

## THE ROLE OF THE CHANNEL ISLANDS IN THE DEVELOPMENT AND APPLICATION OF NORMAN LAW DURING THE LATE MIDDLE AGES AND EARLY MODERN PERIOD

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*Although attention has been paid to the impact of continental Norman law on the Channel Islands, the impact of the experience and practice of the islands themselves on Norman law, more generally, has not been taken into consideration. This is despite the fact that it is increasingly clear that, far from being isolated from developments in continental Normandy, at the social, economic and ecclesiastical level after 1204 the islands were directly involved in exchanges in many contexts. In this paper the role of the islands is assessed in the practice and development of Norman law in the period from the fifteenth century to the seventeenth century.*

1 In this short paper I intend to consider briefly the history of Norman law in its relation to the Islands, and more specifically the place and influence of the Islands within the wider Norman legal context. The role of Norman customary law in Jersey and Guernsey has been extensively discussed. Terrien's commentary on the *Ancienne Coutume* was published in 1574 and was reprinted in 1578 and 1654. It was in Guernsey's case the reference point for the limited degree of codification achieved through the *Approbation des Loix* in 1583, while Jersey remained more straightforwardly able to refer to what ironically in same year was published on the mainland as the *Coutume Reformée*. Even after the end of the 16th century, Island law across both Bailiwicks continued to develop with reference to the practice of the mainland, including the *Coutume Reformée*, through the commentators on it, Basnage, Bérault, Godefroy, and D'Aviron being the main ones in the period before the 18th century. This might impact, as Gordon Dawes has pointed out, via commentators like Laurent Carey, on Guernsey law.<sup>1</sup>

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<sup>1</sup> *Essai sur les Institutions, Lois et Coûtumes de l'île de Guernesey* (to be dated before his death in 1769 but not published until 1889: Guernsey: TM Bichard). The volume reputed to be its manuscript original contains cross-references not only to Terrien's *Commentaires* but also to the *Coutume*

2 This is, however, as Dawes indicates in the same paper, usually taken as occurring through the presence of continental Norman texts in insular libraries. It is about a one-way flow of influence through a movement of printed paper, not an interchange of people and ideas. More generally in the historiography, there is a generally accepted account of the Norman connection being a residual one which would gradually fade and eventually be replaced.<sup>2</sup>

3 It is perhaps particularly significant that this historiography treats the Norman influence as external—legal texts arrive from Normandy and are followed or not as the case may be. It is especially the case in those authors, such as Eagleston, who see the Islands following versions of the custom which were no longer the current ones practised and followed in Normandy itself—so in Guernsey we might have a situation of dependence on the ‘frozen’ traditions of the later Middle Ages.

4 That is not to say that the influence of the Customary Law of Normandy was not powerful. The advent of printing ensured the ready availability of texts on Norman law, with editions appearing from the

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*Reformée* (see J Le Patourel et al, *List of Records in the Greffe, Guernsey*, vol 1, List and Index Society, Special Series, 2 (1969), 51 (item 52)). G Dawes, “A Note on Guillaume Terrien and his Work”, (2007) 11 *Jersey and Guernsey Law Review* 67; D Ogier, *The Government and Law of Guernsey* (2nd ed., St. Peter Port: States of Guernsey, 2012), at 160–167. I am grateful to many friends and colleagues, the participants in the Colloquium ‘Origine et développement du droit normand et anglo-normand’, Centre Culturel International de Cerisy, May 2011, and especially Dr Darryl Ogier (Island Archive Service, Guernsey), and also to Dr Malcolm Pollard (formerly of the Modern Language Centre, University of Huddersfield) for his assistance with the translation of the text given at the Colloquium; all opinions and errors are mine.

<sup>2</sup> Perhaps best expressed by AJ Eagleston, *The Channel Islands under Tudor Government: A Study in Administrative History* (Cambridge: for the Guernsey Society at the University Press, 1949); it is present, although much less prominent, in J Le Patourel, *The Medieval Administration of the Channel Islands, 1199–1399* (London: Oxford University Press, 1937), as might be expected given the importance ascribed in his work to the trans-Channel empires, although in some of his work it is the dominant interpretation (e.g. on religious interactions: J Le Patourel, “*Le monachisme normand dans les Iles de la Manche pendant le Moyen Age*”, in L Musset (ed), *Aspects du monachisme en Normandie (IVe–XVIIIe siècles): Actes du Colloque scientifique de l’“Année des Abbayes Normandes”*, Caen, 18–20 octobre 1979 (Paris: J Vrin, 1982), 109–114).

presses of Rouen and elsewhere from the 1480s.<sup>3</sup> But it is to say that this influence was external, in some senses residual, and declining.

5 Now elsewhere I have argued that the general assumption that the non-English possessions of the English crown became more or less rapidly integrated or accommodated within a more unified whole is misplaced. The implications of this assumption can be tracked even in the historiography of the period before the 16th century, although it is not until then that the tendency for integration and unification is usually seen to have reached a peak. I have argued against this assumption with respect to aspects of the history of the Isle of Man and of Wales;<sup>4</sup> more directly relevant, here I have done so with respect to the history of the Channel Islands, for example in terms of the operation of the diocese of Coutances, and of English attitudes to Island government, legal and cultural distinctiveness, at the most recent and previous *Rencontres de Droit Normand*.<sup>5</sup> In this article, I want to consider briefly whether the history of Norman law in its relation to the Islands is correctly characterised in those terms—external, residual, and declining, at least in the period before the end of the 17th century.

6 Initially, we do need to emphasise that there was a high point of interaction with Norman legal culture in the centuries when overlordship of the Islands, and of mainland Normandy, rested in the same hands, and this pattern continued in the subsequent decades in the 13th and 14th centuries even when the exchequer at Caen had fallen under the control of the French king. Although, as their insular status made inevitable, there were significantly autonomous aspects to the exercise of jurisdiction in and over the Islands, they were in these years ultimately part of a pattern of jurisdiction and legal interactions

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<sup>3</sup> 1483: *eg* British Library, IB.39785; 1490?: *eg* British Library, IA.43904.

<sup>4</sup> T Thornton, “Dynasty and Territory in the Early Modern Period: The Princes of Wales and their Western British Inheritance”, (2000) 20 *Welsh History Review* 1; T Thornton, “Scotland and the Isle of Man, c.1400–1625: Noble Power and Royal Presumption in the Northern Irish Sea Province”, (1998) 77 *Scottish Historical Review* 1. T Thornton, *Cheshire and the Tudor State, 1480–1560* (Woodbridge: Boydell Press, 2000).

<sup>5</sup> T Thornton, “British/English Attitudes to the Norman Law of the Channel Islands in the Early Modern Period”, in G Dawes (ed), *Commise 1204: Studies in the History and Law of Continental and Insular Normandy* (Guernsey: Guernsey Bar/Barreau de Guernsey, 2005), 123–132; T Thornton, “Clergy Careers in the Channel Islands, 1480–1570”, in G Dawes (ed), *Paris 1259: Studies in the History and Law of Continental and Insular Normandy* (Guernsey: Barreau de Guernsey/Guernsey Bar, 2016), 41–53.

which spanned Normandy, insular and mainland. Even as late as 1328, as Le Patourel showed, it was the norm for complex questions of interpretation (in this particular case over the rights of a priest's illegitimate children) to be referred to the bailli of the Cotentin and his legal advisers. In 1309 the community of Jersey, and Philip de Carteret, considered it was worth maintaining an attorney in mainland Normandy, one Robert de Bruere.<sup>6</sup> Such a provision was perhaps wise when it was possible, in spite of the Island's privileges, for its bailiff to be summoned to Coutances for, allegedly, the faithful discharge of his duties.<sup>7</sup>

7 When it comes to considering the traditional case for a decline from this relatively close relationship, it must first be acknowledged that there is some basis for this claim in statements made in England by sceptical commentators in the early modern period who felt that the claim to be following Norman custom had become little more than a cover for the capricious rule of the local oligarchy. Arguably from a position of either ignorance or frustration, in 1580 it was stated in the English Privy Council that justice was not being properly administered in Guernsey because of—

“the libertie, the Bailiffs and Jurats do take unto them selves to directe their Judgements by presidents, wherein there is neyther certainty nor rule of Justice . . . forsaking the Customarye of Normandie.”<sup>8</sup>

8 There are, however, examples of continuing legal interactions between mainland Normandy and the Islands.

9 This is evidently true of the period before 1450, during much of which mainland Normandy was under the English crown's control, and then again in the 1460s specifically in Jersey when it was out of

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<sup>6</sup> J Le Patourel, “The Law of the Channel Islands: 1. The Origins of the Channel Islands Legal System”, (1962) 1 *Solicitor Quarterly* 198, at 202–203; Le Patourel, *Medieval Administration*, at 32–35; *Rolls of the Assizes Held in the Channel Islands in the Second Year of the Reign of King Edward II. A.D. 1309*, Société Jersiaise, publication 18me; Jersey: Labey et Blampied, 1903), at 218.

<sup>7</sup> *Ibid*, at 227; when individuals were cited to appear out of the realm it was most likely at the ecclesiastical court, cf. 143 (?ecclesiastical court), 211, 214 (all Coutances), 215 (Paris), 248 (uncertain), 257–258 (Coutances), 261, 263, 264, 269, 273, 282, 286–287 (all Coutances).

<sup>8</sup> *Acts of the Privy Council of England: New Series*, ed J Roche Dasent et al (46 vols; London: HMSO, 1890–1964) [hereafter APC], vol 12: A. D. 1580–81, at 231 (9 October 1580).

the control of the English crown now that mainland Normandy was back under the sway of the French crown. We have in too many spheres assumed that the Lancastrian regime in Normandy was something distinct from their regime in the Islands. The potential power of the Norman Exchequer in the first half of the 15th century was such that it might be resented and resisted in the Islands. The Guernsey *précepte d'assise* of 30 September 1441 sets out the rights of the Islanders as they were then understood (rather inaccurately) in relation to the determination of the *extente* of 1331. It includes a provision against Islanders being compelled to go out of the Islands on an appeal or otherwise to the duchy of Normandy and to the Exchequer at Rouen—

*“pour cause que anciennement les appellations et applegements en la dicte duche de Normandie estoient et souloient estre determines entierement a leschiquer a Rouan sy ne voulut point souffrir nostre dit Seygnour le Roy duc de Normandie, comme dessus est dit, nostre Souverain et liege Seygnour que james ses dicts hommes subjects et lieges fussent et deussent estre constraintz et compellez par aulcun breff de Roy, ne aultrement, de yssir ne aller hors de la dicte ysle Mes accorda et conceda iceluy noble Roy que tous les cas dessus ditz fussent et deussent estre cougneus mis affin et determines en la dicte ysle, par devant les Justices de nostre dit Souverain Seygnour le Roy yllenquez transmis et mandes avec les douze Jures de la dicte ysle, qui cognoissent et sayvent les accoustumancez et anciens usages de la dicte ysle.”*<sup>9</sup>

There is, nonetheless, the intriguing possibility of the activity of Channel Islanders in Rouen, at the Norman Exchequer, as for example in the possible action of John Neele there on behalf of the abbot and convent of the Our Lady of the Vow, Cherbourg, in the autumn of 1448.<sup>10</sup> It seems unlikely that those involved in the creation of the *précepte* would have been concerned to deny the possibility of

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<sup>9</sup> *The Extentes of Guernsey 1248 and 1331 and other Documents Relating to the Ancient Usages and Customs in that Island*, Havilland de Sausmarez (ed) (St Peter Port, Guernsey: *La Société Guernesaise*, 1934), at 130–150, esp at 135, of which the commentary and a translation have been reprinted as “Guernsey’s *précepte d'assise* of 1441: Translation and Notes”, (2008) 12 *Jersey and Guernsey Law Review* 207. The notarial element is dated 11 September 1482, and collation 25 September 1489 (at 138–139).

<sup>10</sup> Rouen, *Archives Départementales de la Seine Maritime*, 1 B 26, ff 78v–79r.

unwilling involvement in mainland Norman courts if there were no contemporary potential, at least, for its occurrence.

10 This direct connection with mainland Normandy is also evidently true of the ecclesiastical sphere, through to the 1570s. Ecclesiastical jurisdiction was of course a distinct sphere, but separate though it was it maintained the normality of interaction with mainland Normandy in important matters of administration and dispute resolution. The records of the diocese of Coutances clearly indicate a continuity of jurisdiction into the early 16th century. This includes the evident fact that the clergy of the Islands were, overwhelmingly, progressed through minor and major orders, more or less quickly and to a variety of levels, *via* Coutances' administration. As an example, Nicolas Despestys, who originated at St Lawrence, Jersey, was ordained at St Lo by Geoffrey Herbert, bishop of Coutances on 2 April 1491 and became, on the presentation of the bishop himself, rector of the church of St Mary, Jersey, in December 1501.<sup>11</sup>

11 Of course, not all the business conducted *via* Coutances was uncomplicated and uncontested. There is evidence of conflicts between patrons: Jean l'Arbalestrier was presented to Trinity in 1529 by the captain of Jersey; meanwhile Robert Guillemelles was presented on 17 August by Leobin, abbot of Our Lady of the Vow, Cherbourg, telling the bishop of Coutances that the patronage belonged to the abbey and the foundation of St Helier; on 22 August, the vicar general of Coutances refused to confer Trinity on l'Arbalestrier. Yet it was l'Arbalestrier who seems to have been successful, in that he was commissioned as Dean in August 1532 by Guillaume Quetil, the bishop's vicar general.<sup>12</sup> In 1491, it was the chapter of Coutances which was successful, presenting André Murdrac to Alderney on the nomination of Thibault de Fromentiers, penitentiary and canon of the cathedral; Governor David Philip presented Guillaume Fabien, but the vicar general turned him down.<sup>13</sup>

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<sup>11</sup> Coutances, *Archives Diocésaines Historiques* [hereafter ADiocC], Le Roux, "Documents pour servir à l'histoire religieuse et ecclésiastique des Îles Anglo-Normandes" [hereafter, Le Roux, "Documents"], 199–239, at 209; GE Lee, "Extraits des registres du secrétariat de l'évêché de Coutances, 1485–1557", (1885–89) 2 *Annual Bulletin of the Société Jersiaise* 404, at 409 (vol i, at 72); 423 (vol ii, at 25b). For more on this connection, see Thornton, "Clergy Careers".

<sup>12</sup> Le Roux, "Documents", 208–208v, also citing the Cartulary of Notre-Dame du Vœu, Cherbourg, and Toustain de Billy.

<sup>13</sup> ADiocC II, collations [hereafter "Collations register"], vol i, at 63; Le Roux, "Documents", at 225 (Lee, "Extraits", at 408).

12 There is of course no doubt that periods of war between England and France could affect the reality of Coutances jurisdiction. The relative absence of administrative activity there in 1488, its complete disappearance in 1489 and limited activity in 1490 seems to correlate with the Anglo-French hostilities in Brittany in those years. Business only reaches a height in 1496, to fall again in 1497, no doubt in reaction to the troubles of that year, again some of the most acute of which affected the western approaches to the Channel. By contrast, the consistently high levels of activity through the first decade of the 16th century reflect the peace of that time between France and England. The more bellicose policy of Henry VIII from 1511 is also apparent in its effects on the pattern of business, with low levels of activity evident in 1511–1513 in particular, and then again in 1521–1524 at a time of English invasions and fears of conflict in Normandy itself. Still, the notable thing is perhaps the resilience of the jurisdictional relationship even in times of tension between the crowns. The evident need for continued contact even in time of war is suggested by the safe conduct given by Louis Malet, seigneur of Granville, to Guillaume Fabien priest of Alderney and to his fellow Islanders in 1513.<sup>14</sup>

13 Further periods of restricted interaction with Coutances jurisdiction are apparent during other Anglo-French conflicts in Henry's reign. In spite of these hostilities, however, and even more remarkably in spite of the break with Rome, and the slightly more awkward reality of an ecclesiastical jurisdiction which acknowledged the pope while the lay authorities did not, the relationship remained real through to the end of Henry VIII's reign. But in the reign of Edward VI, the more aggressively protestant regime rapidly ended the link, only for it to be restored quickly under Mary and for it to continue in the early years of Elizabeth I. The final appearances of the Islands in the registers of Coutances occur in 1568 and in 1571.<sup>15</sup>

14 These were, however, an appendix to the medieval chapter in the history of Coutances and the Islands, in a world which had been transformed by religious conflict and the emergence of the reformed church in both Islands and mainland. It may only have been in 1567 that the local Island consistories acknowledged the supremacy of the bishop of Winchester, a year before a letter from the Council formally

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<sup>14</sup> Le Roux, "Documents", at 225v; Paris, Bibliothèque Nationale de France, MSS lat. 17064, 254 (Leopold Delisle, "Aurigny (1513)", *Mémoires de la Société Nationale Académique de Cherbourg* (1867) 236, at 238–240; *Letters and Papers relating to the War with France, 1512–1513*, A Spont (ed) (1897) 10 *Publications of the Navy Records Society*, at 99–100.)

<sup>15</sup> J de Pierrepoint, 25 June 1568: Collations register, vol. vi, at 30.

ended the authority of Coutances and imposed that of Winchester. But the early 1560s had seen an upsurge of Protestant activity in both Islands and mainland, and strong connections between them. This was very much an expression of continuity of contact in this important context for insular and mainland Norman life and law beyond the ecclesiastical sphere.

15 What is most striking, therefore, is the continuing interaction between the legal systems of mainland Normandy and the Islands from the mid-16th century onwards.

16 There is, for example, the remarkable case, recounted for us in the pages of the *Chroniques de Jersey*, from the early part of the reign of Mary. While admittedly an isolated survival in terms of evidence, there is nothing in the way the account is provided to suggest there was anything particularly exceptional about the events described. Several members of the garrison at Mont Orgueil, led by one Thomas Cook, and including William Moore, William Smythe, Thomas Sayer, John Gullin and Walter Maxwell, committed an extremely audacious crime. They robbed the Island's bailiff, Helier de Carteret, and another man, one Nicholas Hue. They took from the bailiff his gold chain and four silver cups, as well as 24 spoons and 500 escus in coin of gold and silver.

17 The group of criminals took their booty from the bailiff's house and headed for Bouley Bay. There they forced a seaman called Thomas Patron to sail them to Normandy, landing in Portbail. The very same night of the robbery, a merchant of Portbail named Gilles Monchet happened to be in Jersey, heard of the crime and knew the individuals involved. After his return to Normandy, being in Coutances on business, he noticed Thomas Cook in the Cohue (the precincts of the court). Monchet therefore went straightaway to the bailli of the Cotentin, who was sitting in Coutances, and told him of the affair; the bailli responded by immediately ordering the arrest of the robbers.

18 There was then a near-pitched battle, with the community of Coutances taking all but one of the robbers. The bailli had them imprisoned in the conciergerie of the town, and he recovered many of the goods of the bailiff, including the gold chain and silver cups. News of the arrest reached Jersey and the bailiff and the lieutenant there sent to the bailli of the Cotentin to have the robbers extradited to Jersey. He, however, refused, saying it would be done only with the permission and good will of the king of France. Here the accounts of the Chronicles and of the English government record diverge. The former says the Jersey authorities had to make a request *via* the French ambassador in England—which was successful, resulting in the rendition of the suspects back to the Island, where they were found



guilty and executed. The goods, however, were never recovered. The latter shows that the Privy Council contacted Sir John Mason, ambassador in Paris, for his intervention.<sup>16</sup>

19 However it was achieved, in this case, fugitives from the Islands were arrested in the Cotentin, indeed they were arrested in a display of community collective action; what was considered remarkable at this time was the fact that having been arrested they were not extradited as a matter of course. The assumption betrayed by the text is clearly that in more normal circumstances extradition would naturally have followed arrest. The outcome in this case is even more striking given that the criminals were thought to be offering the continental Norman authorities that they would betray Mont Orgueil.

20 In practice, evidence suggests a continuing practice of referring contentious issues to Rouen. For example, the case of a ship abandoned off Sark in 1608 was taken to Rouen in an attempt to resolve the difficult issues relating to *choses gaives* which it raised.<sup>17</sup> That May, one Monday, a ship of four hundred tons or more dropped anchor near Sark, and its crew abandoned it; fishermen boarded on Tuesday and found no one on board—

*“... dedans lequel ne trouuerent personne. Dont fort estonnez vindrent aussi tost auertir le gouuerneur de ladite Isle de Grenesey, lequel fit le lendemain amener le nauire en ladite Isle. Et pour la perplexité en laquelle se trouua le Procureur du Roy dudit lieu, de ce qu’on deuoit faire dudit nauire & a qui il le falloit adiuger, & dautant qu’en ladite Isle qui appartient au Roy d’Angleterre on vse de la Coustume de Normandie, il enuoya vn Factum de cecy en cette ville de Roüen, pour estre consulté au siege general de l’Admirauté en la table de marbre, & aux*

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<sup>16</sup> On 2 April an instruction was given for letter to Sir John Mason ambassador in Paris to apply for surrender of the robbers, giving the names of the accomplices: *APC* iii.249. The letter to Mason is dated 30 April (*Calendar of State Papers, Foreign Series, of the Reign of Edward VI, 1547–1553* (London: Longman & Co., 1861), no. 334) and sets out the ancient custom of extradition as having been refused in this case, to ask for surrender, the more urgently since they were allegedly plotting the betrayal of the castle; a note by Mason indicates that it was acted on by the Constable, who delivered to the bearer (Sir Hugh Paulet’s son) a letter to bailli of La Foi for speedy redress of that and some other robberies. *Chroniques de Jersey* (St. Helier: P. Falle, 1858), ch XXIX, at 98–103.

<sup>17</sup> J Kelleher, “The Mysterious Case of the Ship Abandoned off Sark in 1608: The Customary Law of Varech and Choses Gaives”, in G Dawes (ed), *Commise*, 171–190.

*Aduocats de la Cour. Surquoy ie fus d'auis avec quelques vns que ce n'estoit point varech.*"

[. . . in which nobody was found. Very much affected by this, those that found the ship quickly came to advise the governor of the said Isle of Guernsey, who the following day had the boat brought to the said Isle. And because the Procureur du Roy of the said place was perplexed, as to what was to be done in regard to the said ship, and to whom it was necessary to give it in judgment, and since in the said Isle, which belongs to the King of England, the Custom of Normandy is used, he sent a statement of the facts of all this to this city of Rouen, to consult the judges and advocates of the Court of the Admiral. On which matter, I was of the opinion with others that this was not a case of *varech* (wreck).]

This was reported in Josias Berault's *La Covstyme reformée du pays et duché de Normandie*, from its first edition in 1612 through its fourth in 1632 and beyond one of the major texts on the subject.<sup>18</sup>

21 Clearly, this is not an appeal to Rouen in the formal sense, and it is not an attempt to take the case into any of the mainland Norman courts. But it is a sign that where the Island authorities were uncertain as to the correct application of customary law they might look to those who practised it in Rouen for an opinion. And Berault would have known, perhaps even personally have been consulted on this occasion, for he was "*conseiller aux sieges de l'Admirauté & eaux & forests en la table de marbre du Palais à Rouën & aduocat au Parlement de Normandie*". Berault's work is interesting in this respect for it demonstrates a ready willingness to reference the Islands in other respects too, for example (albeit unconvincingly) in explaining the derivation of *varech* from *vraich*, or seaweed, "*de laquelle vsent les habitans des Isles de Gersey & Grenesey au lieu de bois & pour se chauffer*", and expanding on its plentiful growth there, in a way that implies he had witnessed the foreshore of the Islands himself.<sup>19</sup>

22 Another part of this story is to be found in the activity of Island students, especially once the University of Caen was founded. Stephen le Bally of St Andrew in the Isles is clearly described as such in the university's records in 1537, and it seems likely that many other

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<sup>18</sup> The case is in *La Covstyme reformée du pays et duché de Normandie, anciens ressorts et enclaves d'iceluy. Avec les commentaires . . .* par M. Josias Berault (1st edn, Rouen: Raphael du Petit Val, 1618), at 768–769; (4th edn, Rouen: David du Petit Val, 1632), at 762–763.

<sup>19</sup> *La Covstyme reformée du pays et duché de Normandie*, at 758.

Islanders studied there, relatively anonymous behind their typical names and the uncommunicative record.<sup>20</sup> It is surely a possibility that many of the Islands' clergy and other members of the population had studied at Caen. And it is worth remembering that it was civil and canon law which was the initial focus of the University of Caen.<sup>21</sup>

23 It is perhaps too easy also, from an English perspective, to fall into a view of the Islands as economically primarily and predominantly associated with England. There is no avoiding, for example, their characterisation in recent work as a key point in the maritime networks between the French South West and England. We are very fortunate in having the remarkably complete records of the English customs system to thank—or to blame—for this. It is salutary to remember, however, that by the 1660s 240,000 pairs of stockings were being exported annually from the Islands into France, most of the production; perhaps 1000–2000 pairs per year went into England.<sup>22</sup>

24 It appears clear that Guernsey's Royal Court in the later 16th century looked to the French edict on the concealment of pregnancies and infanticide of 1557 to inform prosecutions coming before it. Indeed the Island's Bailiff and Jurats remained *au courant* with developments in Normandy and France more generally.<sup>23</sup>

25 The implications of these findings are significant. Political separation does not lead to legal separation. This explains the continuing influence of Norman law—there is some external reference point, it can grow and develop. The Islands certainly did not need English law to provide fresh and innovative responses to insular Norman challenges.

26 This also provides an interesting context for the attitude of the English authorities in Westminster. Their overwhelming concern to ensure the proper functioning of the local legal system according to the privileges of the Islands needs to be seen not as the preservation in

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<sup>20</sup> Caen, Archives Départementales du Calvados, D90, 124.

<sup>21</sup> CT Allmand, *Lancastrian Normandy, 1415–1450: The History of a Medieval Occupation* (Oxford: Clarendon Press, 1983), at 105–120.

<sup>22</sup> WR Childs, "Channel Island Shipping as Recorded in the English Customs Accounts, 1300–1500", and JC Appleby, "Neutrality, Trade and Privateering, 1500–1689", both in AG Jamieson (ed.), *A People of the Sea: The Maritime History of the Channel Islands* (London: Methuen, 1986), at 77 (stockings), and further at pp. 84–86 (wine and cider from France).

<sup>23</sup> D Ogier, "New-born Child Murder in Reformation Guernsey", in G Dawes (ed), *Commise*, 133–151, at 139; *idem*, *Government and Law of Guernsey*, at 165, 176.

aspic of an archaism—perhaps as a way of subordinating and limiting the development of their societies<sup>24</sup>—but as a conscious support for a vibrant legal culture with key roots in Rouen, Caen and the rest of mainland Normandy. The Order in Council of 9 October 1580 that initiated the process of the *Approbation des Loix* was mainly concerned with the current presentation of the customary, “whereunto they should holde them selves”. On several occasions when the English Privy Council became involved in cases from the Islands, either through appeals or *doléance*, it made a point of its eagerness to abide by local law and custom, and sometimes explicitly extended this reference point to the law of continental Normandy. In September 1620, for example, considering a case relating to wine found floating in the sea off Jersey, the Council noted that it had been shown no deed or grant to support the rights to it of Hugh Lempriere, seigneur of Dielament, but they set this aside—

“forasmuch as it appeareth by good probabilitie that both there and in Normandie the practize hath ben very ancient to divyde things found floatinge at sea, and thence brought by the fynders to launde, into three parts . . . [and so] wee conceive this course of division to bee in all respects most justifiable and fittest to bee observed for the wyne presently controverted.”<sup>25</sup>

27 To what extent does this show the Normans were still looking to an Anglo-Norman past; and that the English were looking to their Norman past? For the English regime this was an aspect of the richness of the complex of territories over which their monarch held sway. It was not a matter of concern, or confusion, or shame, that their king had amongst his territories vibrant communities which were part of the culture of Norman law. Historians of the English Reformation have recognised aspects of this in a parallel case in the way in which Henry VIII and his protestant successors found encouragement in a history of Welsh religion and associated cultural and social phenomena, most notably the Welsh language, which they could argue, however speciously, gave an ancient pedigree to insular leadership in religion.<sup>26</sup> In a similar way, English monarchs’ support for the vigour of the Norman legal culture of the Islands helped to

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<sup>24</sup> M Hechter, *Internal Colonialism: The Celtic Fringe in British National Development* (new edn, New Brunswick, NJ; London: Transaction, 1999).

<sup>25</sup> *APC July 1619–June 1621*, 280–281.

<sup>26</sup> PR Roberts, “Tudor Wales, National Identity and British Inheritance”, in Brendan Bradshaw and Peter Roberts (eds), *British Consciousness and Identity: The Making of Britain, 1533–1707* (Cambridge: Cambridge University Press, 1998), at 8–42.

support their claim to the duchy more generally, and potentially to the French throne itself; that they ruled a multiplicity of systems might be sign of their might rather than their weakness; and it emphasised the antiquity of their descent and that of the political systems over which they presided.

28 When we appreciate the liveliness of the Norman legal culture of the Islands, we can understand better, too, the rawness of the sense of loss expressed in so many Norman texts in the early modern period. Toustain de Billy's 17th-century *"Histoire du Costentin et de ses villes"* listed the Coutances deaneries and indicated, at the end, *"on doit ajouter ceux de Gerzay & de garnsezay quoique les Anglois les ayant usurpées"*. The diocese had once had more than 500 parishes, but the English *"ont volé 24"*.<sup>27</sup> The *"Nouvelle histoire universelle et chronologique du Grand Baliage du Cotentin"* of Francois le Franc, a former vicar general of the diocese, included a listing of all the Islands, noting the change of religion that affected Jersey and Guernsey, and included events such as the alleged crowning of Henry Beauchamp as king of the Isles under Henry VI.<sup>28</sup> For continental Normans this was not a distant divorce fading from memory, but a partial and ongoing separation.

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<sup>27</sup> *Bibliothèque Municipale de Coutances*, MS 23 "Toustain de Billy's 'Histoire du Costentin et de ses villes'", at 3; R Toustain de Billy (1642–1709) collected evidence of Coutances jurisdiction in the period after English control was achieved, at 16–18.

<sup>28</sup> *Bibliothèque Municipale de Coutances*, MS 24, at 9–10v.