



The Development of Borough Customary Law in Medieval Britain

Abstract for talk on May 31, 2016

Esther Liberman Cuenca, PhD Candidate

Fordham University

This lecture explores the development of borough customary law, or customary practices that took on the force of law within English towns and cities, as it began to appear in royal charters and *custumals* (or collections of customs) in the twelfth and thirteenth centuries. Compared to the abundant scholarship on medieval common law and canon law, both of which generated extensive treatises and commentaries by medieval contemporaries who were professionals formally trained in schools, publications on medieval English customary law have been few and far between. Law merchant and manorial customary law have received some attention, but fewer studies have focused on borough customary law, with the notable exception of Mary Bateson's seminal Selden Society volumes, collectively entitled *Borough Customs* (1904-6), which focused mainly property rights and the jurisdiction of the borough courts. Building on Bateson's work, this talk grapples with how borough officials began to develop their own set of customs as both prescriptive guidelines and as laws that helped them intervene in the pressing concerns of their communities. An examination of over fifty charters from the boroughs of Beverley, Bristol, Colchester, Dublin, and Southampton—as well as six stand-alone *custumals* from Exeter, Ipswich, Lincoln, Newcastle, Northampton, and Winchester—show that the majority dealt with the procedures and jurisdiction of the borough courts, bearing directly on the source of legal power for the urban elite, but that this focus shifts markedly over time to the requirements and particular challenges of holding political office.

This change in focus reveals three crucial features of the development of borough customary law in this early period. First, the appearance of independently produced *custumals* embodied a shift in the way borough customary came to be conceptualized. Borough customs were not only seigniorial privileges that granted rights, but also a set of laws that ensured officials could exercise these rights with sufficient responsibility, restraint, and consistency. Second, the increasing emphasis in later charters and *custumals* on the duties, character, and qualifications of holding political office exemplifies a broader trend in the development of customary law, one that signals the maturation and ever-growing influence of towns as loci of power and the power of men tasked with their governance. Lastly, the discourse of borough customary law combined two, inextricably linked conceptions of custom that depended on both seigniorial charters, with privileges handed down or renewed over time, *and* collections of practices and traditions that were rooted in local context and concerns.