

Custom and the social organization of writing in early modern England

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Social historians of sixteenth and seventeenth century England have tended to see literacy as a modernizing force which eroded oral tradition and overrode local identities. Whereas the increasing literacy of the period has long appeared an important constituent element of Tudor and Stuart England's early modernity, custom has been represented as its mirror image. Attached to cumbersome local identities, borne from the continuing authority of speech, bred within a plebeian culture which was simultaneously pugnacious and conservative, customary law has been taken to define a traditional, backward-looking mind-set which stood at odds to the sharp forces of change cutting into the fabric of early modern English society.¹ Hence, social historians have sometimes perceived the growing elite hostility to custom as a part of a larger attack upon oral culture. In certain accounts, this elite antipathy is presented as a by-product of the standardizing impulses of early capitalism.² Social historians have presented the increasing role of written documents in the defence of custom as the tainting of an authentic oral tradition, and as further evidence of the growing domination of writing over speech.³ Crudely stated, orality, and hence custom, is seen as 'of the people'; while writing was 'of the elite'. In this respect as in others, social historians have therefore accepted all too readily John Aubrey's nostalgic recollections of the late seventeenth century that

'Before printing, Old Wives tales were ingeniose and since Printing came in fashion, till a little before the Civil warres, the ordinary Sort of people were not taught to reade & now-a-dayes Books are common and most of the poor people understand letters: and the many good Bookes and the variety of Turnes of Affaires, have putt the old Fables

¹ The most nuanced accounts of the modernizing force of literacy are to be found in K. Thomas, 'The meaning of literacy in early modern England', in G. Baumann (ed.), The written word: literacy in transition (Oxford, 1986), 97-131; and in K.E. Wrightson, English society, 1580-1680 (London, 1982), ch. 7. For enduring influences, see especially W. J. Ong, 'Writing is a technology that restructures thought', in Baumann (ed.), Written word, 23-50; J. Goody and I. Watt, 'The consequences of literacy' in J. Goody (ed.), Literacy in traditional societies (Cambridge, 1968), 27-68. For a study which sites the domination of literacy alongside the growth of industrial modernity, see D. Vincent 'The decline of the oral tradition in popular culture' in R.D. Storch (ed.), Popular culture and custom in nineteenth century England (London, 1982), 20-47. For an important critique of this view, see P. Joyce, Visions of the people: industrial England and the question of class, 1848-1914 (Cambridge, 1991), chs. 8, 11-12.

² D. Rollison, The local origins of modern society: Gloucestershire, 1500-1800 (London, 1992), 12-15, 67-83; M. Johnson, An archaeology of capitalism (Oxford, 1996), ch. 5.

³ See especially A. Fox, 'Custom, memory and the authority of writing', in P. Griffiths, A. Fox and S. Hindle (eds.), The experience of authority in early modern England (Basingstoke, 1996), 89-116. I managed to persuade myself of this connection too: see A. Wood, 'Social conflict and change in the mining communities of north-west Derbyshire, c.1600-1700', International Review of Social History, 38, 1 (1993), 41-2, in which I drew far too easy a division between a literate (elite) interest and a popular (oral) culture. The subject is, of course, contradictory. Edward Thompson could see the importance of written documentation in sustaining custom: Customs in common, (London, 1991), 153, 159. Yet elsewhere he continued to present 'customary consciousness' as synonymous with 'oral tradition': Customs in common, 179.

out of dores: and the divine art of Printing and Gunpowder have frightened away Robin-good-fellowe and the Fayries'.⁴

This paper will challenge the established historiographical opposition between custom and writing. In its place, it will emphasize the complex interplay of speech and writing in the creation and renewal of customary knowledge. It will subsequently discuss the social organization which underlay the production and preservation of written documents. I am interested primarily in the cultural worlds of those of non-gentle status; that is, with what historians used to call 'popular culture'.⁵ As we shall see, this does not presuppose that either elite or plebeian worlds were hermetically sealed. Neither should we conceive of writing as a weapon of a literate elite; following Jack Goody, we will rather see that 'the written code does not initiate either oppression or justice; [instead] it gives them a different format'.⁶ While elites were certainly able to use their greater access to written documentation and to the central legal system to undermine claims to local custom, some defenders of custom responded with creativity to this challenge. We will see from this that the distinction between orality and literacy has been overdrawn. While speech remained a vital constituent of customary law and local memory throughout the early modern period, the written word had long been an important means of retaining and transmitting local knowledge prior to the sixteenth century.⁷ The modernizing, unitary transition imagined in earlier histories ought therefore to be replaced by an emphasis upon the contradictory dynamism which developed between writing, speech and custom. Those contradictions were felt most keenly in the early modern period, as oral and literate cultures twisted ever more closely into one another. Finally, this paper will contest the claim that 'literacy dis-located memory' (that is, literacy removed the junction between collective memory and local identity) and that literacy 'marginalised local and regional cultures'.⁸

Cultural histories of writing, speech and custom in early modern England make little sense without an appreciation of contemporary contests over the rights and resources guaranteed by customary law. The legal and political authority of custom shifted over the course of the sixteenth and seventeenth centuries, but in order for a custom to be accepted as legitimate by central courts, it had to be shown to conform to three important criteria.⁹ Firstly, the custom had to be reasonable, and of benefit to the person(s) exercising the claim. Secondly, the custom had to lie 'beyond memory of man', or 'time whereof the memory of man is not the contrary'. Formally, this meant that a custom had to originate at some point prior to 1189; but in the practise of

⁴ B.L. Lansdowne Ms. 231, fol. 140r. For the uncritical use of Aubrey in other contexts, see especially D.E. Underdown, Revel, riot and rebellion: popular politics and culture in England, 1603-1660 (Oxford, 1987), esp. ch. 4.

⁵ For the historiographical deconstruction of popular culture, see most recently T. Harris (ed.), Popular culture in England, 1500-1850 (Basingstoke, 1995).

⁶ J. Goody, The logic of writing and the organization of society (Cambridge, 1986), 133.

⁷ The classic study is M.T. Clanchy, From memory to written record: England, 1066-1307 (1979; 2nd ed., 1993). But see also Z. Razi and R. Smith (eds.), Medieval society and the manor court (Oxford, 1996).

⁸ Rollison, Local origins, 71, 73.

⁹ The best contemporary introduction to the subject is C. Calthorpe, The relation between the lord of a manor and the copyholder his tenant (London, 1635). For an useful discussion, see A. Kiralfy, 'Custom in medieval English law', Journal of Legal History, 9, 1 (1988), 26-39.

courts, evidence that the custom was known within the memory of the oldest inhabitants, and that such memory was not contradicted by earlier written sources, was sufficient. Finally, custom had to have been shown to have been exercised continuously prior to its being called into question. Custom necessarily operated within a defined administrative unit: typically, the manor or parish; less typically, the lordship, borough or city. The defenders of custom therefore presented the concept in highly normative terms as the quintessential form of local knowledge.

Insofar as custom regulated production, and exploitation and defined the spatial, moral and legal boundaries of rights and responsibilities, custom had always been political.¹⁰ Since its conception, customary law had been a source of contention. Lord and tenant argued over fines, rents, the extent of *demeasne*, seigneurial enclosures. Inhabitants of one village argued with those of another over boundaries and mutual responsibilities. Landed and landless argued over encroachment on commons, rights of gleaning, and the stinting of common right. But in the sixteenth and seventeenth centuries such conflicts both intensified and broadened. Increasing population put more pressure on resources; inflation encouraged lords to raise rents and change tenures; social and cultural polarization between villagers diminished the moral standing of the rights of the parochial poor in the eyes of their wealthier neighbours. In relation to such structural and cultural changes, central courts based in Westminster and Chancery Lane heard an increasing number of cases concerning matters of custom, thereby extending their own authority over the subject. With every judgement issued by central courts concerning local custom, English state formation advanced another scarcely perceptible step.

It is a cliché of structural anthropology that ‘pre-industrial’ systems of thought are only revealed to the historical record at the moment of their dissolution. For all that this insight both obscures earlier changes in customary law and assumes the inevitable defeat of custom, it nonetheless remains important to our discussion. Rarely can the provisions of customary law be reconstructed with such accuracy, or the ambivalences of the language of custom be heard so clearly, as in the records of proceedings before central courts. Of special importance are the records of depositions, in which the verbal evidence of inhabitants was transcribed by clerks equity courts adjudicating in customary disputes. In such evidence, deponents spoke of the character of customary law, how they learnt about it, how it had changed in their lifetime, and often discussed the roles of writing and speech in the maintenance of such knowledge.

In early modern legal transactions, the spoken word had a power it lacks today: in 1596, for instance, the Court of the Duchy of Lancaster heard evidence that the custom of Godmanchester allowed property to be conveyed by word of mouth.¹¹ Just as accepted communal opinion could be used to damn somebody’s sexual or moral reputation at the consistory court, so it could also be presented as a common assumption of rights. Hence a village or town could be imagined as speaking in a ‘common voice’ or as holding a ‘common opinion’ which held that a custom had

¹⁰ For the politics of custom, see A. Wood, ‘The place of custom in plebeian political culture: England, 1550-1800’, *Social History*, 22, 1 (1997), 46-60; K.E. Wrightson, ‘The politics of the parish in early modern England’, in P. Griffiths, A. Fox and S. Hindle (eds.), *The experience of authority in early modern England* (London, 1996), 22-5.

¹¹ PRO DL4/29/54, deposition of Baldwyn Easdall.

existed ‘time out of mind’.¹² Custom therefore both legitimated and defined collective memory. Whereas in our own society writing is conceived of as a means of avoiding dependence upon memory, in the early modern period writing was more likely to be thought of as providing a support to memory.¹³ The social function, and politico-legal meanings given to both memory and writing were therefore quite different from today. Early modern plebeians who were unable to read or write could nonetheless gain access to writing. Institutional settings such as court meetings provided mnemonic contexts within which complicated texts concerning local custom were read aloud.¹⁴ Illiterate men and women remembered having ‘heard read’ and thereby ‘knowing’ the customs of the manor or parish. For many, memory remained the equivalent of knowledge. Hence, a dying man might be described as ‘in the pangs of death wthowte any memorye sence or understandinge’.¹⁵ In his deposition of 1580, Arthur Watts, a yeoman of Hockwold (Norfolk), stated consistently that ‘he doth not remember’ or ‘he remembreth not’ in order to make the point that he didn’t *know* something. Conceived of as immediate and communal, memory was understood by many deponents as a normative, moral force which imposed duties of maintenance and transmission. The aged were expected to pass on their memories to the young, and thereby to maintain the common voice: Edmund Burden, aged 68 in 1584, remembered how ‘about fiftie yeres sithence he was tolde by one daynes an olde man beinge a maker of fursse there that the Towne of wells (Norfolk) had a certaine libtie for the feade of theire milche neate there from Michelmas til Martylmas And so had longe before his tyme’.¹⁶ To Burden, his recollections of the old man’s words seemed to carry him back into the (often deliberately) ill-defined ‘ancient time’ within which custom had been born. The duty of transmission was important enough to intrude into the dying moments of the early modern plebeian: John Coatman of Thetford (Norfolk) recalled how ‘old Mr Torrell upp[on] his death bedd’ had confirmed to him the extent of common rights upon the town’s fens, linking his testimony of his own use of the fens with the common voice, and thereby with time immemorial.¹⁷

Such memories present themselves as cosy, consensual and widely accepted. Those claims are, of course, highly ideological and often quite fictional. In actions concerning the defence of common rights against a lord, for instance, plebeians had an obvious interest in projecting a united front. Differences and contradictions in knowledge about the history and past use of such land, or the character of legal title to it, remain concealed beneath the surface of these texts. Nonetheless, careful study and cross-reference reveal layers of uncertainty and contradiction in the stories told by lower class deponents to the commissioners of Westminster courts. In reality, communal memory was not homogeneous. Rival factions of villagers might contend against one another, producing wildly different accounts of local custom and local history. Certain aspects of the past - such as the lord’s or the church’s right to a

¹² See for instance PRO, DL4/14/36, deposition of Robert Marsham.

¹³ J. Fentress and C. Whickham, *Social memory* (Oxford, 1992), 9-10.

¹⁴ See for instance PRO, E134/11ChasI/Mich45; PRO, DL4/105/1661/22; P. Griffiths, ‘Secrecy and authority in late sixteenth and early seventeenth century London’, *Historical Journal*, 40, 4 (1997), 940-1.

¹⁵ PRO, STAC5/S70/24.

¹⁶ PRO, DL4/26/37, deposition of Edmund Burden.

¹⁷ PRO, E134/3 Jas I/Mich 30, dep. of John Coatman.

particular duty - might be conveniently forgotten.¹⁸ More simply, there may just be confusion or contradiction in local memory, as with the 'ylde men' of Haddenham (Cambridgeshire) amongst whom 'there grewe some dyversitie of speche' as to whether a certain ditch was a fen drain or not.¹⁹ It is easy for historians to be gulled by such sources, and to reify 'local memory' into a composite, unchanging whole which was gradually marginalized by equity and common law, and undermined by the written word. The reality was rather more complex.

For all that the relationship between speech, writing and custom may have been more elaborate than it seems upon initial enquiry, conflicts over customary law typically expressed a blunt opposition of material interest. We will concern ourselves primarily with one such opposition: that between lord and tenant. Amongst the advantages held by the seigneurial interest in such confrontations was lords' possession of an organized body of written evidence which could be produced to undermine the 'common report' of their tenants. Where early modern central courts were presented with such a choice, they seem to have increasingly favoured written evidence over oral.²⁰ This trend became more noticeable over time as estate owners, seeing the growing importance of written evidence in legal process, grew more concerned to protect and collect manorial documents, customaries, surveys and the like into their muniment rooms.²¹ Where a lord wished to raise entry fines, or enclose common land, such documents could therefore be set in opposition to the 'common report' of plebeian community. For this reason, gentlemen who gave evidence to central courts adjudicating in disputes over local custom were much more likely to cite their readership or possession of written documents than were those further down the social scale.²² The role of the estate steward on larger estates was of particular importance in this regard. Such men were often equipped with a degree of legal training, and sometimes doubled up as attorneys. As such, they were responsible for the maintenance and renewal of the estate archives. Making trips to the Tower, the Rolls Chapel or the muniments room of a nearby great house, stewards might return bearing transcriptions or the originals of key documents which were felt to shed light upon a particular custom. In commissioning surveys, maps, rentals and customaries, the estate steward again contributed to the stock of written evidence concerning local custom and history.²³ Similarly, the growth of litigation over matters of custom helped to produce a more document-conscious and legalistic culture amongst lesser gentlemen (again, often possessed of a degree of legal training) concerned to raise

¹⁸ For a colourful example of the deliberate loss of collective memory, see PRO, DL4/55/47.

¹⁹ PRO E134/25Eliz/Trin1, deposition of Robert Page.

²⁰ Fox, 'Custom, memory'; A. Wood, 'Custom, identity and resistance: English free miners and their law, c.1550-1800', in Griffiths, Fox and Hindle (eds.), *Experience of authority*, 268-73.

²¹ For example, when Edward Phipers of Haddenham found 'a writinge in the Bottome of his Chest', concerning the tithes of Haddenham, he exchanged it with the Earl of Suffolk in return for the remittance of his debts and two stone of wool to make a gown for his wife: PRO, E134/9JasI/Trin2, deposition of Elizabeth Cordell. Keith Thomas has pointed to the growing importance of historical records to landowners: K. Thomas, *The perception of the past in early modern England*, (London, 1983), 2.

²² For representative examples, see PRO, DL4/38/17, 60/7.

²³ For a remarkable case study, see A. Bagot, 'Mr Gilpin and manorial customs', *Transactions of the Cumberland and Westmorland Antiquarian and Archaeological Society*, new ser., 62 (1962), 224-45. For depositions given by such antiquarian stewards examples, see PRO, DL4/56/12, 117/8. See also J.H. Bettey, 'Manorial stewards and the conduct of manorial affairs', *Dorset Natural History and Archaeology Society*, 115 (1993), 15-19.

revenue upon their smaller estates or to find employment as attorneys in legal cases.²⁴ It is a strange irony that it has been the survival of those catalogued and ordered manuscripts in the muniments rooms of great houses, or in the document chests of the gentry, that has allowed twentieth century social historians to reconstruct the plebeian communities against which those documents were so often opposed in the legal contests engendered by early agrarian capitalism.

It is therefore more than possible to sustain the argument that writing was a source of power in early modern England. The tenants of Gillingham Forest in Dorset, the commoners of the Cambridgeshire and Lincolnshire fens and the miners of Wirksworth in the Peak Country of Derbyshire certainly made the claim that the written word was an agent of elite domination. In the years of the Personal Rule of Charles I, all of these groups complained of being conned by cunning royal patentees who had threatened and cajoled them into setting their hands to agreements which they were too 'unlearned' to make sense of, and which subsequently proved to prejudice their rights.²⁵ In so doing, these foresters, commoners and miners may have protested too much. No doubt they were, as they insisted, laboured and intimidated by the arbitrary proceedings of 'great men'. But the bloody-minded defence of custom formed the cornerstone of a bifurcated plebeian political culture in all three regions. Moreover, customary law in all three areas was heavily dependent by the late 1620s upon written documentation.²⁶ The point backs up one of the key findings of the 'new' social history of the period: that not only were the early modern lower classes notoriously litigious, but in many cases their local cultures were based upon a highly legalistic mind-set in which understandings of custom occupied a central place.²⁷

We should not therefore be surprised to find that as equity and common law process became more dependent upon the written word, so too did local customary law. In increasing proportion from the mid-sixteenth century, accounts of parish and manorial bounds were written down, vague local rights given new clarity in customaries, documents such as account books, manorial rolls, surveys, depositions and inquisitions collected into parish chests. One result was to standardize parochial, manorial and regional difference. Another was to provide a more concrete vision of community from which certain groups were closed out, and within which others were silenced. In spite of the well known participation of women in the assertion of key common rights, and in the maintenance of oral tradition, women featured very rarely in accounts of custom. In my sample of about 12,000 depositions held in the archives

²⁴ See especially C.W. Brooks, Pettyfoggers and vipers of the Commonwealth: the 'lower branch' of the legal profession in early modern England (Cambridge, 1986).

²⁵ For the Peak, see PRO, DL44/1121; PRO, DL4/91/16. For Gillingham Forest, see PRO, E134/3ChasI/East17. For the fens, see K. Lindley, Fenland riots and the English Revolution (London, 1982), 31.

²⁶ On the fens, see for instance W. Cunningham, 'Common rights at Cottenham and Stretham in Cambridgeshire', Camden Miscellany, new ser., 12 (1910), 173-289; on Gillingham, see John Rylands Library, Nicholas Ms., 65 [Customary book of Gillingham Forest]; on the Peak, see A. Wood, The politics of social conflict: the Peak Country, 1520-1770 (Cambridge, 1999, forthcoming), ch. 6.

²⁷ On popular ideas about the law, see J.A. Sharpe, 'The people and the law' in B. Reay (ed.), Popular culture in seventeenth century England (London, 1985), 244-70, and more recently *idem.*, 'The law, law enforcement, state formation and national integration in late medieval and early modern England', in X. Rousseaux and R. Levy (eds.), Le Penal dans tous ses etats: justice, etats et societies en Europe (XIIe-XIXe siecles) (Brussels, 1997), 65-80.

of central courts, around 90 to 95 per cent of deponents were male. Similarly, written customaries almost invariably defined custom as a male property, held by the 'Men' or (still more exclusive) the 'Substantial Men' of the place concerned. While this may not have had much practical effect upon the day-to-day operation of custom, given the lower levels of female literacy in the period one long term repercussion was to restrict women's participation in the growing document-conscious culture of custom.²⁸

The effect of the transliteration of custom was therefore to reorder the priorities and logic of local systems of law, and to a lesser extent to redefine the memories upon which they depended. Where lord and tenant sat down to negotiate the content of a customary, they created an ideologically-charged piece of writing. For the creation of a customary represented more than the simple description of agricultural, industrial or communal practice, or of the rights and dues owed by one social group to another. Rather, the customary froze a fluid set of relations, imposing a rigidity and homogeneity upon custom which had important implications for the future. Both lord and tenant were aware of the ramifications of deciding upon a fixed statement of custom, and to that end (dependent upon local circumstance) might be more, or less, interested than the other in agreeing a specific statement. Customaries were therefore the product of a complex web of local political interests, in which the rendering of custom into writing represented not the necessary domination of literacy over orality, or of elite over plebeian interest, but rather a formal, ideal statement of the balance of power at one given moment. Just as in their encounters with legal authority the plebeians of eighteenth century England were not to be 'mystified by the first man who puts on a wig' so their predecessors of the sixteenth and seventeenth centuries were unlikely to roll over at the production of pen and ink.²⁹

The point is best illustrated by example. In 1589, John Manners of Haddon, a powerful Derbyshire gentleman, purchased the Peak Country manor of Holmesfield. Knowing the Holmesfield copyhold tenants to be a troublesome bunch - they had been had up before the Court of Star Chamber for a collective assault upon their bailiff only eight years earlier - he wrote to the copyholders, telling them that he wished to avoid 'Sute and contensyon' and therefore wanted to have 'the customary of the Lordship set downe in certainty... whereby I may know what to demand, & they the better performe what is their Duty to doe'. To that end, Manners intended to convene a jury of copyholders whose duty it would be to describe their customs, 'therefore I will be well content therewith, that I may be ascertained what the Law is, which I will willingly yield unto'.³⁰ The subsequent customary detailed the nature of copyhold tenure, the extent of common rights, the organization of the common field system, the antique military service owed to the lord, the circumstances under which the tenants'

²⁸ I hope to write about the changing relationship between gender and custom elsewhere.

²⁹ Quoting E.P. Thompson, *Whigs and hunters: the origins of the Black Act* (London, 1975), 262.

³⁰ Sheffield Archives, MD3401/1; B. Bunker, *All their yesterdays: the story of an ancient Derbyshire village on the south-eastern foothills of the Pennines* (Sheffield, 1973), 78-80. On the Manners' role in disputes over custom in the Peak, see Wood, *Politics of social conflict*, chs. 7-11. The creation of the customary was important enough to lodge in the mind of Arthur Mower, who led the tenants' negotiations. Many years later, the production of the customary was one of the events which he singled out as noteworthy enough to enter into his brief autobiography. See BL, Add Ms 6671, fol. 163v; Bunker, *All their yesterdays*, 85-6.

labour services had been commuted to a cash payment some twenty years earlier, and the lord's monopoly over milling. The tenants stood to benefit from the bulk of the customs listed by the jury, which amounted to a fulsome statement of popular rights. Knowing the Manners to be harsh and interventionist lords, however, the jury added a series of riders to the customary, by which they hoped to provide fuller legal protection. They asked to see the lord's court rolls, 'for their further & better memory & instruction'. Furthermore, the customary of 1589 should 'remeane of record perpetually', as a statement of all the rights which they could recall at the moment of the passage of the manor into the Haddon estate. But they were keen to ensure that the customary itself should not provide the lord with a means of denying any wider claims which the tenants might make in the future, adding also that 'if any custome or matter materiall now in this short time not come to theire memory concerninge the Lord or them be omitted and forgotten, & shall hereafter come in their memory or aryse in question', then such additional customs should be entered alongside those of 1589.

The Holmesfield customary pointed to a very careful, hard-headed appreciation on the part of the tenants of the significance of writing. There was no sense that the relatively poor and largely illiterate villagers of 1589 were intimidated by the written word. They seem not to have regarded writing as a definitive statement of solid, permanent rights, but rather as a contingent product of their recent encounter with Manners. To that end, the tenants assumed that the customary could be overridden by the advance of memory, stating that any customs they had omitted to mention in 1589 should be added in thereafter. To the tenants, it was memory which carried authority within custom, rather than the means by which it was communicated. Yet in spite of the pragmatic attitude displayed by the tenants to writing, we ought also to note that the new customary was felt to be of sufficient importance that it should 'remeane of record perpetually'. The invention of past tradition was therefore intended to reach into the future.

Larger material conflicts between lord and tenant were sometimes reducible to contest over the 'writings' of a manor. Arrangements for access to such documents codified the uneasy relationship between interest groups: thus the keys of the 'greate chyste standinge in Wighton church' (Norfolk) which contained the evidences of the manor were divided between the tenants and the bailiff.³¹ Writing could act to sustain as much as to deny popular rights. The inhabitants of Huntingdon claimed freedom from all market tolls in the kingdom, by virtue of charters of 1205, 1348, 1381, 1402, and 1559 which were held by the town bailiffs. All seven deponents in an action of 1563 (two were yeomen, one a gentleman, one a minister, one fisherman, one pewterer and one unidentified) said that they had seen these charters, and had heard them read.³² Fifteen years later, Thomas Amborough, a shepherd of Godmanchester (Huntingdonshire), claimed a similar right and explained that when he used to trade at other town markets he always carried with him a copy of the Charter of Godmanchester which showed his exemption from market tolls.³³ The increasing use of written documentation by plebeians in the defence of their rights at law did not replace the spoken word in the articulation and definition of custom. Rather, it

³¹ PRO, DL4/17/27.

³² PRO, DL4/5/12.

³³ PRO, DL4/20/24, deposition of Thomas Amborough.

supplemented orality. By the late sixteenth century in East Anglia and by the Restoration in the Peak Country, it was common for equity court commissioners to hear from plebeian deponents that a custom existed time out of mind, that it was known by common report, and that the deponent had read or had heard read ancient documents which further proved the right. Depositions in earlier actions concerning the same or similar rights might also be produced, having been carefully safeguarded upon victory at law.³⁴ The source for such depositions was more likely to have been ‘common report’, memory and speech alone; but at their moment of their words being transcribed by the clerks of central courts, illiterate deponents also joined in the growing role played by writing within custom.

Yet the place held by writing within custom remained anomalous. In 1595, the 76 year old John Martin of Clare (Suffolk) remembered that in his youth a board displaying details of lands belonging to the almshouses had hung in the chancel of the parish church. He recalled that he had heard the contents of the board read aloud many times: as he told commissioners of the Court of the Duchy of Lancaster, ‘He doth not knowe how long it is since the same was sett upp there but by reporte he sayth it was longe there before he was borne’. The board was removed, together with much else, in the reign of Edward VI.³⁵ The Clare board, like the ‘auncient booke of the towne of Clare’ which John Martin remembered as ‘covered wth a whyte parchment’ functioned as a mnemonic device. For Martin the significance of the board lay not so much in its precise text, but in its place and function in his memory, calling to attention rights and duties to the community, and placed in a sacred spot within the church. Like the stained glass in the parish church of Haxey (Lincolnshire), which depicted John de Mowbray holding the deed which he granted in the fourteenth century to his tenants, and which provided the basis for the legal defence of their commons in the seventeenth century, the board in Clare church spoke to local inhabitants about their rights and duties, its meaning known to literate and illiterate alike.³⁶ For all that barriers between orality and literacy may have been rising in early modern England, they were rather less fixed and stable than they were to become by the eighteenth and nineteenth centuries. By the eighteenth century, the character of this transition in the place and relative strength of writing within popular culture was becoming more clear. Literate yeoman had their own chests, in which they kept documents proving individual and collective titles and rights; they bought newsbooks from London, linking them to the wider world of national and international print culture; sometimes they wrote indexed and ordered descriptions of their local laws, transcribed earlier customaries or the evidences on which they were based, or kept precedent books and extracts from manorial court rolls as points of reference to be produced in the case of dispute. From all this, the illiterate were being *gradually* excluded. But this process was long, slow and uneven in its geography. For many generations, writing and speech acted together to define remembrance and custom, and to strengthen local identities.

Writing was an important means of conserving memory and custom. But even in the eighteenth century, it was still not the only one. By 1700, its position in custom was

³⁴ For an example, see PRO, DL4/30/28, deposition of Thomas Gunthorpe.

³⁵ PRO, DL4/37/51, deposition of John Martin.

³⁶ C. Holmes, ‘Drainers and fenmen: The problem of popular political consciousness in the seventeenth century’ in A. Fletcher and J. Stevenson (eds.), Order and disorder in early modern England (Cambridge, 1985), 191-2.

becoming hegemonic; but that domination never became monolithic. Orally communicated memory, and the assumptions of everyday usage, habit and opinion bound up in 'the common report of the neighbours' remained key constituents of customary law, and hence of local identity. Indeed, local identity could be strengthened by the increasing authority of writing. Written documents helped to uphold custom, and hence in some part local identity, before central law courts. Written accounts of parochial and manorial bounds gave a clearer, and in some respects a sharper, sense of local difference. Written customaries and depositions, where preserved and widely communicated, helped to articulate and refine local loyalties, and could even become totemic emblems of a spatial identity: witness the 'Book of Dennis' whose widely-known provisions gave a solidity to the collective identity of the Free Miners of the Forest of Dean.³⁷

In noting the peculiarities of folk culture and local tradition, Gerry Sider has pointed out that we tend to perceive of the origins of tradition as lying 'in the hazy dawn of time' - a perception, of course, which the lower orders of early modern England both consciously played on and persuaded themselves of - and that we all too often see tradition in constant retreat before 'the expansion and consolidation of supralocal institutions'. So much has been true of the historiography of orality, literacy and custom in early modern England. But as Sider goes on: 'Clearly, incorporative structures of power *do* undermine and destroy differentiation; but they must also, simultaneously, create it.'³⁸

³⁷ For the 'Book of Dennis', see especially C.E. Hart, The free miners of the Forest of Dean and the Hundred of St. Briavels (Gloucester, 1953). For a revealing case study of the long preservation of legal records by tenants, see J. L. Drury, 'Sir Arthur Hesilrige and the Weardale chest', Transactions of the Architectural and Archaeological Society of Durham and Northumberland, new ser., 5 (1980), 125-37.

³⁸ G.M. Sider, Culture and class in anthropology and history: a Newfoundland illustration (Cambridge, 1986), 93.