

Clerks and Scriveners: Legal Literacy and Access to Justice in Late Medieval England

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as a thesis for the degree of
Doctor of Philosophy in Law
In March 2013

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ABSTRACT

Provincial town clerks and scribes have hitherto been a neglected subject in the historiography of the legal profession, yet as this thesis demonstrates, they contributed significantly to medieval England's legal and scribal culture. Arguing for a new definition of scribes based on their legal and linguistic literacy, this fresh interpretation differentiates between scribes, notaries, generic clerks and lawyers and modifies the existing tendency towards classifying scribes purely on the basis of the work they did and the legal instruments they produced. The study not only rectifies a gap in our knowledge, but reconceptualises our understanding of the lower echelons of the legal profession by examining the work that scribes did and the role that they played in the local legal administration of medieval England, and by extension, the ways in which they facilitated access to justice on several levels. Focussing primarily on Exeter, Bristol, Bridgwater and Southampton, this research for the first time reveals the identities of some of the many scribes who worked outside of London and evaluates their activities in provincial England.

In order to achieve this, the thesis considers the extent to which scribes were an integral part of an urban legal service as members of the provincial secretariat. Underpinning the theoretical framework of this thesis are themes such as literacy, clerical identity and professionalization – all of which are examined through the prism of law, languages and access to justice. Grounded in a palaeographic and diplomatic approach to the manuscript sources, this research has yielded some surprising results regarding the essential role of provincial scribes within the legal, political and administrative landscape of medieval England. Fundamentally, this thesis offers a new vision of provincial English scribes and the influence of their work. Set against the backdrop of an increasingly 'professional' legal profession, the importance of provincial scribes as the keepers and creators of legal memory is highlighted along with the impact that this had on the wider legal community of medieval England.

ACKNOWLEDGEMENTS

There once was a girl called Kitrina,
 Who'd travelled afar to find scriven-as,
 She'd been to Plymouth and back,
 To Barnstaple by track,
 And had found plenty in these different arenas.
 But now she must head up to Bristol,
 To the office of records where she hopes she'll,
 Find hundreds galore,
 Of her men-folk of law,
 To add to her doctorate of Phil(osophy).

Upon completion of a long project there are, as always, many people to thank. First, I would like to thank my dear friend Fae Garland for the limericks about scriveners and the never ending cups of tea. In many ways, we have travelled the PhD road together and as a result, the journey has never been lonely or short on laughs!

Endless amounts of gratitude are owed to my supervisor Anthony Musson who has bravely guided me down this path and provided invaluable support along the way. His encouraging and constructive thoughts and comments have helped to shape this thesis and my own thoughts on scriveners and more!

To my friends and colleagues in history and in law, in Exeter and in Canada, your support has always been felt and you have all been constant sources of inspiration over the years. I would like to thank the archivists and librarians at the DRO, the BRO, Exeter Cathedral Library and Archives and the Devon and Exeter Institution in particular for their help, encouragement and commitment to making researchers like myself feel welcome. Thank you!

Special thanks must be extended to the Social Sciences and Humanities Research Council of Canada and to the School of Law at the University of Exeter; without the generous financial support of both institutions this research could not have been possible.

Last, but not least, I would like to thank my family for all of their love, especially Dad and Heidi who might not have always understood what I have been working on for the better part of four years but they have always cared enough to ask regularly and express an interest in the things that interest me. As a result, they have served as a constant reminder that taking the time to ask questions is what it is really all about in the end. This is for you.

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CHAPTER ONE: Introduction

“Scribite Scientes”

– Motto of the Scriveners’ Company

1. Introduction

It seems appropriate to begin exploring the work of medieval scribes with a quote from their London guild which instructed its learned membership, quite literally, *to write*. In response to their Latin command and with their blessing implied, I shall do just that. As their motto suggests, scribes, who were legal writers, were very much preoccupied with the written word. Not only were they dependent upon writing for their livelihood, but they were also deeply ensconced in the legal culture of their time which had evolved so as to be increasingly reliant upon texts for both creating and maintaining the legal record. Scribes wrote for prosaic purposes, such as to convey property or make a bond, but writing carried a deeper meaning for them as well. Through their practical legal instruments and records, scribes were able to communicate something of themselves as individuals and as members of a legally and linguistically specialised group both through the text and beyond it. As a result, these men were heavily invested in ensuring that the words they wrote endured when and where the spoken word might perish instead.¹

In London, these writers formed a collective group of professional legal writers with rules and regulations organising their activities and practices. Beyond London, in provincial England, a largely unregulated body of scribes was similarly engaged in conveyancing and writing legal instruments. Among these men were the town clerks who, alongside scribbling, were tasked with the responsibility of administering law in the local courts and making the records of the courts’ proceedings. Here, in provincial guildhalls, scribes were in demand as their ability to write was a skill that could be applied to a wide range of administrative tasks and their knowledge of the law, legal formulae and the art of composing legal instruments was an indispensable asset for local governments which had begun to recognise the practicalities of keeping written records of their transactions, customs, ancient rights and newly acquired liberties.

¹ *“Litera Scripta Manet”* – “The Written Word Remains”. Scribes took this ancient Latin proverb seriously and it was adopted as the second motto of the Worshipful Company of Scribes in the seventeenth century.

As the producers of increasingly large volumes of documentary material, much of it still extant in record offices around the country, one would expect to find that provincial scribes had already been the subject of many historical studies, but this is not so. With the exception of the members of London's Scribes' Company, there are only scant references to their provincial counterparts which appear in a small number of books, the majority of which are focused on notaries and common lawyers instead. As early as 1963 Geoffrey Martin asked a pointed question regarding these provincial 'common clerks' by inquiring: 'to whom, or to what, was the common clerk common? Where was he educated and, in particular, where did he learn his law?'² Occasionally, variations on this simple yet fundamental question have been raised in the histories of medieval writing and in studies of the lower branches of the legal profession, but until now there has been no concerted effort to put forth an answer to these questions or to examine provincial English scribes in any meaningful way. Martin hoped that by learning more about such matters 'we should know more than we do about medieval education and about the growth of the lay professions'.³ This thesis will contribute not only to questions surrounding the availability of education in the law and legal languages and the role of scribes as lay clerks working in the medieval legal profession, but it will also explore themes regarding scribes and their clerical identity and the role of scribes as legal intermediaries. This thesis will show that from granting probate to petitioning parliament, provincial scribes had a significant role in facilitating access to justice in medieval England.

2. *Parchment and People*

While it is true that the literature on town clerks and scribes is sadly lacking in the attention it pays to provincial practitioners, it cannot be said that this literature is entirely without value for the study of legal writers outside of London. In particular, the research and approach to scribes as presented in this thesis has been largely inspired and influenced by a recent collection of papers presented in a special edition of *Parliamentary History*, entitled: *Parchment and People: Parliament in the Later Middle Ages*. Edited by Linda Clark and published in 2004, the articles in this volume represented at that time the most current research being done on a new edition of *Rotuli Parliamentorum* and provided an update on the continuing biographical work being done on the medieval members of parliament (1422-1504) for the History of Parliament Trust. Many of the questions addressed in this particular volume

² G. H. Martin, 'The English Borough in the Thirteenth Century', *Transactions of the Royal Historical Society*, 13 (1963), at 142.

³ *Ibid.*, at 143. There were three professions in medieval England: the church, medicine and the law.

with regard to the role of Westminster's clerks and England's lawyers in parliament are found throughout and appear in both the articles that focussed on the parliament rolls and in those that were concerned with the medieval members of parliament. For example, as the editor of the *Parliament Rolls of Medieval England (PROME)* for the period 1337-77, Mark Ormrod questioned the role of parliament's clerks and the extent of clerical influence on the compilation and content of the rolls. Anne Curry, *PROME's* editor for the period 1422-54, made similar observations about the influence of the clerks of parliament and also addressed the choice of the languages used in the petitions, their enrolment by clerks and the responses to the petitioners' requests.⁴ With regard to the members of parliament, Hannes Kleineke examined the factors behind borough elections in Devon and Cornwall and the high rate of return of lawyers as members of parliament for the south west.

Echoes of these investigations into medieval scribal practices and the influence of clerks in parliament that were collectively raised by the contributors to *Parchment and Politics* can also be found elsewhere in the literature on lay clerks. Collectively, the message amounts to a call for more research into clerks which is what first piqued my interest in the subject. Discussing clerks of the central government's administration, Linda Clark writes in her 'Introduction' to the volume that:

Biographical studies undertaken by the *History of Parliament* will reveal significant trends whereby in the fifteenth century a growing number of officials working in the chancery, the exchequer and the law courts were elected to parliament. The advantage of electing men such as these, especially from the point of view of the smaller boroughs, was their availability at Westminster, their knowledge of procedure and perhaps their willingness to act for a smaller fee than the prescribed parliamentary wages.⁵

Originally my research was going to focus on the role of chancery clerks as government officials involved in producing the parliament rolls. However, my focus soon shifted thanks to the encouragement of Professor Mark Ormrod at the University of York who first suggested that I turn my attention to the work of provincial scribes instead. From there, I have been able to use some of the questions raised in the articles in *Parchment and People* to identify similar trends involving scribes working in provincial England as town clerks. Like the central

⁴ Anne Curry briefly discusses the matter of language: 'A topic in need of further detailed research but one where some interesting issues are worth raising. For instance, it can be deduced from the rolls that scribes may have had different linguistic competences ... but many scribes must have had a trilingual or at least bilingual competence'. Anne Curry, "'A Game of Two Halves': Parliament 1422-1454', *Parliamentary History*, 23/1 (2004), at 98. See also: Gwilym Dodd, 'Trilingualism in the Medieval English Bureaucracy: The Use - and Disuse - of Languages in the Fifteenth-Century Privy Seal Office', *The Journal of British Studies*, 51/2 (2012).

⁵ Linda Clark, 'Introduction: Parchment and People in Medieval Parliaments', *Parliamentary History*, 23/1 (2004), at 10.

government clerks, provincial clerks possessed knowledge of the law and legal procedure to varying extents. In his contribution to *Parchment and People*, Simon Payling directed his attention to the rise of lawyers as members of parliament in the medieval Commons, demonstrating that the number of so-called 'lawyers' in this house increased from comprising approximately fifteen percent of the representatives in 1395 to twenty-four percent in 1536. Usefully, Payling cast a wide net when describing the type of man he considered to have constituted a lawyer at that time and he rightly identifies the need for flexibility in approaching a definition of the medieval English 'lawyer'. In order to evaluate the influence of various types of men of law on the late-medieval Commons, Payling considers a lawyer to be:

Any MP who was regularly named to the *quorum* of the peace or served as a clerk of the peace or county coroner; who acted as filacer or attorney in the central courts; who served as a town recorder or clerk; or who is known to have attended an inn of court or chancery.⁶

Payling's inclusion of town clerks in his definition of lawyers helped to frame my approach to scriveners as men of law. This has had the effect of reaffirming my desire to consider the ways in which provincial scriveners, employed as town clerks, had an important part to play in medieval parliaments as borough representatives. Furthermore, Payling emphasises the importance of labelling individuals in accordance with the work that they did rather than by strict definitions of education or professional affiliation. He argues that 'those whose legal training did not result in elevation to the profession's higher reaches ... have to be identified by the functions they discharged rather than their documented schooling in the law'.⁷

This could not be truer for those legal clerks, like scriveners and town clerks, who worked outside of Westminster and the city of London. Payling's perspective is especially refreshing considering that historians tend to talk about clerks as a homogenous group of overwhelmingly nameless beings who are presented as completely devoid of personality, character and individual agency. These clerks seem to lurk in the shadows, writing writs and letters on behalf of others but only rarely revealing any hints of themselves. Historians rely on manuscripts as evidence but few stop to question where the documentary records came from, who produced them and why? The truth is that we almost only know these scribes through their work as writers and the products thereof. The articles in *Parchment and People* inspired

⁶ S. J. Payling, 'The Rise of Lawyers in the Lower House, 1395-1536', *Parliamentary History*, 23/1 (2004), at 104.

⁷ *Ibid.*, at 103. See also: Nigel Ramsay, 'What Was the Legal Profession?', in Michael Hicks (ed.), *Profit, Piety and the Professions in Later Medieval England* (Gloucester: Sutton, 1990), at 62-71.

me to think differently about clerks, their control over written records and writing as an expression of self or group identity.

Chris Given-Wilson's contribution to *Parchment and People* focuses on the early fifteenth-century parliament rolls. His assessment of these further supports the need for an investigation into the role of legal intermediaries, such as clerks, who bridged the gap between the multilingual and literacy dependent culture of written law and the vernacular, 'illiterate', oral tradition of the average medieval layperson who needed to somehow access the law. He observed that 'historians have shown remarkably little interest' in the appointment of the receivers of petitions which is quite surprising, given the importance of the job with which they were entrusted.⁸ Mark Ormrod's article proves that receivers were often clerks who had a remarkable amount of power in their hands as the controllers of the legal record and as interpreters and translators of the law and of legal languages.

Furthermore, Given-Wilson writes that: 'the importance attached to the recording (or non-recording) of procedural matters is a reminder of what was undoubtedly one of the principal functions of the rolls: that is, to serve as a kind of manual of procedural precedents'.⁹ This statement, along with Ormrod's article, have made me think about individual agency and the ways in which clerks, as the writers and keepers of parliamentary records, were able to exercise any influence over what became part of the written record. The message is that the records that historians rely on for first-hand evidence of past events have histories of their own. They are more than a means to an end; they can be an end in themselves. These are the products of clerks who approached their writing and record-keeping with their own set of priorities and motives for not only what was kept on-or-off the record, but why, how and who had access to this information as well. As a postgraduate, this was my first experience reading the writings of a group of historians who clearly identified clerks as being politically, socially and legally significant agents of change who were essential to the administration of medieval parliaments.

The role of clerks as legal intermediaries was further explored in Matthew Davies' article on lobbying parliament. Davies shows that by the fifteenth century, London's companies had:

Come to depend upon the figure of the company clerk, and as this office developed in stature a number of the companies began to employ trained legal officials, often

⁸ Chris Given-Wilson, 'The Rolls of Parliament, 1399-1421', *Parliamentary History*, 23/1 (2004), at 60.

⁹ *Ibid.*, at 64.

drawn from the ranks of scribes and lawyers who were active in the city courts. Their expertise was invaluable, both for the internal affairs of the companies and for dealing with litigation, property transactions and the drafting of bills and petitions.¹⁰

Paul Brand also considers the writers of petitions. He believes that it is possible that the relative lack of variation in the formulae of petitions comes down to two possible explanations; the first being that this activity was 'dominated by a relatively small number of scribes or clerks who used the same range of formulas for all petitioners', the second being that those who taught the writing of business documents (also known as the scrivener's craft) 'had come by the end of the reign [of Edward I] to include petitions of this kind among the document types they taught and reinforced the use of particular forms'.¹¹ In my mind, each of these articles provoked further questions about provincial scribes and town clerks. Might the need for men with legal and scribal expertise such as this in London be connected to the office of town clerk in provincial England? Boroughs are incorporations just as the London companies were. If London's sources show that companies recognised that they had to invest in men with knowledge and know-how to help grease the wheels and do the practical work of drawing up petitions if they wanted success in lobbying parliament, why not adapt this theory to apply to smaller urban centres too?

Perhaps the key to understanding the role of provincial clerks is to consider the ways in which they used their linguistic ability and legal skills to facilitate access to justice in the medieval period. After all, Hannes Kleineke's article has already successfully demonstrated the high rates of return of 'lawyer' MPs in Devon and Cornwall's boroughs and Simon Payling has put forth a convincing case for considering town clerks to be among these lawyers. Similarly, Paul Brand has noted that: 'It is only very rarely that we learn anything about the drafters and writers of petitions', while Matthew Davies has suggested that clerks had a role to play in both the writing of petitions and the lobbying of parliament.¹² In studies of legal professionals within the body of medieval members of parliament, the primary focus has traditionally been on lawyers and sheriffs, but Payling has opened the door to consider other types of legal professionals as well.

¹⁰ Matthew Davies, 'Lobbying Parliament: The London Companies in the Fifteenth Century', *Parliamentary History*, 23/1 (2004), at 138.

¹¹ Paul Brand, 'Petitions and Parliament in the Reign of Edward I', *Parliamentary History*, 23/1 (2004), at 30.

¹² *Ibid.*

This thesis will investigate provincial scribes, working as town clerks, and consider the ways in which they facilitated access to justice through their specialised knowledge of languages and the law. The method of understanding scribes will be to look at what they wrote, and this goes beyond legal instruments to include other types of literature produced by them as well. In order to participate in the law and legal procedure, these clerks had to be highly specialised. Not only did they need to be literate in the languages of the law (Latin, Anglo-Norman French and English) but they also needed to be legally literate in the sense that they understood the technical elements of the law as a manuscript culture. By the mid-thirteenth century, the written documents produced by these legally literate clerks are directly connected to legal administration and access to justice in provincial England. As the legal system was driven by documentation and the written word was the key to unlocking doors and accessing justice, scribes fulfilled a vital role in English society as both intermediaries and translators for their legally and linguistically 'illiterate' clientele.

3. Legal Literacy and Access to Justice

Since time immemorial, the relationship between literacy and the law has had profound implications for access to justice. The questions that this situation has raised have recently developed as a subject open to debate in both the public sphere and within academia. Some of the questions that have been raised relate to the meaning of access to justice and the role of literacy. Literacy is a necessary precursor to accessing justice and there is a duality within the very nature of literacy as it applies to the law. Today, literacy is the basic ability to read and write. In the medieval world, literacy was a term used to indicate the ability to read and write in the Latin language. This is different from 'legal literacy' which addresses issues related not only to basic literacy skills, but also extends its scope to consider a person's ability to derive meaning, understanding and context from a legal text. In instances where both or either of these elements of literacy are lacking, a person's ability to access justice is immediately compromised. This is where the role of the intermediary becomes essential. The complex nature of medieval literacy rates presents a different picture from today's when literacy is largely taken for granted and the implications of illiteracy are more limited.

Legal intermediaries are people who possess both legal and linguistic literacy and use these skills on behalf of the 'legally illiterate' and for those 'legally literates' who chose to hire private secretaries or assistants. The need for a legal intermediary to gain access to the law applies equally to those who are without reading or writing skills and those who are illiterate in

matters of the law. Conventionally literate individuals are at least as likely to engage the services of a legal intermediary as illiterate individuals – perhaps they are even more so inclined as we know that literate people are usually more aware of the legal services available to them and are in a better position to access them, financially speaking. The role of the ‘intermediary’ as described above is today fulfilled by legal executives who are specially trained and highly skilled, such as solicitors and barristers. To a degree, this also applies to the medieval period. However, there was another type of legally and linguistically literate person who acted as a legal intermediary in the Middle Ages – the scrivener.¹³ Thus the relationship between legal literacy and the law necessitates the involvement of an intermediary who is capable of ‘translating’ the meaning of the law into a more accessible language in order to facilitate the otherwise ‘illiterate’ litigant’s understanding – but how does this apply to access to justice?

Most modern jurists consider access to justice to be a fundamental human right while some politicians, like former justice secretary Ken Clarke, have gone so far as to declare this principle to be ‘the hallmark of a civilised society’.¹⁴ In today’s climate of budget cuts and legal reform in the United Kingdom, access to justice (especially as it is portrayed in the media and popular press) is inextricably connected to notions of publically funded law and legal aid as providing access to justice on a primarily financial level.¹⁵ However, for the purposes of this thesis I will consider ‘access’ and ‘accessibility’ in terms of the practical and procedural aspects of obtaining redress in medieval England. This includes the ability and opportunity to gain and achieve redress through the physical presence of legally and linguistically knowledgeable clerks to act as advisors, facilitators or agents of access to justice.¹⁶ Furthermore, access to justice will be considered in relation to ‘the capacity to understand the basic legal problem and

¹³ Andrew Butcher considered the role of medieval town clerks as ‘cultural mediators and creators’ in his chapter: Andrew Butcher, ‘The Functions of Script in the Speech Community of a Late Medieval Town, c. 1300-1550’, in Julia Crick and Alexandra Walsham (eds.), *The Uses of Script and Print, 1300-1700* (Cambridge: Cambridge University Press, 2004), at 157.

¹⁴ See: Francesco Francioni (ed.), *Access to Justice as a Human Right* (Oxford: Oxford University Press, 2007). Jon Robins, ‘Access to Justice Is a Fine Concept. What Does It Mean in View of Cuts to Legal Aid?’, *The Guardian*, Thursday 6 October 2011.

¹⁵ The Attlee government introduced legal aid in 1949 as part of the new welfare state. However, politicians are not the only people concerned with questions relating to access to justice - prominent lawyers are as well. See: Human Rights Lawyers’ Association, ‘Access to Justice as a Human Right’, in Human Rights Lawyers’ Association (ed.), (Freshfields Bruckhaus Deringer, 2010), Michael Napier, ‘Access to Justice: Keeping the Doors Open’, *2007 Annual Gray’s Inn Reading* (2007).

¹⁶ For an examination of judicial accessibility and the role of the written text in enhancing the law’s jurisdictional, jurisprudential, educational and popular authority in medieval England, see: Anthony Musson, ‘Law and Text: Legal Authority and Judicial Accessibility in the Late Middle Ages’, in Julia Crick and Alexandra Walsham (eds.), *The Uses of Script and Print, 1300-1700* (Cambridge: Cambridge University Press, 2004).

comprehend something of the court proceedings'.¹⁷ In this thesis, this last consideration will be referred to as 'legal literacy'.

Legal literacy and the plea of 'non est factum'

The problems associated with illiteracy and the law can be found in the law of obligations, specifically in the action of debt. Medieval English commerce depended largely upon the lending and borrowing of money. In order to ensure that unpaid debts could be recovered by creditors, bonds or 'obligations' were devised as instruments that set out the amount borrowed and the terms of repayment agreed upon by the parties involved. If the conditions specified by the bond were broken then the bond was forfeited and the 'obligor' (debtor) was required to pay the penalty due to the obligee (creditor). Bonds were so popular that they were the most common class of actions found in the rolls of the Court of Common Pleas from Tudor times through to the nineteenth century.¹⁸ Due to the fact that bonds fell under the law of deeds and conditions, a delinquent obligor had few defences at his disposal to avoid repayment. However, the plea of '*scriptum predictum non est factum suum*' was an acceptable defence, which is to say that the writing was not the party's deed. In order to prove this, the defendant had to show that the agreement was not a deed at all, was a forgery, or that he had been deceived into making an agreement that he did not understand.¹⁹

The plea of *non est factum* was especially applicable in cases dealing with deceit based on the obligor's inability to read due to illiteracy. This is demonstrated in the earliest reported case on the point: *Thoroughgood's Case* (1582) 76 E.R. 408. In this case:

William Chicken, being in arrears with his rent, tendered to his landlord, Thoroughgood, a deed by which he was relieved from 'all demands whatsoever' which Thoroughgood had against him. Thus the dispensation on its face comprised not only arrears of rent, but also the right to recover the land. Thoroughgood was illiterate, but a bystander, affecting to be helpful, seized the deed and said: 'The effect of it is this, that you do release to William Chicken all the arrears of rent that he doth owe you and no otherwise, and thus you shall have your land back again.' After replying, 'If it be no

¹⁷ Anthony Musson, 'Social Exclusivity or Justice for All? Access to Justice in Fourteenth-Century England', in Rosemary Horrox and Sarah Rees Jones (eds.), *Pragmatic Utopias: Ideals and Communities, 1200-1630* (Cambridge: Cambridge University Press, 2001a), at 137.

¹⁸ J. H. Baker, *An Introduction to English Legal History* (4th edn.; London: Butterworths, 2002), at 324.

¹⁹ Duress, incapacity and tampering were also acceptable terms for invalidating such bonds. See: J. H. Baker, 'Deeds Speak Louder Than Words: Covenants and the Law of Proof, 1290-1321', in Jonathan Rose, Christopher Whittick and Susanne Jenks (eds.), *Laws, Lawyers and Texts: Studies in Medieval Legal History in Honour of Paul Brand* (Leiden: Brill, 2012).

otherwise, I am content,' Thoroughgood sealed the deed. Chicken subsequently sold the land to an innocent purchaser.²⁰

In order to recover his land and by alleging that Chicken had unlawfully trespassed upon Thoroughgood's real estate, Thoroughgood sued for trespass based on a writ of *quare clausum fregit* in the Court of Common Pleas. The court found that due to his illiteracy, Thoroughgood had been deceived by a deliberate misreading of the contents of the deed that he had inadvertently agreed to by attaching his seal.²¹ This case clearly demonstrates the point at which literacy and access to justice meet – while illiteracy could not be used as an excuse for all mistakes, the plea of *non est factum* applied in cases where it could be argued that the deed, as written, did not reflect the intentions of one of the parties and therefore his 'will did not go with the deed'.²² The decision to invalidate the bond was based on the fact that the agreement was made by mistake because the signatory did not have knowledge of its true meaning and the consequences thereof. The precedent set by the Thoroughgood case illustrates the convergence of three of the themes that are central to this thesis: literacy, law and the role of the legal intermediary.

The next case further expanded the doctrine for making the plea of *non est factum* and its application in the area of contract law. In the judgment made by Byles J in the case *Foster v Mackinnon* (1869), L. R. 4 C. P. 704, the court considered a plea of *non est factum* and determined:

It seems plain, on principle and on authority, that, if a blind man, or a man who cannot read, or who for some reason (not implying negligence) forbears to read, has a written contract falsely read over to him, the reader misreading to such a degree that the written contract is of a nature altogether different from the contract pretended to be read from the paper which the blind or illiterate man afterwards signs; then, at least if there be no negligence, the signature so obtained is of no force. And it is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer did not accompany the signature, in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended.²³

Furthermore, Byles J stated:

The defendant never intended to sign that contract, or any such contract. He never intended to put his name to any instrument that then was or thereafter might become

²⁰ M. P. Furmston, G. C. Cheshire, and C. H. S. Fifoot, *Cheshire, Fifoot & Furmston's Law of Contract* (15th edn.; Oxford: Oxford University Press, 2007), at 322.

²¹ *Ibid.*

²² A. W. B. Simpson, *A History of the Common Law of Contract: The Rise of the Action of Assumpsit* (Oxford: Clarendon Press, 1975), at 98-99.

²³ 'Foster V. Mackinnon', *Law Reports* (4: Court of Common Pleas, 1869), at 711.

negotiable. He was deceived, not merely as to the legal effect, but as to the actual contents of the instrument.²⁴

The principles behind the plea of *non est factum* are at the heart of legal literacy. In *Foster v Mackinnon*, deception occurred on two levels. As an elderly person with poor vision, Mr Cooper was incapable of reading the contract himself and so Mr Callow deceived him by misrepresenting the contents of the contract alongside the legal implications associated with agreeing to the terms of the contract. Significantly, this plea does not allow for negligence related to failure to read a contract which reflects the increased literacy rates in the seventeenth century.

A more recent judgment made in the House of Lords in the matter of *Saunders v Anglia Building Society* [1971] A. C. 1039 (on appeal from *Gallie v Lee* [1971]) has expanded on the idea of deception with regard to legal effect. In this case, Lord Pearson stated:

The plea of *non est factum* ought to be available in a proper case for the relief of a person who for permanent or temporary reasons (not limited to blindness or illiteracy [sic]) is not capable of both reading and sufficiently understanding the deed or other document to be signed.²⁵

The end result was a modification of the plea of *non est factum* and judicial elaboration on the idea of legal (il)literacy. This fits with the idea of ‘understanding’ as an element of legal ‘literacy’ with legal illiteracy as a recognised barrier to accessing justice.

Legal literacy and public legal education

Recently within Canadian jurisprudence, literacy (as it relates to access to justice and the legal system) has gained a significant amount of attention.²⁶ Reports produced by the Canadian Bar Association Task Force on Legal Literacy are of particular interest as they address the same themes that will frame this thesis – legal literacy and its implications for accessing justice.²⁷ The plea of *non est factum* and the need for parties to understand the documents which they sign is of vital importance to modern courts and tribunals that come into contact with people with low levels of literacy and even lower levels of legal literacy. A conference on ‘Plain language:

²⁴ *Ibid.*, at 713.

²⁵ *Saunders v Anglia Building Society* [1971] A. C. 1039, p. 1050.

²⁶ Other common law jurisdictions have also struggled with illiteracy and providing legal protection for these vulnerable groups. For an interesting article dealing with illiteracy and the plea of *non est factum* in Nigerian law, see: Gatta Ayodele, 'An Overview of the Plea of *Non Est Factum* and Section 3 of the Illiterates Protection Law (1994) of Lagos State in Contracts Made by Illiterates in Nigeria', *Nigerian Current Law Review*, 6 (2010).

²⁷ Laird Hunter et al., 'Reading the Legal World: Literacy and Justice in Canada', (Ottawa, 1992).

How does it concern you?’ was held in Montreal, Québec on 21-22 October 2010 and was hosted by Éducaloi, a non-profit organisation known and recognised as a leader in the area of access to justice and as an advocate for the simplification of legal information.²⁸ In Canada, these campaigns have targeted aboriginal communities and immigrants as groups which have historically struggled with low rates of literacy in either French or English, but ‘legal illiteracy’ equally affects all those who have no little understanding of the law and legal procedure.

In the UK, the other side of legal literacy – meaning understanding – is a priority for public interest groups and government as demonstrated by the various attempts by these bodies to improve access to public legal education. The Community Legal Advice Direct website (CLAD) functioned as the first port of call for people in England and Wales seeking advice for dealing with civil legal problems until 2011 when it was absorbed by the Directgov website and responsibility for its content was taken over by the Ministry of Justice.²⁹ Most recently, Directgov has been replaced by a new website called gov.uk.³⁰ As a result, some of the information and advice that was once provided by the CLAD website is no longer available. In order to compensate for the loss of the CLAD website, an independent not-for-profit website called Advicenow was launched with the aim of providing relevant content on rights and legal issues for the general public.³¹ In order to do so, Advicenow collates articles and references from over two hundred and fifty British websites and provides links to them on their website. More importantly, Advicenow’s priority is to present their material in ‘plain English’ in order to improve the average person’s ability to access the law and legal information. This website’s objective of delivering its content in plain English is part of a larger societal movement towards simplifying the language of the law in order to make it intelligible to those outside of the legal community with the intention of improving access to justice for the legally illiterate.

Access to Justice

These objectives, access to justice and facilitating understanding of the law, are found in two of the eight regulatory objectives of the UK Legal Services Act 2007 (2007 c 29). Regulatory objectives 1 (1) (c) and (g) refer to the aims of ‘improving access to justice’ and ‘increasing public understanding of the citizen’s legal rights and duties’, respectively. Similarly, the European Convention on Human Rights, Article 6 (3) (a) gives everyone charged with a criminal

²⁸ ‘Éducaloi’, <<http://www.educaloi.qc.ca>>, accessed 30 April 2012

²⁹ ‘Directgov’, <<http://www.directgov.co.uk>>, accessed 24 April 2012. Certain web pages from the CLAD website were archived by the National Archives and are available on the TNA website: <http://webarchive.nationalarchives.gov.uk/+www.direct.gov.uk/en/dl1/directories/dg_10010839>

³⁰ ‘Gov’, <<http://www.gov.uk>>, accessed 21 November 2012

³¹ ‘Advicenow’, <<http://www.advicenow.org.uk>>, accessed 24 April 2012

offence the right 'to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him' while Article 6 (3) (e) gives the accused the right 'to have the free assistance of an interpreter if he cannot understand or speak the language used in court'.³² These modern laws address historic issues of access to justice and public understanding of the law that are as applicable to contemporary British and European society as they were to people in medieval England. These concerns would have been recognised by medieval English people as well and this is due to the fact that in many ways, very little has changed over the years. Accessing justice in the medieval period was just as much a written process as it is today. Consequently, literacy was an absolutely essential skill for the legal intermediaries, such as scribes, who interpreted law and languages for their clients who could have fallen anywhere on the broad spectrum of literacy.

This term, 'literacy', is a complex one as it covers a range of experiences and interactions with both textual and oral cultures.³³ As representative of a wide scope of understanding, certain literacies are outside of one's literate experience, regardless of one's ability to read or write.³⁴ This means that even those who are capable of reading and writing can still be, rather paradoxically, 'illiterate' in other contexts. Certain eighteenth-century scholars made influential, if exaggerated, statements on literacy rates in the medieval period. Most notably, William Robertson portrayed medieval society as being composed of 'rude, illiterate people'.³⁵ Of his early medieval subjects, Robertson wrote: 'Persons of the highest rank, and in the most eminent stations, could not read or write. Many of the clergy did not understand the breviary which they were obliged daily to recite; some of them could scarcely read it'.³⁶ His scathing criticism of literacy in both the sense of reading and writing and comprehension extended from the church to include the law and literature. Robertson considered both to be uncultivated aspects of medieval European society, a situation which he claimed did not begin

³² Council Of Europe, 'European Convention for the Protection of Human Rights and Fundamental Freedoms', in Council Of Europe (ed.), *ETS 5* (1950).

³³ For influential works on textual cultures, see: Walter J. Ong, *Orality and Literacy: The Technologizing of the Word* (New York: Routledge, 2002). Brian Stock, *Listening for the Text: On the Uses of the Past* (Philadelphia: University of Pennsylvania Press, 1997), Brian Stock, 'History, Literature, and Medieval Textuality', *Yale French Studies*, 70 (1986), Brian Stock, 'Medieval Literacy, Linguistic Theory, and Social Organization', *New Literary History*, 16/1 (1984).

³⁴ Cheryl Glenn, 'Medieval Literacy Outside the Academy: Popular Practice and Individual Technique', *College Composition and Communication*, 44/4 (1993), at 497.

³⁵ William Robertson, 'A View of the Progress of Society in Europe, from the Subversion of the Roman Empire to the Beginning of the Sixteenth Century', *The History of the Reign of the Emperor Charles V* (1; London, 1782), at 52-53.

³⁶ *Ibid.*, at 21-22. On page 76, Robertson goes on to describe the clergy as the only men 'in the ages of darkness' who were 'accustomed to read, to enquire, and to reason'.

to improve until the eleventh century. Nevertheless, medieval society in the later medieval period is equally subject to Robertson's contempt. Of literacy and legal writing, Robertson described the following situation:

But among a rude people, when the arts of reading and writing were such uncommon attainments, that to be master of either, intitled [sic] a person to the appellation of a clerk or a learned man, scarcely anything was committed to writing but treaties between princes, their grants and charters to their subjects, or such transactions between private parties as were of extraordinary consequence, or had an extensive effect. The greater part of affairs in common life and business, were carried on by verbal contracts or promises.³⁷

Robertson's interpretation of the legal literacy of medieval European society acknowledged that progress was eventually made through the professionalization of law and the development of a knowledgeable 'order of men, to whom their fellow-citizens had daily recourse for advice'.³⁸ Town clerks were certainly among the members of this 'order of men' who were capable of giving legal advice, providing writing services and who were readily available and relatively easy to find in and around the provincial guildhall.

The claim that the Middle Ages was rife with illiteracy and barbarism was propagated and spread by Renaissance humanists from as early as 1450 and these ideas surrounding medieval literacy rates were perpetuated by scholars who were keen to represent ecclesiastics as the monopolisers of literacy right up to the middle of the twentieth century.³⁹ Since then, scholars have rejected the received opinion of medieval literacy which has for centuries asserted that the ability to read and write was confined to the clergy and the uppermost echelon of medieval society. Research on the subject carried out by scholars such as Michael Clanchy and Richard Britnell has found this to be a simplistic view and argues instead that the high rate of illiteracy in the medieval period has been grossly overestimated.⁴⁰ In reality, it is impossible to calculate the percentage of literate individuals in medieval society.⁴¹ However, it is possible to consider the ways in which the benefits of literacy reached traditionally illiterate peoples and allowed them to engage with a literate culture.

³⁷ Ibid., at 56-57.

³⁸ Ibid., at 82.

³⁹ M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 14-16.

⁴⁰ See: Ibid., R. H. Britnell (ed.), *Pragmatic Literacy, East and West, 1200-1330* (Woodbridge: Boydell Press, 1997).

⁴¹ For an attempt to ascertain the extent of lay literacy in Anglo-Saxon England, see: C. P. Wormald, 'The Uses of Literacy in Anglo-Saxon England and Its Neighbours', *Transactions of the Royal Historical Society*, 27 (1977).

Charles Briggs reminds us of the variety and complexity of the term 'literacy':

Literacy is not simply the ability to read, though it is partly that. It is a complex cultural phenomenon with powerful ideological implications, which vary depending on the time, place, and milieu one is looking at. So, for example, literacy amongst the early Christians is not exactly the same thing as the literacy of the late medieval universities. Thus if literacy is, on the one hand, an individual skill, it is also an historically contextualized mentality.⁴²

It was once a widely accepted fact that the majority of Europe's population was, at the very least, functionally illiterate if not fundamentally illiterate. How is it possible to account for this widespread illiteracy in what was in reality a society largely dependent on the written word for religion, governance, communication and law? Franz Bäuml explained that while the majority of the population of late medieval Europe was 'in some sense, illiterate', medieval society as a whole was still a 'literate civilization'.⁴³

The distinction commonly made between educated or lettered people, the '*litterati*' and uneducated people, the '*illiterati*', presents a false dichotomy in which medieval people are viewed as either literate participants or illiterate observers of textual culture. While partially true, this generalised view lacks an acceptance or awareness of the varieties of literacy and illiteracy within textual and oral communication in the Middle Ages.⁴⁴ Brian Stock's work has done much to describe the interaction between orality and textuality in order to demonstrate how illiterate people were able to participate in the 'textual communities' of medieval society despite their position as 'outsiders' in this scenario.⁴⁵ Stock's conception of an accessible textual community emphasised the role of the 'interpreter' in this system. In Stock's view, the interpreter is the most important person who was capable of facilitating access to literate culture for the *illiterati*.

4. Scriveners as intermediaries

The contradiction that seems to be present in this notion of a literate, but also illiterate, civilisation can be explained by considering the complementary relationship between the written word, the spoken word and the ways in which the two are received and communicated by interpreters. At the intersection of literacy and the law, we find scriveners fulfilling a vital

⁴² Charles F. Briggs, 'Literacy, Reading, and Writing in the Medieval West', *Journal of Medieval History*, 26/4 (2000), at 398.

⁴³ Franz H. Bäuml, 'Varieties and Consequences of Medieval Literacy and Illiteracy', *Speculum*, 55/2 (1980), at 237.

⁴⁴ *Ibid.*

⁴⁵ Brian Stock, *Listening for the Text: On the Uses of the Past* (Philadelphia: University of Pennsylvania Press, 1997), at xi and 23.

role in society as legal intermediaries who interpreted languages, law and context for their clients.⁴⁶ Evidence of scribes using their legal literacy to transform and translate the needs of their clients into written documents, composed according to commonly accepted formulae and conventions is abundant. Scribes facilitated access to justice for their clients through their interpretation and explanation of the law and its meaning in order to avoid nullifiable deeds, as seen in Thoroughgood's case.⁴⁷ Not only were they able to access the written law through their traditional literacy skills, they were also able to engage with oral custom as they possessed all the necessary skills required to understand the languages of the law (including legal jargon and terminology). Furthermore, they were able to translate it into something more comprehensible to a wider audience that experienced legal and/or linguistic illiteracy in the sense of being able to understand the complexities of the law and legal languages, whether written or spoken. The key to unlocking the contradiction can thus be explained by understanding the role played by literate individuals who acted as oral transmitters, and sometimes translators, of the written word. In the legal context, this role was fulfilled by legal professionals, among them the clerks and scribes who are for the first time being investigated and contextualised in this thesis.

The concurrence of oral and written laws is characteristic of accessing literate culture in the Middle Ages. Brian Stock calls the people who engaged in this culture 'the real or abstract reading public', referring to the fact that the ability to read in a literal sense was not necessarily the only means by which people could access and interpret works of literature, philosophy, theology or law.⁴⁸ Even in a conventionally literate society, legal illiteracy persists among those who have limited literacy skills as well as among those who are considered fully engaged in literate society. When an individual does not possess legal literacy they will find accessing justice without the assistance of a legal professional incredibly difficult, if not altogether impossible. In order to bridge this gap, intermediaries must exist who can help the legally illiterate access justice by facilitating understanding. The prevalence of legal jargon, the complexity of set legal forms, and the myriad procedures and conventions within the legal system made the intercession of an intermediary necessary in order to act as an interpreter for those who were unfamiliar with this system but wanted to access the law. This intermediary is

⁴⁶ See: Nigel Ramsay, 'Scribes and Notaries as Legal Intermediaries in Later Medieval England', in Jennifer Kermode (ed.), *Enterprise and Individuals in Fifteenth-Century England* (Gloucester: Alan Sutton, 1991).

⁴⁷ Brian Stock, *Listening for the Text: On the Uses of the Past* (Philadelphia: University of Pennsylvania Press, 1997), at 37.

⁴⁸ *Ibid.*, at 20-21.

as much a legal translator today as he was in the medieval period. This is because written legal material is composed in a language that is peculiar to the law and when removed from its legal context it loses much of its meaning.

Most of the legalese that is prevalent in the legal lexicon and is a source of so much frustration for people today can find its roots in the Anglo-Norman French used by medieval English legal professionals. The relative obscurity of this legal language has led to the modern Plain English Movement which traces its origins back to medieval England and the Statute of Pleading (1362). This was England's first attempt to legislate on the languages of the law, but it was not the last.⁴⁹ The Statute of Pleading was re-enacted several times and legislation on making English the official language of England spans seven centuries.⁵⁰ Puritans petitioned parliament to insist upon the use of English in English law in 1647, stating:

That considering it a Badg of our Slavery to a Norman Conqueror, to have our Laws in the French Tongue, and it is little lesse than brutish vassalage to be found to walk by Laws which the People cannot know, that therefore all the Laws and Customes of this Realm be immediately written in our Mothers Tongue without any abreviations of words, and the most known vulgar hand, viz., Roman or Secretary, and that Writs, Processes, and Enroulements, be issued forth, entered or inrouled in English, and such manner of writing as aforesaid.⁵¹

Parliament made three attempts at reform after this petition. Cromwell's government passed the 'Act for turning the Books of the Law...into English', 22 November 1650⁵² which was repealed by statute in 1660 (12 Car. II, c. 3) and followed by the Proceedings in Courts of Justice Act in 1731, (4 Geo. II, c. 26; repealed by Civil Procedure Acts Repeal Act, 1879, 42&43 Vict., c. 59) and the last statute banned the court hand which was the typical script of scribes. It was so highly stylised and heavily abbreviated that it was deemed to be virtually illegible to those who were unfamiliar with its conventions. This reform was extended to include other parts of the realm in what became the Courts in Wales and Chester Act of 1733 (6 Geo. II, c. 14; repealed by Civil Procedure Acts Repeal Act, 1879, 42 & 43 Vict., c. 59). The ability (or inability, as the case may be) for people to understand both familiar and unfamiliar words and even handwriting as they are commonly used in the legal context has been an impediment to access to justice for centuries, regardless of an individual's level of literacy. These issues continue to be relevant to the legal profession today, just as they were in the

⁴⁹ This statute will be examined further in Chapter Five.

⁵⁰ David Mellinkoff, *The Language of the Law* (Boston: Little, Brown and Company, 1963), at 4, fn 18.

⁵¹ Richard Foster Jones, *The Triumph of the English Language* (London: Oxford University Press, 1953), at 317. The Statute of Pleading was repealed by the Statute Law Revision Act, 1863, 26 & 27 Vict., c. 125.

⁵² C.H. Firth and R.S. Rait (eds.), *Acts and Ordinances of the Interregnum, 1642-1660* 3 vols. (2; London: Wyman, 1911) at 455.

medieval period as litigiousness grew and increasing numbers of (il)literate people interacted with the laws of England.

Despite their obvious utility as legally and linguistically literate interpreters, historically, clerks and scribes have suffered in both the estimation of their peers and that of historians. Rarely is a clerk glorified or exalted in any work of literature that bothers to address the man with the quill. Instead, their mistakes are exaggerated and their skills derided and degraded. Quotes found in popular works of contemporary literature have undoubtedly contributed to the negative perception of the scribe and his abilities as a writer. From John Lydgate's *Poems*, the reader is led to believe that a scribe was no more than an automaton or amanuensis when the poet writes:

As doth a skryuener
That can no more what that he shal write
But as his maister beside both endyte.⁵³

Even Geoffrey Chaucer highlights his scribe's incompetence in his *Wordes unto Adam, His Owne Scryveyn*:

Under thy long lokkes thou most have the scalle,
But after my making thow wryte more trewe;
So ofte adaye I mot thy werk renewe,
It to correct and eke to rubbe and scrape,
And al is thorough thy negligence and rape.⁵⁴

Contrary to Chaucer's chiding tone, evidence points to the contrary as we know that his scribe, Adam Pinkhurst, cannot by any means have been considered an incompetent clerk, or a simple copyist. Instead he was a professional scribe and a member of the Scribes' Company which was the official body of organised legal writers in the City of London. In fact, it was the presence of his signature on the register of the Scribes' Company (called the 'Common Paper') that made it possible for Linne Mooney to match his hand to that of 'Scribe B' who not only copied Chaucer's manuscripts but Gower's as well and until Mooney's 2004 discovery had been an anonymous clerk.⁵⁵

As clerks and scribes themselves, it is surprising to see Lydgate and Chaucer treat their brethren with such derision. However, this is by no means typical of the treatment given to clerks in contemporary literature. For a more sympathetic view of the craft, we can turn to

⁵³ J. Norton-Smith (ed.), *John Lydgate: Poems* (Oxford: Clarendon, 1966) at 52.

⁵⁴ Larry D. Benson (ed.), *The Riverside Chaucer* (3rd edn., Oxford: Oxford University Press, 1987) at 650.

⁵⁵ Linne Mooney, 'Chaucer's Scribe', *Speculum*, 81 (2006), at 97-138, John Ezard, 'The Scribe's Tale: How Chaucer's Sloppy Copyist Was Unmasked after 600 Years', *The Guardian*, 2004.

Thomas Hoccleve's account of the physical trials and tribulations suffered by clerks who were shackled to their desks and unable to pass the time with 'gladnesse' as other artificers and craftsmen can, as their 'song and wordes' must be suppressed in order to work.⁵⁶ In defiance of the crass generalisations of the scrivener and his craft and in support of Hoccleve's assessment, this thesis will explore the 'suppressed' creativity and individuality of the men who practised scrivening in medieval England. In the next chapter I will further illustrate the various ways in which scribes have been represented by historians in the general historiography of medieval writers and men of law and I will also outline my personal approach to the subject. First, in this section I will set out my own definition of scrivener and define the parameters of the research questions that will be posed and responded to in this thesis.

What is a scrivener?

As scribes represent a disparate group of individuals whose history and development is largely unexplored and not fully recognised or understood to date, a new way of defining scribes is required that goes beyond 'writer' or 'clerk' but stops short of 'lawyer'. In the simplest terms, the dictionary description of a 'scrivener' is typically 'a person who writes', however this generic definition undermines the specialised work done by medieval English scribes and it makes them out to be a vague, non-descript group which in turn obscures their identities as individuals, as skilled writers, as learned in the law and as professional practitioners of the scrivener's craft. Such broad definitions and poorly defined terminology is unhelpful and questionable to say the least, as it can be used to describe almost any clerk or scribe whether or not he practised the scrivener's craft.

Deriving from the Old French for writer or clerk, '*escrivain*', the term scrivener is sometimes loosely applied to any type of clerk. The term describes a member of a craft of considerable antiquity which incorporated a wide range of practitioners; from writers of legal documents to early modern entrepreneurs. Before the sixteenth century when they flourished as moneylenders, scribes performed the basic functions of notaries and attorneys, conveying property and drawing up and witnessing wills, petitions, depositions, and other documents. Many scribes evidently began life as humble clerks or copyists and may have functioned as such for most of the time. By 1373 they were deemed a sufficiently respectable and powerful

⁵⁶ See F. J. Furnivall (ed.), *Hoccleve's Works*, 3. *The Regement of Princes* (London: Early English Text Society by K. Paul, Trench, Trübner & Co., 1897) at 36-38; lines 985-1029, M. S. Serjeantson (ed.), *Osbern Bokenham's Legendys of Hooly Wummen* (London: Early English Text Society, 1938) at lines 895-908.

group in London to establish their own livery company, and in doing so they distinguished themselves from other kinds of writers, such as the stationers and writers of the text letter who will be examined in the next chapter.⁵⁷

Until relatively recently, the existing historiography on the subject of medieval English scrivenering has focussed overwhelmingly on the model provided by the Scriveners' Company of London, its members and the craft regulations enshrined in the guild's Common Paper. In contrast, provincial scribes have attracted only modest passing attention from a small number of historians whose work has positioned English notaries as the primary concern. Historians have called scribes by various names: scribes, clerks, copyists, notaries, men of law and even country lawyers but really the work that these men all did was scrivenering – that is to say that they read and wrote and performed secretarial and administrative duties that traditionally included composing legal instruments.⁵⁸ These scholars, while keen to acknowledge that an unknown proportion of scribes worked outside of London in this period, have all had to accept that beyond this fact very little else can be said for certain about them. For example, we do not know who they were or exactly what work they did. Or to what extent scribes constituted a group of legal 'professionals'. Moreover, what impact and impressions did they make on their local communities? What we do know for certain is that provincial scribes *existed* but very little is said in the historiography beyond this fact. The tendency to draw on what is already known about London's professionally organised legal writers and apply that formula to all scribes means that the many questions regarding their provincial counterparts are still unanswered and the value of their work remains underestimated as a result.

This thesis argues that one of the fundamental identifying characteristics of scribes was their knowledge of the law and the legal formulae that formed the tools of their trade. Furthermore, their ability to operate in all three languages of the law further demonstrates

⁵⁷ Peter Beal, *A Dictionary of English Manuscript Terminology: 1450-2000* (Oxford: Oxford University Press, 2008), at 367. Francis W. Steer (ed.), *Scriveners' Company Common Paper 1357-1628* (London: London Record Society, 1968), Francis W. Steer, *A History of the Worshipful Company of Scriveners of London* (London: Phillimore, 1973).

⁵⁸ In his book *Notaries Public in England*, C. R. Cheney chose to distinguish between scribes and notaries in spite of the fact that the distinction he made between the two was really based on semantics rather than based on the work that was done by each group. This contradicts his own definition of English notaries public as he argues that scribes and notaries were one and the same in the later medieval period. Cheney uses the level of authority given to writers to prepare legal instruments as the only distinction between notaries public and scribes; See: C. R. Cheney, *Notaries Public in England in the Thirteenth and Fourteenth Centuries* (Oxford: Clarendon Press, 1972).

their linguistic ability and specialisation within the larger group of scribes and writers. While it is true that scribes fulfilled many of the same duties and performed many of the same tasks as generic clerks, scribes and copyists, 'scrivener' is a term that will be used throughout this work as an indication of the clerk's possession of legal knowledge and also an ability to compose legal instruments in the appropriate form and language. It is this knowledge and understanding that is reflected in the documents that they produced. Until now, historians have been satisfied to know these men only through the existence of their work. This thesis will reveal more personal and professional information about clerks and scribes through an analysis of the forms and format of their work as a movement toward better understanding of the group and its historical importance.

5. Proposal

What I am proposing, therefore, is a new definition of scribes based on their legal and linguistic literacy. Admittedly, this definition is a modern construct and in that sense it is an artificial creation of a group composed of individuals who did not universally self-identify as 'scribes' on the basis of the aforementioned criteria. This new classification will, however, provide not only an original and distinctive contribution to the subject, but reconceptualise and inform future studies of the legal profession. The few historians who have written about scribes have asserted that they know for certain that these clerks wrote petitions and other legal documents, but with the notable exception of Nigel Ramsay none has gone so far as to go beyond questioning who these provincial scribes really were or how they did their work.⁵⁹ My interpretation is unique and serves to modify the scope of defining scribes to apply equally to those individuals who self-identified as scribes and to those who can be called scribes on the basis of the documentary evidence they produced. By refining the definition of scribes it becomes possible to narrow the criteria for their identification by excluding from this group those clerks and scribes who did not produce legal instruments or otherwise participate in their local legal culture.⁶⁰ As a result, scribbling encompasses a broad group of

⁵⁹ Nigel Ramsay, 'The History of the Notary in England', in Mathias Schmoeckel and Werner Schubert (eds.), *Handbuch Zur Geschichte Des Notariats Der Europäischen Traditionen* (Baden-Baden: Nomos, 2009), at 380.

⁶⁰ In his article examining the increase in lawyers acting as members of parliament, S.J. Payling redefines the term 'lawyer' in order to justify the inclusion of town clerks in his study of the legal element at work in the House of Commons in the later medieval period. See: S. J. Payling, 'The Rise of Lawyers in the Lower House, 1395-1536', *Parliamentary History*, 23/1 (2004), at 104.

Among these other types of clerks and scribes that could be found working in non-explicitly legal areas of writing such as writing letters, making copies of documents or even keeping accounts for large households were secretaries and a group of men called 'stationers' who copied books and formed their

legal professionals and scribes who worked in various capacities. This group included not only scriveners and notaries, but also local officials like town clerks. It is in this capacity that we can see scriveners fulfilling an important role in urban society as easily accessible legal professionals.

There are few studies dedicated to scrivening, and unfortunately none exist that reveal the identities and activities of medieval English scriveners. Only a small number of the official records of organised groups of scriveners in London and York have been preserved, while no records have been found suggesting that provincial scriveners ever attempted to organise themselves along the lines of a guild outside of these two cities. Fundamentally, this thesis will consider several broad questions surrounding the identities of provincial scriveners and the work that they did. What qualified them for this work? What role did they play in the local legal administration of medieval England and by extension facilitate access to justice? In his most recent article, 'The History of the Notary in England', Nigel Ramsay advocates shifting focus away from the scriveners working in London in association with the Scriveners' Company to consider those who worked beyond the guild's authority in the provinces.⁶¹ Ramsay notices that towards the end of the thirteenth century, probably in imitation of a practice that had begun in London in about 1252, many English towns had begun to informally register the legal instruments touching on urban property made by local scriveners.⁶² Ramsay then asks in what way was 'the gradual increase in the organisation of scriveners in such towns' connected to 'the concomitant rise of the office of the *common clerk*, the scribe who was specially charged with the writing-down of the town's own transactions'?⁶³

Ramsay's questioning of the role that town clerks might have played in the rise of provincial scrivening in the medieval period is important. It crystallises the issue in a way that no one else has done before and it positions my research within the history of the legal writers that Ramsay has significantly contributed to through his work on notaries and notarial practice. Most importantly, Ramsay acknowledges that while there was an apparent correlation between the gradual increase in scriveners working in provincial towns and the rise of the office of the common clerk who was hired to record the town's business, this topic 'has yet to

own guild in London. For more on the divergent specialisations of scriveners and non-scrivener clerks, see Chapter Two.

⁶¹Nigel Ramsay, 'The History of the Notary in England', in Mathias Schmoeckel and Werner Schubert (eds.), *Handbuch Zur Geschichte Des Notariats Der Europäischen Traditionen* (Baden-Baden: Nomos, 2009), at 375-390.

⁶² *Ibid.*, at 380.

⁶³ *Ibid.*

be researched in detail outside London'.⁶⁴ This is exactly the place where my research fits into the current historiography of provincial scribes. This thesis will consider how scribes were part and parcel of an urban legal service as members of the city's secretariat, reflecting the connection between scribes working in provincial towns and the rise of the office of the common clerk or town clerk as identified by Nigel Ramsay.

In her investigation into 'The Emergence of Professional Law in the Long Twelfth Century', Susan Reynolds also highlighted a general need for further research into the clerical side of the legal profession. Reynolds tells us:

The lawyers whom historians called learned were not the only ones to think about law and create new procedures ... The lower reaches of legal experts, including those who wrote deeds and contracts and gave advice on uncontroversial business, not only deserve more study but may repay it in so far as their work can be studied through the diplomatic of the documents they produced.⁶⁵

Despite this apparent gap in the historical record for scribes, by directing an inquiry at other kinds of records, particularly archival documents produced by scribes themselves, it is possible to discover the names of scribes and uncover the varied ways in which they plied their trade in provincial urban settings in the later medieval period. My intention in writing this thesis is to draw together the surviving evidence for these legal writers and use it to extend the potential for further study of scribbling in medieval Britain, c. 1230-1500.

The ambitious chronological and geographic perspectives of this study has meant that certain choices had to be made with regard to the material and time periods covered for each of the urban centres considered within this thesis. A systematic in-depth study of four cities over a two hundred and fifty-year period is virtually impossible to do within the parameters of a doctoral dissertation and has not been attempted. Instead, this project focuses on four urban centres within a limited geographic region at specific periods of time. As one of the earliest English boroughs it is only right that Exeter's clerks will provide the majority of the information for the period between c. 1230 and c. 1400 when the focus will shift towards Bristol. Due to the later development of borough administration in Bridgwater and Southampton, primarily fifteenth-century clerks working in these areas will be considered alongside references made to Exeter's clerks and selected others working in the south west of England and beyond.

⁶⁴ Ibid.

⁶⁵ Susan Reynolds, 'The Emergence of Professional Law in the Long Twelfth Century', *Law and History Review*, 21/2 (2003b), at 366.

The *longue durée* is important to this study because there are instances in the administrative history of these towns that, if looked at in isolation, can seem like abrupt changes but when looked at over the long period of administrative history in these places it becomes clear that these were logical progressions, changes and transitions within growing urban centres. By considering the role of town clerk from its inception in the thirteenth century and tracking its development as a secretarial and administrative position within civic organisations, this project benefits from taking the long view with regard to the evolution of the position of scribes within provincial borough society. However, as a result I have had to narrow the focus of my subjects to look specifically at the work of town clerks as a subset of the larger group of scribes. By considering the work of a small group of scribes from different urban centres at different stages of the development of the role of town clerk, it will be possible to track these changes over an extended period of time. This period of time applies to both the chronological sense and also to the different stages of development for individual boroughs and their respective jurisdictions.⁶⁶ By restricting this study to a small number of boroughs and expanding the study to cover a broad period of time, it will be shown that each place has something of interest to contribute to the study of scribes at various points.

This thesis offers a unique interpretation of provincial English scribes and their influence on the legal administrative culture of the medieval period. Set against the backdrop of a progressively 'professionalised' legal profession, the importance of provincial scribes in the sphere of the law will be brought to light as they are revealed to be active members in the larger legal community of medieval England. Through an examination of the various manuscripts they produced, the essential role of the scribe as a town clerk within the urban legal, political and administrative landscape becomes clear. Legal instruments and scribe's manuscripts are central to this thesis' analysis as they are the primary surviving evidence for the type of work engaged in by this class of legal writer. These will be examined in greater detail in the next chapter alongside the methods that will be used to approach the research presented in this thesis and a summary of the historiography that applies to both this subject and its methodology.

⁶⁶ For example, Exeter's borough administration developed at an earlier period than Southampton's. Therefore the experiences of these two locations can be compared and contrasted not only at similar time periods, but also at similar stages in their individual internal development as boroughs which did not coincide temporally.

CHAPTER TWO: Historiography and Methodology

1. Introduction

As one of its broader goals, this thesis aims to add a new dimension to our understanding of medieval England's local administrative and judicial structures through the study of the lives and livelihoods of a relatively small and specific group – provincial scribes. While London's scribes and their activities are fairly well represented in studies of medieval legal and administrative history, relatively little is known about their provincial counterparts in comparison. There are, however, several notable exceptions. This chapter will consider, summarise and evaluate the relevant secondary studies that apply to medieval English scribes. A special emphasis will be placed on how these have contributed to our general understanding of this group of writers and the work that they did. Scribes as legal writers is a theme that has been addressed by a small number of scholars in the literature, each presenting different approaches and views on how secular writers differed from ecclesiastical clerks and what made these writers scribes rather than simply lay clerks. This study is influenced and inspired by scholars and literature from all quarters – among them are historians of law and administration, politics, art and language.⁶⁷ Based on the foundation that the existing historiography of medieval writers provides, this chapter will engage with both the primary and secondary sources that are considered to be of methodological significance to this study as a whole. Finally, this chapter will outline how this thesis aims to bridge the gaps that are present in the existing historiography through its unique methodological approach to the primary sources that will be outlined below.

2. The Scribes' Company

The logical place to begin a study of scribes is with the Scribes' Company, later known as the Scribes' Guild. Ranking forty-fourth in order of precedence, the Scribes' Company is an ancient livery company in the City of London. The company traces its incorporation back to a charter which it obtained on 28 January 1616/17 although its origins as an organized body of writers predate the incorporation by at least two hundred and seventy-five years. Originally,

⁶⁷ Special mention must be given to the impressive body of work produced by both antiquarians and professional local historians of medieval Devon and Exeter in the late nineteenth and early twentieth centuries; in particular R. C. Easterling, J. J. Alexander and W. G. Hoskins. The contribution that they have made to my understanding of local concerns and contexts through their devotion to the collection of data cannot be underestimated and this present endeavour could not have been undertaken without standing on the shoulders of these prolific and enthusiastic researchers.

this was a fraternal organisation composed of an amalgam of scribes called the writers of the court letter and text letter. All the members of this first semi-formal group were known collectively as professional scribes and freemen of the City of London. What distinguished the writers of the court letter from the writers of the text letter were their individual areas of expertise: writers of the court letter specialised in a similar craft to those of notaries public as the writers of conveyances, letters and legal instruments, whereas the writers of the text letter specialised in the writing, binding and selling of books.⁶⁸ The writers of the court letter became known as 'scriveners' while the writers of the text letter became known as 'stationers'. While there were times at which the work of one group overlapped the work of the other, for example in the copying (rather than composition) of statute books, scriveners are the focus of this thesis and will be examined here.⁶⁹

The earliest documentary reference that we have for the combined presence of these writers as a recognised class of scribe in London comes from the *Calendar of Letter-Books* which refers to a city ordinance dated 20 May 1357. This ordinance effectively made these writers, alongside the limners and barbers, exempt from serving on sheriffs' inquests while also forgiving them their fines and restoring any amercements taken from them by the sheriff's officers.⁷⁰ Within twenty years, the scriveners had officially split from the larger group and on 26 September 1373, the Company of Scriveners was founded when it petitioned the Mayor and Aldermen of London and obtained its first set of ordinances thereafter.⁷¹ By granting this first set of rules for self-governance to the writers of the court letter, the Mayor and Aldermen not only provided the basis for a new craft guild but, ipso facto, they also allowed the city's

⁶⁸ Tom Hoffman, 'Guilds and Related Organisations in Great Britain and Ireland, Part I: Introduction, the London Guilds', (2011), at 298.

⁶⁹ Despite the legal nature of their contents, most statute books were written by stationers, rather than scriveners. See: Don C. Skemer, 'Reading the Law: Statute Books and the Private Transmission of Legal Knowledge in Late Medieval England', in J. A. Bush and Alain Wijffels (eds.), *Learning the Law: Teaching and the Transmission of Law in England, 1150-1900* (London: Hambledon, 1999), at 115. Despite the clear division of labour between scriveners and stationers, the two still came into conflict when the work of one infringed upon the monopoly of the other. For examples of the disputes between York's professional writers, see: Stacey Gee, 'The Coming of Print to York, c. 1490-1550', in Peter Isaac and Barry McKay (eds.), *The Mighty Engine: The Printing Press and Its Impact* (New Castle, DE: Oak Knoll Press, 2000).

⁷⁰ 31 Edward III (1357), Letter-Book G. fol. lxi b. (written in Latin) in *Calendar of Letter Books of the City of London, Letter Book G*, 88; Transcribed and translated in H. T. Riley, *Memorials of London and London Life* (London: Longmans, Green and Co, 1868), 295; Francis W. Steer (ed.), *Scriveners' Company Common Paper 1357-1628* (London: London Record Society, 1968) at 1, Francis W. Steer, *A History of the Worshipful Company of Scriveners of London* (London: Phillimore, 1973), at 1.

⁷¹ 47 Edward III (1373), Letter-Book G. fol. cccvii (written in Latin and AF) in *Calendar of Letter Books of the City of London, Letter Book G*, 312; Transcribed and translated in H. T. Riley, *Memorials of London and London Life* (London: Longmans, Green and Co, 1868), 372-3.

scriveners to sever the ties that had previously existed between them and the writers of the text letter.⁷²

While London's Scriveners' Company may have been the first group of scriveners to organise themselves in a professional manner, it was not the only scriveners' guild to exist in fourteenth-century England. For example, York's writers of the court letter and text letter were organised in a similar fashion. Quite possibly intentionally duplicating the London example, professional writers in medieval England's second city had also begun to divide and distinguish between the two types of scribal activity in which they engaged from at least as early as the 1370s. The earliest ordinances of York's 'Escriveners de Tixt' date from around the first year of the reign of Richard II, which is within a few years of the first ordinances of London's scriveners.⁷³ Emphasising this distinction, the scriveners in both London and York formed guilds that were separate and distinct from the stationers with whom they once formed a fraternity of writers.⁷⁴ The distinction made between writers of court and of text letter reflects their specialisations as writers and witnesses of wills, deeds and legal instruments on the one hand and as bookmakers (including legal books) on the other.⁷⁵

There is precious little literature devoted entirely to either of the known scriveners' guilds in medieval England. When it comes to York's scriveners, there is none at all to speak of. For

⁷² Later ordinances were approved by the Court of Aldermen in 1390, 1440, 1497 and 1557.

⁷³ Maud Sellers (ed.), *The York Memorandum Book. Part I (1376-1419), Lettered a/Y in the Guildhall Muniment Room* 2 vols. (1; Durham: Surtees Society, 1912) at 56-57.

The text of the Ordinances as recorded in the *Memorandum Book* are as follows:

Ceaux sount les ordeignaunces faitz parentre les escriveners de la citee Deverwyk par lour comune assent.

Primerment si ascun escrivener estraunge vendra a la citee pur demuerer illequoes, sil (ne) soit sachaut et sufficiaunt a occuper sicome mestre, il serra tantost mys de la franchise de la citee; et, sil ne soit a bil a occuper sicome mestre en le dit artifice, il se mettra apprentice ovesqez ascun meistre del dit artifice pur apprendre tanqez il soit bien appris et sachaut a occuper sicome meistre en mesme lartifice.

Item que nul meistre escrivein preigne apprentice pur meyndre terme que pur v ans; et que le dit apprentice soit del age de xvj ans au meyns, et qil preigne nul autre pur apprendre sinon qil soit son apprentice.

Et ceaux qui sount my de la franchise, et sount appris et enfourmez pur escrivere, demurgent ovesqez meistres del dit artifice de mesme la citee pur covenable salarie prendre solone lour abiltee a overer en mesme lartifice.

Et que nul du dit artifice face au contraire de ceste ordinaunce en ascun poynt suisdit, il paiera xx s. desterlingas : cest assavoir x s. a la chaumbre du conseil et x s. al oepe de lour pagyne et lumer appartenante a lour dit artifice.

⁷⁴ Stacey Gee, 'The Coming of Print to York, c. 1490-1550', in Peter Isaac and Barry McKay (eds.), *The Mighty Engine: The Printing Press and Its Impact* (New Castle, DE: Oak Knoll Press, 2000).

⁷⁵ Don C. Skemer, 'Reading the Law: Statute Books and the Private Transmission of Legal Knowledge in Late Medieval England', in J. A. Bush and Alain Wijffels (eds.), *Learning the Law: Teaching and the Transmission of Law in England, 1150-1900* (London: Hambledon, 1999).

London's scribes, a notable exception can be found in the work that has been done by Francis Steer. Steer's edition of the *Scriveners' Company Common Paper, 1357-1628* (1968) and his monograph *A History of the Worshipful Company of Scriveners of London* (1973) comprise the only literature exclusively dedicated to the earliest period in the history of the Company and its records.⁷⁶ Unfortunately, the sources available for the study of the Scriveners' Company as a guild are in short supply for the medieval period and as a result the vast majority of the information we have in this regard derives from the information contained in the company's Common Paper.⁷⁷

The Common Paper was the name given to a collection of the London scribes' annual records, craft regulations and apprentice and membership lists beginning in 1357 and ending in 1628. The regulations enshrined in this document provide historians with exceptional insight into the internal operations of London's scribes, the essential elements of the oaths they took and the regulations which they swore to uphold.⁷⁸ The Common Paper contains a copy of the scribes' petition of 1373 to Henry Pykard, then mayor of London, voicing their desire for a protected, regulated and internally organised franchise over the scribbling done in the city. First and foremost, the scribes were in pursuit of a monopoly for economic purposes, but they were also anxious to prevent unskilled outsiders from committing various 'mischief and defaults' that were known to damage the good reputation 'of all the good and lawful men of the said craft', which must surely indicate that this was already a problem in the city.⁷⁹ At this time, the guild was composed of various types of scribes, including clerks, copyists and notaries public – all of whom, by adding their signature or leaving their notarial mark, agreed to abide by the rules and regulations imposed upon them by the mandate of the guild as expressed in its Common Paper.

⁷⁶ The history of the company was brought fully up to date by Brian Brooks and Cecil Humphery-Smith twenty-eight years after the publication of the first volume of the series begun by Steer: Brian G. C. Brooks and Cecil Humphery-Smith, *A History of the Worshipful Company of Scriveners of London* (Vol. 2; Chichester: Phillimore & Co, 2001).

⁷⁷ Francis W. Steer (ed.), *Scriveners' Company Common Paper 1357-1628* (London: London Record Society, 1968). Steer lists the thirteen manuscripts of the Scriveners' Company in held in the London Metropolitan Archives (formerly called the Guildhall Library) and the three manuscripts held in the Bodleian Library, Oxford, which relate to the Scriveners' Company. The majority of these date from the seventeenth century.

⁷⁸ Francis W. Steer, *A History of the Worshipful Company of Scriveners of London* (London: Phillimore, 1973), at 30-31.

⁷⁹ Francis W. Steer (ed.), *Scriveners' Company Common Paper 1357-1628* (London: London Record Society, 1968) at 2.

While Steer's translation of the Common Paper is an invaluable resource in its own right, it is Steer's more recent book on the history of the Scriveners' Company that helps readers of the Common Paper to understand the significance of the information contained therein. *A History of the Worshipful Company of Scriveners of London* contextualises the Common Paper by tracing the evolution of the Scriveners' Company over the centuries from its origins as a group of 'humble writers' in the mid 1300s to contend that by the end of the fifteenth century these writers had attained 'positions of responsibility as conveyancers, land-agents and usurers'.⁸⁰ Although the experience of provincial scriveners was beyond the purview of his book, Steer surmised that scriveners were also practising outside of London in the same period.⁸¹ Out of necessity, Steer's seminal work was regrettably restricted by geography and scope and therefore his focus on London's scriveners came at the detriment of those working beyond the boundaries of the city's monopoly.

That said, Steer does not entirely overlook the country brethren of the city guild members. He makes reference to the need for an investigation into the later period of the Scriveners' Company and proposes that by using other deeds and wills as evidence we might be able to confirm that scriveners also found employment as writers in the countryside. He believed that scriveners working outside of London must have emigrated from the city into the countryside, 'as business has always been conducted in the larger towns rather than in the country,' and suggested that 'the professional writers and providers of other services tended to settle where their skills were most in demand; in the remote country districts, it probably was the clergy who added to their paltry incomes by acting as scribes'.⁸² Steer's evidence to support this statement is largely derived from the references to scriveners found in the archival records of the Bedfordshire and Essex Record Office, 'which promote the thought that a most valuable piece of research could be done on provincial scriveners and notaries, their areas of activity, their migration from London, their apprentices and where the latter eventually set up in practices'.⁸³ Regrettably, Steer does not provide any direct references to these 'early deeds' which apparently were supplied by a Dr Emmison and were not the researches of Steer himself. Furthermore, the evidence Emmison uncovered which indicates that the migration theory is true comes primarily from references found in sixteenth- and seventeenth-century deeds and wills. The research that follows in this thesis will demonstrate that evidence found

⁸⁰ Francis W. Steer, *A History of the Worshipful Company of Scriveners of London* (London: Phillimore, 1973), at 38, 68.

⁸¹ *Ibid.*, at 68.

⁸² *Ibid.*, at 36.

⁸³ *Ibid.*, at 68.

in provincial archives provides proof that local scribes engaged in conveyancing and other legal work from a much earlier period, at least as early as the mid thirteenth century.

Unfortunately, research into provincial scribes is not quite as straightforward as Steer's proposal makes it seem. Steer's research has undoubtedly served as the main contribution to our understanding of the organisation of London's scribes and their evolution as a livery company from its inception in the fourteenth century through to the eighteenth century; however his statements regarding scribbling outside of London are open to repudiation. First and foremost, the main difficulty associated with researching provincial scribes who were not associated with any professional guild or company is the relatively complicated matter of identifying these individuals in the absence of a register along the lines of the Common Paper. The phrase 'scriptor curialis london' has yet to be discovered in the Westcountry archives that are the main sources of documentary evidence in this thesis, for example, thus making it difficult to establish the intellectual connections between the provinces and the metropole that Steer believes not only existed but were responsible for spreading knowledge of the scribbling craft from London out to the furthest reaches of the realm. Tellingly, evidence of apprentices receiving their training at the hands of London's guild émigrés to the countryside is wanting, which suggests instead that provincial scribes who worked as administrators were more often educated local men trained on the job by their predecessors who were trained in a similar fashion themselves.⁸⁴

The second problematic area of Steer's theory on the origins of provincial scribes lies in his suggestion that in the remotest regions of England, this clerical or secretarial role was filled by local clergy.⁸⁵ Steer is by no means alone in making this assumption as it has long been held and oft repeated. In his *Calendar of Ancient Charters*, William Beamont tells his readers that:

The chief framers and scribes of ancient charters were for the most part ecclesiastics, and the list of witnesses at the foot of them generally concluded with some clerk

⁸⁴ There is one notable exception to this. For an example of a London scribe who became a teacher of scribbling in Oxford, see William Kingsmill in Chapter Five.

⁸⁵ With regard to the legal role of secular clergy in provincial England, the editor of *Brooke's Notary* posits: 'In the course of time the clergy ceased to take part in secular business, and laymen, especially in towns and trading centres, began to assume the official character and functions of the modern notary. Matters of a commercial nature occupied their attention chiefly, and so numerous and complicated did these become that the necessity arose to separate the functions of ecclesiastical and civil notaries. In England this change seems to have taken place as early as the reign of Richard II'. Nigel P. Ready and Richard Brooke, *Brooke's Notary* (12th edn.; London: Sweet & Maxwell, 2002), at 12. In Chapter Three, this thesis will refute Steer's theory and suggest an earlier date than that suggested by Ready by showing that by the mid-thirteenth century scribbling was being done by lay clerks in urban centres such as Exeter and Bristol.

whose name is modestly inserted at the end, sometimes with the additional information that he made or wrote the charter.⁸⁶

While this was certainly true in some instances, particularly in villages with small populations of clerks (both ecclesiastic and secular), in larger urban centres there is more compelling evidence to suggest that by the end of the thirteenth century, administrative and secretarial roles were filled by laymen who were literate in both languages and the law and therefore capable of scrivenering.⁸⁷ Steer's assumptions regarding the role of clergy as provincial scribes are understandable, especially when the various definitions of 'clerk' are taken into consideration. In order to begin to rectify these ambiguities, the next section will consider how the term 'scrivener' can be defined as a unique type of clerk who possessed a specialised set of skills.

3. Scriveners as clerks and scribes

Largely as a result of the effort put in by Francis Steer to succinctly summarise the major developments in the history of the Scriveners' Company, the historiography of London's scribes is easily established. Conversely, ascertaining and assembling relevant sources to evaluate the historiography of scribes working outside of this guild and beyond the city of London provides a greater challenge to the researcher. First, the paucity of work exclusively dedicated to scribes in general leaves the researcher with only two publications from which to draw; both of which are Steer's contributions to the subject. However, as has been established, Steer's work is restricted to London's scribes and omits any significant references to those working elsewhere. Second, the other studies that have been done on professional writers which occasionally mention scribes are usually so broad in their scope that more often than not they are only tangentially related to this particular type of clerk. The challenge of understanding the role of the provincial scrivener seems to be rooted in what

⁸⁶ William Beamont, *A Calendar of Ancient Charters, with Modern Transcripts of Nearly the Whole, Preserved at Eaton Hall, Cheshire* (Warrington, 1862), at 2. As cited in J. H. Hodson, 'Medieval Charters: The Last Witness', *Journal of the Society of Archivists*, 5/2 (1974), at 71.

⁸⁷ This can be demonstrated in the thirteenth-century clerk of the Totnes guild called Bartholomew the chaplain, who seems to have been in G. H. Martin's view, an 'unusual figure' in the sense that he was actually an ecclesiastic filling this role. Bartholomew refers to himself as 'chaplain' in the 1260 roll of the merchant guild and was appointed vicar of Totnes in 1269. Martin argued that 'there is no general evidence that the clerks were, in the ordinary sense, local clergy or that they looked to an ecclesiastical career'. See: G. H. Martin, 'The English Borough in the Thirteenth Century', *Transactions of the Royal Historical Society*, 13 (1963), at 142. Other, more recent research similarly is moving away from the long-held assumption that literacy was limited to clerical élites. See: Adam J. Kosto, 'Laymen, Clerics, and Documentary Practices in the Early Middle Ages: The Example of Catalonia', *Speculum*, 80/1 (2005), Rosamond McKitterick, *The Carolingians and the Written Word* (Cambridge: Cambridge University Press, 1989).

amounts to a problem of definition and will be closely examined in this section. In an age when individuals regularly pursued several occupations, sometimes consecutively, sometimes concurrently, it can be difficult to ascribe a singular job description to any person. In the absence of an adequate description of what made a scrivener a distinctive category of legal clerk, research into the subject is unnecessarily complicated. This calls for a new delineation to be set down for the definition of scribes and scrivenering in the medieval context.

The Oxford English Dictionary defines 'scrivener' very simply as: 'a professional penman; a scribe, copyist; a clerk, secretary, amanuensis'.⁸⁸ According to this definition, in its most fundamental sense, the term 'scrivener' can literally apply to any person capable of writing. This leaves the parameters of definition wide open and confounds our ability to determine which of these various professional 'penmen' actually produced the types of legal instruments that scribes were known to make, as defined by the Scribes' Company. Not all 'clerks' wrote legal instruments, so we must go beyond this term in our definition. Throughout the Middle Ages, 'clerk' was an umbrella term under which three categories of people fell. The first was members of the regular clergy, secular clergy, or members of one of the holy orders or minor orders (re: clerics). The second was scholars of any typology. The third includes any and all secretaries, scribes or officials in charge of records and accounts.⁸⁹ It is fair to say that all medieval writers fell under at least one of these categories at any given point in their careers. However, as a means of referring to scribes, who were especially skilled in languages and the law, the term clerk is insufficiently precise. The simplicity of the definition as it stands is far too generic to be helpful, especially as it fails to refer to scribes' specialised skills as multilingual legal writers. Suggestions for redefining the parameters of scrivenering as a medieval craft and as an occupation requiring legal and linguistic literacy were previously proposed in Chapter One, but in this section I would like to briefly consider how certain historians have presented scribes as lay clerks and then follow this with an examination of some of the literature on notaries and lawyers. This literature has included scribes among these two types of legal professionals and can help to explain how the current broad definition of scribes has sometimes helped, but often hindered, research on the subject. Drilling down

⁸⁸ Oxford English Dictionary, "'Scrivener, n.'", *Oxford English Dictionary Online* (Oxford University Press). The Oxford English Dictionary finds the earliest reference to scribes as professional writers in the example of Reinaldus le Scriveyner around 1375 (who had an occupational surname), although the profession had already existed in everything but name several decades before.

⁸⁹ For a more detailed definition see the entries for 'clerk' in the Oxford English Dictionary and the Middle English Dictionary. Oxford English Dictionary, "'Clerk, n.'", *Oxford English Dictionary Online* (Oxford University Press).

this information will demonstrate the unique nature of scribes as a type of specialised legal clerk and justify setting a new definition for this group.

Allusions to their specialism as legal writers are sometimes made in the historiography of clerks and scribes, but this distinction has yet to make an appearance in any dictionary thus far. This further demonstrates and justifies the need for a refined definition of scribes as a subset of secular clerks who were skilled in languages and the law.⁹⁰ Often, some clerks are presented as part of a special class which is distinguishable from other types of clerks on the basis of their specialised skills, but they are not identified as being scribes. An excellent example of this approach can be found in the work of Thomas Frederick Tout. Tout's life-long study of the administrative machinery of the medieval English state has contributed greatly to the study of scribes – although he does not refer to them as such.⁹¹ Instead, Tout calls them 'lay civil servants' who, throughout the fourteenth century, were able to gradually assume the roles that had been 'hitherto regarded as the exclusive preserve of the clerk, so that the word clerk began to connote not ecclesiastic so much as writer'.⁹² While his emphasis may have been on the uppermost echelon of clerks working in London or Westminster as servants of the Crown or Chancery (or to a lesser extent in the offices of baronial households which might include local men as well), Tout's description of these 'civil servants' fits in precisely with my definition of 'scribe'. Of this type of clerk, Tout writes:

He had, for example, to have a reading and writing knowledge of three languages ... To this we must add a wide acquaintance with official forms and precedents, the traditions of his office, the corresponding formalities and traditions of foreign courts

⁹⁰ One such example can be found in Peter J. Lucas, 'A Fifteenth-Century Copyist at Work under Authorial Scrutiny: An Incident from John Capgrave's Scriptorium', *Studies in Bibliography*, 34 (1981). While his article is a fascinating investigation into the palaeographic and diplomatic practice of a medieval copyist, instead of highlighting the differences between clerks, Lucas perpetuates the notion that copyists and scribes were analogous. This is most clearly demonstrated in his choice of quotations with which to begin his article. Commencing with two quotations presented as contemporary evidence of the shortcomings of scribes, Lucas suggests that his fifteenth-century copyist is continuing a tradition of fallibility among writers as demonstrated by Lydgate and Chaucer. These quotations appear in Chapter One of this thesis. It is worth noting that Lydgate's quotation may have been more a commentary on the scribe-client relationship than the scribe-master relationship and also that Chaucer's well-known quotation regarding Adam, may possibly be perceived as a tongue-in-cheek chiding rather than a derogatory comment as he was undoubtedly Chaucer's favourite scribe.

⁹¹ See: Thomas Frederick Tout, 'Literature and Learning in the English Civil Service in the Fourteenth Century', *Speculum*, 4/4 (1929), Thomas Frederick Tout, *Chapters in the Administrative History of Mediaeval England*, 6 vols. (1; Manchester: Manchester University Press, 1920), Thomas Frederick Tout, 'The English Civil Service in the Fourteenth Century', in Manchester John Rylands Library (ed.), *The Bulletin of the John Rylands Library* (Manchester: Manchester University Press, 1916).

⁹² Thomas Frederick Tout, 'Literature and Learning in the English Civil Service in the Fourteenth Century', *Speculum*, 4/4 (1929), at 367.

and offices, skill in the art of *dictamen* or literary composition and form, and a good knowledge of law, municipal, civil, and ecclesiastical.⁹³

This quote seems to reveal a hesitance, or a reluctance, on Tout's part to expressly identify lay clerks with legal and linguistic skills as scribes unless they were also members of the Scribes' Company. This is a recurring theme in the literature as scholars have grappled with definitions of clerks and scribes and how to apply them. As early as 1923, scholars of medieval literacy identified the 'rise of the *laicus litteratus*' or the literate layman as a practically unworked field within the history of education; arguing that this could be remedied by doing research into both the history of scribes and the history of scribes' companies in London and York.⁹⁴ Since then, the history of London's scribes has been researched and fleshed out, however research into the history of English scribes as a whole has been left relatively untouched.

It is important to note that this crisis of identity is not only present in the secondary literature, but in the documentary evidence as well. The variety of usages and the plethora of meanings of the word 'clerk' in contemporary sources and within the medieval vocabulary is what led to the term's nebulous definition in the first place. Lila Dibben addressed some of the questions surrounding clerical identity in her study of thirteenth and fourteenth-century royal secretaries. Dibben found that it was clear that the medieval secretary 'was a special and important kind of clerk' as holders of this title were nearly always described as the clerks of their patrons.⁹⁵ Unfortunately, Dibben does not specify whether the type of clerk she is referring to in her article was lay or ecclesiastic. However, the implication of her statement leads one to conclude that she means to say that nearly all secretaries in this period were ecclesiastics, as they were certainly all clerks in the most basic sense of being either secular clergy or educated members of the laity who were able to read and write.⁹⁶ In his article on fourteenth-century civil servants, Tout broadened the definition of clerk to include those who

⁹³ *Ibid.*, at 368.

⁹⁴ Hilary Jenkinson, 'On Autographs', *History*, 8/30 (1923), at 102.

⁹⁵ L. B. Dibben, 'Secretaries in the Thirteenth and Fourteenth Centuries', *The English Historical Review*, 25/99 (1910), at 435.

⁹⁶ Further evidence of identity can be gleaned from the occupational surnames and bynames that became increasingly common throughout the later middle ages. For example, a study of Devon's taxpayers found that in 1332, only 10% of these people bore occupational bynames (excluding those derived from the woollen cloth industry and those referring to offices held or social status). Of those names, names such as Clerk and Clericus ranked 28th most common, surpassing Baker, Cook, Smith and Tailleur in order of occurrence. Questions surrounding identity will be examined in greater detail in Chapter Four.

were 'actual or potential ecclesiastics, capable of ordination to minor holy orders'.⁹⁷ While technically correct, this definition serves little purpose when it comes to differentiating between clerics and literate laymen.

Not all clerks were created equal. In the realm of Chancery and its clerks, A. F. Pollard attempted to distinguish between secular clerks and clergy in his article on 'The Authorship and Value of the "Anonimale" Chronicle'.⁹⁸ In this article, Pollard used the marriages of chancery clerks as evidence of their status as laymen. While clerks of the crown were free to marry from Richard II's reign, chancery clerks were officially prohibited from doing so from around 1388 until the statute of 1523 (14 & 15 Henry VIII c. 8) which lifted the rule of celibacy from the Six Clerks of Chancery.⁹⁹ Despite this rule imposed on the Six Clerks, other chancery clerks appear to have eschewed celibacy and chose instead to marry. Consequently, as Pollard explains, 'chancery clerks did not always call a clerk a clerk, and clerks were beginning to marry and discard their orders'.¹⁰⁰ As a result, it became increasingly difficult to differentiate between men of the same name who were also referred to as 'clerks' in the fourteenth century.

A parliamentary petition of 1371 demonstrates a movement towards replacing ecclesiastics with laymen as office holders in the highest clerical positions of the realm. The original petition seems to have been lost, however it was enrolled on the roll for the 1371 Parliament and sets out the following grievance:

And because in this present parliament all the earls, barons and commons of England declared to our lord the king that the governance of the realm has been controlled for a long time by people of holy Church, who are not liable to the king's justice in all cases, whereby great misfortunes and damages have occurred in times past, and more might occur in times to come, for various reasons which can be declared, in disinheritance of the crown and great prejudice of the said realm; may it please our said lord the king that henceforth lay people of the same realm, sufficient and of suitable rank to be chosen for this, and no other people, be made chancellor, treasurer, clerk of the privy seal, barons of the exchequer, chamberlains of the exchequer, controllers and all other great officers and ministers of the said realm; and that this matter shall now in such manner be established in the aforesaid form, that it shall in no way now be undone, nor should anything be done to the contrary in

⁹⁷ Thomas Frederick Tout, 'Literature and Learning in the English Civil Service in the Fourteenth Century', *Speculum*, 4/4 (1929), at 366.

⁹⁸ A. F. Pollard, 'The Authorship and Value of the "Anonimale" Chronicle', *The English Historical Review*, 53/212 (1938), at 577-605.

⁹⁹ *Ibid.*, at 583.

¹⁰⁰ *Ibid.*, at 579.

any time to come. Saving always to our lord the king the choice and removal of such officers, but still that they shall be lay people such as is aforesaid.¹⁰¹

Whether this petition represents an anti-clerical movement targeting top government office holders whose primary allegiance was to the Church or reflects a general desire to perpetuate a ‘change of recruitment policy’ that began with the replacement of the chancellor, the treasurer and the keeper of the privy seal with laymen in March of 1371 has yet to be adequately explained by political historians.¹⁰² Ormrod suggests that the Commons was motivated by its ‘preoccupation with greater accountability’ for the holders of these offices, along with their general suitability for roles that required not only political prowess but demonstrable fiscal responsibility as well.¹⁰³ However, what is certain is that from this date, ‘sufficient’ and ‘suitable’ laymen began to fill the roles that had previously been the jobs of the ecclesiastical élite, thus moving towards greater representation of scribes within the highest echelons of the English government’s administration.

4. Scriveners as men of law

Establishing scribes as a special class of lay clerk was the first step in refining the definition of this term. It is important to identify scribes as a distinct group of legal writers from within the larger body of professional writers, clerks and lawyers because the central claim in this thesis is that scribes were different from other types of clerks and men of law in medieval England because of their specialism as writers of legal instruments. In short, it was their legal and linguistic literacy that separated scribes from other clerks – both secular and ecclesiastical. Following on from this statement, I would like to consider the varied ways in which scribes have been presented by the historiography as ‘men of law’, specifically the references to scribes as being among the ranks of professional notaries and lawyers. These references appear despite a relative lack of evidence that provincial scribes ever attained (or indeed aspired to attain) such lofty positions within the body of legal professionals in this period.¹⁰⁴

¹⁰¹ Translated from Anglo-Norman French into modern English: Chris Given-Wilson et al. (eds.), *Edward III: February 1371* (Parliament Rolls of Medieval England, 1275-1504 (Prom), Leicester: Scholarly Digital Editions, 2004) at Membrane 3, Item 15.

¹⁰² The latter of these two options is favoured by the editors of PROME. ‘Introduction’, *Ibid.*

¹⁰³ W. Mark Ormrod, *Edward III* (New Haven: Yale University Press, 2011), at 528.

¹⁰⁴ Suggestions to the contrary are anachronistic, as historians have wrongly attributed the achievements of Tudor scribe-notaries and early solicitors to medieval scribes who were their scribal ancestors. While scribes undoubtedly dabbled in substantive law, they were more directly involved in the procedural elements of the law and therefore are more closely related to administrators than to contemporary notaries or lawyers. In fact, certain provincial cities expressly prohibited town clerks from acting as attorneys, pleaders or counsel. See: W. H. Bird, *The Black Book of Winchester*

Notaries

Legal historians have been remarkably silent on the subject of medieval scribes. In general, when references to scribes are made, legal historians tend to focus on the Scribes' Company and rely upon Steer's research as evidence of the scribal work most commonly carried out by London's professional writers. Only rarely do they venture to question the possibility that scribes were present elsewhere in the country, doing similar work but beyond the control of any regulatory body. Some notable exceptions to this can be found in histories of English notaries public.

C. R. Cheney's book *Notaries Public in England in the Thirteenth and Fourteenth Centuries* is an indispensable resource for the history and evolution of notaries public in England. It covers their original role as representatives of papal and imperial authority in the thirteenth century to the rise of English notarial activity in both the church and in the field of diplomacy in the following century. Cheney makes little mention of scribes, but they are not entirely overlooked in his study of notaries. This is perhaps surprising when one considers the scope of his investigation into notarial practices in England however it is understandable when one considers that Cheney's study was limited to the thirteenth and fourteenth centuries. His focus was on the ecclesiastical history of notaries rather than the activities of their lay counterparts who were scribes. This is interesting because, by Cheney's admission, scribes could also be notaries public and vice versa, and we can find evidence of this in the notaries' marks found in the Common Paper. Perhaps in part to justify the exclusion of scribes in his study of notaries, instead of recognising the many similarities between the legal work done by both scribes and notaries in medieval England, Cheney argues that the members of the Scribes' Company 'must be distinguished as a class from the notary public' based on the fact that only a few of its members drew their signs in the Common Paper and self-identified as a '*notarius publicus*'.¹⁰⁵

Cheney admits that terminology can be problematic since the word '*notarius*' was infrequently used in medieval England 'by itself as the indeterminate equivalent of scribe or secretary', and states that the word had 'no very precise connotation'.¹⁰⁶ Consequently, Cheney's own definition of English notaries public seems to suggest that scribes and notaries were

(Winchester: Warren & Son, 1925), at 40, 18.; E. W. W. Veale (ed.), *The Great Red Book of Bristol: Text*. (2; Bristol: Bristol Record Society, 1933) at iv, 122, 254.

¹⁰⁵ C. R. Cheney, *Notaries Public in England in the Thirteenth and Fourteenth Centuries* (Oxford: Clarendon Press, 1972), at 69.

¹⁰⁶ *Ibid.*, at 2.

analogous in the later medieval period. Therefore it is all the more difficult to discern his reasons for distinguishing between scribes and notaries based upon the infrequency of notarial marks in the Scribes' Company's register. While this thesis uses the type of work done by writers in order to categorise them, Cheney uses the level of authority given to them to prepare legal instruments as the only distinction between notaries public and scribes. Notaries public were given their authority to make legal instruments by kings and popes whereas scribes required no such authority to do their work.¹⁰⁷ However, according to Cheney's own research this distinction did not apply for the majority of the period he covers since English notaries ceased to receive their authority from popes and monarchs once the profession was laicized in the fourteenth century.¹⁰⁸ It was only until the latter part of the century that English notaries were still primarily clerics. After this time laymen were appointed by the Archbishop of Canterbury and the occupation of a notary remained the same in its secular capacity.¹⁰⁹

Both scribes and lawyers trained in the common law were the obvious choices for appointment as lay notaries because all three professions required the practitioner to possess knowledge of the law, languages and advanced levels of literacy. Michael Birks suggested that scribes must have begun to seek appointments as notaries around the same time that the Scribes' Company gained recognition from the City of London in the fourteenth century.¹¹⁰ Towards the end of this century lay notaries monopolised the business of authenticating documents for use abroad, but shared the practice of conveyancing with the scribes.¹¹¹ In the fifteenth century, as laymen began to replace ordained clergy in clerical offices within the

¹⁰⁷ The first notarial instruments appeared in 1257. C. R. Cheney, *Notaries Public in Italy and England in the Late Middle Ages* (The English Church and Its Laws in the 12th-14th Centuries: Essays by Christopher Cheney; London: Variorum Reprints, 1982), at 175-176.

¹⁰⁸ Cheney wrote the following to discern the basic characteristics of the English notary public: 'By definition he was a persona publica with some public functions, if only in the field of private law; he was authorized by a public authority to issue instruments'. C. R. Cheney, *Notaries Public in England in the Thirteenth and Fourteenth Centuries* (Oxford: Clarendon Press, 1972), at 1. Notaries public were finally banned by Edward II in 1320. See: Patrick Zutshi, 'Notaries Public in England in the Fourteenth and Fifteenth Centuries', *Historia. Instituciones. Documentos*, 23 (1996), at 422.

¹⁰⁹ Nigel P. Ready and Richard Brooke, *Brooke's Notary* (12th edn.; London: Sweet & Maxwell, 2002), at 11. Nigel Ready writes that notaries were employed by the monarch and the government to deal in matters touching the relationship between church and state, however the common law courts refused to accept notarial instruments as valid evidence. Private individuals hired notaries to prepare documents for secular matters that occurred in overseas jurisdictions where the instruments of notaries public were better recognised. *Ibid.*, at 12.

¹¹⁰ Michael Birks, *Gentlemen of the Law* (London: Stevens & Sons, 1960), at 74.

¹¹¹ H. C. Gutteridge, 'The Origin and Historical Development of the Profession of Notaries Public in England', in P. H. Winfield and A. D. McNair (eds.), *Cambridge Legal Essays* (Cambridge: W. Heffer & Sons, 1926), at 127.

government's administration, professional advancement for scribes became increasingly possible within the context of the secularisation of administrative personnel.¹¹² In England, the law never insisted upon the authentication of wills, deeds or written contracts by notaries per se which allowed both scribes and notaries to draw up legal instruments and practise conveyancing indiscriminately. The records of the Scribes' Company show that it admitted both notaries and attorneys who desired to practise conveyancing and the scribe's craft, thus reinforcing the notion that it was the *act* of scribening that was important rather than the scribe's affiliation with a particular group or professional organisation of legal writers.

Paradoxically, Cheney's failure to clearly define the attributes of the activities that were characteristic of scribes and notaries in England serves to contribute to my argument that the practice of the two professions was fundamentally the same in England.¹¹³ In fact, notaries public in the Middle Ages did similar work as their modern counterparts, dealing primarily in non-contentious matters such as deeds, letters of attorney, estate management, and foreign affairs and international business.¹¹⁴ Other than their activity in international matters of legal importance, the work of notaries public mirrored the work of scribes and the types of legal instruments that they produced. This makes Cheney's silence on the question of scribening and the overlapping legal practices of scribes and notaries working in later medieval England quite a remarkable omission in *Notaries Public*.

Slowly but surely, historians of notaries have begun to acknowledge the pertinence and urgency of more research on scribes in order to complement their work.¹¹⁵ Nigel Ramsay's incredibly valuable attempts at shedding light on the work of notaries and his efforts to elucidate some of the similarities and differences between notaries and scribes have added

¹¹² R. L. Storey, 'Gentlemen-Bureaucrats', in C. H. Clough (ed.), *Profession, Vocation and Culture in Later Medieval England* (Liverpool: Liverpool University Press, 1982), at 104, S. J. Payling, 'The Rise of Lawyers in the Lower House, 1395-1536', *Parliamentary History*, 23/1 (2004), at 110.

¹¹³ This is not to say that the status of notaries public on the continent was indistinguishable from that of scribes. On the contrary, continental notaries public undoubtedly formed a class of legal professional that was separate from mere scribes.

¹¹⁴ Eventually the ecclesiastical notaries stopped taking part in secular business and laymen assumed the function of notaries – especially in matters of a commercial nature. This change appears to have taken place in England as early as the reign of Richard II. See: Nigel P. Ready and Richard Brooke, *Brooke's Notary* (12th edn.; London: Sweet & Maxwell, 2002), at 12.

¹¹⁵ Among these historians is the work of Patrick Zutshi, a follower of C. R. Cheney, who recently noted that while scribes were likely influenced by notarial practice 'little can be said about scribes outside London, for virtually no research has been done on them'. Patrick Zutshi, 'Notaries Public in England in the Fourteenth and Fifteenth Centuries', *Historia. Instituciones. Documentos*, 23 (1996), at 428. Richardson also hinted at this in the 1930s, see: H. G. Richardson, 'An Oxford Teacher of the Fifteenth Century', *Bulletin of the John Rylands Library*, 23/2 (1939), at 428.

much to the corpora of knowledge on both subjects. In his chapter 'Scriveners and Notaries as Legal Intermediaries in Later Medieval England' and his article 'The History of the Notary in England', Ramsay explains the differences he perceives to have existed between the work done by late medieval scriveners and notaries and that which was done by other legal professionals like attorneys.¹¹⁶ By distinguishing between their professional skills and the social status or levels of authority associated with each of their specialties, Ramsay also considers how each type of legal actor prepared or used legal documents and he uses these criteria to make the distinctions between notaries, attorneys and scriveners. Ramsay first tackles these definitions by using Cheney's status-based interpretation, explaining that a scribe's status: 'varies according to the extent to which he is the originator of his text and depending on whether he can uphold its legal validity by his own actions'.¹¹⁷ Ramsay finds that a notary's instrument carried a certain weight in international litigation and an attorney's legal expertise meant that he could advise and represent his clients in the royal courts, whereas a scrivener derived his status from the sealed legal instruments that he was able to compose. As the common law placed value on these sealed documents, the scribe's ability to compose original charters and deeds was valued as well.¹¹⁸ Thus the simple distinction between notaries, attorneys, and scriveners lies in the level of social influence and authority that their instruments carried.

Next, Ramsay considers the type of work done by scriveners in order to distinguish them from copyists and attorneys. He argues that a scrivener's legal instrument benefitted from his ability to compose an original legal document rather than simply 'filling in the blanks' by copying and altering another text's format as a copyist would. In this regard, neither scriveners nor notaries could act in the same capacity as professional lawyers and attorneys who dispensed legal advice and spoke for their clients in court. Attorneys had more freedom to choose to what extent they wished to advise clients on the substance of the law and could opt instead to operate more like scriveners and notaries by intentionally restricting their actions to the

¹¹⁶ Nigel Ramsay, 'Scriveners and Notaries as Legal Intermediaries in Later Medieval England', in Jennifer Kermode (ed.), *Enterprise and Individuals in Fifteenth-Century England* (Gloucester: Alan Sutton, 1991), at 118-131, Nigel Ramsay, 'The History of the Notary in England', in Mathias Schmoeckel and Werner Schubert (eds.), *Handbuch Zur Geschichte Des Notariats Der Europäischen Traditionen* (Baden-Baden: Nomos, 2009), at 375-391.

¹¹⁷ Nigel Ramsay, 'Scriveners and Notaries as Legal Intermediaries in Later Medieval England', in Jennifer Kermode (ed.), *Enterprise and Individuals in Fifteenth-Century England* (Gloucester: Alan Sutton, 1991), at 118.

¹¹⁸ Nigel Ramsay, 'The History of the Notary in England', in Mathias Schmoeckel and Werner Schubert (eds.), *Handbuch Zur Geschichte Des Notariats Der Europäischen Traditionen* (Baden-Baden: Nomos, 2009), at 380.

preparation of legal documents and by leaving the business of acting as counsel to other legal professionals like lawyers. On the other hand, scribes and notaries could not act as counsel or represent their clients in any officially recognised capacity in the superior courts. Ramsay's argument for categorising scribes and notaries as legal professionals who formed a separate group from attorneys and lawyers is sound, and it contributes to my argument that the difference between the scribes and notaries themselves is so slight as to be inconsequential and counterproductive to the general study of the work done by these legal scribes.

When it comes to the question of scribes working outside of London, Nigel Ramsay observes that there are sources which show scribes finding success working in the provinces. In his evaluation of the role of provincial scribes, Ramsay argues:

It would be wrong to present them as substitute lawyers in a general way, for their legal skills were obviously limited. They excelled as copyists and as form followers, and yet, paradoxically, it was where the law was at its most informal that they were able to make inroads into it.¹¹⁹

Ramsay's estimation that scribes must have been employed in the provinces is not unique, however his claim that scribes' knowledge of the law was of an inferior sort is a direct contradiction to the conclusions made by other scholars like Timothy Haskett.¹²⁰ Ramsay's findings in this regard perpetuate an outdated assumption that scribes' work was somehow substandard, especially when put in comparison to notaries simply because their craft occupied a lower position in the hierarchy of legal writers and practitioners. This belief is perhaps nowhere more apparent than in the otherwise seminal work of Cheney, *Notaries Public in England*, but is countered by Eric Ives' contention that it is nearly impossible to categorize legal actors based on their qualifications, training or education.¹²¹

¹¹⁹ Nigel Ramsay, 'Scribes and Notaries as Legal Intermediaries in Later Medieval England', in Jennifer Kermode (ed.), *Enterprise and Individuals in Fifteenth-Century England* (Gloucester: Alan Sutton, 1991), at 126.

¹²⁰ Timothy S. Haskett, 'Country Lawyers? The Composers of English Chancery Bills', in P. Birks (ed.), *The Life of the Law: Proceedings of the Tenth British Legal History Conference* (London: Hambledon, 1993), at 9-23. However their dates of publication are too close together to know whether the one was aware of the other's work on the subject before their respective articles went to print.

¹²¹ See: C. R. Cheney, *Notaries Public in England in the Thirteenth and Fourteenth Centuries* (Oxford: Clarendon Press, 1972), E. W. Ives, 'The Common Lawyers in Pre-Reformation England', *Transactions of the Royal Historical Society*, 18 (1968), at 150. Also see: Herbert C. Schulz, 'The Teaching of Handwriting in Tudor and Stuart Times', *The Huntington Library Quarterly* 4 (1943), at 381.

Lawyers

How then is it possible to make any assertions about the skills of those working at the bottom of the legal hierarchy? In his monograph *The Common Lawyers of Pre-Reformation England*, Ives presents 'minor' legal professionals as a single group which included scribes and lawyers of middling rank.¹²² Lawyers below the level of judges and serjeants were all 'learned in the law' or simply designated as 'learned men' by their contemporaries.¹²³ Considering he based his definition on the contemporary common terminology used to describe these legal professionals, it is clear that in Ives' opinion, we should rely on contemporaries to make the distinction between these men. It is similarly apparent to Ives that medieval society observed a unity in the legal profession which is reflected in the vocabulary that they employed to describe legal professionals as a group. Ives also considers the role of other types of men 'learned in the law' and asserts that the demand for legal services outside of London was met by a contingent of local legal officials and businessmen who were for all intents and purposes 'the only lawyers that mattered' for the majority of people in provincial England.¹²⁴ This statement supports the findings of one palaeographer who recognised half a century before Ives that scribes were a class of professional men 'whose skill was generally available to that large part of the populace unable to record its own words in writing' which was essential to a society that was increasingly reliant upon the written word in order to access justice – even in areas outside of London.¹²⁵

This is an interesting element of debate in the existing literature when it comes to setting the parameters for the group in which the scribes belonged and when considering the type of employment they engaged in. One study on the clerical population of medieval England addressed the presence of a body of clerks working in provincial England and emphasised the need for a study of their activities.¹²⁶ While characterising these men as local lawyers who wrote charters and wills and kept manorial accounts, the author of that study, Josiah Russell, identifies these lawyers as secular clergy because he assumes that they were clerks in minor orders. Although this certainly seems to be true for the first half of the period covered by Russell in his research (c. 1000-1500) and is supported by the evidence for some of the Westcountry clerks researched in this thesis, after the thirteenth century there is no reason to

¹²² E. W. Ives, *The Common Lawyers of Pre-Reformation England* (Cambridge: Cambridge University Press, 1983).

¹²³ *Ibid.*, at 20.

¹²⁴ *Ibid.*

¹²⁵ Herbert C. Schulz, 'The Teaching of Handwriting in Tudor and Stuart Times', *The Huntington Library Quarterly* 4 (1943), at 381.

¹²⁶ Josiah Cox Russell, 'The Clerical Population of Medieval England', *Traditio*, 2 (1944), at 178; fn. 3.

believe that these legal clerks were necessarily members of the secular clergy. It is notoriously difficult to ascertain the numbers of people working in any given profession in the Middle Ages, and this task is similarly complicated when it comes to counting clerks.¹²⁷ Basing his calculation on two fundamental assumptions, Russell estimates that between ten and twenty thousand clerks in England were secular clergy. First, he supposed that if on average there were one or more clerks working on each manor in the thirteenth century, then there must have been at least as many clerks as there were manors. Second, he set his estimate in accordance with the prevalence of clerks' names appearing as witnesses and writers of charters, wills and manorial accounts in these provincial English records which led him to the general figure of ten to twenty thousand.¹²⁸ This is significant because Russell identified these men (many of whom were most certainly scribes) as being not only members of the non-beneficed secular clergy but also as consisting of 'a class of local lawyers'.¹²⁹

More recently this idea has been expounded in literature on medieval English lawyers working outside of London. Timothy Haskett has authored one of the most recent and relevant articles on the subject of medieval legal actors working in the provinces in a paper which he presented in 1990 at the Tenth British Legal History Conference, entitled: 'Country Lawyers? The Composers of English Chancery Bills'.¹³⁰ Haskett focuses primarily on the men who engaged in petitioning the early Court of Chancery and the questions surrounding their approaches to equity. The major themes he pursues are the identities of the petitioners, the regularity with which they sent bills (or petitions), who they were against, what they were about and why these people chose to petition Chancery rather than other courts? A secondary aspect of this article focuses on an examination of the diplomatics of Chancery bills by considering the scribal forms and features of the documents, along with their distinguishing linguistic features.

With regard to these linguistic features, Haskett considers how Chancery English was able to spread from London's courts and out into the countryside. While doing so he makes some

¹²⁷ Still, historians continue to try. See Kosto's attempt to calculate the number of lay scribes in medieval Catalonia based on the percentage of laymen among the recorded names of scribes: Adam J. Kosto, 'Laymen, Clerics, and Documentary Practices in the Early Middle Ages: The Example of Catalonia', *Speculum*, 80/1 (2005), at 59-60. Also McKitterick's attempt to identify the number of non-royal scribes in the Carolingian world: Rosamond McKitterick, *The Carolingians and the Written Word* (Cambridge: Cambridge University Press, 1989), at 115-125.

¹²⁸ Josiah Cox Russell, 'The Clerical Population of Medieval England', *Traditio*, 2 (1944), at 178-179.

¹²⁹ *Ibid.*, at 178; .fn. 3.

¹³⁰ Timothy S. Haskett, 'Country Lawyers? The Composers of English Chancery Bills', in P. Birks (ed.), *The Life of the Law: Proceedings of the Tenth British Legal History Conference* (London: Hambledon, 1993), at 9-23.

interesting observations on the legal professionals who were undoubtedly responsible for this expansion of Chancery Standard and its interaction with local dialects. It was Haskett's view that these men, who worked in the country and had a measure of competence in the law and a level of familiarity with petition forms and formulae, had sufficient legal and scribal ability to present individual cases in writing to the chancellor and his court according to the standards expected by Chancery.¹³¹ Haskett identifies these 'agents of diffusion' who were the authors of Chancery bills as 'country lawyers.'¹³² The use of this term, 'country lawyer', is important because it represents a desire to distance legally literate and linguistically literate peoples from those with fewer skills and experience with languages and the law. For Haskett, these abilities are what set the writers of petitions apart from mere scribes or clerks. Furthermore, this justifies putting petition writers on a par with lawyers despite the primarily scribal nature of their work. By giving these writers the moniker of 'lawyer', Haskett thereby implies that these men possessed certain additional advocacy skills and attributes that they probably did not have – like the ability to plead cases, advise clients on the law and pursue legal action on behalf of others.

While recognising that historians know little information and few details about the subjects of his study, Haskett concludes his article with the assertion that Chancery bills were products of these country lawyers. He argues that we can be certain that they existed as a class of legal professional and that it was their literacy, legal knowledge and linguistic skills that offered provincial petitioners a reasonable chance of success in the bills they sent to the Court of Chancery.¹³³ When Haskett describes country lawyers in this way and outlines their practical legal skills which were fundamentally procedural and scribal skills rather than pleading skills, I would argue that what he is inadvertently describing are provincial scriveners rather than provincial lawyers. This distinction may seem slight, but it is central to this thesis as scriveners deserve to be considered as a special class of legal clerk and therefore different from lawyers due to their positions as legal administrators rather than as litigators. Through his characterisation of provincial scriveners as 'country lawyers', Haskett (perhaps unintentionally) elevates the professional status of a group of specialised clerks by labelling them as lawyers

¹³¹ *Ibid.*, at 18-23. The question of the presence of professional scribes working outside of London and their role in petitioning parliament was examined by Gwilym Dodd. See: Gwilym Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford: Oxford University Press, 2007), at 306-309.

¹³² Timothy S. Haskett, 'Country Lawyers? The Composers of English Chancery Bills', in P. Birks (ed.), *The Life of the Law: Proceedings of the Tenth British Legal History Conference* (London: Hambledon, 1993), at 9-23.

¹³³ *Ibid.*, at 23.

without any real justification for doing so. Simultaneously, Haskett is able to negate this elevation in status by applying the term 'country' to his 'lawyers' in what amounts to an arguably pejorative commentary on their training and abilities. By calling them 'country lawyers', Haskett relegates his lawyers to a junior position when compared to that of their London colleagues and thereby insinuates that provincial legal professionals were an inherently inferior sort of lawyer by virtue of geography.¹³⁴ Therefore, Haskett's 'country lawyer' label reflects one of the most unfortunate assumptions to be found in the existing literature: the belief that scriveners were a substandard variety of lawyer. Sadly this is also among the most prevalent of the incorrect claims found in the historiography of legal professionals. However well-intentioned it may be, the assumption that they were lawyers does little to clarify the boundaries of the scrivenering craft itself.

Solution

To date, the majority of the literature available that pertains to medieval scriveners working as legal professionals has been produced by Timothy Haskett, Christopher Cheney and Nigel Ramsay. This brief examination of these studies has shown that the criteria applied to scriveners when attempting to define them or to identify them as a group is inconsistent. Consequently, it can be difficult to ascertain whether or not an author is in fact writing about scriveners since historians do not universally connect this title with the type of work that was characteristic of the profession. As a result, the literature that exists which pertains to scrivenering sometimes never mentions the word scrivener at all. Whether this has been done intentionally to avoid delving into the question of provincial scriveners when they are not the focus of the historians' studies or merely reflects an oversight in terminology on the part of non-specialists, the result is the same as scriveners continue to be overlooked.

This present study will draw on these diverse approaches to defining the role of scriveners in order to demonstrate that the occupational activities of certain legal actors in the provinces can be classified as scrivenering although these people did not always self-identify as scriveners. For this thesis it is imperative that scriveners are recognised as being both a class of clerk and a class of legal professional, however the strict labels that have been applied by scholars in the literature are of little importance. As Ives observed, lawyers in Westminster and minor legal officers like scriveners in the provinces cannot be said to have worked in the same profession

¹³⁴ In reality, provincial legal professionals were likely to have benefited from similar formative, foundational and advanced training and education as those in the city.

exactly, however it should be noted that the two groups differed in degree – not in kind.¹³⁵ Instead, it is the accurate description of their occupations and the products of their scribal work that are matters of great interest as it is their work that identifies scribes as a uniquely skilled group of legal clerks within their provincial communities.

Scribes were a group of specialists that existed as a subsection of two different groups – clerks and legal professionals. Historians have called this motley group of writers by a variety of names in an attempt to categorise them, but what sets scribes apart is the nature of the work that they performed and the specialised skills that they brought to their craft. None of medieval England's legal professionals enjoyed any special vocational privilege and the work of the early barristers, attorneys, solicitors, scribes and even literate laymen overlapped.¹³⁶ Rather than homogeneity, it is the multiplicity of skills within the medieval legal profession that gives it a unique character and also makes it a challenge to study. No matter the appellation, the work that they did was scribing – that is to say that they read and wrote and performed secretarial and administrative duties that traditionally included composing legal instruments. These functions all required a certain level of legal and linguistic literacy and share the goal of accessing justice through their written work.

These distinctions should be kept in mind when considering the work done at all levels of the legal spectrum. In keeping with Simon Payling's example, this study will redefine the term 'scribe' in order to identify these legal professionals based on the work that they produced and the scribal activities that they participated in. This work-based perspective serves to expand rather than limit the definition of scribe to apply equally to those individuals who self-identified as scribes and to those who were identified as scribes in either documentary sources or existing literature.¹³⁷ It also adds to the analysis of scribes by including individuals who do not fit into either of the aforementioned groups of traditionally identified scribes. In particular, this thesis will examine town clerks as both prolific and ubiquitous scribes working in provincial England for local government administrations.

¹³⁵ E. W. Ives, 'The Common Lawyers in Pre-Reformation England', *Transactions of the Royal Historical Society*, 18 (1968), at 148-151. Ives notes that attorneys of the central courts also had practices in the provinces.

¹³⁶ Wilfrid R. Prest, *The Rise of the Barristers: A Social History of the English Bar 1590-1640* (Oxford: Clarendon Press, 1986b), at 18.

¹³⁷ In his article examining the increase in lawyers acting as members of parliament, S. J. Payling redefines the term 'lawyer' in order to justify the inclusion of town clerks in his study of the legal element at work in the House of Commons in the later medieval period. See: S. J. Payling, 'The Rise of Lawyers in the Lower House, 1395-1536', *Parliamentary History*, 23/1 (2004), at 104.

According to this broader definition of scribes based on their actions rather than on arbitrary labels, scribes can be considered to be a larger sub group of legal professionals that incorporates certain types of scribes working at all levels of the legal profession and in various public offices. Following this approach, finding evidence of the products of scribbling in the form of legal instruments is the first step to identifying the existence of scribes outside of London. The sources and approach to this investigation will be explored in greater detail in the next section of this chapter.

5. Sources and Methodology

Introduction

The literature surveyed in the first half of this chapter has provided the historical foundations of, and scholarly justification for, this study on provincial scribes. On occasion, comments made in passing by the finest scholars in the field have revealed the presence of several gaps in the historiography. As there is little written about scribes in this period from either historians or contemporaries¹³⁸ it has become apparent that these gaps cannot be filled if historians continue to rely so heavily on what the documentary evidence can literally tell us about this group. Instead the study of scribes demands a more radical approach to interpret the sources in order to reveal that which has hitherto been hidden behind the text.

Every researcher who has looked at a legal instrument like a will, a deed or a charter, a recognizance of debt, a court roll, a manor roll, a receiver's account, or a petition, has held the work of a scribe in their hands. But how often do any of us really think about this amorphous category of scribe? Do we look at the charter and consider who might have written it? These manuscripts represent the all too often invisible presence of writers who were hard at work during a time when documentary production was increasing as English bureaucracies expanded and required more records. We have scribes to thank for the proliferation of documentation that came not only out of the central government's Chancery, but also out of local guildhalls. It is here, at the local level, that this study focuses as I look at the lives and livelihoods of provincial scribes who worked as town clerks in England's southwest from c. 1230-1500. More than mere scribes or copyists, scribes possessed specialised knowledge of the law and legal formulae which were essential tools of the scribbling trade and which can be demonstrated by considering the types of documents they wrote. These sources are more

¹³⁸ With perhaps the exception of the Paston letters and Chaucer's references to his scribe, Adam Pinkhurst.

than a means to an end. For this research, the sources found in local record offices are as much the basis for an historical investigation as they are essential to the methodology upon which it depends. My methodology is reliant upon first, an evaluation of scribes' written instruments and second, an ability to identify the hands of individual scribes from within this body of manuscripts. Only then is it possible to reflect upon the type of work done by scribes and situate it within the context of access to justice in order to demonstrate how provincial scribes' linguistic prowess and legal literacy were essential elements of late medieval urban society.

Sources

Legal instruments

Susan Reynolds and Paul Brand have both drawn attention to the importance of writers of deeds, charters and contracts as representatives of the 'lower end' of the English legal profession.¹³⁹ Brand has suggested that this is an area of research that requires much more investigation as 'there is no satisfactory general modern treatment of the diplomatic of private charters and other documents ... and no general study of those who wrote and drafted these charters or of their relationship with the other parts of the legal profession'.¹⁴⁰ As this thesis intends to remedy this absence of literature on these draftsmen, medieval deeds and charters found in local record office archives for the period 1230-1500 will be used as the main primary sources for this research.¹⁴¹

¹³⁹ Susan Reynolds, 'The Emergence of Professional Law in the Long Twelfth Century', *Law and History Review*, 21/2 (2003b). Paul Brand, 'The English Difference: The Application of Bureaucratic Norms within a Legal System', *Law and History Review*, 21/2 (2003).

¹⁴⁰ Paul Brand, 'The English Difference: The Application of Bureaucratic Norms within a Legal System', *Law and History Review*, 21/2 (2003), at 387.

¹⁴¹ Deeds fall into two categories: simple deeds and chirographs (or indentures). J. M. Kaye describes a simple deed as: 'A single text, written usually in the first person by the maker or makers, sealed, or in the early years otherwise authenticated, by him or them and delivered to the named beneficiary. Most grants in alms, grants in fee and inheritance made by laymen, and most confirmations and quitclaims, were in this form'. Chirographs can be divided into two types. J. M. Kaye describes the first type as: 'a simple deed, as defined above but made in two identical copies, one of which was delivered to the beneficiary and the other retained by the maker. This form was commonly used for exchanges, for leases for life or years, and, by some religious houses, for grants in fee and inheritance'. The second was known as a deed *inter partes*. This usually began 'with the words *Hec est conventio (or concordia) facta inter A et B*, or something similar' and the difference between it and a simple deed was that a deed *inter partes* set out the grants, liabilities and obligations of the parties, usually in the third person, 'thus speaking indifferently for both parties whereas as a simple deed, whether duplicated or not, spoke only for the person or persons who made it'. See: J. M. Kaye, *Medieval English Conveyances* (Cambridge: Cambridge University Press, 2009), at 8.

When discussing deeds relating to property transactions, this thesis will follow the conventions set forth in the catalogue descriptions used by the National Archives: The term grant (or deed) will be used for

Deeds or charters were a type of instrument that granted a privilege or an object from one person to another in the presence of witnesses which were validated by attaching wax seals to the parchment agreement. The majority of these documents were written in Latin, although occasional examples in Middle English or Anglo-Norman can also be found. Much maligned as a source for 'boring' history, these unassuming deeds possess an unexpected ability to open a window into the world of the scribes who wrote them. As sources, deeds provide insight into the history of land and property ownership, give information on urban history and topography and they also reveal much about people and communities. Moreover, they leave little question as to the patronage of the work. We know precisely for whom these deeds were written, when, why and sometimes where. These are legal instruments that were not only prepared by scribes, but whose content also sometimes touches on scribes' personal property as well. Most noticeably, deeds contain information about the propertied classes and their transactions as they list the names of owners, tenants, neighbours, colleagues and family members. Medieval deeds also give us a glimpse into the working lives of the scribes who wrote the instruments and who left their indelible mark on the legal history of this country through the written documents that have survived them. The task set forth in this thesis is to determine the identities of these scribes, thus answering all fundamental questions regarding the evidence and clarifying the place of individual clerks in the picture of medieval conveyancing.

In the past, historians have accused charters of being, in the words of T. F. T. Plucknett, 'too conventional in form to be very communicative'.¹⁴² This is only partially true. The historian's ability to commune with these sources is very much dependent upon the conversation that he or she desires to have. The use of written formulae today connotes a lack of independent thought and creativity on the part of the writer, but form following was commonplace in the medieval period and the medieval business school masters taught their students how to choose appropriate formulae and apply them to any given situation. Is this such a bad thing? Should it be perceived as a lack of education, or should it instead be construed as an indication of training? Furthermore, it has been posited that adhering to a set formula increased the

the basic conveyance that transfers title to real property from one party (grantor) to another (grantee), in Latin 'dedi, concessi et ... confirmavi'. A deed will only be described as an enfeoffment when it is specifically described as such in the document. The term quitclaim will be used to refer to any documents disclaiming future interest in a property to the new owner, in Latin 'remisise, relaxasse et quietaclamasse'. The term lease will be used for those documents including the Latin phrase 'tradidi, concessi et dimisi'.

¹⁴² T. F. T. Plucknett, 'Bookland and Folkland', *Economic History Review*, 6 (1935), at 64.

chances of success for medieval petitioners.¹⁴³ Therefore, the consistency and regularity of forms and formulae in legal instruments should not be seen as reflections of ignorance or inability, rather they should be seen as evidence of intention on the part of the clerks. In this thesis I will argue that by following a formulaic approach to writing deeds and petitions, in particular, scribes are actually demonstrating their training in the art of scrivening. If these were mere scribes or copyists, would they have access to templates? Would they even be aware that there was a set formula to follow in the first place? If anything, a deed or petition which deviates from the norm reveals a lack of sophistication, not the presence of it.

Furthermore, there is genuine beauty in such a simply crafted instrument and the clear structure of deeds also tells us something of their evidentiary use as historical records.¹⁴⁴ It is astonishingly easy to read through a large number of deeds in a relatively short space of time if you are looking for basic information such as place, parties, property, rent/conditions, witnesses and the date of the transfer. While this ease of access is certainly of great benefit for the modern researcher, I cannot help but surmise that it was of equal value to the medieval clerk who occasionally needed to refer to these deeds himself, or locate them for another. Exchange the modern archivist's box for a medieval chest and the researcher can imagine how long it would take a town clerk to sort through a stack of deeds in search of one in particular. The ability to read the language of the document and understand its terminology are prerequisites for success, but I believe that the searcher benefitted much more from a familiarity with the format of the documents in question, just as this researcher has benefitted from this knowledge in her many forays into the piles of deeds deposited in boxes in record offices. While the language(s) and antiquated legal terminology used in the composition of these instruments may act as an impediment to the illiterate layman, the simplicity of its structure acts as an open window, revealing to the legally and linguistically literate reader the nature of the instrument itself as a fairly simple and straightforward exchange. When

¹⁴³ See: Gwilym Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford: Oxford University Press, 2007), at 303.

¹⁴⁴ Maitland divided written documents into two when it came to their relations to a legal transaction: 'On the one hand it may itself be the transaction: that is to say, the act of signing, or of signing and delivering, the document may be the act by which certain rights are created or transferred. On the other hand, the instrument may be but evidence of the transaction.' In the first case the charter/deed/instrument is called 'dispositive,' meaning that the deed itself brought about the settlement which distributed or transferred the property in question to someone else. In the latter case the document is considered 'evidentiary,' reflecting its nature as a document held for posterity. However, after the Conquest no charter by itself could effectively transfer land without an actual change of seisin by which means the grantee obtained both possession and title of the property. F. W. Maitland, *Domesday Book and Beyond* (Cambridge: Cambridge University Press, 1907), at 262.

considered in these terms, the ‘conventional form’ of the medieval deed might actually be its greatest strength and its most communicative quality.

Borough records: court rolls, accounts and custumals

Court Rolls

At the bottom of the hierarchy of medieval England’s secular courts, lie the local courts of the hundred, the shire and the borough. Borough courts were often held in local guildhalls which formed the epicentre of civic life in all of the jurisdictions that will be considered in this thesis. More importantly, it was there that one could find a scrivener hard at work in the local courts of the mayors and bailiffs as the town’s clerk. Generally speaking, the guildhall was:

The recognised Court for civil business, and here deeds for the conveyance of property and other legal documents were entered into and enrolled in the open Court, that is, between the four benches, the citizens standing round. It was usual to enter on the deed the names of some of the spectators as witnesses, and sometimes their seals would be affixed.¹⁴⁵

The guildhall fills a similar role in each of the cities that will be considered in the following paper: Exeter, Bridgwater, Bristol and Southampton. While the personnel of the guildhall and its courts changed annually, the town clerk was a constant figure on hand to perform his clerical and secretarial duties and equally to advise on legal matters in the days before the recorder made his appearance as a civic official.¹⁴⁶ Here the town clerk sat in the courts and recorded all of their proceedings on the rolls and in doing so, effectively created an official legal record.

Geoffrey Martin described the borough court as ‘the heart of the medieval town’s government’ and stated that as its judicial business was: ‘the most extensively developed of all medieval administrative practices, it is not surprising that court rolls of all kinds are amongst the commonest, and in terms of categories probably the most numerous, of borough

¹⁴⁵ H. Lloyd Parry, *The History of the Exeter Guildhall and the Life Within* (Exeter: James Townsend & Sons, 1936), at 6.

¹⁴⁶ The recorder seems to have evolved out of the role of town clerk, when the administrative demands on the clerks was sufficient enough to warrant the creation of a new position in the guildhall which focused exclusively on legal affairs and left the secretarial aspect of scrivening to the town clerks. The sudden appearance of recorders in towns as they grew coincided with the beginning of the end of the golden age of scrivening as a profession in the way that we understand it in the fourteenth century. Scrivening, which was once a catch-all profession for writers, money lenders, legal advisors, and ‘businessmen’ begins to fragment into several different professions: writers/copyists, solicitors/notaries and bankers by the end of the fifteenth century.

records'.¹⁴⁷ The court also served as a registry. In boroughs like Exeter and Bristol, the parchment rolls produced by the town clerks were maintained throughout the Middle Ages as comprehensive records of the town's business, of admissions of freemen to the franchise, elections of local officials, fines and court judgments, enrolments of personal documents such as deeds, wills and testaments and other private business transactions as well. Consequently, court rolls have rightly been called 'the remnants of a substantial body of working documents, written in a business-like way for prosaic purposes'.¹⁴⁸ Furthermore, Martin reminds us of the significance of the appearance of these regularly written memoranda as it marked 'an important stage in a community's progress towards corporateness'.¹⁴⁹

Receiver's Accounts

Mayor's court rolls were not the only type of administrative record to be produced by town clerks in the guildhall. The rolls of other courts, such as provosts' courts and manorial courts, which were overseen by members of the borough's oligarchy, were also produced by the guildhall's secretariat. Additionally, the compilation of the receiver's accounts also fell under the purview of the town clerk on occasion. These were the yearly accounts of the borough's receiver which contain entries of all receipts and payments made by him and to him from Michaelmas to Michaelmas. Not only do these rolls carry great importance from an economic history perspective as they contain explicit fiscal information about the city's income and expenditure, but they also contain a vast amount of valuable and interesting implicit information of a more socio-legal nature. In particular, the receiver's accounts record the city's payments to individuals for specific types of work or fulfilment of certain extraordinary duties – such as attendance at parliament. Exeter's receiver's accounts also show that clerks were in the constant employ of the city as 'businessmen', performing various tasks for the mayor and local government.

Receiver's accounts also provide insight into the earning potential of a local scrivener as they tell us not only how much he was paid as the town clerk, recorder or sub clerk, but they also offer evidence of the ad hoc employment that local clerks engaged in. More often than not, these additional payments were made for additional secretarial duties for the borough that were not considered part of the typical obligations of the town's clerks. Furthermore, the

¹⁴⁷ Geoffrey Martin, 'English Town Records, 1200-1350', in R. H. Britnell (ed.), *Pragmatic Literacy, East and West, 1200-1330* (Woodbridge: Boydell Press, 1997), at 124.

¹⁴⁸ G. H. Martin, 'The English Borough in the Thirteenth Century', *Transactions of the Royal Historical Society*, 13 (1963), at 142.

¹⁴⁹ *Ibid.*, at 128.

receiver's accounts attest to the upward social and political mobility of the local élite, demonstrating scribes' career paths and ultimately proving that not all clerks were content in their position and that scribbling could be a stepping stone to civic leadership, even to the mayor's office.

Together, the court rolls and the receiver's accounts represent a large body of work produced by local clerks in their official posts within the borough's administration. In the past, it has been argued that it is precisely because borough records such as these are so numerous that they 'have received only spasmodic attention, and little of that for their own sake'.¹⁵⁰ The nature of the approach taken towards these records in this thesis will begin to rectify this.

Customals

While this research is primarily based on legal instruments, legal literature will also be considered such as customals and local chronicles. Customals are another type of written record produced by scribes. Put simply, a customal is a collection of customary laws set down in a written record. In Penny Tucker's words they were: 'compiled by and for administrators, and they were designed to assist the governors and officers in the administration of the city generally'.¹⁵¹ As the compilers of customals, provincial scribes certainly intended that these records would be referred to by their colleagues as they were often the registers of the medieval borough's administration, accumulated over a long period of time.¹⁵² Town clerks were the custodians of these local laws and of local memory as the creators of the written record who were entrusted with their preservation for the future. In her study of London's surviving customals, Penny Tucker noted that they rarely contained statements of and justifications for substantive law and custom because the administrators who wrote them were more concerned with doing things correctly than they were with questioning why things were done at all.¹⁵³ While town clerks did make note of the changes in custom, they did not normally provide any jurisprudence to explain it. Tucker attributes this focus on procedure to the fact that 'the city's law courts were mainly the province of men who were not legal professionals', especially during the period c. 1300-1400 when many customals

¹⁵⁰ Ibid.

¹⁵¹ Penny Tucker, *Law Courts and Lawyers in the City of London 1300-1550* (Cambridge: Cambridge University Press, 2007), at 48.

¹⁵² See the Introduction to Mary Bateson (ed.), *Borough Customs* 2 vols. (I; London: Bernard Quaritch, 1904) at xv-xviii.

¹⁵³ Penny Tucker, *Law Courts and Lawyers in the City of London 1300-1550* (Cambridge: Cambridge University Press, 2007), at 48.

were written.¹⁵⁴ This thesis and its focus on town clerks will show that Tucker's interpretation applies equally to provincial scribes who certainly were legal professionals.

Exeter, Bristol and Southampton are three areas in the south west of England that have significant histories of custumal writing and demonstrate three different approaches to recording local laws and information. Ipswich lays claim to having an early custumal to rival Exeter's, potentially dating from around 1200, however the earliest surviving record of this is a copy made in 1312. Exeter's custumal, however, can be dated to the 1230s and it still exists in its thirteenth-century form. We do know that from the thirteenth century onwards, around the country, town clerks were writing custumals; these have been called both 'a by-product of a literate administration [and] a statement of common practice and not a record of business done'.¹⁵⁵ Bristol is a city with a rich history of custumals: the first was *the Little Red Book* which William de Coleford, then recorder of Bristol, began to write in 1344. It contains the ordinances or rules of the guilds. The later *Great Red Book*, which was started in 1373, contains records of all land and buildings in the town. When *the Little Red Book* became full the ordinances were written in odd spaces in *the Great Red Book*. *The Great White Book* (1491-1598) contains a variety of miscellaneous documents, among them references to local custom. There is, however, a fourth custumal that is often overlooked as such because it is better known as a chronicle – this is Ricart's Kalendar, or as it is known in its printed version, *the Maire of Bristowe is Kalendar*.¹⁵⁶ Southampton's custumal reflects the constitutional and administrative history of an important trading town whose government had evolved out of the twelfth-century merchant's guild. The result was an amalgamation of personnel and rules which became enshrined in the ordinances that are found in the Oak Book and the Paxbread, which together constitute Southampton's custumals.¹⁵⁷ All of these custumals and their authors will be considered in Chapter Four of this thesis.

In order to consider the textual history of the custumals, we first must understand that these records did not develop spontaneously; rather they came as a natural progression out of the use of custom alongside other types of law.¹⁵⁸ Perhaps surprisingly, it is possible to extract a

¹⁵⁴ Ibid.

¹⁵⁵ G. H. Martin, 'The English Borough in the Thirteenth Century', *Transactions of the Royal Historical Society*, 13 (1963), at 138.

¹⁵⁶ Robert Ricart, *The Maire of Bristowe Is Kalendar*, ed. Lucy Toulmin Smith (5: Camden Society, 1872).

¹⁵⁷ Colin Platt, *Medieval Southampton* (London: Routledge, 1973), at 54.

¹⁵⁸ In reference to the relationship between local custom and the common law as demonstrated in London's courts, Penny Tucker tells us that 'the city's courts heard cases not just according to its own law and custom, but also to the national law and custom of England. Its own customs were not entirely

substantial amount of information from customals. First and foremost, they directly communicate to us the local laws of the town and in doing so they tell us what was important to the people who wrote them and also what problems they faced. Even though town clerks inherited these registers of municipal by-laws as part of their duty to preserve local custom, they were also compelled to modify and add to them over the years in order to respond to the needs of their communities. Through the creation of a written record of a town's customs it could be more or less ensured that local laws would continue to be applied in the borough's courts and not be lost through the fallibility of living memory or oral history. It is therefore relevant to inquire into the authorship of such an important piece of legal literature as it speaks directly to the role of scribes in medieval society. By reading between the lines, we can learn a lot about the authors of the customals and the role of the town clerk within the local system of legal administration as customals demonstrate that even the earliest provincial town clerks acted as the custodians of local law, customs and memory. We can say that from the very start, these scribes were something more than simple legal secretaries; they were the creators of the written record and its guardians, ensuring its preservation for the future. Furthermore, as professionally 'inherited' legal records, passed from one town clerk to another, customals can also be considered sources of local legal education as they transmitted information to successive clerks.¹⁵⁹

The National Archives: Petitions and Recognizances

SC 8 – Ancient Petitions

In the later medieval period, private petitions and common petitions were the primary means for individuals and groups of people to voice their grievances and have their concerns addressed and redressed by the king. The series called 'Ancient Petitions' (SC 8) held in The National Archives is a special collection of over 17 000 late medieval documents. The earliest petitions in this group date to the reign of the thirteenth-century king, Henry III, with the vast majority dating to the period between the late thirteenth century and the middle of the fifteenth century – these are particularly concentrated in and around the reigns of the first three Edwards. The majority of the petitions are written in Anglo-Norman French, although

separate from the common law ... but a local variant of it'. Penny Tucker, *Law Courts and Lawyers in the City of London 1300-1550* (Cambridge: Cambridge University Press, 2007), at 32-33.

¹⁵⁹ My assessment of the educative nature of customals will question how, and for what purpose, were these manuscripts originally compiled? With the possible exception of Ipswich, Exeter's 'Anglo-Norman Customal' (so called because it is primarily written in the Anglo-French language) is the earliest example of such a document and is quite possibly the only customal for which the scribe can be positively identified, but why did he decide to set these customs down in a written record?

some early examples are written in Latin, and English was used increasingly as the fifteenth century progressed.

The petitions generally fall into two categories: some ask for the redress of grievances which could not be resolved at common law; others are straightforward requests for a grant of favour from the king. In most cases the petition was presented in the hope that it would mobilise royal grace.¹⁶⁰ As such, the Ancient Petitions offer a wealth of information and present researchers with endless opportunities for historical investigation. For example, the formal statement of grievance or request which lies at the heart of each petition includes detailed information about the circumstances of the petitioner, and reveals much about the social, economic and cultural conditions that the petitioner found himself in. However it will be the references to scribes who wrote the petitions and the presence of their hands that will be of primary significance to this thesis.

C 241 – Certificates of Statute Merchant and Statute Staple

Recognizances, or certificates, of debt found in the series of Certificates of Statute Merchant and Statute Staple in the National Archives (C 241) will be used alongside these other sources as means of verifying the hands of certain clerks who were both clerks of the staple and active town clerks in Exeter and Bristol, two of the staple ports in England. Unlike deeds and petitions, the authors of these recognizances are always known as they were the clerks of the staple and identified themselves as such in the documents that they wrote and witnessed alongside the mayor of the staple. Certificates issued under the Statute of Acton Burnell, the Statute of Merchants and the Statute of the Staple authorized the issue of process for the recovery of outstanding debts.¹⁶¹ Recognizances were authenticated and enrolled before local keepers of the seal, who were the mayor and clerk of the staple and were often the mayor and clerk of the town as well. These men wrote, witnessed and sealed these documents as incontrovertible proof of the authenticity of a debt and set the terms for its repayment or recovery in case of default. These documents include information regarding the name of the staple or borough court, its mayor and clerk and the names, residences and professions of the debtor and of the creditor. Of course they also included the amount of the debt and the terms

¹⁶⁰ The National Archives, 'Special Collections: Ancient Petitions', *Catalogue* <<http://www.nationalarchives.gov.uk/catalogue/displaycataloguedetails.asp?CATID=12370&CATLN=3&FullDetails=True>>

¹⁶¹ The National Archives, 'Series Reference C 241', *Catalogue* <<http://www.nationalarchives.gov.uk/catalogue/DisplayCatalogueDetails.asp?CATID=2240&CATLN=3&FullDetails=True&accessmethod=7>>

and dates set for repayment, and the date when the certificate was sent to the chancellor along with the name of the sheriff who was required to enforce the terms outlined by the clerk in the case of non-repayment.

Languages

All of these sources adhered to certain formulae for their composition, followed linguistic conventions and reflected trends in the uses of languages in medieval England. Legal instruments, court records and accounts were most often composed in Latin, while customals demonstrated a mixture of languages, sometimes English, Latin and French appearing in the same document. Petitions in this period followed certain linguistic conventions as well. The Ancient Petitions followed a language pattern that is typical of writing in England in the later medieval period and can be seen in other forms of poetry and prose. They started to be written in Anglo-Norman French and remain almost exclusively written in this language until the early fifteenth century when Middle English begins to take over. English was generally adopted in common (and private) petitions earlier than it was in the Crown's replies to these requests. Instead, the clerks who wrote the replies continued to use French as their primary language of communication and sometimes also used Latin, thus demonstrating that the languages of the responses to petitions also followed a pattern but it was to some extent independent from the linguistic patterns exhibited in the petitions themselves.¹⁶² Recognizances, on the other hand, were typically written in Latin and sometimes in English. The training of scribes in the languages and formulae of the law will be examined in further detail in Chapter Five.

Methodology and theoretical approach

Codicology, Diplomatics and Palaeography

First, by using the three closely related disciplines of codicology, diplomatics and palaeography as a collective approach to the sources outlined in the preceding section, this thesis will

¹⁶² Until the death of Henry V there was no concerted movement towards the adoption of English for government or business. The earliest group of official documents in English in uniform style and language are the English Signet letters of Henry V. Until his second invasion of France in August 1417, Henry's correspondence had been in French, but from August 1417 until his death in August 1422 nearly all of it is in English. The reasons for the change can only be inferred. No document has come to light expressing his views or prescribing the use of English, but there is evidence of his sensitivity to linguistic nationalism. One of the first acts of his reign was an assent, in English, to a petition by the Commons asking that statutes be made without altering the words of the petitions on which they were based. See: John H. Fisher, Malcolm Richardson, and Jane L. Fisher (eds.), *An Anthology of Chancery English* (Knoxville: University of Tennessee Press, 1984) at xv.

explore the work of scribes in order to produce findings about these clerks. In order to do so, their written legal instruments and other scribal products will be used as evidence. This approach – codicology – is sometimes referred to as ‘the archaeology of the book’ and is typically used in reference to the study of books as physical objects and the cultural and historical circumstances of book production.¹⁶³ In this study, a codicological perspective will be applied more generally to the study of manuscripts and will be used to question the ways in which looking at manuscripts as physical objects can tell us something about their makers. This is a natural accompaniment to the discipline of diplomatics which similarly considers the physical aspects of manuscripts but also includes the internal composition of documents. It is an approach which analyses the forms and conventions present within a document and considers the meaning behind the ways in which the information has been conveyed by its author. This enables the researcher to comment on the interrelationship between documents, their creators and their consumers. Using this dual approach, I will examine scribes through the prism of their own written work, work which was done while these men held the most prominent secretarial roles in local government administration as the clerks to their respective towns. The method by which I have identified the handiwork of individual scribes is through the use of palaeography and by studying the unique characteristics of their handwriting.¹⁶⁴

Diplomatics was developed by Dom Jean Mabillon in the seventeenth century as a systematic method of examining documents held in monasteries for the purposes of authentication and to disprove allegations that certain of them were forgeries.¹⁶⁵ Mabillon did this by contextualising the handwriting, language, punctuation, formulaic expressions, signatures, seals and the materials used to produce the documents within the date and location of their creation. General diplomatics provided a useful framework for interpreting manuscripts and has contributed to archival practice in particular by helping to identify the people who created (or contributed to the creation of) documents. What is known as special diplomatics is a method used today that is based upon an analysis of the ‘form’ of a document. Special

¹⁶³ R. L. Storey, 'Gentlemen-Bureaucrats', in C. H. Clough (ed.), *Profession, Vocation and Culture in Later Medieval England* (Liverpool: Liverpool University Press, 1982), at 7.

¹⁶⁴ This approach has been proven successful in other studies of scribes. Linne Mooney authenticated the hand of Chaucer's scribe, Adam Pinkhurst, by studying his signature as it was found in the Scribes' Company's Common Paper. She then compared this to one of the hands found in Chaucer's manuscripts. See: Linne Mooney, 'Chaucer's Scribe', *Speculum*, 81 (2006). Also see Mooney's work on the variety of scribal hands present in works by Geoffrey Chaucer, John Gower, John Trevisa, William Langland and Thomas Hoccleve. This can be found in catalogue available online: <<http://www.medievalscribes.com>>

¹⁶⁵ Susan E. Storch, 'Diplomatics: Modern Archival Method or Medieval Artifact', *The American Archivist*, 61/2 (1998), at 368.

diplomats does not stray far from the basic principles of general diplomacy which are still applied to the documents being studied, but it extends to include a critique of the way in which the contents of the text are organised and presented – this is known as the ‘form’.¹⁶⁶ Form refers to the characteristics of a document that can be separated from its content both physically (the external characteristics) and intellectually (the internal elements). The underlying theory of the method is that ‘all documents present forms similar enough to make it possible to conceive of one typical, ideal documentary form’, the elements of which can be analysed and upon doing so, the administrative functions of the documents will be revealed.¹⁶⁷

Susan Storch explains:

The form of a document is both intellectual and physical. The external, extrinsic, or physical elements of form are those which make the document perfect and capable of accomplishing its purpose. Extrinsic elements can be examined without reading the document. They are integrally present only in the original, and include the medium, script, language, special signs, seals, and annotations. These elements are actually the proper object of study of palaeography, but diplomacy considers them because they can reveal information about administrative processes and activities. The internal, intrinsic, or intellectual elements make the document complete.¹⁶⁸

For this thesis, script, language, special signs and annotations are the extrinsic elements that will be focused on primarily as indicative and reflective of the individual who wrote the document, his hand, his training and education as a legally and linguistically literate scribe and to a certain extent as expressions of his personality. Script and language are two extrinsic elements that need no explanation; however special signs are different as they straddle the line that separates extrinsic from intrinsic. Special signs serve the function of physically and intellectually identifying the person, or persons, involved in the creation of the document. This includes the signs of the writer and the subscribers (such as notarial marks or the crosses used by witnesses) as well as the signs of chancery.¹⁶⁹ Similarly, annotations for the purposes of authentication are also relevant to this thesis. They may sometimes refer to the presence of signatures indicating that the signature was affixed by the person whose name it reflects or other signs such as marks, initials, signs beside the text, memoranda and the like.¹⁷⁰

The intrinsic elements of the form of a document are also examined in this thesis. These are considered to be the ‘integral components of its intellectual articulation: the mode of

¹⁶⁶ Ibid., at 367.

¹⁶⁷ Luciana Duranti, 'Diplomatics: New Uses for an Old Science (Part V)', *Archivaria*, 32 (1991), at 6.

¹⁶⁸ Susan E. Storch, 'Diplomatics: Modern Archival Method or Medieval Artifact', *The American Archivist*, 61/2 (1998), at 369.

¹⁶⁹ Luciana Duranti, 'Diplomatics: New Uses for an Old Science (Part V)', *Archivaria*, 32 (1991), at 8-9.

¹⁷⁰ Ibid., at 9.

presentation of the document's content, or the parts determining the tenor of the whole'.¹⁷¹ These elements are composed of three sections and are highly formulaic. The first is the 'protocol' which contains references to the people involved in the document, time, place and subject matter (the initial formula which tells us who, what and when). The second is the 'text' which refers to the actions which gave rise to the document (the why). The third is the 'eschatocol' which is the attestation of the document (the names of those who took part in writing, witnessing, issuing or approving the document) and this sometimes takes the form of a signature.¹⁷² The ultimate purpose of diplomatic criticism is to discover the function of a document by examining its form. In turn, the form tells us about the document's creation and its intent. Together, by considering the intended action or purpose of the document along with its creator we are able to both verify the authenticity of the document as well as understand the juridical, administrative and procedural context in which it was created.¹⁷³ Diplomatics naturally lends itself to the study of documents that already follow set formulae and procedures for their creation, such as the instruments produced by provincial clerks like deeds, wills, petitions, etc., upon which this thesis is founded.

This study is based upon the manuscripts produced by scribes. From a diplomatic perspective, these manuscripts are considered fundamental to understanding who scribes were and what they did as we can look at these people through the prism of the written evidence they left behind. Diplomatics has been described as 'a mind-set, an approach [and] a systematic way of thinking about archival documents'.¹⁷⁴ By using this approach I have had to be mindful of what Michael Clanchy called 'the most fundamental distinction to make [...] between primary and secondary records'.¹⁷⁵ While the concept of primary and secondary sources is an elementary one for students of history, they must be distinguished from the records. Clanchy explains:

A charter extant in its original form as a single piece of parchment (preferably with the seal still attached) is a primary record, whereas a copy of that charter in a monastic cartulary or in the royal Charter rolls is a secondary record. By this classification original charters, writs, chirographs, wills, court rolls, ministers' accounts and so on are primary records; whereas chronicles, cartularies, the Chancery rolls, Domesday Book and similar surveys are secondary records because they are compiled from other sources. [...] Taken generally, the distinction between primary and secondary is

¹⁷¹ Ibid., at 11.

¹⁷² These elements do not have to appear precisely in this order. For a detailed break-down of the subsections of each of these three intrinsic forms, see: Ibid., at 11-16.

¹⁷³ Ibid., at 16.

¹⁷⁴ Ibid., at 21.

¹⁷⁵ M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 84.

applicable and useful, because it emphasizes the difference between documents in their original form and copies or edited versions of them, whether medieval or modern.¹⁷⁶

For the purposes of this research, the majority of my sources will be original primary records composed by medieval scribes themselves, as evidenced by the presence of their individual hands in the writing of the manuscripts which will be identified palaeographically. Each and every one of these manuscripts will be considered as examples of meaningful, and sometimes artful, forms of individual expression which speak to the intentions and ambitions of their authors and the clients who commissioned their composition.

All historians wish they could speak directly to their subjects and ask them about their thoughts, opinions and feelings on matters of importance to the researcher. Those working on pre-Tudor periods may wish for this more than most. As scribes were not in the habit of keeping journals to describe their lives, the historian must turn to other sources to glean information about their profession and personalities.¹⁷⁷ However, it is possible that these men left us more of themselves than one might think. Historians rely heavily upon written legal instruments like wills, deeds, court rolls and petitions, amongst myriad other documents, for various types of research into a countless number of subjects and themes. All of these are the creations of scribes.¹⁷⁸ By looking at the manuscripts produced by scribes, considering their authors and the methods and motivations for their compilation, the importance of scribes' instruments and products becomes clear. From a codicological and diplomatic perspective, we can learn as much about the scribes of the texts and the boroughs that commissioned them as we can from the data contained within the text of the documents themselves.

Prosopography

Second, this thesis makes use of prosopography as one of its approaches. Prosopography can be simply defined as a biography of a group rather than a biography of an individual.

¹⁷⁶ Ibid.

¹⁷⁷ A. E. B. Owen demonstrated the utility of this approach in his study of a professional scribe's notebook. From the content and form of this fifteenth-century manuscript, Owen is able to infer that the scribe 'had legal knowledge enough to draw up the commoner types of conveyance' and also that he regularly wrote in both Latin and English. A. E. B. Owen, 'A Scribe's Notebook from Bury St. Edmunds', *Archives*, 14/61 (1979), at 17, 19.

¹⁷⁸ Of the abundance of materials available for the study of the membership of the lower reaches of the medieval legal profession, John Baker writes: 'the material is superabundant. It simply has not been studied'. J. H. Baker, 'The Attorneys and Officers of the Common Law in 1480', *The Journal of Legal History*, 1/2 (1980), at 182.

Prosopography is a method by which we learn something about the group by collating the information that pertains to individuals within the group as defined by set parameters.¹⁷⁹ There are many different applications of prosopography; however this thesis considers scriveners, specifically those working in the office of town clerk, as the subject group.¹⁸⁰ Historians have been writing prosopographically for several decades and it is a useful tool for extracting information from a large amount of data.¹⁸¹ Most recently, John Baker has used a purely prosopographical approach to his two-volume study of the membership of the Inns of Court and Chancery and the courts.¹⁸² Other than this fine example, prosopographical research is quite often presented as separate from the rest of the text in books and articles, appearing in the form of an appendix of biographical notes on individuals in keeping with the presentation of the *Dictionary of National Biography*.¹⁸³

The following research will not be presented in such a segmented manner. Instead, the biographical details of individual clerks will be integrated into the text in order to draw on both the common and the divergent experiences of these men which will inevitably benefit the analysis of their work as scriveners. It is not sufficient to simply collate the information as it is only by placing it within the framework of, in this case, an administrative context, that this method is able to help answer the research questions presented in this thesis. This approach is in keeping with a premise in prosopographies orientated toward political history 'that an understanding of who the actors were will go far toward explaining the workings of the institution to which they belonged, [...] and will enable us better to understand their

¹⁷⁹ These parameters for the subject population can be self-defining or set by the researcher. This research focuses primarily on a small group of town clerks from within a larger group of legal writers (scriveners) who can certainly be described as members of an identifiable group. The narrow focus of this research is ideal for applying prosopography as a method.

¹⁸⁰ For varieties of approaches to prosopography, see: K. S. B. Keats-Rohan, 'Introduction: Chameleon or Chimera? Understanding Prosopography', in K. S. B. Keats-Rohan (ed.), *Prosopography Approaches and Applications: A Handbook* (Oxford: Prosopographica et Genealogica, 2007), at 1-32. For the historiography of prosopography, see: Lawrence Stone, 'Prosopography', *Daedalus*, 100/1 (1971), at 46-79.

¹⁸¹ In fact, collections of a prosopographical nature have been popular since well before prosopography was a recognised historical method, especially throughout the eighteenth and nineteenth centuries when antiquarians eagerly collected snippets of biographical information found in their researches.

¹⁸² Sir John Baker, *The Men of Court 1440 to 1550: A Prosopography of the Inns of Court and Chancery and the Courts of Law*, 2 vols. (London: Selden Society, 2012).

¹⁸³ See, as examples: Wilfrid R. Prest, 'Appendix E: Biographical Notes on Benchers', *The Rise of the Barristers* (Oxford: Clarendon Press, 1986a), at 339-406.; And to a lesser extent: A. B. Emden, 'The Remuneration of the Medieval Proctors of the University of Oxford', *Oxoniensia*, 26-27 (1961-62), at 59-76, J. H. Baker, 'The Attorneys and Officers of the Common Law in 1480', *The Journal of Legal History*, 1/2 (1980), at 188-203.

achievement, and more correctly to interpret the documents they produced'.¹⁸⁴ Consequently, by considering the work and experiences of individuals within the larger group of scribes it will be possible to assess their roles in the administration of law at the local level and their impact on accessing justice in the medieval period. Naturally this complements both legal history and administrative history. In the early 1980s, Wilfrid Prest complained that as a result of their focus on tracing the evolution of the law 'as a body of substantive doctrines and rules', legal historians 'have hitherto paid little more than passing attention to its practitioners, except in biographies of eminent jurists and Whiggish accounts of professional institutions'.¹⁸⁵ The suggestion, therefore, is that by understanding legal actors and practitioners, our understanding of the workings of the institutions in which they participated will improve in turn. This study will examine the office of town clerk, its officers, the documents that they produced and their place in the structure of provincial society in order to understand the role of scribes, and scribbling, in later medieval English legal culture.¹⁸⁶

Prosopography is an approach that depends upon a solid foundation of available sources in order to guarantee success. This statement is echoed in Maryanne Kowaleski's study of medieval Exeter, in which she writes: 'the success of the prosopographical method rests largely on the quality of the sources employed to identify individuals. For the medievalist, the survival rate of documentation and the type of information offered are the most important determinants of source quality'.¹⁸⁷ Through a source-based biographical investigation, it will be easier to understand the accomplishments of scribes as a whole and to interpret the documents the group produced.¹⁸⁸ This prosopography aims to provide a glimpse into the lives and livelihoods of provincial scribes as a group by focusing on the significance of their role

¹⁸⁴ Lawrence Stone, 'Prosopography', *Daedalus*, 100/1 (1971), at 53.

¹⁸⁵ Wilfrid Prest, 'Introduction', in Wilfrid Prest (ed.), *Lawyers in Early Modern Europe and America* (London: Croom Helm, 1981a), at 11.

¹⁸⁶ This thesis is not the first to approach the study of scribes from a biographical perspective. Scholars such as H. G. Richardson, I. D. O. Arnold, John Baker and Graham Pollard have made very valuable contributions to the literature on scribes through their work on business teachers, town clerks, scribes and scribes. However, these are either studies of individual scribes (as in the case of Richardson) or 'prosopographies' loosely defined (as in the case of Pollard's article which is more a list of mini-biographies which follows the *Dictionary of National Biography* format by prioritising the collection of data over its analysis.) See: H. G. Richardson, 'Business Training in Medieval Oxford', *The American Historical Review*, 46/2 (1941), H. G. Richardson, 'An Oxford Teacher of the Fifteenth Century', *Bulletin of the John Rylands Library*, 23/2 (1939), J. H. Baker, 'The Attorneys and Officers of the Common Law in 1480', *The Journal of Legal History*, 1/2 (1980), Graham Pollard, 'The Medieval Town Clerks of Oxford', *Oxoniensia*, 31 (1966).

¹⁸⁷ Maryanne Kowaleski, *Local Markets and Regional Trade in Medieval Exeter* (Cambridge: Cambridge University Press, 1995), at 335-336. The wide availability of archival sources for Exeter and Bristol was the main consideration in selecting them as the two main boroughs examined in this thesis.

¹⁸⁸ Lawrence Stone, 'Prosopography', *Daedalus*, 100/1 (1971), at 53.

as town clerks who were the creators and custodians of civic legal memory. By doing so, certain aspects of their identity as a group will be made apparent. First, from a legal history perspective we can see that it was through their administrative and legal work that this group of men made important contributions to urban society as legal intermediaries who facilitated access to justice. Second, from a biographical, social history viewpoint, it is clear that there is much for us to learn about legal writers from the very documents which they produced; their deeds, customals and other legal records. Certainly this was an unintended by-product of their work, but a happy coincidence nonetheless that the scrivener's own craft is capable of opening a window into the lives of the individuals who made the very documentary records upon which medievalist rely to write their own histories. Not only did scribes document the lives of others, but they also left us with invaluable evidence about their own lives through the same written instruments.¹⁸⁹

The overall goal of this thesis is to demonstrate that through their written administrative and legal work, scribes made important contributions to the functioning of the medieval legal system and impacted the way we perceive it, and them, today. In this sense, prosopography, codicology, diplomatics and palaeography are natural bedfellows as approaches to historical research because all are 'source-critical' historical methods.¹⁹⁰ As a combined methodology this approach is certainly useful on a practical level. However there is also something profoundly symbolic about reading between the lines of a manuscript that cannot fail to resonate with historians who are writers themselves. In this thesis, textual interpretation will go beyond what the documents say in order to examine what they mean on another level by considering who wrote them and why, thus causing us to reconsider how we use legal instruments as historical sources.¹⁹¹ By turning our focus to the analysis of a document's creation, its inner constitutions and form, the meaning of transmitting or recording information in a particular way and the relationships between documents and their creators

¹⁸⁹ This type of research is capable of other applications as well and can help us to establish the personal and professional associations between scribes, their clients and their employers. By demonstrating the links between these scribes and the local, regional and national markets for their services we can start to piece together more connections that existed between provincial scribes and access to justice in this period.

¹⁹⁰ K. S. B. Keats-Rohan, 'Introduction: Chameleon or Chimera? Understanding Prosopography', in K. S. B. Keats-Rohan (ed.), *Prosopography Approaches and Applications: A Handbook* (Oxford: Prosopographica et Genealogica, 2007), at 26.

¹⁹¹ G. H. Martin asks a similar question in his 1963 article. Of medieval English borough records, he states: 'The obvious questions to ask of these documents are who wrote them and for what purpose?' G. H. Martin, 'The English Borough in the Thirteenth Century', *Transactions of the Royal Historical Society*, 13 (1963), at 132.

we will be able to learn something more about this group than what one would otherwise glean from the content of a document alone.

Jurisdictions and Polycentric law

One final aspect of the methodology of this research is the theoretical approach that will be employed in the analysis of these sources. ‘Polycentric law’ is an approach to legal history that has been promoted by Tom W. Bell and explained in his article with a title of the same name, published in the *Humane Studies Review* in its 1991/2 volume.¹⁹² Polycentric law is connected to the concept of private law as outlined in an article by Randy E. Barnett. According to him, “‘private law’ actions are those usually brought by the private individual who was harmed (or her representative or heirs)’ and can be distinguished from ‘public law’ which sees governmental, or ‘public’, authorities as responsible for initiating action.”¹⁹³ Furthermore, Barnett lists contract, torts, property, corporations, agency and partnership, trusts and estates, and remedies as modern private law subjects which define ‘the enforceable duties that all individuals owe to one another’.¹⁹⁴ Loosely defined, these are all areas of law in which scribes engaged in the medieval period as well and it is this earlier period of history to which Bell has applied this theoretical perspective.

Bell found his inspiration in the legal revolution that swept early medieval Europe in the period 1050-1200. He argues that the Gregorian reforms and the Investiture Crisis of the twelfth century were instrumental in transforming the medieval Christian Church into an institution which was independent from monarchs and thereby able to exercise its freedom in creating a system of canon law based on the Roman law that was rediscovered in the form of Justinian’s codes.¹⁹⁵ Subsequently, as urban centres developed and multiplied throughout Europe, other legal systems were developed. Bell explains:

Thousands of cities and towns sprang up, leading to new centres of power and the development of urban law. The support of the church and a labour shortage brought an element of reciprocity to the relations between peasants and lords, triggering the emergence of manorial law. Vassals likewise won standing in the separate jurisdiction of feudal law. And the rise of a populous, mobile merchant class promoted the evolution of another form of privately produced law, the law merchant.¹⁹⁶

¹⁹² Tom W. Bell, 'Polycentric Law', *Humane Studies Review*, 7/1 (1991/2).

¹⁹³ Randy E. Barnett, 'Foreward: Four Senses of the Public Law-Private Law Distinction', *Harvard Journal of Law and Public Policy*, 9 (1986), at 269.

¹⁹⁴ *Ibid.*, at 271.

¹⁹⁵ Tom W. Bell, 'Polycentric Law', *Humane Studies Review*, 7/1 (1991/2).

¹⁹⁶ *Ibid.*

The multiplicity of legal systems in medieval England, or ‘the presence or coincidence in a certain social field of more than one legal order’ resulted in overlapping and competing jurisdictions.¹⁹⁷ Bell quotes Harold J. Berman who explains how this legal pluralism and competition benefited individuals: ‘A serf might run to the town court for protection against his master. A vassal might run to the king’s court for protection against his lord. A cleric might run to the ecclesiastical court for protection against the king’.¹⁹⁸ Bell argues that due to this presence of choice between jurisdictions, ‘the same person, in different capacities (merchant, cleric, vassal, townsman, etc.), enjoyed a significant degree of choice among legal systems, forcing them to compete [for customers]’.¹⁹⁹

Expanding on these concepts, this thesis will consider an additional element of polycentric law which is the extent to which the boundaries between the jurisdictions of the various courts in medieval England were permeable and fluid.²⁰⁰ Medieval England enjoyed a multiplicity of courts with overlapping jurisdictions which can be envisaged as a series of interlocking spheres. English courts operated within a system that was subdivided hierarchically with the king’s courts at the top and local courts at the bottom rung of the ladder. These jurisdictions were competitive, while at the same time being complementary. For example, the English common law accommodated local law, although the common law took precedence in the king’s courts while local courts were left to apply local laws. These legal customs were subordinate to the common law in England and were applied by the local courts, be they manorial courts, borough courts, shire and hundred courts or other ‘special’ courts like those of the court staple or piepowder.²⁰¹ As for mercantile law, in the proceedings of a case brought

¹⁹⁷ Carol J. Greenhouse and Fons Strijbosch, ‘Legal Pluralism in Industrialized Societies’, *Journal of Legal Pluralism and Unofficial Law*, 24 (1993), at 3.

¹⁹⁸ Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983).

¹⁹⁹ Tom W. Bell, ‘Polycentric Law’, *Humane Studies Review*, 7/1 (1991/2).

²⁰⁰ In recognising the overlap between the lay and ecclesiastical courts, Anthony Musson explains that the perceptible differences should not be overdrawn: ‘[As] it was not so much the laws themselves which differed as the approaches to (and legal thinking behind) them and approaches to record-keeping. Medieval England was graced not simply with a single, monolithic form of law, but several distinct types of law, sometimes competing, occasionally overlapping, invariably invoking different traditions, jurisdictions and modes of operation’. Anthony Musson, *Medieval Law in Context* (Manchester: Manchester University Press, 2001b), at 9. For the sake of clarity and brevity, English ecclesiastical courts and the jurisdiction of the canon law will not be considered in this thesis.

²⁰¹ H. Patrick Glenn, *On Common Laws* (Oxford: Oxford University Press, 2007), at 29.; Mary Elizabeth Basile et al. allude to the presence of scribes as practitioners of *lex mercatoria* (mercantile law): ‘We think we can see in our treatise the professional representatives of men who were neither clergy nor warriors nor peasants carving out a legal identity for their clients by using and developing a *lex* that was dependent on, yet different from, the common law’. Mary Elizabeth Basile et al., ‘Introduction’, in Mary

before the court of King's Bench in 1492, Chief Justice Hussey remarked that mercantile law 'is a special law, which is allowable here but does not follow the common law'.²⁰² This is a reflection of the hierarchical nature of the common law legal tradition and demonstrates the ability of the common law to transcend the laws of other jurisdictions.

As scribes can be found as active participants in all of the abovementioned courts, polycentricity as a concept provides a relevant theoretical framework for my methodological approach. Polycentric law encompasses more than ideas surrounding public versus private law and goes beyond the variety of legal recourse available to clients in various courts of law. Throughout the later medieval period, there were three main legal traditions operating in England: common law, canon law and customary law.²⁰³ These traditions were based on the kinds of justice dispensed by their courts in which their laws were implemented. Polycentricity is therefore an important part of this thesis as it puts the subjects of the research into context: as the jurisdictions of these traditions and their courts overlapped, so too did the legal actors who functioned within them.²⁰⁴ Despite my best intentions of setting a definition for scribes that separates them entirely from clerks and lawyers, no legal professional worked in isolation from another (just as no jurisdiction can be completely isolated from the others) and so

Elizabeth Basile et al. (eds.), *Lex Mercatoria and Legal Pluralism: A Late Thirteenth-Century Treatise and Its Afterlife* (Cambridge: The Ames Foundation, 1998a), at 13.

²⁰² Mary Elizabeth Basile et al., 'Introduction', in Mary Elizabeth Basile et al. (eds.), *Lex Mercatoria and Legal Pluralism: A Late Thirteenth-Century Treatise and Its Afterlife* (Cambridge: The Ames Foundation, 1998a), at 7.; fn. 4 and at 143, fn. 80

²⁰³ Thus the common law was connected to the royal courts, canon law was connected to the ecclesiastical courts, and customary law was connected to the local courts. The common law developed as a result of the merging together of the legal customs and practices that had existed since 'time immemorial,' or at least since Anglo-Saxon times. Canon law was the law that governed all of the Western Christian Church and was not in any way a system of laws unique to England. The canon law's rules extended from the Church and applied to all Christians in many lands. Canon law was based primarily on papal decretals and promulgations, but it also made use of the Roman civil-law tradition to provide a complex (though flexible) amalgam of traditions and procedures covering issues such as ecclesiastical discipline and morality. Customary law consisted of a combination of local practices that were interpreted by the itinerant courts according to various regional and manorial customs and conventions that were rooted heavily in local practices. See: Anthony Musson, *Medieval Law in Context* (Manchester: Manchester University Press, 2001b), at 9-10. Whether *lex mercatoria* ought to be included in, or be considered independent of, the common law is a matter for debate. See: Mary Elizabeth Basile et al., 'Introduction', in Mary Elizabeth Basile et al. (eds.), *Lex Mercatoria and Legal Pluralism: A Late Thirteenth-Century Treatise and Its Afterlife* (Cambridge: The Ames Foundation, 1998a), at 14.

²⁰⁴ While these three legal traditions were distinctive based on the types of procedures, courts, and matters that they addressed, together they formed the body of laws to which medieval English people were subject. Regardless of the different types of legal problems dealt with in each, legal professionals could be found in all of England's courts working in all legal traditions although they were most commonly found working in the ecclesiastical courts, the royal courts, and for the royal administration.

polycentric law can be used as a tool to visualise the reality of the multiplicity within the medieval legal system – and systems – in which scribes operated.

6. Novel Approach

As a direct consequence of using London's scribes' guild as the archetype for medieval English scribbling, local scribes working outside of the City have been largely overlooked by historians. Indeed, few scholars have ventured to question who were the provincial scribes, where did they work, how did they earn their living and what role did they play in local government bureaucracy? There are, of course, notable exceptions to this and the work done by certain scholars has made a valuable contribution to broadening our scope of knowledge regarding provincial scribes. For a general review of scribbling and scribes, these types of studies can contribute much to our basic understanding of the scribes' trade and can reveal a significant amount of detail on the lives and livelihoods of London's scribes specifically, however these approaches neglect the significance of scribes outside of the capital and the roles that they played in their own communities. As a result, studies which concentrate solely on London's scribes can best be used as introductory sources to the subject rather than as models for understanding the work and experiences of scribes elsewhere in the realm.

When Nigel Ramsay stated that more research into the correlation between an increase in scribbling and the rise of the role of the provincial common clerk was needed, he echoed a call for further research that had been articulated by other historians before him which had, until now, been left unanswered. In response to Ramsay's, Baker's and Jenkinson's appeals, this thesis addresses and rectifies this void in the historiography of medieval English scribes by asking questions about them as individual clerks and as a group of legal professionals with the aim of demonstrating who scribes were, what they did and how they fit into late medieval society. In doing so, I reveal the diverse nature of scribes as individuals and scribbling as an occupation outside of London by looking at the example of some notable scribes working in and around provincial guildhalls as town clerks in four selected towns. The nature of their legal and scribal work and their place in society is reconstructed through the manuscripts that they produced and that have been preserved in archives.

Therefore this thesis proposes a new approach to old sources in order to draw information about scribes from their documents by looking beyond the content of the text to consider

how modern historians can communicate with medieval scribes in other ways. The material tells us that these men were active members of town oligarchies and that their work touched the lives of people at every social level. Through their administrative and legal work it will be demonstrated that scribes, as town clerks especially, made important contributions to the legal system as a whole in provincial England during the late medieval period. Perhaps most significantly it also shows how scribes were integral to the function of local government administration through their diversified work as the town's clerks, legal advisors and agents. Using their own written instruments as evidence, these clerks can be portrayed as both linguistically skilled and legally literate which made them ideal legal intermediaries and facilitators in their clients' quests to access justice. These clients invariably depended upon the legal and linguistic abilities of these scribes in order to gain a means for accessing the law and justice. The existing literature on scribes overlooks their function as intermediaries which will be redressed here by clarifying the important role they filled in medieval society. It will be argued that scribes as a group performed an essential urban legal service in the Middle Ages as they helped their clients to navigate the technicalities of the law, its languages and its formulae. Finally, this thesis proposes that we shift our focus away from London's *guild* and instead turn our attention toward provincial *guildhalls*, their courts and their records for it is here that both the ordinary and the extraordinary elements of the lives and livelihoods of town clerks may be uncovered.

CHAPTER THREE: Origins of Provincial Scrivening & the Office of the Town Clerk

1. Origins of Provincial Scrivening

The focus of this section is on the origins of scrivening as a craft for clerks in the twelfth and thirteenth centuries. Evidence of these early origins will be linked to the development of lay clerks assuming local office in provincial England. In doing so I will directly respond to Nigel Ramsay's hypothesis that by the fourteenth century, many towns had begun to follow London's lead by registering legal instruments such as deeds, testaments and copies of financial obligations in their official records. Finding that this urban development took place at a time when scriveners were also organising themselves, Ramsay concluded that there is a relation between this apparent organisation 'and the concomitant rise of the office of the common clerk, the scribe who was specially charged with the writing-down of the town's own transactions'.²⁰⁵ By acknowledging that this subject has yet to be researched outside of London (with the exception of a handful of projects done on fourteenth and fifteenth-century clerks in Romney, Oxford and York), Ramsay highlighted the need for further research on the connection between scrivening and town clerks working elsewhere. Here, I will begin to redress the imbalance in the historiography by first examining the origins of provincial scrivening and the office of town clerk. I will highlight the types of legal instruments made and recorded by scriveners in their posts as town clerks, evaluate the role of the town clerk as the creator and keeper of legal memory, consider the early forms of specialisation that took place within local government secretariats and end with an assessment of the kinds of financial rewards associated with this type of employment in order to dispel the myth of the 'poor' clerk.

Growth of local government and the first English town clerks

When evaluating the role of provincial scriveners working as town clerks, it is beneficial to return to the earliest known examples in order to see where it all began. The local scrivener in the western world has been an essential element of public administration since at least as early as ancient Greece. The town clerk is among the oldest of the public servants in local government, predating the office of the mayor by several centuries and has been known by

²⁰⁵ Nigel Ramsay, 'The History of the Notary in England', in Mathias Schmoeckel and Werner Schubert (eds.), *Handbuch Zur Geschichte Des Notariats Der Europäischen Traditionen* (Baden-Baden: Nomos, 2009), at 380.

various historic terms: ‘keeper of the archives’, ‘remembrancer’, ‘city secretary’, ‘common clerk’, etc. The town clerk even makes an appearance in the Book of Acts which tells us that Paul and his companions received the protection of a town clerk in Ephesus.²⁰⁶ It is not the purpose of this section to trace the earliest instances of town clerks in the ancient world, however it is important to recognise that the need for scribes has existed for as long as the written word has been used to communicate and record information.

Town clerks were unnecessary when towns were small enough for memory to be a sufficient means of conducting business and only a minimal amount of secretarial work was needed to keep law and order – a job that was delegated to and managed by the king’s reeves. The amount of administrative work dealt with by the king’s reeves, or sheriffs, grew steadily from the height of their influence following the Conquest and the accession of William I.²⁰⁷ The sheriffs certainly had secretarial assistance to process the volume of writs that required their execution, payments of fee farms that required their collection and myriad other burdens placed on this office holder within his jurisdiction. In this period, clerks (most often ecclesiastics in minor orders) were used by English kings to administer law because they were literate and easily paid by giving them benefices.²⁰⁸ Clerks of sheriffs received an apprenticeship in legal administration which could explain why it is that by the thirteenth century we see some of the clerical burden of the sheriff’s office being relieved by the *clerici comitatus* who assumed some of the clerical responsibilities of the sheriffs while the sheriffs’ chief administrative purpose came to focus on the response to royal writs.²⁰⁹ It is at this point that provincial scribes began to thrive as they found permanent positions in burgeoning local governments.

The story of the person whom we would recognise as an English town clerk begins soon after the Conquest when royal control via the central government administration came into full force. In his work on the medieval town clerks of Oxford, Graham Pollard suggests that the impetus for the change from memory to written record which necessitated clerical

²⁰⁶ Acts 19:21-22, A.D. 58

²⁰⁷ Richard Gorski, *The Fourteenth-Century Sheriff* (Woodbridge: Boydell, 2003), at 1, Graham Pollard, 'The Medieval Town Clerks of Oxford', *Oxoniensia*, 31 (1966), at 45, J. Green, 'The Sheriffs of William the Conqueror', *Anglo-Norman Studies*, 5 (1982), at 129.

²⁰⁸ Frank Pegues, 'The Clericus in the Legal Administration of Thirteenth-Century England', *The English Historical Review*, 71/281 (1956), at 531.

²⁰⁹ Richard Gorski, *The Fourteenth-Century Sheriff* (Woodbridge: Boydell, 2003), at 2. Also see: Frank Pegues, 'The Clericus in the Legal Administration of Thirteenth-Century England', *The English Historical Review*, 71/281 (1956), at 541. Possibilities for professional training in the law and advancement via the sheriff’s office will be considered in the next section of this Chapter.

administrators (to borrow Michael Clanchy's familiar phrase) came not only from within the town, but from without as non-local landowners desired the security of tenure that written documentation could provide. Evidence of this can be found in Oxford's earliest property deeds which date from the early twelfth century. These show that the majority of deeds were written for individuals and organisations that came from outside of the town, such as monastic clients and the gentry who had large property portfolios that they had acquired from various locations.²¹⁰ Furthermore, once towns grew large enough that townspeople became increasingly less mutually acquainted, title deeds for properties were needed to record the changes in ownership that once was a matter of communal remembrance.²¹¹

While this may explain the presence of jobbing scribes in urban areas, it does not explain the development of a permanent post for clerks in the government administration. In order to do that we need to turn our attention toward the internal workings of the borough and seek out evidence of record production on a larger scale. In medieval Britain, references to town clerks appear with some frequency in the early 1200s. In Oxford, Pollard finds the earliest reference to the *clericus comitatus* in the Cartulary of Christ Church in which an individual named Walter de Tiwa was described as a clerk of the community in 1234.²¹² Similar references to clerks of the community appear in Exeter even earlier. R. C. Easterling's study of Exeter's civic officials traces the origins of the office of town clerk back to the middle of the twelfth century when Exeter's provost or bailiff was assisted by a clerk and four catchpolls, the predecessors of the serjeants who eventually became known as the bailiffs.²¹³ The earliest reference to the clerk of the catchpolls can be found in a deed dating from c. 1160-1164 in which Baldwin, '*clericus prepositi*' appears as one of the witnesses.²¹⁴ It is quite possible that Baldwin was the clerk of a merchant guild, however there is no direct evidence to corroborate this. We do know that Exeter had a merchant guild in the twelfth century as the guildhall dates to this period, although it is impossible to give specific dates for the foundation of these institutions due to a lack of evidence. The merchant guild regulated trade in the city and exempted its members from paying tolls and custom duties both in England and abroad. Presuming that Baldwin was one of the guild's earliest clerks, then the references to William

²¹⁰ Graham Pollard, 'The Medieval Town Clerks of Oxford', *Oxoniensia*, 31 (1966), at 44-45.

²¹¹ *Ibid.*, at 44.

²¹² N. Denholm Young (ed.), *Cartulary of the Medieval Archives of Christ Church* (Oxford: Oxford Historical Society, 1931); 38, Graham Pollard, 'The Medieval Town Clerks of Oxford', *Oxoniensia*, 31 (1966), at 45.

²¹³ R. C. Easterling, 'List of Civic Officials of Exeter in the 12th and 13th Centuries c: 1100-1300', *Report and Transactions of the Devonshire Association*, 70 (1938).

²¹⁴ DRO, ED/SN/4 [c. 1160-64]

'*filius Ricardi eorum scriba*' and William '*scriba*' in the 1170s are in all likelihood, also references to clerks of the guild.²¹⁵

According to Charles Gross' research presented in his study *The Gild Merchant*, the medieval English guild was the source from which municipal government grew.²¹⁶ Judging by the early appearance of records of the guilds in Dublin and Leicester in the twelfth century, specifically their registers of members and the payments they made for their admission into the fraternity, it is reasonable to assume there was a link between the creation of such records by the guilds which were kept by their clerks and the subsequent registers of freemen made by the boroughs and managed by their town clerks. Not only did the new borough governments share the emphasis placed on record making and record keeping that was first developed by the merchant guilds, but they also shared administrative ambitions for greater internal control and organisation that the guilds expressed early in their history and continued to voice throughout the medieval period. Not coincidentally, the membership of the boroughs' élite and that of the guilds were nearly identical as each group aimed to gain wider powers than might have been exercised alone, or under the jurisdiction of the king's sheriff.²¹⁷ It has even been suggested that the guilds 'played an essential role in enabling townsmen to undertake and sustain negotiations with the king and other figures of power'.²¹⁸ It was James Tait's view that: 'the gild alderman anticipated the elected mayor or bailiffs, the gild organization the borough assembly and town council, and the gild purse the borough treasury'.²¹⁹ To what extent this development influenced the role of the local clerk in the matters of borough administration will be considered throughout this section.

By 1189 there is concrete evidence of the presence of a merchant guild in Exeter. This is found in a reference to the '*senescalli de gilde marcand*' in a grant made for the citizens of St Andrew's Priory.²²⁰ The importance of the role of the guild in the city's affairs grew alongside Exeter's municipal growth as a focal point for commercial trade and as the hub of the south

²¹⁵ R. C. Easterling, 'List of Civic Officials of Exeter in the 12th and 13th Centuries c: 1100-1300', *Report and Transactions of the Devonshire Association*, 70 (1938), at 465.; fn. 16 and 18. Easterling's references come from deeds found in King's College Cambridge Mss, 2 W 20, 15, 17 and 18.

²¹⁶ Charles Gross, *The Gild Merchant* (Oxford: Clarendon, 1890).

²¹⁷ James Tait, 'The Borough Community in England', *The English Historical Review*, 45/180 (1930), at 533.

²¹⁸ Geoffrey Martin, 'English Town Records, 1200-1350', in R. H. Britnell (ed.), *Pragmatic Literacy, East and West, 1200-1330* (Woodbridge: Boydell Press, 1997), at 122.

²¹⁹ James Tait, 'The Borough Community in England', *The English Historical Review*, 45/180 (1930), at 540.

²²⁰ Exeter, Devon Record Office, Exeter Miscellaneous Book 55, fo. 80. (Hereafter abbreviated as DRO)

west's regional economy.²²¹ The emergence of the office of town clerk coincided with a 'new spirit of independence' in the twelfth-century English town in general, as reflected by the first fee farm charter issued to London which set a precedent in self-government around 1131.²²² By the thirteenth century, Exeter's merchant guild had become assimilated into the city's own administration as the two 'effectively merged into a single civic institution' and the mercantile élite which once controlled the guild used their presence in the local government to expand their influence and exercise political, economic, legal and administrative power over the city and its institutions.²²³

It was in the first decade of the thirteenth century that we begin to find references to the first mayor of Exeter.²²⁴ It is not a coincidence that it is also at this time that the office of town clerk really begins to take shape. In 1230 we have our first reference to John Baubi, '*clericus communitatis Exonie*' who also acted as the mayor's attorney that year.²²⁵ The next reference to a *clericus civitatis* does not appear until 1244, which perhaps reflects the nature of the job as a fairly continuous appointment with low turnover.²²⁶ A few years later another clerk is mentioned in the records, named Godfrey de Sowy. He was a clerk, and probably also the Earl of Cornwall's bailiff in the city in this period.²²⁷ He is called clerk, bailiff, and '*scriptor civitatis*' and served as such for more than two decades, increasing in prominence in the city's administration.²²⁸ In 1255, Godfrey the clerk had usurped the provosts as the primary witness to deeds alongside the mayor, and he continued to witness most of the deeds written during his tenure as clerk as the provosts were slowly phased out. In 1259 Exeter was given the

²²¹ The most thorough treatment of Exeter's place in the regional economy is presented in: Maryanne Kowaleski, *Local Markets and Regional Trade in Medieval Exeter* (Cambridge: Cambridge University Press, 1995).

²²² Colin Platt, *The English Medieval Town* (London: Book Club Associates, 1976), at 127.

²²³ John Reader, *Cities* (London: Vintage, 2005), at 114-115.

²²⁴ Either Martin Prudomme or William Derling, depending on the source.

²²⁵ From as early as the late 1220s, John Baubi signed his deeds as 'John Baubi, clerk'. See a grant of property: Exeter Cathedral Archive, Dean and Chapter 302 [1229] (Hereafter abbreviated as D&C). See also: R. C. Easterling, 'List of Civic Officials of Exeter in the 12th and 13th Centuries c: 1100-1300', *Report and Transactions of the Devonshire Association*, 70 (1938), at 472.; fn. 56.

²²⁶ Exeter Cathedral Archive, D&C 348 [1244]

²²⁷ R. C. Easterling, 'List of Civic Officials of Exeter in the 12th and 13th Centuries c: 1100-1300', *Report and Transactions of the Devonshire Association*, 70 (1938), at 476.; fn. 74. Evidence of this can be found in a grant written by John Baubi in which he refers to Godfrey as the 'clerk of Lord Richard' (presumably this is Richard, 1st Earl of Cornwall). See: Exeter Cathedral Archive, D&C 261 [10 July 1257]

²²⁸ Godfrey typically referred to himself as a clerk, or as a scribe. For example: DRO, ED/M/81 [1253-54]. However, as his position grew in the city, Godfrey took to drawing attention to his status as not only a clerk but also as a servant of the Earl of Cornwall, who was also a German King (or 'King of the Romans' from 13 January 1257). For examples of his use of the attribute 'clerk and bailiff of the Lord of the King of "Alemannie"', see: DRO, ED/MAG/45 [1258-59], DRO, ED/MAG/46 [21 April 1259] and DRO, ED/M/97 [c. 1260s]

exclusive right to hold the fee farm of the city for ever at the rate of £15 9s annually.²²⁹ As boroughs gained emancipation from the financial controls of the sheriffs who once farmed these areas, it would seem that they also gained the right to organise their own administrations by appointing or electing reeves or bailiffs, receivers and mayors to collect the farm and manage its payment. Adolphus Ballard and James Tait found that only one third of the fee farm grants were accompanied by a formal license to elect a financial officer and with the exception of two Irish charters, none of the royal charters granted between 1215 and 1284 give the burgesses the power to elect a mayor.²³⁰ Exeter is an example of a borough that had a mayor well before it controlled the fee farm, as Martin Prudhomme had been referred to as the mayor in the first decade of the thirteenth century.²³¹ In the last quarter of the century, the clerk begins to be referred to more explicitly as the 'bailiff' thus positioning him as the 'chief bailiff' which is how he is styled for much of the next century, further emphasising that control over the city and its affairs was firmly in the hands of the city's own officials.²³² Easterling suggested that in the early fourteenth century the chief bailiff or clerk sometimes combined his office with that of the 'principal town clerk', thus demonstrating the close relationship between the role of the chief bailiff as an enforcer of law and order and the role of the town clerk as legal record maker which will be explored in further detail in the last section of this chapter.²³³

The relationship between city and guild as intertwined institutions can also be found in Bristol's civic origins. As is the case for most of England's early town governments, there is no

²²⁹ The aforesaid 'Richard, King of the Romans' granted two identical charters to Exeter in 1259 which were confirmed by Henry III in the same year. See: Adolphus Ballard and James Tait (eds.), *British Borough Charters, 1216-1307* (Cambridge: Cambridge University Press, 1923) at xli. For the text of the Henry III's original inspeximus and confirmation of Richard's charter, see: Great Britain, *Calendar of the Charter Rolls Preserved in the Public Record Office* (2; London: HMSO, 1906), at 24-25. For later confirmations, see: Great Britain (ed.), *Calendar of the Patent Rolls. Richard II, 1377-1381, Vol. 1* (London: HMSO, 1895) at 292.

²³⁰ Adolphus Ballard and James Tait (eds.), *British Borough Charters, 1216-1307* (Cambridge: Cambridge University Press, 1923) at lvi-lvii.

²³¹ R. C. Easterling, 'List of Civic Officials of Exeter in the 12th and 13th Centuries c: 1100-1300', *Report and Transactions of the Devonshire Association*, 70 (1938), at 466.; fn. 28; Exeter and Winchester are two examples of communities with mayors before they were granted their fee farms. See: James Tait, 'The Borough Community in England', *The English Historical Review*, 45/180 (1930), at 543.

²³² The terminology associated with each of these offices can sometimes be confusing because it changes frequently enough throughout the medieval period that even Exeter's chamberlain in the seventeenth century mistakenly believed that recorder and the town clerk were contemporary positions in 1313.

²³³ R. C. Easterling, 'List of Civic Officials of Exeter in the 12th and 13th Centuries c: 1100-1300', *Report and Transactions of the Devonshire Association*, 70 (1938), at 459.

precise date to which we can trace Bristol council's establishment.²³⁴ Bristol benefitted from several charters confirming the borough's rights as early as 1164²³⁵ and a mayor was instituted by 1200, if not earlier.²³⁶ Like Exeter, as Bristol grew, its leadership required the assistance of provosts who eventually became known as stewards and bailiffs. The mayor's authority came from the merchants who elected him. In a charter granted by Henry III in 1256,²³⁷ Bristolians were given the privilege of their fee farm which had the effect of elevating Bristol's status to that of London which had been given its charter by Henry I around 1131.²³⁸ In fact, Bristol's charter directly references London:

And that the same burgesses shall have and hold throughout our kingdom and realm all their liberties and free customs hitherto used and enjoyed by them as quietly and completely as the citizens of London or others of our kingdom and realm best and most freely have and hold their liberties.²³⁹

At the same time, Southampton was going through a similar process of change which also reflects the interconnectedness of guild and city institutions and their leadership. Here, where self-government had evolved out of the twelfth-century guild merchant, 'substantial portions of the gild regulations were [eventually] incorporated [into] the ordinances [that were] copied into the "Oak Book", or "Paxbread"', which were the town's customals and records of local laws.²⁴⁰ In the thirteenth century, as the organisation and personnel of the guild and the borough began to merge, the ordinances of the one became those of the other, and once amalgamated they formed a type of constitution, or working code, for the town.²⁴¹ In the late fifteenth century, when William Overay, the town clerk, translated the Oak Book from French into English, he described it as a collection of the: 'olde rules and ordinaunces of the good towne of Suthampton, made by greate deliberacon by the awncyent fathers in time passed, for

²³⁴ Tait tells us that the first recorded common councils in Bristol and Exeter appear almost simultaneously in the middle of the fourteenth century, while noting that these councils existed in earlier incarnations as less strictly defined organisations. James Tait, 'The Common Council of the Borough', *The English Historical Review*, 46/181 (1931), at 24, 29.

²³⁵ For this charter granted by Henry II, see: Samuel Seyer (ed.), *The Charters and Letters Patent, Granted by the Kings and Queens of England to the Town and City of Bristol* (Bristol: John Mathew Gutch, 1812) at 1-2.

²³⁶ The first mayor of Bristol may have been Robert FitzNichol, however Robert Ricart's list of the mayors does not go back further than 1216. This list is printed in: William Barrett, *The History and Antiquities of the City of Bristol* (Bristol: William Pine, 1789), at 669-681.

²³⁷ For more information on the liberties granted to Bath, Bristol and Southampton in July of this year, see: Adolphus Ballard and James Tait (eds.), *British Borough Charters, 1216-1307* (Cambridge: Cambridge University Press, 1923) at lxii.

²³⁸ C. Brooke, G. Keir, and S. Reynolds, 'Henry I's Charter for the City of London', *Journal of the Society of Archivists*, 4 (1973), at 575-576.

²³⁹ Translated from the original Latin in: Adolphus Ballard and James Tait (eds.), *British Borough Charters, 1216-1307* (Cambridge: Cambridge University Press, 1923) at 9.

²⁴⁰ Colin Platt, *Medieval Southampton* (London: Routledge, 1973), at 54.

²⁴¹ *Ibid.*

the utilitie and common welthe, as well as for the burgeasses and bretheren of the gilde, as for all the Dwellers and inhabitantes within the franchis and liberties of the saide towne'.²⁴² The book, he said, was to persist as the administrative structure of the municipal government 'unto the worldes ende'.²⁴³ It also had the effect of both demonstrating the very close relationship between the guild and the local government bodies and expressing the parallel interests of the 'burgeasses' and the 'bretheren of the gilde' within the town at the time that Overay's translation was made.

We know that these two groups of men shared a common goal – self government. The right to internally regulate finances and freedoms and have control over the town's privileges was deemed important by both sides; however there was no need for the burgesses and the guildsmen to wage a battle of primacy. Southampton had a mayor as early as 1216; however by 1249 the burgesses of the town were moved to request that this arrangement end. As a result they were granted freedom from this obligation: 'Sciatis quod concessimus burgensibus nostris de Suhampton quod ipsi et eorum heredes aliquo tempore not habeant maiorem in predicta villa nostra de Suhampton'.²⁴⁴ It is possible that the motive behind this removal was a desire to prevent excessively lengthy terms in office, as evidenced by the fact that at this time, Azo (the mayor) had been in office continuously from 1235 to 1249. However it is also likely that the guild was motivated to overthrow the office of mayor for its own purposes in order for the guilds' 'alderman', who was the guild's equivalent to the mayor, to regain the control that he once exercised over local government as the head of the guild.²⁴⁵ This second theory is supported by the terminology used in reference to Southampton's civic leader – from 1270 the terms 'mayor' and 'alderman' were used interchangeably to refer to the same individual.²⁴⁶

Tait considered the organisation of the guild merchant as a stepping stone to the eventual organisation of the borough.²⁴⁷ Historians have also credited the guild merchant with having fostered the 'nascent municipal community' in medieval England.²⁴⁸ Evidence of this can be found in the rolls of the guild records that date from the mid thirteenth century for twelve

²⁴² Paul Studer (ed.), *Oak Book of Southampton Vol. 1* (Southampton: Cox and Sharland, 1910) at 85.

²⁴³ *Ibid.*

²⁴⁴ Adolphus Ballard and James Tait (eds.), *British Borough Charters, 1216-1307* (Cambridge: Cambridge University Press, 1923) at 363.

²⁴⁵ *Ibid.*, at 386.

²⁴⁶ *Ibid.*, at lvii.

²⁴⁷ James Tait, 'The Borough Community in England', *The English Historical Review*, 45/180 (1930), at 540.

²⁴⁸ G. H. Martin, 'The English Borough in the Thirteenth Century', *Transactions of the Royal Historical Society*, 13 (1963), at 127.

English boroughs.²⁴⁹ These boroughs required settled administrations capable of paying their fee farms, tallages and parliamentary taxes along with keeping the king's peace and doing his justice in the boroughs' courts.²⁵⁰ Here we can see that the borough courts were the main judicial and administrative organs of the borough. These courts needed written records and clerks to properly keep them, which explains the increase in the appearances of town clerks at this time. G. H. Martin explains the significance of these records and the impact of the record makers and keepers:

The existence of records before 1200, or even before the end of John's reign, pushes the period of what we might call experimental writing in the boroughs back to a time when writing was still not an indispensable part of public administration, and suggests in turn that the surviving material from the thirteenth century is likely to be the wreckage of a sophisticated system of archives, rather than the first indications of a practice that was not established and perfected until a much later time.²⁵¹

Borough records have been called 'the mind and memory of a community that was feeling its way toward corporate personality'.²⁵² It is no coincidence that scribes are largely responsible for this proliferation of documentation as they began to assume a larger role in the burgeoning local governments of the thirteenth century. If the records that have survived the ravages of time are any indication, this was a prolific period of record production in English boroughs, their courts and by their guilds and Martin's research has found that from 1272 the court roll is often the earliest record kept by boroughs.²⁵³ The prevalence of these records coming out of the borough court both justified and necessitated the permanent presence of a clerk to create and curate the records and develop the archival system that is responsible for their continued existence in record offices today. It is in this arena that the provincial scrivener carved out a niche within the local secretariat as a specialist legal scribe.

Despite the fact that clerks were certainly in the guilds' employ from an early date, it was not until the fourteenth century that guilds regularly named their clerks alongside their other officers. Because of the guild's earlier origins, Martin argues that we can find 'the chief impulse to record-keeping' in the clerks of the guild rather than the borough courts. However, when court rolls finally do appear in medieval English boroughs, the influence of the town clerk on this record can be seen. In Martin's view, court rolls:

²⁴⁹ These boroughs were Leicester, Newcastle-upon-Tyne, London, Shrewsbury, Wallingford, Ipswich, Totnes, Andover, Exeter, Hereford, Canterbury and Winchester

²⁵⁰ G. H. Martin, 'The English Borough in the Thirteenth Century', *Transactions of the Royal Historical Society*, 13 (1963), at 127.

²⁵¹ *Ibid.*, at 128.

²⁵² *Ibid.*, at 144.

²⁵³ *Ibid.*, at 132.

Are compiled with an eye to local and immediate purposes, and they are subdivided and developed at will. There is little or no trace of notarial influence in any of these documents; they are casual rather than formal, abstracts rather than *verbatim* records, and yet they are not tentative or experimental, but fair-written copies for reference. If they have not yet revealed as much about their authors as we might wish, they have a good deal to tell us about their purpose and effect.²⁵⁴

Something of the individual qualities and characteristics of the town clerk can be said to be imbedded in the fabric of his compositions. He is not a notary, for as Martin tells us 'there is little or no trace of notarial influence' in the court's records, however he is still revealed to be a highly literate professional scribe. He is not a secretary who wrote down what was dictated to him in court for the court roll is not a '*verbatim* record', therefore the clerk had the freedom to use his own discretion in choosing what to record and what to remove from the contents of the roll. The final court roll is presented as the product of a previously edited draft, so this work was not done haphazardly by a copyist, but by a legally literate person capable of abstracting the court's proceedings.

Of the role of the town clerk in the process of producing fair copies of borough records, Andrew Butcher has suggested that these surviving records 'must be seen not just as accident but as a matter of archival choice'.²⁵⁵ Martin's quote helps to further support and explain Mark Ormrod's position on the role of the chancery clerks and their use of personal discretion in deciding what memoranda eventually made it onto the parliament rolls and what was left off.²⁵⁶ Taken together, we can expand Ormrod's thesis to include the writing done by other types of government clerks who worked on different types of enrolments. The unexpectedly revealing nature of borough records in general will be considered in the next chapter which examines questions of clerical identity and the representations of town clerks in their own writings.

Scrivening skills – languages, the law and formulae in the thirteenth century

Making these records for the guild and early borough courts speaks not only to scriveners' literacy skills but also reflects the levels of their fundamental language and legal skills in general. This will briefly be considered in this section, and examined in greater detail in

²⁵⁴ Ibid., at 144.

²⁵⁵ Andrew Butcher, 'The Functions of Script in the Speech Community of a Late Medieval Town, c. 1300-1550', in Julia Crick and Alexandra Walsham (eds.), *The Uses of Script and Print, 1300-1700* (Cambridge: Cambridge University Press, 2004), at 167.

²⁵⁶ W. M. Ormrod, 'On-and Off-the Record: The Rolls of Parliament, 1337-1377', *Parliamentary History*, 23/1 (2004), at 39-56.

Chapter Five. Frederic Maitland tells us that the thirteenth-century writers of English deeds needed to know ‘a little of several kinds of law’ in order to do their jobs.²⁵⁷ For example, in drawing up a will the scrivener wrote a document that was subject to the jurisdiction of ecclesiastical courts and when drawing up other legal instruments these could also be subjected to the tests of Roman law and the common law. In the case of bonds, the borrower and his sureties agreed to submit themselves to all jurisdictions.²⁵⁸ To this list we should also add customary law and eventually mercantile law as well. Therefore a medieval scrivener, even in the days of Henry III, needed to be knowledgeable in more than one area of medieval law and its formulae – if only moderately so. In order to achieve this level of legal literacy, first a scrivener had to acquire a level of traditional literacy in the sense that he was capable of writing and reading in the languages of the law – Latin and Anglo-Norman French – and in the language of the majority of the people in medieval England – which was English. The push for self-government that has been traced thus far in this chapter has demonstrated the movement toward the creation of new municipal officers like mayors and has also shown how the engagement of a permanent clerk to the burgeoning towns became a necessity. The appearance of town clerks as cities began to grow coincided with the beginning of the golden age of scrivening and as English towns and governments grew towards the end of the thirteenth century, so too did the amount of work available to their secretariat. In preparation for the second section of this chapter which examines the roles and responsibilities of town clerks from the fourteenth century, first I would like to briefly examine the main skills that were required for scribes to carry out their duties.

Maitland’s short, but insightful, article on ‘A Conveyancer in the Thirteenth Century’ summarises the contents of three manuscripts found in Cambridge’s University Library in the late nineteenth century. The first of these manuscripts is of particular interest. Cambridge MS. Ee. i. 1 (f. 225), described as ‘Fasciculus Johannis de Oxonia *De Cartis et Contractibus*’ in *The Catalogue of the Manuscripts Preserved in the Library of the University of Cambridge* was written in the early years of the reign of Edward I by John of Oxford who eventually became a monk at Luffield Priory.²⁵⁹ It contains copies of the types of legal instruments that were written by the average English scrivener. Significantly, the preface to this bundle explains why its author believed that it was important to have written evidence of legal transactions

²⁵⁷ F. W. Maitland, ‘A Conveyancer in the Thirteenth Century’, *The Law Quarterly Review*, 7 (1891), at 3.

²⁵⁸ *Ibid.*, at 68.

²⁵⁹ Cambridge University Library, ‘A Catalogue of the Manuscripts Preserved in the Library of the University of Cambridge’, (2; Cambridge: Cambridge University Press, 1857), at 3.

because of the fallibility of the nature of men which makes them more prone to do evil than to do good:

Cum humana condicio vergat ad declivem et generaliter loquendo prouiores sunt homines ad malum natura carnea quam ad bonum...

The preface then ends with a summary of the contents of the bundle:

Explicit modus, et ars componendi cartas, cyrographa, convenciones, obligaciones, testamenta, litteras presentationum ecclesie, et institucionum, suspencionum, certificacionum, edicionum et literarum dismissoriarum et litterarum pro pecunia patri a scolari destinatarum secundum Johannem de Oxonia et similiter quietarum clamacionum et manumissionum. Explicit expliciat, ludere scriptor eat.²⁶⁰

While this scrivener happened to be a monk and therefore a cleric, his status is irrelevant as the 'method and art of writing' different types of charters, chirographs, agreements, bonds to secure debts, obligations, wills and testaments (as listed above) were universal skills for both lay clerks and clergy throughout the medieval period, as was knowledge of Justinian's *Institutes* which were also listed by John of Oxford. Three examples of sales and manumits of villeins by deed appear in the bundle as well, which reflects the shift of village economies and perceptions of human resources at this time as the feudal relationship of lord and peasant was rapidly giving way to a monetized system of agricultural labour. In reflection of an altogether different medieval economic system which is familiar to many people today, John of Oxford includes an exemplar of a letter from an Oxford student to his father asking for money, which was likely of great use to his own disciples. Maitland posited that John of Oxford might have been either a student or a teacher in Oxford before he reached Luffield, and the instructional tone of the preface strongly indicates that John intended his bundle to be used by someone.²⁶¹ Presumably he compiled his bundle in service of other scribes who could benefit from using it as a learning tool. This would be in keeping with what we know of other teachers of the scribbling arts, which are examined in detail in Chapter Five of this thesis.

John of Oxford's note on a copy of an obligation between the Prior of Luffield and the buyer of the convent's wool, Alexander le Riche, is also significant for it sets out the early role of scribes in the composition of bonds. Dated 1 August 1271, it specifies that 'two witnesses with the tabellio or notary are enough for a bond; for a chirograph there should be four; for a charter seven or nine, but at any rate an uneven number'.²⁶² Not only does this predate the

²⁶⁰ Cambridge University Library MS. Ee. i. I (f. 225), quoted in: F. W. Maitland, 'A Conveyancer in the Thirteenth Century', *The Law Quarterly Review*, 7 (1891), at 63.

²⁶¹ *Ibid.*, at 68.

²⁶² *Ibid.*, at 66.

Statute of Acton Burnell (1283) by twelve years²⁶³ but it also harkens back to the laws of Cnut that set out the requirement of the presence of four witnesses in cases of purchases exceeding the value of 4d.²⁶⁴ These people are now known as instrumentary witnesses in common law. Maitland selects these bonds as being ‘curious’ examples of John’s writing and thinks it strange that ‘no one has thought [it] worthwhile to investigate the mercantile law of this period’.²⁶⁵ More than a century after Maitland’s article, it has finally been given a thorough treatment by historians such as Joseph Biancalana and the editors of the *Lex Mercatoria* and its import will be briefly considered here.²⁶⁶

Written bonds were first introduced into England in the twelfth and thirteenth centuries to replace ‘parol’ or oral contracts. John Baker states that ‘it was in the interests of certainty that deeds should prevail over mere words’.²⁶⁷ Therefore, if a debtor paid his debt but failed to cancel or destroy the deed or obtain an acquittance under seal, he could still be sued by his creditor for payment because this area of law required written evidence as proof and did not have provision to give remedy based on oral agreements.²⁶⁸ As a result, it is clear that the common law considered the bond (which was written) as ‘incontrovertible evidence of the debt’ which nullified any oral claims of payment having been made as a defence against further payment on the debt.²⁶⁹ In order to provide security through certainty, medieval judges believed that it was preferable for an individual to suffer hardship rather than inconvenience others through inconsistent interpretation of the common law and its rules.²⁷⁰ This principle served to limit special pleadings and other exceptions being made to general rules and it also reinforced the primacy of the written word over orality in contract law.

²⁶³ This statute extended existing remedies and also represents the beginning of a significant period of legal reform in the last quarter of the thirteenth century.

²⁶⁴ George H. Westley, ‘Old Laws Concerning Debt’, *The Green Bag*, 11 (1899), at 447.

²⁶⁵ Cambridge, Cambridge University Library MS. Ee. i. I (f. 225), excerpted in: F. W. Maitland, ‘A Conveyancer in the Thirteenth Century’, *The Law Quarterly Review*, 7 (1891), at 68.

²⁶⁶ Joseph Biancalana, ‘Monetary Penalty Causes in Thirteenth-Century England’, *Tijdschrift voor Rechtsgeschiedenis* 73 (2005), Mary Elizabeth Basile et al. (eds.), *Lex Mercatoria and Legal Pluralism: A Late Thirteenth-Century Treatise and Its Afterlife*, ed. The Ames Foundation (Cambridge: The Ames Foundation, 1998b).

²⁶⁷ J. H. Baker, *An Introduction to English Legal History* (4th edn.; London: Butterworths, 2002), at 102. See also: J. H. Baker, ‘Deeds Speak Louder Than Words: Covenants and the Law of Proof, 1290-1321’, in Jonathan Rose, Christopher Whittick and Susanne Jenks (eds.), *Laws, Lawyers and Texts: Studies in Medieval Legal History in Honour of Paul Brand* (Leiden: Brill, 2012).

²⁶⁸ J. H. Baker, *An Introduction to English Legal History* (4th edn.; London: Butterworths, 2002), at 102, 324-325.

²⁶⁹ *Ibid.*, at 102.

²⁷⁰ *Ibid.*, at 80.

There was no official government-supported recourse for creditors to recover the debts owed to them until the Statute of Acton Burnell in 1283 and the Statute of Merchants in 1285. Previous to these, the bonds written by Jewish money lenders which survive from the 1170s and date to their expulsion in 1290 are the earliest English conveyances specifying (usually escalating) monetary penalties for breaking the terms of a contract, although this practice was likely in place from at least the 1140s.²⁷¹ Found among the manuscripts in John of Oxford's bundle is an interesting example of a 'form of obligation for money lent' that demonstrates the Anglo-Saxon practice of inserting spiritual penalty clauses into the conditions of bonds and the continental, Roman law-derived practice of inserting monetary penalty clauses into contracts.²⁷²

What is important here is that this example bond seems to represent the crossover or intersection between several legal cultures, influences and jurisdictions, thus demonstrating the scrivener's familiarity with multiple systems of law and legal tradition. This bond shows Anglo-Saxon and Roman law approaches to securities while also reflecting the spirit of canon law and simultaneously anticipating what was to develop into statutory mercantile law in the next decade. Fixed penalty conveyances appear in the early years of the thirteenth century in England. The use of monetary penalties was a means by which certainty could be inserted into contracts and John of Oxford's example dating from c. 1274 demonstrates that a clever clerk could amplify this certainty by including not only monetary penalties for defaulting on a debt or breaking a contract but also spiritual penalties such as excommunication.²⁷³

Inflicting spiritual penalties on a defaulter also helped to assuage any concerns about usury. The 'peculiarly English' way in which the penalty clauses were designed for religious applications such as contributing to the fabric of a church or in support of the Holy Land was a way of offsetting any accusations of usurious action on the part of the lender.²⁷⁴ This is directly related to questions of intent: if the intention of the creditor was to profit from the monetary penalty that he inflicted upon his errant debtor, then his profit was usurious. If instead he aimed to punish the defaulter or gently encourage the quick repayment of the principal

²⁷¹ Joseph Biancalana, 'Monetary Penalty Causes in Thirteenth-Century England', *Tijdschrift voor Rechtsgeschiedenis* 73 (2005), at 247.

²⁷² For a more detailed treatment of this see Biancalana's section on penalty clauses in England in: *Ibid.*, at 244-253.

²⁷³ F. W. Maitland, 'A Conveyancer in the Thirteenth Century', *The Law Quarterly Review*, 7 (1891), at 65.

²⁷⁴ Joseph Biancalana, 'Monetary Penalty Causes in Thirteenth-Century England', *Tijdschrift voor Rechtsgeschiedenis* 73 (2005), at 251.

(without interest, naturally) then his profit was nil and he could not be accused of usury.²⁷⁵ Usury was prohibited by canon law and was similarly forbidden in common law from at least the reign of Edward I, although the application of anti-usury laws in secular jurisdictions has received less attention by historians and our understanding of it is far from complete.²⁷⁶

Joseph Biancalana has argued that the insertion of penalty clauses in English contracts and conveyances was partly as a direct consequence of the teaching of Roman law in the thirteenth century. Considering John of Oxford's bundle included Justinian's *Institutes*, 'institucionum',²⁷⁷ (or at least abstracts of the *Institutes*) and we know that lectures on the subject were delivered by civilians in England as early as the late twelfth century (possibly these were even given in Oxford)²⁷⁸ it is not difficult to see where John derived his inspiration for using penalties in order to increase certainty where damages would otherwise be uncertain.²⁷⁹ Furthermore, by actively keeping records of the bonds he made, John of Oxford was in effect doing exactly what was later prescribed by the Statute of Acton Burnell. He was protecting the creditors by registering the bonds and preserving an independent record of the transaction that had taken place. Even without the authority to recover the debts that the Statutes of Acton Burnell and Merchants could later afford to creditors, John's bundle demonstrates that scribes were aware of the potential role of their written records in regularising what had hitherto been an informal practice of debt registry throughout England.²⁸⁰ John's bundle of copies and formulae for compositions is an example of something that must have been common among legal writers as it is essentially what constituted the tool kit of a typical thirteenth-century scrivener. The work that he did for his monastic community echoes the work that was done by clerks of guilds and eventually town clerks as towns began to grow larger in pace with the demand for scribes and their services. The strong

²⁷⁵ Unlike Jewish money lenders, Christians could not employ escalating penalties as a means of enforcing repayment of a debt as this was considered usurious. However, Christian money lenders could use fixed penalties of double the debt or more. *Ibid.*, at 264. For more information on the complicated relationship between damages, debt, penalty, interest and usury in English jurisdictions, see: Gwen Seabourne, *Royal Regulation of Loans and Sales in Medieval England* (Woodbridge: Boydell, 2003).

²⁷⁶ An attempt to answer some of these questions can be found in: R. H. Helmholz, 'Usury in the Medieval English Church Courts', *Speculum*, 61 (1986).

²⁷⁷ F. W. Maitland, 'A Conveyancer in the Thirteenth Century', *The Law Quarterly Review*, 7 (1891), at 63.

²⁷⁸ F. De Zulueta and P. Stein, *The Teaching of Roman Law in England around 1200* (London: Selden Society, 1990).

²⁷⁹ Joseph Biancalana, 'Monetary Penalty Causes in Thirteenth-Century England', *Tijdschrift voor Rechtsgeschiedenis* 73 (2005), at 250.

²⁸⁰ The presence of pleas of debt on manorial court rolls is evidence that money was being borrowed in provincial England and that the lenders were not exclusively Jews in the years preceding their expulsion, nor were they regularly Italians after 1290. Postan believes that wealthy villagers filled this gap in the money-lending market, and John of Oxford's formula seems to support this conjecture. See: M. M. Postan, *The Medieval Economy and Society* (London: Weidenfeld and Nicolson, 1972), at 134-138.

manuscript culture of John's monastic house at Luffield and their respect for record keeping may have even ensured the survival of his bundle where those of other scribes have surely been lost.

The composition of John of Oxford's instruments required not only an understanding of several jurisdictions but also knowledge of the written conventions applied to their formatting and content and relied on his discretion to choose the appropriate language for the appropriate instrument. Susan Reynolds has suggested that the regularity of forms found in twelfth-century deeds is evidence of 'the beginnings of expertise at what one could call the lower end of the [legal] profession'.²⁸¹ Reynolds highlights the fact that historians tend to disregard the possibility that professional expertise in the law could have been acquired outside of universities before the fourteenth century and that local law could have been practised in secular courts by professional scribes as early as the twelfth century.²⁸² Furthermore, Reynolds suggests that the appearance of legal specialists in this period corresponded directly with the increasing complexity of the law and its emphasis on the importance of rules, norms, customs and local circumstances.²⁸³ These skills were becoming increasingly necessary to meet the needs of a highly litigious society. Authors of legal instruments also needed to be familiar with legal jargon. This type of legal knowledge was unique to those who worked within the legal system – be they lawyers, judges, Chancery, parliamentary, and common clerks, or any other legal professional who earned his living through contact with the law and legal procedures – in other words, the scribes and notaries. As the cost of employing a lawyer to do this type of written legal work was most certainly prohibitive for those of little means, a local town clerk was a good alternative as he possessed significant legal knowledge by virtue of his position, and the invaluable ability of scribes to read, write and compose in the languages of the law. Medieval men of law relied on language and their linguistic ability to act as hallmarks in order to self-identify as legal professionals and to demonstrate to outsiders that they possessed unique skills.²⁸⁴ These specialised skills will be initially examined in the second part of this chapter and will be analysed in greater detail in Chapter Five.

²⁸¹ Susan Reynolds, 'The Emergence of Professional Law in the Long Twelfth Century', *Law and History Review*, 21/2 (2003b), at 362.

²⁸² *Ibid.*, at 362-363.

²⁸³ *Ibid.*, at 366.

²⁸⁴ Anthony Musson, *Medieval Law in Context* (Manchester: Manchester University Press, 2001b), at 44-50.

We know that scriveners were heavily engaged in conveying property in medieval England and for many historians this is considered to be their primary business. It is certainly true of London scriveners as they held a near monopoly on the conveyancing done in the city and were the first professional body to try to exclude competitors from encroaching on this business in the fourteenth century. Through conveyancing, scriveners were able to make inroads into the legal profession. Conveyancing was a non-litigious practice, and while it was an activity that did not require the participation of a specialist, it certainly benefited from it. It seems, then, that the primary occupation of scriveners was something that could technically have been done by other literate people, but usually was not.²⁸⁵ What separated scriveners from other literate people was their linguistic and legal know-how, as evidenced by the regularity of forms that became standard from the twelfth century. It was the co-occurrence of these two highly specialised skills that drew the line between scriveners who were professionals and laymen who were not. Scriveners had to be masters of all three languages of the law – English, French and Latin. By virtue of their profession, scriveners would also have acquired a familiarity with the technical vocabulary in each of these languages that was unique to English law. They would also have possessed a capacity for putting that skill into practice when pressing quill to parchment.

Writing in the correct language, choosing the right formula and using the proper vocabulary were essential elements of conveyancing, an area of the law in which scriveners excelled. In his study *Medieval English Conveyances*, J. M. Kaye describes the relationship between languages, writing and deeds.

But although Latin became the standard language in which conveyancing documents were written, the documents had to be written in such a way that they could be easily translated at sight into English or French, for the benefit of the unlearned persons who had to know what they contained: the parties themselves, witnesses, suitors of courts, members of juries and assizes, bailiffs and others. It was no doubt for this reason that the old diploma, and the convoluted modes of expression associated with it, disappeared, and the simpler writ-charter was used as a model. English did not reappear in conveyancing until the fifteenth century, when some documents, chiefly indentures of lease, contracts for sale and deeds of covenant, were often written in what had by then become Middle English.²⁸⁶

²⁸⁵ Evidence from the Exeter Property Deeds shows that the majority of deeds written in the city were written by either the town clerks, or by self-identifying clerks (both secular and ecclesiastics), with the exception of the property that belonged to the Dean and Chapter of Exeter Cathedral which was more often conveyed by ecclesiastics. See: P. R. Staniforth and J. Z. Juddery, 'Exeter Property Deeds 1150-1450: Part 3', (Exeter: Exeter Museums Archaeological Field Unit, 1991).

²⁸⁶ J. M. Kaye, *Medieval English Conveyances* (Cambridge: Cambridge University Press, 2009), at 7.

In this statement, Kaye describes the role of the scribe as a legal intermediary. This person was tasked with translating and 'interpreting' the law and its languages for the legally or linguistically illiterate. This type of person continues to be required by modern societies, as evidenced by Article 6 of the European Convention on Human Rights which was described in the first chapter of this thesis. It appears that a scrivener's involvement in the process of writing and witnessing legal documents like deeds and wills reflected their 'responsible position in society' which in turn suggests that their documents bore evidence of 'a greater authority than that of witnesses not enjoying such high professional status'.²⁸⁷ The same cannot be said of copyists or general scribes and in this sense, scribes as legal writers were a more prestigious group with regard to their specialised writing skills and position as 'translators'. Allusions to this stature (or at least aspirations to attain such stature) can be further demonstrated by the pride with which fourteenth- and fifteenth-century town clerks crafted their instruments and identified themselves through the written word.²⁸⁸

Scriveners' Books

No medieval town clerk that we know of has left a systematic description of the work that his office entailed, but from the surviving documents that scribes produced one can begin to reconstruct a picture of the tasks they performed, though inevitably this reconstruction will be in many ways incomplete. Among these records are scrivener's record books which are excellent evidence to showcase all three of the scrivener's specialist skills in languages, the law and the writing of legal formulae. Unfortunately, these precious books are few and far between as their survival rates seem to have been negatively affected by time and the ephemeral nature of their contents.

Among the survivors is the book of a Bury St Edmunds scrivener which dates from the period between the late fourteenth-century through to the 1460s.²⁸⁹ This book was begun by William Broun who describes himself as a 'clerk' of Bury St Edmunds. Broun was the author of the first eight folios which contained various undated items written in Latin relating to his personal accounts, purchases of malt and an excerpt of the philosophical treatise *Secretum Secretorum* written in French.²⁹⁰ The random nature of these first few pages is characteristic of

²⁸⁷ Francis W. Steer (ed.), *Scriveners' Company Common Paper 1357-1628* (London: London Record Society, 1968) at vii.

²⁸⁸ This will be examined in Chapter Four.

²⁸⁹ Cambridge University Library, MS. Add. 7318. See: A. E. B. Owen, 'A Scrivener's Notebook from Bury St. Edmunds', *Archives*, 14/61 (1979), at 16-22.

²⁹⁰ *Ibid.*, at 16.

'commonplace books' which were a type of medieval and early modern scrapbook that contained information of interest to their makers. After the eighth folio, the intention of the book seems to have changed as it ceased to be a register (in the sense that its compiler kept copies of his written instruments for the sake of their preservation) and instead became very much an aide-mémoire used to assist another clerk in the preparation of his instruments. It is also at this point that a second hand takes over the book's compilation. From now on we see the new author using the book to make a record of more than three hundred conveyances and five hundred other types of commercial and legal records entered in Latin and English over a four and a half-year period in the 1460s.²⁹¹ Here, he jotted down the names of the interested parties, the nature of their transaction, the boundaries of any properties involved along with the financial details of debts, rents and any other special conditions. Two other record books belonging to London practitioners – John Thorpe, for the period 1457-9, and William Styfford, for the period 1457-8 also still exist and have been studied by Stuart Jenks and Wendy Childs, respectively.²⁹² In these books, each of the scribes kept copies of the deeds, charters, and bonds that they had written for their clients in their own rather incomplete aggregations of memoranda.

Until recently these have been the only known scribes' books to survive from the medieval period. However, there is new evidence to suggest that many more scribes' books are scattered in archives around the country.²⁹³ These are rapidly being identified or, in some cases, rediscovered. Maryanne Kowaleski has recently contributed a chapter on the maritime use of French in England to a collection of edited essays entitled *Language and Culture in Medieval Britain: The French of England c. 1100 – c. 1500*.²⁹⁴ Her essay focuses on the use of French by non-literary communities of people in medieval England, specifically sea faring men and others associated with overseas shipping and trade; however it has also made an important, if unintended, contribution to the historiography of scribes' books. Kowaleski used the late fourteenth-century register of Daniel Rough, a New Romney fishmonger and town clerk, to show how local men like him preferred to keep their records in French and Latin

²⁹¹ Ibid., at 16-17.

²⁹² Stuart Jenks, 'Das Schreiberbuch Des John Thorpe Und Der Hansische Handel in London, 1457-59', *Hansische Geschichtsblätte*, 101 (1983), at 67-113.; W. R. Childs, "'To Our Losse and Hindraunce": English Credit to Alien Merchants in the Mid Fifteenth Century', in J. Kermode (ed.), *Enterprise and Individuals in Fifteenth-Century England* (Gloucester: Alan Sutton, 1991), at 68-98.

²⁹³ One of these is Humphrey Newton's Commonplace book which will be examined further in Chapter Five.

²⁹⁴ Maryanne Kowaleski, 'The French of England: A Maritime *Lingua Franca*?', in Jocelyn Wogan-Browne et al. (eds.), *Language and Culture in Medieval Britain: The French of England c. 1100 - c. 1500* (Woodbridge: York Medieval Press, 2009), at 103-117.

rather than in English.²⁹⁵ She also briefly mentions the ‘private memoranda book’ of William Asshebourne, the fifteenth-century town clerk of the port of King’s Lynn.²⁹⁶ Asshebourne used his book to record correspondence, petitions and other documents in Latin and French and very rarely in English, thus demonstrating the linguistic ability of another maritime town clerk.²⁹⁷ Kowaleski used these examples in order to support her argument that Anglo-Norman was very much a living language in the port towns of later medieval England, however she does not acknowledge the wider significance of Rough and Asshebourne’s records as scribes’ books.

Their status as scribes’ books is significant because Kowaleski does not seem fully aware of the importance of these books as being among the few survivors of the record-keeping practices of medieval scribes. Therein lies the real significance of Rough and Asshebourne’s uses of Latin and French. These books provide further evidence to demonstrate the linguistic skills of town clerks and provide clear examples of how they applied their linguistic knowledge to the types of legal records that they kept in their registers. The presence of legal records written in Latin, French and English in such scribes’ books supports the hypothesis that these men were employed by towns as their clerks precisely because they were in possession of two very specialised and sought-after skills: knowledge of languages (as Kowaleski shows) and knowledge of law and legal procedure. It is the legal knowledge of town clerks that is most often overlooked by historians and will be given detailed treatment in Chapters Five and Six of this thesis.

2. The Provincial Town Clerk in the Fourteenth Century

Now that I have briefly traced the origins of the office of the town clerk and provincial scribbling, we can delve into some deeper questions regarding the next phase of development by asking what kind of work was expected of a permanently engaged scrivener? Working as a

²⁹⁵ K. M. Elisabeth Murray (ed.), *Register of Daniel Rough, Common Clerk of Romney 1353-1380* (Ashford: Kent Archaeological Society, 1945).; Maryanne Kowaleski, ‘The French of England: A Maritime *Lingua Franca?*’, in Jocelyn Wogan-Browne et al. (eds.), *Language and Culture in Medieval Britain: The French of England c. 1100 - c. 1500* (Woodbridge: York Medieval Press, 2009), at 109.

²⁹⁶ Maryanne Kowaleski, ‘The French of England: A Maritime *Lingua Franca?*’, in Jocelyn Wogan-Browne et al. (eds.), *Language and Culture in Medieval Britain: The French of England c. 1100 - c. 1500* (Woodbridge: York Medieval Press, 2009), at 109.; See also: Dorothy M. Owen (ed.), *William Asshebourne’s Book* (Norfolk: Norfolk Record Society, 1981).

²⁹⁷ Kowaleski notes that approximately ten percent of the 328 items in Asshebourne’s book were written in French, while the majority of what remains was in Latin with the occasional use of English: Maryanne Kowaleski, ‘The French of England: A Maritime *Lingua Franca?*’, in Jocelyn Wogan-Browne et al. (eds.), *Language and Culture in Medieval Britain: The French of England c. 1100 - c. 1500* (Woodbridge: York Medieval Press, 2009), at 109, n. 129.

town clerk was an excellent opportunity for an otherwise freelance or itinerant scrivener who wanted the security of regular employment that could also provide him with the freedom to engage in work for private clients. The duties, tenure and specialisation of regularly employed town clerks will be considered in this section along with an examination of their remuneration for this type of work in an effort to ascertain the typical scribal output and the levels of compensation earned by town clerks during their careers as professional writers.

Tenure and official responsibilities

The first section of this chapter touched upon the relationship that existed between merchant guilds and the development of the earliest borough administrations where we saw that record keeping in boroughs was not just a functional method of recording payments but it was also judicial in character and this is reflected in the records of courts from an early period. Martin argues that one of the strongest impulses to systematically record what happened in these courts came from the registration of conveyances and property titles which we know to have been the primary occupation of provincial scribes.²⁹⁸ The creation of these records for the local government was of dual significance to the scribes who worked as town clerks. Not only was it their responsibility to make the court's records and enroll private legal instruments, but by doing so these clerks were officially recording their own work as they were commonly the writers of these instruments as well.

Provincial court rolls have an impressive pedigree. Wallingford's rolls appear in the 1230s, which surpasses even London's Husting rolls in their antiquity. Exeter's court rolls are known for being among the finest of these records not only for their early appearance in the 1260s, but also for their comprehensiveness. Exeter's town clerk and his sub clerk were expected to attend the city's courts which met regularly, requiring attendance at the mayor's and provosts' courts at least three days per week, sometimes as often as four or five times.²⁹⁹ These were courts of record, wherein real and personal actions were tried, fines passed, wills proved, pleas of debt, assault, and trespass made, actions for detention of goods and other matters relating to the borough's business were noted. Exeter's rolls recorded the judicial

²⁹⁸ Geoffrey Martin, 'English Town Records, 1200-1350', in R. H. Britnell (ed.), *Pragmatic Literacy, East and West, 1200-1330* (Woodbridge: Boydell Press, 1997), at 123.

²⁹⁹ The provost's court rolls appear to be the adjourned sessions of the mayor's court, presumably taking place when the mayor was unable to attend. From 1328, the records of this court are enrolled separately from the mayor's court. Previous to this date, the records for both courts were made on the mayor's court rolls. Margery M. Rowe and John M. Draisey (eds.), *The Receivers' Accounts of the City of Exeter, 1304-1353* (32; Exeter: Devon & Cornwall Record Society, 1989) at xiv.; fn. 1.

business heard by the courts, but also included various memoranda such as the abstracted versions of royal writs, the elections of borough officials and entries into the freedom thus combining elements that were characteristic of guild rolls with those of importance to the borough. Exeter and Bristol had two of the first recorded common councils in medieval England with roles for their clerks established early on. In Exeter, the Ordinances of 1345 officially created a permanent council, however such a group had already appeared on a less formal basis sporadically from the 1260s.³⁰⁰ James Tait tells us that in this period most of the 'important towns' had councils that engaged in administrative work and were increasingly involved in self governance and giving advice to their mayors (where applicable).³⁰¹

Just as Exeter's court rolls included enrolments of wills and testaments, Bristol's court was also a probate court.³⁰² This was a right officially granted to the town by Edward III in his charter of 1373 although this merely legitimised and redefined an already established practice as one of the city's longstanding customs. In the charter, the mayor and sheriff of Bristol were given the power to receive probates of the wills which devised lands, tenements, rents and tenures found within the city, its suburbs and precincts. This was done explicitly 'so that such wills and legacies being proclaimed in full court of the guildhall of the said town of Bristol, and enrolled in the rolls of the said court ... shall be of record'.³⁰³ Bristol's custumal, written in 1344, had limited the probate of wills to those of the burgesses of the town and their lands, tenements or rents.³⁰⁴ In outlining the procedure for enrolling and proving Bristol's wills, a great emphasis was placed on the role of the town as the keeper of the records. The custom specified that once the wills were proven, they were to be 'inserted in full in a paper' and that this paper was to be kept in the treasury where the town's common seal was also kept 'so that they whom such wills concern may have their recovery again by such record'.³⁰⁵ Naturally the town clerks were responsible for making these rolls which documented the activities of the court as a

³⁰⁰ Bertram Wilkinson and Ruth C. Easterling, *The Mediaeval Council of Exeter* (Manchester: Manchester University Press, 1931), at 101.; fn. 97.

³⁰¹ James Tait, 'The Origin of Town Councils in England', *The English Historical Review*, 44/174 (1929), at 196-197.

³⁰² Exeter's mayor's court was a court of probate from at least as early as 1301. For examples of early probates of wills, see DRO, Mayor's Court Roll 29-30 Edw. I, m. 10, m. 20, m. 29, m. 43 (hereafter abbreviated as MCR); DRO, MCR 32-33 Edw. I, m. 3, m. 9, m. 18, m. 33.

³⁰³ Samuel Seyer (ed.), *The Charters and Letters Patent, Granted by the Kings and Queens of England to the Town and City of Bristol* (Bristol: John Mathew Gutch, 1812) at 54.

³⁰⁴ Francis B. Bickley (ed.), *The Little Red Book of Bristol* 2 vols. (1; Bristol: W. Crofton Hemmons, 1900a) at 32.

³⁰⁵ *Ibid.*

court of law and also functioned as a source for written records. In return for endorsing wills with the day and place of probate, Bristol's town clerk was entitled to 40d for his work.³⁰⁶

To borrow a simple, albeit profound, phrase from Susan Reynolds: 'Local courts mattered: Most law was done in them'.³⁰⁷ This is significant because it is a fact that is frequently overlooked in favour of what was happening in the central law courts and the type of higher justice that was dispensed by the judges there. In her work on *Local Markets and Regional Trade in Medieval Exeter*, Maryanne Kowaleski found that in Exeter, in the 1380s, about three hundred and thirty cases appeared each year. In this period, anywhere from five to thirty new cases arose in each court but about ninety percent of the cases heard each week had been carried over from the previous week. The single most common plea was for debt (about thirty-six percent), followed by trespass (thirty-four percent) which shows that the town's clerks needed to process a large number of cases and in lieu of a recorder (in the fourteenth century) they were also expected to advise the court on relevant points of the common law and on local custom.³⁰⁸ The clerk's knowledge of both of these areas of law was essential to his ability to execute his professional duties. Martin claims that it was 'the administrative and archival activity of town clerks in the second half of the thirteenth century [that] both reflected and in some measure contributed to the great elaboration of the English common law in that time'.³⁰⁹

It was also here, in the local courts, that many legal transactions were made, witnessed, sealed and enrolled. S. J. Bailey explained the prevalence of high ranking and influential men appearing as witnesses to conveyances in the thirteenth century by suggesting not that these men were available at the beck and call of the scribes' clients, but rather that these witnesses were inclined to gather in the same place where such instruments were made or

³⁰⁶ Ibid., at 33.

³⁰⁷ Susan Reynolds, 'Variations in Professionalism', *Law and History Review*, 21/2 (2003a), at 391.

³⁰⁸ Maryanne Kowaleski, *Local Markets and Regional Trade in Medieval Exeter* (Cambridge: Cambridge University Press, 1995), at 337-338. The recollections of John Hooker, Exeter's chamberlain in the 1550s, reveal that the town clerk's legal responsibilities and expertise extended to 'the order and keepinge of courtes the keepinge of sessions and instructinge me in all thinges concerninge the peace takinge of recognisaunce, examyninge of witnesses makinge of indictmente and all other thinges p[er]tayninge thereunto.' W. J. Harte (ed.), *An Account of the Sieges of Exeter, Foundation of the Cathedral Church and the Disputes between the Cathedral and City Authorities by John Vowell Alias Hooker* (Exeter: James G. Commin, 1911) at 2. In the fifteenth-century, Bristol's town clerk, Robert Ricart instructed the mayor and sheriff of Bristol to first ask the recorder for advice on points of law, or, in his absence, to consult the town clerk. For a further examination of this, see Chapter Four under the section 'The Maire of Bristowe is Kalendar'.

³⁰⁹ Geoffrey Martin, 'English Town Records, 1200-1350', in R. H. Britnell (ed.), *Pragmatic Literacy, East and West, 1200-1330* (Woodbridge: Boydell Press, 1997), at 125.

completed – namely in the central royal courts.³¹⁰ A thirteenth-century formula for composing wills that was written by a provincial clerk around 1274 suggests that this was also true of local provincial courts. This formula contains a note which specifies that executors of wills and testaments were required to be present when the document was made so that they may seal it, which confirms that there was a communal element to the creation of these documents.³¹¹ Whether or not their ‘presence’ indicates that they were physically there when the will was made or simply that they were present when the will was read aloud and were therefore in a position to authenticate its contents by affixing their seals can be debated.³¹² Nonetheless, the tendency to carry out private business in the local courts demonstrates that the type of men who were likely candidates to witness deeds and attest to the contents of wills were derived from the same category of man who could be expected to be found frequenting these courts. Moreover, the clerk entrusted with making these records, listing the witnesses and attributing the executors to these types of instruments could also be found in attendance at the courts because his regular employment as town clerk required his presence there to do the town’s secretarial business. This supports Bailey’s belief that charters were drafted in or near courts because it was easier to find ‘an experienced conveyancer’ there, as opposed to outside of these ‘official circles’.³¹³

The official circles to which Bailey refers to specifically are the Curia Regis and the court of the Barons of the Exchequer; however this statement applies equally to the personnel of the lower courts as every court required a clerk. In Exeter it seems that the town’s clerk kept an office attached to the guildhall itself. Exeter’s earliest receiver’s accounts for 1304-6 show that there were two shops next to the Guildhall, ‘*iuxta pretorium Gyalde in parte occidentali*’, that were usually rented for 24s per annum.³¹⁴ This reference to the provostry and the shop against it on the west side of the building indicates that the provosts’ court was held on the ground floor of

³¹⁰ S. J. Bailey, 'Thirteenth-Century Conveyancing from the Charter Rolls', *The Cambridge Law Journal*, 19/2 (1961), at 202-203.

³¹¹ F. W. Maitland, 'A Conveyancer in the Thirteenth Century', *The Law Quarterly Review*, 7 (1891), at 66.

³¹² The presence (or conversely, the absence) of witnesses at the time of writing has been studied by Michael Clanchy who found that in the twelfth century the act of witnessing was considered secondary in solemnity and symbolism to the act of writing itself. M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 256. Further evidence is found in Bracton, who advised that: ‘Witnesses ought to be called and let everything be done in their presence with due ceremony, that they may verify what was done if required to do so ... if they are not present at the making of the charter it is sufficient if it is afterwards read and approved [in their presence], both donor and done being present.’ Samuel E. Thorne (ed.), *Bracton on the Law and Customs of England* 2 vols. (2; Cambridge, MA: Harvard University Press, 1968) at 119.

³¹³ S. J. Bailey, 'Thirteenth-Century Conveyancing from the Charter Rolls', *The Cambridge Law Journal*, 19/2 (1961), at 203.

³¹⁴ DRO, Exeter City Accounts, Receiver's Accounts 32-34 Edw. I.

the guildhall. A reference to the cellar below the provostry in 1366 further supports that indication.³¹⁵ In 1476, one of these shops was given to the town clerk and the sergeants for the use of the city '*ad usum civitatis*'.³¹⁶ The provosts' court was held by the bailiffs in the provostry and exercised a similar jurisdiction as the mayor's court which was held in the main hall of the guildhall. Each of these courts dealt with pleas of debt, assault and trespass and other civil matters, however only the mayor's court exercised a limited jurisdiction over capital offences, prior to the reign of Edward III.³¹⁷ Other than their jurisdiction and their attendees, the main similarity between the two courts was their accessibility. The mayor's court sat on Mondays while the provosts' court was convened according to the bailiffs' will on the other days of the week (with the exception of festivals). Furthermore, as these courts did not sit in a closed session, they were open to the public who must have used the opportunity to gain access to the town's clerks should they need to engage their services as scriveners.

Bracton advises that even private charters should be read aloud in a public place, saying that witnesses should be called and everything should be done in their presence with due ceremony, that they may verify what was done if required to do so and that their names should be included in the charter.³¹⁸ However, if the witnesses were not present at the making of the charter it was considered sufficient if it was read and approved afterwards in the presence of both the grantor and the grantee, preferably in a public place like the county or hundred court, 'so that if the gift is denied it may more readily be proved'.³¹⁹ The automatic presence of clerks and men of standing in the local courts made them locations in which to witness and seal instruments, and explains why the deeds that are written by town clerks are most often witnessed by the mayor, receiver, bailiffs and aldermen of the town council regardless of the identities of the parties. The local court was also the perfect location to complete the transaction of a deed or a will if the parties wished to have a record of it enrolled by the court as well.

Registration of a transaction via enrolment provided greater protection against possible loss or destruction of the evidence of title than a deed could give, as it backed up the grantee's claims in instances when the original deed was lost, ruined or even forged. In the thirteenth century,

³¹⁵ H. Lloyd Parry, *The History of the Exeter Guildhall and the Life Within* (Exeter: James Townsend & Sons, 1936), at 8.

³¹⁶ *Ibid.*, at 5.

³¹⁷ *Ibid.*, at 45.

³¹⁸ Samuel E. Thorne (ed.), *Bracton on the Law and Customs of England* 2 vols. (2; Cambridge, MA: Harvard University Press, 1968) at 119.

³¹⁹ *Ibid.*, at 119-120.

private charters were regularly enrolled using the royal government's registry, primarily in the Charter Rolls, but after 1303 no royal inspection or confirmation appears on the rolls unless the transaction directly touched upon the church or a royal franchise.³²⁰ This change did not apply to local courts as they continued to register private deeds on their rolls – for a fee, naturally. While records of conveyances made on the Charter Rolls were limited to a certain type of individual, namely one who could afford to pay for the privilege of having their deed seen, *inspeximus*, or confirmed, *confirmatus*, by the king, local courts were less expensive and more accessible while still meeting the needs of the people who desired the extra protection that the enrolment of conveyances was able to afford.

It is worthwhile to remember that provincial scribes were not bound by the rules and regulations of a guild as the London practitioners were. Inevitably, forgeries were made by unscrupulous locals who understood the scribbling craft and could falsify documents relating to property ownership which invariably then led to litigation upon discovery. Forged documents were a cause of civil unrest in Exeter in the late-fifteenth century and it was deemed important to safeguard against them in order to maintain civic order. Exeter's mayor, John Atwill, was compelled to petition Henry VII sometime after 1488 to complain of forgeries made by the city's 'most infamous person' – one John Bonefant.³²¹ Bonefant was not only a forger of documents but was also a generally unsavoury individual who, along with a group of armed men, unlawfully forced his way into the messuage of the mayor, John Atwill, and began to occupy it while Atwill was away in the king's service. Bonefant was accused of forging false deeds and of counterfeiting seals upon Atwill's return in order to defraud the mayor of his property.

Bonefant was uniquely equipped with the capacity to forge documents as he happened to also have been the city's bailiff prior to this, a fact which likely made his crime especially heinous to the city's officials. An important safeguard against forgeries could easily be had by enrolling the agreements on the city's court rolls. Enrolling deeds added an extra layer of security and made the documents more official by physically copying them onto a roll kept by the town clerk. Should the town clerk also be the scrivener involved in the conveyance then it was all the better for the client who benefitted from additional security for his document. However,

³²⁰ S. J. Bailey, 'Thirteenth-Century Conveyancing from the Charter Rolls', *The Cambridge Law Journal*, 19/2 (1961), at 220.

³²¹ J. H. Wylie, 'Report on the Records of the City of Exeter', (London: Historical Manuscripts Commission, 1916), at 16.

as Bonefant's case demonstrates, the town's clerks could not always be trusted to use their legal knowledge and invested powers to serve honourable purposes, meaning that they could just as easily tamper with the city's records as they could with private documents.

We know that deeds were made in Exeter's guildhall and that many of the deeds and other legal instruments written by the town's clerk were enrolled in open court, which may have acted as a deterrent for unscrupulous clerks like Bonefant.³²² The most direct evidence for this practice comes from the deeds themselves and we can readily infer that medieval guildhalls were the offices of town clerks and the places in which transactions were made between individuals from as early as the twelfth century in Exeter. In his history of Exeter's guildhall, Mr Parry, Exeter's town clerk, tells us that his medieval predecessors did the court's civil business, entered and enrolled conveyances of property and other legal documents between the four benches of the court with other citizens present who appeared as witnesses.³²³ Proof that this occurred in the Middle Ages can be found in occasional references made after the signatures on deeds, saying that the testators were between the four benches of the Guildhall, 'hi sunt testes qui fuerunt in Guihalla Exonie ubi ista concession infra quator scanna facta est',³²⁴ 'quator scanna Ghihaldie Exonie',³²⁵ or simply that the deed was dated in the guildhall, 'datum in Gyhalda Exonie'.³²⁶

Other early references to transactions taking place in Exeter's guildhall can be found in a grant of 1189,³²⁷ a reference to an early thirteenth-century grant of a house and a plot of land from Reimund de Aqua to the Church of St Nicholas in which specific mention was made that the grant was transacted in the guildhall in the presence of the citizens,³²⁸ a quitclaim of the first quarter of the thirteenth century which was transacted in the guildhall 'in the presence of the bailiff'³²⁹ and a grant of frankalmoign dating from 1232-33 which also described the transaction as having taken place in the guildhall.³³⁰ The relative scarcity of these references and the fact that they are all found in early deeds should neither be seen as an indication of the rarity of

³²² H. Lloyd Parry, *The History of the Exeter Guildhall and the Life Within* (Exeter: James Townsend & Sons, 1936), at 6.

³²³ *Ibid.*

³²⁴ Exeter, DRO, ED/M/5

³²⁵ Exeter, DRO, ED/M/16

³²⁶ Exeter, DRO, ED/M/449, ED/M/473

³²⁷ Exeter, DRO, Russell Collection, W1258 G4/26

³²⁸ Exeter, DRO, ED/SN/16

³²⁹ Exeter, DRO, ED/M/12 (original); ED/M/13 (copy); ED/M/14 (confirmation)

³³⁰ British Library Cotton MS Vitellius D IX folios 115-115v, Extracted in P. R. Staniforth and J. Z. Juddery, 'Exeter Property Deeds 1150-1450: Part 3', (Exeter: Exeter Museums Archaeological Field Unit, 1991).

this type of transaction taking place in the guildhall nor should it be assumed that this activity ceased to occur in the guildhall after the thirteenth century. Instead, I would suggest that these transactions had become so commonplace in the guildhall and in the city's courts that these occasions no longer warranted a special mention and instead the location of the witnessing of the instruments was taken for granted.

The guildhall was also the place where the council met and the city's coffer was kept which held both money and important legal documents.³³¹ The proximity of Exeter's town clerks to the guildhall where he was sure to be found in the courts and at the council's meetings undoubtedly helped attract the business of private clients. It was undeniable that in hiring a town clerk as your conveyancer you were getting an all-in-one service that could not be as easily or readily provided by freelance scribes unattached to an established court. The town clerk gave his client access to his skills as a writer and as a seasoned conveyancer, while also giving the client direct access to a body of men from which to draw witnesses of high social standing and access to the registers of the courts.

In the absence of explicit town ordinances for this period, many of the inferences made about the work of Exeter's clerks have had to come from the instruments that they produced. By contrast, Bristol's records are clear about the expectations that the city had of its town clerks, particularly in the fifteenth century. *The Great Red Book of Bristol* gives the 'Ordinaciones facte et stabilite pro communi clerico in communi concilio ville bristolie' which outline the role of the common clerk and the fees he was allowed to take for his various duties. The ordinances date to the clerkship of John Joce in 1449/50, however a note in the margin in another hand suggests that they were of a much older provenance, claiming that: 'thes ordinaunces weare made long before the time of King the fourth by whose Charter the Maior hath authority to hold all maner of pleas'.³³² Payments to the clerk for writs of trespass or entering a plea cost the litigant 4d, for writing a writ of capias³³³ or a letter of attorney³³⁴ the clerk charged 2d, but

³³¹ H. Lloyd Parry, *The History of the Exeter Guildhall and the Life Within* (Exeter: James Townsend & Sons, 1936), at 7-8.

³³² E. W. Veale (ed.), *The Great Red Book of Bristol: Text*. (2; Bristol: Bristol Record Society, 1933) at 119.

³³³ A warrant of arrest.

³³⁴ This instrument authorised one or more attorneys to appear in any court, or in some specified court, or otherwise act on behalf of the person giving it.

if the letter of attorney was put under the mayor's seal then the clerk could demand 12d.³³⁵ To write two apprenticeship indentures, the clerk could claim 8d in compensation.

The ordinances not only outline the acceptable fees for clerks to charge, they also curtail the town clerk's curial activities by limiting the types of actions that the clerk was allowed to bring before the mayor and sheriff. The mayor and council specified that the clerk 'shall not take noon accion a fore the seyde Meyre and Shreve saf only Accions of trespace and deceyt'.³³⁶ It is unsurprising that the clerk was restricted to these two areas of law as these forms of action were commonly based on writs or bills. This English word, 'writ', is the equivalent of the Latin 'breve' and these two words refer to two sides of the same coin – the writ was both 'written' and it was 'brief'. These short written instruments were required to initiate certain legal proceedings as they gave instructions to the sheriff to take action in relation to a case. H. A. Hollond explains that 'by buying a particular writ the plaintiff acquired the right to have his claim tried in accordance with the rules pertaining to that writ, and the sum of those rules became a concept which lawyers later called a form of action'.³³⁷ Not all actions required writs and it was possible to make a complaint or demand orally in local courts which was sufficient 'to set the process of justice in motion'.³³⁸ A bill had the same effect as a writ only it did not adhere to an established form and, where permitted, could be issued by a court in place of a formal writ.³³⁹ Bills were commonly used for deceits and trespasses, which is precisely the area of expertise of the medieval scrivener.

Early evidence of clerical specialisation in Exeter

Exeter's medieval guildhall was the epicentre of civic life and it is here that scriveners could be found hard at work in the employ of the city as its town clerk and sub clerks. The guildhall was the recognised court for civil business, where deeds for the conveyance of property and other legal documents like wills were written and enrolled in the open court by the clerk. In the thirteenth-century, the town clerk typically headed a group of four sergeants, who seem to have sometimes been stewards of the merchant guild as the guild had an important role to play in the early days of Exeter's civic government that we see replicated in countless other

³³⁵ E. W. W. Veale (ed.), *The Great Red Book of Bristol: Text*. (2; Bristol: Bristol Record Society, 1933) at 120.

³³⁶ *Ibid.*, at 121.

³³⁷ H. A. Hollond, 'Writs and Bills', *The Cambridge Law Journal*, 8/1 (1942), at 16-17.

³³⁸ J. H. Baker, *An Introduction to English Legal History* (4th edn.; London: Butterworths, 2002), at 53.

³³⁹ H. A. Hollond, 'Writs and Bills', *The Cambridge Law Journal*, 8/1 (1942), at 23.

English towns.³⁴⁰ This is reflected in the composition of Exeter's early administrations which began to form in the twelfth century.

From the fourteenth century, Exeter's receivers' accounts record the payments of the fees for the three distinct clerical roles that together made up the city's secretariat. The first (and most important) of these was an individual known as the chief bailiff, which was the local terminology for the person who would otherwise be known as either the common clerk or the town clerk in other locales. The second was the bailiff's sub clerk (who, rather confusingly, was referred to as the town clerk) and the third was the receiver's clerk. In Exeter, the chief bailiff and his sub clerk attended the city's courts and made the rolls which recorded their proceedings. The receiver's clerk's regular scribal activities consisted of attending to the receiver's business, compiling accounts, and may also have included writing the final draft of the receiver's account itself.

Of these, the chief bailiff and his sub clerk are the most readily identifiable as these officials were elected and their names appear in Exeter's financial accounts. By contrast, the receiver's clerk's name is never given so this person's identity is unknown. However, judging by the hands present in the both the mayor's court rolls and the receiver's accounts, it appears that the receiver's clerk and the town clerk were the same person, or, at the very least, that the town clerk was charged with making the final copy of the receiver's account. In 1302, Exeter's chief bailiff and the town clerk were first appointed separately and had not only become a recognised feature of the city's administration but they were two independent offices in contrast to the previous century in which the two roles were almost always executed by the same person.³⁴¹ This can be seen in the cases of Godfrey de Sowly who was called both '*clericus*' and '*ballivus*' in 1254,³⁴² Walter Okehampton who was called both '*clericus civitatis Exon.*' and '*ballivus*' in 1263 and 1282,³⁴³ Philip Shillingford who was called both '*ballivus*' and '*clericus civitatis*' in 1277³⁴⁴ and Henry de Bokerel who was called both '*ballivus et capitalis*

³⁴⁰ In Southampton in particular it is difficult at times to distinguish between the two organisations due to their overlapping governance.

³⁴¹ The city seems to have dabbled in separating the role into two in 1294 when Henry Bokerel was appointed '*clericus*' and Martin Belebuche was appointed '*clericus civitatis*' but this arrangement was short lived. By 1296 Henry de Bokerel seems to have been working alone. R. C. Easterling, 'List of Civic Officials of Exeter in the 12th and 13th Centuries c: 1100-1300', *Report and Transactions of the Devonshire Association*, 70 (1938), at 488.

³⁴² *Ibid.*, at 478.

³⁴³ *Ibid.*, at 480.; 486.

³⁴⁴ *Ibid.*, at 484.

clericus'.³⁴⁵ By 1313, evidence of the elections of both the chief bailiff and the town clerk appear on the mayor's court roll, indicating that as Exeter was growing, the city was responding to the enlargement of its population and the increasing pressures being put on the government's secretariat by dividing the work of the town clerk's office into two.³⁴⁶ Exeter was a modest provincial town at the beginning of the fourteenth century, with a population of at least 3 000 which was a substantial number for Devonshire but it was still only a quarter of the size of York or Bristol and less than half the size of Salisbury.³⁴⁷

The next shift in Exeter's clerical offices came in 1352 when, for the first time, the chief bailiff becomes known as the recorder – Robert atte Weye being the first man to hold this position.³⁴⁸ Initially the recorder was appointed on an annual basis at the Michaelmas election, but by the end of the century it had become normal to hold office for life.³⁴⁹ The creation of this post was possibly done in imitation of the practice in London, where such an official had functioned since the early fourteenth century, but this may also have reflected a new recognition of the evolution of the job. By this time, the chief bailiff seems to have already acquired the position of mayor's counsel from the two provosts whom he more or less replaced in the thirteenth century. Once the chief bailiff was given an assistant he could concentrate further on the legal side of his work, whilst also retaining the clerical duties that he had always had. If indeed the new 'recorder' took on greater responsibility than what was assumed by him as the chief bailiff, this was not reflected in his salary which remained the same as it was in previous years: 60s or £3 per annum. In Richard Izaake's manuscript notes on the 'chiefest officers within the cittie of Exeter', dated 1665, we can find the following passage referring to the recorder:

The Recorder was not an officer from the beginnunge, for (as it should seeme by the course of the Recordes) some one of the Officers was learned & able to directe the Courte accordinge to the lawes of the land, but in processe of tym, when knowledge

³⁴⁵ *Ibid.*, at 489.

³⁴⁶ DRO, MCR 7-8 Edw. II, m. 1. The next evidence of the election of these two officers comes in 1327 with the appointment of Hamund de Dyreworthy as '*capitalis ballivus*' and Walter Fartheyn as '*clericus*'. From this point onward it is a regular feature of the rolls. DRO, MCR 1-2 Edw. III, m. 1. Easterling reached the same conclusion with regard to the separation of the town clerk's office in the fourteenth century, writing that by 1327, 'the election of the chief bailiff and the town clerk indicates that these offices are now a recognised feature of the city establishment, and by this time they are offices which are independent of one another ... the citizens' own election of their chief bailiff should be clearly noticed'. *Ibid.*, at 493.; fn. 159.

³⁴⁷ E. M. Carus-Wilson, *The Expansion of Exeter at the Close of the Middle Ages* (Exeter: University of Exeter Press, 1963), at 5.

³⁴⁸ For a succinct explanation of the many contradictions found in the literature regarding Exeter's first recorder, see: Ethel Lega-Weekes, 'William Wykes, "First Recorder of Exeter"; and Wykes, Sheriff of Devon', *Report and Transactions of the Devonshire Association*, 45 (1912), at 561-567.

³⁴⁹ Margery M. Rowe and John M. Draisey (eds.), *The Receivers' Accounts of the City of Exeter, 1304-1353* (32; Exeter: Devon & Cornwall Record Society, 1989) at xx.

fayled in them, & matters on lawe did increase, then by good advise 'twas thought fitt & expedient that choice should bee made of a wise & learned man, who should be alwayes attendant uppon the Maior & Bayliffes, to directe & advize them in all matters of doubte & difficulty, according to Lawe...³⁵⁰

Izaake may have overestimated the legal competency of the earliest recorders, as in many ways they were really just doing the work of the chief bailiff and being called by another name. What Izaake is describing in the first three lines is the chief bailiff through and through. It had always been his job to 'direct the court' while also making and keeping its written record. But Izaake was right to identify the recorder's position as being more explicitly legal than the position of chief bailiff might have been. This lexical shift probably also reflected a changing attitude towards a rapidly evolving office which distanced the recorder from the clerical role of the chief bailiff and focussed more on the advisory role that he fulfilled alongside the city's attorney. It is important to keep in mind that the early recorders, while perhaps being learned in the law to some extent, were by no means on par with the city's lawyers – Exeter employed professional attorneys who were completely separate from the elected city officials and their legal responsibilities far exceeded those of the recorder and the clerks.³⁵¹ Once the position of chief bailiff had evolved into a recordership by the mid-fourteenth century, it seems to have had a domino effect on the city's other clerks as their job descriptions, or at least their job titles, changed. We see the terms 'recorder' and '*clerico civitatis*' used over the next few years, but these terms were applied differently to different people. The chief bailiff became the recorder while the sub clerk became the town clerk. The differences were not superficial as there was a financial impact on the salaries of these individuals as well.

Remuneration

As clerks, scribes have sometimes been painted with a broad brush that labels them as 'poor clerks', but to what extent does this cliché accurately describe the financial position of lay clerks engaged in provincial scribbling? We are used to seeing 'poor' as a way of

³⁵⁰ DRO, C1/53, Izaacke's 'A Memoryall of sundry of the chiefest officers within the cittie of Exeter', fol. 84. [23 January 1665].

³⁵¹ In Exeter, the recorder was an elected official however the town clerk was not and neither were the attorneys. This can be contrasted with the situation in London where the holders of city office were encouraged to act as the attorneys for the city, presumably so that the city could exercise a degree of control over this group of legal professionals. Penny Tucker has estimated that at least a quarter of London's attorneys in the fourteenth century held city offices concurrently with their legal appointments. Penny Tucker, 'First Steps Towards an English Legal Profession: The Case of the London Ordinance of 1280', *English Historical Review*, 121/491 (2006), at 30.

With regard to the legal expertise of Exeter's recorders, the situation had altered by the fifteenth century when one of the city's recorder's – William Wynard – was a professional lawyer and called to the order of serjeants at law.

categorising ecclesiastical clerks as a reflection of their devotion and commitment to religious life. After all, they chose to forgo the material aspects of the world in order to follow a path of righteousness, with poverty being one of the three archetypal values of Christianity and fundamental to the Mendicant model of religious practice especially. But when it comes to predominantly lay clerks like scribes, to what extent does this theory of poverty apply? Chaucer paints the picture of a thin and impoverished clerk as one of his pilgrims in *The Canterbury Tales*, but to how much of this portrait of a clerk is truth or trope?³⁵² In this section I address the question of fees and payments made to town clerks for typical lay clerking business, along with some of the extraordinary payments and rewards made to them in the form of essentials such as food, drink and clothing.³⁵³ By looking at examples of town clerks working in Exeter and Bristol this section will consider the monetary rewards associated with scribbling for a living in order to determine where town clerks fit on the spectrum of wealth based on occupational remuneration.

Salaries for clerical positions

Exeter

As provincial cities grew in the fourteenth century, so too did the amount of work available to their local secretariat. The most fortunate scribes found consistent work with a city that not only paid a salary but also appointed or elected its clerks for life instead of replacing them annually. Exeter and Bristol are perfect examples of such cities. Exeter's receiver's accounts provide some of the earliest and most complete records of their type in England, containing data pertaining to the city's finances from 1304 until the present. These yearly accounts of the city's income and expenditure fell under the control of the office of the receiver and his clerk, however it appears that the job of writing up these accounts was regularly delegated to the town clerk. The receiver's accounts record the city's payments to individuals for specific types of work and these salaries will be used as evidence to show that clerks were regularly employed at the local government level. All of the city's salaried officials earned a good living through their positions. The earliest of the receiver's accounts show the mayor's fee as 60s in

³⁵² Larry D. Benson (ed.), *The Riverside Chaucer* (3rd edn., Oxford: Oxford University Press, 1987). Not all scribes were laymen. For more on the gradual change in the clerical status of town clerks from the thirteenth century, see Chapter Two of this thesis at pages 40-41. From the fourteenth century, town clerks were more likely to have been laymen and although many of them may have been educated as clerks in minor orders, they often returned to a secular life once they began their careers outside of the Church. For Nicholas Orme's explanation of this phenomenon, see Chapter Five of this thesis at page 190.

³⁵³ Fees earned for ad hoc employment outside of the guildhall will be considered in Chapter Six, under 'Secondary Occupations'.

the year 1304/5 which increased to 100s in 1339 and stayed at that rate, making the mayor the highest salaried official throughout the medieval period in Exeter. The mayor was followed by the chief bailiff who earned 60s per year, while the receiver earned 40s as did the town clerk. The city's attorneys were paid 20s as were the stewards. The receiver's clerk earned 10s and the serjeants slightly more at 10s 1d each while the gatekeepers earned the least amount at 3s per annum. From this comparison we can see that the town clerk earned a salary that was on par with the receiver but he earned double that of the community's attorneys who worked in the courts of King's Bench and Common Pleas rather than the local courts which were the domain of the town's clerk.

These fees were not static, however, and changed over time according to changes in the city's circumstances. In the year 1348-9, the city's finances were deeply affected by the appearance of plague in Exeter. Just as the plague effected an economic change which resulted in an eventual increase in pay for wage labourers, it also had a huge impact on the economics of the city and its administrators. Plague ravaged Exeter for nearly three years, resulting in the loss of half of its clergy and at least one third of its lay population.³⁵⁴ The impact of disease and death is reflected in the city's records, which show that the number of testaments recorded on the mayor's court rolls increased from an average of four per year in the 1330s and 1340s to fifty five in the year 1348/9.³⁵⁵ The effect of the pestilence is also shown in the receivers' accounts, demonstrating long term problems associated with death on an unprecedented scale, resulting in chronically vacant tenements and labour shortages – all of which had a negative impact on the city's revenues.³⁵⁶

Because of the pitiful state of the city's finances, some city officials were paid for only part of the year in 1348-49. As a direct result of the pestilence, the chief bailiff's fee was substantially lower as he was paid a mere 30s while the town clerk received 20s, which was half of their regular fees for a year's worth of work. 1348 was the first year of Martin Battishulle's appointment as town clerk, a position he held until 1365 when he became the city's receiver. Battishulle's fees steadily increased even in the plague ravaged environment of Exeter, initially

³⁵⁴ Maryanne Kowaleski, *Local Markets and Regional Trade in Medieval Exeter* (Cambridge: Cambridge University Press, 1995), at 87.

³⁵⁵ *Ibid.*

³⁵⁶ Despite the obvious and immediate demographic impact on the city, Exeter's financial crunch was fairly short-lived and its coffers bounced back with apparent ease and between 1350 and 1400. During this period, the city prospered and experienced a commercial boom. The best analysis of Exeter's economic history can be found in Maryanne Kowaleski, *Local Markets and Regional Trade in Medieval Exeter*, (Cambridge: Cambridge University Press, 1995)

doubling in 1349-50 to 40s but dropping the year after to 33s 4d. In 1350-51 the city's finances regained some strength and Battishulle's regular fee returned to its pre-plague salary of 40s which remained the standard fee of a town clerk for the rest of the century. This may indicate that Battishulle took on more work at this time, as his was the only fee to increase and none of the other elected officials were given a pay rise. There is also plenty of evidence to suggest that Battishulle's income was able to increase during a time of crisis because he was a shrewd and prudent man.

Proof of Battishulle's cunning is found in the records of freedom entries from the period. Perhaps unsurprisingly for a city experiencing such devastation to its population, the number of men entering the freedom increased in the year 1349. What is surprising, however, is that relatively few of these new admissions were by succession. Of the forty-six new freemen, only eight of them were the heirs of deceased freemen. Not only did the entries to the freedom on the mayor's court roll more than double in this year as compared to the previous year, but the percentage of entrants by payment of a fine as opposed to those who entered after having their fines pardoned or appointed as a 'gift of the mayor and community' also increased. Furthermore, there is a correlation between the increase in the number of people admitted to the freedom and a decrease in the average fee charged for entering into the freedom during the height of plague in Exeter. Not only did this widen the franchise by making entrance into the freedom more attainable for a greater number of people but it also broadened the pool from which the city's leaders could draw on in order to boost their dwindling incomes.³⁵⁷ More importantly, the city used the fees paid by men to enter into the freedom of the city in order to directly, and unabashedly, subsidise the salaries of its officials.

Evidence of increasing numbers of freedom entries in the years after the plague can also be found in York's records. In York there was a direct correlation between outbreaks of plague and an increase in the numbers of freemen registered shortly thereafter, much like in Exeter. For example, between 1345 and 1349 the average number of freemen admitted to York's franchise on an annual basis had been fifty-eight, but in 1350, after the plague had hit the city

³⁵⁷ Freemen were granted special privileges and monopolies of trade within the city as well as the right to vote in elections for mayors and members of the city council; in return they had to serve the mayor by defending the city and maintaining the city fabric. In Exeter, men (and sometimes women) could enter the freedom of the city in one of five ways: 1) by the free gift of the mayor; 2) at the pleasure of the court/commonalty; 3) by patrimony or inheritance; 4) at the end of a seven-year apprenticeship to a franchised man; 5) by paying a fee/fine, the amount which was set by the mayor and court of thirty-six electors. See: Muriel E. Curtis, 'Admission to Citizenship in Fourteenth-Century Exeter', *Report and Transactions of the Devonshire Association*, 63 (1931), at 265-272.

the year before, that number quadrupled to a total of 212.³⁵⁸ The highest number of freemen registered in any given year reached a peak of 219 entries in 1364, which was only two years after the general epidemic of 1361-2. A similar pattern of post-plague increases can be found in 1371-4, 1393, 1414 and 1439-41; all of which were years that followed localised outbreaks of plague in York or the north of England more generally.³⁵⁹ Dobson hypothesises that the expansion of the York franchise can be explained by a pre-existing backlog of eligible men who were already in line to enter the freedom, suggesting that 'heavy mortality among the existing freemen class could itself be responsible for accelerating the rate at which new craftsmen and traders were admitted into the liberty,' after plague had ravaged the city and decimated the population of enfranchised citizens.³⁶⁰

While this may have been true for York, in Exeter there was a purely economic explanation for the expansion of the franchise at various points in time. It might be imagined as a type of fundraising scheme in which new members were entered into the freedom on the condition that they sponsored an official and contributed to the payment of his salary during times of financial hardship. In fact, this was not an uncommon way for the city to subsidise the fees of its officials and the method had been used before the plague on occasion and continued to be used thereafter. The main difference that we can observe in the two-year period from the beginning of 1348 to the end of 1349 is that the city employed the use of this income-generating device to pay the salaries of almost all of its office holders, from the stewards, to the bailiffs, the town clerk and the mayor as well. In 1348 it seems as though the fees of several of the new entrants into the freedom were combined in order to raise enough money to pay the mayor his fee for that year. One entry on 31 March 1348 is explicit in its intention, stating that Robert de Leycetre's fine of £1 was 'in part payment of the mayor's fee'.³⁶¹ Three other entries in that year were made 'in allowance of the mayor's fee'.³⁶² Martin Battishulle, the aforementioned town clerk, especially benefitted from this system over the years. Perhaps in reaction to his small fee of only 20s in 1348, by the next fiscal year new members entered the freedom with conditions. The first was John de Langeford who was admitted in September 1349 'in aid of the fee of Martin de Battishill, clerk', after which time many other men

³⁵⁸ R. B. Dobson, 'Admissions to the Freedom of the City of York in the Later Middle Ages', *The Economic History Review*, 26/1 (1973), at 17.

³⁵⁹ *Ibid.*

³⁶⁰ *Ibid.*

³⁶¹ Margery M. Rowe and Andrew M. Jackson (eds.), *Exeter Freemen, 1266-1967* (Devon & Cornwall Record Society, Exeter, 1973) at 28.

³⁶² *Ibid.*

followed.³⁶³ In no less than seven of the subsequent fifteen years, freemen were granted entry into the freedom in return for providing 'aid' to support the payment of Martin Battishulle's fee as Exeter's town clerk.³⁶⁴ Battishulle himself entered the freedom on 13 December 1350 for an undisclosed amount, suggesting that he probably did not pay a fee.³⁶⁵

Battishulle was not the only clerk to find financial reward in times of hardship. Indeed, tragedy and opportunity are juxtaposed in the records and we see that some city officials appear to have benefitted from the vast number of deaths from plague. Robert de Lucy, who had been chief bailiff in 1348, was paid 16s in fees for recording the extraordinary number of wills that needed to be proved in the mayor's court over a five-week period in 1348/49.³⁶⁶ We do not know how much Exeter's clerk was paid per will as they were not all enrolled. However, we do know that in 1344, Bristol's town clerk was paid 40d for each will that he endorsed with the day and place of probate.³⁶⁷ Using this amount to do Exeter's sums gives us only four wills for Exeter in that five-week period. This is an unlikely number which means that we can assume that Exeter's clerk charged much less per will as there were more than four wills proven in that period of time. In fact, the average number of wills enrolled on the mayor's court rolls in Exeter had been four per year in the 1330s and 1340s, but in 1348/49 there were fifty-five wills enrolled.³⁶⁸ Bristol's clerk's rather hefty fee for granting probate might be explained in part by his rather small salary which was only £4 per year. From this, the town clerk was probably expected to pay his sub clerk as there is no provision for payment to sub clerks in Bristol's records.³⁶⁹

Exeter's 'receiver's' clerk?

The identity of Exeter's 'receiver's clerk' is shrouded in mystery. Of all the secretaries working in Exeter, the receiver's clerk is the only one who is never named in the receiver's accounts. In the introduction to their edited volume the manuscript rolls of Exeter's receivers' accounts (1304-1353), Margery Rowe and John Draisey write that in this period, other than the chief

³⁶³ Ibid., at 29.

³⁶⁴ Ibid., at 29-32.

³⁶⁵ Ibid., at 30.

³⁶⁶ Margery M. Rowe and John M. Draisey (eds.), *The Receivers' Accounts of the City of Exeter, 1304-1353* (32; Exeter: Devon & Cornwall Record Society, 1989) at 41.

³⁶⁷ Francis B. Bickley (ed.), *The Little Red Book of Bristol* 2 vols. (1; Bristol: W. Crofton Hemmons, 1900a) at 33.

³⁶⁸ Maryanne Kowaleski, *Local Markets and Regional Trade in Medieval Exeter* (Cambridge: Cambridge University Press, 1995), at 87.

³⁶⁹ E. W. W. Veale (ed.), *The Great Red Book of Bristol: Text*. (2; Bristol: Bristol Record Society, 1933) at 120.

bailiff and the assistant bailiff/sub clerk, 'there is also another clerk, the receiver's clerk'.³⁷⁰ For the period under consideration by the editors of the receiver's accounts, the rolls yield very little evidence of the identity of this particular clerk and his role. The individual presumed to be the 'receiver's' clerk is always left unnamed and the only evidence of him can be found in the payment of his annual fee of 10s which is recorded on the receiver's accounts along with the fees and payments made to all of the city's officials, both current and retired. In Rowe and Draisey's estimation, the 10s payment made to a clerk in 1347-48 for 'writing and entering everything touching the usage of the community' indicates that the receiver's clerk 'was responsible for writing other documents besides the receivers' rolls'.³⁷¹

There is another way of viewing this payment and the clarification comes in the following century when the receiver's accounts are more forthcoming with evidence to suggest who the 'receiver's clerk' could be. Until the 1430s, the receiver's accounts always refer to the payments made to the receiver's clerk as the fees of either 'the clerk' or 'his clerk', meaning the clerk of the receiver and throughout the fourteenth century his fee was always listed after that of the receiver where he was styled 'cl[er]ico suo' in reference to the receiver. This individual was paid 10s for compiling the receiver's account, thus justifying the hypothesis that the clerk referred to was in essence the receiver's sub clerk. Consequently, it has been assumed that the receiver continued to have his own clerk who was responsible for writing up the city's accounts throughout the medieval period. This assumption has been supported by the receiver's accounts themselves as the record of the payments made to the city's officials seems to indicate that the receiver's clerk was a third clerk working in the city, distinct from the other two salaried clerks and subordinate to the office of the receiver. Upon closer inspection of the records, however it appears that in 1437, the city's secretarial pool downsized by one third.

From the fifteenth century, the receiver's accounts list the payments of the fees and salaries of the following individuals in this order: the mayor, the seneschalls or bailiffs, the receiver, the chief bailiff/recorder, 'the clerk who wrote this account', the town clerk and lastly, the gatekeepers. This order is important because it helps to reveal the true identity of the receiver's clerk. On the surface, it seems as though 'the clerk who wrote this account' was a separate individual, hence the long-standing separate payment for this work. However, a very

³⁷⁰ Margery M. Rowe and John M. Draisey (eds.), *The Receivers' Accounts of the City of Exeter, 1304-1353* (32; Exeter: Devon & Cornwall Record Society, 1989) at xx.

³⁷¹ *Ibid.*, at xx, 36.

slight difference in the wording of the receiver's accounts from c. 1437 reveals a hidden truth with regard to the identity of the receiver's clerk. In the rolls for the years 16-17 Hen. VI, the payments made to the 'receiver's clerk' and the town clerk are reversed. While this may seem a small matter, it allows the writer of the roll to reveal himself. He writes: 'It[e]m sol[ute] John Drygon cl[er]jico civitate pro feode suo per annum xls, It[e]m pro roba sua xvs, It[e]m eod[e]m cl[er]jico pro fact' comp' xs'.³⁷² It is the presence of the word 'eodem' that is key. It tells us that the clerk who rendered the account was the *same* person as the aforementioned town clerk, John Drygon. The same phrase is used in 1439 and in 1440 payment for making the account is given to the 'cl[er]jico civitatis'.³⁷³

This shift cannot be attributed to a clerical error – the receiver's accounts reveal that over the next two decades there were only two salaried clerks in the city's secretariat: the recorder and the town clerk. From 1440 onwards, all ambiguity regarding the identity of the 'receiver's clerk' is removed as from that point onward he is invariably referred to as 'the same clerk' or as the clerk of the community. To dispel any lingering doubts regarding the possibility that the person who wrote the accounts for the receiver was a third clerk, a palaeographic examination of the hands that are present in both the receivers' accounts and the mayor's court rolls proves that the same scribe wrote both rolls. Similarly, by comparing the hands present in the earlier receiver's accounts and the financial accounts for Duryard Manor from the end of the reign of Edward III, it is clear that a third clerk, the mysterious 'receiver's clerk' was once regularly employed by the city as the hand that is found in both the receiver's accounts and the Duryard Manor accounts differs from the hand that wrote Exeter's Mayor's Court rolls.³⁷⁴ However, by the fifteenth century this situation had clearly changed and this has a significant impact on our understanding of the composition of Exeter's secretariat.

Other than clarifying matters of identity, what can we learn from the change in clerical personnel of the city in the fourteenth century and the increase in the scribal responsibilities of the town clerk in the fifteenth? It is clear that before the watershed of c. 1437 there was a

³⁷² DRO, Receiver's Accounts, 16-17 Hen. VI.

³⁷³ DRO, Receiver's Accounts, 18-19 Hen. VI.; 19-20 Hen. VI.

³⁷⁴ Duryard was a manor of the city of Exeter for which we have the manorial accounts from 42-43 Edward III. Court rolls for the manor exist in four rolls: 42-47 Edward III, 2-22 Richard II, 22 Richard II – 3 Henry V, and 4 Henry V – 14 Henry VI. A survey of the Duryard Manor Accounts and the Exeter Receiver's Accounts for the period 42-43 Edward III to 50 Edward III – 1 Richard II show two or possibly three sets of hands. The hands change on the rolls for both accounts in the same year (1-2 Richard II). As neither the recorder or the town clerk changed in this year, this leads one to conclude that the receiver employed his own clerk to write up these accounts and that this clerk was not the town's clerk who wrote up the Mayor's Court Rolls.

receiver's clerk and that afterwards the job of the receiver's clerk was being performed by the town clerk. Does the melding of the responsibilities of town clerk with that of the receiver's clerk at this time carry any significance? By virtue of the fact that the clerk's payments for each role (that of town clerk and that of writer of the accounts) were kept separate indicates that writing up the receiver's account was not necessarily *expected* of the town clerk – after all, they could have just increased the clerk's salary by 10s along with the change in his responsibilities. Instead, the city kept the payments for those rolls separate, leaving the role of the receiver's clerk open for another person to take on in the future. Whether or not the job did go to a separate individual after this date is unclear, as the receiver's accounts cease to individually name many of the payees after 30-31 Hen. VI. Other than the names of the mayor and the city's attorney, often only the position and the payment of the fee is given, and the names of other office holders are given very haphazardly. That may have merely been a change in scribal practice, however, as even the mayor goes unnamed in the payments section of the account from this date forward. However, in 1446 it is even more explicitly clear that the town clerk was also paid for writing up the receiver's account, with a reference to the payment of 10s 'to the same William for making this account'.³⁷⁵ As William Speare was the town clerk that year and his fee for that office immediately precedes this 10s supplement, it can only be assumed that he fulfilled a dual clerical role.

Might this indicate that the city's secretariat was becoming increasingly professional or actually less professional in the fifteenth century? What began with a seemingly clear division of specialised labour in the fourteenth century: recorder, town clerk, and the receiver's clerk, apparently shifted to divide the work between less people, or at least between fewer offices. Perhaps the responsibility for drawing up the receiver's accounts simply shifted to the town clerk's 'office' if it can be called that, and the work may have been delegated to a subordinate or apprentice clerk. If this is the case then this may indicate that Exeter's guildhall provided training for scribes. Because the receiver's clerk was never an elected official to begin with, his name does not appear on the mayor's court roll in its records of the annual elections and appointments to civic office. Therefore there is no way of knowing if he continued to operate under the umbrella of the town clerk in the fifteenth century or if his position was removed altogether, or if it just morphed into something else in the same way that the other clerical officials had changed slightly over time. What is evident is that Exeter's town clerk shouldered the heaviest burden when it came to assuming the responsibility for the composition of the

³⁷⁵ Exeter, DRO, Receiver's Accounts, 25-26 Hen. VI.

city's legal and financial records. Even if he was assisted by subordinates of his own in writing drafts (the existence of which can only be surmised as none have been found), the consistency of the hands that I have identified in the mayor's court rolls, the receiver's accounts and Duryard manor accounts and court rolls shows that Exeter's town clerk wrote the final copies of each of these records almost without fail. Consequently, it is the records that were produced by the town clerk himself that have been preserved in the city's archives for hundreds of years. Whether this was done intentionally so as to speak to future generations of clerks through the written record or was simply done as a matter of course or even as a cost-cutting measure, we can only speculate. What is apparent, however, is that the town clerk worked hard to earn his fee and this diligence was rewarded by the city in the form of perks and bonuses.

Financial Supplements and Incentives for Clerks in Bristol and Exeter

In addition to their regular salaries, clerks and lawyers working for town governments also benefitted from a livery allowance. The Ordinance relating to the liveries of Bristol's officials dates from 8 December 1391,³⁷⁶ in which it was declared that only certain men were allowed to wear the common livery – the town's clerk being among these men. At the time of Robert Ricart, Bristol's recorder was paid £10 per year for his salary and he was also allowed ten yards of scarlet fabric worth £6 13s 4d and given £3 'for his furre', for a total of £29 13s 4d.³⁷⁷ The town clerk was allowed £4 for his salary, 6s 8d for his fur, and 20s 'for his parchemyn, wax and wyne'.³⁷⁸ He was also allowed five yards of 'wollen cloth' for his gown, but if his livery 'be of ray then 42 rays with plain cloth' were granted to him.³⁷⁹ The town's attorney was paid £3 for his salary and allowed 6s 8d for his fur.³⁸⁰ Because the council was budget conscious, the ordinance also specified an allowance for the city officials' furs: the mayor was allowed ten marks, the sheriff was allowed £5, while the bailiffs, recorder and town clerk were each allowed 6s 8d to spend on their furs. The punishment for overspending was an unpardonable fee of £40 to be paid into the common purse. They also agreed that the total sum of the livery

³⁷⁶ Francis B. Bickley (ed.), *The Little Red Book of Bristol* 2 vols. (2; Bristol: W. Crofton Hemmons, 1900b) at 64-67.

³⁷⁷ Robert Ricart, *The Maire of Bristowe Is Kalendar*, ed. Lucy Toulmin Smith (5: Camden Society, 1872), at 82.

³⁷⁸ *Ibid.*

³⁷⁹ Francis B. Bickley (ed.), *The Little Red Book of Bristol* 2 vols. (1; Bristol: W. Crofton Hemmons, 1900a) at 11.

³⁸⁰ Robert Ricart, *The Maire of Bristowe Is Kalendar*, ed. Lucy Toulmin Smith (5: Camden Society, 1872), at 82.

expenditures could not exceed £42, of which the town clerk was allowed half a mark.³⁸¹ By contrast, the typical livery allowance for Exeter's clerks was around 11s. Placing limits on livery expenditure may have been more than just a measure of economy. Cities may have wished to avoid contravening the Ordinance on Livery and Maintenance that was issued by Richard II's government in May 1390 in response to a common petition that was presented at the January Parliament of 1390 and requested that certain restrictions be placed on the livery of cloth.³⁸²

All of the officials who worked in local government in Bristol and Exeter benefitted from additional rewards for their services to the city. Wine seems to have been considered one of the necessary tools for Bristol's clerk as he was allocated 20s per year for his parchment, wax and wine.³⁸³ Each Christmas and Easter, Exeter's council received gifts of bread and wine. On election days, both the new and old mayors and seneschals were gifted with wine while the rest of the council benefited from the free-flowing wine consumed in the guildhall on election day each year. The records for 1352/3 provide greater insight into the amount of bread and wine given to Exeter's clerks. In comparison to the fourteen loaves of bread given to the mayor, and the twelve loaves of bread given to the recorder and stewards, the chief bailiff and the town clerk were allowed five loaves of bread each for Christmas along with one gallon of wine for the chief bailiff. They were commonly rewarded with copious amounts of wine for going beyond the call of duty and for doing odd jobs for the city – all of which provided a source of income for the city's clerks when they were not otherwise occupied in the courts.³⁸⁴

What then can we surmise about the financial stability of a provincial clerk?

³⁸¹ In England the mark, which was there a weight two-thirds of the size of the pound, had been transformed into a unit of account, two-thirds of the pound sterling and was frequently used alongside it as 13s. 4d. or 160 pence. Therefore half a mark was 6s 8d.

³⁸² The request states:

'Also, as to liveries of cloth, the commons pray that no lord temporal or spiritual, or any other of lesser estate, of whatever condition he may be, shall give a livery to anyone, unless to his familiars of his household, his kin and allies, his steward, his council, or his bailiffs on their manors. And also, that no livery be given by colour of gild, fraternity, nor any other association, as well of nobles and valets as of commons, but be altogether withdrawn within half a month of this parliament. And if anyone takes a livery contrary to this ordinance, let him be imprisoned for a year without redemption: and further, the said gilds and fraternities shall lose their franchise, and those gilds and fraternities which have no franchise shall forfeit a hundred pounds to the king. And that proclamation be made thereon throughout all the boroughs and towns in the kingdom, and that as soon as it can be done. And that no master give livery to anyone contrary to this ordinance, on pain of paying a hundred pounds to the king.' See: 'Richard II: January 1390', in Chris Given-Wilson (General Editor) et al. (eds.), *Parliament Rolls of Medieval England, 1274-1504* (6: British History Online, 2005). Also: A. Luders et al. (eds.), *Statutes of the Realm (1377-1504)* (2; London: Record Commissioners, 1816) at 74-75.

³⁸³ E. W. W. Veale (ed.), *The Great Red Book of Bristol: Text.* (2; Bristol: Bristol Record Society, 1933) at 120.

³⁸⁴ The wide variety of extra employment opportunities available to town clerks will be examined in Chapter Six where it will be shown that clerks earned more than just their basic salary – they received

Based solely on the wages that came directly from the guildhall in exchange for regular clerical work, Exeter and Bristol's town clerks held a comfortable financial position – judging them on their annual earnings, they were neither rich nor poor. By the end of the fourteenth century, the average skilled building worker in southern England could expect to earn around 4d a day, while unskilled day labourers could earn in the region of 1½ d to 3d per day.³⁸⁵ In general, the wages of labourers were regulated by the labour laws enacted in second half of the fourteenth century, specifically the Ordinance of Labourers (1349), the Statute of Labourers (1351) and the Statute of Cambridge (1388).³⁸⁶ These caps on wages do not seem to have applied to scribes. Even taking into account the fact that there is no consensus within the historical community with regard to the average number of days worked in a year, the base income of Exeter's town clerks does seem to have been just enough to live on.³⁸⁷ In the fifteenth century, wages rose in England in general so the slightly higher base income of Bristol's town clerks in this period was also good by comparison. In Exeter, the wages for local administrators stagnated and by the sixteenth century, they were cause for complaint. Exeter's city chamberlain John Hooker commented on his salary, lamenting:

Ffirst when I was called to be the chamberlaine of this cite I was allowed yerely but onely iiiij^l and after some fewe yeres my paynes and diligens considered I was rewarded wth xxxij^s for my lyveries as other officers had ... A small rewarde and a slender recompense and consideration to one of my callinge and quallitie who haue spent my tyme and my mony in their s[er]vice.³⁸⁸

Clearly Hooker felt as though he was poorly compensated for his job which, while it may have been felt, was not articulated or documented by clerks in an earlier period. Perhaps the most valuable aspect of the clerk's employment in local government was the pension that they were rewarded with once they left their positions. Alongside royal employment, jobs in local

extra payments in specie for additional work and also received gifts and payments in kind from the city, whilst engaging in several different secondary occupations.

³⁸⁵ Simon A. C. Penn and Christopher Dyer, 'Wages and Earnings in Late Medieval England: Evidence from the Enforcement of the Labour Laws', *The Economic History Review*, 43/3 (1990), at 356.

³⁸⁶ Ordinance of Labourers: A. Luders et al. (eds.), *Statutes of the Realm (1235-1377)* (1; London: Record Commissioners, 1810) at 307-309.; Statute of Labourers: Ibid., at 311-316.; Statute of Cambridge: A. Luders et al. (eds.), *Statutes of the Realm (1377-1504)* (2; London: Record Commissioners, 1816) at 55-60.

³⁸⁷ Donald Woodward, 'Wage Rates and Living Standards in Pre-Industrial England', *Past & Present*, 91 (1981), at 29. Simon Penn and Christopher Dyer calculate that a labourer's household c. 1400 might have had a total annual income of around £4. At this time, the family's expenditure on bread and ale might have cost as little as £2. Simon A. C. Penn and Christopher Dyer, 'Wages and Earnings in Late Medieval England: Evidence from the Enforcement of the Labour Laws', *The Economic History Review*, 43/3 (1990), at 373.

³⁸⁸ W. J. Harte (ed.), *An Account of the Sieges of Exeter, Foundation of the Cathedral Church and the Disputes between the Cathedral and City Authorities by John Vowell Alias Hooker* (Exeter: James G. Commin, 1911) at 6.

government were among the few to provide any financial security for 'retired' employees. In Exeter, we can see that clerks who served split terms received pensions in the interim period so even during times of 'unemployment' in the city's administration, semi-retired clerks benefitted from a financial and social safety net that was not available to the vast majority of medieval workers.³⁸⁹ Surely Hooker must have found comfort in the fact that no matter how meagre his earnings, he would be financially supported by his employer into his old age as his sight began to 'waxeth dymme' and his memory became enfeebled.³⁹⁰

We have seen that Bristol's clerks, especially, could not be considered poor by any means. They received salaries and they benefitted from the perks associated with being city officials. Exeter's clerks, however, seemed to have earned just enough to survive but certainly not enough to thrive. There were, however, ample opportunities for them to make extra money here and there by doing additional work for the city, and that is to say nothing of the private scrivener work that they did on the side, unrelated to their business as city clerks. The opportunities they had for ad hoc employment will be discussed in Chapter Six. However, even taking only their recorded wages into consideration, both Exeter's and Bristol's town clerks were men of means, indicating that the traditional interpretation of the material wealth of this type of clerk has been underestimated. The interpretation of the financial status of scribes as lay clerks needs to expand to include an evaluation of their base earnings in order to accurately gauge their liquid wealth. The prevailing opinion on the socio-economic status of scribes is that they belonged to a broad group of predominantly anonymous and uniformly 'poor clerks'. However, even a brief look at the accounts of their salaries as town clerks is able to chip away at this theory as they undoubtedly belonged to a privileged class of educated men.

³⁸⁹ See especially the case of John Fforde who continued to receive a pension of 26s 4d even after he had left and then resumed employment with the city as its clerk and was paid a salary of 40s: DRO, Receiver's Accounts, 3-4 Hen. VI – 24-25 Hen. VI. John Fforde stopped receiving payments in the rolls for 25-26 Hen. VI, indicating that he had probably died. There is a reference to the pension of the clerk with a space left empty where the name should have appeared and there is a line drawn through that entry. This situation was not unique to the town clerk as in the same period Nicholas Radford also continued to receive his salary as the current recorder and his pension as the former recorder when he resumed his role in the city's administration.

³⁹⁰ W. J. Harte (ed.), *An Account of the Sieges of Exeter, Foundation of the Cathedral Church and the Disputes between the Cathedral and City Authorities by John Vowell Alias Hooker* (Exeter: James G. Commin, 1911) at 4.

3. Conclusion

This chapter has traced the evolution of the role of the clerk in guilds and in boroughs by linking the early origins of scrivenering as a craft for clerks in the twelfth and thirteenth centuries with the development of lay clerks assuming local office in provincial England. By doing so, this chapter confirmed Nigel Ramsay's hypothesis that there is a correlation between the organisation of scribes in general and the rise of the office of the common clerk in provincial England. This chapter took the legal work of scribes from the shadows and made it central to the investigation of the office of town clerk, demonstrating the various roles and responsibilities of scribes who worked as town clerks and arguing that their ability to do this work was wholly contingent upon their legal and linguistic literacy. By evaluating the levels of compensation associated with this type of occupation, provincial clerks can no longer be grouped with Chaucer's 'poor clerk' as they could count on a steady income from the cities that employed them in permanent positions and they even benefited from additional perks that were associated with their jobs. This chapter has also made a significant contribution to the administrative history of the city of Exeter as I revealed, for the first time, the true identity of the 'receiver's' clerk and unmasked the unidentified scribe as the town clerk. Consequently, the secretarial pool of Exeter's borough government was considerably smaller than has previously been assumed and the two clerks of the city were responsible for more work than has been calculated, thus justifying their moderate but not modest salaries.

This chapter has shown that town clerks have a long history of being the hub of local administration as it was through their work that they forged a direct link between the inhabitants of the community and the government which they served. The clerk has been the historian of the community as the keeper of its laws and memories and as Professor William Bennett Munro, author of one of the first textbooks on municipal administration in 1934, describes it:

No other office in municipal service has so many contracts. It serves the mayor, the city council, the city manager (when there is one), and all administrative departments without exception. All of them call upon it, almost daily, for some service or information. Its work is not spectacular, but it demands versatility, alertness, accuracy, and no end of patience. The public does not realize how many loose ends of city administration this office pulls together.³⁹¹

While he may have been referring to twentieth-century town clerks, his words ring true for the medieval town clerk as well and it seems that little has changed with regard to the

³⁹¹ William Bennett Munro, *Municipal Administration* (New York: Macmillan, 1934). as quoted by: Drew A. Dolan, 'The Clerk', in Carl W. Stenberg and Susan Lipman Austin (eds.), *Managing Local Government Services* (Washington, D.C.: ICMA Press, 2007), at 49.

fundamental role of the town clerk within local government in over eight hundred years. The next chapter will delve deeper into the types of written work done by town clerks in order to gain a greater insight into the individual personalities of scribes and explore the ways in which they used the written word, and legal records, to communicate information about themselves as individuals and as professional scribes.

CHAPTER FOUR: Expressions of Clerical Identity & Self

1. Introduction

The last chapter traced the twelfth-century origins of the English town clerk and considered the type of work that scribes did in their official capacities as local government officials and by introducing the type of writing that they commonly did on behalf of their clients. Chapter Two discussed the differences and similarities between scribes and lawyers and in this chapter I would like to consider the ways in which scribes, as town clerks, were the creators and keepers of legal memory. This chapter will consider scribal identity as a construct created and perpetuated by scribes themselves through their scribal outputs. In order to show this I will examine the ways in which scribes articulated their sense of identity as members of a clerical group and as individuals within that group. In particular, diplomatic and palaeographic methods will be used to identify individual scribes at a time when signatures were an uncommon feature of medieval penmanship. Legal literature, in the form of customs, will be considered as a vessel for communicating and representing authors and their role as custodians of legal memory. Furthermore, this chapter will analyse a selection of compositions, legal instruments and customs in particular, which were made by town clerks in order to reflect on the ways in which writing holds a mirror up to the role of scribes in their local communities. This analysis will also be used to ask probing questions relating to authorship and scribal identity.

2. Signatures

The first section of this chapter will consider signatures as a hallmark of identity. 'Signatures' will be considered in two different, but complementary, ways by employing the diplomatic approach that was outlined in Chapter Two. Signatures fall under eschatocol which is an aspect of intrinsic form.³⁹² Eschatocol is the final section, or closing protocol, of a legal document which is typically highly formulaic and includes the names of those people who are responsible for validating the document, such as the names of the parties involved, any witnesses and the writer. If we refer to the eschatocol of medieval deeds, we find the tangible presence of signatures in two forms. The first is in the closing address, usually following a list of witnesses, in which the clerk identifies himself as the author of the document. The second is occasionally

³⁹² For a more detailed explanation of the diplomatic interpretation of eschatocol, refer to Chapter Two.

found in an autograph which usually accompanies, but sometimes replaces, the scribe's reflexive reference to himself in the list of witnesses. The second diplomatic approach to these documents is less tangible; it is an abstract evaluation of the manifestation of the writer's 'signature' as imprinted in the text through the individuality of the author's hand, form and style of composition. This section will consider the use of late-medieval signatures in both their physical and metaphysical senses, which is capable of representing authorial 'presence'; similar to the way in which a seal is capable of communicating the identity and authority of its owner.³⁹³

Varieties of Early Authorial Signatures

It is perhaps worth mentioning that later medieval society did not put the same value on personal signatures as modern society does today. While signatures were not unheard of in England in this period, they appeared relatively infrequently in the years leading up to the mid-fourteenth century.³⁹⁴ The convention of signing a letter which is now a universal standard was not established until the late tenth century and even then these signatures were sometimes added by the scribe on behalf of the signatories rather than written in an autograph hand.³⁹⁵ The earliest signatures on documents appeared in the form of crosses made by witnesses and placed next to their names which were written by the clerk in order to indicate that the witness had sworn an oath that authenticated the contents of the document.³⁹⁶ In France, secretary-notaries signed their names on the documents that they drew up for the king, while in England, signatures of the private clerk to the king who wrote signet letters began to appear on these documents with some frequency in the middle of the reign of Richard II.³⁹⁷

Self-reflexive and self-reflective statements

The introduction of the use of seals on medieval manuscripts as a means of asserting identity and authority is perhaps the method with which historians are most familiar when it comes to revealing individual identity in texts. These tangible appendages to manuscripts first appeared in the ancient world and the presence of wax seals on deeds and legal instruments became

³⁹³ For a semiotic and ontological interpretation of medieval seals as signs of identity in northern France, see: Brigitte Miriam Bedos-Rezak, 'Medieval Identity: A Sign and a Concept', *The American Historical Review*, 105/5 (2000). And more generally: Brigitte Miriam Bedos-Rezak, *Form and Order in Medieval France: Studies in Social and Quantitative Sigillography* (London: Variorum, 1993).

³⁹⁴ M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 8.

³⁹⁵ Lawrence J. McCrank, 'Documenting Reconquest and Reform: The Growth of Archives in the Medieval Crown of Aragon', *The American Archivist*, 56/2 (1993), at 263.

³⁹⁶ This practice persisted throughout the Middle Ages, even as rates of lay literacy increased. For early sixteenth-century examples, see: Deborah Youngs, *Humphrey Newton (1466-1536) an Early Tudor Gentleman* (Woodbridge: Boydell, 2008), at 178.

³⁹⁷ L. B. Dibben, 'Secretaries in the Thirteenth and Fourteenth Centuries', *The English Historical Review*, 25/99 (1910), at 438. and 438, fn. 54.

increasingly common in Europe by about the end of the tenth century. Notwithstanding the prevalence of seals in the medieval world, the authors of documents had additional and supplementary means of self-reflexive and self-reflective identification at their disposal. Self-reflexivity has been described as ‘an ongoing conversation with one’s whole self about what one is experiencing as one is experiencing it’.³⁹⁸ This self-awareness happens in the moment and in this way it differs from self-reflection which is an awareness of self that occurs after having had an experience. Self-reflexivity occurs within the experience, self-reflection occurs after the fact. If the ‘experience’ is the process of writing a document, then the presence of statements of clerical identity therein can be interpreted as being self-reflexive, self-reflective, or both. These types of statements and expressions of identity will be examined here as a means of setting out the framework for my approach to the manuscripts produced by provincial scribes.

The most readily identifiable examples of these statements can be found in the eschatocol of a document in which the names of witnesses and the date and place of writing were given. This is also the place where the author highlights his role in the writing or composition of the text by saying that it was made by him. Examples of this are numerous and most are simple statements, such as ‘this deed was made by Henry, clerk’. Others were more explicit in their use of reflexive signatures and identify themselves as writers or scribes.³⁹⁹ The use of the terms ‘scribeyn’, ‘scribeynere’ or ‘scribeyn’ as a means of both self-identification and external identification with the trade of legal writers begins to appear with some frequency in London from the end of the fourteenth century, corresponding with the establishment of the scribes’ guild. Some of these ‘scribeynere’ who were so styled in public records were actually writers of the text letter, or stationers, thus reflecting the ambiguity or overlaps that existed between legal writers and writers in the book trade in the early years after the official schism that took place within the fraternity of the writers of the court letter and text letter when the London Company of Scribes was founded in 1373.⁴⁰⁰

³⁹⁸ Adair Linn Nagata, ‘Promoting Self-Reflexivity in Intercultural Education’, *Journal of Intercultural Communication*, 8 (2004), at 141.

³⁹⁹ For example, in a grant Godfrey de Soway called himself ‘Godfrey, clerk and scribe’. DRO, ED/M/81 [1253-54].

⁴⁰⁰ See references to text writers John Ruddock, John Carswell, John White and John Roulande who were all called ‘text-scribeyn’ or ‘scribeynere’ in public records between 1393 and 1401 in: C. Paul Christianson, *A Directory of London Stationers and Book Artisans, 1300-1500* (New York: Bibliographical Society of America, 1990), at 22-23.

The second most common way to identify the scribe of a deed is less explicit and can be inferred by means of interpreting scribal conventions that are present in the closing clauses of this type of document. Historians have depended upon the reliability of witness lists as a way of locating the names of these clerks who might otherwise have remained anonymous. Often the scribe of a deed does not identify himself as a clerk, but he will put his name last on the list of witnesses. From this, we can assume that the last name on a list of witnesses is the name of the clerk who wrote it. This was the typical 'signature' of the medieval clerks who wrote deeds and it is the way that historians have traditionally identified the authors of witnessed documents, working on the assumption that the last named witness is in all probability the very clerk who wrote the deed.⁴⁰¹ This approach is not without its risks, but in this research the tendency for town clerks to include themselves in lists of witnesses (although without invariably listing themselves last) has proven invaluable for their identification.

Applying this theory must be done with caution. The final witness was not always the scribe of a charter and not all charters written by a scribe were witnessed by him.⁴⁰² In his article 'Medieval Charters: The Last Witness', J. H. Hodson is particularly critical of using witness lists to identify scribes. He questions whether we know the names of scribes who wrote deeds because they 'declare' themselves or because their names occur as last witnesses in the majority of documents written in their 'characteristic' hands?⁴⁰³ If we rely only on hands and the corroborative evidence of the names of the last witnesses, in such cases we must deduce that the distinctive hands belong to those clerks although it may not always be the case.⁴⁰⁴ Hodson's article questioning the presence of scribal signatures is nearing its fortieth anniversary and yet the ideas which it promotes regarding the status of scribes continue to be pervasive.

⁴⁰¹ Schopp articulates a common assumption regarding the likely authors of deeds and their identities: 'We may assume that, even in the absence of such statement as to the authorship, the clerk who witnessed the deed was probably the writer'. J. W. Schopp (ed.), *The Anglo-Norman Customal of Exeter* (Oxford: Oxford University Press, 1925) at 8.

⁴⁰² See J. H. Hodson, 'Medieval Charters: The Last Witness', *Journal of the Society of Archivists*, 5/2 (1974). See also: Shelagh Bond, 'The Attestation of Medieval Private Charters Relating to New Windsor', *Journal of the Society of Archivists*, 4/4 (1971).

⁴⁰³ J. H. Hodson, 'Medieval Charters: The Last Witness', *Journal of the Society of Archivists*, 5/2 (1974), at 73.

⁴⁰⁴ An example of this can be found in the confusion between the hands of John Baubi and Henry the clerk. See: J. W. Schopp (ed.), *The Anglo-Norman Customal of Exeter* (Oxford: Oxford University Press, 1925) at 10.

Echoes of Hodson's thesis can even be found in Clanchy's work, particularly in his assessment of the practice of signing documents in medieval England.⁴⁰⁵ In it, Clanchy perpetuates Hodson's conviction that only a small minority of the scribes of English charters identified themselves through either the use of signatures or by identifying themselves as the writers of their instruments in the eschatocol of their documents. This thesis needs updating in order to take the scribal practices of the later medieval period into account. Clanchy's book is undoubtedly a seminal work in the field of early medieval English literacy, however we must remember that it covered only the first two hundred and forty-one years following the Norman Conquest. As of yet, no one has continued where Clanchy left off, despite the fact that the latter years of the later medieval period deserve equally detailed attention. Hodson ends his article with the hope that by identifying the hands and names of local scribes we might 'reach a fuller and richer knowledge and understanding of [their] varied activities'.⁴⁰⁶ Four decades have passed but the hope is still being repeated. The research presented in this section hopes to have begun the movement towards drawing together some of these loose strings that once connected, will present a more complete picture of the life and work of the provincial scrivener.

Instead of relying too heavily on witness lists, it is preferable to first palaeographically examine a hand that appears in multiple examples and then compare it to the lists of witnesses in order to identify and narrow the list of potential candidates. Next, by cross-referencing the deeds which demonstrate a common hand with other manuscripts in which the scribe declares himself through a signature or by other means, the scribe can be identified with some certainty. This prevents us from making assumptions of identity based on declarations made in the eschatocol, especially when it is difficult to discern whether or not the declarations are original manuscripts or copies of the originals. However, as it is altogether rare to possess such abundant material for a single clerk, palaeographic skill and a reliance on the 'humility' of a clerk in putting his own name last in a list of witnesses, combined with palaeographic instinct and diplomatic intuition based on familiarity with an individual's hand are most often the best options for the historian. That being said, identifying the hands of town clerks is a more achievable goal because of the volume of writing that these scribes were required to produce as part of their official clerical duties, such as writing court rolls and other records

⁴⁰⁵ M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 305.

⁴⁰⁶ J. H. Hodson, 'Medieval Charters: The Last Witness', *Journal of the Society of Archivists*, 5/2 (1974), at 89.

which emanated from the guildhall.⁴⁰⁷ However, we know that sub clerks were also entrusted with writing these records, so they cannot be relied upon as demonstrating holographs in all cases. It is better still to use the records of staple towns such as Exeter, Bristol and Southampton as their town clerks were often the clerks of the staple. As the clerk of the staple was required to write recognizances in his own hand, these instruments can be used to compare the hands present in other manuscripts in order to positively identify the writing of an individual scribe. These palaeographic techniques will be used to identify the scribal products of scribes throughout this chapter.

Additional Autographs

The best way to identify authorship is through palaeographic and diplomatic means, but relying on the scribal conventions used in the making of witness lists is also a good place to start and the results are mostly dependable, albeit lacking in the levels of certainty that palaeography and diplomatics can provide. This brings us to the third approach for identifying authors. This is the use of autographs which appear in the form of initials or surnames added to the margins of a text, usually in addition to the scribe's name as witness in the case of witnessed documents like deeds. One of Bridgwater's town clerks appears to have been an early proponent of this method. John Kedwelly was active as a clerk in Bridgwater from October 1383 until around 1420. Between the years 1383 and 1404, a large number of local deeds were witnessed by him as the town's clerk and he is usually styled as such: 'John Kedwelly, clerk'. Fascinatingly, from 1396 John Kedwelly's documents began to bear his full name in the list of witnesses and he added his surname separately from, but in addition to, the list of witnesses.⁴⁰⁸ From this date, 'Kedwelly' began to appear as an autograph within the text box and just touching the edge of the right margin at the bottom of his deeds, along with a series of signature flourishes. This sudden tendency to sign his name to his deeds leaves little doubt that these documents were written in Kedwelly's own hand as the signed conveyances demonstrate palaeographic parallels with his earlier, non-autographed, deeds.⁴⁰⁹ It does beg the question: Why did Kedwelly's practices shift at this time? Had he merely become

⁴⁰⁷ Without any real substantiation for his belief, Hodson suggests that the opposite is true, stating: 'It is interesting that it is easier to put a name to ordinary scribes of private charters than to borough clerks who engaged in this work: when a borough clerk wrote a private charter he did not, perhaps, feel the same need, or inclination, to reveal his identity'. *Ibid.*, at 84.

⁴⁰⁸ Earliest example of this is found in The National Archives: Public Record Office WARD 2/57A/204/5 [24 August 1396]. (hereafter abbreviated as TNA, PRO)

⁴⁰⁹ Some of Kedwelly's earlier, unsigned deeds are TNA, PRO WARD 2/57A/204/65 [6 January 1384]; TNA, PRO WARD 2/57A/204/2 [17 April 1385]; TNA, PRO WARD 2/57A/204/37 [6 November 1385]; TNA, PRO WARD 2/57A/204/14 [1 March 1390]; TNA, PRO WARD 2/57A/204/15 [29 February 1390] and TNA, PRO WARD 2/57A/204/90 [3 October 1390].

comfortable in his position and felt like he could sign his name if he wanted to or was this part of a more general and ongoing shift towards autographs and self-identification within the community of scribes and town clerks?

The signatures of clerks can also be found among the upper echelons of government clerks. In the later thirteenth century chancery clerks began to write their surnames in the corner of their writs. This could indicate that either they had been influenced by the contemporary legal treatise called *Fleta* (written c. 1290) which directed writers of writs to sign their instruments as a form of best practice or even that *Fleta's* instruction was a reflection of pre-existing scribal procedure in Chancery.⁴¹⁰ As early as 1326 the Exchequer had begun to request that the names of the auditors of accounts be listed, without requiring that these names be written in the auditors' own hands.⁴¹¹ On rare occasions in the fourteenth century, clerks of both the Chancery and the Privy Seal added their names to warrants and other legal instruments; whether this was done as a result of external influences such as treatises like *Fleta* or if this was done spontaneously and of the clerks' own accord may never be known.⁴¹² After 1434, clerks of the privy seal began to place their names on the bottom right-hand corner of the writs that they wrote which is exactly the place where Kedwelly wrote his name on his deeds.⁴¹³

Yet another example of the use of signatures at the top of the secretarial ladder can be found on the Parliament Roll for the parliament held at Westminster, 13 January 1489-27 February 1490. This roll bears the signature of parliament's clerk, John Morgan. Although the text itself was written by several scribes, Morgan's signature is accompanied by an explicit statement that it was he who had examined the roll.⁴¹⁴ Even provincial clerks would have been familiar with (and therefore influenced by) the documents produced by the Exchequer, Chancery and Parliament and they may have also been familiar with the standards of the Scribes' Company which mandated that clerks sign their instruments. In an ordinance of 1391, the Scribes' Company directed its members to add their name to every document that they

⁴¹⁰ M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 306, H. G. Richardson and G. O. Sayles (eds.), *Fleta* 4 vols. (2; London: Bernard Quaritch, 1955) at 126, Ch. 113.

⁴¹¹ Hilary Jenkinson, 'On Autographs', *History*, 8/30 (1923), at 104.

⁴¹² *Ibid.*

⁴¹³ Gwilym Dodd, 'Trilingualism in the Medieval English Bureaucracy: The Use - and Disuse - of Languages in the Fifteenth-Century Privy Seal Office', *The Journal of British Studies*, 51/2 (2012), at 264.

⁴¹⁴ PROME. 'Introduction 1489', signature Hen VII, 1485 November, Membrane 47, see also A. Luders et al. (eds.), *Statutes of the Realm (1377-1504)* (2; London: Record Commissioners, 1816) at 505-506.

wrote and a register of their autographs and notarial marks (if relevant) was to be kept by the Company – now known as the Common Paper.⁴¹⁵ Taken together, it seems as though there was a general movement toward scribal autograph signatures on the instruments produced by scribes in the fourteenth century. If this is true then Kedwelly may have been perpetuating what he saw in documents produced by central government clerks, or perhaps he was familiar with the Scriveners' Company's ordinances and professional practices, although he was not a member himself.

There is also another possible explanation for the increase in the sudden appearances of autographs and signatures in the fourteenth century. We know that scribes sometimes learned their trade by being apprenticed to a master, although direct evidence of this is patchy outside of the Scriveners' Company.⁴¹⁶ In cases when the same autograph is appended to documents written in different hands, it raises the possibility that this is a physical reflection and evidence of the apprentice-master relationship. It is possible that a master scribe might have put his name to the work of a sub clerk, perhaps as a means of affixing his stamp of approval on, or indicate his verification of, the quality and accuracy of a subordinate's work.⁴¹⁷ This could be a relatively rare indication of apprenticeship within the town clerk's office as well. John Kedwelly, for example, employed at least two apprentices during his career as town clerk. Evidence for Kedwelly's apprentices comes from a power of attorney dated 8 October 1402 in which he sends Thomas Hore and John Crafte, his 'servants and apprentices', to Ireland in order to collect a debt of £21 owed to him.⁴¹⁸ However the consistency of his hand shows that the documents bearing his signature autograph were most likely his own compositions and not those of his apprentices. Another complication to this hypothesis lies in the absence of surviving evidence for Kedwelly's apprentices, and it is very possible that they

⁴¹⁵ For subscriptions to the oath, see: Francis W. Steer (ed.), *Scriveners' Company Common Paper 1357-1628* (London: London Record Society, 1968) at 20-49. The ordinance appears at 7.

⁴¹⁶ The education and training of scribes will be examined in Chapter Five.

⁴¹⁷ One rather curious example can be found on an award of writ of seisin and return in the Bristol Record Office (hereafter abbreviated as BRO) which is signed quite elaborately with the name 'Caryll' – despite the fact that no one with that name appears anywhere within the content of the document. See: BRO, P. St P & J/D/15/d [30 October 1499]

Gwilym Dodd also suggested that signatures could be used by master clerks who were effectively 'signing off' on the work done by their apprentices or sub clerks in the office of the privy seal. Gwilym Dodd, 'Trilingualism in the Medieval English Bureaucracy: The Use - and Disuse - of Languages in the Fifteenth-Century Privy Seal Office', *The Journal of British Studies*, 51/2 (2012), at 266.

⁴¹⁸ Thomas Bruce Dilks (ed.), *Bridgwater Borough Archives, 1400-1445* (58; Frome: Somerset Record Society, 1945) at 15. Document no. 517. Note that the date for this power of attorney is incorrectly given as 1420 in the History of Parliament entry: Carole Rawcliffe, 'Kedwelly, John, of Bridgwater, Som.', in J. S. Roskell, L. Clark, and C. Rawcliffe (eds.), *The History of Parliament: The House of Commons 1386-1421* (3: History of Parliament Trust, 1993), at 509-510.

were apprenticed to him under the auspices of learning a merchant's trade rather than that of a scrivener, as Kedwelly pursued several occupations alongside scrivening.⁴¹⁹ The lack of evidence for either Hore or Craft working in the southwest as scribes further supports the assumption that they went into another of Kedwelly's businesses.⁴²⁰

Bristol

John Bolton

In the fourteenth century, Bristol's town clerks began to sign their instruments. These personal signatures became a common occurrence in Bristol from the fifteenth century and we have several examples of Bristol's common clerks signing their names or otherwise identifying themselves in their work which suggests that this may have been an internal policy or convention within the city's secretariat. One of the earliest of Bristol's common clerks to engage in this practice was John Bolton who held this post from 1418 until 1432. Bolton's own unique form of signature appears in the chirographs that he made from at least as early as 1420 and up until around 1439. Chirographs were used primarily for legal agreements, like deeds, that were made between two parties and became more commonly known as 'indentures' from the later medieval period. This term, 'indenture', is in reference to the indented or tooth-like appearance of the jagged, wavy, or otherwise irregular cut which was a defining characteristic of this type of document. This cut was made in order to divide a single sheet of parchment containing two copies of an agreement into two separate sheets. The two copies were then given to the two parties involved in the transaction. Another type of chirograph could be made by making a tripartite indenture. This third copy of the chirograph was made near the bottom, or the 'foot' of the parchment where the other two copies of the agreement, or 'fine', appeared and hence is the origin of the term 'feet of fines'.

The practice of making chirographs has its roots in Anglo-Saxon record production and was used as a means to authenticate documents.⁴²¹ The text of a document was first written out in

⁴¹⁹ John Kedwelly's petition to parliament in 1410 listing his grievances against French pirates sets out his business in importing wine and shipping goods to the continent. 'Henry IV: Parliament of January 1410 Text and Translation,' in *The Parliament Rolls of Medieval England*, ed. C. Given-Wilson et al., item 66. CD-ROM. Scholarly Digital Editions, Leicester: 2005. See Chapter Six.

⁴²⁰ The exception to this is two references to a man named 'Thomas Hoore' who lived in Bristol in the fifteenth century. He appears as the witness to a deed in Bristol in 1457, BRO, 5163/166 and there is a will for a 'Thomas Hoore' of Bristol dating from 1466. It is possible that this is the same man who worked for John Kedwelly, however the surname Hore, Hoore, or Hoare, was not an uncommon one in

⁴²¹ The first, or at least the earliest surviving, tripartite chirograph was made at the instruction of Archbishop Hubert Walter on 15 July 1195. While this may not have been the first tripartite chirograph,

two copies, head-to-head on a single sheet of parchment. Before the single sheet was divided, the clerk would write a word, phrase or a combination of letters in the blank space between the copies. The indenture, or cut, was then made through this lettering thus ensuring against forgery and allowing for a straightforward means of identification and authentication of the two parts when and if they were ever brought together again. Along with the oral testimonies of the witnesses to the agreement and the seals affixed to each chirograph, it was possible to visually test the validity of this type of document in three ways. First, there was the oral evidence of the witnesses who were present when the chirograph was made (or were present when they heard the agreement read aloud); second, there was the presence of at least two visual cues to test the validity of the document. One was the form of the shape of the indented cut and the other was the accuracy of the seals, both of which were used as essential forms of identification. These visual cues were made by legally and linguistically literate scribes in a way that could easily be interpreted by illiterate people without the immediate need for intermediaries or interpreters to read the contents of the chirograph.

Not all means of verification were visual. A fourth test, in the form of autographs, required slightly more education to interpret. As has been demonstrated, autograph signatures were increasingly common but still relatively rare on documents in general in this period. Autographic convention, however, was no obstacle for John Bolton who managed to integrate his autograph into the indenture of his chirographs. Commonly, the text that was severed when chirographs were cut was often simply the word 'C I R O G R A P H U M' or letters from the alphabet, 'A B C D E' or a phrase like 'A V E M A R I A' or any other word or acronym of the scribe's choosing. Less predictably, but much more revealingly, John Bolton used his own surname for the text between the chirographs, writing 'B O L T O N' in large block letters which he then cut with a wavy indent. The majority of the examples of this date from the 1420s and it is fortunate that there are two complete sets of Bolton's chirographs that still survive in the Bristol Record Office. The first is the lease and counterpart of an agreement made between Thomas Stamford and Thomas and Agnes Filour in 1422; the second is also a lease and a counterpart detailing the terms of payment and renovation of a High Street messuage and cellar in 1425.⁴²² Other examples of Bolton's signed chirographs exist, however they are missing their counterparts which is, while unfortunate, also to be expected from the

it does represent a movement towards record making for the purposes of record keeping as the third part was meant to be archived by the treasury and not given away. See M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 68-69.

⁴²² BRO, P. AS/D/NA/40 a & b [1422]; BRO, P. AS/D/NA/42 a & b [1425]

traditional two-part chirograph as each party kept a hold of their copy and without good reason, the two parts would never again be reunited.⁴²³ Somewhat curiously, Bolton does not sign any of his other instruments. Despite his apparent preference for leaving his mark on chirographs, there can be no mistaking that it is his holograph hand that appears in both his 'signed' chirographs and his unsigned works.⁴²⁴

As Bristol's common clerk, John Bolton's name and hand are not only recognisable, and therefore traceable and verifiable, but they also carried an additional element of authority by virtue of Bolton's position. This is demonstrated in a memorandum found in *The Little Red Book of Bristol*. It is a brief note recording the date of the death and burial of Enmota Chilcombe, written by John Bolton himself. This fact is recorded by John Bolton as he tells us (in the third person) that he wrote the note in his own hand, 'manu sua propria scripsit', at the prayer and request ('ad instanciam et rogatum...') of the Prioress and sisters of St Mary Magdalen and John Haddon, vintner.⁴²⁵ This note tells us one of two things: either the interested parties listed in the memorandum believed in the authorial power and significance of Bolton's hand which is why they asked him to write it, or it tells us that John Bolton believed in his own hand so much that he felt it was appropriate to promote it in this way. There is evidence to suggest that there is an element of truth in each of these possibilities. Judging by Bolton's use of his surname in his chirographs, it is clear that he was adept at self-identification and self-promotion, however this does not mean that Bolton was undeserving of the plaudits. References to Bolton in the wills of prominent burgesses show that he oversaw the executions of the wills of Thomas Pappeworth (proved in 1425) and James Cokkes (proved in 1427).⁴²⁶ Overseers of wills were people who were especially trusted by the testator and who were given the task of overseeing the performance of the executors and check that they did their jobs with due diligence. As a reward for fulfilling this role, Bolton was given 20s from Pappeworth's estate and Cokkes left Bolton a legacy.

⁴²³ These are BRO, P. St J/F/28/24 [1420]; P. St J/F/28/26 [1420]; AC/D/6/48 [1439]. Of these, the letters used in the latter two are more difficult to discern; however the shape and number of the letters do seem to match the examples above and positively indicate that Bolton has used his signature in the indentures.

⁴²⁴ See for example, BRO, P. St MP/D/8 [9 May 1422] and BRO, P. AS/D/BS/B/3 [1437]

⁴²⁵ Francis B. Bickley (ed.), *The Little Red Book of Bristol* 2 vols. (1; Bristol: W. Crofton Hemmons, 1900a) at 2.

⁴²⁶ T. P. Wadley, *Notes or Abstracts of the Wills Contained in the Volume Entitled the Great Orphan Book and Book of Wills* (Bristol: Bristol and Gloucestershire Society, 1886), at 111-112. and 112-114.

Thomas Oseney

The autograph of another of Bristol's town clerks frequently appears on several mid-fifteenth-century manuscripts in the Bristol Record Office. Thomas Oseney was the common clerk from 1458 to c. 1478 and from the varied and sundry references to him found in *Notes on the Wills in the Great Orphan Book*, we can ascertain that in 1471 he was living in a tenement in the suburbs of Bristol.⁴²⁷ While he was town clerk, he not only wrote wills (like that of John Brown, baker and burgess) and witnessed the making of wills,⁴²⁸ but he also proved them in the borough court and granted them probate.⁴²⁹ Oseney was also a man whom testators remembered in their wills, in 1474 he received 'three yards of scarlet cloth, and forty shillings in ready money'⁴³⁰ from William Coder, burgess and merchant of Bristol and in the following year a merchant named William Hoton left Oseney a legacy of an undisclosed amount.⁴³¹

Like John Kedwelly and John Bolton, Oseney did not sign all of the instruments that he wrote.⁴³² However, he began to do so fairly regularly from January of 1457, perhaps in an effort to distinguish himself from his predecessor, John Joce (fl. c. 1449-1457), who may have trained Oseney in his clerical office. It is possible that Oseney acquired his habit of adding his name to his instruments from Joce who can also be found occasionally signing his instruments, in precisely the same place where Oseney left his mark.⁴³³ Oseney's signature is always found on the right hand side of the document and is almost always hidden under the fold of the seal flap along the bottom of the parchment, with few exceptions.⁴³⁴ This indicates that the signature was placed there before the parchment was folded and the seals were attached, thus suggesting that the mark was not meant to be immediately noticeable but that much like Bolton's name in a chirograph cut it could be used as an authoritative mark to validate the authorship of the document if necessary.

The placement of this signature underneath the fold is even more revealing when the medieval conventions of authenticating legal documents are given further consideration. The

⁴²⁷ Ibid., at 145.

⁴²⁸ Ibid., at 161.

⁴²⁹ Ibid., at 148-149, 153 and 161.

⁴³⁰ Ibid., at 149-150.

⁴³¹ Ibid., at 155-156.

⁴³² Such as: BRO, P. St T/D/311, 312, 313 and BRO, 5163/161 [all written in 1456].

⁴³³ An example of this can be found in a deed appointing the first chaplain of Halleway's chantry in the parish of All Saints in Bristol, which Joce signs with his surname in a similar style to Oseney's: BRO, P. AS/D/CS/A/24 [1453]

⁴³⁴ Examples where the signature is not hidden: BRO, 5163/222 [28 October 1471]; BRO, 5163/170 [28 December 1461]; BRO, 5163/164 [20 February 1457]

conventions for the formalisation of legal documents and their authentication (through the use of seals) flourished in the twelfth and thirteenth centuries as increasing amounts of information were recorded in writing, making sealed deeds more common and widespread. Affixing one's seal to a deed was as punctilious and ceremonious a gesture as the act of adding one's signature to a legal document is today. Furthermore, it is a physical marker of a perceivable shift in society from relying on parties to honour oral agreements to a move towards a greater dependence upon the physical presence of a written record, sealed by the parties' own matrices for evidence. From the presence of signatures on documents, it seems that seals were not the only means by which the makers of deeds ensured the security of their work; the position of the text on the parchment could also prevent tampering. By using stock phrases such as 'Sciatis presentes et futuri quod me AB dedi, concessi et hac presenti carta mea confirmavi CD ...' (in gifts) and distinguishing the first line from subsequent lines (say by elongating the ascenders) scribes could protect their deeds from other unscrupulous clerks who might try to insert additional information into the opening clauses. Furthermore, the content of deeds always ends with the list of witnesses (sometimes with '*et multi aliis*' added after the last name) and a dating clause as an indication that the text of the instrument was complete. Scribes can be found using idiosyncratic methods of differentiating their work from that of their peers. Sometimes a scribe stretched out the text so that it reached the right margin, sometimes a scribe added a flourish after the phrase in order to reach the margin, thus ensuring the justification of the text in a solid block format and preventing anything from being added to the end of the deed and its closing clauses. As their last act before sealing the document, all scribes folded the bottom of the parchment up and made horizontal knife cuts through the two layers of parchment, into which the seal tags were inserted and the seals could be added, thus completing the process of production.

At first glance this may seem to be a stylistic device or perhaps a purely practical one; a means by which the seal tag could be more securely attached through reinforcing the parchment to reduce the likelihood of the seal(s) being accidentally torn off and thus invalidating the deed. This fold served another purpose as well. By folding the bottom of the sheet up to the last line of the text, the scribe added another guarantee that no addenda could be added to his instrument. Chirographs were yet another way of preventing tampering when multiple copies of the same deed were made, as the uniqueness of each cut was very difficult to copy. And of course, the scrivener's writing was itself a means of prevention against forgery. Whereas the parties to an agreement relied upon their seals to act as authentication and identification, the individuality of the scribe's own hand was his signature and it was present on every line in

every word and in each and every letter that appeared on the page. As a person's handwriting is unique to the individual, explicitly identifying the owner of the hand on the instrument itself must have acted as a further precaution against counterfeiting. Taken together with these other fail-safes, the use of scribal autograph signatures indicates that the fifteenth century witnessed the arrival of a period of additional security measures for the authentication of English documents in general.

An individual's autograph signature, much like an individual's handwriting, can be seen to have evolved over time. This can be demonstrated in the examples of Thomas Oseney's signature which appear on various types of witnessed legal instruments between 1457 and 1471. His signature first appears in January 1457 and from the following month Oseney's signature is applied universally to his writings. In its earliest incarnation, Oseney's name is spelled 'Oseney', however by November 1457 Oseney's name is spelled with a double s, resulting in 'Ossenei'.⁴³⁵ This change in spelling occurs despite the continuity in the spelling of 'Thomas Oseney', as a witness, made with a single 's'. These two spellings are used interchangeably between 1454 and 1471 in deeds that appear to all have been written in a single scribe's hand. Notably, the mark, or flourish, found beneath the signature remains consistent no matter the variation in spelling.⁴³⁶ The fact that Oseney varied the way he wrote his own name is, perhaps surprisingly, not an indication that it was not written by him. Quite the contrary, the variation in Oseney's spelling of his own name was not unusual as a plethora of alternate spellings of various words could be found written by the same person. Michael Clanchy identifies Louis, clerk of Rockingham, as an example of a scribe who varied the way he wrote his own name in order to argue that, in contrast to the emphasis placed on seals and witnesses in order to authenticate a document, 'the idea of a distinctive signature was unfamiliar in England'.⁴³⁷

My research shows that this is true to a point, however by the end of the fourteenth century signatures appear with greater frequency and seem to carry greater currency than they did in King John's time when Louis the clerk was adding the phrase 'who wrote this charter' to his documents. Nonetheless, it is true that unlike modern orthographers, uniformity in style and

⁴³⁵ In the beginning of the year only one 's' is used: BRO, 5163/162 [20 January 1457], BRO, 5163/164 [20 February 1457] and BRO, 5163/165 [20 February 1457]. The earliest surviving record of an 'ss' spelling is found in BRO, 5163/166 [25 November 1457].

⁴³⁶ In comparing the signatures found on BRO, 5163/165, 5163/166, 5163/167, 5163/169 and 5163/222, there is continuity in the wavy flourish mark present beneath the autograph which is not present in either 5163/170 or 5163/162.

⁴³⁷ M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 128.

spelling was not the aim of the medieval clerk. However, as a skilled scribe, Oseney had a range of scripts at his disposal and as a result a wide variety of styles could be written by the same man which could be mistaken for a multiplicity of hands. Writing masters' books which survive from the medieval period display the range of scripts that could be employed by a single scribe, so we cannot rely upon the discrepancies present within the variety of scripts as evidence of the presence of a variety of hands in a body of documents, especially when they have more points in common than they have points of difference.⁴³⁸ His expertise in writing using a wide range of scripts might explain why it appears as though Oseney spelled his autograph signature in two different ways.

At the same time that the spelling of Oseney's autograph signature changes, there is a perceivable shift in the script used in the documents that he produced which date from November 1457. Before this date, there was nearly perfect consistency in the script of the documents attributed to Oseney as the same hand wrote both the autographed instruments and the non autographed instruments that were made in 1456, before the signature began to appear.⁴³⁹ The most obvious differences in the two dozen manuscripts that survive bearing Oseney's name as the last witness (which presumably identifies him as the scribe) are found in the shapes of certain letters. In particular, the letters 's', 'a' and 'e'. From 25 November 1457, when used as the first letter of a word the short, curly, letter 's' becomes larger and the open 'a' that was characteristic of Oseney's writing loses its cap. More importantly, the variety of 'a' forms and 'e' forms that he uses can cause some confusion as the pre-secretary hand 'e' that looks like an O-hook or theta 'ϑ' can easily be mistaken for an 'a'. On the occasions that this version of 'e' is used in Oseney's signature, it can appear to be written 'Osaney' instead of 'Oseney'.⁴⁴⁰ However if the signature is examined in the context of the body of the document which uses two varieties of 'e' forms, his signature can instead be read as 'Oseney'. There is nothing surprising about Oseney's use of multiple letter forms for 's', 'a' and 'e' per se as these letters all had alternative forms that many scribes used interchangeably. However this pre-secretary 'e' is present in the majority of the examples of Oseney's writing that survive, both with autograph signatures and without, making it the key to identifying Oseney's hand in its many incarnations as it gradually evolved over the years that he was active as a clerk.

⁴³⁸ S. J. P. Van Dijk, 'An Advertisement Sheet of an Early 14th-Century Writing Master at Oxford', *Scriptorium*, 10 (1956).

⁴³⁹ See BRO, P. St T/D/311, P. St T/D/312 and P. St T/D/313 as well as BRO, 5163/161 as examples of instruments bearing Oseney's name as last witness but without the autograph signature.

⁴⁴⁰ BRO, 5163/170 [1461]

In light of these variations and the fact that we only have the presence of Oseney's name as the last witness and the presence of his signature to go on, how can we be sure that any or all of these examples are actually written in Oseney's hand rather than that of an apprentice or sub clerk? When attempting to identify an individual's hand, the goal is to find a holograph example that can be verified by other documentary means. One deed signed by 'Oseney' is called a holograph in the catalogue and its status can be verified palaeographically, but not documentarily as it does not make any internal references to its author.⁴⁴¹ However many the differences, it does appear to be an example of the neatest hand ascribed to Thomas Oseney – the pen strokes seem to have been made with greater care than usual, the lines are thinner and overall the presentation is of a better quality than other writings of the same time period. Also, this manuscript is more attractive and eye-catching, with a highly decorative initial 'O' in the first word, 'Omnibus'. Oseney also uses decorative long ascenders in the first line of the text. Interestingly, the Oseney signature is not hidden beneath the fold for the seal flap as is typical of his other deeds. Instead, his signature appears just slightly below the last line of the body of the text and aligned with the right side of the writing field, just within the frame of writing. In this example, the 'e' that looks like an 'a' is not present. Instead, the 'e's are all formed in the way that is typical of the pre-secretary hand style. The letter 'd' in this example also differs from Oseney's standard, in which the looped ascender is tightly closed over the base of the letter and angled sharply to the left. In this example, the looped ascender is nearly vertical and the letter is much more open with greater space between the base of the letter and its ascender.

One explanation for this dissimilitude could be that what appear to be different hands are actually natural variations within the same hand.⁴⁴² Another explanation is that some of these documents are copies made by another scribe, and Thomas Oseney's name was either reproduced by the copyist or it was added by Oseney himself as a type of verification of its contents. After all, the mere presence of a signature cannot be taken at face value and must always be viewed with suspicion as there was nothing to stop a clerk from copying the autograph along with the rest of a document. Another possible explanation is that the document was written by a student in the style of his master and signed by the master. This could explain both the similarities and the differences between the hands of signed

⁴⁴¹ BRO, P. AS/D/HS/B/4, D10 [1464]

⁴⁴² The notebook of a Bury St Edmunds scrivener demonstrates the variety of letter forms and differences between the hands used by the same scribe. See: A. E. B. Owen, 'A Scrivener's Notebook from Bury St. Edmunds', *Archives*, 14/61 (1979), at 21.

documents, thus indicating that these documents were not physically written by the named scribe, but were written instead by an apprentice within the master's school of scrivenering or as a sub clerk to an already established town clerk. The presence of the signature on documents that may have been written by other scribes supports the notion that a signature reflects evidence of a sort of quality control of the work. Depending upon the circumstance, Oseney's signature either indicates that he wrote the deed or that he supervised its production and approved its contents.

When searching for a holograph of Oseney's own hand, we must look for not only his signature but also an internal reference to positively identify the scribe. Useful references of this sort can be found in the second of two lists of testators at the end of *The Great Orphan Book*. Of these lists, the editor of the book writes:

The [first] one [being] complete, and apparently written, though not by the same hand, [in the 17th c]; the other ending with "Test'm Will'i Rowley Jun'" – date 1478. This list is preceded by the words – "Kalendar' testamentor' in isto paupiro content' de test'o in aliu' fact' p' Thomam Oseney Co'em Cl'icum ville Bristoll'."⁴⁴³

Wadley made this transcription in his 'Introduction' to the *Notes of Bristol Wills*. His transcription of 'Thome' as 'Thomam' confirms that the original note was made in Oseney's hand as Wadley read Oseney's trademark pre-secretary 'e' form as an abbreviation for 'am'. Similarly, this is found in another note written by Oseney found on the verso of a will on which he signed his probate, stating that it was made: 'before Robert Jakys, Mayor, and John Hoper, Sheriff; Monday next after Epiphany, 7 Edward 4, in Guyhald' in full hundred' and is also signed: 'Oseney'.⁴⁴⁴ Dating from 1467-68, this will features at the midway point in the chronology of Oseney's tenure as town clerk. By using the characteristics present in this hand as an exemplar against which to compare the other documents that carry his signature, we can work both backwards and forwards in time to identify certain hallmarks of his hand that are found in all examples of his writing over the years. Oseney's probate makes exclusive use of the capped 'a' form, and his pre-secretary hand 'e' is used throughout, including his signature which looks like it is spelled 'Osanay' on account of the swirly nature of that particular 'e' form.

Thomas Oseney is only one scrivener, however even the relatively small corpus of his surviving instruments raises questions regarding authorship, apprenticeship and scribal practice that are intriguing and worthy of further study. The thorough cataloguing of manuscripts by archivists

⁴⁴³ T. P. Wadley, *Notes or Abstracts of the Wills Contained in the Volume Entitled the Great Orphan Book and Book of Wills* (Bristol: Bristol and Gloucestershire Society, 1886), at 3-4.

⁴⁴⁴ BRO, P. AS/D/HS/A/22 [1467-1468]

in record offices every day is increasing the number of known autograph signatures on legal instruments made in the medieval and early modern period. Research using palaeographic and codicological techniques can further expand our body of known scribes, which is the aim of two freely accessible online databases: *Digital Scriptorium* and *Late Medieval English Scribes*.⁴⁴⁵ Although these databases do an excellent job of digitally preserving examples of scripts, scribal hands and autographs and making these universally accessible through the Internet, each site has self-imposed limits on the sources which they represent. *Digital Scriptorium* focuses on the manuscripts found in a small number of traditionally difficult to access manuscript libraries in the United States (there are twenty-nine participating institutions at present) while the *Late Medieval English Scribes* catalogue is intentionally restricted to examples of the scribal hands that are found in the manuscripts of the English writings of Geoffrey Chaucer, John Gower, John Trevisa, William Langland and Thomas Hoccleve. Consequently, equally prolific and historically significant scribes, such as English town clerks, are only represented haphazardly and unintentionally (if at all) in these databases. Interest in this area does seem to be growing, however. For example, 'Medieval autograph manuscripts' was the general theme of the XVIIth Colloquium of the Comité internationale de paléographie latine in Ljubljana, Slovenia in September 2010. The poster for this colloquium acknowledged and highlighted the disconnect that is present within the historiography of scribal autographs, clearly stating that:

Only the autograph manuscripts of well-known authors have been the object of more intensive palaeographical or codicological study. Most autograph manuscripts have not yet received the attention that they deserve.⁴⁴⁶

The large volume of writing produced by these clerks who are, at present, 'nameless' is what makes them fairly easily identifiable in most large towns and boroughs with healthy archives. This merits a project dedicated to cataloguing the hands of these less prominent, but nonetheless important, medieval town clerks and scribes – especially as the connections that could potentially be made between the uncatalogued hands of anonymous scribes and those of the scribes already catalogued and identified by the aforementioned projects are likely to be innumerable and incredibly important to improving our understanding of scribal practice in provincial England.

⁴⁴⁵ <<http://scriptorium.columbia.edu>>; <<http://www.medievalscribes.com>>

⁴⁴⁶ <http://www.mediaevum.de/tagung/Programm_ljubljana_2009.pdf>

Signatures as Conscious Expressions of Identity

While it is true that only a small number of documents were signed by their authors,⁴⁴⁷ it is wrong to conclude from this that manuscript cultures were anonymous and lacking the hallmarks of individuality.⁴⁴⁸ So far in this chapter, signatures have been examined in the literal sense as autograph signatures, but signatures can be considered more abstractly as well. Brigitte Bedos-Rezak explored the presence of personality in written texts. She begins by providing examples of twelfth-century letter writers who were aware of the power of the written word and its ability to physically represent the author or dictator in spite of his or her absence. When Bernard of Clairvaux sent two letters without affixing his seal, he reassured his audience of the letters' authenticity by explaining in one: 'I do not have my seal handy, but the reader will *recognize the style* because I myself have dictated the letter' (emphasis added) and in the other he asks permission that 'the discursive structure stand for the seal, which I do not have handy'.⁴⁴⁹ Thus by sending letters in lieu of making a physical appearance, medieval letter writers expected that their messages might not only be communicated but also that their presence may be inferred on a metaphysical level. Bedos-Rezak calls this phenomenon the 'personal presence [of the letter writer] within the fabric of the text, through its style and diction'.⁴⁵⁰

In the thirteenth century, the unique quality of clerks' hands was officially recognised in English law. The Statute of Acton Burnell (1283) provided for the protection of creditors by the enrolment of debts in London, York, Bristol, Lincoln, Winchester and Shrewsbury.⁴⁵¹ The statute considered the individuality of clerk's hands to be an essential element for validating the authenticity of the debts enrolled which in turn gave these documents greater authority and validity. In order to recover merchants' debts, the statute specifically required the debtor

⁴⁴⁷ This statement was made by Hodson in his 1974 article: J. H. Hodson, 'Medieval Charters: The Last Witness', *Journal of the Society of Archivists*, 5/2 (1974), at 71. It is repeated in M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 304-308.

⁴⁴⁸ These 'hallmarks' of individuality are usually associated with the age of the printing press as colophons, or marker's marks, began to be used in early modern printed books to provide the details of their publication.

⁴⁴⁹ The quotes and translations of Bernard's letters, Ep. 330 and Ep. 339 are found in Brigitte Miriam Bedos-Rezak, 'Medieval Identity: A Sign and a Concept', *The American Historical Review*, 105/5 (2000), at 1489. His letters are also discussed in Auguste Dumas, 'La Diplomatie Et La Forme Des Actes', *Le moyen âge*, 42 (1932), at 21.

⁴⁵⁰ Brigitte Miriam Bedos-Rezak, 'Medieval Identity: A Sign and a Concept', *The American Historical Review*, 105/5 (2000), at 1489.

⁴⁵¹ The New Ordinances, 5 Edw. II (1311), c. 33 expanded the number of staple towns to include Newcastle-upon-Tyne, Nottingham, Exeter, Southampton, Northampton and Canterbury. See: A. Luders et al. (eds.), *Statutes of the Realm (1235-1377)* (1; London: Record Commissioners, 1810) at 53-54, 98-100, 165.

to appear before the mayor of the statute merchant and for his clerk to acknowledge the debt and the deadline for its repayment. It was the clerk who was responsible for entering the recognizance onto a roll in his own hand, 'which shall be known', and for making 'with his own hand a bill obligatory'.⁴⁵² Evidence of a fairly literal interpretation of the statute's instruction can be found in the eschatocol of these documents. The dating clauses of some recognizances give not only the name of the staple town and the date of the agreement but also clearly state that the document was written in the hand of the mayor and clerk of the staple.⁴⁵³ Therefore it was the recognisability of the clerk's hand alongside the debtor's seal and the seal of the statute merchant that authenticated the debt and facilitated its speedy recovery in case of default. In this way, the authors of texts also left their mark through their handwriting. In this sense, we can view the text of a manuscript as 'an embodiment of its author'.⁴⁵⁴

If it is correct to assume that the majority of the scribes of charters 'modestly inserted' their names at the end of their lists of witnesses, then we can glean some information from this predilection.⁴⁵⁵ Typically, historians have focused on the 'modesty' or the 'humility' of the clerks as they almost invariably placed their own names last, presumably as the rest of the list was organised in descending order in accordance with the relative importance or status of the witnesses. In reference to the witnesses of private thirteenth-century charters, S. J. Bailey tells us that: 'rarely does a charter fail to include several eminent men in its list of witnesses; and in fact, if we except the modest clerk who relegates his own name to the foot of the list, it would seem that the custom was to name the witnesses in order of merit'.⁴⁵⁶ The Oxford English Dictionary defines 'modest' as 'having a moderate or humble estimate of one's own abilities or achievements; disinclined to bring oneself into notice; becomingly diffident and unassuming;

⁴⁵² '...enroulee de la main le avaundit clerk qi serra conue. E estre ceo lavaundit clerk face de sa main le escrit de obligation...' Owen Ruffhead (ed.), *The Statutes at Large: From Magna Charta to the End of the Last Parliament, 1761* 8 vols. (1; London: Mark Baskett, 1763) at 76.

⁴⁵³ A typical example of this is found in the dating clause of BRO, P.AS/D/NA/11 which states that the recognizance was made in 'Bristoll', by the hand of John Bathe, Mayor, and John Woderoue, Clerk, 8 April 44 Edward III' [1370]. Another example is BRO, 5163/111 which was made 'by the hand of William Derby, mayor, and John Woderoue, clerk' [21Feb 1381]

⁴⁵⁴ Brigitte Miriam Bedos-Rezak, 'Medieval Identity: A Sign and a Concept', *The American Historical Review*, 105/5 (2000), at 1490.

⁴⁵⁵ See: William Beaumont, *A Calendar of Ancient Charters, with Modern Transcripts of Nearly the Whole, Preserved at Eaton Hall, Cheshire* (Warrington, 1862), at 2. Beaumont writes: 'the chief framers and scribes of ancient charters were for the most part ecclesiastics, and the list of witnesses at the foot of them generally concluded with some clerk whose name is modestly inserted at the end, sometimes with the additional information that he made or wrote the charter'.

⁴⁵⁶ S. J. Bailey, 'Thirteenth-Century Conveyancing from the Charter Rolls', *The Cambridge Law Journal*, 19/2 (1961), at 200.

not bold or forward'.⁴⁵⁷ Thus far, this chapter has demonstrated willingness, perhaps even eagerness, among some scribes to identify themselves as the authors of their deeds. To what extent does this challenge the notion of provincial scribes' modesty and humility? In order to answer this question I will turn to their own written work, primarily considering the deeds and customs written by the town clerks of Exeter, Bridgwater, Bristol and Southampton for evidence of conscious expressions of scribal identity.⁴⁵⁸

When Ethan Knapp considered the presence of expressions of bureaucratic identity and constructions of selfhood in the works of Thomas Hoccleve, he used graffiti as a model for understanding Hoccleve's use of his own initials in the text of the *Formulary*. Knapp describes graffiti as 'an assertive textual marking of the self, and of the presence of the self, through a graphics [sic] that is necessarily supplemental to official textuality. To write graffiti is to place a mark where there is supposed to be no mark or to place a mark in the margins'.⁴⁵⁹ While I agree with Knapp's theoretical basis for the comparison of initials with graffiti as two forms of expression of self, the subtext of rebellion behind the action of making graffiti is problematic as there is little to suggest that writers who signed their work were being in any way illicit in their behaviour. Signing one's work does not smack of defacement or subversion in the way that graffiti does.

Instead, drawing comparisons between manuscript signatures and signatures found in art, such as those found in Venetian and Florentine works of art, is more conducive to the scholarship of clerical, or artistic, identity in the later medieval period. Signatures first became a feature of Italian paintings in the early fifteenth century and continued to evolve throughout the sixteenth century as they were influenced by artists working elsewhere.⁴⁶⁰ There are interesting parallels between artists' signatures on Italian paintings in the fourteenth and early fifteenth centuries and English scribal signatures found in the same period. Most notable is the positioning of the signatures within the frame of the painting's canvas and within the body of the written text on the parchment. Knapp saw an author's use of his initials as being on par

⁴⁵⁷ Oxford English Dictionary, "'Modest, adj.'", *Oxford English Dictionary Online* (Oxford University Press).

⁴⁵⁸ Tim William Machan also challenged the notion of the humble clerk. Using Gower's multilingualism as evidence, Machan turned authorial 'humility' on its head to argue instead that Gower's clever use of languages and feigned incompetence suggests that he was proud of his specialised skill and used humility as rhetorical and literary devices. Tim William Machan, 'Medieval Multilingualism and Gower's Literary Practice', *Studies in Philology*, 103/1 (2006), at 1-25.

⁴⁵⁹ Ethan Knapp, 'Bureaucratic Identity and the Construction of the Self in Hoccleve's *Formulary* and *La Male Regle*', *Speculum*, 74/2 (1999), at 369.

⁴⁶⁰ Louisa C. Matthew, 'The Painter's Presence: Signatures in Venetian Renaissance Pictures', *The Art Bulletin*, 80/4 (1998), at 616.

with graffiti as the presence of each could be considered marginal or could be found in places where they do not really belong as standard. However, the model of signatures found in Italian art follows a principle of marginality that is mirrored by the signatures of English town clerks. An Italian artist's signature was either entirely external to the painting itself by appearing on the bottom edge of its frame or, if placed within the painted field, the signature was found at the bottom centre edge.⁴⁶¹ English scribal practice reflects this as clerks' signatures nearly always appear outside of the frame of the written space in documents such as deeds, suggesting that they are extraneous to the content of the deed and do not form a part of it.

By drawing a parallel between the signatures found on legal instruments and those found on works of art I do not mean to say that scribes were in any way influenced by painters of the Italian Renaissance – to do so would be anachronistic. What I mean to suggest by making such a comparison is to draw out some of the similarities between the scribal expressions of artistic identity and those of artists in other disciplines that are familiar to the average person. If we are to consider the art of writing in the Aristotelian sense, that is, as a formulaic craft, it is a fruitful exercise to look to other artistic expressions, such as painting, as cognates with regard to their creators' uses of signatures. No one would dare to suggest that the signatures found on Italian paintings were akin to graffiti, instead we tend to see painters' signatures as evidence of a shift away from anonymity and a move toward self-identity and personal expression. Louisa Matthew eloquently describes the significance of a painter's signature:

The placing of a signature on a painting is a conscious act by the painter that establishes his or her presence. That presence communicates outward to the viewer, but it also communicated information about the painter's relationship inward, to the painting itself: its form, subject, and even the process of its creation. Since the Middle Ages, the painter's presence had been manifested in a variety of ways that extended beyond the signature's function as documentation of authorship.⁴⁶²

What is key in this description is its reference to the multifaceted nature of signatures as a means of expressing more than simple authorship. First, Matthew's quote speaks to Bedos-Rezak's interpretation of signatures as standing in for the presence of the author, or in this case, the painter. Second, in the fifteenth century signatures also made good business sense as a marketing tool. In this period, Italian artists and workshops standardised their signatures in an effort to advertise their skills, promote and protect their reputations and compete against

⁴⁶¹ *Ibid.*, at 619.

⁴⁶² *Ibid.*, at 616.

others in an increasingly aggressive market.⁴⁶³ Something similar can be said of the market for scribal work in England.⁴⁶⁴

In the context of this increasingly literate society there was greater competition for clients between the growing number of laymen who had been trained in scrivening and legal writing in business schools, Inns of Court and Chancery and even at the Universities of Oxford and Cambridge. For these laicised clerks, their identity was based on their relationship with the written word and their signatures were part and parcel of their creative process. Matthew describes signatures as 'a vivid, if often overlooked, indicator of the increasingly complex and self-conscious status of their creators'.⁴⁶⁵ A signature is also a means by which the artist not only identifies himself as the object's creator, but also signals to the outside observer that the object is complete (be it a manuscript or a painting) and ready to be viewed. Therefore the signature possesses an aura of authority. As was demonstrated with the example of Thomas Oseney, the authority of an individual writer's hand can only go so far to identify him. In this way a signature is able to reinforce the initial indication of identity that is first projected by one's hand and can do the otherwise difficult job of more clearly identifying authorship. Personal signatures used as indicators of lawful authentication were rare in England in the twelfth and thirteenth centuries and with the exception of the writers of recognizances and members of the Scriveners' Company, medieval English writers were never required to identify themselves in their writings.⁴⁶⁶ In fact, only Jewish moneylenders used their signatures to authenticate their documents while their Christian clients needed only to either sign their names with a cross, indicating that they were making a promise before God, or affix their seals as evidence of them having agreed to the terms of the document.⁴⁶⁷

To some degree, signatures and their ability to authenticate a legal document (or not) is what distinguishes the writing of a scrivener from that of a notary. Whereas the mark, or signum, of a notary was a sufficient means by which the validity of a document could be ascertained, the

⁴⁶³ Ibid., at 620.

⁴⁶⁴ Malcolm Parkes also questioned why some commercial scribes signed their copies (not originals, but copies) and posited that it might have been a marketing device used early in a free-lance scribe's career, suggesting that once a scribe had established his reputation there would be no need to continue signing. See: M. B. Parkes, *Their Hands before Our Eyes: A Closer Look at Scribes* (Aldershot, Hants.: Ashgate, 2008), at 45.

⁴⁶⁵ Louisa C. Matthew, 'The Painter's Presence: Signatures in Venetian Renaissance Pictures', *The Art Bulletin*, 80/4 (1998), at 616.

⁴⁶⁶ M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 308.

⁴⁶⁷ Ibid., at 201 and 233.

signature of a scrivener alone carried little weight by comparison. Notaries obtained their authority from either the papacy or from a monarch and registers of notaries with papal or imperial authority were kept in order to settle disputes over the validity of notarised documents. On the continent, where notaries exercised a professional monopoly over the writing and authenticating of legal documents, the use of notarial instruments was widespread and typical. By contrast, English scribes held no 'authority' from either pope or king and so they relied instead on the English practice of appending seals to their documents in order to make them true in law. There were, of course, notaries working in England throughout the medieval period, however their instruments are relatively rare in comparison to the large volume of scribes' writings which survive. The Scriveners' Company's Common Paper contains several examples of notaries' marks in its register of members because London's notaries, as practitioners of the scrivener's craft, were obliged to register with the guild if they worked within the boundaries of its control.

It would be remiss to end an examination of signatures without addressing a statement made by Michael Clanchy in which he posited that 'English scribes were not required to identify themselves, [and] not [required] to put their *signa* on the documents they wrote, because writers were of little significance'.⁴⁶⁸ Whether or not Clanchy said this in order to be controversial is not going to be debated here. What is clear, however, is that based on the evidence gathered above, writers, the ability to write and the uniqueness of an individual scribe's hand all mattered as they carried a certain currency within the sphere of legal documentary production as it was in medieval England. Certainly the same cannot be said of the letter writer or the copyist, whose identity was of less importance as he was not the creator of the text, and needless to say it would be unfair and inaccurate to paint all scribes with the same broad strokes.

3. Custodians of legal memory

As demonstrated in Chapter Three, certain exogenous and endogenous factors drove the process of change that resulted in the creation of a permanent clerical post within provincial English towns. First and foremost was the development of more bureaucratic local governments than had ever existed before. These governments were textual and they produced and preserved written records at a rate that had never before been witnessed. These records required creators and keepers in order to manage both the proliferation of legal

⁴⁶⁸ Ibid., at 308.

documents and the memories that they represented. It is unsurprising that the early keepers of archives were often called ‘remembrancers’, a term which harkens back to the days before notes were taken at town meetings and reminds us that it was the clerk’s responsibility to literally remember and recall the proceedings and decisions taken there. In this manner, the clerk’s memory served as the public record.

This chapter is concerned with articulations of clerical identity in provincial England as projected by town clerks through the written records they produced. In the previous section I considered the preponderance of town clerks who left evidence of themselves in the legal records they created and I began to examine to what extent clerks demonstrated self-awareness or even pride in their work through the use of autograph signatures. Next, I would like to continue in this vein by considering the role of town clerks as the creators of legal records and in a broader sense as the keepers of legal memory. To do this, I will turn to the customals produced by them. Customals are collections of customary laws set down in a written record. From these records I will examine the ways in which they reflect the priorities of their authors and compilers by extracting evidence of both individual and group identity from them. The aim of this is to identify the clerks who wrote customals, ask why they were written and consider how their presence speaks to the intentions, abilities, training and identity of the town clerks who were integral to their creation and continuation as examples of legal memory.

Exeter & the Anglo-Norman Customal

The first of these that I would like to examine is a customal that is short on length but long in significance: Exeter’s ‘Anglo-Norman customal’. So called because it is primarily written in the Anglo-French language, I encountered this customal as a result of my researches into John Baubi who was a thirteenth-century clerk who wrote numerous deeds in Exeter. His hand is very distinctive and it is also found throughout the Anglo-Norman customal. It is a bold and expressive informal chancery cursive script and upon comparison with the many examples provided by Hilary Jenkinson in his *Palaeography and the Practical Study of Court Hand* it is apparent that John Baubi’s hand contains as many variations within it as is typical for any mid thirteenth-century scribe.⁴⁶⁹ Among the characteristics of Baubi’s hand is the presence of a small hook at the top of what are rather long ascenders, although this hook cannot be

⁴⁶⁹ Hilary Jenkinson, *Palaeography and the Practical Study of Court Hand* (Cambridge: Cambridge University Press, 1915).

described as the 'm' shaped split or notch that is typical of a formal chancery cursive, although his extravagantly loopy ascenders do fit in with this category of script.⁴⁷⁰

As the scribe of the Anglo-Norman customal, John Baubi can be credited with being the author of one of this country's earliest surviving customals.⁴⁷¹ With the possible exception of Ipswich, Exeter's Anglo-Norman customal is the earliest original, and most complete, example of such a record of local laws and customs. Based on a preliminary and cautious analysis of the characteristics of Baubi's hand and type of scripts used, J. W. Schopp, who was an early twentieth-century editor of the customal, noted: 'the MS. is written in a hand of the first part of the thirteenth century. The date circa 1282 has been suggested for it from the interpolation of an extract from the City Court Roll of 10 Edward I in the blank space which follows the list of toll-free places'.⁴⁷² Based on this evidence, Mary Bateson reached a similar conclusion in her estimate of the date of the customal's creation in her book *Borough Customs*.⁴⁷³ However, this date is slightly off the mark. Instead, it is more likely that John Baubi wrote his parts of the customal before 1242. This can be determined from an examination of the content of clause 27 of the customal (as numbered by Schopp) which refers to Robert de Courtenay. As Robert de Courtenay died in 1242, the customal cannot have been written later than this date. A closer examination of the other hands found in the customal also makes it clear that clauses 17-22 were added sometime later than the original clauses which were written in Baubi's clearly identifiable script. These discrepancies have caused confusion regarding the dating of the customal on the basis of the hands present therein.

Schopp also suggested that the Anglo-Norman customal is the product of a process of compilation; however I must also disagree with this point as on closer inspection I have found that it is mostly written in the same hand – Baubi's – and may have even been written all in one sitting. There is one point on which I agree with Schopp's assessment; I support his findings that clauses 1-6 on the first membrane of the customal, are in one hand, followed by clauses 7-16 and 23-66 which are written in a second hand. At the break between clauses 16

⁴⁷⁰ Charles Johnson and Hilary Jenkinson, *English Court Hand A. D. 1066 to 1500, Part I: Text* (Oxford: Clarendon, 1915), at 5.

⁴⁷¹ John Baubi was first proposed as the scribe of the Anglo-Norman customal by its editor, J. W. Schopp. My purely palaeographic examination of the customal and subsequent comparison of the main hand found in the customal to numerous other deeds written by John Baubi has proven beyond a doubt that Baubi wrote the original thirteenth-century manuscript.

⁴⁷² J. W. Schopp (ed.), *The Anglo-Norman Customal of Exeter* (Oxford: Oxford University Press, 1925) at 7.

⁴⁷³ Mary Bateson (ed.), *Borough Customs* 2 vols. (I; London: Bernard Quaritch, 1904).

and 23 there is evidence of at least one other different hand, resulting in a minimum of three hands appearing in the 69 clauses that make up the Anglo-Norman custumal. John Baubi's hand, characterised by his distinctive hooks at the top of the ascenders, along with his tendency to almost exclusively use lower case letters (with the exception of the first letter of Christian names), is evident in around eighty-three percent of the custumal. I had first noticed Baubi's use of upper case lettering in Christian names followed by lower case lettering in surnames in his writing of his own name and thought of it as a type of signature, until I noticed that he follows the same convention in other names as well. While mixing and matching letter cases is not unusual for the time period, it can be a useful marker for picking out an individual hand.

Schopp and I also differ in our assessments of the last three clauses of the custumal (numbers 67-69). Schopp claims these are written in a different hand to the others whereas I think this is still John Baubi's hand, and probably dates to the 1230s. In keeping with clauses 7-16 and 23-66 when it comes to ascribing a date to this document, I think that it is probable that the custumal was written around 1238 because in the 1230s we see Baubi mixing his 'a' forms in the deeds that he wrote in this period. In these deeds he uses both double and single closed looped a's in greater frequency than he did in the deeds dating from the previous decade and his hand is also much neater in the custumal than it is in his deeds that date between the late 1240s and 1257. Throughout this period Baubi's hand becomes increasingly sloppy and shaky, perhaps as a reflection of his increasing age and weakening eyesight. In defence of Schopp, I do not believe that he had access to one of the deeds in the Devon Record Office which I have examined and which helps to show the evolution of John Baubi's hand and demonstrates the mixing of 'a' forms that can also be found in the Anglo-Norman custumal.⁴⁷⁴ Schopp primarily relied on examples of Baubi's earlier deeds to compare to the last three clauses of the custumal which explains how he could think that it was written in the hand of a different scribe.

The Anglo-Norman custumal was written down for the practical purpose of instructing future clerks and civic leaders on matters of local custom in Exeter. If we are to believe Dr Wylie, who was of the opinion that the Anglo-Norman custumal was the same document that was known as the 'Black Roll', then this is also a very well-travelled manuscript that carried considerable clout. The receiver's account for 25-26 Hen. VI reveals that the Black Roll journeyed to London

⁴⁷⁴ DRO, ED/MAG/43

in 1447 under the care of William Hampton, for which he was paid 13s 4d: 'Item in j equo locato pro Willelmo Hampton ad equitandum versus Londonium cum le blak rolle et aliis scripturis cum argento sibi liberato pro expensis suis versus Londonium xiiij s. iij d.'⁴⁷⁵ In the same year, John Harry was paid 12d for writing one roll of chronicles: 'pro scriptura j rotuli de croniculis'.⁴⁷⁶ I believe that these two payments are related, which is a connection that has never been made before.

At present, there is not a chronicle attached to the custumal so it is difficult to ascertain very much about it. However, the editors of the Anglo-Norman custumal believe that the roll as it currently exists represents but a fraction of what was once a much larger roll that has been dismembered and reattached to form what is now very much a miscellaneous roll containing: 'memoranda, extracts from the Court Roll including a number of final concords, a rental, a formula for making up the city accounts, copies of deeds, a coroner's inquisition, and some later orders in the mayor's court, and other entries'.⁴⁷⁷ The Anglo-Norman custumal makes up the first three membranes of what is now known as Misc. Roll 2 with the additions listed above added sometime later. Unfortunately it is impossible to say exactly when the roll was altered and what might have been removed from its contents.

It is very possible that the chronicle was once attached to the custumal. Regardless, it is both clear that the roll and the chronicle were of great importance to the mayor and city of Exeter and both were used to argue the city's side in its case against the Dean and Chapter of Exeter Cathedral with regard to a dispute over their respective jurisdictions. I would hypothesise that whilst the mayor, John Shillingford, was in London pursuing the case and collecting evidence he commissioned a scribe to copy a section of Geoffrey of Monmouth's *Historia Regum Britannie* which traced the earliest origins of the city of Exeter. *Historia Regum Britannie* is one of the most important literary products of the Anglo-Norman period which today we would refer to as a 'pseudo-history' but in its own time it was highly influential.⁴⁷⁸ Shillingford's articles of complaint in his case against the bishop, Dean and Chapter of Exeter tidily summarises the salient points in Monmouth's work that directly refer to Exeter and its ancient

⁴⁷⁵ DRO, Receiver's Accounts, 25-26 Hen. VI

⁴⁷⁶ DRO, Receiver's Accounts, 25-26 Hen. VI

⁴⁷⁷ J. W. Schopp (ed.), *The Anglo-Norman Custumal of Exeter* (Oxford: Oxford University Press, 1925) at 6.

⁴⁷⁸ Neil Wright (ed.), *Bern, Burgerbibliothek, Ms. 568* 4 vols. (The *Historia Regum Britannie* of Geoffrey of Monmouth, 1; Cambridge: D. S. Brewer, 1984) at vii. There are more than two hundred medieval manuscript copies of the *Historia Regum Britannie* still extant.

privileges.⁴⁷⁹ Based on the similarities between Shillingford's statements and the text of the *Historia Regum Britannie*, it seems most likely that the payment made to John Harry was for copying a pre-existing chronicle rather than 'writing' a new one. Furthermore, the only man by the name of John Harry in Exeter's records at that time was a freemason (who is an unlikely candidate for a scribe or copyist), so it is more likely that the payment of 12d was made to a clerk working elsewhere. Considering the small sum, it is possible that John Harry was a London clerk paid to make a copy of a chronicle while Shillingford was in London with the rolls.⁴⁸⁰

Furthermore, the 'Anglo-Norman Custumal' was used as more than just a record of the city's early laws. A hint to its use as an almost sacred text can also be identified. If Wylie is correct that the Anglo-Norman custumal and the Black Roll were one and the same (and I would argue that he is), then this was also the same roll upon which the city's mayors were formerly sworn in their oaths of office. In 1871, Stuart Moore described the Black Roll and the story of its loss from the city's archives:

This was a roll containing the customs of the City of Exeter. It was considered of great authority and value, and on it the mayors were sworn. It was lent to Sir William Cecil [who was the secretary of state to Edward VI] in the reign of Edward VI and is stated by Izacke (*Memorials of Exeter*, p. 95) and by Oliver (*History of Exeter*, p. 309) never to have been returned. In a paper dated 1 March, 1552-3, entitled "Remembrances for the Parliament", occurs the following memorandum about it: "Item to speke to Mr Cicell for the Blake rolle which Griffyn lyfft in his custody". It was delivered to Grffin [sic] Amerideth 22 Dec. 1 Edw. VI, but it had found its way back to Exeter in the first year of James I., for there is in the Act Book of that year an order "that the Blacke rolle shall be broght [sic] into the Council Chamber, and Mr Chamberleyn shall write oute of the said roll into some booke in the Chamber fitt for the sam [sic], such speciall thynges therein contained as shall be necessary, and he to be allowed for his peynes therein". Neither the copy nor the original can now be found.⁴⁸¹

Moore's description fits the character of the custumal exactly and unless Exeter had several custumals which were all bound in black leather, it is almost certain that the roll currently known as the Anglo-Norman custumal is actually what was known by its contemporaries for most of its history as the Black Roll.

⁴⁷⁹ Stuart A. Moore (ed.), *Letters and Papers of John Shillingford, Mayor of Exeter 1447-50* (Westminster: Camden Society, 1871) at 75-77.

⁴⁸⁰ The inspiration behind using chronicles and customs as evidence of the city's jurisdiction over the contested fee came directly from the Chancellor who, according to Shillingford's letters, told him that his case could be helped if he had 'olde recordys and evydences'. *Ibid.*, at 20.

⁴⁸¹ Charles Johnson and Hilary Jenkinson, *English Court Hand A. D. 1066 to 1500, Part I: Text* (Oxford: Clarendon, 1915), at 8.; fn. a.

Casting aside its eventful past, the Anglo-Norman *custumal* demonstrates the premium placed on the preservation of borough custom over the years. The *custumal* was first written down in the mid-thirteenth century but it was still in use over two hundred years later when it was vital to support John Shillingford in the city's dispute with the Dean and Chapter. It had not become a collection of obsolete laws; instead its status as an ancient document seems to have strengthened the mayor's argument. Taken together with the facts presented from the chronicle that had been copied, these two documents demonstrate how local law could be used as a precedent upon which communal legal memory was shaped and perpetuated.

Southampton, the Oak Book & the Paxbread

Self-government in Southampton evolved out of the pre-existing operations, rules and regulations of the twelfth-century guild merchant. By the thirteenth century, as the organisation and personnel of the guild and borough progressively merged together, so too did their rules and ordinances. As a result of this early influence on the administrative history of the town, a large number of the guild's regulations were incorporated into the ordinances of the new government and were recorded in what are known as the 'Oak Book' and the 'Paxbread'. The Oak Book is a small book, bound in oak covers from which it gets its name. It first attracted the attention of local antiquarians in the mid nineteenth century who found it to be a 'curious volume, which is one of the most interesting of the town records'.⁴⁸² The book itself dates from the early fourteenth century when the guild had already effectively begun to control Southampton's government, however the ordinances contained within it date from a much earlier period. It was mostly written in Anglo-Norman French and much like Exeter's Anglo-Norman *custumal*, chapters were added to it periodically by various clerks over time. Together, the rules of the guild and those of the borough amounted to a constitution. In 1473, the Oak Book was translated and edited and this version is what is known as the Paxbread.⁴⁸³

For its part, the Oak Book outlines the administrative structure of the municipal government and gives us insight into the role of the town clerk in government affairs. It specified that each year twelve men were to be elected by the community on the morning after St Michael's day (30 Sept) and from among these twelve men, two were to be chosen bailiffs for the duration of

⁴⁸² J. Silvester Davies, *A History of Southampton* (Southampton: Gilbert & Co., 1883), at 132. For a complete transcript of the Oak Book, its ordinances, local customs and tolls, see: Edward Smirke, 'Ancient Ordinances of the Gild Merchant of the Town of Southampton', *The Archaeological Journal*, 16 (1859).

⁴⁸³ The exact meaning of this name is unknown, however it is the term used to describe the work by the writer of the translation.

one year (these were chosen by the twelve themselves). As for the town clerk, the Oak Book says that 'the same shall be done with regard to the clerk and of the town sergeants as to making and removing them'.⁴⁸⁴ Colin Platt calls the town clerk at this time 'a shadowy figure before the phenomenal expansion of the office in the sixteenth century', however he includes the clerk among the body of the men who made up the essential members of the borough's administration.⁴⁸⁵

Of the history of Southampton's town clerk, Dr Speed wrote that: 'the town clerk is an officer of that kind that the corporation cou'd never be without somebody to do that business; perhaps he is the person call'd usher in the laws of the gild'.⁴⁸⁶ The first guild ordinance set out the elections for the most important members of the organisation, stating that:

There shall be elected and establish'd as chiefs of the Gilde, one Alderman, one Chaplain, one Steward, and IV Eschevins, and one Usher; and be it known that the Alderman is to have of everyone who is admitted a member of the Gilde 4d., the Steward 2d., the Chaplain 2d., and the Usher 1d.⁴⁸⁷

If Speed is correct, then this last elected official was the guild's clerk which made him the administrative predecessor of Southampton's town clerk. To support this belief, Speed added the etymology of this work and his interpretation of it in a foot note, as follows: 'Cotgraves' Dictionary, *Usser*, in modern French *huissier*, signifies an Usher or Doorkeeper; it signifies also a Messenger or Apparitor; perhaps it is used here [in the Guild Ordinances] in the latter sense'.⁴⁸⁸

Naturally, the guild ordinances were primarily concerned with matters regarding the regulation of mercantile affairs, sales and purchases of merchandise and the like in the town, although they also covered environmental matters of sanitation, such as the consequences for allowing one's pigs to roam the streets (a grievous fine, 'amercie grevousment') and the

⁴⁸⁴ Paul Studer (ed.), *Oak Book of Southampton Vol. 1* (Southampton: Cox and Sharland, 1910) at 44-45. See also xxiii-vii and 24-81.

⁴⁸⁵ Colin Platt, *Medieval Southampton* (London: Routledge, 1973), at 55. For the later development of the office of town clerk, see: A. L. Merson (ed.), *Third Book of Remembrance of Southampton, 1514-1602* 4 vols. (1; Southampton: Southampton University Press, 1952) at xiii.

⁴⁸⁶ Elinor R. Aubrey (ed.), *Speed's the History and Antiquity of Southampton* (Publications of the Southampton Record Society, Southampton: Cox & Sharland, 1909) at 51.

⁴⁸⁷ Dr Speed's translation, *Ibid.*, fn. 4. Original Anglo-Norman version: Edward Smirke, 'Ancient Ordinances of the Gild Merchant of the Town of Southampton', *The Archaeological Journal*, 16 (1859), at 284.

⁴⁸⁸ Elinor R. Aubrey (ed.), *Speed's the History and Antiquity of Southampton* (Publications of the Southampton Record Society, Southampton: Cox & Sharland, 1909) at 51., fn. 4.

proper method of marine waste disposal for the remains of a 'blobbe' of whale blubber.⁴⁸⁹ However, some of the guild's ordinances refer back to the usher or clerk. Ordinance 3 makes explicit mention of the 'usser', explaining that he is allowed a gallon of wine for every night that the guild sits, while Ordinance 32 sets out the method of election and removal of office for the council of twelve, including the bailiffs, sergeants and the 'clerk'.⁴⁹⁰ As no mention is made of the 'usser' in this ordinance, only a clerk, it is likely that Speed was correct and these terms were used synonymously. Other than these scant references, very little else is said of the office of the town clerk in Southampton. The earliest example of an oath taken by the town clerk comes from a charter of Charles I.⁴⁹¹ This charter states that the clerk's duties were to 'see that true records are kept and due processes made between party and party, and true judgements given, as nigh as he could, on the Mayor and Bailiffs' behalf': also to administer, 'if required, common right after the common law of England and the laudable customs of this town'; to give good advice to 'the Mayor and his brethren,' and to keep 'their counsel'.⁴⁹²

Despite the scarcity of information regarding the town clerk, he must have been in existence from an early period. The first reference to him dates from 1315, when William Fowell, the 'town clerk,' received a bushel of wheat from the hospital of God's House in return for his professional assistance – what kind of professional assistance is left unspecified but in 1321 John le Barbur, also town clerk, received a quarter of a bushel of wheat under the same circumstances.⁴⁹³ This connection between the clerical activities of the city and one of its hospitals suggests that the town clerk's skills were in demand by organisations other than the town's government. The Stewards' Books give insight into the economics of scrivening in Southampton, stating that in 1457 the wages of both the town clerk and the recorder were £5 per annum, along with a variable allowance for purchasing consumables in the form of paper, parchment and ink.⁴⁹⁴ This salary was substantially more than Bridgwater's clerk earned and amounted to approximately sixty-five percent more than the salary of Exeter's clerks at a similar date. In the same year, the clerk was granted five yards of 'musterdyvelyg' (which was a kind of mixed grey woollen cloth) for his gown and he was also allowed a tippet, or stole, of

⁴⁸⁹ Edward Smirke, 'Ancient Ordinances of the Gild Merchant of the Town of Southampton', *The Archaeological Journal*, 16 (1859), at 290, 296.

⁴⁹⁰ *Ibid.*, at 284, 288.

⁴⁹¹ Elinor R. Aubrey (ed.), *Speed's the History and Antiquity of Southampton* (Publications of the Southampton Record Society, Southampton: Cox & Sharland, 1909) at 54.

⁴⁹² *Ibid.*

⁴⁹³ J. Silvester Davies, *A History of Southampton* (Southampton: Gilbert & Co., 1883), at 186.

⁴⁹⁴ Elinor R. Aubrey (ed.), *Speed's the History and Antiquity of Southampton* (Publications of the Southampton Record Society, Southampton: Cox & Sharland, 1909) at 52.

fur.⁴⁹⁵ According to the city's accounts this cloth cost 3s. 4d. per yard, making his gown worth at least 16s 8d, which was on par with what was allowed to Bristol's clerks.⁴⁹⁶

One such man who may have found himself clothed in this attire was William Overay who was Southampton's town clerk in the late fifteenth century and active in the city's affairs from the 1460s until around 1485. As a very prominent member of Southampton society, Overay appears in the city's records well before he became its clerk. He worked on royal commissions enquiring into merchants' complaints during which time he was also the town's clerk, with references to him in the Patent Rolls showing that in 1462 alone he led two enquiries into mercantile losses due to piracy.⁴⁹⁷ In 1471 he was appointed controller of the great and petty custom, the subsidy of wools, hides, and woolfells.⁴⁹⁸ He was elected sheriff the following year in 1472 and became mayor in 1474. In this sense Overay was continuing on a path forged by his father, also called William Overay, who had been steward in 1394, mayor in 1398 and 1406, bailiff in 1425 and parliamentary burgess in 1426.

In his personal life, William Overay Junior was married to Joan, with whom he had two children: Isabel and Joan.⁴⁹⁹ While holding the joint position of Southampton's sheriff and clerk in 1473, Overay began to translate the ancient guild ordinances of the town found in the Oak Book from their original French into vernacular English.⁵⁰⁰ In his introduction to the translation, William first explains the nature of his work:

Here after folo [w]ithe the contynue of a boke named the paxbread ... [be]ing the olde rules and ordinaun[ces] of the good t[own] of Suthampton made by greate [deli]beracon b[y] the awncyent fathers in time passed [for] the utilitie and comon welthe as well f[or th]e burgeasses and bretheren of the gilde as of a[ll the] dwellers and inhabitantes within the franchis and liberties of the saide towne: the which

⁴⁹⁵ Ibid., fn. 1.

⁴⁹⁶ William Page (ed.), *A History of the County of Hampshire* 5 vols. (3; London: Archibald Constable and Co, 1908) at 490-524.

⁴⁹⁷ Great Britain (ed.), *Calendar of the Patent Rolls. Edward IV, 1461-1467* (London: HMSO, 1897) at 101, 202.

⁴⁹⁸ Great Britain (ed.), *Calendar of the Patent Rolls. Edward IV, Henry VI, 1467-77* (London: HMSO, 1900b) at 100, 268.

⁴⁹⁹ Note that William Overay Jr is often described as the father of Isabel, 'John' and Thomas Overay. From a reference to William's heirs in the Black Book of Southampton, we know that this cannot be the case. Instead, we are told that at the time of his death he was the father of two daughters, 'filiarum et heredum', named Isabel and Joan. See: A. B. Wallis Chapman (ed.), *The Black Book of Southampton* 3 vols. (3; Southampton: Cox & Sharland, 1915) at 52. It is possible, however, that Thomas was a male relative, perhaps a cousin. Seems more likely that Thomas was the child of William's half brother Laurence Overay, alias Marmoray, who was the child of William's mother's first marriage to Bartolomeo Marmora, the earliest Florentine living in Southampton about whom any personal details are known.

⁵⁰⁰ Paul Studer (ed.), *Oak Book of Southampton Vol. 1* (Southampton: Cox and Sharland, 1910) at 85-100. Colin Platt, *Medieval Southampton* (London: Routledge, 1973), at 254.

ancient fathers made the saide booke of olde tyme in French tonge, and the first sadd and good rule to be had and settled amoung them, and so for to conteyne in the same unto the worldes end...

And then he provides the reader with a brief autobiography:

...and seth by William Overey, sonne and heire unto William Overay sometyme mayer of the saide towne, translated out of Frenche into Englishe, he beinge burgesse succeedinge his saide father's burgeswicke by inheritaunce, and by free election afterwarde chosen clerke and made shreve of the said towne the yere of grace M'CCCCLXXVIIJ (1478).⁵⁰¹

Overay presented this translation of the Oak Book, containing some omissions and additions which distinguished it from the original, to the mayor and to the inhabitants of the town in 1478.⁵⁰² It is for this work on the Paxbread that William Overay earned a prominent position in Southampton's medieval history as the translator and editor of its civic legal memory.⁵⁰³

Interestingly, he never directly addresses his reasons for translating the Oak Book from French into English. Perhaps by this point, in the later fifteenth century, French was no longer the *lingua franca* that it once was and as such, Overay did not need to justify translating the text

⁵⁰¹ J. Silvester Davies, *A History of Southampton* (Southampton: Gilbert & Co., 1883), at 132-133.

⁵⁰² From: William Page (ed.), *A History of the County of Hampshire* 5 vols. (3; London: Archibald Constable and Co, 1908) at 490-524.; fn 189.

⁵⁰³ William Overay was also a clerk prone to controversy. He was one of Southampton's four rebels implicated in the insurrection against Richard III in 1483. At this point in time, Overay was a highly respected man in Southampton – he had served as town clerk, he gained a lucrative post as Southampton's customs controller, he served as mayor and had even been knighted between 1478 and 1483. He also came from a prominent family – in the prologue of the Paxbread Overay described himself as the son and heir of 'William Overay, sometime mayor', and claimed to have succeeded by inheritance his father's burgeswick. Some thirty years earlier, William's mother, Agnes, featured prominently in the Southampton Terrier of 1454. This was a record of all the properties within the town walls, along with their owners and tenants and it depicts her as a major landlord, owning several cottages and tenements in the parishes of Holy Rood and St Michael. Thus, William was obviously a man of some substance and prominence which must have given him pause when considering rebellion against the monarch. As punishment for his treason, which was probably connected to the duke of Buckingham's rebellion and Henry Tudor's unsuccessful attempt to land at Poole, William Overay was attainted. In English criminal law, an attainder or *attinctura* was the metaphorical 'stain' or 'corruption of blood' which arose from being condemned for a serious capital crime (either felony or treason). It entailed losing not only one's property and hereditary titles, but typically it also revoked the right of heredity for the children of the attainted. In the medieval period, attainder essentially amounted to the legal death of the attainted's family, and as such it was a very effective political tool. Fortunately for William Overay, he was pardoned shortly after Henry's accession to the throne in 1485.

The record of this pardon appears in the parliament rolls where we see that a petition from the Commons to parliament was able to reverse the attainders and restored all of the convicted traitors to their lands, tenements, goods, chattels and rights of inheritance – William Overay is named among them and was soon collecting customs and subsidies at Southampton for the first Tudor king in the December of 1486.

See: Great Britain. Parliament. (ed.), *Rotuli Parliamentorum; Ut Et Petitiones, Et Placita in Parlamento*. 6 vols. (6; London, 1777) at 246 and 273. Colin Platt, *Medieval Southampton* (London: Routledge, 1973), at 254, Kenneth Hillier, 'Four Southampton Rebels of 1483', *The Ricardian*, 5/64 (1979).

into English. However, from this preamble to the Paxbread we can glean further information about Overay and how he perceived his role as translator. For him, what he was translating was a set of ancient and immortal rules, which he expected would persist ‘unto the worldes ende’. Unfortunately his original translation has been lost, but Overay was correct in a way to believe that these rules were of perpetual importance as his translation was revised, copied and added to right up until 1835. The Paxbread is therefore a document that was able to both define the early laws that regulated both the guild merchant and the town and adapt alongside Southampton’s emerging borough government. From a constitutional perspective, it seems as though Overay recognised that there was a distinction between the guild’s rules and the borough’s ordinances, however he also must have considered any differences to be of little importance to his readers as he presents them as a cohesive body of local laws. In William Overay, we have an excellent example of a town clerk who left a written legacy to the Southampton which he served. By using vernacular English in place of French, the Paxbread demonstrates Overay’s linguistic prowess and reflects an awareness of the linguistic shifts and trends taking shape which can also be demonstrated by one of the customals that was written in medieval Bristol.

Bristol’s Customals

The Little Red Book

Bristol is a city with a rich history of customals which is befitting of an administration that demanded that its clerk ‘be trewe and feythfull ... and by the boke’.⁵⁰⁴ The first of these ‘bokes’ was *The Little Red Book* which William de Coleford, then Bristol’s recorder, began to write in 1344. In his preface to the customal, Coleford explains his reasons for writing it, telling his audience that he set these customs down in writing ‘for the tranquillity of the inhabitants of the town of Bristol, at the request of the Commonalty of the same town’.⁵⁰⁵ Furthermore, he explains that it was ‘made for the commonalty of the aforesaid town, to be recorded and entered in this book together with certain laws, other memoranda and divers necessary things to be inviolably kept in perpetual remembrance’.⁵⁰⁶

⁵⁰⁴ E. W. W. Veale (ed.), *The Great Red Book of Bristol: Text*. (2; Bristol: Bristol Record Society, 1933) at 121.

⁵⁰⁵ Francis B. Bickley (ed.), *The Little Red Book of Bristol* 2 vols. (1; Bristol: W. Crofton Hemmons, 1900a) at 24-25.

⁵⁰⁶ *Ibid.*, at 25.

Coleford begins the custumal by setting out the thirty-five ordinances, customs and liberties of the city of Bristol which had apparently never before been set down in writing.⁵⁰⁷ The new common council of forty-eight men (later reduced to forty in 1373) was elected to assist the mayor in his business and together they approved the ordinances and Bristol established its first working municipal constitution that was entirely separate from the seventeen trade guilds operating in the city at that time.⁵⁰⁸ Towards the end of the fourteenth century, a further forty regulations were added to the pre-existing custumal, mostly concerning trade, food and drink and the general welfare of the town.⁵⁰⁹

A modern editor of *The Little Red Book* writes that 'by reducing all the customs and ordinances to writing, he [Coleford] transformed chaos to order, and conferred inestimable benefit on his fellow-townsmen by separating fact and certainty from tradition and uncertainty'.⁵¹⁰ Coleford's successors in his office, along with the city's clerks, continued this book until the last entry was made in 1574. What eventually grew to contain two hundred and six leaves, *The Little Red Book* is more than just the original custumal that was begun by Coleford. As a whole, it is a register and book of record containing a variety of miscellaneous documents written in Latin, French and English. In the fifteenth century, Robert Ricart, the town clerk, left a Latin inscription in the book describing its varied contents:

Liber rubeus ville Bristoll. in quo continentur plurime libertates, franchisesque, constituciones dicte ville, Ordinaciones diuersarum arcium, composicionesque plurimarum canteriarum ac aliarum multarum cartarum libertatum a tempore quo non existat memoria impetratarum. Ricart R^o.⁵¹¹

As a record of the city's liberties, franchises, constitutions, etc., *The Little Red Book* provides insight into the city council's interpretation of these rights. On 2 January 1422, the death of Nicholas Bagot during his term as sheriff of Bristol brought on a mini constitutional crisis to the

⁵⁰⁷ The later Great Red Book, which was started in 1373, contains records of all land and buildings in the town. When the Little Red Book became full the Ordinances were written in odd spaces in the Great Red Book. See: E. W. W. Veale (ed.), *The Great Red Book of Bristol: Introduction (Part I)* (2; Bristol: Bristol Record Society, 1931), E. W. W. Veale (ed.), *The Great Red Book of Bristol: Text.* (2; Bristol: Bristol Record Society, 1933).

⁵⁰⁸ Each guild made its own ordinances and was required to ask for official confirmation from the mayor and council and for permission to have their ordinances enrolled in *The Little Red Book*. In 1346 William de Coleford entered all of the trade guilds' ordinances in *The Little Red Book* in 1346, thus ensuring that the position of the guilds was kept subordinate to that of the new common council. See: Francis B. Bickley (ed.), *The Little Red Book of Bristol* 2 vols. (1; Bristol: W. Crofton Hemmons, 1900a) at xxi. For the entries of the trade guild's ordinances, see: *Ibid.*, 2.

⁵⁰⁹ Francis B. Bickley (ed.), *The Little Red Book of Bristol* 2 vols. (2; Bristol: W. Crofton Hemmons, 1900b) at 224-232.

⁵¹⁰ 'Introduction', *Ibid.*, 1, at ix.

⁵¹¹ *Ibid.*, at viii.

town. As there was no precedent set for the manner of making a mid-term re-appointment to the post, the council relied upon the terms of their charter which had been granted to them by Edward III in 1373. This charter had made Bristol its own county, separate from Somerset and Gloucester which had then granted Bristol its own sheriff. The charter specified that the sheriff:

Shall be chosen and made annually in the underwritten form; viz. the said burgesses and commonalty shall every year choose out of themselves three persons, whose names under the common seal of the said town of Bristol they shall every year for ever send to the chancery of us and our heirs; and out of the three we and our heirs...in our and their name shall choose and by our letters patent under our great seal *shall make one every year for ever for sheriff of the said town of Bristol the suburbs and precincts to continue for one year only* [emphasis added].⁵¹²

The town council took the decision to follow the protocol set forth by the charter for a regular election and chose three candidates to submit to Henry V for his selection, specifying in their letter to the king that they sought an appointment to be made, not for one year as per the terms of their charter, but for the duration of Bagot's term as sheriff instead.⁵¹³ This request was granted three weeks later and John Milton was duly appointed sheriff of Bristol by letters patent on 28 January 1422 for a term to end on the anniversary of his predecessor's appointment on 12 October 1422.

This event is certainly remarkable from a constitutional perspective, however what is more intriguing for the purposes of this thesis is that an additional note was appended to the end of the record of this exchange of letters between Bristol's council and the king which explains why this matter was recorded for posterity in *The Little Red Book*. The author of this note was Bristol's common clerk at the time, and he speaks to the reader directly in order to explain his rationale in making a note of this extraordinary occurrence:

Because this misfortune in the office of Sheriff never happened before in the town of Bristol, the foregoing proceedings are inserted here by John Bolton, Clerk of the Commonalty of the aforesaid town, that the aforesaid mayor and commonalty and their successors may the more fitly conduct themselves in the same if the aforesaid misfortune should happen hereafter.⁵¹⁴

This statement demonstrates several points. The first is an intention: the clerk recorded this event specifically for posterity, because by writing it down he could ensure that future generations of civic leaders would know what had happened. The second is an instruction: by

⁵¹² Samuel Seyer (ed.), *The Charters and Letters Patent, Granted by the Kings and Queens of England to the Town and City of Bristol* (Bristol: John Mathew Gutch, 1812) at 42.

⁵¹³ Francis B. Bickley (ed.), *The Little Red Book of Bristol* 2 vols. (1; Bristol: W. Crofton Hemmons, 1900a) at 145.

⁵¹⁴ *Ibid.*, at 149.

writing directly to future burgesses, the clerk is directing them to do as his council did under these circumstances. The third is a reflection of identity: John Bolton revealed himself not only as the author of the 'foregoing proceedings' in *The Little Red Book*, but was also clear that they were inserted in this text by him alone, '*hic inseruntur per Johannem Bolton*' for the benefit of future councils. Bolton's motivation seems to have not only been for the education of others, but also to claim recognition for this act and derive credit or validation from it, thus preserving his own name and identity for posterity as well. This is not the act of a 'humble clerk'; rather it appears to be the act of a man whom we have already established had a proclivity for self-promotion.⁵¹⁵

The Maire of Bristowe is Kalendar

All of Bristol's other books of record and customals, like *The Great Red Book*, *The Great White Book* and *The Maire of Bristowe is Kalendar* owe their existence to the example set by Coleford in *The Little Red Book*. One of these is often overlooked as belonging to the city's corpus of customals because it is better known as one of the first provincial English chronicles – this is Ricart's 'Kalendar', or as it is called in its printed edition: *The Maire of Bristowe is Kalendar*.⁵¹⁶ Ricart's Kalendar is composed of six parts: the first three form the chronicle while the fourth part is Bristol's customal, followed by several charters and a copy of a London customal. Part four contains 'the laudable costumes of this worshipfull Towne, and ... the eleccion, charge, rule and demenyng of thonourable Maire, Shiref, Baillifs and othir officers of the same Town in thexecuting and guidyng of their said offices during their yeres'.⁵¹⁷ Unlike Exeter's customal, we know much more about the provenance of this 'kalendar' which is part chronicle and part customal.

On the whole, the writers of Bristol's customals were significantly more reflexive in their approach to writing than Exeter and Southampton's clerks. This is especially apparent in Ricart's Kalendar, in which the author details his intentions behind the composition of each of the six sections in the prefaces he wrote for them. Robert Ricart, who was appointed common clerk of Bristol on 29 September 1478, began to write his calendar in 1479 at the urging of

⁵¹⁵ This can be compared to Robert Ricart's writing: he was not ashamed to openly admit in the preamble to his text that he derived his authority from the mayor who was the main instigator behind writing the Kalendar.

⁵¹⁶ Robert Ricart, *The Maire of Bristowe Is Kalendar*, ed. Lucy Toulmin Smith (5: Camden Society, 1872). The original manuscript is in the Bristol Record Office, 04720. Another volume, called *the Great White Book* (1491-1598) also contains a variety of miscellaneous documents (among these are a few references to local custom); however it will not be considered here.

⁵¹⁷ *Ibid.*, at 69.

William Spencer, who was the mayor.⁵¹⁸ Spencer instructed Ricart to compile a register of information that would be useful to both him and to mayors in the future. Ricart describes his instructions both in Latin and in English in the preface to his chronicle. In English, he writes:

The right honourable famous and discrete personne William Spencer, as nowe beinge Maire of this worshipfull Toune of Bristow, in the xviiith yere of...the reigne of... Edward IV, hath commaunded me, Robert Ricart, the same yere electid and admitted into the office of Toune Clerk of the saide worshipful town, for to devise, ordeigne, and make this present boke for a remembratif evir hereaftir, to be called and named the Maire of Bristowe is Register; or ellis the Maire is Kalendar. In the whiche boke is and shalbe enregistred a grete parte of the auncient vsages and laudable custumes of the saide worshipfull towne, tyme oute of mynde vsed and excercised in the same.⁵¹⁹

Because the book's intended use was to provide reference material relevant to the civic authorities of Bristol, Ricart, and his successors who maintained the volume after him until 1898, emphasised those matters they deemed to be most important to the life and governance of the town. This included a history of Bristol from 1217 and references to notable events which took place on both a local and national level.⁵²⁰ Peter Fleming has called this book 'a practical guide by which civic officers might more effectively defend their town's liberties in the future'.⁵²¹

The section covering the customs of Bristol begins halfway through Ricart's book, although it is in his Prologue to the volume as a whole that his reasons for preserving the city's customs can be found:

This noble and worshipfull Toune off Bristowe is ... founded and grounded upon fraunchises, libertees, and free auncient custumes, and not vpon comen lawe, as it is affermed and ratedified bi oure olde chartres, in as free and semlable wise as is the Citee of London ... as tyme oute of mynde it hath be graunted bi the noble progenitours of our moost dradde souveraigne lorde the kinge, and by his good grace confermed vnto the saide worshipfull Toune in so large wise, that for to shewe or express it in certeyn it passith mannes mynde to remembre it.⁵²²

⁵¹⁸ Ricart continued to make entries in the chronicle until 1506, although he appears to have been town clerk until at least 1508.

⁵¹⁹ Robert Ricart, *The Maire of Bristowe Is Kalendar*, ed. Lucy Toulmin Smith (5: Camden Society, 1872), at 3.

⁵²⁰ For a more detailed examination of the part of Ricart's *Kalendar* that contains the city's custumal, see: Peter Fleming, 'Making History: Culture, Politics and *the Maire of Bristowe Is Kalendar*', in Douglas I. Biggs, Sharon D. Michalove, and A. Compton Reeves (eds.), *Reputation and Representation in Fifteenth-Century Europe* (Leiden: Brill, 2004).

⁵²¹ *Ibid.*, at 310.

⁵²² Robert Ricart, *The Maire of Bristowe Is Kalendar*, ed. Lucy Toulmin Smith (5: Camden Society, 1872), at 2.

Ricart continues: 'Therefore nowe in maynteyng of the said fraunchises herafter more duely and freely to be executed and exercised, and the perfaitter had in remembraunce' the mayor asked him to compile this book as a 'remembratif'.⁵²³

The first part of the custumal contains a detailed description of the ceremony in which the new mayor of Bristol was sworn in by his predecessor in the guildhall. This ceremony took place every year from the time of Edward III down to the passing of the Municipal Reform Act of 1835. The ritual was set out by Bristol's charter in 1373 which gave Bristol its county status. In this charter, the Edward III stipulated that the incumbent mayor 'immediately after his election shall make his oath before his immediate predecessor who had been mayor of the same town (if he be living) in the guildhall of the said town of Bristol before the commonalty of the same town'.⁵²⁴ Directly preceding the introduction to the custumal is a visual representation of the mayor's induction ceremony, which covers an entire page. In the custumal that follows, Robert Ricart describes in words what happened during the ceremony portrayed in the painting. The presence of this illustration is extraordinary, not only because it represents a rare depiction of a medieval mayor's induction and the men who were present at it, but also because in many ways it is an entirely unique visual record for its time. Ricart's text as a whole features eighteen drawings and miniatures, possibly representing the involvement of several artists. However, the relative lack of sophistication of the illustration discussed here strongly suggested to Lucy Toulmin Smith and William Barrett that Ricart was also the artist of at least some of these paintings and drawings, the mayor's induction ceremony included.⁵²⁵ Fleming, however, does not agree and believes instead that the work was done by 'an enterprising amateur' or perhaps even professionals working out of London.⁵²⁶

Regardless of the artist's identity, his perspective of the status of the people involved is clear. He paints the focal figures of the scene bigger than the rest to draw the viewer's eye to them, and the men are placed in the scene in descending order of importance with the incoming and outgoing mayors at the top, along with previous holders of this post. In the centre of the row

⁵²³ Ibid., at 3.

⁵²⁴ Samuel Seyer (ed.), *The Charters and Letters Patent, Granted by the Kings and Queens of England to the Town and City of Bristol* (Bristol: John Mathew Gutch, 1812) at 44.

⁵²⁵ Robert Ricart, *The Maire of Bristowe Is Kalendar*, ed. Lucy Toulmin Smith (5: Camden Society, 1872), at x-xiii, William Barrett, *The History and Antiquities of the City of Bristol* (Bristol: William Pine, 1789), at 456.

⁵²⁶ Peter Fleming, 'Making History: Culture, Politics and *the Maire of Bristowe Is Kalendar*', in Douglas I. Biggs, Sharon D. Michalove, and A. Compton Reeves (eds.), *Reputation and Representation in Fifteenth-Century Europe* (Leiden: Brill, 2004), at 306.

of men in red robes, you see the outgoing mayor holding the Bible on which the incumbent placed his hand, while below him the town clerk dressed in his brown livery reads the oath that the new mayor had to repeat and in doing so, swear his oath to the outgoing mayor. This may very well be a self-portrait of Ricart as town clerk, and if it is then it is certainly among the first of its kind for an English scrivener.⁵²⁷ Nonetheless, it is definitely evidence of a town clerk leaving his personal stamp on his work. This visual image is an invaluable supplement to the written description of the mayor's induction ceremony and also a wonderful accompaniment to the written descriptions of the city's official livery that are also contained in the custumal.

Ricart's custumal makes more frequent mention of the person and role of the town clerk than Coleford's, Overay's or Baubi's. In his description of Bristol's 'law day' or view of frank-pledge, Ricart emphasised the duties of the town clerk in calling all the participants to the guildhall before he began his inquest and made his register.⁵²⁸ Furthermore, he described the requirement that the town clerk attend the mayor's audit of Redcliffe's chantries, specifying that the town clerk was to enter the account in a book and for doing this he was to receive a payment of 20d.⁵²⁹ While there is nothing particularly extraordinary about the nature of these references to the town clerk and his role in making the city's various records and accounts, their presence in the city's custumal is beguiling. There was no reason why these references could not have appeared elsewhere in Bristol's accounts. As has been mentioned, there were several, arguably more appropriate books, where these references could have been noted as memoranda, such as *The Little Red Book*. After all, it was rather unnecessary to make explicit reference to the town clerk as his presence and involvement in these events were implicit. Nonetheless, Ricart chose to insert these into the custumal, perhaps in order to permanently ensconce the town clerk in these annual events and by doing so he could protect his profession and livelihood. Further references are made to the town clerk that seem even more out of place, among them a curious reference to the town clerk's responsibility for finding dice for the mayor, sheriff and their brethren to play with on the eve of St Nicholas when they

⁵²⁷ There are a few examples of the scribe as 'self-portraitist' on the continent, however all of these artists/scribes are ecclesiastics rather than town clerks. Interestingly, they all identify themselves as painters yet paint themselves in the act of writing. An eleventh-century monk called Hugo painted himself with a scribe's pen and knife, describing the portrait as 'imago pictoris et illuminatoris huius operis. Hugo pictor' (University of Oxford, Bodleian Library, MS. Bodley 717, fo. 287v). Another similar example is an twelfth-century monk named Isidore at the cathedral in Padua who calls himself the painter of the manuscript yet presents himself visually as a writer. See: Mary Carruthers, *The Book of Memory* (Cambridge: Cambridge University Press, 2008), at 280.

⁵²⁸ Robert Ricart, *The Maire of Bristowe Is Kalendar*, ed. Lucy Toulmin Smith (5: Camden Society, 1872), at 79.

⁵²⁹ Ibid.

joined in the festival of the Boy Bishop. The town clerk, naturally, was entitled to ‘have 1d of every Raphill’, which was a game of chance played with three dice, and the Boy Bishop was charged with blessing the players in their pursuits.⁵³⁰

As a result, it seems that Ricart’s custumal goes beyond the practical aspects of setting down the city’s customs for the purpose of maintaining its ancient liberties and extends to setting the civic calendar in stone for the future maintenance of the city’s ceremonies. Did Ricart do this intentionally in order to give the impression that the town clerk was indispensable to these ceremonies, or perhaps to show how the town clerk was indispensable to the mayor himself? Ricart’s references to the town clerk are usually located alongside references to the mayor. This is further demonstrated in Ricart’s description of the judicial functions of the mayor of Bristol. Here, he seems to suggest that the town clerk’s knowledge was on par with that of the city’s recorder. Ricart writes:

Item, it hath be vsid, the Maire and Shiref of Bristowe to kepe their due residence at the Counter euery fferyall day, aswele byfore none as afternone, except the Saterdaies afternone and othir festyual evis afternone, and to be there at viij. at the clok and sitte untill xj., and atte ij. afternone, sittynge untill v., for to hyre compleyntes and varyaunces betwene parties and parties, and to discerne and determyn the same after their discrecion, and, by thaduyce of their brethern there beyng with them, to sett parties in rest and ease by their advertysment, compromesse, or otherwise; ynless then it so requyre that they must remit them to the lawe, as they can be aduysed by the Recorder if he be present, or by the Town clerk in his absence.⁵³¹

This tells us two things. The first is that the presence of the recorder could not be assumed, probably because he could not always be counted on to be resident in the city. The second is that the presence of the town clerk was a given – there was no alternative source for legal advice in the absence of the town clerk. Therefore the town clerk was perceived as a constant source of legal advice and counsel who was always available to advise the mayor and sheriff on points of law as they sat in court and heard complaints.

Another explanation for the abundance of ceremonial custom that was inserted into what should have been a legal custumal could be that Ricart recorded the ceremonial acts of the city and its leaders in reaction to challenges to the authority of the local government at this time.⁵³² However, I believe that a clue may be found in Ricart’s Prologue to the Kalendar in

⁵³⁰ Ibid., at 80-81.

⁵³¹ Ibid., at 84-85.

⁵³² For a very interesting assessment of ceremonial practices in later medieval and early modern Bristol, see: David Harris Sacks, ‘Celebrating Authority in Bristol, 1475-1640’, in Susan Zimmerman and Ronald F. E. Weissman (eds.), *Urban Life in the Renaissance* (London: Associated University Presses, 1989). Also

which the last part really reinforces the message of Ricart's work by describing its function as a register 'of the auncient vsages and laudable custumes of the saide worshipfull towne, tyme oute of mynde vsed and excercised in the same'.⁵³³ Fleming has also highlighted this section as being of particular interest because it speaks not only to the past but also to the future of Bristol. In his assessment, this shows that 'for Ricart – and Spencer – the future defence of interests depended on an awareness and understanding of the past'.⁵³⁴ This is a compelling statement. Whose interests needed defending, why else might town clerks want to 'remember' all of these customs and liberties and what, if any, relationship existed between these provincial custumals and the scribe's own sense of personal or professional identity?

Custumals, collective memory and clerical identity

On the one hand, this type of protectionism can be seen as an early development of identity within England; however I would like to think of it more in terms of provincial scribal identity and as an indication of their role in creating and maintaining local collective memory.⁵³⁵ Clearly these clerks understood the importance of memory and remembrance; they refer to it regularly enough in their custumals for us to be sure that it was on their minds as a matter of priority. We also know that the clerks knew that it was important to make written records of their town's local customs and the liberties granted to them by royal charter as these charters were often included in the custumals as well. However, returning to Mark Ormrod's article on the scribal freedom demonstrated by the clerks of the parliament rolls, town clerks were also in control of what ultimately went into (or was left out of) the records they made, be they court rolls or custumals.⁵³⁶ What these clerks did choose to include is interesting as they regularly included self-reflective statements, thus immortalising themselves alongside the events, rules and regulation that they deemed worthy of enshrinement into the legal record. Exeter's custumal does not have an example of this, but that may be due to the fact that the

see Harris Sack's monograph on Bristol: David Harris Sacks, *The Widening Gate: Bristol and the Atlantic Economy, 1450-1700* (London: University of California Press, 1991).

⁵³³ Robert Ricart, *The Maire of Bristowe Is Kalendar*, ed. Lucy Toulmin Smith (5: Camden Society, 1872), at 3.

⁵³⁴ Peter Fleming, 'Making History: Culture, Politics and *the Maire of Bristowe Is Kalendar*', in Douglas I. Biggs, Sharon D. Michalove, and A. Compton Reeves (eds.), *Reputation and Representation in Fifteenth-Century Europe* (Leiden: Brill, 2004), at 310.

⁵³⁵ In spite of the title, Sweet's book contains several references to a much earlier period. See: Rosemary Sweet, *The Writing of Urban Histories in Eighteenth-Century England* (Oxford: Oxford University Press, 1997).

⁵³⁶ W. M. Ormrod, 'On-and Off-the Record: The Rolls of Parliament, 1337-1377', *Parliamentary History*, 23/1 (2004). See also: Andrew Butcher, 'The Functions of Script in the Speech Community of a Late Medieval Town, c. 1300-1550', in Julia Crick and Alexandra Walsham (eds.), *The Uses of Script and Print, 1300-1700* (Cambridge: Cambridge University Press, 2004), at 166-168.

town clerk's role was undefined in the mid-thirteenth century when the custumal was written. These later custumals in Southampton and Bristol, however, were written by professional town clerks working for established local governments. Therefore it seems that town clerks had a professional interest in formalising their place in the government and in order to do this they inserted themselves into the written record.

The legal elements of these custumals cannot be emphasised enough – after all, they recorded the laws and customs of a place in a written format thus ensuring the preservation of local legal memory. To paraphrase Frank Schechter, it was unwritten custom rather than written law that was the 'normal manifestation of medieval legal life'.⁵³⁷ It is therefore relevant to question why an individual, or a group, would decide to break with tradition and write down what had until that point been unwritten?⁵³⁸ Someone must have perceived the value in recording the towns' customs, laws and the duties of the municipal administrators for the use of future generations. In Southampton, the inspiration to translate the Oak Book into English came from William Overay as the town clerk and the presence of a thumb hole in the wooden cover of the Oak Book gives some indication of how it was traditionally used by the town clerks there. In Bristol, the impetus came from the mayor, and his instructions were followed by the town clerk, who nevertheless was still able to find ways of expressing himself within it. Surely this carried meaning for the clerks – they were not only enshrining the customs in a written document, they were recording them for the benefit of their successors who undoubtedly would need to refer to them at some point in time, likely in the local courts of law, which reflects elements of the clerks' legal knowledge and on-the-job training. The first step towards professionalization is specialisation followed by an expression of group identity. Borough custumals are a testament to that process for scribes. Here we have a specific type of record written almost exclusively by a specific type of writer. These records of laws written by lay clerks who were legally literate, but not necessarily lawyers, were uniformly composed by provincial scribes.

⁵³⁷ Frank I. Schechter, 'Popular Law and Common Law in Medieval England', *Columbia Law Review*, 28/3 (1928), at 292.

⁵³⁸ Andrew Butcher has suggested that towns were motivated to produce and keep such records precisely because they reflected 'civic memory and identity, the defence and expression of power and authority, and the recording of adaption and change'. Therefore Butcher views the civic record as embodying 'the self-conscious acts of memory...of the citizens and their households'. Andrew Butcher, 'The Functions of Script in the Speech Community of a Late Medieval Town, c. 1300-1550', in Julia Crick and Alexandra Walsham (eds.), *The Uses of Script and Print, 1300-1700* (Cambridge: Cambridge University Press, 2004), at 165-166.

The very existence of the Anglo-Norman customal tells us something about its author, John Baubi, and the role of a town clerk in a thirteenth-century borough. It is a perfect example to demonstrate that even in the earliest provincial towns, clerks acted as the custodians of local law, customs and memory. We can say that from the very start, these scribes were something more than simple legal secretaries: they were the creators of the written record and its guardians, ensuring its preservation for the future. Through the creation, copying, or translation of a record of a town's customs it could be more or less guaranteed that local laws would continue to be applied in the city's courts and not be lost through the fallibility of living memory or the loss of a vernacular language (as in the case of Southampton). Whether customals were commissioned by mayors or came from the initiative of the town clerks themselves, their existence is evidence that local administrators were keenly aware of the need to preserve oral legal tradition and memory in the form of the written record.

There are also personal, individual and artistic elements to some of these customals which are readily identified. Customals can demonstrate the creativity and independent thought of the clerks who both wrote them and acted as the editors of the information which they chose to preserve. In the example of Ricart's *Kalendar*, this town clerk's creative license extended beyond the text to include a visual representation of the mayoral election. Ricart's illustration of the ceremony is even self-reflective; it includes an image of the town clerk who was possibly also the artist himself, depicted in the unique position of holding an earlier customal, probably *The Little Red Book* of Bristol. This is a man who understood his role in the city's administration and was not shy about showing it to his readers (who were his colleagues and his own successors as town clerks). This takes us beyond the concept of the 'humble clerk' who left his own name for last in lists of witnesses. Ricart wanted his colleagues to literally see his place in the hierarchy of the town. This is better than a signature; it is the mark of an artist who was clearly aware of his own importance and stature, or perhaps wished to increase it through portraiture and the written record.

Fleming calls Ricart's *Kalendar* 'the product of a prosperous, sophisticated and self-conscious urban community' that, in an attempt to sanitise its history wrote an 'authorised version' of events, which would 'drive out any variant readings that might have lingered in the collective memory'.⁵³⁹ Here, Fleming is primarily referring to the first half of the *Kalendar*, which

⁵³⁹ Peter Fleming, 'Making History: Culture, Politics and *the Maire of Bristowe Is Kalendar*', in Douglas I. Biggs, Sharon D. Michalove, and A. Compton Reeves (eds.), *Reputation and Representation in Fifteenth-Century Europe* (Leiden: Brill, 2004), at 316.

consisted of Ricart's chronicle of Bristol. Evidence of a custumal being used in conjunction with a chronicle in order to serve the purposes of the city can also be demonstrated in Exeter's mayor's use of the Black Roll. Neither of these compilations is an impartial record, and the chronicles associated with each of these custumals demonstrate the influence that collective memory could have on the law. Collective memory is a concept that was described by the French sociologist Maurice Halbwachs in his monograph *La Mémoire Collective* in 1950. Different from (but not entirely unrelated to) historical memory, Halbwachs presented the idea of collective memory as a social construct created by a body of people who share their knowledge of the past. This memory is reinforced by the group of people and is only able to endure for as long as the individuals within it continue to remember and perpetuate the shared memory.⁵⁴⁰ Without continuous support from the group, collective memory cannot survive. In their article 'Law and Collective Memory', Joachim Savelsberg and Ryan King ask to what extent is law able to influence how we remember the past and how do collective memories inform the creation and enforcement of law, primarily human rights law, today?⁵⁴¹ Similar questions can also be asked of medieval law and memory as 'the social nature of memory and its relationship to law' is just as applicable to societies and laws in the past as it is to the present.⁵⁴² The preservation of legal memory is supported by the power of the institution that produces it – be it Parliament, the members of the Inns of Court who wrote the Yearbooks or the local government administrations that backed the writers of custumals. These writers were in powerful positions as they controlled what information was collected and preserved in the written record.⁵⁴³ Similarly, collective memory can be used to influence law. Savelsberg and King call this phenomenon the 'institutionalisation of collective memory as law'.⁵⁴⁴

This process of institutionalisation is evidenced by the contemporary usage of both Ricart's Kalendar and of Baubi's Anglo-Norman custumal. Annotations in the margins of the manuscript made by later clerks indicate that Ricart's Kalendar served the purpose for which it was intended. Not only did it set out local customs but it also provided evidence in support of

⁵⁴⁰ Maurice Halbwachs, *La Mémoire Collective* (Paris: Presses universitaires de France, 1950), at 48.

⁵⁴¹ Joachim J. Savelsberg and Ryan D. King, 'Law and Collective Memory', *Annual Review of Law and Social Science*, 3 (2007).

⁵⁴² *Ibid.*, at 190.

⁵⁴³ For the influence of king's clerks on the parliament rolls, see: W. M. Ormrod, 'On-and Off-the Record: The Rolls of Parliament, 1337-1377', *Parliamentary History*, 23/1 (2004). Brian Stock would view scribes as the producers and controllers of their local textual community, see: Brian Stock, 'History, Literature, and Medieval Textuality', *Yale French Studies*, 70 (1986), at 10.

⁵⁴⁴ Joachim J. Savelsberg and Ryan D. King, 'Institutionalizing Collective Memories of Hate: Law and Law Enforcement in Germany and the United States', *American Journal of Sociology*, 111/2 (2005).

Bristol's civic liberties which were fully exploited by the town. Fleming draws a very interesting parallel between the phrases used in Bristol's 1534 petition to the Star Chamber and the text of Ricart's *Kalendar*. The petition's phrase: 'youre saide towen is a auntyent Borowe & Portte [whose customs and liberties had existed] tyme oute of memorie & [had been] confirmed by dyv[er]s youre noble progenytours' directly referred to the *Kalendar* and its contents, specifically the *custumal* and the borough's royal charters.⁵⁴⁵

A useful comparison can be drawn between Bristol's tendency to hearken back to its ancient customs and Exeter's similar use of its *custumal* and of Geoffrey de Monmouth's *Historia Regum Britannie* to engage in legal proceedings against the Dean and Chapter of the Cathedral. If we hypothesise that a copy of Exeter's origins story, as told by Geoffrey de Monmouth, was at some point kept with, or perhaps even attached to, Exeter's Black Roll (which contained the Anglo-Norman *Custumal*), then Shillingford's use of the mythical origins of Exeter in his articles of complaint against the cathedral is evidence of the insertion of collective memory into law.⁵⁴⁶ It also shows how collective memory is capable of infiltrating the legal record because 'collective memory is also dependent on previous ways of remembering history'.⁵⁴⁷ Paired together, *custumals* and chronicles were perpetual in their written form as opposed to oral memory which was limited in its ability to preserve collective memory as the memory deteriorated over time as the group changed.⁵⁴⁸ Collective legal memory was then, as it is now, preserved by legal record makers like town clerks who were in a position to institutionalise collective memory as written law. Furthermore, by exercising control over the written record of collective memory, town clerks affected the dissemination of information about the legal past of their locality and thereby had the potential to regulate these memories by preserving some and overlooking others (intentionally or unintentionally). Based on their work as the producers of legal and civic records, Andrew Butcher has called town clerks 'a

⁵⁴⁵ Peter Fleming, 'Making History: Culture, Politics and *the Maire of Bristowe Is Kalendar*', in Douglas I. Biggs, Sharon D. Michalove, and A. Compton Reeves (eds.), *Reputation and Representation in Fifteenth-Century Europe* (Leiden: Brill, 2004), at 311.; The petition is held in TNA, PRO STAC 2/6/93.

⁵⁴⁶ The assumption that Monmouth's *Historia* was once kept with the Black Roll and was detached at some point is supported by the presence of a copy of Monmouth's chronicle dated to c. 1400 in a manuscript volume held by the Devon Record Office which was rebound in the eighteenth-century. See DRO, D1508M/1/SS/11/1.

⁵⁴⁷ Joachim J. Savelsberg and Ryan D. King, 'Law and Collective Memory', *Annual Review of Law and Social Science*, 3 (2007), at 191. Note, however, that collective memory should not be confused with historical memory as history is relegated to the past whereas collective memory is continual. As such, the boundaries between past and present are transcended by collective memory. See: Maurice Halbwachs, *La Mémoire Collective* (Paris: Presses universitaires de France, 1950), at 47.

⁵⁴⁸ Lewis A. Coser (ed.), *Maurice Halbwachs on Collective Memory* (London: University of Chicago Press, 1992) at 45.

crucial repository of collective knowledge or memory' and called their writings 'an embodiment of that particular and general knowledge within the community'.⁵⁴⁹ The truth of this statement can be very clearly demonstrated by all the customals described above.

4. Conclusion

The purpose of this chapter has been to challenge the myth of the humble clerk through an examination of the legal instruments and records that were produced by scribes in Exeter and Bristol in their positions as town clerks. Part of the challenge of this thesis is to ask who provincial scribes were. For later periods, one might turn to personal diaries for self-reflections and evidence of individual identity. Or for later periods, one might turn to periodicals and the popular press for evidence of group identity and the public's opinion of this group. We do not have the luxury of such sources for the medieval period, so we must be more adventurous in our approach. What I hope to have demonstrated is that through a critical textual examination of legal instruments and customals it is possible to extract evidence of the identities and personalities of the clerks who wrote them. From a legal history perspective we can see that by writing customals, provincial scribes made important contributions to the functioning of their local legal systems as they were literally the creators and keepers of the legal record and of local legal memory. From a biographical, social history viewpoint, it is clear that there is much for us to learn about legal writers from the very documents that they produced. Here, deeds and customals have been the primary sources for this investigation and they are sufficient to show that the scribe's own craft is capable of opening a window into the professional lives of the individuals who made the very documentary records upon which medievalists rely to write their own histories.

Turning to the legal and administrative work produced by provincial scribes and asking these sources to reveal something about their authors' professional identities and sense of self is clearly an effective methodology. In fact, scribes may very well have told us more about themselves through the writing that they did for others than we ever could have hoped to learn from what was written about them by third parties. Furthermore, these individuals exercised their individual voices through the medium with which they identified themselves – as writers, they spoke through their writings and the written word represented their presence and authority. In doing so, these individuals consciously, and perhaps subconsciously, chose to

⁵⁴⁹ Andrew Butcher, 'The Functions of Script in the Speech Community of a Late Medieval Town, c. 1300-1550', in Julia Crick and Alexandra Walsham (eds.), *The Uses of Script and Print, 1300-1700* (Cambridge: Cambridge University Press, 2004), at 167.

present themselves as individuals, as practitioners of a skilled craft and as invaluable members of their local government administrations through the indelible personal marks they left in their written work.

As individuals with their own personalities, drivers, motivations and ambitions, all the clerks examined in this section were absolutely aware that what they wrote would be around for a long time, conceivably forever. Consequently, I believe that one can never be too critical of these sources, who wrote them and what they said. The fact that we have more and more evidence of their self reflections and an increasing number of signatures as the medieval period progressed also suggests that town clerks gained confidence in their positions over time and therefore readily asserted their authority through their association with this role. Interestingly, this confidence seems to have risen after the division was made between the work of the clerk and that of the recorder in both Exeter and Bristol. As the recorder found himself in a more specialised position within the increasingly 'professional' legal profession, the town clerk was able to practise the administrative side of the scrivener's craft in almost absolute freedom as his appointment was usually for life and there were few, if any, restrictions on his extra-curial or extra-governmental activities.⁵⁵⁰ As for the legal instruments and the legal literature examined in this chapter, these were written by scribes who applied their specialised knowledge of the law, of language and of formulae in order to write what was correct and appropriate in terms of content and form. How they learned these skills and acquired their legal and linguistic literacy will be examined further in the next chapter.

⁵⁵⁰ Some of these freelance jobs will be considered in Chapter Six.

CHAPTER FIVE: A Literate Office

1. Introduction

The last chapter focused on questions surrounding clerical identity by looking at scribes through the prism of their signatures, autographs and the other self-reflexive statements that they made both on and in legal instruments and legal records. In order to answer these questions and to draw out information about their creators, Chapter Four made use of a wide variety of manuscripts and approached them using both codicological and palaeographic perspectives. This chapter continues to focus on the close relationship between scribes and the written word by first evaluating the social and historical context of languages and the law in multilingual medieval England. Next, this chapter seeks out and assesses evidence of the availability of education in languages for provincial students of Latin and French in Exeter and Bristol and applies it to the legal training of English scribes. Last, I shall examine the ways in which this linguistic knowledge could be applied to the learning of law and legal formulae. For this, evidence of the teaching provided at business schools in Oxford and more locally through private tuition and on the job training will be analysed to show how provincial clerks were able to acquire all the skills of a scribe without ever having to venture very far from the countryside, thus challenging the notion that scribal services were centralised in and around London.

2. Linguistic Literacy

Languages and the law in medieval England: multilingualism in English society

Medieval English scribes lived and worked within the context and confines of a multilingual society. The main linguistic characteristic of this society was its diglossia, which means that two or more languages coexisted in England by functioning in specialised ways. In a typical diglossic situation, one language variety is known as the 'high' variety and it is used in authoritative domains while the other, the 'low' variety, is used for more casual functions.⁵⁵¹ England's diglossia comprised three languages: Latin, Anglo-Norman French and various dialects of vernacular English. English society in general, and English law in particular, made ample use of all of the languages at its disposal. This section demonstrates how Latin, French and English were used in different contexts and analyses the impact of multilingualism on the legal literacy of scribes.

⁵⁵¹ For further information on diglossia, see: Ralph Fasold, *The Sociolinguistics of Society* (Oxford: Basil Blackwell, 1984). R. A. Hudson, *Sociolinguistics* (Cambridge: Cambridge University Press, 1980).

Social Context of Languages

In no uncertain terms, Latin held the highest linguistic status in medieval English society as the language of 'Latin culture' – a term which encompassed the Church and most official royal government offices. As the traditional language of literacy, Latin was perceived as the 'high' language in England, ranking above the French and English vernaculars.⁵⁵² An interesting example of the high status of Latin as a written language can be found in the record of John Balliol's homage to Edward I at the end of the thirteenth century. John – as king of the Scots – is said to have spoken the oath of homage 'with his own mouth in the French language', which Edward I's notary recorded 'literally' in order to give it full legal authority.⁵⁵³ While it may seem as though this statement suggests that French was the authorial language in this situation, Michael Clanchy argues instead that in this case the word 'literally' actually meant that the notary translated John Balliol's pledge to Edward I from French into Latin, rather than recording his words *verbatim* because the social status of the people involved and the nature of the document called for the use of a more official and sacred language than the French that Balliol had spoken.⁵⁵⁴ In other, less prestigious, cases the language used for the written record could easily have been French, even if the words were spoken in English. The choice of language all depended on the context in which the event took place. The more official the context was, the more likely it was that Latin would be used as the language of written record in the thirteenth century.

However prestigious Latin may have been, French occupied a similar, albeit 'middling' status in medieval English society as the popular vernacular language of the upper classes. As such, the use of the French language was an indicator of a person's status in England just as Latin was an indicator of a person's education and learning. French came to England with the Normans in 1066 and while the precise number of Normans who settled in England in this early period is unknown, it is clear that this group of French speakers was at least numerous enough to continue to use its own language for the next hundred years or so. Throughout most of the eleventh and twelfth centuries, those who knew French in England were those of Norman origin. However, as a result of intermarriage and the language's association with the ruling class, its popularity spread to non-native speakers who acquired French as a second language in much the same way as one would have learned Latin. Throughout the twelfth and thirteenth

⁵⁵² John Nelson Miner, 'Schools and Literacy in Later Medieval England', *British Journal of Educational Studies*, 11/1 (1962), at 17.

⁵⁵³ M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 206.

⁵⁵⁴ *Ibid.*, at 206-207.

centuries, French was often written alongside Latin in documents and sometimes used in place of Latin thus demonstrating the slow transition of French as a vernacular language to a scholarly one. Intermarriage between French and English speakers also resulted in a bilingualism that persisted for generations following the Conquest. By the thirteenth century, French had gained a place alongside Latin as a language of culture and as a means for expressing spiritual and intellectual ideas.⁵⁵⁵ By the fourteenth century, those in England who knew French undoubtedly also knew English and perhaps even some Latin depending on their level of education. The use of the French language by bilingual English people was considered almost as highly cultured as their use of the Latin language would have been. As such, French was equated with social and economic power – especially when contrasted with the relative weakness associated with English as it was a common tongue. At this time, the French language was not only a language of power in England, but it was also regarded as a sign of cultivated society in much of Europe, just as it would continue to be through to the eighteenth century. Thus, by the fourteenth century the distinction between French speakers and English speakers in England was more a matter of social standing than a reflection of ethnicity. Because of this bilingualism and multilingualism, speakers and authors could choose among the languages that they knew according to the social situation that they found themselves in at the time or even according to their personal preference.⁵⁵⁶

Personal preference may have been at work in a fifteenth-century charter that uses both Latin and English. The foundation charter in question established William Wynard's almshouses in Exeter in 1436. Wynard was the recorder of Exeter (1404-1442) and he founded his almshouses in the last years of his life as an act of charity and penance. The almshouses were built for the relief of the poor and infirm who could not fend for themselves and the charter ordained that twelve paupers were to be sheltered and looked after in the houses and garden outside South Gate. Provision was also made for a perpetual chaplain to live and work in Trinity chapel for an annual stipend of 12d. The very detailed charter was written on a large sheet of parchment that is 51x53 cm and was written almost completely in the Latin

⁵⁵⁵ William Rothwell, 'The Role of French in Thirteenth-Century England', *Bulletin of the John Rylands Library*, 58/2 (1976), at 462.

⁵⁵⁶ David Mellinkoff, *The Language of the Law* (Boston: Little, Brown and Company, 1963), at 70. For the individual linguistic choices of fifteenth-century clerks of the privy seal, see: Gwilym Dodd, 'Trilingualism in the Medieval English Bureaucracy: The Use - and Disuse - of Languages in the Fifteenth-Century Privy Seal Office', *The Journal of British Studies*, 51/2 (2012).

language.⁵⁵⁷ The exception to this is a short passage covering lines 9-11 which was written in English. These lines read:

[line 9] Ffor the good sped prospente and welfare of our liege lord the kyng and of his trewe consell and for al the so who of his noble [line 10] progenitors and for the good spede welfare and prospente of William Wynard foundeur of this place and for all his ffeffees of this place that hath other shal be at eny tyme here after and for William Wynard is fader sowle [his father's soul] and his moder and for al his annctres saules and for al the sawales of [line 11] them that William Wynard is hold to do fore and for al crstyn sawles seyth eny man a pat[er] nost[er] and Ave.⁵⁵⁸

English is only used in these three lines, but these lines are very significant. It is here that Wynard addresses the chaplain to pray for the souls of Wynard, his parents and for the souls of his ancestors. While lines 9-11 represent the only part of the charter written in English, a further reference to the language appears on line 12 where Wynard instructs the chaplain to speak the psalms in English: 'dicet dicta verba in anglas cum psalmo'. There are at least two possibilities to explain why Wynard, who may have even written the charter himself, used and referred to the use of English. Either this was a stylistic device; Wynard could have used English as a way of emphasising his instruction and setting it apart from the rest of the text, or perhaps Wynard's use of English and his clear message regarding the use of oral English in the chapel reflects the linguistic ability of chaplains in Exeter at this time.⁵⁵⁹ Wynard may have been concerned that his chaplain's Latin was weak and so he used English to send his most important message which was to pray for the souls of him and his family – a message that Wynard wanted faithfully conveyed. Despite the charitable intent behind the foundation of the almshouses, Wynard would have been very concerned with the penitential aspects of his charity and expected that it would absolve him of his transgressions. An indication of this intention can be found in the charter which specified that the chaplain was to be called 'William Wynard's priest'. The continual prayers of the chaplain on his behalf would ensure that Wynard remained in God's good graces for eternity and served as an insurance policy for a lawyer whose life had never been entirely free of sin.⁵⁶⁰

⁵⁵⁷ DRO, ED/WA/2 [1436]

⁵⁵⁸ DRO, ED/WA/2 [1436]

⁵⁵⁹ Such 'code mixing' or 'diglossia' (the use of two or more languages in one text), was not unusual in this period. See: Gwilym Dodd, 'Trilingualism in the Medieval English Bureaucracy: The Use - and Disuse - of Languages in the Fifteenth-Century Privy Seal Office', *The Journal of British Studies*, 51/2 (2012), at 256-259. Linda Ehsam Voigts, 'What's the Word? Bilingualism in Late-Medieval England', *Speculum*, 71/4 (1996), at 818-823, Tim William Machan, 'Language Contact in Piers Plowman', *Speculum*, 69/2 (1994).

⁵⁶⁰ There is some suggestion that the source of Wynard's wealth came from piracy and that he used these misbegotten gains to endow his charity. See: S. Bhanji, 'The Involvement of Exeter and the Exe Estuary in Piracy', *Transactions of the Devonshire Association*, 130 (1998), at 23-49.

Legal Context of Languages

The interplay between Latin, French and English as the languages of the law directly impacted those who worked in government, administration and the legal profession who needed to be fluent in all three. Throughout the medieval period, Latin, French and English had practical written and oral functions in England as well. As individual members of society operated within what were essentially linguistic 'communities', the Latin, French and English languages can be seen as having fulfilled particular social roles in England at a time when individuals used specific languages to perform certain written and oral tasks. According to Clanchy, no one language could serve all the diverse purposes required of it by medieval English society therefore the written and oral uses of languages in medieval England can be difficult to understand because documentary evidence has mainly preserved the history of the written word.⁵⁶¹ Texts only rarely mention the languages of verbal expression. Although medieval vernacular literary texts sometimes reflected the diction of spoken language, business and legal documents by contrast often disguised the oral language used in dictation once it was transformed into text.⁵⁶² As has been demonstrated for the thirteenth century, this occurred when the spoken word was translated into the written word because the language used to record an oral exchange was not always an accurate reflection of what was said aloud. For example, a statement made in court in English or French might be written down in Latin instead of recorded verbatim. Conversely, a Latin charter might have been read out in English or French thus obscuring the original language of the speech or text for the audience.⁵⁶³ Similarly, royal proclamations which were written in Latin were announced in English by the clerk who was responsible for making the proclamation.⁵⁶⁴ This practice was firmly in place by

⁵⁶¹ M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 200. The linguistic competition that has been perceived by some scholars as a struggle for dominance can also be viewed as medieval linguistic cooperation. There are many supporters of the 'struggle' thesis, as first set out by Pollack and Maitland in 1895 in: Frederick Pollack and Frederic William Maitland, *The History of English Law*, 2 vols. (1968; Cambridge: Cambridge University Press, 1968). Adherents to this interpretation are: Richard Foster Jones, *The Triumph of the English Language* (London: Oxford University Press, 1953), Basil Cottle, *The Triumph of English: 1350-1400* (London: Blandford Press, 1969). More recent scholarship has begun to shift away from this thesis as the focus turns to linguistic conciliation and evidence from texts of the later medieval period which show all three languages together in one sentence or one single document. For examples of this phenomenon, see: William Rothwell, 'Arrivals and Departures: The Adoption of French Terminology into Middle English', *English Studies*, 2 (1998), at 165. For a very balanced view on the transition from French to English in the case of petitions, see: Gwilym Dodd, 'The Rise of English, the Decline of French: Supplications to the English Crown, c. 1420-1450', *Speculum*, 86/1 (2011b), at 117-150.

⁵⁶² M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 206.

⁵⁶³ *Ibid.*

⁵⁶⁴ James A. Doig, 'Political Propaganda and Royal Proclamations in Late Medieval England', *Historical Research*, 71/176 (1998), at 264.

the thirteenth century when two proclamations concerning the Provisions of Oxford were circulated in both English and French and distributed throughout the kingdom in order to prevent any misunderstandings.⁵⁶⁵ It is especially true that in the medieval period, the language of record was not a reliable or accurate reflection of the spoken language used in this predominantly oral society.

The prevalence of Latin and French in the law was not universally accepted by medieval English society, as one fourteenth-century statute shows. The Statute of Pleading was a law passed by Edward III's October Parliament in response to a real grievance regarding the inability of the majority of the English people to comprehend all of the oral languages of the legal proceedings in which they participated. The Statute of Pleading (1362) encapsulates the ways in which languages and the law intersected in this period and neatly presents the place and role of each language in the English courts. This was the first attempt of many to legislate on the languages of the law in England and has been labelled 'one of the best-known, but least-understood, statements on the use of the vernacular in medieval England'.⁵⁶⁶ On the surface, the Statute of Pleading seems straightforward enough. It presents a fourteenth-century legal and linguistic predicament and proposes legislation in order to remedy the situation. According to the text of the Statute, there was a problem of communication in the courts: the oral proceedings were in French but not all people were fluent in this language. The Statute proposes that English, rather than French, should be the compulsory spoken language of communication in the courts of England.⁵⁶⁷ Based on the problem identified in the Statute, it appears that for most people in 1362, the linguistic dominance of Latin and Anglo-Norman French in these courts restricted their ability to fully access justice.

In this context, the notion of accessibility goes beyond the mere physical access to the courts, although their itinerant nature and the infrequency of their sessions could certainly delay a litigant's contact with them.⁵⁶⁸ In order to understand accessibility as it was alluded to in the

⁵⁶⁵ Ibid.

⁵⁶⁶ W. M. Ormrod, 'The Use of English: Language, Law, and Political Culture in Fourteenth-Century England', *Speculum*, 78/3 (2003), at 750.

⁵⁶⁷ The text of the statute states: 'all pleas which shall be pleaded in his courts whatsoever, before any of his justices whatsoever, or in his other places, or before any of his other officers whatsoever, or in the courts and places of any other lords whatsoever in his realm, shall be pleaded, counted, defended, answered, debated, and judged in the English language'. Translated from the original French by Ormrod. Ibid., at 756-757.

⁵⁶⁸ Anthony Musson, *Medieval Law in Context* (Manchester: Manchester University Press, 2001b), at 163, Anthony Musson and W. M. Ormrod, *The Evolution of English Justice* (London: Macmillan, 1999), at 177-181.

Statute of Pleading, and as it was defined in Chapter One of this thesis, the extent to which the courts were truly open to all classes of people based on language and linguistic literacy need to be evaluated. The complainants behind the petition that resulted in the Statute of Pleading identified a linguistic impediment to accessing the king's courts; due to an inability to comprehend French, many people were unable to participate in and follow the court's proceedings. This linguistic obstacle was surely compounded by the financial difficulty of obtaining the services of a legal professional skilled in the law and legal languages to act as a legal and linguistic intermediary; however this concern was not addressed by the petitioners. Nevertheless, these financial and linguistic barriers to accessing the royal courts were intertwined with the amount of specialised expertise required of the legal professionals involved in translating both the law and languages for their clients.⁵⁶⁹

For those who lacked the legal and linguistic literacy required to gain access to the courts, legal intermediaries were required at all stages of the legal process and this is where scribes provided an invaluable service. A literate clerk was needed to write the writs that were necessary to initiate litigation in the king's courts and clients often hired the clerks of royal justices who were travelling in the provinces to do this for them, although provincial scribes were also capable of writing writs.⁵⁷⁰ Especially in the thirteenth century, the solicitation of such ad hoc legal advice and assistance was relatively common; it was a financially viable option to employing at a considerably higher cost more skilled lawyers and serjeants to do similar work.⁵⁷¹ Although they may not have benefited from a traditional legal education, scribes were at the very least literate in the legal languages used in official documents just as royal clerks were. As specialised legal scribes, they were familiar with the technical vocabulary that was unique to English law and were capable of putting that skill to practical use.⁵⁷² Furthermore, as the Statute of Pleading demonstrates, the primary spoken language of the royal courts was French, while Latin was used primarily as a language of written record. For an English monoglot, a legal intermediary was required to speak on his behalf, in the royal courts at least. By the fourteenth century this was a necessary expense for most litigants who were unable to navigate the linguistically and procedurally technical realm of English law on

⁵⁶⁹ Note that there was also a political element to the Statute of Pleading. This aspect of the complaint was analysed and interpreted by Ormrod. See: W. M. Ormrod, 'The Use of English: Language, Law, and Political Culture in Fourteenth-Century England', *Speculum*, 78/3 (2003).

⁵⁷⁰ Some judges travelled in circuits around the provinces in order to dispense royal justice locally; Paul Brand, *The Making of the Common Law* (London: Hambledon Press, 1992), at 184.

⁵⁷¹ *Ibid.*

⁵⁷² This will be examined in greater detail later in this Chapter.

their own.⁵⁷³ Outside of the royal courts, the situation was slightly different. Litigants in most manorial courts and local borough courts were able to access justice in their mother tongue much more readily. The records of these courts are written in Latin, however the language of record cannot possibly have reflected the spoken languages used in provincial courts which must have mostly been English and French. In 1356, at the insistence of the mayor and aldermen of London, the proceedings of the sheriff's court switched to English.⁵⁷⁴ This may have been the impetus behind the petition that resulted in the Statute of Pleading six years later.

Availability of basic Latin education for future scribes

Overall, Latin was perceived as the sole language capable of adequately expressing the thoughts of sophisticated men, especially on themes of religion and theology, and this applied almost equally to men of law.⁵⁷⁵ As it was considered a more efficient vehicle of thought than French or English, Latin was highly respected as a language of the erudite. As such, it was nearly impossible for a person to advance his career in the Church or in government administration or to pursue a more than elementary level of education without first obtaining a solid foundation in Latin. As a reflection of how most medieval people perceived this language that few outside the Church and the intelligentsia could actively use and wholly comprehend, one scholar has called Latin's prestige in these areas 'dazzling'.⁵⁷⁶ As the language of the élite, Latin served as a means of differentiating the learned from the unlearned, as well as the socially powerful from the weak, but if the vast majority of those who were fluent in both French and Latin could be generally categorised as either clergy or government administrators, how and where did they acquire this linguistic training? More specifically, how did local boys and lay men learn a sufficient amount of Latin grammar so that they were able to go on to train in French and gain the skills necessary to launch a career in scribbling? Latin was never a maternal language in medieval England, which means that by necessity, it was a learned language, so how and where did people learn it?⁵⁷⁷ Latin was the language of reading and writing in medieval Europe as a whole and it was the first language in

⁵⁷³ Anthony Musson, *Medieval Law in Context* (Manchester: Manchester University Press, 2001b), at 164.

⁵⁷⁴ R. R. Sharpe (ed.), *Calendar of Letter-Books Preserved among the Archives of the City of London, Letterbook G: 1352-1374* 12 vols. (7; London: J. E. Francis, 1905) at 73.

⁵⁷⁵ V. H. Galbraith, 'Nationality and Language in Medieval England', *Transactions of the Royal Historical Society*, 23 (1941), at 119.

⁵⁷⁶ *Ibid.*, at 116.

⁵⁷⁷ Serge Lusignan, *Parler Vulgairement* (Montreal: Les Presses de l'Université de Montréal, 1986), at 82.

which reading and writing were taught to children.⁵⁷⁸ In fact, Latin was the only learned language in England for centuries, and was the only language that required the use of grammar books as study aides until French began to be studied academically after it had also ceased to be a maternal language in the thirteenth century.⁵⁷⁹

In her volume exploring the cultural, intellectual and historical context of the book and lay readership in the fourteenth century, Janet Coleman contended that it was the proliferation of grammar schools and the expansion of universities that acted as the key factors to enabling the English middle class (broadly defined) to improve its education and ultimately its job prospects.⁵⁸⁰ Since education was the domain of the Church in the medieval period, Latin was the language of instruction for its students.⁵⁸¹ These students were not all destined to become priests and monks and the Church played an important role in training intelligent administrators like town clerks who could meet the increasing demand for multilingual officials in the kingdom.⁵⁸² From the ranks of the clergy came not only chaplains, but also the scribes, civil servants, Chancery clerks, attorneys and judges of the age who compiled the vast number of documents that survive to this day.⁵⁸³ For this educated group of officials (both government and religious), their knowledge of the Latin language was the key to their employment in text-dependent professions and this knowledge could be gained by attending one of the many provincial schools found around the country. Direct evidence for the education of scribes at the grammar school level is scant. There is, however, an abundance of material which sets out the presence of schools in provincial England. These sources will be mined for evidence that points to the type of training and education in languages and writing that could be acquired by future scribes in Exeter and Bristol.

⁵⁷⁸ Franz H. Bäuml, 'Varieties and Consequences of Medieval Literacy and Illiteracy', *Speculum*, 55/2 (1980), at 238. Nicholas Orme, *Education and Society in Medieval and Renaissance England* (London: Hambledon Press, 1989), at 170.

⁵⁷⁹ Nicholas Orme, *Education and Society in Medieval and Renaissance England* (London: Hambledon Press, 1989), at 252.

⁵⁸⁰ Janet Coleman, *Medieval Readers and Writers, 1350-1400* (New York: Columbia University Press, 1981).

⁵⁸¹ For an interesting article on clerical education, see: Christopher M. Bellitto, 'Revisiting Ancient Practices: Priestly Training before Trent', in Ronald B. Begley and Joseph W. Koterski (eds.), *Medieval Education* (New York: Fordham University Press, 2005), at 35-49.

⁵⁸² S. J. Curtis, *History of Education in Great Britain* (7th edn.; London: University Tutorial Press, 1967), at 4.

⁵⁸³ J. W. Adamson, *A Short History of Education* (Cambridge: Cambridge University Press, 1922), at 13. Henry Blumenthal and Renee Kahane, 'Decline and Survival of Western Prestige Languages', *Language*, 55/1 (1979), at 187.

Fee-paying private schools such as those in Exeter and Bristol were the norm for most of the medieval period. By the turn of the sixteenth century, Bristol had acquired at least two permanently endowed free grammar schools, what are now known as the Bristol Grammar School (established shortly after the death of Robert Thorne, its benefactor, in 1532) and the Bristol Cathedral Choir School (refounded in 1542 by Henry VIII after the dissolution of Bristol Abbey).⁵⁸⁴ Exeter has plentiful and reliable information for the history and provision of education from an early period (which did not actually change very much throughout the medieval period) while Bristol provides greater insight into the latter years of the period. Each offers a different perspective on the type of Latin education that was available for future scribes in the Westcountry. Both cities reveal to us different aspects of education in the southwest of England that would have benefitted boys with aspirations to become lay clerks or scribes.

In Exeter

In Exeter, as was the case in the majority of medieval English cities, the local clergy were the driving force behind education. Education could be had in schools for song and grammar and in high schools for the study of theology and canon law. In 1338, just outside of Exeter, a secular college was founded at Ottery St Mary through the generosity of John Grandisson, bishop of Exeter. This school's mandate was to provide education for eight canons, eight vicars, eight secondaries (older boys whose voices had broken), eight choristers, three chaplains and four other clerks, along with additional fee-paying students.⁵⁸⁵ Exeter's grammar school was run by the archdeacon of Exeter and the Cathedral chapter maintained and educated the boys in its choir.⁵⁸⁶ In 1344, Richard Brayleigh who was the dean of Exeter Cathedral sponsored scholarships to the grammar school, funded a new schoolroom and also paid for the schoolmaster's lodgings.⁵⁸⁷ By 1384 the grammar school master held a monopoly on the teaching in the city and seven miles beyond its walls into the suburbs and countryside, just as the Scribes' Company controlled a monopoly on scribbling in London. This master received no regular stipend for this work and lived wholly from the fees paid by his pupils, which was 6d per term. This small sum was a good incentive for the master to acquire many students in order to increase his salary. Not all of these pupils paid their fees from their own

⁵⁸⁴ Nicholas Orme, *Education in the West of England, 1066-1548* (Exeter: University of Exeter Press, 1976), at 41-42.

⁵⁸⁵ Janet Coleman, *Medieval Readers and Writers, 1350-1400* (New York: Columbia University Press, 1981), at 27.

⁵⁸⁶ *Ibid.* Records of the Dean and Chapter show that in 1529, the fees paid by the secondaries to their grammar master were 6 d per boy, per term. Exeter Cathedral Archive, D&C 3551 fol. 55 v.

⁵⁸⁷ *Ibid.*

pockets, however, as scholarships could be obtained through the Church. Therefore education in Exeter was widely available, in theory, to any student who could afford to pay the master's fees or who was able to find a patron to sponsor his schooling.

In the fifteenth century, the city's authorities began to involve themselves in local education. Acting in a private capacity, when William Wynard established his charitable foundation in 1436, he asked the chaplain of the foundation to teach children in his spare time between giving divine services, 'as is fitting and as time allows'.⁵⁸⁸ As Wynard was Exeter's recorder, his concern with the provision of education in the city reflected a personal interest.⁵⁸⁹ In particular, Wynard asked that the chaplain instruct a minimum of three and a maximum of nine boys to read from the beginning of the alphabet and to both read and *learn* the psalter. This distinction made between memorization (also known as functional literacy) and the actual textual comprehension that was necessary for pure literacy is significant. Wynard was a product of a bureaucratic meritocracy and could not have attained his position in Exeter's government without a strong foundation in languages and the law. He also had a strong foundation in Latin grammar. Memorization may have been sufficient for boys at the song schools, but Wynard's boys were held to a higher standard and were expected to understand what they were reading and learning. Wynard must have intended to prepare the pupils of his foundation for higher education which would allow them to pursue scrivenering which was a career that placed a greater emphasis on ability than on birth or status. Although Wynard's institution was a charity, his charitable spirit did not extend to cover the cost of educating these boys. Instead, he specified that this was to come at the cost and expense of their parents and friends.⁵⁹⁰

Higher education was available in Exeter at this time and Nicholas Orme has found evidence of several local secondaries learning advanced grammar there in the fifteenth century. In 1412, Thomas Fyllecombe was bequeathed £6 13s 4d to attend 'school', which Orme has interpreted as being at least a grammar school and possibly even university. There were also possibilities for local students to obtain higher education both in the city and beyond it. From 1314 there was the opportunity for twelve scholars from Devon and Cornwall to complete their studies at

⁵⁸⁸ DRO, ED/WA/2 [1436]

⁵⁸⁹ Wynard was probably a lawyer of Lincoln's Inn and was a serjeant-elect in 1415, although he was never created as a serjeant. Nonetheless, he frequently appeared as counsel in the circuit courts. He died in 1442. See: John Baker, 'John Bryt's Reports (1410-1411) and the Year Books of Henry IV', *The Cambridge Law Journal*, 48/1 (1989), at 107, fn. 153.

⁵⁹⁰ DRO, ED/WA/2 [1436]

Exeter College, Oxford, which was founded by Bishop Walter de Stapeldon. In 1332 Bishop Grandisson established St John's Hospital as a high school which boarded twelve scholars and provided a tutor.⁵⁹¹ Richard Maister who was a secondary c. 1409-1420 and John Boryngton who was a secondary c. 1425-8 are presumed to have learned grammar while they served as secondaries because both became masters of the city's grammar school almost immediately after the end of their of study terms with the Cathedral.⁵⁹² Masters of the grammar school were appointed by the archdeacon of the cathedral from at least as early as the 1220s, although their schools lay outside of the cathedral close (but nearby in Smythen Street) and were referred to as 'the high school' or 'the grammar school of the city'.⁵⁹³ With regard to the origins of these masters, the average Exeter schoolmaster was a local man, usually a priest or a clerk in minor orders but never married, at least not until after the Reformation. Orme has calculated that at least nine of the seventeen schoolmasters of whom we have evidence between 1329 and the Reformation were probably natives of the west of England.⁵⁹⁴ These men were usually addressed as 'master' without necessarily meaning that they held degrees or ever attended university. In fact, only four or five masters in Exeter in this period can be positively identified as university graduates, and they all attended Oxford.⁵⁹⁵

There is evidence in Exeter's mayor's court roll to show how Exeter's local government supported students who wished to pursue their studies elsewhere. In 1334, the mayor's court roll for 8-9 Edward III entered John of Cornwall into the freedom on 24 October by the agreement of the mayor and community and at the instance of Roger de Critton (Crediton). The enrolment specifies that John of Cornwall was 'going to York for the purpose of study', but the nature of his studies is a mystery.⁵⁹⁶ Roger of Crediton was Exeter's sub clerk at this time but there are no other references to John of Cornwall in Devon's archives which makes it difficult to determine exactly what John planned to study in York. Unfortunately, York's

⁵⁹¹ A quitclaim of 21 January 1413 refers to the master of St John's Hospital, presumably this is the schoolmaster. See: DRO, Book 53a, folio 29v.

⁵⁹² Nicholas Orme, 'Education and Learning at a Medieval English Cathedral: Exeter 1380-1548', *Journal of Ecclesiastical History*, 32/2 (1981), at 270.

⁵⁹³ Nicholas Orme, *Education in the West of England, 1066-1548* (Exeter: University of Exeter Press, 1976), at 47. W. G. Hoskins identified these early schools in Smythen Street as 'the beginnings of a university' and blames Oxford for stifling the early development of this 'university' in the reign of Henry II because Oxford attracted scholars and students from all over the country, not just the local area, and it was easier to access from London. See: W. G. Hoskins, *Two Thousand Years in Exeter* (Chichester: Phillimore, 1960), at 34-35.

⁵⁹⁴ Nicholas Orme, *Education in the West of England, 1066-1548* (Exeter: University of Exeter Press, 1976), at 50.

⁵⁹⁵ Ibid.

⁵⁹⁶ DRO, MCR 8-9 Edward III [1334]

records yield no information for him either. With a generic locative surname like 'of Cornwall', it is difficult to trace John in the records as he might have changed his name upon his arrival in York. Consequently, we can do no more than postulate on the relationship between these two men and the subject of John's studies. The possibilities are endless and he may have even been a scrivener who went to York to join the scribes' guild there, but in the absence of any biographical information for John of Cornwall this can be no more than speculation.⁵⁹⁷

The boys who went to Exeter's grammar school were a mixture of members drawn from the local community and from the wider region of Devon and Cornwall, just like John of Cornwall was and their schoolmasters were too. For example, John Boryngton, master at the high school, wrote two tracts on grammar in 1433-48: *De regimine casibus* and *Liber communis*. Three other manuscripts survive that include examples of writings on grammar from medieval Devon. The first is found in Gonville and Caius College Ms. 417/447 and includes John Boringdon's works although it was written by William Berdon c. 1450/70. Another, British Library Ms. Add. 19046, was written in the mid fifteenth century by John Jonys and witnessed by Peter Carter, both of Exeter Cathedral. The third, Bodleian Library MS Rawl. D.328, was written between 1444 and 1483 by Walter Pollard of Plymouth.⁵⁹⁸ According to Orme, the relative numbers of native and immigrant scholars were not necessarily consistent and changed over time with the largest proportion of immigrant scholars flocking to Exeter in the twelfth and thirteenth centuries when there were fewer schools in the outlying towns.⁵⁹⁹ By the end of the medieval period it is likely that the majority of pupils in Exeter were natives to the city.⁶⁰⁰ Consequently, there was no pressing need for local boys to look beyond the resources available to them in the city for their education, even though some certainly did. Unfortunately the names of these scholars are not known, but evidence of their education is apparent in the presence of a body of local men in both cities (judging by their family ties and locative surnames) who were skilled enough to take on the top lay clerical offices in Exeter's and Bristol's administrations. From this we can infer that at least some of Exeter's scribes were locally educated.

⁵⁹⁷ It is also possible that this is the same John of Cornwall who is mentioned in John of Trevisa's translation of Higden's *Polychronicon*. See page 198 of this Chapter.

⁵⁹⁸ Nicholas Orme, *Education in the West of England, 1066-1548* (Exeter: University of Exeter Press, 1976), at 51-52.

⁵⁹⁹ It is important to note that Exeter was not the only source of education in medieval Devon, and there is evidence of grammar schools in Plympton, Ottery, Barnstaple, Crediton and Ashburton, and teaching was also undertaken in the monastic foundations at Hartland, Tavistock, Buckfast, Cornworthy and at the collegiate foundations in Crediton, Ottery and Slapton. For more information on these seats of learning, see: *Ibid.*

⁶⁰⁰ *Ibid.*, at 42-43.

The ability to read does not necessarily imply a sophisticated grammatical knowledge of Latin and Orme reminds us that despite the availability of education for the lay clergy in Exeter, some may have been Latinists who studied in the Cathedral's library in their spare time while others might have been considered to be hardly literate.⁶⁰¹ The same must have been true for all the pupils at the grammar schools, although their resources were surely fewer. Orme has calculated that of the boys and youths who were educated by Exeter's cathedral, as many as half returned to life as laymen rather than advancing to the priesthood and by doing so these laymen augmented what Orme called 'the fund of lay literacy...when they returned to a secular way of life'.⁶⁰² Returning to the secular life did not mean that these clerks ceased to pursue an education. On the contrary, the young men who had proceeded far enough in their studies to have acquired a strong grasp of Latin grammar and composition were prime candidates to enter into private secretarial work, estate management or government administration.⁶⁰³ With a bit of additional training in legal procedure and formulae, either through apprenticeship or by attending further education at specialised business schools, these literate laymen could join the increasing numbers of freelance scribes or might even find regular employment as town clerks.⁶⁰⁴

In Bristol

Like Exeter, Bristol was a regional hub of learning and there seem to have been several schools and multiple schoolmasters offering education in the city at any given time. Medieval topographer John Leland mentioned Bristol's early schools in his *Itinerary*, writing that the schools there 'for the conversion of the Jews' were under the control of the guild of the Kalendarers in the time of Henry II, although it is more likely that the *scola Judeorum* to which

⁶⁰¹ When an inventory of the Cathedral's library was made in 1506, it housed nearly 400 volumes covering standard works of liturgy and included works on the liberal arts, history, civil law, canon law and theology. While not all clergy would have been allowed access to the library proper, some 45 volumes were chained in and around the choir and were thus available to the minor clergy. Nicholas Orme, 'Education and Learning at a Medieval English Cathedral: Exeter 1380-1548', *Journal of Ecclesiastical History*, 32/2 (1981), at 272-273.

⁶⁰² *Ibid.*, at 270-280.

⁶⁰³ Notice that while mathematics was an important skill for local administrators, merchants, businessmen and any person who needed to keep financial records and make accounts, arithmetic was not studied at school. Instead it was learned on the job by those who required it. Nicholas Orme, 'Education in Medieval Bristol and Gloucestershire', *Transactions of the Bristol and Gloucestershire Archaeological Society*, 122 (2004), at 11.

⁶⁰⁴ Training in the scribbling arts and legal literacy will be considered later in this Chapter.

Leland refers was a synagogue rather than a school.⁶⁰⁵ Leland's reference to the foundation of a school at Keynsham Abbey in the 1160s has been deemed credible by Orme as the canons of Keynsham were members of a branch of the Augustinian order which was often associated with the government of schools in the twelfth century.⁶⁰⁶ Keynsham was several miles outside of Bristol and over time more schools appeared within the city proper. In 1243 a large stone house 'called the school' was left to Simon the Clerk, although it might not have been used as a school for very long after this date as it was later referred to as the 'old school' in an inquisition.⁶⁰⁷

References to Bristol's schools in the fourteenth and fifteenth centuries are more plentiful and reveal much more about the nature of education in the city in the later Middle Ages. In this period, schools were numerous and there were at least two masters working in different parts of the city concurrently – one was a clerk in minor orders and the other was a priest.⁶⁰⁸ As for the curriculum of these schools, it is difficult to discern but they begin to be clearly identified as grammar schools in the fifteenth century. Of these later schools, some could be found associated with the city's larger churches, such as All Saints which had a schoolhouse attached to the main building and the churches of St Mary Redcliffe and St Nicholas which seem to have also provided for the education of their choristers.⁶⁰⁹ References to fifteenth-century grammar schools give a greater indication to the type of education that a future scrivener would have been able to receive as a young pupil in Bristol. Robert Londe ran a school at Newgate, possibly in a chamber over the gate itself, and a manuscript compiled by one of his students, Thomas Schort, survives in Oxford in the Bodleian Library, MS Lincoln College Lat. 129. This anthology contains around twenty short Latin tracts on the study of grammar along with some verses, letters, recipes and *vulgaria* or English sentences translated into English which indicates the type of teaching devices used in Londe's Newgate school.⁶¹⁰ The compilation itself dates from

⁶⁰⁵ John Chandler (ed.), *John Leland's Itinerary* (Stroud: Alan Sutton, 1993) at 181, Nicholas Orme, *Education in the West of England, 1066-1548* (Exeter: University of Exeter Press, 1976), at 36.

⁶⁰⁶ John Chandler (ed.), *John Leland's Itinerary* (Stroud: Alan Sutton, 1993) at 181, Nicholas Orme, *Education in the West of England, 1066-1548* (Exeter: University of Exeter Press, 1976), at 36.

⁶⁰⁷ Nicholas Orme, *Education in the West of England, 1066-1548* (Exeter: University of Exeter Press, 1976), at 37. See also: E. W. W. Veale (ed.), *The Great Red Book of Bristol: Introduction (Part I)* (2; Bristol: Bristol Record Society, 1931) at 264 and 103. Francis B. Bickley, *A Calendar of Deeds, Chiefly Relating to Bristol* (Edinburgh: T&A Constable, 1899), at no. 4.

⁶⁰⁸ This is according to the clerical poll tax that they paid in 1379. Nicholas Orme, *Education in the West of England, 1066-1548* (Exeter: University of Exeter Press, 1976), at 37.

⁶⁰⁹ *Ibid.*, at 38.

⁶¹⁰ *Ibid.*, at 39. Only around twenty such anthologies still exist, and Schort's is the only example from Bristol or Gloucestershire. See: Nicholas Orme, 'Education in Medieval Bristol and Gloucestershire', *Transactions of the Bristol and Gloucestershire Archaeological Society*, 122 (2004), at 19.

the 1430s and seems to reflect Schort's ambition to become a teacher himself, perhaps intending to use the detailed notes that he made based on Londe's teachings for his own classroom.⁶¹¹ In this instance, imitation is not only the sincerest form of flattery but it is also an indicator of how new teachers were trained and shows how they developed their own curricula.

Furthermore, the *vulgaria* copied by Schort provide a valuable glimpse into the method of learning Latin in the fifteenth century and demonstrates the role of English in the medieval classroom. Orme surmises that in the translation exercises, the phrases were first dictated to the students in English who then rendered them into Latin, assuming that Londe compared the students' translations against his own as evidenced by his miscellany.⁶¹² Or, Londe dictated the phrases in Latin and the students had to render them into English. It is also possible that he used both teaching methods interchangeably. This element of bilingual oral dictation is important for several reasons. First, it tells us that grammar pupils were clearly expected to know how to write in English even though the intention was to learn Latin. Second, it tells us that the medium for learning Latin was English by the fifteenth century, rather than French. Third, it demonstrates the place of dictation and orality in the medieval classroom. The *ars dictaminis* (art of composing letters) and the *ars dictandi* (art of composing documents) were essential skills for lay clerks and will be examined in greater detail in the last section of this chapter. These skills were required whether scribes needed to take dictation to write a letter for their patron or whether they needed to transcribe the events taking place in a borough courtroom for the composition of legal records or to compose a legal instrument. For these reasons, the ability to write prose in Latin according to set conventions and appropriate formulae was a very important part of clerical education and practical foundational training for future scribes. The presence of example letters in Schort's miscellany further points to the fact that basic business training was an element of grammar school education in Bristol, and that this training was not only a means of learning and practising Latin in the classroom but it also introduced students to the building blocks needed to pursue careers as professional scribes.

⁶¹¹ Nicholas Orme, 'Education in Medieval Bristol and Gloucestershire', *Transactions of the Bristol and Gloucestershire Archaeological Society*, 122 (2004), at 19.

⁶¹² Nicholas Orme, *Education in the West of England, 1066-1548* (Exeter: University of Exeter Press, 1976), at 40.

Linguistic treatises for the instruction of French for scribes

The previous section demonstrated that for boys who could afford to pay the master's fees, or for whom their studies were subsidised by the Church or through endowments, it was possible to acquire an education in Latin in medieval towns and cities like Exeter and Bristol. Therefore Latin learning was best accomplished at school with a master who had access to books of grammar and vocabulary. Basic literacy, however, could easily be acquired in the home with a primer and a willing teacher and for most people this was how they learned their letters in Latin, English or French. Historian of medieval education and childhood, Nicholas Orme, encourages historians to 'envisage gentlemen- and gentlewomen-in-waiting, clergy ... and merchants or their clerks, all teaching reading to children or young people, though evidence of the fact is hard to find'.⁶¹³ There is, however, evidence to demonstrate that even seasoned scribes continued to practise their penmanship, experimenting with different letter forms and styles of writing. In Exeter, a clerk used the draft copy of a deed he was writing to make the seal tags of the final copy. On the inside of one of the seal tags it is possible to see where the clerk practised writing the letter G multiple times before he used this scrap parchment to make a tag.⁶¹⁴ Other provincial scribes practised their writing in similar ways. For example, several folios of Humphrey Newton's commonplace book were dedicated to the copying of the alphabet from a letterbook that he had acquired and sought to emulate as an adult learner.⁶¹⁵

Newton lived in Pownall, Cheshire, from 1466-1536 and was a country gentleman who practised scribing. The manuscript of his book is held in the Bodleian Library as MS. Lat. misc. c. 66. Deborah Youngs of Swansea University has written a biography of Newton's life, relying primarily on his commonplace book to illuminate aspects of his life, and his personal and professional interests.⁶¹⁶ Most importantly, Newton's book speaks to his business practising law at the lower end of the legal profession in the Cheshire countryside. Like many, if not most, provincial scribes, Newton never attended an Inn of Court or Chancery. As a result, his knowledge of the law and legal procedure and the documentation upon which these first two depended came from a fundamentally practical legal education. In Newton's case, it appears as though he learned his law through artful imitation. Newton's commonplace book contains his transcriptions of the letters sent to him by two prominent local serjeants and

⁶¹³ Nicholas Orme, *Medieval Children* (London: Yale University Press, 2001), at 242.

⁶¹⁴ DRO, ED/M/61 [1250]

⁶¹⁵ Newton's exercises appear in Bodleian Library, MS. Lat. misc. c. 66 folios 96v, 97r, 98r, 99r, 100r, 100v and 105r.

⁶¹⁶ Deborah Youngs, *Humphrey Newton (1466-1536) an Early Tudor Gentleman* (Woodbridge: Boydell, 2008).

justices which contain advice on the rights of inheritance and on how to set land to feoffees.⁶¹⁷ Acquiring advice like this from other local practitioners and then learning by the example they set is one way in which provincial men were able to make inroads into the law, on a local level at least.

Youngs suggests that Newton's legal knowledge was accrued in the most practical way for someone who had never attended an Inn. First, he could have easily gained a familiarity with legal procedure by watching the law in action in the local and county courts. As a landed country gentleman, he would have certainly been required to attend the courts on occasion, especially as a juror. Second, he would have had access to legal theory from the wide variety of tracts and treatises that were available on the law; registers of writs were commonplace as were instruction manuals on estate management and abridged versions of statute and common law were fairly ubiquitous at that time.⁶¹⁸ Evidence of access to such literature is found in what was copied by Newton into his book. He copied deeds, but he also made memoranda and recorded information that would help him in the interpretation of documents, such as the dates of famous statutes like the Statutes of Westminster and the date to which the first Statute of Westminster set the limitation for time immemorial (assigned to 6 July 1189, the date of Richard I's accession).⁶¹⁹ Learning law through example, via legal literature and by seeking out the invaluable advice of more senior and successful locals on matters of interpretation and formula were some of the ways that a freelancing provincial scrivener could accrue the knowledge required to correctly formulate the testaments and conveyances that comprised the bulk of his business.⁶²⁰

Humphrey Newton is an example of a largely self-taught scrivener. From the number of instruction manuals available for private tuition on languages, Newton was not alone in pursuing his studies independently. French was not always studied at grammar schools as they focused on Latin, but it could be learned alongside English and Latin at home. The first half of the thirteenth century witnessed the advent of the production of manuals that were intended to teach French to English speakers as an acquired language. One of the earliest of these is

⁶¹⁷ *Ibid.*, at 43.

⁶¹⁸ Anthony Musson, *Medieval Law in Context* (Manchester: Manchester University Press, 2001b), at 38-44.

⁶¹⁹ Deborah Youngs, *Humphrey Newton (1466-1536) an Early Tudor Gentleman* (Woodbridge: Boydell, 2008), at 49-50.

⁶²⁰ Sources of legal training and education, alongside the role of languages and legal literacy in medieval England will be examined in greater detail in Chapter Five.

Walter de Bibbesworth's *Tretiz de Langage*.⁶²¹ Bibbesworth's *Tretiz* is a book that aimed to help the English gentry improve their French, indicating that the differences between commonly used written and spoken languages had begun to cause difficulties for them. This seems to have been the case for Lady Dionisie de Munchensi and her children, for whom the book was specifically intended, to teach them the French vocabulary that they would need to manage their lands when they came of age.⁶²² It was written in French, and partially glossed in English for the benefit of Lady de Munchensi who was not a native speaker of French. The de Munchensi family's use of Bibbesworth's *Tretiz* points to the home as the school and the mother (or one of her servants, perhaps and administrator or private secretary) as the children's instructor, much as Orme had encouraged his readers to envisage.

Different types of teaching manuals had different agendas, and in the fourteenth century, French teaching manuals continued to proliferate in England. *Nominale sive verbale in Gallicis cum expositione eiusdem in Anglicis* was a French manual used in England in the early 1300s.⁶²³ *Nominale* was a vocabulary list of French words entirely translated into English for the reader, which sets it apart from Bibbesworth's *Tretiz* which only glossed selected words.⁶²⁴ This implies that even the simplest words in French were no longer commonly known by the English gentry. The *Tretiz* and the *Nominale* were books of vocabulary, but the technicalities of the French language were also learned through instruction manuals. The first book used to teach the parts of speech and grammar of the French language was the *Orthographia Gallica*.⁶²⁵ Unlike the books of vocabulary, at least one of the copyists (most likely the original author) of this early fourteenth-century grammar book assumed that his readers already understood Latin, so the instructions were given in that language. Only one version of this text survives in which the

⁶²¹ Annie Owen (ed.), *Le Traité De Walter De Bibbesworth Sur La Langue Française* (Geneva: Slatkine Reprints, 1977). William Rothwell, 'The Role of French in Thirteenth-Century England', *Bulletin of the John Rylands Library*, 58/2 (1976), at 458.

⁶²² M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 197-200.

⁶²³ W. A. Wright (ed.), *Femina* (Cambridge: Cambridge University Press, 1909). William Rothwell, 'The Role of French in Thirteenth-Century England', *Bulletin of the John Rylands Library*, 58/2 (1976), at 41.

⁶²⁴ W. Rothwell, 'The Teaching of French in Medieval England', *The Modern Language Review*, 63/1 (1968), at 39.

⁶²⁵ The *Orthographia Gallica* was first edited by J. Stürzinger in 1884. He based his edition on four manuscripts which he called T, C, O and H. These he presented in parallel columns to represent the three versions of the text and the variation in number of orthographic rules presented in each: 27 rules in the 'short version', 100 rules in the 'long version' and 98 rules in the 'French version'. J. Stürzinger (ed.), *Orthographia Gallica* (Heilbronn: Verlag von Gebr. Henniger, 1884). More manuscripts of the short and long versions have surfaced since Stürzinger wrote his edition, however there remains only one manuscript of the French version which dates from the fourteenth century, and these new versions of the text are presented in R. C. Johnston's edition. R. C. Johnston (ed.), *Orthographia Gallica* (London: Anglo-Norman Text Society, 1987).

rules were given in the French language, thus presuming that the users of the book already had a foundation in French and were seeking to learn the intricacies of the language, the rules of grammar and also its proper pronunciation when spoken. Whether in its Latin or French form, the *Orthographia* was clearly intended for an advanced readership that had already attended a cathedral school, a grammar school or had benefited from private tuition in these languages. As French at this time was firmly entrenched as a language of the law, the *Orthographia's* intended audience may have been scribes and lawyers who would have needed to read, write and speak French. The *Orthographia* was owned and used by at least one practising scribe, for whom we have evidence. Thomas Sampson used the *Orthographia* as a tool in his lessons at the business school in Oxford where he taught scribbling to other clerks.⁶²⁶ Sampson and his school will be examined in greater detail in the third part of this chapter.

This section has demonstrated some of the ways in which French could be learned by those wanting to do so, but it does not answer the question of why French was able to persist as a learned language for centuries after its last native speakers in England had died out. One suggestion is that it was precisely because French was known mostly by the powerful and the few in society that it was considered a desirable language to learn. Learning French was a way of climbing the social ladder in medieval England, as it was not only a useful language for oral and written exchanges in royal and local government administrations, but also in international business and affairs. Before long, the distinction between those who spoke French and those who spoke English in medieval England ceased to be ethnic in nature and became a largely social distinction. A chronicler named Robert of Gloucester described this situation in his native Gloucester dialect at around the turn of the fourteenth century:

Thus came, lo! England into Normandy's hand.
 And the Normans didn't know how to speak then but their own speech
 And spoke French as they did at home, and their children did also teach;
 So that high men of this land that of their blood come
 Hold all that same speech that they took from them.
 For but a man know French men count of him little.
 But low men hold to English and to their own speech yet.
 I think there are in all the world no countries
 That don't hold to their own speech but England alone.
 But men well know it is well for to know both,
 For the more that a man knows, the more worth he is.⁶²⁷

⁶²⁶ H. G. Richardson, 'An Oxford Teacher of the Fifteenth Century', *Bulletin of the John Rylands Library*, 23/2 (1939), at 453.

⁶²⁷ Robert Of Gloucester, *Robert of Gloucester's Chronicle. Transcrib'd, and Now First Publish'd, from a Ms. In the Harleyan Library by Thomas Hearne, M.A. To Which Is Added, Besides a Glossary ... A*

In this commentary on the linguistic situation of medieval England, Robert of Gloucester not only explains his belief for why people speak French in England, but also demonstrates the social divide that existed between the speakers of these languages at that time. English was the language of ‘low men’ while French was the language of ‘high men’ who were perceived as having more worth than those who spoke only English. Thus bilingualism was an indicator of social status in this multilingual society as it occurred most often among members of the upper classes.⁶²⁸ However, Gloucester indicates that by learning French, one could improve one’s status and thereby increase his ‘worth’ through education.⁶²⁹ This seems to be what many scribes were doing as part of a body of men who were climbing the social ladder as bureaucrats and administrators.

English

Finally, what place (if any) was left for English in learning and education? We have seen how English could be used to facilitate the learning of Latin and French, but what resources were available for a person who wanted to learn English? The short answer is that there were none, per se. English was used in different ways to Latin and French throughout much of the fourteenth century due to the fact that it lacked the institutional supports of government and education, the ideological support of theology and the formal supports of standardized grammars and dictionaries – all of which were given to Latin and French.⁶³⁰ Without these supports, English developed its covert prestige by expanding into domains that had been hitherto restricted to Latin and French. Even though it remained the language of the majority while carrying with it the least amount of authority, English gained important momentum in this period. It is in fact to this period that we can date an emergent self-consciousness about English and its use in society, such as Gloucester’s comments on England’s unique and somewhat distorted relationship with its native tongue.⁶³¹ John of Trevisa’s famous remarks in his English translation of Ranulf Higden’s Latin chronicle *Polychronicon* are a further reflection

Continuation (by the Author Himself) of This Chronicle from a Ms. In the Cottonian Library, 2 vols. (1; Oxford, 1724), at 364. Construed into modern English in: Albert C. Baugh and Thomas Cable, *A History of the English Language* (6th edn.; London: Routledge, 2013), at 114.

⁶²⁸ Douglas A. Kibbee, *For to Speke French Trewely: The French Language in England, 1000-1600* (Amsterdam: John Benjamins, 1991), at 29.

⁶²⁹ I will return to this theme of ‘worth through education’ in the Conclusion of this thesis.

⁶³⁰ Tim William Machan, ‘Language Contact in Piers Plowman’, *Speculum*, 69/2 (1994), at 380.

⁶³¹ *Ibid.*, at 385.

of the general awareness of linguistic diversity in England in the later 1300s.⁶³² An entire chapter of *Polychronicon* is dedicated to detailing the native dialects of English and the subsequent corruption of the English language as a result of the encroachment of French in grammar schools. This demonstrates an awareness of the social impact made on English as a consequence of teaching children in French. Higden criticises teaching schoolboys to construe from Latin into French since this causes them to speak French and neglect their own English language.⁶³³ Higden explains that noblemen teach their children French from birth, which serves to differentiate them from the native English speakers of England. In the 1380s, John of Trevisa's translation of Higden's text also explained that the result of this prevalence of French in English schools and homes was that the French language had become a sign of gentility in contrast to the lewdness of English.⁶³⁴ Furthermore, Trevisa tells the reader that this was the state of French and English in English society up until the first instance of the plague, after which time a schoolmaster named John of Cornwall began to teach children to construe their French into English, which eventually caused children to know no more French than their 'lift heele'.⁶³⁵ Higden's chronicle and Trevisa's accompanying glosses demonstrate that in this period, English society was becoming increasingly conscious of the social statuses and uses of the vernacular languages in England. As a result of this linguistic awareness, the use of English began to be encouraged in more varied applications throughout the second half of the century – like literature and the law – and medieval scribes had a part to play in these innovations.

3. Legal literacy

The previous section considered the social roles of Latin, French and English in medieval English society and examined the ways in which potential scribes were able to obtain at least a foundation-level education in languages and literacy through formal education and through the use of language manuals in private study. Historians have yet to uncover evidence of the education of scribes and as a result 'we are very imperfectly informed about their authors, the "common clerks" ... where was he educated and, in particular, where did he learn his law?'⁶³⁶ Susan Reynolds also advocates the study of the people who worked at the lower reaches of the legal profession, conveying land and securing debts, and she too questions how

⁶³² Churchill Babington (ed.), *Polychronicon Ranulphi Higden Monachi Cestrensis; Together with the English Translations of John Trevisa and of an Unknown Writer of the Fifteenth Century* (2; London: HMSO, 1869).

⁶³³ *Ibid.*, at 160.

⁶³⁴ *Ibid.*, at 159.

⁶³⁵ *Ibid.*, at 161.

⁶³⁶ G. H. Martin, 'The English Borough in the Thirteenth Century', *Transactions of the Royal Historical Society*, 13 (1963), at 142.

the people who advised on such matters and wrote these deeds learned their trade.⁶³⁷ In order to answer these questions, this section will consider the importance of linguistic literacy in the law and focus on evidence of the availability of specialised training in the art of scrivening and the law through the presence of business schools in Oxford, instances of apprenticeship and the use of legal tracts and treatises. Evidence of the implementation of these acquired skills will be demonstrated through the use of the *ars dictaminis* in medieval petitions.

The early legal profession was largely unregulated and as a result, its practitioners exhibited variable levels of skill in both languages and the law. Both legal and linguistic illiteracy were social concerns in London from at least as early as the thirteenth century and this is reflected in an Ordinance of 1280. This ordinance reveals that at that time, there was a general perception of excessive litigation taking place in the city which people believed was being carried out by incompetent lawyers.⁶³⁸ The Ordinance was a product of longstanding displeasure with lawyers generally in the London courts, but it also highlighted contemporary complaints about the legal illiteracy of certain pleaders whose ineptitude was considered injurious to not only their clients in particular but also to the profession as a whole. This caused a great scandal in the courts that had allowed these men to practise as pleaders (also known as *countors* or *narratores*) attorneys and essoiners (or assessors).⁶³⁹

Specifically, the Ordinance revealed that ‘pur ceo qe soventefoiz par ascunes qi countours se firent, qi lour mestier ne savoient, ne ne eurent apris’.⁶⁴⁰ Not only did these men not understand their profession, but they had not ‘learned it’ adequately which was all the more insulting to those who had. This was not a criticism of their ignorance of the ‘learned laws’ taught at the medieval university, but a damning indictment on their lack of comprehension of the laws of the city in which they practised law. Furthermore, these ignorant men ‘itel ascune foitz qi bone langage ne savoit parler’ were highly criticised for their inability to speak in the proper language.⁶⁴¹ This can be interpreted in two ways. Quite literally, these men may have

⁶³⁷ Susan Reynolds, 'Variations in Professionalism', *Law and History Review*, 21/2 (2003a), at 391.

⁶³⁸ Jonathan Rose, 'Medieval Attitudes toward the Legal Profession: The Past as Prologue', *Stetson Law Review*, 28 (1998), at 354. This Ordinance marks the beginning of a specialisation within the legal profession. See: Penny Tucker, 'First Steps Towards an English Legal Profession: The Case of the London Ordinance of 1280', *English Historical Review*, 121/491 (2006).

⁶³⁹ Henry Thomas Riley (ed.), *Munimenta Gildhallae Londoniensis: Liber Albus, Liber Custumarum Et Liber Horn* (2 Part 1; London: Longman, Green, Longman and Roberts, 1860) at 280-281. The pleaders that were criticised in the London Ordinance are the predecessors of the serjeants-at-law who eventually held a monopoly on pleading in the central courts.

⁶⁴⁰ *Ibid.*, at 280.

⁶⁴¹ *Ibid.*

been unable to verbally address the court in either of the two languages of the law – French or Latin. Even more likely is that these men were ignorant of the technical vocabulary of the law and legal process, thus bungling their attempts to speak on behalf of their clients because they were incapable of speaking the language of the court as an institution. Considering that the job of a pleader was to stand with his client in court and plead his case, an inability to adhere to the precise formulaic phraseology of the court would certainly end in failure. The use of the wrong plea or the wrong words in a plea could lead to dismissal or to the loss of the case without the right to appeal, so the legal and linguistic literacy of pleaders was essential to the success of a case.⁶⁴²

In the absence of formal advanced legal education at this time through the Inns of Court or Chancery, these ‘ignorant’ men were still expected to learn the basic usage of the languages of the law and the correct ways of speaking. The first section of this chapter demonstrated some of the various ways in which Latin and French grammar could be learned and also how languages were taught by scribes, to scribes. The question of the provision of legal education for scribes in the medieval period has yet to be studied by legal historians and the remainder of this chapter will analyse the information that we have on basic legal education in order to answer how men, like scribes, were able to learn enough law to pursue careers at the administrative level of the legal profession.⁶⁴³ In particular, this section uses Oxford and its business schools to argue that schools like this were the basis of education for provincial town clerks and scribes and to show that legal and linguistic training was available to students outside of London.

Training

Thus far this chapter has established that there were plenty of opportunities for boys and young men to learn a little written English and French at home and at least a bit more French

⁶⁴² This also applied to the writing of writs, if factual errors were made or the Latin was grammatically incorrect, the writ could be invalidated. By contrast, bills or petitions, which were written in French, were allowed to contain ‘rambling phrases’ and errors in spelling or grammar. See: Anthony Musson, ‘Law and Text: Legal Authority and Judicial Accessibility in the Late Middle Ages’, in Julia Crick and Alexandra Walsham (eds.), *The Uses of Script and Print, 1300-1700* (Cambridge: Cambridge University Press, 2004), at 108.

⁶⁴³ J. H. Baker, *The Third University of England: The Inns of Court and the Common-Law Tradition* (London: Selden Society, 1990), J. H. Baker, ‘Oral Instruction in Land Law and Conveyancing. 1250-1500’, in J. A. Bush and Alain Wijffels (eds.), *Learning the Law: Teaching and the Transmission of Law in England, 1150-1900* (London: Hambledon, 1999), Paul Brand, ‘Courtroom and Schoolroom: The Education of Lawyers in England Prior to 1400’, *Historical Research*, 60/142 (1987), David S. Clark, ‘The Medieval Origins of Modern Legal Education: Between Church and State’, *The American Journal of Comparative Law*, 35/4 (1987), Janice Gordon Richter, ‘Education and Association: The Bureaucrat in the Reign of Henry VI’, *Journal of Medieval History*, 12 (1986).

and Latin grammar both at home and at school throughout the medieval period, but how did they learn to apply these languages in the workplace? More specifically, how could their basic (or even advanced) knowledge of Latin, French and English be practically applied to learning the law and legal formulae in anticipation of going into the scrivener business as the bailiff of an estate, as a freelance scribe or even as a professional scribe like a town clerk? Scrivener was a universal skill that could be applied to myriad occupations, so how was it learned? In order to learn the art of scrivener, men required specialised training that went beyond the level of a typical grammar school education. This section will argue that there were at least three avenues open to literate laymen to pursue this type of training. The first was at what were known as the business schools, evidence for which is plentiful in Oxford; the second was through the traditional route of an apprenticeship while the third was through the private study of tracts and treatises on the law and manuals of legal formulae. In all three instances, it is clearly shown that if a clerk wanted to obtain a specialised education in scrivener, he had to go to a scrivener to get it.

Evidence of the training available in 'business' (loosely defined) in medieval Oxford has attracted the attention of several scholars interested in different aspects of the curriculum offered, the teachers and their students. This school was not a university and it did not aim to award degrees in either civil or canon law. Instead this was a place 'for the less academically inclined' – in John Baker's words – or, as it was described by H. G. Richardson, this was a place 'to train young men in business methods – to write letters, to keep accounts and to do miscellaneous legal work for landowners of substance'.⁶⁴⁴ Essentially, the purpose of this

⁶⁴⁴ Baker highlights the fact that while Oxford's business schools were not affiliated with the university, they seemed to have operated with its blessing as the schools and their students are occasionally mentioned in the university's statutes. J. H. Baker, 'Oral Instruction in Land Law and Conveyancing. 1250-1500', in J. A. Bush and Alain Wijffels (eds.), *Learning the Law: Teaching and the Transmission of Law in England, 1150-1900* (London: Hambledon, 1999), at 160, H. G. Richardson, 'An Oxford Teacher of the Fifteenth Century', *Bulletin of the John Rylands Library*, 23/2 (1939), at 458. For those students who went on to work for landed gentry, there were several didactic treatises on estate management that were available to them for further study and reference, in particular *Seneschaucy*, the *Anonymous Husbandry* and Robert Grosseteste's *Rules*. For a list of these manuscripts and their owners, see: Dorothea Oschinsky, 'Medieval Treatises on Estate Management', *The Economic History Review*, 8/3 (1956), at 298.

Schools that specialised in common law teaching have been identified in London and Westminster, although this thesis is primarily concerned with the Oxford schools as they are examples of providers of provincial legal education. Paul Brand's research on the instruction of lawyers in London before the Inns of Court and during the early years of their foundation can be found in his article: Paul Brand, 'Courtroom and Schoolroom: The Education of Lawyers in England Prior to 1400', *Historical Research*, 60/142 (1987). For more on the Inns and the role they played in formalizing English legal education, see:

school was to provide practical vocational training in scrivenering by teaching students to write and speak in French, the proper way to hold lay courts, to plead in court and also to write letters and conveyances according to the appropriate rules and conventions of these types of documents.

Oxford business schools

In his work on the Oxford 'school of clerkship', John Baker focused on the availability of oral training in land law and conveyancing there which has, in the past, been largely overlooked in favour of the teaching of language and *dictamen* that was also delivered at schools of this type. Thomas Sampson, Simon O, William Kingsmill and David Pencaer are the four known teachers of the Oxford business school that Baker considered in his research, and taken collectively, they reflect a group of men who drew on a pre-existing body of knowledge to teach their students what they needed to know of the law, all the while consciously expanding on the resources available to future instructors by setting their lectures down in writing. More significantly, these men were all scriveners who used their legal and linguistic expertise to teach their craft to the next generation. This transmission of information impacts our understanding of the training and education that was made available to scriveners in the Middle Ages and solves the problems posed by Martin and Reynolds.

Simon O's successor, William Kingsmill, is one of the few readily identifiable London scriveners who migrated to Oxford to teach his craft. It appears as though Kingsmill was driven to teach in the countryside not because he was particularly passionate about education, but because he had been dismissed from his duties as the under-marshal of the Court of King's Bench in 1419 and was no longer welcome to practise in London.⁶⁴⁵ Like Thomas Sampson and Simon O before him, Kingsmill taught his students through the use of specimen or exemplar formulae. In all of these examples, the specimens were devised by the teachers and rather than use real events or situations they presented the contents in a more imaginative way.⁶⁴⁶ These teachers frequently inserted themselves into their exemplars and used their own names for those of

J. H. Baker, *The Third University of England: The Inns of Court and the Common-Law Tradition* (London: Selden Society, 1990).

⁶⁴⁵ Nigel Ramsay, 'Scriveners and Notaries as Legal Intermediaries in Later Medieval England', in Jennifer Kermode (ed.), *Enterprise and Individuals in Fifteenth-Century England* (Gloucester: Alan Sutton, 1991), at 124.

⁶⁴⁶ One obvious example of this can be found in a patent in which Simon O inserts himself as 'King Simon'. See: J. H. Baker, 'Oral Instruction in Land Law and Conveyancing. 1250-1500', in J. A. Bush and Alain Wijffels (eds.), *Learning the Law: Teaching and the Transmission of Law in England, 1150-1900* (London: Hambledon, 1999), at 166.

their imaginary clients which reveals the playful nature with which they must have approached their lessons and classroom pedagogy.⁶⁴⁷

David Pencaer succeeded William Kingsmill and like his forebears, he based some of his lessons on those of his immediate predecessor and some on legal sources, such as Huguccio, Hengham and the *Year Books*.⁶⁴⁸ Baker shows that Simon O's lectures on conveyancing were based on Thomas Sampson's method as well and also that he relied on *Old Tenures*, *Britton*, the *Natura Brevium* and even the *Year Books* (along with other sources of the common law) for his teaching on the subject. As a business school teacher, Pencaer is an important example of a scrivener-teacher. Unlike Thomas Sampson and Simon O, who seemed to have both been professional educators, Pencaer was a career clerk who became a teacher only after he had already held the important post of Oxford's town clerk.⁶⁴⁹ Therefore Pencaer was not only a practising scrivener, he was also a town clerk who taught. Moreover, this convergence of three careers – scrivening, clerking and teaching – has never before been so clearly identified as being represented by a single individual. Martin questioned the sources of education for 'common clerks' and Pencaer provides the answer.

Apprenticeship

It is possible that Pencaer was already accustomed to teaching scrivening to apprentices in the guildhall and he might have merely transferred his practical skills used in the workplace to apply to teaching in a classroom setting. The next section will examine further evidence which points to the widespread availability of both practical and theoretical training in scrivening outside of London. The frequency of apprenticeships within the scrivening community is difficult to determine. Some of the apprenticeship records for London's Scriveners' Company have survived, but these are incomplete. The *Common Paper* was the name given to a collection of the London scriveners' annual records, craft regulations, membership and apprenticeship lists beginning in 1357 and ending in 1628. Tellingly, with the exception of William Kingsmill, evidence of apprentices receiving their training at the hands of the London guild's émigrés to the countryside is wanting, which suggests that English scrivening as a trade was independent from London's body of skilled legal scribes. Instead, provincial scriveners

⁶⁴⁷ A useful parallel can be found in the teaching of grammar school masters who gave their students silly phrases to practise their translations.

⁶⁴⁸ J. H. Baker, 'Oral Instruction in Land Law and Conveyancing. 1250-1500', in J. A. Bush and Alain Wijffels (eds.), *Learning the Law: Teaching and the Transmission of Law in England, 1150-1900* (London: Hambledon, 1999), at 170-171.

⁶⁴⁹ *Ibid.*, at 170. For a brief professional biography of Pencaer, see: Graham Pollard, 'The Medieval Town Clerks of Oxford', *Oxoniensia*, 31 (1966), at 73-74.

who worked as administrators were more likely to have been educated local men trained on the job by their predecessors who were trained in a similar fashion themselves.⁶⁵⁰ There are some indications of the ways in which scrivenering could be learned on the job. For example, John Kedwelly's petition which was briefly discussed in Chapter Four demonstrates that scribes had apprentices. When he writes that he sent two of his servants to sell cloth at La Rochelle, they may very well have been his apprentices Thomas Hore and John Craft who, on a separate occasion, had previously acted on his behalf in the collection of a debt owed to him in Ireland.⁶⁵¹

Provisions for apprenticeship within York's scribes' guild were set out in the guild's first Ordinances, stating that no master scribe was permitted to take on an apprentice for less than five years. The apprentice had to be at least sixteen years of age and he was bound to his master for his apprenticeship: 'Item que nul mestre escrivein preigne apprentice pur meyndre terme que pur v ans; et que le dit apprentice soit del age de xvj ans au meyns, et qil preigne nul autre pur apprendre sinon qil soit son apprentice'.⁶⁵² Further evidence of formal apprenticeship as a method of learning the scribe's craft outside of London can be demonstrated in a case found in the *Year Books* which was heard in the Court of Common Pleas in 1431. It concerned a master who attempted to sue his apprentice on a writ of the Statute of Labourers (1351), based on the plea that the plaintiff had retained the defendant as his apprentice to be a scribe. The plaintiff had agreed to teach the defendant to write ('informer a escrire') for seven years, however the apprentice left his position before the end of his apprenticeship.⁶⁵³ The defendant countered this accusation with the allegation that as an apprentice he could not be considered the plaintiff's servant and therefore he could not be held accountable under the Statute of Labourers. Sjt Chaunterell argued that even if the plaintiff had retained the apprentice for seven years, apprenticeship by indenture is an act of covenant as each party is bound to the other. Consequently an apprentice is expected to only do that which pertains to his 'mystery' and to follow the custom of the city where the

⁶⁵⁰ For an overview of apprenticeship as a means of introducing young men to the business side of their trades, see: Leverett S. Lyon, 'Medieval English Apprenticeship as Business Education', *The School Review*, 28/8 (1920).

⁶⁵¹ Thomas Bruce Dilks (ed.), *Bridgwater Borough Archives, 1400-1445* (58; Frome: Somerset Record Society, 1945) at 15. Document no. 517. Note that the date for this power of attorney is incorrectly given as 1420 in the History of Parliament entry: Carole Rawcliffe, 'Kedwelly, John, of Bridgwater, Som.', in J. S. Roskell, L. Clark, and C. Rawcliffe (eds.), *The History of Parliament: The House of Commons 1386-1421* (3: History of Parliament Trust, 1993), at 509-510.

⁶⁵² Maud Sellers (ed.), *The York Memorandum Book. Part I (1376-1419), Lettered a/Y in the Guildhall Muniment Room* 2 vols. (1; Durham: Surtees Society, 1912) at 56.

⁶⁵³ David J. Seipp and Carol F. Lee (ed.), *1-20 Henry VI, 1422-1442* 11 vols. (The Year Books [Reprinted in 2007], 7; London: George Sawbridge, 1678, 1679-80) at 9 Hen. VI, plea 18, fol. 17b-18a.

apprenticeship is held.⁶⁵⁴ Ultimately, Cottesmore JCP determined that it was the plaintiff's 'own folly' to take the defendant on as an apprentice without an indenture (because only a writ of covenant can be sued on an apprenticeship, and not a writ on the Statute of Labourers).⁶⁵⁵ Ironically, it was the master's failing to keep a written record of his own apprenticeship agreements that was criticized in this case.

Nevertheless, it is also in this case that Babington CJCP set out the principle that 'chaqun apprentice est le servent de son Maistre'.⁶⁵⁶ The extent to which the Statute of Labourers applied to scribes can be interpreted in different ways. While they were not 'labourers' per se, the Statute of Labourers did not distinguish between wage earners and businessmen; instead it classified 'every one purporting to deal with the public [as] a "minister", "workman", "artificer" or "servant", as the case may be'.⁶⁵⁷ Adler clarifies that scribes were classed as artificers, which is a term for artisans or craftsman and this appears in some translations of the Statute of Labourers. Furthermore, the Ordinances of York's scribes refer to their occupation as an 'artifice' no less than seven times in what is a relatively short text.⁶⁵⁸ In this context, the York scribes are clearly using the term artifice in the same manner as a tradesperson would use the term 'craft'. A specific and very precise reference to scribes as artificers can be found in the *Year Books* in which Brook, J. states: 'Issint si un artificier acquir(e) a luy plusieurs customers que autr(e) de mesme l'art; come Scrivener, ou Schoolmaster qui ad plusieurs disciples que aut(re), p(ur) c(eo) q(ue) il e(st) plu(s) erudite, c(eo) e(st) dam(mage) a l'aut(re)'.⁶⁵⁹ This connection between scribes and schoolmasters is telling as it accurately reflects the position of the Oxford teachers as scribe-schoolmasters.

Scribes could also be trained on the job as a type of informal apprenticeship and this may have been the commonest form of professional 'education' for this class of clerk. At least as

⁶⁵⁴ 'Meme cesty fuit retenu ove le plaintiff d' estre son apprentice pour estre un escrivener, & que le plaintiff doit luy informer a escrire per vij ans; apprentice per indenture; fessance d' apprentice est un covenant, & chaqun lie a l' auter, & l' apprentice n' est pas tenu a fair auter chose, mes cest que appartient a son mistiere, & le custome de chaqun ville ou apprentice est'.

⁶⁵⁵ David J. Seipp and Carol F. Lee (ed.), *1-20 Henry VI, 1422-1442* 11 vols. (The Year Books [Reprinted in 2007], 7; London: George Sawbridge, 1678, 1679-80) at 9 Hen. VI, plea 18, fol. 18a.

⁶⁵⁶ Ibid.

⁶⁵⁷ Edward A. Adler, 'Labor, Capital, and Business at Common Law', *Harvard Law Review*, 29/3 (1916), at 251. It was not until 1563 that guidelines were set out regarding the terms of employment for servants, labourers and apprentices. These can be found in the Statute of Artificers (1563).

⁶⁵⁸ For the text of the Ordinances of York's scribes and its references to 'artifice', see Chapter Two, footnote 73.

⁶⁵⁹ David J. Seipp and Carol F. Lee (ed.), *Edward V, Richard III, Henry VII and Henry VIII, 1483-1535* 11 vols. (The Year Books [Reprinted in 2007], 11; London: George Sawbridge, 1679-80) at 12 Hen. VIII, plea 13, fol. 13b.

early as the thirteenth century, county administration was a means for clerks to rise in the ranks of provincial courts and learn their law. Frank Pegues explains:

The office of sheriff afforded a splendid opportunity to learn English law and judicial administration ... from time to time clerks of his staff were called on to perform most of the duties pertaining to his office. And it was probably here at the level of staff clerks that the real instruction took place ... Among these multifarious tasks were the empanelling of jurors, attaching defendants for the county court, the keeping of writs, rolls, accounts and, of course, the rendering of the sheriff's account at the exchequer.⁶⁶⁰

Furthermore, Pegues instructs us to be mindful of the fact that the sheriff's clerk 'received and kept the original writs issuing from the chancery and directed to the sheriff – writs which were the initiating force of thirteenth-century English law ... [and from which the sheriff's clerk] could learn a great deal about procedural law'.⁶⁶¹ The sheriff's clerk is known to have held the county court in the absence of the sheriff himself, thus demonstrating that the clerk was able to exercise both the clerical and legal responsibilities of the sheriff's office. Nearly all of the duties of the sheriff's clerk were performed in a similar fashion by town clerks working in the guildhalls and local courts of provincial England, thus what was happening in the sheriff's office was being paralleled in the administrations of towns and boroughs.⁶⁶²

Practices that were already established in Exeter's sixteenth-century guildhall point to a similar method of on-the-job training within the secretariat of the city. John Vowell, *alias* Hooker, became the first person to hold the office of chamberlain in Exeter in 1554/55. His chief duty was to look after the city's orphans but he also assisted the town clerk and the city's receiver in his role. In the introduction to his book the *History of Exeter*, Hooker reveals a great insight into the internal mechanisms for workplace training available in the guildhall. First, he tells us that in his eagerness to serve the city to the best of his ability, he ingratiated himself with Master Richard Hert who was the town clerk at the time of his appointment. Hooker tells us that with much love and affection, Hert nourished his humour and instructed him: 'in all things w^{ch} app[er]tained and w^{ch} in his opinion was to be donne: ffirst in the counsell chambre where

⁶⁶⁰ Frank Pegues, 'The Clericus in the Legal Administration of Thirteenth-Century England', *The English Historical Review*, 71/281 (1956), at 540. For the judicial duties of sheriffs up to 1307, see: William Alfred Morris, *The Medieval English Sheriff to 1300* (Manchester: Manchester University Press, 1968), at 189, 209.

⁶⁶¹ Frank Pegues, 'The Clericus in the Legal Administration of Thirteenth-Century England', *The English Historical Review*, 71/281 (1956), at 540-541.

⁶⁶² The possibility of actual links existing between sheriff's clerks and town clerks is worthy of further investigation, however it falls outside of the realm of this thesis as the sheriff's clerks would first need to be identified and then compared to known town clerks within the sheriff's jurisdiction. Due to the abundance of material that would need to be examined in order to identify all of the potential candidates, this would be lengthy project, but also a very valuable one.

I was a diligent trauellor [worker] asswell in attendinge the Mayo^r and his brethren in matters of counsell as in pennyng their actes and devisinge their l[ett]res to any estate or p[er]son'.⁶⁶³

Furthermore, it was Herte who gave him a crash course in local law and procedure:

M^r Hert dyd also instructe me in matters of lawe concerninge his office. The order and keepinge of courtes the keepinge of sessions and instructinge me in all thinges concerninge the peace takinge of recognisaunce, examyninge of witnesses makinge of indictmente and all other thinges p[er]tayninge therunto: and when I was somewhat expert therin I dyd in all thinges app[er]tayninge to his office p[er]forme it to his greate comfort and to my knowledge and experience.⁶⁶⁴

It is important to remember that Hooker was not in any way ignorant of the law – according to his biographer he had read civil law at Exeter College Oxford, although he left without taking a degree.⁶⁶⁵ He also studied law at Cologne and divinity in Strasbourg. In 1559 he gave legal advice to the city's merchant adventurers in a dispute with the craft guilds over the former's new charter of incorporation and travelled to Ireland in 1568 as the private legal secretary and adviser of Sir Peter Carew before returning to Exeter and continuing in his role as chamberlain until his death.⁶⁶⁶ However, it does not seem as though he was expected to already possess these skills at the time of taking up the job. Even Hooker's own recollections focus upon the practical legal training that he received under the tutelage of Master Richard Hert, rather than emphasize the formal theoretical education in the law that he had received elsewhere. There is no reason to believe that it would be anachronistic to assume that Hooker's training was typical of the training of town clerks in general, even in the earlier period, as he gives no indication that there is anything novel or extraordinary about it. Therefore this method of training was probably the norm for Exeter's civic administrators.

Legal tracts and treatises

The use of legal tracts and treatises on oral pleading, writ composition, statutes and land management supplemented a provincial scrivener's knowledge of the law. As the central courts in particular were strict about the oral and written accuracy of pleading during all of its stages (from writ to courtroom), it is not surprising that medieval lawyers needed books to guide them through these complicated procedures. From an early period there were a large

⁶⁶³ W. J. Harte (ed.), *An Account of the Sieges of Exeter, Foundation of the Cathedral Church and the Disputes between the Cathedral and City Authorities by John Vowell Alias Hooker* (Exeter: James G. Commin, 1911) at 1.

⁶⁶⁴ *Ibid.*, at 2.

⁶⁶⁵ N. M. Fuidge, 'Hooker, Alias Vowell, John (c. 1527-1601)', in P. W. Hasler (ed.), *The History of Parliament: The House of Commons 1558-1603* (2; London: HMSO for the History of Parliament Trust, 1981), at 334.

⁶⁶⁶ S. Mendyk, 'Hooker, John (c. 1527-1601)', in Lawrence Goldman (ed.), (Oxford: Oxford University Press, 2005).

number of written resources available to students of English law that concerned pleadings or countings, however this thesis is primarily concerned with those texts that elucidate elements of legal procedure as these were more relevant to provincial scribes and their day-to-day business. The first of these were the works attributed to Ranulf Glanville and Henry de Bracton (although not authored by them). The mid-thirteenth-century treatise *Tractatus de legibus et consuetudinibus regni Angliae* was a practical text covering the forms of procedure in the court of King's Bench and it still provides the earliest and best description of the court's framework.⁶⁶⁷ Bracton's was a complementary text written in around the same period and *De legibus et consuetudinibus Angliae* constituted a study of the forms of the original writs used in England.⁶⁶⁸

A medieval scrivener who also engaged in pleading could rely upon the very popular fourteenth-century pleading manual *Novae Narrationes* for helpful instruction.⁶⁶⁹ This manual collected model 'counts' or 'narrations' which were the formal statements made by plaintiffs in response to the specific writs that had brought their cases to court. It is a compilation of thirty-eight manuscripts dating from 1285-c. 1310. While pleading may never have been of much consequence to some provincial clerks, knowledge of it was required in order to choose the appropriate writs. For the writs themselves, the medieval clerk or lawyer had several treatises on the subject from among which he could choose to seek guidance. Provincial scribes, just like London's clerks, would have understood the writ process in order to initiate legal action in the royal courts. This knowledge could be acquired by reading the *Brevia Placitata* which was a collection of writs written in Latin and translated into French and accompanied by an example of a specimen count and defence for each.⁶⁷⁰

The fact that an increasing number of legal texts on oral pleading and writ composition had begun to proliferate in the fourteenth century and were either written in French or were translated from Latin into French shows how French was the preferred medium of instruction and reference for medieval legal professionals. It was certainly becoming the most common

⁶⁶⁷ G. D. G. Hall (ed.), *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill* (Oxford: Clarendon, 2002). Glanville's authorship has been rejected by some authorities based on the fact that he would not have had sufficient leisure time to complete such a work. See: Ralph V. Turner, *The English Judiciary in the Age of Glanvill and Bracton* (Cambridge: Cambridge University Press, 1985), at 33. Josiah Cox Russell, 'Ranulf De Glanville', *Speculum*, 45/1 (1970), at 69-70.

⁶⁶⁸ Samuel E. Thorne (ed.), *On the Laws and Customs of England* 4 vols. (Cambridge: Harvard University Press, 1968-1977).

⁶⁶⁹ Elsie Shanks and S. F. C. Milsom (eds.), *Novae Narrationes* (London: Bernard Quaritch, 1963).

⁶⁷⁰ G. J. Turner and T. F. T. Plucknett (eds.), *Brevia Placitata* (Selden Society, 1951).

written language of the law from around this date and the majority of written petitions presented to the crown before the third decade of the fifteenth century were written in French, as were other official government documents like the parliament rolls. Not only was French a more familiar language, but it was also the language of choice for medieval lawyers who used it to write the *Year Books*. While we know that Latin continued to be used occasionally, the vast bulk of the records were written in French and continued to be so written until French began to give way to English in the later years of the century.⁶⁷¹ What is less clear, however, is the extent to which the written language of these legal texts reflected the oral languages of the courts as there is little direct evidence of the languages spoken in court, excepting the Statute of Pleading.

Collections of statutes were used by provincial scribes to learn old laws and stay current with new legislation. Humphrey Newton's commonplace book showed how he used copies of statutes that he obtained from local lawyers to learn his law. Statute books were quite useful to all manner of people, not just those who practised the law but also those who were directly impacted by it – most notably, members of the landed classes. We know relatively little about the private ownership of books of law, legal treatises and the like, however we do know that statute books were owned by London's lawyers and Andrew Horn, who was the chamberlain of London. In his will, Horn bequeathed a number of books to the Chamber of the Guildhall, among them a book called *De Statutis Angliae* which would later be considered a compilation of the 'old statutes'.⁶⁷² Books on statutes were similarly owned by provincial businessmen like John Bount and Philip Langley, both of Bristol. From the evidence found in their wills, we can see that in 1404 John Bount left his books of the 'new statutes' (which date from the reign of Edward III) '*nova statute mea*' to John Beoff who was an 'apprentice of the court' and perhaps a junior barrister in London.⁶⁷³ Philip Langley, alderman of Bristol, also possessed a copy of the new statutes which he left to his son, along with his Bible – the first representing temporal laws while the second contained the tenets of the faith eternal.⁶⁷⁴

⁶⁷¹ Helen Suggett, 'The Use of French in England in the Later Middle Ages', *Transactions of the Royal Historical Society*, 28 (1946), at 69.

⁶⁷² R. R. Sharpe (ed.), *Calendar of Wills Proved and Enrolled in the Court of Husting, London: Part 1: 1258-1358* 2 vols. (1; London: Corporation of London, 1889) at 344.

⁶⁷³ TNA, PRO PROB 11/2A f. 61 [24 Aug. 1403, probate granted 6 Feb. 1404/5] For a transcript of Bount's will, see Rev. F. W. Weaver (ed.), *Somerset Medieval Wills (1383-1500)* (26: Somerset Record Society, 1901) at 11-14.

⁶⁷⁴ T. P. Wadley, *Notes or Abstracts of the Wills Contained in the Volume Entitled the Great Orphan Book and Book of Wills* (Bristol: Bristol and Gloucestershire Society, 1886), at 266.

Perhaps of even greater importance to the landed classes and the clerks and scribes who managed estates were collections of the tenures, or collections of land law. What became known as the 'old' tenures is a tract that was written sometime during the reign of Edward III while the term 'new' tenures was applied to Littleton's *Tenures* and was used to distinguish his late fifteenth-century book from the former.⁶⁷⁵ Littleton has been attributed with having written the first thoroughly English book of law, meaning that it is entirely devoid of any direct references to Roman law.⁶⁷⁶ John Baker's research into the teaching of land law has uncovered that 'the elementary law of property could be learned from the Old and New *Tenures*, [and] the precedents copied or adapted from written collections'.⁶⁷⁷ Littleton's *Tenures* were, in fact, written with instruction in the law in mind. The author professes that the book was written in order to help his son Richard in his study of the law. Rather poignantly, Littleton's epilogue tells us why he wrote his book for his son, believing as he did that 'such things shall make thee more apt, and able to understand and apprehend the arguments and the reasons of the law, &c. For by the arguments and reasons in the law, a man more sooner shall come to certainty and knowledge of the law'.⁶⁷⁸ Both Philip Langley and Littleton were concerned with the futures of their sons and hoped that a good grasp of the law would keep them on the right path in life. Again, this is further evidence that scrivenering was considered a career for the burgeoning middle class.

The further importance of this book, and other such manuals, to the study of early English law was stated by William Rastell, the Tudor barrister and publisher who prefaced a printed collection of twelve law tracts with this statement on Littleton's contribution: 'How commodious and profitable unto gentlemen students of the law, be these thre bokes, that is to wit, *Natura Brevium*, the olde tenures, & the tenures of mayster Lyttlyton...for lyke as a chylde goyng to scole, fyrste lerneth his letters out of the a. b. c.: so they that entende the study of the law, do fyrste study these iii. bokes'.⁶⁷⁹ *Tenures* brought together all the information that a scrivener would need in order to write a perfect conveyance. While Littleton's work was an expository text and not a formulary like the *Old Natura Brevium*, it did explain the technical terms and stock phrases that were expected to appear in certain types of property transactions while also explaining the meaning of the different types of tenancy. For example,

⁶⁷⁵ Eugene Wambaugh (ed.), *Littleton's Tenures* (Washington: John Byrne & Co, 1903).

⁶⁷⁶ *Ibid.*, at xii.

⁶⁷⁷ J. H. Baker, 'Oral Instruction in Land Law and Conveyancing. 1250-1500', in J. A. Bush and Alain Wijffels (eds.), *Learning the Law: Teaching and the Transmission of Law in England, 1150-1900* (London: Hambledon, 1999), at 173.

⁶⁷⁸ Eugene Wambaugh (ed.), *Littleton's Tenures* (Washington: John Byrne & Co, 1903) at 341.

⁶⁷⁹ Quoted in: *Ibid.*, at lxiii.

in the first chapter of the first book of the *Tenures*, Littleton tells his readers that a ‘tenant in fee simple is he which hath lands or tenements to hold to him and his heirs forever’ meaning that it is a ‘pure inheritance’. Next, Littleton advises his reader to include the words ‘to have and to hold to him and to his heirs’ in any purchase of lands or tenements in fee simple, for if the word ‘heirs’ is left out of the conveyance then the meaning of the conveyance changes and it becomes an estate for term of life rather than an estate of inheritance.⁶⁸⁰ From the offset, Littleton draws his readers’ attention to the minutiae of land law by demonstrating how a simple omission of one word, or the use of the word ‘assigns’ instead of ‘heirs’ is able to completely alter the nature of a deed.

Ars dictaminis

The first half of this section has argued that between the business schools in Oxford, the availability of apprenticeships and abundance of legal tracts and treatises available for both communal and private instruction, an education in scrivenering was readily available in provincial England. This begins to answer Susan Reynolds’ question in which she asked how the writers of deeds learned their trade, but it does not show how their legal and linguistic knowledge manifested itself in the written word. By focussing on the *ars dictaminis* as it appears in petitions, this section argues that the legal formulae that was used as a training tool for medieval legal scribes and formed the foundation of their education at the business schools can be revealed in the content of medieval petitions, thus reflecting the education of their composers.

The *ars dictaminis*, or the rhetorical ‘art’ of letter-writing, evolved out of Alberico da Montecassino’s eleventh-century *Dictaminum radii*. From there, it developed into the *ars dictaminis* in Bologna in the twelfth and thirteenth centuries where it became part of the university curriculum. The *ars dictaminis* is a medieval term used to describe the art of prose composition, in particular the art of writing letters. However, it also includes the composition of documents that are not explicitly letters, such as deeds, the writing of which served as the basis of a scrivener’s livelihood.⁶⁸¹ As a subfield of rhetoric, the *ars dictaminis* established the canonical five-part letter which follows a simple diplomatic layout composed of:

- 1) *Salutatio* = the greeting

⁶⁸⁰ Ibid., at 1.

⁶⁸¹ H. G. Richardson noted that ‘early deeds are often hardly to be distinguished from letters, and a deed, like a letter, was a message meant not only to be read, but to be read aloud; the same rules, it might well be thought, should govern both’. H. G. Richardson, ‘Letters of the Oxford *Dictatores*’, in H. E. Salter, W. A. Pantin, and H. G. Richardson (eds.), *Formularies Which Bear on the History of Oxford, c. 1204-1420* (2; Oxford: Clarendon Press, 1942), at 331.

- 2) *Captatio benevolentiae* = any literary or oral device which seeks to secure the goodwill of the recipient or hearer, as in a letter or in a discussion. This typically grabs the attention of the reader through flattery.
- 3) *Narratio* = the presentation of the essential facts
- 4) *Petitio* = in a petition, this could be an announcement, demand, or request for something, while in a letter, this is usually an instruction or a request for something to be done
- 5) *Conclusio* = the letter's conclusion

The *ars dictaminis* was a discipline that covered not only the composition of letters, but also encompassed the theory behind their structure. An analysis of both aspects of the source is necessarily diplomatic and codicological in method. The *ars dictaminis* can be used to examine the intrinsic elements of the form of a document like a deed or a petition. These documents were composed in accordance with a set of rules and followed a highly formulaic structure. Within a typical letter (or deed, or petition) the author began with the *salutatio* and the *captatio benevolentiae*. These two parts of a letter fit under the 'protocol' of diplomatics which contains references to the people involved in the document, the time, place and subject matter. The third and fourth parts of a letter are the *narratio* and the *petitio*, which fit under the 'text' section of the diplomatic approach which refers to the actions which gave rise to the document. The final part of the traditional *ars dictaminis* letter is the *conclusio* which finds parallels with the 'eschatocol' section of diplomatics, also known as the attestation of the document (the names of those who took part in writing, witnessing, issuing or approving the document) and this sometimes takes the form of a signature.⁶⁸² As the purpose of diplomatic criticism is to discover the function of a document by examining its form, documents which adhere to a strict formula in their composition are ideal candidates for this type of approach.

Evidence of training in the ars dictaminis in petitions

The *ars dictaminis* was also readily applied to the writing of petitions – a skill which was taught in business schools alongside the composition of other legal instruments.⁶⁸³ Petitions, their form and the conventions used to write them will demonstrate how training in the scrivener's craft can be identified through the extrinsic and intrinsic elements of interpretation. This in turn will demonstrate how scribes were able to facilitate access to justice by using petitions as a vehicle to obtain justice and grace. In considering the ways in which petitions were presented in accordance with the principles of the *ars dictaminis*, it is possible to begin to see

⁶⁸² These elements do not have to appear precisely in this order. For a detailed break-down of the subsections of each of these three intrinsic forms, see: Luciana Duranti, 'Diplomatics: New Uses for an Old Science (Part V)', *Archivaria*, 32 (1991), at 11-16.

⁶⁸³ Wendy Scase, *Literature and Complaint in England, 1272-1553* (Oxford: Oxford University Press, 2007), at 171.

another side to them. By looking at how the complaints were framed, how the authors of the petitions presented their cases rhetorically, and the role that languages played in the process, the importance of the scribal context of drafting such letters becomes apparent. Consequently, these documents are able to expose some of the lesser known aspects of the scrivener's craft and its practitioners by revealing physical evidence of scribes' training in both languages and legal formulae.

Evidence of the application of the *ars dictaminis* to medieval petitions can be found in the evolution of their form. One of the earliest petitions in the SC 8 series of Ancient Petitions was written around 1280 and is typical of petitions at the time of Edward I as it occupies only nine lines.⁶⁸⁴ For this reason, it will be used as an example to demonstrate the evolution of the petitionary form and the role of the professional scribe in this transition. This petition was written in Anglo-Norman French and demonstrates a fairly simple three-part formula consisting of: 1) the address; 2) the supplication or statement of grievance; and 3) the conclusion or prayer. In this period it was common for petitions to consist of fewer than a dozen lines of manuscript and these were written on thin strips of parchment often only about 22cm wide by 5cm long, or sometimes smaller.⁶⁸⁵

In the text of the petition, the provincial author states the petitioner's request in very simple and straightforward terms, using the format of a three-part letter. The three parts are the address to the king and his council in the first line; followed by the supplication which states the petitioner's request for letters of the king (as he was granted £15 annually for life to be paid by the provost of Bayonne, which he has only received for one year) and this takes up the next six lines, followed by the conclusion in the last two lines. This basic formula was sufficient to obtain redress in the early days of petitioning. By the following century, however, it had become increasingly difficult to secure an answer to a petition and as a result, petitions evolved accordingly.

Petitions mainly changed in two ways. First, they became more elaborately written while retaining their precision. Second, they became more complimentary toward the person to whom the petition was addressed – be it the king, council, chancellor or other eminent public

⁶⁸⁴ TNA, PRO SC 8/160/7962 [c. 1280]

⁶⁸⁵ A. R. Myers, 'Parliamentary Petitions in the Fifteenth Century: Part I: Petitions from Individuals or Groups', *The English Historical Review*, 52/207 (July 1937), at 387.

figure with political clout.⁶⁸⁶ As medieval petitions were complex on each of these fronts, it was difficult for petitioners to draw up their own even if they were literate enough to attempt it. Consequently, petitioners required the services of someone who was capable of drafting a formal letter, like a scrivener, in order to navigate these complexities. A scrivener could use his legal and linguistic literacy to ensure that the petition was not delayed or invalidated by any irregularity in form.⁶⁸⁷ A simple petition like SC 8/160/7962 would not have necessarily required any specialist knowledge to compose however petitioners must have sought advice and scribal assistance from third parties such as scribes from an early period. In this case it is possible that the petition may very well have been written by the petitioner himself and this is demonstrated by the extraordinary and frequent use of first person pronouns. The petitioner, Parschal duPin, uses such words as 'je,' and 'moi'; phrases like 'ma vie' and 'me facez' to refer to himself reflexively in the first person. Stylistically, this deviates from the norm of other petitions and the traditional manner in which they presented complaints to the king. Petitions in general were usually written from the third person's perspective which indicates the presence of the hand of the third party who was key to interpreting languages and the law and facilitating access to justice for the legally and linguistically illiterate. As Ormrod explains: 'It is not "I" or "we" that address the king and council but "s/he" or "they", and the voice in use is therefore that of the intermediary, whom we may usefully imagine as the clerk or attorney who provided the secretarial and legal services in drawing up and delivering the written petition'.⁶⁸⁸ Unless duPin was a scrivener himself (there is no evidence to suggest that he was) he would have needed the help of a scrivener who was accustomed to writing such legal documents.

A later petition dating from 1445 demonstrates how petitioning had really evolved from the three-part petition of the thirteenth century. SC 8/199/9901 differs greatly from SC

⁶⁸⁶ For an interesting examination of petitions addressed to English queens, see: Anthony Musson, 'Queenship, Lordship and Petitioning in Late Medieval England', in W. Mark Ormrod, Gwilym Dodd, and Anthony Musson (eds.), *Medieval Petitions: Grace and Grievance* (Woodbridge: York Medieval Press, 2009).

⁶⁸⁷ The pool of petition writers was broad and could include anyone who was capable of writing a formal letter in the style of the *ars dictaminis*, whether they were legal professionals or not. See: Gwilym Dodd, 'Writing Wrongs: The Drafting of Supplications to the Crown in Later Fourteenth-Century England', *Medium Aevum*, 80 (2011a), at 238.

⁶⁸⁸ W. Mark Ormrod, 'Murmur, Clamour and Noise: Voicing Complaint and Remedy in Petitions to the English Crown, c. 1300-c. 1460', in W. Mark Ormrod, Gwilym Dodd, and Anthony Musson (eds.), *Medieval Petitions: Grace and Grievance* (Woodbridge: York Medieval Press, 2009b), at 137. For another exception to this practice, see: Gwilym Dodd, 'Thomas Paunfield, the 'Heye Court of Rightwysnesse' and the Language of Petitioning in the Fifteenth Century', in W. Mark Ormrod, Gwilym Dodd, and Anthony Musson (eds.), *Medieval Petitions: Grace and Grievance* (Woodbridge: York Medieval Press, 2009).

8/160/7962 in that it is significantly longer, includes a more elaborate address and has a more detailed narrative. This petition consists of some twenty-six lines that beautifully show the author's skill in employing the rhetorical techniques and conventions of the *ars dictaminis* to structure the petitioners' complaint, which in this case outlined the interests of a group of wine merchants. These merchants believed that the measures in place for ensuring the purity of the wine they bought from Gascony and Guyenne in France were being neglected to their detriment, so that the wine often became undrinkable within a year, and also that tuns of wine were being made of smaller measure than the English gauge, so that merchants such as themselves paid customs in England on more wine than they actually bought in France. A professional scribe drawing up such a petition knew when to present the facts of the case in the *narratio* and when to go deeper in the *petitio* to describe the plight of the petitioners to show how badly they had been wronged thus focusing on the pain and suffering endured by the victims – in this case mostly financial pain where the petitioners expected financial gain. Most petitioners would not have been capable of drawing up a petition like this, but a professional scrivener would have possessed this rhetorical skill.

The wine merchants' petition is one of many put forth during the reign of Henry VI which demonstrates that the drafters recognised the usefulness of presenting their clients' grievances in an accepted and expected format – hopefully yielding positive results for the petitioners and thus justifying the cost of engaging a professional to do this work. It was crucial that those seeking the king's justice and grace were able to make the best possible case that they could within the limits of the petitioning process in order to secure the best result. Clever and artful employment of the *ars dictaminis* by a skilled scribe evidently improved one's chances of being heard and its continued use throughout the period is proof positive of its efficacy.⁶⁸⁹ The *ars dictaminis* was not a new innovation even in the thirteenth century, but its application to petition writing was novel and its use elevated the position of petitions as a letter form. The basic tenets of the petition's structure remained the same: address, supplication and conclusion, but the *ars dictaminis* was a much more elaborate way of writing and being skilled in this nuanced discipline of rhetorical flourish was integral to the development of medieval petitioning.⁶⁹⁰ This evolution can be simply demonstrated by tracking

⁶⁸⁹ For a more detailed examination of the uniformity of petitionary diplomatic, see Chapter 9 in: Gwilym Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford: Oxford University Press, 2007).

⁶⁹⁰ Some historians view the fourteenth century as the point at which the *ars dictaminis* reached its peak in England, arguing that its use was on the decline from around 1400. See: Malcolm Richardson, 'The Fading Influence of the Medieval *Ars Dictaminis* in England after 1400', *Rhetorica: A Journal of the*

the changing vocabulary used in the addresses to the petitions to the king. This could range from the early perfunctory addresses to the king as, 'nostre seigneur le Roi' which is found in a petition from a Jewish petitioner asking to be released from prison in Bristol in 1279, to more elaborate addresses to 'nostre tresage conseil le trespuissant, tresexcellent et tresdoute seigneur le Roi' like that which is found in a 1398 petition from a merchant who was shipwrecked in Bristol and unfairly charged customs on his merchandise.⁶⁹¹

The ability to adapt one's writing and to distinguish between different kinds of petitionary texts was taught in England as a business skill and was applied to not only legal writing but also to the writing of diplomatic and other non-legal letters.⁶⁹² Much like the learning of languages and the law, the *ars dictaminis* could be learned from reading one of the many treatises on the subject or by following the examples set in formularies. From the mid-fourteenth century, treatises describing the *ars dictaminis* began to be written by English authors like John de Briggis (c. 1350) and Thomas Sampson (c. 1380). One of the most well-known of these formularies is the *De modo dictandi*, which dates from the later fourteenth century in England and has been translated into English by Roger P. Parr.⁶⁹³ Its appearance at this time is not surprising as it was also around the same time that the diplomatic of petitions began to change. Thomas Sampson is perhaps the most widely known teacher of the aforementioned Oxford school of business who was not only a teacher of language, *dictamen*, conveyancing and the general scrivener arts, but he was also a practising scrivener. Just as Robert Londe's teachings in Bristol have been left to us through the fastidious efforts of his student Thomas Schort, who compiled an anthology of Londe's lessons, Thomas Sampson's lectures have stood the test of time as they continued to be copied for as long as a century after his retirement in 1402. This shows the wider impact of Sampson as a teacher and as a scrivener. Through the written record, Sampson was able to continue to influence his craft and the development of its teaching long after his death. Parallels can be drawn between Sampson and the ambitions of Bristol's town clerks who wrote custumals with the express intention of leaving their mark on the constitutional and administrative landscape of their city. While Sampson may not have intended for his lectures to be kept and copied for posterity's sake, they were. It is through the

History of Rhetoric, 19/2 (2001), Martin Camargo, 'The Waning of Medieval *Ars Dictaminis*', *Rhetorica: A Journal of the History of Rhetoric*, 19/2 (2001).

⁶⁹¹ SC 8/218/10892 [1279]; SC 8/215/10718 [1398]

⁶⁹² Wendy Scase, *Literature and Complaint in England, 1272-1553* (Oxford: Oxford University Press, 2007), at 171.

⁶⁹³ Geoffrey De Vinsauf, *Documentum De Modo Et Arte Dictandi Et Versificandi = Instruction in the Method and Art of Speaking and Versifying* trans. Roger P. Parr (Milwaukee: Marquette University Press, 1968).

perpetuation of Sampson's lessons on scrivining in the copies that were made that show the level of deference to Sampson as a master of his craft. Remarkably, his status as a provincial scrivener does not appear to have negatively affected his standing within the scrivining community, so the argument that provincial scrivining was of an inferior sort is firmly without basis.

4. Conclusion

This chapter has demonstrated that for scribes, linguistic expertise was useless without an equally advanced understanding of the legal implications of the words and phrases found in legal documents. The drafting of legal instruments required a considerable amount of thought and planning that was rooted in the knowledge of legal vocabulary and semantics, therefore this could not have been done by just anyone. In addition, scribes and their work cannot be examined in isolation from the multilingual society in which they lived and worked. In this thesis, scribes are defined by their knowledge of languages and the law and this chapter has demonstrated how these men were able to learn the skills of their trade. Furthermore, this chapter has sought evidence of scribes' specialised training in legal writing by highlighting the presence of the *ars dictaminis* in petitions as indicative of the training in the scrivining craft acquired either through formal education or private study. The first half of this chapter showed the extent to which opportunities were available to receive an education in Latin grammar and French in provincial England. By using Exeter, Bristol and Oxford as examples of centres of education, this chapter has demonstrated the possibilities to acquire the basic skills required of a provincial scrivener and has shown that English scrivining as a whole was not dependent upon London's practitioners to share the knowledge of the scrivining craft or to develop the skills sets of local scribes.

This is a pervasive and damaging myth in medieval English history that pertains not only to scrivining but to other areas of cultural and political history as well. Underlying this myth is an assumption that all knowledge and popular trends emanated outward from London as the centre of royal government and therefore the social fabric, however this is not the case with scrivining. Had London's scribes been the sole source for training in the scrivining craft in provincial England they would have left a greater mark on the historical record in the places that they moved to and on the records of the Scribes' Company as well. If this had been the case then a much greater number of scribes would have needed to be trained in London in the first instance, in order to support a regular exodus of teachers to the countryside, yet there is no evidence for this. With the exception of William Kingsmill who

moved to Oxford to set himself up as a teacher in the first quarter of the fifteenth century, there is little evidence to suggest that this was something other than an exception and not the rule. Instead, greater evidence exists to support the theory that provincial scrivenering and local scribes were a self-sufficient and self-sustaining community of scribes. Basic education in languages and literacy skills was readily available in all but the smallest of towns and an advanced education in law, business writing and administration could be acquired in the traditional method of vocational training, through private study, and those who wished to (and could afford to) could attend specialised scrivenering schools such as those in Oxford.

Consequently, it is clear that historians need not assume that provincial scribes and their education or training originated in London. This chapter has challenged the London-centric thesis of the origins of professional scrivenering to argue instead that local men were able to stay close to home and learn the same transferable legal and linguistic skills and gain comparable professional training in the scrivenering craft as those men who were trained in London through organisations like the Scribes' Company or the Inns of Court and Chancery. Chapter Six will expand on the specialised skills of provincial scribes and explore both the ordinary and the extraordinary ways in which these legal and linguistic intermediaries applied their training in languages and the law to a multitude of occupations, and show that by doing so scribes were able to facilitate access to justice through their written work at even the highest levels of the law.

CHAPTER SIX: Scrivening as a Transferable Skill

1. Introduction

The last chapter considered the ways in which students in provincial England were able to learn Latin and French and then apply their aptitude for languages to the pursuit of the scrivener's craft. The relationship between law and languages is inextricable, and this chapter will build on the previous one in order to explore how provincial scribes were able to put their language and legal skills to practical effect by taking on additional paid work. Not only will it be shown that scribes capitalised on their legal and linguistic literacy for both financial and socio-political advancement, but by doing so it will be demonstrated that through these additional occupations, scribes were able to facilitate access to justice in unexpected ways. Furthermore, this clerical diversity shows that provincial scribes were not working at a disadvantage; rather, it will be revealed that rural clerks had as many, if not more, opportunities for advancement as London's scribes who were faced with greater competition for work in the city.

First, this chapter will briefly examine the varied nature of a selection of the secondary occupations taken on by provincial clerks, primarily in Exeter. By considering the role of scribes as clerks of the staple and as clerks, collectors and controllers of the customs this first section will show how town clerks were able to make the most of their transferable skills and exploit the opportunities presented to them by virtue of their affiliation with local government.⁶⁹⁴ Next, this chapter will focus on provincial scribes and their involvement in parliament through petition writing and as active participants in the parliamentary process as MPs, thus revealing some surprising elements of the nature of their involvement in this institution that have never been examined before. Lastly, the ways in which scribes exercised their freedom and ability to work in these various secondary occupations will be examined in relation to the administration of, and access to, justice at all levels of the law in order to situate scribes within the increasingly specialised medieval legal profession. This

⁶⁹⁴ The pursuit of secondary occupations was not restricted to provincial clerks. Dodd explains that 'it was common practice throughout the royal bureaucracy for clerks to supplement their income from fees charged to private patrons or clients who required their professional services.' Gwilym Dodd, 'Trilingualism in the Medieval English Bureaucracy: The Use - and Disuse - of Languages in the Fifteenth-Century Privy Seal Office', *The Journal of British Studies*, 51/2 (2012), at 272.

chapter will end with a discussion of the meaning of specialization within the law while evaluating the extent to which provincial scribes ought to be considered 'professionals' in the context of England's rapidly evolving medieval legal profession.

2. Secondary Occupations

This thesis has already shown how provincial scribes regularly worked as town clerks while writing for private clients as well, and this last chapter will show how scribes also turned their hands to other ad hoc work and argue that this impacted the medieval legal system from the local to the national level. Scribes used their transferable skills in many ways, and the vast legal knowledge and linguistic aptitude of practitioners of the scribbling arts could be applied to other endeavours both within and without the realm of the law. Scribes used their specialised skills to take on complementary secondary occupations which they often pursued alongside clerking as a means of improving both their economic lot and as a way of maintaining their privileged position in society. This section will briefly consider some of the variety of secondary tasks and occupations that were taken on by provincial scribes and look at some of the other additional clerking roles pursued by town clerks.

The most fortunate provincial scribes were those who were able to acquire a place within the secretariat of a town's government. More often than not, these positions were salaried and most importantly, they offered a measure of job security as towns such as Exeter, Bristol and Bridgwater gave their clerks appointments for life instead of replacing them on an annual basis. Chapter Three examined the salaries of scribes who held offices in Exeter and Bristol's town governments and showed that based on these wages they were men of moderate means. Expanding upon this, this section will show how the provincial scribes who became town clerks were highly prized legal writers whose business skills were in high demand. The financial records of the city of Exeter show that the leaders of the local government capitalised on their clerks' abilities by setting them to various ad hoc tasks outside of the guildhall and the courts while other evidence shows how clerks were able to exploit their own skills by applying them to additional occupations and business ventures. This section on secondary occupations will further elaborate on the remuneration of town clerks that was first examined in an earlier chapter of this thesis by taking into consideration the other opportunities that provincial scribes exploited in order to supplement their incomes as town clerks.

Ad hoc work for local government and money lending

By taking a sample of ten years of receiver's accounts for the city of Exeter it is possible to see some of the varied ways in which the city's clerks could supplement their salaries. During the period in question, 1342-1352, the salaries of Exeter's officials remained constant but they were able to increase their wages through the accumulation of assorted gifts and payments that were made to them from out of the city's coffers. With the exception of conveyancing for private clients, the majority of the city's clerks' extra earnings appear to have been directly related to their established role within the city's government. For example, from 1339 until 1349, Robert de Lucy was Exeter's chief bailiff during which time he was assisted by his sub clerk John Mathu. The son of Geoffrey, also a scrivener, Robert de Lucy is an example of a member of a clerking dynasty who benefited from regular employment in the guildhall while also doing other jobs for the city on the side. For the entirety of his employment as town clerk, de Lucy earned 60s annually for his salary, but he also earned an extra 2s in 1342/3 for expenses related to riding to the justices of the measures.⁶⁹⁵ De Lucy's sub clerk, John Mathu, earned 20s for his fee initially, but was given an additional 20s as a gift from the mayor and community in 1344/5, perhaps as a reward for a job well done or as an incentive to stay on in his position.⁶⁹⁶ In 1347/8 John Mathu received an extra few shillings for arresting a ship and stopping an unlicensed shipment of corn from unloading which is seemingly unrelated to his job as a clerk, but is actually indicative of the type of customs control work that town clerks did on occasion and will be returned to later in this section.⁶⁹⁷

When Robert de Lucy fell victim to plague in 1348, William Wyke assumed the role of chief bailiff of Exeter. In that same year, Martin Battishulle (known as 'Martin the Clerk') took over from John Mathu as sub clerk. Wyke and Battishulle were both enterprising individuals when it came to taking advantage of the opportunities made available to them as the city's clerks. Wyke held the position for twenty-eight years between 1348 and 1376 while Battishulle worked as sub clerk for eighteen years until 1366. From early on in his career as sub clerk, Battishulle occasionally did extra work for the city, once spending five days in Sherborne on business in 1349 for which he was paid 3s 10d plus the cost of hiring a horse.⁶⁹⁸ In the early 1350s he also went to Colepole and Colecombe on business for which he was paid 6d.⁶⁹⁹ Wyke

⁶⁹⁵ DRO, Receiver's Accounts, 17-18 Edw. III

⁶⁹⁶ DRO, Receiver's Accounts, 19-20 Edw. III

⁶⁹⁷ Margery M. Rowe and John M. Draisey (eds.), *The Receivers' Accounts of the City of Exeter, 1304-1353* (32; Exeter: Devon & Cornwall Record Society, 1989) at xv.

⁶⁹⁸ DRO, Receiver's Accounts, 23-24 Edw. III

⁶⁹⁹ DRO, Receiver's Accounts, 24-25 Edw. III

was also paid for travelling to London in 1349/50 and in 1351/2 to purchase a writ and to do what was referred to in general terms as 'common business' for the city.⁷⁰⁰ His travels to London apparently warranted the purchase of a horse which was valued at 17s, rather than merely hiring a hack as was done for Battishulle when he did the city's business on the county level.⁷⁰¹ Wyke must have been successful in whatever business brought him to London for the horse was given to him as a gift afterwards. Moreover, Wyke was exceptionally well paid for his travels to London, on one occasion he received 6s 8d and on another he was paid 20s which was the equivalent of half of his sub clerk's annual salary.⁷⁰²

Turning toward Wyke's sub clerk, Martin Battishulle's financial position gradually improved over the time he spent in his post with his fees as sub clerk steadily increasing in the post-plague environment in Exeter. Although his fees dropped after initially doubling in 1349-50 the amount he received in the following year still represented an increase of 13s per year which raised his fee from 20s to 33s 4d annually.⁷⁰³ In the following year Battishulle's regular fee increased to 40s which set a precedent in this regard and remained the standard fee of a sub clerk for the remainder of the century. This pay rise may also indicate that he was taking on more work, as from among the city's employees his was the only fee to increase. Battishulle's career in Exeter's government ended on a high note overall as he was promoted to receiver in 1366 for which he was paid 40s and then he was promoted to mayor in 1370 for which he earned 100s. He must have already been doing well for himself before then, as he was able to loan £25 to William Christianson of Somerset in 1366 while he was the city's receiver.⁷⁰⁴ This indicates that Battishulle also earned income on the side from money lending, using a recognizance of debt to cleverly hide the usurious interest that he undoubtedly charged the borrower. In this, Battishulle was not alone as William Wyke was also known to loan money on occasion, lending £6 in 1350 but also borrowing £140 two years later in 1352.⁷⁰⁵ While this may reflect a downturn in his financial situation, conversely, this may suggest that he had the necessary leverage to negotiate such a large loan. Regardless, this is evidence that Exeter's town clerks used the city's status as a staple town to their advantage.

⁷⁰⁰ DRO, Receiver's Accounts, 23-24 Edw. III; 25-26 Edw. III

⁷⁰¹ DRO, Receiver's Accounts, 25-26 Edw. III

⁷⁰² DRO, Receiver's Accounts, 25-26 Edw. III

⁷⁰³ DRO, Receiver's Accounts, 24 Edw. III

⁷⁰⁴ TNA, PRO C 241/147/38 [1366]

⁷⁰⁵ TNA, PRO C 241/131/33 [1350]; C 241/133/33 [1352]

Clerk of the Staple

Both Exeter and Bristol were staple towns and their town clerks not only made use of the privilege, but also regularly held the post of clerk of the statute merchant/staple concurrently with their posts as town clerks. In Exeter, this dual occupation was first held by Robert de Lucy, then by Martin Battishulle and subsequently by William Wyke. In 1341, while he was Exeter's town clerk, Robert de Lucy began a fight to retain his position as clerk for the recognizances of debt in Exeter. When de Lucy was appointed to this post on 16 September 1340, a king's clerk named John Cory who had previously been given this position by letters patent, was overseas and away from his post.⁷⁰⁶ As a result, each of the two men believed that he was the rightful holder of the office and its seal. The Patent Rolls refer to the trouble between de Lucy and John Cory by explaining the situation in detail:

By letters patent the king lately appointed John de Cory, king's clerk, to the custody of the smaller piece of the seal for the recognizances of debts in the city of Exeter, during good behaviour, and afterwards when he was last beyond the seas R. bishop of Chichester, late chancellor, made letters patent under the great seal then in use in England to Robert de Lucy of the office, to hold during pleasure, without any mandate from him, and John was removed from the office without reasonable cause, contrary to his commission. As it is his will that such commission should remain of force, he by these presents revokes the appointment of the said Robert. By p.s. [privy seal]⁷⁰⁷

As a result, on 12 March 1341, John Cory was restored to his office and de Lucy was removed from this position by privy seal. Indeed, you can find the names of both of these men on a bond from 1342 with Robert de Lucy as the witness of the agreement alongside Exeter's mayor, and with John Cory and the mayor as the senders of the writ.⁷⁰⁸ Thus John Cory was able to regain his position and this demonstrates that there was fierce competition for the more lucrative clerical appointments in the city as the clerk of the recognizances was paid for each of the bonds that he wrote.⁷⁰⁹

As the clerks of the recognizance of debts, scriveners like Bristol's Richard de Calne were responsible for issuing the recognizances, or certificates, of debt which authorized the issue of process for the recovery of outstanding debts. Definitive evidence for Richard de Calne as Bristol's official town clerk is patchy, however from the volume of deeds that he wrote and witnessed it is clear that he was at the very least a prominent local scrivener who acquired the

⁷⁰⁶ Great Britain (ed.), *Calendar of the Patent Rolls. Edward III, 1340-1343* (5; London: HMSO, 1900a) at 148. *Ibid.*, at 34.

⁷⁰⁷ *Ibid.*, at 148.

⁷⁰⁸ TNA, PRO C 241/115/25 [1341] Robert de Lucy wrote at least one of his recognizances in English rather than the customary Latin. See: TNA, PRO C 131/10/18 [1340]

⁷⁰⁹ In order to maintain the costs of the clerk, the Statute of Merchants (1285) set the rate as one penny from every pound owed to the king.

first appointment to the lucrative position of clerk of the staple in the city.⁷¹⁰ According to the Patent Rolls, de Calne was granted the 'counter-seal of merchants' on October 23 1291 while Simon de Burton, who was then mayor of Bristol, was granted custody of the greater part of the seal at the same date and by the same letters patent.⁷¹¹ Alongside the mayor of the staple, it was the job of the clerk to keep the seal which was used to authenticate the transactions made between debtors and creditors and the terms for the repayment of the debt.

The appointment of both the mayor of the town and the town clerk to the posts of keepers of the seal was very common and lends credence to the assumption that de Calne was the city's clerk. Undoubtedly, de Calne was a prominent clerk as he could be found making recognizances with the constable of Bristol Castle and also with the mayor in the years which preceded his royal appointment to the staple.⁷¹² Similar to Martin Battishulle and William Wyke, Richard de Calne also engaged in money lending on the side and was even his own client. In 1286 he loaned 73s to Reginald de Anmer, a citizen of London, and wrote up his own bond to record the transaction.⁷¹³ In the following year, de Calne loaned the much larger amount of £20 to a debtor, indicating again that much like Battishulle, de Calne had a sizeable amount of liquid assets despite the modest salary that he was likely to have earned as a town clerk or as a clerk of the staple.⁷¹⁴

Clerks, Collectors and Controllers of the Customs

Exeter's town clerks had a long-established relationship with the local customs and can frequently be identified as the collectors of the customs. The customs accounts of the port of Exeter for the period 1266-1321 demonstrate the utility of the city's clerks as they were occasionally entrusted to act as the collectors' proxy. Between 1304 and 1306, town clerks Alured Aylward and Philip Denebaud were the only individuals who were regularly linked to the collection of port customs who were neither the mayor nor the stewards of the city.⁷¹⁵ As collectors of the customs, Exeter clerks like Martin Battishulle and John Lake both collected the

⁷¹⁰ See for example: BRO, P. AS/D/CS/N/2 [1267-1268]; BRO 5163/35 [1325]; P. St MR/5163/72 [1325]; 5163/46 [1329]

⁷¹¹ Great Britain (ed.), *Calendar of the Patent Rolls. Edward I, 1281-1292* (2; London: HMSO, 1893) at 448.

⁷¹² For recognizances made with the constable of Bristol Castle, see: TNA, PRO C 241/3/10 [1286]; C 241/3/18 [1286]; C 241/3/9B [1286]; C 241/3/9A [1287]; C 241/3/11 [1290]; C 241/3/13 [1290]; C 241/22/189 [28/07/1291]. For those early bonds made alongside the mayor of Bristol, see: C 241/3/15 [1286]; C 241/3/16 [1287]; C 241/3/19 [1290].

⁷¹³ TNA, PRO C 241/27/133 [1286]

⁷¹⁴ TNA, PRO C 241/3/16 [1287]

⁷¹⁵ Maryanne Kowaleski (ed.), *The Local Customs Accounts of the Port of Exeter, 1266-1321* (36: Devon and Cornwall Record Society, 1993) at 82, 85, 101, 103, 104, 111, 127, 130.

customs and subsidies owed to the Crown and kept the accounts of the port as well.⁷¹⁶ The distinct lack of evidence of any payments made to a clerk of the customs in Exeter suggests that the city's collectors did not employ one, even though they were entitled to this administrative support.⁷¹⁷ It is very possible that the collectors kept the wages that the Exchequer's auditors allocated to them for a clerk and simply wrote the accounts for themselves. This is almost certainly the case for both Battishulle and Lake as their accounts appear in their respective hands. Considering that the collectors' positions were unsalaried (with the exception of the payment of their 'expenses' and the gratuities they extracted from wool exporters for weighing wool and affixing the seal to their receipts), literate collectors in smaller ports would be wise to do double duty whenever possible as the rewards were high and the work not particularly taxing.⁷¹⁸ Providing what amounted to free administrative services to the Crown was not unknown as it was a tradition that could be traced back to the Anglo-Saxons, but the job of a customs collector was not entirely without reward as it certainly helped to establish local clerks as patricians on the make and doing double-duty must have substantially sweetened the pot for these scribes.

Town clerks were also appointed as the controller of the customs, like William Thursteyn *alias* Gylemyn, who held this position in Bristol between February 1339 and March 1341.⁷¹⁹ This royal office was first introduced under Edward I, but it was only during the reign of Edward III that there was a concerted effort to use salaried controllers in order to supervise the work of the unpaid collectors. In fifteenth-century Southampton, William Overey used his appointment to this post as a stepping stone to higher office. Overey was a member of a clerking dynasty who supplemented his annual salary of £5 as town clerk by doing various jobs for the city and he rapidly worked his way up through the civic hierarchy by acquiring the post of controller of the great and petty custom, the subsidy of wools, hides and woolfells in 1471. Soon after, Overey was elected sheriff and became mayor in 1474. In effect, Overey was continuing on a

⁷¹⁶ For Battishulle's accounts, see TNA, PRO E 122/40/8 [1-2 Rich.II.]; For John Lake's accounts, see TNA, PRO E 122/41/11 [6-7 Hen.VII.]; E 122/201/1 [7-8 Hen. VII]; E 122/41/13 [8 Hen. VII]; E 122/41/16 [8-9 Hen. VII, (Apr.-Sept.)]; and E 122/41/17 [9 Hen. VII]

⁷¹⁷ Robert L. Baker, 'The English Customs Service, 1307-1343: A Study of Medieval Administration', *Transactions of the American Philosophical Society*, 51/6 (1961), at 8, fn. 35.

⁷¹⁸ Customs collectors received a 'cocket' fee of 2d for every sealed letter of receipt that they provided to each merchant exporting wool, fells or hides and usually demanded a small sum from every shipmaster 'pro sede navis'. See: Frances A. Mace, 'Devonshire Ports in the Fourteenth and Fifteenth Centuries', *Transactions of the Royal Historical Society (Fourth Series)*, 8 (1925), at 106.

⁷¹⁹ Robert L. Baker, 'The English Customs Service, 1307-1343: A Study of Medieval Administration', *Transactions of the American Philosophical Society*, 51/6 (1961), at 67. Gylemyn seems to have acquired this position in his twilight years. Evidence of his frailty can be found in a release which he penned in a weak and shaky hand in the year after his last as Bristol's controller. See: BRO 5163/71 [1342]

path forged by his father, also called William Overey, who been a steward of Southampton in 1394, mayor in 1398 and 1406, bailiff in 1425 and parliamentary burgess in 1426. Even though the controllers of the customs were very highly remunerated, men like Overey may have found greater value in the power and influence that their appointments could bring.⁷²⁰

John Kedwelly – the archetypal jobbing clerk

Elsewhere, town clerks were using their clerical and administrative skills in other ways. In fourteenth-century Bridgwater, John Kedwelly was the quintessential clerking homme d'affaires whose multifaceted approach to earning a living is revealing and highlights the ways in which some provincial scribes put their business acumen to use by branching out into other occupations. John Kedwelly is an excellent example of this because his lengthy career as Bridgwater's clerk allows for a thorough examination of his forty-year working life as a scrivener, during which time he also took huge financial risks by engaging in mercantile ventures at home and abroad. As Bridgwater's town clerk, Kedwelly earned a rather paltry regular salary of 6s 8d, recorded in the years 1394 and 1400.⁷²¹ In comparison to the salaries of Exeter and Bristol's clerks, who earned on average at least ten times that amount, Kedwelly was grossly underpaid if this was his primary source of income. To put his earnings into context, 6s 8d was approximately the equivalent of a month's wages as a day labourer in this period. Surely Kedwelly could not possibly have depended on his work as town clerk for his living if this was the extent of his income? Other sources of income were clearly required in order to earn a living wage therefore Kedwelly must have pursued other interests in order to supplement his salary as town clerk.

In the case of John Kedwelly this can indeed be demonstrated and further evidence of his additional sources of income are readily available. First, he looked to the town for additional employment. In 1400 he received an additional 6s 8d for carrying out other business for the community – which means that moonlighting as a businessman for Bridgwater immediately doubled his annual income.⁷²² However, that still only elevated his earnings to 13s 4d and it appears that Kedwelly did not stop there in his search for a fee. He wrote and witnessed numerous local deeds in his capacity as town clerk which was perhaps one of the most

⁷²⁰ The salaries of controllers varied according to location, but could easily be double the salary of the local mayor. For the salaries of controllers in the fourteenth century, see Baker: *Ibid.*, at 16, 25.

⁷²¹ Thomas Bruce Dilks (ed.), *Bridgwater Borough Archives, 1377-99* (53; Frome: Somerset Record Society, 1938) at 233. Thomas Bruce Dilks (ed.), *Bridgwater Borough Archives, 1400-1445* (58; Frome: Somerset Record Society, 1945) at 7.

⁷²² Thomas Bruce Dilks (ed.), *Bridgwater Borough Archives, 1400-1445* (58; Frome: Somerset Record Society, 1945) at 7.

common scribal activities for men in his position and he also occasionally acted as a clerk for others; keeping a rental for the chantry of the Holy Cross and writing up the accounts for the Earl of March's receiver at Bridgwater while also drawing up title deeds for St. Mary's chantry. In 1388 he was paid 20d for these deeds, but unfortunately there is no way of knowing the total number of deeds written by him, how much he was paid for each, or how much he earned in his other engagements.⁷²³

Kedwelly was more than a humble town clerk, and writing was not the only source of his income. It was as an officer of the court of the admiralty of the west that he achieved some notoriety, apparently for an excess of zeal in the execution of his duties – a theme which seems to recur in the history of scriveners.⁷²⁴ Acting on behalf of William Thomer, the admiral's deputy, John Kedwelly came into conflict with a local merchant in Bridgwater when he tried to collect on a debt that the merchant owed to the city. The merchant, John Henton, accused Kedwelly of entering his house 'by means of mines and other contraptions', and of illegally seizing his goods when carrying out the court's judgement.⁷²⁵ Kedwelly was found guilty on all the charges that were brought before the Admiralty Court and was sentenced to pay Henton restitution - £100 on the main charge and £137 in damages. Kedwelly's appeals and Henton's counter-appeals continued from 1390 until at least 1404, the case moving up from the Admiralty Court to be heard in Chancery, by several judicial bodies appointed by Richard II, and eventually it was heard in the court of King's Bench.⁷²⁶ The victorious party in this suit is unknown, however the lengthy battle over these damages demonstrates that Kedwelly was wealthy enough to keep his case in the courts and also suggests that his personal wealth was large enough for the courts to justify awarding Henton with such a large sum.

Kedwelly's income as a clerk on its own could not possibly have provided him with such wealth, however the contents of an early fifteenth-century petition clearly show how Kedwelly was able to acquire his small fortune. Furthermore, it reveals even more information about

⁷²³ Thomas Bruce Dilks (ed.), *Bridgwater Borough Archives, 1377-99* (53; Frome: Somerset Record Society, 1938) at 184.

⁷²⁴ Carole Rawcliffe, 'Kedwelly, John, of Bridgwater, Som.', in J. S. Roskell, L. Clark, and C. Rawcliffe (eds.), *The History of Parliament: The House of Commons 1386-1421* (3: History of Parliament Trust, 1993), at 509. For other overzealous, unethical, or scandalous clerks, see John Bonefant's forgeries in Chapter Three, William Overay in Chapter Four and Robert de Lucy's controversies as detailed earlier in this present Chapter.

⁷²⁵ *Ibid.*, at 510.

⁷²⁶ *Ibid.* According to Marsden, the case likely began in 1389. The long appeals process is detailed in: Reginald Marsden (ed.), *Select Pleas in the Court of Admiralty, Vol I* (London: Selden Society, Bernard Quaritch, 1894) at 17-26. For details of the case in translation, see pages 165-172.

Kedwelly's business dealings and his activities both in Bridgwater and beyond the shores of England to show how he used his scrivener skills to his advantage in parliament. As has been briefly mentioned earlier in this thesis, in 1410 Kedwelly petitioned for redress of grievances against French pirates who had taken one of his fishing vessels called *The Cog John* of Bridgwater. In his petition, Kedwelly shows how he was a provincial scrivener with a much diversified business portfolio.⁷²⁷ Kedwelly claimed that whilst crossing the Channel, his boat and its crew that were bound for La Rochelle with a cargo of wine were captured by some Frenchmen. These men imprisoned the crew at Harfleur in strict confinement without food and drink until Kedwelly agreed to pay a ransom of £100 to free them.⁷²⁸ These pirates had also taken a 'balyner' of his and when he sent two of his servants to sell 60 dozen cloths at La Rochelle to raise the money for the ransom, these men were also captured and held prisoner at Cherbourg.⁷²⁹ In addition to the cost of his boat and the ransom for his men, Kedwelly had suffered the loss of £200 worth of goods that were being transported in the vessels. As he makes no mention of any other financiers or interested parties in his petition, it is probable that the entire £200 investment was his own loss to bear and further supports the suggestion that Kedwelly was a man of considerable means.

Significantly, it is almost certain that John Kedwelly drafted and wrote his own petition, however the only surviving evidence that we have of his petition is found in the enrolled version on the Parliament Rolls as the original seems to have been lost and cannot be located in the Ancient Petitions series. This petition and other documents written by him during his tenure as Bridgwater's town clerk demonstrate that provincial scriveners could be quite wealthy in money, goods, investments and people – Kedwelly was not just an employee of the city and of his private clients, but he was also an entrepreneur with employees of his own. If it is indeed safe to assume that John Kedwelly composed his own petition (and I believe that we can) then from it something can be inferred about his legal knowledge and business acumen. First, he demonstrates an acute awareness of the truces made between the English and French kings on which his claim is founded. Not only does he mention the truces relating to the trade

⁷²⁷ Thomas Bruce Dilks (ed.), *Bridgwater Borough Archives, 1377-99* (53; Frome: Somerset Record Society, 1938) at 139. John Kedwelly was working on William Tomer's behalf at the time that he came into conflict with John Henton. Kedwelly and Tomer were also Bridgwater's MPs in 1402 which further demonstrates the connection between Kedwelly and Tomer and their involvement in the local shipping industry.

⁷²⁸ 'Henry IV: Parliament of January 1410 Text and Translation,' in *The Parliament Rolls of Medieval England*, ed. C. Given-Wilson et al., item 66. CD-ROM. Scholarly Digital Editions, Leicester: 2005.

⁷²⁹ See: R. W. Dunning (ed.), *The Victoria History of the County of Somerset* (6; Oxford: Oxford University Press, 1992) at 213-223.

between England and La Rochelle repeatedly, but he explains the significance of the letters patent issued by both kings along with knowledge of how, when and where the terms of the agreement were publically proclaimed and how this influenced his decision to send out his boat at that time. Overall, Kedwelly presents a sophisticated argument in his petition which is founded on a sound legal argument with direct references to points of law. It is interesting that he took a practical and pragmatic approach in his use of language in his address to the king; rather than resorting to a purely emotional plea based on a claim of poverty, Kedwelly eloquently balanced the facts of his case with the reality of the pecuniary damage done to him as a result of the pirates' actions in order to win the king's favour and grace. Referring back to the subject of the previous chapter, this is evidence of not only his legal knowledge but it also shows that Kedwelly was skilled in rhetoric and the type of persuasive discourse that was essential for framing a private petition in a way that would increase its chances of actually being heard.

What is perhaps most intriguing about this petition is not its content, but its context and through it, what is revealed about the role of scribes in the medieval parliamentary process. This petition was presented at the January Parliament of 1410 when Kedwelly was also in attendance. Specifically, Kedwelly was present in his capacity as Bridgwater's member of parliament, thus providing irrevocable proof that scribes not only wrote petitions, but also championed them in the Commons when they acted as representatives of boroughs and counties. In this particular case, Kedwelly seems to have seized the opportunity for a subsidised trip to parliament. He did so in order to look after his personal business interests but he also took care of his constituents as he was a seasoned MP who attended parliament on the borough's behalf no less than seven times between 1395 and 1417 throughout the roughly forty-year period that Kedwelly was Bridgwater's town clerk. The fact that this parliamentary exuberance directly coincides with the period of time during which he was battling Henton in the courts is unlikely to be mere coincidence. Clearly Kedwelly sought compensation for the piratical attacks on his boats and used the occasion of parliament to do double-duty to fight his own causes in parliament and in the central courts, while also being paid a small per diem of 2s for his work as well. This proves that provincial scribes multi-tasked, diversified and supplemented their incomes through occasional employment in order to further their careers and earn a living by their writing. From the example of Kedwelly, we have proof that provincial scribes took advantage of the trips they took to London on behalf of their employers in order to do other business. The next section will further examine the unexpected role played by medieval scribes in the parliamentary process.

3. From Petitions to Parliament

Thus far this thesis has shown that although there was ample opportunity for provincial scribes to find employment within their local secretariat, the clerks employed by towns could not afford to sit on their laurels. The previous section has demonstrated some of the numerous ways in which provincial scribes were able to take on ad hoc clerical and business pursuits in order to supplement the salaries that they earned in their permanent positions as town clerks, and has suggested that in the case of some town clerks like John Kedwelly, the 'secondary' occupation they pursued may have been the scribbling itself. Kedwelly's example shows that scribes not only wrote petitions to parliament, but that they presented petitions to parliament as well and were present when the petitions were heard by the assembly. Matthew Davies, among others, has already suggested that clerks had a role to play in both the writing of petitions and the lobbying of parliament; however the role played by provincial scribes has not yet appeared in the histories of medieval parliament or the parliamentary process in any significant way.⁷³⁰

In studies of legal professionals within the body of medieval members of parliament, the primary focus has traditionally been on lawyers and sheriffs, but Payling has opened the door to consider other types of legal professionals as well. Much like local lawyers, town clerks and scribes were motivated to represent provincial boroughs at parliament. These men had the benefit of understanding local causes and as locals, would also have wanted to support their neighbours and community by promoting their petitions in parliament – all the while, gaining a small income and access to a subsidised trip to wherever the parliament was being held on that occasion. This section will explore this phenomenon further and focus on parliament as an area of particular interest with regard to the pursuit of secondary occupations and consider the role of the provincial clerk as a legal intermediary in facilitating access to justice, on both this and other levels. In particular, Devon's parliamentarians will be highlighted in this section as an especially interesting – and enterprising – group of provincial scribe-MPs.

Scriveners and the Petitioning Process

According to the definition of 'scribe' established in the first chapter of this thesis, a scribe was a legally and linguistically literate writer of legal instruments. Many of these

⁷³⁰ Paul Brand, 'Petitions and Parliament in the Reign of Edward I', *Parliamentary History*, 23/1 (2004), at 30. Matthew Davies, 'Lobbying Parliament: The London Companies in the Fifteenth Century', *Parliamentary History*, 23/1 (2004).

instruments have already been examined in previous chapters and this type of document also includes petitions. Just as the writ was the first step in initiating legal action in the king's courts, the petition was the first step in initiating action in the king's highest court – parliament. Petitions were written with one of two goals in mind - either to obtain redress for a perceived wrong or to access the crown's grace. In both cases the petition set out the grievance and a proposed remedy. Petitioners regularly relied on professional scribes to draft their supplications and there are plenty of references to London's scriveners engaging in this type of work – especially on behalf of other livery groups in the city. Examples of scriveners being hired to draw up petitions can be found in the records of the Pewterers' Company of London, among others, which reveal the various financial implications of hiring a professional in this capacity.⁷³¹

In 1460-1, the Pewterers paid 4s 'for makynge of a byll to Cobbe for to pute yn the parlement howse for the welle of all the ffelechype' however the cost for such a specialised service seems to have escalated over the ensuing years.⁷³² In 1487-8, a payment of 13s 4d was made to a scrivener named John Pares for the cost of 'drawyng and wrytyng of ij Supplicacions' to the king and his chancellor.⁷³³ Furthermore, in the same year the Company paid 2s 6d to an unnamed clerk 'for makynge of a Supplicacion for the Comon house'.⁷³⁴ Perhaps the increase in cost can be attributed to inflation, or this may demonstrate the difference between making a petition, in the sense of writing it, and drawing one up, in the sense of composing a petition. As the last chapter demonstrated, the first was a task that could be accomplished by a scribe whereas the second required greater skills of rhetoric and dictamin and could only be accomplished by a trained scrivener. This distinction also seems to have been made by the clerk who kept the Pewterers' accounts as he noted the name of the individual scrivener who both drafted and wrote up two petitions, whereas the scribes who simply made the other petitions remain nameless. This is supported by A. R. Myers who, in the first of his two-part series of articles on parliamentary petitions, explained the price differential according to the status and complexity of the requests. For example, the request for a charter of incorporation incurred a greater

⁷³¹ See also: Matthew Davies (ed.), *The Merchant Taylors' Company of London : Court Minutes 1486-1493* (Stamford: Paul Watkins, 2000).

⁷³² Charles Welch, *History of the Worshipful Company of Pewterers of the City of London* (1; London: Blades, East & Blades, 1902), at 28.

⁷³³ *Ibid.*, at 64. John Pares was likely a relation of another John Pares who was an influential member of the Company and at the time of his death in 1484 he was Master of the Pewterers. His will was made probate on 11 May 1485: TNA, PROB 11/7/264. See Welch's *History of the Worshipful Company of Pewterers*, at 58-59.

⁷³⁴ *Ibid.*

expense due to the number of drafts made and the legal expertise required for its compilation as opposed to paying for 'merely the writing out of the completed petition'.⁷³⁵

In many ways, writing the petition was the easy part. The petitioning process as a whole was altogether more complex and was not as straightforward as may be assumed; especially as the sending of petitions was not restricted to the times when parliament was in session. Petitions could in fact be sent to the king at any time and in many of these cases, the petitions were simply drafted, written and sent in the same way that a personal letter would make its way to its recipient. As petitioners were already familiar with the concept of representatives working on their behalf by the fifteenth century, they readily accepted the role of the MP as intermediary and advocate and they must have observed the benefit in having their case endorsed by an elected representative. Some petitioners preferred to oversee the process themselves or hire a personal representative to do so on their behalf. This is naturally more likely in the cases of wealthy petitioners pursuing high stake petitions. These petitions could go through a number of stages of drafting and redrafting before they were finally presented at parliament, all of which financially benefitted the clerks and legal professionals who assisted in the improvements. Some research was necessary for the drafting of certain petitions that relied on precedents set by others as can be seen in the 1477-8 payment made by the Pewterers to the aptly named Clifford Scrivener 'for to serch for oure evidences' in a property dispute between the Company and the Priory of Chiksand.⁷³⁶ This also rings true for petitions requesting charters. In 1452-3, the Pewterers paid a chancery clerk for searching through the records for 'statuts & oth[e]r thyngs' to support their procurement of a charter, which must have required looking back through the contents to see which rights and privileges had been granted in the charters given to other companies.⁷³⁷

Petitioners had a larger degree of control over how their petitions were received if they were sent to parliament, because the king was obliged to hear all petitions before its close.⁷³⁸ Along with some contemporary accounts of petitions being presented personally by petitioners in the fourteenth and fifteenth centuries, Myers argues that evidence found in the speeches

⁷³⁵ A. R. Myers, 'Parliamentary Petitions in the Fifteenth Century: Part I: Petitions from Individuals or Groups', *The English Historical Review*, 52/207 (July 1937), at 388.

⁷³⁶ Charles Welch, *History of the Worshipful Company of Pewterers of the City of London* (1; London: Blades, East & Blades, 1902), at 51.

⁷³⁷ *Ibid.*, at 18.

⁷³⁸ W. Mark Ormrod, 'Introduction: Medieval Petitions in Context', in W. Mark Ormrod, Gwilym Dodd, and Anthony Musson (eds.), *Medieval Petitions: Grace and Grievance* (Woodbridge: York Medieval Press, 2009a), at 7.

given by the chancellor at the opening of parliament suggests that 'men not infrequently came to parliament to prosecute their own petitions'.⁷³⁹ One of these men was almost certainly Bridgwater's town clerk, John Kedwelly. Whether he presented his petition in his capacity as the burgess for Bridgwater or as a private citizen is not known, but in any case he was certainly working both agendas when he attended the Parliament of 1410. Matthew Davies hints at the role of scriveners in the London Companies' lobbying of parliament, however he does not greatly expand upon their influence in parliament. He does provide the example of John Stodeley, a London scrivener who had once kept the accounts of the Mercers and worked in the service of the duke of Norfolk, who seemed to represent the interests of both when he was returned as a burgess for two of the duke's boroughs in the parliament of 1453-4.⁷⁴⁰ The rest of this section will show the prevalence of Exeter's clerks in medieval parliaments and demonstrate how pluralism among these men had already taken hold in Devon and its boroughs from the early fourteenth century.

Elections in Devonshire

J. J. Alexander, an early twentieth-century antiquarian, wrote a series of articles in the early 1910s which not only catalogued the references to Devon's MPs, but also questioned the high number of sheriffs, lawyers, recorders and attorneys that were returned as the representatives of Devonshire and of the boroughs of Exeter and Dartmouth in particular.⁷⁴¹ He found that in contrast to the MPs who represented Devon's boroughs who essentially owed their seats to the favour of a powerful patron and did not necessarily have any real connection with the places that they represented, Devon as a county seat 'was generally found to be too large for the effective exercise of patronage or purchase. [And so] the members returned were, for the most part, men of local importance'.⁷⁴² What constituted the elevation of a town to the rank of a parliamentary borough was a decidedly haphazard affair, depending almost entirely on the

⁷³⁹ A. R. Myers, 'Parliamentary Petitions in the Fifteenth Century: Part I: Petitions from Individuals or Groups', *The English Historical Review*, 52/207 (July 1937), at 389.

⁷⁴⁰ Matthew Davies, 'Lobbying Parliament: The London Companies in the Fifteenth Century', *Parliamentary History*, 23/1 (2004), at 141-142. Stodeley signed the Scriveners' Company's Common Paper on 2 April 1433. Francis W. Steer (ed.), *Scriveners' Company Common Paper 1357-1628* (London: London Record Society, 1968) at 68.

⁷⁴¹ J. J. Alexander, 'Devon County Members of Parliament: Part I', *Report and Transactions of the Devonshire Association*, XLIV (1912), J. J. Alexander, 'Devon County Members of Parliament: Part II', *Report and Transactions of the Devonshire Association*, XLV (1913), J. J. Alexander, 'The Early Boroughs of Devon', *Transactions of the Devonshire Association*, LVIII (1926), J. J. Alexander, 'Exeter Members of Parliament, Part I: 1295-1377', *Report and Transactions of the Devonshire Association*, 59 (1927), J. J. Alexander, 'Exeter Members of Parliament, Part II: 1377-1577', *Report and Transactions of the Devonshire Association*, 60 (1928).

⁷⁴² J. J. Alexander, 'Devon County Members of Parliament: Part I', *Report and Transactions of the Devonshire Association*, XLIV (1912), at 366.

arbitrary powers of the sheriffs of the counties who were directed to hold elections for two knights of the shire and to instruct the boroughs within their counties to elect two burgesses from each. With this power, the sheriffs could just as easily omit previous parliamentary boroughs as they could create new ones and the financial burden that parliamentary representation imposed on less wealthy boroughs was sometimes so heavy that they requested exemption from the parliamentary process. As a result, some smaller boroughs petitioned the king asking to be excluded, which Torrington did in 1368.⁷⁴³ Up until 1553, all of Devon's boroughs (excepting Exeter) held their elections at the same as the county court that elected the knights of the shire. Elsewhere in the country this arrangement had been atypical since around 1500.

Differences between the two types of representatives – borough MPs and county MPs – cannot always be readily drawn, however, as the elections for both were likely held together in the same location.⁷⁴⁴ In this period, the franchise was extended to only a small number of individuals in each electoral area. From 1429 a statute restricted the eligibility of electors according to the 'forty-shilling rule' which stipulated that only those men who were freeholders of the shires that they represented and were worth forty shillings and above each year were allowed to be returned to parliament.⁷⁴⁵ The forty-shilling rule communicated the idea that men with wealth and high local standing made better parliamentarians and although cities and boroughs were free from this restriction, many may have abided by the principles that were inherent within – particularly if following them yielded positive results. In the years preceding this legislation, counties and boroughs were largely self-regulatory and seemed to naturally prefer to return men of high social standing who were usually also men of wealth who probably already met the criteria of the later statute. From among this pool of eligible

⁷⁴³ J. J. Alexander, 'The Early Boroughs of Devon', *Transactions of the Devonshire Association*, LVIII (1926), at 281.

⁷⁴⁴ Alexander believed that the members for Devonshire were elected at the county court that was held in Exeter and convened by the sheriff while being overseen by the bishop and abbots, barons and knights, freeholders of the county, twelve citizens or burghers from each city or borough, and four men and the reeve from each township which was supposed to have met on a monthly basis. Furthermore, only one writ was sent to the sheriff of Devon directing him to oversee the election of the members of parliament for Devon and for the towns in that county, which were not specified by name, which further supports the theory that all of Devon's MPs were chosen at the same forum from an early date. See: J. J. Alexander, 'Devon County Members of Parliament: Part I', *Report and Transactions of the Devonshire Association*, XLIV (1912), at 367-368. Note that Kleineke disputes this interpretation of events: Hannes Kleineke, 'The Widening Gap: The Practice of Parliamentary Borough Elections in Devon and Cornwall in the Fifteenth Century', *Parliamentary History*, 23/1 (2004), at 126-127.

⁷⁴⁵ May McKisack, *The Parliamentary Representation of the English Boroughs During the Middle Ages* (Oxford: Oxford University Press, 1962), at 51-52.; For the contents of Statute 8 Hen. VI, see: A. Luders et al. (eds.), *Statutes of the Realm (1377-1504)* (2; London: Record Commissioners, 1816) at 243.

men who were gathered there (in theory, if not in practice actually physically present), the representatives were chosen.

By the later fourteenth century, this arrangement of simultaneous election was commonplace in Devon. It may explain the frequency of pluralism among the MPs in that period who sat simultaneously for both the county and for one or more boroughs. Alexander connected pluralism with the prevalence of lawyers as MPs, noting that:

It will be observed that some, if not all, of these pluralists were lawyers, whose proverbial fondness for fees has been suggested as a solution of the mystery; but whatever the motive may have been, the combination of county and borough member in one single individual is significant of the extent to which the two kinds of representatives had commingled.⁷⁴⁶

As the legislative activity of parliament increased, so too did the frequency of 'men of law' being returned as MPs for Devonshire.⁷⁴⁷ Important business was carried out at parliament and around the courts at Westminster so it may be proposed that legal professionals and high status townsmen were the best value for money as elected representatives. The focus on results surely applied to the decision-making process behind selecting the candidates to return as members of parliament. Would leading townsmen perceive a need to put forth the best quality candidates for the job instead of settling for those men who simply met the requirements and could be counted upon to attend parliament as instructed? This question applies equally to the cities and boroughs and their selection of parliamentary candidates. With such a limited pool of eligible candidates, an emphasis was naturally placed upon selecting the candidates who would yield the highest rate of return during their time spent at parliament, but to what extent were scriveners returned as members of parliament in the fourteenth and fifteenth centuries?

'Men of Law' as Members of Parliament

While much has been written about the role played by lawyers in parliament, little work has been done on identifying the scriveners who existed among those generic and vaguely described 'men of law' who were returned by counties and boroughs to medieval parliaments. If the quality of parliamentary candidates was indeed a concern for medieval cities and boroughs, how might they have judged the best men for the job? What type of individual

⁷⁴⁶ J. J. Alexander, 'Devon County Members of Parliament: Part II', *Report and Transactions of the Devonshire Association*, XLV (1913), at 248.

⁷⁴⁷ J. J. Alexander, 'Devon County Members of Parliament: Part I', *Report and Transactions of the Devonshire Association*, XLIV (1912), at 369.

would give the electorate the best return on their investment and the greatest value for money? Parliamentary service was rewarded by a minimum 2s per diem allowance, so this could result in a tidy sum depending on the length of the parliament.⁷⁴⁸ Members of parliament were entitled to wages that included not only the days spent at parliament, but were also paid for the days spent travelling from their constituency to parliament's meeting place. After factoring in the costs of travel, lodging and subsistence, the per diem allowance would have favoured some members of parliament while disadvantaging others.

The disproportionate number of parliamentarians with a legal background in medieval parliaments has been considered by historians such as Hannes Kleineke and Simon Payling in their contributions to the 2004 volume of *Parliamentary History*.⁷⁴⁹ Carole Rawcliffe and Susan Flower have also argued that the 'jobbing lawyer' was the most useful type of MP because he not only understood the intricacies of parliament and procedure but could also use the time spent there to supervise or pursue his other employers' business going on in the law courts in the vicinity.⁷⁵⁰ Based on what we now know about John Kedwelly, we can add 'pursuing his own business' to the list of the perks of parliamentary service. In comparison, the role of scribes in medieval parliaments has been largely overlooked, although Payling included them in his categorization of legal professionals insofar as they were employed as town clerks or recorders.⁷⁵¹ Generally, scribes are often hidden behind terminology and the all-encompassing definition of 'men of law' who may or may not have actually been lawyers in the conventional sense.⁷⁵² This is also true in the history of parliament and its representatives. The percentage of lawyers in the Commons steadily increased during the period spanning the end

⁷⁴⁸ Rates of pay varied. In Exeter they frequently fell below the prescribed rate, paying Nicholas Whytyng and Robert Crauthorne 40s between the two of them for a 1348 parliament that lasted thirty days as demonstrated on the receiver's account for that year. Margery M. Rowe and John M. Draisey (eds.), *The Receivers' Accounts of the City of Exeter, 1304-1353* (32; Exeter: Devon & Cornwall Record Society, 1989) at 42. Exeter also seems to have paid their representatives according to status, so that a former mayor would be paid a minimum of 2s per day while a man who never held city office would be paid less than that. See also: Hannes Kleineke, 'The Widening Gap: The Practice of Parliamentary Borough Elections in Devon and Cornwall in the Fifteenth Century', *Parliamentary History*, 23/1 (2004), at 130-131.

⁷⁴⁹ Hannes Kleineke, 'The Widening Gap: The Practice of Parliamentary Borough Elections in Devon and Cornwall in the Fifteenth Century', *Parliamentary History*, 23/1 (2004), S. J. Payling, 'The Rise of Lawyers in the Lower House, 1395-1536', *Parliamentary History*, 23/1 (2004).

⁷⁵⁰ Carole Rawcliffe and Susan Flower, 'English Noblemen and Their Advisers: Consultation and Collaboration in the Later Middle Ages', *The Journal of British Studies*, 25/2 (1986), at 173.

⁷⁵¹ S. J. Payling, 'The Rise of Lawyers in the Lower House, 1395-1536', *Parliamentary History*, 23/1 (2004), at 104.

⁷⁵² According to Anthony Musson's definition, men of law: '[...] were defined by the way they utilised their literate and communicative skills for a particular endeavour in the law and possessed a training capable of coping with (indeed one that was stimulated by) the clarity and intellectual rigour demanded by the technicalities of substantive law and its all-dominating procedures'. Anthony Musson, *Medieval Law in Context* (Manchester: Manchester University Press, 2001b), at 44.

of the fourteenth century and throughout the fifteenth century and, in Devon at least, scribes made their presence known from an early date. Approximately ninety per cent of Devon's MPs are known for the period 1290 and 1450, with several more names missing from the records covering the century after 1450.⁷⁵³ By cross-referencing the names of known scribes with the names of these MPs there is potential for this information to be used in order to reveal which of these men – who were identified as lawyers – were actually clerks or scribes.⁷⁵⁴

Scriveners as Members of Parliament

In his research on the increase of lawyers as MPs between 1395 and 1536, Simon Payling is one of the few historians to include town clerks in this group, although the presence of scribes and town clerks as MPs was given no specialised treatment in his article. As a result, the impact of town clerks and scribes has yet to be studied in this context although their presence was undoubtedly felt. By identifying clerks and scribes as composing a particular group within the broader composition of the MPs who were classified as lawyers or 'men of law', our knowledge of parliament as a whole will improve. The influence of men of law on medieval parliaments is well documented, however not all of these MPs should be grouped together in this manner. By extracting clerks and scribes from the larger umbrella group of lawyer-MPs, the influence of this type of legal professionals on parliament can be demonstrated. This section will not only examine the frequency with which Devon's clerks, in particular Exeter's clerks, were returned as parliamentary burgesses and county representatives, but by focussing on the parliaments of the fourteenth century it will also highlight an earlier period of the influence of 'men of law' on parliamentary history that has until now been understudied.

Exeter

Devon's parliamentary representation began with the parliament of October 1258, and from the Model Parliament of November 1295 until 1832, Devon is continuously represented.⁷⁵⁵ Of Devon's boroughs, only Exeter, Barnstaple, Plympton and Totnes have a continuous parliamentary history from 1295, although Dartmouth, Plymouth and Tavistock are regularly

⁷⁵³ J. J. Alexander, 'Devon County Members of Parliament: Part I', *Report and Transactions of the Devonshire Association*, XLIV (1912), at 367.

⁷⁵⁴ A problem with the reliability of J. J. Alexander's identification of Devonshire lawyer-MPs is that he used the Year Books in order to do this, and the Year Books normally only give the participating sergeants and judges which means that any attempts at identifying lawyers in parliament is necessarily restricted to the most élite classes and excludes the lower reaches of the profession.

⁷⁵⁵ W. G. Hoskins, *Devon* (London: Collins, 1954), at 178.

represented in the records of returns.⁷⁵⁶ In the fourteenth century, attendance at parliament was viewed as an inconvenience rather than a marker of social prestige – this came later in the fifteenth century when parliament gained a new cachet. The burden was especially heavy for MPs in the Westcountry who often had the furthest to travel in order to attend. For example, Exeter to Westminster was a 360-mile round trip and would have required a serious time commitment from the city's MPs. Alexander calculated that London was a six-day journey from Exeter in the fourteenth century and York was a ten-day journey, so MPs from Devon and its county-towns could expect a minimal amount of remuneration for their troubles.⁷⁵⁷ Strangely, this distance did not dissuade local men from attending parliament and in comparison to other counties, the large majority of Devon's MPs were resident in the county when they were returned as burgesses or knights of the shire.⁷⁵⁸

While scribes may not have been ubiquitous in parliament, they were certainly present within the ranks of the myriad legal professionals who frequented parliament as borough and country representatives in the fourteenth century. Perhaps the most straightforward example of a scrivener MP can be found in the aptly named John le Screvinur who was returned to the 1306 Parliament for Tavistock borough.⁷⁵⁹ Other freelance scribes are less readily identifiable which is why town clerks are the focal point of this chapter. Henry Bokerel was the first of Exeter's town clerks to be returned as a member of parliament for the city in the 1300-01 Parliament of Edward I. Bokerel became town clerk around 1297 and seemed to have stayed in the position on and off until 1327, during which time he served as a justice at Exeter's court.⁷⁶⁰ In July 1308 Exeter's Bishop Stapeldon appointed Bokerel his steward in Devon.⁷⁶¹ Bokerel's immediate successors in the new office of chief bailiff were Philip de

⁷⁵⁶ Ibid., at 178-179, 180.

⁷⁵⁷ J. J. Alexander, 'Devon County Members of Parliament: Part I', *Report and Transactions of the Devonshire Association*, XLIV (1912), at 369.

⁷⁵⁸ Hoskins calculated that only one in eight of its MPs came from outside of the county in the period 1439-1509 and this pattern continued throughout the sixteenth century, however he provides no evidence for an earlier period. Based on the returns for Exeter, however, the preference for local men is also found in the fourteenth century and is likely indicative of the situation in Devon as a whole. W. G. Hoskins, *Devon* (London: Collins, 1954), at 179-180.

⁷⁵⁹ *Return of the Names of Every Member Returned to Serve in Each Parliament from the Year 1213-1702, Part 1*, (London: HMSO, 1879), at 21. See also: J. J. Alexander, 'Tavistock as a Parliamentary Borough, Part I (1295-1688)', *Transactions of the Devonshire Association*, 42 (1910), at 267.

⁷⁶⁰ J. J. Alexander, 'Exeter Members of Parliament, Part I: 1295-1377', *Report and Transactions of the Devonshire Association*, 59 (1927), at 302. Alexander puts the date of Bokerel's appointment at 1299 but R. C. Easterling traced Bokerel's appointment back to 1294: R. C. Easterling, 'List of Civic Officials of Exeter in the 12th and 13th Centuries c: 1100-1300', *Report and Transactions of the Devonshire Association*, 70 (1938).

⁷⁶¹ Mark Buck, *Politics, Finance and the Church in the Reign of Edward II: Walter Stapeldon Treasurer of England* (Cambridge: Cambridge University Press, 1983), at 75.

Henton (1301-2, 1304), John de Fenton (1303) and Philip Denebaud (1305-6), all of whom represented the city of Exeter at parliament.⁷⁶² Philip de Henton represented Exeter in the 1302 parliament while he was also serving as town clerk just as Bokerel had done. Philip Denebaud represented Exeter in 1309, when he was no longer the town's clerk as did John de Fenton when he represented Exeter in 1322, long after his tenure as town clerk had ended. In the period 1295-1377, of which we have records of the returns for Exeter for sixty-six parliaments, either current or former town clerks acted as the city's representatives on at least twenty-four occasions. This accounts for over one third of Exeter's representatives being either one of its town clerks or (after 1352), its recorder. With the rare exception of Denebaud in 1309 and William Bickley in 1312-13, all of these scrivener-MPs represented the city whilst also holding the post of town clerk. There is a precedent being set in the first decade of the fourteenth century of town clerks filling the position of one of the two burgesses returned for the city. By the middle of century, this began to shift in favour of the city's new recorders.

William Wyke is the earliest example of a clerk to mark this transition. In 1354, Wyke first sat for Exeter and he continued to sit in the majority of the parliaments held during his lengthy tenure in civic office for Exeter, evidence for which is found in the receiver's accounts.⁷⁶³ From 1348, Wyke had served as Exeter's town clerk and in 1352 he became the second person to hold the city's recordership. He occupied the post of recorder for the remainder of his career in the city, likely lasting up until his death which seems to have occurred at the beginning of 1374.⁷⁶⁴ William Wyke was one of the most frequent representatives for the city of Exeter, and he seems to have been continuing a practice that was first established by Robert de Lucy, Wyke's predecessor in the office of town clerk. For his part, de Lucy represented the city in 1332, March 1336, 1337 and 1344 while also representing Devon county in the 1346 parliament. Hannes Kleineke showed that it was fairly commonplace to find mayors (both former and current) along with town officials among the representatives in parliament for the southwest boroughs because the franchise in Devon and Cornwall was controlled by the ruling

⁷⁶² J. J. Alexander, 'Leading Civic Officials of Exeter, 1330-1537', *Transactions of the Devonshire Association*, 70 (1938), at 420.

⁷⁶³ J. J. Alexander, 'Exeter Members of Parliament, Part I: 1295-1377', *Report and Transactions of the Devonshire Association*, 59 (1927), at 300. Several of these references are listed in a short biographical article written on Wyke, see: Ethel Lega-Weekes, 'William Wykes, "First Recorder of Exeter"; and Wykes, Sheriff of Devon', *Report and Transactions of the Devonshire Association*, 45 (1912).

⁷⁶⁴ Ethel Lega-Weekes, 'William Wykes, "First Recorder of Exeter"; and Wykes, Sheriff of Devon', *Report and Transactions of the Devonshire Association*, 45 (1912), at 564.

oligarchs.⁷⁶⁵ This phenomenon is observed in Exeter, where the mayor was often returned as one of the MPs for the borough.⁷⁶⁶ Town officials such as these were certainly qualified for parliament and may have been seen as particularly valuable allies. As elected representatives not only was it their civic duty to appear on behalf of the towns at parliament, but they likely found that it benefited their personal business interests as well.⁷⁶⁷

Devon Pluralism

Personal interests and personal finances can only be part of the explanation for the tendency of men to sit for more than one borough or county at a time. To suggest that monetary gain was the primary motivating factor in a legal professional's decision-making process is not only overly simplistic but it also serves to perpetuate the myth of the legal practitioner's general avariciousness. The lack of any residency requirement for members of parliament in the fourteenth century may be a better reason for why so many men of law represented multiple constituencies – lawyers were qualified for the job, apparently willing enough to take the time and make the effort to travel to London, and could afford to leave their work at home behind for an indeterminate length of time (or indeed, pursue other work whilst in the city at the hub of the central courts). It was not until 1413 that a law was passed requiring returning members of parliament to be residents in their own constituencies.⁷⁶⁸ We have much evidence of provincial clerks and lawyers working on behalf of their clients in the central courts. James Gresham, member of Staple Inn and the legal advisor and business agent of the Paston family is perhaps one of the most familiar examples. Along with his local practice in Norfolk and his private work for the Pastons, Gresham was also attorney of the common pleas when his business took him to Westminster.⁷⁶⁹ This is especially interesting and relevant as it pertains to

⁷⁶⁵ Hannes Kleineke, 'The Widening Gap: The Practice of Parliamentary Borough Elections in Devon and Cornwall in the Fifteenth Century', *Parliamentary History*, 23/1 (2004), at 128.

⁷⁶⁶ The tendency for town clerks and mayors to work in tandem is echoed in the guildhall, parliament and even in the mayors and clerks of the staple.

⁷⁶⁷ For the tendency of communities to be represented by their most important members, see: Susan Reynolds, *Kingdoms and Communities in Western Europe, 900–1300* (2nd edn.; Oxford: Oxford University Press, 1997), at li–lii, 251.; S. H. Rigby, 'Urban "Oligarchy" in Late Medieval England', in J. A. F. Thomson (ed.), *Towns and Townspeople in the Fifteenth Century* (Gloucester: Alan Sutton, 1988), at 63–67. Peter Fleming, 'Telling Tales of Oligarchy in the Late Medieval Town', in Michael Hicks (ed.), *Revolution and Consumption in Late Medieval England* (Woodbridge: Boydell, 2001), Carl I. Hammer, 'Anatomy of an Oligarchy: The Oxford Town Council in the Fifteenth and Sixteenth Centuries', *The Journal of British Studies*, 18/1 (1978), Antony Black, *Political Thought in Europe, 1250–1450* (Cambridge: Cambridge University Press, 1992), at 14–15, 18–19.

⁷⁶⁸ A. Luders et al. (eds.), *Statutes of the Realm (1377–1504)* (2; London: Record Commissioners, 1816) at 170; Hen. V, c. 1; J. J. Alexander, 'Dartmouth as a Parliamentary Borough', *Report and Transactions of the Devonshire Association*, 43 (1911), at 350–351.

⁷⁶⁹ E. W. Ives, *The Common Lawyers of Pre-Reformation England* (Cambridge: Cambridge University Press, 1983), at 21.

the multiplicity of functions that could be served by local officials with legal knowledge, like clerks and scribes, who could attend to various types of business whilst at parliament. On at least one occasion when borough elections in Exeter were contested, lawyers were actually replaced in favour of city officials perhaps for this very reason – they could be counted upon to prioritise working in the best interests of the city over working in the best interests of their other clients.⁷⁷⁰

In contrast to sheriffs who were prevented from representing their shires in the Commons because of conflicts with their other duties, no objections were ever raised in parliament to protest the frequency of prominent town officials holding the positions.⁷⁷¹ In 1372 an ordinance forbidding the return of lawyers and sheriffs as knights of the shire was issued and was effective in preventing sheriffs from appearing as such for the remaining parliaments of Edward III's reign, although the ordinance did not seem to have any impact on the types of borough representatives that were returned.⁷⁷² In Devon, the cities and boroughs evaded this restriction on returning lawyers as members of parliament although the ordinance was apparently observed in the county elections for the next fifty years.⁷⁷³ 'Men of law' were so often returned as members of parliament that they incurred its wrath and controls were placed on their eligibility. The first attempt to restrict the presence of men of law in parliament is found in a writ dating from 4 Edward III in which this group was referred to, but only in ambiguous terms, which were further clarified in the writs of the 1350s.⁷⁷⁴ By 1372 it was clear that not only were sheriffs unwelcome at parliament as knights of the shire, but so were lawyers who pursued other business – mainly private petitions – while at parliament.⁷⁷⁵ These restrictions, while tough, would have had less bearing on provincial men of law whose legal work did not meet the description outlined in the 1372 ordinance. Local officials, clerks and scribes remained a group of legal professionals who were prime candidates for parliament.

⁷⁷⁰ Hannes Kleineke, 'The Widening Gap: The Practice of Parliamentary Borough Elections in Devon and Cornwall in the Fifteenth Century', *Parliamentary History*, 23/1 (2004), at 129.

⁷⁷¹ *Ibid.*, at 134.

⁷⁷² A. Luders et al. (eds.), *Statutes of the Realm (1235-1377)* (1; London: Record Commissioners, 1810) at 394; Stat. 3. 46 Edw. III. K. L. Wood-Legh notes that the practice of returning sheriffs as MPs was revived during Richard II's reign, but never again to the extent that it occurred before 1372. See: K. L. Wood-Legh, 'Sheriffs, Lawyers, and Belted Knights in the Parliaments of Edward III', *The English Historical Review*, 46/183 (1931), at 373, Anthony Musson, *Medieval Law in Context* (Manchester: Manchester University Press, 2001b), at 196.

⁷⁷³ J. J. Alexander, 'Devon County Members of Parliament: Part II', *Report and Transactions of the Devonshire Association*, XLV (1913), at 251.

⁷⁷⁴ K. L. Wood-Legh, 'Sheriffs, Lawyers, and Belted Knights in the Parliaments of Edward III', *The English Historical Review*, 46/183 (1931), at 376-377.

⁷⁷⁵ *Ibid.*, at 377 and 381. For a summary of the hostility towards lawyer MPs in England, see: S. J. Payling, 'The Rise of Lawyers in the Lower House, 1395-1536', *Parliamentary History*, 23/1 (2004), at 109-110.

While the majority of these officials, clerks, and scribes were probably never lawyers in the conventional way, their work made a significant contribution to the functioning of the law nonetheless as they practised their trades in the provinces and worked on their constituents' behalf at parliament.

Although Nicholas Whytyng was Exeter's recorder in 1355/6 and became sheriff of Devon in 1372, he was never explicitly referred to as a lawyer, attorney or member of an Inn as might be expected of a true 'lawyer'.⁷⁷⁶ He had joined the freedom of the city of Exeter in 1349 by gift of the mayor and community which suggests that he was already a well-established member of the local oligarchy by this time.⁷⁷⁷ His exact status is unclear and in this sense, he is a personification of the general ambiguity surrounding the term 'man of law'. In his case, it may be the most apt description for what he did. While his name appears frequently in Exeter's receiver's accounts, he is never paid in the capacity of practising the law or representing the city in any court. His name is often found in close proximity to the names of other men who we know were lawyers for the city and who were referred to in the accounts as lawyers; however Whytyng is never referred to as such. While he may certainly have been a 'man of law' and a prominent member of local society akin to his colleagues the lawyers, there is no evidence to suggest that he was anything more than a scrivener with legal knowledge who worked for Devon and its boroughs at parliament.

What we can say about Whytyng, however, is that he was a serial pluralist. He was first elected to parliament as MP for Exeter in January 1348 and again in 1351 and in six parliaments he filled fourteen seats for multiple boroughs as well as for Devon county.⁷⁷⁸ Whytyng simultaneously sat for Devon, Exeter, and Dartmouth in the 1352 parliament and was returned as a member of parliament for Devon, Dartmouth, Tavistock, Torrington, and Totnes the

⁷⁷⁶ DRO, Receiver's Accounts, 29-30 Edw. III; J. J. Alexander, 'Dartmouth as a Parliamentary Borough', *Report and Transactions of the Devonshire Association*, 43 (1911), at 365.

⁷⁷⁷ Margery M. Rowe and Andrew M. Jackson (eds.), *Exeter Freeman, 1266-1967* (Devon & Cornwall Record Society, Exeter, 1973) at 29.

⁷⁷⁸ J. J. Alexander, 'Devon County Members of Parliament: Part II', *Report and Transactions of the Devonshire Association*, XLV (1913), at 259.; Nicholas Whytyng is listed as the MP for Exeter city in 1347-8, see: *Return of the Names of Every Member Returned to Serve in Each Parliament from the Year 1213-1702, Part 1*, (London: HMSO, 1879), at 143.; for Devon county in 1348 (*Ibid.*, at 145); for Devon county, Clifton Dartmouth borough, and Exeter City in 1350-1 (*Ibid.*, at 148); for Devon county, the borough of Chipping Torrington, Clifton Dartmouth borough (listed as Nicholaus fil' Willielmi Wytyng'), Tavistock borough, and Totnes borough (listed as Nicholaus Whytyng, de Sydebury) in 1351-2 (*Ibid.*, at 150); for Devon county and Tavistock borough in 1354 (*Ibid.*, at 155); and for Devon county and Dartmouth borough in 1360-1 (*Ibid.*, at 166).

following year.⁷⁷⁹ Between 1348 and 1372, Whytyng represented Devon at one quarter of the parliaments held in this period. Pluralism such as this is an important part of the untold history of provincial scriveners in parliament because it reflects a wider trend within Devon and its boroughs. In Whytyng's time, lawyers were commonly returned as MPs for multiple boroughs and counties and Alexander believed that their high rate of return was able to temporarily enhance the political importance of the region by bringing its concerns to the fore.⁷⁸⁰ From Whytyng's example we can see that a great number of instances of pluralism can be found in the borough seats, as well, and that this phenomenon was not restricted to county representation, but why were scriveners returned at all?

Medieval Parliament and Legal and Linguistic Literacy

This section has briefly mentioned the social, economic and political advantages for members of parliament, and shown how scriveners like John Kedwelly wrote and promoted petitions once they arrived at parliament, but how did the boroughs and their constituencies benefit from returning town clerks and recorders as their representatives? The historiography often presents parliamentarians as unwilling candidates upon whom the burden has been imposed rather than as active or even enthusiastic participants, but what if there was a body of men who saw parliament as an opportunity worth pursuing? Matthew Crauthorne was a clerk (though not a town clerk) who acted as MP for Exeter on six separate occasions and as MP for Devon three times and he was involved in one of the earliest contested elections to parliament. In 1319 he was returned for Exeter and he claimed that he was also the elected candidate for Devon, however the sheriff returned another person in his stead. Crauthorne petitioned parliament to complain of the wrong doing, unfortunately his original petition seems to have been lost.⁷⁸¹ Early twentieth-century antiquarians accused Crauthorne of greed, as they assumed that 'what chiefly troubled him was the loss of 2s 4d per diem, [being] the difference between a knight's and a citizen's wages' but that may not be a fair assessment as

⁷⁷⁹ J. J. Alexander, 'Dartmouth as a Parliamentary Borough', *Report and Transactions of the Devonshire Association*, 43 (1911), at 350.

⁷⁸⁰ J. J. Alexander, 'Devon County Members of Parliament: Part II', *Report and Transactions of the Devonshire Association*, XLV (1913), at 251, 252.

⁷⁸¹ The reply dates from the York parliament of 1318 (Michaelmas) and enrolled on the parliament roll. We do have a seventeenth-century transcription of the petition that Crauthorne presumably penned himself in the fourteenth century, but the original seems to either be lost or uncatalogued. The petition was referred to the Court of Exchequer as well. For the transcription see: J. J. Alexander, 'Devon County Members of Parliament: Part II', *Report and Transactions of the Devonshire Association*, XLV (1913), at 268, Note A, 'Addenda'.

he might have had altruistic motives for wanting to represent Devon.⁷⁸² Crauthorne's petition revealed sheriff Robert Beudyn's corruption in this matter as he allegedly went against the will of the 'commune' of the county by sending a false return. This type of questionable behaviour was typical of Beudyn who returned himself as MP for Devon in 1320 and 1322. While this was not unheard of it was highly unusual for a sheriff to return himself as the representative for his county and it seems to show that he prioritised his own interests above those of the county he served.

As 'men of law', scribes were uniquely positioned to work in the environment of the medieval parliament. This was a place where laws were made and who understood the impact of legal reform and innovation better than those who were immersed in the law on a daily basis? Remember that scribes were in possession of some very practical linguistic skills that would prove useful at parliament. As legally literate individuals they were not only well versed in the technicalities of the law, but they also understood the legal jargon used by lawyers and were capable of operating in the languages of the law – Latin, French and English. They were also deeply embedded in the affairs of their localities either through political allegiance, kinship/family ties and/or through personal investment (especially in the form of property ownership). As such, they had a vested interest in doing the best they could for their constituents and by helping others they were also helping themselves. Their legal literacy was invaluable in this context and it was complemented by their linguistic literacy as well. Parliament at this time must have been a linguistically fascinating gathering as it was, quite literally, meant to assemble people for the express purpose of talking (*parler*).⁷⁸³ As a result of bringing together the disparate representatives from boroughs and counties, the many dialects of the English language would have been on display in parliament and must have had the effect of creating a microcosm of the varieties of English and French spoken in England.⁷⁸⁴

While French and Latin remained the official languages of written legal record, English had a role to play in parliament too. Certainly by the fifteenth century English was the commonest maternal language amongst the members of parliament, and as a result it was used in oral communication – even by the Chancellor who in 1362 made his opening address to parliament

⁷⁸² J. J. Alexander, 'Devon County Members of Parliament: Part I', *Report and Transactions of the Devonshire Association*, XLIV (1912), at 370.

⁷⁸³ Chris Given-Wilson, 'The Rolls of Parliament, 1399-1421', *Parliamentary History*, 23/1 (2004), at 69.

⁷⁸⁴ W. M. Ormrod, 'The Use of English: Language, Law, and Political Culture in Fourteenth-Century England', *Speculum*, 78/3 (2003), at 753.

in English rather than in French which had until then been the standard.⁷⁸⁵ Alongside its function as a written language, French too was used as an oral language of parliament. Latin was reserved as a language of record, used mostly by the clerks who translated the decisions made by parliament in French and English and set them down on parchment on the parliament and statute rolls, however Latin terms – especially legal terms – would have made their appearance in the oral exchanges at parliament as well.⁷⁸⁶ By this period we see a marked increase in French language documents coming out of the English Chancery, with the parliament and statute rolls being the best examples of official documentation that were produced in the French language by the Chancery clerks.⁷⁸⁷ Therefore, although these three languages certainly had their own specific domains in the multilingual society of fourteenth-century England, Latin, French and English ultimately served complementary functions that are reflected in how they were used by parliamentarians.

Clerks and men with legal knowledge were essential as parliamentarians for cities and boroughs as they would ensure that the petitions made were drawn up well and contained accurate information. Additionally, scribes understood all the languages that could be encountered in both written and oral form while at parliament. As a result they could participate in parliamentary proceedings in a manner that was impossible for less legally and linguistically capable MPs. This explains why the pattern of Exeter's town clerks as MPs continues throughout the fourteenth century; a model which is carried on into the following century by the recorders who took on an increasing amount of legal responsibility in the city while the clerks retained their ancient secretarial and administrative role. From the moment of the creation of the recordership in Exeter, the city's recorders begin to largely usurp the town clerks as MPs in the later parliaments. Despite this shift, the frequency with which town clerks were returned as borough representatives in earlier fourteenth-century parliaments indicates that there was a larger role there for this class of legal professional than has never before been suggested.

⁷⁸⁵ Great Britain. Parliament (ed.), *Rotuli Parliamentorum; Ut Et Petitiones, Et Placita in Parlamento*. 6 vols. (2; London, 1783) at 268. See also: *The Parliament Rolls of Medieval England*, C. Given-Wilson et al, eds., CD-ROM, (Leicester: Scholarly Digital Editions, 2005); W. M. Ormrod, 'The Use of English: Language, Law, and Political Culture in Fourteenth-Century England', *Speculum*, 78/3 (2003), at 779.

⁷⁸⁶ Sir John Fortescue explained that Latin was an essential language because it was used to record the statutes that were decided by parliament. See: John Fortescue, 'In Praise of the Laws of England', in Shelley Lockwood (ed.), *On the Laws and Governance of England* (Cambridge: Cambridge University Press, 1997), at 67.

⁷⁸⁷ W. M. Ormrod, 'The Use of English: Language, Law, and Political Culture in Fourteenth-Century England', *Speculum*, 78/3 (2003), at 775.

By including the clerks and scribes who served as members of parliament but who have not yet been classified as either men of law or lawyers, the number of legal professionals within parliament was certainly greater than the total previously calculated. As a result, the legal profession – including scribes – may actually have had more influence on medieval parliaments than is currently believed and this in turn reflects their level of involvement in creating legislation at the highest level. This has revealed medieval parliament, and the parliamentary process as a whole, as the most unexpected way in which provincial scribes applied their specialised skills. Their membership in the medieval Commons situates provincial scribes as legal intermediaries working at the highest level of the law. Together, this reveals the truth of the place of scribes within the wider legal profession. They certainly possessed the skills of the average lawyer, from the perspectives of procedure and parchment, but they put their knowledge and training to largely different uses and this is what sets scribes apart.

The next section will consider the modern fascination with categorizing legal professionals in a way that is largely inconsistent with medieval practice. This tendency is chiefly responsible for minimizing (if not ignoring altogether) the role of scribes in medieval parliaments. In both this and in other areas of medieval legal history, this proclivity has served to obscure the impact that the lower reaches of the law had on the administration of the law. This applies not only to the history of parliament as the highest court in the land but also speaks to the greater impact made by provincial scribes on their local area through their participation in law and procedure on that level. As this thesis redefines scribes according to their work, what this demonstrates is that both London's scribes and those working beyond the Guild's monopoly in the countryside were equally highly specialised. They should, therefore be considered a separate class of legal professional. After all, these were not 'country lawyers', generic 'men of law' or even simply 'clerks'; instead, these were scribes, who were legal professionals in their own right. As the previous chapter has shown, scribes had their own institutions for training and as Chapter Three demonstrated, town clerks possessed their own heterogeneous systems of internal regulation, in accordance with local custom that set out the roles and responsibilities of the men holding clerical office. Together, these form part of the criteria for identifying a true profession.

4. Specialization and professionalization of the scribening craft

The term 'legal professional' has been used with caution in this thesis precisely because it carries with it a heavy burden of proof. However, questions surrounding the accepted

definitions of the legal profession and legal professionals are all necessary components of improving our understanding of the unique role of those who are wrongly perceived to have worked on the margins of the law and are seen as being on the outside of the legal profession looking in. Because scriveners are only rarely classed as legal professionals, the importance of the role they played in the administration of justice and access to it through procedure and parliament is almost entirely overlooked by legal historians. This section will redress this oversight by discussing – for the first time – the meaning of specialization and professionalization of the legal profession as it applies to provincial scriveners and on the basis of the research presented in this thesis, determine whether or not these men constituted a group of legal professionals.

What is a ‘legal professional’?

It is widely accepted that there are two ways of identifying a legal professional. First, he earns his living through the law; second, he belongs to a professional legal association.⁷⁸⁸ In response to Reynold’s article on the professionalization of English law in the twelfth century, Paul Brand remarked that ‘if professional law was crucially dependent on legal professionals, those professionals could only exist and survive if they could find clients willing and able to pay for their services’.⁷⁸⁹ According to his own definition, a profession is predicated on the presence of professionals who rely on legal work to form the basis of their incomes. Scriveners who worked as town clerks were essentially on retainer to their ‘client’ which was the local government. In return for their services, they were given a salary along with ad hoc payments for work done that was considered beyond the purview of their job description. While this work was certainly of a secretarial nature, it was rooted in local custom and the common law which made it a specialist legal service. Additionally, one of the perks of working as a town clerk was the large volume of private scrivener business that it brought to the clerk, most recognizably in the form of conveyancing.

This second criterion – membership of a professional organization – includes the availability of, or opportunities for, formal education along with evidence of internal control and maintenance of professional standards amongst its membership. A legal professional might fall

⁷⁸⁸ Reynolds, Brand and Musson are three historians who use these criteria in their assessments. See: Susan Reynolds, 'Variations in Professionalism', *Law and History Review*, 21/2 (2003a), at 389, Paul Brand, 'The English Difference: The Application of Bureaucratic Norms within a Legal System', *Law and History Review*, 21/2 (2003), Anthony Musson, *Medieval Law in Context* (Manchester: Manchester University Press, 2001b).

⁷⁸⁹ Paul Brand, 'The English Difference: The Application of Bureaucratic Norms within a Legal System', *Law and History Review*, 21/2 (2003), at 386.

into either of these two categories but not necessarily both. An insistence upon ticking boxes does little to further our knowledge of the men who worked within the legal profession but does much to limit the scope of research on these subjects. On the basis of the research presented in this thesis, there is only one possible conclusion that can be reached when considering the place of scribes in this profession. In previous chapters it has been demonstrated how scribes were able to gain a specialized education in languages and the law and that many of them, especially those who pursued scribing as a full-time occupation, relied upon scribing to earn an income. While there is no evidence of professional organizations for scribes outside of London and York, this does not mean that they worked without any professional standards. The very detailed descriptions of the responsibilities of Bristol's clerks in Ricart's Kalendar are proof that town clerks were subjected to a certain degree of internal regulation as a consequence of their employment within the local government. On this basis, this thesis strongly advocates for the inclusion of provincial scribes in the membership of the medieval legal profession.

Rejection of the London-centric view of professionalization

Without labouring any further on the subject of definitions, the main contention of this thesis is that questions of 'professionalization' are important to address, but they are also easily debatable. More importantly, not all scholars impose such strict definitions on what constitutes a professional or a profession for that matter. Starting in the early twentieth century with the publication of William Holdsworth's multi-volume *History of English Law*, interest in the history of the legal profession began to grow and take into account the professionalization that existed pre-industrialization.⁷⁹⁰ In his 1986 monograph on the history of barristers, Prest acknowledges that 'the term "profession" is now more widely recognised as

⁷⁹⁰ William Searle Holdsworth, *A History of English Law*, 17 vols. (London: Methuen, 1903-66). For more recent contributions to the field, see the contributors to Wilfrid Prest (ed.), *Lawyers in Early Modern Europe and America* (London: Croom Helm, 1981b). Especially: C. W. Brooks, 'Common Lawyers in England, C. 1558-1642', in Wilfrid R. Prest (ed.), *Lawyers in Early Modern Europe and America* (London: Croom Helm, 1981), J. H. Baker, 'The English Legal Profession, 1450-1550', in Wilfrid Prest (ed.), *Lawyers in Early Modern Europe and America* (London: Croom Helm, 1981). See also the various books and articles written by Baker, Brooks and Prest on similar topics relating to the development of the English legal profession and its institutions in the medieval and early modern periods, among them: Wilfrid R. Prest, *Inns of Court, 1590-1640* (London: Longman, 1972), E. W. Ives, 'The Common Lawyers in Pre-Reformation England', *Transactions of the Royal Historical Society*, 18 (1968), E. W. Ives, *The Common Lawyers of Pre-Reformation England* (Cambridge: Cambridge University Press, 1983). For a more recent contribution on the history of the medieval legal profession, see the work of Anthony Musson, particularly: Anthony Musson, *Medieval Law in Context* (Manchester: Manchester University Press, 2001b), Anthony Musson and W. M. Ormrod, *The Evolution of English Justice* (London: Macmillan, 1999). Susan Reynolds has challenged some traditional interpretations of the shift from customary law to 'professional' law by seeking its origins in twelfth-century Europe: Susan Reynolds, 'The Emergence of Professional Law in the Long Twelfth Century', *Law and History Review*, 21/2 (2003b).

a subjective, value-laden concept' than it once was and is 'not a precise analytical category'.⁷⁹¹ In his assessment of the profession, Prest identifies two types of medieval common lawyers and compares them with those who worked on the periphery of the law, like scriveners. Prest states:

The common law of England and its practitioners emerged during the two centuries following the Norman Conquest. The two leading and representative types of medieval common lawyer were the serjeant at law and the attorney...In addition, numerous men on the fringes of the profession, especially in the countryside, who had few or no formal links with the courts and inns of the London-based legal system, nevertheless practised law in one capacity or another, as manorial stewards and court-keepers, attorneys in borough courts, scriveners, town clerks, and undersheriffs.⁷⁹²

Prest clearly associates geographic peripheries with professional peripheries – not only do scriveners and town clerks exist on the margins of the law in the sense that they are practitioners (but not entirely professionals in his assessment) but they also work outside of London, on the fringes of the legal systems of the city and the Crown. This interpretation unfairly subordinates provincial legal professionals to those engaged in the central courts and presents an inaccurate picture placing London's legal 'professionals' on one side of the legal spectrum and provincial legal 'practitioners' on the other, inferior, end of the continuum. These distinctions, while evidenced in the early modern period and positively entrenched by the middle of the seventeenth century, cannot be applied retrospectively to the medieval period because of the realities of its polycentric legal system and legal culture. As demonstrated by the criticisms of the profession found in the London Ordinance of 1280, in the medieval period there was nothing to prohibit a literate layman from pleading in any of the king's courts – these boundaries simply did not exist within the legal profession that lacked official separation of the specialties within the law.⁷⁹³

While observing that scriveners could sometimes find greater success working as scribes and copyists in the provinces than in London, Ramsay argues that it would be wrong to present them as 'substitute lawyers in a general way, for their legal skills were obviously limited'.⁷⁹⁴ For her part, and supported in this notion by Paul Brand, Susan Reynolds considers research on scriveners and those who found themselves at 'the lower reaches' of the legal profession to be

⁷⁹¹ Wilfrid R. Prest, *The Rise of the Barristers: A Social History of the English Bar 1590-1640* (Oxford: Clarendon Press, 1986b), at 2.

⁷⁹² *Ibid.*, at 4.

⁷⁹³ See Chapter Five for more detail on the Ordinance of 1280.

⁷⁹⁴ Nigel Ramsay, 'Scriveners and Notaries as Legal Intermediaries in Later Medieval England', in Jennifer Kermode (ed.), *Enterprise and Individuals in Fifteenth-Century England* (Gloucester: Alan Sutton, 1991), at 126.

experts in the law in their own right, and therefore equally deserving of further study as they were part and parcel of the legal profession.⁷⁹⁵ Since so little is known about those working at the middling rank of the profession, how can one make any assertion about the skills level of those working at the very bottom? Ives considers these 'minor' legal professionals to constitute a single group along with the lawyers of middling rank based on the common terminology used to describe these men. Lawyers below the distinction of judges and serjeants were all 'learned in the law', or simply designated as 'learned men' by their contemporaries.⁷⁹⁶ Furthermore, Ives asserts that the demand for legal services outside of London was met by a contingent of local legal officials who were the only lawyers that really mattered for the average person.⁷⁹⁷ Insofar as this applies to the classification of scribes, this is an interesting element of the debate. Ives is of the opinion that it is down to contemporaries to make the distinction between legal professionals, however documentary evidence shows that medieval writers were more inclined to refer to scribes as clerks rather than scribes, so it is more difficult to ascertain the difference between the members of the procedural side of the legal profession as compared to the easy distinctions that were made between judges, serjeants, lawyers and other legal practitioners found in the central courts at the highest end of the legal profession.

This thesis has drawn on various approaches in the attempt to define the role of scribes and has freely referred to them as legal professionals. This is not without controversy however, and there are many historians who would be inclined to disagree with labelling scribes as legal professionals. Following S. J. Payling's example, this study has redefined the term 'scribe' in order to identify these men as legal professionals based on the work that they produced and the scribal activities that they participated in. This work-based perspective has been applied throughout this thesis in order to expand the scope of the history of scribes by identifying scribes from within the wider amorphous group of 'men of law' or those who have been labelled as 'lawyers'. According to the definition of scribes based on their actions rather than on arbitrary labels, which has been supported by the research presented here, scribes can be considered to be a larger sub group of legal professionals that incorporates certain types of scribes working at all levels of the legal profession and in various public offices. Following this approach and taking into account their varying degrees of competence, it

⁷⁹⁵ Susan Reynolds, 'The Emergence of Professional Law in the Long Twelfth Century', *Law and History Review*, 21/2 (2003b), at 366.

⁷⁹⁶ E. W. Ives, *The Common Lawyers of Pre-Reformation England* (Cambridge: Cambridge University Press, 1983), at 20.

⁷⁹⁷ *Ibid.*

cannot be denied that these scribes had at the very least acquired two professional skills which they used as a means of earning a regular income.

Scriveners and the professionalization of the English legal system

In response to Susan Reynold's article on the emergence of professional law in the twelfth century, Paul Brand responded with a reminder that the question of the professionalization of the law is an area that requires more investigation. Brand concluded that historians need to look beyond the judges and the lawyers and look towards the draftsmen of charters and contracts as contributors to the developing legal profession. Brand bemoaned the absence of a 'satisfactory general modern treatment of the diplomatic of private charters and other documents' and the lack of any 'general study of who wrote and drafted these charters or of their relationship with the other parts of the legal profession'.⁷⁹⁸ Furthermore, Paul Brand identified the growth of English bureaucracy as having contributed to the professionalization of the legal system – facilitated in no small part by 'tidy-minded' bureaucrats such as clerks.⁷⁹⁹

This thesis has remedied this and exposed the scriveners who engaged in this type of legal work. The impact that scriveners, in their role as town clerks especially, had on the administration of – and access to – justice on a local level, cannot be overestimated. Through their tidy-mindedness, they occupied an important and privileged place in medieval society. They wrote the records of people's lives as they came into contact with local courts, they drafted the legal instruments that provided people with protection for their property and recorded its transactions, they wrote the documents that were needed to secure loans and recover debts. Finally, scriveners were present in the twilight years of a person's life to make sure that all loose ends were tied up by writing the final wills and testaments of many of these same people for whom they had written their deeds and recorded their recognizances. That these men were present in a capacity to not only write but also to advise on points of law has been established in this thesis, however there is another connection that can be made between the nature of this work and the development of the legal profession as a whole in this period, along with the role of provincial scriveners in access to justice beyond the jurisdiction of their local courts to include representation at medieval parliaments. The purpose of this section is not to find professional lawyers in a place where there were none, but to show that scriveners were another type of legal professional on the broad spectrum of legal professionals

⁷⁹⁸ Paul Brand, 'The English Difference: The Application of Bureaucratic Norms within a Legal System', *Law and History Review*, 21/2 (2003), at 387.

⁷⁹⁹ *Ibid.*, at 385.

practising in provincial England until the end of the medieval period. Although scribes are not always classed as legal professionals by medievalists in histories of the legal profession, they clearly had an important role to play in the administration of justice and access to it through procedure and parliament. This has been demonstrated in this chapter and used to support a strong argument for their inclusion as members of the medieval legal profession.

5. Conclusions

This chapter has built on Chapter Five in order to show that there were scribes working in the capacity of town clerks in provincial England who used their specialized legal and linguistic skills to turn their hands to other secretarial, administrative and business opportunities. They did this not only in order to broaden the base of their income, but also their influence on provincial society. As capable scribes these clerks used their considerable clerical and administrative skills to find employment in the local guildhall as town clerks, whilst branching out as parliamentarians, scribes for hire, government officials, businessmen, merchants and more. All of these activities improved their finances and their social standing. Truly, it seems as though diversification was essential for the economic survival of provincial scribes because, put simply, sometimes they had to find work where they could get it, much like Robert Clerk of Cuxham in Oxfordshire. As the literate, but non-inheriting younger son of a miller, he worked as a freelance clerk, 'making a living from what work he could get in the area'.⁸⁰⁰ None of the clerks presented in this thesis were in such dire straits; on the contrary, they seemed financially secure even in a time of social instability and this can be attributed to their tendency to take on other occupations.

Their individual financial security and varied business affairs allowed scribes the freedom to explore several avenues for employment which included recurring engagements as members of parliament. This is significant because this is the first time that scribes have been observed actively engaging in the making of the common law through their presence at parliament and through their representation of the vox populi. There is no better way to encapsulate the role of the legal intermediary in access to justice than to observe the scribe present and voicing the concerns of individuals and groups at the very place where new laws were made. Therefore it is evident that the basic administrative, clerical and secretarial

⁸⁰⁰ P. D. A. Harvey (ed.), *Manorial Records of Cuxham, Oxfordshire, circa 1200 -1359* (Oxfordshire Record Society, 23: Royal Commission on Historical Manuscripts, 1976) at 38. R. H. Britnell, 'Specialization of Work in England, 1100-1300', *The Economic History Review*, 54/1 (2001), at 1.

imperative for town clerks coupled with their specialized linguistic and legal skills resulted in the development of an identifiable group of legal scribes whose varied roles within civic administration on a local level had implications for their clients' ability to readily and easily access justice on both the local and the national level.

Indeed, scriveners possessed many of the same skills as lawyers and yet for the most part, they put these skills to a different use. This chapter provides evidence to support the proposition that scriveners and scrivening must be identified through the work produced by these legal scribes. This chapter contends that while the concept of medieval 'professionalization' can be debated, what cannot be denied is that these scribes, taking into account their varying degrees of competence, had at the very least acquired a professional skill which was recognized by their peers, capitalized upon by scriveners to further their careers and exploited by the élite medieval electorate who sent these men to parliament. The argument for redefining scrivening on the basis of their specialised work extends to all scriveners and includes those working in London under the Scriveners' Company. Guild membership can no longer be used as the defining criteria for establishing membership of a profession, as this chapter has demonstrated that provincial scriveners are equally worthy of this designation. As lay legal and linguistic specialists who attained office through their knowledge and expertise rather than by virtue of their birth, provincial scriveners were truly qualified to office by their law.

CONCLUSION: 'the most noble craft'

This thesis has established the importance of provincial scribes and has examined their role as the keepers and creators of legal memory in medieval England. The first chapter began by quoting one of the maxims of London's Scribes' Company and this last chapter will begin by quoting another. The first, 'Scribite Scientes', commanded the learned to write. The second, 'Littera Scripsit Manet', states that 'the written word endures'. Throughout this thesis, scribes have been shown to adhere to the first dictum in order to honour the values that underpinned the second. The scribes' instruments that were produced as a result have been used as evidence to demonstrate the legal and linguistic expertise of these men and to reveal evidence of how they perceived themselves as clerks. Through these largely formulaic documents, scribes left us records of more than just the legal transactions of their clients – they have left us evidence of themselves as individuals and as members of the legal profession. While the first motto was an instruction to scribes to go forth and write, the second served as a sober reminder of the significance and permanence of the manuscripts that they produced.

A fourteenth-century Flemish poem encapsulates both the practical and the symbolic aspects of scribbling and the scribbling craft as they were viewed by its fifteenth-century English translator. It describes the work of Gervais the scribe and it contextualises the significance of scribbling to the manuscript culture of medieval Europe and to the people who depended upon scribes for their legal skills.⁸⁰¹

Geruays the scriuener
 Can well write chartres,
 Preuyleges, instrumentis,
 Dettes, receyttes, (4)
 Testamentis, copies.
 He can well rekene
 And yelde rekenynges
 Of all rentes, (8)
 Be they of rente for lyf,
 Or rent heritable,
 Of all fermes.
 He is well proufitable (12)
 In a good seruise;
 That whiche he writeth
 Abydeth secrete.

Ne so noble
 That may hym shame (20)
 For to lerne ne for to doo.
 Yf it were not the scripture
 The law and faith shold perisshe,
 And all the holy scripture (24)
 Shall not be put in forgetting.
 Therefore euery true cristen man
 Ought for to do lerne
 To his children and frendes; (28)
 And them selfe owe it to knowe,
 Or othirwyse, withoute faulte,
 God shall demande them
 And shall take of vengeaunce; (32)
 For ignorance

⁸⁰¹ H. Bradley (ed.), *Caxton's Dialogues in French and English: Adapted from a 14th-Century Book of Dialogues in French and Flemish* (London: Kegan Paul, Trench, Trübner for E.E.T.S., 1900) at 36-37.

Hit is the most noble craft (16)
That is in the world;
For ther is none so hye

Shall nothyng excuse hem.
Euery man so acquite hym
As he wylle ansuere! (36)

Gervais is presented as the ideal clerk in this tribute to scribes and the scribbling craft that first appeared in a conversation book called a *Livre des Mestiers*. It was written in Bruges between 1360 and 1369, or possibly even earlier.⁸⁰² The book is bilingual and the text is set in two parallel columns which give both the French and the Flemish versions. The author of the book is unknown but there is one element of his identity that has been ascertained – he was a schoolmaster who seems to have intended for his book to be used as an ABC by children and as a book of vocabulary, conversation and translation by local merchants. The book was brought to England by the renowned printer William Caxton upon his return from the English mercantile colony in Bruges where he was governor of London’s merchant adventurers between 1463 and 1469.⁸⁰³ Caxton’s edition became known as *Dialogues in French and English* and in 1483 it was the third book that was published by his press.⁸⁰⁴

The significance of this verse extends far beyond its ability to summarise the scrivener’s craft, although this is also quite revealing. The original author explains that as a scrivener, Gervais writes charters, privileges, instruments, debts, receipts, testaments and makes copies. Moreover, his skills include accountancy as he can both ‘reckon’ and ‘yield reckonings’ and can calculate and collect all different types of rents. This echoes the role of Exeter’s town clerk and his responsibility for compiling the receivers’ accounts, among other things. Furthermore, Gervais not only does his job well, but he does it whilst respecting the privacy of his clients; therefore his good service is performed confidentially, so his clients need not fear entrusting him with intimate details of their lives and finances. As a result, the scrivener does a profitable trade. This has also been seen in the examples of the town clerks in Bristol and Exeter that appear in this thesis and who have been used to challenge the myth of the poor and humble clerk.

⁸⁰² Margaret Spufford, 'Literacy, Trade and Religion in the Commercial Centres', in Karel Davids and Jan Lucassen (eds.), *A Miracle Mirrored: The Dutch Republic in European Perspective* (Cambridge: Cambridge University Press, 1995), at 250. For other possible dates, see: Philip Grierson, 'The Dates of the «Livre Des Mestiers» and Its Derivatives', *Revue belge de philologie et d'histoire*, 35 (1957), at 778-783.

⁸⁰³ Margaret Spufford, 'Literacy, Trade and Religion in the Commercial Centres', in Karel Davids and Jan Lucassen (eds.), *A Miracle Mirrored: The Dutch Republic in European Perspective* (Cambridge: Cambridge University Press, 1995), at 251.

⁸⁰⁴ Caxton’s version kept the dual column format of the original, but replaced the Flemish translation with an English translation of the French.

Modern readers of the *Dialogues* often comment on the high esteem with which Gervais is held by the author who passionately and unabashedly describes scrivening as ‘the most noble craft / That is in the world’, without which ‘the law and faith shold perisshe’; however these passages are not part of the original *Livre*.⁸⁰⁵ The original version of the poem on Gervais contained the first thirteen lines only, and the remaining twenty-three are Caxton’s additions.⁸⁰⁶ Consequently, any analysis of the discourse used in the description of scribes in this text must be done with caution as much was inserted by Caxton as the editor and translator of the original. Caxton’s additions do not detract from the value of the text in any way; instead, the additions are notable for the contribution they make to our understanding of the perception of scribes in England by outsiders. As the original *Livre* did not include such emphatic praise of the scribes’ craft, it must be viewed as a reflection of Caxton’s own opinion. For the purposes of this thesis, this is actually beneficial. It means that Caxton did not simply translate a Flemish author’s sentiment on scrivening; he added his own perspective on the craft in order to compensate for the fact that it was only given a superficial treatment by the original scribe.

Consequently, Caxton’s elaboration on the subject presents us with a contemporary view of medieval scribes and he praises scrivening (not bookmaking, which was his own craft!) as a useful skill. The original author refers to writing and teaching in other parts of the book as well but only Caxton’s elaboration on the entry on Gervais is a ringing endorsement for the scrivening craft. The original version of Gervais was factual, whereas Caxton’s contribution to the Gervais verse is aspirational. Without reflecting practice, it instead sets out best practice and in that sense; it is prescriptive and represents the ideal clerk who, rather significantly, is neither poor nor humble. Caxton’s enormous respect for scribes may have been inspired by his own struggles with languages and translating. Even though Caxton translated three-quarters of the texts he published into English, he found it difficult to render foreign languages into comparable English. In the prologue to his translations of Virgil’s *Eneydos*, Caxton reflected on the difficulties of translation and again lauded the nobility of clerks who made and translated books as this task was complicated by the varieties of English and its lack of standardised spelling and vocabulary.⁸⁰⁷

⁸⁰⁵ Lisa H. Cooper, *Artisans and Narrative Craft in Late Medieval England* (Cambridge: Cambridge University Press, 2011), at 52-53.

⁸⁰⁶ H. Bradley (ed.), *Caxton's Dialogues in French and English: Adapted from a 14th-century Book of Dialogues in French and Flemish* (London: Kegan Paul, Trench, Trübner for E.E.T.S., 1900) at xi.

⁸⁰⁷ M. T. Culley and F. J. Furnivall (eds.), *Caxton's Eneydos* (London: Kegan Paul, Trench, Trübner for E.E.T.S., 1890) at 1-4.

While no biographical information for the Flemish author survives beyond the fact that he seems to have been a schoolmaster, his inclusion of scrivening in his list of crafts might indicate that he was a scrivener himself. Earlier in this thesis a connection was made between scribes and teaching in medieval Oxford and it is tempting to propose that the anonymous author of the original *Livre des Mestiers* was also a practising scrivener which could suggest that the section on Gervais was partly autobiographical. Perhaps, like William Kingsmill and David Pencaer in Oxford, the Flemish author was the master of a school of scrivening? Without any concrete evidence, this suggestion is certainly plausible; however there is no way of knowing for certain. The book certainly frames education in general as a source of enrichment and profitability and the original version of Gervais' poem ends with a reference to the scrivener's revenues from writing legal instruments. Elsewhere in the *Livre*, the author encourages parents to send their children to school 'to lerne rede and to write / that they resemble not bestis'.⁸⁰⁸ It is possible that he is referring to his own school and encouraging his audience, which was partly comprised of merchants, to educate their children in the scrivening craft in order to improve their fortunes.

In contrast with today's modern society with its high literacy rates and therefore high levels of personal agency that can be transmitted by individuals through the written word, in the medieval period people could not be expected to write their own documents in their own hands (even if they were capable of doing so). This could be due to illiteracy, but it could also be attributed to the prevalence and availability of professional scribes and personal secretaries whose services were engaged by clients at all levels of society. As a consequence of this intervention, there is a presumption that the hand that writes the instrument is an uninterested third party who is simply doing the job for which he was hired; in other words, the scribe is viewed as an automaton without personality or character.⁸⁰⁹ Through a careful analysis of the documentary evidence produced by scribes, the research presented in this thesis proves that the opposite is true and that scribes were often keen to express their individuality and draw attention to their specialised skills and underscore their significance to the administration of local government. Caxton's ruminations on the importance of scrivening to medieval society indicates that this significance was generally accepted and that people other than scribes themselves were aware of their impact on the foundations of life, from

⁸⁰⁸ H. Bradley (ed.), *Caxton's Dialogues in French and English: Adapted from a 14th-century Book of Dialogues in French and Flemish* (London: Kegan Paul, Trench, Trübner for E.E.T.S., 1900) at 9.

⁸⁰⁹ Hilary Jenkinson, 'On Autographs', *History*, 8/30 (1923), at 102.

rents to wills and all the legal instruments in between. Even the language used by Caxton in his description of scrivening has legalistic overtones, such as his assertion in the last two lines that ‘Euery man so acquite hym / As he wylle ansuere!’ This use of language can be interpreted as paying homage of sorts to the legal scribes that Caxton exalts in his ode to Gervais.

‘Geruays the Scriuener’ can also be used as a prism to reflect upon the evidence presented in this thesis. This thesis set out to redefine scrivening and scribes based on their legal and linguistic literacy. The combination of these two literacies is the defining characteristic of the medieval scrivener whether he was affiliated with a guild in London or York or he worked independently in provincial England as a town clerk or even as a teacher. Bruce O’Brien wrote that ‘legal literacy...should be considered the *sine qua non* of the common law’.⁸¹⁰ This thesis has demonstrated that linguistic literacy should be included in this as well as it was a necessary prerequisite for lay clerks who wished to become scribes. By acquiring legal literacy, clerks became scribes. In order to acquire this specialised skill, education in languages and training in law, in business writing and in administration were all readily available outside of London, with some places like Oxford developing their own specialised schools for scrivening. We have seen that legal literacy is not confined to questions of language or even to the ability to read and write – instead, it is really about comprehension in a broader sense. Comprehension encompasses all of these elements of literacy (and more!) as they are intertwined in the story of scribes. Without comprehension, and someone to facilitate it, the average medieval person could never have achieved access to justice in England, whether that was on a local level or on a national stage like parliament. The linguistic skills of scribes should not be taken for granted – instead, historians need to acknowledge that linguistic ability was a skill that was developed through education. This thesis proposes that we consider their flair for languages and the law as two of the strings to their professional bow that set scribes apart from other clerks.

As ‘Geruays the Scriuener’ shows and this thesis has argued, scribes used their specialised legal knowledge to write court rolls, financial accounts, petitions, wills, charters, deeds, bonds and numerous other legal instruments. The strength of their instruments is evidenced by the ways in which the solemnity of the written word was preferred to oral evidence. Caxton explained this by comparing the law to scripture, whereas this thesis has explained this by emphasising the significance of the presence of scribal identity in legal instruments as a way of

⁸¹⁰ Bruce O’Brien, ‘Forgery and the Literacy of the Early Common Law’, *Albion*, 27/1 (1995), at 1.

asserting the scribe's authority in what was otherwise a standardised and formulaic document. Scribal signatures and the uniqueness of an individual scribe's hand were used as safeguards against forgery and as written proof of an agreement or a transaction having been made. In the cases of recognizances as records of debt, the strength of substantive law meant that the evidence found in the form of the written bonds was always superior to that of any claim of there being an oral contract. By way of explaining the preference for the written record over orality in the law, John Baker argues that 'it was in the interests of certainty that deeds should prevail over mere words'.⁸¹¹ The use of written evidence as irrefutable proof was a relatively new innovation as oral contracts had been the norm since time immemorial, the origins of which were traced by Michael Clanchy. Clanchy argues that the introduction of the written word as the medium of legal record making had the effect of shifting the spotlight 'away from the transitory actors witnessing a conveyance and on to the perpetual parchment recording it'.⁸¹² This thesis argues that the spotlight should also be placed on the scrivener who made the perpetual parchment record as it was he who was responsible for physically implementing this transition within the law by putting quill to parchment.

This thesis began by challenging many of the historical myths and presumptions regarding scribes that pervade the historiography in order to rescue scribes from their relative obscurity. The chief explanation for that obscurity is the tendency among historians to group scribes in with either clerks or lawyers – both groups are large and heterogeneous and this does little in the way of revealing the nature of scribbling as a skill that combines both writing and the law. As was demonstrated in Chapter One, ambiguity pervades the existing definitions of scribes in which they are grouped with secular clerks, notaries and lawyers, despite the distinctive nature of their work as professional legal scribes. While it may seem as though a vague and fairly generic definition would increase the inclusivity of the term, in reality it serves to undermine the variety of specialised work done by scribes and thus obscures their identities as individuals, as skilled writers, as learned in the law and as professionals in their own right. The several peripheral references to scribes in the literature have been invaluable in ascertaining what is known about scribes as compared to what has traditionally been assumed about this manner of man and his work, but they do not go far

⁸¹¹ J. H. Baker, *An Introduction to English Legal History* (4th edn.; London: Butterworths, 2002), at 102, J. H. Baker, 'Deeds Speak Louder Than Words: Covenants and the Law of Proof, 1290-1321', in Jonathan Rose, Christopher Whittick and Susanne Jenks (eds.), *Laws, Lawyers and Texts: Studies in Medieval Legal History in Honour of Paul Brand* (Leiden: Brill, 2012).

⁸¹² M. T. Clanchy, *From Memory to Written Record: England 1066-1307* (2nd edn.; Oxford: Blackwell, 1993), at 254.

enough to speak to the impact of scribes on the legal profession and the administration and procedure of law. My aim in writing this thesis was to reclaim the scribe from out of the shadows and position him as an integral part of the machinery of the law and the medieval legal system.

Languages and legal knowledge have been used as the prisms through which scribes have been viewed throughout this thesis and this dual approach has yielded results. First, by modifying the scope of the definition of scribes and anchoring it to the documentary evidence they produced, the true extent of the impact of scribes on access to justice has been uncovered and their place within the legal culture of medieval England has been revealed to show that they were active at all levels of the law – including medieval parliaments. Furthermore, this approach has shown that both the existing literature pertaining to scribes in the medieval period and the approaches used for research into this subject have been unnecessarily limited by scope and creativity. The historiography reveals that only a small number of scholars have contributed to our general understanding of English scribes and that the primary concern of their studies has been London's Scribes' Company and its membership. We have seen that the majority of the studies that include provincial scribes view them as either notaries or lawyers or unfairly assimilate them into London's scribes. Instead of pigeon-holing these men based on fruitless attempts at categorisation, this thesis has used an approach based on the identification of scribes through the nature of their work alone. The emphasis has been on the typology of the work produced rather than on the classification of the scribe and by anchoring this project's methodology in palaeography, codicology and diplomatics the manuscript sources have yielded more evidence about scribes and scribbling than has ever before been found by historians. The scribal products of scribes go beyond legal instruments to include customs and other civic records which all offer unique insight into these men as proud clerks rather than humble clerks. This revelation challenges the widely-held belief that the general anonymity of medieval scribes is connected to their perceived humility.

By tracing the office of the town clerk back to its thirteenth-century origins in English guilds, the skills required of a clerk in this position were revealed and these were connected to the evolution of the office over the following century. The true nature and extent of Exeter's secretariat was shown to have consisted of fewer clerks doing more work than has previously been estimated. These scribes expressed themselves as individual clerks and as members of a profession through their written work and by grounding the interpretation of these sources

in diplomatics and discourse analysis, evidence of their individuality and personality as clerks was extracted from the manuscripts. When I began the research for this thesis, finding material was a real concern, however I have found a wealth of material which supports John Baker's belief that 'the material is superabundant. It simply has not been studied.'⁸¹³ If this research is any indication, then there is certainly cause to believe that there is much more evidence to be found and so much more to be studied. Evidence for scribes is in every single instrument that they wrote, and this thesis has offered suggestions on how to interpret these manuscripts in order to extract from them a considerable amount of information about their authors. Moving forward, the creation of a database that is dedicated to English town clerks, following the fashion of creating databases of prominent English authors and poets, would facilitate further research on provincial scribes. By collecting examples of a large number of hands and attributing them to individual scribes, it could be possible to crowd-source examples from numerous researchers and gather this information together in one place. Not only would this fill in many of the gaps in our knowledge of scribes, but it could help to track their movements and in turn reveal even more detail regarding their sources of income, their career trajectories and more. There are other implications for such a database as well. It could improve efforts to identify individual sheriff's clerks and it would make matching the hands present in the Ancient Petitions series to known provincial clerks realistic on an even larger scale than has been attempted to date.

While the first half of this thesis focused on who scribes were and the type of work that they did, the second half established their training and education and examined the impact that they made on accessing justice. This thesis has shed a great deal of light on one dark corner of medieval scribbling by extracting evidence of their training in the scribbling arts. As legally and linguistically skilled clerks, scribes were a class of legal professional that was separate and distinct from other lawyers which means that they required a distinctive method of specialised training, evidence of which has been found in Oxford's business schools. While historians were already aware of the role of scribes in writing petitions, this investigation has revealed that scribes participated in the parliamentary process in other ways as well, as numerous examples have been found of scribes representing counties and boroughs as members of parliament. This has confirmed that provincial scribes had both an individual and a collective influence on access to justice at the local, regional and national levels. By using their presence at parliament and their involvement in the petitioning process at all stages,

⁸¹³ J. H. Baker, 'The Attorneys and Officers of the Common Law in 1480', *The Journal of Legal History*, 1/2 (1980), at 182.

scriveners exercised their clerical muscles in this political arena alongside lawyers and other 'men of law'. As legal clerks, this thesis has positioned scriveners as a separate class of professional lay clerk that is distinct and different from other literate laymen. A study of this group can help explain their role as legal intermediaries in various local, regional, and national capacities and the repercussions of this research on future scholarship are considerable. There is no longer any excuse to leave scriveners out of any future studies on the medieval legal profession or histories of the composition of medieval parliaments. Therefore they can no longer be dismissed as ghostly apparitions operating in the background – this thesis has given scriveners form and agency, and by doing so it has put scriveners directly into the foreground of history.

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