

I. WHERE ARE WE? ANGLO-NORMAN AND ANGEVIN KINGS

1. Last time we jumped ahead 450 years from Aethelberht: c. 600 to 1050, 250 from Alfred, c. 900 to 1050.

	William I — 1066–1087
	William II (Rufus) — 1087–1100 sons of
“Anglo-Norman” kings	Henry I — 1100–1135 William I
	Stephen (Henry I’s nephew) and Matilda (Henry I’s
	daughter) — 1135–1154

(The latter part of Stephen’s reign is frequently referred to as “the anarchy.”)

	Henry II (Henry I’s grandson) — 1154–1189
“Angevin” kings	Richard I (Henry II’s eldest surviving son) — 1189–1199
	John (Henry II’s younger surviving son) — 1199–1216

2. William Rufus and Henry I were the second and third sons of the Conqueror. His first son, Robert Curthose inherited Normandy. (We do not yet have strict primogeniture. Robert, the eldest son, got the inherited duchy; William, the second son, got the conquered kingdom.) William Rufus was cordially detested by the church, and it was churchmen who wrote the histories. He was killed in a hunting accident, which was probably not an accident, in 1100. Henry I was in the hunting party and immediately went to Winchester, seized the treasury and proclaimed himself king. His coronation charter, which we will look at later in the class, was issued three days later at Westminster when Henry had himself crowned king. In 1106 Henry I seized Normandy and imprisoned Robert Curthose, who remained imprisoned until his death in 1134.

3. Stephen, Henry I’s nephew, was his closest male relative when Henry died, but Matilda, his daughter, was his only legitimate surviving child. She was the wife of Geoffrey of Anjou, and she contested Stephen’s succession. For most of the period from 1135 to 1154, Stephen acted as king, but he was not very effective. Upon his death, by prior agreement, Matilda and Geoffrey’s son Henry became King Henry II of England.

4. Upon Henry II’s death, his eldest surviving son, became Richard I of England. Richard spent very little time in England, leading a crusade and fighting in France. When he died, his younger brother John succeeded in preference to Arthur of Brittany who was the son of Geoffrey, a deceased elder brother. Because this happened in the succession to the monarchy (the *casus regis*), representation of a deceased elder brother was not fully recognised in English law until much later.

II. ADMINISTRATIVE HISTORY

1. The history of administration is out of fashion today, why is it important? Do institutions precede substantive law or do they follow it, or can we generalize about this?

2. So what would say if we were asked to compare A-S administration with Norman? We know something about Anglo-Saxon institutions, at least in the later period, that there were courts in shire, hundred and borough that were regarded as royal courts, that the king was involved in dispute-resolution and law enforcement, that he did a pretty good job at collecting money. Central royal administration was pretty primitive even in the late Anglo-Saxon period if we

judge it by the standards of the later Middle Ages, much less the early modern, but there is evidence that the king had a writing department which was more than nominally the ancestor of the chancery of the Anglo-Norman period, and he had a treasury.

3. He did not, however, have an Exchequer, an institution designed to do an annual accounting to collect the revenue owed to the king. Nor, so far as we can tell, did William I or William II, though some have argued that William II did. We first see the Exchequer with any clarity in the time of Henry I.
4. The story begins with Roger le Poer. He was Henry's chancellor in 1101; he became bishop of Lincoln in 1102, a post that he held to his death in 1139; he served as a judge throughout his service with Henry. In 1109 Henry appointed him chief justiciar, a post that he retained until Stephen deprived him of it in 1137. He was thus in royal service for more than thirty-five years, and that's a long time. Members of his family were involved in financial administration in the reign of Henry II in the 2d half of the 12th century. One of them wrote a book called the *Dialogue of the Exchequer*.

III. THE PIPE ROLL OF 31 HENRY I (All of these texts are in the *Mats.*, starting on p. III–45, (<https://amesfoundation.law.harvard.edu/lhsemelh/materials/Mats3E.pdf>) but it may be easier to follow them here. I have sometimes compared Judith Green's more recent translation.)

1. Coinage and units used in the Pipe Roll of 31 Henry I

- a. Pound (*libra*) (£) = 20 shillings = 240 pence (pennies) (*denarii*, abbreviated 'd')
- b. Shilling (*solidus*) (s) = 12 pence
- c. mark (*marca*) (m) = 13 shillings 4 pence (2/3 of a pound = 160 pence)

For an image of the original of what follows, see

https://amesfoundation.law.harvard.edu/ELH/slides/Pipe%20Roll%201130_image%2041.pdf

Warwickshire. Geoffrey de Clinton renders account of 44s. 8d. blanch from the old farm. He has paid it into the treasury. And he is quit.

And the same man renders account of the new farm. In the treasury £100 4s. 4d. by weight. And he owes £32 9s. 4d. blanch.

Green trans. [in a seventeenth-century hand] Warwickshire]

WARWICKSHIRE. Geoffrey de Clinton renders account of 44 s. 8 d. blanch of the old farm. Paid in the treasury. And he is quit.

And the same of the new farm. In the treasury £100 4 s. 4 d. by weight.

And he owes £32 9 s. 4 d. blanch.

Translation is the same in substance, but a bit more literal and the layout is designed to reflect the layout of the manuscript.

What are we to make of this?

1. In the first place, it's clear that although this is the only pipe roll that survives from the reign of Henry I, this was not the only such roll that was made. These entries bespeak a bureaucratic routine, a technical vocabulary. There's lots to write down and a minimum number of words are used because everyone knows what they mean. Unfortunately, we don't know what all of

them mean, though we know what most of them mean, thanks in no small part to the *Dialogue of the Exchequer* (Richard fitz Nigel's treatise).

2. The only coin in common use in this period is the silver penny. All the rest of the units are units of account. There are twelve pennies (pence) in the shilling and twenty shillings in the pound. The English money system was still working like this when I first went to England in the early 1970's, and I can tell you that it's a bear to deal with. The Pipe Roll (and other medieval accounts) also make use of another unit of account, the mark. This is two-thirds of a pound or 13s. 4d. or 160 pence. The clerks of the Exchequer made life a little easier for themselves by doing their divisions on a large checkered table cloth from which the Exchequer gets its name. They also had abacusses, but it's not surprising that they sometimes made mistakes.
3. Coins were regularly clipped in Middle Ages, and it's easy enough to tell that that has happened if we weigh the coin on a balance against the same number of coins that we know are not clipped. They were also, however, adulterated, and that's a lot hard to detect. The Exchequer would take a sample from the bags of coins that accountants brought in and fire the sample. The dross would separate out and the silver and lead sink to the bottom. A further process could determine if the silver and lead combination was right. The value of the bag was then discounted by the percentage of non-metal in the sample and then by the percentage by which the laed exceeded the proportion that it ought to have been. That's what the first two entries mean when they say in the first entry that Geoffrey paid his arrears in blanch and that he owes his next arrears in blanch. Notice, however, that he pays a portion of the current account by weight. The coins are not blanched, giving him a kind of prompt payment discount.
4. But who is Geoffrey and what is he paying for? If you read the Warwickshire entries very carefully you probably figured out that Geoffrey is the sheriff of Warwickshire. Clinton (*Clinton*) is now Glympton in Oxon. Geoffrey's biography appears in ODNB <http://www.oxforddnb.com.ezp-prod1.hul.harvard.edu/view/article/5680?docPos=1>. He was one of HI's 'new men'. The first entry for every county on every pipe roll records the payment of the sheriff's farm. The sheriff promised to pay the king a fixed sum for a large collection of miscellaneous revenues to which the king was entitled from each county, principally revenues from manors and from royal boroughs and from fines and fees in the county court. If the sheriff collected more, he could pocket the difference. If he collected less, he was up the creek. He never pays the full amount the first time around. He needs to hold some back because the king will order him to spend money in the county for one purpose or another.
5. What was the farm of Warwickshire in 1129–30? It would seem to be the sum of what Geoffrey paid in the second entry plus what he owed. That adds up to 199m 4d. That seems unlikely. All of the farms that we know of for sure are in round numbers. Indeed, adding a weight total to a blanch total should not yield a sensible number if we are looking for the true value of the farm. It is, as it were, adding apples to oranges. The clerks of the Exchquer knew this, and they had standard numbers to get from weight to blanch: 1s per pound, 8d per mark, and 1d for every 20d. Applying those numbers to what we have here gives us a somewhat different real value: 127 2/3 pounds or 191 1/2 marks, also not a round number. My guess is that the farm is probably 200 marks, and that someone either made an error in calculation or cut Geoffrey some slack under the table. Judith Green, by a method of calculation that I cannot discern, says that the total is £133, which would be 199.5 marks.

6. How much money is this? It's a lot. Around 1300, a skilled carpenter could support himself and his family for a year for 40s or £2. There was some inflation in the 13th century. Geoffrey's 200 mark farm would probably pay a decent annual wage for a 100 carpenters.

Retuning to the basic translation: And the same Geoffrey renders account of 310m. of silver for an office in the treasury at Winchester. In the treasury 100m. of silver. And he owes 210m. of silver.

7. Geoffrey de Clinton was an operator. This entry shows him buying an office in the treasury for 310 marks. A Weberian bureaucracy this is not. We must assume that Geoffrey expected to make at least 310 marks from holding this office.

Osbert of Arden renders account of £10 for the pleas of William Hubold. In the treasury 40s. And he owes £8.

Green trans. ¶ Osbert of Arden renders account of £10 for a plea of William Hubold. In the treasury 40 s.

And he owes £8.

8. Here we have a difference in the translation: 'plea' vs. 'pleas'. This may make a difference, as we will see in a minute. It was also JG's decision. The Latin reads *plac'*, and so could be either.

And the same sheriff [Geoffrey de Clinton] renders account of 100s. from old pleas and murders. In pardon by the king's writ to the earl of Warwick 100s. And he is quit.

9. In both of these entries someone is rendering account from the profits of judicial business. In the first case, if we follow the traditional translation, it seems that the pleas were held by a man named William Hubold, who we learn from other sources was the lord of Ipsley manor, on the Warwicks./Worcs. border. It is also possible that this was a plea that William brought. In that case the justice is unnamed. (William T. Reedy, Jr. "The Origins of the General Eyre in the Reign of Henry I," *Speculum*, 46 (1966) p. 698, so argues.) (Osbert of Arden according to genealogies on the web was a descendant of an Anglo-Saxon family who managed to become a gentry family in the thirteenth century. Both the Arden and the Hubold families survive to this day.)

In the second case I think (JG does not) that Roger de Beaumont, earl of Warwick from 1123 to 1153, was holding pleas the revenue from which was owed to the king. He was also collecting what were known as murder fines, fines that the community paid when a man was killed and the community could not prove that the man was of English rather than French origin. It was the sheriff's job to collect these revenues from the earl and account for them in the Exchequer, but the king has pardoned the earl, for what reason we do not know, so Geoffrey is quit upon presenting evidence of the pardon. (The other possibility [JG] is that these pleas and fines were in the county court, and the earl got them waived for 'his' people.)

William Fitz-Ralph renders account of 113s. 4d. and one war-horse (*destrier*) that he may have the land of his father. In the treasury 30s. And he owes £4 3s. 4d. and one war-horse.

Robert Fitz-Ralph renders account of £4 for his portion of his father's land. In the treasury 20s. And he owes 60s.

The Green translations read (correctly) Rannulf rather than Ralph, but they are the same name.

10. We can be reasonably confident that both of these entries show heirs paying to the king a relief, a kind of inheritance tax, in order to have livery of their father's lands, which the latter

held of the king. Magna Carta in 1215 (c. 2) fixes the relief for a knight at 100s. William Fitz-Ralph is paying more, but not much more. (How much the total is above 100s. depends on what a war horse is worth. They were expensive, but I haven't found any figures for the early 12th century. Later it would be a minimum of £5, so add another 60s. to the 8.5 marks in cash.) Notice that we don't seem to have a fixed system of primogeniture yet. It certainly looks as if Robert is Ralph's younger brother, and he's getting a portion of his father's land.

Norfolk. Benjamin renders account of £4 5s that he may keep the pleas that belong to the king's crown. In the treasury 56s 8d. And he owes 28s 4d; and [guarantees] to make a profit of 500m for the king. . . .

11. The only entry that I have listed under Norfolk shows us what seems to be the ancestor of the office of coroner, the keeper of the pleas of the crown in a particular county. Again, notice that the king expects to make a handsome profit out of these pleas. In other entries Benjamin also renders account for lastage (?fair dues). He is involved in a money plea, and he has a brother Joseph who is involved with land.

I haven't got time to read through all the entries that I have in the Materials for Yorkshire and Northumberland, and the piece of what became southern Lancashire that lies between the Ribble and Mersey rivers. They make interesting reading and are full of puzzles. Let us focus on some highlights.

Yorkshire and Northumberland. [JG p. 21] Roger de Flamenvilla renders account of 20m silver from pleas of G[eoffrey] de Clinton and his companion at Blyth. . . .

12. We have seen Geoffrey de Clinton before as the sheriff of Warwickshire. Here the king has sent him to Blyth (southeast Northumberland) with another man unnamed to hold pleas.

And the same sheriff [of Yorkshire, Bertrand de Bulemer] renders account of 31m silver from 9 "judicators" (*judicatoribus*, JG translates 'lawmen') of the county from the same pleas. . . .

And the same sheriff renders account of 335m silver, 5s 6d from the lesser judges and jurors of the county (*de minutis judicibus et juratoribus comitatus*, JG translates 'small doomsmen and jurors') from the same pleas. . . .

William fitz Rannulf, sheriff [not of Yorkshire; he may be the sheriff or the former sheriff of Huntingdonshire; JG translates 'William son of Rannulf the *vicomte*', a Norman title], renders account of 20m silver from the same pleas. . . .

William de Albamara [JG, p. 23, 'William d'Aumale', which just puts the Latin into French] renders account of 154m silver from the same pleas from his land of Holderness. . . .

13. Aumale is in Seine-Martime, Normandy. William is not prominent in the roll, but he does have a steward. He is probably to be identified with William le Gros, count of Aumale, for whom see ODNB <http://www.oxforddnb.com.ezp-prod1.hul.harvard.edu/view/article/47237>. William, if we have the right guy, had just succeeded to his father's estates.

Robert Fossard renders account of 10m silver from the same pleas and of 40m silver that he be reseised of his land.

14. What exactly the role of all the folks in the previous entries was is not completely clear. What is clear is that the pleas of Geoffrey de Clinton and his companion at Blyth was a large operation generating a huge amount of revenue for the king. It is certainly possible that they were conducting what a somewhat later age would call a general eyre.

Godreda, daughter of Gospatric son of Aldret, owes 10m silver for right of the land of her father.

...

15. This entry seems to be different. In the other cases the person rendering account seems to be some sort of official or someone paying something that without too much anachronism we might call a fine. (A possible exception is the last phrase in Robert Fossard's entry.) Here Godreda seems to be paying for justice, and it is probably significant that what she is asking for is right. Since we know that there was (and have a few examples of) something called a writ of right in this reign, we are probably safe in assuming that that's what she's paying for. This lady has an Anglo-Saxon name but justice seems to be available to her, for a price.

Walter Espec renders account of 200m silver from pleas of the stag. In the treasury 50m silver. And he owes £100 pounds. . . .

And the same renders account of one gold ring of 5-penny weight from a certain finding. He has paid to the treasury. And he is quit.

Grento of York renders account of 10m silver for a plea of the land of his wife.

16. After an entry that seem to deal with pleas of the forest (called pleas of the stag) and another that deals with a traditional royal prerogative in buried treasure, we return to an entry that seems to deal with what we would call a civil matter and a man paying for justice on behalf of his wife.

Nigel of Doncaster renders account of 20m silver for the forfeiture of his sons who killed a man. In the treasury 5m silver. And he owes 15m silver. . . .

17. We would put this entry more on the criminal side than on the civil.

William fitz Hugh renders account of 10m silver that he may hold in peace the land of Sulinga (unidentified in JG's index). In the treasury £5 [*sic* this would be 7m 6s and change]. And he owes 4m. . . .

Turbert fitz Gamel renders account of 40m silver that the king might make him have seisin of his land from William de Albamara. In the treasury

18. Without a huge amount of confidence, we might suggest that what these entries have in common is that they both deal with the relationship between king's tenants-in-chief and their own tenants. That this is the case is clearer in the case of Turbert fitz Gamel. William, as suggested above, had just succeeded to his father's estates. Turbert is trying to persuade the king to get William to acknowledge the seisin that he had from William's father. It is less clear in the case of William fitz Hugh, because the entry does not say who is disturbing William's peace. It is, however, possible, perhaps even likely, that it is either the lord of whom William claims to hold or another lord who thinks that his man ought to hold the land that William holds.

19. Finally, in one of the entries that concerns a massive set of pleas held one Walter Espec and one Eustace fitz John, we find a group of lesser men buying their way out of their office.

Pleas of W. Espec and Eustace fitz John . . .

The judges and jurors [*judices et juratores*] of Yorkshire owe £100 that they may no longer be judges and jurors. . . .

[Green p. 27] The doomsday and jurors of Yorkshire owe £ 100 not to be doomsday and jurors any longer.

IV. INSTITUTIONS IN THE TIME OF HENRY I

2. Summary of the Pipe Roll of 31 Henry I

a. sheriff's farm	= sheriff
b. profits of justice from <i>justiciarii</i> (eyre and local), <i>judices, minutu homines, juratores</i> ¹	= itinerant justices, local royal courts, ?presenting bodies
c. payment for writs by individuals	= central royal justice

3. Courts in the time of Henry II

a. Anglo-Saxon survivals	= shire, hundred, borough (ancient public)
b. More recent lordly	= palatinate, franchisal, communal in private hands, “feudal” (leet, baron, manorial) (private jurisdiction)
c. Royal justices in the country	= local, <i>tocius Anglie</i> = eyre <– iter –> itinerant justices

1. The tables would suggest that by the end of the reign of Henry II England had a remarkable set of institutions, and these institutions were heavily judicialized.
2. Now I'm not emphasizing courts of law simply because I'm a lawyer—I'm emphasizing courts of law because they are the last step in a complex process of development which will happen again and again in the middle ages and in early modern times as well: regular gatherings of people for governmental purposes become courts of law. In the 13th century the

¹ I have in my notes a very confused list of references to support and qualify this. I haven't time to clean it up, but I include it in the hope that someone might want take one or a couple of the references to use for a paper: *justiciarii* (eyre and local; the word, however, does not appear in the roll), *judices* (itinerant justices, local royal courts), *minuti homines* (it's on p. 24, where it seems to be a subset of *homines de honore de Blida*; it's found again on p. 44 in connection with the pleas held by G. de Clinton with a reference to Richardson & Sayles, and again on p. 56, where it's connected with defaults of the hundreds, and again on p. 76, where we are dealing with pleas of Ralph Basset, and on p. 82, pleas of G. de Clinton, 92 Basset again, p. 112, pleas of Eustace fitz John, p. 118, once more default of the hundreds), *juratores* (?presenting bodies) . . . [not completed]

JG has doomsday on pp. 22 (small) [*minutis Judicibus et Juratoribus comitatus*], 27 [*Judices et Juratores*], w/ x-ref to lawmen; jurors on 22 (small) [*minutis Judicibus et Juratoribus comitatus*], 51 [*sum de placitis G. de Clint' de Juratoribus Comitatus (Kent)*], 54 [*sum de placitis G. de Clint' de Juratoribus Comitatus (Sussex)*], 82 [*sum de placitis Gaufridi de Clint' de Juratoribus et minutis hominibus de Comitatus (Beds.)*], lawmen, [22, *Judicator*], 77 (*sum de Judicibus Comitatus et Hundredorum* (Suffolk) of the county and hundreds), 80 [*sum de placitis G. de Clint. de Judicibus burgi de Bucingham* (Buckingham, Bucks.)]; she lists in the index as possible justices: Anfrid the collector; Elias, Roger son of; Gloucester, W[alter] of; Hubold, William, and describes all the men like Geoffrey de Clinton who were clearly conducting pleas as justices.

gathering of the magnates of the realm reinforced by knights of shire and burgesses from the boroughs will become the greatest court in the land the high court of parliament. In the late 14th or early 15th century the gatherings of king's small council will lead to the development of the court of the chancellor later called the court of conscience, later still the court of equity, and finally chancery. In the 16th century the same council will spin off the court of requests and the court of star chamber. What caused this phenomenon? In particular, what caused it in the 12th century?

3. Clearly, however, the *curia regis* of the Conqueror's time is not a court of law in the modern sense. It is a gathering of people around the king, constantly on the move, there for political, legal, military, or financial purposes or just to have a good time. By the end of John's reign this undifferentiated mass of people had produced at least 3 quite well defined, quite specialized and, for their period, efficient institutions: the exchequer, the chancery and the central courts of justice. Parliament lay in the future as did the heyday of household in the 14th century, but English institutions were already marked by distinctive characteristics which they were to preserve to this day — again the question is why.
4. In order to get some idea of why, we must have some idea of when. No one ascribes the crucial developments to the reigns of Stephen and Matilda, but there are respectable scholars who argue both for Henry I and Henry II. Whatever the date it seems reasonably clear that the Exchequer came before the central courts and that the central courts of justice in some sense developed out of it. Now:
 - a. If Henry I then the purposes must be making money and keeping order.
 - b. If Henry II then the possible purposes expand.
 - c. What we have just looked at suggests, although it certainly does not prove, that the answer to the question when is the reign of Henry I. What we do not have yet is any regularization at least on the civil side. What happened during the reign of Henry II was:
 - i. Restoration of a system that had probably fallen down under Stephen
 - ii. Regularization on the civil side of the writs. What had been of grace became of course and this means you don't have to pay as much for it.
 - iii. Identification of various types of actions and development of pleading
 - iv. The returnable writ — the administrative order becomes an invitation to a judicial proceeding in the central royal courts
5. Now maybe all this had happened during Henry I's reign but the evidence suggests to the contrary. High prices paid for writs. The messy quality of the *Leges Henrici Primi*.
6. Let us close with some even broader questions:
 - a. Do institutions have to come before law? Well, at least in this case, they did.
 - b. Do we know what Henry II was trying to do? No, but the fact that he was putting content into already existing institutions rather than creating new ones suggests that the simple stealing jurisdiction answer won't do. Our next class will be devoted to finding substitutes for that answer. Here are some possibilities:
 - i. Destroy lords courts
 - ii. Make money

iii. Introduce Roman law

iv. Make the system work in its own terms (see the Milsom thesis, below)

c. What was Henry I all about? Be careful of the records. One would get a rather strange notion of what Harvard University was all about if all that survived 900 years later were the records of the bills that the university sent to its students. (A-S Chronicle for 1135): “He was a good man, and people were in great awe of him. No one dared injure another in his time. He made peace for man and beast. Whoever carried his burden of gold and silver, nobody dared say anything but good to him.”

v. THE DIALOGUE OF THE EXCHEQUER

1. Nigel bishop of Ely, Roger le Poer's nephew, served as treasurer under Henry II, while Nigel's son Richard fitz Nigel served as treasurer of the Exchequer (as opposed to treasurer of the realm, which his dad was) and wrote the *Dialogue of the Exchequer* (*Dialogus de scaccario*). Possibly only in the 12th century could one write a treatise on accounting and have it have some claim to literary merit.
2. What are we to make of the *Dialogue of the Exchequer*?
3. The theory of the prologue.

To the powers ordained of God we must be subject and obedient with all fear. For there is no power but of God. [cf. Rom. 13.1] There is clearly, therefore, nothing incongruous, or inconsistent with the clerical character in keeping God's laws by serving kings as supreme [1 Pet. 2:13] and other powers, especially in those affairs which involve neither falsehood nor dishonour.

The glory of princes consists in noble actions in war and peace alike, but it excels in those in which is made a happy bargain, the price being temporal and the reward everlasting. Therefore, greatest of earthly princes, because I have often witnessed your Majesty's glory in peace and war alike, not hoarding treasure but spending it as it should be spent, in due place and time and on fit persons, I dedicate to Your Excellency this little book, on no lofty subject nor in eloquent language but written with an unskilful pen, about the procedure necessary in your Exchequer. I have at times seen you so concerned about this as to send some of your wise councillors to call in the Bishop of Ely for his opinion on it. Nor was it unbecoming so wise a man and so unusually powerful a prince to concern himself with this matter as well as with others of more importance. The Exchequer has its own rules. They are not arbitrary, but rest on the decisions of great men; and if they are observed scrupulously, individuals will get their rights, and Your Majesty will receive in full the revenue due to the Treasury, which your generous hand, obeying your noble mind, may spend to the best advantage. (Sane scacrarium legibus non temere set magnorum consideratione subsistit, cuius ratio si seruetur in omnibus, poterunt singulis sua iura seruari et tibi plene prouenient que fisco debentur, que possit oportune nobilissime mentis tue ministra manus effundere.) Institutions, at least in this case, come before substance.

vi. THE CORONATION CHARTER OF HENRY I

1. We will return to this later. It is rightly regarded as a precursor of Magna Carta. In its own time it did not have much effect. Henry did not follow it after his hold on the monarchy became secure.
2. What feudal institutions are being referred to in the following clauses, which the first clause refers to as 'bad customs' (*malas consuetudines*)?

[2] If any of my barons, whether earls or others who hold of me, shall have died, his heir shall not redeem his land as he used to do in my brother's time, but shall relieve it with a lawful and just relief. Likewise also the men of my barons shall relieve their lands of their lords with a lawful and just relief.

[3] And if one of my barons or my other men shall have wished to give his daughter to marry or his sister or his neice or his cousin, he shall speak with me on the matter. But I shall not receive anything of his for this permission nor shall I forbid him to give her, unless he wished to marry her to my enemy. And if, when my baron or another man has died, his daughter shall have remained as heir, I shall give her and her land by the counsel of my barons. And if, when a husband has died, his wife shall have remained and shall be without children, she shall have her dower and marriage gift, and I shall not give her to a husband except in accordance with her wish.

[4] But if any wife shall have remained who has children, she shall have her dower and marriage gift for as long as she shall have kept her body lawfully, and I shall not give her except in accordance with her wish. And the custodian of the land and the children shall be either the wife or another relative who ought more justly to be custodian. And I command that my barons likewise shall restrain themselves towards the sons and daughters or wives of their men.

[7] And if any of my barons or men shall be sick, just as he will give or intend to give his wealth (*pecuniam suam*), so I grant it to have been given. But if he is cut short unexpectedly by warfare or sickness and shall not have given or intended to give his wealth, his wife or his children or relatives or his lawful men shall divide it as shall have seemed best to them for the good of his soul.

[11] To knights who earn their lands by military service, I grant by my own gift that they shall have the lands of their demesne ploughs quit of all gelds and of all works, so that being relieved of so great a burden they shall so equip themselves better with horses and arms that they shall be fit and ready for my service and for the defence of my realm.

3. Questions about any of the other clauses?

VII. WHAT IS MILSOM'S THESIS IN *LEGAL FRAMEWORK OF ENGLISH FEUDALISM* ABOUT THE REFORMS OF HENRY II?

1. When we looked at the concept of feudalism last time, we defined it for England as a pyramidal system of landholding in which all land was held of the king by tenants-in-chief principally for military service. Others held land of the tenants-in-chief, some for military service, some for agricultural service, some for the service of prayers. Others held land of them and so on down to the peasants, who held by services that were called unfree. By confining the definition to England, we were able to avoid the considerable controversy about how feudalism should be defined more generally and whether it is appropriate to say that all of Europe had a feudal system in the Middle Ages.
2. We also said that the principal issues about feudalism in England were whether William the Conqueror introduced it and whether Henry II changed it or even destroyed it. What we saw in Domesday Book was that not much seems to have changed, but that the notion of tenure in chief seems to be new. That's pretty important if we define feudalism in the way we just did. So far as Henry II is concerned, we know that he introduced an action called novel disseisin by which a tenant who had been disseised of his land could recover it very quickly. We also know that an action called the writ of right either was invented, or greatly increased, in Henry II's time. These ultimately joined a panoply of 'real' actions, actions to recover property in land.

3. The great legal historian F. W. Maitland, looked at these changes, and said, borrowing terms from Roman law, that novel disseisin was a possessory action and the writ of right a proprietary action. One could win in novel disseisin and still lose if the defendant brought a writ of right. Reacting somewhat reluctantly to Maitland, Milsom's argument has the following elements:
4. Maitland fundamentally misunderstood not the thirteenth-century meaning of the real actions for his possession/ownership distinction comes right out of *Bracton*, a treatise that was written for the most part in the 1220s and 1230s, but the twelfth-century meaning of them, in particular, the importance of the clues that we get as to who was the defendant, who very frequently seems to have been a tenant who was disseised by his lord.
5. The key to the whole operation was the introduction of the regulatory assize of novel disseisin which deprived the lord's court of its ability to discipline a sitting tenant and necessitated the introduction of the writs of entry allowing the lord to sue the tenant. Key to Milsom's argument is his understanding of the case of the countess Amice, a case that in the thirteenth century would be handled by a writ of entry *cui ante divorvum* (to whom before divorce) but which was brought before the writ was invented.
6. More broadly, modest reforms may have unintended consequences, for there was no doubt in Milsom's mind that what Henry II did destroyed the system as it had existed in the century from the time of the Conqueror to Henry II's day.
7. More broadly too, the shift from customary law to appellate review involved the elimination of the lord's discretion.
8. And perhaps most broadly, the shift from the lords' courts to the king's courts involved a shift from obligation to property.
9. The evidence that supports the Milsom thesis is *Glanvill*, a treatise that was written at the very end of Henry II's reign and the plea rolls, the first of which that survive come from the reign of King Richard and which become quite full in the reign of King John. We will look at both next time.
10. While I basically accept the Milsom thesis (you don't have to agree), we will see next time some evidence that Roman law may have played some role in the reforms of Henry II. That is a proposition that Milsom denied.