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# The micro-politics of water management in early modern England: regulation and representation in Commissions of Sewers

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## Summary

Early modern water management was as much a social and political endeavour as it was an environmental one. This paper explores this assertion by analysing the different forms of knowledge used by English Commissions of Sewers in the governance of flood defence and drainage in the sixteenth and seventeenth centuries. Using examples drawn primarily from Gloucestershire and Lincolnshire, in south west and eastern England respectively, this paper traces the rise and decline of popular influence over water management. Where Commissions of Sewers operated harmoniously, they were staffed by significant numbers of local people, who valued their right to participate in water management. With the involvement of large numbers of 'ordinary' people, Commissions of Sewers, and particularly the minutes of Courts of Sewers, became repositories of oral and customary knowledge about the functioning of local drainage networks and flood defence schemes. However, the paper argues that over time, as customary knowledge that was divulged and negotiated orally became codified, and decisions about water management became founded on textual precedent, those who lacked access to textual resources lost influence over water management decision making.

## Key words

water management, Commissions of Sewers, orality, textual culture, flooding, early modern, England

## INTRODUCTION

Social power and political power are central themes in the history of water management. Historians have demonstrated links between bureaucracy, economic power and the control of water infrastructure, institutional frameworks and successes in drainage schemes, and the distribution of wealth and the entitlement to flood defence, to name but a few.<sup>1</sup>

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<sup>1</sup> Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (Cambridge: Cambridge University Press, 1985); Piet van Cruyningen, 'Dealing with drainage: state regulation of drainage projects in the Dutch Republic, France, and England during the sixteenth and seventeenth centuries', *Economic*

Theoretically, geographers have stressed the essential link between the flow of water and the flow of power.<sup>2</sup> Most of these analyses have focussed on the relationship between structural conditions, such as economic prosperity and inequality, or state-level regulatory environments, and water management. This paper also focusses on the importance of social and political power in water management, yet does so at a much smaller scale, focussing on ‘micro-politics’, and micro-political cultures of water management in early modern England.

This paper attempts to answer two simple questions – who governed water, and how, in early modern England? Rather than looking at large-scale drainage projects and the Great Men who orchestrated them, it turns to the profile and practices of the most numerically significant group of water managers in early modern England: jurors working in Commissions of Sewers. In doing so it looks at how well these jurors represented the interests of the neighbours whose drains they oversaw, and how local political and historical cultures impacted on routine water management. First, the paper analyses the prominence, proliferation, social standing and duties of sewers jurors, arguing that they were relatively ordinary people who became essential to the functioning of water governance in early modern England. Second, it shows how the collection, organisation and deployment of knowledge about rivers and lowlands in Courts of Sewers changed over the course of the seventeenth century, leading to a decline in access to decision making for the majority of people. Ultimately, the paper charts the rise and decline of popular influence over water management across the seventeenth century. Examples are drawn primarily from two coastal lowland areas, southern Gloucestershire and South Holland, Lincolnshire, two areas subject to a variety of flood risks, requiring well-maintained drainage networks to protect against freshwater flooding, and sufficient sea walls to protect from estuarine flooding (map 1 **\*\*NEAR HERE\*\***).

## COMMISSIONS OF SEWERS

Commissions of Sewers managed flood defence, drainage and navigation on a local and regional scale in early modern England. They derived their power from the monarch, had wide-ranging powers to direct flood defence maintenance and repair, and preserve the navigability of waterways. To achieve these ends, Commissions were granted extensive powers. Their judgements were given the authority of law, they could levy taxation, compel individuals to serve the Commission, and fine, imprison and make distress and sale of defaulters’ goods. The most significant and detailed statement of their powers and terms of operation was made in the 1532 ‘General Act Concerning Commissions of Sewers’.<sup>3</sup> The origins of this Sewers Act stretch back to 1258, when Henry de Bathe was given a commission to settle disputes between the jurors of Romney Marsh over drainage and sea defences. This commission drew on local administrative structures of much older, but

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*History Review* 68 (2015): 420–440; Tim Soens, ‘Flood Security in the Medieval and Early Modern North Sea Area: A Question of Entitlement?’, *Environment and History* 19 (2013): 209–232.

<sup>2</sup> Erik Swyngedouw, *Social Power and the Urbanization of Water* (Oxford: Oxford University Press, 2004).

<sup>3</sup> 23 Hen. VIII, c. 5 ‘A generall Acte concernynge Commissions of Sewers to be directed in all parts within this Realme’, His Majesty’s Stationery Office, *The Statutes of the Realm* 11 vols (London: HMSO, 1810–1828), iii, pp. 368–372.

uncertain origins.<sup>4</sup> In some areas, these pre-statutory flood defence and water management structures were highly developed.<sup>5</sup> A series of time-limited acts of parliament codifying Commissions of Sewers were passed in the fourteenth and fifteenth centuries. The 1532 Act was significant as a culmination of three centuries of practice that made a lasting statement of the commissions' powers, only finally superseded by the Land Drainage Act of 1930. Legal debate surrounded the commissions in the seventeenth century as commentators and jurists clashed over the commissions' role in improvement, rather than just maintenance.<sup>6</sup> Yet the commissions' ancient origins and customary foundations set them apart from the other commissions issued in the seventeenth century which were principally used to implement reforms.<sup>7</sup>

In their day-to-day functioning, Commissions of Sewers were served by a variety of officers. At the head, Commissioners were to hold lands up to the yearly value of forty marks (later effectively raised to forty pounds), be resident in an incorporated town, city or borough and have one hundred pounds in moveable goods, or be a qualified barrister.<sup>8</sup> Amongst Commissioners could be found manorial lords, the wealthiest yeoman farmers, members of the peerage, and members of parliament.<sup>9</sup> Below the Commissioners were surveyors, who fulfilled a number of roles, ranging from offering considered opinion on maintenance, to provisioning and directing work. Jurors were appointed to report nuisances which impeded drainage, navigation and flood defence. The selection of jurors varied across the country and across time, with some juries rotating annually, whilst others took on the position on a semi-permanent basis. Jurors were men of good credit and standing in their local communities, deemed 'good and lawful' by their neighbours.<sup>10</sup> These were men of the 'middling sort' who came to play an increasingly important role in government in this period, and who conducted the face-to-face, interactive tasks of government.<sup>11</sup> The courts also often had a clerk and a treasurer. None of these roles were permanent, salaried

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<sup>4</sup> H.G. Richardson, 'The Early History of Commissions of Sewers', *English Historical Review* 34 (1919): 385–93, at 389.

<sup>5</sup> H.E. Hallam, 'The fen bylaws of Spalding and Pinchbeck', *Lincolnshire Architectural and Archaeological Society Reports and Papers* 10 (1963): 40–56.

<sup>6</sup> Clive Holmes, 'Statutory interpretation in the early seventeenth century: the courts, the council and the commissioners of sewers', in J. A. Guy and H. G. Beale (eds), *Law and Social Change in British History* (London: Royal Historical Society, 1984), pp. 107–17; David Chan Smith, *Sir Edward Coke and the Reformation of the Laws* (Cambridge: Cambridge University Press, 2014), pp. 91–114.

<sup>7</sup> C.W. Brooks, *Law, politics and society in early modern England* (Cambridge: Cambridge University Press, 2008), p. 198.

<sup>8</sup> 23 Hen. VIII, c. 5; 13 Eliz. C. 9, 'An Acte for the Commission of Sewers', HMSO, *Statutes of the Realm*, iv, pp. 543–44.

<sup>9</sup> Lincolnshire Archives (hereafter LA) Spalding Sewers 473/2, A Verdict at Stamford, 6 July 1552, fol 10; Gloucestershire Archives (hereafter GA) D272 1/3, 'Gloucestershire Court of Sewers, General Minutes, 1615–1631, 1635', fol 57v; Keith Fairclough, 'A Successful Elizabethan Project: The River Lea Improvement Scheme', *Journal of Transport History* 3rd series 11 (1990): 54–65, at 54–55.

<sup>10</sup> GA D272 1/3, fol 57v.

<sup>11</sup> Mark Goldie, 'The Unacknowledged Republic: Officeholding in Early Modern England', in Tim Harris (ed.), *The Politics of the Excluded, c.1500–1850* (Basingstoke: Ashgate, 2001), pp. 153–94; Steve Hindle, 'The Political Culture of the Middling Sort in English Rural Parish Communities, c. 1550–1700', in Harris (ed.), *The Politics of the Excluded*, pp. 125–152.

positions, and payment practices varied across the country, with some Commissions offering their jurors a free meal, and others paying them in an ad hoc fashion.<sup>12</sup>

Across Europe bodies existed with similar functions but different forms. On the Flemish coastal plain, *wateringen* regulated the maintenance of dikes, waterways and sluices from the 1270s. These bodies were bureaucratised and monetised early on, centralising the work undertaken to maintain dikes, and paying for it out of a common tax or *geschot* levied on all land within their jurisdiction.<sup>13</sup> In Rijnland, part of the modern-day Netherlands, water authorities began with a legal framework akin to a Court of Sewers: a *dijkgraaf* (dikereeve) would bring individual defaults to prosecute before *hoogheemraden*, who would judge cases. Over the course of the sixteenth century these bodies gained greater administrative functions, beginning to employ permanent staff to supervise water management on a regional scale.<sup>14</sup> In North Friesland (Germany), villages joined together to maintain dikes from the twelfth century. The princes of Schleswig-Holstein attempted to centralise these organisations in the early seventeenth century by creating regional *Amte des Deichgrafen* (dike overseers).<sup>15</sup> As bodies that derived their authority from the crown, and deployed it to enforce local individual obligations, Commissions of Sewers were unusual in the context of England's North Sea neighbours. Their continued judicial rather than administrative structure set them apart, and their amateur rather than professional staff fostered engagement with water management throughout local society.

Beatrice and Sidney Webb have written most extensively on the nature, structure and prevalence of Commissions of Sewers. The Webbs concerned themselves only briefly with medieval Commissions, focussing mainly on their history post-1689. This is understandable, as they wrote in the early-twentieth century, before the Land Drainage Act of 1930 began to remove Commissions of Sewers from the administrative landscape of local government, and before their records were available in public archives.<sup>16</sup> Since the Webbs, historians have assessed the political and environmental significance of early modern commissions of sewers through their role in the drainage of the eastern English fenland. Depending on their composition, Commissions of Sewers have been cast as either vehicles of state power, guided by courtly interest in improvement projects, or as voices of local resistance standing up to such power. In Cambridgeshire and Somerset crown-sponsored

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<sup>12</sup> GA D272/1/3 fol 38r; Beatrice and Sidney Webb, *English Local Government* (11 vols, London: Frank Cass & Co., 1963), iv, p. 62.

<sup>13</sup> Tim Soens, 'Explaining deficiencies of water management in the late medieval Flemish coastal plain, 13th–16th centuries', in Hilde Greefs and Marjolein 't Hart (eds), *Jaarboek voor Ecologische Geschiedenis 2005/2006: Water Management, Communities, and Environment. The Low Countries in Comparative Perspective, c. 1000 – c. 1800* (Gent: Academia Press, 2006), pp. 35–61, at 37–38.

<sup>14</sup> Milja van Tielhof and Petra J.E.M. van Dam, 'Losing land, gaining water. Ecological and financial aspects of regional water management in Rijnland, 1200–1800', in Greefs and 't Hart, *Water Management, Communities, and Environment*, pp. 63–94, at 67–68.

<sup>15</sup> Marie Luisa Allemeyer, 'The world according to Harro: mentalities, politics and social relations in an early modern coastal society', *Bulletin of the German Historical Institute Washington DC Supplement* 3 (2006): 53–75, at 57–62.

<sup>16</sup> Webb and Webb, *English Local Government*, iv, pp. 14–106. The Webbs provide the fullest explanation of Metropolitan Commissions of Sewers, operating in the Greater London area, as their records were more fully available to them after the Metropolitan Commissioners of Sewers were replaced by the Metropolitan Board of Works in 1855.

drainage schemes were stymied by the opposition of locally controlled Commissions of Sewers whose 'commanding authority of local knowledge and experience' was used to block projects.<sup>17</sup> Yet when Commissions were packed with pro-drainage commissioners and jurors, they might be used against local interest.<sup>18</sup> In South Holland, local interests used courts of sewers to block the schemes of external drainage investors, yet these same courts were liable to subversion when drainers used their connections with central government to ensure their men were selected to operate them.<sup>19</sup> Likewise, in the Fens, locally-staffed Courts of Sewers were used to defend wetland habitats and the prevailing socio-economic order of the fenland, until new Commissions were obtained by drainage undertakers and pursued their drainage interests.<sup>20</sup> Struggles over the control of Commissions of Sewers, and over drainage more generally, have then been cast as conflicts between local interest and the State, and between peasant tradition and capitalist improvement.<sup>21</sup>

Most of these assessments of the role of the Commissions of Sewers have rested on their significance as devolved institutions with extensive statutory powers. Their significance comes from Commissioners' ability to legitimately exercise a wide range of disciplinary and financial powers, such as imprisonment, confiscation, rating and taxation – it is thus who is using these powers in what interest that makes them politically significant. Moving away from the furore of fenland drainage, and turning to look at Commissions undertaking seemingly more settled and routine flood defence and drainage maintenance, this article shows that it was not just who was in control of Commissions of Sewers that impacted how and in whose interest water was managed, but who performed its routine and mundane tasks, and how the performance of those tasks changed over time. Such an approach builds on the 'new social history' of early modern England, within which the state, as both an ideal of authority and a 'network of territorially bounded offices' has emerged as a central theme.<sup>22</sup> The Commissions of Sewers – highly localised legal fora in which local people acted with the power of the state to compel and coerce their neighbours – should then pique the interest of political and social as well as environmental historians.

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<sup>17</sup> Christopher Taylor, 'Post-medieval drainage of marsh and fen', in Hadrian Cook and Tom Williamson (eds), *Water Management in the English Landscape: Field, Marsh and Meadow* (Edinburgh: Edinburgh University Press, 1999), p. 150; Eric H. Ash, 'The Non-Drainage of the Cambridge Fens, 1619–20', in Susan M. Oosthuizen and Frances Willmoth (eds), *Drowned and drained: exploring Fenland records and landscape* (Cambridge: CUP, 2009), pp. 27–28.

<sup>18</sup> Van Cruyningen, 'Dealing with drainage', 433–434.

<sup>19</sup> Mark Kennedy, 'Fen Drainage, the Central Government, and Local Interest: Carleton and the Gentlemen of South Holland' *The Historical Journal* 26 (1983): 15–37.

<sup>20</sup> Keith Lindley, *Fenland Riots and the English Revolution* (London: Heinemann, 1982), pp. 49–51.

<sup>21</sup> Mark Kennedy, 'Charles I and Local Government: The Draining of the East and West Fens', *Albion: A Quarterly Journal Concerned with British Studies* 15 (1983): 19–31; Kennedy, 'Fen Drainage, the Central Government, and Local Interest'; Vera Candiani, 'The Desagüe Reconsidered: Environmental Dimensions of Class Conflict in Colonial Mexico', *Hispanic American Historical Review* 92 (2012): 36–39; Candiani, *Dreaming of Dry Land: Environmental Transformation in Colonial Mexico City* (Stanford: Stanford University Press, 2014), pp. 309–10.

<sup>22</sup> Patrick Collinson, *Elizabethan Essays* (London: The Hambledon Press, 1994), p. 16; Goldie, 'The Unacknowledged Republic', p. 161; Michael Braddick, *State Formation in Early Modern England, c.1550–1700* (Cambridge: CUP, 2000), pp. 19–29.

Despite important recent studies of the politics of water management in France, Flanders and Holland, water management institutions have not featured in histories of the English state.<sup>23</sup> In fact, Sidney and Beatrice Webb, in many ways the intellectual grandparents of the social history of early modern politics regarded courts of sewers as unimportant, unexciting and of the utmost obscurity.<sup>24</sup> Only Clive Holmes has sought to understand the relationship between political *culture* and Commissions of Sewers, finding that in the mid-seventeenth century, engagement with Commissions of Sewers fostered significant political and legal knowledge in the fens.<sup>25</sup> Yet the history of Commissions of Sewers is political, socio-cultural, and environmental. By understanding these multifaceted organizations, we can show how early modern state formation incorporated significant environmental efforts, and how including an environmental dynamic in our analysis of state formation can enrich historical narratives in which social and religious policies have previously taken precedent.

### PROLIFERATION AND EXPANSION

In the years after the passage of the 1532 Act, local governing elites remained unenthusiastic about Commissions of Sewers. The aldermen of York sought to have the act repealed in 1533 as it weakened their jurisdiction over the River Ouse.<sup>26</sup> In the following year, Parliament cited ‘dyvers commissions ... [that] remayne hitherto without effectuall execucion’ because of the number of potential Commissioners refusing to swear the oath.<sup>27</sup> Such apathy was evident in Gloucestershire as the commission operated in fits and starts and failed to take root. In the first sessions, only sixteen officials could be sworn, and between them not enough could be mustered to reach quorum, the Commissioners being ‘too few in number’.<sup>28</sup> This had ramifications across the 1580s: when the jury was summoned in 1588 the court was dismayed to find that ‘the Jurey for the moste part, since the last syttinge here being regestered are decessed’.<sup>29</sup>

However, Commissions of Sewers grew to play a significant role in the life of rural communities. The minutes of Courts of Sewers reveal that moments of significant flooding

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<sup>23</sup> i.e. Piet van Cruyningen, ‘State, property rights and sustainability of drained areas along the North Sea coast, sixteenth-eighteenth centuries’, in Bas van Bavel and Erik Thoen (eds), *Rural societies and environments at risk: ecology, property rights and social organisation in fragile areas* (Turnhout: Brepols, 2013), pp. 181–208; Raphaël Morera, ‘Environmental Change and Globalization in Seventeenth-Century France: Dutch Traders and the Draining of French Wetlands (Arles, Petit Poitou)’, *International Review of Social History* 55 (2010): 79–101; Milja van Tielhof, ‘Forced Solidarity: Maintenance of Coastal Defences Along the North Sea Coast in the Early Modern Period’, *Environment and History* 21 (2015): 319–350.

<sup>24</sup> Webb and Webb, *English Local Government*, iv, pp. 14–106, at 39–40.

<sup>25</sup> Clive Holmes, ‘Drainers and Fenmen: The Problem of Popular Political Consciousness in the Seventeenth Century’, in Anthony Fletcher and John Stevenson (eds), *Order and Disorder in Early Modern England* (Cambridge: Cambridge University Press, 1985), pp. 166–195.

<sup>26</sup> Angelo Raine (ed.), *York Civic Records, Vol. III* (York: Yorkshire Archaeological Society, 1942), p. 146.

<sup>27</sup> 25 Hen VIII, c. 10 ‘An Acte concernyng the acceptaunce of the othe to the acte of Sewers’, HMSO, *Statutes of the Realm*, iii, p. 445.

<sup>28</sup> GA D272/1/1, ‘Gloucestershire Court of Sewers, General Minutes 1583–1606’, p. 3.

<sup>29</sup> GA D272/1/1, p. 10.

were catalysts for institutional change.<sup>30</sup> After large-scale flooding in the later-sixteenth and early-seventeenth centuries, Commissions of Sewers in both Lincolnshire and Gloucestershire grew in both prominence and size. Both of these counties' Commissions of Sewers met more often in the immediate aftermath of bad floods, and continued to do so in the following years. The frequency of court sessions in Holland, Lincolnshire doubled after the climax of several stormy winters in 1571 – the court sat twenty-five times in the two-decades before 1571, and fifty times in the two decades after.<sup>31</sup> In Gloucestershire, the frequency and regularity of court sessions dramatically increased after flooding in 1607. The Commission's patchy minutes record just twelve meetings from 1583 to 1607. In 1607, the court convened twenty-four times, and continued to meet regularly throughout the seventeenth century. Furthermore, the court recruited hundreds of individuals to serve in 1607 alone, with scores serving as jurors for their respective Hundreds (a local administrative division).<sup>32</sup> In the two decades after 1607, the Court minutes record over 850 appointments to serve in an official capacity, as either a clerk, commissioner, juror, surveyor or treasurer.<sup>33</sup> The spike in both the frequency of court sessions and the number of people involved in the court's business reveals how once-neglected water management authorities gained and sustained new leases of life after large floods.

Significant changes in the use of the Commissions at the local level were reflected at the national level. The Entry Books of Commissioners provide an incomplete, yet nonetheless striking picture of the spread and extent of these commissions in the first centuries since the 1532 'Statute of Sewers'. Between 1601 and 1673 (excepting a seven-year gap in the records between 1646–53 during the Civil Wars and Interregnum) the Entry Books record that the crown and Commonwealth issued 547 Commissions of Sewers.<sup>34</sup> These books are an incomplete register of commissions; other local and central records sporadically document further commissions.<sup>35</sup> Once established, Commissions of Sewers came to occupy an important position in the administrative landscapes of Gloucestershire and Lincolnshire. Commissions of Sewers made up half of all non-judicial commissions issued for Gloucestershire between 1601 and 1673, and three-quarters of all those issued for Lincolnshire.<sup>36</sup> Such was the proliferation of Commissions of Sewers in the sixteenth and seventeenth centuries that additional legislation was passed to ensure Commissions could be issued more swiftly. From the mid-sixteenth century onwards, Parliament passed a series

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<sup>30</sup> The arguments in this paragraph draw on John Emrys Morgan, "By tempest or unusual overflowing of waters': flooding, state formation and catalytic catastrophe in early modern England", in Jaime Lara (ed.), *Catastrophes and the Apocalyptic in the Middle Ages and Renaissance* (Turnhout: Brepols, Forthcoming).

<sup>31</sup> A. Mary Kirkus (ed.) *The Records of the Commissioners of Sewers in the Parts of Holland 1547–1603* (Lincoln: Lincoln Record Society), i, pp. xxxviii–xlx.

<sup>32</sup> GA D272/1/1–14, 'Gloucestershire Court of Sewers, General Minutes, 1583–1688'.

<sup>33</sup> GA D272/1/1–3.

<sup>34</sup> Data calculated from TNA C181/1–7, 'Chancery, Crown Office: Entry Books of Commissioners, 01 January 1601 – 31 December 1673'.

<sup>35</sup> Mark Kennedy, 'Commissions of Sewers for Lincolnshire, 1509–1649: An annotated list', *Lincolnshire History and Archaeology* 19 (1984): 83–88; J.H. Gleason, *The justices of the peace in England, 1558 to 1640: a later Eirenarcha* (Oxford: Clarendon Press, 1969), p. 5.

<sup>36</sup> 'Non-judicial commissions' are all commissions except those of Oyer and Terminer, which were the commissions issued regularly to assist with the twice-yearly peripatetic courts of Assize that prosecuted felonies.

of laws making the operation of the Commissions easier. In 1549 the Sewers Act was made perpetual; in 1571 the requirement for laws made by Commissioners to be enrolled in Chancery or given royal assent was removed; in 1659 the Protectorate re-authorized all Commissioners sitting in 1653 to continue; and the sixth act passed in the first parliament after the Restoration was to ensure that Commissions of Sewers could still be issued despite the country's current lack of a Lord Treasurer or Lord Chief Justice.<sup>37</sup> Whereas medieval commissions of sewers were reactively issued, often after floods, early modern commissions became more routine, and although commissions could expire, they were frequently renewed, becoming fixtures in the administrative landscapes of lowland England.<sup>38</sup>

Commissions of Sewers grew in size and expanded their operations with the service of large numbers of local people. The extra work the court engaged necessitated a greater number of people acting on behalf of the state. The growth of the early modern English 'participatory society'<sup>39</sup> is typified by the rise of the number of people engaging with Courts of Sewers as jurors. But who exactly were these people who served the state with renewed vigour in the later-sixteenth and early-seventeenth centuries? In Gloucestershire, some of these jurors can be socially profiled using taxation and muster records. Thirteen of the eighteen jurymen that served the refreshed Gloucestershire 1588 can be identified in the lay subsidies of either 1585 or 1592.<sup>40</sup> The subsidy was levied on people who held lands worth £1 per annum or goods worth at least £3, and whilst being notoriously poor indications of absolute wealth, can be used to understand how a subsidy payer's contemporaries 'ranked him within his community'.<sup>41</sup> The jurymen sworn in November 1607 that can be identified in the 1608 lay subsidy are remarkably representative of subsidy payers more generally. Thirty-seven jurors assessed on the value of their goods were said to hold goods of an average value of £3 8s 5d, whilst the local average was £3 5s 6d.<sup>42</sup> The 1608 military survey gives an idea of the occupational structure of the jury. Sixty jurors from November 1607 can be identified, and include twenty-two yeomen, twenty-two husbandmen, eight gentlemen, along with a baker, a butcher, a carpenter, a mariner, a

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<sup>37</sup> 3 and 4 Edward VI, c. 8 'An Acte for the contynuanse of the Statute of Sewers', in HMSO, *Statutes of the Realm*, iv, pp. 109–10; 13 Eliz. I, c. 9; 'An Act enabling such Commissioners of Sewers, as acted on the 19th April 1653 to Act as Commissioners of Sewers', C.H. Firth and R.S. Rait (eds), *Acts and Ordinances of the Interregnum, 1642–1660* (London: HMSO, 1912), pp. 1271–1272; 12 Car. II, c. 6 'An Act for the present nominating of Commissioners of Sewers', HMSO, *Statutes of the Realm*, v, p. 206.

<sup>38</sup> James A. Galloway and Jonathan S. Potts, 'Marine flooding in the Thames Estuary and tidal river c. 1250–1450: impact and response', *Area* 39 (2007): 370–379, at 376.

<sup>39</sup> Jan Pitman, 'Tradition and Exclusion: Parochial Officeholding in Early Modern England, A Case Study from North Norfolk, 1580–1640', *Rural History* 15 (2004): 27–45, at 27–28.

<sup>40</sup> 'Gloucestershire Lay Subsidies 1581–1595 (Southwest Division): Select Rolls 82–85 (1581–1595)', Bristol and Gloucestershire Archaeological Society <<http://www.bgas.org.uk/publications/subsidy/index.html>> (accessed 1 March 2015).

<sup>41</sup> Subsidies almost invariably undervalued property holdings so as to minimize the tax liabilities of those assessed. M.A. Faraday (ed.), *The Bristol and Gloucestershire Lay Subsidy of 1523–27* (Bristol: Bristol & Gloucestershire Archaeological Society, 2009), pp. xxxi–xxxii; Richard Hoyle, *Tudor Taxation Records: A Guide for Users* (London: Public Record Office, 1994), p. 15.

<sup>42</sup> GA D4431/4/2, 'Subsidy roll for the hundreds of Berkeley, Grumbolds Ash, Langley and Swinshead, Thornbury, Henbury, Pucklechurch and Barton Regis, 5 James I'.

mercator, a servant, a shoemaker, and a weaver.<sup>43</sup> (Commissioners noted this occupational diversity, ordering jurors to defer to the opinions of the ‘chiefest and substantielest of the Jury’.)<sup>44</sup> Sewers juries were then broadly representative of the financially stable members of local society, and largely agricultural in occupation – very much men of the rural ‘middling sort’, amongst whom were found ‘small knots of reliable men’ who served on local administrations.<sup>45</sup> As with other juries, participation was both a valuable marker of social status and ‘the price of social privilege’.<sup>46</sup> Sewers juries were then as representative as other local institutions in early modern England. As the subsequent section will show, this was important. Whilst water management was nominally devolved to local elites – the lords and landowners who served as Commissioners – significant power and influence could lie in the ‘relatively humble’ hands of the jurors.

Whilst the juries were made up of a reasonably representative sample of the landholding and wealthier members of village society, numerically significant groups were left out of water governance. Despite often being property owners, women were excluded from juries until the 1920s in England.<sup>47</sup> Women also rarely gave evidence before the court, mirroring the practice in other courts in the period.<sup>48</sup> A host of deep-rooted social and cultural factors precluded women’s involvement in courts of sewers, but it was certainly not due to a lack of knowledge. Women did occasionally give evidence, and, as Nicola Whyte has shown in other contexts, were often deeply knowledgeable about customary arrangements in local communities – in Ludney, Lincolnshire, women were paid to ride the inner drains with the jury, yet were not a formal part of the decision-making body.<sup>49</sup> Women were more often on the receiving end of the court’s orders than they were involved in making them.

Copyhold tenants were also excluded from juries.<sup>50</sup> Copyhold tenants held land under a customary agreement with the manorial lord. In the early-seventeenth century, copyhold leases were under attack from manorial lords who sought to increase traditionally low rents to closer to market value. The tensions this generated between lords and copyhold tenants led to their exclusion from juries to the extent that even being related to a copyholder was enough to disqualify potential jurors. In January 1626, John Baker and William Jones were discharged from the Gloucestershire sewers jury on the request of the

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<sup>43</sup> John Smith, *Men and Armour for Gloucestershire in 1608* (Gloucester: Sutton Publishing, 1980). Searchable online at <<http://coaley.net/glos1608/index.php>> (accessed 1 March 2015).

<sup>44</sup> GA D272/1/3, fol 35r.

<sup>45</sup> Hindle, ‘The Political Culture of the Middling Sort’, pp. 125–152.

<sup>46</sup> Cynthia Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge: Cambridge University Press, 1989), p. 97.

<sup>47</sup> One juror, ‘Launderess Taylor’, who served three times from August 1635, is potentially a woman, but would be just one woman in over a century of all-male juries.

<sup>48</sup> Andy Wood, ‘Custom and the Social Organisation of Writing in Early Modern England’, *Transactions of the Royal Historical Society*, Sixth Series, 9 (1999): 257–269, at 264.

<sup>49</sup> GA D272/1/11 ‘Gloucestershire Court of Sewers, General Minutes 1663–1665’, fol 5v. Nicola Whyte, ‘Custodians of memory: women and custom in rural England c. 1550–1700’, *Cultural and Social History* 8 (2011): 153–173; LA Alford Sewers/Dikereeves Accounts/Louthesk and Ludborough/9 Ludney/10, Payments made 24 and 25 July 1694.

<sup>50</sup> E.g. in 1646 Richard Adams was ‘spared’ jury service ‘being a Customary tenant of Thornbury and Oldbury’, GA D272/1/5, ‘Gloucestershire Court of Sewers, General Minutes, 1646–1648’, fol 3.

Lord of Thornbury because 'they have each of them a sister married to a copyholder of the manor of Thornbury'.<sup>51</sup>

Religion could also be an excluding factor, particularly from the mid-seventeenth century. Quakers, the radical preaching sect established by George Fox during the 1640s, refused to swear oaths as a matter of conscience, precluding their involvement in juries.<sup>52</sup> Depending on how strictly courts enforced protocols, Quakers could also be excluded from courtrooms altogether because of their refusal to remove their hats in reverence to their superiors – in this context Commissioners of Sewers.<sup>53</sup> John Harvey of Spalding, for example, was threatened with a fine for not serving as a dikereeve and juror and was subsequently fined a further five pounds for not removing his hat in the courtroom.<sup>54</sup> In Lincolnshire, the site of significant seventeenth-century religious dissent, this potentially excluded large numbers of people.<sup>55</sup>

#### POLITICAL CULTURES, PARTICIPATION AND THE PEOPLE

Despite these caveats, the change in the scale and frequency of popular involvement with the Commissions was significant enough to change the ways Commissions functioned. Those who participated in the Commissions of Sewers brought with them local, oral, and customary forms of knowledge which impacted on how the business of government was transacted. The increased activity of jurors provides an example of Wayne te Brake's argument that 'ordinary people' did not just work for and with the State, but that their 'popular political practices' played a creative role in shaping the *kind* of State that was formed.<sup>56</sup>

Thanks to the involvement of jurors, Courts of Sewers became repositories of water management customs. Custom was a cornerstone of English law, and was particularly significant in local contexts. Customary obligations, rights, and rules structured much of local life, time and space. They were used to regulate common rights, like estovers (the right to gather kindling) and turbary (the right to cut peat), and responsibilities, like the obligation to maintain drains and sea walls.<sup>57</sup> Custom was predicated on practices having existed 'for time out of mind'. It existed in the 'collective memory' of local communities, or the 'memory of the people'. However, rather than being simply a fixed store of information, custom was malleable, and local people constructed and reconstructed it as a 'usable past' for establishing rights and liberties.<sup>58</sup> Thus, rather than just being recalled, customs were

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<sup>51</sup> GA D272/1/3, fol 70v.

<sup>52</sup> S.G.E. Lythe, 'The Court of Sewers for the East Parts of the East Riding', *Yorkshire Archaeological Journal* 34 (1938–39): 11–24, at 14.

<sup>53</sup> H. Larry Ingle, *First Among Friends: George Fox and the Creation of Quakerism* (Oxford: Oxford University Press, 1994), p. 204.

<sup>54</sup> LA Spalding Sewers/451/1, 'Sewers Entrys. John Johnson Clerk 30 Oct 1667', fol 44.

<sup>55</sup> Clive Holmes, *Seventeenth-Century Lincolnshire* (Lincoln: Society for Lincolnshire History and Archaeology, 1980), pp. 45–46.

<sup>56</sup> Wayne te Brake, *Shaping History: Ordinary People in European Politics, 1500–1700* (Berkeley: University of California Press, 1998), pp. 5–8.

<sup>57</sup> E.P. Thompson, *Customs in Common* (London: Penguin, 1993), p. 106.

<sup>58</sup> Andy Wood, *The Memory of the People: Custom and Popular Senses of the Past in Early Modern England* (Cambridge: Cambridge University Press, 2013).

actively shaped by those who used them and formed an important ‘knowledge system’ for the organization of rural life.<sup>59</sup> Intergenerationally flexible oral customs could then be altered and attuned to changing social, economic and environmental contexts.

Custom formed the basis of much of the sewers juries’ work. The earliest commissions of sewers were introduced to compel negligent landholders to fulfil customary duties, and custom remained at the heart of commissions’ work in the early modern period.<sup>60</sup> In the East Riding of Yorkshire, jurors were to uncover who ‘by custom or tenure’ was responsible for particular drains and ditches.<sup>61</sup> Many repair verdicts given by juries in Gloucestershire demonstrate the importance of custom, referring to ‘all that of right ought to’ or to ‘whom it doth appertene’.<sup>62</sup> The court enforced customary duties, requiring individuals to make repairs ‘as [they] ought to make.’<sup>63</sup> With their absence of specificity, presentments and orders in local disputes appealed to popular memory, revealing the importance of implicit local understandings of customary landscapes of obligation and right. Gloucestershire sewers jurors required an understanding of a complex tissue of rights, obligations and environmental processes that rendered the landscape ‘illegible’ to outsiders, much like the Mine Court juries of the nearby Forest of Dean.<sup>64</sup> Such idiosyncratic local knowledge could only be gained through a longstanding association with the landscapes jurors were tasked with overseeing – in Spalding (Lincolnshire) jurors were addressed as ‘Men grown Gray in this employment’.<sup>65</sup>

Much of this local customary knowledge was produced through embodied and emplaced experience. E.P. Thompson described experiential knowledge as formed through ‘another kind of knowledge-production’, ‘going on all the time’ in ‘mental and emotional’ responses to the world.<sup>66</sup> Pre-industrial floodplains in particular fostered emplaced and embodied experience – as Richard White notes, for most of history ‘work and energy have linked humans and rivers’, knowledges of the river were ‘felt in human bones and sinews’, and people knew rivers ‘through the work the river demanded of them’.<sup>67</sup> Such bodily relationships with the waterscape were locally important. In 1618, deponents at the Court of Sewers recalled labour experiences as evidence for contemporary maintenance obligations at Oldbury. John Prevet remembered being aged eleven, when his father ‘did worch vpon the wall’. Henry Scriven and John Hobbs, aged forty-six and fifty, ‘wrought vpon

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<sup>59</sup> Nicola Whyte, *Inhabiting the Landscape: Place, Custom and Memory, 1500–1800* (Oxford: Oxbow Books, 2009), p. 7; Andy Wood, ‘The Place of Custom in Plebeian Political Culture: England, 1550–1800’, *Social History*, 22 (1997): 46–60, at 56; Adam Fox, *Oral and Literate Culture in England 1500–1700*, (Oxford: Oxford University Press, 2000), p. 263.

<sup>60</sup> H.C. Darby, *The Medieval Fenland* (Newton Abbot: David & Charles, 1974 [1940]), p. 155; Michael Chisholm, ‘Water management in the Fens before the introduction of pumps’, *Landscape History* 33 (2012): 62.

<sup>61</sup> Lythe, ‘The Court of Sewers for the East Parts of the East Riding’, 14.

<sup>62</sup> GA D272/1/3, *passim*.

<sup>63</sup> GA D272/1/3, fol 13v.

<sup>64</sup> Simon Sandall, ‘Custom and popular senses of the past in the Forest of Dean, c. 1550–1832’ (Ph.D Diss. University of East Anglia, 2009), p. 52.

<sup>65</sup> Anon., *Instructions for Jury-Men on the Commission of Sewers* (London, 1664), p. 1.

<sup>66</sup> E.P. Thompson, *The Poverty of Theory: Or an Orrery of Errors* (London: Merlin, 1995), pp. 9–11.

<sup>67</sup> Richard White, *The Organic Machine: The Remaking of the Columbia River* (New York: Hill and Wang, 1995), p. 4.

the Seawall... & were sett a worck' by the manor bailiff.<sup>68</sup> Such sinuous knowledge was respected and privileged, having been gained through labouring on sea-walls.

Sometimes we glimpse the embodied nature of common knowledge. An order relating to Appledore Common is given in terms of movement across the land: 'those to whom yt doth apperteine' were to clear a stream 'from Mr Chesters pill *downwards till you come over against* Elinghurste gowt'.<sup>69</sup> Such relations offer a vernacular description of the landscape, in terms of walking the banks of the stream, making visible the importance of used and lived place, rather than mapped geometrical space. Landscape features were 'as prominent as mere-stones and stakes on the mental maps' of local people.<sup>70</sup> In 1617 the Gloucestershire Court of Sewers ordered a sea-wall to be repaired starting at 'a litle Bush in th'old Sea wall', 'ffrom thenc to an Elme tree', 'a Nooke in the hedg of John Groves... a pearetree in the hedg of Thomas Brooks...' and so on, eventually returning to the sea-wall.<sup>71</sup> Engaging 'perceptually with an environment that is itself pregnant with the past', such descriptions are composed of specific referents to particular places with personal and communal significance – in a 'mnemonic' language of local landscape, distinguished by socially important physical markers which defined 'limits of belonging' and coloured local identities.<sup>72</sup>

Water management was thus deeply woven into the social fabrics of communities. Regulating a drained and defended landscape was an inherently social activity, inflected with sociability at all levels. Typically, when juries were sent out to 'survey, reform and peruse' or make 'viewe & survey' of walls and drains they did as much talking as they did looking.<sup>73</sup> Their reports were based on a series of interrogatories which required a combination of visual assessments and interviews with local people.<sup>74</sup> Juries gathered a great deal of oral and customary evidence relating to landholding and flood defence practices which they presented orally. The formulaic records of Sewers sessions compress much of the individual detail of presentments. Occasionally a clerk alludes to the orality of the courtroom, noting how jurors 'presented in thes words, that is to say...'.<sup>75</sup> Such oral reporting was important for jurors as they were often unable to present their findings in writing. Early modern rural literacy rates are hard to determine, but David Cressy has estimated that roughly thirty per cent of yeoman farmers and eighty to ninety per cent of

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<sup>68</sup> GA D272/1/3, fol 25v.

<sup>69</sup> GA D272/1/3, fol 76v, emphasis added.

<sup>70</sup> Steve Hindle, 'Beating the Bounds of the Parish: Order, Memory and Identity in the English Local Community, c.1500–1700', in Michael J. Halvorson and Karen E. Spierling (eds), *Defining Community in Early Modern Europe* (Ashgate: Aldershot, 2008), pp. 205–227, at p. 217.

<sup>71</sup> GA D272/1/3, fol 10r.

<sup>72</sup> Tim Ingold, 'The temporality of the landscape', *World Archaeology* 25 (1993): 152–174, at 152; Nicola Whyte 'Landscape, Memory and Custom: Parish Identities c. 1550–1700', *Social History* 32 (2007): 166–186, at 186; David Rollison, *The Local Origins of Modern Society: Gloucestershire 1500–1800* (London, 1992), pp. 71–73; Franz Krause, Nicola Whyte and Joanne Garde-Hansen, 'Flood memories – media, narratives and remembrance of wet landscapes in England', *Journal of Arts & Communities* 4 (2012): 128–142, at 132.

<sup>73</sup> GA D272/1/1, p. 5; GA D272/1/3, fol 31r.

<sup>74</sup> GA D272/1/5, fol 2v.

<sup>75</sup> GA D272/1/5, fol 25r.

husbandmen and labourers were incapable of signing their own names.<sup>76</sup> Being able to sign one's name is an imperfect measure of literacy (telling us almost nothing about reading ability), yet the low levels of ability to sign presentments indicates a lack of basic writing skills. Such low literacy levels were reflected in sewers juries. A jury presentment at the Spalding Court of Sewers in Stamford in 1551 contains the seals of twenty-six jurors, yet only eleven of their signatures.<sup>77</sup> Likewise, S.G.E. Lythe found that four in five East Riding jurymen could not sign their own name in the early eighteenth century.<sup>78</sup>

The reliance on memory, spoken testimony and peripatetic, dialogic surveys also points to the performative nature of government in the period. Getting decisions right was clearly a priority for sewers jurors, but they were also concerned to be seen (and heard) to be getting decisions right. Given that their power rested on popular consent to their authority, working out solutions in public, and amongst neighbours, would have been a more visibly legitimate method of dispute resolution than being shut away in the clerk's archive. As such, lamenting the loss of Commissions' authority in their region, the inhabitants of the Soke of Peterborough emphasised that juries were 'the life of the Law, and the peoples just freedome'.<sup>79</sup> As J.M. Neeson has shown, 'the subtle and not-so-subtle pressure of village opinion' could weigh heavily on those who contravened custom.<sup>80</sup> Offenders would be aware of their defaults, and the status of the jurors would be preserved, by being seen to perambulate, discourse and survey people and land. Such communal legitimacy had been crucial in securing common consent since the middle ages, and remained an important factor in the operation of Commissions of Sewers as late as the 1830s.<sup>81</sup>

Customary responsibilities made sense among the 'community of talkers' in which they were generated and applied.<sup>82</sup> However, as Simon Sandall, James Scott, Andy Wood and others argue, fixing oral customs in text changes their function. Oral customs provided 'an amorphous set of rules that might twist and change over time' and could 'mutate very quickly in new circumstances when it favoured the tenants'.<sup>83</sup> John Lyly observed this in *Gallathea*, his comedy set on the floodplain of the Humber: Tityrus notes that 'Fortune, constant in nothing but inconstancy, did change her copy, as the people their custom'.<sup>84</sup>

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<sup>76</sup> David Cressy, *Literacy and the Social Order: Reading and writing in Tudor and Stuart England* (Cambridge: Cambridge University Press, 1980), pp. 125–27.

<sup>77</sup> LA Spalding Sewers/473/2, Verdict at Stamford 6 July 1552, fol 14.

<sup>78</sup> Lythe, 'The Court of Sewers for the East Parts of the East Riding', 15.

<sup>79</sup> Anon., *The humble petition of the inhabitants of the soake of Peterborow, within the county of Northampton, containing about forty townes and villages, against the undertakers there* (London, 1650), p. 4.

<sup>80</sup> J.M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700–1820* (Cambridge: Cambridge University Press, 1996), p. 117.

<sup>81</sup> James Masschaele, *Jury, State and Society in Medieval England* (New York: Palgrave Macmillan, 2008), pp. 205–10; David Sunderland, 'A monument to defective administration'? The London Commissions of Sewers in the early nineteenth century', *Urban History* 26 (1999): 349–372, at 362–363.

<sup>82</sup> Wood, *The Memory of the People*, p. 272.

<sup>83</sup> Richard W. Hoyle, 'Introduction: Custom, Improvement and Anti-Improvement', in Richard W. Hoyle (ed.), *Custom, Improvement and the Landscape in Early Modern Britain* (Farnham: Ashgate, 2011), pp. 1–38, at p. 6.

<sup>84</sup> John Lyly, 'Gallathea', in John Lyly (ed. George K. Hunter and David Bevington), *Gallathea, Midas* (Manchester: Manchester University Press, 2000), pp. 27–110, at p. 33. I am grateful to Patricia Badir for alerting me to the relevance of *Gallathea*.

However, custom's 'constancy' increased when it was written down, fixing in writing what might have been elided in speech or relegated from communal memory.<sup>85</sup> For Scott, transcription 'freezes' spoken texts, recontextualising them outside of their particular origins, allowing words to be 'dug up and consulted as an authority' in future.<sup>86</sup> As a court of record in which Commissioners' judgements carried the full weight of law, Courts of Sewers could set strong textual precedents.

Despite the apparent fixity that texts could give flood defence responsibilities, jurors continually resorted to using oral testimony. It would be quite possible to imagine that court records would render jurors' presentments obsolete: with custom recorded, the court would be able to refer to its own records and enforce regular and consistent maintenance. Yet this did not happen. Jurors eschewed reference to their own records when making routine presentations of defaulters. On several occasions, witnesses were sworn to testify as to the proceedings and outcomes of previous court sessions. In May 1654 Richard Mathews and Phillip Adams testified that John Baker of Thornbury 'did att a certayne meetinge of Sewers for the County of Gloucester make Oath' regarding the sea wall at Oldbury, which was subsequently 'entred by the said Mr Baker then Clerke unto the Coms in the Sewers booke'.<sup>87</sup> Likewise, in 1702, seventy-six year old yeoman Richard Wither testified that

'seaventeene yeares agoe hee served upon A Jury of the Sewers and was then ordered by the Comissioners of Sewers to try and end A certaine dispute about the repaire of a certaine parcell of Seawall in difference between Sir John Fust and John Wilkins lyeing att Hill and hee this deponent with the rest of the Jury Did then give their presentment.'<sup>88</sup>

The evidence Mathews, Adams and Wither all cite survives in earlier minute books of the court. Eschewing its own textual archive, the Commission of Sewers placed greater significance on the memory of those who had been involved with it. Amongst the 'community of talkers' that the juries frequently represented, oral testimony held the most sway.

Written records were consulted in moments of absolute uncertainty and controversy, and were rarely left just to speak for themselves. Estate surveyors like the influential John Norden praised records in Latin or French as 'so much the more certain, by how much the more ancient'.<sup>89</sup> In 1619, disputes over sea walls at Oldbury on Severn resulted in both landlord and tenant hiring 'learned Counsell' who produced 'proofes... out

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<sup>85</sup> Fox, *Oral and Literate*, p. 293.

<sup>86</sup> James C. Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven: Yale University Press), p. 230. See also, Wood, *The Memory of the People*, p. 272; Sandall, 'Custom, Memory and the Operations of Power in the Seventeenth-Century Forest of Dean', in Fiona Williamson (ed.), *Locating Agency: Space, Power and Popular Politics* (Newcastle: Cambridge Scholars Publishing, 2010), pp. 133–160; Whyte 'Landscape, Memory and Custom'.

<sup>87</sup> GA D272/1/8, 'Gloucestershire Court of Sewers, General Minutes, 1653/4–1656', p. 11.

<sup>88</sup> GA D272/2/2, 'Gloucestershire Court of Sewers: Upper part minutes, 1699–1714', unpaginated, session 31 August 1702.

<sup>89</sup> Mark Netzloff, *John Norden's The Surveyor's Dialogue (1618): A Critical Edition* (Farnham: Ashgate, 2010), p. 80.

of ancient Court Rolls & Records of the Manor of Thornbury'. The records were interlocuted by lawyers, and four gentlemen were 'sworne & examined for the Testifying of the Records & Court Rolls'.<sup>90</sup> Where customary responsibilities were unclear, misremembered or contested, having a document could prove particularly useful, as they offered a seemingly direct line to a past of legitimate evidence. In 1676, jurors requested the assistance of a number of deliberative aids, including 'surveyors who have an ancient booke & some ancient Witnesses... yet liveing to guide them therein'. The surveyors were to look in the 'ancient booke' to decide on sea wall maintenance responsibilities, based on historical precedent, rather than contemporary innovation.<sup>91</sup> In 1684 jurors were advised to consult the ancient court records for the 'more easy and speedy describing' of the sea walls because they provided 'most certeyne informacon'.<sup>92</sup> Ancient did not usually mean particularly old. In the later seventeenth century, an 'ancient' book of sewers was consulted that was only sixty years old, and the oldest records cited were from 1583.<sup>93</sup>

Searching historical records that extended beyond the 'memory of man' to establish liability for repair then became a 'battle for documentary proof'.<sup>94</sup> These were battles that engaged all levels of society. Early modern parishioners placed great emphasis on the accessibility of documents preserving their 'collective memory'.<sup>95</sup> As tenants these same parishioners valued texts just as highly, yet did not always have consistently open access to their textual history. For tenants, texts could signify both their rights and the oppression of landlords. That tenants were at the mercy of inaccessible texts is clear in seventeenth-century disputes over the sea wall at Oldbury on Severn. In a bill of complaint to Chancery, Oldbury tenants alleged that the Staffords withheld crucial documents, with the presentation of elder witnesses their only means of making up for this lost evidence. The tenants requested that the Staffords 'may produce the said evidences & records & that your orators wittnesses whoe are of great age may be examined'.<sup>96</sup>

History was invoked on a grander scale in textual disputes. Oral testimony relied implicitly on situations existing for 'time out of mind', extending back perhaps a generation or two beyond the age of the eldest remembering witness. Textual disputes gave disputants access to even older pasts, which again brought with them implications of access and power. Fifteenth-century manor court rolls were used as precedent in some disputes over liability.<sup>97</sup> Drawing on the available textual record, the inhabitants of Oldbury extracted historical precedents for the lord's responsibility for flood defence maintenance at the boundaries of their property. Their evidence stretched back across the sixteenth century,

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<sup>90</sup> GA D272/1/3, fol 35.

<sup>91</sup> GA D272/1/13, 'Gloucestershire Court of Sewers, General Minutes, 1671–1684', fol 63v.

<sup>92</sup> GA D272/1/13, fol 126.

<sup>93</sup> GA D272/1/13, fol 118; GA D272/1/10, fols 8, 21v.

<sup>94</sup> Fox, *Oral and Literate*, p. 281.

<sup>95</sup> Beat Kümin, 'Parishioners in Court: Litigation and the Local Community, 1350–1650', in Susan Wabuda and Caroline Litzenberger (eds), *Belief and Practice in Reformation England: A Tribute to Patrick Collinson From His Students* (Aldershot: Ashgate, 1998), pp. 20–39, at p. 28.

<sup>96</sup> Staffordshire Record Office (hereafter SRO) D641/2/C/4/1/iv/K, 'Cases concerning property in Gloucestershire: Oldbury - Sea Walls of River Severn, Briefs, Pleadings etc.' fol 2.

<sup>97</sup> GA D272/1/3, fol 26v.

yet their use of the past was cast in doubt. The lords' counsel conceded that a precedent from 1540/1 was 'the only particuler presentment that makes against the Lord', yet argued that it was still not proof, as

at this tyme the Mannor was in the kings hands, & then corrupcon of Customes increased, when new officers were in place, Who not knowing the truth, were apt to take any presentment that the Tenants would obtrude upon them.<sup>98</sup>

Thus even 'ancient documents' were not good enough here. Such precedents required proper historical and a historiographical framing. By colouring the very nature of the past that tenants sought to make arguments about, the Staffords were able to limit the parameters of acceptable history.

Access to records then became a determinant factor in one's ability to influence water management. Access to oral tradition was itself not universal, as age, status and location limited both who could legitimately give convincing oral testimony, and who might hear and be influenced by it. Administrative and financial restrictions associated with texts shaped decision making. Some of these excluded those unable to pay. In the Manor of Thornbury, tenants were charged four pence to search one year's records for a particular order in the manor court roll.<sup>99</sup> Given that precedents were brought before the Court of Sewers from as far back as the fourteenth century, searching for precedents could prove costly. In the 1670s in the Spalding Court of Sewers, the clerk charged one shilling for searching for a particular law or record of sewers, and a shilling per sheet to copy them.<sup>100</sup> Changing practices of storing court records are symbolic of some of these changes. In 1609 the Gloucestershire Commissioners of Sewers consolidated its records, developing its archival practice over the course of the seventeenth century.<sup>101</sup> Sewers books were kept in a box from 1661, and from 1704 they were kept in a specially made chest with two locks, with keys in the custody of separate commissioners.<sup>102</sup> The reliability of the records was paramount, such that clerks took pains to ensure they were not accused of altering them in any way: on returning the collected archive of the Commission in 1661, Edward Fust swore before the court that he had done so 'unblotted and without alteracon without adding or diminishing to or from the same'.<sup>103</sup> By the 1680s the court was producing records for the purposes of posterity. The whole sea wall from Shirehampton to Longney was to be measured and the results recorded in two books, to 'remaine a perpetuall record to future ages... preventinge controversy and avoidinge frequent sittings of the Court'.<sup>104</sup>

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<sup>98</sup> SRO D641/2/C/4/1/v/N, 'Cases concerning property in Gloucestershire: Oldbury - Sea Walls of River Severn', fol 3.

<sup>99</sup> Bristol Record Office, 35192/D/18, 'Scale of fees under Customs of the Manor of Thornbury'.

<sup>100</sup> LA Spalding Sewers 451/2, 'Sewers Entrys; John Hutchinson and Maurice Johnson Clerks, 1675-1685', unpaginated, endpapers.

<sup>101</sup> GA D272/1/2, 'Gloucestershire Court of Sewers, General Minutes, 1606-15', fol 28.

<sup>102</sup> GA D272/1/10, 'Gloucestershire Court of Sewers, General Minutes, 1661-63', fol 16; GA D272/2/2, unpaginated, session 21 February 1704.

<sup>103</sup> GA D272/1/8, pp. 7-8.

<sup>104</sup> GA D272/1/13, fol 125v.

Those who appealed to the Court of Sewers were well aware of the importance of its textual legacy. When customary tenants at Oldbury were charged with repairing their landlords' sea wall out of necessity rather than obligation they complained it might, 'in succeeding tymes... be to their great prejudice, & subject them to the charge which they constantly affirme they are of noe right lyable unto'.<sup>105</sup> Along the southern North Sea coast, Milja van Tielhof has shown how communities were reluctant to help one another with sea defences when that help might set a precedent for future liability. Any assistance that was given was explicitly couched as voluntary and incidental, rather than obliged and routine: as one Polder put it 'for this single time, as a favour, and with no consequences'.<sup>106</sup> Texts could fix an isolated response to a particularly damaging flood and create a precedent. Those who used the Court of Sewers negotiated this, just as they negotiated the transcription of other customary rights.<sup>107</sup> That some of the most contentious disputes concerned sea walls is crucial: freshwater drainage customs proved less contentious, binding landholders to routine labour to maintain drains several times a year, yet a custom proving responsibility for the upkeep of a sea wall could bind landholders to large and unexpected capital outlays in the event of storms that brought them down and damaged their land leeward of the dike.

Most problematically for jurors and their world of oral custom, court records – records of their own speech – came to be used against them. Absentee landlords attempted to relieve themselves of flood defence obligations using court archives. The Staffords' legal counsel placed great emphasis on copious and rigorous collation and citation. In a motion regarding liability for floodgates and sea defences at a mill bordering Oldbury and Kington tythings, the Staffords detailed thirty-eight separate precedents for liability. These were abstracted and their source noted from eleven separate volumes of sewers minutes labelled A to K. At the end of the list, to leave the court in no doubt that liability lay with the mill owners, and not the lord of the manor, there is an index of precedents showing nineteen 'proofes for the Lady Stafford', and only eighteen for the mill owners.<sup>108</sup> Elsewhere, the Staffords complained that their tenants brought several 'vast presentments' that 'extended beyond all reason' and 'which without a good construccon will crosse many others before, of the same tyme & after'.<sup>109</sup> In this, and other cases, what began as the oral evidence of experience given to address a specific environmental problem was subsequently transmuted, first by transcription, then by citation, into another kind of 'usable past', one that bestowed agency no longer on the articulator, but the rearticulator, to ends quite contrary to those that motivated its initial utterance.

## CONCLUSION

The history of popular representation in water management in the sixteenth and seventeenth centuries is then one of rise and decline. The 1532 statute of sewers and its

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<sup>105</sup> GA D272/1/3, fol 28v.

<sup>106</sup> Van Tielhof, 'Forced Solidarity', 328.

<sup>107</sup> Wood, 'Custom and the Social Organisation of Writing', 257–269.

<sup>108</sup> SRO D641/2/C/4/1/iv/l, 'Cases concerning property in Gloucestershire: Oldbury - Sea Walls of River Severn', fols 1–4.

<sup>109</sup> SRO D641/2/C/4/1/v/N, 'Cases concerning property in Gloucestershire: Oldbury - Sea Walls of River Severn', fols 3–4.

amendments over the next century provided the legal framework for establishing standing Commissions of Sewers in English counties. Moments of large flooding invigorated several of these commissions, which came to be staffed by an array of local people whose local knowledge and experience became crucial to their functioning. Commissions of Sewers appear as representative as other local institutions of government in the period, enthusiastically staffed from a pool of village worthies which was expanded at times of imminent need. The culture of these local people then determined much of how the courts functioned, relying on customary knowledge collected peripatetically and divulged orally. However, as courts of record, Courts of Sewers facilitated the wholesale codification of oral water management customs, making previously malleable, relatively accessible oral customs and practices 'subject to diachronically ordering influences from without'.<sup>110</sup> Those unable to use texts because of illiteracy, lack of access to records, or inability to pay for archival searches, gradually lost the ability to influence decision making over the period.<sup>111</sup> The implications of these changes would hasten the marginalisation of custom, even as more people came to be involved with the Courts of Sewers as they expanded in size.

As James Scott notes, custom is a 'living, negotiated tissue of practices' which communities shape to react to current environmental stimuli, and is 'continually being adapted to new ecological and social circumstances'.<sup>112</sup> Focussing water governance on texts employed historicizing principles that removed a degree of agency from local people, as well as an element of the live environmental responsiveness that communities could insert into their negotiations of custom. Whilst relatively ordinary people remained a crucial part of water management by overseeing drainage networks and flood defences, their ability to shape how their land was drained and defended diminished.

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<sup>110</sup> Sandall, 'Custom, Memory and the Operations of Power', p. 149.

<sup>111</sup> Wood, 'Custom and the Social Organisation of Writing', 268; Adam Fox, 'Custom, Memory and the Authority of Writing', in Paul Griffiths, Adam Fox and Steve Hindle (eds), *The Experience of Authority in Early Modern England* (Basingstoke: Palgrave Macmillan, 1996), pp. 89–116, at p. 91.

<sup>112</sup> James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1999), p. 34.