According to F. W. Maitland, 'the treatment of seisin in our oldest common law must be understood if ever we are to use the vast store of valuable knowledge that lies buried in the plea rolls and the Year Books'. In *The History of English Law*, Maitland stated firmly that 'Seisin is possession', and that 'When we say that seisin is possession, we use the latter term in the sense in which lawyers use it, a sense in which possession is quite distinct from, and may be sharply opposed to, proprietary right.' He added that 'The idea of seisin seems to be closely connected in our ancestors' minds with the idea of enjoyment ... Seisin of land ... is not the enjoyment of the fruits of the earth; it is rather that state of things which in due time will render such an enjoyment possible.' His discussion rests to a considerable degree on his reading of the thirteenth-century lawbook *Bracton*, which adopted a significantly Roman law framework, although Maitland did not simply accept *Bracton*'s views but questioned and modified them in various ways. Published three decades after Maitland's *History*, Jouon des Longrais's *La Conception Anglaise de la Saisine du XIIe au XIVe Siècle* also drew heavily on *Bracton*. However, his emphasis was upon seisin as enjoyment penetrated by right. This he saw as the old notion of seisin, which continued in England after the influence of Roman and canon law brought


a sharper division between possession and property in France. For S. F. C. Milsom, such treatments were misconceived, in part because of the influence of Bracton and its Romanism. Rather, lordship was central to seisin, particularly until the late twelfth century: ‘seisin itself connotes not just factual possession but that seignorial acceptance which is all the title there can be’. This basic structure of feudal tenure left its mark even after Angevin reforms had diminished the importance of the seignorial dimension of landholding.

The purpose of the present paper is not to arbitrate between these positions, but to look more carefully at the language of the evidence upon which the arguments rest. It assesses use of the word ‘seisin’ in the sources of the nascent English common law, in the late twelfth and early thirteenth centuries. Normally the word was used with reference to a tenement, but it could also be used, for example, with reference to chattels. How far was ‘seisin’ a technical term with a defined meaning, how far did other usages continue? How far was ‘seisin’ a term employed with explicit association to a particular person or tenement, how far without such an explicit association, including as a more free-standing abstraction? How did it relate to ownership or right, how far did it involve an element of title, how far actual enjoyment of profits? I then move on to developments designed to refine the word’s technical meaning. First I consider Bracton’s distinction between being ‘in seisin’ and being ‘seised’. Next I examine statements as to what the person was seised of, for example free tenement or gage. Then I move on to the use of adjectives applied to seisin, for example ‘simple’ and ‘full’. Finally I turn to capacity to alienate and protection of tenure.

The root of the word seisin was Old French, appearing Latinised in the records. The relationship between the Latin of the records and the French that was probably used in court is therefore one issue in the use of these sources. In addition, there is the further issue of how far the plea rolls

5 E.g. Jolien de Longrais, Conception, 73.
7 See e.g. S. F. C. Milsom, Historical Foundations of the Common Law, 2nd edn (London, 1981), 150: ‘how people think and act depends partly upon their vision of their own society ... it was natural for lordship as an organising idea to outlast the individual powers which made it a reality’.
8 See below, p. 97, for references to seisin of chattels; also e.g. ‘Glanvill’, Tractatus de Legibus et Consequentibus Regni Anglie qui Glanvill vocatur, xii, 8, ed. and trans. G. D. G. Hall, rev. M. T. Clanchy (Oxford, 1993), 140, on being seised of a court; CRR, VI, 159, for a decision that a woman have seisin of her daughter.

modified the form and the content as well as the language of what was actually said in court. The very occasional instance where the recorded version of the litigant’s words is given in the first person is a reminder that the plea rolls give a transformed and translated version of court proceedings. Only later, from the latter part of the thirteenth century, would we be able to compare plea rolls with law reports. The present paper remains a study of words and ideas in plea rolls and law books, rather than directly of words and ideas in court and other aspects of legal practice.

It seems likely that seisin terminology started with an active verb, meaning ‘to seise’, to put in possession. By 1086, Domesday Book used the verb in the active or passive for this act, or for seizing of land in the modern sense; it also used the nouns sesina and saisitis. During the first half of the twelfth century if not before, the noun came also to signify enjoyment of a tenement. Thereafter, the word continued to have multiple meanings. Occasionally Glanvill uses the verb saisire, rather than his usual capere (to take), to indicate the seizing of land into the king’s hand, and such usage is frequent in the plea rolls. The verb was also used to mean ‘to seise’, and the noun saisina likewise is used to refer to the act or ceremony of putting into seisin. A single short passage might use saisina in the sense of both ceremony and state. It is on use of

9 See below, p. 87.
11 The plea roll record may also have been affected, for example, by the habitual practices or the one-off choices of individual scribes.
13 See esp. Regesta Regum Anglo-Normannorum, 1066-1154; II, Regesta Henrici Primi 1100-1135, ed. C. Johnson and H. A. Cronne (Oxford, 1956), no. 1653 (c. 1130); see also no. 1938, although this does not survive as an original. Note further Domesday Book, II, fo. 299v, where the reference to the earl of Chester’s own seisin could refer to the process of being seised, but might refer to the state of being in seisin.
14 Glanvill, iv, 5, 9, ed. Hall, 46, 49, concerning adwons, uses saisire for seizing into the king’s hand; more commonly the author used capere. E.g. CRR, I, 374, 388, 389, for use of saisire with respect to land being taken into the hands of the king or another lord.
15 See e.g. CRR, I, 248.
16 See e.g. CRR, VI, 243. That the king could be described as seised or having or recovering seisin indicates that grant from a lord was no longer seen as an essential aspect of seisin; see e.g. Glanvill, iv, 5, ed. Hall, 46; CRR, I, 259; Pleas before the King or His Justices,
the noun in that second sense that I concentrate hereafter. I look primarily at Glanvill and the early plea rolls. Bracton too will be examined, but care taken not to project his picture back before 1215, whether by filling silences or colouring interpretation of earlier sources.

The investigation is thus of usage in the early common law sources, but it also has significance for how historians should use words and employ concepts. Not only did these change over time, but there was variety and flexibility at any one time. Such may warn against conflating different uses in search of a single definition and against assuming too great precision and rigidity even in technical terminology.17

***

‘What a curious materialism it implies!’, wrote Maitland.18 How far was seisin associated with a particular person or tenement, what might be described as ‘materialism’? Early in his treatise Glanvill distinguished between pleas concerning property and pleas concerning possession. Yet when he reached the transition from one category to the other, at the start of his Book XIII, the distinction he made was not between property and possession but between pleas concerning ‘right’ (placita de recto) and those only over ‘seisins’ (super saisins solummodo).19 The use of ‘seisins’ in the plural might suggest a certain materiality in the notion. Plea rolls frequently use possessive pronouns in relation to seisin, for example concerning the recovery of his or her seisin.20 Whilst the employment of the possessive of course does not indicate that seisin was material in the same way as a cow or a piece of land, it can be taken to support Maitland’s suggestion of ‘a curious materialism’. At the same time it should be noted that usage showed some inconsistency. An account of a single case might refer to someone recovering ‘his seisin’ and recovering ‘seisin’ or – given the absence of the definite article in Latin – ‘the seisin’, with no possessive.21

If seisin was often associated with a particular person, in such instances whose seisin was being sought in litigation? Bracton would use as a structuring device the distinction between ‘seisin prorpa’ – one’s own seisin, and ‘seisina aliena’ – another’s seisin; the former was sought in novel disseisin, the latter in mort d’ancestor where the claimant sought ‘eadem seisin [the same seisin]’ as the decedent had enjoyed.22 According to Glanvill, the demandant in an action of right stated that he claimed the land ‘as my right and inheritance, of which my father . . . was seised in his demesne as of fee in the time of King Henry I’.23 Plea rolls refer to the right of the claimant and the seisin of the ancestor from whom descent of land was claimed.24 An action of right might be lost for not naming anyone from whose seisin the litigant sought the land.25 It was also the ancestor’s seisin that was being sought in mort d’ancestor, but here Glanvill’s usage shows some ambiguity. He stated that the assize was not to proceed between litigants who were of age if the tenant admitted that the ancestor ‘whose seisin is sought’ was seised of the tenement in his demesne as of his fee on the day he died; such was an admission of the demandant’s case and rendered further process unnecessary.26 However, he also may have used the word seisin in a fashion less associated with a specific person. To a minor’s exception that he was under age and that his ancestor was seised of the tenement on the day he died, a demandant might respond (replicetur) that the minor’s ancestor died seised of the tenement ‘whence seisin is sought through the recognition’ yet not as of fee but as of wardship. Here ‘seisin’ is associated with the tenement rather than the person.27

Plea roll references to the restoration of seisin at the end of cases are suggestive both of some pattern and of inconsistency. Often, yet not

---

17 It is also possible, for example, that to conflate early usage about land and about advowsons could be to expect excessive consistency; the drive for consistency was rather a product of practice and of the intellectual aspirations of the royal justices. On advowson and seisin, see Maitland, ‘Mystery’, esp. 380–1; J. C. Tate, ‘Ownership and Possession in the Early Common Law’, American Journal of Legal History, 48 (2006), 280–313, esp. 305–13.
18 Maitland, ‘Mystery’, 379; note also below, p. 86, on taking of esplees.
19 Glanvill, xiii, 1, ed. Hall, 148.
20 E.g. CRR, VI, 133, 322.
21 See e.g. CRR, VI, 76–7, VII, 129.
23 Glanvill, ii, 3, ed. Hall, 23.
24 E.g. Rotuli Curiae Regis, ed. F. Palgrave, 2 vols. (London, 1835) (hereafter RCR), I, 49–50; CRR, V, 138. A scribe with apparently poor Latin reveals by his use of the verb habere as an auxiliary that this would have been the form in the vernacular: ‘que ei habet descendere de saisina Rogeri avi sui’; CRR, II, 90. Not all entries use a phrase such as ‘his right and his father’s seisin’; see e.g. CRR, II, 93.
26 Glanvill, xiii, 11, ed. Hall, 154.
always, novel disseisin cases won by the plaintiff end with 'his seisin' being restored. Use of the possessive is perhaps less common in mort d'ancestor cases, possibly because it was the decedent's seisin that was being sought. In judgments it is often simply said that the successful claimant receives 'seisin'. On other occasions he receives 'seisin thereof', associating seisin with the tenement. Yet not infrequently he is said to receive 'his seisin', which cannot mean the seisin he previously enjoyed – as in novel disseisin – but rather the seisin that he should enjoy, that rightly belonged to him. 'Seisin' thus could be used in four ways: associated with someone who actually possessed it; associated with a tenement; associated with the person who rightly should possess it; or without any such explicit association, including as a more standing abstraction.

This last usage becomes more apparent when we move on to our next issue and ask, how did seisin relate to right? Glanvill, as we have seen, equated pleas over property and over possession with pleas concerning right and those 'only over seisins'; the use of 'only' reveals that proprietary pleas involved both right and seisin. In a case on an advowson we hear of the parties placing themselves on a jury of twelve lawful men 'both about seisin and about right [tam de saesina quam de recto]'. Particulars of the case and the assises of novel disseisin and darrein presentment, the possibility became established of 'dual process', of an action of right following a judgment as to seisin. Such a distinction is also apparent in Glanvill's statement that if the tenant summoned by a writ praecipe has defaulted, 'seisin will be adjudged to his opponent, thus that henceforth he will not be heard except over property through writ of right [nisi super proprietate per breve de recto]'.

The sharpening of the distinction between seisin and right, and the related development of dual process, must owe much to the increased influence of learning in Roman and canon law, as well as to proceedings in litigation involving churches and their lands. However, seisin and right did not have the Romano-canonical distinction between possession and property simply imposed upon them; rather, the learned laws contributed to development of existing ideas. As Maitland indicated, one can indeed find the sharp Roman division within Bracton, although it must be noted that the quotation deriving from the Digest, 'possession has nothing in common with ownership', comes in an addition to the earliest text. However, Bracton's discussion treats possession or seisin with increasing elements of right.

So seisin could be seen as involving an element of right, of good title, but was such an element a necessity? It appears that the word seisin could be used where the person had obtained it without justification; however, the explanatory phraseology may indicate that seisin normally should, and would be considered to, involve an element of good claim. Bracton would refer to 'unjust seisin'. Plea state that a party 'had not other seisin [alius saesinam] of the aforesaid lands ... except through the aforesaid intrusion'. Other entries in similar circumstances use the phrase 'any/some seisin [aliqua saesina]' as well as 'no seisin'. In 1203, Eustace the clerk sought that Alexander the chaplain take his homage concerning specified land:

Alexander came and said that Eustace ought not [i.e. was not entitled] to hold from him; but he [Eustace] had intruded himself into that fee, and he ought not [i.e. was not obliged] to take his homage concerning this. Eustace said he was seized thereof, and placed himself on a jury [super

---

28 See e.g. CRR, I. 271, 286, III. 130, 132; cf. no possessive in the judgment in CRR, I. 184 (habet in seisinam), 185 (habet seinam). 29 E.g. CRR, IV. 206; Three Rolls of the King's Court in the Reign of Richard the First, A.D. 1194–1195, ed. F. W. Maitland (14 Pipe Roll Society) (London, 1891), 39; Earliest Lincolnshire Assize Rolls, ed. Stenton, no. 43. 30 E.g. Three Rolls, ed. Maitland, 68; Earliest Lincolnshire Assize Rolls, ed. Stenton, no. 143. 31 E.g. CRR, IV. 66, V. 88, 191, 193. Note also the reference in a darrein presentment case to the claimant having 'his seisin', as his father last presented: CRR, VI. 102. 32 Glanvill, i. 3, xiii. 1, ed. Hall, 4, 148, also cited above, p. 82. 33 CRR, III. 216. 34 Glanvill, i. 7, ed. Hall. 6. On advowsons and dual process, see Tate, 'Ownership and Possession', esp. 309.
concerning right, including a rare instance recorded in the first person. Occasional instances where esplees are not stated may suggest some variation in procedure or perhaps more probably some variation in record.

If mention of esplees was a requirement only in making a claim concerning right, was this because taking of esplees was a required feature only of such seisin as was needed to establish right, or was it rather a procedural requirement only of actions concerning right? And if the latter, were esplees being mentioned as evidence of seisin? A case of 1200 has a party offer to prove his claim through his free man, 'who offers to prove this against [the opposing party] as of his own sight, just as the court will decide, and that he saw Reginald himself take esplees from that church to the value of 20s. and more'. This may support a procedural interpretation, but the required inclusion in claims could still emphasise that taking esplees was essential to the seisin needed for establishing right.

Let us turn to possessory actions. Interfering with economic enjoyment might constitute disseisin. For example, ploughing another's common pasture produced a verdict of disseisin, changing a lock might produce a claim of disseisin. But does the plea roll evidence suggest that economic enjoyment was viewed as essential to notions of seisin in possessory litigation? Taking of esplees was not mentioned routinely in the making of the claim or complaint, as it was in the claim in actions concerning right. What of other evidence relating to economic enjoyment? In a novel disseisin case, the jurors' verdict rested on the fact that the complainant's father had died seised and that the complainant 'remained in seisin of that land as the heir taking esplees'. Novel disseisin might protect even seisin for a matter of few days, certainly if properly established and backed by the taking of

---

46 CRR, VI. 290. Note also the dower case from 1194 in RCR, I. 20–2.
47 E.g. CRR, I. 211, 290, VI. 335, VII. 109; PKJ, II. 110, no. 656.
48 CRR, I. 290.
49 Earliest Northamptonshire Assize Rolls, ed. and trans. D. M. Stenton (5 Northamptonshire Record Society, 1930), no. 815. The complainant in PKJ, II. 110, no. 870, seems to argue that his opponent's changing of a lock on a mill door amounted to disseisin. See further CRR, III. 332, an interesting attaint case, again involving the breaking of a lock. Earliest Lincolnshire Assize Rolls, ed. Stenton, no. 477, suggests that if ploughing and sowing by the alleged disseisor were 'for the use [ad opus]' of the complainant, the complaint of disseisin would have been rejected. Note also e.g. CRR, VII. 97; PKJ, II. 110, no. 481, Earliest Lincolnshire Assize Rolls, ed. Stenton, no. 1312.
50 CRR, V. 265.
rents and homage. On the other hand, a former ward who, when he came of age, went to a mill and placed a lock on the receptacle for flour (archa), but had not taken esplees, lost his claim to have been disseised of the mill by the other party who came and broke the lock; he lost presumably because his action was not taken to constitute seiisin. In all such cases, it is hard to decide whether the taking of esplees was seen as solely evidence of seiisin, as an essential part of seiisin, or as rendering seiisin stronger. A final case shows a decision based on the jurors' view that a minimal or unjustified seiisin did not receive protection from the assize. The jurors said that the complainant 'was never disseised since he had no seiisin except that he took away corn by night'.

It thus treats the form of economic exploitation as more than just evidence to help answer, in yes/no fashion, whether the complainant was seized.

Similar issues could arise in mort d'ancestor. Just after the period covered by this chapter, in 1227, jurors said that the decedent, in the illness (languor) of which he died, about eight days before his death, made a charter to his sister, who was — along with her husband — the tenant in the action. The dying man gave the contested message to her, 'but she took no esplees therefrom in [the decedent's] life except only that she took homage. And since that gift was made in languor and she took no esplees therefrom in [the decedent's] life, it was decided that the claimant [the decedent's son] recover his seiisin and [the woman's husband] was in mercy.' Here not taking esplees was viewed as indicating that the woman did not have such seiisin as would defeat the heir's claim by mort d'ancestor, although the argument is supplemented by another concerning deathbed gifts.

Such a reading, involving interpretation of enjoyment of esplees as an element of defensible seiisin, is compatible with a statement in Glanvill. He states in relation to gifts to a younger son: 'thus that son receives seiisin thereof and takes the profits and esplees in his lifetime as long he lives, and dies in such seiisin [in tali seiisin]. The phrase 'such seiisin' may be taken to mean seiisin sufficient that it involves the taking of esplees.

That enjoyment of esplees related in part to the degree of seiisin is supported by Bracton, who here may be revealing for our earlier period:

... as it is in a proprietary action, for in order to have the property it does not suffice to be in seiisin as of a free tenement unless he uses it effectively, thus that he takes the esplees, so that he thus has his twofold right, that is dret dret. For there is right of possession and right of property.

In contrast the absence of need to mention esplees in mort d'ancestor makes it apparent that a possessory right may stand without use and esplees, though if they have been taken they may be of value and are not injurious, since they furnish vestments for the possession and make explicit the possessory right. Thus for Bracton taking of esplees was not essential to all seiisin, but could both reinforce and provide evidence of it.

Overall, it may be best not to be too precise in defining the significance of the taking of esplees in our period. Such taking may have been seen both as evidence of, and as an element strengthening, seiisin of the sort that should be protected by assize. Separation into an evidential or procedural aspect and a more substantive one may indeed be to impose a division that was not firmly made.

So far my arguments have suggested variety, flexibility, and perhaps a limit to precision in some usage. However, there were efforts at increasing precision. According to Bracton, a person could be 'in seiisin and seized', or 'in seiisin' and not 'seized'. Those who were in seiisin and not seized, or in possession but not possessing, included farmers and others in seiisin in the name of their lord or another, as well as intruders and disseisors who had had long tenure. For such, 'to be in seiisin is something far other than being seized, just as to possess is something far other than being in possession.' It was necessary to discover who was seized in

51 See CRR, VII. 215.
52 CRR, VII. 79. Cf. CRR, IV. 66, another, quite complicated, novel disseisin case: one of the alleged disseisors stated that when he was in seiisin of the land, the plaintiff came with his force (probably a band of men) and ploughed three seiisors of that land and 'that he never had other seiisin [aliam seiisinam]'.
53 Three Rolls, ed. Maitland, 131; the mention of night may be circumstantial, or may indicate how far from normal economic enjoyment this was. Note also CRR, VI. 81.
54 Bracton's Note Book, ed. F. W. Maitland, 3 vols. (London, 1887), III. no. 1018 (from Pattenhall's Norfolk eyre, 1227). A marginal note states: 'Nota quod non uilet donatio facta in languore unde moritur licet per octo dies, et quia non capit expleta.'
55 Glanvill, vii. 1, ed. Hall, 72.
57 Bracton, ed. Thorne, III. 325; see also III. 125, including the statement that 'Nor is use or the taking of esplees of great importance in acquiring seiisin as of a free tenement, because they add nothing to the seiisin or the tenement except, so to speak, a certain vestment, as where they strengthen the seiisin and make it clear.' Note further Bracton, ed. Thorne, II. 125, 138, III. 277, IV. 240-1; cf. the points about use made at II. 149-50, 160.
58 See Bracton, ed. Thorne, III. 26, 33, 124-5 (quotation at 124), 133. See also Maitland, 'Seisin of Chattels', 347-50; Jouvien des Longrais, Conception, 194-201. Note also the
order to determine who might recover the tenement through novel disseisin. Yet Bracton's discussion loses the clear distinction and becomes tangled: of those whom he had described as 'in seisin but not seised' he continues with a passage stating that 'though in a way they are seised, with respect to [quoad] the use and with respect to fruits, they are not seised with respect to a free tenement'.

Another paper might investigate whether mid thirteenth-century plea rolls show any sign of the distinction between 'in seisin and seised' and merely 'in seisin'. However, Bracton's argument may derive its form from the statement in the Digest that 'it is one thing to possess, another far to be in possession'. Certainly sources from our period do not seem to have made the distinction. Parties might rather be described as being seised only by intrusion, or as 'seised, but unjustly'. Nor was the distinction apparently used for creditors, who must often have been seised as of gage. And it is such formulations that are of particular significance in the plea rolls. Various such phrases appear, for instance 'seised of the guardianship' of a gaol. However, our main interests here are 'seised as of gage', 'seised as of wardship' in a minority, and 'seised as of a free tenement' or 'as of fee'.

The 1202 Lincolnshire Assize Roll contains a revealing dower case, between a claimant named Matilda and a tenant named Adam. Adam said that he never held one of the disputed bovates 'because his father, a long time before his death, gaged that land to a certain [blank] who always afterwards held it and still holds it in gage'. The decision was that Adam should give Matilda either dower of that fourth bovate or exchange to value, 'because, although that land was gaged, however he was seised, distinction being made in ecclesiastical courts later in the thirteenth century: e.g. Select Cases from the Ecclesiastical Courts of the Province of Canterbury c. 1200–1301, ed. N. Adams and C. Donahue (95 Selden Society) (London, 1981), C.18 (at 310).

Bracton, ed. Thorne, III. 124 (my italics); the subsequent discussion raises the possibility that some might be in seisin, although not seised, for sufficient long and peaceful time to amount to title (see also III. 33). See also below, p. 94, on the search for linguistic and legal precision.


Note e.g. Glanvill, v. 3, vi. 4, vii. 16, ed. Hall, 55, 60, 88. See also above, p. 87, for CRR, v. 265.

See CRR, I. 117 (for which note also CRR, I. 119–20); above, p. 86.

Glanvill, xiii. 26, 28–9, ed. Hall, 164–6, uses 'seised as of gage', not 'in seisin'.

CRR, I. 117.

Note also Bracton, ed. Thorne, II. 121, 'possession or seisin is of many kinds [possezione se itself seina multiplex est]', although this does not just refer to classifications such as 'as of fee'.

Earliest Lincolnshire Assize Rolls, ed. Stenton, no. 426.

since gage does not take away [rollit] seisin'. Here the implication may be that the gagee was not seised. Alternatively, the gagee was seised as of gage whilst the gageor remained seised as of a free tenement, there existing a kind of hierarchy of seisins. This interpretation fits better with Glanvill, who includes a recognition to determine whether a man died 'seised of any [de aliquo] free tenement as of fee or as of gage'. The decedent's seisin as of gage would not bring success in mort d'ancestor against the true heir, that is the man seised of the free tenement as of fee.

Similar issues arise concerning seisin 'as of wardship'. A case might turn on whether a donor was seised as of fee or as of wardship. Or it might be pointed out that a father 'had no seisin thereof, except as of wardship'. Further, if the guardian was seised only as of wardship, was the minor seised? In a 1207 case a party argued that the opponent 'never had seisin of that land, since he was below age'. The same may be the implication of a 1206 mort d'ancestor case, where it is stated of someone 'that he was in the wardship of the earl of Gloucester and under age and had no seisin of his land'. This factual statement that he did not have seisin, however, leaves open the possibility that a minor could have seisin. In particular some may have considered joint seisin a possibility. In another 1206 mort d'ancestor case, the tenant said that the assize should not proceed because the claimant had been seised of the tenement after his father's death. The claimant said that 'he was never seised thereof except together with [simul cum] his mother while he was under age'. It was decided that the assize should continue, indicating that the claimant's argument was rejected, but it is unclear whether this was simply on factual grounds or whether in addition the idea of joint seisin was rejected. An action of right in 1214 may suggest joint seisin by...
entry and to make seisin in the fee of their lord ought to make nothing 'except simple seisin.' The man’s lord justified his action on the grounds that his tenant had died and ‘he wished to seise into his hand, as custom is, the fee that he held from him until [the heir] would do what ought to be done’.

Elsewhere, the phrase ‘simple seisin’ is used in contexts other than inheritance. In 1208 a certain Matthew was summoned to show why he was unwilling to make to Mosse son of Bruno – a Jew – ‘full seisin of his gage.’ Mosse had brought a writ of the justiciar, that Matthew make him have seisin thereof as he had recovered it in the county court. According to Mosse, when Matthew ought to have made him seisin thereof, Matthew sent a servant, ‘who made to him nothing except a certain simple seisin of houses and granges, thus that, when he ought to make the men of the vill come to do fealty to him, he was unwilling’. Here ‘simple’ is contrasted with ‘full seisin’, with the implication that ‘simple seisin’ was incomplete. A similar implication comes in a statement by Jocelin of Brakelond in his Chronicle, in a passage concerning restoration of monks to the church of Coventry: ‘simple seisin was made to one of the monks of Coventry with a book. But corporal institution was delayed for a time . . . ’. Again, then, we have degrees of seisin.

The phrase ‘full seisin’ appeared in royal writs. It also appears in various forms in the pleas rolls: ‘plenaria saisina’, ‘plena saisina’, have seisin ‘plenarie’. In general it is used in a sense similar to that in the case of Matthew and Mosse, although without being contrasted with a lesser form of seisin: the beneficiary was to enjoy seisin of everything due and be able to enjoy it fully. A party might complain that he did not yet have his full seisin as he still lacked the seisin of some service despite judgment of the king’s court. In an action of right, the tenant said he had recovered his seisin through novel disseisin but not yet been paid damages, and he did not wish to answer concerning the land ‘until he would have full

74 CRR, VII. 160. For possible joint seisin, note also Bracton, ed. Thorne, I. 55, 152, III. 246.
75 See e.g. Bracton, ed. Thorne, I. 108; note also Bracton, ed. Thorne, I. 66.
76 See e.g. Bracton, ed. Thorne, IV. 150, on the distinction between disseisin and distress, the latter only involving ‘capio simplem’.
78 Glanvill, vii. 9, ed. Hall, 82; see also ix. 4–6, ed. Hall, 107–11. Glanvill’s discussion of lords’ rights in relation to minors is not primarily formulated in terms of seisin.
79 For a post-1215 example, Rolls of the Justices in Eyre, being the Rolls of Plea and Assises for Lincolnshire, 1216–9, and Worcestershire, 1221, ed. D. M. Stenton (53 Selden Society) (London, 1934), no. 256.
80 CRR, VII. 170, 173; tenurial relationships in the dispute are not entirely clear, but this does not obscure the use of the phrase ‘simple seisin’.
81 CRR, V. 169.
82 The Chronicle of Jocelin of Brakelond, ed. and trans. H. E. Butler (London, 1949), 94. For a person being put ‘in corporalem possessionem’ of a church, see e.g. CRR, VII. 39, 72, 157, 200.
83 For an interesting instance, see the letters close of King John to the earl of Salisbury on 19 June 1215, issued as part of the general restoration of lands of which people had been dispossessed by the king ‘unjustly and without judgment’: J. C. Holt, Magna Carta, 3rd edn (Cambridge, 2015), Appx. 11 no. 7.
84 CRR, I. 376; see also e.g. CRR, II. 313.
Seisin of the chattels'. Such use of 'full' for emphasis fits with phrases such as 'plenum rectum', 'full justice', in the writ of right, or 'pleniarum justiciam' in other writs. It also matches uses of 'plena possessio' or 'plenaria possessio' in Romano-canonical instances.

Bracton applies further adjectives to seisin. It talks of seisin as 'natural' and 'civil', 'imaginary' and 'seisin', 'tenuous', 'first'. It also speaks of 'long and peaceful seisin'. In some plea rolls the length of seisin is emphasised, but through phrases such as 'for years and days' or 'for a long time' or for a specified length of time, rather than simply by adjectives. We therefore see Bracton seeking to bring greater precision and conviction to treatment of seisin, but his usage should not be projected back into the earliest stages of the common law.

Other adjectives requiring examination are non-descriptive. An important pair is talis and qualis. Statements using these words abound, for example that a son is to have such (talis) seisin as (qualis) his father had. The phrase could signify seisin of the same type or of the full tenement and enjoyment that the predecessor had. The word qualis appears, for example, in actions of right that turn on the seisin of the ancestor from whom right is traced. Significant usage also appears in Glanvill's discussion of why assizes of mort d'ancestor might in certain circumstances not proceed:

If it is granted that the ancestor whose seisin is sought had such and such a sort of seisin thereof [inde qualem qualem saisinas], but through that tenant or through any of the ancestors of his, as in a grant or a loan [ex

commendatione] or other cause of this sort, thereupon that recognition ceases [remans] and the plea concerning this proceeds in another way.

Such phraseology indicates a hierarchy of forms of seisin, with 'of gage' or 'from a loan' below 'as of a free tenement' or 'as of fee'.

Talis and qualis are also used with reference to a person's own seisin, rather than their ancestor's. In a 1214 dispute with Robert de Percy over a marsh in Yorkshire, the abbot of Fountains 'sought such seisin as he had [petit talem seisinam qualem ipse habitu]'. Robert said that the abbot 'never had such seisin of that marsh as he said he had [talem seisinam de mara illa qualem ipse dicit se habere]', but rather Robert and his ancestors had common in the marsh since the Conquest. The abbot said that Robert ought not to have the grand assize concerning this, since he was not in seisin of any common nor ever was, except that he unjustly entered into that marsh by force. Thus the abbot was seeking that he have seisin 'wholly and fully', of all that he considered belonged to him, which Robert's claim to seisin of common threatened.

One further adjectival phrase is 'other seisin [alia saisina]'. Sometimes this was used when indicating that a party had no seisin, or at least no seisin that merited royal protection. In a 1214 novel disseisin case, the recognitors said that, on the death of a woman's father, she and her husband, the complainants, had come to land that the father had given her as her maritagem, and built a hut and lived there for two or three days 'but on their oath they say that they never saw them have any other seisin; and so they were not dispossessed, since they had no seisin'. Elsewhere it could refer to the type of seisin. In 1201 Robert Rumbald was summoned to show by what warrant he entered into other seisin of one virgate of land ... than he had thereof on the day he went abroad in the service of King Richard and which he had by writ of the king himself.

---

85 CRR, I. 411. See also e.g. CRR, II. 290–1; Glanvill, xiii. 9, ed. Hall, 153; note Bracton, ed. Thorne, II. 121, 124.
86 Glanvill, xii. 4, ed. Hall, 138; e.g. T. A. M. Bishop, Scriptores Regis (Oxford, 1961), nos. 102, 135. Note also Earliest Northamptonshire Assize Rolls, ed. Stanton, no. 846, using the phrases 'in pleno comitatu' and 'in pleniarum seinasiis'.
87 E.g. The Chronicle of Battle Abbey, ed. and trans. E. Searle (Oxford, 1980), 328; note also 330, 'nullam in eo proprii iuris obtinuit possessionem'. See also e.g. Canterbury Cases, ed. Adams and Donahue, A. 2.
88 He also talks of seisin being 'vacua'; e.g. Bracton, ed. Thorne, III. 156, 246, 248.
90 See e.g. Bracton, ed. Thorne, II. 126, III. 247–8; cf. Bracton, ed. Thorne, III. 126, 'in seisina libera et pacifica'. For caution as to what may be meant by 'long', see Maitland, 'Beatitude', 424.
91 Note e.g. CRR, I. 387, 404, II. 157–8, IV. 7, VI. 93.
92 See e.g. CRR, I. 207–8, III. 100, VI. 136, VII. 49.
93 Note e.g. CRR, III. 323.
94 Glanvill, vili. 11, ed. Hall, 155. It is interesting that, in the passage quoted, Glanvill does not more economically say 'if the ancestor was not seised as of fee' or perhaps 'of a free tenement', but rather gives examples; nor does he use the vocabulary of 'in seisin but not seised' that would appear in Bracton (see above, p. 89).
95 Note also e.g. RCR, II. 165; Three Rolls, ed. Maitland; 3; Earliest Northamptonshire Assize Rolls, ed. Stanton, no. 668; PFK, I. no. 3145.
96 CRR, VII. 258.
97 In other instances too we see talis and qualis being used in this way, by parties seeking full seisin, although without necessarily using words such as plenaria saisina or integre et plenarie; e.g. RCR, II. 143–4; CRR, VII. 216; note also CRR, IV. 62, V. 142.
98 For another use of alia saisina, and also aliqua saisina, as well as 'no seisin' and 'unjust seisin', see above, p. 85.
99 CRR, VII. 177.
and how he brought that land to his demesne by occasion of that writ, as
on the aforesaid day of his crossing he held only in service, as is said.100

Here, then, 'other seisin' is seisin in demesne when seisin should only
have been of service. Again, therefore, we have an indication of
a hierarchy or hierarchies of seisins.

Such refinements of definition of seisin were to bring clarity when
questions arose about what a person could do with a tenement and what
protection they were to enjoy. These were determined by the type of
seisin, including whether it was just or not. Thus, to give a free tenement,
the tenant must be seised of that free tenement.101 A party might argue
that their opponent could not make a gift because they never had seisin or
they never had seisin after a specified and crucial point.102 The point
arose particularly often in dower cases, where, as Glanvill points out, the
groom had to be seised in demesne of the tenement in order to endow his
wife with it at the church door at the time of the marriage.103 It might be
argued in court that the man could not endow the woman because he was
not seised of the land concerned,104 or was not seised thus that he could
endow her thereof.105 It might also be more specifically argued that the
husband 'never had such seisin through which he could give dower
thereof', with the issue being whether the husband had seisin of service
of the land as lord of the fee, presumably in contrast to being seised of the
land in demesne.106

Likewise for protection through certain actions in the king's court,
either the person making a claim, or an ancestor through whom they
were making the claim, had to have been in seisin as of a free tenement.
In 1200 Theobald and his wife Hildith brought novel seisin against
Juetta of Acle and Eustace of Dunewell.107 Juetta had the land as her dower
until Theobald came with his force and ejected her. Theobald said that he
was acting 'through judgment [per considerationem]' of his court because

100 CRR, II. 84; see the accompanying note for a problem with the text.

101 Note the statement in Bracton, ed. Thorne, II. 53, that 'one who has no seisin at all or of
any kind [qui omnino seisinam non habuerit vel qualem qualitem], though he has
dominion and receives service, cannot make a gift'. Note also Bracton, ed. Thorne, II. 51.

102 See e.g. CRR, VII. 233.

103 Glanvill, vi. 1, 8, ed. Hall, 59, 62. If the groom did not specify the dower, the
woman would have one third of the free tenement of which he was seised in demesne at the
time of marriage.

104 E.g. CRR, VII. 234, 351.

105 E.g. CRR, VII. 304.

106 Three Rolls, ed. Maitland, II.

107 CRR, I. 320–1.

Juetta defaulted on service. His argument was rejected, on the grounds
that he was not seised thereof as of his free tenement, since that tenement
was Juetta's.

A disseisee, provided they acted without undue delay, could take
back the tenement from the disseisor; the latter did thus have a free
tenement protected by novel disseisin. According to Bracton,
the disseisor would have protection against others, but the evidence
cannot establish the situation in the period covered by this
chapter.108 A donee who had benefited from a gift that would not
stand challenge by writ of right might, however, be considered to
have seisin that would be protected against disseisin by their lord
acting without such a writ.109 There was a hierarchy in unjust, as well
as just, seisins.

We have thus seen that the word seisin, and the associated verb, could
be used in a variety of ways. Even in technical usage there may have
been some flexibility, inconsistency, a penumbra of vagueness.110 Very
occasionally seisin vocabulary was used regarding chattels. The rarity
suggests an awareness that such usage was considered not quite right yet
not impossible. Glanvill, in its most Roman-influenced section, Book X
on debt, uses saisina as well as possessio regarding chattels. Later in
the work, the discussion of mort d'ancestor states that the successful
demandant will recover 'seisin also of all the chattels and all the goods
[reorum] that are found in the fee at the time of making seisin'.111 Plea
rolls, too, occasionally refer to seisin of chattels, including stolen
ones.112

Yet alongside continuing flexibility, inconsistency, vagueness, the
demands of law in practice, be it in conveyancing or in litigation,
and the intellectual atmosphere of the circle of the royal justices might have
stimulated a desire for a more technical and a more exact legal language:
with concepts already in existence demanding further refinement and
distinctions greater sharpness.113 Efforts were made to increase precision

108 See e.g. CRR, III. 67; D. W. Sutherland, The Assize of Novel Deseisain (Oxford, 1973),


110 See e.g. above, p. 90, on the gagee.

111 Glanvill, xiii. 9, ed. Hall, 153.

112 See e.g. CRR, II. 231, VI. 215, PKJ, II, no. 741 (seisitas de roberia illa). Note also Bracton,
ed. Thorne, II. 425–6, 427.

113 See also J. G. H. Hudson, 'From the Leges to Glanvill: Legal Expertise and Legal
Reasoning', in S. Jurasein et al. (eds.), English Law before Magna Carta (Leiden, 2010),
221–49.
of use of seisin, for example through the addition of adjectives. We have
noted both hierarchies of different seisins, and elements that could
strengthen seisin.

We have also seen how Bracton took attempts at definition and
technicality considerably further than anything apparent in our period.
In particular there is vocabulary influenced by Roman law, for example
‘civil seisin’, and references to ‘quasi-seisin’, sometimes paired with
quasi-possession. Such vocabulary may indicate the degree to which
Bracton was a product of the medieval schools. Along with the closely-
related Roman influence, this origin would help to explain some of the
ways in which Bracton’s treatment of seisin diverges from a pattern
apparent both in Glanvill and in lawbooks after Bracton, for example
Britton. As in the case of Bracton’s distinction between being ‘seised’
and being ‘in seisin’, we see a search for linguistic and legal precision
becoming a self-perpetuating, if not necessarily a self-defeating, one.
Refinement was sought through particular vocabulary but faced the
problem of the continuing use of common words with long histories
and multiple nuances, and in court these words might have a power and
a durability that the scholarly linguistic refinements lacked.

Further lines of exploration are possible. One might look at other
words that take on a technical meaning in common law, such as ‘felony’.
This word appears with reference to serious offences in the 1176 Assizes
of Northampton. At one point that text refers to those ‘seized concerning
murder of theft or robbery or forgery . . . or concerning any other felony
that he has done’. At another point it speaks of accusation ‘concerning
murder or other base [turpi] felony’, in contrast to the other offences.
Here use of the adjective to distinguish murder or other atrocities makes
felony sound less like a precise technical term. Comparing the develop-
ment in usage of various legal terms could invigorate analysis: the
relationship of the category ‘felony’ to criminal procedure developments
might be compared with the effect of the assize of novel disseisin on
thinking about seisin. The result would be deepened understanding of
the thought-world of the early common law, and a reinforced sensitivity
among legal historians to the employment in their writings not only of
modern legal terminology but also that of the period being studied.

114 For natural and civil, see above, p. 94. Note also the phrase ‘animo et corpore’: e.g.
Bracton, ed. Thorne, III. 270.
115 See e.g. Bracton, ed. Thorne, III. 33, IV. 318–19. The phrase was already familiar in learned
law circles in England in our period; see e.g. F. de Zulueta and P. Stein, The Teaching of
Roman Law in England around 1200 (8 Selden Society, Supplementary Series) (London,
1990), 132.
116 See also e.g. Maitland, ‘Beatitude’, 432, 435, 444. Note also Pollock and Maitland, I. 208,
on peculiarities of language in plea rolls of cases heard by Henry de Bracton as a justice.
117 See above, p. 89; also p. 94 on Bracton’s use of adjectives referring to seisin.
118 Assizes of Northampton, cc. 1 and 2, Stubbs, Select Charters, 179.