the town, and the prestige of the town itself were under severe threat from complex social and economic change. While the exact nature of these changes has been hard to reconstruct, the implication is that the custumal was produced in a perhaps final act of defence or re-assertion of the traditional form of government in the years when such traditional government was itself in danger of, or in the process of dying.

3.11 The use and re-use of MS Sa/LC 1

The making of this Sandwich custumal in the fourteenth century was followed by its use as record. Precisely what use it was put to is not immediately obvious, but the fact that it bears the marks of later modification is indicative of the fact that the book continued to be of value to the administration of Sandwich.

²¹³ f. 115r, not transcribed in Boys.

²¹⁴ 'The Register of Daniel Rough', ed. Murray, *loc. cit.*, pp. xlv, 274-5, 284-5.

Before considering the ways in which the book was modified, it must be said that the text itself and the margins and spaces around it are, by medieval standards, noticeably free of later annotation. While the survey of the Cinque Port customals as a whole has shown that certain customal texts came to be heavily annotated and altered,²¹⁵ this Sandwich customal is not among them. In no cases are parts of the text altered, questioned, or erased by the addition of marginalia and this should influence the estimation of its intended function and later use. If, as has been suggested, the book was intended partly as a repository of customary information for the purpose of use in courts or in negotiation concerning the franchises of the town, the text never came to be altered as a result of decisions made in such circumstances. This may suggest that the book's function was primarily ritual or symbolic, and that the text was perceived to have a permanence which was immutable.

The exception to this overall impression is provided by the later addition of several sets of leaves to specific portions of the book. While these remain largely blank, they imply that at a certain point there had been an intention to add text or texts to the existing customal. Some of the added leaves (those at the front and rear) may simply have been additions made by a binder for the purpose of protection, and not been intended for writing upon.²¹⁶ Quires 1, 2 and 19²¹⁷ seem to be of this nature, with quires 2 and 19 consisting of waste-sheets from larger quires of prepared parchment, and may therefore have been added at the time of the current binding. As the description of the manuscript above suggests, this may be a slightly later binding, and thus these leaves might also be later. Since quire 2 bears a hastily written table of contents to the customal in a later fifteenth century hand, they must have been added before then, and by extension, so must the current binding. Three sets of leaves added within the body of the text itself must though have been intended for the addition of

²¹⁵ Appendix 1 ('The customals of the Cinque Ports: a catalogue of manuscripts and texts'), see, in particular New Romney customal (app.) 2.

²¹⁶ For the common practice of addition of waste leaves from other manuscripts to either end of a medieval book for the purpose of providing flyleaves see, Christopher de Hamel, *Scribes and Illuminators*, Medieval Craftsmen Series (Toronto: University of Toronto and London: British Museum, 1992, 2nd impression 1993), p. 67.

²¹⁷ The first two quires are unfoliated, quire 19 consists of ff. 140-146 and a rear paste-down.

text, and the manner in which each has been inserted into the text indicates that all three were added at the same time. The first set (a bifolium, ff. 5-6) is added to the end of the list of ordinances to be proclaimed during the week of the mayor-making;²¹⁸ the second (also a bifolium, ff. 45-46) is added to a list of tolls and customs to be collected by the bailiff; and the third (two bifolia, ff. 69-82²¹⁹) is rather more complex, and appears to replace four original leaves (also largely blank) moved to the end of the book (now forming ff. 136-139). The replacement follows the claim of the custumal that the mayor and jurats may take cesses and other taxes upon the moveables of freemen, both within and outside the liberty, for which they have (unspecified) letters patent of Edward III. In the case of each of these additions, the new leaves interrupt a clause of the text, and in each case the remaining portion of the clause has been re-written onto the head of the first leaf of the insertion, and its original text on the leaf now to the rear of the insertion carefully scraped away. The hand of these copyings is a cursive Anglicana-type script, evidently of the late fourteenth century or very early fifteenth century, and so although the addition of these leaves cannot be dated precisely, it is likely to have taken place relatively soon after the initial production of the book.

The implication of these blanks is that more town-ordinances were to be added to the existing list; more tolls were to be added to the existing list; and that details of a cess on moveables, or the rehearsal of letters patent justifying this, were to be added to the custumal text. It is very striking that each of these seek to express more ways in which the government of the town might impinge upon the activities and prosperity of its inhabitants. In view of the problems which have been associated with civic government in Sandwich in the later fourteenth century, this is perhaps unsurprising, and hints at a growing authoritarianism in town-government, something which has been noted in other towns, and which probably stood behind the production of the

²¹⁸ The existing ordinances are described in the context of the mayor-making ceremony, see above in this chapter, 3. 2 ('The custumal of Adam Champneys, 1300/1301)

²¹⁹ A misfoliation occurring here is noted in the collation offered in Appendix 4 ('Collation of Sandwich MS Sa/LC 1)

custumal in the first place.²²⁰ The possibility that the additions may have been made only shortly after the initial production of the book suggests that the intentions of both successive acts may be closely linked. The fact that these leaves were never actually filled in is, of course, tantalising. There was apparently an intention to add this material, but the intention was never carried into action, since neither this custumal nor its immediate successor (MS Sa/LC 2) contain any further clue as to the nature of the proposed additions.

The final major addition to the custumal MS Sa/LC 1 was the writing of a memorandum of the proceedings of the first parliament of Henry V (May 1413) onto leaves of quire 18 (ff. 137r-139r).²²¹ These leaves are carefully written, and thus appear to have been a considered and careful addition to the custumal book. The significance of Henry V's first parliament to the government of Sandwich, which is apparently manifest in the decision to include a memorandum of its proceedings in their custumal book, may have been seen to lie simply in the fact that it marked a new beginning in the governance of the realm after the period of uncertainty represented by the latter years of Henry IV's reign. The issue of '*bone governance*' which was pressed by the commons in the parliament, which had also been a major issue in the commons petitions of Henry IV's parliaments, suggests that the accession of a new king was seen a possibility for the restoration of order within the nation and its safeguarding from foreign enemies.²²² It is likely, however, that the concern of the commons for the enforcement of the law expressed in this parliament, was seen in a somewhat equivocal light by those commons who represented the towns of the Cinque Ports, and perhaps also by the burgesses of other towns with franchisal liberties. It is clear from the preceding history of the relationship between the

²²⁰ Butcher, 'English Urban Society and the Revolt of 1381', *loc. cit.*, pp. 102-106.

²²¹ The date of the parliament is not given in the memorandum, but can be deduced from its contents. The last clause: '*Touchant les chivalours Citezeins & Burgeys de darrein Parlement dissolue par la morte de darrein Roy seront gouvernez en paiement de leur gages pour mesme le temps come il ad este fait en semblable cas devaunt ces heures*' (ff. 139-139v), clearly refers to the last parliament as that in which the last king (Henry IV) died. This parliament had sat in February and March 1413.

²²² The issues raised by the parliament of May 1413 are discussed in Edward Powell, *Kingship, Law, and Society: criminal justice in the reign of Henry V* (Oxford: Clarendon, 1989), pp. 135-136.

franchises of the Cinque Port towns and royal justice that any innovation or re-assertion of law as enshrined in the justice of the crown was likely to present a threat to franchisal rights of justice, especially where they coincided with the justice of the crown in the case of major pleas of the crown. It may have been this ambivalent feeling towards possible re-assertions that caused the government of Sandwich to record a partial account of the parliament which included the conditions which the commons had made to the granting of a new subsidy:

*'Et que les Citeins & Burgeys soient tretez en poursuant & fesant fyns pout lour libertes & franchise avoir come ils feurent tretez en temps de Roy votre pere qi dieu assoile & de vos noblez progenitours Rois dengleterre.'*²²³

In recording this assertion in a memorandum placed with the custumal, the government of Sandwich were placing the custumal and all its described franchises in the context of a promise made by the crown in order to gain its desired subsidies. In this way, the memorandum takes on the form of a kind of quasi-charter of confirmation, recorded in this way until the true charter of Sandwich was confirmed later in the same year.

3. 12 The Sandwich custumal in the early fifteenth century

In the early part of the fifteenth century a new version of the Sandwich custumal was written up. Like its precursor, (MS Sa/LC 1) it was presented in the form of a book. It is intended here to consider the nature of this book, its contents, and the context of its production.

Sandwich MS Sa/LC 2 is a manuscript book containing 78 parchment leaves, each leaf measuring c.250 mm x 170 mm. It is bound in wooden boards which are probably contemporary, and are now backed with a coarse leather spine pinned to the boards with brass strapping. These boards are very substantial, being over 10 mm thick. Each bears the stubs of four wooden pegs in drilled holes (in a vertical line c.

²²³ f. 137r.

40 mm from the spine.) suggesting that the original sewing cords were pegged into these boards. It is possible that the boards were originally covered with leather, though no trace of this survives. Channels cut into their outer edges indicate that the book would originally have had a pair of ties or clasps. The backing must have been added relatively recently, perhaps in the latter part of the nineteenth or earlier part of the twentieth century. Recent restoration work has added end-papers and preliminary leaves, and some pages which were worn at the margins have been augmented with paper repairs.

3. 13 Hands and the Dating of MS Sa/LC 2

As the analysis of the hands found in MS Sa/LC 2 offered in Appendix 8 ('Hands of Sandwich MS Sa/LC 2') shows, the manuscript is principally in a single hand (called here hand 'a'), which was responsible for the writing of the whole of the custumal text (ff. 1r-56v). This hand is a neat early fifteenth century example of the Anglicana script, and is presented on pages ruled to leave a relatively large border around the text of roughly 28 mm at the head, 55 mm at the foot, and 46 mm to the outer edge. Two further principal hands are found in the manuscript, hand 'b' and hand 'c'. Hand 'b' wrote the copy of an *inspeximus* charter of Henry IV to Sandwich of 1413 (ff. 59r-66v), and hand 'c' the memorandum of the proceedings of the Leicester parliament of 1414 (ff. 67r-70r). The overall impression of the manuscript is of neatness and order, and the texts are each written as single enterprises not bearing signs of the gradual accumulation of small portions of text.

The custumal text itself is a direct copy of the version as found in MS Sa/LC 1, and this is of significance to the consideration of the methods and dating of the making of this book. This fact was unknown before the rediscovery of the manuscript now known as MS Sa/LC 1 in the 1940s, and so previous analyses of what is now MS Sa/LC 2 were based on the assumption that it was the earliest surviving manuscript of the Sandwich custumal.

There is no direct evidence for dating the manuscript, but consideration of the hands contained in it, in conjunction with the evidence of the texts themselves, give some clues to the date of production. William Boys suggested in the eighteenth century that the manuscript was probably written by John Serle, a Sandwich town clerk of the 1460s, though he cited no evidence for this assumption.²²⁴ Bateson, as has been seen, followed Boys when she made the decision that the Sandwich custumal text was best seen as a production of the fifteenth century.²²⁵ Gardiner followed both Boys and Bateson, when she noted the possibility that the manuscript was the work of Serle.²²⁶ However, the comparison of the hand of the custumal with a text known to be in the hand of Serle makes the assumption unlikely.²²⁷ The manuscript was examined in 1933 by Hilary Jenkinson of the Public Record Office, who dated a sample of the script (without consideration of internal or codicological evidence) to the second quarter of the fifteenth century (1425-1450).²²⁸ He further suggested the possibility that the custumal itself may be in several contemporary hands, since there are minor variations within that text. Examination of these variations in the present study, however, tends to the view that they represent the same hand at different 'sittings', and there is internal evidence that questions the margin of dating given by Jenkinson.

The scribe of the bulk of the text (i.e. hand 'a' writing the custumal itself) maintains the position that this is the work of Adam Champneys, writing in 1301, through the reproduction of his preamble, and there are no clues to the actual date of this copy. However the fact that the appended charter (ff.59r-64r) and parliamentary memorandum (ff.67r-70r) date from 1413 and 1414 respectively and are written in hands which can be considered roughly contemporary with these dates is significant. As the collation of the book shows each of these two texts have been written onto their own quires (quires 10 and 11), each of eight leaves bound at the end of the custumal. If weight is given to the fact that the 1413 and 1414 texts are bound at the *end* of the custumal, it is likely that the custumal was in existence before these

²²⁴ Boys, pp. v and 787.

²²⁵ Bateson, *Borough Customs*, 1, pp. xlix-l.

²²⁶ Gardiner, *op. cit.* p. 55.

²²⁷ The cartulary of Saint Bartholomew's Hospital, Sandwich: CKS MS Sa/QBC 1

gatherings were added. Although the hand of the custumal (hand 'a') has been roughly dated by others to the second quarter of the century (1425-1450), this can only represent an approximate margin. On the basis of the hand alone, there is no reason to exclude the possibility that it is a slightly earlier production of before c.1413/14.

Although it is likely that the custumal was written before the last two quires of additions were added, it is unlikely to have been completed before the summer of 1413, since it is known that the previous version of the custumal, MS Sa/LC 1, was added to in this year, a memorandum of Henry V's first parliament (May 1413) being added to it on a quire of parchment clearly intended for that volume rather than any other. For this reason, it becomes possible to suggest that MS Sa/LC 2, was produced between May 1413 and a date shortly after May 1414, the date of the Leicester parliament recorded in MS Sa/LC 1. Since the earlier manuscript MS Sa/LC 1 was not available to any of the previously noted commentators on the fifteenth century MS Sa/LC 2, the implied evidence of the parliamentary memorandum found in each could not be taken into account in their conclusions as to dating. This evidence, together with the shortcomings of the previously noted assumptions as to dating, leads to the conclusion that MS Sa/LC 2 is almost certainly an earlier production than has been envisaged, having been begun in 1413 or 1414. The manuscript, as a whole, is apparently the result of three distinct stages (the custumal, the charter and the parliament memorandum), but it is probable that these stages were not widely separated in time and that the manuscript took its current form in little over a year. This relatively brief sequence of production appears to be reflected in the neatness of the collation of the manuscript.

²²⁸ The record of this examination is found in the file of notes: CKS MS Sa/ZT 14/1.

3. 14 The contents of MS Sa/LC 2²²⁹

In view of the suggested close conjunction between the writing of the custumal and of the other elements of the manuscript, and their binding together, it is proposed to examine each of these elements in detail. At the very least, the consideration of the charter and of the parliament memorandum might be expected to throw some additional light on the preoccupations of those who wrote up the custumal. Furthermore, it is probable that the three elements were put together because in some way their function or status was linked in the minds of the manuscript's makers and that they all bear a similar relationship to the experience of the government of Sandwich at a precise moment in the early fifteenth century. For the sake of clarity, however, each element must first be considered in isolation.

3. 14. 1 The custumal

The custumal text written up in MS Sa/LC 2 is an exact copy of the custumal as it appears in the fourteenth-century MS Sa/LC 1. It would appear that nothing has been either added or deleted from this earlier text. As has been noted, it is preceded by the preamble of Adam Champneys, written in 1301, copied word for word, with no attempt made to indicate that this version is a later copy. Unlike the custumal as reworked in the later fourteenth century, no new material has been added, no new memoranda associated with names are added to those already present in the text; the charters and letters patent bear no amendments recording confirmations; and ordinances and customary charges remain frozen in their fourteenth century form. Paradoxically this makes the custumal as found in MS Sa/LC 2 rather different in character from the two preceding versions already discussed. *Both of the earlier versions recorded not only historic precedents and documents from a distant past, but also material of a much more recent origin. It was amongst this more recent material that biographical information was recorded concerning the activities of members of the current town government or of their recent predecessors. This characteristic of*

²²⁹ A detailed calendar of contents is given in Appendix 9 ('Calendar of Sandwich MS Sa/LC 2') The following is a discussion of the principal elements in the manuscript.

the earlier versions has suggested that they may in some way have fulfilled a chronicle function. The same cannot be said for the text as found in its early fifteenth century version in MS Sa/LC 2. In this text, all of the material is from a relatively more distant past. The very latest material recorded in the text (from 1368)²³⁰ is at least forty years old and had appeared in the earlier version, and the vast bulk of the text is, of course, much older. In some way, therefore, the past is privileged in this custumal in a way that it had not been before. The custumal is no longer a site for the recording of recent events in the town.

It has been suggested that the custumal as found in MS Sa/LC2 is primarily the work of one hand. The only major variation is the hand which wrote a list of charges on ff. 20-22v and since this portion does not represent an insertion of leaves and it faithfully copies the same list in MS Sa/LC 1, it must have been included in the same process of production as the custumal. The predominant uniformity of the text, and the fact that it is the copy of an already existing version suggest that this production was a single, planned enterprise, probably carried out over a short period of time. There is no reason to suppose that the text represents a period of additions and amendments made to an existing text, which means that it must present a contrast to the production of MS Sa/LC 1 in the fourteenth century.

A further contrast to be drawn between the two manuscripts is their relative size. The later version is considerably larger having pages measuring c. 250 mm x 170 mm; while the earlier measures only c. 170 mm x 100 mm. Corresponding to the size of the pages is the size of the script, that of MS Sa/LC 2 being considerably larger and clearer. In addition, MS Sa/LC 2 is notable for the broad margins given to its leaves in page preparation.²³¹ This might simply indicate that the manuscript has suffered less at the hands of later binders, trimming the leaves for the sake of uniformity, but it might equally have been an intended feature. The manner in which the book came to be annotated after initial production, through the addition of notes and text to these

²³⁰ The case of Thomas Crabber's case concerning the jurisdiction of Sandwich in Stonor.

²³¹ See the description of the manuscript above.

margins suggests the possibility that such marginal annotation was envisaged by the makers.

Whether the contrasts noted between the earlier and later Sandwich custumal reflects the relative status or function of the two books, or whether it simply points to changing fashions in book production or hand writing is a point worthy of some consideration. If the interpretation of MS Sa/LC 1 is correct, then the choice as to its size was made some time around the year 1350. The corresponding decision in the production of MS Sa/LC 2 was therefore made some 65 years later. The contrast in size may therefore reflect a complex change in styles of book production quite unconnected with the relative status of these two books. It might be noted, for example, that the latter years of the fourteenth century have been identified as a point at which writers began to abandon *textura*-based hands (such as those which have been identified in the script of MS Sa/LC 1) for all but the most deluxe books, in favour of the generally larger forms of *Anglicana*.²³² Such changes in the relative size of script may well have affected page and thus book sizes.

Suggestions based on changing style are, however, often overly deterministic, and should not prevent a more informative interpretation of their relative size, especially since style is not independent of functional demands. It might legitimately be suggested that the size of the page reflects the circumstances under which the book was intended to be used. It is quite possible that MS Sa/LC 2 was a relatively more public book than its precursor since its larger size points to the possibility of simultaneous use by more than one person. This is not to say that it is necessarily a ceremonial book, since it is not elaborate in its script and decoration, but simply that more than one person might be expected to look at the pages at any one time. Connected to the size of the page is the size of the written area, and thus the size of the margins. In view of the frequency and character of the marginal annotations made to MS Sa/LC 2, it may be suggested that this aspect of its use was envisaged by its makers, and influenced the production of a text with substantial space around it. This point should perhaps be taken into account in any interpretation of the custumal text

²³² M.B. Parkes, *English Cursive Book Hands 1250-1500* (Oxford: Clarendon, 1969), pp. xvii-xviii.

itself, since, although it is an exact copy of an earlier text it is produced in a manner which gives the opportunity for a very specific form of addition in the future.

The fact that the fourteenth century MS Sa/LC 1 survives alongside the later MS Sa/LC 2 must also be taken into account, since it too suggests a perceived difference in function or context of use, rather than merely that one book superseded the other. The possible uses of MS Sa/LC 2 will be considered in more detail.

3. 14. 2 The Charter

The charter represents the text of an *inspeximus* and confirmation of the Cinque Ports' general charter (1278), made by Henry V on 16 October 1413. The confirmation appears to have been made not by the confederation as a whole, but by Sandwich alone.²³³ The version written up in MS Sa/LC 2 states that twenty-five marks was paid for this confirmation.²³⁴ For the most part, the text closely follows that of the standard form of the 1278 charter.²³⁵ The Sandwich version, however, has two additional, confirming clauses (granted by Henry IV and V respectively), stating that the barons may hold their franchises even though they may not have used all of them fully in the past.

The charter confirms all of the franchises and liberties historically associated with the Cinque Ports, and thus fulfils the important function of confirming, in generalised terms, the text of the custom itself. The two types of document are closely connected in the archives of the ports as a whole, often appearing together, as they

²³³ When Samuel Jeake examined the charters of the Cinque Ports as a whole, he was apparently unaware that a confirmation had been made of the 1278 charter by Henry V in 1413. This indicates firstly that he had not seen the Sandwich version as found in the manuscript now known as Sa/LC 2, and secondly that none of the ports he examined had a copy of the charter confirmed in 1413. Samuel Jeake, *Charters of the Cinque Ports, two ancient towns, and their members* (London, 1728).

²³⁴ Boys, *op. cit.*, 563, 565.

²³⁵ The corresponding portion of the charter is given in Jeake, *op. cit.*, pp. 5-51. A further version of the 1278 charter is given in Murray, *op. cit.*, pp. 237-239. The contents of the charter are discussed in *VCH; Sussex*, 9, pp. 37-38.

do here in a single manuscript.²³⁶ The Sandwich custumal itself, as has been noted, contains portions of other charters in the main body of its text. Because of this close connection, it is possible to suggest that the new custumal may have been produced in conjunction with the activities associated with obtaining of the *inspeximus* of 1413. It would not be surprising to find a new custumal being written up at the beginning of *any* new reign as a way of obtaining a guarantee that the franchise might be secure under the new monarch. However, the opening of the reign of Henry V appears to have been seen in a rather special light, and this must be examined in more detail if the status of MS Sa/LC 2 and its contents are to be understood as fully as possible.

3. 14. 3 Memorandum of the Leicester parliament of 1414

This text represents a version of the proceedings of the parliament convened at Leicester in May 1414. It includes both commons petitions and statutes made by the crown, but is substantially different from the officially enrolled text.²³⁷ The most obvious variance is in the ordering of the clauses, but there are also elements found in MS Sa/LC 2 that are not found in the enrolled version, as well as certain omissions. The nature of the text, coupled with the wider significance of the Leicester parliament for franchisal jurisdiction and local government suggest that its examination may shed light on the circumstances surrounding the production of the custumal. The parliament was the second called by Henry V since his accession in 1413 and is particularly important for its production of several statutes relating to the responsibilities of officials acting as agents of the crown in the maintenance of law and order, and in the suppression of heresy. Some have seen this parliament as the beginning of a concerted re-assertion of royal authority in matters of law and order, which coincided with the mounting of a vigorous campaign (waged by newly commissioned circuits of the eyre) to root out disorder and administrative malpractice

²³⁶ Charters sometimes included with the custumals in the manuscripts considered in this study, see Appendix 1, Faversham custumal (app.) 1; Fordwich custumal (app.) 4; New Romney custumal (app.) 3.

²³⁷ *Rotuli Parliamentorum*, 4, pp. 21-26.

in local government.²³⁸ It also saw the presentation of a much discussed commons petition which asserted a particularly forceful version of their parliamentary role.²³⁹

For the most part, the substance of the text in MS Sa/LC 2 compares roughly with the enrolled version, although most clauses are presented in summary form. On occasion the two texts are almost identical. The petition from the commons, recorded in English, asserting their role as both assenters and petitioners in parliament appears to be the same in each version, as is the king's reply.²⁴⁰ Portions of the statutes making provision for suppression of heresy are also identical in both cases.²⁴¹ There are, however, three major omissions in MS Sa/LC 2 version. Firstly, a petition from the commons of Northumberland, complaining that many felonies go unpunished there because of the franchises of Tynedale, Ridesdale and Hexhamshire, where the king's writ does not run, does not appear in this version. Secondly, the Statute of Truces which enacted that truce-breaking was henceforth to be judged as high treason, and made provision for the appointment of royal guardians of truces in all ports, does not appear. Thirdly, a statute apparently made in response to a commons petition to counter the avoidance of justice by those who have committed murders, robberies, assaults and other felonies, is not found. This last statute, in the enrolled version, includes provision for bills to be issued to sheriffs, returnable to Chancery and in case of default, writs returnable in the court of King's Bench.²⁴² Although the petition from the commons of Northumberland might be an understandable omission in a Sandwich manuscript, there may be other significant reasons for omission of these three items. All in some way address the issue of the relative responsibilities of crown and local officials in the localities, particularly within franchises. In view of the long-established sensitivity to this issue in Sandwich, it may be suggested that the

²³⁸ The Leicester parliament, and associated events of 1414 are considered in detail by Edward Powell, *op. cit.*, ch. 7 'The Leicester Parliament and the Superior Eyre', pp. 168-194.

²³⁹ See Ronald Butt, *A History of Parliament: the Middle Ages* (London: Constable, 1989), p.488 and J.S. Roskell, *The Commons and their Speakers in English Parliaments 1376-1523* (Manchester: University Press, 1965), p. 158.

²⁴⁰ MS Sa/LC 2, ff.67-67v; *Rot. Parl.* 4, p. 22.

²⁴¹ MS Sa/LC 2 ff.68-69; *Rot. Parl.* 4, pp. 24-25.

²⁴² *Rotuli Parliamentorum*, 4, pp. 21-3, 22-4, 26.

omissions are unlikely to be the result of their perceived irrelevance, and further, that there may then be more political reasons behind their omission. The omission of the Statute of Truces is of particular interest, since it is probable that at the time of the meeting of the Leicester parliament, the port of Sandwich was involved, or was expecting to be involved in a major legal case resulting from the action of members of the town contrary to the truce with Flanders. It might also be noted that the Statute was to be the subject of a commons complaint in the following year, resulting in its ultimate suspension. This will be examined in more detail below.²⁴³

The memorandum contains one text which represents a substantial and significant addition to the officially enrolled account. Following the statute outlining the powers of royal justices in the trial of suspected heresy, the Sandwich version contains the conditions made by the commons in assenting to this statute.²⁴⁴ These conditions require that none be troubled by the justices unless they have been formally indicted; that the indictment not be used against the accused before a judge, but kept for information; that those indicted or accused and held in prison be tried and released within three months; that no maintainer or abettor of heresy, writer of heretical books and sermons, or convenors of congregations and conventicles be troubled before the principal be convicted; that heirs should not be required to pay to the crown in cases where the indicted escapes and is not found; and that no sheriff or other officer empanel any with lands and tenements valued at less than 100 shillings per year.²⁴⁵

²⁴³ Below in this chapter, 3. 15 ('Courts, custom and law in early fifteenth century Sandwich')

²⁴⁴ For the statute see MS Sa/LC 2, ff.68v.-69r; *Rotuli Parliamentorum*, 4, pp. 24-25. For the conditions attached by the commons see MS Sa/LC 2, ff.69r-69v.

²⁴⁵ MS Sa/LC 2, ff. 69-69v. 'Et quaut a cest article les Comunes ount denez lour assent par issint que null soit pris ne greve par les ditz justices ne lour mynistres per accusacioun devaunt eux si ne soit eut endite. Et lenditement de teux heretiks ne soit en condision devers tielx accuseez devaunt lordenarie quant les endites sount deliverez al ordenarie par endenture meas les enditementz soient tenuz pour enformacioun. Et que les ditz enditez ou accusez et detenuz en prison soient examynez et delyverez denz trois moys. Et que null mayntenoure, fautour, defendour, receptours, sustenours et scrivour des livres des heresies ne de sermons ne ceux que facent conventicles, congregaciouns et confederacies ne soient malestез ne grevez avaunt que les principale soient convyctis et si lendite esquape hors de prison et ne soit retourn a dit prison et de vie ayent count que bien lise as heires dentrer en soun heritage sanz poursut paire au Roy. Et que nul viscounte ou autre officer face en paneller ascun, qui nad le value de

These conditions, and their absence from the enrolled version are remarkable in the light of the commons petition presented at the same parliament regarding their role as assenters of statutes. Their appearance in the Sandwich manuscript is also significant, as they seek to define the powers of the royal justices more carefully than the statute itself does, suggesting again that the activities of royal justices were of particular interest to the government of Sandwich. Furthermore, it is relevant to note the emphasis of these conditions on the maintenance of the correct processes of law in these cases.

In order to understand the significance of the parliamentary text as a whole it is crucial to form some opinion of the circumstances and manner of its composition. The neatness of the hand, and its writing on vellum must suggest that this is a fair copy made from some other source. The text itself has clearly been composed *after* or *during* the parliament, since it contains not only petitions, but the king's responses and his own demands. The extent of the variances in material and ordering between it and the enrolled version suggest that it was not simply copied at a later date from the parliament rolls. Whoever composed the text appears to have had access, though, to documents produced for, and as a result of the parliament, since parts of it do correspond exactly with the enrolled version. This suggests copying of existing texts of petitions and statutes. If the additions and omissions are taken into account as significant indicators, it would seem that the text represents a commons' version of the proceedings, and perhaps further, a Sandwich version. It is quite likely that the text represents the work of members of parliament from Sandwich itself, and is a contemporary record made by them for the benefit of the town government, which was then copied into a gathering of vellum leaves for preservation.

Aside from the mechanism of the production of this text, it is of value to make some consideration of the importance which seems to have been attached to the Leicester parliament by the government of Sandwich, which is evident from the writing and binding up of its proceedings with the custumal. In order to do this, some account

terres et tenementz come desuis sur payne de perdee au Roy £20 dount la partie greve eait lun moyte et le Roy lautre moyte.'

must first be taken of the significance of the Parliament for the commons as a whole, since it is likely that the ideas and expectations of the commons of Sandwich reflected and influenced much wider ideas and expectations. Much discussion has been devoted to the constitutional significance of the parliament, because of the particularly assertive nature of commons' petitioning, and a variety of views have been expressed as to whether the king's response to it represented a turning point in constitutional development.²⁴⁶ This discussion is not, however, entirely relevant to the present enquiry, since we are more concerned to understand how the parliament was perceived by contemporaries, and to what extent its business reflected current aspirations, rather than whether these aspirations were realised in the long term. Before looking at the details of the Leicester parliament itself, it should perhaps be noted that the memorandum of its proceedings recorded in MS Sa/LC 2 may reflect an intense interest in the activities of parliament in general at this time, since it will be remembered that the Sandwich customal presented in the earlier manuscript MS Sa/LC 1 had an account of the proceedings of Henry V's first parliament in 1413 bound in with it. This more general interest should stand behind any conclusions drawn as to the particular significance of the Leicester parliament of May 1414.

The opening clause of the parliament memorandum as written up in MS Sa/LC 2 records what appears to be the first petition made at the session by the commons and the church together. It asks that Holy Church and all lay and spiritual lords, as well as other subjects of the king should have all their liberties and franchises. In particular, it asks that cities and boroughs should have and enjoy all their liberties and franchises granted by the king and his progenitors.²⁴⁷ While this sort of petition is one with which medieval parliaments customarily began, as a general confirmation of the king's good-will towards his subjects, its wording has very particular resonances in the light of the business of the rest of the parliament, and this must have been apparent to whoever wrote the memorandum. Following this text, the memorandum

²⁴⁶ Butt, *op. cit.*, *loc. cit.* and S.B.Chrimes, *English Constitutional Ideas in the Fifteenth Century* (Cambridge: University Press, 1936), pp. 158-164.

²⁴⁷ MS Sa/LC 2, f. 67r. '...toutz les Cites et Burghs du Roiaume eient et enioient touz leur libertees et fraunchises queux ils ount du graunt de les progenitors notre seignour le Roy et de son graunt demesme ou confirmacioun.'

continues with the petition (and the king's response), presented by the commons declaring their position as both assentors and petitioners in parliament. It is recorded in MS Sa/LC 2 in English, as it is in the enrolled account. This petition is clearly given prominence in the Sandwich version, since it is given in full (where other clauses are given as summaries) and is presented immediately after the first, general petition. In the enrolled version it is placed last in the order of commons' petitions.²⁴⁸ The distinctive script used by the writer of the memorandum also tends to reinforce the impression of importance being attached to this document. The text opens as follows:

'Oure souverayn lord youre humble and trewe lyege that been Come for the Comune of yowre lond be sechen onto youre ryght rightwesnesse that so as it hath be evere thayre liberte and fredom That thar shulde no statut ne lawe be maad of lasse than they gaf ther to their assent. Considerynge that the Comune of yowre lond, the woche is and ever havbe a membre of yowre parlement, ben as wel assentours as petycioners...'²⁴⁹

After this, the text continues, recording the demand that no law or statute be made upon a petition presented by the speaker which changes the terms of the petition, either by addition, subtraction or other change, without the consent of the commons. This demand is then tempered with the recognition that it is the king's right 'to graunte whiche of thoo that thow luste.' The king's reply is then recorded:

'The kyng of his grace especiall grauntyth that from hennys forth no thyng be enactyd to the Petycions of his Comune that contrarie of here askyng ware by thai shuld be bownde wythowte ther

²⁴⁸ *Rotuli Parliamentorum*, 4, p. 22. Some consideration has been given by parliamentary historians to the extent to which the order of the text presented in the parliament rolls reflects the chronological course of the parliament. It appears that the ordering of the parliament rolls is not usually the result of actual chronology, suggesting that the order is more likely to be the result of editorial decisions by the enrolling clerks. See H.L. Gray, *The influence of the commons on early legislation: a study of the Fourteenth and Fifteenth centuries*, Harvard Historical Studies 34 (Cambridge, U.S.A.: Harvard University Press, 1932), pp. 72-74.

²⁴⁹ MS Sa/LC 2, f. 67r; *Rotuli Parliamentorum*, 4, p. 22.

assent savyinge alway to owre licge lord his reiall prerogatyff to graunte and deniye wat him lust of ther petyciouns and askyng aforsayd.’²⁵⁰

What is remarkable about the petition is not so much that it achieved any constitutional victory for the commons, but for the historical basis on which the commons based their claims. The statement that they have always been part of parliament as assentors and petitioners is not only audacious but seems to spring from a very particular view of the history of parliament, which has led one commentator to see it as a manipulation of historical fact.²⁵¹ The recourse to historical justification is especially significant in the light of the petition’s ultimate appearance in the Sandwich custumal book, amongst other documents which assert political liberties by recourse to historical precedent, which is, at least in some cases, invented. The king’s reply is characteristic, since although it appears to accept the petition, it only does so with the *caveat* of the royal prerogative. Although it is possible, with the benefit of hindsight, to suggest that such a response casts serious doubt on any long-term effect of the petition, its presentation was clearly seen to be important enough in the eyes of the commons of Sandwich to be committed to record in a very particular way, and this is in itself a historical fact.

The statutes and provisions made in the Leicester parliament concerning the suppression of heresy and the related issue of order in the localities, and their recording in MS Sa/LC 2, may cast further light on the preoccupations of the government of Sandwich at this time.²⁵² Perhaps the most obvious reason for the inclusion of these statutes in the manuscript is that they empowered town officials to make enquiry into suspected heresy, and authorised secular courts to receive indictments for heresy.²⁵³ In this way urban officials added an extra responsibility to their offices, and so it would be natural for this to be given permanent record, as it is here at Sandwich. However, the way in which the record is made in the Sandwich

²⁵⁰ MS Sa/LC 2, ff. 67-67v; *Rouli Parliamentorum*, 4, p. 22.

²⁵¹ Butt, *op.cit.*, p. 488.

²⁵² For the connection, perceived by contemporaries, between heresy and sedition, see M.E. Aston, ‘Lollardy and Sedition 1381-1431’, *Past and Present* 17 (1960) pp. 1-44.

²⁵³ Aston, *op.cit.*, pp. 34-35.

version (with the detailed conditions of the acceptance of the statute not found in the enrolled version) suggests that the statute was not accepted without caution and vigilance. It has been pointed out that the statutes of 1414 represent a culmination in the legislation against heresy and sedition which had begun as early as 1388.²⁵⁴ In the intervening period the statutes of parliament made increasing provision for the empowerment of sheriffs, justices of the peace, mayors, bailiffs and other keepers of the peace in this matter. It would appear that, while urban officials may have welcomed increased powers, the zeal with which the campaign was waged appears to have provoked a degree of caution and suspicion on the part of at least some of the commons. This is evidenced by the conditions of acceptance of the statute found in the Sandwich manuscript outlined above, in which the potential interference of justices is specifically dealt with. It is likely that the judicial campaign against heresy and sedition was seen within franchises as a potential source of interference and oppression by officials hitherto excluded from those franchises. That these conditions should appear in a custumal manuscript made by the town of Sandwich is once again highly significant, in view of the suggested correlation between the interference of external justices in town affairs and the production of custumal texts.

The recording of the proceedings of the 1414 Leicester Parliament in MS Sa/LC 2 allows some insight into the preoccupations and aspirations of the government of Sandwich, and their relation to the interests of the English commons as a whole. The fact that the proceedings are recorded in this way appears to indicate that Sandwich in some way identified its own concerns with the wider concerns of the commons at this time, but that it may have held major reservations concerning any campaign of law enforcement emanating solely from the crown, which, in the light of experience might have been seen as a potential threat to franchisal liberties. This may have significant bearing on the interpretation of the production of the custumal. The production of a new version of the Sandwich custumal in the early part of the reign of Henry V may reflect a more widespread desire to assert local and franchisal interests at a time when they might very legitimately be considered threatened.

²⁵⁴ *cf.* Aston, *op. cit.*, pp. 30-35.

3. 15 Courts, custom and law in early fifteenth century Sandwich

Examination of the royal and national records of the early fifteenth century reveals that the government of Sandwich was involved in serious dispute over the extent of its franchise at this time. This dispute involved the town, individuals from outside the town, the warden of the Cinque Ports, and the crown. One particular dispute which ran from 1413 (or shortly before) until at least 1416, and which was pursued at the highest levels, is to be considered as a likely motivation for the production of a version of the Sandwich custumal at this time.

As early as 1407, there is evidence that franchisal dispute prompted the government of Sandwich to reconsider the written evidence which it possessed concerning the nature of their franchises and their relationship with the franchises of others. In May of that year an exemplification was issued on request of John Godard, then mayor of Sandwich, relating to the extent of the rights of the warden's court of Shepway.²⁵⁵ The record among the Patent Rolls states that the exemplification consisted of the tenor of a certificate sent in to Chancery from the Exchequer. In a search of the rolls and memoranda of the Exchequer a book called the '*quarternum*' of Dover had been found in which was recorded, under a heading 'La court de Scipweie' several memoranda relating to the holding of that court. These stated that the court was to be summoned at forty days notice, to consider five types of case (or one of those five), namely, cases of false judgement (presumably in the town courts of the Cinque Ports); refusal to provide the required service to the king; cases of treasure trove; cases of false moneying; for treason and for breaking the king's peace.²⁵⁶ The interpretation of the '*quarternum*' (quire) of Dover is tantalising, since it may denote an item relating to the town of Dover, or to the jurisdiction of the warden in his courts at Dover. Both might be expected to contain the material described. If the quire referred to did relate to the town itself, then it would probably represent a custumal, or portion of a custumal, lodged at the Exchequer, and this would be a

²⁵⁵ CPR 1405-1408, p. 329 (May 28 1407).

²⁵⁶ 'la courte de Scipweie avera quarante jours de sommuse e est tenu pour cinq poins o pur un des cinq cest a savoir Pur faux jugement, Pur service le roy sustret, Pur tresor trove desouz terre, Pur fausever de monee, Pur traisun purparle cuntre le Roy e sa pees trubler.'

further insight into the uses of custumals and the location of this use.²⁵⁷ Furthermore, the fact that Sandwich was able to obtain a copy of part of the text would seem to illustrate a possible mode of transmission of this sort of material. The implication that the mayor of Sandwich was able to initiate a search of the Exchequer materials; the subsequent passing of material from one department to another; and the production of an exemplification not only illustrates the mechanisms of the relationship between royal and local government, but also the strength of will with which a town government pursued its affairs at this level. The search and the production of the exemplification were presumably paid for in the same way as a charter would have to be paid for.

The record does not give the reasons for John Godard's request, but an item amongst the Close Rolls may provide some clue to his intentions.²⁵⁸ On February 11 of 1407 notice was sent to the warden of the Cinque Ports to come into Chancery 'before Wednesday next' on account of a petition made by two Portuguese merchants.²⁵⁹ The merchants had impleaded one Roger Hood, merchant of Lynne, in the court of Sandwich 'according to the custom of the town', concerning certain covenants, 'cognisance whereof pertains and ought to pertain to the said court'. Hood was condemned in the court 'in certain sums of money', but the warden 'inhibited the mayor from executing the condemnation, alleging that the contract was made at sea, which it was not, and therefore the cognisance thereof ought to pertain to him as admiral of the said ports, which it did not.' The claim implicit in the warden's interference is that the case should have been brought at one of his own courts, either the court of Shepway or the court of St. James' in Dover, and not in the town courts

²⁵⁷ The surviving version of the Dover custumal in BL Stowe MS 850 does contain the information supplied in the exemplification. It is notable for the lengthy treatment of the operation of the court of Shepway, and describes the five types of case pertaining to that court (ff. 140-142). It states further 'that non other thynges shall be inqyred in the said Court but yif it be speciall Commandement of the Kyng.' (f.141v.)

²⁵⁸ *CCR 1405-1409*, p. 187 (Feb. 11 1407).

²⁵⁹ John Domyngus 'merchant of Portugal' and John Franciscus master of the Seynte Marie of Oporto.

of Sandwich.²⁶⁰ The motivation of the two Portuguese merchants in petitioning the crown was probably to ensure the speedy termination of the case, which had been delayed by the warden's intervention. However, the dispute may have been seen in a rather different light by the government of Sandwich since it appears to have been the result of a direct encroachment of their liberties by the warden, on grounds considered to be spurious. Bearing in mind that John Godard's request to Chancery for the exemplification of the limits of the jurisdiction of the court of Shepway must have been made at the time that the case of the Portuguese merchants was being considered, it would seem likely that the two events were connected.²⁶¹ Although this case is unlikely to be directly connected to the production of the new custumal, since it has been suggested that this was written up some five years later, it is of relevance to the present discussion. It demonstrates how a conflict over relative rights of officials and courts might firstly stimulate the invocation of custom, and secondly, cause the town government to seek confirmation of customary delineations of rights in the form of a written document.

In July 1414 a commission was issued to the warden to make an enquiry into the delivery of William Clerk, Henry Bray and John Herry from Sandwich gaol.²⁶² These men had taken the goods of Katherine Kalewarts, a widow of Flanders, during the recent truce with Flanders, and this was the cause of their imprisonment.²⁶³ Katherine Kalewarts had not received restitution from the imprisoned before the time of their delivery. The mayor of Sandwich, Thomas Loveryk; the bailiff, Nicholas Reyner, and an unnamed gaoler had recently appeared before the king in Chancery and were examined on oath. The mayor and bailiff claimed that the gaoler had delivered the prisoners, whilst the gaoler claimed that the mayor and bailiff had delivered them. A slightly later record suggests that by the time the warden was given this commission,

²⁶⁰ The functions of the court of Shepway and of other courts presided over by the warden are examined in detail in Murray, *op. cit.*, chs. 5, 6, 7, and 8 ('The court of Shepway', 'The Warden', 'The Warden's Courts at Dover' and 'The Warden as Admiral.')

²⁶¹ The exemplification was issued on May 28 1407, after the search of the exchequer had been made. Thus Godard must have made his request some time before that date.

²⁶² *CPR 1413-1416*, p. 233 (July 15 1414).

²⁶³ The truce had been declared in July 1412. *CPR 1403-1413*, p. 423 (July 25 1412).

the case had already been running for some time.²⁶⁴ This record states that the goods of Katherine Kalewarts had been seized by subjects of Henry IV, so the seizure must have occurred *before* March 1413. The fact that the case had reached Chancery by mid-1414 also suggests that it had been pursued for some time before then.

Richard Weyville, the warden's lieutenant, made the inquisition on the 16 August at the court of St. James', Dover, and returned his findings to Chancery.²⁶⁵ The inquisition found that John Herry had been delivered from the gaol without warrant, before Katherine Kalewarts had received legal satisfaction, by the bailiff of Sandwich, whose deputy was the Nicholas Reyner mentioned in Chancery. A William Artour, who was not mentioned in the Chancery inquisition, was also found to have been delivered in the same way. Henry Bray had been arrested by a servant of Nicholas Reyner 'to answer to a plea of detinue²⁶⁶ in the king's court of Sandwich.' He was detained in prison for that reason and for no other. At the first court held before the mayor and jurats after the arrest, Katherine Kalewarts 'was essoined and appointed to keep a day at the next court.'²⁶⁷ She did not come to the court, or send an attorney and 'judgement was therefore given by the said mayor and jurats that Henry should go without day according to the custom of the court.' Another individual, John Warrewyk who had been involved in the capture of Kalewarts' goods had also been imprisoned, but had been released on bail provided that he return should suit be brought against him in the future in that case. William Clerk was stated to have never been in Sandwich prison on any such charge.

The case was obviously pursued further by the crown, since the minutes of Privy Council for 10 April 3 Henry V (1415) include a petition from Katherine Kalewarts.²⁶⁸ This petition asks that the warden make inquisition into any who have

²⁶⁴ *CPR 1423-1416*, p. 423 (May 8 1415).

²⁶⁵ *Calendar of Inquisitions Miscellaneous (Chancery)*, 7 (1399-1422), p. 275, no. 494.

²⁶⁶ Detinue: 'Unlawful detention of a personal chattel belonging to another.' *OED*.

²⁶⁷ Essoin: 'The allegation of an excuse for non-appearance in court at the appointed time; the excuse itself.' *OED*.

²⁶⁸ *Proceedings & Ordinances of the Privy Council of England*, 2, 1410-1422. ed. by Sir Harris Nicholas (London: Record Commission, 1834), p. 152.

possession of her goods in Sandwich, to arrest any so found and to imprison them until the king gives order for their release. If nothing is found by the warden, then the inhabitants of Sandwich are to restore to Katherine the sum of eighty pounds, according to the form of the late truce with Flanders. This petition is probably not a new petition from Kalewarts, but that originally made (perhaps as much as two years ago) for the recovery of her property. It seems to be included amongst the minutes in order that it might be scrutinised by the council in the light of the subsequent events. The minutes then record a writ sent to the warden (probably as a result of consideration of the petition by the Privy Council) to arrest the gaoler of the port of Sandwich, and to keep him safely until such time as satisfaction is made for the detainee, or that eighty pounds is delivered to Katherine Kalewarts. A commission was duly issued to the warden, on May 8, stating that Kalewarts had not yet secured restitution 'although she has made diligent suit for no small time.'²⁶⁹ It asks that eighty pounds be levied on the people of Sandwich, to be delivered to her without delay, and that any found in possession of her goods and chattels be imprisoned until further notice.

This commission was vigorously contested by the inhabitants of Sandwich, who went so far as to produce a petition in the parliament of November that year.²⁷⁰ The representatives of Sandwich introduced the case by describing the taking of the goods of Katherine Kalewarts at sea, and their landing in the 'Downs' outside Sandwich, contrary to the truce with Flanders. The wrongdoers are then stated to have brought certain goods to the town of Sandwich, to the value of forty shillings or a little more, which were then arrested by the officers of the town in order that they might be delivered to Katherine. Later, however, she had claimed that the goods were actually worth eighty pounds. On this account, the commission had been issued to the warden to levy a fine of eighty pounds on the inhabitants of Sandwich. This was claimed to be contrary to '*commune droit*', from which great damage to all the towns and ports of England might arise in the future, unless remedy is made in this case²⁷¹. The petition

²⁶⁹ *CPR 1413-1416*, p. 344 (May 8 1415).

²⁷⁰ *Rotuli Parliamentorum*, 4, pp. 67-68.

²⁷¹ 'dout graunt meschief ent purroit sourde en temps a venir, si bien as touz les Villes et Portz d'Engleterre come a dite Ville, sinoun que remedie en ceo cas soit purveu.'

asks that the matter be considered in the light of the Statute of the Great Charter [Magna Carta], which states that no-one be judged except by '*la commune ley*', and that a writ of *supersedias* be issued to the warden, to delay the execution of his commission until the truth of Katherine's assertion can be tried according to the common law. No answer to this petition is recorded in the parliament rolls, but it was apparently disallowed, since later in November the warden was issued with an identical copy of the original petition, demanding that the eighty pounds fine be levied on the people of Sandwich.²⁷²

Once again he appears to have been delayed in the collection of the fine by the actions of the government of Sandwich, who prepared a further petition, which was presented at the parliament of the following March.²⁷³ The substance of the petition is much the same as that of the petition of the previous year, but is more insistent in its recourse to legal principle. It cites the second Statute of Westminster (1285), which enacted that none be judged except by the common law, and other (unspecified) ancient statutes which enacted that such cases must follow the due process of the law.²⁷⁴ It goes on to state that the last petition had asked that the matter be determined according to the form enacted in the terms of the truce, namely that goods taken on the sea, or their value, be restored to the owner. Despite this, it states that the warden had been issued with another commission for collection of the eighty pounds. It asks that the warden make an enquiry into who has received the goods of Katherine Kalewarts, and from whom, and that the goods (or their value) be restored to their rightful owner, according to the form of the truce. The recent commission to the warden would thus be void '*...come droit demande.*' The king

²⁷² CPR 1413-1416, p. 410 (Nov. 28 1415).

²⁷³ *Rotuli Parliamentorum*, 4, pp. 91-92. The petition is recorded in the edition amongst petitions 'Ex Original' in Turri Lond'', most of which date from 1415. It is itself dated by the editors to 'AD 1415, 3 Henry V', but the ascription to that year must be incorrect, since the text of the king's reply to the petition states that it was made in the parliament of 16 March, 3 Henry V. This must refer to the parliament of March 1416.

²⁷⁴ '*...consideraunt le statut de Westm' le Seconde, qe v'oit qe nully ne s'roit juge sinoun p' comune ley; & autres Estatutz d'ancien temps ordeignes, nully ne seroit moleste ne greve saunz due processe de ley.*' *Rotuli Parliamentorum*, 4, pp. 91-92.

replied that he wished the matter to be terminated according to the terms of the truce, which suggests that he had accepted the petition, and that an enquiry along the lines asked by the people of Sandwich should be carried out.

No evidence has been found to indicate that this enquiry was ever made, and it is probable that the activity of the commons in the parliament held later that year (October 1416) prevented the case from being terminated.²⁷⁵ The parliamentary proceedings record that a general pardon for fines, amercements and exactions of less than 26s. 8d. made before the opening of the parliament was issued. Obviously, the amount levied on the people of Sandwich in the Kalewarts case far exceeded the amount set for the pardon. However, a further enactment made as a result of the petition of the commons, states that pardon be made to breakers of the king's peace and perpetrators of treasons who had broken truces or safe-conducts.²⁷⁶ The issue of truce-breaking was apparently discussed at some length, and several concessions made by the crown, since the commons had claimed that they had suffered in a number of ways as a result of the Statute of Truces made at the Leicester parliament of 1414. Once again the particular grievances of the inhabitants of Sandwich had intersected with those of the commons as a whole, with the result that persistent petitioning had secured a reversal of the king's will.

It will be apparent that this case, involving the government of Sandwich, Katherine Kalewarts, the warden of the Cinque Ports and the Crown coincided in some way with the production of MS Sa/LC 2. It would therefore be valuable to consider the possible links between these activities. In order to do this the course of the case needs to be examined alongside the suggested chronology of the production of MS Sa/LC 2. It has been suggested that the bulk of the manuscript (the custumal) was produced some time after May 1413,²⁷⁷ but probably before May 1414.²⁷⁸ This suggests that at

²⁷⁵ *Rotuli Parliamentorum*, 4, pp. 104-105.

²⁷⁶ 'Et auxint, de votre grace especiale pardonner, & relessier a voz ditz Lieges, la suyte de v're pees q'a Vous envers eux appartient, p' cause de ascune treson faite ou perpetre, p' eux ou ascun de eux, devaunt le dit xix jour d'Octobr' pur enfreindre de voz trieves & suaf conduytz.'

²⁷⁷ The date of Henry V's first parliament, recorded at the end of MS Sa/LC 1.

²⁷⁸ The date of Henry V's second parliament, recorded at the end of MS Sa/LC 2.

the time of its production, Sandwich was already involved in legal negotiation or inquisition concerning the capture of Katherine's goods at sea. The capture had occurred some time before March 1413,²⁷⁹ and the mayor, bailiff and gaoler of Sandwich had appeared in Chancery shortly before, or in the early part of, July 1414.²⁸⁰ It is probable, therefore, that the custumal as it appears in MS Sa/LC 2 was written at a time when the government of Sandwich was expecting to have to defend the customary rights associated with its town courts before officials of the crown. If this was the case, then it is true to say that there was abundant precedent for such a response, in the form of the original compilation of the custumal by Adam Champneys in 1300/1301, which was made in the anticipation of an appearance before the King's Bench in April 1301. This precedent may have been particularly apparent to the current government of Sandwich, led by the mayor, Thomas Loveryk. It will be remembered that two members of the Loveryk family (John and Salcock) had been amongst the group who had assaulted the royal justices over a hundred years before, in an action which resulted in a summons before the king's bench and in the writing-up of the Sandwich custumal in 1300/1301.²⁸¹ Thomas Loveryk was perhaps the only member of the early-fifteenth century Sandwich elite who could claim to have had forebears prominent in the town-government of the early-fourteenth century, and so it is legitimate to ask whether his own personal insight into Sandwich history might have influenced the way in which the town government went about defending its customary rights at this time. It may also be that the expected defence of custom in the early fifteenth century may have been only one manifestation of a series of perceived threats to the liberties and franchises of Sandwich around this time since, as had been seen there had already been attempts to obtain exemplification of the customary rights associated with the town's courts in 1407.²⁸²

²⁷⁹ Since the captors were referred to as subjects of Henry IV.

²⁸⁰ Since the commission to the warden ordering an inquisition was issued as a result of this appearance, on July 15 1414.

²⁸¹ Coram Rege Roll no. 164 (Easter 1301) m.61d., transcribed and translated in G.O.Sayles *ed.*, *Select Cases in the Court of King's Bench under Edward I*, 3, Selden Society, 58 (1939) pp. 111-112.

²⁸² See above 3. 15 ('Courts, custom and law in early fifteenth century Sandwich')

The nature of the defence made by the government of Sandwich in the warden's inquisition of August 1414 appears to confirm the fact that customary rights were under careful scrutiny at this time. At this stage, the issue appears to have been the right of the mayor, jurats and gaoler to have freed their prisoners before Katherine Kalewarts had received restitution of the goods captured by the men of Sandwich. The surviving record of this inquisition is brief, and does not provide much evidence as to the actual wording of the defence made by the representatives of Sandwich.²⁸³ However, beneath this rather bald account it may even be possible to detect the influence of the Sandwich custom itself. The portion of the inquisition relating to the case of Henry Bray, which has already been alluded to, is of particular interest. Bray is stated to have been arrested 'to answer Katherine in a plea of detinue in the king's courts of Sandwich'; and that at the first court following his arrest 'Katherine was essoined and appointed to keep day at the next court...'. Katherine did not come to that next court, or send an attorney, so that Henry Bray was released by judgement of the mayor and jurats '...according to the custom of the court.' The careful use of the customary terminology (*essoyn* and *detinue*) and the allusion to the custom of the court appear to represent the defence made by the government of Sandwich for their release of the prisoners. It might be noted that the custom does contain detailed description of the customary proceedings of the town courts in such cases. It makes provision for the granting of one essoin for either plaintiff or defendant in cases of detinue, and states that this applies both to freemen of the town and to foreigners:

'Si vero vel per plegios vel per distraccionem positus fuerit dictus defendens, venire potest ad dictum diem aut per se aut per essoniatum primo; quia nec in placito debiti; neque in placito conuencionis fracte, sicc in placito sanguinis fusi, vel *alicuius iniuste detencionis catalli, iacet nisi unica essonia: et iacet illa essonia tam inter extraneos quam inter liberos, et tam ex parte ipsius defendentis quam petentis..*'²⁸⁴

The apparent relationship between the text and the defence made in the court of St. James' may indicate the use of the custom in the court itself. The book itself may

²⁸³ *Calendar of Inquisitions Miscellaneous (Chancery)*, 7 (1399-1422), p. 275, no. 494.

²⁸⁴ Boys, *op. cit.*, p. 445. My emphasis.

have been taken into court as physical evidence of the existence of the customs of Sandwich, and as a source of reference for the defendants.

Soon after the production of the custumal itself, the two further gatherings of the present manuscript, bearing the *inspeximus* charter of Henry V and the memorandum of the Leicester Parliament, were added to it. The addition may actually have occurred so soon after as to indicate that the whole manuscript book had been planned to contain these elements. The *inspeximus* had been granted in October 1413, and the Leicester parliament was held in May 1414, and both these dates fall within the suggested margin for the production of the custumal, even when a delay between the events themselves and the subsequent copying up of the resulting document is taken into account. It is these two added elements which suggest that the custumal book was made to reflect the dealings which the Sandwich government had with powers external to the town, and more specifically as a tool for the prosecution of these dealings. The parliamentary petition in particular, suggests that the issue of local custom in Sandwich had become fused with more general political issues expressed by the commons in parliament. Sandwich appears to have perceived some connection between the preservation of its own customs and the interests of the commons from at least 1413, since it was the memorandum of a parliament of that year which was added to the previous custumal book, MS Sa/LC 1.

This fusion is exemplified by the manner in which the Kalewarts case was pursued after 1414. The issues raised in the case appear to have exploded outwards from the initial dispute over rights of gaol-delivery in a franchise, and to gather momentum from opinions being expressed by the commons of the country as a whole, particularly by that part which represented the urban burgesses, regarding law and just government. The petitions presented by Sandwich in the parliaments of 1415 and 1416 sprang from the initial dispute over the custom of their courts, but came to be based on fundamental questions of the crown's rights in relation to those of its subjects. What is particularly striking about the petitions is the invocation of the law as defence against governmental neglect of 'right'. The fine levied on the inhabitants of Sandwich is stated to be '*encountre commune droit*', since it represented summary justice. The petitions both demand that the case be considered according to the form

of *'la commune ley'*. This insistence on the due process of the law, and the prevention of summary justice is precisely the concern articulated in the commons' conditions attached to the statutes against heresy in the 1414 Leicester parliament, as recorded (perhaps uniquely) in MS Sa/LC 2. This fact apparently demonstrates that this was a primary concern, recognised in Sandwich, in dealings with the crown at this time. The coincidence of the concerns of Sandwich and those of a much broader sector of the population as represented in parliament, seems further to be suggested by the range of justificatory materials used in the 1415 and 1416 petitions. Whilst the Kalewarts case began (in the phase represented by the Chancery appearance and the warden's inquisition) with the invocation of the customs specific to the courts of Sandwich as set out in the custumal, this appears to have changed as the case progressed and the stakes were raised. The 1415 petition cites the terms of the truce with Flanders, the second Statute of Westminster, the common law, and other ancient statutes; while that of 1416 mentions: the terms of the truce, common right, Magna Carta, and the common law. These referents spring not so much from the particular customary materials of Sandwich, as from the contemporary discourse of the commons in parliament. The fact that the fine was ultimately avoided through the general reversal of the Statute of Truces in October 1416 has important implications. It suggests that the government of Sandwich identified with a more general resentment of its terms, expressed in that parliament, and that their particular case was terminated through the concerted action of a broad sector of the commons.

The suggested conjunction between the making of MS Sa/LC 2 and the activities of the government of Sandwich, in defending themselves and their liberties at law, beg questions as to how the book may have been used by those who made it. Its component parts appear to make the book a repository for reference materials used in this defence. It may therefore be possible to suggest that the book (as an object) accompanied those involved in this defence in their appearances before the courts. It has already been suggested that the pleas made before the warden's court of St. James', Dover, in 1414 may reflect the text of the custumal and perhaps the presence of the book itself. It may also be that the book was taken to the sessions of parliament in which the commons of Sandwich made their petitions in 1415 and 1416. Certainly,

the quantity and temporal variety of fifteenth century annotation in the margins of the book indicate that this book was heavily used, and was not simply regarded as a ceremonial or ritual object. The character of these annotations, which are primarily indicators to salient parts of the text further suggests the use of the book as a source of reference in practical negotiation.²⁸⁵

3.16 The later use of MS Sa/LC 2

When compared to the fourteenth century custumal (MS Sa/LC 1) this manuscript bears evidence of much more intensive use than its precursor. This is firstly suggested by the condition in which the two manuscripts are found today. Whilst the pages of MS Sa/LC 1 are remarkably clean and white, those of MS Sa/LC 2 are darkened and soiled in a manner which indicates use over a long period of time. The first and last few leaves of MS Sa/LC 1 are largely intact, whilst those of MS Sa/LC 2 are heavily worn and have been recently repaired. The contrast is heightened by comparison of the extent to which the manuscripts have been added to, or annotated. The earlier manuscript, as has been noted, appears to have been re-organised some time soon after its initial production. It also has a parliamentary memorandum (of 1413) appended to it, and a very rough table of contents written on to its preliminary leaves some time in the fifteenth century. Apart from these aspects, however, the text itself is largely free of later annotations. On the other hand MS Sa/LC 2 not only contains several texts added some time in the fifteenth century, but also numerous annotations, in a bewildering variety of hands from the fifteenth century onwards.

In view of the number of annotations to MS Sa/LC 2, and the difficulty of dating additions, which may be no more than a single letter added in the margin, or an underlining, it would be virtually impossible to provide an exhaustive and systematic account of the history of the use of the manuscript by this method. However, it is

²⁸⁵ In the form of pointing hands, the word “nota” or underlinings.

possible to characterise the sorts of annotations made, particularly in the fifteenth century, and to offer some interpretation of them.

Perhaps the most universal feature is that the annotations do not add substance to the custumal text, or alter its content, but draw attention to parts of it. This is done either by adding the word “nota” (or an abbreviation of it) to the margin of a phrase or clause, by adding a title to the clause or phrase, or by simply underlining portions of text. There is considerable variation to be noted in the degree of emphasis which has been placed on these additions, which may allow us to make some deduction about the various different acts of annotation represented. Whilst some annotations are presented neatly (sometimes calligraphically), possibly implying an intended permanence, others are less neat, and perhaps imply that they were made for a rather more immediate purpose. In order to illustrate this variation, a portion of the text which has been relatively heavily annotated (roughly ff. 19-26) in the fifteenth century, has been chosen for the purpose of illustration. The fact that this portion, which describes the relative rights of officials in the town courts, is heavily annotated is in itself significant, since it appears to illustrate that it was a part of the custumal which was particularly subject to repeated scrutiny over a long period of time.

In the left-hand margin of f.19v., the word “Nota” has been carefully written, with an almost calligraphic initial letter “N”. This refers to the clause found beside it which sets out the right of the mayor and jurats to punish freemen committing acts judged to be against the community, and which states that this right is not subject to any interference from the bailiff. On f. 26, the word “Nota” is again found, but in the right hand margin, and presented within a calligraphic scroll. This refers to a clause describing the rights of freemen to make distraint of goods belonging to their debtors dwelling outside the liberties in order to bring the debtor to court. Because of the neatness, and the apparently deliberate permanence of these two notes, it is possible that they actually formed part of the original composition of the manuscript in the early fifteenth century. However, the rather brown ink used for the second (which contrasts with the ink of the main text), and the fact that both notes are in different hands (probably representing different periods), suggest that this is unlikely.

Other less conspicuous marginal notes also refer to whole clauses, and are usually in the form of abbreviations of “Nota”. Examples of this appear at f.24 (referring to pleas of the crown to be held at the court of “Les Mastz” at Sandown); on f.24v (referring to the necessity of the presence of both mayor and bailiff at this court, and the consequent need for both officers to be resident in the town); and on f.26v. (which refers to a clause forbidding the bailiff or sub-bailiff from entering the tenement of a freeman to take distraints). All of these have been added at some time in the fifteenth century. This portion of text also contains numerous underlinings of smaller portions of text. Ff. 23-24v., which considers in detail the rights and duties of the bailiff and his officers in the town and its courts, has apparently received particular attention.

Whilst these examples are neither exhaustive nor systematic, they are a graphic illustration of the later use of this manuscript. Each of the noted portions of the text is likely to represent a point of dispute, or a matter which is potentially contestable. The noted portions described here refer to relationships between mayor and bailiff, between bailiff and community, between freemen and foreigners. As has already been seen, these relationships contain ample potential for discord and contest. The annotations, furthermore, demonstrate that the text was not only consulted as a work of reference, but also brought forward as evidence in its own right. By writing on the pages of the manuscript, the annotators were perhaps marking text for their own reference, but also probably to draw the attention of others to the substance of the customs of Sandwich. Sometimes, as in the case of underlinings or abbreviated notes this may have been for an immediate purpose of pointing out material relevant to a current case in the town courts or in other courts. However, the more conspicuous notes described also seem to fulfil the purpose of reference for the future, in the manner akin to that of a precedent. When taken together, the fifteenth century annotations demonstrate that the custumal, as written up in manuscript MS Sa/LC 2 bears a very direct relationship with contemporary practice in Sandwich. Whilst attention has previously been drawn to the rather complex symbolic status of the manuscript and its text, it is possible, from consideration of later annotations, to see a

close connection between the text and the activities of the town government in its various administrative functions.

3.17 Summary

This chapter has considered the production and development of customals at Sandwich in the period c. 1290-c. 1415. From the evidence of the surviving customal manuscripts (MS Sa/LC 1 and MS Sa/LC 2), three successive versions of the Sandwich customal have been discussed, the first of 1301, the second of c. 1351-c. 1381, and the third of c. 1413. In addition, the text of a later thirteenth century *quo warranto* enquiry has been considered as a likely precursor to first codification of the Sandwich customal.

The first codification at Sandwich, made in 1301 by Adam Champneys, has been interpreted as a response to pressure exerted by the crown upon franchisal governments to justify their liberties. This pressure was greatest at the time of the *quo warranto* enquiries themselves, but the subsequent activities of the royal justices have been seen as a crucial causative factor in the production of the Sandwich customal. Adam Champneys' text is likely to have been produced at the time of a session of the king's bench, in which the town government was required to defend itself for a violent attack made upon the justices in 1300. The nature of Champneys' enterprise has been considered in some detail, and particular attention has been paid to the sources of his text. Despite his claim that the customs of Sandwich had not previously been committed to memory, it has been shown that much of his text is drawn from documentary evidence. However, other parts of his text point to the importance of non-literate modes of transmission of custom, and there is particular emphasis given in the text to ceremony and performance. In view of the complex interplay between the oral and the literate apparent in the text, there has been cause to question the assumptions of models which have sought to make firm distinctions between these two categories.

The later fourteenth century customal (MS Sa/LC 1) has been interpreted as a recodification of Champneys' earlier customal. Evidence for the processes of

production has been considered, and the suggestion made that the manuscript may have been made over the course of a number of years. The modifications made to the text of the custumal in this codification have been considered as indications of the preoccupations of a town government in a period of crisis and dislocation in the exercise of authority. Contextual evidence from Sandwich, and of the experience of other town governments, highlights the extent to which such governments were subjected to pressure from within the communities they governed in the period after c. 1350. The manuscript has been interpreted both as a response to the demands of franchisal defence, but also as a symbolic reflection of the acts of members of the town government. A particular tendency has been noted for members of this government to seek to perpetuate their authority by making record of their administrative acts within the custumal, and by establishing other forms of remembrance, such as may be indicated by the foundation of chantries.

A new version of the custumal was made c. 1413 (MS Sa/LC 2), being a copy of MS Sa/LC 1. Once again, a specific context has been suggested for this production, associated with Sandwich's need to defend its franchises, and the activities of its inhabitants, in the king's courts. The suggestion that the book may specifically have been intended for use within the context of the courts is perhaps suggested by its size and format, which seem intended to allow acts of addition and annotation, both of which are represented by the density of later notes.

A remarkable feature of these successive productions, is the indication that custumal codes, while being qualitatively similar, might undergo considerable change of function over time. Each successive codification appears to have been a reinvention of the customs of the town, made for specific purposes, or reflecting or addressing contemporary interests or anxieties.

Chapter 4

The medieval custumal of Faversham

4.1 Introduction

In the town and port of Faversham on the North coast of Kent, there survives a single small manuscript book on parchment, which contains the only known version of the Faversham custumal.¹ The book consists of a substantial portion (which includes the custumal itself) likely to have been produced between c.1382-c.1405, together with some additional quires and text of the fifteenth and sixteenth centuries. It is intended here to examine this book in detail, giving particular attention to its early portions, as further evidence of both the manifest emergence of Cinque Port custumals in the fourteenth century, and of a new book culture associated with urban government in this century. Close consideration of the custumal text will also be offered, and demonstrates that, as has been suggested for the case of the Sandwich custumal, it contains within it a depth of compositional history which can be partially charted. In addition to the codicological and textual evidence offered by the manuscript itself, external evidence will also be considered in order to suggest ways in which the custumal text, and the book in which it was contained, may have been perceived by those involved in their production. The principal interest of this enquiry is to understand the culture associated with such productions, but this culture is to be set in the both a social and economic context, as well as in a wider political context.

A detailed consideration of the book is timely, since it has largely escaped the attentions of historians and antiquarians alike, probably due to its disappearance from the Faversham archive at some time after the late eighteenth century. It was only re-discovered in 1936, and restored to the town in the 1948, and since then only one brief article has appeared in print recording its existence.² Edward Jacob had briefly

¹ The Mayor's Parlour, The Alexander Centre, Preston Street, Faversham, MS Fa/LC 1. A full photographic copy is kept at the Centre for Kentish Studies, Maidstone, CKS TR 880/1. The book is described in this study in Appendix 1 as Faversham custumal (app.) 1.

² K.M.E. Murray, 'The Common-Place Book of Faversham', *Arch. Cant.*, 48 (1936) pp. 94 -114

mentioned a 'red book' of Faversham in his antiquarian study of the town published in 1774, which is likely to have referred to this book, but he provided very little further description of its form or contents.³ K.M.E. Murray prepared a short article discussing the book upon its re-discovery 1936, which pointed out its value to the study of the Cinque Ports confederation and which reproduced the custumal and other documents from the book in transcription.⁴ Since then no further work, as far as I am aware, has appeared in print which considers or mentions this book. The book was, however, carefully catalogued and calendared by the Kent Archives Office in 1959, at a time when the book was completely dismantled in the course of archival restoration.⁵

It may be that the manifest complexity of the later history of the book, together with the difficulty of attaching an obvious 'function' to it may have discouraged its use as a historical source. Furthermore, the lack of any firm archival context for the book, which might give clues to events and conditions related to its production, initially appears to discourage its consideration.⁶ Murray's decision to call the book a 'common-place book' in her 1936 article seems to be symptomatic of these problems. It is obvious that many of the early documents contained within it are concerned with the exercise of town-government in Faversham, and the existence of the custumal, of charters, of town memoranda and of document formulae within the portion of the book which I will argue dated from c.1382-c.1405, suggest that this is a town-book comparable to those recognised already in this study from a similar period.⁷ However, other texts now included in the book, both within the early portion and in its later additions have an apparently more miscellaneous character, less easily associable with

³ Edward Jacob, *The History of the Town and Port of Faversham* (London: J. March, 1774, new edn. ed. by John Whyman & Arthur Percival and The Faversham Society, Sheerness: Arthur J. Cassell, 1974)

⁴ Murray, *op. cit.*

⁵ The book was catalogued by J. Michael Farrar and his entry in the catalogue of what is now the Centre for Kentish Studies, Maidstone (elsewhere referred to as 'CKS') provides a detailed calendar.

⁶ The earliest systematic civic records for the town survive in the 'Wardmote book' (kept in the Mayor's Parlour, The Alexander Centre, Preston Street, Faversham), which contains information from c.1436, but which does not become a systematic record until later in the fifteenth century.

urban government in Faversham. Among these are a remarkable chronicle from the creation of the world to 1382, an archive of documents relating to Sandwich, and lengthy transcripts made in the mid-fifteenth century from the allegorical and prophetic poetry associated with John of Bridlington. While one of these texts (the chronicle) is in the same hand as the town documents described above and must be considered an integral part of the earliest production, others are later, and suggest that the book acquired a more miscellaneous character as the fifteenth century progressed. Nevertheless, the entire creation retains a unity in the fact that throughout its period of augmentation, it remained the property of the town government. A note on a rear fly-leaf, in an early sixteenth century hand, states that there were fifty four folios in the book when it was delivered by Robert Wythiot, lately mayor of Faversham to John Soole, now mayor of the same.⁸ The transfer of the mayoralty from Wythiot to Soole occurred in the year 1507. This note confirms that the book was in the keeping of the mayoralty, and was passed from one mayor to the next in the early sixteenth century. Although there may have been a change in the perceived function of the book over time, it must be considered to represent, in some way, a town book. There will be cause to examine just what this may have meant, especially in the later fourteenth and early fifteenth century in the detailed discussions of the production of the book and its texts offered below.

While the book has been called both a 'red book' and a 'common-place book' in the past, it has been decided here to abandon both terminologies as potentially misleading. The surviving binding of the book is indeed red, and the note (of 1507) on a fly-leaf already referred to describes the book as '*rubio libro*', but close examination shows the red calf binding to be a later (though presumably pre-1507) addition, placed over an earlier binding of oak boards themselves covered with plain tawed leather.⁹ This binding is evidently earlier, making the terminology 'red book'

⁷ A full calendar of the book is given in Appendix 9 ('Calendar of Sandwich MS Sa/LC 2')

⁸ MS Fa/LC 1, f. 54r. A further note of 1562, on f. 52v., states that another mayor, Thomas Norton counted the leaves of the book in 1562.

⁹ An account of this typical form of medieval book-binding is given in Christopher de Hamel, *Scribes and Illuminators*, Medieval Craftsmen Series (Toronto and London: University of Toronto Press and British Museum Press, 1992, 2nd impression 1993)

inaccurate as a description of the book before augmentation and alteration. There will also be cause to suggest that the quires of the book probably existed for some time in unbound form, before its binding in the form of a book. The term ‘common-place book’ applied by Murray also does the early book an injustice. While the book may have become a rather miscellaneous compilation by the sixteenth century, its contents in the fourteenth and earlier fifteenth century had rather more specific concerns, as will be argued. For these reasons I have chosen to call the book a ‘custumal book’, because it contains the Faversham custumal and because of its affinities with other Cinque Port custumal books.¹⁰

This chapter will tackle the complexities of the Faversham custumal book principally through detailed manuscript analysis. While account will be given of all of the book’s constituent parts,¹¹ the particular focus of this enquiry is to be the portion of the book as it existed between c. 1382 and c.1405, all of which is the work of one hand, in an attempt to throw further light on the use of custumal texts and the production of town books in the later fourteenth century. It is possible also, from the evidence of the custumal text itself, to suggest ways in which that text may have developed in the century before its writing up in its surviving form, and to infer the likely existence of earlier customary texts (such as was also suggested for Sandwich). In making this consideration, recourse will be made to the few surviving pre-fifteenth century documents for Faversham, most of which survived by chance in a single deed-box in the sixteenth-century guildhall.¹² These fragments have proved valuable in the reconstruction of the nature of urban government at Faversham, and its concern for custom in the century-and-a-half prior to the production of the custumal book. They have also encouraged the consideration of the royal records (particularly the legal records of the Chancery, but also the Close and Patent rolls) in the reconstruction of earlier Faversham history. As in the case of Sandwich, the experience of the town in relation to the king’s courts in this earlier period is of primary importance to the

¹⁰ As described in Chapter 2. 2.

¹¹ The full contents of the book are listed as Appendix 9.

¹² Documents from the Faversham deed-box now form CKS class Fa/ZB.

development of a code of written custom as found in the custumal book, and consideration will accordingly be given to it.

In a departure from the method used in the consideration of the Sandwich books, it is proposed to give first some brief consideration of the economy, society and government of the town of Faversham in the medieval period. This is not so much to set up a context into which the evidence of the custumal book can be fitted, as to avoid lengthy explanatory discursions in the close discussion of textual and manuscript evidence. Unlike Sandwich, Faversham has not been extensively studied, and it is not usually possible to refer the reader to secondary material describing economic, social or administrative evidence. Jacob's *History* has proved useful in clarifying detail, but is laconic on the subject of the development of the medieval town. No other synthesis has been attempted after Jacob's time. The administrative complexity of Faversham, which is apparent in the texts of the custumal book also needs some brief explanation in order to elucidate the purpose of the book. In particular, the lordship of the abbot of Saint Saviour's Abbey over the town needs some prior consideration. In addition, the text of the custumal book itself seems to demand that its readers consider the history of the town and its institutions up to the time of its writing. It is apparent that the makers of the book in the late fourteenth and early fifteenth century had an interest in conveying in their writings what they understood or would like to be understood of this history. It is clear by now from this study that custom and custumals make use of the sense of history and of continuity as much as they do of the concept of 'time out of mind' in the location of authority, and the custumal found here at Faversham is no exception. Furthermore, the texts associated with the custumal by their inclusion in the custumal book demonstrate a concern for history which is perhaps more marked than in any other of the texts so far considered in this study. The individual who wrote up the charters and the custumal in the custumal book also wrote up a chronicle, or history of the world from the creation, in the same volume. It is hoped that by looking at the institutional history of the town before c.1380 and, more generally, at the economic and social base of the town in the period, and by relating it to the manifest historical mentalities of the writers of the custumal book, some insight can be gained into the value attached to the texts presented in the custumal book.

4.2 The early development and administration of Faversham

To understand something of the way in which the writers of fourteenth and fifteenth century Faversham thought about their town and its administration it is helpful to consider briefly the history of the town from at least as far back as the Conquest and also into the Saxon period. This is not simply to search for urban origins, but to seek to understand an urban tradition, manifest in the texts of the custumal book, which saw the later medieval town in relation to a long historical past. The use of Saxon history in particular, in the shaping of the identity of the town, has been used even into recent times, with the naming of Victorian and Edwardian streets after the Saxon kings associated with Faversham. It may be, in the light of the evidence of the custumal book, that the fourteenth century witnessed the birth of this arguably invented tradition.

Unlike some other towns which came to form part of the Cinque Ports confederation, Faversham is not styled a borough in Domesday, which records the existence of this settlement as a royal possession with *villani* and *borderii*. These names perhaps suggest a settlement below the level of a town, and there is certainly no mention of the inhabitants as *burgenses*, or use of the term *burgo* in relation to Faversham as is found in the entries for Dover, Romney, Sandwich, Hythe and Fordwich.¹³ However, it has been suggested that the appellations applied to settlements in Domesday are not necessarily definitive, and with this in mind Domesday may be misleading in the case of Faversham.¹⁴ Despite not being styled a borough, the settlement is recorded as having a market to the value of £4, making it one of only three settlements noted in Domesday as possessing a market in Kent.¹⁵ The evidence of place-name etymology and archaeology suggest that the Domesday designation of Faversham as a royal

¹³ *VCH Kent*, 3, 197.

¹⁴ Rodney Hilton, 'The Small Town and Urbanisation - Evesham in the Middle Ages', in *Class Conflict and the Crisis of Feudalism* (1985, reprinted London and New York: Verso, 1990), pp. 114-120 (114).

¹⁵ H.C. Darby and Elia M.J. Campbell, *The Domesday Geography of South-East England* (Cambridge: University Press, 1962), p. 554. The other settlements described with markets are Lewisham and Newenden.

possession with *vilanii* and *borderii* as inhabitants, might obscure an urban or quasi-urban character in the Saxon period. The Saxon origin of the name 'Faversham', with its Latin loan-word (from *faber*) has often been commented on and taken to mean 'the smith's ham'.¹⁶ Myres notes that Faversham was, in the Saxon period a major centre of metal-working, and that it probably represented 'an important semi-urban built-up area on Watling Street' both in Roman times and into the Saxon period. He also cites the fact that Faversham was the centre of a Kentish lathe as an indication of its importance as a focus.¹⁷ The settlement was also one of the recorded sites of the celebrated legislative councils of Athelstan.¹⁸

The possibility that Faversham may have been considered a town by its inhabitants and neighbours as early as this is of more than antiquarian interest to a study of urban attitudes in the later medieval period. We know that the writer of the custumal book in the later fourteenth century knew about the Kentish Saxon past, because he wrote of its kings in his chronicle,¹⁹ and we must assume that if recent archaeology has benefited from relatively rich finds in the area, then these finds must have been even more numerous amongst the agricultural and constructional works of earlier periods. We must not assume that the medieval inhabitants of the town were any less aware of its history than we are. The fact that these people almost certainly knew that their settlement had been a prosperous and populous centre in the past must have important implications for our ideas of the development of urban institutions and culture. Certainly, it must modify any remnants of constitutionalist arguments as to emerging urban liberties in the twelfth and thirteenth centuries. If the inhabitants fought tenaciously (as they did) for liberties from both their lord and from the king at this time, it was probably not so much a result of a naturally emerging desire for urban liberty, but of a desire to defend what were seen as existing liberties and customs held from the pre-conquest period, in the face of seignorial and royal

¹⁶ Jacob, *op. cit.*, p.2; E. Ekwall, *Concise Oxford Dictionary of English Place-Names*, (Oxford: Clarendon, 1960)

¹⁷ J.N.L. Myres, *The English Settlements* (Oxford: Clarendon, 1986) p.125.

¹⁸ F.M. Stenton, *Anglo-Saxon England*, *The Oxford History of England* (Oxford: University Press, 1943, third edition, reprinted 1985), p. 349.

¹⁹ Fa/LC 1, ff. 30r-33v.

oppression in these centuries.²⁰ It is clear that by c.1380 when the custumal book is likely to have been begun, Faversham was a very ancient settlement, and an ancient town at that, and this must have lent credence to the claims made throughout the text that Faversham had held liberties from the distant past. There is no doubt that the writers of the book knew something, however hazy, of this period *before* the time of the foundation of St. Saviour's abbey in 1147, when Faversham was already a prosperous centre of production and administration with direct connections with the crown.

It is this knowledge which seems to stand behind the conflict, and occasionally violence which characterised the period after the foundation of the abbey, particularly in the later thirteenth century, when the assertion of urban status becomes a characteristic motif. The history of this conflict is of great importance not only to the understanding of the government of the town, but also, of the development of concepts of custom and, ultimately, of the writing of the custumal at Faversham. Just as the evidence at Sandwich points to the later thirteenth century as a crucial period of definition of the town (to the extent that documents produced as a result of negotiation between the king and the town can be seen as prototype custumals), so at Faversham there is evidence of a crystallisation of ideas of the town and of its customs partly born out of conflict with its lord, the abbot at this time.

On the foundation of St. Saviour's abbey in 1147 by Stephen and Maud, the settlement into which it was planted, which had been a possession of the king was

²⁰ It is perhaps not irrelevant to point out that what were seen as anciently-established craft specialisms associated with the town may have played some part in the way in which certain inhabitants of Faversham asserted their political personalities as late as the mid-fifteenth century. It may be more than coincidence that prominent members of the political rebellions of that century from Faversham were drawn from the metal-working crafts. William Parmynter, whom rebels from Faversham and elsewhere accepted as the 'second captain of Kent' in Jack Cade's rebellion of 1450/1 was a Faversham smith, while one James God, who was prominent in no less than three uprisings or attempted uprisings, including Cade's, was a lead-worker of the town. For Parmynter's involvement in Cade's rebellion see I.M.W. Harvey, *Jack Cade's Rebellion of 1450* (Oxford: Clarendon, 1991) pp. 134- 7, 152, 157, 199. For James God's activities see *CPR 1429-1436*, p. 518; *CPR 1446-1452*, p. 423; *CPR 1461-1467*, p. 355.

granted to the house for its sustenance.²¹ The abbey itself was colonised from the Cluniac Benedictine house of Bermondsey. Those who had previously held their lands and tenements in Faversham directly from the king were now tenants of a resident ecclesiastical lord and owed service to him. As a monastic possession, the town seems initially to have flourished, partly because of the demands of the abbey itself and partly because of the grants arising from the continued royal interest in this foundation. Henry II granted an eight-day fair, freedom for men of the manor from tolls throughout the realm and valuable fishing rights in the vicinity of the town.²²

At Faversham, words which are associated with urban status, such as 'burgess', 'burgage' or 'mayor' do not appear in the records until the second half of the thirteenth century, and this must in part be due to the careful control which the abbey exercised over the communal activities of the inhabitants of the town which threatened its own authority and income. Even when such words do begin to appear, it is clear that they were the subject of vigorous dispute. William Thorne, chronicler of St. Augustine's abbey, Canterbury, writing in the later fourteenth century mentions an early thirteenth century dispute in which '*universitas Burgensiam de Faversham*' took the unusual step of writing to the Pope concerning the right of the abbot of St. Augustine's to the church of Faversham in 1201/2, which might imply the perception that Faversham inhabitants were 'burgesses' in the early thirteenth century.²³ This however may be a projection of terminology by Thorne to the previous century, but the reference is interesting since it is evidence of the perception of a fourteenth-century monastic chronicler of communal activities of townsmen in the thirteenth century, the period in which towns developed distinctly 'urban' characteristics and distinct administrations.²⁴ A memorandum of a *quo warranto* case heard in the king's

²¹ For the foundation of St. Saviour's and its subsequent history see *VCH Kent*, 2, p.137.

²² *Ibid.*

²³ *William Thorne's Chronicle of St. Augustine's Abbey, Canterbury*, ed. by A.H. Davis (Oxford: Blackwell, 1934) p.143; *Historiae Anglicanae Scriptore X*, ed. by Roger Twysden, (London: Jacob Flesher & Corneli Bee, 1652) p.1848.

²⁴ A survey of evidence for the establishment of distinct urban administrations and identities in this period is given by G.H. Martin in 'The English Borough in the Thirteenth Century' *Transactions of the Royal Historical Society*, 5th series, 13 (1963), reprinted in Richard Holt and Gervase Rosser, eds., *The*

courts of 1258 among the documents surviving in the Faversham deed-box is headed with the assertion that it represents the claims of the *‘Maior et Baronibus de Faveresham’* and is thus the earliest surviving mention of the existence of a mayor in the town.²⁵ However, other accounts deriving from the royal record of this manifestly important case of 1258 (one of which came to be written up with the late fourteenth century custumal), which will be examined below, clearly style the chief officer of the town ‘alderman’ and outline his subservience to the abbot.²⁶ This is likely to indicate a degree of conflict over the precise status of town government at this period, with the term ‘mayor’ being resisted by the abbot on account of its overtones of urban liberty.²⁷ The royal charter granted to Faversham in 1252 does not mention the existence of a mayor, being granted only to the *‘baronibus’* of the town.

In the years following 1258 there are though definite indications of a developed civic administration at Faversham with some independence from St. Saviour’s, despite the apparent opposition of the abbot. There are fragmentary remains of records of fines made in a borough court from the year 1295, and another document of that year at Faversham, being a bond in the name of the mayor and *‘communitatem’* to pay the keeper of Edward I’s wardrobe 24 marks in payment for negotiations concerning the community, is sealed with the common seal of the town.²⁸ This latter is the earliest dateable document bearing the common seal, and is testimony to the existence of an

English Medieval Town; a Reader in English Urban History, 1200-1540 (London and New York: Longman, 1990), pp. 29-48

²⁵ Now CKS MS Fa/ZB 4.

²⁶ Extant records of this case which style the chief officer of the town ‘Alderman’ are Fa/LC 1 (the custumal book), ff. 7v-9v, and a fourteenth century Chancery record in which the original 1258 case was examined and its proceedings transcribed: PRO C 260/93 no. 8 (Chancery Misc.).

²⁷ Jacob, *op. cit.*, pp. 18-19. Dispute over the naming of urban officials in the thirteenth century occurred also at Bury St Edmunds, where burgesses claimed, in 1292, the right to a mayor as their chief officer to replace the ‘port reeve’ who was politically subservient to the abbey. The abbot refused to accept an official called ‘mayor’, and a compromise was reached with the styling of this office ‘alderman’. Robert S. Gottfried, *Bury St. Edmunds and the Urban Crisis: 1290-1539* (Princeton, New Jersey, U.S.A: Princeton University Press, 1982), pp. 132-134.

²⁸ For the Faversham feet of fines see CKS Fa/JBf 1. The 1295 sealed bond is kept with the charters in the Mayor’s Parlour at Faversham.

aspiration to full urban status in Faversham, and of the apparatus needed for the collecting, keeping and spending of money in the name of the town as a whole.

Despite these manifest developments in civic administration, the townsmen of Faversham failed to gain more than partial self-government in the later medieval period. The abbot only tolerated the presence of a borough court (the portmanmoot) which was, at least nominally, under his control.²⁹ Although the alderman and a group of twelve others sat in this court, it remained under the supervision of the abbot's officials. The abbot also continued to demand suit of court and to take customs and services from the townsmen throughout the fourteenth and fifteenth centuries. The extent to which the demands of the lord impinged upon the prosperity of the townsmen is not quantifiable in view of the paucity of systematic records surviving in this period. However, the existence of an early fourteenth century memorandum surviving amongst the records of the Faversham deed-box, elucidates something more of the relationship between the town and its lord, and of urban aspiration in Faversham.³⁰ It also tells us a great deal of the way in which written codes of custom may have developed in the town. The document in its surviving form is the undated record of an enquiry, probably made in the early years of the fourteenth century, and a search of the chancery miscellanea reveals that it was drawn up in connection with a *quo warranto* case brought by the abbot in the court of the king's bench, in 1304.³¹ In this case, the inhabitants were required to show by what warrant they claimed certain liberties. The version of the case surviving at Faversham represents the answers made by representatives of Faversham to articles issued by the abbot in that court.³² This townsmen's memorandum is a small, asymmetrically-cut single sheet of parchment, which has suffered considerable later wear, bearing nine or ten clauses each beginning with a *paraphus* mark. The wording which begins these clauses

²⁹ Murray, 'The Common-Place Book of Faversham', pp. 93-95)

³⁰ CKS Fa/ZB 7.

³¹ PRO C 260/74 no. 27 (Chanc. Misc.)

³² There is evidence that royal justices attempted to make enquiry into the liberties of Faversham in their circuits of the 1290s (in which the Sandwich liberties were probably also scrutinised) but that they were subsequently commanded to allow the town to retain all its liberties: CKS Fa/ZB 46 discussed in Felix Hull 'John de Berwyke and the Consuetudines Kancie', *Arch. Cant.*, 96 (1980), pp. 1-15, (p. 3)

typically consists of '*In illo articulo...*' or '*Quo ad illum articulum...*' which confirm that it represents a reply to the enquiry recorded among the chancery miscellanea, which must itself have been set out in clauses or articles.

The first two articles of the document concern the jurisdiction of the abbot's own three-weekly court. The community claims, in the first article, that though the abbot demands suit from them at this court, they have never been accustomed to do this suit, save through the attendance of the mayor and jurats at the court, and further, that no suit is due at all between the September 8 and November 30.³³ The second article continues by addressing the matter of a sum of 21 pence which has been levied by the abbot for non-attendance at the court, and states again that only the mayor and jurats need attend, and that others cannot be amerced for non-attendance. The third and fourth articles concern the jurisdiction of the abbot's officials. It has been claimed by the abbot that the townsmen will not submit to his '*virgarius*' (it is not clear whether this refers to an officer or simply the notion of the abbot's 'verge', or rule) and the townsmen state that they have an official called a serjeant. They further state that the abbot himself agreed to this in an earlier composition ('*convencione*') . They also have disputed the rights of the abbot's 'keeper' ('*custos*'). Following these, there are four articles addressing claims made by the abbot to tolls in the town market and to the assizes of bread and ale. Tolls of '*Gavelsestre*' and '*Fenestrage*' taken by the abbot at the market, are stated to be extortions, and the townsmen claim that that they have *by custom* been free from the payment of other market tolls. Concerning the assize of bread and ale, they assert that no baker or brewer is to suffer punishment by pillory or tumbrell for their breaking. The final article concerns the abbot's right to control the election of the chief officer of the town, or alderman, and states that according to the charter the king has granted to all barons of the Cinque Ports *who have mayors*, the right to freely elect them.³⁴ This last article demonstrates the aspiration that the chief officer called 'Alderman' should be chosen in the same way as the mayors of other ports.

³³ The time of the Yarmouth herring-fair.

³⁴ The use of the words 'mayor' and 'alderman' in the same document, referring to one and the same official, appears to be another illustration of the conflict which surrounded the status of the townsmen's chief officer.

The claims drawn up in this way by the community of Faversham represent a significant point in the definition of the borough and its liberties. The early years of the fourteenth century represented a period of crisis in the relationship between the town government and its lord, and it was at this time that townsmen gained limited quittance from tolls formerly levied by the lord, in return for an annual 'rent' of ten pounds payable to the abbot. This arrangement was confirmed by the king, who in 1310/11 confirmed by letters patent a composition between abbot and town in which were confirmed certain of the liberties claimed by the townsmen in the document considered above.³⁵ The abbot gave up his right to the customs of *gavelsestre* (1^{1/2}*d* payable on every brewing exposed for sale) and *fenestrage* (1^{1/4}*d* from every vendor selling at his window on Saturday), as well as tolls on resident merchants not holding in chief from him, and to other residents and their kin and heirs. The townsmen were to grant to the abbot ten pounds yearly until such time as they purchase for the abbey lands to the value of ten pounds in the county of Kent.

The written definitions of the settlements made at this time did not however put an end to dispute between lord and tenants over limits of jurisdiction in the town. The royal record of the *quo warranto* case of 1304 is itself embedded in a later record of a further enquiry ordered in 1363 probably associated with the confirmation of the Faversham charter by Edward III in 1364.³⁶ This 1363 enquiry was particularly detailed, and involved the viewing in chancery of not only the records of the 1304 case, but also that of 1258. A further enquiry was made, which also considered the 1304 case in 1381.³⁷ This last enquiry may be of great importance to the understanding of the production of the Faversham custumal book, which as has been suggested may have been begun c.1382.

Murray examined a number of these cases, and gives an account of developments in the constitution of the town from the mid-thirteenth century, when jurisdiction rested

³⁵ *CPR 1307-1313*, p.322.

³⁶ Mayor's Parlour, Faversham.

³⁷ PRO C. 260/93 no. 8. (Chanc. Misc.)

largely in the hands of the lord, to the time of the custumal.³⁸ The thirteenth century abbots held their three-weekly (hundred court) and presided over the town's portmote (akin to a borough court); they were controllers of the market and its profits; of the assize of weights and measures, as well as hearing pleas of strangers within the town. By the time that the custumal was written up in its surviving version of c. 1400, many of these powers were now in the hands of townsmen. They had claimed exemption from the assize of ale, had come to control civil and strangers' pleas (though these were still technically presided over by the abbot), had some jurisdiction in pleas of land and had firmly established the office of the mayoralty. Murray further argues, with good reason that the custumal was probably in existence by 1356, and so it can be seen that the century between roughly 1250 and 1350 saw very considerable developments in the definition of urban franchise at Faversham, and the sustained assertion of an urban identity on the part of the townsmen.³⁹ Judging by the evidence considered here for conflict in the years around the turn of the thirteenth and fourteenth centuries, it would seem that many of these changes occurred at this particularly litigious time.⁴⁰ As at Sandwich, the whole issue of urban franchise seems to have been particularly prominent at this time. Faversham saw fit to obtain its own copy of *Magna Carta* in 1300, while in 1301 the justice Edmund Passelewe was given an annuity by the town as a retainer, for counsel, aid and service, presumably in the king's courts.⁴¹ It will be remembered that this was precisely the time at which the neighbouring port of Sandwich made its arrangements to retain that other lawyer, Robert of Sturry, to work on behalf of the town. The same Robert acted also for Faversham, accompanying members of the town government to negotiations in Canterbury and London from 1305, and being granted an annuity in 1310 of ten

³⁸ Murray, 'The Common Place Book of Faversham', *loc. cit.*, 93-94.

³⁹ Murray, 'The Common Place Book of Faversham', *loc. cit.*, 93-94.

⁴⁰ This is clearly comparable to the pattern at Sandwich.

⁴¹ Faversham's copy of *Magna Carta* is kept with the other charters in the Mayor's Parlour, Faversham. For Passelewe's retainer see J.R. Maddicott, *Law and Lordship: Royal Justices as Retainers in thirteenth and fourteenth century England*, (Past and Present Supplement 4, 1978), p.29.

marks for counsel to the town.⁴² The Faversham evidence, taken together with that already considered for Sandwich, for very considerable expenditure on litigation, administrative writing, the retaining of justices and the obtaining of confirmations can only strengthen the view that the years around 1300 represent a period of anxiety over the very existence of urban liberties in these towns, and the consequent definition, and codification of claims of urban franchises and customs. While this is most spectacular at Sandwich, with the composition of the custumal by Adam Champneys, the survival of the document of articles at Faversham which has been considered above suggests comparable activity here, albeit on a lesser scale.

The role played by the increasing association of Faversham with the Cinque Ports confederation in the enlargement of urban franchises at Faversham has been stressed by Murray, and it is probably true that the naval service provided by the town in the later expeditions of Edward I secured valuable patronage for the town.⁴³ In addition to the charters granted to Faversham as a town in its own right are also two charters (of 1260 and 1298) granted by Henry III and Edward I giving official recognition to the town's association with the Cinque Ports confederation, an association which had already developed informally. The surviving evidence from the fourteenth and fifteenth centuries relating to the government of the town, including the custumal book itself, suggests that in these centuries much of the energies of the leaders of Faversham was taken up with the maintenance of an advantageous position within the confederation. This appears to have been no simple task, since it involved the securing of favour from no less than three parties: the crown, the warden, and the head-port of Dover. To each of these, Faversham was in some way politically subservient. The custumal book contains two documents concerning the relationship between the limb of Faversham and its head-port of Dover, both of which were written, at different times in the fifteenth century, as additions to the existing book. The first is an indenture made between Faversham and Dover in 1394, concerning its contributions to the common costs of the Cinque Ports, written in an early fifteenth

⁴² For Robert of Sturry's counsel to the town see *HMC Sixth Report*, 1, pp. 500-505b. For his annuity paid by the town see CKS Fv/13 (Faversham 1310).

⁴³ 'The Common Place Book of Faversham', *loc. cit.*, pp. 94-95.

century hand.⁴⁴ Faversham asserted that it would only contribute to these costs if it were fully informed of the way in which the money was to be spent as agreed between head ports at the annual meeting of their Brodhull. Murray writes of this agreement and its stringent terms as evidence of ‘a sturdy independence’ on the part of the town of Faversham, and seems to be confirmed by the sense of identity which was invested in the custumal book itself. The second document dates from 1438, and has also been inserted by a later hand. It records an agreement whereby the charge paid by Faversham to Dover for all Cinque Port service except ship-service is set at 40s and a gift to the Lord Warden at Shepway, and in which provision is made (for the first time) for inhabitants of Faversham to be included in the election of the members of Parliament returned by Dover.⁴⁵

4.3 Economy and Society in medieval Faversham

Although the history of the relationship between the town and the feudal institutions to which it was subservient, clearly tells us something of the way in which its inhabitants came to define their town, it can only give us incidental insights into the economy and society of the town. The inclusion of political documents in the custumal book as described tells us about the immediate occasions of production from which the book arose, but it is harder to account for the changes in relationship between the key players in these events (the abbot, the crown, the warden etc.), without some external evidence of economic and social change. Some consideration of this evidence is essential if the custumal book is to be understood in its context. The general lack of surviving systematic records for Faversham before c.1450, however, makes it very difficult to discern trends of growth or decline in the fortunes of the town and its neighbours, and even to be certain of the basis of the economy of

⁴⁴ Fa/LC 1, ff. 27r,-28v; Murray, ‘The Common Place Book of Faversham’, *loc. cit.*, pp. 110-114 (transcript) and p. 95 (discussion).

⁴⁵ Fa/LC 1, f. 41v; and see Murray, ‘The Common Place Book of Faversham’, *loc. cit.*, p.110n.

Faversham. What information we do have must be gleaned from scattered references, principally in the royal records, and from the evidence of the region as a whole. They only provide a partial picture, but it is one which needs to be considered.

As has been seen, Domesday did not describe Faversham as a borough, but it does mention that it possessed a market. The valuation of £80 for 1086 represents a £20 increase on the figure for 1066, and so some early growth might be speculated. The foundation of the abbey in 1147/8 probably brought an increase to existing economic activity with increased demand for goods and services, which have been seen to be instrumental in urban development in the twelfth century elsewhere.⁴⁶ Charters granted to the men of the manor later in this century by Henry II may either have stimulated prosperity, or simply reflected an emerging growth, with the grant of an eight-day fair, quittance from toll throughout the realm and grant of coastal fishing rights.⁴⁷ The most obvious signs of physical growth occur in the later thirteenth century, when the abbey founded a 'new town' beside the old, though as will be seen the confidence of this foundation may have concealed economic problems of the abbey itself, and perhaps outside its walls in the town. The new town consisted of a street (running roughly North-South) adjoining the East-West axis of the existing settlement. The taxation of the manor of Faversham was valued at £133 6s 8d in this period, but it has been suggested that this was an overvaluation, in view of the coinciding problems experienced by the abbey.⁴⁸ As early as 1275 an abbot was deposed for failing to maintain the abbey and for allowing it to fall into debt to merchants and to others, with the King bringing the abbey into his own hands, appointing custodians for its remedy. These problems seem not to have been simply a passing phase and the fortunes of the abbey continued to be depressed in this way well into the fourteenth century, when another abbot was forced to resign in 1325 for very similar failings.

⁴⁶ Hilton, 'The Small Town and Urbanisation - Evesham in the Middle Ages', *loc. cit.*, *passim*.

⁴⁷ *VCH Kent*, 2, p. 138.

⁴⁸ *VCH Kent*, 2, p. 138.

It would be valuable to know how the fortunes of the abbey reflected the fortunes of the town or otherwise. It may be that the early fourteenth century crisis in abbey revenues resulted from similar problems in the town itself, but such a simple reflection seems unlikely. As has been seen, it is precisely at this time that dispute between the abbey and town is at a peak, and in which the government and administration of the town appears to have been crystallised. The persistent declaration of independence by townsmen from aspects of the lord's jurisdiction which accompanied this may represent a more complex economic and political relationship between lord and urban tenants. It might be possible to interpret the ambitions of the townsmen of this period as a sign of their relative strength and prosperity, since it has been seen that negotiation at the level of the king's courts involved considerable expenditure by the town, but this is not the only interpretation. It may also be possible to shift the emphasis and suggest that the ambitions of the townsmen in their control of the administration of the town may have been factors, in themselves, in the economic crisis of the abbey. The list of complaints of extortion and interference found in the early fourteenth century reply to articles issued by the abbot already considered may be evidence of a systematic refusal to contribute to the economy of the abbey through tolls and the profits of justice. The activities of the abbey in its recourse to law and to the courts which are implied by the evidence, suggest that dispute arose through reactive pressure exerted on inhabitants of the town, in an attempt to salvage diminishing revenues. It was this pressure which I would suggest resulted in the crystallisation of notions of the town and its customs, evidenced by the writings considered above, and ultimately paved the way for the full codification of the Faversham custom in the future.

On present evidence it is impossible to gauge the relative fortunes of abbey and town at this time, and above all, this is testimony to the impossibility of separating the political from the economic in medieval urban politics. The coincidence of constitutional development with economic crisis, and crisis in the relationship between a lord and urban tenants, remains however valuable in our estimation of the symbolic status of the town and its institutions. An awareness of this symbolism must be central to the assessment of the customal book.

It becomes possible in the later fourteenth and earlier fifteenth centuries to gain a more detailed picture of economic activity in Faversham, from incidental material contained in the Close and Patent rolls. Such sources do not allow the confident reconstruction of trends, but allow an impression to be formed of the trade and occupations of the inhabitants of the town, and also of their contacts with a surrounding region. This latter is crucial in the understanding of urban cultures, and is of value to our understanding of writing and writers in this town. A general account of aspects of later medieval Kentish economy and society has been given by I.M.W. Harvey in the introductory chapters of her *Jack Cade's Rebellion of 1450*, and much of this is applicable to Faversham history; in particular, the recognition of a region, largely defined by geography and trade, linking the North coast of Kent with coastal regions of Essex on the other side of the Thames estuary, and most especially, with the city of London.⁴⁹

The Close and Patent rolls give the impression of an established and possibly vigorous water-borne trade between Faversham and London, and especially of close contacts between London merchants and Faversham inhabitants. For the most part, the recorded trade appears to be domestic, though it seems clear that some of the goods (especially wool) taken by water to London were ultimately destined for the continent.⁵⁰ Much of this trade was actually in the hands of London merchants (variously styled grocers, woolmongers and drapers) who used Faversham as an outpost for Kentish produce.⁵¹ In most cases, Faversham men seem to have been involved in these transports as accessories, that is, as shipmen and packers, but there are a few references to Faversham merchants, including a vintner and a mercer,

⁴⁹ Harvey, *Jack Cade's Rebellion of 1450* (Oxford: Clarendon, 1991), chapters 1 and 2.

⁵⁰ For examples of trade with London which was apparently domestic: *CPR 1422-1429*, p. 457; *CPR 1429-1436*, p. 251; *CCR 1429-1433*, pp. 21 and 152. For goods taken to London (principally wool) to be customed for subsequent export: *CCR 1341-1433*, pp. 550 and 684, *CCR 1377-1381*, p. 168)

⁵¹ For London merchants shipping goods from Faversham: *CPR 1385-1389*, p. 405; *CPR 1422-1429*, pp. 457 and 535; *CPR 1429-1433*, p. 152)

shipping goods on their own account.⁵² The records for actual shipments are matched by frequent records of implied transactions between London and Faversham men, and there are frequent enrolled recognisances of debts owed by those of Faversham to those of London.⁵³ Among these references, and elsewhere there is evidence of an arrangement which existed, at least in the fourteenth century, where sons of Faversham men acted in London, for their fathers who remained in Faversham. In 1347 Nicholas Daugh, John Dod and Richard Daugh, named as sons of three Faversham men, were outlawed in the London hustings court for failing to appear before the king's bench at the suit of Henry Wymond. Wymond, who is styled woolmonger and citizen of London had brought the case in order that the three sons should 'should render account to him for the time when they were receivers of his money.' This implies that these men (and their fathers) were acting as accessories in Wymond's trade through the port of Faversham.⁵⁴ Two further records record debts of men named as sons of Faversham men to London merchants, and in one of these the debtor is described a packer, again suggesting participation in wool shipping from Faversham to London.⁵⁵ Further evidence of a strong Faversham-London connection in the fourteenth century is provided by references to Faversham men in the plea and memoranda rolls of the city of London.⁵⁶ It is noticeable that in comparison with the size of the trade with London, such direct trade with the continent as there are indications of, seems to be a relatively minor component, and is in many cases in the hands of merchants from elsewhere. This indicates that it would be unwise to draw close parallels in the later fourteenth and fifteenth centuries between the fortunes of Faversham and towns such as Sandwich, whose more extensive overseas trade suffered periodic, and often serious set-backs as a result of war and foreign policy

⁵² For Faversham merchants: *CPR 1429-1436*, p. 314; *CPR 1436-1441*, p. 205; *CCR 1377-1381*, p. 168.

⁵³ *CPR 1348-1350*, p. 16; *CPR 1429-36*, p. 314; *CPR 1436-1441*, p. 205; *CPR 1452-1461*, p. 624; *CPR 1467-1477*, p. 581; *CCR 1337-1339*, p. 127; *CCR 1341-1343*, p. 550)

⁵⁴ *CPR 1348-1350*, p. 16; *CCR 1346-1349*, p. 381.

⁵⁵ *CCR 1337-1339*, p. 127; *CCR 1341-1343*, p. 550.

⁵⁶ *Calendar of Plea and Memoranda Rolls preserved amongst the archives of the Corporation of London at the Guildhall*, ed. by A.H. Thomas (Cambridge: University Press, 1926) 1323-64, pp. 198—199; 1364-1381, p. 111.

decisions. Faversham's more coastal trade may have been less susceptible to these set-backs. It should, though be noted that the records may not give a complete picture of foreign trade from Faversham, since only illegal shipments came to be recorded.⁵⁷

While these sources cannot give an accurate impression of the totality of merchant activity at Faversham, they do underline the importance of London in the life of this small town. This influence was noted by Harvey as being a defining factor in the cultural identity of much of the south-east, especially of settlements on the land bordering the Thames estuary.⁵⁸ It would seem that Faversham men were frequent visitors to London, and were frequent participants (whether willingly or unwillingly) in the administrative life of the capital appearing with some regularity in both the urban courts of London, and in the royal courts. From this evidence we should expect a relatively sophisticated appreciation of legal and administrative process, and also of political events among those men and their contacts. There will be cause to consider this influence more closely in the discussion of the fifteenth century custumal book.

In addition to these aspects of trade, the activities associated with war, provision of shipping, and the provisioning of armies and garrisons should also be considered, since they have rightly been recognised as a central (if not always beneficial) component of the Kentish coastal economy.⁵⁹ Like other coastal towns in the region, Faversham played a part, whether willingly or not, in this. From the 1250s onwards, commissions for ships from Faversham are regularly included amongst those issued to the Cinque Ports, and to other Southern ports for muster for defence or in military expeditions.⁶⁰ It is therefore no surprise that a copy of Henry III's 1260 charter to the Cinque Ports was obtained by Faversham in confirmation of its contribution to ship-

⁵⁷ *CPR 1396-1399*, p. 441; *CCR 1313-1318*, p. 704; *CCR 1337-1339*, p. 590; *CCR 1341-1343*, p. 628; *CCR 1343-1346* pp., 69, 205, 241-2, 255-6 (the same case), 466-7)

⁵⁸ Harvey, *op. cit.*, pp. 21-22.

⁵⁹ Harvey, *op. cit.*, pp. 12-14

⁶⁰ The first mention of Faversham amongst these commissions is from 1254, see *CPR 1247-1258*, p. 363.

service.⁶¹ In addition to the regular contribution of shipping, in the late fourteenth and fifteenth centuries, the town appears to have operated as an outport for goods to be taken abroad for the provisioning of armies, and more particularly for the provisioning of the garrison of Calais.⁶² It has been suggested that this particular enterprise brought with it a whole series of other demands, which benefited merchants, craftsmen, and providers of hospitality in the region, and this probably applied to Faversham.⁶³ As well as possible benefits, however, it is clear that when demand for men and supplies was at its highest, supplies were purveyed by royal officials by force and without guarantee of payment, and opposition to this purveyance is a consistent feature of the relationship between Cinque Port towns and the crown.⁶⁴

The royal records are not the most useful of sources for the reconstruction of town economies below the level of merchant activity, but they can be used to tell us something of the occupations, trades and crafts in the medieval town. In addition to the metal-working crafts which have already been noted, Faversham, in the fourteenth and fifteenth centuries appears to have had numerous craftsmen associated with leather-working and clothing including: skimmers; tanners; unspecified leather-workers; cordwainers; hosiers and glovers.⁶⁵ These craftsmen almost always appear in the records in recognisances in which they acknowledge debts to either London merchants or craftsmen. The pardons issued in 1450 and 1451 to inhabitants mention additional craftsmen including three brewers, two butchers, a fishmonger, a

⁶¹ Kept amongst the other charters in the Mayor's Parlour, Faversham.

⁶² *CCR 1377-1381*, pp. 21, 38, 202; *CCR 1385-1389*, pp. 55, 375, 390; *CCR 1389-9*, p. 226; *CCR 1413-1419*, p. 214; *CPR 1413-1416*, p. 306)

⁶³ Harvey, *op. cit.*, p. 13.

⁶⁴ When an Ospringe mole-catcher who tried to implicate the mayor of Faversham, John Seyncler in a plot to murder the king in 1440, he thought it relevant to mention in his evidence to the Bench that Seyncler had told him that not only did the French war and the high price of grain cause destruction in the realm, but so also did the taking of corn by the king and by certain other lords. This mole-catcher, in his probably fictitious account, was making creative use of a widely held grievance against the king's purveyors. See R.L. Storey, *The End of the House of Lancaster* (Gloucester: Sutton, 1986), p.204.

⁶⁵ *CPR 1396-1399*, p. 442; *CPR 1422-1429*, p. 252; *CPR 1358-1361*, p. 513; *CPR 1429-1436*, pp. 548 and 447; *CPR 1467-1477*, p. 601.

soapmaker and a weaver.⁶⁶ It seems that Faversham's long-standing reputation as a brewery town was established as early as the fourteenth century, where domestic brewing was a major occupation. In 1327 84 ale-wives are listed among a total of 252 tallage-payers. It is likely that such a major component of the economy had the potential to provide a considerable income for the town government, and this would appear ample motivation for the town to claim custody of this assize from the abbot. The fact that they had attained this custody by the time of the writing of the custumal in the custumal book may indicate considerable advance in the extent of urban self-government.⁶⁷

4. 4 Description of the Faversham custumal book (Fa/LC 1)

Fa/LC 1 is a manuscript book, containing 56 parchment leaves, each measuring approximately c. 195 mm x 140 mm. It is currently bound in modern calf-backed wooden boards, with each quire mounted on guards. This binding was added during restoration in 1959. The original binding has been separately preserved. It consists of two wooden boards, with the remains of double sewing-cords and their securing pegs, and with two channels cut in the outer edges of the lower board for leather straps and clasps. These boards were covered with tawed leather, and survive beneath a later red leather binding with yap-edges. This red binding bears recent leather straps, with brass clasps of some antiquity, and which are perhaps early. It is probable that the addition of the red leather binding was made before the early years of the sixteenth century, since a note on f. 54 (the leaf originally forming the rear paste-down) which was probably written in either 1504 or 1509, calls the manuscript 'red

⁶⁶ CPR 1446-1452, pp. 423, 453, 493

⁶⁷ For tallage of 1327 see Edward Miller and John Hatcher, *Medieval England: Towns, Commerce and Crafts 1086-1348* (London and New York: Longman, 1995) p. 75.

book', and is written on only the left hand portion of the leaf⁶⁸ The remains of the red leather binding retains a flap which would have been pasted over the right hand portion of the leaf, and this is confirmed by staining to that portion The note is likely then to have been added after the book was placed in the red binding

As has already been noted, the book contains a variety of materials and represents a long period of production and augmentation. While a proportion of the book (ff 5-38, i e. quires 2-5) is unified by the work of a single hand, the remainder consists of the added parchment quires of the fifteenth and sixteenth centuries, and the addition of a considerable number of later texts. A complete collation of the manuscript, together with a calendar of all of its texts (noting dates given within them) is presented in Appendices 10 and 12. The construction of the manuscript is represented in the folding diagram bound at the end of this study.

4.5 Hands and scribes in the Faversham custumal book⁶⁹

The manuscript may contain as many as ten different hands, one of which may date from between c 1382 and the first decade of the fifteenth century, five others from the fifteenth century, and the remainder from the sixteenth and seventeenth centuries Combining stylistic analysis of these hands with consideration of the codicology of the book allows us to suggest a sequence of production for the manuscript, and so careful consideration of hands is valuable. In some cases an approximate date can be assigned to these hands through consideration of the documents which they write However, the variety of hands can be meaningful in terms other than the merely chronological The striking appearance of much of the custumal book results from the sheer quality of the hands represented, and this quality must be explained in terms of

⁶⁸ 'Continet' in iste rubio' libro script & non script' Liii fol' delib'at per me Rob'tus Wythiott n ip maiorem Ville de ffav sh'm Joh'e Soole nunc Maior eiusdem ville ' Wythiott was mayor in 1504 and 1509.

the people who produced these writings. It would seem that the Faversham custumal book represents something unusual in the broader context of urban administrative writing of the period, and this needs careful examination. In particular, it requires some explanation of the relationship between such manifestly skilled clerks and the small provincial town for which they were writing in the custumal book. It seems unlikely that these writers can be simply described as 'town clerks' of Faversham, even if we were able to prove that this was in fact their role. Firstly, there is no explicit evidence that any of them were town clerks, and secondly, their experience, as evidenced by their writings, extended well beyond the confines of the town.

Appendix 11 gives a descriptive account of the principal hands (which are labelled hands 'a' to 'f') and their location within the manuscript, which can be used as a basis for the reconstruction of the sequence of production. The principal hands have also been illustrated in Illustrations 1-6, bound at the end of this study. Some consideration will be given to the affinities of these hands and of their place within contemporary writing culture. This being done, secondary evidence will be considered which may elaborate the evidence of the hands themselves and allow conclusions to be drawn about the likely background of the clerks responsible for the custumal book, and thus about the production of the book itself.

The earliest of the hands (hand 'a', see Illustration 1), which was responsible for beginning the book and for the writing of the charters, the custumal and associated texts, the document formulae, the chronicle and the list of quotations entitled '*De Regimine Regis*' is a highly-skilled version of an '*Anglicana*' script.⁷⁰ If, as will be suggested from the internal evidence of the texts in this hand, it can be considered to have been at work at some time between c.1382 and c.1405 it represents an early example of such a hand in urban administration. It is of a style associated at this date with documents produced by the clerks of royal offices such as the Exchequer, and

⁶⁹ A detailed description of hands in Fa/LC 1 is presented below as Appendix 11.

⁷⁰ The types of hands found in the book are described following the descriptions of hands in M. B. Parkes, *English Cursive Book Hands 1250-1500* (Oxford: Clarendon, 1969). Affinities between the hands of the Faversham book and the types he describes are given in Appendix 11, together with reference to hands illustrated by him where there is particular similarity.

thus its presence here in the context of a Faversham book is of great interest. The minute and carefully formed hand 'c' (see Illustration 3), which is likely to have been at work in the early fifteenth century, is also exceptional in the context of urban administrative writing. Its distinctive character perhaps also indicates that it originated from a specialised writing office of the crown or church, though, at present, no comparable hands have been found. The rather later hand 'd' (Illustration 4) (probably of the mid-fifteenth century), with its elegant 'Secretary' features, and semi-calligraphic initials is also a high-quality script, and appears to demonstrate a desire on the part of its writer to present his text with an element of display.

The presence of such accomplished scripts in a town book is in need of some explanation. As has been noted, there is no evidence that they represent the work of town-clerks of Faversham, although there is evidence of named clerks working on behalf of the town government from at least the early fourteenth century, and for the existence of the office of 'common clerk' by 1327.⁷¹ On the other hand, in contrast to the evidence of the later fourteenth century Sandwich custumal book (Sa/LC 1) the hands found in the Faversham book do not suggest production by professional scribes (in the sense of commercial copyists), and the nature of the book itself bears no evidence for an origin within a 'book trade' (as has been suggested of the signatures and catch-words of the Sandwich book). The most likely affinities of the Faversham hands are with the work of clerks who had worked as professional administrators, and hand 'a', in particular might easily be the work of a writer who had worked or been trained as a royal clerk. If the book *were* to represent the work of town-clerks of Faversham, then the types of hands represented in the Faversham book may be evidence of the town government's ability to employ highly skilled and experienced administrative writers. Alternatively, if the book represents commissioned work from beyond the usual administrative personnel of the town then it might imply the use of clerks based in London, either working from texts brought to them in London, or themselves going to Faversham.

⁷¹ *HMC Sixth Report*, 1, p. 505. An account roll surviving from 1305, of expenditure on behalf of the mayor, makes reference to 'Elyas the Clerk', while a tallage roll of 1327 includes reference to a the 'wife of John Goldwyne, common clerk'.

In view of the lack of a consistent supporting archive at Faversham for this period, it is ultimately impossible to be certain at this stage of the identities of the writers of the custumal book. However, there is scattered evidence that the town, perhaps because of its established London connections, may have had unusual access (for a 'provincial' town) to writers of skill and experience. The closeness of the relationship between Faversham and London described in the context of the trade and economy of the town would appear to have been of some importance. If prominent Faversham men were in close and regular contact with counterparts in London, and were frequently in London and attending courts there, on personal or town business, then it would not be altogether surprising that they should find access to writers of the calibre found in their custumal book. We know also that they were able to retain influential legal counsel in the early fourteenth century, and so it is likely that to employ administrative clerks was no more difficult.⁷² Later fourteenth and fifteenth century London, with its royal departments was without doubt the hub of English clerkly activity, and it is certain that there were large numbers of highly skilled writers whose services might be bought by any. An examination of the careers of several prominent Privy Seal clerks, for example, has shown that even well-established and experienced writers in that office saw the need to work on behalf of clients outside the royal administration.⁷³ It has also been suggested that Faversham benefited from its position beside Watling Street, linking London and Dover, and that along this route travelled almost all the important economic and diplomatic traffic of the day. It is known that royal clerks made frequent journeys to and from the continent, making use of this route, and it is likely that such men were frequent visitors to the town. It is known that one of the functions of the Maison Dieu at Dover was to put-up royal Chancery clerks on their journeys, and Faversham (with its Maison Dieu at Ospringe), as a lesser stopping-off point must have seen such men quite regularly.

⁷² Maddicott, *Law and Lordship*, loc. cit., p.29.

⁷³ A.L. Brown, 'The Privy Seal Clerks in the Early Fifteenth Century', in *The Study of Medieval Records; Essays in honour of Kathleen Major*, ed. by D.A. Bullough and R.L. Storey, (Oxford: Clarendon Press, 1971), 260-281 (pp. 269, 273-274). Brown discusses in particular the careers and interests of Privy Seal clerks Thomas Hoccleve, Robert Frye, and John Prophete.

Beyond these general remarks however, there is evidence that Faversham had a more permanent relationship with scribes and clerks of some status. Perhaps predictably, this evidence springs from the abbey, which was clearly a major consumer of writings and which had a particular relationship with certain royal clerks. As a Benedictine house, the abbey would have possessed many books, though very few have survived the library's sixteenth-century dispersal.⁷⁴ At least one of those survivals, however, indicates that the abbey was still either producing or having produced large manuscript books on parchment around the year 1400.⁷⁵ Of more direct relevance to the present discussion is the fact that the crown claimed corrodies for its administrative officials from the abbey, by virtue of its royal foundation. An arrangement existed, at least from the late thirteenth century to the mid-fifteenth century, by which the abbey found a pension and sustenance for officials of the king's household, usually clerks. The institution of a new pension for a clerk was demanded with the appointment of each successive abbot. The Close Rolls contain references to a number of such corrodies from the late thirteenth, fourteenth, and fifteenth centuries although this may not be a complete record, since a new corrody does not always appear when a new abbot is known to have been appointed.⁷⁶ The arrangement may have come to an end shortly after 1453, since in that year the abbey was given a grant (presumably on petition) to the effect that they should no longer find pensions or corrodies to anyone on the creation of a new abbot.⁷⁷ There has been some discussion

⁷⁴ Only four surviving books can now be attributed to Faversham Abbey, see *Medieval Libraries of Great Britain*, ed. by N.R. Ker, second edition, (London: Royal Historical Society, 1964) p. 87. Leland noted the existence of seven works from that library, cited in *English Benedictine Libraries*, ed. by R. Sharpe, J.P. Carley, R.M. Thomson, A.G. Watson, corpus of British Medieval Library Catalogues 4 (London: British Library, 1996) p.155.

⁷⁵ One of the few survivals is a Martyrology of the Abbey, dating from c. 1400 (Bodleian Library, Jones MS 9).

⁷⁶ For the institution of these corrodies see *VCH Kent*, 2, p. 139 (Reginald de Stanweye, 1293); *CCR 1323-1327*, p. 527 (William de Hykeling, clerk, 1325); *CCR 1354-1360*, p. 305 (John de Swynlegh, 1356); *CCR 1429-1433*, p. 272 (John Penycoke, yeoman of the king's crown and robes, 1439); *CCR 1447-1454*, p. 356 (John Browne, king's serjeant, 1452); *CCR 1461-1463*, p. 103 (Henry Fylyngley, king's servant, yeoman drawer of the cellar, 1461).

⁷⁷ *CPR 1452-1461*, p. 108. The later grant of 1461 to Henry Fylyngly is then surprising.

of the means by which such men enjoyed their corrodies, and the opinion expressed that royal clerks collected such grants as pluralists, spending little or no time at the religious houses which provided for them, and so the existence of this arrangement is no clear proof that royal clerks actually came to Faversham for this reason.⁷⁸ There is however evidence that at least some of these clerks were likely to have spent time in the town in the fifteenth century. In the case of John Penycoke (1439), the king's writ states specifically that he is to be admitted to the house, and have provision made for him, and in that of John Browne (1452) it is also implied that he must go to the abbey to take advantage of the corrody. The possibility that such men may have had a relationship with Faversham, and that they may in some cases have 'retired' to Faversham is of great interest in the light of the high-quality hands found in the Faversham custumal-book. While there is no direct evidence of a link between any of these men and the book, the work of the earliest hand (hand 'a') as evidenced by both script and texts, is strongly suggestive of a London, and perhaps royal origin. The existence of the chronicle (in which major themes are: London and the rule of kings) together with the quotes, '*De Regimine Regis*,' in particular point to this possibility.

Two final fragments of evidence may also serve to alert us to the possibility of Faversham's access to a sophisticated contemporary writing-culture. Firstly, one of the few medieval deeds surviving for Faversham, dating from 1407/8 includes among the names of the witnesses to a property transaction, one Thomas Denys, '*scryvener*'.⁷⁹ This is the only reference that has been found in Faversham records to this individual, but it is tantalising evidence of the existence of a professional writer, perhaps also with a London origin, in Faversham in the early years of the fifteenth century.⁸⁰ Secondly there is a parchment slip surviving in the Faversham archive

⁷⁸ For discussion of the granting of corrodies to clerks see A.L. Brown, 'The Privy Seal Clerks', *loc. cit.* p. 268.

⁷⁹ *HMC Sixth Report*, 1, p. 510.

⁸⁰ A Thomas Denyes is named as a mainpernor, together with three men drawn from the book crafts, for an Alis Aylet in a London law case of 1426. Denyes' occupation is not stated but the other three men were a limner, a scrivener, and a stainer respectively. C. Paul Christianson, *A Directory of London Stationers and Book Artisans 1300-1500* (New York: Bibliographical Society of America, 1990), pp.

which is Faversham's own confirmation of a letter patent to the officials of the king's household to the effect that the towns of the Cinque Ports should be allowed to enjoy their liberties and quittances according to the form of their charters, dated 5 March 1 Henry IV (1400).⁸¹ The slip bears, in the lower right hand corner, in the position where one would normally expect to find the name of the clerk who had drafted the document, the name 'London'. It is unclear quite what this refers to, it may simply indicate that the document was procured in London, but the likelihood is that it is the name of the clerk, referring to an individual who styled himself 'of London.' The script in which this document is written is likely to be the same careful '*Anglicana*' as that of the hand 'a' found in the custumal book itself. Comparison of individual letter-forms, and of the overall appearance of the hand indicate the near-certainty of this correspondence. If this is the case, this may be confirmation of a London origin for the hand 'a' of the custumal book. Such a provenance would be entirely consistent with the existence of the texts in that book which are additional to those which are more obviously Faversham-related.

4.6 Sequence of production

The consideration of the successive hands found in the custumal book in relation to its physical construction allows a sequence of production to be reconstructed. This sequence has been illustrated diagrammatically (folding diagram following illustrations). This diagram will be referred to in the following discussion.

The most sustained portion of the production now forming the custumal book is that associated with hand 'a'. This portion consists of what are now quires 2, 3, 4, and 5 (the portion of the diagram coloured *red*), which all bear text written by hand 'a'. It contains, as has been noted: the charters, the custumal, the document formulae, a chronicle, and the quotations '*De Regimine Regis*'. The dating of this initial portion is not straightforward. The document formulae (ff. 16r-20v) given after the custumal all

74-75. There is no proof that Denyes was the same man as the Thomas Denys noted at Faversham, but it would seem a likelihood.

⁸¹ CKS Fa/ZB 58

bear dates between 1401 and 1404, which suggests production after 1404. However, the chronicle, which begins with the creation of the world ends abruptly with an entry for the year 1382, and this suggests that this portion of the work of hand 'a' was completed in, or shortly after that date. The fact that the chronicle and the quotes on kingship occupy their own quire (quire 5), may indicate that the work of hand 'a' represents not a single act, but at least two successive acts: the chronicle being written up in or soon after 1382, and the remainder of the text compiled over a period of years up to 1404 or shortly thereafter. Such a period of time for the compilation and production of such texts would not be unsurprising in the light of the evidence for the production of the Sandwich book Sa/LC 1, which may also represent a culmination of several decades' work. The precise nature of the work of hand 'a' will be considered in further detail below, since it is his work as a later fourteenth or earlier fifteenth century writer which will form the major focus of the present enquiry.

It is probable that the work carried out by hand 'a' was not considered by him to be complete. This is suggested by the fact that quire 4 has only been written on by hand 'a' on its first leaf (f.21), so that the remaining leaves would have remained blank for some time before being filled in by later hands 'b' and 'c'. Hand 'a' chose to begin this new quire rather than simply add a single parchment leaf (which would have been sufficient for his purpose) and this suggests the expectation that there would be more to add in the future. It is not possible to be certain when hands 'b' and 'c' wrote their contributions onto the blank leaves of quire 4, but all of the documents which they write here are copies of fourteenth century texts (between 1343 and 1394). There are no fifteenth century texts in hands 'b' or 'c' on these leaves, and so although they are clearly additions to the work of hand 'a' they were probably made not very much later than his work, and this is also suggested by the style of hands 'b' and 'c' which are manifestly of the early fifteenth century. It is possible that their additions may have been considered part of the enterprise envisaged by hand 'a' and can in some way be seen as part of the original compilation of the custumal book.

The next major stage in the sequence of production can be associated with hands 'd' and 'e'. Some time soon after 1446 two new quires were added to the end of the existing quires (forming what are now ff. 39-46 or quires 6 and 7, the portion of the

diagram coloured *green*).⁸² It is difficult to be sure whether these were added together, or one after another. The fact that each is begun by a different hand (quire 6 by hand 'd' and quire 7 by hand 'e') suggests that they may represent different stages. The fact that hand 'd' writes on both quires may indicate that he is the later scribe, and that he inserted quire 6, and used the remaining leaves of quire 7, which may have already been in existence. In view of the difficulty of separating the acts represented by these two quires, it can only be confidently said that some time shortly after 1446, two new quires were added at the end of the existing group of quires. The purpose of these additions seems partially to add further necessary documents as they are written (especially in the case of charters or letters patent). The addition of the Latin verses of prophecy (ff. 39r.-41r.) at this time is significant and these verses would be worthy of a major editorial study in their own right. There is also an unfinished summary, in English, of parts of the existing custumal book (ff. 49r.-50v). As well as writing on these new quires, hand 'e' was also responsible for adding a note to the end of the custumal (f. 23v) asserting that in all cases and articles concerning pleas of the crown, of which there is no mention on the custumal, the mayor and jurats are to make judgement according to natural law (*'ad jura naturalia'*) from which all laws and customs are derived.

After this time, additions were made to remaining blank leaves in some of the quires, as evidenced by the writing-up of the agreement between Dover and Faversham on ff. 41v-43v. by hand 'f' onto a blank portion of quire 6. Although this agreement dates from 1438, the style of the hand, and the fact that it appears to have been added to a quire itself likely to date from after 1446 indicate that it is probably a later copy. The last addition of supplementary leaves probably occurred in the first decade of the sixteenth century, when a quire of six leaves was added to the beginning of the volume (preliminary leaf; ff. 1-4, and stub of one leaf excised, portion of diagram coloured *blue*). This quire is distinguished from the main parts of the custumal by the comparative coarseness and rough cutting of its parchment. Its addition can be associated with the mayoralty of Robert Wythiott, since the two dateable documents it contains describe, respectively, a meeting of the court of Shepway in 1509 attended

⁸² 1446 is the date of the letters patent described as 'new' on f.50r.

by him (f. 1v) and a proclamation made by him '*ex antiquo usitate*' in 1509 (3v-4r) concerning the regulation of the markets of the town. Both are in his own hand, since a note at the foot of f.1v states that Robert Wythiott wrote this in his own hand. Wythiott appears to have taken a particular interest in the custumal book, since it was he who added the note to the rear paste-down stating that when he passed it to John Soole, the mayor succeeding him in office, the book had 54 leaves.

This early sixteenth century note has already been used to date the addition of the red leather binding, which must, by implication have taken place in or before the opening years of the sixteenth century. Despite this evidence, the question of the earlier binding history is rather more difficult. As has been seen, an earlier binding of boards covered with tawed leather exists beneath the red leather, and this must therefore belong to the period between the beginning of the work of hand 'a' (suggested as c.1382) and c.1500. It is unlikely, however, to belong to the earlier part of that period, since it seems probable that the quires written on by hand 'a' were not initially bound. Although the uniformity of page-size and preparation indicates an intention that all of the texts written by hand 'a' were intended to be made into a single book in the future, certain features of these quires suggest a period of time in which they remained unbound. As the collation and diagram of the manuscript shows,⁸³ the first three quires in this hand (quires 2, 3 and 4) have eight leaves each, while the fourth (quire 5) has ten. This quire 5 is the quire bearing the chronicle, a text which is slightly different in character to the material of the preceding quires. Furthermore, the chronicle text itself begins on the second leaf of the ten-leaf quire (f. 30). This suggests that the quire was originally an eight leaf quire, with a further bifolium having been placed 'around' it as a wrapper. It is on this wrapper (ff. 38r-38v) that the quotations '*De Regimine Regis*' have been written. The presence of such a wrapper is very likely to demonstrate that this part of the manuscript had existed at one time as a loose quire. The implication of quire 5, is that it and perhaps the remainder of hand 'a's work existed for a considerable period of time '*in quaternis*' (in quires). This would not be unusual, as detailed work by Graham Pollard on

⁸³ Appendix 10, and see folding diagram.

Oxford registers has indicated.⁸⁴ The oak board binding with its tawed leather cover, may then be a fifteenth century binding, perhaps made at the time of the writing of quires 6 and 7 by hands 'd' and 'e' after 1446.⁸⁵ It was probably only then that the Faversham quires became a 'book' in the modern sense of the word. The recognition of a lengthy period of time for the gathering of material on quires before binding is important in understanding precisely what the production of books by town governments in the fourteenth and fifteenth centuries actually consisted of. While the decision to make a book might have been taken at Faversham as early as 1382, and the processes of collection and compilation of materials begun at that time, it may not have been considered that such a book would be 'completed' within a single lifetime, if at all. A lengthy process of gathering was probably envisaged, and binding was not considered necessary until a sufficient number of quires had been filled.

4.7 The making of the Faversham quires c.1382 - c.1405: sources and methods for production

Having identified the origins of the Faversham custumal book in a series of parchment quires written in a single hand, produced at some time between c. 1382 and c. 1405, it is intended here to give some detailed consideration to the processes of their production, the likely editorial methods used, and to the possible motivations for compiling the various texts of these quires and presenting them in a uniform fashion, with the intention that they should ultimately form a book. In view of the lack of a

⁸⁴ The earliest of the extant statute books of the University of Oxford (of the early fourteenth century) was apparently predated by the existence of copies of statutes kept 'in quaternis' (in quires) in one of the University chests. These quires remained in unbound form until the theft of the contents of the chest in the sixteenth century. See Graham Pollard, 'The Oldest Statute Book of the University', *Bodleian Library Record*, 8 (July 1968), pp. 69-91 (79-80). The evidence of the city of Oxford's *Liber Albus* may be even more comparable to the history of the Faversham quires, since though its paper quires had existed from the early fourteenth century, there is evidence to suggest that it was not bound much before 1430 when it was referred to as *Liber Rubeus*. See Graham Pollard, 'The Medieval Town Clerks of Oxford', *Oxoniensis*, 31 (1966), pp. 43-76 (53-54)

⁸⁵ Pollard suggests that the fifteenth century binding (probably c. 1430) of the book that was to become the city of Oxford's *Liber Albus* was of tawed leather over wooden boards and that this was 'a usual type of binding at that date', see Pollard, 'The Medieval Town Clerks of Oxford', *loc. cit.*, p. 54.

supporting archive at Faversham at this date, almost all that can be learnt of the production of these quires must be gleaned from the manuscript evidence, and so close attention is to be given to the physical form of the quires and to the appearance of the texts upon the leaves. While this study as a whole has been concerned with the customals of the Cinque Ports, it is intended here to consider not only the customal as found on these quires, but all of the other texts also written in hand 'a'. All of these texts provide valuable evidence of the nature of urban writing in the late fourteenth and early fifteenth century, and can be used to inform our appreciation of the contemporary perception of compilations and codifications of writings associated with town government.

Although it is, at present, not possible to ascribe a name to the maker of these writings, this is not to be seen necessarily as an obstacle. In fact, the Faversham book probably provides more clues as to the 'identity' of an author or maker than do any of the books and texts so far considered. Whilst at Sandwich, we are fortunate in being given the name of Adam Champneys as an author, allowing a degree of external biographical reconstruction, the fact that his text exists only in later copies stands between us and a direct appreciation of his physical writing activities. By contrast, at Faversham we have a series of writings, in the hand of a single writer, whom we can 'identify' through the very marks which he made with his pen on its parchment leaves, and also in the less obvious form of prickings and rulings made on these leaves in preparation for writing. While, there will be cause to consider the variety of ways in which this scribe might be considered a writer (as composer, editor, copyist, for example), the single hand unifies this variety of mental activities in the body of a single individual working within an identifiable period. The individual who must labour under the name of 'hand a' for the time being is thus actually a more tangible figure than the shadowy Adam Champneys, and he speaks to us more directly. The value of his writings, as a historical source, is that they encourage a dialogue between the consideration of the text itself and consideration of the coincidence of text and object (or text as object), in a way which must have been entirely natural to this writer, drawing the interpreter closer to the actual experience of its making.

The suggested sequence of production has already demonstrated that the four quires may represent more than one act of writing. The principal division lies between quires 2-4 and quire 5, the latter being the chronicle quire, which for stated reasons, probably existed for some time as an entity in itself. Quires 2-4 which contain the charters, custumal, and other civic instruments, however, give the impression of having been produced over a relatively short period of time. There are no obvious breaks indicated by changes in script style or size, or by different ink-colours. Potential breaks between quires are bridged by text running continuously from the verso of the last leaf of one to the recto of the first of the next, with no obvious indication that a break was made in writing at that point. The custumal runs continuously from f. 12v to f. 13r, while the common composition of the Cinque Ports runs continuously from f. 20v. to f. 21r, on which folio it ends, thus linking three of the four quires of the book in what was probably a single, or at least planned, enterprise. The portion of the book represented by these three quires contained charters, letters patent and agreements, the custumal proper, the perambulation of the liberty, formulae for town documents, and the copy of a composition made between the Cinque Ports in 1307 as to the apportioning of their common costs. If, for the sake of argument, the writer was readily equipped with all of the source material to be copied on to these leaves, then he could quite comfortably have completed the writing on what are, after all, relatively few quires, in the space of a few days.⁸⁶ In common with the roughly contemporary 'Register of Daniel Rough' from New Romney, the work of the scribe at Faversham appears to represent a fair-copy of documents rather than a gradually accumulating register.⁸⁷ In view of the dates

⁸⁶ It has been estimated that scribes of this period might complete between three and three and a half folios of text (about 7 pages) in a day, see Carla Bozzola and Erzio Ornato, *Pour une histoire du livre manuscrit au moyen age; trois essais de codicologie quantitative* (Paris, 1983, pp. 46-48 cited in Michael Camille, *The Master of Death; The Lifeless Art of Pierre Remiet, Illuminator*, (New Haven and London: Yale University Press, 1996) p. 34. This may, however, considerably overestimate the time that an administrative writer, using rapid letter forms, would need in the production of a book such as Ms Fa/LC 1, since such writers must have produced at far greater speed than their counterparts working in the sphere of production of luxury manuscripts. The script used by 'a' may be neat and accurate, but this probably belies a considerable rate of work.

⁸⁷ The 'Register of Daniel Rough' is discussed in Chapter 2. 2, it is also described in Appendix 1, as New Romney (app.) custumal 1.

attached to the document formulae on ff. 16r-20v, which run from 1401 to 1404, it is likely that all of the text on quires 2-4 in hand 'a' were produced after 1404. The fact that all of the formulae are of the opening years of the fifteenth century seem also to indicate that this production happened in or soon after 1404, though this cannot be considered proven. It seems unlikely that the chronicle quire was written as late as 1404 or after, since the chronicle ends with an entry for the year 1382, making the likely date of its production 1382 itself or shortly thereafter. As has been suggested in the above consideration of the sequence of production, the quires 2-5 taken together probably indicate that they are the result of a process, begun in 1382, in which particular writings began to be produced by or on behalf of Faversham, with the probable intention of producing a book, or books. The variety of document types which are presented in quires 2-4 may be fruit of a lengthy period of compilation and editing, only culminating in the fair copy which now survives, in the early fifteenth century.

The combined evidence of the texts collected and ultimately written on to the parchment leaves of these quires appears to be evidence of an interest in late fourteenth century Faversham in documentary evidence, much of it dating from either earlier in the century, or from a more distant past, of the customs, franchises and institutions of the town, together with a more general interest in the nature of just and lawful government. Apart from the document formulae, few of the texts in hand 'a' can be considered new, and in most cases they might rightly be called historical documents. The evidence of the past appears to have been carefully considered, and eventually represented in new forms. Such an interest appears to parallel that already identified at Sandwich, where the new custumal book (MS Sa/LC 1) consisted of a careful re-editing of an existing custumal and the juxtaposition of additional records and documents concerning the customs, franchises and institutions of the town.

Despite the suggestion that these Faversham quires were the work of a clerk from elsewhere than Faversham, there seems little doubt that they were produced on behalf of the town government. Most of their contents address the matter of town government, and it might be said that they represent, among other things, a manual of town government: describing its officials and the mode of their election, the operation

of the town courts, the franchisal rights of the town government, and types of documents necessary to this administration. The fact that the book was later passed from mayor to mayor,⁸⁸ may suggest that the quires were originally made on behalf of the mayor. Alternatively the document formulae might indicate a function related to the office of the common clerk.

4. 8 The contents of the Faversham quires c. 1382-c.1405

4. 8. 1 Charters (or Letters Patent) and an agreement between the Abbot and the inhabitants of Faversham, ff. 5-9v:

The first page of the first quire (f. 5 in Fa/LC 1) opens with the title *'Hic incipit carta de libertate hominibus de ffaversham per rex Henrici iiiio anno regni sua xxxvi concessa'*. The first word of the ensuing charter is *'Henricus'*, with a substantial space left for the future addition of a calligraphic or illuminated letter 'H' which was never to be completed.⁸⁹ The charter copied-up is that granted to Faversham by Henry III in 1252, granting *soc, sac, thol, them, infangenethef, wrekfri, witefri, locoffri*, freedom from shires and hundreds and rights of den and strand at Yarmouth, as had been granted to their predecessors of the Cinque Ports.⁹⁰ This charter is brief enough for a second charter (or more properly in this case a letter patent) to begin on the same side of f. 5. This is briefly titled and begins with the word *'Edwardus'* and again, a space has been left for the future addition of a decorated letter 'E' which was never carried out. The letter patent is that granted to Faversham in 1302 by Edward I. Had this page been illuminated in the manner envisaged, or hoped for by the writer it would have been an impressive sight, with the eye being drawn, in particular to the names of the two kings Henry III and Edward I.

⁸⁸ As indicated by the note on f. 54r.

⁸⁹ Had this illumination been carried out, the first page might have looked similar to the impressively illuminated first page of the roughly contemporary Fordwich custumal book. See description in Appendix 1, Fordwich custumal (app.) 4.

⁹⁰ The charter is recited in Murray, *Cinque Ports*, p. 236 and in *C.Ch.R* i, p. 392.

That such a book should begin in this way is not altogether unsurprising, since it is the charters which were granted to towns which were used to legitimise the more detailed liberties outlined in the written custumals. This should not however detract from the striking appearance of the page in question, where the name of Faversham is visually associated with the names of kings Henry III and Edward I, in a way which immediately suggests a sense of history and antiquity in this late fourteenth century production. The association of words on the page neatly forms a tangible bridge in the mind of the reader (or simply 'looker') between the present and the past. The words of the charters themselves which appear on this first page also seem to carry with them a historical weight. While the Old-English words for ancient privileges given above were part of the standard vocabulary of the medieval charter of privileges, they carry with them a pleasing antiquity, and which suggests the origins of privileges far earlier than the dates attached to the charters. The very shape of the words, or of the letters and combinations of letters within them contrast with the Latin text into which they were set, and this was surely as apparent to the fifteenth-century writer as it is to us.

The source of these two texts is immediately apparent, since copies of both charters survive in the portion of the Faversham archive which is still kept at Faversham.⁹¹ It is possible to place these charters and the book together in the same way as the scribe must have done in order to make his copies, and this image of the writer working directly from documents contained in the common chest of his town is one which is also suggested in the production of Sandwich custumal a century before. The ready availability of these two documents in the Faversham archive begs the question of the scribe's motivation in copying them from one format (on large sheets of parchment) to another (the pages of a small quire of parchment). Why, if the charters were so available to this writer, was there a need to produce copies of them? Firstly, the fine condition of originals surviving at Faversham suggest that they were not frequently consulted as reference sources, but were viewed as symbolic or ceremonial objects, and this may have been a motivation for production of reference copies. Secondly, the shift in format carried out by the scribe further suggests that his copies would have a

⁹¹ Fa/I 1 and Fa/ I 2. Kept in the Mayor's Parlour, Faversham.

different purpose. The small size of the pages onto which he transcribed them, and of the book which they were to become part of strongly suggest that portability was desirable. The original Faversham charters have almost certainly not been moved far from the few hundred square yards of the town's centre in all their seven hundred or so years, while the wear and tear on the leaves of the custumal book suggest a more mobile existence for its texts. It would seem that the scribe who made the charter transcriptions wished to be able to provide charter-texts which could be moved around beyond the confines of the common chest.

These two charters are followed, on f. 7v. with the text of an agreement made in the king's court between the abbot of Saint Saviour's and the men of Faversham on the morrow of the feast of the Purification in 1258.⁹² It records a case brought by the abbot concerning the encroachment of his liberties in the town by its inhabitants, and it represents a densely negotiated confrontation between these two parties, and the ultimate determination of their respective rights in the jurisdiction of the town. Its importance to the writer who transcribed it here seems to lie partly in the fact that the agreement reached is the first written formulation of the rights and responsibilities of an urban government at Faversham. While by the late fourteenth century the arrangements outlined in it would have been seen as archaic (the chief officer being styled 'alderman' rather than 'mayor' for example) they still remained at the heart of the administration of the town. The intensity of litigation surrounding the government and franchises of Faversham found in the late thirteenth and early fourteenth century has already been commented on, and the existence of this historical document, together with the charters, is evidence that this period was seen in the context of the late fourteenth century as a crucial time in the development of urban government and institutions in the town.

The source from which the scribe copied this document is not so immediate as the source of the charters, since there is no other surviving copy of the agreement in the Faversham archive. However, amongst the miscellaneous surviving documents from the Faversham deed-box, is the parchment slip already, probably written in the late

⁹² 42nd year of Henry [III].

thirteenth or early fourteenth century, bearing the title '*Kanc*' - *Placita coram Rege Termino Sancti Hilarii Anno RR' H'. XL secundo*' [i.e. 42 Henry III (1258)].⁹³ Beneath this title is a laconic account of the case, giving references to the rolls amongst the royal records on which the proceedings are recorded. It furthermore states that following the proceedings in the king's court the warden of the Cinque Ports was required to establish '*quo warranto*' [by what warrant] the Mayor and Barons of Faversham claimed certain liberties ('*quasdam libertates*'). The survival of this small slip gives a remarkable insight into the way in which urban governments sought to protect their liberties, and into the practices of our compiler in the late fourteenth century. It must have been produced on behalf of the town government after the 1258 proceedings, since it refers to fair-copy rolls of the king's bench, and is in a hand probably later than this date (perhaps of the early fourteenth century), and then kept in the town's archive. There it must have remained for consultation, since the scribe 'hand a' used it to locate the text which he came to transcribe into his book. Whether he copied directly from the royal records, or whether there was some intermediary stage is unclear, but it seems certain that those documents not actually kept at Faversham could be obtained if needed.

The transcribed agreement records that the abbot had brought his suit to the king's bench, making several complaints: that the men of Faversham should do due custom and service for the free tenements which they held of him in the town; that they had rescued a certain felon from his rightful custody, imprisoned him themselves and later hung him from their own newly-made gallows; that they had levied tallage on inhabitants without his licence; and that they usurped many new liberties from him. What is implicit in this complaint is that the inhabitants had attempted to appropriate from their lord aspects of urban government which were increasingly becoming the responsibility of other English town governments, particularly in the administration of justice and the right to raise common taxes for the expenses of the community. The vigorous reaction to such attempts by the abbot is testimony to the zeal with which this ecclesiastical landlord sought to define and maintain his profits from jurisdiction, which characterised the attitudes of the Benedictine house in the middle ages.

⁹³ Fa/ZB 4

The text goes on to record the agreement made in the court, which although broadly a reassertion of the rights of the lord, also includes some concessions granted to the townsmen. These concessions are carefully drafted and closely defined. The men of Faversham were to owe due service to the abbot, as they had done to previous abbots, and to the king at the time when he held the manor (i.e. pre-1147), before the foundation of Saint Saviour's. They were to permit the abbot to exercise his just summons and jurisdiction in the town for all manner of pleas and attachments, just as they had done for his predecessors (again defined as abbots and formerly, the king). The record states that this had already been agreed upon in two previous cases between the two parties in 1242 and 1243. Furthermore, it is stated that the abbot should lose none of his services by reason of the charter lately granted to the men of Faversham. This charter is that of 1252 already discussed, occupying the f. 5 of the custumal book, transcribed from the original in the Faversham archive.

Following these reassertions of the lord's rights, there begins a list of the concessions made by the abbot in the court. These concessions do not have the character of freely granted liberties, but reluctant confirmations of practices which had been in operation for some time, closely defined so that they might not be overstepped. The first states that the men of Faversham should be permitted to choose a man to be presented to the abbot, to act as his bailiff and to have custody of his prison. It is stated that should any escape from this prison, the townsmen were to share the responsibility with the abbot, with the implication that they should be answerable to the king for such a defect in their keeping of the peace within the town.. Furthermore, they are required to faithfully deliver prisoners kept in this prison to and from the abbot's courts at his request. Following this there is further definition of the respective rights of abbot and townsmen in courts held within the town. This definition amounts to a formulation of the border between the limited franchise of the town and the jurisdiction of the lord, and from this formulation emerges a geographical as well as a theoretical dimension. It is stated that if a man is arrested within the '*trentdeushages*', that is the area in which were contained the original thirty-two tenements held by townsmen from the lord, then he is to be tried at the abbot's court. The execution of his sentence, however, is to be the responsibility of the town. In the

light of the text that follows, the 'abbot's court' here referred to is probably the portmanmoot, which was the town's court presided over by the abbot. On the other hand, if a man is taken outside the '*trentdeushaghes*', that is, in the hundred of Faversham, then he is to be judged in the abbot's hundred court. In this way, this document defines the liberty of Faversham in way in which jurisdictional and geographical determinants are intertwined.

The abbot also granted, in this case, that the men of Faversham may choose three men annually to be brought before him, so that he might choose one of them to be alderman of the town. This alderman was to make an oath 'for faithful execution of his office in all that belongs to the king and his peace and towards the abbot and church of Faversham, and all other men of the town'. In this way, this chief officer of the town (who is carefully styled alderman, not mayor), is defined as a servant of the king and of the abbot, and lastly of the people of the town. It is also stated that the men of the town might make collections from within their number for the express purposes of: providing ship-service; for other aid to the king or abbot; or for the maintenance of their freedom. In making such a collection twelve men may be summoned for the purpose, at a special assembly presided over by the abbot. The collection itself was to be closely supervised by the abbot's officials, with the alderman keeping one roll of record, and the abbot's bailiff another. Finally the means of summoning this assembly is described, with the blowing of the common horn, and regulations are described governing the use of this horn.

The significance of later thirteenth century litigation and of its documentary legacy in the history of Faversham has been considered in some detail. Here, however, we are concerned with the significance of the document in its later context: that is, when it was copied into this compilation after 1382. Why did the scribe choose to include it in his compilation, and what significance was attached to it in this context? As has been seen, several documents survive amongst the royal records concerning the definition of the liberties and franchises of Faversham. The answers to these questions are not immediately obvious, since in some respects the original intention of the document runs contrary to the intention of the Faversham compilation as a whole. It seeks to define the limits rather than the extent of urban government at Faversham. After all,

the case was originally brought by the abbot against the townsmen, in defence of his rights, and so, at first sight, it seems to be an unlikely choice for inclusion here. An explanation seems to lie in the copying and editing activities of the scribe himself. As has been seen, the text was originally transcribed from the royal records, and in the process of the physical appropriation of the text, the scribe seems to have effected a more conceptual appropriation. By including it in the Faversham compilation he has changed its significance and status to suit his own ends. By the late fourteenth century, the document appears to have attained a certain emblematic quality, having been used as a precedent in the royal courts at least twice in the fourteenth century.⁹⁴ This probably arose because the chancery case of 1258 of which it is a record, provided the first legally considered and recorded formulation of an urban administration at Faversham in which townsmen played a part. In describing the officials of alderman, serjeant and twelve collectors and their responsibilities, the royal clerk who recorded the case was unwittingly providing the makers of the late fourteenth century Faversham compilation with a document giving royal confirmation to the existence of these officials and their responsibilities. By the later fourteenth century the name of 'alderman' had certainly been supplanted by that of 'mayor' and the twelve collectors were now known as jurats, and so the record is in a literal sense outdated, but their principal definition was made here at this chancery session in 1258. The document then has a character not far removed from that of the two charters which preceded it in the compilation: that of historic documents, giving emblematic weight to the more detailed claims to be made in the ensuing customal. The use of the ancient expression '*trentdeushages*' to describe the oldest parts of the town (which were those granted by Stephen to St. Saviour's) is of particular interest, and may have had a specific value to the makers of the Faversham compilation in expressing the antiquity of their borough. The land division termed '*haga*' referred, in the Saxon period, to an enclosed holding within the very earliest English boroughs, held directly from the crown.⁹⁵ The holder of such a *haga* was a king's tenant and personally free. Some of the earliest written borough customs

⁹⁴ PRO C.260/74 no.27. (Chancery Misc.)

⁹⁵ F.M. Stenton, *Anglo-Saxon England*, third edition (Oxford: Clarendon, 1971, reprinted 1985), pp. 526-529.

concern the administration of the tenancy of these *hagae*, and come significantly from Kent. To use such a term in the context of a custumal compilation perhaps indicates a desire to express the antiquity of the town of Faversham and its customs, and an origin in the period before the foundation of the abbey, when inhabitants were both king's tenants and freemen.

4. 8. 2 The custumal, ff. 9v - 14v:

f. 9v is headed with the words '*Hic incipiunt usus et consuetudines ville de Faversham existentes in castro Dovorr et retornate sub communi sigillo dicte ville*' and this title is followed by a text, predominantly in French, of the Faversham custumal. A critical edition of this text has been made by Murray, presented together with some discussion of its principal features.⁹⁶ As has been noted, this is the only known version of the custumal. It is proposed to consider the text in detail here in order to draw conclusions about the context or contexts of its production and about the preoccupations of its makers. In doing this it is necessary to consider the compositional history which is manifest in the text, and to understand the significance of the custumal as it appears in this compilation of the later fourteenth century.

It has been pointed out, following the suggestion by Murray, that the custumal text as found in Fa/LC 1, although unified here in a single hand, represents two distinct sections, one being later than the other.⁹⁷ The first section forms the bulk of the text and is indicated by the heading on f. 9v stating that '*Hic incipiunt usus et consuetudines ville de Faversham existentes in castro Dovorr et retornate sub communi sigillo dicte ville*'. This section of the text must therefore form the custumal that was delivered to the warden of the Cinque Ports at his request, in an enquiry of 1356.⁹⁸ The second section follows on without any break in the writing process and begins on f. 13r with the heading '*Hic incipiunt alia notabilia usitata infra villa et libertatem de Faversham quinque portuum Adeprimes*'. This implies that the text

⁹⁶ Murray 'The Common-Place Book of Faversham', pp.96-110.

⁹⁷ *Ibid.*, p. 92 and p. 105n.

⁹⁸ The evidence for the 1356 enquiry is discussed above Chapter 2. 1.

which follows is additional to the 1356 text, despite the assertion that the usages had been in existence '*a de primes*', which was made before or at the time of the copying into this present compilation. This break in the text is valuable in that it allows a degree of deconstruction of a custumal text not commonly possible. While the contents of the early section might in theory have been codified at any time before 1356, the latter section must have been deliberately added between 1356 and c.1405 (at the latest). This margin of between forty and fifty years may seem wide, but in writing a history of such fluid concepts as custom, it is actually a rather narrow field. It may prove useful in reconstructing urban preoccupations in the particularly significant period following the Black Death.

There are several features of the text as a whole which make it distinctive, and which can usefully be compared with other Cinque Port custumals in the attempt to understand this example. The language used here, that is, French, is worthy of comment and may have significance. The Sandwich custumal, which as has been seen was an early production dating from around 1300, is almost exclusively in Latin. The only portions which are in French are manifestly later additions - a case in point being the memoranda of the 1413 parliament, added at the end of the fourteenth century copy of the custumal.⁹⁹ Since both texts are qualitatively similar it is possible that the difference in language used indicates relative compositional dates. This evidence is one indicator amongst several that the Faversham custumal may only have been codified in, or shortly before 1356. Had a Faversham custumal been codified c. 1300, it is very likely that it would have been in Latin, and remained in Latin throughout its later editorial history, as at Sandwich.

It is also noticeable that the format of the custumal is neat, and for the most part laid out along the lines of legal theory. It begins with a description of the mode of choosing civic officials, and works through their responsibilities in the spheres of: pleas of the crown, pleas of land and civil pleas, with those matters not fitting into these sections (such as the custody of the assizes) placed at the end. The only way in which this scheme is broken is by the post-1356 material added at the end. The

⁹⁹ Sa/LC 1, ff. 137r-139r.

legalistic, and carefully planned character of most of the text may be further indication of a relatively recent origin for the Faversham custumal. It has been seen how the older Sandwich custumal is characterised by a host of local details and a complexity of structure which seem to have resulted from a long period of organic growth and augmentation. The absence of such features in the Faversham text may suggest a meaningful contrast: that is a shorter overall period of compositional history and composition at a time of developed legal codification.

If the Faversham custumal in the form found in the custumal book was drawn up for the 1356 royal enquiry then it emerged from a very different social and political climate from that of the early years of the century which had produced earlier codifications of urban liberties at Faversham, and this accounts for its distinctive tone. What is particularly striking about the custumal is its studied concentration on the correct application of law and custom, and the maintenance of the peace. The landlord-tenant disputes which were so prominent and stridently expressed in the earlier period are pushed into the background by this emphasis on ‘the king’s peace’ and due process of the law. It is noticeable that there is no verbal similarity between the custumal and the radical list of articles drawn up by townsmen in the early part of the century, suggesting that these articles were not drawn on in the same way as similar *quo warranto* texts were drawn on in the earlier production of the Sandwich custumal. This may have been because the Faversham custumal was specifically produced for a royal enquiry, and thus addresses specific concerns, but it also closely reflects a growing concern for law and order in the later fourteenth century amongst those with political responsibilities. While this was true in 1356, the issue was perhaps even more pressing after 1381 when the issues of law, order and good government dominated the political agenda from top to bottom, seeing expression in responses to the revolt of 1381 and in protracted debate over the nature of kingship itself. This feeling can be traced at a local level throughout the custumal.

The first word of the custumal (‘a’ of ‘*a deprimes*’) appears in the corner of a space left for later illumination. This begins a description of the choosing of the mayor and other officers of the town. In the scheme of compilation as a whole the projected illumination links the text of this first clause of the custumal to the charters already

discussed, and to the text of the chronicle which also begin with spaces left for illumination.¹⁰⁰ Apart from the function of decoration, this projected illumination would have had the function of indicating the beginning of a notable portion of the text to a reader or beholder. The fact that the custumal should be linked in this way to the charters is notable, and suggests that documents which were to have illuminated initials were of comparable status in the mind of the writer as is also suggested by the co-existence of charters and custumals in the books of other towns.¹⁰¹ It seems to be further evidence of the mutual interdependence of these document types in urban administrative mentality. It also lends credence to the claims repeatedly found in the clauses of the custumal that these are expressions of the king's will, as enacted by him and confirmed in his charters. For the custumal to state that the procedures associated with the mayor-making had existed '*a deprimes*' (from the first), is however, to make a much larger claim, and a claim which goes beyond even the usual recourse to 'time out of mind' usually associated with claims of a customary nature. Quite which point in time this text refers to is not clear when looked at from a strictly historical viewpoint, and from the same stand-point it might be said that the claim is not true. As has been seen the origin of the mayoralty at Faversham was actually quite recent, only being firmly established in the thirteenth century. Nevertheless, it is likely that the inhabitants *had* customarily gathered together to choose their leaders from a very early time and this seems to stand behind this categorical claim that this had happened from the first. It would seem that whoever wrote this custumal had an interest not only in description but in historical justification based on the identification of origins. This is precisely the strategy which is used in the chronicle text appearing later in the compilation which begins with the phrase (again intended to be illuminated) '*In principio creavit deus celum et terram et omnia que in eis sunt*'.¹⁰² I would argue that the writer of the custumal was suggesting just such a fundamental origin when he began his text with '*a deprimes*', intending to imbue the text with absolute authority.

¹⁰⁰ Fa/LC 1 f. 5r and f. 30r.

¹⁰¹ The fourteenth century custumal books of Sandwich and Fordwich both juxtapose town charters and their custumals: Sandwich custumal (app.) 1; Fordwich custumal (app.) 4.

¹⁰² f.30r

The first clause which was begun with this claim fits neatly onto one side of a folio, and deals with the election of the mayor, the serjeant and the twelve sworn men of the town. It will be remembered that the same clause follows the preamble of the custumal at Sandwich, which emphasises the fact that the enactments of the custumal are the responsibility of these officers, and that they are to dispense the law and custom outlined therein. The mode of the elections at Faversham is described: the candidates for the mayor being chosen according to usage, on the Monday after Michaelmas at an assembly of the commons, at a place called *Ildhalgren*, summoned by the sounding of the *Burghorn*. Three of the oldest, wisest and most sufficient men of the town are chosen by the sworn and resident commons (freemen), by the assent of the whole commons.¹⁰³ At the same gathering a common serjeant is chosen who is to be deputy to the abbot's official responsible for the safe-keeping of prisoners.¹⁰⁴ The three candidates for the mayoralty, and the serjeant are presented to the abbot, who chooses one of the three as mayor. The serjeant swears an oath before the commoners 'according to a composition hitherto made between the abbey and the people of the town.'¹⁰⁵ This composition referred to is that already copied onto ff. 7v-9v of the compilation. It is then stated that on the following Sunday, the mayor assembles all the commons at a meeting called a *Wardmot*, and with the assent of the commons, chooses twelve of the most sufficient commoners. These men are not described as 'jurats' here, but it is stated that they are obliged to swear (*jurere*) to loyally attend the mayor in the maintenance of the king's peace within the town, to give loyal judgement within the franchise, to dispense law and equity to both residents and strangers, and to sustain the laws and customs of the town.¹⁰⁶ This is followed by a brief description of contingencies to be made if either mayor or sworn

¹⁰³ '...de commune assent eslirent les comuners jurez et reseantz, trois de mieuth vantz plus sachaantz et sufficeaantz en office du maire de la ville'

¹⁰⁴ The abbots officials with responsibilities for the gaol are described as 'les tenaantz de Kyngismelle', Kingsmill being the abbot's gaol.

¹⁰⁵ '...solonc le tenure dune composicion iadis de ce faite entre les ditz Abbe et gentz de la ville.'

¹⁰⁶ '...loialment serount entendaantz en eide de luy [the mayor] de la pees notre seignour le Roy en la dite vile mayntener, loialx juggementz doner et dedeinz cele fraunchise as touz privez et estraungez droite et equite faire et sustiner les leies et custumes dycelles'.

man die within his time of office, in which a new officer in each case is to be chosen by the abbot or the mayor respectively as appropriate.

The government of the town, is thus described in the terms of ceremony, as it had been at Sandwich, which, through the invocation of repeated usage lends customary authority to their offices. It is also notable that the words used for the institutions and trappings of these ceremonies (*Burghorn, Ildhalgren, Wardmot*) are kept firmly in English amidst the predominantly French text. This too lends authority, through the suggestion of antiquity, in the way which has been observed in the copying of the Faversham charters into this compilation. Their use suggests Old-English origins for specifically urban concepts. The word *Ildhal* in *Ildhalgren*, in particular, is evocative of Saxon urban origins being somehow derived from *Yildhall*, and though it may be a partial invention, it gives a powerful suggestion of the ancient establishment of communal organisation and government in the town. The specific name *Burghorn* given to what in other towns might simply be called the 'common horn' is of special interest, since it is likely that the impressive bronze horn which survives at Faversham was made in the fourteenth century.¹⁰⁷ The fact that such a powerful symbol of early communal borough organisation should be made in the fourteenth century, and the name *Burghorn* applied to it is suggestive of an interest of town government in the early institutions of the town.

Following the account of choosing of the officials of the town is a series of four titled clauses which describe the responsibilities of these officers in those cases where they act as representatives of the crown, in criminal jurisdiction, by virtue of the franchise.¹⁰⁸ They are headed in Latin, respectively: '*Hic Incipiunt Placita Corone &c*'; '*De Morte Hominis &c*'; '*De Infortunio Ibidem &c*'; and '*De Appello Pro Morte Hominis*'. Murray noted in her discussion of the custumal, that the duties of the town government of Faversham in criminal jurisdiction were actually rather

¹⁰⁷ The horn, which is as long as a man's arm, bears the legend around its bell: '+*Ricardus. Iuvenus: Me: Fecit:*'. The town clerk has informed me of the dating of the horn to the fourteenth century, though no substantiation for this has yet been found. The horn would merit a study in its own right, and it should be possible to identify the Richard Young who made it, and thus confirm the dating.

limited, and that in no case except those where a criminal was caught red-handed with the evidence of his crime on his person (which demanded summary justice), could the mayor and commonality give judgement. They acted only as agents of the crown in the criminal procedure, with judgement and punishment resting in the hands of the king's official, the warden of the Cinque Ports. Although their charter technically granted the right of final justice over felons (the rights of *infangenethef* and *utfangenethef*) Faversham did not actually possess this right that was commonplace in other Cinque Port towns.¹⁰⁹ It is perhaps curious, then, that such limited responsibilities should be given such emphasis in this custumal by being placed first in the order of clauses presented. It would seem that the clauses are presented in this custumal in an order which somehow reflected the perceived hierarchies of law and justice on a national level - beginning with those that belonged to the crown, and giving them precedence over those internal customs which belonged to the community of the town itself. *This may be confirmed by the wording of the clauses themselves, which makes it abundantly clear that in these case the officials act, not so much in the service of their community (although this was the origin of the action), but as agents of the crown.*

The first begins 'And as for pleas of the crown held by virtue of the franchise...'¹¹⁰, and describes the procedure allowed when a felon is found within the franchise, with the evidence of his crime. The bailiff makes attachment, while the mayor summons the jurats and commons, to proceed against the felon between the hours of prime and vespers. The defendant may have three days delay should he wish to send for pledges from his home, but then his penance should be judged *according to the common law*.¹¹¹ The prisoner should then be kept safely under guard, until he should be delivered by the warden of the Cinque Ports, 'by command and confirmation of our lord the king.'¹¹² The second clause describes the actions of the mayor, jurats and

¹⁰⁸ ff. 10r-10v.

¹⁰⁹ See Murray, 'The Common-Place Book of Faversham', p. 94, for limitations of criminal jurisdiction at Faversham.

¹¹⁰ 'Et quant as plees de las coroune tenir par virtue de la fraunchise...'

¹¹¹ '...solonc la commune leye.'

¹¹² '...par commaundement et garaunt notre seignour le Roy.'

commonality in the case of a death within the franchise, where again, the customary process is described as a function of the king's jurisdiction. The mayor acts as coroner of the king,¹¹³ gathering the jurats and commons to make an inquest on the body of the deceased. If any be indicted as a result of the inquest, then the indictment is to be sealed by the members of the inquest and sent to the bailiff, so that the indicted be bodily attached and held in prison as a felon. Once again, it is stated that final determination and deliverance can only be granted by the warden, by command and confirmation of the king. The third clause refers to cases of accidental death within the franchise,¹¹⁴ where once again the mayor is to assemble the commons in his capacity as coroner of the king, as before, and to proceed in the manner used in the common law of the land.¹¹⁵ The fourth describes the action to be taken when anyone accused in the enquiry into a death makes an appeal. The bailiff is to take sureties for the appeal in the next ensuing *Halimote* (the abbot's hundred court), keeping the appellant in safe custody until determination is made by the warden, or by direct command of the king.

The very specific manner in which these aspects of criminal jurisdiction are set out in the Faversham customal, and the way in which procedure is justified by recourse to royal authority is of great significance. All of the Cinque Ports had, by virtue of their franchises, control in varying degrees over these aspects of law.¹¹⁶ It is probable also that the establishment of these customs was very ancient indeed, arising from communal policing, and not from the enactments of the king. However, it was criminal procedure which was at the heart of the expansion of royal justice in the years after c.1150, and whose customary exercise in the localities was under closest scrutiny.¹¹⁷ This expansion and scrutiny of existing arrangements reached a culmination in the fourteenth century, fuelled by frequent complaints of lawlessness in

¹¹³ '...come coroner notre seignour le Roy...'

¹¹⁴ 'infortunie'

¹¹⁵ '...par la commune leie de la terre...'

¹¹⁶ See Murray, 'The Common-Place Book of Faversham', pp. 97n. and 98n. and Bateson, *Borough Customs*, 1, pp. 15-17.

¹¹⁷ Edward Powell, *Kingship, Law, and Society; Criminal Justice in the Reign of Henry V* (Oxford: Clarendon, 1989) pp. 9-19.

parliamentary petitions, and was responsible for the refinement and definition of responsibility in all aspects of criminal jurisdiction. A particular feature of this was the identification of the right of 'gaol delivery' as crucial, and the delegation of this responsibility to crown officials such as itinerant justices and the more recently established justices of the peace. In the case of the Cinque Ports, as is seen in these clauses, the ultimate right of gaol-delivery was placed firmly in the hands of the king's minister, the warden of the Cinque-Ports.

By the time the Faversham custom was codified, it was not enough to simply state that the mayor, jurats and commons had rights of community policing in these matters by immemorial custom. In order to safeguard these franchises, they had to be couched in terms which suggested that they were granted and confirmed by the king, and that in the prosecution of these actions, the officials of Faversham were acting as servants of the crown. This is not to be interpreted simply as pragmatic strategy against a threatening royal administration by the leaders of the community of Faversham, but, certainly by the later fourteenth century, a genuine reflection of a culture of loyalty to the *institution* to the crown (not necessarily the person wearing it) in the just governance of the realm.

There follow three clauses entitled respectively '*De Placitis Terre Ibidem*', '*Assisa Nove Disseisine sequitur*', and '*De Convencione pro Fine Levandum*'.¹¹⁸ As the first title indicates, all of these clauses address the manner in which land transactions were to be administered and recorded. The first clause describes the general principles to be followed, while the latter two describe specific actions. Once again there is emphasis on the presentation of local custom in terms of a centralised system of justice since they describe actions as defined by common law: novel disseisin, mort d'ancestor, dower and fresh disseisin in particular. The collective administration at Faversham (including abbot, mayor, jurats and commons) act, in these cases as agents of the common law. It is claimed (in the first clause) that it is the usage in the Halimote court, to hear all pleas of land, arising from all manner of writs ('*briefs*') that might be issued within the franchise of the Cinque Ports. These pleas are heard

¹¹⁸ ff. 10v - 11v.

from three weeks to three weeks, except while barons are at parliament, or otherwise under royal summons, while they are at the Cinque Ports' court of Shepway, or during the Yarmouth herring fair. The second clause details the procedure followed in the common law actions described, making allowance for the various adjournments in those cases. The third clause describes the manner in which the conveyance of free-tenements between parties is to be overseen and recorded in the type of fictitious law case customary in urban property transfers. It is first stated that summons is to be made 'as at the common law',¹¹⁹ and that concordance be made between parties in court. The remainder of the clause describes the actions to be taken in cases where the land or property in question is in the right of a woman, in which she is examined outside the court by mayor, bailiff and jurats in order to ensure that the transaction is being made with her full agreement. The concords made in these cases are endorsed by the names of the jurats and other witnesses, and enrolled amongst the town records.

The manner in which land transactions are described in a later fourteenth century urban customal is potentially of great interest. In the first instance, it is true to say that the holding of free-tenements (burgage-tenure) and rights of free alienation of these tenements were the fundamental liberties of the medieval town. Security of these rights was a preoccupation in all towns with franchises, and clauses relating to the administration of these property rights are found in all of the Cinque Port customals.¹²⁰ It has been pointed out that common law actions such as novel disseisin came to have not only practical significance but also a symbolic significance and that 'to generations of freeholding Englishmen it was largely synonymous with security under the law.'¹²¹ For such security to be reiterated in these customals is an indication of the status attached to such documents. Secondly, it is of interest because whether we see the customal as a production of 1356, c.1400, or both, it was written up in a period of intense fluidity and disruption in established land-holding patterns

¹¹⁹ 'Come a la commune leie' (f.11)

¹²⁰ S. H. Rigby, *English Society in the Later Middle Ages: Class, Status and Gender* (Macmillan, 1995) p. 163; Murray, 'The Common-Place Book of Faversham, p. 100n., and p. 101n.; and M. Bateson, *Borough Customs*, 2, p. 117 *et seq.*

which witnessed a variety of administrative reactions to such disruption, arising from a desire amongst those in authority to avert disintegration of accumulated wealth.¹²² What is remarkable here in the Faversham custumal is the extent to which customary provisions in the sphere of land transactions interlock with the jurisdiction of the abbot and coincide with the provisions of the common law. This may in part be due to the unusually stringent limits on the townsmen's jurisdiction in these cases (the actions being supervised by officials of the abbey), but it is very noticeable that these franchises are expressed not in opposition to the authority of the abbot or of the crown, but as part of it. If there had in the past been dispute over jurisdictions in these cases, this is not expressed in the custumal. The impression conveyed by the text is of a system in which differences had been overcome, and respective rights agreed upon in the creation of an orderly administration. Whether or not this reflected reality is arguable, but the text hints at a shared interest in the maintenance of order in the way in which property changed hands amongst all those with a stake in the government of Faversham, regardless of past conflicts. Such a strategy may perhaps be only natural in a text originally produced for a royal enquiry, where attempts were made to present the situation in the town as lawful and effective, but it might equally reflect a genuine situation in which the leaders of the town saw their interests as coinciding with those of others in authority in this period. This suggestion will be examined in more detail.

The next group of clauses, of which there are four, relates to usage in the case of personal pleas within the town, and is headed '*De Placitatis Personalibus, viz' Transgressione &c.*'.¹²³ In these cases, jurisdiction is nominally in the hands of the lord, but it has been suggested that by the time the custumal was codified, such pleas were in practice the responsibility of the officers of the town.¹²⁴ The clauses describe

¹²¹ D.W. Sutherland, *The Assize of Novel Disseisin*, (Oxford: Clarendon, 1973) p. 2.

¹²² A.F. Butcher, 'English Urban Society and the Revolt of 1381' in *The English Rising of 1381*, ed. by R.H. Hilton and T.S. Aston (Cambridge: University Press, 1984) pp. 84-111.

¹²³ ff. 11v - 12r.

¹²⁴ Murray, 'The Common-Place Book of Faversham', 94 and n. Murray appears to base this assumption on the existence of one of the clauses added to the 1356 version in the c.1400 version, which gives a detailed description of procedure in civil pleas. This clause is discussed below.

the general principles adhered to in this jurisdiction, with cases between strangers and indwellers or between two strangers being heard from 'hour to hour' (i.e. immediately), and the means by which respective parties are to be brought to court. In cases of debt or covenant, parties are brought firstly by simple summons, then by attachment and then by '*graunde destresse*'¹²⁵ (distress taken from goods inside and outside the house). In pleas of trespass involving battery, blood-shed, '*homsokyn*'¹²⁶ or armed affray, indwellers are brought to court by distress, or by pledges, while strangers are bodily attached. A short clause entitled '*De Minis Factis &c*' follows and describes procedure in a case of 'menace', where the '*manassour*' is attached if his action has been witnessed, until he has found surety of the peace (presumably in the form of pledges). This action is described as proceeding, once again, 'as at the common law.'¹²⁷

The last two clauses of the group addressing personal pleas describe *procedure in* case of debt. One, entitled '*De Compoto Reddendo &c.*' describes procedure in cases of debts or other account owed within the franchise. These are to be proved by tally, written record or the witness of four good men of the town, and a system of distresses and attachment operates according to the 'sufficiency' of the plaintiff. Cases are heard before mayor, bailiff and jurats at the next court, and any found guilty is to be put in prison until he has made amends or found sureties, for as long as reason demands.¹²⁸ The other, entitled '*De Withirnammio Habendo &c.*' describes the procedure used in the collection of debts owed to a member of the community by an inhabitant of another town, in which the mayor writes on behalf of the member to the administration of the other town, demanding restitution. A total of three such letters are issued, until payment is made. If none is forthcoming it is allowed that the next time an individual from that other town comes to Faversham he may be attached, with his goods, and recompense made from those goods. The process of withernam, although rooted in customary self-help, was actually sanctioned by the common law,

¹²⁵ Distress taken from goods inside and outside the house.

¹²⁶ Assault made within someone's house.

¹²⁷ '...come a la commune leye.'

¹²⁸ '...solonc ce que reasoun demaunde'. This is an interesting occurrence of recourse to reason in cases where custom does not stipulate fixed terms.

and used regularly amongst towns as a means of debt regulation. Similar clauses appear in many of the Cinque Port customals, and the process came to be a part of the business of the Brodhull court of the confederation.¹²⁹

Lodged amongst these last clauses is also a phrase which appears somewhat misplaced, since it has no obvious affinity with the debt procedures which surround it. It concerns the conditions under which an individual (by implication, a man) may be considered a freeman of the town. It states that if anyone be resident in the town, or occupies a free tenement there, or marries the daughter of a freeman, then he is by virtue of one of these qualifications enfranchised.¹³⁰ This is a very loose definition of the franchise, since if the statement that all residents may be considered enfranchised is taken at face-value, then all of the male population of the town would be technically free. The phrase takes on particular significance in the light of a clause found later in the custumal text, in the portion which has been suggested to be a later production of between 1356 and c.1405, in which the terms of enfranchisement are much more closely defined.¹³¹ The significance of such a loose definition of urban freedom as is found in the earlier part of the text being qualified in a portion of the text produced later in the fourteenth century will be discussed in more detail. Why the phrase should appear in the position that it does in the custumal is perplexing, since it is in the same hand as the surrounding text and clearly part of the text he was copying. It may be that the actions for debt were open only to freemen, and thus a definition of the franchise may have been seen to be necessary at this point, but this is unlikely, since the same could be said of many of the actions described in the custumal. The most likely explanation is that the phrase was written in to an earlier version of the custumal, perhaps in an available space, and that this distinction is no

¹²⁹ See Murray, 'The Common-Place Book of Faversham', pp. 102-103n. and Bateson, *op. cit.*, 1, p. 121 *et seq.* for similar clauses in other Cinque Port customals. The process of withernam is also discussed and examples of its operation found, in 'A Calendar of the White and Black Books of the Cinque Ports', edited by Felix Hull, *Kent Records, 19* (Kent Archaeological Society, 1966), pp. xxvii - xxix and elsewhere *passim*.

¹³⁰ 'Et si null soit reseant ou eit fraunk tenement, ou eit espouse file de fraunk homme de la vile, sera par taunt enfraunchi come un de la fraunchise.'

¹³¹ f. 13r.

longer apparent, the phrase being copied faithfully by hand 'a'.

The last four clauses of the suggested 1356 text are untitled and are more miscellaneous in character than the preceding clauses, which had been carefully laid-out according to a theoretical scheme. They concern respectively: the mode of dealing with felons coming to the franchise to seek sanctuary: the assize of bread, ale and measures; contributions to the Cinque Port confederation; and the privileges of the Cinque Ports claimed by the town. It is once again noticeable that these clauses express the customs and usages contained within them as extensions of royal or national law, sanctioned by the crown. The mayor acts as king's coroner in cases where a felon seeks sanctuary in a church of the franchise; exemption from the assize of ale is claimed, as had always been allowed by the king's steward; and the privileges of the Cinque Ports are claimed in the final clause with what can only be described as a flourish. *'Et quant as poyntz des fraunchises cleyment touz poyntz des fraunchises enioier en avaunt come nuls autres des cynk portz solonc lez grauntz et confermementz des chartres de progenitours notre seignour le Roy quels sount de record assetz notoriez et feisauntz ent ce que atoint a lour service come eins ces heurs tout temps ount prestez a lour asseraunt come autres de la dite fraunchise.'*

There follows the title already referred to which indicates that ensuing clauses are supplementary to those enrolled with the warden in Dover castle in 1356. The first of these clauses, which addresses the method of acquiring freedom in the town has been referred to and modifies the loose definition of the franchise given in the earlier text. Here, it is stated that when a man wishes to become a freeman, he must attend a Wardmote court, and his case is to be considered 'by offer and proffer' according to how much he is able to pay to the commons for this privilege.¹³² The mayor, clerk and serjeants are, in addition, to take fees respectively of 12d, 2d and 2d in the process. The prospective freeman is then to swear an oath upon a book according to a given form. He swears to do loyal service to the king and his heirs, to loyally maintain the franchise of the town of Faversham, to come at the summons of the mayor and the common horn, to pay taxes and tallages demanded within the town, to

¹³² '...par ofre et profre combien il paiera a les communes.'

keep the counsels and secrets of the town, to keep the peace, and to alienate no other property other than his own under colour of the franchise.

The new stipulations as to the admission of freemen at Faversham reflect a much wider concern amongst urban administrations in the post-Black Death period to control the changing social composition of their towns. They can accurately be described as reactionary measures to combat forces which were largely beyond control. It has been recognised elsewhere that the dislocations brought about by the Black Death and subsequent plague outbreaks caused widespread immigration from rural areas into towns, with individuals seeking new opportunities. This immigration was not entirely unwelcome, since landlords sought new tenants to take up those tenements left vacant by those who had died, and by the 1370s in nearby Canterbury a rapid influx of inhabitants of the nearby countryside may have been of benefit to the town as a whole, though it may have been considered with caution by *the traditional* civic elite.¹³³ This clause in the Faversham customal may represent an attempt by this town's government to regulate immigration, by allowing for the purchase of freedom (which had not been explicitly one of the modes of enfranchisement in the earlier clause) but under specific conditions: that is, the ability to pay. New freemen were apparently welcome at Faversham in the late fourteenth century, provided they could pay, and would swear to uphold the franchise. The system of 'offer and proffer' is of interest, since it seems to allow the mayor and commons discretion, over and above the codified stipulations, to allow entry to any who would seem profitable to the town. It has been suggested that in the later middle ages, the purchase of freedom, accompanied by close control of entries into the franchise was a way in which town governments were able to raise money in times of financial need.¹³⁴ Certainly, the intention at Faversham seems to have been to recruit economically valuable freemen while at the same time restricting the prospects of less well-off entrants, who would have been seen as a burden. The stipulation that the mayor, clerk and serjeant were to

¹³³ For discussion of changes in the composition and dynamics of society in Canterbury, and also in Rochester, between c.1348 and the revolt of 1381 see. A.F. Butcher, 'English Urban Society and the Revolt of 1381' *loc. cit.*, pp. 84-111, in particular pp. 93-97.

¹³⁴ See S. Rigby, *English Society in the Later Middle Ages*, pp. 162-163. The drive to recruit new burgesses who would 'buy' freedom occurred at Hull and at Norwich in the early fifteenth century.

take a fee from new entrants suggests that the creation of freemen was potentially as lucrative for these individuals as for the commons as a whole.

The second of the later clauses is untitled and represents a very detailed rehearsal of usages to be followed in the town's courts in cases of trespass, debt, covenant, detinue and account. Its principal concerns are with the complex system of delays (*essoins* and *defaults*) which were allowed to both plaintiffs and defendants in the process of such cases, and with the usages concerning the action of pledges for both sides, in which pledges take the same responsibilities as the main protagonists, and are vulnerable to the same punishments. These provisions do not seem to modify any of the procedures already outlined in the earlier part of the custumal, but gloss them, adding supplementary detail. The next short clause also represents a gloss on the usages outlined in the preceding 1356 text, and concerns the treatment of petty criminals, whose crime is not sufficient to be considered a case of 'life and member'. It is entitled '*De Parvis Latronicis Adiudicandum*'. The words with which the clause is introduced are of interest and appear to confirm that it represents an addition to a previous version of the custumal, despite being written up as part of the whole text written up by our hand 'a' after 1382. It begins: '*Item ils ount eu usages...*', and this form is notable for two reasons. Firstly the prefix '*item*', while common in the introduction of clauses in other Cinque Port custumals is found in no other place in the Faversham text. Its Latin origin is also not entirely compatible with the French text which it introduces. This in itself may suggest that the clause was not drafted at the same time or by the same person as the earlier text. Secondly the construction '*ils ount eu*', contrasts with the use of the present tense of '*user*' (usually [*ils*] *usent*) in other clauses. It suggests that these usages had been in existence in the past and are now being reinstated. This nuance is very interesting in the light of the purpose of this clause which prescribes the treatment of petty felons, who are 'judged' at the pillory and made to foreswear the town, and of cut-purses, who suffer the same penalty but who are also to lose an ear. The apparent reassertion of these ancient methods of communal policing by an urban government in the context of the later fourteenth or early fifteenth century is striking, and seems to provide more evidence of reactionary attempts at control, in this case of petty

disorder in the town. The insistence that petty felons should forswear the town is probably another manifestation of a desire to control the composition of the town and possibly also of a drive towards exclusivity. Its tone compares with that of the redefinition of the qualifications for enfranchisement, with those not conforming to the moral and economic expectations of the town government being excluded.

Beneath this clause on f. 14v. is found the title '*Hic Incipit le Purle de Faversham*', and there follows a description of the perambulation of the bounds of the liberty (the *purlieu*) of Faversham. It is presented in the form of a writ from the mayor and commons to Stephen Pencester (warden of the Cinque Ports from 1268-1298) in response to his request to be informed of the bounds of the franchise of the town, considered part of the Cinque Ports liberty on account of Faversham's contribution to the Ports' ship service. It is very likely that the original codification of this perambulation took place as a result of an enquiry made throughout the confederation into the extent of the franchises of its members. As has been seen a comparable text exists as part of the Sandwich custumal, which was drawn up at the request of Stephen Pencester. At Sandwich, Pencester is stated to have made the perambulation himself, while here at Faversham the bounds were apparently surveyed and recorded by the community and sent in to Dover Castle as a writ. Edward Jacob noted the existence of this document in the custumal book, and provided a translation and a topographical discussion of the text, and it is therefore not proposed to consider this topography in detail here.¹³⁵ The form of the text is in many ways very similar to the Sandwich perambulation, and takes as its reference points local landmarks which are all given their local names. It is, however, distinguished from the Sandwich text by a coda which once again mentions the '*trentdeushaghes*' : the original thirty-two holdings which were held by the abbot in the franchise (with names of some of the tenants). These holdings were not considered part of the Cinque Port franchise, because they formed part of the seigneurial possessions of the abbey to whom 'scot and lot' were paid. The presence of the '*trentdeushaghes*' here demonstrates the peculiarity of the jurisdictions of Faversham, and suggests that the custumal is not simply a description of franchise claimed on behalf of the association with the Cinque

¹³⁵ Jacob, *The History of Faversham*, pp. 25-30.

Ports, but of a more fundamental and ancient liberty. The possibility that the juxtaposition of the perambulation text with the custumal only in the later fourteenth century (specifically for the post 1382 compilation) suggests that this compilation was specifically intended to be a collection of evidences for the antiquity of the town of Faversham.

Following this perambulation text are two texts covering most of f.15 and part of f. 16. Both texts are likely to be additions to the original 1356 custumal, in common with those texts already discussed. The first is a copy of a statute or royal decree concerning the duty of the king's coroner in cases where a felon has sought sanctuary in a monastery or church and the second is the record of an actual case at Faversham of such felon seeking the sanctuary of St. Saviour's Abbey in 1401. As has been seen the office of coroner within the liberty of Faversham rested in the person of the mayor, who acted as a direct agent of the crown in circumstances requiring the jurisdiction of the coroner. In a sense then the addition of these texts serves to augment the earlier description of the coroner's duty, but it is also likely that the issue of sanctuary was seen to have much wider significance than this. These texts also have an emblematic quality relating to the whole issue of liberties and franchises when seen in the light of contemporary discussion of concepts of sanctuary.

The statute states that the coroner should go to the felon, and ask whether he will come out of the church and submit himself to the process of the law. If the felon agrees, then on his emergence, all his chattels are to be forfeit and the felon is to remain outside the king's peace until acquitted. If however the felon refuses, and remains within the church, after forty days, he is to be regarded as an outlaw, and must prepare to abjure the realm within forty days. A form for this abjuration is given, with a port being chosen for the felon's passage abroad, and the stipulation that he be not troubled as long as he remains upon the highway to that port. He is to go his way carrying a cross of branches, barefoot and bareheaded, and with a clean tunic. There is also provision for the inheritance of the lands of such felons, and a qualifying clause that states that should the abjuration be made on the demand of anyone not legally authorised (that is, not a coroner) then it is to be annulled. At the head of the next leaf begins the record of a case where sanctuary was claimed, in 1401 at Faversham.

One William Clerk, hosier, had fled to St. Saviour's abbey church, and the mayor and coroner William Ledes had gone to him. Whereupon Clerk confessed to having stolen a pair of beads worth two shillings from Agnes Thornton of Newcastle upon Tyne, and asked to be delivered. He was led to the church doors, and abjured the realm in the presence of the coroner who had assigned the port of Dover for his passage.

The right of sanctuary was very ancient, and was considered both as a liberty of all the king's subjects and as a liberty of the church, but it was hotly debated in the latter years of the century, especially in the early years of the reign of Richard II.¹³⁶ The issue of sanctuary, and the right of the crown to override it in the name of public order and justice became intertwined with broader issues of regalian right in the 1370s and 1380s, with the church demanding respect for the institution in the early parliaments of Richard's reign. It seems that the violation of sanctuary rights in Westminster Abbey by the crown in two celebrated cases of 1378 and 1388 was widely considered to be a violation of the liberties and franchises of the church, and thus emblematic of the illegality of Richard's administration. To find a record of the subsequent royal enactment, making compromise between the existence of the liberty of sanctuary and the demands of order, *in a town custumal is significant*. As has been noted, the enactment outlines the responsibility of town mayors as coroners in such cases, and this is an obvious motivation for its codification amongst the other usages and customs. However, the manner of that codification is further evidence of the desire and need to present usages as legitimate extensions of royal power, sanctioned by grant, in order that they might be adequately safeguarded in the future. It is also relevant to point out that sanctuary was fundamentally a liberty of the church, and so to find reference to it in this town custumal may be evidence of a genuine identification of shared interest between town commons and the church at this moment - an identification which is implicit in the coincidence of the demands of the commons and the church (largely in the sphere of liberties and franchises) in the first

¹³⁶ The issue of sanctuary in the reign of Richard II, with particular reference to cases arising from felons seeking sanctuary in Westminster Abbey is discussed in Peter Heath, *Church and Realm 1272-1461* (Fontana, 1988) pp. 209-212. The first case (Hauley and Shakel) occurred in 1378, while the second (of the chief justice Robert Tresilian) occurred in the aftermath of the intervention of the Appellants in 1388.

parliaments of Richard's reign.¹³⁷ The fact that the enactment is followed by a memorandum of an actual case is also of interest. In the first instance it might indicate some former uncertainty in the manner in which the case should be prosecuted and recorded, but it also perhaps points to a desire to record that the mayor's duty was carried out lawfully and correctly when such a case arose. There will be cause to consider later the possibility that such recording was essential in the environment of the turn of the fourteenth and fifteenth centuries, where those responsible for law and order in local government were put under pressure to prove that they acted lawfully and effectively. The existence of the memorandum seems also to provide evidence of the continuation of the legal mentality associated with franchises which had been in existence for many centuries, where the possession of a franchise was proved and justified by its use.¹³⁸ By writing down a memorandum of a case of sanctuary, the urban government of Faversham were confirming their right to hold that franchise in the future.

The last major portion of the custumal text occupies ff. 15-20v of the manuscript and consists of what might loosely be called a formulary. This portion represents a consistent whole, and is almost certainly the enterprise of one individual, perhaps, as will be suggested, the clerk identified as hand 'a' himself. Most of the texts contained within it are actual documents issued by the mayor and jurats of the town, between the years 1400 and 1404. Some can be further identified as of the mayoralty of William de Ledes, containing the abbreviation 'W. de L' and being dated to within his period of office (that is 1400-1401). For the most part, names have been abbreviated in this way in order to make the documents into 'types' for use in other situations. Nevertheless, it is possible to detect from these abbreviations other individuals prominent in Faversham government at this time, including Seman atte Tonge, who

¹³⁷ For the church's demands in 1377 see Heath, *op.cit.*, p. 209.

¹³⁸ This mentality, which was reflected in common law provisions, came to particular prominence in the quo warranto enquiries of the thirteenth century. The identification of disuse of a franchise was one of the ways in which Edward I's justices were able to claim resumption of rights to the crown. See D.W. Sutherland, *Quo Warranto Proceedings in the Reign of Edward I, 1278-1294* (Oxford: Clarendon, 1963) pp. 9-11.

appears as a jurat in 1401/2 and probably also William Makenade.¹³⁹ To call this text a formulary is perhaps to distort its character and probably also its purpose, since although it contains stereotyped documents, they are usually presented as accessories to judicial and administrative processes. Most sections describe a complete administrative process, with the relevant document resulting from the process being included. It is therefore to be considered as part of the custumal. As has been noted the *Register* of Daniel Rough, common clerk of New Romney of the 1380s contains a custumal for that town laid out in a similar fashion, with document types being inserted into the custumal text itself after the appropriate description of process.¹⁴⁰ The technique lends a distinctly clerkly air to this latter part of the custumal at Faversham, suggesting that it was drafted by an individual steeped in the use of written record in legal and administrative processes. It might even be said that the attention to detail found in the text, with regard to the use of these records, borders on the obsessive. The clerkly expertise apparent here is further heightened by the ease with which the text moves from French to Latin, according to need. The usages themselves are in French, as they have been in the preceding sections, but the documents are reproduced in the Latin proper to administrative record.

The types of document listed in the formulary have been noted in the calendar of the custumal book given above, and it is not proposed to give an exhaustive account of each here. Instead, a single item is to be described, as an indicator of the character of the text, followed by a discussion of the significance of this group of texts. The first item in this formulary concerns the method by which the mayor, as coroner of the king should make an inquisition into the death of a man, and begins: 'W. de L., Mayor and Coroner, to the Bailiff of Faversham'. A document follows ordering the bailiff to summon twenty-four honest and lawful men of the community for an

¹³⁹ William de Ledes' name appears in abbreviated form on ff. 16 (twice), 16v, 17 (twice). In each case he is described as mayor, and additionally, in some as king's coroner. Seman atte Tonge and (probably) William de Makenade on f. 16v, immediately following Ledes' name, suggesting their function as jurats.

¹⁴⁰ Saint Catharine's College, Cambridge, MS G.V 69, published as 'The Register of Daniel Rough', edited by K.M.E. Murray, *Kent Records*, 16 (Kent Archaeological Society, 1945). Discussed above, Chapter 2. 1.

inquest. This writ is given in Latin, but the ensuing text which describes the inquest made beside the body of the dead man is in French. It is stated that the bailiff is to obey the writ, summoning the required men and committing their names to the *dorse* of the writ, or on a sheet appended to it. There is a description of oaths to be sworn by the summoned men, with each being charged by the mayor or his clerk to swear upon, and kiss a book, before the whole party goes to see the body and to make a verdict as to the cause of death. When this has been done, the mayor is to take the verdict, under seal, and keep it carefully. The bailiff may then proceed against anyone indicted for the death 'in the manner otherwise declared in the above-written text.' The text then reverts to Latin and a formula is given for the document containing the verdict, which is derived from what was probably an actual case of 1401 or 1402, concerning the death of one John atte Noke, which gives two options for the type of death recorded: being firstly a felonious death by dagger or secondly a death by misfortune. A particular interest of this item is *the extent to which prescribed physical action* (the partly ritualised gathering for the inquest, and the taking of evidences) is intertwined with the legal imperatives. It would appear to represent a good example of the extent to which the essentially non-literate aspects of custom endured within a procedure sanctioned by law.

This entry and the ensuing documents fulfil the function of presenting in one place a variety of documents used by a town clerk, on behalf of the mayor and jurats, associated with their jurisdiction within the Faversham franchise and their privileges outside the town. In a straightforward, practical sense, the creation of a formulary might be seen simply as an attempt to record for the benefit of town-clerks, present and future, the methods used in urban document writing. It would be a natural part of a manual for civic government such as this custumal book. However, because of the way in which the documents are presented as extensions of civic processes, and in view of the sort of documents reproduced, it would appear that this section of the custumal book also has a more overtly political intention. It has been argued that the careful description of processes in the earlier part of the custumal, and their location within a scheme compatible with the common law and the king's own jurisdiction was intended to justify the Faversham usages and customs, and a similar intention may have influenced the shaping of the formulary. The oscillation between process and the

resulting document type in this text seems intended to give a sense of orderliness and good government to the processes, with a written record being produced in each case as evidence.

4. 8. 3 A composition made between members of the Cinque Ports in 1307, ff. 20v-21:

This is the last document written by hand 'a' in the early fifteenth century custumal book (other than the chronicle and associated texts which were appended to it on a separate quire). As the codicological analysis of the book has shown it runs from the last few lines of the verso of the last leaf of quire 3 to the foot of the recto of the first leaf of quire 4. It seems to have been the length of this document which dictated the need for the addition of quire 4, which was then left mostly blank by hand 'a', only to be written on soon after by hands 'b' and 'c'. It consists of an indenture made at the court of Shepway, before the warden Henry de Cobham, on the Tuesday following the feast of Dunstan 35 Edward I [23 May 1307]. It states that it springs from the great debates which have arisen from the debts accrued by the confederation as a whole for tallages, assessments and other charges. It records the decision that the debt, and future charges on the chattels of dwellers of the ports, should be divided between the ports. Hastings should pay a third, Romney and Dover together a third, and Sandwich and Hythe a third. Faversham is not named, being limb of the port of Dover, but it is stated that Faversham was among the ports and limbs who set their common seals to the document in 1307.

4. 9 The codification of customs and usages at Faversham in the late fourteenth and early fifteenth centuries

To describe the Faversham custumal as it exists in the custumal book in terms of its component parts is to employ the methods of deconstruction. In describing these parts, it has been possible to identify the 'building blocks' from which the text written by hand 'a' shortly between c.1382 and c.1405 was constructed. These blocks consist either of short portions of text in the form of specific clauses, and larger portions incorporating a number of clauses, which represent distinct stages of production. The

text as a whole has been seen to consist of two of these larger blocks, one produced in 1356 and the other (incorporating the first) produced in the period c.1382 - c.1405. Since one of the major themes of this project has been to consider the cultures associated with codification of custom, it is now necessary to move beyond the deconstructive method, to consider the Faversham texts as a whole, as codes in their own right. It is proposed to consider now the two major codifications represented in this customal. This consideration can in one sense be pursued in order to understand how such codification reflected the urban culture with which it is concerned, and in another, to understand how codification as an act in itself was an agent in this culture. This latter consideration is to extend the implication of the Sandwich evidence that codification of custom is a political act, requiring analysis as such.

The text tells us that the first part of the customal consists of a text which was kept in Dover castle, returned under the common seal of the town. This information has been interpreted to mean that this portion was that enrolled, in common with the customals of several other Cinque Port towns, in 1356. The evidence for a royal enquiry of 1356 into the customs and franchises of the Cinque Ports has been considered in some detail in the survey of customals from all of the Ports given in Chapter 2. It has been noted that the special powers invested in the office of the warden of the Cinque Ports in the 1350s associated with a commission of oyer and terminer were perceived by the administrations of the ports themselves as a fundamental threat to their liberties, and that this provoked the petitioning of the crown in 1356 and the subsequent enrolment of town customals in Dover castle on the demand of the crown. As the Faversham customal itself demonstrates, the franchises of the Cinque ports included judicial rights usually associated with the justices of the crown in major actions (pleas of the crown). While these were not as extensive at Faversham as in most of the other ports, these rights were apparently held as a considerable source of prestige and profit. The warden's commission of oyer and terminer may also have represented only one of a number of perceived threats to these major aspects of the Cinque Port franchises, since it is in this period that considerable innovations were made under Edward III in the closer royal control of law and order in the localities,

with the new office of justice of the peace being established to this end.¹⁴¹

How precisely does the 1356 Faversham custumal express the contemporary political anxieties of the Cinque Port town governments? In the first instance it can be said that its studied concentration on the presentation of the actions of officials and courts at Faversham as anciently established, royally confirmed, and legally justifiable points to concern that the independence of such institutions was threatened by an increasingly developed royal administration operating through new and more powerful local officials, especially in the person of the warden of the Cinque Ports. It might also be said, by extension, that the custumal represents a response to the demands of the commission of oyer and terminer issued to the warden in 1354. As has been seen, this commission addressed the issue of malpractice by local officials, and sought to expose and eradicate corruption. Many of the clauses specifically addressed the problem of misuse of franchisal justice, such as the right to hold courts, the keeping of prisons, the custody of assizes, of customs and of other taxation, and the use of systems of pledging in courts. This is not to say that Faversham was ever subjected to such an enquiry of oyer and terminer, or that its fourteenth century custumal is a point for point rejoinder to the articles of enquiry, *but that the knowledge of the debated issues behind the articles is a tangible presence in the custumal text*. Provision for the correct keeping of the town prisons, the rights of assize, the making of collections in the town, and the methods by which a defendant in the town courts might call upon the witness or pledges of his fellows are specifically and carefully addressed in the enactments of the text. At all points these functions and processes are articulated as extensions of the king's own authority, and as non-exclusive of the application of the common law.

The role of the warden is also very specifically dealt with, which closely reflects the fear of franchisal encroachments associated with the misuse of the courts of Dover castle by Roger Mortimer. As has been seen, franchisal justice at Faversham was

¹⁴¹ For the legal developments in Edward III's administration of the localities see Edward Powell, *op. cit.*, pp. 14-16. The establishment of the Justices of the Peace was only effected in the immediate post-Black Death period, when their major function was the enforcement of labour legislation in the localities.

often limited, and final determination or delivery in cases was in the hands of the warden, whose court of Shepway held the judicial powers associated with the eyres, with commissions of oyer and terminer or later, with the justices of the peace. In all those cases where process is to be begun in the town courts of Faversham, or by the action of the mayor, bailiff and jurats and subsequently determined by the warden, the process residing in the power of town officials is first carefully set out, and then concluded with the warden's right of jurisdiction. Such a process is outlined for all pleas of the crown, including those of homicide.¹⁴² The careful limitation of the warden's rights in the town which is implicit in these enactments is made explicit in a single clause towards the end of the 1356 custumal, among the details of Faversham's association with the Cinque Ports. This clause is a direct reflection of Cinque Port concerns in the Faversham custumal and states '*...que nul des Gardeins qi quil soit ne autre ministre se medle dedeinz la dite vile de rien atainer en ycele ou execucion faire sinoun en defaute de droite expresse et notorie, et ce a veraie suggestion de partie.*'¹⁴³

If the 1356 custumal is to be interpreted as a response to the threat of franchisal encroachment, then its function is comparable with the custumal produced c.1300 in nearby Sandwich. At Sandwich a direct intrusion of royal justices, and the subsequent enquiry provided the stimulus for the codification of customary provisions by Adam Champneys on behalf of the community. This situation has been considered as an example of the symbolic construction of community, through the production of a custumal text, arising from a fundamental threat to existing social and political arrangements within the town. The similar production of the Faversham custumal, in the context of a confederation-wide enterprise, over fifty years later might be seen in a similar light. The community which is symbolically constructed in the custumal text is one which incorporated both the town of Faversham and its affinity to the wider community of towns within the Cinque Ports. In common with the Sandwich custumal, the construction is made with reference to the past and is sometimes presented as meta-history. The coincidence of the custumal with historical charters is

¹⁴² Fa/LC 1, f.10r.

¹⁴³ Fa/LC 1, f.12v.

notable, as is the assertion that these customary provisions had existed '*a deprimes*' (from the first). The manipulation of objective historical fact is particularly associated with claims relating to the authority of the mayor, where the antiquity of that office is exaggerated, in a manner which can truly be described as the invention of tradition. In presenting such a custumal to the warden in 1356, the community of Faversham can be seen to be making use of the resources of the past, and of the collective memory residing in customary procedures, as a political tool aimed at the defence of their liberties and franchises.¹⁴⁴

While such a model for the production of custumals is valuable, it cannot be accepted without qualification or refinement of the terms of reference. A major problem lies in the equation of the community with the town. Although the concept of the town as a distinct unit, and as a functional whole, is a preoccupation of the custumal text, this is of course a mental construct by the creators of that text. It is unlikely to correspond in a simple or direct way to the reality of urban life in 1350s Faversham, since it clearly represents the interests of the town's government rather than the whole community. It is not the response of the whole community to franchisal encroachment, but the response of the urban elite, who were the beneficiaries of the franchise in the first place. Despite the presentation of the customs as the will of the community as a whole (being returned to Dover castle under the common seal), its emphasis is on the authority of the mayor and his officers, who act in some way in all the procedures described in the clauses of the custumal. While the authoritarian tone of the custumal might in one sense be interpreted as an attempt to justify the liberties of the town to the crown, in the manner outlined above, it also betrays a genuine anxiety over the administration of the town and the maintenance of law and order.

Although there is no direct evidence for social processes at Faversham at this time, comparative evidence strongly suggests that urban elites were experiencing profound crisis in administration in the 1350s. Many of the problems experienced stemmed from the dramatic reduction of the population wrought by the Black Death of 1348,

¹⁴⁴ Anthony P. Cohen, *The Symbolic Construction of Community*, (1985 repr. London and New York: Routledge, 1989) particularly ch. 4, pp. 97-108.

and by subsequent outbreaks of plague. Not only did this mortality threaten the longevity of established urban governments, but created dislocations at all levels in familial and business relationships. Such dislocations apparently created problems for all aspects of urban administration. At Canterbury in the 1350s, mortality of as much as fifty per cent radically altered the character of freeman admissions, and perhaps also resulted in a high degree of mobility and business insecurity.¹⁴⁵ It also threatened to break down the established patterns of office-holding, and uncertainty as to the very methods of administrative procedure arising from this have been suggested as the motivation behind a re-assertion of customary procedures made in September of 1351. At a meeting of the Canterbury burghmoot, twelve jurats, with the assent of bailiffs, aldermen, a council of thirty-six and the whole community published ordinances rehearsing customary procedures for the town courts and the actions of officials.

The evidence that the government of Canterbury had produced this codification of custom and usage in 1351 must surely influence the interpretation of similar codification in Faversham, and probably all of the Cinque Port towns in 1356. It would seem that an interpretation based on the political expediencies of the relationship with the warden represents only a very basic explanation. In reality, the government of Faversham was probably embroiled in much more complex and time-consuming problems within the boundaries of their liberty. While it is not possible to reconstruct these problems the customal does seem to address uncertainty in matters of government, with its reiteration of all manner of urban functions and of the duties of its officials. In particular, the careful description of methods of land transactions may reflect the difficulties of controlling a fluid and rapidly changing land-market and pattern of inheritance. The rather loose definition of the franchise found in the 1356 portion of the text is also of interest in a period of potentially very high mobility between the surrounding countryside and the town. The stated methods of enfranchisement are residence, the occupation of vacant tenements, and marriage, and all of these may be seen to be encouraging of newcomers to the town taking up the

¹⁴⁵ This paragraph relating to the evidence of Canterbury closely follows A.F. Butcher, 'English Urban Society and the Revolt of 1381', *loc. cit.*, pp. 95-96 and n.

franchise as contributors to the costs of maintaining the administrative franchises of the town, to replace those lost to the plague.

A further problem with the model of a custumal produced purely as a response to the warden's encroachment is the implication of a simplistic relationship between the warden and the members of Cinque Port town governments. While the image of the tyrannical feudal beneficiary in the person of the warden Roger Mortimer, as advanced by Murray may be partly valid, this does an injustice to the complexity of relationships between such aristocracy and civic elites. Murray herself notes the rather warmer relations between Mortimer's predecessor, de Bugarssh and the ports and describes the portsmen's voluntary participation in his commission of oyer and terminer in 1354. Such collaboration hints at an increasing alignment of these urban governments with royal and aristocratic authority, and the attempt to secure patronage for their own political authority within their respective towns and elsewhere. There is certainly an attempt to define the extent of warden's power in the jurisdiction of the town, but this is done with subtlety, in a manner which does not exclude his intervention where *this is the benefit of the town*.

In this light, the emphasis on the correct application of law and custom which is such an overt feature of the Faversham custumal takes on new significance. It is not simply a justifying strategy in defence of the franchise for the benefit of royal officials but probably also a genuine reflection of the concerns and opinions of the government of Faversham. This should not be altogether surprising, since a particular feature of the post-Black death period is an increasing alignment of interest between those who could broadly be called the 'commons' (including members of town governments as well a prominent landowners) and older established proponents of the law, such as the magnates and the crown itself. A particular case in point is the operation of the 1351 Statute of Labourers, which sought to re-affirm the status quo in the relationship between labourers and employers which was undergoing profound alteration in the aftermath of the Black Death. It is true to say that the complaints of the commons concerning the break-down of law and order were frequently targeted at the abuse of law which was seen to reside in the franchises, and so the position of members of the Cinque Ports was highly ambiguous at this time, but the custumal

evidence here at Faversham indicates that they were equally concerned with the maintenance of order, even if they insisted on their customary methods of enforcement in the town courts. As has been seen, the provisions of custom and usage are at all times expressed as extensions of the king's own law.

In symbolic terms, the construction of the notion of community through the custumal then becomes much more complicated. Certainly, the town as a community is expressed, but so too are other communities of interest. By locating custom within the common law and within a wider system of authority (notably the confederation of the Cinque Ports), the government of Faversham seem to place themselves within the community of law-makers which also included the crown's lawyers and its feudal officials. The confederation-wide presentation of custumals at Dover castle probably provided an opportunity for the respective governments of this group of towns to express *internal anxieties, and to articulate them* in an authoritarian manner. By presenting the resulting codes of custom to the warden of the Cinque Ports, and by registering them at Dover castle, these governments were appealing to the warden for his patronage and protection, in the maintenance of their political power. The act of registering within the castle appears to be an extension of the practice of depositing copies of agreements or important documents in royal departments (such as the exchequer) for safe-keeping, and it also carries a symbolic weight. To place these written codes, as objects, within the walls of a castle would have invested them with a powerful sense of permanence and impregnability which was a natural extension of the very act of codification as already discussed. This symbolic weight was not of merely passing interest, since the scribe of the custumal as it survives in its later fourteenth century version heads the text with the information that these are the customs held in Dover castle.¹⁴⁶

The custumal as it now appears in the work of hand 'a' in the custumal book represents the second major act of codification recognisable in the history of this text. It is now proposed to examine the possible reasons for this act, and to reconstruct something of the urban culture which it both reflected and influenced. In the above

¹⁴⁶ Fa/LC 1, f.9v.

discussion of the components of the custumal, it has been seen that the later additions to the 1356 text may all be seen to address the contingencies of an urban government in the later fourteenth century. They represent not only an attempt at closer definition of the elements of the Faversham franchise (as in the additional description of customary procedures in the town courts) but also an attempt to sanction close control over the inhabitants of the town and their behaviour, as is reflected in the clauses describing an increasingly exclusive definition of conditions for enrolment of freemen, and the reassertion of criminal processes for petty offenders. It might therefore be possible to suggest that the multiplication of such additional clauses (probably added to the end of a previous custumal manuscript) ultimately demanded the production of a new version of the custumal, and that the genesis of the custumal book was a result of an increasingly authoritarian civic government. This interpretation may be valid, but needs to be considered in greater detail. The nature of the custumal book as produced by hand 'a' makes such a consideration possible, since the variety of its contents, unified by the work of a single writer, gives many clues to a sophisticated political and administrative culture at Faversham in the later fourteenth and earlier fifteenth centuries. The custumal can be considered in the context of a cluster, or archive, of other documents found in the book in a manner which is not possible for the 1356 text. It represents not only a codification in its own right, but part of a much larger codification or compilation. Unlike the 1356 codification it is unlikely that a specific occasion can be reconstructed for the production of the c. 1382 - c. 1405 version. There is then no simple causation to be reconstructed in this case. Instead, we might look at external evidence in conjunction with the evidence of the custumal book texts themselves in order to understand the context of production and the place of such written records within it.

Both the Sandwich evidence, and the evidence for the earlier codification at Faversham point to the connection between royal enquiry into franchises and the production of custumals, and suggest ways in which written codes of custom may have been used as political tools in such circumstances. It is true to say that the later years of the fourteenth century marked a peak in the operation of such enquiries, and that the reign of Richard II (especially the early part of it) saw concerted attempts at authoritarian control of, and attempts to curtail, franchisal liberties. The case of the

resumption of the liberties of London in 1392 by Richard, who claimed to have found 'notable and evident defaults in the government and rule of the city...', is now well known,¹⁴⁷ and it is likely that the experience of London was a single example of the experience of towns and boroughs as a whole in the reign of Richard. It is probable that there was a general anxiety amongst borough and town governments for the safety of their franchises. While no specific charges were laid against the government of London the issues of city custom, the financial relationship between the crown and the city, and of the frequent lawlessness seen to arise within the liberty, have been identified as major causes for Richard's action.¹⁴⁸ The commission of oyer and terminer through which an enquiry was made into the shortcomings of London government in 1392 was made according to the 1354 statute devised to force observance of the Statute of Labourers, which had been put into action 'regardless of any civic franchise, privilege or custom' and applied to all the cities and boroughs of the realm.¹⁴⁹ This in itself may suggest that any beneficiaries of urban franchise at the end of the fourteenth century would have considered it necessary to be ready to defend and justify their liberties, and this must stand behind the interpretation of the current compilation.

The matter of local law and order in the late fourteenth century was highly contested at Faversham, as it was elsewhere. As might be expected the years around 1381 seem to have seen a particular concentration of occasions upon which royal justice was experienced directly in Faversham, and it is likely that the whole issue of the franchisal government of Faversham was questioned in a case of 1381. In 1380 a commission was issued jointly to royal officials (among whom was the justice Robert Bealknap) and to leading members of the Faversham administration (including William Makenade and Seman atte Tonge) to enquire into the case of certain malefactors who had rescued a felon from the king's minister Richard Cook at

¹⁴⁷ Caroline M. Barron, 'The Quarrel of Richard II with London 1392-7' in *The Reign of Richard II: essays in honour of May McKisack*, ed. F.R.H. DuBoulay and Caroline M. Barron (London: Athlone Press, 1971), pp. 173-199 (173)

¹⁴⁸ *Ibid.*, pp. 174-189.

¹⁴⁹ *Rotuli Parliamentorum*, vol. 2, pp. 258-9; *Statutes of the Realm*, 1, pp. 346-7; cited in Barron, *op. cit.*, pp. 185-6.

Ospringe (lying immediately beside the liberty of Faversham) together with the goods stolen by him.¹⁵⁰ In 1381, the records of the Chancery include the proceedings of an enquiry made into the government of Faversham itself in which the *quo warranto* case of 1304 already considered was scrutinised as evidence of the jurisdictional arrangements within the town.¹⁵¹ The reason for this scrutiny in Chancery in 1381 is unclear, though the case itself was probably brought by the abbot of Faversham, and may therefore have resulted from the actions of inhabitants of the town associated with the Revolt itself. The two cases underline the complex situation into which the town government was placed at this time. On the one hand, men such as Makenade and Atte Tonge were associated with royal justice in their participation in commissions with men such as Bealknap, and this probably accounts for the experience of Makenade at the hands of the rebels in 1381.¹⁵² On the other hand their own local authority, as members of a franchised urban government, appears to have been not only difficult to implement at this time, but questioned also by the crown as being obstructive to the exercise of law and order. Nearly twenty years later, a case which ran throughout the winter of 1398/9, involved the appointment of Richard Drax, king's serjeant at arms to enquire into a case of one Robert Bouekolt, king's searcher in the port of Faversham, who had illegally shipped eight-hundred fleeces bought in the isle of Sheppey to Flanders against the current embargo.¹⁵³ The enquiry appears to have implicated six others, involved in similar activity, including one William de Ledes, who was probably at that time a prominent member of the

¹⁵⁰ CPR 1377-1381, p. 461. The commission was issued to Robert Bealknap, Roger Asshebournehamme, John Frenyngham, William Makenade, William de Brenchesle, and Seman atte Tonge. It is almost certainly no coincidence that Makenade, who lived at Preston beside Faversham, and probably held office within the town, was singled out by the rebels of the following year, who were assisted at Faversham by one John Gardener a tailor of the town. See W.E. Flaherty, 'The Great Rebellion in Kent illustrated from the Public Records', *Arch. Cant.*, 3, (1860) pp. 65-96 (90).

¹⁵¹ PRO C 260/93 no. 8, Chancery Miscellanea. The 1304 *quo warranto* case is discussed above in this chapter 4. 2 ('The early development and administration of Faversham').

¹⁵² The experience of Makenade, as one associated with royal commissions is perhaps comparable to that of such prominent Kent men as William Septvans and William Medmenham who were also local representatives of royal justices, and who were attacked and their muniments burnt in 1381. See A.F. Butcher, 'English Urban Society and the Revolt of 1381', *loc. cit.*, pp. 107-108.

¹⁵³ CPR 1396-1399, p. 441.

Faversham town government, perhaps even mayor.¹⁵⁴ This is the same William de Ledes who appears in the documents of the formulary in the custumal book, and whose career will be considered in greater detail. All of these men were brought before the king's council, but the fate of only two of them is recorded. William de Ledes and one William Notte were apparently successful in their defence and received general pardons for all felonies, trespasses, misprisions, negligences and ignorances, excluding treasons, murders, rapes and homicides.¹⁵⁵ The case of the illegal shipments is precisely the sort of abuse of delegated authority which had been under scrutiny in commissions of enquiry throughout the second half of the fourteenth century, and when it was considered in the king's council it is likely, in the light of the London evidence considered above, that the ability of Faversham officials to act within the law was as much under scrutiny as the case itself. The formulary of the *custumal* book compilation itself provides evidence of another case in which a mayor of the town came under suspicion by the crown, in the reign of Henry IV. A document which purports to demonstrate the method of making a return to the warden upon a royal writ consists of an acknowledgement of receipt of the writ and the return, stating that W. Managh, mayor has been distrained and taken into custody, and that the bailiff, Walter Hunt, is dead. The document is described as having been sealed with the seal of the office of the mayor in the fourth year of the reign of Henry IV (1403/4).¹⁵⁶

The evidence for the rather extraordinary difficulties with which the town government of Faversham was faced from 1380, and for the extent to which such government was contested at all levels forms a remarkable context for the production of the Faversham custumal book. It has been suggested that while the quires which formed the early part of the book cannot have been completed until c. 1405, it is likely that they may be the fruits of a period of compilation and collation which began in 1382 or shortly thereafter. While the lack of systematic records at Faversham at this time makes it difficult to reconstruct precisely the events of these years, or the exact

¹⁵⁴ *Ibid.*, p. 442

¹⁵⁵ *Ibid.*, p. 490

¹⁵⁶ Fa/LC 1, f.17v. The reference to the seal of the mayor is of interest, since no earlier record has been found of this seal. Earlier documents were sealed with the common seal.

motivations and affinities in the cases described, the texts of the Faversham book address the complex jurisdictional contingencies of the period. Of primary importance is the forceful assertion of the distinctive and anciently-held liberties and customs of the town, which provides justification for the rights of the established town government to exercise a degree of authority within the town through the operation of its courts. But, also of importance is the degree to which such authority is presented under the sanction of royal authority, and this reflects not only the identification of leading members of the town government with royal justice, but also the need to present local custom as 'legal' in the eyes of a royal government which was increasingly intolerant of abuse of franchisal authority. The need to justify such authority in the eyes of the crown may be a primary explanatory factor in the decision to produce a new custumal compilation at Faversham in these years.

4. 10 Urban government and culture at Faversham and the production of the custumal book

In addition to explaining the production of the custumal book in particular terms, as a response to the political imperatives of franchisal government in this period it is possible to offer some indication of the urban culture associated with government at Faversham. This is valuable in the light of the variety of the texts contained in the early quires of the book. It would seem over-deterministic to explain such a production, which includes such oblique material as the chronicle text (which will also be considered) as a simple response to the demands of the crown in the definition of franchise. In exploring this culture at Faversham it has been necessary to consider the limited evidence for urban government in the light of comparative studies of such government in other Kentish towns, particularly Canterbury.

The fluidity and short-lived nature of aspects of urban life, from business instability to the social composition of neighbourhoods, in the period when the custumal book was begun, has been noted in nearby Canterbury, and reflects a much wider fluidity both within towns and the surrounding countryside. It has also been argued that the last years of the fourteenth century witnessed, as a result of demographic and cultural restructuring, an unprecedented blurring of the distinctions between towns and the

surrounding countryside, with extensive transference of people and of interests between the two.¹⁵⁷ Such an effect may stand behind the emergence of what has been called an 'urban gentry' in the fifteenth century.¹⁵⁸ The evidence for Sandwich, together with that for Canterbury in the same period has also suggested the extent to which the exercise of government by traditional urban elites was threatened by the later fourteenth century. While detailed reconstructions of changing personnel in the town and its government are not possible for Faversham, there is evidence that those involved in urban government were by no means immune from these social processes, and that their participation in that government was shaped by very specific late fourteenth century conditions. Account must also be taken of evidence from other English towns, which suggests that the culture of urban life and government witnessed distinctive changes at the turn of the fourteenth and fifteenth centuries and that it is at precisely this time that we find a cluster of related cultural activities: the building and re-building of town halls, the obtaining of new borough charters, the invention of new forms of urban ceremony and display, together with the beginnings of the elaboration of forms of urban government themselves.¹⁵⁹ It would seem that at the very point when 'traditional' urban society (such as may have existed in the early and mid-fourteenth centuries) had been most profoundly transformed, and the very concept of the town as a social unit redefined in practice, urban governments invested considerable energy and resources in the expression of urban self-consciousness, often making use of old-established motifs. As is now well recognised, literate productions, in the form of town-books and charters played a major part in the specific culture of the early fifteenth century town, and this must inform our estimation of the significance of the custumal book.

Before examining the evidence for such culture, it is worth considering the admittedly scant evidence for the personnel of town government in the period. It is possible to reconstruct something of the interests of two individuals, who held the mayoralty of

¹⁵⁷ A.F. Butcher, 'English Urban Society and the Revolt of 1381', *loc. cit.*, p. 99.

¹⁵⁸ Rosemary Horrox, 'The Urban Gentry in the Fifteenth Century' in *Towns and Townspeople in the Fifteenth Century*, ed. by J.A.F. Thomson (Gloucester: Alan Sutton, 1988) pp. 22-44

¹⁵⁹ Stephen Rigby, 'Urban 'Oligarchy' in Late Medieval England', in *Towns and Townspeople*, pp. 62-106 (62-63)

Faversham at the opening of the fifteenth century, and who had been involved in its administration previously, who were likely to have been closely connected with the production of the custumal book. The first is William de Ledes, who is explicitly associated with the book through the use of the abbreviated 'W. de L', which appears amongst documents of the formulary, and who was mayor in 1400 and also in 1402.¹⁶⁰ The second is Seman atte Tonge, who does not appear in the same way in the book, but was mayor in both 1401 and 1403, and for whom there is substantial surviving evidence, allowing not only discussion of his business interests, but also his participation in a broader urban culture.¹⁶¹

The evidence for the life of William de Ledes has been found for only the short period between 1398 and his burial in St. Mary's church, Faversham in 1419.¹⁶² We first hear of de Ledes when he is arrested to appear before the king and council in November of 1398 with a group of six others in the case already discussed in which the illegal shipping of fleeces from Faversham was considered.¹⁶³ The fact that he was likely to have been a merchant of some stature at this time (and thus capable of making these kinds of shipment) may be confirmed by the individuals who stood as pledges for him in this case in chancery in the winter of 1398/9. Four men are named: William Hoton of Yorkshire, John Shelford of Cambridgeshire, Thomas Wilton of Kent, and John Wawe, draper of London.¹⁶⁴ Such widely scattered connections, and the connection with a London draper do seem to indicate that de Ledes could secure support from a wider merchant community. A pardon was subsequently issued to de Ledes in March of 1399.¹⁶⁵ One of the letters reproduced in the formulary of the custumal book provides further insight into his merchant activity.¹⁶⁶ This letter ostensibly provided as an example of a letter to be sent in the case where a ship of the town has been arrested in another port, provides an illuminating case of the

¹⁶⁰ Jacob, *The History of Faversham*, p. 117; Fa/LC 1, f. 16v.

¹⁶¹ *Ibid.*, p.117.

¹⁶² *Ibid.*, p. 146 for burial of William de Ledes.

¹⁶³ *CPR 1396-1399*, p. 442.

¹⁶⁴ *CCR 1396-1398*, p. 415.

¹⁶⁵ *CPR 1396-1399*, p. 490.

¹⁶⁶ Fa/LC 1, f. 20v.

coincidence of the personal interests of a prominent inhabitant and the administrative processes of the town. This coincidence, where the administration of the town is clearly used in the personal interest of de Ledes, is an illustration of the advantages associated with civic office. A ship denoted only as 'M', belonging to de Ledes was arrested in London, by the mayor and sheriffs, in the belief that it belonged to one J. de B. It was detained, as forfeit to the king, by reason of a felony committed by J. de B. The letter sent on behalf of William de Ledes, claiming that the ship was his and not the accused's, and never had been, cites the testimonies of trustworthy inhabitants of Faversham. The letter is undated, but from the date range of the other formulae it probably dates from between 1400 and 1404, a period in which de Ledes was twice mayor. Nothing more has been found for de Ledes until 1416, in which year he was provided with a royal commission to buy 1000 quarters of wheat for the victualling of Harfleur. This is the limit of evidence for his career, save for the fact that he died and was buried in St. Mary's church in 1419.¹⁶⁷

The evidence for the life of Seman atte Tonge is rather richer. As has been seen atte Tonge succeeded William de Ledes in the mayoralty in 1401, and is also known to have been mayor in 1403. It is not possible to attribute the mayoralty to any other individual after that date until 1422, and so it is also possible that atte Tonge held the mayoralty in other years between 1402 and his death and burial in St. Mary's church in 1414.¹⁶⁸ He is likely to have held office in Faversham for some years prior to 1401, since he was chosen, along with Willam Makenade as part of the royal commission to enquire into the case of the malefactors who had removed a felon from the custody of the king's minister in January 1380.¹⁶⁹ Most of our knowledge of atte Tonge comes from the early years of the fifteenth century. In 1400 he acted as a pledge for Ralph Andrewes in Wye, some ten miles from Faversham.¹⁷⁰ In 1409 atte Tonge was granted a royal licence, on payment of 80 marks, to found a chantry with two chaplains, to celebrate mass daily at the altar of the Holy Trinity in St. Mary's church, 'for his good estate, for his soul after death and the souls of his parents, friends,

¹⁶⁷ Jacob, *op. cit.*, p. 146.

¹⁶⁸ *Ibid.*, p. 146 for burial of Seman atte Tonge.

¹⁶⁹ *CPR 1377-1381*, p. 464.

benefactors.’ The chaplains were provided for with 360 acres of land, 7 acres of meadow, 30 acres of wood, 27 shillings of rent, and a rent of 2 quarters of barley, 2 cocks and 20 hens in Wye, Godmersham and Boughton Aluph.¹⁷¹ This chantry-foundation is not only surprising for its scale, but also for the source of the resources used to found it. It is not absolutely clear whether the listed quantities of land are in the named parishes, or simply the rents, but the former seems likely. The fact that this townsman who had been, and may still have been, mayor of Faversham was able to use such apparently disposable wealth based not in the town, but in parishes at quite some distance indicates that such urban officials should not be seen simply as having urban interests. The mode of acquisition of this accumulated wealth may be hinted at in a further record in which *atte Tonge* receives royal confirmation of his keeping of the lands of the heir of John Frogenhale, despite a recent exchequer enquiry in which it is found that he has made waste of certain houses and woods.¹⁷² This is only evidence of a keepership in the case of a minority, but it suggests that *atte Tonge* was prominent in a circle of local landowners (of whom the Frogenhales were part),¹⁷³ and that he was well placed to benefit from opportunities in the land market or in inheritance. The fact that he had been implicated for making waste of houses and woods further suggests an accumulator and consolidator of landed wealth, which is confirmed by his ability to found a chantry on such a scale. This chantry was not either the limit of his disposal of wealth towards the end of his life, since it is known that he made benefactions from his lands in Boughton and Faversham to the Maison Dieu at Ospringe, and it is possible that he also made a benefaction to St. Saviour’s abbey itself or made some other arrangement for his soul to be remembered in the prayers of its monks.¹⁷⁴

¹⁷⁰ *CCR 1399-1402*, p. 275.

¹⁷¹ *CPR 1408-1413*, p. 141.

¹⁷² *CPR 1408-1413*, p. 348.

¹⁷³ John Frogenhale was one of two men who came to the rescue of William Makenade when he was attacked by the rebels of 1381. Flaherty, *op. cit.*, *loc. cit.*, p. 90.

¹⁷⁴ List and Index Society, 17, *Inquisitions Ad Quod Damnum*, part II, p. 679; ‘Faversham and District Bibliography; Primary Sources’, 1, ed. by Patricia Hyde, *Faversham Studies*, 1 (Faversham: The Faversham Society, 1993) p. 57. The martyrology dating from c. 1400 from St. Saviour’s Abbey (Bodleian Library, Jones MS. 9) contains among names written into its margins (which have been interpreted as the names of local benefactors) several incidences of the name ‘Seman’.

Although we can do no more than suggest characteristics of the composition of the town government from this evidence, we are on firmer ground in considering the culture associated with this government in the first decade of the fifteenth century. This evidence suggests that the making of the custumal book stood at the beginning of a period of relatively heavy investment in symbolic expressions of wealth and political power. These expressions were partly articulated through ceremony, display, and in cultural artifacts, and partly through petitioning the crown for grants and confirmations of the status of the town. If the re-codification of the custumal and associated texts between c. 1382 and c.1405 can be seen as a re-assertion of a distinctly urban culture, then it forms part of a wider exercise in the presentation of urban self-consciousness.

This self-consciousness seems to have been expressed both by prominent individuals, as well as in the name of the town as a whole. The personal side of this phenomenon is illustrated by atte Tonge's chantry foundation. Despite his diversity of interests in town and country he chose to have masses sung at the centre of urban life, in the church of *St. Mary's, at Faversham*. *This is a presentation of the self in the context of the urban community in which this individual was so prominent, and suggests that urban display was as much intended for the perpetuation of personal prestige in the minds of the community as for the celebration of the prestige of the town as a whole.* It is striking that this foundation was made some years before atte Tonge's death, implying that such the daily celebration of mass in *St. Mary's* in the name of his good estate and for the souls of his parents, friends and benefactors, would have reflected in a very immediate and direct way upon the reputation of its founder. The comparison between atte Tonge's chantry and the chantry of the Condy family at Sandwich in the fourteenth century is apposite here, since that chantry had been set up by John, who was succeeded in town government by his son William, whose own prestige must have benefitted from the operation of the chantry.¹⁷⁵

¹⁷⁵ See above Chapter 3. 10 ('The making of the book of the Sandwich custumal in context.')

The majority of the evidence for ceremony and display, however, is found in relation to the town as a whole, though it may still reflect the personalities of such prominent men as Seman atte Tonge. In the three years preceding the establishment of his personal chantry, the town government of Faversham had obtained royal grants for the levying of pavage for four years subsequent to 1408; for the purchase of a mace with the arms of the Cinque Ports, to be carried before the mayor (1406); and perhaps most importantly, a grant of confirmation of the Faversham charter (1408).¹⁷⁶ Each of these grants can be seen to have strong symbolic potential. Although a grant of pavage was a fiscal privilege, the right to tax for the purpose of improvement of the urban environment would seem to have strong symbolic value, with the very stones upon which people walked being attributable to the mayoralty of 1408. Pavage and the provision for it was a uniquely urban characteristic, with the rights to collect on that account being particular to urban franchises, and the contribution to the physical environment of the town drawing a symbolic contrast (both visual and tactile) between town and countryside. The purchase of a mace may be a typical investment in civic regalia, but its specific Cinque Port emblem, when applied to the mayor as it is carried before him may be interpreted as an attempt to locate his authority within the wider political context of the confederation, among the officials of similar towns. The charter has obvious political value, as the confirmation of Henry IV's good-will towards the town and its franchises, but the treatment of the copy of this charter obtained by Faversham strongly suggests that its symbolic character was to be exploited. The charter bears an elaborately illuminated initial 'H', of the highest quality associated with London workshops of the period, with heavy use of stipple-tooled gilt, and knots of leaves and tendrils on three corners, and with extended borders in two margins. The purchase of such illumination, which compares favourably with the work in some of the finest illuminated books of the period, and very significantly, with books associated with urban government at London, says a great deal about aspiration to urban display within the town.¹⁷⁷ The acquisition of such physical symbols represents investment in

¹⁷⁶ *CPR 1405-1408*, pp. 162, 425; Faversham charter kept in the Mayor's Parlour, The Alexander Centre, Faversham.

¹⁷⁷ The background to the illumination of this charter is worthy of a study in its own right, not least because it is further evidence of the access of a civic elite to the skills of book-artists and craftsmen of the highest calibre. It would seem to mirror the quality of hands found in the custumal book. Although a

the widest sense of the word. The government of Faversham invested not only money or other economic resources, but must also have contributed thought, discussion, and imagination to the chosen modes of expression of the 'idea' of the town. Of course some of these symbols were already, or were becoming, part of a kind of repertoire available to towns, though it might be noted that the Faversham evidence comes early in the explosion of urban ritual and ceremony of the fifteenth century. The collection of elements of ceremony on behalf of the town also deserves consideration as a type of composition, in which recognised ritual components are consciously and creatively brought together in combination to make a performative whole.

It is partly the compositional element of urban ritual culture at this time that suggests that town books, such as the Faversham customal book should be considered within this context. This may need some closer justification. It is true to say that the Faversham book is not an object of immense display, being small and of restrained characteristics. Nevertheless, it was clearly intended in some way as an accessory to ceremony. The projected illumination, while having a practical function, would also have had a visual effect. It is also probable that the book had a function within the ceremony of the annual passing of the mayoralty from one individual to the next. Such an act is symbolic of the passing-on of urban knowledge, at a time when such

particular workshop has not been identified for the illumination of this charter, such an attribution should ultimately be possible. For the present, it must suffice to point out some of the affinities of the Faversham illumination with London manuscripts of the opening years of the fifteenth century. In particular, it is close in style to the illuminated initials surrounding miniatures by the celebrated book-painter Herman Scheere or his workshop. Close comparisons can be drawn with a Book of Hours now Bodleian Library Gough Liturgical MS 6 in the (*Illuminated Manuscripts in the Bodleian Library, Oxford*, 3, ed. by Otto Pacht and J.J.G. Alexander (Oxford: Clarendon, 1973) no. 812, illustrated in plate LXXVIII) and with a Book of Hours now Corpus Christi College, Oxford MS 350 (*Illuminated Manuscripts in Oxford College Libraries, The University Archives and the Taylor Institution*, ed. by J.J.G. Alexander and Elzbieta Temple, (Oxford: Clarendon, 1985) no. 403, illustrated in plate XXVII). The range of motifs in the initials (especially within the knot-work cornerpieces) of these manuscripts is very close to those of the Faversham charter. A similar style of initial illumination, though slightly less immediately comparable in details, is found on the opening leaf of book four of the London *Liber Albus*, presumed to have been executed c.1419 (illustrated in Henry Thomas Riley ed., *Munimenta Gildhallae Londoniensis; Liber Albus, Liber Custumarum, et Liber Horn*, 1 (Rolls Series, 1859), opposite p. 529.

transmission by non-literate means may not have been taken for granted, in view of the profound dislocations of the preceding period.¹⁷⁸ Apart from the use of the book, its very processes of composition and production can be considered as ritual in their own right. Through the agency of a sophisticated and skilful writer (not just a scribe), the town government drew together available urban knowledge, in the form of texts. Some of these texts must have existed among the records of the town, while others may have been brought from elsewhere, and perhaps also specifically composed.¹⁷⁹ Such a drawing-together involved, in particular, consideration of the past, in the use of historical or meta-historical material, in the construction of continuities and, occasionally, contrasts with the past.

The intention of such ritual activity seems to have been to reflect, and at the same time strengthen the perceived place of the town (and by extension its rulers) within the hierarchies and structures of the realm, as part not only of its present, but also its historical past. It has been seen how political power is articulated through custom and usage, but also how this has been carefully placed within the context of the structures and hierarchies of law and government. The local officials of the town have been consistently described as agents of a wider national government. It has also been seen how such political units as the Cinque Ports confederation have been invoked, and the place of Faversham constructed within that unit. The symbolic effect of the custumal book as it was compiled in the first decade of the fifteenth century is heightened by the enclosure of all of these elements within the covers of a single book in the hands of the mayor of Faversham.

4. 11 The Faversham chronicle

¹⁷⁸ The possibility that the book was passed on after each mayoralty is suggested by the later note on f.54r.

¹⁷⁹ This latter proposition is to be examined in the discussion of the chronicle appended to the texts already considered.

It has been suggested that the quires which would later form the custumal book of Faversham were produced in an atmosphere of insecurity and disjuncture in the period after c.1382. This disjuncture was apparent both in the relationship between the crown and its urban franchises and within the social structures of the towns themselves, and it is possible to examine something more of the culture associated with this atmosphere through the evidence of the texts found on quire 5, which has not yet been considered in detail.¹⁸⁰ The material found here consists of a Latin chronicle running from the creation of the world to the year 1382, together with a series of quotations in Latin from celebrated writers presented with Middle English translations.¹⁸¹ These texts are not only important evidence for the varieties and sophistication of writing within the administration of a late medieval town, but are crucial in understanding the spirit in which the *Faversham custumal book* was made and the political significance of the codification of local custom.

The texts of this quire 5 are linked to the material of the quires already considered by the facts that this quire 5 is also in the skilful *Anglicana* script of the writer described here as hand 'a', and that its texts are presented on parchment leaves of the same size as the other quires on which this hand is found, prepared in an identical fashion, and with a space left for the illumination of the first initial ('I') on f. 30r. These features suggest that the quire was produced as part of the same overall writing enterprise as quires 2-4. However, it has also been suggested, on the basis of the existence of a bifolium (now f. 29 and f.38) around the original eight leaves of quire 5(ff. 30-37), that it had previously existed as a loose quire, with the added bifolium forming a wrapper.

The final event of the chronicle text written in quire 5 (the earthquake of 1382) has been used to suggest a date of composition of shortly after 1382 for this quire, and thus it may have been produced before the custumal and associated texts were completed after 1404. Although the chronicle quire may now have a place in the

¹⁸⁰ Quire 5 consists of 10 leaves (ff. 29-38).

¹⁸¹ ff. 30r - 33v and ff. 38r - 38v respectively.

order of the custumal book *after* the custumal itself, it may actually have stood at the beginning of the writing enterprise undertaken by, or on behalf of, the Faversham town government between c.1382 and c.1405.

The chronicle is derived from a variety of sources and does not present a simple line of chronology. However, its form suggests the intention to construct a chronology which linked the present (1382) to the very origins of the earth. Beginning with the creation, (*'In principio creavit deus celum et terram et omnia que in eis sunt'*¹⁸²) the chronicle first considers the lengths of the six ages of the earth (running, respectively, from Adam to Noah; from Noah to Abraham; from Abraham to David; from David to the Babylonian captivity; from the Babylonian captivity to the birth of Christ; and from the birth of Christ to the end of the world).¹⁸³ Estimations of the length of each age are given, save the last. Attention is then turned to the city of Troy, which is fitted in to the scheme of the ages by the dating of its destruction to three thousand and forty-four years after the creation, and one thousand, one hundred and five years before the birth of Christ.¹⁸⁴ This occasion is then used to begin the description of the coming of Brutus, the Trojan, to the isle of Albion, upon the command of the goddess Diana.¹⁸⁵ This description of the origins of Britain are followed by an account of the foundation of London, then called Trinovantum, which, it is claimed, derives from the name *'troiam novam'* or 'new Troy'.¹⁸⁶ The early history of London is considered, especially its fortification under king Lud. It is stated that the name of London was derived from the name of Lud. This early history of London is succeeded by a sequence which forms the major part of the chronicle, in which is presented a chronology of the reigns of kings, from Brutus to Richard II.¹⁸⁷ This chronology begins with a further account of Brutus' decision to come to Albion, which is presented in verse. Account is made of his going to the island of Loegecia and his prayer to Diana, and the goddess's response, in which is described a Western island

¹⁸² Drawn from Genesis 1.1.

¹⁸³ f. 30r - 30v.

¹⁸⁴ f. 30r.

¹⁸⁵ f. 30r - 30v.

¹⁸⁶ f. 30v.

¹⁸⁷ ff. 30v - 32v.

beyond the setting sun, inhabited by giants. Here, Diana says, will be another Troy.¹⁸⁸ Then begins the chronicle of kings, which consists of lines giving the date of the accession of each king, the length of the reign, and the place of their burial. King Arthur is an exception in this scheme, since though it is stated that he reigned for twenty-six years, it is noted '*...de cuius obitu vel sepultura certum non referunt historie*'.¹⁸⁹ Much of the early part of this chronology concerns the Saxon kings, who reigned initially in a divided kingdom.¹⁹⁰ Alfred is described as the first king of all England.¹⁹¹ The period of the rule of Saxon and earlier kings is summarised after each individual reign has been described, by the calculation that from the birth of Christ to the reign of Edward the Confessor there ruled one hundred and sixty-five kings.¹⁹² The Confessor is then stated to have ruled for twenty-five years, and to have been subsequently venerated in the church of Westminster.¹⁹³ King Harold is mentioned in a single line, and a new paragraph begins with the record of the Conquest, the crowning of William at Westminster, and the making of the description of England '*in uno volumine dicto Domesday*'¹⁹⁴ The chronology of kings then continues, unbroken, over almost two sides of a folio (f. 32) to the accession of Richard II in 1377 at the age of eleven. Most of the reigns are given in the simple form noted above recording the date of accession, the length of the reign and the place of burial,

¹⁸⁸ ff. 30v - 31r, '*Brute sub occasu solis trans gallica regna / Insula in occiano est undique clausa mari / Insula in occiano est habitata gigantibus olim / Nunc deserta quidem gentibus apta tuis / Hanc pete namique tuis sedes erit illa prehemis / Hiuc fiet natis altera troia tuis / Hiuc de prole tua reges nascentur et ipsius / Tocius terre subditus orbis eri.*', 'Brutus, beyond the setting of the sun, beyond the realm of Gaul / There is an island, in the west, enclosed by sea / This western island was once the home of giants / But now it is empty and suited to your people / Down the years it will prove an abode suited to your people / It will be a second Troy / A race of kings will be born there from your own stock / And the whole earth will be subject to them. Translation loosely based upon that of Lewis Thorpe, ed. and trans., *Geoffrey of Monmouth; the History of the Kings of Britain* (London: Penguin, 1966, reprinted 1979), p. 65.

¹⁸⁹ 'where he died or was entombed for certain, history (or 'the chronicle') does not record.

¹⁹⁰ '*Anno Dlxxxvi ab angelis dicitur Anglia divisa per octo regna id est Cantiam / southsexiam / westsexiam / merciam / estsexiam / estangliam / terram et Berniciam* (f. 31r)

¹⁹¹ f. 31v.

¹⁹² f. 31v.

¹⁹³ f. 32r.

but into this scheme are inserted a number of additional details. These details principally concern the reign of Edward III (described as '*princeps totius milite Christiane*')¹⁹⁵ and include the battles of Sluys, Crecy, Durham, and Poitiers, and the siege of Calais.¹⁹⁶ Following the hyperbole of the description of Edward III's reign, the lack of any detail of the deeds of Richard II is very striking.

Following the record of Richard's accession, a new sequence of chronology begins immediately (without even a line break) and the final section of the text, provides a much more miscellaneous account of events from the time of king Lucius.¹⁹⁷ There is much anecdotal evidence from the city of London (including fires and the freezing of the Thames) and its churches; of religious houses and orders (the foundation of the abbeys of Battle and Bermondsey, and the coming of the Franciscan and Dominican friars); and as time goes on, of increasingly frequent natural and supernatural disasters. This accelerating account of the disasters of the sixth and final age of the earth brings the chronicle to a very suggestive end. In 1202 quadrangular hail-stones the size of eggs fell, causing injury to men and damage to crops, while birds seemed to carry down lighted coals in their beaks to burn houses. In 1221 a north wind shook houses, orchards and church towers, and fiery dragons and evil spirits flew in the whirlwind. In 1316 there fell a great plague upon animals and men, with summer rains and flooding bringing a dearth of corn so that a quarter was sold for 40 shillings. The plague of 1348 is noted, and a second in 1361 (in which Henry duke of Lancaster died) accompanied by great winds throughout England. A third plague came in 1368, in which Blanche, duchess of Lancaster died. The chronicle then ends:

Anno MLCCCLxxxij, xij kalends Junii videlicet feria iiiia. Ante Pentecostes tunc contingur immediate post prandium erat terre motus magnus per totam Anglie.

¹⁹⁴ f. 32r.

¹⁹⁵ f. 32v.

¹⁹⁶ f. 32v.

¹⁹⁷ foot of f. 32v - f.33v

and the remainder of the leaf is left blank.¹⁹⁸

As has been noted the material for this remarkable chronicle has been taken from several sources. It has been seen that the first line is drawn from the opening of the Bible, but the remainder of the text is principally derived from the Ranulph Higden's *Polychronicon* and Geoffrey of Monmouth's *Historia Regum Britannie*.¹⁹⁹ The overall intention to record the reigns of English kings is comparable to Higden's interest in the reigns of kings as one of the areas of knowledge required for the full knowledge of history.²⁰⁰ While Higden includes an account of the kings of England in his *Polychronicon* as part of a more universal 'history', the choice of the specific subject of England is more akin to the earlier Geoffrey of Monmouth. Some sections of the text, however, rely almost exclusively upon Higden's *Polychronicon*. The account of the six ages appears to be drawn from Higden's massive account of the ages given in Books 2 -4 of the *Polychronicon*, and is derived from the extraction of material from the introductions given by Higden to each of those ages, in which he expresses his opinion of the lengths of the ages from the authority of various ancient sources, such as Jerome, Methodius, Hebrews, and Septuaginta.²⁰¹ The estimations of the length of the ages in the Faversham chronicle usually correspond precisely with

¹⁹⁸ f. 33v. The remaining leaves of the quire ff. 34 -37 were also left blank, later to be filled in with material relating to the Cinque Ports rights at Great Yarmouth, by hand 'b' (suggested to be of the early fifteenth century). The leaving of these leaves blank perhaps suggests an original intention that the chronicle should be continued.

¹⁹⁹ *Polychronicon Ranulphi Higden Monachi Cestrensis*, ed. by C. Babington *et al.*, 9 vols. (Rolls Series, 1865-1886) and *Historia Regum Britannie of Geoffrey of Monmouth*, first variant version, ed. by Neil Wright (Cambridge: Brewer, 1988).

²⁰⁰ Higden's enumeration of eight necessities in the acquisition of such knowledge is discussed in Antonia Gransden, *Historical Writing in England, 2, c. 1307 to the Early Sixteenth Century* (London and Henley: Routledge and Kegan Paul, 1982), p. 46-47. Gransden devotes a full chapter (ch. 2, pp. 43-57) to Higden.

²⁰¹ The portions of Higden's text from which the first five ages are drawn (given as book and chapter numbers, together with corresponding volume and page numbers in the printed version) are as follows: First Age, Book 2, chapter 5 (vol. 2, 236); Second Age, Book 2, chapter 6 (vol. 2, 244); Third Age, Book 2, chapter 28 (vol. 2, 450); Fourth Age, Book 3, chapter 36 (vol. 3, 102-104); Fifth Age, Book 4, chapter 1 (vol. 4, 253-258).

those given by Higden, and many of the ancient sources cited by him are found also in the Faversham text. The account of the foundation of London, and its fortification by king Lud is also found in Higden, and the Faversham text is close to the Higden version.²⁰² However, the subsequent account of the origins of the name of London is also found in Geoffrey of Monmouth.²⁰³ The possibility that Geoffrey's version is reflected here is strengthened by the inclusion at this point in the Faversham text of an estimation that the foundation of London was contemporary with the captivity of the Ark of the Covenant, an estimation which is found at the same point in the Geoffrey of Monmouth's *Historia* but not in the *Polychronicon*.²⁰⁴ The verses of Diana in the Faversham text are direct copies from Geoffrey's *Historia*.²⁰⁵ The chronology of the kings of England appears to have been drawn from Book 6 of Higden's *Polychronicon* and represents the extraction of the information regarding the date of accession, the length of the reign and the place of burial from the much more detailed and extensive material recorded by Higden.²⁰⁶ The account of miscellaneous miraculous happenings which concludes the Faversham chronicle is more problematical, though once again it would appear that the *Polychronicon* represents the likely source.²⁰⁷ It is probable that in addition to the material from these sources, the Faversham text includes additional material, which may be unique to it, or drawn from some other source. Higden's work on the *Polychronicon* came to an end with his death in the 1360s, so that all of the material recording reigns and events from after that date must, in any case, be supplementary. Whether the additions were made by the hand 'a' who wrote the text is unknowable, but it might be pointed out that

²⁰² *Polychronicon*, Book 1, chapter 47 (vol. 2, p. 56).

²⁰³ *Historia Regum Britannie*, first variant version, pp. 16-17 (verses 21 and 22).

²⁰⁴ f. 30v. *Historia Regum Britannie*., the reference to the Ark of the covenant is itself drawn from the Bible, I Samuel 4.

²⁰⁵ *Historia Regum Britannie*, first variant version, p. 10 (verse 16)

²⁰⁶ *Polychronicon*, Book 6 (vol. 7)

²⁰⁷ A full collation of the texts has not been attempted here, but it is certain that some of the occurrences noted in the latter portion of the Faversham text are drawn from Higden. The account of the Jew, who in 1258 fell into a latrine at Tewkesbury on a Saturday, and would not allow himself to be pulled out on account of his reverence for the Sabbath, whereupon Richard de Clare Duke of Gloucester refused to have him pulled out on the following Sunday on account of his reverence for the Sabbath, is, for example, copied from the *Polychronicon* (vol. 8, p. 55) cited in Gransden, *op. cit.*, p. 55.

existing versions of the *Polychronicon* were frequently extended beyond the 1360s, especially where a copy was held by a monastic house.²⁰⁸ The material in the Faversham chronicle from after the 1360s, may then have been drawn from one of these continuations.

Before discussing the cultural significance of this remarkable chronicle, it is necessary to examine the incidental evidence found within it for its editor, not least because it may potentially enlarge our knowledge of the writer identified as hand 'a'. A crucial question must be, whether this hand 'a' was responsible for the editorial work on the texts of Higden and Geoffrey of Monmouth, or whether he was simply copying from an edition previously made by someone else. The presence of notes beside portions of the text (such as '*versus sequiatur de Regibus*', '*versus*', '*verba bruti &c*', and '*versus ad deanum*')²⁰⁹ have the character of notes added to an earlier exemplar to indicate what was to be placed where in the chronicle (which the scribe has faithfully copied), and might perhaps indicate that he was a copyist rather than the editor, but this cannot be proven. In geographical and historical terms there is, of course, a strong bias towards London: with the origins of the city examined, and record made of later events in its history, and this might indicate that the chronicle was not necessarily compiled in Faversham. However, this does not discount the authorship of hand 'a' in the light of the suggestion of a possible London origin for this clerk. It is perhaps tempting to see a clerk working on behalf of Faversham, who, it has been tentatively suggested may even have called himself 'de London', inscribing his own interests upon the chronicle. However, to emphasise the London slant in the text as evidence of its origins may underestimate the extent to which London may have been used as emblematic of the towns of England as a whole, and this possibility will be discussed. The sources used for the chronicle were ubiquitous, and even though the *Polychronicon* was worked on by Higden until the 1360s, copies of his work were apparently common among monastic (especially Benedictine) houses by the later

²⁰⁸ Continuations of the *Polychronicon* are discussed by John Taylor, 'The Development of the *Polychronicon* continuation', *English Historical Review* 76 (1961), pp. 20-36, cited in Gransden, *op. cit.*, p. 56, n.68.

²⁰⁹ f. 30v, f. 31r.

years of the fourteenth century.²¹⁰ It is very possible that the Abbey of St. Saviour's, Faversham was itself the source of the texts used for the chronicle. Both texts would be a likely part of the library of a such a house, and it is known that St. Saviour's possessed a copy of Geoffrey of Monmouth, it being one of those chronicles demanded by Edward I in his attempts to substantiate his Scottish claims in the late thirteenth century.²¹¹

Whether or not hand 'a' composed the chronicle in this version, it was he who wrote it up here, in the same manner as the other quires of the Faversham custumal book in his hand, and its close connection with the texts of the custumal quires is suggested not so much by incidental detail, but by its broader themes of kingship and legitimacy. In the chronicle, a seamless line of kingship is drawn, from the time of Lucius, the first Christian king, and it is implied that all these kings were the legitimate heirs of Brutus. The vision of just and legitimate kingship is, of course, one that is very particular to the end of the fourteenth century and beginning of the fifteenth century, and addresses the anxieties of a nation where the fundamental concept of kingship was challenged during the reign of Richard II. Richard's reign, marked initially by the insecurities attendant on his minority, subsequently by breakdown of political and social order, and latterly by what was perceived to be tyrannical disregard for the laws and customs of the realm, ended ultimately with his deposition on the grounds that he was a tyrant and unfit to rule.²¹²

Nevertheless, the Faversham chronicle makes it clear that Richard, despite his minority upon succession, was the true and legitimate king of England, being

²¹⁰ Gransden, *op. cit.*, p. 55.

²¹¹ *Documents and Records Illustrating the History of Scotland*, ed. by Francis Palgrave (London: Records Commission, 1837), p. 92. This evidence for the possession of Geoffrey of Monmouth's *Historia* is additional to the list of seven books noted in the sixteenth century by Leland belonging to St. Saviour's cited in *English Benedictine Libraries; The Shorter Catalogues*, ed. by R. Sharpe, J.P. Carley, R.M. Thomson, and A.G. Watson, *Corpus of British Medieval Library Catalogues 4* (London: British Library in association with the British Academy, 1996), pp. 155-156. This list shows that St. Saviour's also owned a copy of William of Malmesbury's *Gesta Regum*.

represented as part of the line of kings from the time of Lucius. The expression of this legitimacy is highly significant in the light of the events of 1381, and represents a reassertion of that legitimacy at a time when it was being fundamentally challenged. Once again there appears to be an attempt made, in the texts of these Faversham quires, to identify with the authority of the crown. The custumal quires, as has been seen, began with the authority of royal charters, and the same source of authority and legitimacy is apparently being celebrated here in constructing a retrospective chronology of past kings. The way in which Richard's reign is recorded seems, additionally, to be a significant indicator of a profound sense of loss, or disorientation, experienced by those in authority after the trauma of 1381. We know that the text must have been compiled or copied after 1382, but nothing of the nature of Richard's rule is recorded in it, which contrasts starkly with the detail which is accorded Edward III's reign. The only event of Richard's reign which is noted, is the final record of the chronicle, namely the earthquake which shook the whole of England in 1382. The Peasants' Revolt is an absent sign in this text, not a mere omission. We know that the very people who may have commissioned the custumal book and its chronicle had themselves been threatened by the revolt. It would seem that the widely-recorded earthquake of 1382 is here used as an emblem of upheaval or shock, but that the revolt itself did not bear recording in a book in which the authority of kings, and the authority of government in general was expressed. The blankness of the folios following the record of the earthquake must have stood for some time as a symbol, in itself, of the profundity of the events of the previous year. This suggests that the texts of the Faversham book, which have previously been interpreted as a source of remembrance of the customs, institutions and liberties of the town, might equally be considered a means of forgetting. In selecting texts for inclusion within the book, its makers were ensuring their endurance, but in choosing not to make a record of such a significant event as the revolt, they were perhaps articulating the hope that it would be forgotten.

²¹² M.H. Keen, *England in the Later Middle Ages: Political History* (London and New York: Methuen, 1973, reprinted 1975), pp. 274-301.

Besides the aspects of the chronicle which deal specifically with the reigns of kings, it should also be noted that it is also closely concerned with the subject of towns and cities of Britain. The particular London bias has been noted, and there appears to be a careful attempt to place London at the centre of the history of the nation and to claim that its origins were with the origins of Britain itself, as the 'New Troy' promised to Brutus by Diana.²¹³ The antiquity of the city is directly expressed by the dating of its foundation by Brutus, as contemporary with the captivity of the Ark of the Covenant. London is portrayed a city founded and favoured by kings, and there is description of the fortification of the city with encircling walls carried out by Lud. This appears to be an attempt to convey the impression of the strength and historical endurance of the City. London is not, however, the only ancient town which is mentioned in the chronicle, since Tynemouth, Hereford, Winchester, Kingston, Glastonbury, Westminster, Reading, Faversham, York, and Gloucester are noted in the chronicle of kings, as either the place of coronation, or the final resting-place of kings.²¹⁴ These English towns are presented as fundamental elements in the power of England's kings. Towns provided the location for coronations and for burial of kings. The chronicle is probably not therefore simply an expression of the antiquity of the line of English kings, but an expression also of the antiquity of the relationship between towns and kings. This would appear to have great significance in the light of the evidence considered for the particular ruptures in the relationship between towns (such as London and Faversham) and the king in the late fourteenth century, and the attempts that such towns were forced to make to justify their franchises and liberties. The making of the Faversham book has been interpreted as just such a strategy, expressing the need to claim the antiquity of customs of the town, as justification for their continued exercise in the face of intense royal pressure. In making the Faversham chronicle, which as has been seen, must be considered part of a wider enterprise of writing which also included the making of the custumal, the idea of Faversham and its governments as an integral and necessary part of the power of the

²¹³ Chronicles recounting the history of Brutus, had become widely associated with the expression of civic pride in London, which received its most elaborate expression in the vernacular *Brut* chronicles and *Chronicles of London*, which emerged in the early fifteenth century. Gransden, *op. cit.*, devotes a chapter (ch. 8, pp. 220-248) to their discussion.

king, through the exercise of its own particular local customs was being given material form of words of record upon a page.

4. 12 'De Regimine Regis'

The final piece of work by hand 'a' to be considered is the collection of quotations headed '*De Regimine Regis*', added to the chronicle quire.²¹⁵ As has been noted, they appear to have been written onto a bifolium, probably intended as a wrapper, added to the chronicle quire before the binding of quires. The dating of the quotations is thus problematical. Since they are in the same hand ('a') as the other quires considered here, a possible range of dates for their writing would be c. 1382-c. 1404. They are almost certainly later than the chronicle itself, in view of their location on a wrapper around it. The nature of the contents of these quotations, addressing the issue of kingship, might be equally applicable to the reigns of both Richard II and Henry IV, and express the opinion that the king should not be above the law, and that their power rests in the people around them.

'*De Regimine Regis*' consists of 22 lines in Latin, each with a loose translation in Middle English, and in most cases with a name entered beside (to the right) usually representing the supposed source of the quotation. These sources are: Aristotle, Plato, Socrates, Averoes, Demotius, Avicenns, Alanus, Boethius, Eupedictes, Lentippus, Aristippus, Zeno, Cato, Hippocrates, and Bede; together with advice from four generalised individuals: an archer, a soldier, a knight, and a queen. These lines represent advice to a king on the subject of his rule. He is advised to be prudent, just, strong, temperate, liberal and generous, of moderate diet, thoughtful and merciful. More specifically, he is advised never to stray from truth and to despise extortion, to see the error of adultery, to recognise the transience of misfortune, to encourage fair speech when his court speaks ill, to take counsel, to favour clerks, to take care in choosing friends, to teach his sons the art of war, to protect the laws, to maintain the

²¹⁴ King Stephen was interred at Faversham.

²¹⁵ Ff. 38r - 38v.

rights of holy church, to favour archers, to defend the realm, and to favour knighthood.

These lines are of interest for the further light which they throw on the personality of our nameless scribe, and also in providing a context of political opinion for the custumal book as a whole. While their presentation gives the impression of some kind of clerkly exercise in the art of translation, their subject matter is by no means neutral. It is likely that trope of the academic exercise is being used here as a vehicle for political expression in a way which hints at the scribe's anxiety at being identified as the author or compiler of these lines. The concerns expressed closely reflect those of a widespread contemporary literature on the subject of just kingship, and probably also a more informal clerkly discourse shared by administrative writers. The most elaborate expression of such concerns is found in the slightly later work of Thomas Hoccleve in his *The Regiment of Princes* (c. 1411), and the lines found at Faversham form part of an existing culture upon which Hoccleve was to draw so extensively.²¹⁶ As in the case of much of Hoccleve's *Regiment* these lines come almost exclusively from the works of authors from the Classical past and later. It is unlikely that the Faversham scribe was working directly from versions of these authors, not least because his translations indicate that his understanding of such literary Latin was not as sophisticated as his manifest understanding of administrative and legal Latin, and we should perhaps envisage that this fragment was a copy of a text in circulation among clerks. The entreaty to be kind to clerks and to keep '*universite*' in mind is tantalising, and it may just tell us something about the origins of the literacy of hand 'a'. This clerkly complaint is very characteristic of a culture where scribes and clerks at all levels saw themselves as leading precarious existences at the mercy of their pay-masters.²¹⁷ The manner in which a personal note of advice or petition is placed within the context of much more overtly political advice once again makes a parallel with Hoccleve appropriate, whose writing is scattered with references to his own condition and with veiled complaint about his own pay-master, the king. This coincidence of

²¹⁶ For the dating and political context of Hoccleve's *The Regiment of Princes* see J.A. Burrow, *Thomas Hoccleve, Authors of the Middle Ages 4: English Writers of the Late Middle Ages* (Aldershot: Variorum, 1994) p.18.

clerkly complaint with broader political complaint, which emphasises that these writers naturally saw their own condition as inextricably bound-up with the difficulties of royal government is very significant for the present enquiry. It suggests that while we may wish to identify specifically 'clerkly' strands in such texts, these writings do not address only personal opinion, but the opinion of the writer's immediate social milieu. In the case of the custumal book and its maker, it suggests that while we should recognise elements such as the formulary, the chronicle and these lines on kingship as the product of a rather special sort of urban writer, these texts should also be seen as reflective of the immediate culture in which this writer worked. Certainly, his interests interlock with those of other clerks in other places (especially it seems in London), but they also interlock with those of the people for whom he was writing, that is, the mayor and jurats of Faversham.

These lines on the rule of kings are not only an expression of specific debates over the nature of kingship at the end of the fourteenth century, but also, in view of their location among the Faversham quires, an expression of a more general concern with the nature of authority. Both the evidence of Sandwich and Faversham has suggested the possibility of an increasingly authoritarian approach to urban government in the later fourteenth century. The production of the custumals themselves at this time may be indicative of an urban culture in which texts describing the exercise of government and administration were seen as desirable. The quotations on kingship might on the one hand be interpreted as advice offered to kings, but on the other, they might be seen as advice to all those involved in the exercise of authority. In writing them onto one of the Faversham quires, it may be that the writer known as hand 'a', may have been recording instructions on the nature of government, in the same spirit as the writing of the custumal text, for the benefit of the current town government.

4.13 Summary

This chapter has considered the evidence for the production of a custumal and associated texts at Faversham in the later fourteenth and early fifteenth centuries,

²¹⁷ J.A. Burrow, *Hoccleve*, p.6.

through the codicological analysis of a surviving custumal book. This book is a complex production, produced over the course of several centuries, and is not susceptible to an analysis based upon text alone. As the calendar of contents given in Appendix 12 demonstrates, it includes documents of diverse origin and date, written onto the leaves of the book at widely differing times. The dates contained within these documents are no indication of the time at which they were written in their current form. Through the analysis of the quires of the book, in conjunction with the evidence of handwriting, it has been possible to reconstruct a sequence of production for the book beginning c. 1382 and running into the eighteenth century. A single hand (hand 'a') has been identified as belonging to the late fourteenth and early fifteenth century, and the work carried out by this hand (which includes the custumal) has been the subject of most of this chapter.

Recognition has been given to the sophistication of the writer identified as hand 'a', both *in the style of his handwriting, and in the types of text which he writes*. Some consideration has been given to his identity, and the possibility of an origin in, or affinity with London has been expressed. The close connections between London and Faversham in social and economic terms had earlier been explored, and may account for this affinity.

Having recognised the existence of this writer, and identified the texts which he was responsible for writing, these texts have been subjected to further analysis. As in the examination of the Sandwich material, the processes of compilation, composition and editing have been examined, and consideration given to the origins of the texts of hand 'a's work. Two distinct phases in the production of the custumal itself have been suggested, the first resulting from a royal enquiry of 1356, and the second represented by the rewriting of the custumal by hand 'a' after 1382. In observing the processes of compilation, the interest of the writer, or of those he was writing for, in the reconstruction of historical and quasi-historical origins for the institutions of the town of Faversham has been noted. In particular, the genuine Anglo-Saxon origins of the town have been seen to have been drawn upon and elaborated in the construction of the identity of Faversham and its government at the end of the fourteenth century.

While local customary procedures are described in detail in the custumal written by hand 'a', it has been observed that these customs are frequently expressed as extensions of the authority of the crown and of the laws of England as a whole. This may in part be a result of the need to justify local custom when the franchises of the town were under scrutiny. However, it may also represent an attempt by a town government to express its own customary authority as a natural extension of the authority of the crown.

The work of hand 'a', and the production of the custumal have been examined in the context of the culture of urban administration in the late fourteenth and early fifteenth century. As at Sandwich, problems in the exercise of authority in the town after c. 1450 have been identified, and the custumal has been seen, in part, as an expression of an increased authoritarianism in that exercise. The limited surviving evidence for the composition of the town's government has been considered, and an attempt made to explore the interests of its prominent members. The turn of the fourteenth and fifteenth centuries has been identified as a period in which members of the town government of Faversham invested considerable resources in aspects of ceremony and display. This investment seems to have been intended to reflect not only their own prestige, but also the prestige of the town itself. A number of symbolic expressions of town government and authority have been considered, and it is probable that the decision to begin a complete recodification of the Faversham custumal, together with the associated writing of the other texts by hand 'a' represent part of the desire to express the authority and legitimacy of this government in symbolic terms.

Chapter 5

Conclusion

1 The customals of the Cinque Ports and the study of borough custom

would seem fitting to begin this concluding chapter with a consideration of the ways in which the findings of the surveys and case-studies of Cinque Port customal texts offered in chapters 2, 3 and 4 might add to the knowledge and understanding of the nature of borough custom. In particular, it is valuable to re-examine the remarks made by Mary Bateson, in the introduction to her *Borough Customs*, arising from her own pioneering survey and study of surviving evidence from the British Isles as a whole, in the light of the findings of the current study.¹ As my introduction indicated, my own approach to the sources has differed considerably from the far more ambitious approach of Bateson. The scope of the current study is clearly far narrower than Bateson's, though it is hoped that the detailed scrutiny that such concentration has allowed may prove useful in suggesting the basis for a new approach to the examination of borough custom. The different approach to the evidence which has been taken here has, of course, yielded rather different results to those of Bateson's enquiry, and so it is proposed *in this section to set the implications of my own study alongside those suggested by her, in order to consider the ways in which detailed scrutiny of cases might serve to confirm, reject, or modify her earlier findings.*

The overall intention of the *Borough Customs* collections was to generalise from a host of local customary arrangements in order to make comparisons (in a geographical and chronological sense) that would lead to the better understanding of the ultimate attainment of uniformity in borough custom, which would in turn lead to an understanding of the emergence of a uniform national law. There is a clear, and ultimately pre-determined, progression to be traced in Bateson's thesis. Despite her generally sympathetic approach to the sources, borough custom is treated less as a cultural phenomenon in its own right than as a step along the road to the perceived perfection of the British legal system. Bateson observes the medieval proponents of

¹ Mary Bateson, ed., *Borough Customs*, 1, Selden Society, 18 (1904), pp. ix-xviii (sections entitled: 'A Plea for the Customals', 'The Causes of Retention of Borough Custom', and 'Character of the Sources')

customary law ‘...as they grope their way, cutting many tracks till they cut the straightest track from point to point’. She writes of the custumals and other customary texts as ‘...these childlike stammerings of town-clerks, whose training in the law-schools has not been such as to win for them prizes of the profession...’. Custom for her is ‘...live law in the making.’² Her evolutionary approach thus renders her enquiry a ‘natural history’ of the extinct species and sub-species of English law which nevertheless had a part in the creation of the pure forms of law seen to exist in the English legal system of the opening years of the current century. The quantity of data which was needed to construct such an argument (and which is presented in the two volumes of *Borough Custom*) was such that the close consideration of the local and the particular was under-privileged, while the need for cross-comparison privileged the general. It is ironic that such an immense work as *Borough Customs* has come to represent a cornerstone in the historian’s appreciation of localism in the government of medieval England, when its intentions at the time of writing appear to have been the celebration of the ultimate uniformity of English law. It would seem that evidence from the custumals examined which was local and particular was only of interest insofar as it fitted into a wider generalised picture. It was this approach which clearly stood behind the editorial method of *Borough Customs* which dismembered customary texts, selected portions which were comparable to portions from elsewhere, and discarded those which appeared peculiar or unprecedented. Such an approach was considered necessary if the custumals were to be removed ‘...from their present isolation’ for the purpose of systematic study.³ A general distaste for the local seems evident in the remark: ‘Indeed, it may be said generally of these codes, that it would little diminish their value if the names of the places to which they belong should happen to be lost. Their importance in legal history must then appear, even if their local interest vanishes.’⁴

In contrast, this current study has been intimately concerned with the local and the particular. Such a concern results partly from the obvious limitations of time and

² All three quotations from *Borough Customs*, 1, p. xi.

³ *Borough Customs*, 1, p. ix

⁴ *Ibid.*

resources, but also represents a deliberate choice. This choice has not been taken in order that the customals be placed back into the isolation from which Bateson so carefully rescued them, but in order to pursue the 'closer criticism' which Bateson herself recognised as crucial to the continuation of the enquiry into borough custom.⁵ The consideration of customals from given communities in the context of the social, economic, and political experience of those communities has demonstrated the extent to which the texts of these customals address and reflect quite specific contingencies and situations. It is intended to consider here the advantages that the closer criticism of selected texts has brought to this enquiry.

This study as a whole, especially in its case-studies, has pursued the issue of the dating of customal codification and modification with some care. While Bateson suggested that features within the customals which would help to fix dates for production were not 'readily identifiable',⁶ it has proved possible to suggest a number of critical dates and periods for the production and modification of Cinque Port customals, especially in the cases of the texts and manuscripts from the towns of Sandwich and Faversham. The identification of such dates has been pursued not simply as an end in itself, but as a means of understanding more fully the processes which stand behind the acts described in generalised terms as 'compilation' or 'codification'. Such identification, together with the consideration of the contexts of codification, indicates very clearly that the particular nature of a given customal text is constructed by the context of its production. Bateson had been forced to conclude that the methods of compilation and the ultimate sanction for codification are '...usually hidden from view',⁷ and was unable to offer a consistent account of the factors which influenced the choices made by a town-clerk as to what was to be included in a customal and what was not. In the current study, where textual and codicological scrutiny has allowed the deconstruction of a customal text and identified distinct (and often dateable) stages of development, each stage has been considered in the context of the event or events surrounding its production.

⁵ *Ibid.*, p. xvi.

⁶ *Ibid.*, p. xvi.

⁷ *Ibid.*, p. xv.

Such consideration has demonstrated that customary codes do not merely comprise accumulating accounts or descriptions of the totality of customary procedures of urban government, but a series of ‘inventions’ or ‘reinventions’ of the concept of urban government, each addressing rather specific concerns and contingencies. Editorial decisions made by town clerks in compiling or modifying these codes are apparently made according to the intended purpose of each successive version. A custumal from a particular town can, it seems, be used for a number of different purposes over a period of time. In the case of the Sandwich custumals, a text produced in the year 1301 has been considered within the context of royal judicial scrutiny into liberties and franchise, both in the 1301 King’s Bench hearing of the case of the violent encounter between townsmen and the royal justices, and in the culture of enquiry associated with Edward I’s *quo warranto* proceedings in the previous decades.⁸ Close consideration of a reconstructed version of the 1301 Sandwich custumal has demonstrated the extent to which that text addresses the issue of royal and seigneurial intrusion into franchisal liberties. Thus the editorial choices made by its compiler, Adam Champneys as to what was to be included in the custumal begin to become apparent. While Bateson tentatively suggested that a text which was an obviously selective account of custom may principally comprise ‘points of difficulty’ that have recently arisen in the borough courts,⁹ the 1301 Sandwich text confirms the concentration of a custumal codification upon disputed points, but suggests that in this instance the ‘difficulty’ lay in the relationship between an urban franchisal administration and the aggressive super-ordinate judicial administration of the crown. It offers a description of borough custom for the purpose of its defence in the king’s courts. When the text came to be modified in the later fourteenth century, the town government of Sandwich was faced with rather different anxieties, including the issue of conflict with neighbouring franchises, and the insecurity of established ‘family government’ in the dislocations of the post Black Death period.¹⁰ The custumal was re-written and a variety of additions made which clearly address these

⁸ See Chapter 3. 3 and 3. 4.

⁹ *Borough Customs*, p. xv.

¹⁰ See Chapter 3. 7 - 3. 10.

anxieties, and in particular, a desire has been suggested to identify the personnel of government with the security of the customs and franchises of the town. The version of the custumal produced in the early part of the fifteenth century seems once again to have had a function rather different to that of its precursors.¹¹ It has been suggested that the physical format of the manuscript book in which the early fifteenth century text was presented indicates a change of perceived function of the town's custumal. The presence of numerous annotations in broad margins apparently intended for this very purpose indicates that this custumal was intended as book of reference for use in the borough court and in other courts. It would seem that even in the relatively short period of time from c.1300-c.1415 in which three successive custumal texts were produced at Sandwich, the qualitative nature of the custom written in to them might change profoundly according to the circumstances and purpose for which they were produced.

The case study of the Faversham custumal has similarly demonstrated the extent to which a custumal code is shaped by the immediate circumstances of its production, and that such a code might then be modified over a period of time, as circumstances changed. The single surviving text of this custumal contains within it a text likely to have been produced as a result of a royal enquiry of 1356 into the liberties and franchises of the Cinque Ports, and the extent to which this 1356 text articulated the customs of Faversham as co-existent with a national system of law and government has been noted. The customary provisions are presented here as though they were extensions of the crown's own jurisdiction. Later modifications to the 1356 text (probably made over the ensuing decades) which were copied up in the surviving text have been interpreted as evidence of an increasing concern for order within the town, and perhaps also of attempts to make the freeman community a more exclusive body, both of which were symptomatic of the profound social changes of the later fourteenth century.

An implication of these findings appears to be that if large-scale comparison or generalisation is to be made between codes of borough custom across time or space,

¹¹ See Chapter 3. 13 - 3. 16.

the terms of reference must be very carefully considered. One customal is not qualitatively similar to another simply because both are codes of borough custom. Each may have been produced with very different agendas. This suggests that to approach the customals for the purpose of making any generalised argument about the development of law (as Bateson had done) is fraught with difficulty. Clearly there are comparisons to be drawn between texts, but the appreciation of those comparisons must be considered in the light of the specific evidence of social, economic and political contexts of customal production. Where correlations may be observed between customals at a given time, it is likely that these result from common experience of town governments of such social, economic or political forces. They do not result from the natural development of law.

5.2 Orality and Literacy - Custom and Law

The examination of written texts of borough custom in this study has, in part, been a consideration of the act of codification. Each of the successive versions of the Cinque Port customals made between c. 1300 and c. 1500 might be considered new codifications (even if they merely copy a previous text), and of special interest are those early customals which represent the first appearance in writing of the customs of a particular town. These are of value in the understanding of the changing status of orality and literacy and of custom and law in English medieval society.¹² As was suggested in my initial survey of the customal texts,¹³ there is some difficulty in identifying the precise moment at which the customs of these towns were codified. A traditionally accepted date of 1356 has been modified in the light of the specific evidence of the studies of Sandwich and Faversham, where written statements of custom in a codified, or semi-codified form, were produced at least half a century

² The study of which has received detailed examination by M.T. Clanchy in *From Memory to Written Record; England 1066-1307* (Edward Arnold, 1979; second edn., Oxford: Blackwell, 1993), and consideration in an anthropological context by Jack Goody in *The logic of writing and the organisation of society*, Studies in Literacy, Family, Culture and the State Series (Cambridge: University Press, 1986, reprinted 1988)

³ Chapter 2.

before that date.¹⁴ It is likely that detailed study of the texts of other towns may reveal other such early productions. The identification of customary codifications made within a period of ten years on either side of the turn of the thirteenth and fourteenth centuries, and the clear association of those texts with the experience of urban governments of *quo warranto* and other royal enquiries, would appear to be evidence of the profound influence of the crown's own application of the technology of writing to matters of legal proof (of rights, possessions, or franchises) upon unwritten local custom. Two writers (an historian and an anthropologist), namely Michael Clanchy and Jack Goody have offered influential accounts of the extent to which an increasingly literate national administration (the crown) came to influence the use of literacy (principally writing) in local administrations. Both have expressed qualitatively different interpretations, which might be considered in the light of the present study.

Clanchy, who worked within the closely defined context of the study of medieval administrative techniques, demonstrated how the particular needs of the post-Conquest English monarchy in securing political dominance account for the enterprise of 'bringing the people under written law', which by c. 1307 (the end of period considered by Clanchy) had resulted in the expansion of the use of writing, and its appearance at all levels of administration from the royal courts to the village.¹⁵ For him, the manifest expansion of literacy in his chosen period (1066-1307), was the result of the particular ideological context of the practices of writing within a determined social formation, the English medieval state.¹⁶ Although the expansion of the uses of writing in this period had profound consequences, these did not lie

¹⁴ Statements of custom in the form of responses to *quo warranto* enquiries from these two ports date from c.1290-1300, and a full codification of the Sandwich custom was produced in 1301. Chapters 3.2 - 3.4 and Chapter 4.2.

¹⁵ Clanchy, *op. cit.*, ch. 1 'Memories and Myths of the Norman Conquest', pp. 25-43 (quotation from p. 42)

¹⁶ See Brian V. Street, *Literacy in Theory and Practice*, Studies in Oral and Literate Culture Series (Cambridge: University Press, 1984, reprinted 1993) pp. 10, 46-7, 110-21 and elsewhere *passim*. Street cites the work of Clanchy as an example of what he terms the 'Ideological' model of the effects of literacy.

primarily or necessarily in the nature of writing itself but in the manner in which such writing was used. Goody's approach to the history of literacy (in medieval Europe and elsewhere, and at other times) arises from the conviction that the very nature of literacy ('the logic of writing'), rather than simply the ideological context in which it is applied, affects the organisation and mentalities of societies and their members in which such literacy becomes prevalent.¹⁷ He used the evidence presented by Clanchy and others for the use of writing and written law in the administration of medieval England as evidence of a transition from the primacy of local and unwritten custom to that of a comprehensive code of written law in the hands of the state.¹⁸ This code, by virtue of the technology of writing (which in Goody's view allows the identification of inconsistency and contradiction within legal codes), became truly 'systematic', and based upon legal principle rather than local expediency.¹⁹ In addition, law (as a written culture) became in some way divorced from society, and became a semi-autonomous category of culture, with its own specialists (the legal profession which emerged in the thirteenth century) who relied on the authority of the book rather than the customary authority of a collective memory, or the simple appreciation of right and wrong.²⁰ As has been noted in the discussion of the Sandwich custom of 1301, Goody's model of the expansion of writing sees local custom superseded by a national system of law as established by the 'determined application of writing' of the

¹⁷ Goody, *op. cit.* In his conviction that the technology of writing *in itself* alters the patterns of thought and hence of social organisation, Goody shares many of the ideas expressed in Walter Ong's *Orality and Literacy: The Technologizing of the Word* (Methuen, 1982) in which the supposed determinacy of literate habits on mental processes is considered. Nevertheless, Goody apparently distances himself from the psychological approach of Ong, since he does not refer to him in the *The Logic of Writing*, in which he principally takes the disciplines of history and anthropology as his informants. Street cites the work of Goody as an example of what he terms an 'Autonomous' model of the effects of literacy, *op. cit.*, ch. 2 'The 'Autonomous Model' II Goody', pp.44-65 and elsewhere *passim*. Although Street acknowledges that Goody defends himself against charges of technological determinism in his views of the consequences of literacy by entering into caveats against taking his model over-literally, he ultimately identifies his approach as deterministic, *op. cit.*, p. 5.

¹⁸ Goody, *op. cit.*, 'The expansion of writing and law in medieval in England', pp. 159-165.

¹⁹ *Ibid.*, p. 164.

²⁰ *Ibid.*, pp. 164-165.

thirteenth century.²¹ This period is thus seen as crucial in the transition from a predominantly oral to a predominantly literate society. Some scepticism has already been expressed for Goody's 'literacy thesis' in the light of the findings of this present study.²² In particular, the 'progressive' aspects of the thesis, which equate the shift from orality to literacy with shifts from custom to law in medieval England, implying an unfounded determinism in the ways in which custom was transformed in this period, have been questioned in the context of the discussion of the codification of custom at Sandwich c.1300.²³

It should be said that the evidence from the current study conforms to the now well-established model of the shift from memory to written record, and it seems true to say that custom in the Cinque Ports was codified, probably under the pressure exerted by the thirteenth century *quo warranto* enquiries, by or shortly after 1300. However, the question remains as to how, or whether, this technological shift altered the nature of custom. Did the fact of writing custom down amount to the origin of the shift from custom to law? Can it be said, following Goody, that 'to codify custom is to set it down in writing before proclaiming it as law' and that such codifications were part of a wider shift from custom to law?

Several observations made from the evidence examined might shed some further light on these questions. The first concerns the motivations and the immediate context for codification of custom in the examined cases. In each case it has proved possible to suggest that such codification was carried out for rather specific purposes, and not simply as a result of general cultural trends or shifts. Customals were produced for royal enquiries (especially in the thirteenth and fourteenth centuries), and the precise

²¹ *Ibid.*, p. 130

²² See Chapter 3. 2.

²³ Goody's thesis provides an unexpected, but revealing, parallel to the progressive view of legal development offered by Mary Bateson in *Borough Customs*, noted above. In place of the progressive development of national law itself, Goody substitutes the development of the means by which that law was articulated (i.e. writing) as the primary explanatory factor for the emergence of national legal codes.

occasions can usually be reconstructed,²⁴ and they were also produced as component parts of collections, or registers of civic documents which express the legitimacy of urban government (and these have been seen as a special feature of the second half of the fourteenth century.²⁵ It is probably only in the fifteenth century that customals come to be used as guides for the procedure in borough courts.²⁶ The implication of this variety of purpose suggests that it would be unwise to view the frequent appearance of customal codification between c. 1300 and c.1500 as simply manifestations of a trend or transition from one culture to another. If certain correlations have been made in the dating of customals produced in different towns (as in the identification of the early fourteenth century, the late fourteenth century, and the late fifteenth century as points of particular concentration of customal production), this is likely to be the result either of consistent royal policy towards franchise (as in the *quo warranto* enquiries which themselves arose from a particular political expediency) or the common experience of town governments of social and economic change (as in the association of the production of customal books with the late fourteenth century). It may be true that writing came to have an increasing role in the response of urban governments to such contingencies, but the motivation for this is not contained within the nature of writing itself (as the work of Jack Goody would suggest) but within the immediate experience of urban government. Writing and writings are in every case tools subordinated to the will of those who make and use them.

A second observation concerns the effect which writing and codification had upon custom. As a historical study, the present enquiry has taken as its primary evidence the written records of custom, and these have in all the considered cases dated from c.1290 at the earliest, and mostly from the period after 1300. It would seem at first sight to be extraordinary that the concept of custom, which has been considered a

²⁴ The *quo warranto* enquiries which produced semi-codified documents of custom at Sandwich and Faversham; the King's Bench hearing of 1301 concerning Sandwich; and the confederation-wide enquiry of 1356 are examples of this.

²⁵ The customal books begun at Sandwich, Faversham, Fordwich, and New Romney are examples of these.

²⁶ The fifteenth century Sandwich customal manuscript Sa/LC 2 has been cited as an example of this.

particular feature of predominantly oral cultures, should continue to have such a vigorous and long-standing life in written form. The density of customary production that has been identified in the later fifteenth century, in particular, demonstrates the longevity of custom in a society where literacy was highly advanced and absorbed. Throughout the period c. 1300 - c. 1500, a sophisticated culture associated with written custom has been identified, in which specialists in the field (who included lawyers, town clerks and town officials) invested considerable time and resources in the perpetuation and defence of this custom. This study as a whole has been an examination of the culture associated with written custom. While the thirteenth century has been seen not only as the period in which a fundamental shift took place in the primacy of literacy over orality in law and government, but as the point at which unified national codes of written law came to be established over and above local variances, it is quite clear that local custom was in no way superseded in these shifts. The evidence of the written codes of custom demonstrates that it underwent qualitative change, but was not extinguished. The recognition of this represents a challenge to Goody's *formulation of codified custom as a transitory form of 'law'* existing at a time of shifts between orality and literacy. Goody's statement that: 'the distinction between law and custom is ultimately based on what was written and what was not. To codify custom is to set it down in writing before proclaiming it as law',²⁷ which is made with relation to the distinction between law and custom in medieval Europe, is highly problematic in relation to the current evidence. At the very least it seriously underestimates the importance and longevity of the culture of written custom by relegating it to the status of the transitional. The codified custom of the Cinque Ports was not a precursor of or merely an influence upon national law, or such law in embryo form, but in most cases a specific form of law set alongside (and frequently against) national law. While specific instances have been observed where customary codes have been claimed by town governments as extensions of the justice of the crown (as in the late fourteenth century customary of Faversham, with its special emphasis on Pleas of the Crown and its claims that Faversham customs interlock with the provisions of the common law)²⁸ these claims are entirely motivated by particular

⁷ Goody, *op. cit.*, p. 129.

⁸ Chapter 4. 8 and 4. 9.

expedience and cannot be explained in simply transitional terms. While town governments may have become increasingly authoritarian in the late fourteenth century, the terms in which they expressed the strength and extent of their jurisdictions were distinctly urban and customary. They may have claimed to be acting as agents of the crown, but they did so as guardians of customary law and not of national law. Goody would perhaps see the insistence on the legitimacy of borough custom which has been noted in the texts considered in this study, as a symptom of the initial conflict observed '...when the jurisdiction of a written code is promulgated over a wide territory...',²⁹ but this again underestimates the longevity of written custom by claiming its transitory status.

Having suggested the extent to which a cultural category such as custom, which has been seen by some as a feature of the primacy of orality in a given culture could exist with some vigour in an increasingly literate society, it would be appropriate here to return to the suggestion made earlier in this study that orality was not transcended by literacy in the shift from memory to written record.³⁰ The view that the perceived rise of literacy at the expense of orality in the medieval period fundamentally altered the organisation of society has been expressed by Goody with *relation to law, and the suggestion made that law became partially separated from society when it came to reside in books which thus came to be the preserve of literate specialists.*³¹ The current study has identified both books and customary-legal specialists, but the assumption that such phenomena arose because of the rise of literacy at the expense of orality is not straightforward. In fact, the written custom which has been considered here gives abundant evidence of the continued existence of oral modes of

Ibid, p. 130. 'But when the jurisdiction of a written code is promulgated over a wide territory, there bound to be some conflict, at least initially, between national law and local custom (and in some cases with religious 'law').'

Made in the context of the discussion of Adam Champneys' 1301 custumal, Chapter 3. 2.

Goody cites the work of Fritz Kern in making these suggestions: 'For a simple person...it is a strange thing that all law should exist in books, and not where God has planted it - in conscience and public opinion, in custom, and sound human understanding. The positive written law brings with it learned lawyers and scholars, cut off from the people.' F. Kern, *Kingship and Law in the Middle Ages*, transl. J. Chimes (Oxford: Blackwell, 1939), pp. 178-9.

articulating local custom throughout the period under consideration. It is very probable that the codification of urban custom did not mean the end of its life as an oral culture. Almost all of the customals considered, across the period contain the texts of oaths to be made by civic officials,³² in public and aloud, and since these officials represent the guardians of borough custom, and its articulators in the borough courts, these oaths should be taken as evidence of the value attached to the spoken, even (and perhaps especially) when custom was written down. The Sandwich customal, in versions of both the fourteenth and fifteenth century, has been seen to be particularly explicit in setting out the role which oral performance was considered to have in the authority of the customs of the town.³³ Set speeches are given to officials in the annual ceremony in which the mayor and other officials were chosen, and the form of the vocal summons made to the borough courts are given in the text, and stipulate not only words to be spoken, but also the 'style' of their performance.³⁴ Civic ordinances are recorded in the customal, but they are proclaimed aloud following the mayor-making, and their authority *vis-a-vis* the inhabitants of towns must have rested as much in this proclamation as in their presence in the customal book. It is interesting that Jack Goody uses an observation of Michael Clanchy's (made in a discussion of the spoken word in legal procedure) as to the increasing frequency of law books which prescribed speeches and actions, to support his (Goody's) argument already alluded to that law became partially detached from society when articulated in writing. Goody does not however follow Clanchy's observations to their conclusion. Clanchy very clearly states that the presence of prescribed speech and action in texts does not imply the immediate absorption of orality into literate modes and that if this did happen it did so only very gradually. He furthermore concludes that 'Dependence on symbolic gestures and spoken word persisted in law and literature, and throughout medieval culture, despite the growth

² See Chapter 2. 2.

³ Chapter 3. 2

⁴ '... *clamet serviens alta et longa voce Pees a godys half, pees et intervallo facto iterum clamet eodem modo et tercio.*' MS Sa/LC 1, f. 8v. Discussed in Chapter 3. 2.

of literacy.³⁵ This acknowledgement of the continued co-existence of oral, literate, and aural modes of expression in urban custom is supported by a piece of evidence cited earlier in this study from the later fifteenth century, a time by which in any account of the rise of literacy, such literacy must have been widespread and highly absorbed.³⁶ It concerns the treatment of a new provision relating to the ancient custom of the attendance of representatives of the Cinque Ports at the coronation of a king. In 1483, this provision was entered into a common book of the Cinque Ports confederation, with the stipulation that it should also be copied into the common books of all of the towns of the confederation, and be read out each year by the common clerk as part of his public oath of office, for the specified reason that it should not be 'put into oblivion'. This stipulation is a strong indication of the continued importance attached to oral performance in urban government as a means of maintaining and transmitting customary knowledge. It also indicates the perceived shortcomings of the written record (even in 1483) in such maintenance and transmission.

The recognition of the non-exclusive nature of orality and literacy is a field of enquiry which would repay considerable further research, not least in the field of customary law. It is perhaps only recently that texts have come to be approached not so much as evidence of literacy as for the clues they provide of the practices of orality and aurality in medieval literate culture. A recent enquiry concerning the precise period dealt with in the present study has been made by Joyce Coleman in her study of the culture of aurality (reading aloud) associated with later medieval 'literary' texts. In that study, the assumption that the existence of an increasing number of books must imply a particular sort of solitary and private reading is fundamentally (and theoretically) challenged.³⁷ The extent to which books and texts were intended as triggers to aural performance rather than objects of private scrutiny is described, and

³⁵ Goody, *op. cit.*, p. 165; Clanchy, *op. cit.*, p. 278. Clanchy devotes considerable space to the interplay of orality, literacy and aurality in his sections 'The spoken versus the written word'; 'Listening to the word'; 'The spoken word in legal procedure', *op. cit.*, pp. 260-278.

³⁶ Chapter 2. 3.

³⁷ Joyce Coleman, *Public Reading and the Reading Public in Late Medieval England and France* (Cambridge: University Press, 1997)

this must have very far-reaching consequences for those studies which have concerned perceived shifts from orality to literacy.

So far, the evidence of the customs of the Cinque Ports has suggested that the orality/literacy and associated custom/law modalities expressed by proponents of the 'literacy thesis' are not straightforward, and in particular, that models (such as Goody's) which propose a progressive or transitional relationship between such categories, based on the nature of writing itself, are likely to be at best misleading, and at worst, fundamentally flawed. Nevertheless it must be accepted that the increasing use of writing in administration and law (in medieval England as elsewhere) has profound effects upon the ways in which societies, communities, and individuals store, transmit and recall information. In particular, the recording and transmission of information in the physical form of a text produces specific problems and potentialities in the ways in which that information is to be preserved or modified as situations change. This current study has given accounts of numerous ways in which written information in the form of codified custom has been kept (on scraps or rolls of parchment; in small parchment quires, and in books of various types). It has also identified ways in which such information might be altered through different types of re-writing, acts which might consist of direct copying from one document to another, the addition of extra material to an existing text, or the complete re-working or re-editing of an existing text. One of the recognised features of writing as a technology which can be accepted is its relative permanency, and the resulting need for special strategies to be adopted when the information contained in a written text needs to be altered. The customary codes here considered were clearly subject to modifications made over long periods of time, but such modification took particular forms.

The simplest form of alteration which the texts of the customs underwent was the later addition of text either to the end of the custom, or to spaces such as margins or gaps between existing clauses. It has been suggested that the 1301 version of the Sandwich custom may have undergone such modification before its complete re-

edition in the later fourteenth century.³⁸ The Faversham customal also bears evidence of such later addition in the existence of a note in a later hand added to its end asserting the primacy of 'natural law' in cases not specifically treated in the text.³⁹ Usually, however, some later attempt has been made to absorb obvious additions into the text as a whole by copying the whole manuscript into a new format, thus partially disguising addition. It has been suggested that the Faversham customal also contains a substantial amount of additional material added to the end of a 1356 version of the customal, but that this material has been absorbed into the customal text as a whole in the copy of the text made after 1382, through its appearance in the same hand as the earlier material.⁴⁰ Such additions then take on the authority of the original customal which claims to have existed from time immemorial. In the majority of the considered texts change to the customal code has been effected by this kind of re-writing of the entire code in a single hand, conferring upon the text a unity implying that all of the new contents (regardless of their real antiquity) were intended to be seen as qualitatively and authoritatively equal. Such efforts appear symptomatic of the genuine difference between oral custom and such custom as presented in a written code. As has long been recognised oral custom is able to change imperceptibly over time, since old or no longer appropriate laws simply become forgotten.⁴¹ Written law (and this must apply to codified custom also) needs to be changed through concerted acts of re-writing. At a point where an old code is no longer applicable, or sufficient, in the eyes of those responsible for its maintenance the whole code must be overhauled and authority invested in a new code. Written custom, as this study has demonstrated, is in no sense immutable, but when change is desired, this change appears to have involved fundamental recodification.

It is of great interest to observe such re-writings or re-codifications being carried out in more than one context at a roughly similar time. Such an observation has been made in the current study with reference to a particular group of customals (from Sandwich, Faversham, New Romney and Fordwich) which were modified in the later

³⁸ Chapter 3. 11.

³⁹ Fa/LC 1, f. 22

⁴⁰ Chapter 4. 11.

fourteenth century and completely re-written in the form of custumal books with comparable features. These books have been discussed as a group in Chapter 2, and two (those of Sandwich and Faversham) have been considered in detail in case-studies. It would be valuable to consider these books as a group once more, in order to understand why such a phenomenon should occur in the later fourteenth century. As was suggested, the books cannot be linked together through the invocation of a simple causative factor, such as a royal enquiry which resulted in the production of all four books at precisely the same moment. It would therefore be of value to consider whether some deeper cultural influence may have stood behind these re-codifications.

5.3 The custumals of the Cinque Ports and the development of an urban book-culture

Of primary interest in the custumals of the Cinque Ports as examined in this study is that many of them exist in the form of books, and that in several cases these can be seen as the first books to have been produced by particular urban administrations. In the cases of Sandwich, Faversham, New Romney and Fordwich, such books belong to the fourteenth century, and in the case of the non-extant Sandwich custumal of Adam Champneys, to its opening year. Thus they can be seen to stand at the forefront of a cultural phenomenon in which the governments of English towns came to collect together documents of particular value and importance and to have them written up on quires of parchment (and later of paper), to have these quires stitched together, and to bind them between boards to form books, or more particularly, 'registers'.⁴² This phenomenon began in a number of towns at a remarkably precise moment, around the year 1300, with the perhaps predictable exception of London, whose

¹ Clanchy, *op. cit.*, p. 296, citing Kern, *op. cit.*, p. 179.

² A description of the register as a type of record is given by M.T. Clanchy in *From Memory to Written Record; England 1066-1307* (Edward Arnold, 1979; second edn., Oxford: Blackwell, 1993), pp. 103-04.

government had begun to produce register books some twenty years previously.⁴³ Apart from the likely production of a custumal book at Sandwich in 1300, there is evidence for similarly early productions (c.1300-1310) of urban administrative books at this time at London,⁴⁴ Ipswich,⁴⁵ King's Lynn,⁴⁶ Oxford,⁴⁷ Southampton,⁴⁸ and Lyme Regis.⁴⁹ As the fourteenth century progressed, the book (in a number of forms) came to be an increasingly ubiquitous type of record associated with urban administration. In the later-fourteenth century (at around the time that custumal books were produced in Sandwich, Faversham, New Romney and Fordwich were begun) registers of civic documents and of customary codes were produced also in London,⁵⁰ Bristol⁵¹ and Colchester.⁵² Within the Cinque Ports themselves, the town

⁴³ The series of letter-books, recording outgoing letters and recognisances of debt on behalf of the London city government, begins in 1276: R.R. Sharpe ed., *Calendar of the Letter-Books preserved among the archives of the City of London, 1275-1498, Books A-L*, 11 vols. (John Edward Francis, 1899-1912); cited in M.T. Clanchy, *From Memory to Written Record*, pp. 103-4,

⁴⁴ The London *Liber Custumarum*, which is comparable in intention (if grander in scale) to the custumal books of the Cinque Ports compiled by Andrew Horn and Hugh Waltham dates from the period between 1285 and 1298 (Thomas Riley ed., *Liber Custumarum, compiled in the early part of the fourteenth century*, Munimenta Gildhallae Londoniensis, 2 (2 parts) (Rolls Series, 1860). Other books produced on behalf of the government of London at this time are: *Croniques de London*, ed. G.J. Aungier (Camden Society, 1st series, 23, 1844) and *De Antiquis Legibus Liber: Chronica Maiorum et Vicecomitum Londoniarum*, ed. T. Stapleton (Camden Society, 1st series, 24, 1846).

⁴⁵ The Ipswich custumal was copied into a register-book at the opening of the fourteenth century, G.H. Martin, 'The English Borough in the Thirteenth Century' *Transactions of the Royal Historical Society*, 5th series, 13 (1963), pp. 123-144 (139).

⁴⁶ A paper register beginning 1307 see *HMC Eleventh Report*, 3, pp. 152-3; cited in Graham Pollard 'The Medieval Town Clerks of Oxford', *Oxoniensia* 31 (1966), pp. 43-76 (53)

⁴⁷ *Liber Albus Civitatis Oxoniensis*, ed. by W.P. Ellis and H.E. Salter, Publications of the Oxford Historical Society, 53 (1920); described and discussed in detail by Graham Pollard, *op. cit.*

⁴⁸ *The Oak Book of Southampton of c. A.D. 1300*, ed. by Paul Studer (Southampton: Southampton Record Office, 1910-11)

⁴⁹ The book of the Hustings Court of Lyme Regis (beginning 1308), noted in Pollard, *op. cit.*

⁵⁰ *Liber Albus*....., ed. by Thomas Riley, Munimenta Gildhallae Londoniensis, 1 (Rolls Series, 1859)

⁵¹ *The Little Red Book of Bristol*, 2 vols., ed. by Francis B. Bickley (Bristol and London: Crofton Hemmings and Sotheran, 1900)

⁵² R.H. Britnell, 'The Oath Book of Colchester and the Borough Constitution, 1372-1404', *Essex Archaeology and History* 14 (1982).

and port of Hythe had produced a cartulary in the form of a paper book shortly after 1350.⁵³ Towards the end of the century books came also to be used as the site for the location of cumulative records, such as accounts and memoranda, replacing the rolls which had dominated urban record keeping from its earliest inception in the twelfth and thirteenth centuries.⁵⁴ The case of Canterbury is perhaps indicative of the shifts in such systematic record-keeping towards the end of the fourteenth century. Thomas Chirche, common clerk of Canterbury was responsible for a major re-organisation of the city's records and also for the introduction of entirely new classes of record, in the account and memoranda books which survive from the 1390s to the early sixteenth century. New Romney itself also provides evidence for new departures in urban record keeping in the last quarter of the fourteenth century. Of approximately the same date as has been suggested for the production of the *Register* of Daniel Rough (in or shortly after 1382), are the surviving fragments of an assessment book on parchment beginning 1383/4 and running to 1389.⁵⁵ This book was clearly intended to be a systematic record of such assessments, and fragments of a further similar book include the records of assessments from 1389-1424.⁵⁶ The remains of another parchment book, which opens with a memorandum of the granting of the poll tax which led to the revolt of 1381, and which also includes records of receipts of subsequent assessments, suggests that a whole new class of documents, in the form of books was begun at New Romney in the 1380s.⁵⁷ The correlation between the production of Daniel Rough's *Register* and the probable beginning of systematic record keeping in books (rather than on rolls) in New Romney, should perhaps further inform our estimation of the production of the custumal books produced in the fourteenth century, and this will be pursued further below. It must, however, be admitted that it is difficult to gain an accurate picture of the totality of types of record in the other Cinque Port towns which have fourteenth century custumal books

⁵³ I am grateful to Andrew Butcher for this information, which is to be included in his forthcoming work on Hythe.

⁵⁴ The character of urban record-keeping and the use of rolls in the twelfth and thirteenth century is a major theme of Martin's 'The English Borough', *loc. cit.*

⁵⁵ *HMC Fourth Report*, p. 439.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, p. 440.

(Sandwich, Faversham and Fordwich), since the survival of early material is sparse. However, in each of these cases, while a few rolls of systematic court or accounting records survive for the fourteenth century, no books survive from earlier than the suggested dates for the custumal books, which might indicate that administration was also dominated by a roll-culture for most of the fourteenth century.⁵⁸

The reasons for the emergence of a book-culture in towns, which is principally a post-1300 development, are worthy of some consideration. It is perhaps surprising that such a line of enquiry has received so little previous attention. While printed editions of such books have been available now for (in some cases) a century or so, *the study of the original books as artifacts in their own right has barely begun*, and certainly no systematic attempt has been made to locate them within the context of cultural change. There is a need for a study of the scale of Michael Clanchy's *From Memory to Written Record*, considering the evidence for the technologies of writing and literacy in medieval period *after* c.1300, when the book came to replace the roll as a dominant form. The identification in this current study of a series of town books in the form of the fourteenth-century Cinque Port custumals would appear to have much to contribute to such an enquiry.

In general terms the appearance of books or registers in urban archives after 1300 can be explained as a corollary of the accumulation of records in all spheres of administration (ecclesiastical, royal, and lay) which occurred in the eleventh and twelfth centuries, but which saw considerable acceleration in the thirteenth century.⁵⁹ In each of these spheres, administrators drew together previously separate documents and copied them into single books. The great monastic houses, with their virtual monopoly of writing technology in previous centuries, were probably the first institutions to make such books. Clanchy notes the existence of very early monastic 'cartularies' (registers of charters) in the eleventh and twelfth centuries, but confirms that it was the thirteenth century which saw the practice of cartulary-making firmly

⁵⁸ *HMC Fourth Report*, pp. 568-571 (Sandwich); *HMC Sixth Report*, pp. 500-511 (Faversham); *HMC Fifth Report*, pp. 605-608 (Fordwich)

⁵⁹ The growth of literacy and its uses in administration is described by Clanchy, *From Memory to Written Record*, ch. 2, 'The proliferation of documents', pp. 44-80.

established.⁶⁰ The crown and its administrative offices began to produce books as guides to law and administration in the later twelfth century (under Henry II), from which period date the *Dialogue of the Exchequer* and the law-book now known by its likely author, *Glanvill*.⁶¹ The administrators of the crown were the first makers of registers of day to day business in the form of records of outgoing letters, although these registers were initially in the form of parchment rolls, as in the case of the Chancery rolls kept from the time of the reign of John (1199-1216).⁶² Royal administrative books become an established feature by the thirteenth century, with the compilation of the Red and Black Books of the Exchequer.⁶³ Two major royal law-books were compiled in this century, namely *Bracton* and *Fleta*.⁶⁴

The administrative registers of the English bishops have a comparable history to those of the crown, and have been seen as a direct reflection of developments in royal administration, initially resulting from the interchange of personnel between the high offices of state and church.⁶⁵ The bishop's registers of between c. 1217 and c.1250 are presented in roll format, while those after 1250 are increasingly in the form of books.⁶⁶ It is from the thirteenth century too that register books produced by laymen begin to survive, although it has been suggested that such books from the thirteenth century itself are exceptionally rare,⁶⁷ and so it is to the very end of that century and the beginning of the fourteenth century that we need to look to see the firm establishment of a culture of administrative book- and register-making outside the administrations of the crown or the church. It is from this period that the surviving town-books noted above appear. While there is perhaps a general trajectory to be observed in the history of the making of such books, running from the centre (the crown), outwards, such a course is by no means the result of organic or inevitable

⁶⁰ Clanchy, *From Memory to Written Record*, p. 102.

⁶¹ *Ibid.*, pp. 18-19

⁶² *Ibid.*, p. 103.

⁶³ *Ibid.*

⁶⁴ *Ibid.*, pp. 67 and 77.

⁶⁵ *Ibid.*, pp. 74-75.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, p. 102.

development, nor of simple imitation. As the individual study of the some of the Cinque Port books demonstrates, the books produced in the fourteenth century town may have been a product of very specific political, social, and cultural conditions.

In the specific context of urban administration itself, there is also a chronological development to be traced, which saw the proliferation of written records in the late twelfth and the thirteenth centuries, and the beginnings of a culture of 'register', together with the ultimate production of such registers in books around the year 1300. G.H. Martin has observed that the comparatively scant remains of urban archives for the thirteenth century (with only 11 English boroughs having extant records earlier than 1272, and another 11 with such records earlier than 1300) do not indicate a paucity of written record in towns in this period, but are '...likely to be the wreckage of a sophisticated system of archives, rather than the first indications of a practice that was not established and perfected until a much later time.'⁶⁸ The earliest of these records were frequently made in the interest of town 'gilds', rather than in the name of the town or 'borough'.⁶⁹ It is of interest that some of the earliest identifiable records are customals (written in roll rather than book form), which might reinforce the suggestion of the evidence for the customals examined in this study, that their location in the register-books of the fourteenth century, may be only the tip of the ice-berg in terms of compositional history. Despite a few early survivals of pre-1272 records, the survival of systematic record-keeping (particularly in the form of court rolls) is chiefly from post 1272, from which date a general accumulation of records may have encouraged administrative experimentation in the subdivision of types of record.⁷⁰ The appearance of the first town registers around the year 1300, which represents a culture of making 'secondary documents', drawn from the 'primary documents' of systematic record-keeping and archived documents,⁷¹ might

⁶⁸ Martin, *op. cit.*, p. 128.

⁶⁹ *Ibid.*, pp. 131-132.

⁷⁰ *Ibid.*, pp. 132, 140-141.

⁷¹ Clanchy (*Ibid.*, p. 84) draws a fundamental distinction between copied documents (secondary records) and their exemplars (primary records) for the purpose of description and discussion, but recognises the difficulty of applying such categorisations to certain medieval records which have a complex compositional history.

thus be seen as a response to the proliferation of urban administrative documents. It would seem to represent a widespread attempt to create a new class of document designed to place selected documents, from a mass of systematic and accumulating records into one easily accessible location, a book. The model of the multiplication of records in the reign of Edward I, and the manifest experimentation with new types of record, ultimately giving rise to the production of books is typified in a particular account of the administration of London in the last years of the thirteenth century, in which it has been suggested that:

‘...between 1285 and 1298 duplicate court rolls were ordered and a whole new series created. The administrative tradition of the city crystallised as the precedent letter-books were drawn up. Andrew Horn and Hugh Waltham compiled the magnificent London law-books and carefully copied Brunetto Latini’s treatise on town government into *‘Liber Custumarum’*.⁷²

This model would however seem to be overly deterministic, as though to suggest that the obvious response to accumulating documentation was to produce registers, and that these registers were, by necessity, presented as books. Although the force of example may have been a factor (with urban governments simply copying the exemplar of the great administrations of the crown and church, who had produced such books rather earlier), the production of registers in books in towns cannot simply be seen as an inevitable or foregone conclusion. An obvious objection might be that a register need not by definition be a book, as the evidence of the pre-1250 bishop’s registers attests.

Such a model is also not entirely applicable to the particular evidence of the Cinque Port customal-books. The detailed examination of the Sandwich and Faversham books, together with the survey of other Cinque Port customal books have demonstrated, for example, the range of textual material which came to be written up in them. In all cases, in addition to material which probably existed in other forms within the towns’ archives themselves (such as copies of charters or agreements), there is also a substantial body of material drawn from other sources: from the archives of

⁷² Gwyn A. Williams, *Medieval London: from Commune to Capital* (London: Athlone Press, 1963), p. 78.

other towns, from the royal records, or, most strikingly, material which was probably composed especially for the new book. Much of Adam Champneys' custumal of 1300 is likely to have been of this nature, and among the later-fourteenth century books, the chronicle materials from the Faversham book are cases in point. While the production of the custumals might in one sense be seen as a re-organisation of existing materials, or a crystallisation of administrative techniques, the presence of such exceptional material suggests that this was not necessarily their primary intended purpose.

Further questions clearly need to be asked about the status or 'function' of such town books in the minds of contemporaries: both in immediate political terms and in broader cultural terms. What was the value of the production of such books to urban governments *and why were they desirable? What was the perceived value of the book over and above other record types?* It should also be asked: Why did such books become desirable or necessary in the fourteenth century?

A major practical advantage of the book is the possibility of the location of numerous different classes of record together as a single, portable object. The possibility of placing the original Faversham charters granted by Henry III and Edward I on a table alongside the Faversham custumal book into which they were later copied makes this advantage very plain.⁷³ The existence in these books of transcripts from the royal records, such as those noted in the Sandwich and Faversham books as memoranda of cases heard and recorded in the royal courts, is a further example of the possibilities for the placing together of documents which in their original form could never be so placed.⁷⁴ The implied evidence of the Sandwich and Faversham books for production at particular points in time at which the town governments may have expected to justify their liberties in courts may suggest that the physical placing of documents together in portable form was seen to be of paramount importance. In addition to the value of a book in this respect, it is probable that a perceived advantage of such a form above other documentary forms (such as rolls) was the ease with which specific

⁷³ Fa/I 1, Fa/I 2, and Fa/LC 1.

⁷⁴ Sa/LC 1, f. 126r, discussed Chapter 3. 7 above; Fa/LC 1, ff. 7v-9v, discussed Chapter 4. 8 above.

documents might be found among a mass of other texts. This is suggested by the ubiquity of decorative features found in books (including the fourteenth-century custumal books identified here). The value placed upon such features in the fourteenth century was probably not simply that they provided 'decoration' as understood in modern terms, but that they served as visual indicators to prompt the memory in the location of desired portions of text.⁷⁵ The presence of coloured and decorated initials (of varying sizes) and rubrics, of calligraphic enhancement of initials and extensions of letters into margins, is likely to be indicative of the function of a book as a repository for texts which may need to be easily and quickly accessed. The best example of such a function is provided by the earliest extant Sandwich custumal book (MS Sa/LC 1) with its coloured initials, rubrics, and elaborate calligraphic development of initials and ascenders forming a gallery of faces and figures around the text. Texts remembered by association with these features are easily found in this particular book. Although this is the best example among the books considered, the fourteenth-century books of Faversham, New Romney and Fordwich are also either illuminated, or were intended to be illuminated and rubricated. Once again, such features suggest a possible advantage of the book where convenient reference was needed.

The physical protection which the binding of a book gave to its contents has also been suggested as a particular advantage of books over other types of document, and the dual attributes of 'greater security and convenience' have been noted by Clanchy.⁷⁶ He cites the example of the late twelfth century Ramsey Abbey *Book of Benefactors* as an explicit instance of the intention of a book compiler to avert the possibility of the destruction of documents, which had occurred in this case in 'the gloomy days of King Stephen'.⁷⁷ The makers of the Cinque Port books appear to have been equally aware of the vulnerability of unbound records in the fourteenth century, and it is intended to suggest here that the notion of 'vulnerability' is a primary explanatory factor in the production of their custumal books, both in

⁷⁵ The use of decorative features as finding-aids in medieval books is discussed by Clanchy, *op. cit.*, pp. 172-177: 'Ways of Remembering'.

⁷⁶ Clanchy, *op. cit.*, pp. 102 and 103.

practical and symbolic terms. Adam Champneys must have had the keenest awareness of the possible fate of unbound documents, since it will be remembered that he himself was among the assembled members of the community of Sandwich who attacked the royal justices at Ash in 1300, slashing the bags in which the king's rolls were carried, and carrying them off. In view of the direct link between this event and the writing of Champneys' customary *'libellus'* for the town of Sandwich, the idea of the destruction of the king's rolls cannot fail to have been in this writer's mind as he went about his work in the spring of 1301. As Champneys drew together his source materials for those parts of his work which consisted of transcripts of 'primary records' (charters, letters patent, commissions, the perambulation text, and the 'domesday' of Cinque Port services owed to the crown)⁷⁸ he must have been aware of the value of placing these records together in a book, not only for the purpose of convenient reference, but also for the long-term protection which a bound book would give.

The perception of vulnerability in the fourteenth century was not, however, confined to the records, but to the nature of franchised town government itself. Champneys, as he tells us himself in his preamble, was not simply re-presenting existing town and Cinque Port documents but also committing to writing on the pages of a book the unwritten knowledge of urban government and custom residing in the minds, memories, and actions of the present members of Sandwich government. This he claims to have done because: '*...multa dubia solent inueniri in libertatibus portus Sandwici: cum nichil hucusque de predictis scriptum fuerit, et labilis fit humana recordacio...*'.⁷⁹ As has been suggested, much of the text of the first Sandwich customary may represent the first time at which many of the customs of Sandwich were committed to writing. Champneys was not then simply protecting documents in his *'libellus'*, but also the very existence of the town as defined by its liberties and customs. The perception of the vulnerability of urban knowledge expressed by Champneys coincided with the anxiety for the vulnerability of the customs and

⁷⁷ *Ibid.*

⁷⁸ Described above Chapter 3. 2.

⁷⁹ '*...much doubt has arisen in the liberties of Sandwich, when nothing concerning them has been written down and human memory is apt to fail...*' Sa/LC 1 f.1r.

franchises of Sandwich. It has been shown that the need for the security of this book was brought about by the perceived vulnerability of the town at the hands of the crown, and its law as propounded by the royal justices. Such a need may well be the key to understanding the emergence of these new town books. While the chronological evidence described above may suggest a simple dissemination of the technology of the book from the centre outwards, with developments in royal literate technologies leading the way and subsequent developments in localities occurring by imitation rather later, the particular evidence examined here suggests a qualitatively different interpretation. A book was produced at Sandwich in 1300 not in imitation of royal forms (such as the royal law books), but in direct opposition to the literacy of the crown, as a means of securing the political existence of the town. By using the Sandwich book in the royal courts (as may well have happened in 1301) the government were setting their book of customs against the books of the crown in which the very legitimacy of such custom was cast into doubt. Clearly, to advance such an interpretation of early town books as a whole would be risky without detailed case-study in every instance, but the Sandwich evidence suggests that this line of enquiry might be very fruitful. The case of the emergence of London books associated with Andrew Horn in the last decades of the thirteenth century described above would seem further to encourage such interpretation, since it was precisely at the time of the encroachment of Edward I's ministers into the government of London that these books were produced. They came to be made, not in imitation of the crown, but in direct opposition to it.

The later fourteenth century Cinque Port custumal books seem to beg a slightly different interpretation, but once again, they suggest that the particular efficacy of a book as a source of security for both texts and the knowledge contained in those texts may have been even more valued by urban governments. It has been suggested, in the foregoing surveys and case-studies of the custumals, that urban government in Kent and the Cinque Ports in the period immediately following 1350 was characterised by complex intersections of political and social forces. On the one hand, town governments were vulnerable to a similar kind of royal scrutiny of franchises and liberties as has been recognised in the late thirteenth and early fourteenth centuries, through the activities of the royal justices and others

commissioned to make enquiry into perceived lawlessness. On the other hand, more profound threats to established government were offered by the social dislocations attendant to the Black Death and subsequent plague outbreaks. A degree of disorientation and uncertainty has been suggested as a motivation for the production of new customals at this time. Not only were established town governments under pressure from *outside* the town, but also from *within*.

An important consequence of the dislocations of the post-1348 period was the correspondence of an interest in justice, law and order on the part of the crown and of local government. Urban government, despite its conflicts over the extent of its jurisdiction in relation to that of the crown, became increasingly identified with reactionary national legislation, such as is evidenced by the enforcement of the Statute of Labourers.⁸⁰ This identification may partly explain the prominence of descriptions of rights to try pleas of the Crown in the Cinque Port customals of this period.⁸¹ The case-studies of the customal texts of both Sandwich and Faversham have indicated the probability of new provisions for the maintenance of order in these towns in the later fourteenth century, which is indicative of the increased authoritarianism on the part of town government.⁸² There are also indications of a reaction to these problems in the increasing sense of exclusivity attached to urban government and to the membership of the franchises themselves. The Faversham customal, in particular, gives evidence of additions to a customal which express the desire for closer control of the composition of the membership of the franchise, while the Sandwich customal demonstrates the extent to which government came to be associated with particular elite families.

The evidence of the English Rising of 1381 demonstrates the extent to which the reaction and authoritarianism expressed by many types of established administration

⁸⁰ A.F. Butcher, 'English Urban Society and the Revolt of 1381' in R.H. Hilton and T.H. Aston eds., *The English Rising of 1381* (Cambridge: University Press, 1984, reprinted 1987), pp. 84-111 (97); B. H. Putnam, *The Enforcement of the Statute of Labourers during the first decade after the Black Death, 1349-59* (New York: Columbia University Press, 1908).

⁸¹ see above Chapter 2. 2.

⁸² see above Chapters 3. 8 - 3. 10 and 4. 8.

(from the crown to the lesser members of local officialdom) was resented by sections of the population below the level of government in both town and country. It has long been recognised that primary targets of the rebels of 1381 were those associated with the law and with its manifestation in written record. Legal and judicial records in the form of charters, court rolls and commissions were themselves perceived as instruments of oppression and were burnt or otherwise destroyed in very considerable numbers.⁸³ While the rebels inconvenienced local landlords in most areas, their principal venom seems to have been reserved for those who articulated reactionary government at all levels in the form of law. It has been noted that ‘relatively few landlords, and relatively more lawyers and clerks, were killed in the 1381 rising.’⁸⁴ The resentment held for those associated with law and justice was keenly felt in Kent, and the extant records of jurors’ presentments made after the revolt record a number of occasions where specific types of record were burnt in apparently great number.⁸⁵ The sheriff of Kent, William Septvantz (also a local landlord) is noted in one place as having been forced to collect from his manor of Milton and surrender ‘the books and writs of our lord king’, and in another, ‘the rolls of the pleas of the county and of the crown of our lord the king, and whatever writs were in custody of the said sheriff.’⁸⁶ These documents (which, it is stated, included fifty rolls) were burnt at Canterbury. William Medmenham’s house in Thanet was broken and rebels ‘...took and feloniously burnt the rolls touching the crown of our lord the king and the rolls of the

⁸³ Susan Crane in ‘The Writing Lesson of 1381’, Barbara A. Hanawalt, ed., *Chaucer’s England; Literature in Historical Context*, Medieval Studies at Minnesota, 4 (Minneapolis: University of Minnesota Press, 1992), pp. 201-221, surveys the studies which have pointed out the universality of the destruction of written record by rebels in 1381. G. M. Trevelyan pointed out this feature in 1909 in his *England in the Age of Wycliffe* (London and New York: Longman, Green, 1909 reprinted 1943) p. 218; Christopher Dyer surveyed the evidence and noted 107 separate instances of document destruction in 1381, in ‘The Social and Economic Background to the Revolt of 1381’ in R.H. Hilton and T.H. Aston eds., *The English Rising of 1381* (Cambridge: University Press, 1984, reprinted 1987), pp. 9-42 (12).

⁸⁴ Crane, *op. cit.*, p. 204.

⁸⁵ W.E. Flaherty, ‘The Great Rebellion in Kent of 1381, illustrated from the Public Records’, *Archaeologia Cantiana*, 3 (1860), pp. 65-96. Discussed in A.F. Butcher, ‘English Urban Society and the Revolt of 1381’, *loc. cit.*, pp. 106-108.

⁸⁶ Flaherty, *op. cit.*, pp. 86 and 93; Butcher, *op. cit.*, p. 107.

officer of receiver of Green Wax.⁸⁷ John Colbrond⁸⁸ had his house at Wilmington in the parish of Boughton (Aluph) broken, and rebels ‘...took and destroyed the roll of Green Wax of our lord king.’⁸⁹ John Tyece,⁹⁰ who was dragged from his horse and killed at Canterbury may also have had muniments burnt by villagers of Chartham, Petham, Elham and Harbledown.⁹¹ It is clear also that urban government was not excluded from this sort of destruction. The evidence of the fate of members of the Colbrond and Tyece families, who were closely connected with the town government of New Romney here indicated shows that families involved with urban government were also associated in the minds of the rebels with oppressive and reactionary royal justice. There is also evidence from Canterbury that town government was specifically targeted, and a chronicle account states that the rebels ‘who returned to Canterbury [from London] had their own ordinances proclaimed and killed a burgess who contradicted them. They burned charters, records and writings in the house of justice.’⁹² That this account was likely to have been an accurate description of the revolt at Canterbury is indicated by the non-survival of many types of urban record for the pre-1381 period, and the subsequent re-organisations of the city’s record-keeping (in which Thomas Chirche, mentioned above, was a leading figure). The town-government of Canterbury is likely then to have suffered a major destruction of its principal classes of record.

While there is no chronicle evidence relating to the town governments of the Cinque Ports in the revolt, the dating suggested for the custumal books of the fourteenth century, suggest that they should be considered in the light of the association of documents with oppression, and in some cases, of the destruction of town documents

⁸⁷ Flaherty, *op. cit.*, p. 76; Butcher, *op. cit.*, pp. 107-8.

⁸⁸ Almost certainly of the same family of Colbrond who had provided members of parliament for New Romney and gave their name to a taxation-ward of that town in 1383, see above Chapter 3. 8.

⁸⁹ Flaherty, *op. cit.*, p. 83.

⁹⁰ Of the same family of Tyecees who were among the merchant elite of New Romney at the same time as the Colbronds, see ‘The Register of Daniel Rough’, ed. Murray, *loc. cit.*, p. xlv.

⁹¹ Butcher, *op. cit.*, p. 108.

⁹² From the continuator of the *Eulogium Historiarum*, presented in translation in R.B. Dobson, ed., *The Peasants’ Revolt of 1381* (Macmillan, 1970), p. 208; quoted and cited in Butcher, *op. cit.*, p. 108.

at Canterbury in 1381. While the Sandwich book (MS Sa/LC 1) is probably earlier than 1381, the Fordwich book must date from between 1364 and 1402, the Faversham book was probably begun in, or shortly after 1382, and the New Romney book was probably begun in, or shortly after 1381.⁹³ In view of the possibility of the production of the book of Fordwich, and the probability of the production of the New Romney and Faversham books in the immediate aftermath of 1381, it would be valuable to look at the evidence for the activities of the rebels in those places. There is no apparent evidence relating to Fordwich, but it might be said that its geographical and administrative proximity to Canterbury would mean that events in Canterbury would be of the utmost immediacy in Fordwich too.⁹⁴ Faversham was a centre for at least three attacks by rebels in the summer of 1381, though there is no evidence for document destruction. On 10th June, a John Gardener, tailor of Faversham joined the assembled rebels and broke the close of William Makenade at Preston-by-Faversham, assaulted him, and also ejected Stephen Makenade from his land in Preston.⁹⁵ The Makenade family, as well as being substantial local land-owners were members of the town government of Faversham, had interests in the city of Canterbury, and William had acted as commissioner in recent royal judicial enquiries.⁹⁶ The same group are presented as also having carried off the goods of one Phillip Bode, and assaulted Richard Bertelot at Ospringe.⁹⁷ The evidence for New Romney indicates not only that

⁹³ See Appendix 1, Sandwich custumal (app.) 1; Fordwich custumal (app.) 4; New Romney custumal (app.) 1; Faversham custumal (app.) 1.

⁹⁴ Fordwich is less than two miles from the centre of Canterbury.

⁹⁵ Flaherty, *op. cit.*, p. 90.

⁹⁶ A document in the formulary of MS Fa/LC 1 (Faversham custumal book) gives evidence of Makenade's membership of the town government of Faversham (Fa/LC 1, f. 16v). For Makenade's judicial activities see *CPR 1377-1381*, p. 464 (and elsewhere *passim*). William Makenade acted with a group commissioned to make enquiry in 1380 into the removal of a felon from the custody of officers of the crown at nearby Ospringe. The commissioners included the chief justice of Common Pleas, Robert Bealknap, who is credited with having 'fanned the first sparks of the Essex rising into a conflagration by his trailbaston session, and appeared behind [the duke of] Lancaster in the rebels' 'hit list' see Alan Harding, 'The Revolt against the Justices' in Hilton and Aston, eds., *op. cit.*, pp. 165-193 (183). Makenade's Canterbury connections are noted in Butcher, *ibid.*, p. 107, his association with royal commissions noted p. 109.

⁹⁷ Flaherty, *op. cit.*, p.90.

leading New Romney families were targeted by the rebels in 1381, but strongly suggests the government of the town saw a threat not only to themselves, but to the records upon which their government of the town relied. Firstly, the evidence already presented for attacks on members of the New Romney families of Tyece and Colbrond in other parts of Kent is indicative of the probable resentment of such prominent individuals associated with the town government. In the light of the Canterbury evidence, the nature of the surviving New Romney archive is of great interest. The *Report* of the Commission on Historic Manuscripts noted that there are no extant records in the new Romney archive dating from before the early part of Richard II's reign.⁹⁸ This can be qualified further, by stating that with very minor exceptions,⁹⁹ none actually exist from before 1381/2. From after 1381 can be dated not only the 'Register of Daniel Rough', but also the new assessment books already noted. As has been seen, one of these commences with a memorandum of the poll tax assessment of 1379, but does so in a manner which suggests that it may have been produced subsequent to the revolt itself. The rather exceptional manner of referring to the king, with the weighty double use of '*nostro tres excellentissimo [sic] domino Ricardo Regi Angliae at Franciae*' suggestive of a need to express loyalty and legitimacy at a time when Richard's kingship had been so fundamentally challenged, suggests the composition of this memorandum *after* the events of summer 1381. The facts that the tax is stated to have been granted from All Saint's in Richard's third year (1379) to the feast of John the Baptist in his *fifth* year (i.e. 1381), and that the subsequent assessment in the book dates from 1382 suggests that the book was begun in or after 1381 itself. The 1383 assessment book apparently begins a new series of records for New Romney. The pattern of survival of loose documents, in the forms of counterparts of deeds is equally suggestive. As has been noted, one dates from 1380, but the remainder, which run to a number of many hundreds all date from after 1382. As the nineteenth century record commissioners noted, our knowledge of such deeds from pre-1381, is drawn solely from the '*Register*' of Daniel Rough, into

⁹⁸ *HMC Fourth Report*, p. 439. H.T. Riley begins his survey of the New Romney archive: 'The archives and other documents belonging to this Corporation are very numerous, amounting probably, to many hundreds of items in number; in no instance, however, so far as I have been able to ascertain are they of greater antiquity than the early part of the reign of Richard the Second.'

which a large number of such earlier deeds (from the 1350s-1381) have been copied. All the evidence points to an extraordinary burst of energy in the copying of primary records into a new secondary format, on the pages of a new register, and the making of new records (as in the assessment records) on quires for new books, acts which are closely identifiable with the revolt of 1381. Previously loose documents were copied into the small '*Register*' of Daniel Rough, and subsequent records began to be made in books, all of these books being the earliest survival of books for New Romney town government. It is not certain that we can envisage a similar destruction of documents to that which occurred at Canterbury, but if this did occur the clerk who wrote the '*Register*' must have gathered his materials from outside the town government's own holdings or from the portions of deeds remaining in private hands. If the New Romney archive did survive the revolt of 1381, it is nevertheless highly likely in the light of the extraordinary re-organisation of record in or after that the town government was sufficiently fearful for the vulnerability of its records that it resorted to extraordinary contingencies to protect them in the future.

The correlation between the events of 1381 and the production of custumal and other books that this evidence suggests must lead us to consider in what ways the remaking of records in books or on quires to make books might have been seen as advantageous or necessary. The need for the protection of documents had been amply demonstrated in the revolt, and this may in itself have been a factor in the manifest need to produce records in books in its aftermath. As has been noted, the recognition of the book as a means of such protection was long-established in literate culture: the twelfth century *Book of Benefactors* made for Ramsey abbey has been cited as an example of this, and it is particularly apposite here in the light of the reference its writer made to the preceding destruction of documents in 'the gloomy days of king Stephen', which presumably refers to the civil strife of that period.¹⁰⁰

However, as has been suggested of the Sandwich book of 1301, there appears to be a coincidence of the recognition of the vulnerability of documents themselves to

⁹⁹ The *HMC Fifth Report* notes a single deed of 1380.

¹⁰⁰ Clanchy, *From Memory to Written Record*, pp. 101-2.

destruction and the vulnerability of the very authority of urban government. The power of urban government is inextricable from its possession of the written records which provide a large part of the knowledge of that government. The book (not simply writing), at all stages in the history of literate cultures is a technology which has been peculiarly well-suited to the possession and close control of all forms of knowledge, as represented most obviously by the Bible, and closer to the period considered here, by Domesday. All of those advantages of the book as a technology as have been previously recognised: the possibility of juxtaposition of large numbers of varied documents from dispersed sources; comparative ease of reference; security; and general 'convenience', are all beneficial to the control of knowledge. The placing of large bodies of urban knowledge (of which custom was a major part) into the format of the book (especially such small books as we have been concerned with here) presents the advantage of allowing that knowledge to be kept close to those who claim to have control of it. It can be held in the hand, easily moved, or even concealed. In comparison to the range of 'loose' document types in urban archives (such as rolls, deeds, charters) the book offers considerable protection and the opportunity for control. Access to the contents of a small book must have been relatively easy to control. A particular feature noted in the custumal books discussed has been their layout and use of rubrication and illumination as systems of reference, and this must have served not only for ease of reference but as a way of controlling the contents of the book. The book also seems peculiarly protective of its contents not just because of the presence of a binding (it has been indicated that some of these early books may not have been bound until later), but because of the coherence of their make-up. Quires of parchment, as the collations of the manuscripts considered in detail here have shown are usually made up of consistent numbers of leaves (usually eight), thus the removal of a leaf or leaves from a book is usually obvious (especially if there are page signatures). So while additions can be made to a book with comparative ease, the removal or destruction of text is difficult to conceal. Such control of knowledge would be difficult to achieve in an archive consisting of loose documents.

5. 4 Medieval urban culture and the uses of writing

The specific examples of the late fourteenth century custumal books and their association with distinct social and political process or event suggests that the close study of urban administrative culture in its uses of writing may be of great value to the wider understanding of medieval urban society. The evidence for the sophisticated writing culture in which the Cinque Port town governments participated in the examined period (c.1290 - c.1500) might be used to draw some preliminary conclusions.

The evidence for the contexts of major writing enterprises which has been derived from the close textual and codicological analyses of custumal manuscripts, and from the consideration of external evidence, demonstrates a clear correlation between major acts of writing and crisis. Such crisis may take different forms, and writing may bear a slightly different relationship to each according to circumstance. In the cases examined in detail in this study there is evidence for periods of political and social tension (which may last for several decades) in which customary writings are produced on a small scale, or in a piecemeal fashion. These periods may be followed, however, by events of fundamental crisis which elicit a correspondingly fundamental overhaul of custom in the form of major acts of writing, rewriting or recodification. A review of the evidence considered in this study demonstrates the extent of the coincidence of fundamental customary codification or recodification and crisis.

The evidence for the experience of the town of Sandwich suggests a period of particular political tension associated with franchise and custom in the last quarter of the thirteenth century, in which these franchises and customs were subjected to the scrutiny of Edward I's *quo warranto* proceedings.¹⁰¹ As has been seen, it was in this period that the first surviving evidence for the committal to writing of the Sandwich customs is found, in the form of a royal record of claims made by the mayor and community of the town in such a *quo warranto* enquiry.¹⁰² The events of the years

¹⁰¹ The evidence for Sandwich's experience of *quo warranto* and for customary writing in the late thirteenth century has been examined above Chapter 3. 3.

¹⁰² This record is discussed in Chapter 3. 3 and is reproduced in transcription as Appendix 3.

1300 and 1301, in which the town government of Sandwich participated in a violent repulsion of the royal justices, and were subsequently summoned before the king's courts to defend themselves, however, appear to represent a fundamental crisis-point in the relationship between the jurisdiction of the crown and the franchises and customs of a local community.¹⁰³ The fact that violence occurred between representatives of the crown and of the town suggests the seriousness of the situation. The production of the Sandwich custumal in 1301, which was a major writing enterprise undertaken by the town-clerk Adam Champneys, has been interpreted as a direct response to this event and to the need to defend the franchise of the town in the king's courts in that year. While recognising the direct relationship between the writing of the custumal and the defence of the franchise in a particular instance, the nature of the custumal and of Champneys' preamble to it, strongly suggest that it was intended that this code should endure for the guidance of future governments of the town of Sandwich.¹⁰⁴ It thus addresses not only the particular contingencies of 1300/1301, but seeks to provide a fundamental codification of the customs and franchises of the town which might be used as evidence of those customs and franchises in the future. This codification must have served its purpose, in the eyes of the government of Sandwich, for some decades, although it has been suggested that minor additions may have been made to the manuscript in which it was contained in the fourteenth century.¹⁰⁵ These minor additions may have addressed changing contingencies in that century. A major recodification of Champneys' custumal was carried out in the period c.1350 -c.1381 as represented by the surviving MS Sa/LC 1.¹⁰⁶ Although it has been impossible to assign a precise date to the making of this manuscript, and it has also been suggested that its production may have taken place over a period of time, it has been interpreted as a carefully planned and executed production. In common with the earlier 1301 custumal of Adam

¹⁰³ The violent encounter between representatives of the town of Sandwich and the royal justices in the village of Ash is described and discussed in Chapter 3. 4.

¹⁰⁴ Champneys' intentions in producing the custumal as expressed in his preamble are discussed above, Chapter 3. 2.

¹⁰⁵ This has been suggested from the nature of the recodified custumal (MS Sa/LC 1) and is discussed above, Chapter 3. 11.

¹⁰⁶ This manuscript and its dating are discussed above, Chapter 3. 5.

Champneys it represents a fundamental overhaul of an existing codification which had been added to over a period of time. Because of the difficulty of dating this manuscript it is not possible to identify the exact moment at which the need for a new codification was crystallised, but the social, economic and franchisal crises which appear to have been profoundly felt at Sandwich in the period after c.1350 appear to have been the motivating force behind the decision to produce a new custumal.¹⁰⁷ This custumal book evidently served its purpose in the eyes of the government of Sandwich until the first decades of the fifteenth century. The making of a new custumal book in 1415 (MS Sa/LC 2), in which the custumal was copied without textual alteration into a new book has also been interpreted as a direct response to the threat to the customs and franchises of the town which in this case had been perceived in the royal enquiry into the procedures of the Sandwich courts in dealing with a case involving a foreign merchant.¹⁰⁸ Such a particular case came to have implications fundamental to the exercise of franchisal jurisdiction as it was considered in the king's courts, and the association with the production of the new custumal at this point is strongly suggestive of a contemporary perception of the need for new writings at times of such crisis.

The evidence for the history of custumal codification at Faversham is equally suggestive of the association of profound crisis and the production of major writings. While no custumal can be seen to have existed for the town from prior to 1356, there is evidence comparable to that of Sandwich for the committal of custom to writing associated with the *quo warranto* enquiries, in this case from the opening of the fourteenth century.¹⁰⁹ In this, fundamental rights of the town and its officers to administrate aspects of the government of the town were claimed, in the face of seigneurial opposition from the abbot of St. Saviour's Abbey, Faversham. A major codification of custom has been identified in 1356, in the form of a custumal later

¹⁰⁷ The experience of the government of the town of Sandwich in the later fourteenth century is discussed above, Chapter 3. 7 - 3. 8.

¹⁰⁸ The production of MS Sa/LC 2, and the reasons for dating it to 1415 are discussed above, Chapter 3. 12 - 3. 15.

¹⁰⁹ In the form of a memorandum of claims made by the mayor and community of the town made in the king's courts at the suit of the abbot of Faversham, discussed above, Chapter 4. 2.

incorporated into the text of the later fourteenth century custumal surviving in the Faversham custumal book (MS Fa/LC 1), and this has been seen to address the issue of the rights of local government in judicial matters in a period of intense judicial innovation, and even reaction, instigated by the crown in the aftermath of the Black Death.¹¹⁰ In this period franchisal government appears to have been faced not only with a crisis in defining and defending its judicial rights in relation to those of newly empowered royal officials (such as justices of the peace, and commissioners of oyer and terminer), but probably also with the exercise of day to day administration in the town at a time of profound dislocation arising from the consequences of unprecedented mortality after 1348. Such immediate problems have been seen as the ultimate motivation for the production of custumals both at Faversham and in other Cinque Port towns in 1356, which have in the past been seen simply as responses to the demands of a royal enquiry into liberties and franchises in the confederation.¹¹¹ In the case of the 1356 Faversham custumal, evidence has been considered for the making of piece-meal additions to the text in the decades after its production, which may represent a hardening of attitudes to social order within the town (both in terms of a desire to control behaviour and to control access to the freeman community) in the later fourteenth century.¹¹² The year 1382 has been seen as the point at which a decision was taken to completely recodify the customs of the town, which resulted in the production of quires intended to be made into a book which included the charters of the town, the custumal (the 1356 text with subsequent additions), administrative formulae and precedents, together with a chronicle from the creation of the world to the year 1382.¹¹³ While this enterprise was clearly carried out over the course of over two decades, 1382 has been seen as the origin of the perceived need for a fundamental recodification of writings associated with the customs and franchises of the town. Some discussion has been devoted to the association between the production of a new custumal at Faversham, together with comparable acts of

¹¹⁰ The production of this custumal, and its relation to royal judicial innovation is discussed above, Chapter 4. 8 - 4. 10.

¹¹¹ See above, Chapter 2. 2

¹¹² The evidence for this is discussed above, Chapter 4. 8 - 4. 9.

¹¹³ The production and the dating of the Faversham custumal book (MS Fa/LC 1) is discussed above Chapter 4. 6 and 4. 7.

rewriting and recodification of urban documents at New Romney and possibly also at Fordwich, and the revolt of 1381. It has been noted that writings (including urban writings) and their makers and users were singled out for attack in 1381.¹¹⁴ The view has been expressed that the recodifications of custom and other new writing enterprises which can be dated to the immediate aftermath of the revolt, were a direct and reactionary response to the threat to forms of government and their administrative tools (principally documents). This appears to be a further example of the association of acts of violence in expressing political conviction (such as is also evidenced by the 1300 attack on the royal justices at Sandwich) and the subsequent undertaking of major documentary reorganisation.

While the evidence presented in the initial survey of custumal production in the Cinque Ports for a cluster of recodifications of custom in the late fifteenth century has fallen outside the scope of the period chosen for detailed case-study in this thesis, it is likely that these productions also resulted from the perception of crisis in the political authority of urban government.¹¹⁵ Not only did the towns of the Cinque Ports experience major social and economic restructuring in the second half of the fifteenth century (amounting in some case to serious economic decline), but the evidence for political negotiation between central government and the administrations of these towns suggest profound anxiety as to the maintenance of the liberties and franchises of the Cinque Ports. The events surrounding the coronation of Richard III, and the associated burst of writing activity in the towns of the Cinque Ports (which included the production of custumals in some cases) is strongly suggestive of the importance attached to the written record of customs and franchises as protection against potential threat to franchise and to the political authority that such franchise invested in the government of these towns.

The clear association between the making and remaking of written texts, in which were recorded the fundamental sources of knowledge and authority of town governments, with crisis of the types described must indicate that the personnel of

¹¹⁴ Above, in this chapter , 5. 3.

¹¹⁵ The evidence for late fifteenth century custumal production is considered in Chapter 2. 3.

such governments recognised a value in making such texts in the context of crises where their authority was challenged or threatened. It is the recognition of this that suggests that codes of borough custom are in no way merely reflective of urban government or of administrative culture (as seems to have been assumed in Bateson's surveys in *Borough Custom*, for example) but that they were perceived to be powerful agencies in the conflicts and struggles which characterise the maintenance of all forms of hierarchical political authority. The fact that these major writing enterprises involving the description of town government and administration should have been embarked upon in response to threats to authority should not be taken for granted, or considered as merely an obvious response. Such writing is not a neutral act, but highly politicised. In various ways explored in this study, the production of new codes has been interpreted as a means of asserting or re-asserting authority at specific moments when such authority had been fundamentally challenged or undermined. It is a truism that political authority over forms of government and administration is to a large extent maintained by the possession or control of knowledge. In recognition of this, Michael Clanchy, in examining codifications of administrative practices of a legal nature, has seen fit to refer to a remark of Max Weber:

'...bureaucratic administration means fundamentally the exercise of control on the basis of knowledge.'¹¹⁶

This is cited with relation to Clanchy's interpretation of the late twelfth century royal law book ascribed to Glanvill, which was itself, like the custumal codifications considered in the present study, a '*summa*' of technical, legal, and administrative knowledge of forms of writs used in royal legal bureaucracy. Weber (as Clanchy notes) goes on to state that administration:

'...consists on the one hand in technical knowledge which, by itself, is sufficient to ensure a position of extraordinary power. But in addition to this, bureaucratic organizations, or the holders of

¹¹⁶ Max Weber, *The Theory of Social and Economic Organisation*, trans. and ed. by A.M. Henderson and Talcott Parsons (London and New York: Oxford University Press, 1947), book 3, ch. 1, section 5, p. 339, cited in Clanchy, *From Memory to Written Record*, p. 67.

power who make use of them, have the tendency to increase their power still further by knowledge growing out of experience in the service.’¹¹⁷

This observation is very applicable to the codes which have been considered here. The acts of writing which produced them appear to be clear examples of members of established administrations attempting to control or to ‘possess’ the knowledge of urban governments (as articulated by written custom) in the reinforcement of their authority. As has been seen, the particular technology of the book is peculiarly well suited to the impression of possession of knowledge, and codification in books must have been seen as especially desirable. Weber’s comments also help to explain the particular form that the texts of custumal codes took. The custumals are not merely theoretical outlines of jurisdiction, but frequently include examples of actual administrative processes, in the form of precedents, of formulae, and of memoranda, recording the administrative acts of individuals. Authority is usually articulated in the description of administration as an active rather than merely theoretical concept. In this sense the custumals are similar in intention to the earlier royal law book of Glanvill as interpreted by Clanchy, which is seen as ‘an insider’s handbook’ to the royal bureaucracy. By producing codes which described not only administrative process, but also the agency of the town’s officials in those processes, the town governments of the Cinque Ports were seeking not only to possess the knowledge of government but also to associate fundamentally that knowledge with themselves and their immediate peers.

Various methods have been identified by which members of town governments sought to identify themselves with the knowledge of administration represented by the custumal texts. The most striking example is that of Adam Champneys, town-clerk of Sandwich, who in 1301 wrote a preamble to his custumal in which he claimed to have compiled and written the custumal himself, with the help of what he had learned of the liberties of the town from his predecessors and peers.¹¹⁸ A particular feature observed in Champneys’ custumal is the use of a wide range of

¹¹⁷ Weber, *op. cit.*, *ibid.*; cited in Clanchy, *op. cit.*, *ibid.*

¹¹⁸ Champneys’ preamble is transcribed, translated and discussed above, Chapter 3. 2.

names of individuals and officials some belonging to the town's administration and others from outside that circle, and these include the names of attorneys, bailiffs, royal justices, and other royal officials.¹¹⁹ This variety of naming has been interpreted as reflective not so much of the town's interest but perhaps of Champneys' own personal identification with a variety of forms of administration and authority beyond the urban, which is apparent from the connections and mobility of his personal career.¹²⁰ The later fourteenth century custumal (as presented in MS Sa/LC 1) provides considerable evidence for the identification of a current town government with the knowledge of the administration of their town, in what has been interpreted as an 'inscription' of their names upon the text of an existing custumal.¹²¹ The rewriting of Champneys' earlier custumal allowed the town government to include, among the original clauses, a number of memoranda, document formulae and precedents in which were included the names of recent mayors and jurats drawn from a small group of elite families. The need for such naming, and the desire to associate these people with the exercise of authority in the town has been interpreted in the context of a profound insecurity associated with such exercise in later fourteenth century Sandwich.¹²² The Faversham custumal also presents evidence of the desire of an established town government to associate itself with the knowledge and exercise of urban administration. The custumal contains a number of documents in which individuals can be identified, presented as a formulary of document types.¹²³ The example of the post -1381 New Romney custumal presents another striking example of this strategy, since it is presented in the context of a register associated with a single name, Daniel Rough, town-clerk.¹²⁴ It has been noted also that the text of the custumal itself in this register is interspersed with examples of document types associated with the described administrative processes, documents which were

¹¹⁹ Champneys' particular use of naming in his custumal is presented as a contrast to the names inserted into the later fourteenth century version of the custumal, see above, Chapter 3. 8.

¹²⁰ Champneys' career is discussed above, Chapter 3. 2.

¹²¹ Naming in the later fourteenth century Sandwich custumal is described and discussed above, Chapter 3. 8.

¹²² *Ibid.*

¹²³ Described above, in the consideration of the contents of the Faversham custumal, Chapter 4. 8.

¹²⁴ The New Romney custumal, associated with Daniel Rough is considered above, Chapter 2. 3.

presumably drafted originally by Daniel Rough, and in which the practice of administration is expressed in addition to the theoretical description offered by the custumal clauses. The register as a whole is also filled with documents which record the acts of the government of the town in the period between c. 1350 and 1381.

The extent to which urban administration is articulated as an active process in the hands of a limited group of individuals in these texts confirms that they are not merely descriptions of administration, but careful exercises in the control of administrative knowledge. They may have served as guides to administration, but it is probable that, as in the case of the law-book of Glanvill described by Clanchy, they were intended specifically as 'insiders guides', for the benefit of *existing urban governments*. In making the association between the exercise of administration and its personnel the makers of the custumals appear to have sought to possess the institutions and processes through which their towns were governed, just as they possessed the books in which they were described.

The association of the custumals with particular personnel is only one of the ways in which control was exercised over administrative knowledge by the governments responsible for making or commissioning codification and re-codifications. This knowledge was susceptible to other forms of control exercised by town governments. The accumulation of large numbers of documents in urban archives, and the access to documents from a wider administrative culture (which is especially applicable to the administratively-interconnected towns of the Cinque Ports) appears to have stimulated an enthusiasm for retrospective, even historical enquiry, among the governments of these towns. This enthusiasm is reflected in the custumals which have been considered here. Such a historical interest may have been a particular feature of communities or organisations with a degree of franchisal liberty, since as has been seen, the thirteenth century *quo warranto* enquiries had created a political imperative for the holders of franchises to seek-out and present written evidence of their grants or the antiquity of their franchise.¹²⁵ This imperative explains the origins of the need

¹²⁵ The demands of the *quo warranto* enquiries are discussed in detail in the context of the early history of customary codification at Sandwich, Chapter 3. 3.

for towns to collect charters, and thus the inclusion of charters in a number of the custumal codifications considered in this study. In the case of custom itself, the need to claim antiquity in justification of franchisal liberty was extended to its furthest limits in the notion of 'time out of mind'. This notion could assume the character of a fundamental point of origin, as is suggested by the claim of the fourteenth century Faversham custumal that it represented customs of Faversham as they had existed '*à de primes*'.¹²⁶

The acts of codification and recodification considered here allowed a unique opportunity for the selection of documents for inclusion in the custumals which expressed the antiquity and longevity of the authority of urban government. The juxtaposition of ancient material with material of very recent origin, as has been identified in all of the custumals considered appears to have been used to confer the authority of antiquity upon the whole contents of a custumal regardless of actual dating. The Faversham custumal demonstrates the effect which the placing of charters of past kings, may have upon a custumal as whole.¹²⁷ As has been noted, the custumal as it would have existed in the later fourteenth or early fifteenth century begins with a page (f. 5 of the current compilation) on which are presented two charters: of Henry III (1252) and Edward I (1300) granting and confirming the franchises of Faversham, franchises which are subsequently enlarged upon in the custumal itself. The page was intended as an object of display, since large spaces were left around the initials letter of each king's name for future illumination. It would seem that the charters are presented not only as crucial texts, but as objects in their own right, perhaps even as 'artifacts' which convey the idea of antiquity. While such royal grants from past kings were evidently considered important, the authority of a more distant past appears to have been even more desirable to the makers of custumals, and the use of the idea of an Anglo-Saxon past appears to have been especially prevalent. The Faversham charters themselves contain Old-English words for liberties considered to be ancient, and these in themselves have been seen as important visual indicators (again on the opening page of the custumal) of antiquity, as these words stand-out from the Latin

¹²⁶ 'From the first', MS Fa/LC 1, f. 13r, described and discussed above, Chapter 4. 8.

¹²⁷ The charters presented at the opening of the Faversham custumal are discussed above, Chapter 4. 8.

texts of the charters on account of their peculiar word-constructions. Again these seem to have been considered as textual artifacts conferring a sense of antiquity beyond the dates of the charters themselves. The Faversham customal is notable for the particular frequency of the appearance of words and names derived from Old-English, which are used in the description of the institutions fundamental to the government of the town: such as 'burghmoot', 'burghorn', 'Ildhalgren' (to describe the meeting place of moots), and the remarkable 'trendeushaghes', which is used to describe the part of the town considered to be the original royal Saxon burgh. This invocation of Saxon origins is particularly remarkable for the fact that the form of government current at Faversham in the late fourteenth century can only be seen to date from 1250 (at the earliest), so that the notion of the antiquity of this government must represent an invention or embellishment of tradition.¹²⁸ The fact that such an invention occurred at a time when the authority of urban government was probably threatened (indirectly by social process in the post-plague period, and directly in the Peasant's Revolt of 1381) is suggestive of the need for legitimisation and reassertion at times of flux, which invented tradition may satisfy.¹²⁹

The texts of the Faversham customal, however, go beyond the invention of tradition in the expression of legitimacy and authority. The existence of the chronicle suggests the desire to use the opportunity of a new compilation to rewrite the course of history itself, in a highly selective account of the history of the world, of Britain, of kings, and of towns from the creation to the year of 1382.¹³⁰ This remarkable text has been interpreted as a celebration of the continuity of political and legal authority in a national context from the time of Brutus, the mythical founder of the nation and its principal town, London. Brutus is himself linked to the beginnings of the world (the 'in principio...' which has been seen to correspond to the 'a deprimis' of the claims of the customal) through the construction of chronologies of the ages of the earth.

¹²⁸ The tendency to invent traditions surrounding institutions which are in reality of recent origin has been considered in the collection *The Invention of Tradition*, ed. by Eric Hobsbawm and Terence Ranger (Cambridge: University Press, 1983 reprinted in paperback 1984). See especially Hobsbawm's introduction 'Inventing Traditions', pp. 1-14 (1)

¹²⁹ *Ibid.*, p. 4

¹³⁰ The Faversham chronicle is discussed above Chapter 4. 11.

The upholding of law and just government, which the government of Faversham were claiming to be doing in their exercise of customary authority, is located with reference to a historical past, and to the reputations of certain just and lawful kings. Once again the Anglo-Saxon period is given particularly careful treatment suggestive of a fourteenth century perception of the time before the Norman Conquest as a golden-age of just government. With this in mind the attempts apparent in the custumal of a late fourteenth century town government to represent just government, with overt reference to origins in this golden-age seem all the more remarkable. As important as the choices which were evidently made as to which knowledge was to be included in the chronicle, are the choices which must also have been made to omit certain events. Of especial importance is the complete absence in the latter portion of the chronicle (in which are described the calamities of the final age of the earth) of any reference to the revolt of 1381 which had been experienced in Faversham itself, and by urban governments in Kent and beyond. A deliberate choice has been made to erase the memory of this rupture in the established continuity of the exercise of authority through its non-representation in this history. While a 'sign' of upheaval is given in the final line of the chronicle to the earthquake of 1382, the memory of such a fundamental challenge to authority as was represented by the revolt has been taken out of the canon of history.

This concluding examination of the uses of writing in urban culture has so far considered only the intellectual work invested in the custumal texts. However, a large part of this study as a whole has been concerned with the evidence for the practice of manuscript production, and specifically with the production of manuscript books. Writing is not a merely theoretical pursuit, since it involves the transposition of mental concepts and constructs (knowledge) into the physical form of marks upon a surface (writing). These marks are frequently subjected to further transformations as they are embellished, drawn together with other marks on other pages, and sometimes placed between covers of parchment or wood and leather. The production of manuscripts of the types considered here, especially the production of manuscript books, is an enterprise which draws together not only texts but also a multitude of skills, specialisms and crafts, which usually represent the work of a large number of people. That such production, and the associated organisation of all of these skills

should take place at particular moments in urban history may be of significance.

It is perhaps of value to survey the range of skills and specialisms represented in the manuscripts that have been considered. Before the writer of the finished product as it now survives could begin his work, a large number of processes must have been carried out at the instigation of the town government. Individual documents were located, probably by the existing specialists in town record-keeping, the town-clerks. As has been seen, some documents came from the town's own records (which we know because those originals still survive), others were evidently drawn from the archives of other towns and were perhaps transmitted between respective town-clerks of Cinque Port towns. Still more may have had to be located and copied from originals in the vast record-holdings of the crown. All of these activities involved physical labour including the moving of documents themselves and travelling to the source of documents in other towns or in London. Considerable discussion must have been devoted to the *editorial choice of documents for inclusion, and in the placing of those documents into a schema or order*. We might envisage a lengthy process of consultation between the town-clerks and the official bodies (the mayor and jurats) for whom they worked. *The fair-copy appearance of almost all of the manuscripts considered might also imply the making of numerous drafts which no longer survive, for the instruction of the writers who would ultimately present the texts in their final form*. It has been seen how this final writing was probably entrusted to writers not associated with the day-to-day administration of the town (such as town-clerks), but to writers whose experience was of writing and administration in a wider context. The scripts of the Sandwich and Faversham books in the fourteenth century have suggested the work of highly skilled professional (and perhaps commercial) scribes and also of administrative clerks perhaps associated with royal administration. It is significant that London, as a hub of medieval literate production may well have been the origin of these scribes and of their skills. The labour of these writers is likely to have been bought, though we have no direct evidence for this. In addition to the labour of the writers themselves, others supplying or producing parchments, pigments and inks would ultimately receive a share of the total cost of the manuscript. In some case too, the work of book binders may also have been sought (though this may have taken place at a later date, as has been suggested), who produced bindings of wood

and leather. Metal-workers may also have been called upon to make the clasps which were so ubiquitous a part of the medieval book.

It is clear that there is still much work to be done in the understanding of the processes by which urban governments were able to draw all of these skills and specialisms together. The current study has begun to identify possible connections between individual towns, and between these towns and the skills of writers elsewhere, especially in London. There is much patient reconstruction of these links still to be done. The affinities of the hands of clerks and scribes, for example, would bear considerable further scrutiny through close comparison with contemporary writers known to have been working in London. The sources of documents found in the custumals is a further promising area of enquiry, and would elaborate the indications already considered for networks of textual transmission between urban writers, and between them and writers in other spheres of administration or literate production.

In the making of the texts and books which have been considered in this study, town governments were expressing their own authority through the networks in which they participated. In producing their custumals expressive of the knowledge of urban governments they were also affirming the place of their town (and its government) within society as a whole. By embarking on an enterprise in which texts, documents and officials moved or were moved from place to place, on the instigation of the town government, this government was affirming its existing links with other sources of authority. It is significant that in the production of the custumals there seems to be a clear movement in the direction that materials and personnel take in this process, from the periphery to a centre. The centre is the custumal itself, and in order for it to be made materials must be 'drawn together' which may previously have been widely dispersed. This makes the resulting text, especially if it is a book, a powerful symbol of the identity of the town as a nexus in existing systems of knowledge exchange. The fact that the custumal is ultimately to rest in the hands of the town government is also symbolic of their own place in the identity of the town.

There would appear to be a clear ritual element in such productions, suggesting that

the processes of the production of such texts were as much an end in themselves as the resulting customals. The suggestion of this study that in some cases the making of a customal may take several decades to complete, during which time production was a constantly ongoing process of compilation is significant in the light of this suggestion. It perhaps indicates that the occasion of the production of a new customal was used as a means by which a town government could reaffirm existing links with other sources of authority (especially other towns of the Cinque Ports) and develop new links with experts and specialists in law, administration and writing elsewhere. The fact that, in the fourteenth century, customal production in the Cinque Ports should coincide with a renewed interest in the common meeting place of the Ports at the court of Brodhull is possibly another indication of the need to ritually confirm identities at this particular time.¹³¹ A further correlation which has been noted in this study, in the particular case of Faversham is between the production of a customal and the heavy investment by members of the town government in urban ritual and display.¹³² This ritual and display has been interpreted as an attempt to reaffirm not only the prestige of prominent individuals within the town, but to celebrate the town as a social and administrative unit, at a time when many of the 'traditional' features of the town and its governance had been seriously threatened. The more general chronological correlation between customal production in the fourteenth and fifteenth centuries and the elaboration of forms of civic ritual and display expressive of authority is further indicative of the probable ritual function of customal production. The texts produced, usually in the form of small books may not always be objects of immense display (although as has been seen some do contain elements of carefully considered display), but the processes by which they were compiled and produced are probably to be seen as ritual in their own right. The ultimate trajectory of this ritual, which as has been seen runs towards a centre, must have been powerfully symbolic of the location of authority within a town, particularly when the text produced was made into a book, which could be held in the hands of the mayor.

¹³¹ See above, Chapter 2. 3.

¹³² See above, Chapter 4. 10.

Appendix 1

The Customals of the Cinque Ports: a catalogue of manuscripts and texts

The following catalogue represents a list of as many traceable custumal texts as possible, together with archive and bibliographical references, and a brief discussion of each manuscript and text. Bibliographical references note the most useful printed editions and discussions of these texts. Mary Bateson produced a 'Reference List of Sources' for borough customals of the British Isles as a whole in her *Borough Customs*, which included many of the Cinque Port customals.¹ This current catalogue is based on Bateson's list and is supplementary to it. The production of such a supplementary list has been considered necessary here for a number of reasons. In the first instance it is presented for ease of reference in the discussions of the current study. Secondly, the corpus of known texts is substantially different today from that of Bateson's day. Several important manuscripts have come to light which were unavailable to her, and these are given particular attention in this list, and in the study as a whole. Thirdly, the breadth of Bateson's study dictated that she occasionally rely on the opinion of others less rigorous than herself in addressing questions of dating and context, and in these cases an alternative interpretation is offered in addition to that given by her. In common with Bateson, I have chosen to note surviving versions (in transcript or print) of lost originals. I have also included post-medieval manuscript versions since these always copy or re-work medieval originals, though more detail is given in the description here of the medieval or early-modern manuscripts. Other variations in detail apparent in my list are usually a result of the codicological complexity of certain manuscripts, requiring consideration before conclusions as to dating or context might be offered. Where my list gives extra detail to the contents of custumal texts, this is usually because such detail is not (for various stated reasons) found in Bateson's list.

Full references are given in the headings in bold for each version, and citations in the discussions refer to those references. The catalogue is presented in the alphabetical order of towns, and texts from each town presented where possible in chronological order.

Dover:

1. BL Stowe MS 850, ff. 133r-142r. Early sixteenth century. Not published. Noted in *Borough Customs*, 1, ed. by Mary Bateson (Publications of the Selden Society, 18, 1904), p. xxiii. Text in English with abbreviated Latin titles.

This version of the Dover custumal is contained in a large manuscript book of 341 paper leaves (each c. 300 mm x 240 mm). The book is an antiquarian collection, drawing together several earlier compilations. A large portion of the book (ff. 1-210) is such an earlier compilation and can be associated with the name C. Levyn, which appears at the head of many of its pages in a sixteenth-century hand. It is within this compilation that the Dover custumal is found. Levyn apparently gathered together

¹ *Borough Customs*, 1, ed. by Mary Bateson (Publications of the Selden Society, 18, 1904), pp. xviii-lvi.

legal and customary material, and several hands are represented in his compilation. Bateson suggested that the compilation belonged to the city of Canterbury, and it is true that many of the other documents included in this section relate to the city of Canterbury in the fifteenth and sixteenth centuries (including memoranda of oaths, of meetings, of courts and of market regulations, as well as copies of charters granted to the city). There are also a number of documents relating to the Cinque Ports, and to Dover in particular, including: a copy of a confirmation of a charter to the Cinque Ports (ff. 82v-93), documents relating to Castle-ward service at Dover castle (ff. 98v-99v), a list of ship-service owed by the Cinque Ports (ff. 101v-102), memoranda relating to the court of Shepway, and to the warden of the Ports (ff. 102-103), documents concerning Tenterden's membership of the confederation (ff. 105-112v), an inventory of the muniments of the Maison Dieu of Dover (ff. 130-131v), and the custumal of Dover (ff. 133-142).

The leaves bearing the Dover Custumal are headed with the words "Usages and customes of Dovorr", with the word "Dovorr" inserted in another hand. Bateson suggested, presumably on the basis of the hand-writing, that this portion dates from the late fifteenth or early sixteenth century. It might be noted that the hand of the custumal is also found writing a memorandum of an inquisition taken at a general session of the peace at the Guildhall, Canterbury (which includes the testimonies of a number of accused heretics), dated 13 September, 28 Henry VIII [1536]. The fact that the same scribe wrote the Dover custumal suggests that the custumal is more likely to date from the sixteenth rather than the fifteenth century.

Bateson provides a list of the contents of the custumal.

2. BL Lansdowne MS 170, f. 16 *et seq.* Late sixteenth century. Not published, but see *Borough Customs*, 1, pp. xxiii-xxiv. Text in English.

Bateson notes that this text is in a late sixteenth-century hand and that it is 'from the same archetype' as the BL Stowe 850 text (Dover custumal 1 above), despite being a very faulty version.

3. BL Harleian MS 306, f. 55 *et seq.* Seventeenth century (purporting to copy a version of 4 Edward VI [1550/51]). Printed in John Lyon, *History of the town and port of Dover, and of Dover Castle; with a short account of the Cinque Ports*, 2 (Dover and London: Ledger and Shaw, for the author, 1813-1814), pp. 267-286. Also noted in *Borough Customs*, 1, pp. xxiii-xxiv. Text in English.

Bateson sees this as a much abbreviated version of the full text as given in BL Stowe 850 (Dover custumal 1 above).

Faversham:

1. Faversham MS Fa/LC 1 (kept in the Faversham Mayor's Parlour, The Alexander Centre, Preston Street, Faversham), ff. 5r-21r (including charters, the custumal, formulary, and associated documents). Late fourteenth or early fifteenth century [c.1382-c.1405]. Photographic copy kept at the Centre for Kentish Studies, Maidstone, TR 880/1. Detailed calendar with translations found in the MS catalogue of the Centre for Kentish Studies. Printed in K.M.E. Murray, 'The Common-Place Book of Faversham', *Archaeologia Cantiana*, 48 (1936), pp. 96-114. Not noted or discussed in *Borough Customs*. Text in French with Latin titles.

The Faversham custumal forms part of a manuscript book of 56 parchment leaves (c. 195mm x 140mm) begun soon after 1400. The early portion of the book was initially compiled by a single scribe, and contains a number of civic instruments in addition to the custumal, together with some literary material. The book received considerable later additions in the fifteenth century, and lesser additions made in the sixteenth and seventeenth centuries. The book may first have been bound with parchment covered boards in the early fifteenth century, since these survive beneath the later red-stained leather covers (of the later fifteenth or early sixteenth centuries). On account of this later binding, the book came to be known as the 'Red Book'.

Although Faversham was a limb of the port of Dover, it has been noted that the text of the Faversham custumal is not derived from the Dover custumal (Murray, 'The Common-Place Book of Faversham', p.93). The book and its custumal is discussed in detail in this thesis in Chapter 4.

Fordwich:

1. BL Cotton MS Faustina A.i. (The Black Book of St. Augustine's), ff. 85r-89r. Fourteenth century. Printed in *The Register of St. Augustine's Abbey Canterbury, commonly called The Black Book*, ed. by G.J. Turner and H.E. Salter, British Academy: Records of the Social and Economic History of England and Wales, 2 and 3 (Oxford University Press, 1915 and 1924), pp. 145-153. Not noted or discussed in *Borough Customs*. Text in Latin.

This custumal forms an addition to the late thirteenth century Black Book of St. Augustine's, a manuscript volume containing custumals, rentals, charters and other documents concerning the abbey's estates. The custumal itself is written in at least three hands, probably all of the late fourteenth century.

The text, while containing material (sometimes in identical form) from other versions of the Fordwich custumal, appears to have been specifically drafted in the interest of the abbot of St. Augustine's. It principally concerns his rights as lord of Fordwich, and the limitations of these rights claimed by the inhabitants of the port. It outlines the operation of the abbot's hundred court (f. 85r); the alienation and devise of land and property (f. 85r-85v); jurisdiction over felons coming to the liberty and of waifs and strays (f. 86r-86v); the custody of weights and measures and of assizes (f. 87r); the qualification for freedom (f. 87r); the duty of mayor and jurats to merchants coming to the port (ff. 87v-88r); the abbot's bailiff and his commission (f. 88r-88v). It concludes with a separately titled clause: '*Sequitur de rebus illis que dictus abbas*

habere debet infra dictam libertatem', which is a custumal in miniature, outlining all of the abbot's rights and offices within the port (f.89r).

In the context of the Black Book it is unsurprising that in comparison with other versions of the Fordwich custumal, this version contains full detail of the abbot's rights but is laconic on the subject of the mayor and jurats' jurisdiction. There is no description of the mode of elections, nor of the processes associated with the borough court. It appears to be a heavily edited version of an existing archetype, of which the port's own custumal (Fordwich custumal 4, below) is a fuller copy.

2. Canterbury Cathedral Archive Chartae Antiquae F. 46. Later fourteenth century. Not published. Noted in *Borough Customs*, 1, p.xxviii. Text in Latin.

This text is presented on two sides of a parchment roll (two skins sewn together, c. 1300 mm x 190 mm in all) in the hand of two fourteenth century clerks. The context of its production is not known, though its abbreviated form and presentation on a roll, together with the existence of marginal annotations indicating points of the text referring to the rights of the abbot's bailiff, may indicate that it was produced for a specific case or dispute concerning the abbot's rights within the town. Bateson examined the text, comparing it with the town's own version (Fordwich custumal 4, discussed below) and noted the variations between the two (*Borough Customs*, 1, p. xxviii). It is clear from this comparison that the custumal forming Chartae Antiquae F.46 contains only a small proportion of the material which was written up in the town's version, and includes only the general description of the town's officers and courts and of their functions.

3. BL Cotton MS Claudius D.x. ff. 325v.-327v. 'The Red Book of Canterbury'. Early fifteenth Century. Not published. Noted in *Borough Customs*, 1, p. xxviii. Text in Latin.

The text of this custumal is appended to the 'Red Book of Canterbury', and is in a distinct hand from the remainder of the manuscript. It is a short version, and Bateson has suggested that it was drafted in the interest of the abbot of St. Augustine's. She also compared it with the town's own fifteenth century version (Fordwich custumal 4 below), and notes that this 'Red Book' version is only a fragment of the full custumal as represented by the town's own version (Fordwich custumal 4 below).

4. Canterbury Cathedral Archive MS U4/26, pp. 41-109.² Later fourteenth century. Described (with a facsimile page), transcribed, partially translated, and discussed in C.E. Woodruff, *A History of the Town and Port of Fordwich, with a transcription of the XVth Century Copy of the Custumal* (Canterbury: Cross and Jackman, 1895), pp. 213-281. Described in *Fifth Report of the Royal Commission on Historical Manuscripts*, 1 (Eyre and Spottiswoode for HMSO, 1876), pp. 606-607. Noted, with a list of contents in *Borough Customs*, 1, pp. xxvii-xxviii. Text predominantly in Latin, with some French.

² The manuscript has been paginated in pencil (assigning a separate number to each side of a folio) References to pagination here follow that system.

This custumal forms part of a manuscript book of 61 parchment leaves (c.255 mm x 170 mm). The current binding is of the seventeenth century. The book is a composite production of some complexity, and was probably made on behalf of the mayor and jurats of Fordwich in the later fourteenth century.

The custumal (pp. 41-109) which includes a charter of Henry II and an *inspeximus* by Edward III of charters of Henry III, Edward I, and Edward II, (pp. 109-118), is in a single later fourteenth century hand, or just possibly a hand of the early fifteenth century, and is the earliest part of the manuscript. This early portion is partly illuminated: the first leaf of the custumal with a large (ten-line) initial 'H' to the title, and with a smaller initial 'H' (five line) heading the charter of Henry II, both in red and blue with elaborate penwork extending to form borders to the upper and left margins; numerous four-line initials to clauses of the custumal; and the frequent highlighting of letters in red within the body of the text. Though Bateson (following Woodruff's dating) considers this production to belong to the second half of the fifteenth century, this dating is most unlikely.³

Preceding the custumal proper are a number of leaves, some bearing material that may also have formed part of the manuscript as it existed in its earliest form, though they are in different hands. Two leaves (pp. 3-4 and 13-14: one bifolium) of a probably fourteenth century calendar survive for the months of January, February, November and December, noting feasts and holy days (most in black, some in red or blue), which are each headed with 'KL' (for *kalend*) in blue with red penwork. The illumination is similar to that of the custumal, but not identical. The calendar for the remaining portion of the year (March to October) is furnished by the insertion of four leaves (pp. 5-10: two bifolia) of apparently sixteenth century date (as deduced from the style of the hand). A further leaf (pp. 17-18) bears a table of contents of the custumal in another hand of the late fourteenth century with *paragaphus* marks and initials in alternating red and blue.

The fourteenth century hand(s) and their illumination found in these early portions of this manuscript are not typical of urban administrative hands, and are more akin to book hands associated with ecclesiastical administration. This might indicate that this custumal was produced on behalf of the lord of Fordwich, the abbot of St. Augustine's, but this seems unlikely. The bias of the custumal text itself, and the nature of the compilation of charters and the custumal is more likely to indicate a book produced for the government of the port, and all of the texts added to the book indicate use within Fordwich administration. The presence of these hand(s) suggests that the administration of Fordwich employed a scribe from outside this administration in the production of this book.

The book contains numerous additions of later documents, ordinances, and oaths associated with the administration of Fordwich to remaining blank leaves. The earliest of these date from 3 Henry IV (1401/2) (pp. 17-18 and 120). A fifteenth century memorandum of the perambulation of the bounds of the liberty made by the justices in Eyre in 1272 appears on p. 20. Substantial addition was made in 1572, when the

³ I am grateful to Dr. Mark Bateson, Assistant Manager of Canterbury Cathedral Archives for his remarks on the likely dating of hands in this manuscript.

mayor's accounts record a payment of 4s 6d for 'fyxinge and settinge in of the Gospell into the Customall Booke' (Woodruff, p. 213). The extracts from the gospels are in English and form pp. 23-26, and suggest that in the sixteenth century, the custumal book was used for the purpose of swearing. The hand of the gospels is the same as that of the replaced months (March-October) in the calendar, indicating that they were added at the same time.

Bateson notes that this text closely resembles the custumal of the head port of Sandwich, and that it is probably 'a copy from that model'. The precise relationship between the Fordwich and the Sandwich custumals is, however, an editorial question of some complexity. All of the described Fordwich texts owe something to the known versions of the Sandwich custumal, and passages are frequently identical. The varieties of editions of the Fordwich 'copies' from the Sandwich version suggest that both ports had shared written customary material from an early period. It may be that the codification of customs evident at Sandwich between c.1290 and 1301 was an enterprise in which Fordwich had also participated. Woodruff, who examined the Fordwich and Sandwich texts, also notes the affinities between the Fordwich custumal found in MS U4/26 and the Sandwich custumal. As well as noting features unique to the Fordwich custumal he also suggests it may represent a copy closer to an 'ancient copy' than the Sandwich text, since he sees the Sandwich custumal as having been 'amplified' and 'paraphrased' in its surviving later versions. In contrast, he points out that the Fordwich text '...seems to retain all the directness and simplicity of the earlier copy.' While the supposition that all of these texts spring from a single early source may well be an oversimplification, Woodruff's remarks are apposite. If the Fordwich custumal does (as is evident) represent a link with an earlier Sandwich custumal, there is ample evidence that such a text formerly existed, being that compiled by the Sandwich town-clerk, Adam Champneys, c. 1300/1301. Champneys' text, as described under the Sandwich heading below (see Sandwich custumal 1 below) survives only as an edited version of the later fourteenth century.

Hastings:

1. Manuscript now lost. Noted and briefly discussed in William Durrant and Thomas Ross, 'Notices of Hastings and its Municipal Rights', *Sussex Archaeological Collections*, 14 (1862), pp. 65-118 (72). Date unknown.

Durrant and Ross noted that a copy of the Hastings custumal existed in the town until at least 1736, but were unable to describe anything of its nature or contents.

2. Manuscript now lost. Noted and translated in Durrant and Ross, 'Notices of Hastings', pp. 65-118 (72-80). Also noted in *Borough Customs*, 1, p. xxx. Date unknown (but copying a version of 1356). Original text in French.

Durrant and Ross transcribed and translated this text from a 'Norman-French copy found amongst the records of Rye' (p.72). However, when Bateson made her survey at the beginning of the present century this manuscript was no longer traceable, and it has not been found in the current survey. A search of the surviving Rye archive demonstrates that fifteenth century customary material (in the form of precedents etc.) from Hastings does survive among the Rye material (Sussex County Record

Office, Lewes, Rye MS 57/4: Book of precedents including material from Rye, Winchelsea and Hastings; noted in *The Records of Rye Corporation*, ed. Richard Dell (East Sussex County Council, 1962)), but no custumal matching the description given by Durrant and Ross has been found.

The printed text is headed with the title (presumably translated from the manuscript): 'These are the usages of Hastings used time out of mind, compiled in the time of John Reade, at that time bailiff, in the 30th year of Edward 3rd, A.D. 1356'. Bateson notes the similarity of this printed text to the only surviving custumal manuscript from Hastings (below, Hastings custumal 3). Comparison of the two texts shows that any variation is principally the result of differing translation. The customs closely resemble those of Winchelsea and Rye, and the evidence of the Rye precedent book indicates the sharing of customary material between these three towns.

3. BL Add. MS. 28530, ff. 7-16. Early Sixteenth Century (copying a custumal temp. Edward IV [1462-1483]). Not Published. Text in English.

This custumal is contained in a manuscript compilation, a paper book containing also a version of a general custumal of the Cinque Ports (prob. 1504) and the customs of Ashford and Elham (1510 and 1516 respectively). The book is predominantly in a single early-sixteenth century hand. The title of the custumal of Hastings states that it represents '... the boke of the lawes usages and customes graunted unto the poorte of Hastynges of Kynges that were of Inghland sythens the conquest and nowe ratyfyed exemplified and confirmed by the moste excellent cristen prynce kynge Edward of England the iiiijth.' (f.7r.). It represents a translation (presumably time of *Edward IV*) made from the same model as the French version found in the records of Rye (described as Hastings custumal 2 above).

Hythe:

1. Hythe MS. 1061: 'Jurats' or Chamberlains' Accounts 1483-1509: Register of Deeds and Recoveries 1488-1579', (kept at Hythe Town Council Offices, Hythe), ff. 4r-5v. Late fifteenth century [probably 1483]. Not published. Noted in *Borough Customs*, 1, p. xxiv. Transcribed and discussed in Justin Croft, *Hythe MS. 1061: The making of an urban register* (unpublished MA thesis, University of Kent, 1992), pp. 45-59, 118-121. Text in French.

This custumal is included among material preceding the annual jurats' accounts in a large paper book begun by the Hythe administration in 1483. The leaves bearing the text are in poor condition, and some clauses have thus been rendered incomplete. Bateson, however, gives a list of its clauses, and the whole is transcribed by Croft (pp. 118-121).

The production of the book in which this only surviving version of Hythe custumal is found has been interpreted as part of an administrative overhaul which occurred at Hythe in the first years of the 1480s. This partly derived from a preceding dispute as to the election of a bailiff in this seignorial borough, in which the lord of the town, the Archbishop of Canterbury, claimed the right, and in which the crown took an active interest since the appointment of keepers in the Cinque Port towns following

the Fauconberg rebellion of 1471 (Croft, pp. 16-29). The book was also produced in the context of political negotiations and petitioning surrounding the coronation of Richard III, and the importance of this event among the ports is suggested by the addition to the custumal in the same hand of the document 'de coronacione Regis et Regine' (f. 6r). This document is known to have also been entered in the town books of Rye and Winchelsea, and the 'common book' of the Cinque Ports at this time (Croft, pp. 64-65).

Lydd:

1. Lydd MS Ly/LC 1 (kept at Lydd Town Council Offices, Lydd). Late fifteenth century [probably 1476]. Not Published. Noted in the *Fifth Report of the Royal Commission on Historical Manuscripts*, 1 (Eyre and Spottiswoode for HMSO, 1876), p. 530. Noted and discussed in *Borough Customs*, 1, pp. xxxviii-xxxix. Text in English.

This custumal text is presented in its own parchment book of 28 leaves bound in covers made from a fourteenth-century service book. It is the work of Thomas Caxton, town clerk of Lydd, and was made in the year 1476. The *HMC Report* notes that Caxton was paid 13s 4d for making the book from the custumal of the head port of New Romney. The Lydd accounts give numerous references to Caxton's activities on behalf of Lydd, and notes that he later became common clerk of Sandwich (*HMC Report* 5, pp. 526-530). Bateson questions the ascription of the suggested date, on the basis of the hand, which '...seems hardly to accord with so early a date' (p. xxxviii), but the document is certainly in Caxton's hand.

Bateson provides a list of the custumal's clauses and notes the close similarities between the text of the custumal and that of Lydd's head-port, New Romney.

2. Canterbury Cathedral Archive Literary MS B. 2, ff. 219-228. Late fifteenth century and late sixteenth century. Not Published. Described and discussed in Paul Lee, 'The Compilation of a Seventeenth-Century Manuscript Book, its Authorship, Ownership and Purpose', *Archaeologia Cantiana*, 115 (1995), pp. 389-411 (395-397). Custumal noted in *Borough Customs*, 1, p. xxxviii. Text in English.

This custumal comprises fragments of the late fifteenth century, together with portions written in the sixteenth century, placed together in a compilation of paper leaves entitled 'Thomas Godfrey's Book of Lydd' and 'May 6th 1587' on f. 218r. Godfrey was probably bailiff of Lydd in 1586 and 1587. This compilation was itself later bound into a compilation (which included other Cinque Port material among which is a custumal of Sandwich, see Sandwich custumal 5, below) made by the antiquary William Somner. The first leaf is in Godfrey's hand and describes the election and offices of bailiff and jurats, while the remainder is in a late fifteenth century hand.

Bateson examined this version of the Lydd custumal and states that it contains no important variants to the above (Lydd custumal 1).

New Romney:

1. St. Catharine's College, Cambridge, MS G.V 69 (The Register of Daniel Rough), ff. 1r-11v. Later fourteenth century. Printed and discussed in 'The Register of Daniel Rough, Common Clerk of New Romney, 1353-1380', ed. by K.M.E. Murray, *Kent Records*, 16 (1945), pp. 1-27. Noted and discussed in *Borough Customs*, 1, pp. xlvii-xlviii. Text in French.

This custumal is found at the beginning of a manuscript book on parchment (c. 200mm x 150mm) attributed to Daniel Rough, common clerk of New Romney, a manuscript which includes numerous documents relating to the town of New Romney, entered in the form of a register, and latterly as a formulary. The book is predominantly concerned with writing associated with the administration of New Romney, but it also contains much material relating to the Cinque Ports, and some material concerning estate administration. The variety of contents may reflect the varied interests of Daniel Rough at the time when he was also common clerk of New Romney (1353-1380).

Bateson suggested that the custumal was written by Daniel Rough in 1352, presumably on the basis that it precedes the register for first year included in the Register, 1353. However, the character of the manuscript as a whole suggests that it was not the result of successive entries or additions, but a compilation, perhaps carried out as a single enterprise. Since the material written in the principal hand contained within the manuscript runs to 1380, it is possible that the book, including the custumal, was actually produced after that date. It is therefore unlikely that the custumal actually dates from 1352. It is more likely to be a copy of a version prepared for presentation to Roger Mortimer, the warden of the Cinque Ports in 1356 made after 1380.

Bateson provides a list of the clauses of the custumal. The custumal text found in the manuscript (and hence the list of clauses given by Bateson, and the custumal text printed by Murray) lacks a substantial portion resulting from the loss of leaves between the present f. 8 and f. 9.

2. Canterbury Cathedral Archive Chartae Antiquae R. 38. Fourteenth century. Not published. Not noted or discussed in *Borough Customs*. Text in French.

The text is written on both sides of a parchment roll (consisting of 3 skins sewn together, c.1800mm x 220mm in all) in a single later fourteenth century hand, with numerous contemporary or slightly later annotations, additions, and deletions. It cannot be definitively dated, but the hand is likely to belong to the second half of the fourteenth century. This hand is very similar to the hand of the Register of Daniel Rough, and it might possibly belong to the same individual.

Murray was unable to examine this manuscript (on account of its storage during the 1939-1945 war) but correctly speculated that it would contain the portion of the custumal text wanting in Daniel Rough's Register (Murray, p. xvii, n.1). This portion consists of 25 additional clauses, and the remainder of 2 clauses on either side of the

manuscript lacuna which thus appear as fragments in the Rough Register and its printed version. Almost all of these clauses relate to the calling of and the operation of the courts of the town, the weekly '*general court*' (borough court) and the three-weekly hundred court, as well as to the taking of the assize of bread. Besides these additional clauses, this custumal text is almost identical to that found in the Register of Daniel Rough, and variances are usually the result of copying errors.

The text, although neatly written, has been quite heavily annotated, and the sense of many of the statements altered. This emendation took place not long after the initial drafting, probably by the same hand as the original text.

3. Centre for Kentish Studies, Maidstone MS NR/LC 1 'The Deerskin Book'. Late fifteenth century (1497). Not published. Noted in *Borough Customs*, 1, pp. xlviii-xlix. Text in English with titles in Latin.

This version of the custumal text is found in a paper book (c. 300mm x 230mm) made for the purpose by John Bell, common clerk of New Romney, and dated 13 Henry VII [1497]. The book is bound in deerskin, which is presented hair side outwards, with a large proportion of that hair surviving. This may be an original binding, but it has been reinforced, probably at a later date, with fragments from a medieval service book with musical notation, and with a quitclaim from Norfolk dated 1439. Bell included with the custumal a list of contents (with titles in Latin) and a copy of Edward III's charter to the Cinque Ports.

The text is the first English version of the New Romney custumal, and is drawn largely from one of the preceding French texts. In translating, however, Bell also made alterations, additions and omissions. This led Bateson (who provides a list of clauses) to suggest that it is not to be considered a direct translation. She had not however consulted the complete fourteenth century text of the roll in Canterbury Cathedral Archives (New Romney custumal 2 above), and was comparing with the Daniel Rough version (New Romney custumal 1) which is manifestly incomplete. It is apparent that much of the material found in Bell's version which could not be seen to come from the Daniel Rough text is drawn from the 25 clauses found in the complete version. A systematic collation has not been attempted, but would prove a valuable exercise.

Bell's text itself has been subject to later alterations, and there is much later additional material appended to the end of the book. The changes to the text reflect changes to the constitution of the town itself. Two sixteenth century clauses were inserted prior to Bell's text describing the mode of the mayoral election, which must have been entered in, or after, 1563 when the town was finally granted the right to a mayor ('The Register of Daniel Rough', p. li). At the same time, a large section of the clause describing the appointment of a bailiff by the Archbishop of Canterbury was deleted and a description of the office of chamberlain interlineated. Sixteenth century additions to the book include clauses glossing the procedure in the borough court; a lengthy serjeant's oath (with list of misdeeds to be enquired into); ordinances against short-term cloth workers; ordinances requiring households to participate in the destruction of choughs, crows and rooks and in the mending of roads; and a further serjeant's oath with articles of enquiry. These annotations and additions demonstrate

that the custumal book made by Bell continued to be used in New Romney administration until at least the late sixteenth century. Some further annotations or additions to procedures may be even later, being in a seventeenth century hand.

4. Manuscript not located. Noted in *Borough Customs*, 1, p.xlviii. Sixteenth century [*temp.* Henry VIII]. Language uncertain, but probably in English.

Bateson noted the existence of a further custumal manuscript in the New Romney archive, when that archive was still kept at New Romney. This custumal does not appear in the current New Romney archive, now at the Centre for Kentish Studies, Maidstone, and has not been located. Bateson stated that the early chapters of the text were lost, and that the differences between the remaining text and Bell's version were unimportant.

5. Centre for Kentish Studies, Maidstone MS U47/34 Z 2. Printed as a supplement to 'The Register of Daniel Rough', ed. by K.M.E. Murray. Sixteenth century (1564). Not noted in *Borough Customs*. Text in English.

This text is a translation (perhaps independent of Bell's fifteenth century translation) into English made by John Forsett. There are numerous verbal differences between Forsett's and Bell's versions, though few differences of substance, save for Forsett's omission of Bell's chapter xxiii ('of attorneis').

6. Centre for Kentish Studies, Maidstone, CPc i.4. Not published. Seventeenth century. Two copies. Not noted in *Borough Customs*. Text in English.

Two transcripts formerly in the archive of Sandwich, both taken from Bell's version.

Pevensey:

1. BL Add. MS 34149, f. 62 *et seq.* Nineteenth century transcript of a sixteenth century manuscript now lost [possibly copying a version of 1356]. Partially printed in Rev. Lambert B. Larking 'The Custumal of Pevensey; as delivered to the Lord Warden at Dover Castle in 1356', *Sussex Archaeological Collections*, 4 (1851), pp. 209-218. Noted in *Borough Customs*, 1, pp. xlv-xlvi. Text in Latin and French.

This text of the Pevensey custumal was transcribed by Larking from a manuscript in the Dering collection at Surrenden, Sussex. The manuscript has subsequently disappeared, and was not available to Bateson. There is no trace of an original 1356 text, and Larking's assumption that the custumal derived from that year is drawn from the ambiguous clause found in the text: '*Item cleyment le dit Ressevoir et Jures, et les gens de la dite Comunite de Pevense, qe sunt membre del port de Hastyngs, daver, enjoer, et user les usages qeles lors combarons de la comunite de Hastyngs ount et usent, outre cestes qi sount esscript; les queux ils ount retourne en le chastel de Dovorr, south lour comun seal. Lendemayn del sen Michel, lan du regne le Roy Edward tierce puis le conqueste Dengleterre xxxme.*' This suggests rather that Hastings had registered its custumal at Dover castle in 1356, and that Pevensey was now (subsequently) claiming to share in those customs and usages.

Bateson lists the clauses. The custumal falls into two distinct sections, the former in Latin and the latter in French. The Latin section concerns the administration and institutions of Pevensey, including the appointment of the bailiff, jurats and common clerk; the administration of St. John's hospital; and the jurisdiction of the queen's steward and portreve (who had ancient privileges within the franchise). The section in French describes the actions of courts and officials and is derived from the processes common to the Cinque Ports as a whole, probably drawn from the customs of the head port of Hastings. The claim, given above, that Pevensey should share the customs and usages of Hastings makes manifest the close connections between a head-port and its limb in matters of custom.

2. Bodleian Library, Oxford, Dugdale MS 43. Sixteenth century [after 1527, possibly copying a version of 1356]. Printed and discussed in Rev. Edward Turner, 'The Statutes of the Marshes of Pevensey and Romney; and the Custumal of the Town, Port, and Leege of Pevensey', *Sussex Archaeological Collections*, 18 (1866), pp. 42-53. Noted in *Borough Customs*, 1, pp. xlv-xlvi. Text in English.

This custumal is found together with a version of the Statutes of the Marsh of Pevensey and the Statutes of Romney Marsh in a manuscript book on parchment (c. 280mm x 200mm) originally placed in a cover formed from a sixteenth century indenture. Bateson stated that Turner's printed version was taken from a seventeenth century copy from this book, but Turner's transcript was actually made directly from the sixteenth century manuscript, Bateson's statement having arisen from an understandable misinterpretation of Turner's opaque description. The manuscript book had been in the care of Dugdale, while compiling his *Imbanking and Drayning of divers Fenns and Marshes* (1662), and was probably loaned by the mayor and jurats of Pevensey. It was not returned to Pevensey, but was bequeathed to the Ashmolean Museum, Oxford, together with Dugdale's other manuscripts.

Almost all of this manuscript book (including the Pevensey town custumal) is in a single hand of the early part of the sixteenth century. It may be contemporary with, or post-date the year 1527, the date of the session of a Lathe recorded on f. 5v.

The text is a close translation from the same model as the above text (Pevensey custumal 1).

3. BL Add. MS 5705, f. 53. Eighteenth century. Noted in *Borough Customs*, 1, p. xlv. Text in English.

Another copy of the version described as Pevensey custumal 1 above, among Sir W. Burrell's collections made in the eighteenth century.

Rye:

1. Centre for Kentish Studies, Maidstone MS NR/LC 1 . Late fifteenth century. Not published. Noted in *Borough Customs*, 1, p. xlix. Text in English.

An incomplete text in 44 chapters, contained in the same volume as the New Romney custumal 3 described above.

2. East Sussex County Record Office, Lewes, Rye MSS 57/1; 57/2; 57/3. Sixteenth century. Three copies. Not published. Noted in *HMC Fifth report*, 1, p. 488. Noted in *Borough Customs*, 1, p. xlix. Described in *The Records of Rye Corporation*, ed. by Richard Dell (East Sussex County Council, 1962). Texts in English.

Each of these three texts were produced, in book-form in the 1550s and 1560s. Bateson also mentions two further later sixteenth-century manuscripts, which have not been examined in this study. The first being a transcript of a 1568 manuscript in the British Museum that was not found by Bateson. The text was however printed in William Holloway, *The history and antiquities of the town and port of Rye* (1847). The second, of 1578 in the Public Record Office is described in the *Calendar of Domestic State Papers* (Elizabeth), 128.

Bateson notes that the Rye texts closely resemble those of Winchelsea and Hastings.

Sandwich:

1. Centre for Kentish Studies, Maidstone MS Sa/LC 1 (stored as U. 387). Later fourteenth century [after 1351 and before 1381]. Not published. Not noted in *Borough Customs*. Text in Latin.

This custumal is presented in its own manuscript book of 139 parchment leaves (c. 170mm x 100mm) bound in old (though not contemporary) calf over wooden boards, with remnants of three clasps or ties. This custumal book had been lost from the Sandwich borough archive before 1792, only to re-appear in the current century. It was sold by Sotheby's c. 1946 to Messrs. Maggs Bros., from whom it was bought by Kent County Council in 1953.

This is a composite book, being the work of three distinct hands, perhaps working at different times between 1351 and 1381 on behalf of the mayor and jurats of Sandwich. It is clearly a reworking of an earlier text made by Adam Champneys in 1300/1301, and retains his preamble, together with much of his original material. Later material (1351-c.1365) has been interpolated and allows deductions to be made as to the dating of its production. Three leaves at the end (ff. 137-139) bear memoranda of the proceedings of a 1414 parliament, and were added after the major compilation of the book. A discussion of manuscript and custumal is included in the current study, Chapter 3.

2. Centre for Kentish Studies, Maidstone, MS Sa/LC 2. Early fifteenth century (1413-1414). Printed and discussed in William Boys, *Collections for an History of Sandwich* (Canterbury: Simmons, Kirkby, and Jones, for the author, 1892 [recte 1792]). Described in *HMC Fifth report*, 1, p. 568. Noted in *Borough Customs*, 1, pp. xlix-l. Text in Latin.

Written in its own manuscript book containing 78 parchment leaves (c. 250mm x 170mm), bound in contemporary wooden boards with traces of the former existence of ties or clasps, the whole currently backed by a coarse leather spine.

Until the rediscovery of Sa/LC 1 (Sandwich custumal 1 above), this was the earliest known version of the Sandwich custumal, and thus the comments of William Boys, the Royal Commission on Historic Manuscripts, and Bateson on the Sandwich custumal are all drawn from their consideration of this text. It is a direct copy of Sa/LC 1 with no revision to the main body of the text. Bateson, though recognising the work of Adam Champneys within this text, states that the Sandwich custumal should be considered a fifteenth century production. The existence of the identical text in the fourteenth-century Sa/LC 1 means that this needs to be revised.

Bateson, following Boys, states that this is the work of John Serle, town clerk of Sandwich (around the middle of the fifteenth century), but comparison of the hand with a manuscript known to be in Serle's hand (the cartulary of Saint Bartholomew's Hospital, Sandwich: CKS MS Sa/QBC 1) makes this assumption unlikely. The addition of leaves bearing an *inspeximus* of 1413 of the *Sandwich charters*, and memoranda of the proceedings of the Leicester parliament of 1414 to the end of the manuscript (ff. 59r-70r) suggest that the manuscript was produced before or at this time. This dating, and a full discussion of the context of production appears in Chapter 3 of the current study

3. BL Cotton MS Julius B. iv, ff. 74r-94v. Late fifteenth/early sixteenth century. Not published. Noted in *Borough Customs*, 1, p. l. Text in Latin.

This custumal text appears as part of a paper book (c.290mm x 210mm) originally belonging to the town of Winchelsea, which also includes a fifteenth-century custumal and ordinances from that town. It represents a copy of portions of the Sandwich custumal as found in the above two versions and includes only the following clauses: Adam Champneys 1301 preamble; the election of the mayor; officers of the town; town porters; common ordinances; common serjeant; salaries of officials and attornies; charter of Edward III granting immunity from the king's clerk of the market; withernam; admission of freemen; making recognisances in the borough court; the goods of intestates; the custom of fetch and have; of the bailiff of the Yarmouth herring fair; letter patent concerning the Cinque Ports and the Yarmouth fair; Cinque Port service to the crown; the advowson of St. Peter's church; and of St. Bartholomew's hospital.

4. Cotton MS Julius B. v, ff. 4r-29v and 30r-122v. Late fifteenth/early sixteenth century. Not published. Noted in *Borough Customs*, 1, p. l. Texts in i.) English, and ii.) Latin and English.

This manuscript paper book (c. 290mm x 210mm), of uncertain origin, contains two versions of the Sandwich custumal. The first (ff. 4r-29v) is a *precis*, in English of the substance of the full text, in a hand of the early sixteenth century. Most of the anecdotal material has been removed in this edition. The second is a text in Latin and English of the full text, with clauses given first in Latin, and then in English

translation. The hand, with its calligraphic initials is likely to be of the later sixteenth century.

5. Canterbury Cathedral Archive, Literary MS B. 2, ff. 183-216. Sixteenth century. Not published. Described in Paul Lee, 'The Compilation of a Seventeenth-Century Manuscript Book', *loc. cit.*, pp. 395 and 404. Not noted in *Borough Customs*. Text in English, with Latin headings and *introits*.

This custumal text appears on a distinct group of quires in the same antiquarian compilation as a version of the Lydd custumal discussed above (Lydd custumal 2). It is a shortened translation of one of the earlier Sandwich texts, omitting the anecdotal or precedental material found in those versions. Each clause is begun with a few words in Latin from the clauses of the earlier versions, and then continues in English.

Winchelsea:

1. BL Cotton MS Julius B. iv, ff. 15r-21v. Late fifteenth century. Not published. Noted in *Borough Customs*, 1, p. lv. Text in Latin and French.

This custumal appears together with ordinances and other customary material in the book originally belonging to the town of Winchelsea already noted (Sandwich custumal 3, above). Bateson lists the clauses of the custumal and notes its similarity to the custumal of Hastings.

2. Manuscript now lost. Printed in Lyon, *History of Dover*, 2, pp. 370-387. Late sixteenth century [1557]. Noted in *Borough Customs*, 1, p. lv. Text in English.

Bateson notes this English translation by Thomas Hokernam, town clerk of Winchelsea, but was unable to trace the original. It has not been found in the current survey.

Appendix 2

Suggested contents of the Sandwich custumal of Adam Champneys (1301), deduced from the later-fourteenth century text of Sandwich MS Sa/LC 1:

The following list of contents is derived from the editorial extraction of all notes and memoranda dateable to after 1301 from the Sandwich custumal as found in MS Sa/LC 1. Such a method is intended to produce a calendar suggestive rather than conclusive of the contents of this early Sandwich custumal. Folio numbers of MS Sa/LC 1 are given. The extracted later documents are given in Appendix 6 'Fourteenth Century additions'. Folio numbers given in this appendix are to Champneys' text as included in the later MS Sa/LC 1.

- f. 1r Adam Champneys' preamble, April 1301.
- ff. 1r-10v The election, oath-taking, and salaries of town officials (mayor, jurats, porters (after which are given fourteen common ordinances), common serjeant, common weighers, brokers, and the sacrist of St. Peter's church).¹
- ff. 10v-11r The payment and employment of the attorney Robert of Sturry.
- ff. 11r-12r The custody and examination of weights and measures by the officers of the town.
- ff. 13r The advowson of St. Peter's church, appointments being made alternately by the mayor and commonality, and by the abbot of St. Augustine's Canterbury.²
- ff. 15v-20r The hospital of St. Bartholomew.
- ff. 20r-21v The hospital of St. John.
- ff. 21r-22r The custody of the property of orphans.³
- ff. 28r-31r The method of taking 'withernam' for recovery of debt.

¹ On f. 8v are two later additions of memoranda concerning the salaries of mid-fourteenth century mayors. See Appendix 6: 'Fourteenth century additions to the Sandwich Custumal'.

² This section was extended in the later fourteenth century by the addition of memoranda relating to the town's appointment of a rector in 1350.

³ This section was extended in the later fourteenth century by the addition of copies of letters patent of 21 Edward III [1348] (confirming a charter of 18 Edward I [1290]) and of a number of attendant ordinances and document formulae (ff. 22r-28r)

- ff. 31r-32r Royal letters patent granting freedom to the members of the Cinque Ports from assessment of tallages and aids upon their ships, and granting privileges to merchants in taking shares of merchandise (28 April, 26 Edward I [1298])
- ff. 32r-34r Method of making freemen.
- ff. 34r-35r The making of recognizances of property transactions in the borough court.
- ff. 35r-38r The administration of the property of intestates.
- ff. 38r-38v The punishment of those acting against the community.
- ff. 38v-39r The custom of 'veche and have' in property dispute.
- ff. 39r-49r The king's bailiff, his rights and duties (including a list of tolls and customs due to him).
- ff. 27r-27v Men of other communities who are to be considered freemen of Sandwich.
- ff. 28r The action of the bailiff in relation to letters sent under white wax (chancery) and green wax (exchequer).
- ff. 28r-28v Memoranda concerning the receipt and oaths of *bailiffs of the* 1290s, (Adam de Liminge, Roger Colyn, and Hugh of Helpestone) including letters patent appointing Hugh of Helpestone to the bailiwick (18 May, 27 Edward I [1299]).
- ff. 29r-29v Conditions for the receipt of bailiffs in the town.
- ff. 49r-64r The method of pleading, and types of pleas to be heard, in the borough courts.
- ff. 64r-69r The method of pleading, and types of pleas to be heard, in the hundred court.⁴
- ff. 85r-90v Pleas of the crown to be heard in the town.⁵
- ff. 90v-91v Extract from the Domesday of the Ports' naval service, copied from the Domesday of Simon de Burle [probably of 1293].⁶

⁴ The memorandum of letters patent of Edward III is added to this in Sa/LC 1 (f. 69r)

⁵ The memorandum of the case of a felony committed in 1357 is added to this in Sa/LC 1 (f. 90r-90v)

- ff. 91v-99v The right of the Cinque Ports to send bailiffs to the herring fair at Yarmouth.⁷
- ff. 99v-103r The reception of the warden of the Cinque Ports at the court of Shepway. Including an example of royal letters patent to the Ports on the occasion of such an appointment.
- ff. 103r-105r The Cinque Ports' service at the coronation of a king and queen.
- ff. 105r Claim to enjoy all privileges granted by Magna Carta and the Charters of the Forest.
- ff. 105r-107r The perambulation of the boundaries of the liberty of Sandwich by Stephen de Pencester [c.1290s]
- ff. 107r-109 The rights and possessions of the mayor and jurats in the above liberty.
- ff. 109r-110r The custody of the 'waterdelf'.
- ff. 110r-111v The king's rights and their limitation within the liberty.
- ff. 111v-115r The custody of the assize of bread.
- ff. 115r-116v General Charter of Edward I to the Cinque Ports (1278).

⁶ The Ports' Domesday was entered in the Red Book of the Exchequer in 1293 (Murray, *Cinque Ports*, Appendix II, p.16)

⁷ Although this section cites charters of Edward I, and so parts of it may well have formed part of the 1301 custumal, the provisions for sending a bailiff to Yarmouth were overhauled in the mid-fourteenth century, and so much of the text in Sa/LC 1 cannot have formed part of 1301 version. The alternating arrangement with Hythe for the provision of a bailiff, described as '*de novo ordinatum*' on f.91v, for example, began in 1360 (Murray, *Cinque Ports*, p. 155).

Appendix 3

A late-thirteenth century enquiry into the liberties of Sandwich

Sandwych¹

[1] Ista subtract()² fuerunt Priori Ecclesie christi Cantuarie tempore Regis Johannis per Communitatem de Sandwyco eo quod tempore nullus fuit ibi maior³ et dominus Rex deberet habere statum illum quem Knutus Rex Anglorum suo tempore habuit qui villam de Sandwyco dedit ecclesie predictae. Et nunc dominus Rex excluditur/ de subscriptis nescitur quo waranto.

[2] Comunitas⁴ de Sandwyco propria auctoritate tempore Regis Johannis quando Prior et Conuentus ecclesie christi Cantuarie eiecti fuerunt a Prioratu illo per preceptum ipsius domini Regis/ fecerunt sibi ex ipsis maiorem/ et appropriauerunt/ et vsurpauerunt sibi omnia subscripta/ eodem tempore/ et super hoc quando Conuentus reconciliatur fuerat/ predicta communitas super hoc coram domino Rege per Priores eiusdem Ecclesie implacitata fuit per diuersas vices/ set nunquam deueniebatur ad Judamentum/ occasionibus diuersis impediens interuenientibus etcetera. Et memorandum quod nisi omnia subscripta suo debito rectificentur/ status domini Regis non erit talis qualis status Knuti Regis fuerat/ quia villam de Sandwyco dedit ecclesie predictae/ et talem statum dominus Rex⁵ nunc habere debet/ nisi communitas ville predictae sciat ostendere uel dicere quid habeat per se/ quod dominus Rex talem statum habere non debet.

[3] Tronagium de Sandwyco maior ville de Sandwyco habet/ et exitus ad valenciam/ x/ librarum et amplius per annum percipit. Nescitur quo waranto.

[4] Maior asserit quod balliuus domini Regis non potest capere nec ponderare panem Pistorum in villa de Sandwyco sine assensu suo/ nec Curias/ nec Hundred' tenere/ et cum contigerit balliuum ponderare panem Pistorum in uilla predicta/ maior percipit medietatem emendarum et medietatem panis forisfacti. Nescitur quo waranto.

[5] Maior asserit quod pro emenda assise panis fracte tantummodo capi debent/ xxj/ denarios/ nec plus nec minus cum amissione tocius furnagij pistorum illorum/ quorum panis falsus inuenietur. Asserit quod nullus Pistor commorans in uilla predicta Iudicium Pillorii debet subire. Immo tantummodo amerciari sicut predictum est. Nescitur quo waranto.

¹PRO MS E163/2/26 measures c. 14.7 cm in width. It is ruled with a margin on both sides (left c. 1.5 cm, right c. 2 cm) though only the left-hand margin is observed. The word "Sandwych" appears as a heading c. 3.9 cm. from the left-hand edge of the ms and c. 1.8 cm. above the first line of the first clause. For ease of reference the clauses have been allocated numbers. All of these clauses, with the exception of the first [1], are preceded by a *paragraphus*.

²Illegible.

³In punctuation the scribe uses variations on the *punctus*, *punctus elevatus*, comma, and *paragraphus*, throughout. At the end of sentences the *punctus* [.] has been retained. All other punctuation marks have been rendered with an oblique line [/]. For discussion of medieval punctuation see M.B.Parkes, *Pause and effect: an introduction to the history of punctuation in the West* (Scolar Press, Aldershot, 1992). Capitalisation follows the scribe's practice.

⁴Sic, recte "communitas".

⁵"Rex" inserted above line with caret.

[6] Maior capit mensuras galon'/ potell'/ et quarter'/ Bussellorum/ vlnarum/ et aliarum mensurarum et inde capit emendas/ non permittens quod ballivus se inde intromittat. Nescitur quo waranto.

[7] Maior ad opus communitatis appropriat escaetas tenementorum pro defectu heredum/ uel de bastard/ uel post feloniam commissam/ et huiusmodi cum accederint. Nescitur quo waranto.

[8] Maior per se absque ballivo dat licenciam hominibus ville predictę/ et excitat liberos homines ville predictę ad distringend' extraneos venientes in villa cum mercandis suis/ et huiusmodi districiones retinere facit donec discuciatur inde lis inter partes super huiusmodi debito. Ita quod quilibet de villa predicta in hoc casu est ballivus.

[9] Maior et tota communitas asserunt quod nullus liber homo ville predictę in tenemento suo debet distringi per ballivos domini Regis/ nisi seruiens maioris interfuerit/ neque pro amerciamentis/ neque pro aliquibus execucionibus faciendis/ in preiudiciam et exheredacionem etcetera.

[10] Item cum contingat Hundredum uel Curia ville predictę teneri per ballivum domini Regis/ licet communitas intersit et maior absens fuerit liberi homines uille predictę placitare nolunt neque respondere nisi maior personaliter intersit.

[11] Maior asserit quod nulla proclamacio fieri debet in villa predicta/ neque per breuem Regis neque per aliud mandatum per ballivum domini Regis. Immo per seruientem maioris. Et si proclametur per ballivum domini Regis/ illam proclamacionem pro nulla habent,

[12] Item quando Custos quinque Portuum mandat ballivis et Baronibus ville predictę breuem suum quod sint ad Curiam de Schipweye ad certum diem per tot et tales etcetera/ ne pro defectu eorum Judicia remaneant/ maior non permittit ballivum domini Regis quod intersit electionem huiusmodi homini qui ad Curiam predictam venire debent in preiudicium etcetera.

[13] Maior asserit quod licet duo uel tres uel quatuor inter se pro medleta alter alterum uulnerauerit/ nisi querimonia de hoc fiat ballivo domini Regis per aliquem ipsorum/ ballivus non habet inde cognoscere in preiudicium etcetera/ cum pax domini Regis non obseruaretur si hoc permetteretur/ nec Idem maior permittit quod⁶ si transgrediatur seruienti ballivi domini Regis/ quod dominus Rex habeat inde sectam per ballivum suum.

[14] De assisa vini maior se intromittit/ et inde capit emendas et assisam inde facit per consideracionem suam absque ballivo domini Regis.

[15] Maior asserit quod quando quis non est pres' querelam suam/ petens uel querens tantummodo debet amerciari/ et non pleg' sui de pres'.

[16] Maior asserit quod nullus debet amerciari pro pluribus defaultis/ licet quis Centum defaultas fecerit/ in Curia uel Hundredo.

[17] Item quando quis recuperauerit debitum suum uersus aliquem/ ille qui recuperauerit nunquam reportabit dampna aliqua/ nisi tantum debitum suum/ ad graue dampnum omnium mercatorum.

⁶"quod" inserted above line with caret.

[18] Maior de assensu communitatis facit statuta sua et ea facit proclamari et teneri absque balliyo domini Regis sub certa forisfactura/ et predictus maior huiusmodi forisfacturam ad opus suum percipit in preiudicium/ etcetera.

[19] Maior asserit quod si quis non venerit ex recogn' assise coram balliyo domini Regis/ Ita quod assisa per eorum defaltum tardatur non permittit maior quod amerciantur

[20] Item tempore allecium videlicet inter festum sancti michaelis et festum sancti Andree si contencio sit inter ementes et vendentes huiusmodi mercandisam de alleciis maior non permittit quod ballivus domini Regis se inde intromittat/ set de huiusmodi contencione eo tempore maior facit inde Justiciam absque balliyo. Et idem maior et tota communitas asserunt quod durante tempore illo possunt pistores⁷ de Sandwyco licite facere panem adeo modici ponderatis sicut voluerint/ nec licet balliyo nec maiori infra terminum illum panem pistorum ponderare nec inde iusticiam facere/ quia pistores illo tempore assisam panis seruare non debent/ nisi voluerint/ et hoc contra iusticiam.

[21] Item maior asserit quod illi qui per infortunium siue per submersionem subito moriuntur/ non debent videri ab aliquo balliyo/ nec inquisicio inde fieri sicut consuetum est coram Coronatoribus ante quam sepeliatur.

[22] Item asserit quod nullum est deodandum in villa de Sandwyco.

[23] Maior clamat habere totum illud quod quis dedit ut possit tueri sub libertate ville Sandwyco/ et quod possit esse⁸ liber homo eiusdem ville

[24] Les abbokurs de Sandwyco videlicet illi per quorum testimonium mercatoris extranei tradunt mercimonia sua diuersis in eadem villa. Ita quod illi abbokurs inde respondeant secundum legem mercatoriam/ providentur per maiorem et communitatem eiusdem ville absque hoc quod ballivus ad hoc non intersit/ et Jurati sunt/ set non balliyo ad feriarum interempcionem/ quia illi de villa capiunt quos sibi viderint comodiferos sibi ipsis et non extraneis in casu isto/ etcetera.

[25]⁹ Item memorandum quod quidam cursus aque peruenientis de mari quod circuit insulam de Taneto iam viginti annis elapsis currere solebat per quemdam cursum qui dicitur Flet usque in villam de menstre. Ita quod nascelli et batelli applicare solebant in villa de menstre/ et in menstre de de¹⁰ huiusmodi nascellis et batellis que cotidie ankorari solebant Prior solebat percipere Custumam adeo plinarie sicut et in Sandwyco ante tempus predictum/ a tempore quo non exstat memoria. Et ille cursus et ingressus usque in villam de menstre qui dicitur Flet/ obstruitur per Abbatem Sancti Augustini in Cantuarie et predecessores suos. Ita quod predictus Abbas per obstrusionem illam/ non permittit balliyos domini Regis capere Custumam in villa sua de menstre/ sicut ante tempus predictum capi solebat/ ad exheredacionem/ etcetera.

⁷"s" of "pistores" written above the "e".

⁸"esse" inserted above line with caret.

⁹"Loquendum" written in the left-hand margin beside the *paragraphus* of this clause.

¹⁰Sic.

Appendix 4

Collation of Sandwich MS Sa/LC 1

quire 1	four folios	front paste-down and 3 unfoliated preliminary leaves.
quire 2	eight folios	eight unfoliated blank leaves. The presence of vertical rulings on each indicates that these are leaves previously intended for a larger book.
quire 3	eight folios + two	folios 1-9 ¹ . One later bifolium (folios 5 and 6) added between folios 4 and 7.
quire 4	eight folios	folios 10-17
quire 5	eight folios	folios 18-24 ²
quire 6	eight folios	folios 25-32
quire 7	eight folios	folios 33-40
quire 8	eight folios + 2	folios 41-50. One later bifolium (folios 45-46) added between folios 44 and 47.
quire 9	eight folios	folios 51-58
quire 10	eight folios	folios 59-65
quire 11	eight folios	folios 67-84. ³ The four inner leaves (folios 69, 80, 81, 82) of this quire are later additions. They replace four original leaves moved to the end of the book (folios 136-139).
quire 12	eight folios	folios 85-92
quire 13	eight folios	folios 93-100

¹ Two consecutive leaves are numbered '4' in this exceptionally careless sixteenth-century scheme of foliation, hence the impression of only 9 leaves where there are actually 10. It would be valuable to abandon this scheme and to entirely re-number the leaves of the manuscript. For the sake of avoiding confusion, however, it has been decided to follow the existing scheme in the present study, since the catalogue of the Centre for Kentish Studies provides a calendar for the manuscript based on this scheme. Anomalies and errors are footnoted in this collation.

² Misfoliation gives the impression of only 6 leaves in this quire, where there are actually 8.

³ Foliation omits numbers 70-79 in error.

quire 14	eight folios	folios 101-108
quire 15	eight folios	folios 109-* ⁴
quire 16	eight folios	folios 116-123
quire 17	eight folios	folios 124-131
quire 18	eight folios	folios 132-139. Includes leaves transposed from quire 11.
quire 19	seven leaves + rear paste-down.	folios 140-146 and rear paste-down. With vertical lineation, as in quire 2, indicating leaves originally intended for a larger book.

⁴ Leaf missed by foliator.

Appendix 5

Hands and scribes in Sandwich MS Sa/LC 1

Hand 'a' ff. 1-24r. This is a very small and accomplished form of 'gothic' textura.¹ The overall character of the script is of angular strokes typical of such texturas, but certain letter forms ('s', 'c', 'o', 'd') have distinctly curved strokes. As such, the script corresponds best with the variety of textura known as 'textura semi quadrata'.² Lower case letters are rarely larger than 2mm in height, and upper case rarely more than 3mm. There is frequent calligraphic elaboration of initials or of ascenders of the upper lines. This elaboration is most usually in the form of faces emerging from the letter forms. Occasionally these faces are humorous, as in the two faces emerging from ascenders of the upper-line of f.4v: one being stern and cowed, the other facing it with upturned nose. There is also occasional scribely punning, as in the face incorporated into a letter 'E' (with central horizontal forming a protruding tongue) which begins the word '*Est*' which begins the line '*Est a performer le commandement notre seigniour le roy...*' which introduces an ordinance '*in lingua gallica*' (in the French tongue) on f. 24. There is sometimes variation in the script-form, according to the types of document being written. For example, the script of f.13v-14 (the text being a copy of an ecclesiastical document) is noticeably rounder, with curving contraction markers.

Headings, rubric, some vertical strokes, and the frequently used *paragraphus* character are in red ink. The first letter of the first text (Champneys' preamble) on f.1r is a three-line 'Q' (for '*Quoniam*') in blue, with fine red pen-work background extending to short borders in the upper and left margins.

Pages in this hand are ruled for 24 lines of text.

hand 'b' ff. 25r-69r. This hand is a variety of the script known as 'Anglicana Formata'.³ As with the above hand, the general character is of angular strokes, but there are curved strokes in many letter forms, and some ascenders are curved or almost looped ('d', 'b', long 's'). Lower case letters usually c. 3mm high, upper case usually c. 5mm, though occasionally larger. In comparison with hand 'a', this hand is rather less

¹ Parkes describes the principle features of the textura script, and three varieties recognisable within the basic type. M.B. Parkes, *English Cursive Book Hands, 1250-1500* (Oxford: Clarendon, 1969), pp. xiii and 22.

² Parkes, op. cit., p. 22, illustrated in pl. 19.i (the inset portion of text)

³ Parkes, op. cit., pl.5.i. (c.1380); the development of Anglicana Formata as a book hand is discussed pp. xvi-xvii.

fine and accomplished, but is still an attempt to produce a neat and calligraphic impression based on angular textura forms.⁴ There is some calligraphic elaboration of initials, but this is less frequent and less accomplished than in hand 'a'. There is considerable highlighting of initials and other letters with a blotchy red ink. A particular characteristic is the use of scrolling descenders from the lower-lines into the lower margin, bisected by red markings (like kite-tails). There are also frequent red line-fillers. The text is occasionally elaborated with marginal drawings such as the hand with flowing, tasselled sleeve pointing to the clause introducing pleas heard in the hundred court (f.50r).

Pages in this hand are ruled for 19 lines of text.

hand 'c' f.85r- f.133v. This hand is rather harder to characterise because of its development/deterioration as it progresses. Early leaves are akin to a debased form of small, gothic textura (comparable to hand 'a') but later leaves are much closer to a fully-fledged *anglicana formata*. This suggests not that more than one hand is at work here (since there is no obvious break in the hand) but that the same hand is gradually becoming less careful and calligraphic, and more rapid and cursive. There are a few calligraphic initials, though these are of a rather blotchy nature. Red line-fillers appear, as do straight descenders from the lower lines, extending into lower margin with red 'kite-tail' dashes.

Pages between f. 85 and 92 are ruled for 28 lines, while those between 93 and 133 are ruled for 24. This change reflects the increasing size of the script, which begins to outgrow the narrow lineation of the earlier leaves.

⁴ Parkes describes the development of *Anglicana Formata* from the small gothic book hands of the fourteenth century, under the influence of more rapid and cursive forms: pp. xvi-xvii.

Appendix 6

Later fourteenth century additions to the Sandwich Custumal.

Sandwich MS Sa/LC 1 contains a number of documents which can be firmly dated to *after* 1301, and therefore must represent additions to the text as produced by Adam Champneys. It is likely that these documents were inserted at the time of the re-working of Champneys' text for the production of MS Sa/LC 1 itself. They contain important internal evidence to the likely dating of MS Sa/LC 1 and to its function. Those that can be identified are listed here.

- f. 8v Memorandum concerning the mayoral salary of Stephen Yok (mayor 1346) who was paid £18 for two years; and Nicholas Champneys (mayoralty unknown) who was paid £9 for one year.¹
- ff. 12r-12v Letter Patent 19th May 18 Edward III [1344] exempting the barons of Sandwich from the jurisdiction of the royal clerk of the market, and other household officials. Granted whilst the king was in Sandwich awaiting passage to Brittany. During this time his officials are stated to have held pleas, issued attachments, and the clerk of the market had attempted to do his office. It is desired that the ancient liberties of the town are not harmed.
- ff. 13r-15v Memoranda appended to existing arrangements for the advowson of St. Peter's church. Four linked texts entitled: *Presentacio Ecclesie*; *Litera de Inquisicione*; *Rescripcione Inquisicionis*; *Litera Institutionis* respectively. These constitute the record of the appointment by the town of Stephane Gravele to the church September of 1350 and the confirmation by Archbishop Simon Islip. The *Rescripcio Inquisicionis* includes the note '*In dorso huius inquisicionis clause fuit scriptum, Inquisicio capta super vacacionem ecclesie beati Petri de Sandwici.*' This suggests that the items represent formulae entered into the custumal text from the original documents.
- ff. 22r-23v Additions to the existing clause concerning the custody of the possessions of orphans. These begin with a copy of the *inspeximus* charter of 20 January 21 Edward III [1348], confirming letters patent of 10 February 18 Edward I [1290] regarding the possessions of orphans. It is followed by a series of ordinances, in French, made as a response to this charter in the town of Sandwich. An example of the bi-partite indenture drawn up to

¹ A partial list of the holders of the Sandwich mayoralty in the fourteenth century is given in Boys, *History of Sandwich*, p. 416

confirm the arrangement is given, stating that one part remains with the orphan, the other with the town government. The section is concluded with a note apparently concerning an outbreak of plague in 1351: *‘Quando vero maxima mortalitas generatur per universam civitatem fuit, et inter nos plurimi orphani moriebantur, catalla sua devenerunt ad manus Willielmi Yve, tunc maioris, et, tempore maioratus Stephani Espelon de assensu juratorum et avisamento, tercia pars catallorum cuiuslibet distributum pro anima sua. Et hoc fuit anno regis Edwardi tercii Anglie 24 et Francie 11’*[1351].

- f. 69r Memorandum added to the existing texts describing the proceedings of the hundred court: *‘Solent eciam maior et communitas, sonito cornu communi, ordinare collectas in eadem villa resultantes, tam de terris, tenementis et redditibus extraneorum in eadem villa, quam aliorum de eadem villa, prout et quociens viderint faciendum similiter et de catallis hominum dicte communitatis, tam extra libertatem predictam existenciam quam infra; et super hoc ultimo habemus literas patentes domini regis Edwardi tercii’*.
- ff. 90r-90v Memorandum added to the section describing the right to try pleas of the crown within the franchise, in the form of a precedent, or example describing the case of the trial of named felons imprisoned at Romney in the 31 year of Edward III [1357/8].
- ff. 115r A note describing the Chantry of John and William Condy in the Church of St. Mary. *‘Habent maior et communitatis cantarium Johannis et Willielmi filii eiusdem Johannis in ecclesia beate Marie dicte ville; in quae cantaria si quis capellanus eiusdem cantarie fuerat missam matutinalem celebrabit.’* This chantry had been set up in 1344 (over a year before John Condy’s death in late 1345), when licence was granted by the Crown for the alienation in mortmain by the ‘king’s yeoman’ John Condy, son of William Condy of £4 in rent to a chaplain to celebrate mass daily in the church of St. Mary ‘...for his good estate, for his soul when he is dead and for the souls of the faithful departed.’² The mention of William *son of* John Condy in the custumal note suggests that it may have been added after the death of this son in 1368, but this is not certain.³
- ff. 116v- Documents relating to the liberties of Sandwich in the Port of
126v Stonor. Comprising:

² CPR 1343 - 1345, p. 378.

³ CCR 1354 - 1360, p. 445.

ff. 117r-120r. *'De Libertatibus et priveligiis que barones de Sandwico habent in villa de Stonore'*. A list of the liberties claimed by the barons of Sandwich in the port of Stonor. This represents a 'customal within a customal' probably drawn up in this form in the late 1360's as a response to a dispute with the Abbot of Saint Augustine's over liberties and customs in that port. It appears in almost identical form in *Thorne's Chronicle* as an entry for 1368.⁴ It firstly sets out the claim of the barons of Sandwich to the whole town of Stonor, *'...usque crucem de Hennebergh, et ab eadem cruce versus orientem usque ad mare ex opposito de Pepirnasse, et versus occidentem usque mare ex opposito crucis lapidee extra Monkenekoye de Sandwico, esse ita liberum sicut et solum ville Sandwici.'* In the week following the election of the Mayor in Sandwich, the barons cross over to Stonor by boat to appoint six or eight deputies in the town. Through these deputies, they claim sole right in pleas of the crown, of land and others, except those due to the Warden of the Cinque Ports at Shepway. The profits of distrains are to go to the use of the corporation of Sandwich: *'...ex exitus inde provenientes ad opus communitatis ville Sandewici levare; quia communitas ville Sandwici, tam in servicio domini regis quam in aliis oneribus pluribus sustinent onus pro communitate ville de Stonore, quasi pro seipsa.'* The barons further claim to have custody of the property of orphans and intestates; of recognisances of land, tenements and debts; and of the arrangements for arrears of rent ('stakement').

ff.120r-122r. *'De donacione portus Sandewych et omnium exituum eiusdem aque ab utraque parte fluminis, cuiuscunque terra fit.'* A version of the celebrated charter of King Cnut, granting the haven of Sandwich to Christchurch Priory, Canterbury, in 1023. This charter may conceivably have formed part of the 1301 text, but the title given to it links it to the above text and suggests that it is being cited as part of the defence of Sandwich in the dispute over the liberties of Stonor of the later fourteenth century

ff. 122r-126r. *'De quodam placito pro huiusmodi flumine inter Willielmum Archiepiscopum Cantuarie, et Abbatem Sancti Augustini Cantuarie.'* Recording an inquisition taken in 1127, at the command of the King, with the assent of William, Archbishop of Canterbury, concerning the toll and custom of Sandwich haven, granted by King Cnut to Christchurch. It represents a remarkable

⁴ *William Thorne's Chronicle of St. Augustine's Abbey, Canterbury*, ed. A.H. Davis (Oxford: Blackwell, 1934), pp.594 - 5.

piece of history writing, recording that some people had lately considered Stonor to be a good place for shipping in fine weather and 'began to erect small houses so that vessels might stop there.' Thus toll and custom came to be taken clandestinely by the Abbot's people. The officers of Sandwich had crossed to Stonor to reclaim their tolls, resorting to violence when resisted. It is stated that the officers of Christchurch 'with due regard to truth constantly endeavoured to establish the ancient custom, the others by cunning deceit, and presumptuous ferocity strove to maintain their usurpations.' An inquisition was held, with a jury of wise and worthy men 'experienced inhabitants of the coast', which decided that the rights must belong to Christchurch, which the King's writ confirmed. The oaths of numerous men in this inquisition are recorded.

ff. 126r-126v. Memorandum of a case of 1368 in which a certain Thomas Crabber and others of Stonor claimed to be part of the liberty of Sandwich, and thus outside the jurisdiction of the Abbot of St. Augustine's. The case appears to be taken directly from royal records since it records the roll number on which its record is found: '*De termino Trinitatis, anno xliij, rotulo lxxxiiij^o regis Edwardi tercii*' This case is also recorded in *Thorne's Chronicle* immediately preceding the record of the rights claimed by the men of Sandwich in Stonor as described above.

130r-133v

Memoranda of a 'Brodhull' held at Romney in 1357. These represent a substantial addition, and include the articles agreed at the Brodhull itself concerning the provision of bailiffs for the Yarmouth herring fair, and related ordinances subsequently made at the Sandwich Hundred court. Entitled '*Sequitur de assensu et concordia factis apud Romene. Ceux sount lez assentz et accords dez Barouns dez cynk portz esteauntz a Romene pour brodhelle le ieosdy prochein apres le feste seint Johan Port Latin lan du reign notre segniour le roy Edward tierce puy le conquete dengleterre trentisme primer.*' [1357]

There are 6 articles (represented as separate paragraphs) made at the Brodhull: Each of the Ports (Hastings, Winchelsea, Rye, Romney, Hythe, Dover and Sandwich) will, each year, elect a discreet, wise and sufficient individual to be Bailiff at Great Yarmouth. Each of these individuals is to be sufficiently provided for, for the honour, profit, and the maintenance of the franchises of the Ports. These bailiffs are to take what is due to them at the Yarmouth herring fair (ff. 130r-131r); The bailiffs are to be elected by their community on the Monday after the feast of Saint Peter

and Paul, and are to be sworn before those communities to be good and loyal, and to fulfil their office according to the tenor of the king's grant. There may also be seven '*valets*' to accompany the bailiffs, who are chosen by the bailiffs themselves. Furthermore, there are four sergeants; that is, two from the West ports, and two from the East (f. 131r); The Brodhull is to be summoned by each of the Ports in turn the Monday after the feast of Saint Margaret. The first year summons to be made by the bailiff and barons of Hastings, the second year by the mayor and barons of Winchelsea, the third by the mayor and barons of Rye, the fourth by bailiff and barons of Romney, the fifth by bailiff and barons of Hythe, the sixth by mayor and bailiffs of Dover. At each Brodhull two or three jurats of each town come together, and their costs are born by their communities: '*...si bien de Romene et de Hethe come dez aultres*' (f. 131r-132); The Brodhull is to be held from year to year in the manner aforesaid on the Monday after the Feast of the Conception of our Lady. If any of the elected bailiffs are found to be in default, then they are to be judged by their peers in the same Brodhull (f. 132r); Every fishing boat (*nief pessonere*) from whichever port or their members pays 2d to the bailiffs for each catch and every other vessel pays 12d (f. 132r-132v); If any of the ports '*failler*' or '*desturber*' these ordinances they are to pay to the others £20. Concluded: '*...et ia le mayns lez avaunt ditz acord et assent, demourant en lour force et poer adurer pour tout temps.*' (132v).

f.133r-133v

The above articles are followed by a memorandum that in 31 Edward III [1357], in a hundred court held at St. Clement's church on the Monday after the feast of the Ascension the community '*...assenssu concessum est quod ordinaciones prescripte perficientur et perimplebuntur...*'. And at the brodhull held on the Tuesday following the Feast of the Trinity, individuals from each port were elected, including Nicholas and Stephen Espelon from Sandwich. There follows an example of a letter of election in favour of Nicholas Espelon, by way of a formula.

Appendix 7

Collation of Sandwich MS Sa/LC 2:

quire 1	four folios	four un-numbered leaves
quire 2	six folios	folios 1-6
quire 3	eight folios	folios 7-14
quire 4	eight folios	folios 15-22
quire 5	eight folios	folios 23-30
quire 6	eight folios	folios 31-38
quire 7	eight folios	folios 39-46
quire 8	eight folios	folios 47-54
quire 9	four folios ¹	folios 55-58
quire 10	eight folios	folios 59-66
quire 11	eight folios	folios 67-73

¹ Or possibly 2 x two folios.

Appendix 8

Hands of Sandwich MS Sa/LC 2

Hand 'a' ff. 1r-56v. A neat, carefully-formed version of an 'Anglicana' script.¹ Although it is cursive, and sometimes contracted, the overall impression is of neatness and readability. There is little attempt at calligraphic decoration, other than the notable exception of the opening decorative letter 'Q' (for '*Quoniam*', the first word of the preamble on f.1), which is in blue ink against a red pen-work border with scrolling extensions forming two short borders in the upper and left-hand margins. This decoration is similar to the that of the same letter 'Q' opening the preamble in the earlier version of the Sandwich custumal, Sa/LC 1, suggesting that the later copy was modelled upon the earlier.

Some variation occurs within the script written by this hand, but this is not considered here to represent different writers, but the same hand writing at different sittings. This is treated in more detail in the discussion of the custumal in the main text of this chapter.

Hand 'b' ff. 59r-64r. A generally more calligraphic hand, still based upon the Anglicana script, but presented with more concern for display, as in the 'Bastard Anglicana' scripts identified by Parkes.² This is perhaps unsurprising since the text of these leaves comprises a charter of Henry IV to Sandwich. The initial 'H' (for '*Henricus*', opening the charter-text) is given some calligraphic treatment (f.59r).

Hand 'c' ff. 67-70. A neat, and occasionally calligraphic hand corresponding with forms of 'Bastard Anglicana'.³ Considerable care in the formation of letters is evident in this hand. There is a differentiation to be seen between the script of most of the text (in French) and the script of one clause of the 1414 parliamentary memoranda in English. Particular care has been taken in this clause, and some letter forms contrast with those of the remainder of the text: particularly a two-celled 'a' appearing in the English text, where a single-celled form has been used in the French text.. There are several calligraphic initials in the text as a whole, notably a letter 'I' (for '*Item*', the first word of parliamentary provisions

¹ For description of the Anglicana script and its development see Parkes, *op. cit.*, pp. xiv-xv.

² Parkes, *op. cit.*, pp. xvii-xviii, xxiii-xxiv.

³ *Ibid.*

made for the eradication of heresy) from which emerges a grinning, cloven-hooved, and horned devil (f.68v).

Appendix 9

Calendar of Sandwich MS Sa/LC 2:

- four unnumbered leaves Several later notes and memoranda, comprising: various sixteenth and seventeenth century doodles, names and pen-tests; a list of costs relating to the obtaining of the confirmation of a charter (undated, but in a fifteenth century hand); memoranda of the activities of the Cinque Ports bailiffs to Great Yarmouth, including a list of ordinances proclaimed there (Michaelmas 4 Henry IV [1403]); copy of a 'writ of error' addressed to the bailiffs of Great Yarmouth (1431).
- ff. 1r-56v The custumal of Sandwich. An exact copy of the text found in the fourteenth century Sa/LC 1. All of the text in a single fifteenth-century hand, apart from ff.20v-22v (a list of dues to be taken by the bailiff) which may possibly be in another contemporary hand.
- ff.57r-58v Forming the remainder of the last quire of the custumal text. Blank.
- ff. 59r-64r *Inspeximus* of charters and letters patent to Sandwich. (1413). In a contemporary hand.
- ff.64r-66v Forming the remainder of the quire of the *inspeximus* text. These former blanks are filled with: the grant of proceeds from the Sandwich to Stonor ferry made to St. Bartholomew's hospital (1349); grant of freedom from toll to Sandwich freemen (1368); a mandate to the Warden of the Cinque Ports concerning exemption of Cinque Port freemen from shires and hundreds (1368). These are all written up in a fifteenth century hand. There is also a memorandum of the election of a bailiff to Yarmouth (1562) in a sixteenth century hand.
- ff.67r-70r Memorandum of the proceedings of the Leicester parliament (1414). In a contemporary hand. A title ('*Leycestre*') added in another fifteenth-century hand.
- ff.70r-73v Forming the remainder of the quire of the above memorandum. These former blanks are filled in with notes of various dates: the oath of the Warden of the Cinque Ports (1559); the oath of the brothers and sisters of St. Bartholomew's hospital (c.1465); other documents relating to the hospital; document relating to the advowson of St. Peter's Church, Sandwich

Appendix 10

Collation of Faversham MS Fa/LC 1:

quire 1	six folios	front pastedown, folios 1-4 and the stub of on sheet cut away.
quire 2	eight folios	folios 5-12
quire 3	eight folios	folios 13-20
quire 4	eight folios	folios 21-28
quire 5	ten folios	folios 29-38
quire 6	eight folios	folios 39-46 (most of 46 cut away)
quire 7	eight folios	folios 47-53 and rear pastedown.

Appendix 11

The hands of Faversham MS Fa/LC 1

Hand 'a' (Illustration 1) This is a neat but informal variety of Anglicana script.¹ Letters are carefully and, for the most part, consistently formed. There is however some variation. The letter 'e' is found in both the upright form proper to the Anglicana script, and in its looped form typical of more cursive scripts. A consistency is apparent in this variation, since the former type is found when the 'e' occurs at the beginning, or in the body of a word, whilst the latter is found where the 'e' is the final letter, as in the case of the word 'de'. Where text is in Latin the double-celled Anglicana form of the letter 'a' is invariably used, whilst in French text this is substituted by the more rapid single celled form. This is of interest in a hand of this quality, since it appears to betray the influence of forms of Secretary hands which were gaining acceptance in the administration of the crown, and also of the great monastic houses. A notable feature of the leaves on which this hand is found is the careful preparation of the writing space. A single line of prickings is found to the outer margin, double lines are ruled around the writing-space (the first line of text occupying those at the head of this space), and the space is ruled for 31 or 32 lines of text. In some cases space has been left in this scheme for the later addition of illuminated initials (e.g. ff. 5, 30).² Stylistically, the hand might be considered to be of the later fourteenth or early fifteenth centuries, and this may be confirmed by range of dates implied in the documents. The document formulae in this hand bear dates between 1401 and 1404, and this implies that this hand must have been at work in, or after 1404. The chronicle which ends in 1382, might further indicate that work may have begun by this hand at any time after that date. The Anglicana form, with clear influence of Secretary styles at this date is a relatively recent development in England, and is associated with the central administrations of the crown and church. It would not be out of place in the administrative departments of the crown, or of the king's own household.³

¹ The terminology for types of hand used here follow the classification given by M.B. Parkes, *English Cursive Book Hands 1250-1500* (Oxford: Clarendon, 1969) The Anglicana form, its origins and development, are discussed in the introduction to this work (pp. xiv-xviii, xxii-xxiv).

² Which was not to be carried out.

³ For a discussion of the features of, and the development of the Anglicana form in the late fourteenth and the fifteenth centuries see Parkes, *English Cursive Book Hands*, pp. xxii-xxiii. The hands reproduced there in plates 2.i and 2.ii (especially the latter) are comparable with the Faversham hand 'a'. The 'horned' forms noted in particular by Parkes in plate 2.ii are not apparent in the Faversham hand, but the overall appearance is very similar.

The hand is responsible for the writing of the letters patent, agreements, custumal, perambulation, formulae, and copy of the common composition of the Cinque Ports (ff. 5-21); the chronicle from the creation of the world to 1382 (ff. 30-33v); and the list of quotes headed 'De Regimine Regis...' (ff. 38-38v). The substance of these last two texts will be considered later as suggestive of London origins for the scribe represented by hand 'a'.

Hand 'b' (Illustration 2) This hand is at times indistinguishable from hand 'a', and it is just possible that it may represent the work of the same scribe working at a later date. It uses the same 31 or 32-line ruling as hand 'a', and the layout of pages is often similar. Comparison of individual letter forms for the most part strengthens the possibility, as there is much similarity between them. However, the general impression of the hand is undoubtedly different and there are certain distinctive features of the hand which point to it being the work of a distinct scribe. Most conspicuous is the form of the much-used ampersand which has the form of a simple cross, comprising two distinct pen-strokes. This contrasts with the form used by hand 'a', whose looped form has clearly been made without lifting the pen from the page at any point.

Despite the difficulty in firmly separating hands 'a' and 'b' it has been thought best to indicate a distinction in this analysis, since if they do not actually represent the work of two different writers they may represent the work of one writer working at different times. It is noticeable that hand 'b' is found on quires already worked on in hand 'a' (quires 4 and 5) which suggests that 'b' is likely to be chronologically later.

Hand 'b' is found writing the collection of letters patent and confirmations granted to Sandwich (ff. 23-27) and the inspeximus of letters patent concerning the dispute between Yarmouth and the Cinque Ports dated 1364 (ff. 34-37v)

Hand 'c' (Illustration 3) This is an exceptionally neat and careful hand, and is highly individual. It is small, and commonly contains as many as 15 words to a line, where a line in the preceding hands 'a' and 'b' might contain only 10. Letter forms are consistent throughout, and are comparable to all those typical of Anglicana forms. Its distinctive overall character is determined principally by the elongated descenders which form diagonals (or slight curves) from right to left below the line, and by the arched lateral strokes

indicating contractions above the line.

The hand is responsible for writing the record of the inquisition taken at Chilham (ff. 21v-22) and of a deed made between Dover and Faversham (ff. 27-28v) found on previously blank sections of the manuscript as put together by hand 'a'. Although it can be considered an early fifteenth-century hand on stylistic grounds, it must then be considered to be later (if only slightly) than hand 'a'.

Hand 'd' (Illustration 4) This is a fluid and elegant Secretary hand. Its duct is predominantly slightly forward-sloping, and its use of long, curved diagonals gives it a 'splayed' appearance. It uses confident, rather calligraphic initials.⁴ The hand is clearly later than the preceding hands, in the notable influence of the Secretary style. In common with the earlier hand 'a' this hand is more than a 'document' hand, and is very different from the sorts of hands found in most contemporary urban documents. Although the styles of Secretary script were well absorbed in English writing by the middle of the fifteenth century, it seems unusual to find such a confident and artful variety of that script in urban administration.

The fact that letters patent granted in 1446 are described as 'newly granted' (f.50), when written in this hand may suggest that it was at work shortly after this date. The fact that the hand is found on two quires at the end of the volume (quires 6 and 7) which do not contain the work of either hands 'a', 'b' or 'c' suggests that it may also have been responsible for adding one or more of these quires to the pre-existing manuscript.

The hand is responsible for the writing of the Latin verses of prophecy (ff. 39-41); an attempt to summarise, in English, the charters and parts of the custumal previously written in the manuscript (ff. 49-50); and copies of letters patent granted in the mid-fifteenth century (ff. 50-52v).

Hand 'e' (Illustration 5) This is a cursive fifteenth-century hand. Although it has some affinities with hands 'a' and 'b', it is distinguished by its generally more cursive appearance, and its slightly forward-sloping duct. Its descenders, in particular, give a diagonal appearance. It is further distinguished from these hands by a different system of page-preparation.

It is found writing a copy of letters patent granted to Faversham in

⁴ For discussion of the Secretary hand and its development in England, see Parkes, *English Cursive Book Hands*, xix-xxi.

1446 (ff. 47-48v), which are found on the first two leaves of the final quire (quire 7). This suggests that this writer may actually have been responsible for adding this quire. If this is the case then it is possible that it is an earlier hand than hand 'd', and that hand 'd' continued writing on the quire added by hand 'e' and then added a new quire (quire 6) before it. However, since it is impossible to definitively separate hands 'd' and 'e' chronologically, this cannot be proved.

A note found earlier in the manuscript (f. 22), which appears to have been intended as an appendix to the custumal., and which asserts the overall primacy of 'natural law' in cases not specifically treated in the custumal, is almost certainly in this hand.

Hand 'f' (Illustration 6) This is a late Anglicana-type script with clear Secretary influence. It appears to be rapid, and is rather untidy, with descenders curving both to the left and right, sometimes straying into the line below. The duct is predominantly backward-sloping.

The hand is found in only one location, writing a copy of the agreement between Dover and Faversham of 1438 [ff. 41v-43v). This text is found following the Latin verses in hand 'd' on quire 6, and must therefore post-date that hand, which has been suggested to be of the mid-fifteenth century.

Later hands Several later hands are responsible for making a number of later additions.

ff. 1-4 contain a number of notes and memoranda which date roughly from the late-fifteenth to the early seventeenth centuries. These leaves do not bear any text in any of the earlier hands described, and are coarser in quality than those of the bulk of the book, and so it is likely that they form a later addition, made at the end of the fifteenth century.

Other additions are found within the remainder of the manuscript, where blank leaves have been used to record oaths of civic officials in the sixteenth, seventeenth and eighteenth centuries (ff. 28v-29; 44-44v).

Appendix 12

Calendar of the contents of Faversham MS Fa/LC 1¹

- ff. 1-4 Mostly late fifteenth and early sixteenth century memoranda, with some later additions: expenses for seeking counsel in London [n.d.] (f.1); record of the receipt of Edward Poynings as Warden at the court of Shepway, 11 December [1509] (f.1v); the oath and duties of the common porters [late fifteenth century] (f.2); the oath of the jurats [late fifteenth century] (f.2v); the oath of the town clerk [1602] (f.2v); the oath of a freeman [late fifteenth century] (f.3); proclamation to be made annually 'by ancient usage' against forestalling the market and issuing regulations for butchers [1509] (f.3-4); oath of members of the common council [late fifteenth century] (f.4); oath of the mayor [late fifteenth century] (f.4v).
- ff. 5-7v Letters patent to barons of Faversham [1252 and 1302]
- ff. 7v-9v Agreement between the Abbot and men of Faversham in the king's court at Westminster [3 February 1258]
- ff. 9v-13 Uses and Customs of the town of Faversham, being in Dover castle and returned under the common seal of the town.
- ff. 13-14v Other notable uses in the town and liberty of Faversham.
- ff. 14v-15 The *purlieu* of Faversham. A perambulation of the boundaries of the liberty of the town, made at the request of the warden, Stephen Pencester.²
- ff. 15-15v Felons fleeing to the church, including memorandum of an abjuration made by such a felon [1401]
- ff. 16-20v Formulae for documents to be produced on behalf of the town: precept made by the mayor to the bailiff for the death of a man [a coroner's inquest] (f.16-16v); method of making an inquisition (ff.16v-17); method of receiving acknowledgement of a fine (f.17);

¹ A detailed calendar of the manuscript was compiled by J. Michael Farrar when it was catalogued in 1959, which includes extensive translations of some portions. The calendar presented here is primarily an abridged version of that calendar, given to provide a brief reference to the total contents. More detail (particularly as regards dating) is provided below in the discussion of particular portions of the text. For a full calendar of the manuscript the reader is referred to Farrar's in the catalogue of the Centre for Kentish Studies, Maidstone.

² Pencester had been warden of the Cinque Ports in the later-thirteenth century.

method of making a fine (f.17-17v); a writ of *fieri facias* for debt recovery in court (f.17v); making a return to the warden on a royal writ (f.17v); allowance for making an assessment of the fifteenth (f.17v-18); letter declaring liberty under the seal of the mayor for a baron of the town and liberty (f.18-18v); other letters on the same subject (18v-19); cocket under the mayor's seal for carrying wool to other parts of England (f.19); letter on behalf of a man imprisoned for debt for begging by friends in his name (19-19v); another letter for someone held in foreign parts (f.19v); letter for a debt to be acknowledged (f.20); letter of protection (f.20-20v); letter for an arrested ship (f.20v).

These are examples of actual documents, dated between 1400 and 1404, with names replaced with initials.

- ff. 20v-21 The common composition of the Cinque Ports of charges levied on them.
- ff. 21v-22 Record of an inquisition made at Chilham, Kent before William de Septvance, Nicholas atte Crouche and Thomas Chirche by a royal commission to enquire and certify to the king in Chancery into complaints by the men of Faversham against demands of the warden of the Cinque Ports [1388].
- f. 22v Note added [in late fifteenth century] stating that in cases of which no mention is made here (i.e. in the custumal) the mayor, who is judge with the jurats has recourse to natural law, upon which and from which are given all laws and customs.
- ff. 23-27 A collection of royal letters patent and confirmations granted to the town and port of Sandwich, some including the limb of Sarre, comprising: exemplification of Cinque Port services to the king requested by Nicholas Aspilon [Espilon] [1359]; letters patent granted to Sandwich, headed 'concerning the custody of orphans' [1205, 1313 (confirming grant of c.1150), 1289]; and other letters patent [1364, 1343] to Sandwich.
- ff. 27-28v Deed made between the head port of Dover and the limb of Faversham, setting out the procedures for the contribution of Faversham toward the foreign costs of Dover as a member of the Cinque Ports [1394].
- ff. 28v-29 Oaths of serjeant, attorney and presenter (or overseer) [mid or late sixteenth century].

- f. 29v Blank
- ff. 30-33v A chronicle (or amalgam of chronicles) from the creation of the world to 1382.
- ff. 34-37 Inspeximus of royal letters patent, concerning disputes between the Cinque Ports and the town of Yarmouth [1364].
- f. 37v Blank
- ff. 38-38v De Regimine Regis. Quotations and translations concerning the rule of kings.
- ff. 39-41 Verses in Latin. Consisting of a portion of the prophecies attributed to John of Bridlington.
- ff. 41v-43v Agreement between the mayor and commonalty of Dover and the mayor and commonalty of Faversham concerning contributions demanded by Dover. Includes the agreement to elect a baron of Faversham as a member of parliament for Dover [1438].
- ff. 44-44v Oaths of civic officials. [seventeenth and eighteenth centuries].
- ff. 45-46 Blank.
- ff. 47-48v Letters patent to mayor, barons and commonalty of Faversham [1446]
- ff. 49-50 Summary in English of a portion of the charters, custumal and other documents given on ff. 5-22 of this book.
- f. 50-50v Franchises newly granted to the mayor and barons of Faversham [1446].
- ff. 50v-51 Letter from king Henry [VI] to Humphrey Duke of Gloucester, constable and keeper of the Cinque Ports, 1447. Cites letter patent granted in 1446 to Faversham, and commands that the barons are not molested.
- ff. 51v-52v Letters close [1437] commanding that none shall ship wool, fells or other merchandise belonging to the staple of Calais, but through official ports.
- ff. 52v Note by Thomas Norton, mayor (3 September 1562) that there are 53 leaves in this book.

- f. 53 Beginning of a translation of the *purlieu* of Faversham as found on ff. 14v -15, by Robert Wythiott, mayor, 15 September [1486]. Abandoned after the first line. Several later notes.

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Fa/ZB 4

Fa/ZB 7

Fa/ZB 46

Fa/ZB 58

Fv/13

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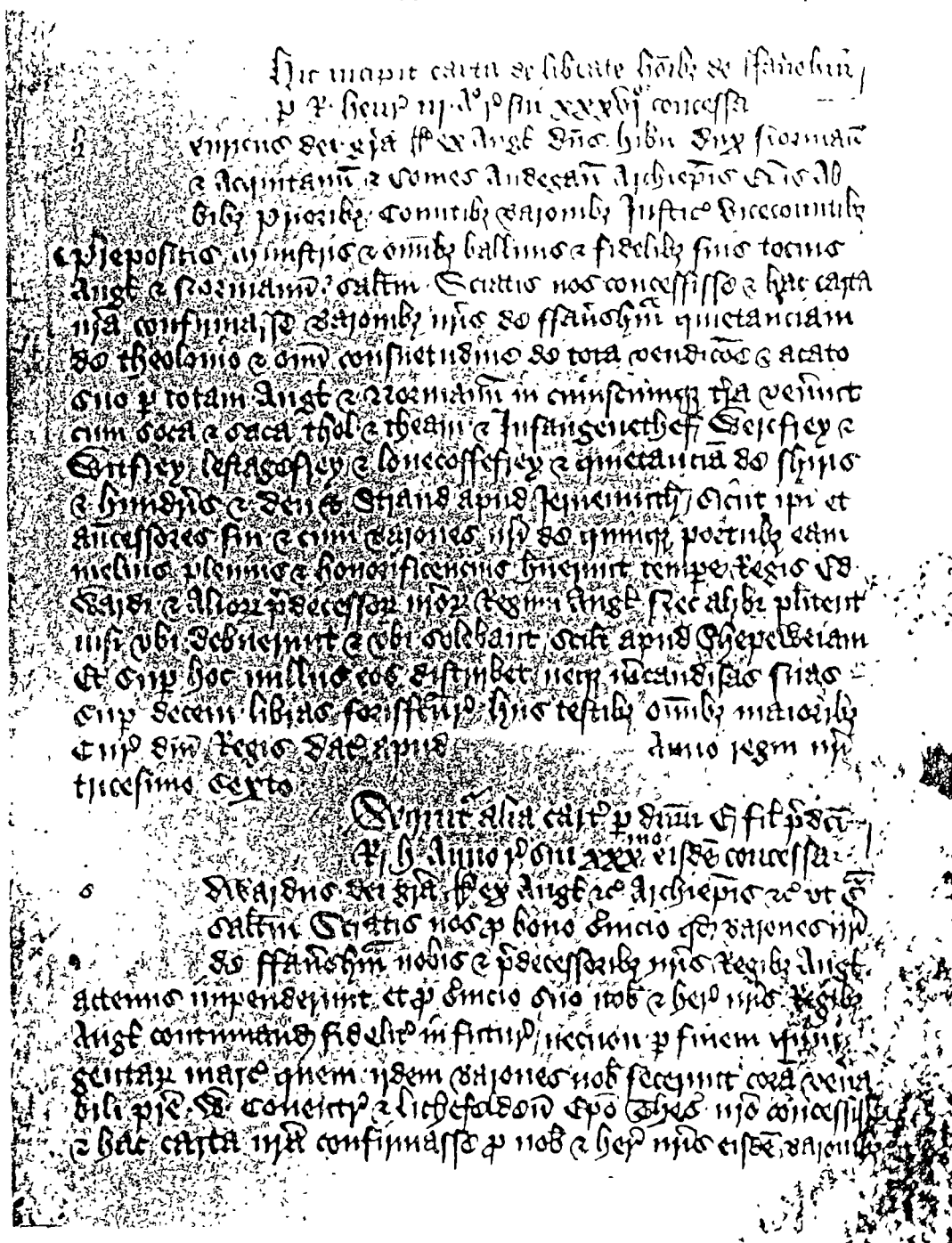
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Illustration 1⁸²⁷

Faversham MS Fa/LC 1, f. 5. Hand 'a'.

This hand is described in Appendix 11, and is discussed in Chapter 4. 5.



⁸²⁷ The illustrations of hands from Faversham MS Fa/LC 1 printed in this book have been reproduced from a photographic copy of the manuscript (CKS TR 88). It inevitably resulted in some deterioration of the image quality. In particular the thin hands appear rather broader than they are in reality. Illustrations are a total size

Illustration 2

Faversham MS Fa/LC 1, f. 23. Hand 'b'.

This hand is described in Appendix 11.

Exemplificatio sequencior quorundam portuum . 23

Magnus Dei gra Rex Angl + France + Gns hinc Omib
ad nos presentes se puenit vltim suspensum quanda
artificacione coram nob in cancellarij nra p Thes + Bazo
nos de Gns nro ad mandatu nra missam. Quia Regalia annua
tun debita de quib partib cu eoz membris si necesse fuerit me
alia specificante in hec vba Scitatis iustis + memorandis an
pextu hinc regij hinc codula consuti conptum est in subes
libro in eodm anno posidone. contineri sic. Quia portus + eoz
membra cu ducis regi debitis de portub pda annuatim
necesse fuit memorandis qm dicit or hillyp Anno regij
regis Edwardi filij regis henr xxxi Stepho de penecy tunc
constabulij Donorj + custoso quib portum existente in scio
sup computo cu ballie que pde coram magro Bato de oia
tunc Thes an + Bazo eiusde an ipos Stepho plen allo
cuto de pda quib portub videlicet qui fuerunt portus +
que eoz membra + que ducis ipi portus regi debeant + qm
+ quo modo idem Stepho pda Thes + Bazo de pmiss
artificabat in hinc modis Supp + hanc hastung est capit
portus cu membra sunt videlicet Wyndelste Eve leuata
de penecy + Dolobastelste in cont Supp Detesbun +
Genest in cont hanc qui portus cu suis membris pda
debet inuenire ad annuacione regis viginti + vna naves
+ in qualibet nam debent esse viginti + vna naves fortes
apri bre armati + armati ad ducem regis pta tamen qd omnia
mno modo fiat ex pto regis p quadraginta dies ante + cu
pda naves + naves in illis existentes ad locu illu venerint
ad quom fuerint annuati morabunt. ibi in ducis regis p
quidam dies ad custos suos pnos et si Rex ducis illoz post
pda quidam dies indignet seu ipos ibidem amplius
morari voluit erunt naves illo cu hoib in illis existentib
in ducis regis morantur ad custos regis quidm regi placit
videt magis capiet eoz denas p diem + constabulij p
denas p diem + quilibet alioz capiet tres denas p diem hanc
Fomenal portus capital Octus Fomenale + hinc membra

Illustration 4

Faversham MS Fa/LC 1, f. 40. Hand 'd'.

This hand is described in Appendix 11, and discussed in Chapter 4. 5

Favensham MS Fa/LC 1, f. 40. Hand 'd'. The image shows a page of handwritten text in a medieval script, likely Gothic or a similar style. The text is arranged in several lines, with some lines starting with a large initial letter. The page is heavily stained and discolored, particularly on the right side, which obscures some of the text. The text appears to be a Latin or Old English passage, possibly a letter or a historical record. The script is dense and somewhat difficult to read due to the ink bleed-through and the overall condition of the manuscript.

Illustration 5

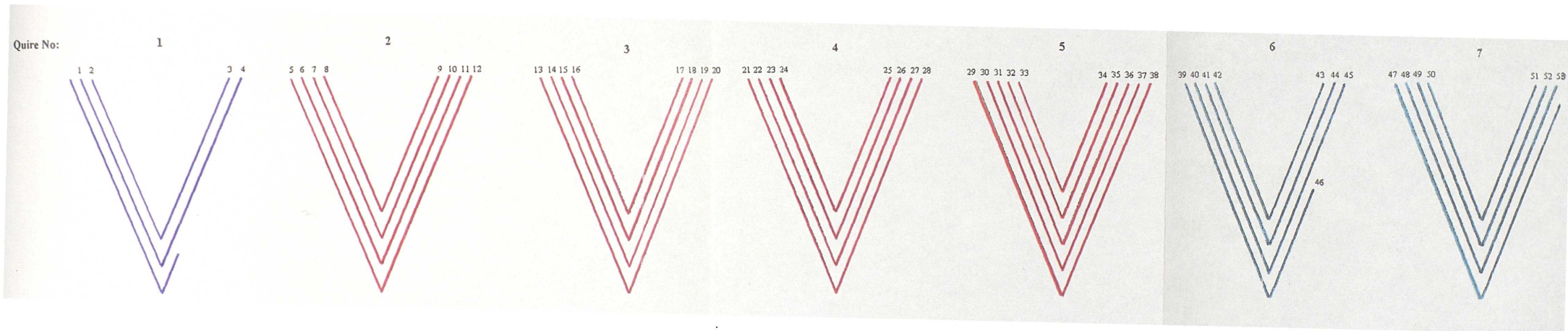
Faversham MS Fa/LC 1, f. 47. Hand 'e'.

This hand is described in Appendix 11

In regis Anglie regis Henrici secundi
Sancie memorie Regis Henrici secundi
in p bono smao sibi et eorum filios regis Anglie p baronibus
quos de sancto mureno de eorum hereditate sine impedimento
quibus curiam suam cum iure in talia videri baronibus
tunc sine baronibus omnem nullam impium ad non plene
miseri - bene et abbi debeant esse ad usum regis
si quis sine eos impitans vellet ipi non - reddunt alibi
placarent alio qm barones nec quinq portum plures adhibent
tempore Regis Ricardi in et qd non pendit in usum in eorum
recognacem aligmo: reno formaco tunc sine cond. dimittit
suam qm tamen qd tunc ipi barones in miferia facta ad
proid de fuerit in facta imp Regis Ricardi et hered suo p
pore qm p tempore p dicitur nullam de sancto mureno in d. h. baronibus
eisdem velle ingredi ad plena iusticiam ibi facta qm
q barones illi et heredes sui facerent videri imp Regi Ricardi hered
suo Regi Ricardi p annu pna in baronibus quinq portum pna plena
sua omni nam ad custus suos p quindecim dies ad ipius imp
et vel her suo emmenciam tantu videt quatuor facta debet in
eidem imp Regi Ricardi et hered suo p dicitur et facta tunc facta confuere
sed considerantes qualiter barones velle pax a tempore confuere
parte p dicitur huius tam notis qm quibus annis p dicitur oribus nris
Regis Ricardi omnia et emmenda omnia interdicent ad obsequium
ad grandes custus et labores suos aliam tempore de labori nullam
parando impenderunt Quo non obstantibus quibus de p dicitur
mo avaris baronibus et communitatis velle p dicitur ad reddidit
constabit castro donorum ac eorum qm quinq et tunc p tempore
existen ten emmo Officiarios et iungit ad velle et facta emmo

Diagram

Faversham MS Fa/LC 1: sequence of production



Portions of the diagram in red indicate the quires as they existed (probably before binding)
c 1382-c 1405, portions in green are those additions made c 1450; that in blue is the
additional quire added c 1500-1510