5

Reading Terminology in the Sources for the Early Common Law: Seisin, Simple and Not So Simple

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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'.[1] 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.'[2] His discussion rests to a considerable degree on his reading of the thirteenth-century law-book *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.[3] Published three decades after Maitland's *History*, Joüon 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.[4] This he saw as the old notion of seisin, which continued in England after the influence of Roman and canon law brought

[1] F. W. Maitland, 'The Beatitude of Seisin', in H. A. L. Fisher (ed.), *Collected Papers of Frederic William Maitland*, 3 vols. (Cambridge, 1911), I. 407–57, at 410. I would like to thank Paul Brand, Will Eves, George Garnett, Kimberley-Joy Knight and Bill Miller for their comments on earlier drafts of this paper.

[2] Sir Frederick Pollock and F. W. Maitland, *The History of English Law before the Time of Edward I*, 2nd edn, 2 vols. (reissued with a new introduction by S. F. C. Milsom, Cambridge, 1968), II. 29, 33, 34.

[3] See also Maitland, 'Beatitude'; Maitland, 'The Mystery of Seisin', in Maitland, *Collected Papers*, I. 358–84.

[4] F. Joüon des Longrais, *La Conception Anglaise de la Saisine du XIIe au XIVe Siècle* (Paris, 1925).

a sharper division between possession and property in France.[5] 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'.[6] This basic structure of feudal tenure left its mark even after Angevin reforms had diminished the importance of the seignorial dimension of landholding.[7]

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.[8] 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. Joüon des Longrais, *Conception*, 73.

[6] S. F. C. Milsom, *The Legal Framework of English Feudalism* (Cambridge, 1976), quotation at 40.

[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 all 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 Consuetudinibus Regni Anglie qui Glanvilla 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.[9] Only later, from the latter part of the thirteenth century, would we be able to compare plea rolls with law reports.[10] 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.[11]

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 *saisitio*.[12] During the first half of the twelfth century if not before, the noun came also to signify enjoyment of a tenement.[13] 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.[14] 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.[15] A single short passage might use *saisina* in the sense of both ceremony and state.[16] It is on use of

[9] See below, p. 87.

[10] See P. A. Brand, *The Earliest English Law Reports*, 4 vols. (111, 112, 122, 123 Selden Society) (London, 1996–2007).

[11] The plea roll record may also have been affected, for example, by the habitual practices or the one-off choices of individual scribes.

[12] Domesday Book, I. fos. 32r, 132v, 336r, II. fos. 299v, 377r. See also *Regesta Regum Anglo-Normannorum: The Acta of William I (1066–1087)*, ed. D. Bates (Oxford, 1998), nos. 289, 334. For this paragraph, see also J. G. H. Hudson, *Oxford History of the Laws of England*, II, *871–1215* (Oxford, 2012), 337; G. S. Garnett, *Conquered England* (Oxford, 2007), 64–66, and also 69–70 on ceremonies; E. Z. Tabuteau, *Transfers of Property in Eleventh-Century Norman Law* (Chapel Hill, NC, 1988), 121, 127–8, 134, 184.

[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 advowsons, 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 hand 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]

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'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 saisinis 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]

1189–1212, ed. D. M. Stenton (67, 68, 83, 84 Selden Society) (London, 1952–67) (hereafter *PKJ*), I, no. 3135.

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 advowsons 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.

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 'seisina propria' – 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 seisina [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

22 'Henry de Bracton', *De Legibus et Consuetudinibus Regni Anglie*, ed. G. E. Woodbine, trans. and rev. S. E. Thorne, 4 vols. (Cambridge, MA, 1968–77), III. 245.

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 decendere 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.

25 *The Earliest Lincolnshire Assize Rolls, A.D. 1202–1209*, ed. D. M. Stenton (22 Lincoln Record Society, 1926), no. 1272.

26 *Glanvill*, xiii. 11, ed. Hall, 154.

27 *Glanvill*, xiii. 13, ed. Hall, 157.

always, novel disseisin cases won by the plaintiff end with 'his seisin' being restored.[28] 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'.[29] On other occasions he receives 'seisin thereof', associating seisin with the tenement.[30] 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.[31] '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.[32] In a case over an advowson we hear of the parties placing themselves on a jury of twelve lawful men 'both about seisin and about right [*tam de saisina quam de recto*]'.[33] Particularly as a result of the development of the assizes 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 breue de recto*]'.[34]

The sharpening of the distinction between seisin and right, and the related development of dual process, must owe much to the increased

[28] See e.g. *CRR*, I. 271, 286, III. 130, 132; cf. no possessive in the judgment in *CRR*, I. 184 (*habeat inde seisinam*), 185 (*habeat seisinam*).

[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.

influence of learning in Roman and canon law, as well as to proceedings in litigation involving churches and their lands.[35] 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.[36] However, *Bracton*'s discussion treats possession or seisin with increasing elements of right.[37]

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'.[38] Plea rolls state that a party 'had not other seisin [*aliam saisinam*] of the aforesaid lands ... except through the aforesaid intrusion'.[39] Other entries in similar circumstances use the phrase 'any/some seisin [*aliqua saisina*]' 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 fief, and he ought not [i.e. was not obliged] to take his homage concerning this. Eustace said he was seised thereof, and placed himself on a jury [*super*

[35] M. G. Cheney, '"*Possessio/Proprietas*" in Ecclesiastical Courts in the Mid-Twelfth Century', in G. S. Garnett and J. G. H. Hudson (eds.), *Law and Government in Medieval England and Normandy: Essays in Honour of Sir James Holt* (Cambridge, 1994), 245–54; on relevant *ius commune* learning in twelfth-century England, see Tate, 'Ownership and Possession', 284–95.

[36] *Bracton*, ed. Thorne, II. 321, footnoting William of Drogheda; D.41.2.12.1. Note Vacarius's textbook for Roman law students, the *Liber Pauperum*, vii. 17; *The Liber Pauperum of Vacarius*, ed. F. de Zulueta (44 Selden Society) (London, 1927), 215. Maitland, 'Mystery', 359. See also e.g. F. W. Maitland, 'The Seisin of Chattels', in Maitland, *Collected Papers*, I. 329–57, at 345: 'In general, [*Bracton*] remains quite faithful to the notion that seisin or possession is pure matter of fact, the detention by body and mind of a corporeal thing.'

[37] *Bracton*, ed. Thorne, II. 122, III. 13. Note the discussion in Joüon des Longrais, *Conception*, 180–1, 188.

[38] *Bracton*, ed. Thorne, III. 27.

[39] *CRR*, II. 213.

visnetum] concerning this. Alexander said he had no seisin except through intrusion.

Eustace sought that it be admitted that Alexander had recognised that Eustace 'has some seisin [*aliquam saisinam habet*]'.[40] In other instances the adjectives 'alia' or 'aliqua' do not appear. A dower case in 1212 uses the phrase 'was never afterwards seised of that land except through intrusion'.[41] In another case a party argues that if a named earlier person ever had seisin of the contested land, 'it was through intrusion'.[42] Thus the plea rolls distinguish not just whether a party was seised or not, but whether justifiably or not.

Was there also a sense that seisin could have an element of degree, that it could be strengthened in certain ways? For example, was economic enjoyment, the taking of esplees (profits or services), necessary to seisin, reinforcing of seisin, or separate from but evidence of seisin? The sources are open to varied interpretation. Reference to seisin did not render mention of esplees redundant.[43] Does this mean that both might need to be mentioned, because they were separate issues? Or was the mentioning of both required in some circumstances, a good strategy in others? And if so, did esplees just provide evidence of seisin, or in some sense reinforce the seisin?[44]

It seems likely that mention of esplees was required in the demandant's claim only in actions concerning right. In *Glanvill* the demandant is made to say that 'he took profits to the value of five shillings at least, in corn and hay and other profits'. It may be that this derived from some jurisdictional custom such as a minimum to allow the case into the king's court.[45] Esplees are mentioned in plea roll accounts of claims in actions

[40] *CRR*, III. 81. See also *CRR*, VI. 82: jurors said that the alleged disseisors did not disseise the plaintiff, 'since they never saw him have any seisin [*aliquam seisinam*] except a certain intrusion [*nisi quandam intrusionem*]'. For 'aliquam seisinam', see also *CRR*, V. 160, VII. 121, 324; *Three Rolls*, ed. Maitland, 123; *Bracton*, ed. Thorne, II. 127, IV. 237.

[41] *CRR*, VI. 215–16.

[42] *CRR*, IV. 136.

[43] See e.g. *CRR*, VI. 271.

[44] Note Joüon des Longrais, *Conception*, esp. 24, 261–4; cf. Maitland, 'Chattels', 346. The notion of seisin of chattels, on which see below, p. 97, could be incongruous with an emphasis on esplees, as many chattels could not produce esplees.

[45] *Glanvill*, ii. 3, ed. Hall, 23. Some eyres, meanwhile, had a maximum amount for cases concerning which they might take grand assizes: Articles of the Eyre, 1194, c. 18, has 100 solidates; *Select Charters and other Illustrations of English Constitutional History from the Earliest Times to the Reign of Edward I*, ed. W. Stubbs, 9th edn (Oxford, 1913), 254. The 1198 eyre doubled the amount, to ten librates; Roger of Howden, *Chronica*, ed. W. Stubbs, 4 vols. (London, 1868–71), IV. 61.

concerning right, including a rare instance recorded in the first person.[46] Occasional instances where esplees are not stated may suggest some variation in procedure or perhaps more probably some variation in record.[47]

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 20*s*. and more'.[48] 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.[49] 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'.[50] 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. 199, 200, VI. 335, VII. 109; *PKJ*, II. no. 656

[48] *CRR*, I. 211.

[49] *Earliest Northamptonshire Assize Rolls*, ed. and trans. D. M. Stenton (5 Northamptonshire Record Society, 1930), no. 815. The complainant in *PKJ*, II. 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. no. 462, *Earliest Lincolnshire Assize Rolls*, ed. Stenton, no. 1312.

[50] *CRR*, V. 265.

rents and homage.[51] 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 seisin.[52] In all such cases, it is hard to decide whether the taking of esplees was seen as solely evidence of seisin, as an essential part of seisin, or as rendering seisin stronger. A final case shows a decision based on the jurors' view that a minimal or unjustified seisin did not receive protection from the assize. The jurors said that the complainant 'was never disseised since he had no seisin except that he took away corn by night'.[53] It thus treats the form of economic exploitation as more than just evidence to help answer, in yes/no fashion, whether the complainant was seised.

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 messuage 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 seisin and [the woman's husband] was in mercy.'[54] Here not taking esplees was viewed as indicating that the woman did not have such seisin 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 seisin, is compatible with a statement in *Glanvill*. He states in relation to gifts to a younger son: 'thus that that son receives seisin thereof and takes the profits and esplees in his lifetime as long he

[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 seisin of the land, the plaintiff came with his force (probably a band of men) and ploughed three selions of that land and 'that he never had other seisin [*aliam saisinam*]'.

[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. 1818 (from Pattishall's Norfolk eyre, 1227). A marginal note states: 'Nota quod non ualet donatio facta in languore unde moritur licet per octo dies, et quia non capit expleta.'

lives, and dies in such seisin [*in tali seisina*]'.[55] The phrase 'such seisin' may be taken to mean seisin sufficient that it involves the taking of esplees.

That enjoyment of esplees related in part to the degree of seisin 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 seisin 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 *dreit dreit*. For there is right of possession and right of property.[56]

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'.[57] Thus for *Bracton* taking of esplees was not essential to all seisin, 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, seisin 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 seisin and seised', or 'in seisin' and not 'seised'. Those who were in seisin and not seised, or in possession but not possessing, included farmers and others in seisin in the name of their lord or another, as well as intruders and disseisors who had had long tenure. For such, 'to be in seisin is something far other than being seised, just as to possess is something far other than being in possession'.[58] It was necessary to discover who was seised in

[55] *Glanvill*, vii. 1, ed. Hall, 72.

[56] *Bracton*, ed. Thorne, III. 125. Note also *Bracton*, ed. Thorne, II. 151–3.

[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 seisin as of a free tenement, because they add nothing to the seisin or the tenement except, so to speak, a certain vestment, as where they strengthen the seisin and make it clearer'. 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; Joüon 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'.[59]

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'.[60] Certainly sources from our period do not seem to have made the distinction.[61] Parties might rather be described as being seised only by intrusion, or as 'seised, but unjustly'.[62] Nor was the distinction apparently used for creditors, who must often have been seised as of gage.[63] 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.[64] 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'.[65]

The 1202 Lincolnshire Assize Roll contains a revealing dower case, between a claimant named Matilda and a tenant named Adam.[66] 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).

[59] *Bracton*, ed. Thorne, III. 124 (my italics); the subsequent discussion raises the possibility that some may 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.

[60] D.41.2.10.1; note *Liber Pauperum*, vii. 17, ed. de Zulueta, 215.

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

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

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

[64] *CRR*, I. 117.

[65] Note also *Bracton*, ed. Thorne, II. 121, 'possession or seisin is of many kinds [*possessio sive seisina multiplex est*]', although this does not just refer to classifications such as 'as of fee'.

[66] *Earliest Lincolnshire Assize Rolls*, ed. Stenton, no. 426.

since gage does not take away [*tollit*] 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.[67]

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.[68] Or it might be pointed out that a father 'had no seisin thereof, except as of wardship'.[69] 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'.[70] 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'.[71] This factual statement that he *did* not have seisin, however, leaves open the possibility that a minor *could* have seisin.[72] 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.[73] An action of right in 1214 may suggest joint seisin by

[67] *Glanvill*, xiii. 26, ed. Hall, 164.

[68] *PKJ*, III. nos. 815, 816.

[69] *PKJ*, II. no. 781. Note also e.g. *CRR*, VI. 57; *Three Rolls*, ed. Maitland, 127; *Roll of the Justices in Eyre at Bedford, 1202*, ed. G. H. Fowler (1 Bedfordshire Historical Record Society, 1913), 133–247, no. 77.

[70] *CRR*, V. 124.

[71] *CRR*, IV. 261.

[72] *CRR*, VI. 241–2 may display some casualness of usage in not distinguishing carefully between seisin as of fee and as of wardship. It is also possible that the situation of minor heirs of tenants-in-chief may, at least in some instances, have differed from that of other minor heirs; note Hudson, *Oxford History*, 807–8.

[73] *CRR*, IV. 292; the record may be so compressed as to render somewhat unclear what was said in court, notably as to whether the mother had wardship.

minor and guardian. The claimant William said that he had been seised 'while he was under age and in the wardship of [his] lord', who during the wardship took esplees to the value of 20*s*. He sought 'such seisin as [the lord] had with him [*talem seisinam qualem ... habuit cum eo*].'[74] The phrase 'talem seisinam qualem' again suggests notions that the degree of seisin could vary. The claimant lost the case, but again the decision does not specifically reject the possibility of joint seisin.

If one method of refining the meaning of seisin was to indicate *of what* a person was seised, another was to attach an adjective to the noun 'seisin'. The first descriptive adjective to be examined is 'simple'. In some legal contexts this adjective might mean unconditional.[75] In others, including with reference to seisin, it means something more like 'limited' or 'incomplete'.[76] 'Simple seisin' could be used with reference to a lord's possession of a tenement when a man died and the heir was already on the land. According to *Bracton*, the lord should have such simple seisin while heirs are in possession 'so that he may be recognised as lord, thus, however, that he take nothing therefrom, nor remove anyone from possession, against the will of those heirs'.[77] *Glanvill* makes a rather similar point, although without using the phrase 'simple seisin'. Heirs of full age could remain (*se tenere*) on their inheritance after the death of their ancestor. Although lords could take their fee with the heir into their hands, 'it ought, however, to be done thus moderately [*moderate*], lest they do any disseisin to the heirs. For if necessary heirs can resist the violence of lords, so long as they are prepared to do relief and other rightful services to them therefrom.'[78]

Early plea rolls use the phrase 'simple seisin' very occasionally.[79] In one complicated case in 1214, it seems that a man justified holding on to a house by arguing that he was of age and that those who came seeking

[74] *CRR*, VII. 160. For possible joint seisin, note also *Bracton*, ed. Thorne, II. 55, 152, III. 246.

[75] See e.g. *Bracton*, ed. Thorne, II. 108; note also *Bracton*, ed. Thorne, II. 66.

[76] See e.g. *Bracton*, ed. Thorne, IV. 150, on the distinction between disseisin and distress, the latter only involving 'captio simplex'.

[77] *Bracton*, ed. Thorne, III. 245; note also *Bracton*, ed. Thorne, III. 156. Cf. *Bracton*, ed. Thorne, II. 207–8. See also Milsom, *Legal Framework*, 11 n. 1, 169. Note P. A. Brand, *Kings, Barons, and Justices: The Making and Enforcement of Legislation in Thirteenth-Century England* (Cambridge, 2002), 55–57.

[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 Pleas and Assizes for Lincolnshire, 1218–9, and Worcestershire, 1221*, ed. D. M. Stenton (53 Selden Society) (London, 1934), no. 256.

entry and to make seisin in the fee of their lord ought to make nothing 'except simple seisin'.[80] 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'.[81] 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 ...'.[82] Again, then, we have degrees of seisin.

The phrase 'full seisin' appeared in royal writs.[83] It also appears in various forms in the plea 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.[84] 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

[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 disseised 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'.[85] Such use of 'full' for emphasis fits with phrases such as 'plenum rectum', 'full justice', in the writ of right, or 'plenariam justiciam' in other writs.[86] It also matches uses of 'plena possessio' or 'plenaria possessio' in Romano-canonical instances.[87]

Bracton applies further adjectives to seisin.[88] It talks of seisin as 'natural' and 'civil', 'imaginary' and 'seisin', 'tenuous', 'first'.[89] It also speaks of 'long and peaceful seisin'.[90] 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.[91] We therefore see *Bracton* seeking to bring greater precision and concision 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.[92] 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.[93] 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 saisinam*], but through that tenant or through any of the ancestors of his, as in gage or from a loan [*ex commendatione*] or other cause of this sort, thereupon that recognition ceases [*remanet*] and the plea concerning this proceeds in another way.[94]

[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. Stenton, no. 846, using the phrases 'in pleno comitatu' and 'in plenariam seisinam'.

[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.

[89] Civil and natural: *Bracton*, ed. Thorne, III. 44, 270. Imaginary and true: *Bracton*, ed. Thorne, II. 164–5. Tenuous: e.g. *Bracton*, ed. Thorne, III. 16, 27, 133–4. First: *Bracton*, ed. Thorne, II. 56, 70, III. 143, 156, 245–6, 248. Also e.g. 'minus sufficiens': *Bracton*, ed. Thorne, III. 270.

[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.

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.[95] 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 habuit*]'.[96] 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.[97]

One further adjectival phrase is 'other seisin [*alia saisina*]'.[98] 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 *maritagium*, 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 disseised, since they had no seisin'.[99] Elsewhere it could refer to the type of seisin. In 1201 Robert Rumbaud

> 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,

[94] *Glanvill*, xiii. 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. Stenton, no. 668; *PKJ*, 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 should 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 disseisin against Jueta of Acle and Eustace of Dunewell.[107] Jueta 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 qualem*], 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, 11.
[107] *CRR*, I. 320–1.

Jueta 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 Jueta's.

A disseisee, provided they acted without undue delay, could take back the tenement from the disseisor; the latter thus did not 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 [*rerum*] 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 Disseisin* (Oxford, 1973), 97–104. Cf. *Bracton*, ed. Thorne, III. 27, 30, 70, 98.
[109] See Hudson, *Oxford History*, 643–4, on Countess Amice's case.
[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 (*seisitus 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. Jurasinski *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',[114] and references to 'quasi-seisin', sometimes paired with quasi-possession.[115] 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*.[116] 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.[117] 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.[118] Here use of the adjective to distinguish murder or other atrocities makes felony sound less like a precise technical term. Comparing the development in usage of various legal terms could invigorate analysis: the relationship of the category 'felony' to criminal procedure developments

[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.

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.