REGNUM AND SACERDOTIUM, 1066–1189 AND BEYOND

Kings	Archbishops of Canterbury	Popes
		1049 — Leo IX
		1054 — d. Leo IX
1066 — William I	1070 — Lanfranc	1073 — Gregory VII
1087 — William II	1089 — d. Lanfranc	1085 — d. Gregory VII
1100 — Henry I	1093 — Anselm	1088 — Urban II
	1109 — d. Anselm	1099 — Paschal II
		1118 — d. Paschal II
	(1122 — Concordat of Worms)	
1135 — Stephen	1138 — Theobald	1130 — Innocent II
		1143 — d. Innocent II
1154 — Henry II		1154 — Adrian IV
	1161 — Becket	1159 — Alexander III
	1170 — d. Becket	1181 — d. Alexander III
1189 — Richard	1193 — Hubert Walter	
1199 — John	1205 — Stephen Langton	1198 — Innocent III
	(1213 — Langton secures post)	
1216 — d. John	1228 — d. Langton	1216 — d. Innocent III

1. The Traditional View
   a. William I, co-operation between Lanfranc and the king
   b. Henry I, attempts by the papacy to exercise influence thwarted by a strong king
   c. Stephen, papal influence fills a power vacuum
   d. Henry II, attempts to restore the situation to what it was in the time of his grandfather, but was betrayed by Thomas Becket
2. The Problems with this View
   a. The facts are accurate to the extent that we can separate fact from attitude in the traditional account.
   b. It misses the point in much the same way that Henry II missed the point when he attempted to restore the *status quo* in the time of his grandfather
   c. The issues of the 12th century are not those of the 16th.
   d. We should not speak of church and state in his period but of *regnum* and *sacerdotium* or temporal and spiritual.
3. The Reform Movement of the Eleventh Century

a. Integration of *regnum* and *sacerdotium* under a sacral king—the abuses to which this leads

b. Monastic reform—Cluny, Henry II of Germany (1002–24)

c. Clerical reform—Leo IX (1049–54), Gregory VII (1073–85): general moral reform, simony, lay investiture, lay ownership of churches, clerical celibacy, primacy of the papacy

d. The controversy over lay investiture

4. The Conqueror and Lanfranc (1070–1089)

a. Council of London (1075)

b. Letter to Gregory VII (1073 X 1085, probably earlier in that span)

"To Gregory, the most noble shepherd of the Holy Church, William, by the grace of God renowned king of the English, and duke of the Normans, greeting with amity."

c. The document entitled 'William and the Royal Supremacy' derived from Eadmer's History (Mats. p. III–50) may not be genuine.

d. Division of the courts (1066 X 1087, probably later in that span)

"If any one refuses to come to justice before the bishop ... let him be excommunicated; and should there be need to enforce this ban, let the power and justice of the king or of the sheriff be invoked."

5. The investiture controversy in England—Anselm (1097–1107)

a. It was remarkably short. Contrast the Continent (1075–1122).

b. Appeals to the papacy were as common in Henry I's reign as they were in any other place in Europe.

c. The difference between Lanfranc and Anselm is a difference of generations.

6. The events of Stephen's reign—Gratian (c. 1140), revival of the study of Roman law, Archbishop Theobald (1138–1161), Vacarius (?1120–?1200), John of Salisbury (c.1120–1180), the Cistercians. E.g., Gratian's *Concordance of Discordant Canons*:

"Mankind is ruled by two things, to wit, natural law and customs. Natural law is what is contained in the law and the Gospel in which everyone is ordered to do to another what he wishes to happen to himself and is prohibited from inflicting on another what he does not wish to happen to himself—whence Christ in the Gospel: "Everything that you wish that men do to you, you also do to them, for this is the law and the prophets." [Matthew 7:12]

"Hence Isidore [of Seville, before 640] says in the fifth book of *Etymologies*:

"'All laws are either divine or human, divine laws correspond to nature, human laws to custom'."

7. Henry II

a. The Constitutions of Clarendon (1164)

[c.9] "If a claim is raised by a clergyman against a layman, or by a layman against a clergyman, with regard to any tenement which the clergyman wishes to treat as free alms, but which the layman [wishes to treat] as lay fee, let it, by the consideration of the king's chief justice and in the presence of the said justice, be settled through the recognition of twelve lawful men whether the tenement belongs to free alms or to lay fee. And if it is recognized as belonging to free

alms, the plea shall be [held] in the ecclesiastical court; but if [it is recognized as belonging] to lay fee, unless both call upon the same bishop or [other] baron, the plea shall be [held] in the king's court. But if, with regard to that fee, both call upon the same bishop or [other] baron, the plea shall be [held] in his court; [yet] so that, on account of the recognition which has been made, he who first was seised [of the land] shall not lose his seisin until proof [of the title] has been made in the plea."

[c.1] "If controversy arises between laymen, between laymen and clergymen, with regard to advowson and presentation to churches, it shall be treated or concluded in the court of the lord king."

[c.3] "Clergymen charged and accused of anything shall, on being summoned by a justice of the king, come into his court, to be responsible there for whatever it may seem to the king's court they should there be responsible for; and [to be responsible] in the ecclesiastical court [for what] it may seem they should there be responsible for—so that the king's justice shall send into the court of Holy Church to see on what ground matters are there to be treated. And if the clergyman is convicted, or [if he] confesses, the Church should no longer protect him."

[c.8] "With regard to appeals, should they arise—they should proceed from the archdeacon to the bishop, and from the bishop to the archbishop. And if the archbishop fails to provide justice, recourse should finally be had to the lord king, in order that by his precept the controversy may be brought to an end in the court of the archbishop; so that it should not proceed further without the assent of the lord king."

[c.15] "Pleas of debt, owed under pledge of faith or without pledge of faith, belong to the king's justice."

b. The Becket controversy

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/slides/Monreale_BecketMosaic.jpg (between 1174 and 1181)

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/slides/Martyrdom_of_Thomas_Becket_-_Psalter_(c.1220),_f.32_-_BL_Harley_MS_5102.jpg

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/slides/Becket_Confrontation_s14.jpg (statute book, c. 1312)

c. The compromise of Avranches of 1172—the constitutions of Clarendon are under a cloud; appeals to the pope are allowed; criminous clerks will be punished by the church and not by secular authority, but how the procedure is to work is not settled; nothing is said about advowsons and debts, and much else remains unsettled.

8. After some time, perhaps too long a time, the following settlements were reached:

a. The assize *utrum*, which began, as we have seen, as a preliminary inquiry into whether land was held in lay fee or by free alms, became by a process that is still imperfectly understood, what was called the "parson's writ of right." If the clergyman won the case that was the end of it.

b. Advowsons remained within the jurisdiction of the secular courts, but possessory actions concerning churches were tried in the ecclesiastical courts.

c. Criminous clerks were tried in the secular courts, but they could then claim their clergy and were turned over the bishop for punishment. The bishop sometimes retried them and set them free. Sometimes he imprisoned them.

d. Appeals to the papacy from the ecclesiastical courts were common and largely unimpeded until a new set of statutes were passed about the practice in the fourteenth century.

   e. Lay debts, except those that dealt with marriage or with testaments, were officially matters for the king's courts. The ecclesiastical courts, in fact, heard a large number of such cases in the fourteenth and fifteenth centuries.

9. An attempt to summarize at the macro level
   a. An attempt at a "constitutional" document before the time was ripe?
   b. The reason that the west developed the notion of the rule of law?
10. An attempt to summarize at the micro level
   a. Introduction of bifurcated proceedings (possessory vs. proprietary)?
   b. Jurisdictional division on the basis of substance rather than persons.

GLANVILL

(Most of this is in the *Mats.*, but I'm going to be skipping around and it may be easier to follow it here)

1. Prologue: (Pro., p. IV-6
   a. Pro 1. "Not only must royal power be furnished with arms against rebels and nations which rise up against the king and the realm, but it is also fitting that it should be adorned with laws for the governance of subject and peaceful peoples; so that in time of both peace and war our glorious king may so successfully perform his office that, by crushing the pride of the unbridled and ungovernable with the right hand of strength and tempering justice for the humble and meek with the rod of equity, he may both be always victorious in wars with his enemies and also show himself continually impartial in dealing with his subjects."

      Justinian's *Institutes*, Pro.: "The imperial majesty should be armed with laws as well as glorified with arms, that there may be good government in times of both war and of peace, and the ruler of Rome may not only be victorious over his enemies, but may show himself as scrupulously regardful of justice as triumphant over his conquered foes."
   b. Pro 2. "No-one doubts how finely, how vigorously, how skilfully our most excellent king has practised armed warfare against the malice of his enemies in time of hostilities, for now his praise has gone out to all the earth and his mighty works to all the borders of the world. Nor is there any dispute how justly and how mercifully, how prudently he, who is the author and lover of peace, has behaved towards his subjects in time of peace, for 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 digress in any respect from the way of truth. For there, indeed, a poor man is not oppressed by the power of his adversary, nor does favour or partiality drive any many away from the threshold of judgment. For truly he does not scorn to be guided by the laws and customs of the realm which had their origin in reason and have long prevailed; and, what is more, he is even guided by those of his subjects most learned in the laws and customs of the realm whom he knows to excel all others in sobriety, wisdom and eloquence, and whom he has found to be most prompt and clear-sighted in deciding cases on the basis of justice and in settling disputes, acting now with severity and now with leniency as seems expedient to them."
   c. Pro 3. "Although the laws of England are not written, it does not seem absurd to call them laws—those, that is, which are known to have been promulgated about problems settled in council on the advice of the magnates and with the supporting authority of the prince—for this is also a law, that 'what pleases the prince has the force of law.' For if, merely for lack of writing, they were not deemed to be laws, then surely writing would seem to supply to written laws a force of greater authority than either the justice of him who decrees them or the reason of him who establishes them."
   d. Pro 4. "It is, however, utterly impossible for the laws and legal rules of the realm to be wholly reduced to writing in our time, both because of the ignorance of scribes and because of the confused multiplicity of those same laws and rules. But there are some general rules frequently observed in court which it does not seem to me presumptuous to commit to writing, but rather very useful for most people and highly necessary to aid the memory. I have decided to put into writing at least a small part of these general rules, adopting

intentionally a commonplace style and words used in court in order to provide knowledge of them for those who are not versed in this kind of inelegant language."

e. "To make matters clear, I have distinguished the kinds of secular cause in the following manner: Pleas are either civil or criminal. Some criminal pleas belong to the crown of the lord king, and some to the sheriffs of counties. The following belong to the crown of the lord king:" (1.1)

2. The distinction between procedure and substance won't do for Glanvill's time though he does make some attempts at substance in books 6–8, family property and in book 9 lay debts. The former discussion has much of the quality of a 13th c. French *coutumier*, the latter is suffused with Roman law.

3. Another piece of Roman law: (1.3, p. IV–9):

"Some civil pleas are to be pleaded and determined only in the court of the lord king; others belong to the sheriffs of counties. The following must be dealt with in the court of the lord king: Pleas concerning baronies; pleas concerning advowsons of churches; the question of status; pleas of dower, when the woman has so far received none; complaints that fines made in the lord king's court have not been observed; pleas concerning the doing of homage and the receiving of relief; purprestures; debts of laymen. All these pleas concern solely claims to the property (*proprietas*) in the disputed subject-matter: those pleas in which the claim is based on possession (*possessio*), and which are determine by recognitions, will be discussed later in their proper place"

4. Suppose your client claims a virgate of land in Puddle Parva in 1200. What more do you need to know and how would you go about suing for it?

   a. Where's Puddle Parva? — this system is not available where the king's writ does not run

   b. Free vs. serf — this system is not available to the unfree. (See IV-9:)

"When anyone complains to the lord king or his justices concerning his fee or free tenement, and the case is such that it ought to be, or the lord king is willing that it should be, tried in the king's court, then the complainant shall have the following writ of summons:"

   c. Of whom do you claim to hold? Of whom does the tenant claim to hold?

      i. The king (*Glanvill*'s 'writ of first summons'):

(p. IV-10): "The king to the sheriff, greeting. Command N. to render to R., justly and without delay, one hide of land in such-and-such a vill, which the said R. complains that the aforesaid N. is withholding from him. If he does not do so, summon him by good summoners to be before me or my justices on the day after the octave of Easter, to show why he has not done so. And have there the summoners and this writ. Witness Rannulf Glanvill, at Clarendon."

Writ of right in capite (Baker [from 'the' register of writs, i.e. late 14th century], p. 614, B.i): "The king to the sheriff of N greeting. Command A. that justly and without delay he render to B. one messuage with the appurtenances in D., which he claims to be his right and inheritance and to hold of us in chief, and whereof he complains that the aforesaid A. unjustly deforces him. And if he will not do so, and if the aforesaid B. shall give you security for pursuing his claim, then summon the aforesaid A. by good summoners that he be before our justices at Westminster [on such a day] to show why he has not done it.. And have there the summons and this writ. Witness, etc."

This form of writ appears shortly after Magna Carta, and clause 34 of Magna Carta says: "Henceforth the writ called *praecipe* shall not be issued for any one concerning any tenement

whereby a freeman may lose his court." But if the demandant claims to hold of the king, no freeman is losing his court because the appropriate court to start off with is the court of the king.

ii. Two different lords:

(3.6, p. IV–19): "Moreover, a case is often delayed by the absence of lords; for example, when the demandant claims that the tenement in question belongs to the fee of one lord, and the tenant says that he himself holds it as of the fee of another lord. In such a case both lords shall be summoned to court, so that the case may be heard and determined in due form in their presence, lest in their absence some injustice may seem to be done them." (If tenant claims to hold of one lord and demandant of the other, both lords must be summoned and appear. As Derek Hall notes the assumption here seems to be that the case is being heard in the royal court.)

(12.8 p. IV–20) "The writ (speaking of the writ of right) must be directed to him of whom the demandant claims to hold, not to anyone else, not even the chief lord. But what if the demandant claims to hold of one lord and the tenant hold of another? In such a case he to whom the writ is directed may not hold that plea, because he may not unjustly and without a judgment disseise another of the seisin of his court which he is deemed to have; therefore recourse must necessarily be had to the county court, and the plea will proceed there or in the chief *Curia* … ."

Writ of right quia dominus remisit curiam, Hall, Registers CCC ("substantially of the middle 1260's"), p. 36: "'The king to the sheriff greeting. Command B. that justly and without delay he render to A. so much land with appurtenances, in such a vill, which he claims to be his right and his inheritance and whereof he complains that the said B. unjustly deforces him. And if etc., and the said A. shall have given you security to prosecute his claim, then summon by good summoners, the aforesaid B. that he be before our justices at Westminster on such a day to show why he has not done this. And have there the summoners and this writ. [Witness, etc.] because the chief lord of that fee has remitted to us his court thereof.' And thus that clause is always set down after the date of the writ." Clearer evidence that the final clause was an afterthought would be hard to come by. There is no other writ that has anything after the witness clause.

iii. The same lord, not the king

(12.3, p. IV–20, Baker p. 613 (A.i)): "The king to Earl William, greeting. I command you to do full right without delay to N. in respect of ten carucates of land in Middleton which he claims to hold of you by the free service of one hundred shillings a year for all service (or by the free service of one knight's fee for all service, or by the free service appropriate when twelve carucates make up one knight's fee for all service; or which he claims as pertaining to his free tenement which he holds of you in the same vill or in Morton by the free service, etc., or by the service, etc.; or which he claims to hold of you as part of the free marriage portion of M. his mother, or in free burgage, or in frankalmoin; or by the free service of accompanying you with two horses in the army of the lord king at your expense for all service; or by the free service of providing you with one crossbowman for forty days in the army of the lord king for all service): which Robert son of William is withholding from him. If you do not do it the sheriff of Devonshire will, that I may hear no further complaint for default of right in this matter. Witness, etc."

d. What is the substantive claim that you can bring in a writ of right?

(the count, 2.3, p. IV–11): "When both parties appear again in court after the three reasonable essoins and the view, the demandant sets out his claim and suit as follows: 'I claim against this N. the fee of half a knight and two carucates of land in such-and-such a vill as my right and my inheritance, of which my father (or grandfather) was seised in his demesne as of fee in the time of

King Henry the First (or since the first coronation of the lord king), and from which he took profits to the value of five shillings at least, in corn and hay and other profits: and this I am ready to prove by this free man of mine, H., and if any evil befalls him then by this other man or by this third man, who saw and heard it.' (He can name as many as he likes but only one of them shall wage battle.) Or the claim may be in other words, thus: 'And this I am ready to prove by this free man of mine, H., whose father in his last minutes enjoined him, by the faith binding son to father, that if ever he heard of a suit concerning this land, he should offer to prove it as something seen and heard by the dying man.'"

5. Alternatives to the writ of right

   a. Why would a litigant want to bring something else if he could?

      i. essoins

      ii. tenant's choice of battle or the grand assize

   b. In what circumstances can he bring something else?

      i. mort d'ancestor

(13.2–12, pp. IV–26): "The king to the sheriff, greeting. If G. son of O. gives you security for prosecuting his claim, then summon by good summoners twelve free and lawful men from the neighbourhood of such-and-such a vill to be before me or my justices on a certain day, ready to declare on oath whether O. the father of the aforesaid G. was seised in his demesne as of his fee of one virgate of land in that vill on the day he died, whether he died after my first coronation, and whether the said G. is his next heir. And meanwhile let them view the land; and you are to see that their names are endorsed on this writ. And summon by good summoners R., who holds that land, to be there then to hear the recognition. And have there the summoners and this writ. Witness, etc."

      ii. novel disseisin

(13.32–39, p. IV–31): "The king to the sheriff, greeting. N. has complained to me that R. unjustly and without a judgment has disseised him of his free tenement in such-and-such a vill since my last voyage to Normandy. Therefore I command you that, if N. gives you security for prosecuting his claim, you are to see that the chattels which were taken from the tenement are restored to it, and that the tenement and the chattels remain in peace until the Sunday after Easter. And meanwhile you are to see that the tenement is viewed by twelve free and lawful men of the neighbourhood, and their names endorsed on this writ. And summon them by good summoners to be before me or my justices on the Sunday after Easter, ready to make the recognition. And summon R., or his bailiff if he himself cannot be found, on the security of gage and reliable sureties to be there then to hear the recognition. And have there the summoners, and this writ and the names of the sureties. Witness, etc."

      iii. *Glanvill* also hints at other situations in which something less than the writ of right might be appropriate:

(13.27, p. IV–30): "The king to the sheriff, greeting. Summon by good summoners twelve free and lawful men from the neighbourhood of such-and-such a vill to be before me or my justices on a certain day, ready to declare on oath whether N. holds one carucate of land in that vill, which R. claims from him by my writ, in fee or as a gage pledged to him by R. (or by R.'s ancestor H.). (or thus: whether the carucate of land in that vill which R. claims from N. by my writ is the inheritance or fee of N., or a gage pledged to him by R. or by R.'s ancestor H.). And meanwhile let them view

the land; and you are to see that their names are endorsed on this writ. And summon by good summoners n., the tenant of that land, to be there then to hear the recognition. and have there the summoners and this writ. Witness etc."

Glanvill 10.9 (Hall ed., p. 125): "The king to the sheriff, greeting. Command N. to restore, justly and without delay, so much land (or, certain specified land) in such-and-such a vill to R., of a term which is now past, as R. alleges; and to accept payment from him (or, which he alleges he has redeemed by payment). If he does not do so, summon him by good summoners to be before me or my justices at a certain place on a certain day to show why he has not done so. And have there the summoners and this writ. Witness, etc." This can lead to a recognition whether gage or fee.

Entry in the per and cui (Baker, Bii, p. 614 (adapted): "The king to the sheriff of N. greeting. Command A. that justly and without delay he render to B. one messuage with the appurtenances in D. which he claims to be his right and inheritance and into which the same A. has not entry except through C. to whom the aforesaid B. demised it for a term which has expired. And if he will not do so, and if the aforesaid B. shall give you security for pursuing his claim, then summon the aforesaid A. by good summoners that he be before our justices at Westminster [on such a day] to show why he has not done it. And have here the summoners and this writ. Witness, etc."

6. We need one more piece from *Glanvill* before we try to solve the puzzle:

(12.6–7; p. IV-21): "These pleas," *Glanvill* says speaking of the writ of right, "are tried in the courts of lords, or of those who stand in their place, in accordance with the reasonable customs of those courts, which cannot easily be written down because of their number and variety. Proof of default of right in these courts is made in the following way when the demandant complains to the sheriff in the county court and produces the writ from the lord king, the sheriff will, on a day appointed to the litigants by the lord of the court, send to that court one of his servants, so that he may hear and see, in the presence of four or more lawful knights of that county who will be there by command of the sheriff, the demandant's proof that the court has made default of right to him in that plea; the demandant will prove this to be the case by his own oath and by the oath of two others who heard and understood it and who swear with him. With this formality, then, cases are transferred from certain courts to the county court, and are once again dealt with and determined there; and neither the lords of those courts nor their heirs may contest this or recover jurisdiction for their courts in respect of the particular plea." This process known as *tolt*; in another place *Glanvill* tells us that once the case is in the county court either party may remove it to the central royal court by a writ known as *pone* (6.7, p. 61, Hall ed.).

3.1 (p. IV-18): "The presence of the third party ... is required ... if the tenant says [the land] is his, but that he has in respect of it a warrantor from whom he got it as a gift, or by sale, or in exchange, or some other such way." In the situation where the warrantor defaults an exchange tenement (*escambium*) (p. IV–19).

7. What were these things originally?

   a. Mort d'ancestor — look at the Assize of Northampton (pp. IV–4 to IV–5)

      4. Item, if any freeholder has died, let his heirs remain possessed of such "seisin" as their father had of his fief on the day of his death; and let them have his chattels from which they may execute the dead man's will. And afterwards let them seek out his lord and pay him a "relief" and the other things which they ought to pay him from the fief. And if the heir be under age, let the lord of the fief receive his homage and keep him in ward so long as he ought. Let the other lords, if there are several, likewise receive his homage, and let him

render them what is due. And let the widow of the deceased have her dow[er] and that portion of his chattels which belongs to her. And should the lord of the fief deny the heirs of the deceased "seisin" of the said deceased which they claim, let the justices of the lord king thereupon cause an inquisition to be made by twelve lawful men as to what "seisin" the deceased held there on the day of his death. And according to the result of the inquest let restitution be made to his heirs. And if anyone shall do anything contrary to this and shall be convicted of it, let him remain at the king's mercy.

b. Novel disseisin — look at the words:

The king to the sheriff, greeting. N. has complained to me that R. **unjustly and without a judgment** has disseised him of his free tenement in such-and-such a vill since my last voyage to Normandy. Therefore I command you that, if N. gives you security for prosecuting his claim, you are to see that **the chattels which were taken from the tenement are restored to it**, and that the tenement and the chattels remain in peace until the Sunday after Easter. And meanwhile you are to see that the tenement is viewed by twelve free and lawful men of the neighbourhood, and their names endorsed on this writ. And summon them by good summoners to be before me or my justices on the Sunday after Easter, ready to make the recognition. And summon R., **or his bailiff if he himself cannot be found,** on the security of gage and reliable sureties to be there then to hear the recognition. And have there the summoners, and this writ and the names of the sureties. Witness, etc.

c. Writ of right — the thing that makes the land heritable originally? Think about the chaos of the years preceding Henry II.

d. If this is right then writs of entry, which are only hinted at in *Glanvill*, are a different story, for which I can give you just the barest outlines. They may be the product of a development like the following:

i. Novel disseisin means that the lord can no longer justice his tenants.

ii. *Glanvill* 2.6: Special mise (p. 146–7): taking an issue away from the grand assize by allegation that the demandant is of the same blood as the tenant. If tenant admits it, the case is pleaded verbally and goes to battle. If tenant denies it, the case is pleaded verbally and goes to inquest. There are a lot of these early in John's reign being used for claims like those that we looked at above, where the question was whether the tenant held in fee or gage or whether he held for a term of years that had expired.

e. The distinction between upward-looking claims and downward-looking claims.

8. Unburdened with knowledge of Roman law, it seems relatively clear that what we are dealing with here originally is three types of claims that may be made against a lord. Burdened with a knowledge of Roman law we see them as dealing with ownership and possession. *Glanvill* hints at this and *Bracton* develops it to a fare thee well. But the writs of entry are a problem in this scheme, and it's the last development that gives the clue to the whole puzzle.

9. So far we have a theory. In fact, we have two theories: (a) that the scheme of writs for land were developed in the time Henry II with the scheme of ownership vs. possession derived with Roman law in mind; (b) that the writs for land were developed in the time of Henry II with something quite different in mind, and the Roman-law scheme was later applied to them and doesn't quite fit. In the next two classes, we will look at some plea roll entries that come from

the generation after Henry II. They are not going to prove that the second of the two theories is right, but they are going to suggest that the second of the two theories has quite a bit going for it.