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Part III

ANGEVIN ENGLAND
Kings and Law

The Angevin kings possessed much more extensive territories than had their Anglo-Norman predecessors. In particular they ruled both Anjou and the duchy of Aquitaine in south-western France. Such extensive territories added to the pressure on kings to spend considerable time outside England, leaving others to administer the realm. The cost of defending their French lands, and of seeking to regain Normandy following its loss in 1204, put great pressure on royal finances, and exploitation of royal judicial and legal rights was one means of raising money. Such developments, together with increasing use of writing in government and developments in academic studies, including that of law, provide crucial background to legal change in the period 1154–1215.¹

1 LAW AND KINGSHIP

Kingship, law and justice

The author of the law-book known as Glanvill, writing in the last years of Henry II’s reign, reveals in his Prologue the views of those in the king’s judicial circle:

Royal power must not only be furnished with arms against rebels and nations that rise up against the king and the realm, but it is also fitting that it should be adorned with laws for ruling subject and peaceful peoples, so that our glorious king may so successfully pass through times both of peace and war that, crushing the pride of the unbridled and ungoverned with the right hand of strength and tempering justice for the humble and meek with the rod of equity, he may both be ever victorious in wars with his enemies and also show himself continually impartial in dealing with his subjects.²

¹ See below, Appendix, for changes in sources.
Much here is familiar from earlier periods, be it from chroniclers’ descriptions, law-books, or the coronation oath, an oath that Henry II himself swore. The king is ‘the author and lover of peace’.

His Highness’s court is so impartial that no judge there is so shameless or audacious as to presume to turn aside at all from the path of justice or to depart in any respect from the way of truth. For there, indeed, the power of an adversary does not oppress a poor man, nor does favour or partiality drive anyone away from the threshold of judgments.

He was to be guided by the laws and customs of the realm, long established and resting on reason, and by the advice of men learned in those laws and customs, excelling in wisdom and eloquence, and skilled in settling disputes, with severity or leniency as seemed best to them.

At the same time, there were changes. One of the most important is the influence of Roman law. This is manifest in Glanvill’s Prologue itself, elements of which were modelled on the Prologue to Justinian’s Institutes. It is also noteworthy that Glanvill opens his discussion of crime with ‘the crime that in the [Roman] laws is called the crime of lèse-majesté, namely concerning the killing or betrayal of the lord king or of the realm or of the army’. Treatment of procedure for other crimes is presented as variations on this archetype. Interest in Roman and canon law was growing across Europe in the twelfth century, but in Henry II’s England the Becket dispute gave particular impetus. Henry’s advisers and servants provided an intellectual response to the challenge from the archbishop, and after Becket’s death in 1170 this circle had continuing influence on legal thinking.

The king as legislator

As Glanvill indicates, long-standing acceptance continued to give authority to law. However, like their predecessors, Angevin kings did legislate. No great shift in ideals concerning the process of legislation is apparent. The king’s order was crucial, as in the 1166 Assize of Clarendon’s instructions beginning ‘the lord king wishes’ or ‘the lord king forbids’. At the same time, counsel was emphasised. The Assize of Clarendon specified that ‘King Henry decreed on the counsel of all his...
barons’, whilst Glanvill mentions laws ‘promulgated about problems such as are to be settled in council on the advice of the magnates and with the supporting authority of the prince’, a statement that precedes and significantly qualifies his citation of the Roman law maxim ‘what pleases the prince has the force of law’.8

Glanvill could present legislation as a manifestation of good kingship. The grand assize, a process whereby twelve local knights stated which of the two parties had greater right to disputed land or other type of property,

is a royal benefit granted to the people by the clemency of the prince on the advice of the magnates. It bears in mind so effectively both human life and civil condition that men may preserve the rights that they have in any free tenement while avoiding the doubtful outcome of battle…. This legal constitution is based above all on equity. For right, which after many and long delays is seldom arrived at by battle, is more easily and quickly attained through the benefit of that constitution. For that assize allows fewer essoins than does battle…and so people are thereby saved trouble and the poor are saved expense.9

Such presentation of the benefit of legislation fits the wider attitudes of the Angevin reformers.10

The Angevins appear to have legislated more frequently than their Anglo-Norman predecessors. The chronology of the legislation will be discussed later in this chapter, its effects in subsequent ones. Here it must be noted first that most of the surviving legislation concerned procedures and the administration of justice, financial or service obligations, and the regulation of commerce. There is much less on substantive law. We do not, for example, have any record of legislation laying down certain inheritance patterns, be they new or customary, such as was issued in England earlier in the century or in Brittany in the mid-1180s.11 Secondly, a shift occurred in the form in which legislation was propagated. Announcement by writ had characterised a significant proportion of surviving Anglo-Norman legislation, and for some measures taken by the Angevin kings such announcement, probably addressed to sheriffs or borough reeves, may have been necessary.12 However, much Angevin legislation may have been issued simply as instructions to the king’s justices. In the Chronicle of Roger

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8 See Assize of Clarendon, I; Glanvill, Prol., ed. Hall, 2. Cf. King John’s statement that ‘it is unheard of in our ancestors’ time or our own that a new assize be established in anyone’s land without the assent of the prince of that land’; Rot. lit. pat., 72.
9 Glanvill, ii. 7, ed. Hall, 28; see also xiii. 32, ed. Hall, 167, on novel disseisin.
10 See below, 534.
11 For the statutum decretum concerning female inheritance, see above, 353–4; for the Breton legislation, see J. A. Everard, Brittany and the Angevins (Cambridge, 2000), 111–15, 182–203, who takes it to be an agreed statement of good custom. In Normandy, note TAC, 8. 4, ed. Tardif, 9.
12 See e.g. Assize of Clarendon, 21.
of Howden, a text of the Assizes of Northampton of 1176 follows the chronicler’s outline of arrangements for the eyre of that year. Parallels are clear between the texts of such Assizes and the articles issued to itinerant justices, the first example of which survives from 1194. Such new procedures were then absorbed into the wider law, their legislative origins only occasionally recalled.

2 ROYAL OFFICIALS

Chief administrators and regents

Like his Norman predecessors, Henry II continued to place some reliance on family members when he was out of the realm. His queen, Eleanor, acted as regent and issued writs, as did his eldest son, Henry, following his coronation as co-king in 1170. However, disputes within the family, most notably the great revolt of 1173–4, brought such arrangements to an end, and even before that date the major responsibilities rested on others.

The chief justiciar came to be the pre-eminent figure in judicial administration, but the inevitability of this development is questionable. We have already examined the administrative prominence of some archbishops of Canterbury. In 1155–62, the chancellor, Thomas Becket, appears to have had wide-ranging authority. Henry II’s intention when he had Thomas elected archbishop was surely that he should retain this administrative office. Had Thomas done so, at least in the short term the chancellor-archbishop, not the chief justiciars, would have been the dominant administrative figure in Angevin England. Personal relations, be it with key administrators or with family members, still determined governmental change.

In the years leading up to 1168, Henry had two justiciars operating together; the great aristocrat, Robert, earl of Leicester, and Richard de Lucy, of knightly

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13 Howden, Chronica, s.a. 1176, ed. Stubbs, ii. 87–91; below, 546–7. On the survival of such texts, see below, 868–9. It is of course possible that at least some of the measures mentioned in such texts were also announced by writs that have not survived.
14 See below, 520, 600, on the grand assize. Note also PKJ, i. 133–4. A case in 1204 recalled a man in Henry II’s reign having lost a foot and an arm ‘according to [ad] the Assize of Clarendon’, but this may have been a means of signifying the date of the event as much as a reference to the legislative origin of the procedure; CRR, i. 180.
15 See West, Justiciarship, 31–4; also below, 575, for the Anstey case.
16 See above, 30, 261.
17 Henry must have had in mind the position of Rainald Dassel, chancellor of the Emperor Frederick Barbarossa and also archbishop of Cologne. See below, 502, on Hubert Walter.
background and formerly a loyal supporter of King Stephen. It is unclear precisely when they took up office, and impossible to define any specific division of responsibilities. The earl was the leading figure until his death in 1168. He may have enjoyed the position from the start of the reign, and from an early date authorised royal payments by his own writ, a characteristic of later justiciars. Richard did not issue such writs before Becket became archbishop of Canterbury, although his prominence in judicial affairs is apparent, for example from the Anstey case at the end of the late 1150s and start of the 1160s. By the mid to late 1160s, the court at the Exchequer, at which the justiciar took a central role, was hearing litigation beyond the specifically financial. After Earl Robert’s death, and certainly following the rebellion of 1173–4, Richard as justiciar was pre-eminent in the administration of the realm, and he also acted as regent when the king was abroad.

Henry was in England when Richard de Lucy retired into his monastic foundation at Lesnes, Kent, in 1178 or 1179, so a new justiciar may not have been immediately necessary; the justiciarship was not yet an office essential to the functioning of the regime if the king was in the country. Only under the year 1180 does Roger of Howden record Henry appointing Ranulf de Glanville as ‘chief justiciar of the whole of England’. Like Richard de Lucy, he was of knightly background, with a long if not unblemished record of royal service. He may have owed his particular rise to prominence to his capture of the king of Scots at Alnwick in 1174. Thereafter he was very significant in judicial matters, both at the central court and on eyre. Some continuing involvement with eyres after 1180, at least in 1183–4, may have encouraged acceptance of the itinerant justices’ courts as a form of the curia regis. Glanville also continued to carry out a wide range of other duties, for example military campaigns against the Welsh in 1182.

Glanville was central to administration in Henry II’s last years, but potential flexibility in development remained. Richard I’s departure for the Third Crusade required exceptional administrative arrangements. Initially he looked

18 For this paragraph, see West, *Justiciarship*, 35–53; *ODNB*; Bates, ‘Origins’, 11.
19 *Lawsuits*, no. 408E; below, 574–6.
20 See below, 539; note also *Dialogus*, i. 11, ed. Amt, 88, on Robert, earl of Leicester.
21 Howden, *Chronica*, s.a. 1180, ed. Stubbs, ii. 215.
22 See West, *Justiciarship*, 54, on his shrievalty of Yorkshire and his removal in 1170; note also above, 13, for his treatment of an heiress when he was justiciar.
23 See *PKJ*, iii. lvii–lxxvii, on 1183–4, although note that some of the headings for some of the Pipe Roll entries differ from the usual form for justices on eyre; also *PKJ*, iii. lxxxi, for 1186, although note the lack of final concords made before Ranulf, and the mention of new pleas before other justices at *PR*III, 46.
24 *Gesta regis Henrici secundi*, s.a. 1182, ed. Stubbs, i. 289.
to a co-justiciarship, of the bishop of Durham and William de Mandeville, earl of Essex.\textsuperscript{25} However, the death of William at the end of 1189 saw a return to reliance on a single individual combining royal and ecclesiastical offices: William de Longchamp was already royal chancellor and bishop of Ely but then became both papal legate and chief justiciar with authority over all lands south of the Humber. William fell from power in October 1191, and was replaced by Walter de Coutances, archbishop of Rouen and an experienced royal administrator. The possibility of uniting the leading position in royal administration with the archbishopric of Canterbury was revived with the next justiciar, Hubert Walter, who became archbishop in May 1193 and took over the justiciarship later in that year, a position that he retained until 1198.

Hubert Walter was replaced by Geoffrey fitzPeter, a man from a family of royal administrators and who himself had a long history of judicial service to the Angevin kings.\textsuperscript{26} Geoffrey helped to ensure the accession of King John in England in 1199, and retained the justiciarship into the new reign. With the loss of Normandy in 1204 and the king’s increased presence in England, and particularly with a greater concentration of business in the king’s own court from 1209, the justiciar’s judicial pre-eminence was reduced.\textsuperscript{27} Geoffrey died in October 1213, and was replaced by Peter des Roches, bishop of Winchester, who acted as regent in John’s absence in 1214.\textsuperscript{28}

One thus sees chief justiciars exercising a wide range of duties, including non-judicial ones, especially when the king was out of the country. In the field of justice, even when the king was present in England, they presided over the court of the Exchequer or the Bench at Westminster, they organised and sometimes participated in eyres, they instigated reforms.\textsuperscript{29} However, their authority varied for several reasons, notably the extent of the king’s presence in England and the justiciar’s possession of other offices. On several occasions, kings sought to create a leading minister distinguished by outstanding ecclesiastical as well as secular authority; the instances of Becket and also perhaps of Hubert Walter when he became chancellor in 1199, remind us that this minister need not have been

\textsuperscript{25} For this paragraph, see Howden, \textit{Chronica}, \textit{s.a.} 1189, 1190, 1196, 1198, ed. Stubbs, iii. 16, 28, 32–3, iv. 12–13, 48; West, \textit{Justiciarship}, 65–96; C. R. Cheney, \textit{Hubert Walter} (London, 1967), ch. 5; \textit{ODNB}. Note also the grant of extensive lands to Richard’s brother, John, including the counties of Nottinghamshire, Derbyshire, Somerset, Dorset, Devon, and Cornwall. The 1190 eyre did not visit these counties.

\textsuperscript{26} West, \textit{Justiciarship}, 98–110; \textit{ODNB}.

\textsuperscript{27} See below, 538.

\textsuperscript{28} See N. C. Vincent, \textit{Peter des Roches} (Cambridge, 1996), ch. 3.

\textsuperscript{29} See below, 522–3, 539–45.
justiciar. Flexibility and experiment continued to characterise important aspects of Angevin judicial administration.\(^{30}\)

**Earls**

Except when selected for administrative positions, as in the case of Robert of Leicester, or when administrators were rewarded with earldoms, as Geoffrey fitzPeter was under John, earls were not prominent in royal administration of justice. From the start of his reign Henry II seems deliberately to have reduced any governmental function of earldoms under King Stephen. The only right that many earls continued to have \textit{ex officio} was receipt of the third penny of judicial profits in the counties.\(^{31}\)

**Bishops**

As with earls, so too with bishops; they did not exercise the important role in the royal administration of justice that they had \textit{ex officio} in Anglo-Saxon England. However, prohibitions of clerics taking secular office or being present at blood judgments did not prevent individual ecclesiastics becoming prominent royal justices, and a number of clerics, such as Richard of Ilchester and Hubert Walter, were rewarded with bishoprics for their royal judicial service.\(^{32}\)

**Royal justices: (i) Central courts**

Numerous men acted as royal justices at the central courts in the Angevin period. Final concords record at least seventy sitting at the Exchequer as justices between 1165 and 1189. However, about half are only recorded as doing so on one or two occasions. The chief justiciars and twelve other justices account for roughly two-thirds of the named appearances. Thus a core group of justices had emerged, and it tightened somewhat in the reigns of Henry II’s sons. The group’s influence on the court and its law must have been considerable.\(^{33}\) Its members

\(^{30}\) Cf. the role of the seneschal in Normandy; Haskins, \textit{Norman Institutions}, 183–4.

\(^{31}\) See White, \textit{Restoration and Reform}, 86–91; \textit{Dialogus}, i. 17, ed. Amt, 98.

\(^{32}\) On clerics not being involved in blood judgments, see e.g. Constitutions of Clarendon, 11; Council of Westminster 1175, 3, \textit{Councils and Synods, I}, no. 168. The Third Lateran Council of 1179 prohibited clerics from acting as justices for secular authorities; the decree appears in Howden, \textit{Chronica}, s.a. 1179, ed. Stubbs, ii. 188. For bishops as justices, see Diceto, \textit{Ymagines historiarum}, s.a. 1179, ed. Stubbs, i. 435; PKJ, iii. l-ccxciv. On Richard of Ilchester, see ODNB.

\(^{33}\) See below, 529–35; also Brand, “‘Multis vigiliis’”, 91–2; Turner, \textit{Judiciary}, 75, 126–9, West, \textit{Justiciarship}, 83–4, 160–7. Note, however, that the most prominent group in John’s court \textit{coram
in general had a background in royal administrative and judicial activities, and might also have experience of the royal courts in other capacities. Thus Roger Huscarl started to act as a royal justice in 1210, but had previously brought his own litigation to the king’s court and sometimes acted as an attorney and as a surety for others. Only a small number can be shown to have had formal schooling in learned law, although others probably had some knowledge of it. Most received their legal education in royal service.

Some central figures in the group of justices were related to one another, most notably Ranulf de Glanville and Hubert Walter. Although there were complaints as to the lowly origins of royal justices, unsurprisingly most significant justices did not come from the lowest levels of society. Some were from prominent ecclesiastical or lay backgrounds, for example Richard fitzNigel was the son of Nigel, bishop of Ely and treasurer of Henry I, and great-nephew of Roger, bishop of Salisbury. More numerous were men from families with a tradition of royal service, a tradition that might already have led to a rise in social standing, as in the case of William Basset’s father, Richard. Others still were from knightly families, as was Ranulf de Glanville. Only occasionally is a justice’s background wholly obscure, as with Richard of Ilchester, although such cases slowly increase.

Of Henry II’s core justices, just under half were clerics. Of these, half were bishops, all servants of the king who had been prominent in the Becket dispute. The others were archdeacons and royal officials. The proportions of laymen and clerics amongst justices of central courts remain similar under Richard I, although we have already noticed the predominance of ecclesiastics amongst the chief justiciars. Under King John the proportion of clerics and of bishops falls markedly.

The justices were very much royal servants, with a primary duty to the king. Writing of those seeking a delay to their case because they were serving the king in Britain, Glanvill states that ‘it shall be at the will and pleasure of the lord king’s justices to assign a shorter or longer term of delay, as they see to be expedient for

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35 See below, 530–3.
36 For this paragraph, see Turner, *Judiciary*, esp. 25–31, 40, 88–94, 100–6, 127, 138–50. Ranulf de Glanville was married to Hubert Walter’s maternal aunt.
37 Turner, *Judiciary*, 31–2, 37, 88, 149. Justices might rise to the rank of bishop from that of archdeacon.
the lord king, provided the proper legal procedure [\textit{juris ordo}] is observed'.\textsuperscript{38} Like chief justiciars, justices were often involved in other royal administrative activities, including finance, diplomatic missions, and ceremonial activities in court.\textsuperscript{39} However, there are signs of increasing specialisation, a feature of Angevin government also apparent in the separation of the court of the Bench from the Exchequer.\textsuperscript{40} The first man who might be referred to as a career judicial specialist was Simon of Pattishall, who had a continuous judicial career for more than a quarter of a century starting in the reign of Richard I.\textsuperscript{41}

\textit{(ii) Eyre}

Men might act as both central and itinerant justices; therefore this section shares some personnel with the preceding one. The early years of Henry’s reign saw only limited visitations of itinerant justices. Those involved were office-holders closely connected to the king, and such men continued to be sent out on individual judicial missions throughout the period.\textsuperscript{42} Once eyres were established on a more routine basis from 1176, again a core group of justices emerged. It has been calculated that, of eighty-four itinerant justices in Henry II’s reign, only eighteen acted in three or more visitations, whilst two of these eighteen acted on six eyres. These two, and five others of the core eighteen, were also among the core justices at the Exchequer.\textsuperscript{43} Such men were involved in other governmental tasks, and this was likewise true of more occasional justices, such as the chronicler Roger of Howden. On being appointed for an eyre, they probably had to take an oath that they would do the king’s justice to everyone, as the chronicler Ralph de Diceto tells us happened in 1176.\textsuperscript{44}

In 1176 each group of justices included a sheriff local to the circuit, and in 1192 seven sheriffs served as justices for the eyre on its visit to their own county.\textsuperscript{45} In contrast, the articles of the 1194 eyre specified that ‘no sheriff is to be justiciar in his own shrievalty, nor in a county that he held after the first coronation of

\textsuperscript{38} Glanvill, i. 27, ed. Hall, 16.
\textsuperscript{39} See e.g. Turner, \textit{Judiciary}, 39–40, 51.
\textsuperscript{40} See below, 539–40. On specialisation, see also Turner, \textit{Judiciary}, 83–8, 126–7.
\textsuperscript{41} Brand, \textit{Legal Profession}, 27, but see also 171 n. 76 for comments on Simon’s other activities. On Simon, see also below, 847.
\textsuperscript{42} See below, 544–8, which also mentions the non-judicial business of the eyre; Stenton, \textit{English Justice}, 70–1.
\textsuperscript{43} Brand, “‘Multis vigiliis’”, 93; see also Stenton, \textit{English Justice}, 73–4.
\textsuperscript{44} See Diceto, \textit{Ymagines historiarum}, s.a. 1176, ed. Stubbs, i. 404.
the lord king’. However, this guideline was flouted with some regularity, albeit primarily by men who were experienced justices and who performed shrieval duties through deputies. Justices more generally continued to act in areas where they had personal interests, and evidence from Henry III’s reign shows them lobbying to be allowed to do so.

Sheriffs

Central authority regarded sheriffs as both essential and requiring control. The sheriff, sometimes acting through an under-sheriff, had various important functions. There were matters of police, most notably over-view of the frankpledge system. The sheriff also presided over the county court. Changes in legal and judicial arrangements diminished the importance of its routine meetings, in favour of sessions before the itinerant justices, particularly as regards the deciding of cases. However, new royal writs did require specific important work to be carried out by sheriffs, who also performed significant acts relating to the execution of royal justice as implemented both by the eyre and the central courts.

Taking control of sheriffs was one of Henry II’s first tasks. Twenty-one counties had their sheriffs replaced at the Michaelmas Exchequer of 1155. Other points in the reign saw wholesale changes in shrieval personnel, most famously in 1170, in association with the so-called Inquest of Sheriffs. However, any attack on a hereditary element in shrievalties was limited, and there remained familial and tenurial links to the office. Some of Henry’s early sheriffs were men of very high status, whilst others, such as Richard de Lucy, had close connections to the king.

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46 Articles of the 1194 eyre, 21, Select Charters, 254.
47 PR12J, xvi–xxii. Although justices had presumably been appointed before the issuing of the articles in 1194, shrieval justices are few in that eyre. The 1198 articles of the eyre do not include the prohibition. Note e.g. Stenton, English Justice, 105–6, on the much increased significance of sheriffs sitting as justices in their own county in 1210. This activity may provide essential background for Magna Carta, 24, on which see below, 507.
48 See e.g. PKJ, i. 39–40; C. A. F. Meekings, ‘Six letters concerning the eyres of 1226–8’ (1950) 65 EHR 492–504, at 497–500.
49 See also below, 508. Note also the restriction of shrieval involvement in choice of knights for the grand assize, below, 602.
50 For an under-sheriff, see e.g. Lawsuits, no. 641 (p. 680).
51 Morris, Sheriff, 115–17. Note also the role attributed to them by the Constitutions of Clarendon, 6, in arranging jurors for accusations against laymen before the bishop.
52 See e.g. Glanvill, ii. 20, xii. 18, xiii. 38–9, ed. Hall, 36, 144, 170, on execution of judgments; also Morris, Sheriff, 118–23, 146–7.
The majority, however, were local landholders, usually with only a few knight’s fees, and such men increased their importance within the shrievalty by the mid-1160s. Variations in the wealth and in the proximity to the king of those appointed as sheriffs continued later in the Angevin period, sometimes in a pattern linked to efforts at increasing revenue from counties and limiting shrieval powers. The mixture of royal reliance upon and desire to direct sheriffs is apparent in the provisions made at Clarendon in 1166. Lords were not to prevent sheriffs from entering their courts or lands to supervise the functioning of frankpledge or the arrest of those accused of serious offences. In addition, sheriffs were instructed to collaborate with one another in dealing with felons or outlaws who had fled. Magna Carta and earlier evidence shows the king prohibiting sheriffs from hearing pleas of the Crown, whilst the Dialogue of the Exchequer reveals a particularly confrontational attitude to sheriffs, at least regarding financial matters at the Exchequer:

Just as, in chess, battle is joined between kings, so here a struggle takes place and battle is joined principally between two people, that is the treasurer and the sheriff who sits at the account, while the others sit by as judges, so that they may watch and judge.

Local justices, serjeants, and coroners

Anglo-Norman local justices dealt with jurisdictions of differing scales, and it is unclear whether there had been an office of justice for each county, or whether arrangements were more ad hoc. The county justice may have become more usual in Stephen’s reign, and certainly men of higher status held that position. Evidence for the early years of Henry II is limited. Pipe Rolls refer to payments by men who may well have been county justices. However, references to the justice of a specific county may in some cases signify a man acting as a justice in the type of limited eyre that took place in these years. Furthermore, evidence suggests

55 White, Restoration, 91–100.
56 See D. A. Carpenter, ‘The decline of the curial sheriff in England 1194–1258’ (1976) 91 EHR 1–32, esp. 1–9; Morris, Sheriff, 137–9 on Richard I’s reign, 163–4 on John’s reign. Council of Westminster 1175, 3, Councils and Synods, I, no. 168, prohibited priests having the office of sheriff or secular reeve; this is the same clause that prohibited their participation in blood justice, cited above, 503.
57 Assize of Clarendon, 9, 11, 17; see also below, ch. 27.
58 Dialogus, i. 1, ed. Amt, 10; Magna Carta, 24; above, 506. On wider complaints about sheriffs, see below, 851.
59 See above, 266–9.
60 See White, Restoration, 184–90; Stenton, English Justice, 68.
61 Note Royal Writs, nos 94, 127, referring to Lincolnshire and London, where we have other evidence for local justices; Cartularium monasterii S. Johannis Baptiste de Colecestria, ed. S. A. Moore (2 vols; Roxburghe Club, 1897), i. no. 41, referring to Norfolk.
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at least one instance of a man, the wealthy Devon baron Henry de Pommeraye, having judicial authority in a group of East Midland counties. The impression again is of a variety of arrangements, a conclusion that will be reinforced when we look at lesser officials.

This lack of uniformity, as well as the limits of evidence, makes it the harder to determine when county justices ceased to exist, although various historians have pointed to the 1160s. A writ of the latter part of Henry II’s reign is addressed to ‘his justices in whose jurisdictions [bailliis] the abbot of Abingdon has lands’. However, this could refer either to itinerant justices or to lesser local officials. The continuity of such lesser officials may be hidden by a terminological change, with an increase in reference to hundred serjeants. Such references may be to a somewhat different type of official from those earlier termed justices, or may be using a new term for a continuing type of official, ‘justice’ now tending to be restricted to those on eyre.

Serjeants might have responsibility for one or several hundreds, and made shrieval administration effective throughout the county. They seem to have been appointed by sheriffs, or by the holders of private hundreds, although in some cases the position was associated with a particular tenancy. They carried out a wide range of duties, many connected to crown pleas. They probably held inquests concerning dead bodies, made arrests, and attended ordeals and hangings.

Some, although not all, of these duties were taken over by the ‘keepers of pleas of the crown’, commonly known as coroners. The articles of the 1194 eyre ordered that ‘in each county are to be chosen three knights and one cleric as keepers of the pleas of the crown’, and this order does seem to mark the general establishment of the position at county level. Coroners both helped in running the county and acted as a check on the sheriff. They were to be of a higher social status than was common among hundred serjeants, and were possibly to be chosen in the presence of the itinerant justices, rather than being shrieval appointees. They took over some of the responsibilities of the hundred serjeants, and added others. In particular, they

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62 White, Restoration, 189.
63 E.g. Richardson and Sayles, Governance, 196.
64 Historia ecclesie Abbendonensis, ii. 297b, ed. Hudson, ii. 346–8. See also Oxford Charters, no. 81 (1172 x 1175), specifying the king’s justice of Oxford or Oxfordshire in its nisi feceris clause.
65 See above, 266–70.
67 See Kimball, Serjeanty, 87; Hunnisett, ‘Origins’, 92–9; Hurnard, King’s Pardon, 24. For a hundred serjeant apparently being an object of fear, see e.g. CRR, i. 470. Serjeants in the far north of the country and the Welsh borders in particular may have continued to have important legal duties; see e.g. Book of Fees, i. 5–6; Stewart-Brown, Serjeants of the Peace.
68 Hunnisett, ‘Origins’, esp. 88, 103; for limits of implementation, see Hunnisett, Coroner, 3–4.
had responsibilities in the county relating to the later stages of criminal appeals, record-keeping, and outlawry. Their assumption of the serjeants’ duties may have been gradual, and serjeants continued to assist coroners.69

Various other officials should be noted.70 The chief justiciar had a chancery, other justices and sheriffs had clerks to produce the necessary written instructions and records.71 Constables of royal castles had duties as gaolers, and also perhaps some judicial role; Magna Carta prohibited them, as well as sheriffs, coroners, and royal bailiffs, from holding pleas of the Crown.72 Justices and sheriffs might use men appointed on an ad hoc basis, for example summoners and also men such as the royal servants ‘David the Lardiner, Odo of Newsham, William Dod, and several others’, who attended the court of Roger de Mowbray on behalf of the sheriff at some point in the 1160s.73 Finally, whilst the wronged party sometimes exacted punishment, on other occasions an appointed servant carried out execution or mutilation.74

3 ANGEVIN REFORM: A CHRONOLOGICAL SURVEY

‘Henry II’s legal reforms’, ‘The Angevin legal reforms’, or ‘The Angevin Leap Forward’, have constituted one of the core topics both of English mediaeval history and of English legal history. Here provide an introductory chronological survey, leaving to subsequent chapters deeper analysis of various issues. Some important changes are hard to date, or more generally hard to uncover. This is partly a matter of lost legislation,75 but also stems from the nature of reform. Administrative changes, as we have seen with the disappearance of county justices, may have been gradual or unrecorded. Some procedural developments, such as the emerging role of trial juries in criminal cases, cannot be attributed to a specific date. Nor can changes in chancery practice, for instance the introduction of new forms of writ or different sealing practices, be precisely dated because

69 See Hunnisett, ‘Origins’; e.g. PKJ, iv. nos 3410, 3422, for serjeants being amerced for not carrying out their duties properly.
70 See also above, ch. 19, on Forest officials.
71 For the justiciar’s chancery, see The Memoranda Roll for the Michaelmas Term [1 John], ed. H. G. Richardson (NS 21 PRS, 1943), lxv–lxxvii. For the clerks responsible for keeping justices’ rolls, see C. T. Flower, Introduction to the Curia Regis Rolls, 1199–1230 (62 Selden Soc., 1944), 7–11. For records of the county court, see below, 553–4. Also for sheriffs’ staff, see e.g. Flower, Introduction, 421–2.
73 Lawsuits, no. 453. See also Morris, Sheriff, 115.
74 See e.g. Lawsuits, no. 505; below, 741. Note also Kaye, ‘Sacrabar’, 744–5, on later Northumbrian evidence.
75 See e.g. Glanvill, ii. 12, viii. 9, xiii. 11, ed. Hall, 31, 100–1, 155.
of lack of examples, particularly lack of documents surviving as originals. 76 And extremely hard to include in any chronology are developments probably caused by a combination of other innovations, developments as important as the requirement of a royal writ to compel a man to answer concerning his free tenement. 77

From the Treaty of Winchester 1153 to the mid-1160s

There are some signs of a reassertion of royal authority in the last months of Stephen's reign. 78 Of particular note is the settlement between the king and his opponent, the future Henry II, and the terms of agreement provided. According to the Gesta Stephani it was agreed in late 1153 that 'arms should finally be laid down and peace restored everywhere in the realm, the new castles destroyed, the disinherited restored to their own, and laws and enactments [plebiscita] made binding on all according to the ancient fashion'. 79 The statement that 'the disinherited [were to be] restored to their own' can be compared with one by the Norman chronicler Robert de Torigni: 'it was sworn that possessions that had been seized by intruders were to be recalled to their former and lawful possessors, whose they had been in the time of the excellent King Henry [i.e. Henry I]'. 80 The interpretation of these passages has been disputed. Possibly it was agreed that inheritances were to be restored to those who had justly possessed them in 1135. 81 Alternatively, the chroniclers may have been projecting back to late 1153 a general promise made at the time of Henry’s coronation in December 1154. 82 Whenever the promise was made and whatever its precise content, its execution may have been very difficult, requiring both compromise and judicial action. 83 Cases arising from Stephen’s reign may have encouraged men, including those below the level of tenant-in-chief, to look to the king to ensure the doing of justice. Such requests, and the consequent writs and actions, may have given an initial impetus to royal involvement in matters of landholding, and it is possible,

76 E.g. it is very difficult to date the appearance of new writs, or say when a writ became available de cursu, that is routinely and for a set low payment (see also Stenton, English Justice, 30); for one example, see below, 525.
77 See below, 557.
78 See White, Restoration, 69–76.
79 Gesta Stephani, 120, ed. Potter and Davis, 240.
80 Robert de Torigni, Chronica, Chronicles of Stephen etc., iv. 177.
83 Some arrangements at tenant-in-chief level may have been made without reference to the king or his court; see Holt, '1153'.
but unproveable, that these were important years in the development of the writ of right, the significance of which we will examine later.  

Further measures were taken to restore order. Considerable changes were made amongst sheriffs. There was probably an edict concerning the restoration of the royal demesne, and, for example, legislation concerning shipwreck. Also from this period come references to edicts concerning distraint and dispossessions, the exact nature of which will be considered later. A royal writ of the period states that

I order that the prior of St Swithun and the monks are to hold all their lands and tenures well and in peace, freely and quietly and justly. And let them not be placed in pleas against my decree [statutum], concerning any tenement of theirs for the claim of some Englishman, unless that Englishman or his ancestor has been seised thereof in the year and on the day when King Henry, my grandfather, was alive and dead or afterwards.

The reference could be to legislation specifically concerning Englishmen, or to more general legislation regarding which Englishmen were a specific exception. A larger scale legislative session for Normandy may have taken place at Falaise in 1159, with particularly notable decrees prohibiting a decanus, presumably a rural dean, from making an accusation without the testimony of neighbours of good standing, and the judges in monthly district courts from judging without the testimony of neighbours. In 1162, still in Normandy, Henry ‘made complaint concerning bishops and their officers and his vicomtes, and ordered that the [provisions of] the council of Lillebonne be observed’. The exact meaning of this phrase is uncertain, but probably Henry was seeking to prevent the extension

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84 See also Milsom, *Legal Framework*, 178. For the writ of right, see below, 582–3. Words such as breve recti (*Lawsuits*, no. 362) need not constitute a technical term and reveal little of the content of the writ. The phrase breve de recto appears in an account of a dispute in Stephen’s reign, *Lawsuits*, no. 316, but the text is not contemporary with the events. Reference to breve de recto in *Lawsuits*, nos 481 and 483, from c. 1165 x 1175, may suggest a more precise use of the phrase.

85 Howden, *Chronica*, s.a. 1156, ed. Stubbs, i. 215, lists the destruction of almost all the castles built in Stephen’s time, Henry’s issuing of a new coinage, his establishment of peace, and his order that the laws of Henry I be held inviolably throughout his realm. See also William of Newburgh, *Historia*, ii, 1, *Chronicles of Stephen etc.*, i. 102.

86 See above, 506; also White, *Restoration*, 95, Boorman, ‘Sheriffs’, 258.

87 *Lawsuits*, no. 417.

88 William of Newburgh, *Historia*, liii, 26, *Chronicles of Stephen etc*, i. 282. See *Lawsuits*, no. 371, for a local dean making an accusation ‘without another accuser, against which custom the king had issued a law of prohibition’; see also below, 735 n. 164.

89 See below, 609–10, 637–8.


of ecclesiastical jurisdiction in Normandy, a subject that would be soon of great prominence in England.\(^\text{92}\)

The overall extent of Henry’s legal and judicial activities in these years is hard to assess. Pipe Rolls show revenue from pleas and agreements rising, but still considerably below 1130 levels.\(^\text{93}\) However, it is possible that other payments were not passing through the Exchequer. It can be argued that until c. 1163 the king, perhaps deliberately, limited the extent to which he and his justices were involved in the hearing of cases.\(^\text{94}\) On the other hand, royal writs seem with greater consistency to have included clauses promising enforcement, most often shrieval or royal, if the addressee failed to act.\(^\text{95}\) Likewise, the royal confirmations issued in these years, some to sub-tenants, constituted promises of future royal action, even within the affairs of a lordship.\(^\text{96}\)

**Mid-1160s to mid-1170s**

At some point between 1154 and early 1164 Henry II issued a decree concerning default of justice. The date is uncertain, although an account written in the mid-1170s refers to it as a ‘new constitution’ in the context of a case of October 1164.\(^\text{97}\) By the decree, the complainant was to take his complaint to a royal justice, then swear with two oath-helpers in his lord’s court that the court had not done him right. The case then went to the overlord, and could eventually reach the king’s court. At least from the perspective of a decade or so later, the decree was regarded as a piece of royal assertiveness, for one writer comments that ‘the king had made an ordinance in his kingdom, which caused the barons of the country great harm, whereby each lost his court by a false oath’.\(^\text{98}\)

\(^{92}\) Robert de Torigni, *Chronica, Continuatio Beccensis, Chronicles of Stephen etc.*, iv. 212, 327; Haskins, *Norman Institutions*, 170–1. *Vicomtes* were the Norman equivalent of sheriffs. For possible parallels in England, see below, 567. Other decrees at Falaise in 1159 were more general, for example concerning peaceful tenure and the immediate punishment of convicted thieves. Note also a decision of Henry’s court concerning the holding of trials by battle in courts of tenants-in-chief in Normandy; Robert de Torigni, *Chronique*, ed. Delisle, ii. 241–2. For possible earlier legislation concerning the jury in Normandy, see Haskins, *Norman Institutions*, ch. 6.


\(^{94}\) See White, *Restoration*, 162–90.

\(^{95}\) White, *Restoration*, 173.


\(^{97}\) *Lawsuits*, no. 420C.

\(^{98}\) *Lawsuits*, no. 420H (the text is in Old French); ‘lost his court’ indicates loss of hearing of the particular case.
If the decree was issued following Henry’s return to England in January 1163 after a four and a half year absence, it coincides with other hints of increased royal assertiveness.\(^99\) Pipe Rolls begin to contain references to forfeiture of chattels by offenders or fugitives, as well as to other judicial matters, and in 1165 there is a sudden spike in payments ‘for right \textit{[pro recto]}’, with thirty-two, the highest figure of the whole reign.\(^100\)

In January 1164 was made a record of ‘a certain part of the acknowledged customs and privileges of the realm’, a text known as the Constitutions of Clarendon. These dealt with various customs of the king in relation to the Church, for example requiring the king’s permission for prominent clerics to leave the kingdom and for the excommunication of tenants-in-chief or royal officials.\(^101\) The king was to aid the Church, for example against great men who were obstructing archbishops, bishops, or archdeacons from doing justice concerning them or their men.\(^102\) In other instances, royal help was promised, but with the intention of restricting the practices of some churchmen. We have already heard about legislation in Normandy against unsupported accusations by archdeacons. The Constitutions of Clarendon state that

laymen ought not to be accused save by known \textit{[certos]} and lawful accusers and witnesses in the presence of the bishop, in such a way that the archdeacon not lose his right or anything that he ought to have therefrom. And if the accused are such that no-one either wishes or dares to accuse them, the sheriff, when requested by the bishop, shall cause twelve lawful men of the neighbourhood or vill to swear before the bishop that they shall make clear the truth about the matter to the best of their knowledge.\(^103\)

Certain areas of jurisdiction were specified as royal on the basis of the issue, irrespective of whether the parties were clerical or lay: ‘if a dispute shall arise between laymen, or between clerks and laymen, or between clerks, concerning advowson and presentation to churches, it is to be treated and concluded in


\(^{100}\) See White, \textit{Restoration}, 193–6, who suggests predominance of activity regarding the Forest; \textit{Royal Writs}, 231–4. Note also White, \textit{Restoration}, 194, on the recording of specific payments by individuals or vills.

\(^{101}\) Constitutions of Clarendon, 4 (noting the comments on translation in \textit{Councils and Synods, I}, 862), 7, and note also c. 10. Other areas of royal control were also specified: e.g. cc. 2 ‘Churches within the fee of the lord king cannot be given in perpetuity without his consent and concession’, 14 ‘the chattels of those who are under forfeiture to the king may not be retained by any church or cemetery against the king’s justice, because they are the king’s, whether they be found within the churches or without’; also cc. 8, 12.

\(^{102}\) Constitutions of Clarendon, 13. The churchmen were likewise to provide aid for the king.

\(^{103}\) Constitutions of Clarendon, 6.
the court of the lord king’. Particularly tendentious was the issue of criminous clerks:

Clerks cited and accused of any matter shall, when summoned by the king’s justice, come into the king’s court to answer there concerning matters that shall seem to the king’s court to be answerable there, and before the ecclesiastical court for what shall seem to be answerable there; in such a way that the justice of the king shall send to the court of the holy Church to see how the case is tried there. And if the clerk shall be convicted or confess, the Church ought not to protect him henceforth.

That the king’s court should decide jurisdiction is also emphasised in another clause: if a dispute arose between a clerk and a layman regarding a tenement that the clerk claimed to be alms, the layman lay fee, that issue was to be determined ‘by recognition of twelve lawful men, through the decision of the chief justice of the king’. Such a recognition by twelve lawful men would be essential to several other key new procedures.

Late in 1165 a major effort against serious crimes was probably started through sheriffs and local judicial officials. Then early in 1166 control of the crackdown was handed over to travelling royal justices, as recorded in the text known as the Assize of Clarendon. Juries of twelve men from each hundred and four men from each vill were to ‘speak the truth, whether there be in their hundred or their vill any man accused or notoriously suspect of being a robber or murderer or thief [latro], or any who is a receiver of robbers or murderers or thieves, since the lord king has been king’. The text uses the word ‘murderer’, which earlier evidence might suggest was associated with particularly heinous forms of homicide. However, the word here should probably be taken in the broad sense of perpetrator of culpable homicide, perhaps with the French vernacular having influenced usage. The accused or notoriously suspect were to be taken, and to be subjected to ordeal by

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104 Constitutions of Clarendon, 1; see also c. 11.
105 Constitutions of Clarendon, 3; see below, 769–72, on this clause, which was central to the Becket dispute.
106 Constitutions of Clarendon, 9; see below, 608, where the clause is quoted in full. The clause was one of those condemned by Alexander III. For c. 15, on jurisdiction in debt cases, see below, 698.
107 See Corner, ‘Texts of Henry II’s assizes’, 16–19; there may be a reference to the earlier assize [‘alia assisa’] in PR12HII, 48. Note also the end of Assize of Clarendon, 1, attributing a role to sheriffs as well as justices. The word assize could at this time have various meanings: an ordinance or piece of legislation, for example the Assize of Clarendon; a procedure, for example the assize of novel disseisin, that in some instances may have been set up by a legislative assize; the jurors or recognitors within that procedure. It could also mean an assessed rent, tax or other due. See DMLBS, s.v. ‘assisa’.
110 See e.g. Lawsuits, 411C, using the Old French murdre for an act that Latin versions refer to as homicidium. Lawsuits, no. 501, takes the Assize of Clarendon or Northampton to cover homicides, thefts, and other such deeds.
water before the king’s justices. Those convicted were to be mutilated by loss of a foot, whilst even those cleared might have to abjure the realm ‘if they have been of very bad repute and openly and disgracefully spoken of by the testimony of many and that of lawful men’. Forfeited chattels were to go to the king.

The text also records other arrangements concerning the maintenance of the peace, for example stating that ‘let there be no-one within his castle or without… who shall forbid the sheriffs to enter into his court or his land to take the view of frankpledge, and to see that all are under pledges; and let them be sent before the sheriffs under free pledge’. Action was to be taken against the group of heretics who came from Germany and had been branded and excommunicated at Oxford, and it may have been at the same council that new procedures concerning disseisins were put into place.

We have evidence of the Assize being put into practice, with records of chattels forfeited by felons and fugitives, and of the allowance to the sheriff of Wiltshire of 5s. for ordeal pits for the judgment of robbers and 20s. for payment of the priests who blessed them. The text states that the Assize was to last as long as the king pleased, and the procedures seem to develop subsequently. For example, at the end of the 1160s arson may have been added to the types of offence to be presented.

There were problems in enforcement. Many of the accused fled, whilst there is evidence of variable degree of implementation and of abuse of the arrangements. The articles of a royal enquiry in 1170 include the following provision:

Concerning the chattels of those who have fled on account of the Assize of Clarendon and the chattels of those who have been condemned [perierunt] through that Assize, let it be enquired as to what has been done and what has issued from it regarding each hundred and each vill, and let it be accurately and carefully written down. And likewise let it be enquired whether anyone has been unjustly accused in that Assize for reward or promise or from hatred or other just cause, and whether any of the accused has been released or any accusation made for reward or promise or love, and who received the reward for it, and likewise let this also be written down.

111 Assize of Clarendon, 1, 2, 14; Assizes of Northampton, 1.
112 Assize of Clarendon, 9. See also above, 507, on co-operation between sheriffs, below, 717, on frankpledge.
113 Assize of Clarendon, 21; on novel disseisin, see below, 609–11.
114 PR\textsc{I}2\textsc{HII}, 72. and see also e.g. 117, which mentions blessing of a pit and also work on Oxford gaol. For the building of gaols, see Assize of Clarendon, 7. For the impact of the assize, note also \textit{Lawsuits}, no. 501.
116 See also Richardson and Sayles, \textit{Governance}, 201.
117 Inquest of Sheriffs, 6; on the Inquest see the next paragraph but one.
Despite such problems of execution, the provisions and the tone of the Assize of Clarendon signify royal assertion of authority in matters of justice, an assertiveness matched in other fields of administration, for example an enquiry in 1166 into knight-service.\(^{118}\)

If it is possible that Henry II’s return to England in January 1163 led to an acceleration of judicial and legal activity, his absence from March 1166 until March 1170 did not stop reform and in some ways may have encouraged it. Royal absence may have stimulated use of the Exchequer for hearing of non-financial cases.\(^{119}\) Further activities are visible, for example Forest visitations and also a much wider eyre in 1168–70.\(^{120}\) Other reforms are more difficult to pin down in terms of date and even of content. It may be at this time, or as a direct result of the Assize of Clarendon, that remaining county justices disappeared or that local justices were reclassified as serjeants.\(^{121}\) It may have been in the late 1160s that certain important writs started to be sealed ‘closed’, that is in a fashion that required the seal to be broken before the document could be read, thereby ensuring that authentication only lasted for one use. Their ephemeral nature suggests a more routine employment of writing than the old writs sealed ‘open’ or ‘patent’, which were reusable because the seal did not have to be broken before reading. Writs might also be ‘returnable’. Such writs were taken to the sheriff, who followed their instructions, for example setting in motion a recognition. He wrote the names of the recognitors on the back of the writ, and then—as the writ instructed—produced it on the specified day before the royal justices, together with those responsible for summoning the recognitors and the tenant. The authorisation to hear the case and any specifications as to process would then be read out.\(^{122}\)

Following his return to England in 1170, Henry ordered probably the largest governmental enquiry in England since the Domesday inquest.\(^{123}\) The chroniclers focus on the inquiry into sheriffs and their bailiffs, and historians normally term it the ‘Inquest of Sheriffs’.\(^{124}\) However, its articles also state:

Let it be enquired concerning the archbishops, bishops, abbots, earls, barons, vavasours, knights, citizens, burgesses, and their stewards and officials as to what and

\(^{118}\) For the returns to the survey, the *Cartae baronum*, see *Red Book*, i. 186–445.

\(^{119}\) See below, 539; on the Exchequer as a court, see also above, 275.

\(^{120}\) Note also 1169 legislation particularly affecting the actions of churchmen; M. D. Knowles et al., ‘Henry II’s supplement to the Constitutions of Clarendon’ (1972) 87 *EHR* 757–71.

\(^{121}\) See above, 508.


\(^{123}\) For a text of the articles of the Inquest, see *Select Charters*, 175–8; for a different version see *The Letters and Charters of Gilbert Foliot*, ed. A. Morey and C. N. L. Brooke (Cambridge, 1967), 523–4. See also Gervase of Canterbury, *Chronicle*, s.a. 1170, ed. Stubbs, i. 216, for some of those who were to carry out the enquiry.

\(^{124}\) See e.g. *Gesta regis Henrici secundi*, s.a. 1170, ed. Stubbs, i. 4–5; e.g. *Select Charters*, 174.
how much they have received from their lands since the above date, from each of their hundreds and each of their vills, and from each of their men, by judgment or without judgment, and let them write down separately all these exactions and their causes and occasions.125

The few surviving returns confirm that investigation took place into lords’ relations not only with their officials but also with their men more generally.126 The extent of the impact on baronial administration must remain unclear, but there were very significant changes in shrieval personnel.127 The prospect of not only routine accounting at the Exchequer but also future special enquiry must have encouraged shrieval obedience.128 A similar warning must have been intended for barons, at the very least in their position as holders of franchises. Information gathering, together with the composition of written records, might inspire or inform further royal action, as well as presenting the king as dispenser of justice against oppressive lords and local administrators.

Within the articles of the Inquest at least one manuscript included matter of a more legislative nature. It is possible but not certain that these legislative sections derive from the same council as the articles of enquiry; if they do not derive from the same occasion, their date is unknown.129 One section confronts the common problem of the reopening of cases:

If anyone complains about any case [querela] that has been concluded [finita] in the court of the lord king, before him or his justice, in order to renew it, once he [the complainant] is convicted or confesses this, he is to be taken and held in prison until the lord king orders him to be released.

It is uncertain whether this is a general measure, or one confined, for example, to complaints made in the context of the inquiry.

A second section concerns essoining, the importance of which is clear from the plea rolls and Glanvill:

Essoiners who come into the court of the lord king before him or his justice, or in the counties before sheriffs, are to give gage and pledge that they shall have their

125 Inquest of Sheriffs, 3.
128 See above, 506–7, below, 530. Note also Diceto, Ymagines historiarum, s.a. 1179, ed. Stubbs, i. 434, on investigation of shrieval activity, and a resultant desire to check their powers.
warrant [i.e. the person on whose behalf they conveyed the essoin] on the set day. And those who do not find gage and pledge are to be taken and held until they find pledge, and unless they have their warrant on the set day, they are to be taken and imprisoned. Moreover, in the courts of barons, if essoiners are unwilling to find gage and pledge that they shall have their warrant on the set day, and if they do not have [him], then let them be taken as perjurers.\textsuperscript{130}

Like the Inquest of Sheriffs, this legislation is particularly significant because it shows the king concerning himself with the behaviour of baronial as well as royal and county courts.\textsuperscript{131}

\textit{Mid-1170s to early 1190s}

The chronicler Ralph de Diceto saw firm royal administration of justice in matters of landholding and crime as one cause of support for the rebellion of Henry II’s son, Henry the Young King, in 1173–4.\textsuperscript{132} However, whilst the treatment of rebels after the revolt’s defeat was mild, the process of the restoration of order involved further royal assertiveness. 1175 saw the most thorough eyre so far conducted, with Ranulf de Glanville and Hugh de Cressy visiting fifteen counties, and William de Lanvalei and Thomas Basset visiting fourteen.\textsuperscript{133} Thereafter visitations of the eyre occurred on average every other year until the mid-1190s.\textsuperscript{134}

In January 1176, a council was held at Northampton, and this arranged a new eyre together with a new set of instructions that the itinerant justices had to swear to keep and ensure that others would observe. Howden called these instructions the Assizes of Northampton, using the plural form. He stated that they were made at Clarendon and afterwards ‘recorded’ at Northampton, but it is unclear to how many clauses this refers.\textsuperscript{135} The first clause revises the Assize of Clarendon procedures concerning serious offenders. It may have added the crime of forgery to those previously dealt with by presentment, and certainly increased punishment for those convicted of the specified felonies: they were to lose not only a foot

\textsuperscript{130} It seems possible that something is missing in the final sentence.

\textsuperscript{131} On essoins, see below, 588–91. For other possible evidence relating to judicial and legal matters in 1170, see Hudson, \textit{Land, Law, and Lordship}, 259 nn. 20–1.

\textsuperscript{132} Diceto, \textit{Imagines historiarum, s.a.} 1173, ed. Stubbs, i. 371. Henry is referred to as ‘the Young King’ as he had been crowned in 1170. It was common for kings of France to have their eldest son crowned, creating a co-king, but this was not customary in England.

\textsuperscript{133} \textit{PKJ}, iii. lvi.

\textsuperscript{134} See below, 544–8.

\textsuperscript{135} Howden, \textit{Chronica}, s.a. 1176, ed. Stubbs, ii. 87–9; also Diceto, \textit{Imagines historiarum, s.a.} 1176, ed. Stubbs, i. 404; note also Brand, ‘Henry II’, 225. Some of the new articles treat recent events, e.g. c. 8 on the demolition of castles. See below, 545, on the shift in the nature of the eyre at this point.
but also their right hand, and were given forty days to abjure the realm.\textsuperscript{136} Other clauses have no basis in the surviving texts of the Assize of Clarendon. There were specifications concerning inheritance and the pursuit of claims by heirs against lords who excluded them. It was also laid down that ‘the justices of the lord king cause recognition to be made concerning disseisins made contrary to the assize, from the time at which the lord king came to England immediately after the peace made between himself and the king his son’.\textsuperscript{137}

It could also be at this time that new commercial regulations came into force, with references to amercements for wine sold ‘contrary to the Assize’, probably, that is, in measures smaller than those that an Assize had specified as standard.\textsuperscript{138} The period may also have seen royal justices encouraging litigants to come to royal courts in order to make their agreements, and to pay for juries to answer a specific question arising in a land case. In addition, the keeping of plea rolls by royal justices may have developed from the mid-1170s.\textsuperscript{139}

New measures continued to be established after 1176. These may have included arrangements concerning distraint of a lord’s men for the lord’s debt, a subject on which Henry certainly legislated for his continental possessions in 1177.\textsuperscript{140} A new provision allowed Jews to build cemeteries outside city walls, whereas previously all Jews had been brought to London for burial.\textsuperscript{141} There were changes in arrangements for royal courts. In 1178, according to Howden, Henry reduced the number of justices from eighteen to five, two clerics, three lay, all from his household. They were not to leave his court but to remain there to hear men’s claims. Such measures were probably not fully implemented, and other arrangements would later be put into place, including a new eyre in 1179.\textsuperscript{142} Diceto gives an impression of repeated experiment. The king

unchanging in his purpose, again and again made changes in personnel while maintaining an unchanged opinion…. He made use now of abbots, now of earls, now of

\textsuperscript{136} Assizes of Northampton, 1; on forgery see Holt, ‘Assizes’, 95.
\textsuperscript{137} Assizes of Northampton, 4, 5; on novel disseisin, see below, 609–11. Note also the suggestion by Biancalana, ‘Want of Justice’, 518, that ‘the greater number of Pipe Roll entries after 1176 relating to dower litigation suggests that Chapter Four of the Assize of Northampton was the source of the \textit{precipe writ of dower}’.
\textsuperscript{138} \textit{PR23III}, 29–30. At some point in Henry’s reign there was also an assize concerning bread; see W. Cunningham, \textit{The Growth of English Industry and Commerce} (2 vols; 2nd edn, Cambridge, 1890–2), i. 502–3.
\textsuperscript{140} Howden, \textit{Chronica}, s.a. 1177, ed. Stubbs, ii. 146; below, 700, 704. See further, below, 706, on legislation relating to imprisonment of debtors to the king. See also \textit{Gesta regis Henrici secundi}, s.a. 1177, ed. Stubbs, i. 138, for an enquiry into services owed by tenures-in-chief.
\textsuperscript{141} \textit{Gesta regis Henrici secundi}, s.a. 1177, ed. Stubbs, i. 182
\textsuperscript{142} \textit{Gesta regis Henrici secundi}, s.a. 1178, 1179, ed. Stubbs, i. 207–8, 238–9; \textit{PKJ}, iii. lx-lxiv.
tenants-in-chief, now of members of his household, now of those closest to him, to hear and judge cases. At length, after the king had appointed to office so many of his faithful men of such diverse callings, who proved harmful to the public good, and yet he had not quashed the sentence of any official, when he could find no other aid more beneficial to the interests of his private affairs, he raised his eyes to heaven and, thinking about worldly matters, borrowed something from heavenly ones. . . . The king appointed the bishops of Winchester, Ely, and Norwich arch-justiciars of the realm.  

Whatever their spiritual virtues, these men had also been particularly loyal supporters of Henry in his conflict with Becket.

From the late 1170s, probably the 1179 Council of Windsor, comes the grand assize, already cited in the context of the ideology of legislation. This allowed the tenant to choose that a case concerning right to land or services of a free tenement be determined by oath of twelve lawful knights before the king's justices. Provisions of the Third Lateran Council in 1179, which permitted bishops to fill livings that had not been promptly filled, probably led to the assize of darrein presentment, a speedy procedure to decide who should present to a vacant living on the basis of the last presentment; questions of right could be settled more slowly by other methods.

Legislation continued in the 1180s. In 1180–1 specifications were made concerning the obligations of men of different status to bear arms. Unusually, such legislation was made in a co-ordinated fashion, first in Henry's French posses-

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143 Diceto, Ymagines historiarum, s.a. 1179, ed. Stubbs, i. 434–5; note also his mention (at i. 434) of the hanging of homicides and the exile of traitors; this may be a general statement of firm justice, or may be a reference to a particular judicial effort.

144 See above, 499, below, 600–3; note EYC, ii. no. 1220. See J. H. Round, ‘The date of the grand assize’ (1916) 31 EHR 268–9. M. MacNair, ‘Vicinage and the antecedents of the jury’ (1999) 17 LHR 537–90, at 585, suggests that the measure may have been introduced as a result of Henry II’s promise to the pope that clerks should not be compelled facere duellum, which he translates as ‘to wage battle’, rather than actually fight the duel. However, the phrase does seem to mean actually fighting. Glanvill uses vadiare for ‘wage’, i.e. give security, as opposed to fight; see e.g. Glanvill, ii. 3, ed. Hall, 23. See also e.g. PKJ, iii. no. 995: ‘Let there be duel concerning this. It has been waged [Vadiatum est].’ Henry II’s promise therefore does not prohibit clerics from offering to prove their case through trial by battle fought by a layperson. Glanvill makes no association of the grand assize with the position of clerics. See also below, 532 n. 221.

145 Brand, ‘Henry II’, 227; Royal Writs, 332–3; below, 606–7. Lateran III, 17; see also c. 8; Sacrorum conciliorum nova et amplissima collectio, ed. J. D. Mansi (31 vols; Florence etc., 1759–98), xxii. cols 222, 227. The time limit in the decree of the Council and in the later canons based upon it varied, at two, three, or four months. In England the time limit specified in a decretal of Alexander III and probably employed thereafter was six months. For a summary of these time limits, see J. Tate, ‘Ownership and possession in the early common law’ (2006) 48 AJLH 280–313, at 306 n. 179. For discussion of the possibility that the assize had its beginnings before 1179, see Tate, ‘Ownership’, 307.

146 On regulations concerning the recoinage of 1180, see Diceto, Ymagines historiarum, s.a. 1180, ed. Stubbs, ii. 7; G. Stack, ‘A lost law of Henry II: the Assize of Oxford and monetary reform’ (2006) 16 HSJ 95–103. On developments in the action of naifty possibly to be dated to the 1180s, see Hyams,
sions, and then in England with the Assize of Arms. This Assize again shows the king dealing with the free men of the realm directly rather than through lords. Not only was an oath to the king required from the bearers of arms, but the Assize also, for example, prohibited that ‘a lord in any way deprive his men of [arms] either by forfeiture or by gift, or as gage, or in any other manner’. The Assize further reveals the intrusiveness of Angevin government, and its characteristic emphasis on information gathering, record-keeping, and regulation.\textsuperscript{147} Then, in 1184, we have significant legislation concerning the Forest.\textsuperscript{148} Meanwhile, another development may suggest that the royal courts were becoming over-burdened, for it seems to be at this time that administration of cases concerning replevin, that is reclaiming of distrained goods, were passed from the eyre to the sheriff.\textsuperscript{149}

Legal and judicial activity and innovation continued under Henry’s sons.\textsuperscript{150} Soon after Henry’s death, his widow Eleanor of Aquitaine, on the order of her son Richard who was yet to be crowned, made a decree concerning the release of all those imprisoned in England. Those held for Forest offences or through the will of the king or his justiciar, or appealed by approvers, were to be freed and quit. Others had to give security through pledges or oath that they would stand to justice if anyone wished to bring a plea against them. All free men were to swear to be faithful to Richard, ‘and that they should be justiciable to him, and lend him aid for preserving his peace and justice in all things’.\textsuperscript{151} As the last section makes clear, the decree should not be seen as a permanent loosening of royal justice, and in 1190 a new eyre was under way.\textsuperscript{152} Whilst on his way to Crusade, Richard quitclaimed his right of wreck throughout his land. All shipwrecked people who reached shore alive were to have all their goods. Sons and daughters, or brothers and sisters, were to have the goods of the dead, if they could show that they were the closest heirs. Only the goods of those who died without children or siblings were to pass to the king.\textsuperscript{153} Howden describes regulations made for the Crusading fleet as ‘assizes’,\textsuperscript{154} but Richard’s absence on

\textbf{Kings, Lords, and Peasants}, 223. Note also Count Geoffrey of Brittany’s assize concerning inheritance and wardship, cited above, 499.

\textsuperscript{147} Howden, \textit{Chronica}, s.a. 1181, ed. Stubbs, ii. 253, 260–3.
\textsuperscript{148} See above, 472–3.
\textsuperscript{149} See below, 553.
\textsuperscript{150} For regulation of the Jewish communities in England and Normandy, see below, chs 26, 28. On the use of novel disseisin for retrieval of rents, see below, 614; on possible legislation concerning bequest of lands, below, 657. For legislation of Richard I in Normandy on clerical and ecclesiastical matters, see \textit{TAC}, 72, ed. Tardif, 68–9.
\textsuperscript{151} Howden, \textit{Chronica}, s.a. 1189, ed. Stubbs, iii. 4–5.
\textsuperscript{152} \textit{PKJ}, iii. lxxxi–lxxxiv.
\textsuperscript{153} Howden, \textit{Chronica}, s.a. 1190, ed. Stubbs, iii. 68.
\textsuperscript{154} See Howden, \textit{Chronica}, s.a. 1190, ed. Stubbs, iii. 36, 45; see also iii. 58–60.
crusade and then in prison is one reason why royal decrees seem less prominent in his reign than in his father’s. In addition, the disturbed state of his lands in the early 1190s may have disrupted judicial activity.

Mid-1190s to mid-1200s

The appointment of Hubert Walter as justiciar in late 1193 and the release of Richard in February 1194 gave renewed impetus to activity and innovation. In August of that year a ban on tournaments was replaced by a licensing system; the regulations laid considerable emphasis on the maintenance of the peace. A new eyre was launched in September 1194, and for the first time a text explicitly containing the articles of the eyre is preserved, in the *Chronicle* of Roger of Howden. These reveal the eyre’s particular concern with royal resources and with recent political events, but also include more strictly legal and judicial matter. As the first surviving text, the extent of change is unclear. Two possible innovations have already been cited, the appointment of keepers of pleas of the crown and the prohibition of sheriffs acting as justices in their own counties. In addition, possessions of the Jews were to be recorded in writing and one copy of the cirograph kept in a special chest (c. 24). However, an enquiry into exactions of royal officials was postponed (c. 25).

The grip of royal government was reaffirmed the following year when Hubert Walter sent a ‘form of oath’ throughout England:

> That all men of the kingdom of England shall preserve the peace of the lord king to their ability [*pro posse suo*]; and that they shall not be thieves or robbers nor receivers thereof, nor consent to them in anything; and that when they can learn of wrongdoers of this sort, to their utmost ability they shall take them and deliver them to the sheriff... Likewise, hue and cry was to be properly obeyed. Such were confirmations of existing provisions, but with duties specified for certain knights, who had not only to take oaths from those aged fifteen years or over but also receive captured criminals and hand them over to the sheriff. According to Howden, many who were forewarned and were of bad conscience fled, but many others were seized and imprisoned by those responsible for enforcing the oath.

Unusually we can give a precise date to a record-keeping development in the mid-1190s. Chirographs, that is documents on which a text was written out two

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156 *Select Charters*, 252–7, and below, 546–7; see also above, 499–500, on Henry II’s legislation being issued to the eyre.  
157 Above, 507–9.  
158 *Select Charters*, 257–8, Howden, *Chronica*, s.a. 1195, ed. Stubbs, iii. 300.
or more times and then cut into separate sections each containing a copy of the text, had long been used to preserve agreements or decisions. Those recording agreements in the king’s court, known as final concords or ‘fines’, had developed a specific form. Then a chirograph recording an agreement made in the king’s court at Westminster on 15 July 1195, between Theobald Walter and William Harvey, was endorsed as follows:

This is the first chirograph that was made in the court of the lord king in the form of three chirographs [under the instructions of] the lord of Canterbury [Hubert Walter] and the other barons of the lord king, so that by this form a record could be handed over to the treasurer to place with the treasure [in thesauro].

The new third copy, written on the lowest part of the parchment, was known as the ‘foot’ of the fine. Such feet of fines were soon extremely numerous. Their production emphasises the importance of regular central record-keeping and multiple copying, both characteristics of Angevin bureaucratization.

At about this time, the general judicial element of the court at Westminster came to be separated from the financial aspects of the Exchequer. The distinct judicial body would be referred to as the Bench. Then, in the eighth year of Richard’s reign, there was further legislation on commerce, known as the Assize of Measures. All measures of corn, legumes, and other similar goods, were to be equal throughout England. Similar provision was made for wine, ale, cloth and other goods. Enforcement procedures were set up. If anyone was found to have infringed the legislation, he was to be taken, imprisoned, and his chattels seized into the king’s hands. Those imprisoned were only to be freed by order of the king or chief justiciar. The Pipe Roll records under London and Middlesex £11 16s. 6d. assigned for ‘a purchase to make measures and gallons and iron rods and weigh-beams and weights to send to all the counties of England’.

Evidently the intention was to apply the law thoroughly, and in 1198 itinerant justices were instructed to investigate implementation. At the start of John’s reign there was legislation concerning the price of wine, again specifying methods for enforcement.

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159 Feet of Fines in the Public Record Office of the Reign of Henry II and of the First Seven Years of the Reign of Richard I (17 PRS, 1894), no. 21. The phrase ‘in thesauro’, often translated as ‘in the Treasury’, indicates the chests in which the king’s treasure was stored; see Clanchy, Memory to Written Record, 163–4. For the existing use of bipartite ‘final concords’, see Hyams, ‘Charter’, 179.

160 See CRR, i. 208, for a party vouching to warranty ‘the justices and the foot of a chirograph that is in the treasury.

161 For this development, see below, 539–40.

162 Howden, Chronica, s.a. 1197, ed. Stubbs, iv. 33–4; PR9RI, xxi–xxii, 160. Magna Carta, 35, sets down the width of cloth as ‘two ells within the selvedges.’ An ell seems to have been five spans, that is about 45 inches, 115cms; Surrey, i. 101.

163 Howden, Chronica, s.a. 1198, ed. Stubbs, iv. 62.
However, it turned out to be unenforceable in its proposed form, and so, according to Howden, ‘the land was filled with drink and drinkers’. Howden likewise mentions that in 1201 merchants purchased from royal justices non-enforcement of Richard I’s legislation concerning measures of cloth and of grain. Commercial regulation clearly had an impact, but one tempered by the selling of exemptions; need for money encouraged prescription to be transformed into licensing.\(^{164}\)

1198 saw a Forest eyre, for which Howden provides details of an Assize,\(^{165}\) and a general eyre, for which he preserves the articles. These deal with the application of the regulatory assizes and with many of the matters that had been covered by the 1194 articles.\(^{166}\) Enquiry was to be made into the conduct of royal officials. Plea rolls meanwhile suggest that in 1198 it was laid down that those winning pleas of novel disseisin should have damages assessed in their favour.\(^{167}\)

The early years of John saw various developments. In 1204 there was legislation on foreign trade and customs,\(^{168}\) whilst legislation in the same year on coin clipping led on to measures for the reform of the coinage in 1205.\(^{169}\) On administrative matters, there was a decree concerning stewards answering for their lords’ debts at the Exchequer, as well as the introduction in 1199 of a new scale of charges for royal documents.\(^{170}\) In the following year, the king instructed his justices at the Bench that ‘they are to do nothing for anyone on account of charters or letters patent that they have from his ancestors, unless they see his own confirmation concerning any matter that is treated in their presence’.\(^{171}\) This measure is known from an isolated entry in the Curia regis rolls, and other similar ones may be unknown to us. The

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\(^{164}\) Howden, *Chronica*, s.a. 1199, 1201, ed. Stubbs, iv. 99–100, 172. See also PR\(^{7}\)J, xx–xxi.

\(^{165}\) See above, 474.

\(^{166}\) Howden, *Chronica*, s.a. 1198, ed. Stubbs, iv. 61–2; note that these may only be the articles for the northern circuit. They spell out more fully, and in some instances modify, some matters mentioned in 1194; for example, the limit for grand assizes is doubled to lands worth £10 per year. For an 1196 administrative enquiry, see Howden, *Chronica*, ed. Stubbs, iv. 5. Note also Howden, *Chronica*, s.a. 1198, ed. Stubbs, iv. 46–7, for regulations concerning punishment of those attempting to evade the carucage of 1198.

\(^{167}\) See below, 619.

\(^{168}\) Rot. lit. pat., 42–3. See also above, on commercial regulation and licensing. In addition Richard’s charters in favour of the Jewish communities in England and Normandy and regulating their legal position were renewed in 1201; below, 773–5.

\(^{169}\) See PR\(^{7}\)J, xxvii–xxxii; Rot. lit. pat., 47b, 54b. Note also PR\(^{8}\)J, xxv–xxvi, on the 1206 eyre’s enforcement of the Assize of Wine.

\(^{170}\) Howden, *Chronica*, s.a. 1200, ed. Stubbs, iv. 152, on the Exchequer; Foedera, i. 75–6 on the chancery.

\(^{171}\) CRR, i. 331; cf. Howden, *Chronica*, s.a. 1198, ed. Stubbs, iv. 66, on Richard I requiring renewal of charters and confirmations, with his new seal. Letters patent were sealed open, so that the document could be read without the authenticating seal being broken (cf. above, 516, on sealing ‘closed’). They were used to convey instructions, a commission, or information, including concerning various types of grant. Often, although not universally, they mention only the king as witness [*teste meipso*].
introduction in 1201 of the writ of attaint, used in complaints that recognitors in possessory assizes had been dishonest, is known through entries in records, not a separate legislative text.\textsuperscript{172} An apparently chance entry, this time on the Close Rolls for 1204, informs us that henceforth the writ of entry sur disseisin should be issued \textit{de cursu}, that is routinely and for a low charge.\textsuperscript{173} Writs of entry concentrated on a particular alleged flaw in the tenant’s title, in this instance that the land had been obtained by disseisin, and brought the case before the royal justices. The \textit{de cursu} issuing of such writs would further extend royal jurisdiction, although their impact remained limited at the end of John’s reign.\textsuperscript{174}

There was an extensive eyre in 1201–3 and another in 1208–9, as well as a Forest eyre in 1207 and other commissions with more limited competence.\textsuperscript{175} The loss of Normandy led to various measures, including provisions against invasion.\textsuperscript{176} One of these decrees in 1205 concerned itself not only with invaders but also with ‘other disturbers of the peace’.\textsuperscript{177} In the same year there was an order that prisoners accused of serious offences be released, in return for finding pledges or abjuring the realm, whilst in 1207 ‘the justices and all loyal men’ were instructed that those appealed of homicide were to be imprisoned until they had their judgment in the presence of the justices, rather than being bailed or kept by other methods short of gaoling.\textsuperscript{178}

\textit{The last years of John}

The last years of John’s reign are significant for the king’s particularly close control of judicial matters, most notably concentrating business in the court that met in his presence.\textsuperscript{179} In 1213 measures were taken against possible invasion, with the

\textsuperscript{172} \textit{Rot. de ob. et fin.}, 193; \textit{CRR}, ii. 97–8. Note also \textit{CRR}, ii. 33. On attaint, see below, 623. Note also below, 702, for arguments that the viscontiel \textit{justicies} writ of debt was introduced in the early years of John’s reign.

\textsuperscript{173} \textit{Rot. lit. cl.}, i. 32b; G. D. G. Hall, ‘The early history of entry sur dissesisin’ (1968) 42 \textit{Tulane LR}, 584–602; below, 582, on writs ‘of course’.

\textsuperscript{174} See below, 620–1.

\textsuperscript{175} See below, 544–8; above, 474. For an early copy of the articles of the 1208–9 eyre, see London, British Library, Additional MS 14252, fos 117r–18r.

\textsuperscript{176} ‘There may also have been provision or decision that those in Normandy who transferred their loyalty to the king of France were not to be allowed to bring land claims in England, but no contemporary evidence survives.

\textsuperscript{177} \textit{Rot. lit. pat.}, 55; Gervase of Canterbury, \textit{Gesta regum}, ed. Stubbs, ii. 96–7.

\textsuperscript{178} \textit{Rot. lit. pat.}, 54, 76. Note also \textit{Rot. lit. cl.}, i. 111 (11 April 1208): John orders sheriffs to proclaim that no-one, as they loved their bodies and chattels, should do or speak evil against men of religion or clerics, against the king’s peace; if anyone was caught so doing, the king would make them be hanged from the nearest oak.

\textsuperscript{179} See below, 538.
issue of a revised assize of arms. Meanwhile, in 1210 the king issued a charter instructing that English law and custom be observed in the lordship of Ireland. The composition of the first surviving Register of Writs may be associated with this measure.

Conclusion

The periodisation adopted in this chapter is necessarily somewhat arbitrary, but does distinguish various stages of reform. In the early years of Henry II’s reign, the king was intent on restoring order. Often he relied on cases being brought to him, or was happy for justice to be provided through lords’ or indeed overlords’ courts. In this sense he was simply seeking to make the old system work according to its own terms, in his words to restore the situation of his grandfather Henry I’s time. This aim, however, also allowed for the extension of royal power, as Henry probably had an idealised view of the rights and power of his grandfather, the ‘Lion of Justice’.

Such an attitude helps to account for a shift to greater royal assertiveness from around 1163. Royal assertiveness, indeed aggression, was both expressed in and encouraged by the Becket dispute, itself originating partly in contestable royal jurisdictional claims. Especially from 1166, with the Assize of Clarendon, royal justice was actively taken to the localities. The Assize also showed concern that local interests were blocking proper exercise of justice, a concern earlier manifest in the decree on default of justice. The same period saw the introduction of some of the new, easily replicable measures that were to characterise later Angevin reforms, for example use of the presentment jury in the Assize of Clarendon, and of recognitions in the assizes *utrum* and novel disseisin.

It was, however, the 1170s that marked the most significant shift in administrative reform. Whilst experiment continued, a greater degree of routine is henceforth present. This is clearest in the regularity of eyres operating through several groups of justices, and the establishment of important land law procedures such as the grand assize. With increasing frequency representatives of central government were intruding into local life, a process also manifest in commercial regulation.

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180 CCR, 1227–31, 398.
181 See below, 864.
182 Note also the decision of his court in Normandy concerning trial by battle in courts of tenants-in-chief there, cited above, 512 n. 92.
183 Note also the religious element in reform in this period, e.g. with its concern regarding heretics; above, 515.
184 See esp. Constitutions of Clarendon, 1, 3, 9; above, 513–14. The initial appointment of Becket, too, was of course a sign of royal assertiveness in relation to the Church.
185 See also below, 539, on the Exchequer court; below, 542, 547, on record-keeping; Brand, ‘Henry II’, 232–4, 240.
Thereafter reform continued, for example with extension of commercial regulation. Further incremental, if less marked, change took place in the administration of justice regarding land and other rights, for example with new writs of attainder and of entry, modifications to existing writs, and refinements to procedures such as the grand assize. Although plea rolls probably existed before Hubert Walter’s time as justiciar in the 1190s, he may well have given an important impetus to record preservation and also to record creation, demonstrably so with feet of fines. The latter years of John’s reign show the continuing possibilities of change in arrangements for royal courts.

The focus of the above chronology is deliberately upon England. The Assize of Arms appears to have been exceptional in being introduced in co-ordinated fashion both in Normandy and in England. Normally, reforms in England were confined to that realm. This does not mean that parallel measures were not taken elsewhere in the Angevin kings’ dominions, particularly Normandy. Lacking an equivalent chronicler to Roger of Howden, evidence for legislation is more limited elsewhere, with only mentions or hints in narrative and other sources. Normandy had the equivalents of novel disseisin, mort d’ancestor, and other recognitions. However, English developments produced a degree of royal control not matched even in Normandy. A ducal writ does not seem to have been required to compel a man to answer concerning his free tenement, whereas in England a royal one was.

Why was there not greater uniformity of development? The Angevin kings do not seem to have aspired to standardise administration of justice across their lands; according to the Angevin chronicler John of Marmoutier, the dying Count Geoffrey of Anjou forbade his son, the future Henry II, to transfer the customs

186 See PKJ, i. 13, on changes to writs between the time of Glanvill and 1199; below, 620–1, on writs of entry, and 602, for Glanvill on refinements to procedure in the grand assize.
188 See TAC, 7, 16, ed. Tardif, 7, 18; it is not clear from this text whether the recognitions always had to take place before ducal justices, nor whether the procedure was routinely begun by writ.
189 See also below, 857.
190 See below, 557.
191 Note also that some similar developments occur outside the dominions of the Angevin kings, demonstrating that no single political impetus need underlie such procedures. See e.g. S. M. G. Reynolds, ‘How different was England?’, Thirteenth Century England VII, ed. M. Prestwich et al. (Woodbridge, 1999), 1–16, esp. 8–9; R. C. van Caenegem, ‘Criminal law in England and Flanders under King Henry II and Count Philip of Alsace’, in his Legal History: a European Perspective, 37–60, at 41–2. Note, however, that e.g. comparison of English procedure in novel disseisin with that in Touraine and Anjou confirms the much greater royal control in England; Les Etablissements de Saint Louis, i. 69, ed. P. Viollet (4 vols; Paris, 1881–6), ii. 104–10; for another version see i. 58, ed. Viollet, iii. 34–6. See also e.g. Philippe de Beaumanoir, Coutumes de Beauvaisis, 32, ed. A. Salmon (2 vols; Paris, 1899–1900), i. 485–99.
of England or Normandy into his county of Anjou, or vice versa. Perhaps still more important was the influence of royal administrators. At least from about 1180 justices generally confined their main activities to one region of their king's lands, although they might also undertake specific tasks elsewhere. As we will now see, such men were crucial to judicial and legal developments.

4 REFORMS AND REFORMERS

There was no overall plan for the Angevin reforms. New procedures developed from specific legal, administrative, or political circumstances, or even from a specific case. Rather, the reforms were fashioned by a developing set of attitudes among those involved in the royal administration of justice. Fundamental were the long-standing royal duties of maintenance of the peace and provision of justice, together with increasing emphasis on active provision of royal justice. Such concerns might inspire royal action concerning land disputes as well as concerning what we now think of as crime.

The extension of royal justice was not presented as a campaign against other courts. Some central measures such as the action of right acknowledged the role of seignorial courts, whilst implementing the king's accepted jurisdiction over default of justice. However, this pattern does not entirely fit the process of reform, most notably in the field of crime where royal rights were vigorously applied through new processes. Likewise, some important land measures, for example the grand assize, are hard to see merely as dealing with failures of justice. Certainly the right to hear cases of default of justice might be a useful negotiating tool for the king and his advisers when justifying innovations to the aristocracy. However, Guernes de Pont-Sainte-Maxence's comment that the decree on default of justice 'caused the barons of the country great harm,'

193 See e.g. below, 543, on the Exchequer of the Jews, 612, on novel disseisin and the case of John Marshal; also M. T. Clanchy, 'The franchise of return of writs' (1967) 5th Ser. 17 TRHS 59–79, at 61–2, on the invention of the writ non omittas. In addition, measures might have a much more general effect than originally intended; see e.g. below, 557–8.
194 On connections between the two, see below, 613. Also Hudson, Land, Law, and Lordship, 42–4.
195 See Biancalana, 'Want of Justice,' esp. 437–8, 441. For collaboration between royal and seignorial courts, although with the royal in a superior position, see also e.g. Glanvill, viii. 11, ed. Hall, 102–3, below, 569.
196 For the king allowing existing procedures to continue in criminal matters, whilst supplementing them with presentment, see below, ch. 27.
197 On royal restriction on the role of overlords, see below, 571.
whereby each lost his court by a false oath’, suggests awareness that the principle could be used simply to extend royal power.\textsuperscript{198} As in his assertion of tendentious royal rights against Thomas Becket, Henry II was surely aware that many of his reforms increased royal power.

Some of the impetus for reform must have come from the kings themselves.\textsuperscript{199} Dispensing justice was an archetypal royal role. Kings also knew that justice was profitable, both through major renders from great men and through smaller but much more numerous proffers, amercements, and forfeitures from the type of business conducted through the eyre.\textsuperscript{200} How far any Angevin king was involved not just in making judgments, but also in wider legal developments is hard to tell, but Ralph Niger stated that Henry II ‘abolished ancient laws and every year proclaimed [\textit{edidit}] new laws, which he called assizes’, Walter Map that Henry was discerning ‘in making laws and ordering all his rule’ as well as being ‘a clever finder of out-of-the-ordinary and obscure judgments’.\textsuperscript{201} Henry was perceived to be legislator as well as judge.

If the king provided crucial impetus, at the heart of the construction and implementation of the reforms lay a group of royal administrators. Their importance was increased by the frequent absences of the Angevin kings in their continental lands and Richard’s absence on Crusade and then in captivity. Although many, including such leading figures as Ranulf de Glanville and Hubert Walter, undertook a multitude of tasks, there was also an increasing degree of specialisation in legal and judicial matters.\textsuperscript{202} Whilst membership changed, the core group remained close-knit. Initial unity may have been gained from their support for Henry II against Becket.\textsuperscript{203} Thereafter local, family, and household links became very important, notably connections to East Anglia and to Ranulf de Glanville and then to his nephew, Hubert Walter.\textsuperscript{204} Particularly after the death of Robert earl of Leicester, men of knightly origin predominated. Such social origin may explain signs that the administrators were assertive of the king’s role as protector of lesser

\textsuperscript{198} See above, 512.

\textsuperscript{199} It is possible that John gained some of his interest in matters of law from Ranulf de Glanville, whom Howden describes as his ‘master [\textit{magister}]’ in 1183; \textit{Gesta regis Henrici secundi}, i. 304–5.

\textsuperscript{200} See e.g. \textit{PR6f}, xi–xxiii; N. Barratt, ‘The revenues of King John’ (1996) \textit{EHR} 835–55, at 846–7, 849; below, 633, 848 on payments; ch. 27, on amercements; 845, on critics claiming that justice was sold. From just after our period, see a letter from an itinerant justice to the chancellor, describing the profits raised by an eyre; Meekings, ‘Six letters’, 499.

\textsuperscript{201} Ralph Niger, \textit{Chronica}, ed. Anstruther, 168; Map, \textit{De nugis}, v. 6, ed. James et al., 476.

\textsuperscript{202} Specialisation was linked to family; see above, 485–6.

\textsuperscript{203} See e.g. \textit{ODNB} on John of Oxford and Richard of Ilchester.

\textsuperscript{204} See \textit{Cartæ antiquæ}, ii–xx, no. 378, for the first mention of Hubert Walter, which is in a witness list with Ranulf de Glanville and other prominent royal administrators and justices; Turner, \textit{Judiciary}, 24–5, 104, 106–7.
men against possible aristocratic oppression. Similar assertiveness may have been characteristic of administrators, including clerics, who came from families with a tradition of royal service. One such man, Henry’s treasurer Richard fitzNigel, wrote that God had entrusted the king with the care of all those subject to him, and described lords as their men’s ‘household enemies [domesticis hostibus]’. He presented itinerant justices as ‘doing full justice to those who considered themselves wronged, saving the poor both labour and expense’. At the same time, the men were serving royal needs, an aspect of Angevin government also apparent from the diverse duties of the eyre. According to the Dialogue of the Exchequer, royal servants were ‘devoted to the king’s interests, when justice permits it’.

Related attitudes affected dealings with sheriffs. As already noted, sheriffs might be seen as opponents of royal government or as barriers to strong rule. At the same time, they might be allowed further duties, particularly when delegated by specific royal instruction; their position as royal servants was thus asserted. To do the king’s business in the localities, the king’s administrators also looked beyond sheriffs, to a large number of men of similar or slightly lesser origins than themselves. Again an ethos of royal service was asserted, in a fashion necessary if processes of centralisation were to be successful; those processes of centralisation relied on an element of local self-government, but self-government very firmly at royal command.

What legal learning did the core group of reformers possess? The chronicler Roger of Howden had been a royal justice, and possessed a collection of legal texts that included a set of ten decrees attributed to William I, the Leges Edwardi Confessoris, a glossary giving Latin and French versions of Old English terms, the law-book Glanvill, and legislation of Henry II. It is not certain whether he possessed these when a justice, nor whether so extensive a collection was typical for an itinerant justice, but the list gives some sense of the type of texts that those at the heart of reform might have had. Certainly the number of surviving early manuscripts of Glanvill suggests that each regular royal justice may have possessed one. Manuscripts of Glanvill also show justices engaging in debate

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205 Dialogue, i. 3, ii. 2, 10, ed. Amt, 12, 116, 152. See also the comments in Map, De nugis, i. 10, ed. James et al., 12–14, regarding the social origins of royal justices. Note above, 497, for ‘royal power’ being the opening words of Glanvill. On reforms protecting those from whom lords unjustly claimed services, see below, 612–13, 640–1, 703–4.

206 See below, chs 23, 31.

207 Note also the numbers involved in judicial proceedings in a wide range of subsidiary roles, e.g. as sureties for amercements; see Surrey, i. 87.

208 Howden, Chronic, a.s.a. 1180, ed. Stubbs, ii. 215–52.

on legal matters, supporting Peter of Blois’ comment that at the court of Henry II it was school every day.\footnote{MTB, vii. 573; Hudson, ‘Leges to Glanvill’, 235–49; also Tullis, ‘Glanvill’, 33–4, 233, on the appearance of terms such as \textit{questio} and \textit{solutio} in the margins of some manuscripts of \textit{Glanvill}; Glanvill, ed. Hall, xlv–xlvi.}

Study of the arts would already have conferred some legal education,\footnote{See e.g. E. Rathbone, ‘Roman law in the Anglo-Norman realm’ (1967) 11 \textit{Studia Gratiana} 255–71, at 262.} but from the 1130s and 1140s we have our first evidence for Anglo-Norman clerics studying Roman law in Italy, and possibly for the teaching of Roman law in England, by Master Vacarius.\footnote{See \textit{The Letters of Arnulf of Lisieux}, ed. F. Barlow (3rd Ser. 61 Camden Soc., 1939), xv, on Arnulf studying \textit{Romane leges}, which may mean both Roman and canon law.} Knowledge of Gratian’s canon law collection, the \textit{Decretum}, had reached England by the 1160s, and both sides in the Becket dispute used Romano-canonical learning.\footnote{See below, 770–2. See also A. Duggan, ‘Roman, canon and common law in twelfth-century England: the council of Northampton (1164) re-examined’ (2009) 82 \textit{Historical Research} 1–30.} Englishmen continued to be prominent in legal studies in the last quarter of the twelfth century, the period from which may come Vacarius’ popular work for students of Roman law, the \textit{Liber pauperum}.\footnote{The \textit{Liber pauperum} of Vacarius, ed. F. de Zulueta (43 Selden Soc., 1927). For an incisive summary regarding Vacarius, see Helmholtz, \textit{Canon Law and Ecclesiastical Jurisdiction}, 121–4; note also F. de Zulueta and P. Stein, \textit{The Teaching of Roman Law in England around 1200} (8 Supplementary Series, Selden Soc., 1990). See further Helmholtz, \textit{Canon Law and Ecclesiastical Jurisdiction}, 124–32, and the works there cited; H. Mayr-Harting, ‘The role of Benedictine Abbeys in the development of Oxford as a centre of legal learning’, in \textit{Benedictines in Oxford}, ed. H. Wansbrough and A. Marett-Crosby (London, 1997), 11–19, 279–80.} Whilst few royal justices bore the title ‘master’, indicating extended formal education possibly including law, some royal justices including William de Longchamp had considerable Roman law learning. Others may well have undertaken some study of Roman and canon law whilst still more would have come into practical contact with at least canon law.\footnote{See E. Caillemer, \textit{Le Droit civil dans les provinces Anglo-Normandes au xiie siècle} (Caen, 1883), 50–72, for a partial edition of the \textit{Practica legum et decretorum} attributed to William de Longchamp; for a continuation and correction, see G. Fransen and P. Legendre, ‘Rectifications et additions au texte imprimé de la “Practica legum et decretorum” de Guillaume de Longchamp’ (1966) 44 \textit{Revue historique de droit français et étranger} 115–18. Note also Rathbone, ‘Roman law’, 259–62, Turner, \textit{Judiciary}, 7–8, 94–6, 150–1.} At the same time, it should be noted that of the men to whom some manuscripts of \textit{Glanvill} attribute legal opinions, probably only Hubert Walter was a cleric.

What then of the influence of the Romano-canonical learning on the Angevin reforms? Learned law may have encouraged the high claims that the reformers made for law, most obviously with the beginning of the Prologue to \textit{Glanvill}
being modelled on Justinian’s *Institutes*.216 Learned law inspired discussion and justification of the lack of written law in England, whilst legal and other studies may have promoted more general emphasis on ‘reason [*ratio*]’, again apparent in *Glanvill*’s Prologue.217

Romano-canonical learning may also have encouraged influential reformers to see at least some aspects of law as consisting of regular forms to which there were certain exceptions; such a presentation of law is clear in the learned law procedural tracts known as *Ordines* that were widely popular, notably in England.218 It is possible that such works influenced the author of *Glanvill* when he set about planning his work, and his characteristic ‘dilemmatic’ method, working through alternative possibilities, can be found in some of the *Ordines*. On the other hand, the method is not unique to such texts, and *Glanvill*’s approach is significantly different; learned treatises may provide inspiration more than a model.219

In the Constitutions of Clarendon the methods for treatment of clerics accused of serious offences drew on Roman law, and it is possible that the group of learned lawyers assembled around Henry during the Becket dispute may have influenced the form of the assize of novel disseisin.220 However, there is no further sign that in secular matters there was extensive copying of Roman or canonical actions.221 Even *Glanvill*’s most Roman treatment of law, that concerning debt, shows learned influence more on vocabulary and presentation than on substance.222 Participants in discussions in the king’s circle, even if lacking a thorough schooling in the learned laws, may have been happy to couch arguments in impressively Roman sounding terms, such as *possessio* and *proprietas*. Such vocabulary may have influenced thinking, but the Roman concepts were not wholly transferred to English law.223

The absence of imposition, or even of extensive copying, of Romano-canonical practice may surprise, given the extent of Romano-canonical learning in England and the important presence of clerics, including learned clerics, among royal

216 See above, 497–8; for lofty claims for law being made in the treatise attributed to William de Longchamp, see *Practica legum*, 1, ed. Caillemer, 50.

217 *Glanvill*, Prol., ed. Hall, 2; see also *Dialogus*, i. 16, ed. Amt, 96.

218 See e.g. Rathbone, ‘Roman law’, 263; also e.g. William de Longchamp, *Practica legum*, 23–5, ed. Caillemer, 60, for dilatory and perpetual exceptions.


220 See below, 611–12, 770–2.

221 It is possible that clerical opposition to trial by battle encouraged the development of the grand assize; see Rathbone, ‘Roman law’, 265–6, 270–1, M. G. Cheney, *Roger, Bishop of Worcester 1164–1179* (Oxford, 1980), 61–5; above, 520 n. 144.

222 Below, ch. 26.

223 See below, 670–2; also Tate, ‘Ownership’.
In part the limitation may arise from hostility to Roman law. However, there is no evidence of conflict between lay and clerical justices over issues relating to canon law or the importance of royal rights; indeed, according to Walter Map it was the clerical justices of the king who were the harshest. Men such as Hubert Walter appear to have been quite content to keep apart the law that they applied in Church courts and that which they applied in the king's. This successful wearing of two hats may appear peculiar to us, but such men were operating in a legal world where they might also be called upon to apply different custom in England and Normandy, Kent and Surrey, Canterbury and London. Uniformity might be an ideal expressed, for example, in Glanvill, but it was uniformity of custom of the king's court.

Besides assertion of royal rights, what other general aims did these administrators have? They extolled reason, but it is uncertain whether they favoured rational forms of proof in law. Glanvill allowed to be replaced a nominated champion who died of natural causes before the duel. If the champion died 'by his own fault', his nominator lost the plea. It looks as if the champion's death caused by his own fault or sin was taken as God's judgment on the case. The reformers were also happy to extend use of ordeal by water in criminal matters. However, they may have been less content with trial by battle in matters relating

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224 Cf. the arguments of Duggan, 'Roman, canon and common law', and esp. the arguments put forward by R. H. Helmholz in various places, e.g. 'Magna Carta and the ius commune' (1999) 66 University of Chicago LR 297–371.

225 Note that the clearest manifestation of such hostility is in Ralph Niger, a critic of Henry II and his legal activities; see H. Kantorowicz and B. Smalley, 'An English theologian's view of Roman law' (1943) 1 Mediaeval and Renaissance Studies 237–52. Note also ECf retr., 11.1 B 1–3.

226 Map, De nugis, i. 10, ed. James et al., 12. Note also Magna vita sancti Hugonis, iv. 6, ed. Douie and Farmer, ii. 28–9.

227 See Jocelin, Chronicle, ed. Butler, 84, for a distinction being drawn between Hubert Walter's roles as papal legate and justiciar. Note also Abbot Samson's apparent ability to acquire different types of knowledge for his activities in secular and in ecclesiastical courts; below, 858, 860.

228 Note Gervase of Canterbury, Actus pontificum, ed. Stubbs, ii. 406, stating that Hubert Walter knew 'omnia regni...jura', which can be translated either as 'all the rights of kingship' or 'all the laws of the realm'.

229 See e.g. Glanvill, Prol., ed. Hall, 2.

230 For an indication from outside the royal circle of a fundamental belief that trial by battle could work as a way of obtaining divine judgment, see Lawsuits, no. 555: a charter of Roger de Clere stated that he had given to the monastery of Ormsby a quarter of the church that belonged to his fee which had been Hugh de Twit's. He declared that 'I Roger, by God's aid, acquired the aforesaid fee by duel in the court of the lord king at London, and so I judged it to be necessary to give a part of the fee to the service of God for the soul of my father and mother and myself and all my ancestors and friends.'

231 Glanvill, ii. 3, ed. Hall, 24. Note, though, that Glanvill never refers to battle as judicium Dei.
to land and other immovables, at least in the courts over which they presided. 232 Concern that trial by battle favoured the physically strong, rather than doubts about all proofs that claimed to be God’s judgment, may underlie their desire for proof through local knowledge; such proof could offer the royal justices greater control than what Glanvill called ‘the doubtful outcome of the duel’. 233 Certainly Glanvill took it as a great royal achievement to have provided the grand assize as an alternative to battle.

The reformers sought methods of accelerating justice, unless the king’s particular interests required otherwise. 234 Walter Map tells of a conversation he had with Ranulf de Glanville.

After I had heard a succinct and just judgment given against a rich man in favour of a poor one, I said to Lord Ranulf, the chief justiciar, ‘Although the poor man’s justice might have been put off by many evasions, you reached it by a happy and swift judgment.’ ‘Certainly’, Ranulf replied, ‘we decide cases here much more quickly than your bishops in churches.’ 235

Speed was also related to routinisation of procedure. Royal justices who were outsiders dealing with large amounts of business may have been more willing to rule certain matters irrelevant, focusing decisions on more specific and standardised aspects of disputes. 236 Uniformity was certainly not complete even in royal courts, 237 but pressures towards uniformity existed, for example through consultation of the justiciar on hard cases. 238

232 Brand, ‘Henry II’, 236, reasserts the line that the reformers favoured rational proof; cf. e.g. MacNair, ‘Vicinage’, 579, 582, who argues on the basis of cases appearing in Lawsuits that the proportion of cases settled by battle was considerably greater in the second than the first half of the twelfth century. Note also e.g. the parties in Lawsuits, no. 453, using both battle and enquiry by a sworn body of knights.

233 Glanvill, ii. 7, ed. Hall, 28. The discussion of the benefits of the grand assize, shows the author’s concerns about trial by battle, even if it does not give a straightforward justification of the grand assize in terms of rationality; see also the longer quotation above, 499. See also TAC, 17. 1, ed. Tardif, 18–19. Note the possibility of disorder arising in a court when a trial by battle was fought; CRR, i. 100.

234 See above, 499, on speed being presented as one virtue of the grand assize; below, 615–16, on recognitions reducing the number of essoins that were allowed to delay proceedings. See also e.g. Helmholz, Ius commune, 133–4, who argues that the development of wager of law in secular courts differed from that of compurgation in Church courts because the small number of royal justices necessitated a less detailed procedure.

235 Map, De nugis, v. 7, ed. James et al., 508; Walter went on to retort that if the king were as far away from Ranulf as the pope was from the bishops, Ranulf would be equally slow. Ranulf, according to Walter, laughed and did not contradict him.

236 See below, 691–2, on private agreements. Also Helmholz, Ius commune, 133–4, on wager of law.

237 For lack of uniformity in judgments, see below, 676; for payments for non-routine procedures, see below, 582, 626; for other methods of influencing royal courts, see above, ch. 1.

238 Note e.g. Glanvill, viii. 11, ed. Hall, 102–3; see also below, 571.
The reformers extended the use of writing in administration, producing both the virtues and the vices of bureaucratisation. Records were produced, perhaps at first for the financial aspects of royal judicial administration, but quite possibly from the 1170s and certainly from the 1190s for not just the outcome of cases but also the mass of procedural matters, for example the hearing of essoins and the appointment of attorneys. From around 1200 we have evidence of earlier plea rolls being consulted, in the hope of finding material pertinent to current cases.\textsuperscript{239}

Still more importantly the reforms operated through standardised writs. The author of \textit{Glanvill} may have been working from an earlier text giving a collection of writs, and certainly his own book could function as a kind of register of writs linked to specific remedies.\textsuperscript{240} The sealing of some writs ‘closed’ indicates more routine use of writing, whilst use of ‘returnable’ writs exerted greater control of local proceedings.\textsuperscript{241} Even if writs had previously been showing some increase in detail of instructions, the changes apparent in \textit{Glanvill} mark a major increase in standardisation and precision of royal control.

Thus the reformers worked with, but transformed, existing materials.\textsuperscript{242} In terms of their legal thinking, they drew on many sources, including traditional ideals of kingship, existing custom and procedures, and aspirations and vocabulary drawn from the learned laws, and developed them in ways to which their copies of \textit{Glanvill} provide a fitting monument. In terms of procedure, they took the writ and the local inquest, routinising them into the reproducible forms already mentioned, and enforcing them from above. Experiments might sometimes lead to dead ends, whilst others succeeded but were transformed in their effect beyond what might originally have been imagined. But at the heart of the reforms were deliberately placed a few essential elements: the eyre, the returnable writ, the sworn body of local men. Adaptable and replicable, these elements would remain central to the administration of the common law.

The effects of Angevin legislation and reform are studied in greater depth in the chapters that follow. Overall, there appears to have been a contrast between the effect that the reforms beginning in the 1160s had on matters of crime and on matters of landholding. At least after the initial restoration of order and efforts to settle land disputes after Stephen’s reign, crime may have been the king’s greatest concern, and the procedures put in place from the mid-1160s had a major effect on prosecution, regular presentment supplementing the traditional method of appeal. However, in terms of actually convicting captured criminals, possibly

\textsuperscript{239} See below, 542, 547–8.
\textsuperscript{241} See above, 516.
\textsuperscript{242} See also below, 611–12, on novel disseisin.
after an initial impact the outcome may not have matched royal aspiration. In contrast, the impact on land law may have exceeded royal expectations, in terms both of uptake of the remedies offered and of wider effect upon procedural and substantive law.

Hindsight encourages a sense of inevitability. The analysis above emphasises that the attitudes of the Angevin reformers were very significant, but also that developments were far from pre-determined. For example, there were points where the chancellorship might have become established as the most important office for matters of administration of justice, whilst John’s concentration of business on his personal court might appear as one in a series of experiments, only anomalous when viewed from Henry III’s reign. Only slowly did the common law crystallise.
EARLIER chapters have considered many issues to which later periods would refer as ‘Constitutional Law’, for example the relationship of king to legislation.\(^1\) Others, for example the composition of the Council, were not discussed in legal terms before the thirteenth century. However, the end of King John’s reign saw a crisis in which matters of royal powers and of law and justice came together, raising specific legal and judicial issues as well as the overarching one of the king’s standing in relation to the law. A settlement was sought through the writing down in Magna Carta of solutions that were to have legal force.\(^2\)

1 CRITICISM OF JUSTICE UNDER ANGEVIN KINGS

The Angevin reforms produced a mixed reaction. The eyre in particular was criticised for the burdens that it imposed, its justices referred to as *errantes*, ‘wandering’, a pun on their itinerant nature and their deviation from justice.\(^3\) However, no evidence exists for widespread resistance to the reforms. Assuming that restricted opposition is not just a reflection of restricted evidence, various explanations are possible, including consultation and consent, royal power and flexibility, the intentional popularity of some measures, and the appeal of the speed of new procedures and of the finality of decisions in the king’s court. Most

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\(^1\) See above, chs 2, 11, 21; also e.g. above, 125 n. 169 and 355 n. 125 on royal succession.

\(^2\) Note also Magna Carta, 12, 14, on counsel and the granting of aids and scutages.

\(^3\) John of Salisbury, *Policraticus*, v. 15, 16, ed. Webb, i. 345, 352; the pun is also made elsewhere, e.g. Herbert of Bosham’s *Life of Becket, Lawsuits*, no. 411D; *Lawsuits*, no. 661. The usage became sufficiently well-established, and acceptable, that it appears in official records; e.g. *PR23HII*, 35, 116. On the burden of the Forest eyre, see above, ch. 19. See also above, 512, on Henry II’s decree concerning default of justice; 518, for Diceto’s discussion of reasons for the rebellion of 1173–4.
importantly, the overall thrust and the overall effect of the reforms may not have been immediately or easily perceptible.\(^4\)

Criticism, therefore, concentrated not on changes in law or administrative structure but—just as at other times and in other places—on the vices of the ruler and his officials.\(^5\) Henry II was accused of cruelty and of delaying and selling justice.\(^6\) According to Gerald of Wales, probably writing early in John’s reign, St Peter and the Archangel Gabriel had instructed a Lincolnshire knight, Roger of Asterby, to take a list of demands to Henry: the just laws of the realm were to be kept; no-one was to be condemned to death without judgment, even if guilty; inheritances were to be restored and right done; and justice was to be done freely and without charge.\(^7\) Criticism of administrators also featured in a vision reportedly experienced in 1206 by Thurkill, an Essex peasant. Amongst those of the damned whom he recognised was a royal justice, possibly to be identified with Osbert fitzHervey. He was said to be famous throughout England ‘for his abounding eloquence and knowledge of the laws’. However, sitting as a justice for royal pleas at the Exchequer, he took gifts from both sides in cases. In the afterlife, he had to act out his sins,

> turning first to the right then to the left, as if speaking in turn with each of the party of litigants, now advising one side how to make their case, now protecting the other side by telling them how to reply and offer refutation, his hands meanwhile did not rest from their movement, taking money now from this party, now from that, and counting it.

He had to swallow burning coins, after which an iron wheel ran up and down his back, forcing him to vomit them out again, and on earth he was punished by others seizing his wealth following his intestate death.\(^8\)

Twelfth- and early thirteenth-century writers also examined the relationship of king, law, and justice. John of Salisbury in his *Policraticus*, completed in 1159,

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\(^4\) As stated above, 626, below, 852, the reforms tended to favour sub-tenants rather than tenants-in-chief; however, many tenants-in-chief were also tenants of lords other than the king, and in this respect shared the benefits of the reforms.


\(^7\) Gerald of Wales, *De principis instructione*, ii. 13, *Opera*, ed. Brewer et al., viii. 183–6. Roger also made demands regarding observance of Henry’s coronation promises to maintain the Church, the services rendered to royal officials, and the expulsion of the Jews.

discussed the differences between a tyrant and a prince, placing first that the prince was obedient to law. Legal writings from London in the years preceding Magna Carta associate good rule with obedience to the law. This is clearest in interpolations in the *Leges Edwardi Confessoris*:

The king ought to do everything properly in the realm and by judgment of the great men of the realm. For right and justice ought to rule in the realm, rather than perverse will. Law is always what does right; will and violence and force, indeed, are not right. The king, indeed, ought to fear and love God above everything and preserve his commands throughout his realm.

In the everyday workings of the courts, parties demanded just treatment according to the custom of the realm, emphasising custom as a restraint upon arbitrary decisions, including those of the king and his justices.

During John’s reign at least some royal justices may have come to see themselves as owing a duty to the law beyond that which they owed to the king; they used the ideals of routine and uniformity to fulfil this duty and constrain royal will. Some justices perhaps resented or indeed suffered because of the watchful presence of John, whereas Richard’s absence had allowed them to insist more strongly that the routines of justice be followed. In 1205 royal justices over-ride the king’s order that because of an error in a writ the parties should go ‘without day’, that is that the plea cease indefinitely. Such hints of tension help to explain the stance of some royal justices in 1215. Certain former justices who had not served recently on Bench or eyre, for example Henry de Braybrooke, seem to have been open in their rebellion. Another who was recorded as having withdrawn from the king’s service was John of Guestling, who had had a long career as a royal justice up to 1209 and had earlier granted some of his tenants concessions resembling certain

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9 John of Salisbury, *Policraticus*, iv. 1, ed. Keats-Rohan, 231–2. From early in the twelfth century, see a gloss on the Psalter, probably based on a lost work of Lanfranc. The passage ‘against thee alone [i.e. God], have I sinned’ (Ps 50: 6 [AV 51: 4]) is glossed ‘it is only for thee to punish the sins of kings and prelates, who have no lord over them save God alone. If a man of the people sins, he sins to the king and God; but a king to God alone . . .’; Smalley, *Study of the Bible*, 72.


11 See Holt, *Magna Carta*, 92–3, 121; note also 117–18 for his discussion of ‘right’. At the same time the king could promote in individual cases, as well as in political concessions (see below, 847–53), the idea that procedure should either be ‘according to the custom of England’, or was invalid; see e.g. *CRR*, i. 375–6; see also e.g. iii. 27–8; iii. 57. Note also e.g. *Lawsuits*, no. 641 (at pp. 683–4).

12 See the contrasting cases cited by Holt, *Magna Carta*, 185–6; one of the cases he cites from John’s reign is that involving Simon of Pattishall, below, 847. Note also, though, evidence that royal justices might favour one of their fellows when he was a litigant in a royal court; see e.g. Turner, *Judiciary*, 182–3.

13 *CRR*, iii. 237, 276, iv. 41–2; for the king taking other interest in one of the parties in the case at this time, see *Rot. de ob. et fin.*, 271.
magna carta and the common law

The problem remained of how to constrain the king who did not act like a good prince. Writers might explore the possibility of tyrannicide or rely upon God as the judge of kings, but theoretical and practical difficulties of placing the king under the law remained. Confronted with the problem of the king who did not rule in obedience to the law, John’s opponents in 1215 turned to rebellion, writing in the form of a charter, and the imposition on the king of a form of superior worldly authority.

2 MAGNA CARTA AND LAW

Magna Carta had essential causes unconnected with matters of law and the administration of justice: personal distrust of John, going back at least to his disloyalty to Richard I; personal quarrels and persecutions during John’s reign; the loss of many Continental possessions, the financial burdens arising from efforts to regain them, and the failure of those efforts; inflation that added to the strain on royal finances; and the king’s dispute with the Church, ending in 1213 in his surrender of the realm to Pope, for the king to hold henceforth as a feudatory. However, much of Magna Carta itself was concerned with matters of law and the administration of justice. Along with financial dues, these were the main areas of contact between royal administration and the realm and therefore were likely to be prominent in any statement of freedoms to be enjoyed in relation to the king. The Angevin reforms greatly increased the number of people directly in contact with royal justice: litigants, sureties, essoiners, and the large number of knights and free men in the localities who had to carry out the royal measures and had

14 ODNB, ‘Braybrooke, Henry de’; for John of Guestling, see Rot. lit. cl., i. 341, PKJ, iii. xciii–cclxvii, and below, 849; Turner, Judiciary, 170–1. For justices who remained loyal to the king in 1215, see Turner, Judiciary, 168–9.
15 See Rot. de ob. et. fin., 386, 412, 447; PR9J, 207 (James of Potterne); Rot. lit. cl., i. 200, 232b.
16 For tyrannicide, see John of Salisbury, Policraticus, viii. 20, ed. Webb, ii. 372–9, noting the qualifications (Webb, ii. 377–8) concerning tyrannicide by one bound to the ruler by fealty or oath.
17 Such problems continued; from Henry III’s reign, see e.g. Bracton, fos 5b–6, 107–107b, ed. Thorne, ii. 33, 305–6.
18 See Holt, Magna Carta, esp. chs 2 and 6.
thereby received an education in law and administration. Furthermore, the very aims of the reformers, notably speed and standardisation, highlighted the contrasting vigorous exercise of discretionary lordship that remained an essential part of Angevin kingship.\footnote{Note Richard I and John forcing those in possession of documents to obtain renewals or confirmations; Howden, *Chronica*, s.a. 1198, ed. Stubbs, iv. 66, CRR, i. 331. See e.g. CRR, i. 465, for Henry II disseising by will. Note also J. C. Holt, *Magna Carta 1215–1217: the legal and social context*, in his *Colonial England*, 291–306, at 300.}

John’s administration, including his administration of justice, may have become particularly oppressive and arbitrary from about 1207.\footnote{See e.g. N. Barratt, ‘The impact of the loss of Normandy on the English Exchequer: the Pipe Roll evidence’, in *Foundations of Medieval Scholarship: Records edited in Honour of David Crook*, ed. P. A. Brand and S. Cunningham (York, 2008), 133–40, on increasing firmness in exaction of debt.} Concentration of litigation on his own court was not only unpopular for the problems that litigants experienced, but also focused upon the king blame for the failings of royal justice.\footnote{On the courts, see above, ch. 22; also below, 851, on Magna Carta, 17.} Nevertheless, the issues addressed in Magna Carta do not wholly derive from John’s rule. They also reflect the baronial realisation of a key structural aspect of Angevin reform, particularly with regard to land law: new royal actions offered considerable protection to sub-tenants in dealings with their lords, much less to tenants-in-chief in dealings with the king. A tenant-in-chief, lacking routine access to many of the royal actions, remained vulnerable to royal delay, demand for proff ers, and arbitrary decision. The plea rolls, particularly those of John’s reign, show such issues being fought out case by case; Magna Carta reveals that they had become the subject of a wider movement of opposition, demanding both increased provision of the routine forms of royal justice and the cessation of arbitrariness.\footnote{See also above, ch. 23; also Holt, *Magna Carta*, esp. 120–1, 191–2.}

The notions of proper practice stated in Magna Carta had precedents, some included in previous royal concessions. There were the general statements of coronation oaths and charters, and the rather more detailed concessions of Henry I’s coronation decree, a text important to John’s opponents at least by the end of 1214.\footnote{Holt, *Magna Carta*, 222. In the period leading up to Magna Carta additional clauses were composed, the text now being known as the ‘Unknown Charter’; Holt, *Magna Carta*, Appx 4. This in turn formed a basis for the Articles of the Barons that provided a draft for the text of Magna Carta; Holt, *Magna Carta*, Appx 5.} In 1191, during Richard I’s absence of Crusade, his brother John had come into conflict with William de Longchamp, whose actions whilst administering the realm were provoking resentment. Within the settlement to their dispute it was granted that ‘bishops and abbots, earls and barons, vavasours and those holding freely, shall not be disseised of their lands or chattels at the will of the justices or
officers of the lord king, but shall be treated by judgment of the lord king’s court according to the lawful customs and assizes of the realm, or by the command of the king’. 24 1213, in the contexts of discontent in the north of England and the settlement with the Church, saw promises of good government and measures to relieve oppression. 25 Such concessions encouraged further demands for reform, especially after the failure of the king’s efforts in France in 1214. Likewise local grants by the king, some to counties, more to boroughs, often prefigure the liberties conceded in 1215. 26 Similar liberties appear in seignorial grants for towns and very occasionally elsewhere. A case of 1208 provides a full text of a charter by John of Guestling making concessions to certain tenants, for example that if any of them or their associates fell into his mercy, the amercement was not to exceed 2s. 27 Between 1207 and 1209 the northern baron Peter de Brus made a more extensive set of concessions to the knights and free tenants of Cleveland, for example regarding obligations and also the level of amercements for offences. Peter was among the most prominent northern rebels in the last years of John’s reign, and his charter was witnessed by other future rebels, including two of those whom Magna Carta would name as responsible for ensuring that the king observe its terms. 28

Magna Carta contains a much wider and more detailed range of liberties than any of these previous concessions. It has Continental parallels, and these show some similar concerns with matters of law and justice, for example promising that deprivation of fiefs only take place according to proper custom and by judgment of peers. However, the Continental grants tended to be more restricted in issues covered and in beneficiaries, being to the aristocracy, sometimes including knights, rather than to all free men of the realm as was Magna Carta. 29 Issues that arose in 1215 were also of concern to the learned laws, although only a few clauses

24 Howden, Chronica, s.a. 1191, ed. Stubbs, iii. 136. Note also the notion of proper process contained in Queen Eleanor’s decree concerning the release of prisoners in 1189; Howden, Chronica, ed. Stubbs, iii. 4–5; e.g. the contrast between those who had been held ‘by the will of the king or his justice’ and those held ‘by the common justice [rectum] of the county or hundred or by appeal’.


26 For boroughs, see above, ch. 30; for borough and other local grants, see Holt, Magna Carta, chs 3–4.

27 CRR, v. 202–4; see above, 846, on John being a royal justice.

28 Cartularium prioratus de Gyseburne, i. 92–4; see above, 746, for amercements, and note the discussion in Holt, Magna Carta, 67–70.

29 See Holt, Magna Carta, 25–7, 76–80, 273–8. Note also Magna Carta, 60, laying down that all men of the realm are to observe the customs and liberties, as far as it pertains to them, towards their own men. On matters of law, jurisdiction, and justice, see also e.g. the 1183 Treaty of Constance, MGH, Legum, sectio iv. Constitutiones, i. 411–18, and the 1212 Statute of Pamiers, C. de Vic and J. J. Vaissete, Histoire générale de Languedoc (16 vols; Toulouse, 1872–1904), viii. cols 625–35. For ecclesiastical legislation that justice in Church courts should be free [gratis], see e.g. Legatine council at St Peter’s, York 1195, 10, Councils and Synods, I, no. 180.
of Magna Carta, involving matters of ecclesiastical concern, show the definite and direct influence of Romano-canonical law. More generally, the ideas and specific concerns, the customs and practices that Magna Carta mentions were rooted in earlier English practice and circumstance.

The core issues in 1215 are further indicated by the author of the contemporary *Histoire des ducs de Normandie*, who came to England in 1216. The king was forced to agree that a woman should never marry in such a way that she would be disparaged; that he would never make a man lose limb or life for a wild beast that he had taken, but that he should be able to make a payment. He had to fix reliefs for lands, which were too great, at such a level as they might wish. They wished to have all high jurisdiction [hautes justices] in their lands. They demanded many other things, with good reason, which I cannot specify to you. Above all this they wished that twenty-five barons be chosen, so that the king should treat them in all matters by the judgment of these twenty-five.

Thus the author emphasised marriage and relief, Forest, jurisdiction, and control of the king. And indeed, after granting the freedom of the Church, the charter immediately treats relief, wardship, marriage, and widows and their lands. Later clauses deal with the king’s prerogative wardship and with restriction on relief to be paid by those holding lands of any barony escheated in the king’s hand. Except in such matters, however, treatment of land law was limited, perhaps surprisingly so given the controversies over service obligations that had arisen in the preceding two decades.

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30 See Hudson, ‘Magna Carta’; for an argument for considerably greater influence from *ius commune*, see Helmholz, ‘Magna Carta’. For vocabulary reminiscent of the *ius commune* being used in a context where significant learned law influence seems unlikely, see the appearance of the word delictum in the charter of Peter de Brus, cited in the previous paragraph.

31 Magna Carta, 26, 27, above, ch. 25; Magna Carta, 9–11, 26, above, ch. 26; Magna Carta, esp. 32, 36, 38, 54, above, ch. 27; Magna Carta, 44, 47, 48, 53, above, ch. 19. Regarding boroughs, Magna Carta, 13, provides a general confirmation of liberties and free customs; c. 12 deals with aids from London. Further clauses include provisions for the implementation of concessions, e.g. cc. 48, 52, 53, 55, the last of which deals with fines and amercements made unjustly and against the law of the land. Other clauses deal with matters largely beyond the scope of this book, including financial and other royal exactions (see cc. 12, 14, 23, 25, 28, 30, 31); commerce (cc. 33, 41; c. 35 concerns regulation of weights and measures, on which see above, 523–4); the Welsh and Scots (cc. 56–9); matters relating to the politics of John’s reign and the recent rebellion (cc. 49–51, 62).


33 Magna Carta, 2–8, see also c. 11, and note Articles of the Barons, 37, cf. Magna Carta, 55. On relief, wardship, marriage, and dower, see above, 646–7, and ch. 29. Note also cc. 46, 53 on the wardship of vacant religious houses.

34 Magna Carta, 37, 43, 53.

35 On services, see Magna Carta, 16, 29; cf. Unknown Charter, 7; Holt, *Magna Carta*, 315–17.
What of jurisdiction and procedures? The Histoire des ducs’ reference to the barons seeking haute justice in their lands suggests demands for a broad and significant jurisdiction in many matters. This may be a misunderstanding of baronial demands, or indicate a baronial aspiration not apparent in the Charter. It does, though, warn against too strong an assumption that clause 34, against loss of jurisdiction through use of the writ precipe, was dealing with only a limited concern.\textsuperscript{36} Clauses 18 and 19, on the other hand, demanded greater access to royal justice, setting down that assizes of novel disseisin, mort d’ancestor, and darrein presentment only be taken in the counties concerned. Two royal justices were to be sent through each county four times a year, to take the assizes in the county court with four knights of the county, chosen by that county. If the assizes could not be taken on the day of the county court, sufficient knights and free tenants were to remain so that judgments could be made.\textsuperscript{37} Clause 17 specified that common pleas were not to follow the king’s court but to be held in a fixed place. The phrase common pleas was probably not yet a technical term, rather indicating pleas arising from the general royal jurisdiction. The aim was to stop the uncertainty and inconvenience that had arisen since 1209 through the concentration of judicial business on the court in the king’s presence. Instead cases were to be assigned to a specific place, be it the Bench at Westminster, or a particular location before the king, or perhaps the eyre.\textsuperscript{38}

Magna Carta also made other grants concerning good provision of justice. Clause 45 required that those whom the king made justices, constables, sheriffs, or bailiffs were to be men who knew the law of the realm and wanted to observe it.\textsuperscript{39} Clause 38 reasserted opposition to unsupported ex officio bringing of suits: ‘no bailiff henceforth is to place anyone to proof by his unsupported plea \textit{ad legem simplici loquela sua}, without trustworthy witnesses brought for this.’\textsuperscript{40} Clause 39, one of the most famous, specified that ‘no free man is to be taken or imprisoned or disseised or outlawed or exiled or in any way destroyed, nor will we go against him or send against him, except by lawful judgment of his peers or by the law of

\textsuperscript{36} See above, 559–60.

\textsuperscript{37} Magna Carta, 18–19, and see above, ch. 23. The clauses modified the Articles of the Barons, 8, 13, which demanded that ‘the king send two justices four times a year who, with four knights of the county chosen by the county, are to take assizes of novel disseisin, mort d’ancestor, and darrein presentment, and no-one is to be summoned because of this except the jurors and the two parties’, and that ‘assizes of novel disseisin and of mort d’ancestor be shortened, and likewise concerning other assizes’.

\textsuperscript{38} See Clanchy, ‘Magna Carta and the common pleas’; also Holt, \textit{Magna Carta}, 323–4; above, 538–9. Note the parallel to the specification in c. 18 that assizes be held in the appropriate county; the two issues had appeared together in Articles of the Barons, 8.

\textsuperscript{39} See also below, 860. Note also c. 24, that sheriffs, constables, coroners, and other royal bailiffs were not to hold pleas of the crown, on which see above, 507.

\textsuperscript{40} For unsupported accusations, see also above, 735.
the land’. The initial concern seems to have been with the king’s political actions, as is suggested by the opening of the so-called ‘Unknown Charter’: ‘King John grants that he is not to take a man without judgment.’ Magna Carta extended it to cover a much wider range of acts and potentially a much wider range of victims. Judgment of peers and the law of the land were alternatives, but mutually reinforcing; it may be that the provision concerning ‘judgment of peers’ gave to tenants-in-chief in their dealings with the king the protection that other free men enjoyed through ‘the law of the land’.

Finally, clause 40 laid down that ‘to no-one will we sell, to no-one will we deny or delay right [rectum] or justice’.

To move on to the last point made by the author of the Histoire des ducs, the Charter laid down that the barons were to choose twenty-five barons ‘who with all their might are to observe, keep, and make to be observed, the peace and liberties that we [i.e. the king] have granted to them’. If the king or any royal servant transgressed, and four of the twenty-five were informed, those four were to bring it to the king’s notice, and he was to have it redressed immediately. Failure to redress within forty days led to the four barons informing the rest of the twenty-five,

and those twenty-five with the commune of the whole land shall distract and burden us in every way that they can, that is by taking castles, lands, and possessions, and in other ways that they can, saving our person and that of our queen and our children, until it has been corrected according to their decision [arbitrium]; and when it has been corrected, let them obey us as they did previously.

To correct the structural anomaly of the king being the one lord without a superior who could force him to act justly, the barons in 1215 provided for him at least an occasional lord in the form of the twenty-five, and they were to exert discipline through the typical seignorial method of distraint.

Some provisions of Magna Carta were put into swift effect, for example those dealing with earlier royal disseisins. However, as part of a peace agreement, Magna Carta failed. The king obtained papal support and a papal bull annulling the Charter, civil war resumed, French invasion followed. What ensured the continuing effect of the Charter was its reissue in the name of John’s son, Henry III, by those who rallied around the child king following John’s death.

41 ‘Unknown Charter’, 1; on the ‘Unknown Charter’, see above, 848 n. 23.
42 See also Holt, Magna Carta, 329–31. Clause 52 only mentions judgment of peers, perhaps because its particular concern may have been disseisin of tenants-in-chief.
43 Compare this ideal of a separation of justice and finance with the increasing distinction of financial and judicial bodies and personnel within the royal administration; above, 539–40.
44 Magna Carta, 61.
45 Holt, Magna Carta, 165–6.
in 1216. The reissued Charter was modified, most notably by the removal of the clause concerning the twenty-five barons. However, with further reissues in 1217 and 1225 the Charter became established at the heart of political, administrative, and legal affairs.\textsuperscript{46} Under Henry III, the sale of justice was constrained compared with John’s exactions. Helped by the special circumstances of a royal minority, the treatment of tenants-in-chief within the king’s courts was less affected by arbitrary royal intervention, although not always free from manipulation or the influence of politics.\textsuperscript{47} Magna Carta, despite being a document imposed on the king in 1215, thus furthered some of the characteristics and aspirations of the Angevin reforms discussed above, notably the use of writing, the adaptation and development of existing customs and practices, and the focus on regular provision of royal justice enforcing set rules.

3 COMMON LAW

The phrase common law, \textit{ius commune}, was associated at this time with Roman and canon law, but the \textit{Dialogue of the Exchequer} employs both \textit{communis lex} and \textit{commune jus} with reference to England.\textsuperscript{48} It uses \textit{communis lex} in discussion of debt, to indicate standard as opposed to exceptional practice.\textsuperscript{49} Still more significantly, it describes the laws [\textit{leges}] of the Forest as based ‘not on the common law [\textit{commune jus}] of the realm but the arbitrary decree of princes’.\textsuperscript{50} Common law was thus general and not arbitrary, in contrast to the law of the Forest.

Much more frequent were references to the custom or law of the realm or of England, a type of phrase also increasingly used in other regions including Normandy.\textsuperscript{51} Reference could be to proper procedure, as already mentioned,\textsuperscript{52} or to matters such as the age of majority.\textsuperscript{53} The customs of England might be

\textsuperscript{46} See Holt, \textit{Magna Carta}, ch. 11.
\textsuperscript{47} See Holt, \textit{Magna Carta}, 167–78, 327; Carpenter, ‘Justice and jurisdiction’, 23–43. Carpenter, at 23–5, attributes less significance to the writ \textit{precipe in capite}, more to process \textit{quo warranto}, but overall the differences of his position and that of Holt are limited.
\textsuperscript{48} Note also \textit{leges publice} at \textit{Dialogus}, i. 8, ed. Amt, 72. For brief reference to English usage in the first half of the thirteenth century, see Hudson, \textit{Formation}, 18.
\textsuperscript{49} \textit{Dialogus}, ii. 22, 23, ed. Amt, 176, 178.
\textsuperscript{50} \textit{Dialogus}, i. 11, ed. Amt, 90. See also above, 521, on the 1189 pardon of prisoners.
\textsuperscript{51} See e.g. D. Power, \textit{The Norman Frontier in the Twelfth and Early Thirteenth Centuries} (Cambridge, 2004), 151–61.
\textsuperscript{52} See e.g. above, 557.
\textsuperscript{53} See e.g. \textit{Carte nativorum}, no. 519. Note also e.g. CRR, i. 279, 284, although this may indicate uncertainty as to custom regarding bringing a case when not of age (see above, 578); \textit{Lawsuits}, no. 641 (pp. 683–4), which again involves an expression of doubt. For procedure, see also CRR, iii. 64; iii. 105; iii. 215.
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contrasted with those of other bodies of law or other countries. We have, for example, references to ‘the custom in court Christian’,54 and more general comparisons or juxtapositions of English and learned laws.55 Similarly an English plea roll recorded that a vicomte of Caux had informed the king that he had ordered a man to be summoned ‘according to the custom of Normandy’ that he appear before the king in England.56 Thus legal and judicial custom was seen to differ across the various lands of the Angevin kings. This perception matched real differences. As we have seen, reforms did not normally operate in a cross-Channel fashion, even if similar developments took place on both sides.57 There were also differences of practice between England and even the most similarly governed region, Normandy.58 For example, according to a Norman legal text probably of about 1200, theft was a matter for lords’ courts in Normandy, whereas Glanvill attributed the plea to sheriffs.59 Likewise, although there were many similarities on substantive matters between English customs and those in lands in the north-west of France, both within and outside Angevin control, there were also differences, for example regarding inheritance patterns, wardship, and the widower’s rights.60

The custom of the realm could also be contrasted with that of a specific place or region. A sale might be described as legitimate because made ‘according to the law of the town’.61 The law of Kent was cited to justify particular practice concerning inheritance or dower.62 As such instances indicate, there remained considerable

54 E.g. CRR, vi. 110.
55 Such comparison is apparent in Glanvill, Prol., ed. Hall, 2; see also above, 497–8. Thomas of Marlborough, Évesham, iii. 2, ed. Sayers and Watkiss, 232, juxtaposes jura regni with jus civile.
56 CRR, i. 256. See also e.g. Magna Carta, 56, on the laws of England, Wales, and the March.
57 See above, 527–8.
58 On ducal authority and the development of custom in the duchy, see Power, Norman Frontier, 179–82. For comparison with weaker rule in other regions, see e.g. Power, Norman Frontier, 181.
59 TAC, 59. 1, ed. Tardif, 50, and also 82. 11, ed. Tardif, 89–90; Glanvill, i. 2, xiv. 8, ed. Hall, 4, 177; on theft cases in the king’s court in England, see above, 689, 716. The dates of the basic components underlying the so-called Très ancien coutumier of Normandy are not established with certainty, and nor are those of any modifications that they may have undergone before being written down in the manuscripts in which they are preserved. Note also arrangements concerning matters involving ecclesiastics; see esp. the charter of the bishops of Bayeux, Avranches, Sées, Lisieux, and Coutances, printed in Valin, Le Duc de Normandie, 280–1.
60 Inheritance: see e.g. Power, Norman Frontier, 186–7, on parage in Normandy; the suggestions of Everard, Brittany, 197–8, on female primogeniture in that county; and more generally Yver, Égalité entre héritiers. Wardship: see e.g. Everard, Brittany, 114–15, 195–6. Widower’s rights: above, ch. 29. See further Hyams, ‘French connection’.
61 See e.g. CRR, iii. 146; v. 251.
62 See e.g. CRR, iii. 9–10; vi. 285. For custom concerning essoins in Oxfordshire, see above, 588; also above, 746, on amerements in Kent. Other county customs are only revealed by later sources; see e.g. Bracton, fo. 124b, Thorne, ii. 350–1, regarding Herefordshire, on the limiting to the lord’s
limits to the consistency of law across the realm, limits readily admitted at the end of *Glanvill*, which comments on the different customs of different counties regarding theft and other pleas.\(^{63}\) Local custom may have been especially significant in the most western and northern areas of the realm.\(^{64}\) We have noted the continuance of particular northern tenures and the possibility of some form of honoral custom concerning dower in the lordship of Richmond.\(^{65}\) On the other hand, even the most remote areas might be visited by the eyre.\(^{66}\) In 1208 the king issued a charter for the knights and free tenants of the bishopric of Durham, confirming that if they were placed in plea concerning their free tenements they could defend themselves according to the common and just assize of the realm, and likewise if they or their heirs were impleaded concerning any other matter in the court of the bishop of Durham. They were not to be impleaded concerning their free tenement except by royal writ, as in the time of Henry II and his ancestors. If they fell into the bishop’s forfeiture, they were to be amerced according to the ‘assize of that bishopric’, but the sheriff of Northumberland would act if the bishop wrongfully took their livestock and held it against gage and pledge.\(^{67}\) Thus royal administration of replevin, standard procedures in court, and the rule requiring a writ to compel answer concerning a free tenement all penetrated this distant and privileged region. We have, then, a situation in which local custom was recognised and local and seignorial courts continued to be of considerable significance, but in which royal justice was of markedly increasing importance, the custom of realm emphasised.\(^{68}\)

Royal remedies were available to a notable portion of the population, paralleling the breadth of grantees of Magna Carta.\(^{69}\) However, some were excluded from access to royal justice, for example women with regard to many criminal matters, villeins and some free men with regard to villeinage tenements.\(^{70}\) Were there further, practical, constraints on access to royal justice? As the time between eyres grew, justice may have been less readily available than when similar disputes had been heard in more frequent county or seignorial courts, a problem

\(^{63}\) *Glanvill*, xiv. 8, ed. Hall, 177.

\(^{64}\) For law in the marches of south Wales, not covered by this book, see e.g. Davies, ‘Kings, lords and liberties’.

\(^{65}\) See above, 635, 811.

\(^{66}\) See the comments of Barrow, ‘Northern English society’, 26–7.

\(^{67}\) *Rot. chart.*, 182.

\(^{68}\) Cf. the variety of custom in boroughs, above, ch. 30.

\(^{69}\) See below, 856 n. 75, for use of novel disseisin by men whom their lords claimed were villeins. See also above, ch. 23.

\(^{70}\) See above, 722, ch. 28.
reflected in the provision of Magna Carta concerning recognitions.\(^{71}\) Having to seek justice at Westminster was costly, time consuming, and involved considerable travel, perhaps enough to put off some potential litigants.\(^{72}\) Fear of the more powerful might also deter the potential litigant or others who would be needed if justice were to be performed. In a case of 1212, a litigant stated that he had raised the hue and cry, but no-one had responded by reason of the abbot of Thorney, whose vill it was and whose servant, the bailiff of the hundred, was the litigant’s opponent.\(^{73}\)

These are significant qualifications to the availability of royal justice. Nevertheless, it remains notable that considerable resort was made to royal courts, including by litigants in apparently unfavourable situations. Not only were claims brought concerning very small areas of land,\(^{74}\) but lesser men might succeed in disputes with their lords or other powerful men.\(^{75}\) The 1212 litigant, faced with his hundred-bailiff opponent, eventually got his accusation into the king’s court.\(^{76}\) Furthermore, if an increased proportion of cases required purchase of a royal writ, many of these were routinely available for 1m. or even ½m, significantly less than earlier, less standardised writs.\(^{77}\) Procedure might also be modified to help the poor.\(^{78}\)

The extent of royal control and of access to royal justice in England seems the more significant when compared to many other areas of Europe.\(^{79}\) English aristocrats had not been granted the type of power of protection that the count of Flanders allowed as a hereditary fief to Arnold of Ghent, count of Guines, in the late eleventh century: Arnold might keep safe at Ardres for a year and a day anyone who had been proscribed \textit{[bannitum]} for any reason, against any men of the count of Flanders’ jurisdiction, so long as the person did not act or conspire

\(^{71}\) See above, 851.

\(^{72}\) See \textit{Lawsuits}, no. 422, for a monastery too indebted to start litigation. Cf. the advantages enjoyed by those with the resources to pay, for example for the hastening of justice; above, 848.

\(^{73}\) \textit{CRR}, vi. 264. See also above, ch. 1.

\(^{74}\) See above, ch. 23.

\(^{75}\) See e.g. the following novel disseisin cases: \textit{RCR}, ii. 187; \textit{Northants.}, nos 663 (lord had claimed that man was his villein, but failed to produce suit); 782 (lord had acted without writ); \textit{CRR}, iii. 140 (lord had claimed that man was his villein, but failed to produce suit).

\(^{76}\) \textit{CRR}, vi. 264–5. For lesser men bringing appeals against greater, see also e.g. \textit{RCR}, i. 309, 314, 412, ii. 12–13 (although this may show a successful cover-up by the accused).

\(^{77}\) See above, 582, on \textit{writs de cursu}.

\(^{78}\) See e.g. Sutherland, \textit{Novel Disseisin}, 65, on poor litigants being allowed simply to pledge their faith that they would pursue their action.

\(^{79}\) For an example of exertion of powerful rule in a small political unit, see van Caenegem, ‘Criminal law in England and Flanders’. Note, though, that, as van Caenegem, 44–5, points out, Count Philip’s ordinances were made not for the whole country, but for the major towns alone, by individual charter.
against the person of the count or countess of Flanders. If the proscribed man was unwilling to stand judgment, Arnold could produce him safely in any court of the count’s lordship, before any judges, and then, so long as the man did not wish to stand to justice, Arnold might take him back and keep him in his own land. Nor would Henry II have allowed castle-holders to protect arsonists who were their lord, man, or relative, as Frederick Barbarossa did in an 1186 decree. Late in our period, the court of the king of France still primarily heard cases between his tenants-in-chief or concerning land in the royal demesne. Clearly part of the difference was physical as well as political geography; England was a relatively small realm and, in Maitland’s words, ‘rivers were narrow and hills were low. England was meant by nature to be the land of one law.’ However, the Angevin kings probably had more extensive control of justice in England even than in the relatively small Normandy. The Anglo-Saxon legacy of strong kingship, the impact of the Norman Conquest, and developments under the Norman kings provided deep foundations for royal law and justice as asserted by the Angevin kings and their officials.

4 CONCLUSION: LEGAL KNOWLEDGE, LAW, AND NORMS

This book has argued that to the development of English law the Anglo-Saxon period contributed in particular a powerful machinery of royal government, significant aspects of a long-lasting court structure, and important elements of law relating to theft and violence. Until the reign of Stephen, these Anglo-Saxon contributions were maintained by the Norman rulers, whilst the Conquest led to the development of aspects of landholding that were to have a continuing effect on the emerging common law. The Angevin period saw the establishment of more routine royal administration of justice, closer links between central government and individuals in the localities, and growing bureaucratisation. Finally, the later twelfth and earlier thirteenth century saw influential changes in legal expertise.

80 Lambert of Ardres, Historia comitum Ghisnensium, 119, ed. J. Heller (MGH, Scriptores 24; Hanover, 1879), 619.
81 MGH, Legum, sectio iv. Constitutiones, i. 451. Note also e.g. the usages of Touraine and Anjou allowing the possibility of a lord summoning his knights against the king when the latter failed to do justice; Établissements de Saint Louis, ed. Viollet, iii. 24–5.
83 Encyclopædia Britannica (11th edn, Cambridge, 1910–11), ix. 601 (s.v. ‘English law’).
84 See above, 557, on the ‘writ rule’, 854, on theft.
We have already examined the legal learning of the Angevin reformers, and must now consider what was possessed by or available to litigants. Some great churches or churchmen had long made use of learned law, but such learning became more widespread in the latter half of the twelfth century, particularly as a general training in the arts was found to be only limited preparation for ecclesiastical litigation. The early-thirteenth-century Evesham chronicler, Thomas of Marlborough, had received legal education from English masters, almost certainly at Oxford. When a potential dispute arose, the abbot summoned Thomas ‘because of his knowledge of law’ and this knowledge is manifest in his History.

Had Thomas not written this work we would not know that a monk at Evesham possessed such learning, raising the question of how many similar but unknown learned men existed by the end of our period. It may be significant that in the late 1150s, Richard of Anstey had relied in part on Italian masters to provide legal expertise for his arguments in the Church courts. In the 1170s the abbot of Battle had to look beyond his monastery for learned legal advocacy. The abbot was criticised by a kinsman for not having invested in legal education for him or any other relative, so that they could have had the requisite knowledge of the law and decretals. Abbot Samson of Bury had to find two clerks learned in law to associate with himself when he was first appointed a papal judge-delegate, again indicating that such learning was not available within the cloister. Therefore, although legal learning had spread, it was still far from the case that in c. 1200 every monastery, even every major monastery, had a Thomas of Marlborough hidden in its cloister.

It should also be noted that learned law was put to use in ecclesiastical rather than secular cases. It was in argument before the pope that Thomas’s skills and

85 See e.g. Lawsuits, no. 134, for William of Saint Calais.
86 Note that, when appointed a papal judge delegate, Abbot Samson was already learned in the liberal arts and imbued with divine scripture, but that such learning was considered insufficient for his new duties; Lawsuits, no. 661.
90 Lawsuits, no. 408E.
92 Lawsuits, no. 661; see above, 13–14, for his swift acquisition of the necessary legal knowledge, which contrasts with the lengthy studies undertaken by legal experts.
learning were most clearly displayed, and it was primarily for arguments in ecclesiastical matters that lawyers were hired. As we saw when considering the Angevin reformers, learned law was not pressed into service in secular courts, and any impact that it had was on a more general shaping of legal thinking.

The same may be largely true of other forms of learning from existing texts. The Anglo-Norman Leges continued to be copied, translated, and developed. It is notable that most of the changes made to the Leges, for example in an early thirteenth-century London collection, were intended not to update them, but to provide more general teaching on justice. The exception is the inclusion of material specifically relating to London customs, and with the increasing number of urban customals it may be that learning law from short, fairly simple texts was a characteristic of urban legal expertise. Such a background may have helped form the legal outlook of men such as the royal justice Henry of Northampton, whose father Peter heads a list of those responsible for stating the laws of Northampton, then recorded in writing.

A different form of literate legal expertise belonged to charter draftsmen. There must have been much continuity in forms and levels of skill, be it among royal or monastic scribes, or clerks in baronial households or the localities. At the same time there may have been some demand for increased skill from at least some scribes. Charters may have been subjected to more precise scrutiny and stricter interpretation in courts. More complicated forms of grant had to be recorded, often in the context of transactions involving money as well as land.

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94 See Lawsuits, no. 408E.
95 Note also the absence of notaries public from England at this time; C. R. Cheney, Notaries Public in England in the Thirteenth and Fourteenth Centuries (Oxford, 1972), chs 1 and 2; cf., for Continental Europe, Brundage, Medieval Origins of the Legal Profession, 211–14.
96 Sometimes several such texts were gathered and then copied together; see e.g. O’Brien, God’s Peace, on the Tripartita, that is the Articuli Willelmi, the Leges Edwardi Confessoris, and a genealogy of the Norman ducal house. See also O’Brien, God’s Peace, 106, for ECf probably having been translated into French before 1200.
97 See F. Liebermann, Über die Leges Anglorum saeculo xiii. ineunte Londonis collectae (Halle, 1894); Keene, ‘Text, visualisation, and politics’; above, 846; also Hudson, ‘Leges to Glanvill’, 245.
98 See Borough Customs, i. xli, Stenton, English Justice, 82–3.
100 Note also requirements at the Exchequer for precise wording of documents in order to obtain quittance; Dialogus, ii. 9, 12, ed. Amt, 136, 158.
101 Note e.g. the type of transaction mentioned in CRR, i. 212. Note that Hubert Walter appears in our evidence as early as 1178 as witness to a charter recording a complex transaction, involving a debt to Bruno the Jew of London; Cartae Antiquae, II20, no. 378. The presence in the witness list of
What, then, of the legal knowledge and skills applied in secular courts? What constituted ‘the law of the realm’, which Magna Carta specified that justices, constables, sheriffs, and bailiffs should know and be willing to observe? It was, foremost, knowledge and skill obtained through experience of practice in the courts, just as in earlier periods.\textsuperscript{102} According to Jocelin of Brakelond, Abbot Samson at first was not used to worldly disputes, so he kept with him a kinsman who was a knight. The latter was an eloquent man, knowledgeable in law and accustomed to secular cases. Later Samson, simply through a small amount of practice in such cases together with his innate reason, became sufficiently skilled to attract comment from a royal official and to be made an itinerant justice.\textsuperscript{103} Particularly officials and court-holders would need to know customary penalties and jurisdiction, but also very important were matters of procedure, both its normal pattern and the possibilities of manipulation.\textsuperscript{104} Knowing the advantage of being in possession in a land case, and knowing how to obtain delays whilst in such possession, were valuable legal skills, sometimes possessed by a litigant himself, sometimes by an adviser distinguished by expertise in the practice of law.\textsuperscript{105}

As far as royal courts are concerned, it may be no accident that essoiners, men responsible for obtaining delays, show some indications of rising status late in our period. People also increasingly used attorneys to represent them at the central court. Often attorneys were friends or kin, but there are signs of parties employing the specialist skills of men who were otherwise strangers.\textsuperscript{106} As yet such specialists were apparently seen only in royal courts, particularly the Bench, but they are significant as a first stage in the emergence of a legal profession.

It seems likely, therefore, that there was a disjuncture between elements of the legal expertise needed in royal courts and what continued to suffice in other secular courts, except perhaps those of some towns. Such a view is supported by men such as the justiciar, Ranulf de Glanville, may suggest that some expert legal guidance had been provided.

\textsuperscript{102} See Hudson, ‘\textit{Leges to Glanvill}’. For the continuing importance of such knowledge beyond our period, see Professor Brand’s volume in this series.

\textsuperscript{103} Jocelin, \textit{Chronicle}, ed. Butler, 24; \textit{Lawsuits}, no. 661; for Samson acting as a royal justice, see also \textit{PKJ}, iii. xciv. Cf. his need for book learning in order to act as a papal judge-delegate; above, 858.

\textsuperscript{104} Note that when describing Samson’s initial ignorance, Jocelin stated that the abbot had never been in a place ‘where was given gage and pledge’; Jocelin, \textit{Chronicle}, ed. Butler, 24.

\textsuperscript{105} For knowing the advantage of being in possession, see e.g. above, 10; for the advantage of delaying, see e.g. Thomas of Marlborough, \textit{Evesham}, iii. 239, 280, 432, ed. Sayers and Watkiss, 240, 278, 414; for this being an area where expert advice might be needed, see Brand, \textit{Legal Profession}, 36.

by signs of ignorance of the more technical law of royal courts. The *Dialogue of the Exchequer* was careful to point out that ‘for him who most needs the law ignorance of it is of no avail’. There are examples of people bringing cases that they could not win, possibly in the outside hope of success, possibly on the basis of a different view of the facts, but possibly in ignorance of the requirements of the action.

Turning to legal norms and legal arguments, again development by 1215 must not be exaggerated. *Glanvill* reveals areas where legal norms were a matter of debate, or where their impact in court might be tempered ‘out of equity’. It is also possible that there was inconsistency in decisions on some issues in royal courts, suggesting a lack of coverage, clarity, or determinacy of legal norms. Complex legal thinking most affected limited areas of law, those regarding land and family, and perhaps debts and agreements. And the level of expert learning recorded in legal argument even in the king’s court remains limited compared with some cases in the most important Church courts. Still, bearing such cautions in mind, let us examine the forms of the legal norms and the legal arguments put forward, particularly regarding matters that might come before the royal courts. There were general maxims, some of which may have been widely used; a possible example appears in *Glanvill*, when he states that ‘someone can lose through default but no-one can win when entirely absent’. Sometimes more precise rules were cited in court, for example those against women bringing appeals except for the death of their husbands or against the same person being both lord and heir. Arguments based on such rules were clearly seen as decisive if they fitted the facts of the case. In other instances several arguments were piled

107 *Dialogus*, ii. 9, ed. Amt, 138, possibly a formulation alluding to Roman law. Cf. in the Anstey case the arguments of Mabel de Francheville, or her advisers, that ignorance of the law should be taken into account, arguments supported with learned references; *Lawsuits*, no. 408B.

108 See Flower, *Introduction*, 152, for possible cases. See above, 581–2, on the process of obtaining a writ. Note also the confusion apparent in *CRR*, i. 221, a case of wounding. See *CRR*, iv. 27, for a man apparently uncertain of the distinction between being an essoiner and an attorney.

109 *Glanvill*, vii. 1, ed Hall, 74; the phrase appears in the context of his discussion of the ‘lord-and-heir’ rule, on which see above, 651, below, 863. See also above, 650–1, on the *casus regis*, 530–1, on debate.

110 See e.g. above, 723, 795–6.

111 See generally Milsom, *Natural History*; also Brand, ‘Henry II’, 240.

112 See e.g. Thomas of Marlborough, *Evesham*, iii. 286–98, ed. Sayers and Watkiss, 288–96. See also *Battle Chronicle*, ed. Searle, 332, Boureau, ‘How law came to the monks’, 30–1, on ‘allegations’, that is quotations, from learned law, which constituted an argument.


114 *Glanvill*, ii. 16, ed. Hall, 34.

115 See above, 651, 722–3.
up, for example that land was villeinage because of the nature of the services owed and because the holder was of villein status. The multiple arguments may stem from doubts about which best fitted the facts or from knowledge that services might sometimes not be decisive. However, they need not indicate that a single argument could not have decided the case, for example based on a rule that a villein could not hold a free tenement. Those pleading preferred the impact created by multiple arguments.

Especially the explicit citation of rules indicates an ability to distinguish between matters of law and matters of fact. The distinction was occasionally made in these very terms, although our evidence is from ecclesiastical cases. Often in secular courts the questions put to recognition, grand assize, or jury were a mixture of law and fact. Visible, however, is some pattern of questions of fact being directed to jurors, questions of law being put to the court. In a case of 1212, one party put to the decision of the court the question of whether a man could give all his inheritance as a maritagium, the other party placed herself on a jury as to whether that man had so given all his inheritance. Such sharp division between matters of law and matters of fact was probably encouraged by the increasingly sophisticated legal thinking of royal justices, their greater regulation of issues and information relevant for consideration in court, and the more routine employment of sworn bodies of men to provide verdicts on specific issues, rather than of ordeal to decide the general issue. It is also manifest in reasoned judgments, for example on the grounds that a wife could not have anything of her own during her husband’s lifetime, and therefore could not make a purchase with her own money. Such a method of reasoning was to encourage development of law as a collection of rules and processes that could decide cases in combination with detailed consideration of the facts.

We can detect other related developments. There are signs of distancing between some legal and social norms. One example relates to marriage, where the consent of the parties came to be a legal requirement whereas the consent of

116 See above, 663–7.
117 Thomas of Marlborough, Evesham, iii. 305, 370, ed. Sayers and Watkiss, 302, 358; in both cases the distinction is being made, according to Thomas, by Pope Innocent III.
118 See also Lawsuits, no. 641 (p. 684), for such a question being put to justices.
119 CRR, vi. 201; she argued that the donor had had other lands in his inheritance. See also above, 653, on the proportion of the inheritance alienable; above, 593, on the special mise.
120 Northants., no. 450; see also e.g. Plac. abbrev., 96, CRR, vi. 149 (above, 802).
121 Note also e.g. Milson, Legal Framework, 182, Historical Foundations, 264. The use of juries in place of ordeal is at the centre of the argument put forward in S. F. C. Milson, ‘Law and fact in legal development’, in his Studies in the History of the Common Law, 171–89, although he may underestimate the wide range of information and argument that might be brought to courts in the period before the routine use of juries.
family or lord might be desirable but not required for the marriage to be valid, although its absence might have other legal consequences. Legal rules might be perceived to be contrary to social expectation. Glanvill found himself forced to admit that a bastard son was in a better position than a legitimate younger son in terms of receiving grants from his father without the heir’s consent. Likewise he regarded the lord-and-heir rule as operating in a fashion that he considered would be surprising to at least some parties involved.

We also see people playing with law to their own advantage. This was not simply a matter of changing the factual situation, for example by placing themselves in possession before litigation began, or by transferring land after litigation had started. Rather, legal processes or legal norms might be used or exploited contrary to their original intended purpose. An important example from the end of our period is collusive litigation in the king’s court in order to have a final concord to secure a transfer of land. Such methods may have been encouraged by legal advisors, although they could come from the parties’ own initiative. It is possible that they developed particularly rapidly in towns, with readily transferable land, frequent use of money, and perhaps the need to secure arrangements with Jewish and other lenders. The first reissues of Magna Carta show such practices spreading, most notably with clause 43 of the 1217 reissue aiming to prevent artificial grants to the Church that led to lords losing reliefs, wardships, and marriages:

> it is not permitted to anyone to give his land to any religious house thus that he resume it to hold from the same house, nor is it permitted for any religious house

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122 See above, 778–82.
123 Glanvill, vii. 1, ed. Hall, 70–1.
124 Glanvill, vii. 1, ed. Hall, 72–4; discussed more fully in Hudson, ‘Leges to Glanvill’, 238–9, and see also above, 651, which notes that the rule was cited in court.
125 For the former, see e.g. above, 10; for a party arguing that the latter had occurred, see e.g. CRR, ii. 228–9.
126 See also e.g. Lincs., no. 1158, where a potential warrantor may deliberately have dispersed his inheritance among his brothers and others, in order to avoid his obligations. See also above, 793 n. 97, for CRR, iv. 271.
127 See above, 654–5. Note also above, 786, for a husband’s use of collusive litigation.
128 See above, 655, for an instance where the abbot seems to have taken the initiative.
129 See EYC, i. no. 300, for a gift of land with the provision that the recipient must not sell or give that land to the Jews ‘or make an exchange or any device of collusion [machinamentum collusionis] whereby the Jews may possess the said land for their own use’. This instance of collusio, admittedly in a cartulary copy, is very considerably earlier than any cited in DMLBS. Note also Borough Customs, i. 288, where a gage was used to defraud lord or kin; the editor of Borough Customs, followed by Hudson, Formation, 228, took the passage to date from c. 1190, but examination of the manuscript (Oxford, Bodleian Library, Douce MS 98, fo. 160r) suggests that this section may be from after our period.
to receive the land of anyone thus that they hand it over to him from whom they accepted it to hold. Moreover, if anyone... gives his land to any religious house in this way and is found guilty of it, his gift will be utterly voided and that land fall to his lord of that fee.\textsuperscript{130}

Sophisticated legal devices would multiply from the time of Henry III; the provision in the 1217 Magna Carta marks the first legislative move to block such a device, the beginning of an as yet unending history.

In the reigns of Henry II, Richard, and John, the learning and legal skills of the core of royal justices, exceptional save that of some great churchmen or their legal advisers, may have given them particular influence on legal development, before the extension and subsequent professionalisation of legal expertise. Justices had the particular knowledge of procedures and more substantive rules, as well as the ways of thinking and the more general know-how, that constituted the law of the royal courts.\textsuperscript{131} Simon of Pattishall was notable not only for his judicial career, spanning three reigns, but also for his witnessing of unusual writs and his recorded statements.\textsuperscript{132} Such law, in particular its writs and procedures, was now transferable, as it was to Ireland in 1210, by the king and by 'discrete men, expert in law', including Simon of Pattishall.\textsuperscript{133} The learning of such justices found its monuments in the law-books Glanvill and Bracton. But just as such law-books in fact stand isolated rather than being the start of a tradition, so too the peculiar predominance of the learned royal justice did not last. Rather, it helped to create the need for the legal profession that would have such influence on the process and nature of the later development of the common law.

\textsuperscript{130} On the limited evidence for such grants, see Kaye, \textit{Conveyances}, 173–4. Cf. Magna Carta 1216, 3, stating that if a minor were knighted, his land was to remain in his lord’s wardship until he was of age, that is twenty-one years old. It may be that early knighting was being used as a way to limit the lord’s right of wardship.

\textsuperscript{131} See also Brand, ‘Henry II’, 223, 240.

\textsuperscript{132} See Stenton, \textit{English Justice}, 85–6; ODNB.