BETWEEN ENGLAND AND FRANCE: A CROSS-CHANNEL LEGAL CULTURE IN THE LATE THIRTEENTH CENTURY

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The relationship between England and Normandy underwent several dramatic changes in the century and a half between 1066, the Norman conquest of England, and 1204, the Capetian conquest of Normandy. While the Norman constitution of Henry I’s reign saw England and Normandy as a single regnum with a single administration, the Angevin constitution saw them become two component parts of a much larger Angevin Empire. After 1204, England and Normandy were separated and a new Capetian constitution was put in place in Normandy, one in which old institutions were respected, but which replaced the personnel at higher levels of government with men from the French king’s domains. In this paper I will explore one thing that remained the same through all of these changes. I will look at the culture of legal treatise-writing as evidence that England and Normandy shared a common way of talking and writing about law, which they did not share with the rest of France, across the divide of 1204. Indeed, while the structures of government diverged in England and Normandy after 1204, legal writing actually converged. The developments in legal writing that we see in English treatises decades after the Capetian conquest are mirrored in their Norman counterparts, suggesting that England and Normandy maintained contacts in the legal sphere for most of the thirteenth century. These legal treatises show us that, although separated politically, England and Normandy were part of a cross-Channel legal culture.

Let us start, as lawyers often do, with a case: William brought a writ of novel disseisin against Henry, claiming that Henry had physically ejected him from William’s Devonshire estate. This writ followed the standard form of the writ of novel disseisin as it had developed in the royal chancery of the twelfth century. It said that Robert had, “unjustly and without

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1 I would like to thank Paul Hyams, Ada-Maria Kuskowski, Sarah Harlan-Haughey, Eliza Buhrer, Melissa Winders, and the participants in the conference “Law, Justice, and Governance” for their comments on earlier versions of this paper.
judgment, disseised William of his free tenement." This case arose in the fourth decade of the thirteenth century, when judges, and even a fledgling legal profession, were beginning to pay more attention to the precise wording of writs. Pleaders in this period thus had the option of parsing the writ: taking an exception to a specific word and claiming that this word did not accurately describe what happened in this case. This is precisely what Henry did. On the appointed day, Henry appeared in court and took exception to the word “disseised,” claiming that he could not have disseised William, since William never had seisin of the land. Henry then made the very technical and sophisticated argument that while William could be said to be in seisin of the land, he could not be said to be seised of the land because he held the parcel in the name of another, namely Robert. William did indeed hold the land for a set term in exchange for rent paid to Robert.

Henry was a savvy pleader, and probably had the aid of a lawyer with some university training, because he was making a subtle distinction based on Roman law. Justinian’s Digest quotes the jurist Ulpian as saying that “there is a great difference” between a person who possesses and a person who is merely in possession. The former actually has the rights of a possessor and can use the courts to regain his possession. The latter is denied the remedies open to a true possessor. When Henry distinguished between a person who is seised and a person who is in seisin he was equating the Anglo-French word seisin with the Roman legal term possession and applying the substance of the Roman law of possession to his English case. This was not a new thing in the 1230s. The author of the late twelfth-century treatise known as Glanvill had referred to the petty assizes—the writs of mort d’ancestor, novel disseisin, utrum, and darrein presentment—both as writs of seisin and as writs of possession at different points in his treatise. But where the Glanvill author only made a

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5 “Those pleas in which the claim is based on possession, and which are determined by recognitions, will be discussed later in their proper place.” (De illis autem que super possessione loquantur et per recognitiones terminantur inferius suo loco dictur). Ranulph de Glanvill, attr., The Treatise on the Laws and Customs of England Commonly Called Glanvill, ed. G.D.G. Hall (London: Nelson, 1965), 4, book I: 4. “There remains for discussion those