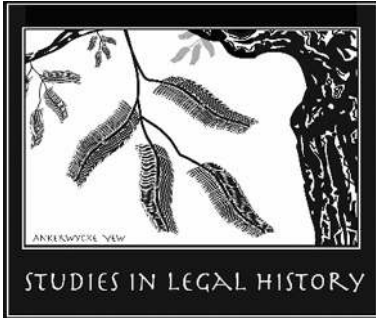


Vernacular Law

Custom was fundamental to medieval legal practice. Whether in a property dispute or a trial for murder, the aggrieved and accused would go to the lay court, where cases were resolved according to custom. What custom meant, however, went through a radical shift in the medieval period. Between the twelfth and thirteenth centuries, custom went from being a largely oral and performed practice to one that was also conceptualized in writing. Based on French lawbooks known as *coutumiers*, Ada Maria Kuskowski traces the repercussions of this transformation – which saw oral customs come to be expressed as bodies of written rules and the language of law shift from elite Latin to the common vernacular – on the cultural world of law. *Vernacular Law* offers a fresh understanding of the formation of a new field of knowledge: authors combined ideas, experience, and critical thought to write lawbooks that made disparate customs into the field known as customary law.

Ada Maria Kuskowski is Assistant Professor of History at the University of Pennsylvania. Her interdisciplinary approach weaves together history, law, and literary approaches to understand how legal cultures developed in Europe. This is her first book.



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Vernacular Law

Writing and the Reinvention of Customary Law in Medieval France

ADA MARIA KUSKOWSKI

University of Pennsylvania



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*For my parents, Magda and Tadeusz, my sister Ania and
grandmother Bożena*

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Acknowledgments

It was in studying common law and civil law simultaneously at McGill that I started seeing law not simply as a set of rules but a product of history, culture, and happenstance. I then found myself drawn in graduate school to questions of how foundational legal ideas develop, how issues in disputes come to be expressed in terms of rules, and other backstories of the written rules that regulate our lives. I first discovered the texts at the heart of this study on a rather dusty portion of a library shelf while in law school at McGill University. Little did I know then that I would look to them for answers, or how long they would be my companions.

The writing and completion of this book was only possible because of the support of many people and institutions along my academic trajectory. What is good in this book has its origins in teachers and friends who were models of avid curiosity, deep thinking, intellectual creativity, and scholarly generosity.

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A Note on the Text

I have drawn on earlier publications in this book, namely ‘The Development of Written Custom in England and in France: A Comparative Perspective’ in *Law, Justice, and Governance, New Views on Medieval English Constitutionalism*, ed. Richard Kaeuper (Leiden: Brill, 2013) and ‘The Time of Custom and the Medieval Myth of Ancient Customary Law’ (in press). The final chapter significantly reproduces ‘Inventing Legal Space: From Regional Custom to Common Law in the *Coutumiers* of Medieval France’ in *Space in the Medieval West Places, Territories, and Imagined Geographies*, ed. Meredith Cohen and Fanny Madeleine (Ashgate, June 2014) 133–55, with some revisions. I have also drawn upon my dissertation, ‘Writing Custom: Juristic Imagination and the Composition of Customary Law in Thirteenth-Century France’ (PhD diss., Cornell University, 2013).

I have expanded my views on vernacular writing and law beyond the subject of this book in articles that might interest the readers of this book: ‘*Lingua Franca Legalis?* A French Vernacular Legal Culture from England to the Levant’, special issue, *Reading Medieval Studies*, 40 (2014), 140–58; and ‘Translating Justinian: Language, Translation and Repurposing Roman Law in the Middle Ages’ in *Law and Language in the Middle Ages*, ed. Matthew W. McHaffie, Jenny Bentham, and Helle Vogt, pp. 30–51 (Leiden: Brill, 2018).

I have generally provided translations of primary sources in the main text and have typically supplied the original texts in Old French or Latin in the footnotes when the original language is important to the arguments I develop. While I have usually used my own translations, I consulted F. R. P. Akehurst’s invaluable English translations of Philippe de Beaumanoir’s *Coutumes de Beauvaisis* and of the *Établissements de*

Saint Louis, and these were a fantastic resource. While I also consulted Judith Everard's French and Latin edition and English translation of the *Grand coutumier de Normandie*, I have generally relied on Ernest-Joseph Tardif's edition of the Latin text as it best reflects the thirteenth-century version of the text. I refer to manuscripts by their letter in critical editions wherever applicable.

Lastly, because this study treats the thirteenth-century *coutumiers* as a group, it does not purport or aim to provide an exhaustive taxonomic study as would be possible if focusing on a sole text or author. This means that I generally proceed by way of illustrative example rather than providing a typology of each issue in each of my central texts. Where questions are left unanswered, I hope to leave fertile ground for future research.