



**Normandy's perhaps not so very ancient "*très ancien*"
*coutumier****

Nicholas Vincent

W Eves (ed and trans), *The Antiqua consuetudo Normannie, or "part one" of the so-called Très ancien coutumier of Normandy*, cxviii + 203pp Jersey and Guernsey Law Review, 2022. ISBN 978–1–914258–03–9

1 Despite its title, daunting for even the most meticulous of typographers, the edition presented here is one of the best as yet produced of any French medieval law book. Not only does it set new standards for the presentation of such materials, but it invites discussion of the status, date and perhaps most importantly the purpose of a text that continues to raise questions infuriatingly difficult to answer. What we must now learn to call the "*Antiqua consuetudo Normannie*" (henceforth "*AC*") survives complete in its Latin original in only one manuscript (Vatican MS Ottobonianus Latinus 2964), first identified in 1880 but until now unpublished.¹ A further almost complete version is preserved in Paris (Bnf MS 11032), but there broken up into chunks, scattered across a text of the later so-called "*Grand Coutumier de Normandie*". A medieval French translation, closer to, but not identical to the Latin of the Vatican manuscript, also survives in Paris (Bibliothèque Sainte-Geneviève MS 1743), accompanied by additional materials. Combined with the "*Antiqua consuetudo*", these additions (themselves surviving variously elsewhere in two further Latin copies, in Paris, Bnf MSS Latin 4653 and Latin 18368) have been collectively identified as a body of laws, known since the nineteenth century as the "*Très ancien coutumier de Normandie*". As a collection, this was published, first in French in 1839, thereafter in Latin (by Léopold Warnkoenig) in 1848. However, as early as 1869, Heinrich Brunner cautioned that this was to merge at least two separate entities into a

* For comments on earlier versions of what follows, I am indebted to Peggy Brown, David Carpenter, Daniel Power, and above all to (the as ever gracious) Will Eves. For assistance with Iberian materials, where I claim no personal expertise, I thank Maria João Violante Branco, Armando José Santana Bugés, and Eloísa Ramírez Vaquero.

¹ For a full online facsimile, see <https://digi.vatlib.it/view/MSS_Ott.lat.2964>.

single whole. Hence the present editor's insistence that the "*Antiqua consuetudo*" be considered, in its own right, as a distinct, and almost certainly more primitive "part 1" of what was only later (and in some ways accidentally) extended to become the so-called "*Très ancien coutumier*". Brunner's conclusions were adopted (with minor caveats) into what until now have been the standard editions by Ernst-Joseph Tardif of both the Latin (1881) and French (1903) texts of what Tardif stubbornly continued to call the "*Très ancien coutumier*".² By 1896, Tardif had also been made aware of the survival of the Vatican manuscript, but too late to do anything more than acknowledge its omission from the edition of the Latin text he had published fifteen years earlier.³ There, until now, matters have rested. Allowing for further investigations published (with particular attention to the Vatican manuscript) by Paul Viollet in 1906, by Robert Génestal, Robert Besnier and Jean Yver through to the 1970s, and more recently by Gilduin Davy, Ada Kuskowski and Judith Everard, there is general acceptance that the "*Très ancien coutumier*" is in reality a portmanteau comprised of at least two parts, the first (Eves' "*Antiqua consuetudo*") produced c.1199–1200, the second perhaps c.1220. Yver's chief contribution here was to suggest, in 1971, that the "*Antiqua consuetudo*" incorporates not just amorphous and previously unwritten "customs", but echoes of the otherwise vanished laws and "assizes" devised by Normandy's Plantagenet dukes, before the Capetian conquest of Normandy in 1204.⁴

2 What does Eves now bring to this debate? To begin with he supplies a succinct publication history, essential to anyone wishing to understand how these various texts have been preserved and edited. Furthermore, he proves beyond any doubt that the Vatican text is far superior to that published by Tardif, not least as a complete copy, supplied with chapter headings, of what in Latin 11032 survives without

² *Coutumiers de Normandie: textes critiques*, E-J Tardif (ed), 2 vols in 3 (Rouen 1881–1903) (henceforth Tardif), the "*Très ancien coutumier*" in vol 1 parts i–ii (1881 and 1903), the later "*Summa de Legibus*" in vol 2 (published in 1896).

³ Tardif, I part ii (1903), vi; II (1896), lii–liv, and cf Eves xviii n.

⁴ J Yver, "Le 'Très Ancien Coutumier' de Normandie, miroir de la législation ducal?", *Tijdschrift voor Rechtsgeschiedenis* (1951), 333–374, and in the same spirit, more recently, see G Davy, "Les chartes ducaltes, miroir du droit coutumier normand? Hypothèses sur les évocations de la coutume dans les actes des ducs de Normandie (fin XIe–fin XIIe siècles)", *Revue Historique de Droit Français et Étranger*, 85 (2007), 197–218, in furtherance of Davy, *Le Duc et la loi: Héritages, images et expressions du pouvoir normatif dans la duché de Normandie, des origines à la mort du Conquérant (fin du IXe siècle–1087)* (Paris 2004). For Génestal, see J Yver, "La Coutume de Normandie à travers l'oeuvre de R. Génestal", *Normannia*, 5 (1932), 201–226.

proper rubrics and only in incomplete chunks. His account of the various manuscripts and editions is in most respects exemplary, above all in setting out so complicated a tale in terms so easily construed. Not only does he list the contents and general patterning of AC, but he draws attention to a series of details, legal and historical, that help us with its dating and general contextualization. His edition, with clauses renumbered from those in Tardif, supplied with an English translation that is both fluent and accurate, allows not only for proper study of the Vatican manuscript (pp 1–125), but for full exposition of the variant readings that distinguish the Vatican from the Paris copy, here set out not only in a Lachmannian edition noting variant readings (pp 1–125), but thereafter (pp 127–174), for various of the thornier disparities, in full transcript from both manuscripts, set in columns side by side.

3 Of the significance of these disparities there is no doubt. Take, for instance, the very opening of the work where the Paris copy's (and hence Tardif's) injunction that the duke preserve "bonam pacem" is replaced by the Vatican manuscript's (grammatically inelegant but possibly more authentic) "kemina, pacem" (*i.e.* "to keep roads <and> the peace"). On occasion, the Vatican copy allows us to repair what is otherwise missing or mere gobbledygook in Latin 11032 (*i.e.* Eves pp lxxxix, xciii). Elsewhere, however, both copies are corrupt or offer readings still infuriatingly obscure (Eves pp ci–cii). As an example, let us take AC c 12.2, dealing with the person best charged with the wardship of a fatherless heir. "Who is this person?", AC queries, responding: "It is the lord of the land, who is unable to have that inheritance in demesne, for heirs of this kind from noble lineage have many heirs".⁵ No doubting the accuracy of Eves' translation here. But what on earth is meant by the linkage via the subordinating conjunction "for" ("enim")? Recourse to the medieval French translation can on occasion iron out such obscurities. But not in this instance.⁶ As Eves notes (p xcix, civ–vi), the French translator seems to have had access to a better text of AC than that supplied by either of the surviving Latin copies. Even so, we are still some way from anything like a satisfactory stemma to account for the divergences between the two Latin and the French texts.

⁵ "Quis est ille? Dominus terre, qui hereditatem istam/illam non potest habere in dominio/dominium, huiusmodi enim heredes de nobili genere multos habent heredes."

⁶ Tardif, I part ii (1903), 10: "Qui est cil? Ce est li sires de la terre, qui l'eritage ne puet avoir en demaine; quar cil oir, qui sont de noble lignage, ont plusieurs oirs." For proofs that the French manuscript is indeed a translation rather than an original, only later turned into Latin, see Tardif, I part i (1881), pp xc–xciii; R Besnier, *La Coutume de Normandie: histoire externe* (Paris 1935), 51–52.

4 In his introduction Eves also questions AC's status, and in particular, whether it is to be considered (as he and previous editors have preferred) an essentially late twelfth or early thirteenth-century epitome of Norman legal custom, or as I have elsewhere suggested, a later attempt, set down in light of the uncertainties that followed the Capetian conquest of Normandy in 1204, to reimagine what such customs ought to, or might have been.⁷ Making full allowance for the text's "moralising" or didactic elements (such didacticism clearly evident in the passage quoted in the previous paragraph), Eves suggests that it was the work of a cleric, perhaps even (p lxiv), as Tardif surmised, of a cleric closely associated with the diocese of Évreux. En route, Eves first considers, and then politely rejects my argument that the "Antiqua consuetudo", at various points, bears striking and in my view suspicious similarity to various clauses of King Henry III's 1225 Magna Carta, itself preserved in half a dozen Norman legal collections circulating in the same milieu and of roughly the same date as the Vatican and Paris manuscripts of AC, but there attributed (with apparently deliberate anachronism) not to 1225 and King Henry III but to the reign of King Henry II, before 1189.⁸

5 Let us begin then with Magna Carta, and with what may or may not suggest its connections to AC's supposed epitome of twelfth century Norman law. Passing for the moment over their more general correspondences, including the basic arrangement of their materials (with both AC and Magna Carta (henceforth MC) proceeding from ecclesiastical issues to widows and wards, thereafter to property, justice and then on to miscellanea), both MC (1225) and the "Antiqua consuetudo" deal with castles granted as dower. The "Antiqua consuetudo" (AC) (c 4.2) permits the granting in dower of any "manasgium" (sensibly enough, translated as "messuage") save for a "tower or castle" ("preter turrem vel castellum").⁹ MC (1225) c 7, here adopting a revision to the terms of King John's Magna Carta first accepted into the charter as reissued in 1216, permits a widow to remain in her husband's chief dwelling for 40 days after his death, save when

⁷ N Vincent, "Magna Carta (1215) and the Charte aux Normands (1315): Some Anglo-Norman Connections and Correspondences", *Jersey and Guernsey Law Review*, 19 (2015), 189–197.

⁸ N Vincent and others (eds), *The Letters and Charters of Henry II King of England (1154–1189)*, 8 vols (Oxford 2020–), vi, no 4006, all of these copies close both to the so-called Register G of Philip Augustus (Bnf Latin 11034) and the lost Register "St Just" of the Chambre des Comptes.

⁹ Missing from Tardif's 1903 edition of the French version, itself lacking its opening clauses and beginning only part way through Eves' AC c 4. No such restriction appears in the "Grande Coutumier" c 102 ("On dower"), whence *Le Grand Coutumier de Normandie*, JA Everard (trans) (St Helier 2009), 440–451.

such a place is a castle (“castrum”), in which case she must leave it and be accommodated elsewhere until her dower has been properly assigned. As Eves points out (pp lvii–lix) there is a distinction between the blanket ban of AC c 4.2 and MC (1225)’s procedural exclusion pending the assignment of dower. “What”, moreover, he asks, “of the suggestion that, before 1200, widows in Normandy had been able to receive castles in dower?” If such assignments were made, he admits, this might indeed suggest that the provisions of AC were derived “however tenuously” from MC, rather than reflecting the true state of twelfth-century Norman custom: yet “no evidence has been given for the occurrence of this practice”. Inconveniently for his argument, just such specific evidence exists.

6 In the 1170s, in a charter of unimpeachable authenticity, we find King Henry II confirming the stronghold (“fortis domus”) of Criel-sur-Mer as dower assigned by the late John count of Eu to his widow, the countess Alice.¹⁰ A “domus fortis”, one might quibble, is not exactly a “castellum”. But what then of the “castra” of Domfront, Falaise and Bonneville-sur-Touques undoubtedly assigned by King Richard in May 1191 as dower for his Queen, Berengaria of Navarre?¹¹ Queens and countesses, the quibbler might suggest, were no ordinary widows. In any event (Eves p lix) “the years of intermittent warfare between John and Philip Augustus from 1199 to 1204 may have provided the impetus for a change to the custom, especially as such fortifications played a crucial strategic role in the hostilities”. Just such seems to have been the case in England where the unspecific provisions of Magna Carta (1215) in respect to the widow’s 40 days were specifically altered in the charter’s 1216 reissue, devised in war time and thence transmitted to MC (1225) c 7, to exclude widows from castles, pending the assignment of their dower.¹² In the summer of 1204, when Berengaria was persuaded to surrender her Norman dower to Philip Augustus in a charter that specifically refers to her three “castra”, presumably neither the dowager Queen of England nor the King of France was aware of this change hypothecized by Eves.¹³ Or was it that this entirely

¹⁰ *Letters and Charters of Henry II*, ii, no 864a.

¹¹ *Les Registres de Philippe Auguste*, JW Baldwin, F Gaspari, M Nortier and E Lalou (eds) (Paris 1992), 469–470 no 28.

¹² Note that the 1216 Magna Carta was available in France, thanks to the two copies today preserved in the Archives nationales, for which now see D Carpenter, “The Copies of Magna Carta 1216 in the Archives nationales in Paris, and their Political Context”, in *Royauté, écriture et théâtre au Moyen-Âge: Mélanges en l’honneur d’Elisabeth Lalou*, M Bouhaïk-Gironès, A Grémois and X Hélyar (eds) (Mont-Saint-Aignan 2024).

¹³ *Registres de Philippe Auguste*, Baldwin *et al* (eds), 493–494 no 47, and for inquests into the values here, see 54–55 nos 10–12.

hypothetical change precipitated their actions? In other words, read in one way, there are indeed correspondences and anomalies that suggest MC (1225) or its model, MC (1216), precedes AC, with AC itself here and elsewhere offering what might also be considered as a gloss on MC. Read another, and all such correspondences and anomalies can be smoothed away. Thus MC (1225) c 7 allows a widow a third of her late husband's property in dower, "unless she were dowered with less at church door", whereas AC 4.1 specifies dower of "up to a third of the grantor's inheritance". Both share the same maximal proportion of a third, but in ways that might suggest not imitation but shared cultural assumptions, resulting in laws or customs themselves subtly distinct.

7 In much this way, Eves (p lix) notes my suggestion that AC c 52, authorizing the levying of aids for the knighting of a lord's eldest son and the marriage of his eldest daughter, corresponds to two of the three categories of aid permitted by MC (1215) c 12.¹⁴ But he then, quite rightly, notes that this clause of Magna Carta (1215) was omitted from MC (1225), both from the official "English" text and from the version of MC (1225) circulating in Normandy and there attributed to King Henry II. No matter that, as JC Holt long ago pointed out, MC (1215) was itself known to the Normans, in a vernacular version where we read precisely of aids levied "a nostre reimburse e a nostre ainzné fiz faire chevalier, e a nostre ainznee fille marier une feiz".¹⁵ No matter, either, that Magna Carta (1215) leaves unspecified the rate of aid that might be charged, that in AC cc 51–52 is rather more precisely established, defined as half what was paid in relief, itself assumed to be a sum generally and customarily agreed. We are dealing here with customary limitations found not only in England and Normandy but elsewhere across northern France, where such correspondences might result from simultaneous evolution rather than from deliberate copying. Quite so. Yet, why in dismissing my suggestions over MC (1215) c 12 and MC (1225) c 7 does Eves then ignore the dozen or more further correspondences between MC (1225) and AC to which I have

¹⁴ The three-fold obligation is spelled out by the "Grand Coutumier" c 35 (Everard (trans), 190–193), including the obligation to ransom a lord from prison, albeit in this instance with the qualification "if he should be captured in a war of the duke of Normandy".

¹⁵ JC Holt, "A Vernacular-French Text of Magna Carta, 1215", *English Historical Review*, 89 (1974), 346–364, at 358 c 12, and compare the French version (c 48) of AC c 52 (Tardif, I part ii (1903), p 36): "Se aucuns sires fet de son einzné fill chevalier ... e austresi a marier s'ainznee fille". For Magna Carta 1215 c 12 more generally, and for customs recorded elsewhere in Normandy before 1215, allowing three or even four occasions for such aids, including the knighting or ransom of a man's lord, see JC Holt, *Magna Carta*, 2nd ed (Cambridge 1992), 317–318, 412.

elsewhere drawn attention? To cite merely a few instances, why ignore the way in which AC c 9.5, prohibiting the partition of baronies, “hauberk” (*i.e.* what in England would be termed “knights”) fees or serjeanties, mirrors the provisions of MC (1225) c 32, intended to prevent alienations of land that might reduce a tenant’s capacity to render the services owing to his lord: a provision only partially recognized in the supposedly later “Grand Coutumier”, where in certain circumstances such partition is specifically licenced?¹⁶ What of the correspondence between AC 25 (“De dissaisinatione sine iudicio”), with its declaration “let no-one dare dispossess anyone of anything except by proper judicial process” (“nisi ordine iudiciario”), and MC (1225) c 29, prohibiting all disseisins and seizures save “per iudicium parium suorum vel per legem terre”? Or between AC c 51, distinguishing reliefs payable for “counties”, “baronies” and knights’ fees, each of which, it is implied, is set at a customary rate, and MC (1225) c 2, distinguishing (albeit in this case clearly specifying) the reliefs payable on earldoms (the English equivalent of Norman “counties”), baronies and knight’s fees.¹⁷ Or between AC 44.3, forbidding foresters, meadow-keepers and other ducal officials from initiating suits related to their bailiwicks on the basis of simple “testem” (here translated as “a witness”, but perhaps better just “testimony”), and MC (1225) c 28, forbidding bailiffs from placing anyone at law or on oath by their mere word of mouth (“simplici loquela sua”), without the production of reliable witnesses (“testes fideles”)?¹⁸ Where MC (1215 and 1225) c 6 decree that heirs are to be married “without disparagement”, AC 12.5 decrees marriage “in good faith” (“fideliter”, or in French “loialment”). In each of these instances, and many more, are AC and MC (1225) arriving at similar rulings as a result of shared assumptions, or by imitation? And if by imitation, is it MC that follows AC, or vice versa?

¹⁶ “Grand Coutumier” cc 26, 33 (trans Everard, 132–149, 172, esp 146–147), in contradiction of what is elsewhere (132–135, 176–177) decreed in respect to “impartible fees”.

¹⁷ By contrast, note that the “Grand Coutumier” c 34 (trans Everard, 184–191, at 184–185), acknowledges a distinction merely between baronies and knights’ fees, specifying the customary payments “in certain fees” as 100 livres for a barony and 15 livres for a knight’s fee, here with the same binary distinction and payment rates as in the second, “later” part of the “Très Ancien Coutumier” c 84, whence Tardif, I part i (1881), 93–94.

¹⁸ The meaning of AC here is helpfully construed in the French version (c 40.2, whence Tardif, I part ii (1903), 31) as “Li foretier n’amenront pas tesmoing seur le mesfet de la forest, ne li prevost en leur prevosté, ne li sergent en leur sergenteries”.

8 One of the more telling instances here returns us to MC (1225) c 29 (MC (1215) c 39) on lawful judgment by “peers” (“nisi per legale iudicium parium suorum vel per legem terre”). As Sir James Holt long ago pointed out, the principle of judgment by peers is far older than either the “Antiqua consuetudo” or Magna Carta, and indeed can be found in legislation of the German emperors as early as the 1030s. In England it surfaces in the so-called “Leges Henrici Primi”, and elsewhere in a wide variety of French or francophone contexts. As Holt, following Sir Maurice Powicke, also recognized, there are resonances here with AC 29, which states that “Assizes are to be held by barons and lawful men”, so that “peer should be judged by peer”.¹⁹ Holt assumed that MC was in this, as in other instances, potentially influenced by AC. However, as we have already found in respect to reliefs and aids, where MC (both 1215 and 1225) is unspecific in its definition of “peers”, AC 29 very clearly states that peer may judge peer, so that barons and knights judge one another and the people under them (“par enim per parem iudicari debet; barones igitur et milites ... possunt iudicare unus alium et subditum eis populum”). However, a peasant or member of the general populace (“rusticus ... vel aliquis de populo”) should not sit in judgment on a knight or cleric.²⁰ In England, in the decades after 1215, there was debate on precisely this issue. Magna Carta (1215) c 21 (MC (1225) c 14), for instance, had very specifically decreed that “earls and barons are not to be amerced save by their peers”, with the clear intention that they were to be judged only by other earls and barons.²¹ In the 1230s, we find Richard Marshal, earl of Pembroke, insisting on his right to judgment by peers, once again with the distinctly “French” spin that as, an earl, he was entitled to judgment by his fellow great men rather than by any mere appointees of the royal court. In response, the French-born bishop of Winchester,

¹⁹ Holt, *Magna Carta*, 75–76, and cf FM Powicke, “Per Iudicium parium vel ver legem terrae”, in *Magna Carta Commemoration Essays*, ed HE Malden (London 1917), 102.

²⁰ Once again, the French version (c 26) is significant here, albeit in retreating from any definition by which “peer” could be set apart from “baron” or “knight”, whence Tardif I part ii (1903), 22: “Les assises sont tenues par les chevaliers e par les leaus homes. Chascuns doit estre jugiez par ses pers: li baron et li chevalier, qui seivent les establissemenz de la loi e qui crient Dieu, pueent bien jugier li uns l’autre; mes il ne loist pas a vilain ne a aucun del pueple a jugier chevalier ou clerc”. By the time of the “Grand Coutumier” c 30, “par/per” had taken on a rather different meaning, still as “equal”, but here defined as the relationship between a tenant and he from whom the tenant holds, where both are descended equally from common ancestry: *Grand Coutumier*, trans Everard, 164–167.

²¹ As drawn to my attention by David Carpenter.

Peter des Roches, is said to have declared that “there are no peers in England as there are in the realm of France”, so that the King might with justice condemn whomsoever he wished, through whatever judges he might care to appoint.²² Viewed in this context, AC 29 seems to follow French rather than English understanding, with “peers” as a privileged minority, potentially set apart even from barons and knights, let alone from mere freemen or peasants, almost as if this were an attempt to gloss or supply a more specific definition of the term “peers” than that allowed for in Magna Carta. Certainly, were it MC that was here being influenced by AC, we might well ask why MC (1215) c 39 (whence MC (1225) c 29) is so unspecific in its definition of “peers”, when AC is so precise and unambiguous. Not least, why this lack of precision, when proper attention to the exceptions specified in AC 29 would have allowed those who drafted both MC 1215 and MC 1225 to forestall one of the more heated controversies to which the terminology of Magna Carta thereafter gave rise?

9 Was it in fact the case that MC failed to follow AC here, precisely because AC c 29 was set down in writing *after*, even perhaps in dialogue with, either MC (1215) c 39 or MC (1225) c 29? And note a side issue, itself of no small interest. AC c 29 assumes that “assizes” (by which it invariably refers to tribunals rather than to the laws that such tribunals enforce: a thirteenth- rather than a twelfth-century usage) “are held by barons and lawful men”. In reality, through to the Capetian conquest of 1204, Norman assizes seem to have been presided over not by barons but by ducal justices. It was Philip Augustus who introduced the procedural changes that AC 29 already seems to know. Rather than accept this as proof that AC dates from after rather than before 1204, we find Robert de Fréville, as early as 1912, suggesting that, as a text supposedly associated with Évreux, itself from the 1190s slipping within the influence of Philip Augustus, we can expect AC to exhibit “French” characteristics that might otherwise have been considered foreign to Normandy proper.²³ Alternatively, are we to suppose that the word “baron” of AC c 29 is not being used, as elsewhere in AC, to denote the duke-king’s tenants-in-chief, but in a technical sense to refer to the “barons of the Exchequer (at Caen)”: a panel of officials from whose number many of the justices in Normandy before 1204 were indeed drawn? Once again, special pleading must be brought to the rescue here, to smooth away anomalies that common sense might otherwise brand significant.

²² N Vincent, *Peter des Roches: An Alien in English Politics, 1205–1238* (Cambridge 1996), 408–410, citing Roger of Wendover and Matthew Paris.

²³ R de Fréville, “Étude sur l’organisation judiciaire en Normandie aux XIIe et XVIIIe siècles”, *Nouvelle Revue Historique de Droit Français et Étranger*, 36 (1912), 681–736, at 714–732, esp 714–716.

10 Magna Carta may well be a bee that buzzes for this particular reader but for few others. More generally, however, and here passing on to similarly busy hives, there can be little doubt that Normandy after 1204 witnessed the forgery or reworking of evidences on a scale almost matching that of England after the conquest of 1066. I have elsewhere supplied specific statistics here, noting, for example, that, although, overall, only one in ten of the charters of Henry II (1154–1189) is either forged or a suspected forgery, in the corpus of his Norman charters surviving from Capetian or Valois inspeiximuses issued after 1204, the proportion of forgery rises to nearly four in ten: two forgeries for every three authentic charters. This applies not only to charters preserved in the French royal chancery registers, but to such semi-official sources as the so-called “Cartulaire de Normandie” (Rouen MS 1235).²⁴ Looking to families below the level of the ruling Plantagenets, there seems to have been a similar willingness to “re-remember” the past, especially when it came to the charters of comital dynasties such as Dammartin/Boulogne, eclipsed by Capetian conquest after 1204. Conquest, whether of England after 1066, Normandy after 1204, or indeed Gascony after the 1450s, was an open invitation to forgery.²⁵ To the Normans it was thus all too tempting to claim that privileges or customs had been granted by now-ousted lords, including the Anglo-Norman dukes, whose present representatives were in no position either to confirm or deny the authenticity of the written instruments now attributed to them. More generally still, across not only France but Spain, Portugal, Scandinavia and other parts of Europe, it is often the case that laws supposedly ancient, set down in writing many years after their purported date of making, have been exposed not as truly “ancient” but as more recent re-imaginings of what “ought to have been”. We are indeed, in the words of Helen Cam, here as much in the world of the “law finder” as of the “law maker”, with custom itself highly malleable according to time, place and need.²⁶ Herein lies one of custom’s greatest strengths: that yesterday’s new procedure can become today’s accepted custom, or indeed tomorrow’s archaic abuse. Fritz Kern, the principal authority in such matters, likens custom to a forest that, though never cut down, is constantly remade, tree by individual tree, whilst, as Ada Kuskowski has more recently pointed out, even the medieval searchers for “good old laws” did not necessarily assume or

²⁴ N Vincent, “La Normandie dans les chartes du roi Henri II (1154–1189): archives, intentions et conséquences”, in *911–2011. Penser les mondes normands médiévaux: Actes du colloque de Cerisy-la-Salle (29 septembre–2 octobre 2011)*, ed D Bates and P Bauduin (Caen 2016), 405–428, esp 421–426.

²⁵ For Gascony, see below n 53.

²⁶ H Cam, *Law-Finders and Law-Makers in Medieval England* (London 1962), esp 11–22

demand that all such trees be of hallowed antiquity.²⁷ Even so, the search for them was widespread.

11 Thus, as Maria João Branco has argued, the so-called “General Laws” of the leper king Alfonso II of Portugal, supposedly promulgated in the vernacular in 1211, in reality survive in only two manuscripts, the first of these (Lisbon, Torre do Tombo, Nucleo Antigo no 1) no earlier than the fourteenth century, arranged in so haphazard and confused an order that it testifies either to incompetence on behalf of its maker, or constitutes not one but several accretions of material, not to be attributed to any single campaign of law-making, and in any event entirely unnoticed by contemporaries: never once cited in legal proceedings from 1211 through to the late fourteenth century.²⁸ Is this in reality a law code of 1211, or something closer in character to such pseudo-archaic codes as the English “*Leges Edwardi Confessoris*” or the Scots “*Regiam Maiestatem*”?²⁹ Much the same questions can be posed of the so-called “*Fuero General de Navarra*”, again surviving in only fourteenth-century vernacular copies, supposedly the outcome of a commission organized in 1238 by King Thibaut I of Champagne-Navarre to seek out and record the good old laws of his predecessors, kings Sancho VI and VII, but in reality just as likely an artificial construction or bricolage of old and new in the same tradition as the “General Laws” of Portugal.³⁰ From Aragón, likewise, the so-called codification of the *Fueros*, generally supposed to be the product of a

²⁷ AM Kuskowski, “The Time of Custom and the Medieval Myth of Ancient Customary Law”, *Speculum*, 99 (2024), 143–182, quoting Kern at 143, and see also Kuskowski, *Vernacular Law: Writing and the Reinvention of Customary Law in Medieval France* (Cambridge 2022), esp ch 1.

²⁸ MJ Violante Branco, “The General Laws of Alfonso II and his Policy of ‘Centralisation’: A Reassessment”, in *The Propagation of Power in the Medieval West: Select Proceedings of the International Conference, Groningen 20–23 November 1996*, ed M Gosman and AJ. Vanderjagt (Groningen 1997), 79–95.

²⁹ BR O’Brien, *God’s Peace and King’s Peace: The Laws of Edward the Confessor* (Philadelphia 1999); A Taylor, “What Does ‘*Regiam Maiestatem*’ Actually Say (and What Does it Mean)?”, in *Common Law, Civil Law and Colonial Law: Essays in Comparative Legal History from the Twelfth to the Twentieth Centuries*, ed W Eves and others (Cambridge 2021), 47–82; *Regiam Majestatem: The Earliest Known Version*, ed JR Davies and A Taylor, Stair Society 68 (Edinburgh 2022).

³⁰ JM Lacarra y de Miguel, “En torno a la formación del *Fuero General de Navarra*”, *Anuario de Historia del Derecho Español*, 50 (1980), 93–110; AJ Martín Ducque, “*Fuero General de Navarra: Una redacción arcaica* (Manuscrito 0.31 de la Real Academia de la Historia)”, *Anuario de Historia del Derecho Español*, 56 (1986), 781–861.

single assembly gathered in 1247 to enshrine the idea of a pact between ruler and ruled, in reality combines elements gathered over a far longer period and again survives only in a single, much later manuscript.³¹ Elsewhere in Spain, and despite the fact that local sensibilities continue to lean in favour of authenticity and antiquity, the “Fuero de León”, supposedly of 1017 AD, survives in no copy earlier than the 1120s, itself already diverging from whatever text served as its basis; the “Fuero de Salamanca” in no copy made within a century of its creation; the “Fuero de Teruel”, supposedly of 1176–1177, in various manuscripts, none of them earlier than the 1230s, with the standard edition reliant on a fourteenth-century copy, and so we might proceed, text by text and collection by collection.³² In these and other cases, the opportunities for reinvention and reimagination are surely too obvious to be ignored.

12 In these circumstances, two further aspects of Eves’ edition deserve attention: first, his dating and description of the manuscripts in which the “Antiqua consuetudo” survives, and secondly the specific details, including names and places, included within the text, that might allow us to approach more closely to the date of its making. On the manuscripts (pp lxvii–lxxv), Eves notes that both copies of AC are accompanied by (in several instances the same) miscellaneous charters and rulings, and by copies of the “Grand Coutumier” in French, generally dated to the late 1250s, in the case of Latin MS 11032 deliberately interspersed with other materials including the hacked apart sections of the Latin AC. On the basis of their handwriting, both manuscripts can be dated to the forty or so years after 1280; Latin 11032, it has been supposed, rather later than earlier within this time frame, since at p 45 it includes an Easter table with note suggesting that this table was made (although not necessarily copied) in 1311. What is missing here is any acknowledgement of the codicology, in the case of Latin 11032. This results from no fault of the editor, but from the pandemic of 2020–2021 that made it impossible for him to access the Paris manuscript other than via the *Gallica* images online.

³¹ J Speed, “The Thirteenth-Century Codification of the Fueros de Aragón”, *Traditio*, 71 (2016), 303–331.

³² I rely here entirely on information supplied by Armando José Santana Bugés, who directs me to the official collection of *Los Fueros del reino de Toledo y Castilla la Nueva*, ed MA Chamocho Cantudo (Madrid 2017), available online at <https://www.boe.es/biblioteca_juridica/publicacion.php?id=PUB-LH-2017-3>. For León, see M Pérez González, “El Fuero de León: Aspectos básicos y los textos más importantes”, *Boletín de la Real Academia de la Historia*, 2019 (2022), 7–28. For Salamanca, *Fuero de Salamanca*, ed J Sanchez Ruano (Salamanca 1870). For Teruel, *El Fuero de Teruel*, ed M Gorosch (Stockholm 1950).

13 In situ, we find that the Vatican manuscript is a semi-deluxe product, through-composed in one basic hand, datable no more precisely than “late s.xiii–early s.xiv”, offering the Latin version of the “Grand Coutumier” (the so-called “Summa de legibus”) followed by a selection of Exchequer memoranda and other charters, very similar to those in Latin 11032, including the assizes (as in Latin 11032 pp 214–220) and ending with the so-called “Consuetudines” of William the Conqueror: a semi-spurious text of the 1090s. Latin 11032, by contrast, consists of a series of disparate parts only later bound together. Law texts form the bulk of its contents, but as two distinct sections or booklets, running from pp 7–44 and then again from pp 47–224. These two legal booklets are framed and divided by three intrusions, pp 1–6 (Eves’ items 1–2), pp 45–46 (Eves item 20), and pp 225–227 (not noticed by Eves), all three of these smaller sections as distinct gatherings, written for the most part in one later hand and on lighter parchment than the principal legal materials. The Easter table datable after 1311 is entered as one of these smaller gatherings, on what seems to be a singleton leaf inserted as pp 45–46. On the reverse of this (unnoticed either by Tarif or Eves) are a series of apparently fourteenth-century memoranda relating to the age and life cycle of the Virgin Mary, a common Mnemonic on the Ten Commandments (“Sperne deos, fugito periuria ...”), and other broadly clerical topics (beginning “Beata virgo Maria fuit annorum duodecim et sex mensium et xvii. dierum quando concepit Cristum”, and ending with a distich on the naming of Christ, the Pope and the Virgin).³³ These are written in the same hand as similar clerical sentences at pp 1–3 (again unnoticed by either Tardif or Eves, and by Eves described as “obliterated” in part: true of the *Gallica* images online, but not of the original manuscript which is entirely legible here). This, now the opening section of the manuscript begins at p 1 with a verse receipt from the Salernitan *Regimen sanitatis*.³⁴ This same hand then continues in Latin and French with similar brief sentences, including at p 1 a model letter requesting information from another parish following reading of marriage banns, and a similarly model testamentary preamble, to p 3, ending with a distich (“Constat in altari carnem de pane creari; Iste cibus Deus est;

³³ “Cristus pastorem, papa servum, virgo minorem se vocat. Hinc minimum se quisquis vocet v(a)e finium”, not in H Walther, *Proverbia sententiaeque Latinitatis Medii Aevi: Lateinische Sprichwörter und Sentenzen des Mittelalters*, 6 vols (Göttingen 1963–1969). For “Sperne Deos”, see Walther, *Proverbia*, vi, 91 no 30130.

³⁴ “Salvia confortat neruos manumque tre<morem> tollit, et eius ope febris acuta fugit”, for which see J Usher, “Simona and Pasquino: “Cur moriatur homo cui salvia crescit in horto?”, *Modern Language Notes*, 106 (1991), 1, citing Walther, *Proverbia*, iv, 704 no 27458.

qui negavit hoc reus est”) followed by four lines derived from verses on the Mass elsewhere attributed to William de Montibus.³⁵ At pp 3–6 there are also the brief Exchequer memorandum and the “customs” of Cheux (Calvados) as noticed by both Tardif and Eves, but here with only tangential association with the legal materials elsewhere in the two longer booklets at pp 7–44 and pp 47–224. All this entirely contrary to the impression first created by Tardif that these are all parts of a supposedly coherent collection. On a bifolium inserted at the very end (pp 225–228), the hand of the memoranda resumes on p 226 (p 225 is blank) with a series of sentences, the first partially illegible but continuing with a canon law tag (“Nulla dierum antiqua posses(s)io iuuat aliquem male fidei possessorem”),³⁶ followed by quotations from the Psalms (“Gustate et videte ...”, Ps 33:9) and further brief sentences in Latin and French, mostly clerical or moral.

14 Whatever else these miscellaneous materials suggest, they surely reveal the clerical ownership of these particular sections of the manuscript. More importantly, the codicology removes any necessity to suppose that either the materials at pp 7–44 (Eves’ items 3–19, including the charters of Philip Augustus and the long register of fees, pp 23–44), or the custumal and other materials that follow from pp 47–224 (Eves’ items 21–26) are in any way datable by the Easter Table. On the contrary, these two parts (pp 7–44, and pp 47–224) were once distinct, created as two independent booklets, only later joined to one another and to the other smaller miscellaneous gatherings. At p 7, indeed, we find an early modern heading suggesting that this may originally have been an opening page: “Constitutio domini regis de consuetudinibus tenamentis in chart(ario) in 5 pag’ pa.2”, with the same hand inserting at the foot of this page a further heading: “Constitutio Guillielmi regis super Normanos facta, pagina 2 fo. In chartario M.S.”, implying an attempt by the annotator to identify these texts with copies found in other manuscripts, not now traceable). The legal materials then resume from pp 7–44, as a second larger booklet written in a hand

³⁵ “Panis mutatur, specie remanente priore; Sed non est talis qualis sentitur in ore. Res occultatur quare quia si videatur; Forsitan horreret, et manducare timeret”. For “Constat in altari”, see the list of manuscripts cited by R Favreau, “Les Inscriptions du calice et de la patène de l’abbé Pélage au Louvre”, *Comptes Rendus des Séances de l’Académie des Inscriptions et Belles-Lettres*, 137 (1993), 42; H. Walther, *Initia Carminum ac versuum medii aevi posterioris Latinorum* (Göttingen 1959), 161 no 3214. For “Panis mutatur”, see J Goering, “The ‘Diffinitio Eucaristie’ Formerly Attributed to Robert Grosseteste”, *Journal of Theological Studies*, 37 (1986), 96 n.25, 104 lines 219–225; Walther, *Initia Carminum*, 703 no 13624.

³⁶ Gregory IX “Liber Extra” 2.26.5, as in E Friedberg, *Corpus Iuris Canonici*, 2 vols (Leipzig 1879–1881), ii, 383.

similar but distinct from that of pp 7–44, in a series of a dozen further gatherings, with blue and red decoration (including at the start (p 47) a rather splendid drawing of a fish).³⁷ From p 47, we proceed via the French text of the “Grand Coutumier” intercalated with Latin sections of AC (pp 47–187), a series of judgments of the Norman Exchequer (from 1207 to 1250), various other law materials including further judgments (pp 214–220, mostly undated but including sentences dated 1233, 1236 and 1246), ending with a charter in French (pp 220–222) relating to Ric(hard) de Baupte (“Banc”), clerk of the parish of Rots (Calvados, cant. Thue et Mue), acknowledging his farm from the abbey of Saint-Ouen at Rouen of property at Rots (“Ros”) and elsewhere, dated 13 December 1309 (Saturday the feast day of St Lucy virgin). There then follows a law text in French, written in a later hand but inserted immediately after Richard’s charter, ending incomplete at p 223, with at the foot of this page an early fourteenth-century note of the book’s sale by Richard de Baupte to Robert le Merchant, as noticed by both Tardif and Eves. Only then, and unnoticed by any of the modern authorities, do we get to the distinct gathering with which the manuscript now ends, pp 225–228, with its collection of moralizing tags and sentences. We should note that Richard’s parish of Rots (p 220) is immediately adjacent to Cheux (Calvados, comm. Thue et Mue), whose customs are preserved at pp 5–6.

15 So much for the knitting patterns. The best that can be said here is that the distinct booklet within Latin 11032 containing AC (pp 47–224) was written at some time, probably after December 1309, in the same hand that copied the charter at pp 222–223, and that pp 1–6, 45 and 225–228 seem to have been bound up with it only after the sale of this booklet from the Richard de Baupte (fl 1309), whose sale certificate was inserted on what was then the final written page (p 223, with p 224 blank). Annotations in French at the head of p 132 (“Ne porgnant len toet porsier de son herung”, folded over the top of the manuscript in such a way as to reveal that the leaves were originally considerably larger than is now the case), and at the foot of p 174 (“Quiconques se cleime de marchie de borse doet fere son claem au seriant il perdroet sa querele”) are perhaps written in the same s xiv hand responsible for pp 1–6, 45 and 225–228, suggesting that the author of pp 1–6, 45–46

³⁷ As noted by Tardif, I part i (1881), p xiii, the distinct gatherings or quires are revealed by contemporary catchwords on the feet of the reverses at the end of most quires, the quires themselves apparently dividing pp 47–62, 63–78, 79–94, 95–110, 111–118, 119–142, 143–150, 151–158, 159–174, 175–190, 191–206, and 206–222 with pp 223–224 apparently a singleton leaf. The binding (remade in modern times) is too tight for absolute certainty here. As noted below, the leaves themselves have been cropped, with their original dimensions indicated by the marginal note at the head of p 132.

and 225–228 may indeed have come into possession of the two law booklets that form the bulk of the present manuscript, but at a date some time after 1309, leading to a situation in which his own miscellanea were then bound up with the legal materials at pp 7–44 and pp 47–224, themselves originally forming two distinct albeit contemporary booklets. Overall, therefore, we have no evidence that AC was known in any form circulating before c.1300, albeit that there is nothing here to prove that AC was not written many years before the earliest manuscript in which it survives. In other words, our knitting patterns, whilst significantly revising our understanding of Latin 11032, solve none of the underlying problems posed by the text of AC.

16 So we come to the names and specific instances cited within AC itself. Eves (pp l–lvi) supplies a tally of these noting, for instance, a reference in AC c 73 to “the time of William/Wulsi de Wascuilis” (who may or may not be the Gilbert de Vascoeul disgraced for his treachery to Richard I in 1193), and most importantly (c 69) to the “time” and rulings of William the seneschal (almost certainly William fitz Ralph, who died in June 1200). A Roger Ferrand (Eves p lv, following Tardif), serjeant of the earl of Leicester, in March 1203 considered by King John as potential replacement for the royal serjeanty at Caen may or may not be the “Ferrandus” who according to AC c 73 “in the time of William/Wulsi de Wascuilis” was forbidden by the seneschal from ever again holding office as serjeant.³⁸ Eves supposes that this statement must predate what he interprets as Roger Ferrand’s re-appointment in March 1203. Just as easily, it might suggest that William and Gilbert de Vascoeul are not the same person and that AC c 73 must date from after rather than before March 1203. “Ferrant” alias “Ferrand”, it should be noted, is a common Norman byname, widely recorded across the pre-1204 Norman Pipe Rolls.³⁹ Nor should we forget that Gilbert de Vascoeul, or a namesake, survived his disgrace in 1193 and can be found as a tenant of the new Capetian order at least as late as 1207.⁴⁰ Other such names, including that of Nicholas Trussebut (AC c 15.3, named apparently a minor at the time that his elder sister was married to Robert de Tournebu); Bertram de Verdun, Peter Foliot, Roger de Saint-André, Odo “le Manc”, Stephen “de Sancto Lucio” (AC cc 64.1, 70.2, 73.1); Norman d’Ogierville and Bernard le Beccant (*alias* “Silly

³⁸ *Rotuli Normanniae in Turri Londinensi asservati*, ed T Duffus Hardy (London 1835), 83.

³⁹ See *Magni Rotuli Scaccarii Normanniae sub regibus Angliae*, ed T Stapleton (London 1840–1844), i, 87, 174, 181, 203; ii, 338, 412, 452–453, 493, 554, 559, 563, 565–566; *Rotuli Normanniae*, ed Hardy, 76, 90, 99, where we encounter men named Halebout, Hugh, Richard, Thomas and William Ferrant, with a further series of “Feronis” and “Ferrats” elsewhere in these rolls.

⁴⁰ *Registres de Philippe Auguste*, ed Baldwin *et al*, 286.

Bernard”, AC c 74.2), offer only scant enlightenment. Most are otherwise unrecorded in the records of chancery or Exchequer, Plantagenet or Capetian. Nicholas Trussebut may be the man of that name recorded holding from the honour of Montfort-sur-Risle both in 1180 and c.1208, shortly after the conquest of 1204.⁴¹ Bertram de Verdun may be the courtier of Henry II who died in 1192, albeit leaving both a son and possibly a grandson of the same name.⁴² Roger de Saint-André is a figure recorded in the 1190s, apparently dispossessed following Philip Augustus’ seizure of the Évrecin, after 1200.⁴³ But none of this either proves or disproves AC’s supposedly pre-1204 date. More significantly, perhaps, we might note AC c 47.2–47.3, allowing adjournments to those absent on business in England or Ireland, or on pilgrimage to Rome or Saint-Gilles. Unnoticed by Eves, England and Ireland seem here to be treated as “foreign” realms, placed after Spain

⁴¹ *Magni Rotuli*, ed Stapleton, i, 82 (where, in 1180, his 19 livres of land at La Vitotière (“Witoteria”), ?Eure, cant. Brionne, cne. Launay, were in custody); *Registres de Philippe Auguste*, ed Baldwin *et al*, 293, and for men named Robert de Tournebu active both before and after 1204, see *Le Cartulaire de l’abbaye Bénédictine de Saint-Pierre-de-Préaux (1034–1227)* (Paris 2005), 359–360 no B129; H Léchaudé d’Anisy, “Extraits des chartes du Calvados”, 2 vols, *Memoires de la Société des Antiquaires de Normandie*, 7–8 (1834–1835), i, 120 no 946; ii, 154 no 132. Even so, Robert has no specific entry in what is otherwise still the standard account of his family’s descent, by VC Fierville, “Histoire généalogique de la maison et de la baronnie de Tournebu d’après les archives inédites de cette famille”, *Memoires de la Société des antiquaires de Normandie*, 26 (1867), 170–367, although for a twelfth-century namesake, see 336–337 no 2.

⁴² MS Hagger, *The Fortunes of a Norman Family: The De Verduns in England, Ireland and Wales, 1066–1316* (Dublin 2001), 16, 210–211, 249, 251.

⁴³ As drawn to my attention by Daniel Power, from details in Power, *The Norman Frontier in the Twelfth and Early Thirteenth Centuries* (Cambridge 2004), 422, 483, augmented and corrected by J Mesqui, *Les seigneurs d’Ivry, Bréval et Anet* (Caen 2011), 58, 68, 90, 298, 347–348. As Power points out, Roger was lord of Saint-André-en-la-Marche, now Saint-André-de-l’Eure (Eure). He must have been descended from Roger le Bègue (fl 1137), lord of Grossœuvre (Eure, cant. Saint-André de-l’Eure), a son of the notorious Ascelin Goel of Ivry, and so from a branch of the Louvels of Ivry and Minster Lovell (Oxfordshire). The younger Roger was receiving revenues at Docking (Norfolk), a Louvel possession, in 1193/4 (*Pipe Roll 6 Richard I*, 23) and was a donor c. 1200 of the abbey of La Noë (Bnf MS Latin 5464, no 34). The Roger de Saint-André who appears in the list of Norman fiefs in 1172 holding a single fee (*The Red Book of the Exchequer*, ed H Hall, 3 vols, Rolls Series 99 (London 1896), ii, 631) may be the same man, or an intervening generation between Roger le Bègue and the Roger who was living in 1193/4.

but before Hungary. Moreover, would a pre-1204 compiler have listed Saint-Gilles-du-Gard as the most obvious place of pilgrimage after Rome, given the well-known appeal of Canterbury and St Thomas to Norman pilgrims before that date?⁴⁴

17 Language might be expected to supply further clues here, not least because the Latin of the text is so conventionally Anglo-Norman legalistic, with none of the regional or vernacular loan words that we might expect of a treatise grappling with concepts and principles foreign to the twelfth- or thirteenth-century mind. Even the more unusual words that do occur—“foriurantis” (AC c 6.2), “campio” (cc 19, 45), “mallavere” (c 14.1), “recreantisia/recreantisa” (cc 45, 54.5), “proprisium” (cc 17.1, 63.1) and so forth—in almost all cases can also be found in English sources of this period (*cf* “forisjurare”, “marlare” *etc*, and from c 17, *cf* Eves’ note at p 38 on Bracton’s use of “armum molutum”). A rare exception is “metearia” (AC c 23, in the French version “loage” alias “moitoierie”): a crop-sharing arrangement widely practised elsewhere in France (in modern French “métairie”), fully documented in Norman, albeit not in English sources, before 1200.⁴⁵ But for the rest, nothing on “Haro”, nor any of the more distinctive terminology (“namps”, “éperquerie”, “champart”, “melagium”, “harella”, “frotagium”, “borda/bordagium”, “fouage”, “deresnatio”, “quadablum”, and so forth) to be found in such early to mid-thirteenth-century sources as the “Grand Coutumier” or King John’s “Constitutions” for the Channel Islands.⁴⁶

⁴⁴ In the “Grand Coutumier” cc 91, 95, 99 (trans Everard, 372–373, 394–395, 420–421) we read of pilgrimages to Jerusalem, Rome or Compostela, and of potential voyages to Jerusalem or Galicia (*i.e.* Compostela).

⁴⁵ *Letters and Charters of Henry II*, nos.87 (line 67), 1864n, 2277, 2425 (lines 57, 59), 2433 (lines 7, 16), 2438 (lines 9, 17), 2669–2670.

⁴⁶ For John’s “Constitutions”, best supplied in *Calendar of Inquisitions Miscellaneous (Chancery)*, i (London 1916), 15–18 no 55, see JA Everard and JC Holt, *Jersey 1204: The Forging of an Island Community* (London 2004), 109–110, 156–165, and for these and other such relics see the “Grand Coutumier”, cc 5–7, 24, 28–29, 53–54, 61, 66, 70–71, 79, 82, 84–85, 126 (trans Everard, 20–21, 26–27, 30–43, 102–103, 156–157, 162–163, 232–233, 238–247, 262–263, 278–279, 304–307, 328–329, 334–335, 338–339, 346–347, 348–349, 588–589. For “Haro”, see H Pissard, *La clameur de Haro dans le droit normand* (Caen 1911). For “campipartitus” and “harella”, see *Recueil de jugements de l’Échiquier de Normandie au XIIIe siècle (1207–1270)* (Paris 1864), 89 no 348, 156 no 686, traceable via Robert Génestal’s invaluable *Index des termes juridiques et économiques contenus dans le Recueil des jugements de l’Échiquier de Normandie au XIIIe siècle* (Paris 1929).

18 As for the supposed “statutes” or laws passed by the Angevin kings that Jean Yver believed might be disinterred from various of AC’s “customs”, the only specific “laws” of Henry II that can be easily identified are the Norman equivalents to the standard English possessory assizes of novel disseisin, mort d’ancestor and darrein presentment (AC cc 25–26). A prohibition mentioned by the chronicler, Robert of Torigny, said to have been issued by Henry II in 1182, forbidding any baron from holding his court at the same time as those held by the duke is perhaps reflected in AC c 48.2, although even here, compare AC c 48.1 which assumes precisely the clash of hearings that the 1182 ruling was supposedly intended to avoid.⁴⁷ Eves (pp xl–xli, lx–lxi) notes the occasional echo of such Roman law concepts as “possessio” or “actor” (AC cc 25.2, 46.2), dismissing these as evidence of later “contamination”. In reality, such concepts, although troubling to those who would seek entirely to segregate customary from statute-based law, no more prove a thirteenth than a twelfth-century context.

19 In further pursuit of dating, it has long been noted that AC c 13 decrees that in paternal inheritance a younger son should take precedence over any male heir born to his elder brother, “as happened with King John of England, and this is a most false judgment”.⁴⁸ Eves dismisses these last seven words as a later marginal gloss somehow carried into the text of both manuscripts, with the exclamation against falsity then deliberately erased in the Vatican copy. Less easy to dismiss, however, is the reference in this same clause (AC c 13) to events that occurred subsequently “during the time of war when King Richard was in possession, and in the time of John”. This Eves allows suggests a date after 1199. But it surely also suggests a date after 1204, indeed potentially even after John’s death in 1216? So too do references in AC c 73 to dukes of Normandy who might be either “king of England or France” (Vatican reading) or simply “king of France” (Latin 11032). Once again, Eves (pp liv–lv) proposes either to dismiss this as a later gloss, or else to accept it as proof that AC dates to “the last years of the 1200–1204 conflict between John and Philip Augustus” when either king might have claimed the requisite authority. Such is his *modus operandi* throughout, like Tardif and de Fréville before him: smoothing away difficulties by suggesting that the text has been “contaminated” by latter glosses and other additions, with the adoption as text of what

⁴⁷ Yver, “Le ‘Très Ancien Coutumier’ de Normandie, miroir de la législation ducale?”, esp 345, 362–363, although see 353–354, suggesting a statute on the indivisibility of baronies and other fees (AC c 9.5), for which see below.

⁴⁸ Cf what is potentially a direct rebuttal of AC c 13, or at least in dialogue with AC, in the “Grand Coutumier’s” indignant rejection of the practice of favouring nephews over younger sons: “Grand Coutumier” (trans Everard) c 25.2, as in Tardif, II (1896), 73–74 (where it appears as c 23.3).

were originally mere marginal glosses or interpolations. AC itself, he allows (Eves pp xxxiv–xlv, esp p xlv), is a “patchwork of legal material” laid down in several stages, at various points repetitious or bafflingly self-contradictory. Elsewhere (Eves pp xlvi, l, lx) this patchwork, or “potentially composite nature” is fully acknowledged. At no point, however, does he allow the surely more obvious conclusion that the principal “laying down” here occurred not before, but after (indeed perhaps long after) 1204.

20 Why such reluctance? And here we approach the nub of the matter. If it can be accepted as something dating from before 1204, not only is the “Antiqua consuetudo” a remarkable survival from the time of the Anglo-Norman and Plantagenet kings, but a relic fit to stand alongside the English treatise “Glanvill” as one of the first and greatest monuments of Anglo-Norman common law. As such it would continue to rank as the oldest and most detailed of all French customals dealing with a region or province rather than with merely one town or set of municipal customs.⁴⁹ The fact that it is preserved in Latin adds to this halcyon allure, since from the mid-thirteenth century onwards virtually all such provincial customals were written not in Latin but in French. There is no doubt that AC has archaic, or as sceptics might suggest perhaps deliberately archaized elements. The ruler of Normandy is “the duke”, although as Eves allows (pp xlix–l) this is an appellation still preserved in the later Norman legal treatises, including various copies of the later “Grand Coutumier”.⁵⁰ The “Grand Coutumier”,

⁴⁹ Hence its continuing to head the list of such customals usefully supplied by Kuskowski, *Vernacular Law*, 5, 64–65, 67–68, 102–104, at 64–65 dating AC to “around 1200” (although acknowledging doubts as to later transmission), followed next by the (French) “Coutumes d’Anjou et du Maine” (1246). Kuskowski rather confusingly cites the post-1207 judgments of the Norman Echiquier from the Marnier edition of 1839, rather than from the far better edition by Léopold Delisle, *Recueil de jugements* (Paris 1864), with subsequent materials edited as *Arresta Communia Scacarii ... (1276–1290, 1291–1294)*, ed L Jouan (Caen 1910). The earlier municipal customs, including those of Breteuil, Verneuil, Rouen, and beyond Normandy, Beaumont-en-Argonne and Lorris-en-Gatinois, have spawned a rich scholarly literature, amongst which see in particular A Giry, *Les Établissements de Rouen*, 2 vols (Paris 1883–1885); M Prou, *Les coutumes de Lorris et leur propagation aux XIIIe et XIIIe siècles* (Paris 1884); M Bateson, “The Laws of Breteuil”, *English Historical Review*, 15 (1900), 73–78, 302–318; 16 (1901), 92–100, 332–345; A Ballard, “The Law of Breteuil”, *English Historical Review*, 30 (1915), 646–658, and *La Charte de Beaumont et les franchises municipales entre Loire et Rhin* (Nancy 1988).

⁵⁰ Cf “Grand Coutumier”, trans Everard, with only vague acknowledgement in c 24 (trans Everard, 62–63), that the King of France now holds the authority that the duke formerly exercised, although cf cc 25, 48, 111–113 (trans Everard,

generally dated to the 1250s, itself incorporates further antiquarian elements, not least its chapter 10 dealing with the office of “seneschal”, in reality abolished in Normandy following the Capetian invasion of 1204.⁵¹ By the 1320s, at least on the island of Jersey, this Latin “Grand Coutumier” was itself being described as if it were a “register” of customs invented by the former king-dukes of England and Normandy: in other words as a relic from before the Capetian conquest of 1204.⁵² Indeed, a willingness to reference the long distant past remains a characteristic of the French customals more generally, long into the fourteenth century, not least in Gascony where we find the attribution to early Plantagenet kings of the authorship of what are palpably much later compilations (of the laws of Agen, Bayonne, Marmande *etc*) themselves reporting specific details of twelfth-century Plantagenet administration that are either deliberately re-invented or filtered through several layers of subsequent mis-remembrance.⁵³

21 Amongst such archaisms in AC, various matters are left to the ordeal by water or possibly hot iron (AC cc 42–43, 54.2, 54.7, 55.1), forbidden in 1215 and in the secular courts rapidly dropped from procedure thereafter.⁵⁴ Punishments are elsewhere draconian, and preserve elements of feud so that (AC 39.1), for instance, no ducal

118–119, 222–223, 470–473, 477–487, 498–499) for the “time of the English”, and occasional references to kings Philip (Augustus) and Louis (IX).

⁵¹ “Grand Coutumier”, trans Everard, pp xx, 52–9, and *cf* c 126 (trans Everard, 590–593), at pp xviii–xix, xxiv–xvii, rehearsing Tardif’s arguments for a date c. 1254 X 1258, but noting that the earliest certain *terminus a quo* is 1223, and the latest *terminus ad quem* 1276. *Cf* also “Grand Coutumier” cc 22, 113, 127 (trans Everard, 96–97, 498–489, 596–597) employing the coronation of Richard I (1189) as a term of legal memory, in place of previous reference to the coronation of Henry (II) (not Henry I, as in the notes by De Gruchy).

⁵² J Le Patourel, “The Authorship of the Grand Coutumier de Normandie”, *English Historical Review*, 56 (1941), 292–300, esp 298.

⁵³ See here N Vincent, “The Plantagenets and the Agenais (1150–1250)”, in *Les Seigneuries dans l’espace Plantagenêt (c 1150–c 1250)*, ed M Aurell and F Boutoulle (Bordeaux 2009), 417–456, esp 419–421, 427–432; F Boutoulle, “Inventer un passé urbain: la production et l’utilisation de faux à Bayonne au XIII^e siècle”, *Revue de l’Agenais*, 150 (2023), 83–98.

⁵⁴ For the almost immediate abandonment of ordeal in secular courts after 1215, see R Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford 1986), 100, 164, noting rulings in Denmark (1216), England (1219) and Aragon (in or before 1247), and *cf* Kuskowski, *Vernacular Law*, 45, 99–100, citing F McAuley, “Canon Law and the End of the Ordeal”, *Oxford Journal of Legal Studies*, 26 (2006), 473–513, which deals with pre-1215 causes rather than post-1215 effects. Note that the replacement of the ordeal by sworn inquest is specifically referenced in the “Grand Coutumier” c 76 (trans Everard, 322–325)

peace (*i.e.* pardon) can be allowed unless the killer is first reconciled with the “friends” of the person slain. By this one assumes that, as in England, some amount of compensation was expected to be paid, as a hangover from the times of “wergild”.⁵⁵ Ducal letters of pardon were to be worn around the neck for the first year and a day after their award (AC c 39.3–39.4), save in the case of greater men who might carry such letters undisplayed.⁵⁶ Burgesses might imprison wicked landless knights, and hold them in chains, pending judgment in court, albeit that wicked commoners (“de populo”) were to undergo their “penance” (“penitentiam”) in the “common prison” (“prisiona/prissiona vilis”, in French “la vilaine prison”) of the duke (AC 61.3). No account is taken of a 1207 French royal ordinance on procedures in case of advowson, although as Eves allows (p xlvi) there is no certainty that this was widely adopted in Normandy much before the 1220s. Parage between brothers seems to be tolerated in AC c 37.1, but elsewhere (AC cc 9.1, 9.5, 49) is either forbidden or strictly regulated, in ways that accord with a new ruling issued by Philip Augustus in 1209 (itself recited in the first legal compilation in Latin 11032, Eves p lxxviii no.3), this Capetian legislation subsequently enforced in the Norman assizes, albeit never entirely accepted into local custom.⁵⁷ As noted long ago by Tardif, the verse chronicler Guillaume le Breton reports a decision by Philip Augustus, apparently made shortly after 1204, to impose penalties of life and limb, rather than merely a monetary fine, on any accuser defeated in a judicial duel. This innovation makes no appearance in AC cc 45, 54.5, where the penalty for a defeated accuser remains fiscal rather than physical, and is set at precisely the figure (60 sous 1 denier) that Guillaume specifies as ancient and abusive.⁵⁸

⁵⁵ ND Hurnard, *The King's Pardon for Homicide Before A.D. 1307* (Oxford 1969), xi, 9–10, 21–22, 194–213, noting that such compensation was a regular feature of pardoning in England, but not, contrary to AC, a formal necessity before any pardon could be issued.

⁵⁶ Again archaic by comparison with English procedure as recorded by Hurnard, *King's Pardon*, 59–66.

⁵⁷ *Recueil des actes de Philippe Auguste, roi de France*, ed H-F Delaborde, C Petit-Dutaillis, J Monicat, J Boussard and M Nortier, 6 vols (Paris 1916–2005), iii, no 1083, and for enforcement thereafter, see M Billoré, *De gré ou de force: l'aristocratie normande et ses ducs (1150–1259)* (Rennes 2014), 325–326, and especially R Génestal, *Le Parage normand* (Caen 1911), 8ff, at 9 citing cases of 1223 and 1239, as in *Recueil de jugements*, ed Delisle, 88 no 345, 147 no 664.

⁵⁸ Tardif, I part i (1881), p lxvii, from Guillaume “Philippiad” Bk 8 lines 228–240, as in *Oeuvres de Rigord et de Guillaume le Breton, historiens de Philippe-Auguste*, ed H-F Delaborde (Paris 1882–1885), ii, 219, with note misleadingly referencing a charter of Richard I, dated 1 March 1190 (P

22 All told, and given the rich array of specific instances naming real people active both before and after 1204, there can be no doubt that AC incorporates a great deal of what was historically “remembered” as Norman law from before the Capetian take-over. But as to whether this remembering was done before 1204, or as seems equally probable, thereafter, the jury must surely be allowed a degree of latitude denied to them in Eves’ rather too restrictive directions from the Bench. It is in the period after rather than before 1204, when Philip Augustus was so keen to establish what were and what were not the uses and abuses of Norman custom (if only so that such uses and abuses might be modified or subverted), that we can locate the majority of the great inquests into Norman knights’ fees and individual Norman seigneurial privileges.⁵⁹ The Paris and Vatican manuscripts of AC both recite one of the more important of these inquests, held in 1205 and dealing with the rights that the English kings had exercised as dukes of Normandy, before the conquest.⁶⁰ It was during this same period, after 1204, that we find literally dozens of charters of Philip Augustus, issued to Norman landowners both old and new, reserving whatever services or privileges the “*usus et consuetudines Normannie*” might allow.⁶¹ Should it not be to this period also that we look for the first efforts to write down what such uses and customs might have been? Surely it is exactly this clash between Plantagenet past and Capetian future that has led Tardif, de Fréville and now Eves to fall back on talk of Évreux and its Capetian annexation from the 1190s onwards, as a convenient location and epoch

Chevreux and J Vernier, *Les Archives de Normandie et de la Seine-Inférieure. État général des fonds: recueil de fac-similes d'écritures du XIe au XVIIIe siècle* (Rouen 1911), 19 and plate 14, as Landon no 222), which does not in fact deal with the issue addressed by Guillaume but with the removal of judicial duels from Church to the ducal court, reserving to the diocesan bishop the customary fine of 9 livres from convicted slayers.

⁵⁹ Billoré, *De gré et de force*, 318–325, and more generally JW Baldwin, *The Government of Philip Augustus* (Los Angeles/London 1986), esp 220–230, 289–293, 315–328, referencing various of the inquests from the *Registres de Philippe Auguste*, ed Baldwin *et al.*

⁶⁰ Eves pp lxix no 10, lxxiii no 5, noting the misdating of the version in Latin 11032 pp 13–15 (but not in the Ottobuono manuscript) to November 1204, in reality of 13 November 1205, as (from a sealed original) in *Layettes du Trésor des Chartes*, ed A Teulet, J Laborde, E Berger and H-F Delaborde, 5 vols (Paris 1863–1909), i, 296–298 no 785.

⁶¹ For a brief selection here, see *Cartulaire normand de Philippe-Auguste, Louis VIII, Saint Louis et Philippe-le-Hardi*, ed L Delisle, *Mémoires de la Société des antiquaires de Normandie* 2nd series 6 (1852), 21 no 119, 22 nos 121, 123, 284 no 91, 286 no 101, 290 no 1082, with many dozens of others listed in Delisle’s subject index under “*usus*” (p 395).

in which to situate a text that itself is not entirely fish, flesh nor good red herring?

23 Once again, we might learn here from comparisons between post-1204 Normandy and England after 1066. In England, were it not for post-Conquest efforts to preserve and where necessary “re-invent” pre-Conquest laws, we would know virtually nothing of the laws of the Anglo-Saxons: a vast array of texts, most richly preserved in such sources as *Textus Roffensis* or the “Quadripartitus”, compiled 50 or more years after William of Normandy’s victory at Hastings. As for John Baldwin’s suggestion that AC must have been compiled “on the eve of the French conquest, inasmuch as it makes no mention of that crucial event and reflects the time when justice was rendered by the duke and his seneschal”; where, one wonders would that leave us in our assessment of the Norman “Grand Coutumier” of the 1250s, let alone of such English law books as the “Leges Edwardi Confessoris” or the “Instituta Cnuti”, undoubtedly post-Conquest yet making no reference whatsoever to the thoroughly cataclysmic events of 1066 or 1204?⁶² Just because the lesser cataclysm of 1204 goes unmentioned in AC (and, with only scant reference in the “Grand Coutumier”), supplies no reason for supposing that AC (let alone the “Grand-Coutumier”) is a pre-conquest relic. Those keen to recreate the past in later times are often those keenest to disguise their own modernity. Indeed, with respect to AC and its author’s failure to mention the Capetian conquest of 1204 (and here adapting the words of the late Mandy Rice-Davies): “He would say that, wouldn’t he!”

24 Finally, and as in all instructions from judge to jury, we arrive at the question of motive. Eves, rather oddly, leaves this more or less unaddressed. The assumption seems to be that AC was made because there was need to set down custom in writing. It was made by a cleric or clerics, at a time when, as John Baldwin and Philippe Buc have taught us, the Church was keen to establish written laws (in the language of Stephen Langton, archbishop of Canterbury, a “Deuteronomy”) to curb the abuses that might arise when kings and courts ruled by fiat rather than according to established rules and procedures.⁶³ That AC was indeed a clerical collection is not in doubt. Note, for instance, the strong dose of misogyny to AC c 54.4 (malicious women raising false accusations of rape), or c 12.1 (mothers unsuited to serve as guardians,

⁶² Baldwin, *Government of Philip Augustus*, 226.

⁶³ See, for instance, D D’Avray, “Magna Carta: Its Background in Stephen Langton’s Academic Biblical Exegesis and its Episcopal Reception”, *Studi Medievali*, 3rd series 38 part 1 (1997), 423–438, and more generally P Buc, *L’Ambiguïté du livre: prince, pouvoir, et peuple dans les commentaires de la Bible au Moyen Age* (Paris 1994).

because of the risks posed by their remarrying into families that might injure a defenceless heir), or c 6.2 (“For a woman ought to obey her husband in very many, and indeed in almost all circumstances”). To our new evidence for the clerical elements of Latin 11032, we can add the emphasis in AC cc 1–2, first on the ruler’s obligations to the Church, and thereafter on his need to know when any count, baron or knight of his household was threatened with excommunication. Yver equated this with the Constitutions of Clarendon (1164) c 7 and with Henry II attempts there to control the Church’s excommunication of his officials or tenants-in-chief.⁶⁴ In reality, the imperative behind AC cc 1–2 is primarily clerical: to avert what would otherwise be the risk that a duke or king might himself incur excommunication, and hence potentially eternal damnation, for unwittingly associating with those already placed under anathema.⁶⁵ This is immediately followed, however, by a clause (AC c 2.2) awarding the duke the chattels of anyone excommunicated for more than a year and day, somewhat at odds with AC c 3.1 which appoints the bishop to determine (and apparently receive) whatever amercement (up to nine livres) might be necessary to secure absolution. Elsewhere (AC c 6.9), and again in Yver’s reckoning evidence of a further lost ducal statute, we find the ducal courts regulating all matters relating to dower, provided that this be done with the consent of the relevant ecclesiastical court.⁶⁶ In other words, from the start this is a treatise that is both clerical yet also firmly tilted in favour of ducal *alias* royal power. Rather than naively supplying written record of previously unwritten customs, it places the duke-king at the very centre of things.

25 Thus (AC c 34) there is to be no feuding or private warfare, but ALL disputes, whether civil or criminal (“in civili causa vel ... criminali”) are to be referred to the duke and his justice.⁶⁷ All pleas may

⁶⁴ Yver, “Le ‘Très Ancien Coutumier’ de Normandie, miroir de la législation ducale?”, 346.

⁶⁵ In general here, see F Hill, *Excommunication in Thirteenth Century England: Communities, Politics, and Publicity* (Oxford 2022), esp 187–191.

⁶⁶ Yver, “Le ‘Très Ancien Coutumier’ de Normandie, miroir de la législation ducale?”, 347–348.

⁶⁷ For the persistence of private warfare in France, from which Normandy was not perhaps as isolated as Jean Yver was inclined to suppose, see J Yver, “L’Interdiction de la guerre privée dans le très ancien droit normand”, *Travaux de la semaine d’histoire du droit normand tenue à Guernesey du 26 au 30 mai 1927* (Caen 1928), 307–347; Davy, *Le Duc et la loi*, 519–521; RW Kaeuper, *War, Justice and Public Order: England and France in the Later Middle Ages* (Oxford 1988), esp 225–267 (at 231–235 noting the general failure by Louis IX to impose his peace); M Strickland, *War and Chivalry: The Conduct and Perception of War in England and Normandy, 1066–1217* (Cambridge 1996),

be appealed from any seigneurial to the ducal court (AC c 33.1), save when trial by battle has been waged, such trials by battle being one of the few areas of the law where “all knights and vavasseurs have their justice in their lands ... in civil cases, together with justice of thieves and their chattels” (AC c 45, “in civili causa”). Such appeals are to be made without any requirement that they pass up the chain from inferior to superior seigneurial jurisdiction, before reaching the duke (AC c 33.2). If a plea has been lodged in the ducal court and the date for its hearing has arrived, then any subsequent seigneurial attempt to recover suit will fail (AC c 33.3), these provisions being established “because of the wickedness and/or imprudence of lords”. Of the author’s anti-lordly prejudice here, as elsewhere, there is no doubt. Take, for instance, AC c 12.3, where we are informed that “Now, because greed rules, lords squander the goods of little ones, overturning the provisions of the law” (a passage, incidentally which reveals the extent to which translation remains a matter of endless less than ideal choices, with mine here departing somewhat from those by Eves).⁶⁸ Elsewhere, note AC c 69, reporting the ways in which lords who had abused their prerogative rights to mill their tenants’ grain are said to have been restrained only by intervention on behalf of the duke’s seneschal. “Vicomtes” (by which read the duke’s local enforcers) are to have no greater authority in pleading than any pauper (AC c 60) and are to forfeit all their chattels should they be found to have acted wickedly or unjustly against any poor person in a civil case (“civili causa”), suffering imprisonment in the duke’s prison in any case of crime (“de crimine”).

26 The duke, it is declared, has rights of prerogative wardship over all tenants-in-chief, including mere serjeants, for all their tenements, no matter how petty their holdings from him or how much more they hold from other lords (AC cc 12.4 and 12.6, in this latter instance in flat contradiction, albeit once again potentially in dialogue with MC (1215) c 36, whence MC (1225) c 27, specifically denying the King’s claims

138–412; H. Kaminsky, “The Noble Feud in the Later Middle Ages”, *Past and Present*, 177 (2002), 55–83, esp 65, 70–71, 74–75, arguing that in practice noble feud continued to be tolerated in both England and Normandy, but noting that Richard I in 1194 chose to cite the “customs and laws of Poitou”, and implicitly not those of Normandy, in his claim that nobles had the right to settle their disputes by the sword.

⁶⁸ “Nunc autem, avaricia regnante, statuta legis evertentes, domini bona dissipant (*sic*) parvulorum”, translated by Eves “Now, however, because greed rules, lords are overturning the established rules of law and squandering the goods of children”. Compare the French, which itself differs somewhat from both Eves and myself: Tardif, I part ii (1903), 10, “mes avarice est orandroit si montee que li seigneur gastent les biens as orfelins”.

to wardship on the basis of any petty serjeanty or tenancy-in-chief). The knights or barons chosen to hold assizes must “protect the rights of the innocent and maintain their rolls in good faith” (AC c 31.1: “iura innocentum conservare, et rotulos fideliter”, where the last three words are somewhat inelegantly positioned, almost as a later addition). Such rolls “are preserved to quash disputes already decided in assize, so that whatever is decided in assize is recorded, and likewise anything decided in any other court by trial by trial” (AC cc 31.2, 32). Passing over the question of whether these baronial or knightly “rolls” can possibly have been a feature of pre-1204 judicial procedure in Normandy,⁶⁹ not least because before 1204 it was the King’s justices, not barons and knights who presided in assize; we might note here the emphasis on written record, also to be found in AC 12.3, where orphans are to be raised in good ways, instructed from documents (“honestis instrui documentis”, here alternatively but perhaps less plausibly mistranslated as “exemplary lessons”, following not the Latin but the French “onestes enseignementz”). Likewise in AC c 28 we are told that no recognition is to be made save through a writ (“breve”) of the duke or his justice “which can easily be had, because clerks have been appointed to make such writs, having heard peoples’ complaints”. Once again, we might question whether this reflects thirteenth- rather than twelfth-century realities. Note likewise the occasional references to something described as “scriptum generalis” (AC cc 14.1, 62.1): not I think to be interpreted (contra Paul Viollet and Eves pp xxx–xxxii with their hankering after halcyon legal “Ur-texts”) as evidence for some sort of previously written “general law” or custom of Normandy, earlier than AC, but rather acknowledging the general drift of written law, with the adjective “generalis” here conveying the same basic meaning as might otherwise have been supplied by the adverb “generaliter”.

27 Meanwhile, what is being propounded here, as throughout AC, is a top-down system of justice entirely dependent on ducal-royal direction, leaving very little room for any seigneurial courts, let alone for seigneurial interference in what in Normandy as elsewhere historians are today taught to describe as “high” rather than “low” justice: the “seigneurie banale” rather than the “seigneurie foncière”, with such rights of “bannum” assumed to have withered away in Normandy in favour of strong central, royal control, generally in the decades either side of 1204.⁷⁰ In reality, of course, claims to, and the

⁶⁹ See here Baldwin, *Government of Philip Augustus*, 419–420, assuming that such rolls did indeed once exist.

⁷⁰ As for example, by M Billoré, “Justice royale et cours seigneuriales en Normandie sous le règne de Henri II Plantagenêt et de ses fils”, and D Power, “Le régime seigneuriale en Normandie (XIIe–XIIIe s)”, both in *Les Seigneuries*, ed Aurell and Boutoulle, 94–136, esp 96–106, 129–130; F Neveux, *La*

active exercise of high justice, not least through the possession of private gallows, remained a feature of Norman society long into early modern times.⁷¹ As the French king might have phrased it, at least as ventriloquized by Victor Hugo, “Any Frenchman with his own gallows counts himself as good as a king!”⁷² We should not exaggerate the royal monopoly of justice after 1204, just as we should remain wary of AC’s attempt to extend such exaggeration backwards in time, to the era of the Anglo-Norman or Plantagenet king-dukes. Louis IX and his successors are regularly to be found acknowledging or awarding Norman lords, clerical and lay, rights of higher justice, many of them claimed from distant antiquity, many of them involving seigneurial rights that the modern authorities would suggest had long been suppressed before 1200.⁷³ But this tendency on behalf of AC is itself most revealing, once again suggesting that the text cannot be read at face value either as an accurate account of Normandy’s law as operating on the eve of the conquest of 1204, or thereafter as a reflection of the real or underlying distribution of power between ruler and ruled. As such, it remains a deliberate, albeit somewhat chaotic exercise in “re-remembering”, very much in the same tradition as the “ancient” laws claimed, just as misleadingly and chaotically, for Portugal, Aragon, Navarre, Scotland, Cnut, Edward the Confessor or indeed most points north, south, east or west.

28 In the shadier corners of Fritz Kern’s forest of customary laws, more credit goes to those who plant and tend the trees than to those who seek to cut them down. There are instances in plenty, not least the notorious assault upon the authenticity of the Anglo-Saxon law codes and the assizes of Henry II launched by HG Richardson and GO Sayles,

Normandie royale (XIIIe–XIVe siècle) (Rennes 2005), esp 91, 153, and in general G Bois, *Crise du féodalisme: économie rurale et démographie en Normandie orientale du début du 14e siècle au milieu du 16e siècle* (Paris 1976).

⁷¹ See here J Strayer, *The Administration of Normandy under Saint Louis* (Cambridge, Mass 1932), 12–31, esp 26; Y Bourguin de Meder, “Rehabilitating Norman Lordship: The Fief of Hauberk and its Judicial Rights in the 15th and 16th Centuries”, in *Lordship and the Decentralised State in Late Medieval Europe*, ed E Graham-Goering, J van der Meulen and F Buylaert (forthcoming), using the P series of “dénombrements” in Paris, Archives nationales.

⁷² Hugo, *Notre-Dame de Paris* (1831), Bk 10 ch.5: “Le français se compte autant de rois qu’il voit de gibets!”, imagined as if spoken by Louis XI.

⁷³ *Cartulaire normand*, ed Delisle, nos 217, 671, 685, 787, 860, 950–951, 1049, 1213, 1230. Such rights were claimed in a series of charters from Henry II, for the most part forged after 1204: *Letters and Charters of Henry II*, nos 410, 410a, 915 (all three apparently authentic), 161, 954, 1207, 2344–2345, 2438, 2670 (these last seven apparently clear or suspected forgeries).

to suggest that the sceptics can be proved more deluded than any of the “naïve” enthusiasts whose balloons they seek to puncture.⁷⁴ Perhaps in Normandy before 1204 there was indeed a blanket ban on parage, a statute (albeit only recently and obscurely passed) forbidding the granting of castles in dower, a clear understanding that barons and knights were to judge one another but not to be judged by lesser fry. Perhaps amercements, aids and reliefs were already set at customary and reasonable rates, and knights and barons kept written records of all judgments in pleas, themselves conducted according to “judicial order” and in all cases initiated by writ from the duke or his local representatives. Perhaps it was indeed understood that wards were only to be married “fideliter”, with seigneurial wings so firmly clipped that appeals to the ducal court were universally encouraged. Perhaps so many of the provisions of Magna Carta were already anticipated in Normandy, either in the observance, or in deliberate breach, a decade or more before King John set foot in Runnymede. Perhaps, perhaps ... And then again, perhaps not.

29 For those of a more sceptical bent, there are problems here to ponder. Perhaps the best we can do is to define not what the “Antiqua Consuetudo” is exactly, so much as what it is not. It is not a full or coherent codification of Norman custom, nor is it in any sense an “official” legal text. It survives in no version copied less than 70 or 80 years after the Capetian conquest of 1204, and although it undoubtedly supports the idea of Norman legal custom distinct from the laws of Capetian France, it does so from an angle clearly tilted towards the interests of Church and king rather than those of the lay aristocracy, and by presenting a view of the Plantagenet past in which king-dukes ruled centrally and according to law, very far from the realities that most landowners or litigants, whether laymen or clergy, would have experienced in the Normandy of Louis IX, let alone in that of Philip IV. It survives in copies that date from a time when the Plantagenet past was being widely re-invented across France, not least through the forgery or reworking of many dozens of pre-1204, pre-conquest Plantagenet royal charters, many of these forgeries circulating in precisely the same milieu, and indeed amongst the same family of manuscripts, from which the “Antiqua consuetudo” itself springs. Elsewhere, in Gascony, well into the fourteenth century, entire customals were being attributed to the authorship of the Plantagenet kings, bearing little resemblance to anything that those kings themselves might have recognized as law. The image of twelfth-century

⁷⁴ HG Richardson and GO Sayles, *Law and Legislation from Aethelberht to Magna Carta* (Edinburgh 1966), published to howls of derision, amongst which note in particular the reviews by D Stenton in *Columbia Law Review*, 67 (1967), 1341–1344, and by JC Holt, in *History*, 55 (1970), 232–233.

realities that the “Antiqua consuetudo” conveys is far more plausible than that presented by the laws of Agen or Marmande. It includes elements that are clearly twelfth-century in origin. If it is by no means entirely implausible, however, nor is it wholly to be trusted. Eves is to be congratulated for producing an edition that is in many ways exemplary, and that for the first time allows proper access to the best copy of the “Antiqua consuetudo” yet brought to light. He has tended his trees with care and intelligence. Whether he has fully mapped their location within the wider and rather wilder surrounding wood, remains a question to which, as yet, the jury has returned no clear response.

Nicholas Vincent is Professor of Medieval History at the University of East Anglia and a Fellow of the British Academy