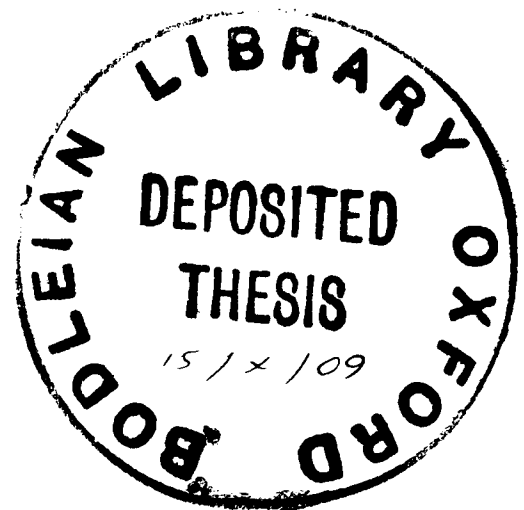


Glanvill after Glanvill

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ABSTRACT 1

This thesis provides a new consideration of the late twelfth-century legal treatise commonly known as *Glanvill*. Detailed analysis of the extant *Glanvill* manuscripts has enabled a number of important new conclusions about the nature of the treatise itself and its textual history and development over time relative to the changing common law. The function and ongoing usage of the treatise are discussed in detail and conclusions are drawn about how, when and why the treatise continued to be copied and/or engaged with and what this may reveal about the history of the English common law. Some traditional views about the treatise and its textual history have been challenged, not least the general perception of its two textual traditions as monolithic.

This study adds substantively to the scholarship on the two so-called ‘versions’ of the treatise, *Glanvill Continued* and *Glanvill Revised*, both of which have been reassessed. The traditional view that *Glanvill Continued* represented a significant and ‘official’ attempt at modernizing the treatise for a mid thirteenth-century audience has been challenged. In contrast, new study of the nature and text of *Glanvill Revised* has re-emphasized its importance in the treatise’s history and the uniqueness of its bipartite revision and re-revision, differentiating and describing these clearly for the first time.

An attempt has also been made to see the treatise in the context of the later legal literature that followed it and to link such literature back to *Glanvill*. It is suggested that the explosion of English legal literature in the thirteenth century at once represents the treatise’s success as the written starting point of the common law and its failure, given that, with the notable exception of *Bracton*, such literature moves substantively away from the earlier treatise. Having said this, *Glanvill* arguably continued to play a role, direct and indirect, through the later literature of the law and continued to be copied, read and used alongside it. More systematic study has been undertaken of the Scottish text based upon *Glanvill*, the *Regiam Majestatem*, and it is argued that the *Regiam* is a much more genuine attempt at re-editing *Glanvill* than has traditionally been thought and that the twelfth-century English treatise may have been surprisingly applicable in early fourteenth-century Scotland.

Finally, this study has involved a new assessment of the later history of *Glanvill* from the fifteenth century to today, considering both the later ownership and use of its manuscripts and early printed editions and its legal and political citations. Consideration of the varying function and usage of the treatise over time enables light to be thrown upon *Glanvill*, the later periods in which it was read and used and the beginnings of legal history.

ABSTRACT 2

The first chapter of this study is based upon extended study of the treatise through its 41 extant manuscripts, some of which were unknown to the treatise's last editor, G.D.G. Hall. Although there are a few well-known *Glanvill* manuscripts, the majority of these have languished in relative obscurity and it is argued here that they warrant far more attention as signposts of the author's purposes in writing the treatise and of *Glanvill*'s subsequent reception and usage by others. New and systematic comparisons have been drawn between the text, date and form of the surviving manuscripts of the treatise as well as an assessment of the material bound up with copies of *Glanvill*. Extensive textual comparison has been undertaken, studying and then comparing transcribed sections of every manuscript for textual or other variations, as well as transcribing one previously unstudied text of the treatise in its entirety to compare with the printed version. Conclusions are drawn from this about the treatise's textual history and development and it is argued that this is in fact far more complicated than has traditionally been thought. Indeed, clear evidence is provided of an ongoing attempt to engage with the text of the treatise through extended early textual comparison and small-scale alteration of its manuscripts. In particular, it is clear that traditional *alpha* and *beta* textual traditions may represent an over-simplification of a much more complicated and fluid manuscript history than has generally been thought. It is argued that the textual, material and codicological form of a manuscript can be a signpost to its function and it is striking in this respect that some of the finest manuscripts of *Glanvill* are the most recent and that there was an accelerated proliferation of manuscript texts of the treatise in the late thirteenth century, about a hundred years after it was first produced and when we might expect it to be outdated and superseded by subsequent legal literature.

The manuscripts have been used, in particular, to determine and systematically analyse what can be adduced of early ownership and attempts to engage with and/or update the text. No previous attempt has been made to list and evaluate the early owners of the treatise and the marks of early usage which they left on its manuscripts. This has entailed the discovery of both a previously unexplored widespread and ongoing process of making small revisions and/or structural alterations to the treatise as well as the detailed consideration of more major attempts to make *Glanvill* more functional over time. The study has therefore included an attempt to analyse the glossed manuscripts of the text as well as an evaluation of the translation of the treatise into French, about which almost nothing has previously been written. A major conclusion of this part of the study is that the manuscripts of the treatise were being produced until the early fourteenth century and were manifestly being read and used in a variety of ways as late as the fifteenth century. I seek to explain the apparent paradox of the treatise's ongoing citation and usage in general without major or legally significant updating by considering the changing function of the treatise over time, particularly its possible role in early legal education. It is concluded that this was a text not, as has been suggested by some, designed as a practical guide for justices nor indeed for a classroom setting as such, but instead that it was written as an unofficial guide largely for litigants and potential litigants and their attorneys. Overall, the extensive textual comparisons made in this chapter reveal both general trends in the patterns of the treatise's early production, reception, transmission and use and important exceptions to these.

Chapter two involves significant reassessment of two well-known ‘versions’ of the treatise which have been heralded as exceptions to the rule of the absence of any general updating of *Glanvill*. Substantial new conclusions have been drawn about the two manuscripts discovered by H.G. Richardson and christened *Glanvill Continued*. Richardson and all subsequent commentators on the treatise have deemed these volumes to constitute a noteworthy attempt at expanding and modernizing *Glanvill* for a mid thirteenth-century audience, based in large part on the material with which the treatise is bound up in these volumes. Further study of these manuscripts has suggested that Richardson made a number of errors in his dating, description and analysis of his ‘version’ and that he greatly over-exaggerated its significance amongst the manuscripts of the treatise. The basis of his attribution of *Glanvill Continued* to the chancery and ensuing claims that it had an ‘official’ status have been discredited and it is argued here that it is incorrect to see the text of the treatise in these manuscripts as a ‘version’ of the treatise in the sense advocated by Richardson. Instead, I suggest that *Glanvill Continued* is an unofficial and privately compiled collection which is not substantially different from other known manuscripts of the treatise, and certainly not different from them in the manner in which Richardson had suggested. It is suggested that these manuscripts indicate the continuing private usage of *Glanvill* but not the continuation of the treatise.

If the status of *Glanvill Continued* is discredited in chapter two, the importance of the version of the treatise discovered and christened by Maitland as *Glanvill Revised* has been reaffirmed. Close textual study of this version, also found in two manuscripts, has been undertaken and new conclusions have been drawn about it. It is undoubtedly a unique and genuine attempt to modernize the treatise in the thirteenth century and an attempt has been made here to analyse the legal changes made in these manuscripts relative to standard texts of *Glanvill* and what these may tell us about later usage of the treatise and about advances in the common law. Such changes are of considerable interest, whether or not they accurately represent accepted contemporary changes in the law. This study has also involved an unprecedented and detailed study of the bipartite revision involved in *Glanvill Revised* at two different points in the thirteenth century. Since Maitland, who only knew of one of the two manuscripts of this version, scholarly attention to *Glanvill Revised* has tended to focus on the technicalities of who copied it into its surviving manuscripts and where and when, to the possible detriment of general considerations of its wider nature and implications. It is hoped that the discussion of the text in chapter two goes some way towards remedying this.

It is argued in chapter three that *Glanvill* should be seen in the context of the later thirteenth-century legal literature that came after it. A preliminary attempt is made here to sketch the different types of legal literature produced under Henry III and Edward I and to begin to compare these with one another and with *Glanvill* in an overarching fashion which modern scholarship on the subject has tended to avoid. The starting point of this is a consideration of the later treatise known as *Bracton*, analysing its legal and methodological similarities and differences to *Glanvill* and the question of why it did not supersede the earlier treatise more decisively. It is argued that, although *Bracton* had much in common with *Glanvill* but with significant modernizations and might have categorically rendered the earlier treatise out of date, *Glanvill* gave something that the later more impracticable *Bracton* did not and so

continued to be read by a slightly different audience. It is suggested, moreover, that although it spawned descendants that merit more consideration than they have traditionally been given, *Bracton* ironically caused a reaction away from the method it shared with *Glanvill* of imposing an overarching analytical framework on the law from above towards a very different legal literature that represented the law growing piecemeal from below. Finally, I suggest that the reason that *Glanvill* continued to be read, used in the production of later literature and bound up alongside it is that it continued to add something distinct, not merely as a historical monument but as a compromise between the learnedness and impracticalities of *Bracton* and the specificity of some of the later legal literature created by and for the ever-expanding incipient legal profession and the processes of education associated with it.

This is followed by a new consideration of the controversial Scottish text based upon *Glanvill*, known as the *Regiam Majestatem*. In my fourth chapter I consider the nature, textual history and status of this treatise as well as its relationship with its English exemplar, *Glanvill*. A new suggestion is tentatively put forward about which *Glanvill* manuscripts the *Regiam* can have been based upon, replacing J. Buchanan's previously accepted attribution. Moreover, the question of why a twelfth-century English legal treatise was copied in early fourteenth-century Scotland whilst purporting to be the enactment of an early twelfth-century Scottish king, and how and why this came to be regarded as the foundation of Scottish law, is explored. It is suggested that the use of *Glanvill* in this context is not in fact as tendentious as it might initially seem and that the *Regiam* is a more genuine and interesting attempt at re-editing *Glanvill* than has traditionally been thought. I consider the reasons, practical and symbolic, for choosing *Glanvill* as the basis of the Scottish treatise produced up to 200 years later and use textual comparisons of the two treatises to discuss similarities and differences between the common law in England and Scotland between the twelfth and the fourteenth centuries. Assessment of the extent to which the English treatise was representative of medieval Scots law involves the paradox that, given its role in the compilation of the *Regiam*, *Glanvill* is at once the basis and key source of such law. The *Regiam*'s status is stressed as being at once practical and propagandist, useful and symbolic and it is also argued that the Scottish treatise is far from the unthinking plagiarism of *Glanvill* that it has sometimes been deemed to be. It is suggested that both the compiler's attempts to Scotticize the English treatise and those places where what must have been anomalous English practice seems to have been allowed to remain are equally significant. The nature and fate of the *Regiam* from its compilation and in its historiography are used to throw light on changing attitudes to the law north and south of the border and on attempts to use law to promote national identity.

Finally, the fifth chapter involves an entirely new consideration of the later usage and citation of *Glanvill* in court and other arenas as a source, varyingly, of law, history and philosophy from the late fifteenth century onwards. I consider how, why and by whom the treatise continued to be read and cited after it had ceased to be copied in manuscript form and before and after its first printing in the mid sixteenth century. This involves an assessment of the changing status of the text over time from living authority of the common law to largely obsolete historico-legal memorial. It is argued that the shifting fortunes of the text in both legal and historical contexts and in particular the ideas framed around *Glanvill* – sometimes genuine and sometimes tendentious – reflect upon the treatise as well as the later nature, history and use of the

changing common law. Later ownership and usage of manuscripts of the treatise and of its early printed editions chart both the treatise's 'dark age' of relative obscurity between its latest manuscripts in the early fourteenth century and its first printing more than a century later as well as the subsequent explosion in its popularity. Conclusions are drawn in particular about owners and users of the treatise in early modern England and colonial America as well as subsequently. The extent to which the treatise and the early common law which it represented were used within, and/or subordinated to, the political polemics of such periods is considered. The irony that *Glanvill* was cited with ever-increasing frequency in court over time as the law it contained became ever more clearly obsolete is likewise explored. Finally, the important role of the Elizabethan Society of Antiquaries, followed by a number of Stuart scholars, is assessed in enabling a balanced view of the treatise and the early common law at this later period.

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Over and above this, I am very much indebted to a number of people. George Garnett was the first to inspire me about medieval history in general and *Glanvill* in particular. John Hudson, who supervised my Masters in St Andrews, really fostered my enthusiasm for legal history and generously suggested this particular project. There is no doubt that this thesis would not exist were it not for him. My supervisor, Paul Brand, has provided absolutely invaluable help and assistance over the past four years as chapters have trickled in. I can only hope that at least some of his exacting standards of scholarship might have rubbed off on me. I cannot imagine a better supervisor. On a more personal note, I thank my family who, as always, have been tremendously loving and supportive and Rebecca Welsford for her remarkable and longsuffering help with proofreading, formatting and for taking an entirely unlikely interest, on the umpteenth re-reading, in the Boston Fair. She has helped to keep me sane and happy whilst this was being written.

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ABBREVIATIONS

Baker, <i>CELM</i>	Baker, J.H. and Ringrose, J.S. (eds.), <i>A Catalogue of English Legal Manuscripts in Cambridge University Library</i> (Woodbridge, 1996).
Brand, <i>MCL</i>	Brand, P., <i>The Making of the Common Law</i> (London, 1992).
<i>EHR</i>	<i>English Historical Review</i> .
Hall, 'Introduction'	<i>Tractatus de Legibus et Consuetudinibus Regni Anglie qui Glanvilla vocatur</i> , ed. and trans. G.D.G. Hall (London and Edinburgh, 1965), pp. xi-lxx.
<i>JLH</i>	<i>Journal of Legal History</i> .
<i>JR</i>	<i>Juridical Review</i> .
<i>LQR</i>	<i>Law Quarterly Review</i> .
Maitland, 'Glanvill Revised'	Maitland, F.W., 'Glanvill Revised', in <i>The Collected Papers of F.W. Maitland</i> , ii, ed. H.A.L. Fisher (Cambridge, 1911), pp. 266-89.
P&M, i and ii	Pollock, F. and Maitland, F.W., <i>The History of English Law Before the Time of Edward I</i> (2 vols.; 2 nd edn.; Cambridge, 1968).
Richardson, 'Glanville Continued'	Richardson, H.G., 'Glanville Continued', <i>Law Quarterly Review</i> , 54 (1938), 381-99.
<i>SHR</i>	<i>Scottish Historical Review</i> .
Southern, 'A Note'	Southern, R.W., 'A Note on the Text of 'Glanville', <i>De Legibus et Consuetudinibus Regni Angliae</i> ', <i>English Historical Review</i> , lxxv (1950), 81-89.
<i>Tractatus</i>	<i>Tractatus de Legibus et Consuetudinibus Regni Anglie qui Glanvilla vocatur</i> , ed. and trans. G.D.G. Hall (Oxford, 1965).
<i>TRHS</i>	<i>Transactions of the Royal Historical Society</i> .

Woodbine, *Glanvill*

De Legibus et Consuetudinibus Regni Angliae, ed. G.E. Woodbine (Yale, 1932).

Bracton, i-iv

Henrici de Bracton. De Legibus et Consuetudinibus Angliae, ed. G.E. Woodbine, revised and trans. S.E. Thorne (4 vols.; Cambridge, Mass., 1968-77).

INTRODUCTION

The *Tractatus de legibus et consuetudinibus regni Anglie*, commonly known as *Glanvill*, is the revolutionary first real textbook of the English common law. It stands as testament to the new and distinctively English legal system operating under Henry II and his circle. The treatise is consciously different from Roman or Canon law precursors, but at times arrogates their language. Unlike previous small-scale and often unofficial attempts at writing down earlier English law, it represents a comprehensive effort to set down the English laws and legal system of the later twelfth century. Plucknett wrote of it: ‘We are, for the first time in the history of our law, presented with a law-book, written by a lawyer, framed upon principles derived from the law’,¹ and for Maitland it was ‘the first of our legal classics’.² The justice in *Glanvill*, both civil and criminal, was almost all by definition royal and common to all free men. However, the treatise reflects that the great Angevin legal leap forward was far more in the realm of civil than of criminal legislation and the law in *Glanvill* is largely civil litigation before the king’s justices, generally initiated by writ. Its author confined himself to those pleas, civil and some criminal, that ‘belong to the court of the lord king’. He was not interested in seignorial justice, the customs of towns or boroughs or the affairs of the county court. The treatise is invaluable for what it can tell us about early legal processes and innovations as well as for its original status as the first attempt to write them down and rationalize them in one place.

¹ T.F.T Plucknett, *Early English Legal Literature* (Cambridge, 1958), p. 36.

² F.W. Maitland, ‘The Materials for English Legal History’, *Political Science Quarterly*, 4 (1889), 516.

It is hoped that a study based upon this text will throw light upon the treatise itself as well as the development of the English common law and the ongoing relationship between the two. Studying the transmission and use of *Glanvill* arguably illuminates very clearly the crossover between theory and practice, between legal and political thought and practised law. Like any legal text, *Glanvill* at once encapsulates the law it describes but also shapes it. It seems particularly worthy of study both because of its status as the written starting point of the English common law and the relative paucity of systematic study of the text and in particular its role over time. Although a number of scholars have written on the treatise, I believe that their work leaves room for important development, not least in terms of the treatise's history and textual development and usage over time, working upwards from its manuscripts. Although the treatise is very well-known and although there are modern editions of it, there are undoubtedly large and significant areas of *Glanvill* scholarship that demand further attention.

Hitherto almost all scholarship on *Glanvill* has tended either to look back at *Glanvill* for what it can tell us about the end of Henry II's reign and the state of the common law at that time or, and to a lesser extent, to use the manuscripts of *Glanvill* as evidence for the original form and content of the treatise, attempting to extrapolate an *ur-Glanvill* from them. In particular, a disproportionate amount of scholarly time and effort has been spent on trying to find an author to fit the work. Although there is some work on *Glanvill* manuscripts in general as well as occasionally on particular 'versions' of the treatise, previous scholarship has not used the manuscripts systematically to consider exactly how the treatise changes in text or structure over time or to analyse its owners and users in the

twelfth-thirteenth centuries and afterwards. The first major contribution to *Glanvill* scholarship was the 1932 edition of the text by G.E. Woodbine, which was the first attempt to rationalize all the 27 then known manuscripts and compare their texts scientifically, rather than relying on the traditional printed text of the treatise which had been based on only a handful of manuscripts, first printed in the sixteenth century and in fairly unchanged form a number of times thereafter. Woodbine realized that there were two manuscript traditions of the text and printed fairly extensive lists of variants and schematic outlines of their textual relationship and some helpful notes. However, unfortunately he chose to print, as had been traditional, a *beta* version of the text, wrongly deeming it to be the more 'straightforward' and therefore older of the two. Woodbine's thesis was authoritatively first challenged by Sir Richard Southern, who in a well-known article in the *English Historical Review* in 1950 used both the text of the *alpha* and *beta* traditions and, in particular, a number of names that appear in some manuscripts, to show that *alpha* must in fact have been older. Southern's findings were taken up, and re-emphasized, by G.D.G. Hall in his important 1965 edition and translation of – for the first time – an *alpha* version of the text. Hall's text was based on 38 manuscripts and featured a newly-detailed and more accurate analysis of the treatise's textual history, contained in a wide-ranging introduction.

Although both Hall's introduction and edition and translation of the text are very useful, they unsurprisingly concentrate on the text of the treatise itself to the detriment of a full consideration of some wider questions about *Glanvill* and its fate over time. Indeed, the treatise's textual history and usage have arguably never received the attention they

deserve. Furthermore, several new manuscripts have come to light since the publication of Hall's edition and there has been considerable new scholarship, if not directly on the treatise itself, on the early common law, enabling new conclusions about *Glanvill*. This study is therefore intended to offer some new analysis of the manuscripts of the treatise, at times amplifying or altering some of Hall's conclusions about them. The two best-known manuscript 'versions' of the treatise, initially highlighted by F.W. Maitland and H.G. Richardson as *Glanvill Revised* and *Glanvill Continued*, have been studied in particular detail, with a number of important new conclusions being made about them and their place within *Glanvill* scholarship. I have attempted to use the manuscripts to consider in detail for the first time ownership, usage of and any form of engagement with the text of the treatise. Rather than simply trying to establish the original form and content of the work, although these are considered, I have sought to assess the changing fortunes of the treatise both *qua* itself and relative to the changing common law. As part of this, the treatise has been considered in the wider context of the thirteenth-century legal literature that came after it, featuring a synthesis and extensive comparisons that *Glanvill* scholarship has tended to ignore and considering the questions of the extent to which *Glanvill* shaped and/or was superseded by later texts such as *Bracton* and those that came after it and whether broader conclusions may be drawn from this about *Glanvill* in particular and the developing common law in general.

The treatise is also compared to the related Scottish text, *Regiam Majestatem*, an edited and unattributed copy of *Glanvill* made in fourteenth-century Scotland that became the foundation of Scottish law. Although always controversial, the existence of a

relationship between the two treatises has long been recognized. Given this, the paucity of scholarship on the wider nature of the Scottish text and in particular on its relationship with its English exemplar is surprising. There is no satisfactory modern edition of the *Regiam* and scholarship on the Scottish treatise has – like that on *Glanvill* itself – tended to focus on the treatise by itself, concentrating on the details of exactly when it was written, to the detriment of the broader questions of exactly why it was written and how and why it used *Glanvill*. Preliminary attempts to address this have been made here, offering some important new conclusions and starting points for future scholarship of the *Regiam* and of the wider relationship between English and Scottish law in this period. Finally, there has hitherto been a total absence of any scholarship on the later history of *Glanvill* after the production of its final manuscript copies in the fourteenth century. Nothing has been written on the later reading and use of either manuscript or early printed *Glanvills*. This study therefore ends with an entirely new analysis of the fate of the treatise in particular in the sixteenth and seventeenth centuries and of the different ways in which it was being read and used in this period and what wider conclusions may be drawn from these.

Certain conventions have been followed. *Glanvill* has been italicized throughout in reference to the treatise which goes under that name, and *Bracton* has been designated in the same way. Standard references to the text of the treatise are given as ‘*Tractatus*, x, 4’ etc and refer to the most recent edition of the text by Hall, unless otherwise stated. References to Hall’s introduction to his edition are given in the form of ‘Introduction, p. 1’. Individual manuscripts are designated ‘A’, ‘B’ etc according to the titles given to

them by Woodbine and Hall. I have noted those manuscripts unknown to Hall and given them my own equivalent designations. Part of chapter 2 is based on a revised version of my article '*Glanvill Continued: A Reassessment*', published earlier in 2007, and details of this are given below.

CHAPTER 1

The Treatise and its Manuscripts

The medieval popularity of *Glanvill* is clearly attested by the survival of the treatise in at least 41 extant manuscripts, dating from the twelfth to the fourteenth centuries.³ Although a few exceptional manuscripts have received historical attention, the majority have languished in relative obscurity. The manuscripts, as the most authoritative witnesses at once of the author of the treatise's purposes in writing and of the text's subsequent reception and use by others, deserve more attention and more comparative study. In the absence of a definitive original manuscript, it is valuable to consider and compare what is already known about these 41 manuscripts, addressing what these tell us about the date, authorship and nature of the treatise as well as the issues of how late *Glanvill* continued to be copied, and how, and if possible why, the text changed over time. This involves consideration and analysis on two levels – into both the original textual and material form of the manuscripts as well as any evidence of subsequent ownership or use that can be gleaned from them. It involves a consideration both of the texts of *Glanvill* themselves and more generally of the manuscript volumes in which they occur. It is hoped that such a study will begin to throw light upon patterns of the treatise's production, reception, transmission and use.

³ To the 38 manuscripts known to, and listed by, Hall (*Tractatus*, p. viii), should be added: Harvard Law School 180; Harry S. Truman Library, Independence, Missouri 64050 and British Library Additional 44842 (designated by me as *Hl*, *Ht* and *Br* respectively). These extra manuscripts were first noticed by Baker, *CELM*, p. 150. Baker also suggested that Trinity College, Cambridge MS O.3.52 was a hitherto unknown *Glanvill*, but this is in fact a version of *Bracton*. To get an idea of the treatise's relative popularity, the *Leges Henrici Primi* survives in only 6 manuscripts, the *Leges Edwardi Confessoris* in 39 and the later *Bracton* in 52 extant manuscripts: L.J. Downer (ed. and trans.) *Leges Henrici Primi* (Oxford, 1972), p. 46; B.R. O'Brien (ed. and trans.), *God's Peace and King's Peace. The Laws of Edward the Confessor* (Philadelphia, 1999), pp. 137-46 and 205-6; Baker, *CELM*, p. 68.

Date, Authorship and Nature of the Treatise

The treatise is immediately dateable to the reign of Henry II, who fits the encomiums of the Prologue, and who appears in its *Incipit*, which is present in almost all manuscripts and from at least within a decade of the treatise's completion.⁴ Moreover, Henry I is several times referenced as 'King Henry, grandfather of the Lord Henry who is now king'.⁵ The treatise may in fact be dated more precisely: it includes two chirographs of final concords in most of its early manuscripts, which are dated 2 and 29 November 1187.⁶ It therefore seems very likely that the treatise was completed between November 1187 and 6 July 1189, when Henry II died.

A disproportionate amount of all *Glanvill* scholarship has focused on finding an author to fit the treatise and neither the text of the treatise nor the precision with which we may date it particularly helps in this respect. The name of chief justiciar from 1180, Ranulf de Glanvill, has long been linked to the work.⁷ His name appears, albeit somewhat enigmatically, in the treatise's *Incipit*:

Incipit tractatus de legibus et consuetudinibus regni Anglie tempore Regis
Henrici Secundi compositus, iusticie gubernacula tenente illustri viro

⁴ Whether or not this is original, it appears in 27 of the treatise's manuscripts, of both manuscript traditions, and in many of the earliest copies of the treatise. There are only three manuscript texts of the treatise which do not include the *Incipit* and are neither incomplete nor in French (MSS *I*, *L* and *Ht*). Of these, only *L* is a notably early text.

⁵ *Tractatus*, iv, 6, p. 46. See also ix, 13 and 14; xii, 10 and 16

⁶ *Ibid*, viii, 2; 'hec est finalis concordia facta in curia domini regis apud Westmonasterium in vigilia beati Andree Apostoli anno regni regis Henrici Secundi tricesimo tertio' and viii, 3: 'Hec est finalis concordia facta in curia Galfridi filii Petri et postmodum recordata in curia domini regis ibi anno regni regis Henrici Secundi tricesimo terti die...'

⁷ For biographical discussion of Glanvill, see J. Hudson, 'Glanville, Ranulf de (1120s?–1190)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/10795>].

Rannulfo de Glanvilla, iuris regni et antiquarum consuetudinum eo tempore peritissimo.

However, this is far from compelling evidence of Glanvill's responsibility for the treatise, merely its composition in the time of his justiciarship. Indeed, one of the earliest and best *alpha* texts of the treatise (*Ls*) only has 'Radō de Glanvil' written in black over an erasure in its red *Incipit*, possibly replacing another name. Further cited evidence for Glanvill's authorship is the enigmatic entry in the chronicle of Roger of Howden in MS Royal 14 C.ii (*A*), the best manuscript of the *Chronica*, which describes the appointment of Glanvill in 1180 'by whose wisdom the laws written below were established [conditie]'. There follow various texts, including the treatise together with a number of items certainly not written by Glanvill including the so-called Ten Articles of William I and the *Leges Edwardi Confessoris*.⁸ Given that Glanvill had nothing to do with these texts, the statement cannot reliably prove his authorship of the treatise. Moreover, as Maitland pointed out, 'this would be a strange phrase whereby to describe the compilation of a treatise'.⁹

Shaky although such evidence seems as a basis for attributing the text to him, it is clear that by the thirteenth century a tradition was developing which called the text 'Glanvill'. A number of the treatise's manuscript copies from the thirteenth and early fourteenth centuries have titles such as 'Summa quae vocatur Glaunvile'.¹⁰ However, although this indicates a widespread coupling of Glanvill's name with the text from an early date, it may perhaps itself also denote an element of long-standing doubt about the attribution.

⁸ See Hall, 'Introduction', p. lvi or P&M, i, p. 163, n. 1 for discussion.

⁹ Ibid.

¹⁰ See, for example, *J*, *P* and *Q*, or *Co* ('iste leges vocate Glaunvile').

Moreover, the only text which makes an explicit and unambiguous statement of Glanvill's authorship is the relatively late *Wr*, dating from the end of the thirteenth century, which ends the treatise with: 'Explicit tractatus de legibus regni Anglie et consuetudinibus eiusdem editus a Ranulfo de Glanville'. The only manuscript versions of the text simply entitled 'Glanvill' have in general had their titles added in much later hands.¹¹ Although almost all of the treatise's texts are linked in some way with Glanvill's name, several also have different titles, none of which presents an alternative authorial candidate. These include 'Regia Potestas',¹² 'Leges Henrici Secundi',¹³ and the curious 'Liber Curialis'.¹⁴ Although many have accepted Glanvill's authorship,¹⁵ doubts have been raised over his candidacy from at least the seventeenth century.¹⁶

Maitland raised the question of whether Glanvill would have had the time for writing such a book with the multiple responsibilities of being a justiciar, particularly towards the end of Henry II's reign. Instead, he suggested Glanvill's nephew, Hubert Walter, who

¹¹ For example MS *Q*. The earliest text found where the treatise is entitled 'Glaunvyle' in the original scribal hand is Harvard Law School MS 193 which contains notes from the treatise and dates from the mid fourteenth century (f. 24^v).

¹² MSS *O* and *W*.

¹³ MSS *Co*, *G* and *Or*.

¹⁴ Hall's theory that there might have been a legal collection that circulated under this name is discussed below.

¹⁵ D.M. Stenton wrote in 1926 that Glanvill's authorship was 'most probable' and that, even if he did not write the treatise, it must have been produced 'under his guidance' ('England: Henry II', in *Contest of Empire and Papacy*, *Cambridge Medieval History*, vol. 5, (ed.) J.R. Tanner, C.W. Prévite-Orton and Z.N. Brooke (Cambridge, 1926), pp. 578-9). For further support of this view, see also J.C. Russell, 'Ranulf de Glanville', *Speculum*, xlv, 69-79 and B. Lyon, 'Glanville, Ranulf de', in *The Dictionary of the Middle Ages*, (ed.) J.R. Strayer, vol. ii (New York, 1983), pp. 544-5.

¹⁶ See, for example, Selden (*Iohannis Seldeni. Ad Fletam Dissertatio*, Cambridge Studies in English Legal History, (ed. and trans.) D. Ogg (Cambridge, 1925), p. 5). Selden reported that 'diligent searchers in this kind of learning' had suggested 'Edwin de Narbrough', rather than Glanvill, as a possible author, but did not place any emphasis on this. This may in fact be a misreading of 'R de N', given in the prologue as justiciar in several manuscripts of the fourteenth century, and is therefore almost certainly an error based upon an earlier error.

was made justiciar in 1193, as a more likely possibility.¹⁷ He suggested that the reference to Walter in the later *Bracton* might be the commemoration of a previous legal writer to whom the author of the later treatise was indebted. However, although fairly widely accepted by other scholars,¹⁸ Maitland's argument remains unconvincing. There are various reasons for the later treatise mentioning Walter which do not have to rely on such a debt of gratitude.¹⁹ It is also conspicuous that neither of Walter's modern biographers have accepted him as the treatise's author.²⁰ Another more recent suggestion was the two men's fellow justiciar Geoffrey fitz Peter. Lady Stenton noted that the second final concord in the treatise (viii, 3) was made in his court and suggested that he was the most likely provider of this.²¹ Holt pointed out that both Glanvill and fitz Peter stood to gain in their own immediate family circumstances by the system of parage described in the treatise.²² Chronology does not, however, support fitz Peter's case; the earliest he is recorded as being a royal justice is June 1188.²³ Moreover, some of the objections urged against Glanvill's authorship also apply to both of these men in that they all appear to be too senior and probably therefore too busy to be likely candidates for writing such a

¹⁷ P&M, i, p. 164.

¹⁸ See, for example, C. Gross, *The sources and literature of English history from the earliest times to about 1485* (rev. edn; London, 1915), p. 316; P.H. Winfield, *The Chief Sources of English Legal History* (New York, 1925), p. 257.

¹⁹ See Hall, 'Introduction', p. xxxii. Southern's discussion (given below) of the names in some manuscript versions of the treatise, which include Hubert Walter, arguably also makes it unlikely that Walter can have been the author ('A Note', 81).

²⁰ C.R. Cheney, *Hubert Walter* (London, 1967), p. 22; C.R. Young, *Hubert Walter, Lord of Canterbury and Lord of England* (Durham, N.C., 1968), pp. 16-17.

²¹ D.M. Stenton (ed.), *Pleas before the King or his Justices, 1198-1202*, i (Selden Society vol. 67; London, 1953), p. 9 and also in her review of Hall's edition of the treatise in *EHR*, lxxxii (1967), 562-4, having changed her mind after 1926.

²² J. C. Holt, 'Feudal Society and the Family in Early Medieval England: IV. The Heiress and the Alien', *TRHS*, 5th Ser., 35 (1985), 19.

²³ R.V. Turner, 'Who was the Author of *Glanvill*? Reflections on the Education of Henry II's Common Lawyers', *Law and History Review*, 8 (1990), 115, and for general discussion of the different candidates, 97-127.

treatise. Moreover, it seems unlikely that, had a man of such stature written the text, his name should have been so generally omitted and/or doubted.

A final, somewhat humbler, candidate suggested as an ‘intriguing possibility’ by Hall, was Godfrey de Lucy, judge and later bishop of Winchester.²⁴ Godfrey was made bishop in 1189 and this would therefore fit as a *terminus ante quem* for the compilation of the treatise. Turner has suggested that Godfrey is the only one of the named candidates who had both the practical experience and the academic background required to have written the treatise.²⁵ Hall also noted that, of a very few justices’ names vouched apparently as authorities in the margins of some of the earliest manuscripts, the only justice long-dead was Richard de Lucy, Godfrey’s father.²⁶ Such an apparently anachronistic citation might just possibly be explained by filial loyalty. Where the treatise gives the *casus regis* succession dilemma, highlighted in some way in almost all of its manuscripts, between the rights of a grandson by a predeceased older son versus those of a second son (vii, 3), as is fairly standard in the text, two contrasting opinions are given, and in some manuscripts attributed to Ranulf Glanvill and Richard de Lucy. The second opinion, essentially that adopted by the author of the treatise,²⁷ – that the claim of the representative, rather than the cadet, be preferred, and still more so if his father had done homage – is marginally attributed in some of the treatise’s earliest and best texts to the two successive justiciars.²⁸ Turner argued that Godfrey’s own position as younger brother of a deceased older brother, himself involved in complicated succession politics

²⁴ Hall, ‘Introduction’, p. xxxiii, n. 2.

²⁵ Turner, ‘Who was the Author’, 117-9.

²⁶ For discussion of these names, see below.

²⁷ With the telling caveat that ‘*melior est conditio possidentis*’.

²⁸ MSS *Ln*, *X* and *Z*. However, some manuscripts attribute each of the different opinions to each of the justices, with Glanvill being vouched on the side of the younger son and de Lucy on the side of the grandson (MSS *B*, *E*, *Ls*, *R*, *V*, *T*, *Wr*, all of which are *beta* texts except for *E*).

over the Lucy inheritance, meant that he would have had particular interest in writing on the subject.²⁹ In fact, however, closer reading of the treatise's marginal names throws considerable doubt on Godfrey's authorship. Godfrey's position as younger son must have made him all the less likely to cite authorities – especially his own father – on behalf of the grandson.³⁰

Another possibility raised has been that of collective authorship, perhaps with all of these men and possibly others having contributed to the treatise.³¹ This has been suggested as accounting for the unusual term *tractatus* for the treatise's internal divisions, assuming that an unknown compiler put together and edited several tractates by different individuals. Although there is evidence of different judges' opinions being cited in the margins of some manuscripts of the treatise, such an explanation simply does not fit the coherence – both of content and style – of the text, and seems highly improbable.

It may in fact be that all such speculation has missed the point and that the most likely authorial candidate was someone of much humbler origin, most probably a clerk with working knowledge of the system that he wrote about and perhaps having studied at the

²⁹ E. Venables, 'Lucy, Godfrey de (d. 1204)', rev. R.V. Turner, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/17148>]; Turner, 'Who was the Author', 118.

³⁰ The succession question was clearly of the utmost relevance after Arthur's birth in March 1187 and it is somewhat surprising that the author of the treatise, although diplomatically giving both sides of the case, should so notably come down on the side of the representative when John's vested interest was so clear. This line stands in contrast with that taken on the same issue by the Norman *Très Ancien Coutumier*, written within a decade or so of *Glanvill* (*Le Très Ancien Coutumier de Normandie*, (ed.) E.J. Tardif (Rouen, 1881), c. 12, p. 13), which is itself damningly glossed 'sicut contingit de Johanne, rege anglico, et de multis aliis; et hoc est falsissimum iudicium'.

³¹ Turner, 'Who was the Author', 119; Lord Dunboyne, 'Who wrote Glanville?' *Journal of the Butler Society*, iii (1994), 500-1.

schools, but also with the time to undertake such a project. This would fit with the treatise's anonymity and with its decidedly unofficial tone. It reads as a practical guide to, rather than as an authoritative statement of, the beginnings of the common law. Our author was certainly a loyal royal servant, albeit without a seemingly entirely consistent or thought through philosophy of kingship, but was certainly no absolutist. Hence 'quod principi placuit' sits quite comfortably and without any need for further exposition alongside assertions that the king 'does not scorn to be guided by the laws of the realm and customs which had their origin in reason [ratio] and have long prevailed... [and have been promulgated] on the advice of the magnates'.³² He went out of his way to stress that the law he described was at once old, customary and inherently rational. In general, our author was not interested in philosophising about the law, but in describing its practical details, in particular those that would concern the judges and clerks at Westminster. Instead, what characterizes the treatise and its anonymous compiler above all is its orderly rational approach, organized structure and lucidity. He set out explicitly to write: 'adopting intentionally a commonplace style [*stilo vulgari*] and words used in court in order to provide knowledge of them for those who are not versed in this kind of inelegant language'.³³

This rational approach is driven by the distinctions between civil and criminal pleas and possessory and proprietary actions. Maitland coined the term for the author's systematic statement of alternatives as 'dilemmatic'.³⁴ The driving force behind this system was the burgeoning framework of royal writs, and it is clear from the layout of the treatise that

³² *Tractatus*, prologue, p. 2. A small mistranslation by Hall has been remedied in the quotation given here.

³³ *Ibid*, p. 3.

³⁴ P&M, i, p. 166.

these were well on the way to becoming the skeleton of the common law. Where possible, the author began chapters with the relevant writ by which a case would come before the king or his justices, then going on to offer a commentary on it, and there are more than seventy writs in the treatise. It is possible that the author had a register and/or a collection of real writs to hand when producing the volume.³⁵ However, although the author's primary interest lay in the procedural exposition of the forms of action available in and from the king's courts, it would be wrong to see the treatise merely as a glorified and slightly extended register. It is at its most original in its nuggets of treatment of substantive law, in which there are elements of the jurisprudential and the discursive. Far from giving a rigid set of rules and punishments, the author is happy at times to raise questions that he cannot answer or to suggest various possible solutions to a given problem. Such an approach must have been radical indeed in the 1180s.

The treatise's author must have had some knowledge of Roman and canon law, but the practical effects of this should not be overstated. The opening words of the Prologue derive from the preface to Justinian's *Institutes* and Roman law has clearly had an influence throughout the book. This influence is largely manifest in terminology and in specifics such as the treatment of debt in book x, which owes much to the discussion of contract in the *Institutes*.³⁶ The author carefully distinguishes, for example, between the two meanings of 'dos': 'dos duobus modis dicitur...'³⁷ discriminating between the term

³⁵ Hall, 'Introduction', pp. xxxiii-iv; Maitland, *Collected Papers*, ii, pp. 126-30.

³⁶ For discussion of the treatise's Roman law influences, see Hall, 'Introduction', pp. xxxvi-viii and, adding to this, G. Post's review of Hall's edition in *Speculum*, xlii (1967), 162-5; Turner, 'Who was the Author', 105-6; R.C. Van Caenegem, *Royal Writs in England from the Conquest to Glanvill* (Selden Society vol. 77; London, 1959), pp. 379-92; Woodbine, *Glanvill*, pp. 187-8.

³⁷ *Tractatus*, vi, 1.

used in common parlance [*vulgariter*] for dower and that according to Roman law [*secundum leges romanas*], in other words, dowry.³⁸ There is only one explicit allusion to canon law in the treatise, to the decretal of Alexander III on legitimation by subsequent marriage: ‘secundum canones et leges romanas’,³⁹ but Hall has traced other less direct references.⁴⁰ It has also been argued that the treatise was influenced by early decretal collections.⁴¹ The treatise’s author must therefore have had at least some acquaintance with the learned laws, and seems to have set out self-consciously to write a treatise on the English laws for an audience who had been brought up with these: ‘Although the laws of England are not written, it does not seem absurd to all them laws...’.⁴² However, all such debate about possible source material for the treatise is interesting but not particularly important. The author of the treatise must have used a variety of English sources, including recent texts such as the Constitutions of Clarendon as well as older English texts such as the *Instituta Cnuti*, the *Leges Edwardi* and the *Articuli* of William I. It is significant that, as with any possible Roman or canon law borrowings, he chose not to cite any of these explicitly.⁴³ This may perhaps have been partly in order not to draw attention to the degree of innovation from the earlier English past that the system of law in the treatise, and more generally under Henry II, represented, and perhaps also at the same time intentionally to denigrate the status of earlier English law to *ius non scriptum*, because it suited his purpose in creating a new system of writ and procedure-based royal

³⁸ Ibid, vii, 1.

³⁹ Ibid, vii, 15.

⁴⁰ Hall, ‘Introduction’, p. xxxix.

⁴¹ P. Hyams, ‘The Common Law and the French Connection’, *Proceedings of the Battle Conference on Anglo-Norman Studies*, iv (1981), 80.

⁴² *Tractatus*, prologue, p. 2.

⁴³ For a discussion of the various terms used to refer indirectly to such enactments as the Constitutions of Clarendon, see Hall, ‘Introduction’, p. xxxiv.

law.⁴⁴ Above all, however, he did not need to cite authorities, English or foreign; indeed the character of his book is premised on not needing to do this. The principal sources used in the making of the treatise were writs and the practice of the king's court, and this is what made it so strikingly original. Its style and contents embody a new approach to law and its practice that is exemplified by the pellucid originality of the treatise's exposition.

Alpha and Beta Manuscript Traditions

The text's first modern editor, G.E. Woodbine, divided the surviving *Glanvill* manuscripts into two groups: *alpha* and *beta*.⁴⁵ Although Woodbine's thesis – that *beta* was earlier than *alpha* – has been superseded, his basic division of the texts into the two discrete manuscript traditions has been retained.⁴⁶ Woodbine followed tradition in printing a *beta* version of the text, but Hall's subsequent edition was – more sensibly – based on a number of *alpha* manuscripts.⁴⁷ The differences between the two traditions are in general that while *alpha* is divided into a large number of rubricated sections,⁴⁸

⁴⁴ See B. O'Brien, 'The Becket Conflict and the Invention of the Myth of Lex Non Scripta', in J.A. Bush and A. Wijffels (eds.) *Learning the Law. Teaching and the Transmission of Law in England 1150-1900, Proceedings of the 13th British Legal History Conference, Cambridge, 1997* (London, 1999), pp. 12-16; P. Wormald, *The Making of English Law: King Alfred to the Twelfth Century* (vol. i; Oxford, 1999), p. 474: 'it was simpler for the 'Glanvill' generation to pretend that there was no inheritance from the past'.

⁴⁵ Woodbine, *Glanvill*. Woodbine consulted 27 manuscripts in his edition of the text (listed on p. 1).

⁴⁶ For *alpha*'s priority over *beta*, see Hall, 'Introduction' and Southern, 'A Note', 81-89. In essence, to assume that *beta* predated *alpha* would necessitate a reviser who set about making obscure *tractatus* references in an already numbered text and then abandoned these numbers in favour of a less user-friendly system of rubrication.

⁴⁷ Hall based his edition of the text primarily on early *alpha* MS *Ln*, also incorporating readings from *alpha* MSS *L* and *Z* and occasionally *beta* *B* for variants.

⁴⁸ The precise number of such rubrics in *alpha* texts varies considerably. When fully rubricated, the text contains c. 179 rubrics (MS *Z*) (Other highly rubricated texts include MSS *A*, *M* and *Nf*).

beta superimposes 14 books of numbered chapters onto these earlier divisions.⁴⁹ As a result of this difference in structure, internal textual cross-references may take different forms in the two traditions, with *beta* sometimes referring to numbered books or chapters and *alpha* tending towards the use of the ambiguous ‘tractatus’ to describe a part of the text.⁵⁰ Every *beta* manuscript contains a final extra sentence at the end of the prologue, qualifying the scope of the treatise. There are some textual differences between the two traditions and two notable textual omissions in all the *beta* manuscripts.⁵¹ *Alpha* is in general slightly wordier than *beta* and less textually uniform. However, although *beta* is clearly the result of a general revision and apparently a desire to make the treatise more functional and user-friendly, textual variations from *alpha* are small and usually not legally significant. Hall classified all but two of the *Glanvill* manuscripts known to him into one category or the other. In fact, however, as discussed below, further study reveals a far more complicated picture of the manuscript traditions than has traditionally been thought.

Dates of Manuscripts

Some trends may be drawn from a more systematic study of the chronology of the manuscripts of the treatise. As Appendix 1 shows, of the 41 known manuscripts, 6 are dateable to c.1200, of which 4 are *alpha* and 2 *beta*; 10 are dateable to 1200-1250; 18 to 1251-1300 and 7 to 1300 and later (of which 5 are *alpha* and 2 *beta*). It is clear not only that the treatise was manifestly popular, but that it was read and disseminated soon after

⁴⁹ Again, the number of chapters in *beta* texts varies but generally and where fullest contains c. 235 chapters (MSS *B*, *Be*, *Ht*, *N*, *W* and *Wr*).

⁵⁰ See, for example, *Tractatus*, iv, 6, ix, 6 or xi, 5.

⁵¹ At i, 27 and i, 31 respectively and described by Hall, ‘Introduction’, p. xlii.

its completion in 1187-9. Moreover, the textual revision which produced *beta* must have been very early as several manuscripts from both traditions survive from the end of the twelfth century, i.e. within a decade or so of the treatise's completion.⁵² Manuscripts of both traditions survive in approximately similar numbers and proportions at different dates. Texts of both manuscript groups survive from the twelfth to the fourteenth century; it is clear that neither manuscript tradition eclipsed the other. The median average date for the production of *alpha* copies was 1257 and for *beta* was 1265; the median average production date for all texts is 1260. The clear majority (29) of the manuscripts are thirteenth century, with an accelerated proliferation in both traditions, but particularly manifest in *beta*, taking place in the second half of that century. The evidence of the manuscripts is therefore that, perhaps surprisingly, the treatise seems to have enjoyed its heyday about a hundred years after it was compiled. Although *Glanvill* was not first printed until 1554/5,⁵³ it seems that production of manuscript copies of the treatise tailed off considerably before this.

Size and Form of Manuscripts

Folio dimensions have been obtained for all 41 of the manuscripts, and these are given in Appendix 2 below. The mean average folio dimensions of all the manuscripts are 231 x 162mm.⁵⁴ Folio dimensions range from 151 x 104mm (*beta Br*) to 347 x 250mm (*alpha Or*). In general, however, the greater number of manuscripts approximate one another in size. *Alpha* manuscripts are generally slightly larger than their *beta* counterparts,

⁵² *Alpha* MS *A* is internally datable to 1199-1201/2 and *beta B* similarly to the late twelfth century.

⁵³ See discussion below.

⁵⁴ This excludes MS *Hl*, discussed below, which is in scroll form.

averaging 242 x 172mm, compared with *beta*'s 219 x 151mm. If size is a signpost towards manuscript value and function, then this may indicate that at least some of the *alpha* manuscripts were perhaps valued for display, and that some of the smallest and perhaps therefore most functional and portable private volumes were *betas*. It is perhaps not surprising that *beta*, a more workable text because of its subdivision into numbered books and chapters, may have been the first choice for such private users. Indeed, there is some evidence of some *beta* versions of the text having been written as booklets, or in other words as small and very easily divisible and/or transportable segments of text that might merely have been kept loose in a wrapper with other booklets but not necessarily bound together with them until a much later date.⁵⁵ Later manuscripts are on average slightly larger than earlier ones: the first 20 dateable manuscripts chronologically average folio measurements of 215 x 151mm, while the second 20 average 248 x 173mm. These are not significant variations, but they do indicate that manuscripts of the text increased in size over time.

In general the manuscripts of the treatise are clearly functional volumes. The treatise is typically written on parchment in relatively careful and often neat but unostentatious gothic bookhands in one or two columns per page. These, of course, become in general much more cursive and often smaller and less neat over time, although there are some

⁵⁵ *Beta MS W* is made up of three discrete but similar booklets of early in the second half of the thirteenth century and one from the fourteenth century, and there is evidence that it was circulating with at least two other related legal booklets which now make up Bodleian Library, MS Douce 132 (See P.R. Robinson, 'The 'Booklet', a Self-Contained Unit in Composite Manuscripts', in *Codicologica 3. Essais Typologiques*, (ed.) Gruys, A. and Gumbert, J.P. (Leiden, 1980), pp. 46-69). Robinson suggested that such a system allowed for practical on the spot administration of the common law and suggested that *W* had belonged to an anonymous Berkshire practising lawyer or administrator of an estate (ibid, p. 57). There is, however, internal evidence in the text not used by Robinson that may link *W*'s booklets more specifically to Reading Abbey.

fine later volumes. The aspect of the typical *Glanvill* manuscript page is densely-written and fairly undecorated. The text of the treatise tends to be broken up at best by touches of colour, such as red rubrics or paraphs, but not to contain more ornamentation than that. Some manuscripts are extremely plain and relatively low quality in terms both of text and materials.⁵⁶ In several cases, manuscripts of the treatise are notably unfinished and several are wanting capitals throughout.⁵⁷ Of 41 surviving texts, two are fragmentary and seven are imperfect at one end of the treatise or the other or both.⁵⁸ At least some of these were evidently always unfinished.⁵⁹ All in all, the copies are practical rather than presentational and add to our picture of a functioning legal text valued in practice rather than for display.

However, there are exceptions to this rule, and there are some finer quality texts. These tend to be amongst the earliest or latest manuscripts of the treatise produced. Some of the treatise's earliest manuscripts are particularly elaborate and these sometimes include particularly detailed coloured or gilded fleuronée historiated initials to mark new sections of the treatise, sometimes also extending into its borders, as well as some black or red inked figures.⁶⁰ However, the text's latest manuscripts are undoubtedly its finest in form.

⁵⁶ *Ht* is completely plain throughout, contains a number of obvious and uncorrected scribal errors; other manuscripts such as *J* are written on very poor quality parchment with folios of variable size and quality.

⁵⁷ For example MS *Ht*.

⁵⁸ MSS *Col* and *Lan* are fragmentary (with fragments of i, 31-2 and mid x, 12-15 and xiv, 6-end respectively); *H* wants the treatise's opening (opening at v, 6); *J*, *P*, *S* and *X* all want its end (ending at xiii, 12 (*J*), xi, 3 (*S*, *P*) and ix, 12 (*X*) respectively) and *Hl* and *K* are imperfect at both ends (comprising i, 29-ix, 1 and i, 13-xi, 3 respectively).

⁵⁹ MS *K*'s text of the treatise, for example, breaks off apparently always unfinished in the middle of a page (f. 41^v).

⁶⁰ The text of *Glanvill* in MS *Z* contains a large number of noteworthy marginal ink grotesques on a zoomorphic theme which are clearly linked to individual titles in the treatise including a number of apparently salutary fire-breathing dragons at relevant sections of the text. Some of these are mentioned but not described by R.A.B. Mynors (ed.), *Catalogue of the Manuscripts of Balliol College, Oxford* (Oxford, 1963), p. 347. Early *beta* MS *B* also includes some, rather less fine, sketchings.

It is likewise striking that some of the largest volumes to contain the treatise are some of the latest texts produced, early in the fourteenth century, and these are often correspondingly fine in form.⁶¹ Like the earliest manuscripts, these can include elaborate initials and/or borders and marginal grotesques.⁶² In general, these latest manuscripts chronologically are also of the highest quality of script and illumination of all the texts of the treatise. The latest manuscripts of the treatise are largely *alpha* and include MSS *G* and *Or*, originally both component parts of a single highly presentational volume,⁶³ which is the only version of *Glanvill* to include noteworthy painted illumination. The one time original from which these volumes derived was clearly intended as a formal display volume, and both manuscripts contain remarkably fine miniatures which are the work of at least two artists of the Queen Mary group.⁶⁴ The miniature of Henry II (f. 73^r) which precedes the section on his reign largely made up by *Glanvill* contains a portrait of the king with an archbishop and four knights with drawn swords, presumably in reference to the murder of Becket. It is striking that some of the finest texts of the treatise date from the beginning and the end of the period in which it was copied. This may perhaps indicate that the manuscript was most valued at these times, originally for its novelty and

⁶¹ This includes MSS *J*, *Or*, *Co* and *G*. The latter three of these are the so-called 'Guildhall manuscripts', discussed below.

⁶² MS *J* includes pictures of dragons and fish and even a merman chasing a dragon; *Or* contains a considerable number of marginal sketches and illuminated borders and panels.

⁶³ For discussion of their textual history, see N.R. Ker, 'Liber Custumarum, and Other Manuscripts Formerly at the Guildhall', *The Guildhall Miscellany*, i (1954), 37-45.

⁶⁴ Manuscripts in the group demonstrate affinities with the elaborate decoration in the 'Queen Mary Psalter' (British Library, MS Royal 2.B.vii) of c.1310-20, which was later given to Mary Tudor (www.bl.uk/catalogues/illuminatedmanuscripts/gloss5.asp). For further discussion of the Queen Mary group and *G*'s location within it, see L. Dennison, 'Liber Horn', 'Liber Custumarum' and Other Manuscripts of the Queen Mary Psalter Workshops' in L. Grant (ed.) *Medieval Art, Architecture and Archaeology in London*, Transactions of the British Archaeological Association Conference, x (Leeds, 1990), pp. 118-134). *Or* is described in J.J.G. Alexander and E. Temple (ed.), *Illuminated Manuscripts in Oxford College Libraries, the University Archives and the Taylor Institution* (Oxford, 1985), p. 29; *G* and *Or* are described in L. Freeman Sandler, *Gothic Manuscripts 1285-1385*, ii, *A Survey of Manuscripts Illuminated in the British Isles*, (gen. ed.) Alexander, J.J.G. (London, 1986), pp. 76-7.

for itself and perhaps later fulfilling more of a ceremonial and/or memorial function. It is possible that the treatise was already being valued for its place in legal history by the early fourteenth century, well over a century after its completion. All of the most notably decorated texts of the treatise, late and early, are *alphas*, which may further the idea that *alpha* may in general have fulfilled a more ceremonial function than *beta*. However, having said this, it must be said that these three manuscripts appear to be very much the exceptions to the general rule that manuscripts of *Glanvill* were not illuminated. Perhaps unsurprisingly, the treatise seems to have been at its most practical in form in the period during the late thirteenth century when it was most commonly produced. Many of the smallest and most apparently functional manuscripts date from the late thirteenth century and are largely *beta* texts.⁶⁵

Finally, there is one manuscript copy of the treatise that was unknown to Hall and that is sufficiently unusual in form that it warrants mention in its own right. Uniquely amongst the manuscripts of the treatise, *beta* MS *Ht*, dating from the reign of Edward I, is written in scroll form on a long parchment roll measuring 184 x 29600mm.⁶⁶ The existence of a copy in scroll form is both unusual and perplexing; such a format must have made practical use of the treatise for reference, as opposed to the more typical uses of scrolls for reading aloud or recording material, extremely difficult. The version is conspicuously ordinary in form and the scroll cannot therefore have been produced for ceremonial purposes. It is perhaps more likely that the text's unusual format simply represents

⁶⁵ For example MSS *N*, *Be*, *Lan*, *Ab2* and *Y*.

⁶⁶ The scroll is two-sided and written in both directions but is incomplete at both ends, possibly implying that it once contained other material.

scribal error, possibly with a scribe accustomed to writing rolls being sent away to copy the treatise. It is also possible that writing in such a format was the best way of using up odd pieces of parchment, and such an explanation would fit with the general suggested status of the treatise at this time.

The Textual Development of the Treatise

In the absence of a definitive original or even clearly earliest manuscript of the treatise, some conjecture is necessary to establish the development of the text over time. Although the treatise seems to have been written as an *alpha* text, the rubrics which have traditionally characterized the surviving *alpha* manuscripts do not appear original. They vary considerably in number and nature across the *alpha* manuscripts and at times seem to impede rather than assist the author's intentions. Rather, the treatise seems to have been originally written as an *alpha* text in undivided form, to which rubrics and possibly the *Incipit* were added at an early stage.⁶⁷ In a lost and perhaps unrubricated version of *alpha* the sections were numbered.⁶⁸ However, quite early, and again later, an attempt seems to have been made to reconstruct what appears to have been the original plan of the treatise by dividing the work into *Cause* and *Tractatus*.⁶⁹ *Beta* is clearly the result of a significant and early rewrite and Hall believed that the author of the treatise and the reviser responsible for *beta* were almost certainly not the same man.⁷⁰ *Beta* seems to

⁶⁷ Hall, 'Introduction', p. xlvi. Almost all of the surviving *alphas* are clearly divided into books, if not chapters, and this must have happened at a very early stage and before the numbering of chapters.

⁶⁸ Two *alpha* manuscripts (*Z* and *E*) evidence an intriguing and enigmatic snippet of numbering which does not fit with *beta*, discussed below.

⁶⁹ See discussion of MSS *P*, *S* and *Ca* below.

⁷⁰ Hall, 'Introduction', p. lii.

have been made from an *alpha* manuscript similar to MS *A*. There is some evidence for *beta*'s chapters not at first being numbered, but they certainly were by c.1200 and the first surviving *beta* manuscripts.⁷¹ In summary, neither *alpha* rubrication nor *beta* numbering are necessarily original within their traditions. Instead, the textual history of the treatise looks much more complicated than a simple *alpha/beta* definition might imply: 'We are thus left with the impression that while *alpha* is certainly earlier than *beta*, they are both of them merely witnesses to stages in the growth of an extremely fluid text'.⁷²

This more complicated textual history is borne out by the far greater variation in both matter and structure across the 41 extant manuscripts of the treatise than has traditionally been recognised. Of the 41 known manuscripts, 22 are *alpha* and 18 are *beta*. Hall had described MS *Ab* as '*beta/alpha*',⁷³ but in fact its text is essentially *beta*. The only truly hybrid text of the treatise between the two traditions is MS *D* (of c.1212), the text of which is divided by *alpha* rubrication up to viii, 3, whereupon an incompetent attempt to number the chapters persists until the end of the treatise. Its text is close to *alpha*, but contains marked *beta* textual variants throughout, and in both halves of the treatise. Moreover, *D*'s version of the treatise also includes several *beta* glosses with numbered – i.e. supposedly distinctively *beta* – chapter references early in the treatise in the same hand as the text, as well as a *beta* prologue, book and chapter list. It is, however, impossible to make the appealingly simple case that its scribe used an *alpha* exemplar for

⁷¹ The reference in vii, 7 of the *beta* text: 'ut infra capitulo proximo post capitulum proximum' suggests that they were not. As discussed below, *beta* numbering is very variable and even in some manuscripts non-existent.

⁷² Southern, 'A Note', 86.

⁷³ Hall, 'Introduction', p. lv.

the first part of the treatise, and a *beta* for the second: *beta* variants persist throughout and all evidence of *beta* glossing, either marginally or erroneously incorporated into the text, occurs early in the treatise. For whatever reason, our scribe seems to have been determined to make the *beta* numbered schema fit his version of *Glanvill*, however badly. At minimum this attests to extended comparison between the manuscript traditions being made in the early thirteenth century. Some of the text's errors of numbering and division are so glaring that they do not look like simple scribal carelessness, but instead seem to indicate a copyist wrestling to rationalize two or more different exemplars, perhaps including an *alpha* as well as a perhaps unnumbered or partly numbered glossed *beta* text.⁷⁴

However, although *D* is unique in its status as neither predominantly one tradition or the other, there are also other many more subtle variations and overlaps within and between the *alpha* and *beta* traditions than has traditionally been thought. These are particularly apparent in the structural divisions of the treatise into rubricated or numbered sections. *Alpha* texts are generally but not invariably rubricated. However, early *alpha* *Z* and its descendant *E* superimpose a *beta* framework of numbered books and chapters onto an *alpha* text. The presence of not only *beta* numbering but also book and chapter lists and both *beta* and *alpha* versions of the *Incipit* written out separately gives these texts at least something of a crossbreed status. Fourteenth-century *alpha* manuscripts *Co*, *Or* and *G*

⁷⁴ It is particularly notable that the text, but not the book and chapter list, actually contains 15, rather than 14, books and includes two different versions of book iv (at ff. 26^r-28^v and 28^v-33^r respectively).

have rubrics numbered consecutively as chapters rather than divided into books.⁷⁵ *Alpha* *X*, dating from around 1200 is un-rubricated, and also without any numbering. *K* is a virtually undivided *alpha* containing, with only one exception, no rubrication, no division into books and no numbering and *Q* is also completely undivided. MS *M*, which will be described below, alternates between rubricated *alpha* text and *alpha* text with *beta* chapter headings. As has been mentioned, even when *alpha* manuscripts are rubricated, the number and nature of such rubrics vary wildly, and some manuscripts such as *Lan* have rubrics both in the text and the margins.⁷⁶

Such structural confusion is not limited to *alpha*: a number of *betas* contain either no, or very limited, numbering. *Ht* is completely undivided, with neither book and chapter list nor numbering in the text itself; *W* is un-numbered after the first chapter; *H* has almost no numbering; *T* has a numbered chapter list, but has relatively little concomitant chapter or even book numbering in the text itself.⁷⁷ Moreover, even when *betas* are numbered, such numbering is in general far more idiosyncratic and erratic than has traditionally been suggested. Some *betas*, with or without numbering, also contain rubrics: *No* is without numbers but instead fully rubricated; *Wr* has no book and chapter list but instead gives rubricated book and chapter headings and contains both numbers and rubrics; *C* is un-numbered but contains some rubrics; *F* is numbered but contains 2 *alpha* rubrics. MS *Br*

⁷⁵ However there are considerable variants even within this group of MSS that suggest a willingness to experiment with such forms of division. In general, their texts contain a strange combination of rubrics, sometimes numbered, numbers by themselves and numbers written out as rubrics. *Co* is numbered to vi, 8 (its chapter 69), together with sporadic rubrication, and then its numbering breaks off unfinished; *G* opens with both systems but then rubrication rapidly gives way and the majority of the text is numbered; *Or*'s attempt at numbering stops at a similar, but not identical, point to *Co*'s and likewise gives way to rubrication.

⁷⁶ See, for example, MS *Hl*'s very shortened and rubrics and MS *L*'s particularly notable variations from those rubrics printed by Hall. *Ht*'s rubrics are somewhat erratically placed.

⁷⁷ Its numbering breaks off completely at ix, 8 and only books vi and vii are numbered.

has a tendency towards having both systems of division beside one another, sometimes together and sometimes interchangeably. Essentially a *beta* text of the treatise, *alpha* rubrics have been given sometimes in clearly the wrong places in the text.⁷⁸ Book and chapter lists in *beta* manuscripts generally appear immediately after the prologue, although there are exceptions to this when listings for each book appear immediately before the text of that book, as in MSS *Be*, *R* and *V*. This general variation in structure is more explicable if it is right to suggest that neither *alpha*'s rubrics nor *beta*'s numberings are the work of the author of the treatise himself.⁷⁹ In general, the distinctions between the two manuscript traditions are far less apparent than has traditionally been thought and there are far more manuscripts that evidence structural crossovers between the traditions. A surprising number of the texts of both traditions are completely, or effectively, undivided, which could only have seriously impeded their practical use. Although Hall's characterization of the different manuscript traditions still stands, the picture is evidently much more complicated than has traditionally been thought. It is just possible that the different traditions and their manifold variants might arise from the original author working on the text for an extended period of time and later copyists copying his own different texts over time.

Whether or not he experimented with different forms of division, all of this confusion may indicate that the text was originally divided, or intended to be divided, in a different manner, and there are possible clues to this in the text of the treatise and in several of its

⁷⁸ Thus the rubric 'Essonium de infirmitate veniendi' appears before i, 10 (f. 14^r), instead of i, 12.

⁷⁹ Ibid, p. xlvii. These texts seem to support the arguments that *betas* may originally have been written with both forms of division, but then rubrication dropped and/or that there must always have been comparison between the two textual traditions.

manuscripts. The rather ambiguous *tractatus* divisions referred to in the *alpha* text for cross-references (for example at iv, 6; ix, 6 and xi, 5) do not correspond to visible division within most of the manuscripts, *alpha* or *beta*. However, *S* and *P*, containing the mid thirteenth-century version of the treatise described by Maitland as ‘*Glanvill Revised*’ and discussed in detail below, are the only manuscripts which actually divide the treatise into *tractatus*. They each contain ten such numbered divisions, before their texts break off unfinished in the middle of the tenth *tractatus*.⁸⁰ It is just possible that these two manuscripts are almost the only survivors of what was the treatise’s original system of division before either rubrication or numbering, or at least something close to it. The ten *tractatus* divisions correspond in wording to the list of civil pleas given in i, 3 and very plausibly therefore represent a system of division which fits organically with the text of the treatise and therefore its author’s intentions. It is striking in this respect that some of the oldest and best texts of the treatise designate these ‘Capitula’ at i, 3 (including *Ln* and *Z*).⁸¹ Although *S/P*’s text is unfinished, its *tractatus* divisions are often but not always in the same place as book divisions would be in the standard version of the treatise.⁸² As Hall observes, they form a sensible attempt at reconstructing the author’s original plan up to the beginning of *tractatus* viii, but *tractatus* ix ‘De placitis que super possessione loquuntur’ (covering x, 14-18) and *tractatus* x ‘De placitis que per recognitiones terminantur’ (xi, 1-3) seem to be foolish attempts to make *S/P*’s incomplete version of the treatise fit into the schema in i, 3.

⁸⁰ See Hall’s list of where these occur, ‘Introduction’, p. xx.

⁸¹ Some support may also be gleaned from *beta H*’s title for book vi, ‘tractatus de dotibus’.

⁸² *Tractatus* divisions in the earlier of these two MSS, *S*, are not themselves subdivided, but those in *P* (which is otherwise based on *S*) are further separated into numbered chapter divisions, but totalling far fewer of these than would appear in a standard version of the text.

Some support for this hypothetical earlier system of division can be taken from an earlier, but textually unconnected, *alpha* manuscript, *Ca*, dating from c.1200. *Ca* contains elements of a unique contemporary division of the treatise into *Cause* and *Questiones*.⁸³ This occurs, somewhat sporadically, in both rubrics and margins and looks like an: ‘attempt... to provide this *alpha* text with a rudimentary and remarkable cross-reference system’.⁸⁴ The text, like *S/P*, features ten main divisions or, in this case, *cause*, and – excepting ix and x, where *S/P* is unreliable – they occur in the same places in the text.⁸⁵ It is striking that, like *S/P*, *Ca* has ten major distinctions, in this case *cause*, and the first eight of these are in exactly the same places in the text as the first eight *tractatus* distinctions in *S/P*. However, as a complete text of the treatise, *Ca*’s eighth *cause* is much longer than *S/P*’s truncated eighth *tractatus*, including not only book x, but books xi and xii, and its 9th and 10th *cause* distinctions comprise books xiii and xiv respectively, as part of a more complete system that must be closer to the original layout of the treatise. In *Ca* these are then in turn sub-divided into *questiones* at those places in the text where the author asked a question,⁸⁶ and the text features a number of marginal cross-references which follow this form (for example ‘C. ix, Q. ix, Postremo’ on f. 280^r (mid ix, 13), with ‘Postremo’ being the first word of the sentence in question).

⁸³ This should be differentiated from the later hand which has partially divided the treatise by adding numbered *capitula* III-VIII in *Ca* where it and *S/P* have those distinctions of *cause/tractatus*, to complicate matters further.

⁸⁴ Hall, ‘Introduction’, p. 1.

⁸⁵ Thus, book xiv is rubricated in red ‘De placitis criminalibus: Causa x’ (f. 288^r).

⁸⁶ Textual examples may be found, amongst many others, at ff. 268^v, 269^r, 273^v and 282^v.

As Hall pointed out, this looks like: ‘an astonishing perversion of the canon law method of reference’.⁸⁷ The fact that this manuscript is such an early *alpha* may imply the status of these divisions and marginalia as perhaps having been present in, or at least closer to, the original lost *alpha* text of the treatise. They may even, in fact, have been closer to the lost original than the more well-known system of *alpha* rubrication. They certainly represent a division and primitive reference system based logically upon the contents of the text of the treatise. However, *C* is clearly not an original, or even particularly good text of the treatise,⁸⁸ and it is possible that this system was simply designed to make a not very functional manuscript more useful, perhaps by reconstructing the author’s original plan. *S/P* may have represented a later attempt at reconstructing this system. A final possible clue towards original manuscript divisions consists of the puzzling gaps in the text of a number of manuscripts before the starts of certain chapters, but neither where one would expect the start of a book in *beta* or of *cause/tractatus alpha* divisions.⁸⁹ Similarly, some manuscripts feature occasional extra large capitals at the beginnings of

⁸⁷ ‘Introduction’, p. 1. Hall did not, however, note that *Ca* also includes a number of other marginal annotations apparently aimed at ease of reference and in the same hand, but which are not explicitly incorporated into the *cause* system in the way that ‘questio’s are. These include: ‘dubitatio’, ‘distinctio’, ‘petitio’ and ‘breve’, examples of which may be found at ff. f. 272^v; 273^v; 264^v and 280^v respectively. These may perhaps also have been a part of this system and/or they may be closer to the lost original than the more well-known system of *alpha* rubrication. Intriguingly, these marginal distinctions, or at least some of them make it into a number of manuscripts, early and late and then, as discussed below, several appear in the *beta* gloss. Where any of these words do appear, they provide a neat and useful system of reference to draw attention to those points in the treatise at which questions are raised and, sometimes, answered or debates acknowledged. There are 35 such designations in *Z* (listed in Appendix 6 below) and others in, for example, *alpha Lan*, *P* and *S* and *beta Br*, often in the same places as *Ca*’s ‘questio’s. 8 such entries make it into the *beta* gloss. Hudson has stressed these terms’ associations with the academic schools, perhaps indicating a learned early approach to commenting upon the text (J.G.H. Hudson, *The Formation of the English Common Law* (London, 1996), p. 155).

⁸⁸ It has noticeably few rubrics, which would have reduced its utility.

⁸⁹ See, for example, very early *alpha Ln* and *beta W*.

the prologue; iv, 1; v, 1 and x, 1 respectively, which may just possibly themselves relate back to an earlier form of division.⁹⁰

Whatever form the treatise originally took, what is clear is that wide-ranging attempts to make its division more functional took place from very soon after it was completed. If *alpha* texts were neither originally rubricated nor numbered, both rubrics and numbers featured very early in *alpha*'s textual history. *Alpha*'s characteristic rubrics had arrived by the late twelfth century and our first surviving manuscripts. Moreover, *alpha* MS Z of c.1200 is also fully numbered in *beta* style. This manuscript also, however, presents some evidence that there may also have been another early attempt at numbering the *alpha* text in a different way. An enigmatic trace of numbering survives at the end of the volume, where a passage of text (now xii, 23-5) is repeated after the close of book 14, but this time not rubricated as earlier in the manuscript, but numbered as clxiii and clxiiii. This numbering corresponds neither to the numbering of the rest of Z, nor to *Co*, *Or* and *G*, the other three numbered *alpha* texts which have rubrics numbered consecutively, nor to standard *beta* numbering. Moreover, the passage would form a single rather than two sections in all four of these *alpha* texts or three *beta* chapters. The same passage appears at the end of Z's descendant, *E*, but is un-numbered. Southern thought that this chance survival indicated an 'intermediate stage' between rubricated *alpha* and numbered *beta*.⁹¹ In fact, however, the truth is probably more complicated and the passage appears to be textually unrelated to *beta*. What it seems to indicate, instead, is that some still earlier *alpha* must have included more textual divisions than *alpha* as we know it, but fewer than

⁹⁰ As in MS G.

⁹¹ Southern, 'A Note', 86.

beta's chapters, and that these were numbered. In summary, it is clear that there were considerable changes in the treatise's structure within the first decade of its textual history and within and between its two manuscript traditions. The moral of the story is that it would be wrong to see monolithic *alpha* or *beta* textual traditions to the detriment of the important variations within them.

Another textual variation which has warranted attention is the inclusion of names within the text itself and as marginalia or interlineations, vouched as authorities for arguments within the treatise. Such names appear in 19 different manuscripts, of which eleven are *alpha*, eight are *beta* and one is hybrid *D*.⁹² They appear more often and in greater numbers in individual texts in earlier manuscripts of the treatise, but continue to appear into the fourteenth century.⁹³ Names appear in both early *alpha* (*Ln*, *X*, *Z*) and *beta* (*B*, *Ls*) manuscripts, although some early *alpha* texts have no names at all (*A*, *Ca*, *L*).⁹⁴ In general, they tend to appear more numerous in *alpha* than in *beta* texts, and they appear most numerous of all in MS *Ln*, deemed by Hall to be the best of the surviving *alpha* texts. MS *Z* is significant as the only early *alpha* manuscript to include names within the text. Excepting some later *alphas* (*Ab*, *E*, *J*, *M*, *Nf* and *Q*), elsewhere names are interlineated or marginal, and in *beta* always marginal.⁹⁵ It is notable that, with the exception of a misreading in *Z*,⁹⁶ where they attribute a name to an opinion, the different *alpha* and *beta* texts always give the same name. Almost all of the names given may be

⁹² These are listed by Hall, 'Introduction', p. xlv. None of the three manuscripts that were unknown to Hall include names but MS *L* should be added to his list.

⁹³ See the table below for a list of manuscripts known to contain one or more names, and their types.

⁹⁴ *Ibid*, p. xliii.

⁹⁵ *Ibid*, pp. xliii-xlvii.

⁹⁶ *Ibid*, p. xlvi.

identified with important justices of the last quarter of the twelfth century. All save former Chief Justiciar Richard de Lucy (d. 1179) were active at the time the treatise was written. The names therefore seem to offer a remarkable window into the personal views of some of Henry II's justices: the men responsible at minimum for the implementation, and at maximum for the conception, of the legal reforms associated with that reign.

These names have long attracted attention. Cutbill and Twiss noticed the names in *Nf* and *Z* respectively in the nineteenth century, but did not pursue them further.⁹⁷ Woodbine also noted some of the names in *Z*, but mistakenly saw them as late additions to the text.⁹⁸ In a seminal article on the subject, Southern stated 'the more interesting hypothesis... [and] more likely by far' that *Z*'s names were original and then dropped in some later manuscripts.⁹⁹ Because they appear in both *alpha* and *beta* traditions, the names cannot be used to postulate the priority of either manuscript tradition.¹⁰⁰ However, Hall's inclination was that the author himself was responsible for the names, particularly as they are not merely given on the headline stories of the day, like the *casus regis* (vii, 3), but also on altogether more mundane questions such as the consequences of default by a demandant in a land action in the king's court (i, 32). Reliable early *alpha Ln* contains more names than any other manuscript, but they are all either interlineated or marginal. It

⁹⁷ A. Cutbill, 'A Norman-French Manuscript of Glanville', *The Academy*, viii (1875), 172; Maitland expressed interest in Twiss's discussion of the names in *Z* in his suppressed version of *Glanvill* for the Rolls Series, described in chapter 5 below (C.H.S. Fifoot (ed.), *The Letters of Frederic William Maitland*, i (Selden Society Supplementary Series vol. 1; Cambridge, 1965), p. 157).

⁹⁸ Woodbine, *Glanvill*, p. 220 only noted the names at vi, 10 and vi, 17 and mis-attributed them to the thirteenth century.

⁹⁹ Southern, 'A Note', 87.

¹⁰⁰ Hall, 'Introduction', p. xlvi.

therefore seems most likely that the author originally wrote the names in the margins and that later scribes either dropped them entirely or moved them into the text.

The picture of extended crossovers between manuscript traditions is very much borne out by the study of the text of the treatise itself in its manuscripts and traditions. Although the broad textual divisions between the two traditions still stand, there are far more small-scale crossovers between traditions than has traditionally been thought. *Alpha* ‘variants’ can be found in many *beta* manuscripts and vice versa. There are also clear filiations between some of the manuscripts and sometimes also the contents of their volumes, including close relations between *alpha* and *beta* texts.¹⁰¹ Excepting *Glanvill Revised*, discussed in the next chapter, there is relatively little evidence of significant development of the text of the treatise in any of its manuscripts. Instead, the text changes over time in a number of small ways which include an increasing textual merging between manuscript traditions, and also evidence a general theme of attempts to make the treatise slightly more functional in its appearance and layout. As well as the addition of rubrication and numbering, there are increasing attempts over time to draw the reader’s eye to particular sections deemed relevant or useful. *Essoins* lists are sometimes highlighted and sometimes put into tabular form,¹⁰² and sections of the text are highlighted or sometimes even sub-rubricated for ease of reference.¹⁰³ As well as adding a number of short comments and titles, in effect superimposing rubrics onto a *beta* text, MS *C* also provides

¹⁰¹ This includes, for example, the very close relationship between *alpha E* and *beta F*, both in their texts of the treatise, despite being of different traditions, and in the wider contents of their manuscript volumes.

¹⁰² As in *Ca, S*.

¹⁰³ MS *Lan*, which gives standard rubrics in red in the text and extra marginal sub-rubrics in black but underlined in red in the margins in an apparent attempt to increase the utility of an *alpha* text.

a unique summary schema of the treatise before its opening.¹⁰⁴ Fairly often, and increasingly over time and in the later manuscripts, single words in the middle of the text are highlighted, written in red or enlarged in a clear attempt to improve functionality and readability.¹⁰⁵ It is significant that these are very often the titles or openings of writs and it may be inferred that later users of the treatise might to some extent be using it as a register to hunt for such models, or to read specifically about how they worked. Some manuscripts are likewise given a small number of specific sub-headed rubrics to mark particular writs.¹⁰⁶

This picture of small functional alterations over time is supported by the developments in the text of the treatise itself. Such variants are usually small and not legally significant, but occur in almost all the manuscripts of both traditions to a greater or lesser extent and, unsurprisingly, increasingly over time. Of course, some texts are simply more carelessly-copied or error-strewn than others, and some more likely to make conscious changes to the text, but overall both the survival relatively intact of the basic text itself and the relative uniformity of the small changes made to it in its different manuscripts are striking. In general these changes include the correction of some errors and the updating of language and specific technicalities, as well as small additions and omissions.¹⁰⁷ There is a general tendency across the manuscripts towards small-scale abbreviation,

¹⁰⁴ This was not discussed by Hall in his edition, but seems to evidence a significant level of engagement with the text and must have acted as a useful way into the treatise.

¹⁰⁵ *Ht, No, S/P.*

¹⁰⁶ *Ls* has six such entries, all in book xii.

¹⁰⁷ Thus, for example, various of the manuscripts omit some parts of vii, 3 on partibility and the rights of the eldest son automatically to inherit the chief message (in, for example, *Or* and *Y*).

particularly of writs and their dating or testatory clauses.¹⁰⁸ Terminology is sometimes, but not always and/or consistently, updated.¹⁰⁹ Sometimes changes are fussy, involving the substitution of seemingly gratuitous changes of word order, tense or the substitution of a synonym.¹¹⁰ In some, but not all, manuscripts, limitation dates and references to monarchs are updated, and just occasionally a real later date is inserted into the text.¹¹¹ In general, the king's presence at proceedings in person is downplayed and he is also increasingly written about using the second person, a change that came about under Richard. Equally, the expanding scope of royal justice, albeit not necessarily physically embodied by the written presence of the person of the king, is evident from some texts.¹¹² Some texts imply an amelioration of procedure.¹¹³ Occasionally a scribe of the treatise takes it upon himself to offer a short explanation of a point: 'id est...'. At times some of the wordier sections of the text are bracketed off as unnecessary. As happens with later registers, there is also a tendency to insert some names or initials and/or places into the text where 'A'/'B' or 'illum locum' might have been, or sometimes to remove names and insert initials, but these do not throw much light upon who precisely was copying the manuscripts, only reaffirming their widespread geography.

¹⁰⁸ For particularly abbreviated texts, see *Ab*, *Lan*, *V* and *Y*.

¹⁰⁹ 'Iusticiis' becomes 'iusticiariis', 'guarantum' becomes 'warrentum', 'terra' becomes 'tenementum', 'comitatus' often becomes 'provincie' etc. Stipulated periods of three days are sometimes altered to four and vice versa.

¹¹⁰ The scribe of *Y* was particularly keen on the general insertion of 'rationabiliter...'.
¹¹¹ Thus the chirographs in *Hl* at the beginning of book viii are not dated to 1187, as in most texts of the treatise, but to 'anno regni regis Henrici tercii xxxix' ie. 39 Henry III (1254-5).

¹¹² Thus, for example, *G* excises the sheriff in i, 4, implying that all of the civil pleas described now rightfully belong in the king's courts.

¹¹³ The text of i, 7 in *G* seems to imply that, in the absence of a summoned party, the claimant does not in fact himself need to present his case in court on that stipulated return day, but should do so if the summoned party has still not arrived by the fourth day (f. 77').

MS *Br*, a *beta* text of c.1250, was studied in particular detail and transcribed in its entirety as a manuscript not known to Hall. A brief survey of its textual variants enables a useful summary of the wider picture. This manuscript is also significant for the picture it presents of a peculiarly concerted crossover between manuscript traditions. Clear cross-referencing of an *alpha* as well as a *beta* exemplar seems to have gone into the original copying of the text, and this is supported by the volume's marginalia, which superimposes some *alpha* variants on the *beta* text. Similarly, while the text itself includes internal *beta* cross-references to different books,¹¹⁴ there are sometimes marginal references in the same place to *alpha* 'tractatus',¹¹⁵ evidencing a pre-existing *beta* reading having been clearly, although perhaps not entirely helpfully, supplemented with the *alpha* variant. *Br*'s text of the treatise is far fuller than usual of small but generally not legally significant variants from Hall's urtext, lots of which are apparently gratuitous synonymic changes or alterations of person, word or tense.¹¹⁶ Underneath this pedantry, however, there does seem to have been an underlying desire to make the text slightly more accessible, and a number of small simplifications and specifications have been made to this end and there are some intelligent emendations. Such points are often made by marginal and interlineated insertions in the copyist's own hand. As is general, writs are increasingly abbreviated. Terminology is updated in the usual ways,¹¹⁷ and local or otherwise known places are added in the treatise's writs.¹¹⁸ Return days and limitation

¹¹⁴ See, for example, 'quod predeterminedatum est in primo libro' in iv, 5 (f. 31^v).

¹¹⁵ 'in prima distinctione huius tractatus' appears in the margin in the same place.

¹¹⁶ It seems that the scribe was determined to make his own mark on the text, however small, through this method of very small changes. Hence even 'vel' routinely becomes 'aut' and vice versa.

¹¹⁷ Thus, 'iusticiariis' is erratically given for 'iusticiis' and they are defined as being 'itinerantibus', rather than 'errantibus'.

¹¹⁸ For example Northampton is given instead of Devon in xii, 3's writ of right and the sheriffs in the next writ are 'de Oxon'.

dates are altered often only very slightly in places,¹¹⁹ and most of the usual variants appear in some form or another. The text has a puzzling habit of addressing writs to ‘vicecomites’ plural, which might perhaps suggest a link with London, the only place where two sheriffs were regularly addressed in writs at once. Like the other manuscripts of the treatise, although *Br* contains interesting snippets, in general it provides a relatively poor harvest of variants and surprisingly few of any legal significance given that it was copied around sixty years after the treatise. We are left with the picture of a text still being assiduously copied and engaged with on this level, but not being substantially or substantively altered and no real attempt made to keep it up to date with the (considerable) legal changes of the intervening years. There is an apparent paradox in the copyist’s earnest desire to engage with the text, and apparently to try to make it more useful, and to go to such trouble to rationalize the two manuscript traditions in a text that is so outdated. We must, however, infer that he deemed his copy of the treatise would fulfill some practical purpose at the time that he produced it.

The other notable way in which attempts were made to make the treatise more useful was the addition into some *beta* manuscripts of a marginal gloss in varying forms. The tables in Appendix 5 show the breakdown of this gloss by type, manuscript by manuscript, and by book of the treatise. The gloss was carried out at an early date, and is present and at its fullest in some of *beta*’s earliest manuscripts. It appears most fully in MSS *B*, *Ls* and in *Wr* (with 234, 229 and 207 entries respectively) and less fully in other *betas* *R*, *T* and *V*

¹¹⁹ Thus tenants must come on the third rather than the fourth day to essoin themselves for sickness in i, 12, but on the fourth rather than the third day in i, 26. Those who go on pilgrimage to Jerusalem are allowed an essoin of a year and a day rather than just a year in i, 29. There are some odd alterations to the text’s limitation dates, with ‘tempore Henrici Regis’ used to refer to Henry II, overlooking Henry I.

and is only fragmentary in *Be* and *F*.¹²⁰ The gloss is rendered possible by *beta*'s book and chapter numbering, although it does not appear in all *beta* texts. MS *F*, for example, is perfectly numbered and would therefore seem an ideal candidate for glossing, but contains only four entries. Equally, the gloss paradoxically appears almost completely uselessly in some un-numbered texts such as *T*, or where there are marked errors of numbering such as *V* or *Wr*, both of which must ironically have rendered it unusable. Once again possibly attesting to cross-referencing between traditions, it has not traditionally been noticed that one numbered *alpha* manuscript (*E*) contains quite a substantial gloss.

Where fullest in MS *B*, the gloss contains 234 marginal entries, of which 152 are simple cross-references which are usually correct; 51 give a numbered cross-reference with some explanation; 5 are notes without numbered references; 4 are names; 8 are of the 'obiectio', 'solutio', 'questio' variety;¹²¹ 4 are sub-headings and 10 are of a critical nature claiming, generally accurately, to discover errors or omissions in the text. Although the existence of a gloss can indicate the formal academic study of a text, the gloss on *Glanvill* seems more simple and utilitarian than one might expect, had this been the case. It reads very much as a limited and informal attempt to increase the functionality of the volume by cross-referencing and expanding on points only where absolutely necessary. In general, it is sensible and accurate and would provide a helpful tool for using the text, were it not so generally impeded by problems with numbering. As Appendix 5b shows,

¹²⁰ Hall, 'Introduction', p. liii.

¹²¹ As is noted above, such entries may derive from those manuscripts such as *Ca* and *Z* which feature such terms, but there are far fewer of these in the *beta* gloss and they do not always feature in the same places.

the gloss is, unsurprisingly, most interested in books vii, i, xiii and xiv and least interested in books xi, viii and iii in that order. Book vii is undoubtedly the most original in the treatise and its incisive treatment of specific problems and, sometimes, possible solutions to thorny questions of alienation and inheritance must have had considerable impact. The functionality of books i, on procedure and essoins; xiii, giving the royal possessory pleas including recognitions of seisin, mort d'ancestor, darrein presentment, utrum and novel disseisin; and xiv, the treatise's only exploration, albeit briefly, of criminal pleas, is immediately apparent. Equally, it is understandable that the gloss should find books viii, on final concords; xi, on attornies; and iii, on warrantors, of much less interest.

Hall characterized the gloss in general as 'efficient and intelligent',¹²² but its usage can only have been seriously undermined by the irony of the manifold errors of book and chapter numbering in so many glossed texts. Paradoxically, some of the glossed manuscripts show the least signs of visible contemporary or later use of any of the *Glanvill* manuscripts.¹²³ We are left with the impression of an intelligent but impracticable gloss, initially written, but then copied in a fairly unthinking way, probably not in a classroom environment. Most of the gloss consists of simple cross-references rather than academic engagement with the issues of the text and there is no evidence for the development of the gloss over time on an academic model. Once again, however, the fact of its existence as well as its thoroughness do indicate thoughtful engagement with the treatise and a desire to make it more user-friendly over time.

¹²² Ibid, p. liv.

¹²³ MS R, for example, shows no signs of use whatsoever.

The Translation of the Treatise into French

An epilogue to the medieval development of the treatise was its translation into French. The silence of *Glanvillian* scholarship on the four French or part-French manuscripts of the treatise is almost deafening. Maitland's tentative suggestion of an edition of the French version of the treatise has never been taken up.¹²⁴ Of these four manuscripts, three give a French version of the treatise (*J*, *Nf* and *Q*), one of which breaks off unfinished at xiii, 22 (*J*), and the fourth comprises a particularly noteworthy part French and part Latin version (*M*).¹²⁵ The four manuscripts contain *alpha* versions of the treatise and, allowing for small variants, a single identifiable French text of the treatise.¹²⁶ It might be expected that these volumes would be particularly functional in form, but in fact they are larger than the typical *Glanvill* text, averaging folio measurements of 248 x 170mm, and in some cases quite formal and presentational texts. Unlike the version of the text known as '*Glanvill Continued*',¹²⁷ no argument can be made for the different manuscripts of the French translation forming a 'version' based on what the treatise is bound up with therein. Each of the four manuscripts contains different further contents and is ordered differently. All are, however, clearly functional legal volumes, with three of four including thirteenth-century statutes, three including registers of writs, three including a wide variety of thirteenth-century legal literature as well as a variety of other highly functional material.¹²⁸ All of the volumes include more additional material in

¹²⁴ Fifoot (ed.), *The Letters of Frederic William Maitland*, i, p. 147.

¹²⁵ See detailed discussion below.

¹²⁶ The text of *M* contains some *beta* elements, described below, but is still clearly essentially based on the *alpha* tradition.

¹²⁷ Richardson, '*Glanville Continued*' and further discussed in the next chapter.

¹²⁸ *J* includes the student's notes of law lectures of c.1278 described below.

French than is typical. The manuscripts date from c.1250-75 (*Nf*),¹²⁹ the 1280s (*M*), and 1290s-1325 (*J/Q*), so it can perhaps be inferred that the translation dates from the middle to second half of the thirteenth century, the boom period for the production of Latin *Glanvills*. As with most *Glanvill* texts, very little is known of most of the volumes' early provenance, excepting *M*, the well-known 'Liber Luffield', described below.

There are equally few clues about the text's translator. The translation opens in MS *J*, one of the latest surviving French manuscripts, with a short and anonymous prefatory note in which the translator claims to be working for the instruction of friends and not by command: 'pur mes amys asenser e par une requeste plus que nuls autres comaundements'.¹³⁰ He emphasizes, with *Glanvillian* sentiment, that he will write 'en un comun romaunz sanz ryme fors pleynement'.¹³¹ His description of Henry 'of England' might just possibly indicate that the translation was written by/for a Frenchman.¹³² The fact that this preface survives only in *J*, one of the translation's later manuscripts, together with the small textual differences between the translation in these volumes, suggest that there must have been other manuscripts of the translation, and that we do not have its original manuscript copy.

¹²⁹ Cutbill published an early note on *Nf*, which he thought unique and mis-attributed to John's reign (Cutbill, 'A Norman-French Manuscript of Glanville', 172).

¹³⁰ MS *J* f. 86^r.

¹³¹ This is a reference to what seems to have been something of a contemporary vogue for translating legal materials such as the Statute of Westminster II or the *Court Baron* into rhyming couplets. For discussion, see for example Baker, *CELM*, pp. xxvi-ii.

¹³² He sets out to: 'translater les loys et les coustumes del secund roy Henry de Engleterre selon les coms. et le usage del Escheter de Londres'. The rest of the preface reports, as does the standard incipit that the treatise was produced 'en le tems Randolf de Glanvyle qui en cel tems estoit chyef Iustice del reyne' and that the text includes 'des lays des assizes. des custumes. des jugements del Escheter...'.

Of the three texts fully translated into French, *Nf* has no title but a Latin *Incipit* and has French rubrics dividing its text into a standard *alpha* 181 sections.¹³³ *J* has a Latin title ('Summa quae vocatur Glaunvyle'), the translator's prefatory note and French rubrics, but these tail off towards the end of the treatise, which is anyway unfinished. *Q* has no contemporary title and has no preface, *Incipit* or rubrics. Broadly speaking, however, and despite such different appearances, the volumes' translations clearly represent one version textually. There are numerous small textual differences between them, especially of spellings, but not significant variants.¹³⁴ Their texts, whether formally divided or not, tend to contain very similar numbers of capital letters and in similar places. Their internal coherence is most clearly illustrated by the fact that they all feature the same justices' names always given, unusually, in their texts rather than marginally or interlineally, and at the same points.¹³⁵ The texts' translation of the treatise is very faithful to the standard *alpha* text upon which they must have been modelled. Paragraphs are evidently very similar to the Latin text, but are translated for ease of comprehension and legibility rather than word-by-word. Rubrics are in general more writ-based, again perhaps indicating the text increasingly being used for its writs/exposition of specific writs, and the translation can be wordier than the pithy Latin of the original, but it is essentially very direct. There is no evidence of any concomitant attempt to update the treatise as part of its translation and outdated formulae such as 'me or my justices' remain

¹³³ *Nf* features in the same volume as a Latin *beta* version of the treatise (*No*), but they are textually unrelated.

¹³⁴ Very occasionally, individual versions completely miss out a chapter as, for example, MS *Nf*'s peculiar omission of the significant vii, 3. This could have been a mistake or just possibly an unwillingness to get to grips with and possibly to update the technicalities of inheritance discussed there.

¹³⁵ See Hall, 'Introduction', p. xlv for a list of these. The names used, and their position in the text of these manuscripts, suggest that none of the surviving Latin *alpha* *Glanvills* can have been the translator's model, unless he deliberately added these names to the text from the margins.

unchanged.¹³⁶ Thus, we have a careful and generally intelligent and accurately written translation which copied the original treatise into French without attempting to re-write or update it in any other significant fashion. A section of summary text of the translation has been included as Appendix 7 below.¹³⁷

The text of the French translation of *Glanvill* in *M* is intriguing and enigmatic in its own right. *M*'s text is best described as a hybrid, both linguistically and – to a lesser extent – in terms of the two *Glanvill* manuscript traditions. Hall described *M* as comprising a Latin *alpha* text with *alpha* rubrics for book i, a Latin *alpha* text with *beta* chapter headings for book ii, 1-18, and a French alpha-based text with Latin *beta* chapter headings for the rest of the treatise.¹³⁸ This version of the treatise is therefore unique in changing not only between manuscript traditions, but also languages. In fact, Hall oversimplified the position. Book i is a fairly standard, albeit somewhat ignorantly copied, *alpha* text with rubrics but no numbers.¹³⁹ There is no automatic shift from rubrication to *beta* numbering at book ii. Instead, from this point *M*'s *Glanvill* continues largely rubricated. The text of the treatise contains 203 original rubrics which continue throughout, albeit in a highly irregular fashion and with many mistakes. While the rubrics in the first book are fairly standard relative to those printed by Hall, those from book ii onwards tend to vary more. There is some overlap with the slightly unusual rubrication in *L*, one of Hall's 'early *alpha* revised' manuscripts, possibly used with *A* as

¹³⁶ As at, for example, *Q*, f. 100^v.

¹³⁷ This section is taken from the opening of MS *Q*, i, 1-8 and reproduced to the best of my ability.

¹³⁸ Hall, 'Introduction', p. lviii, n. 2.

¹³⁹ The text also contains a number of textual omissions, such as that on f. 13^r.

the foundation of the *beta* tradition.¹⁴⁰ It is noteworthy that the total of 203 rubrics falls between the c. 180 typical rubrics in *alpha* and the c. 238 numbered chapters in *beta*.¹⁴¹ What is particularly unusual is that, from ii, 8 on f. 16^v, chapters are sporadically also numbered, as they would be in a *beta* text, and it is clear that where they are not actually numbered, rubrics effectively count as such. The books themselves are also numbered from this point. We therefore have an essentially *alpha* text with some *beta* numbering. This represents a genuine crossover between the two manuscript traditions, probably evidencing comparison of at least three different exemplars.¹⁴²

The text abruptly changes from Latin to French after ‘constitutioni eleganter’ midway through ii, 19.¹⁴³ It continues in the same hand, without a new title, with the Latin rubric ‘De pena temere iurantium in magna assisa’ followed by a French translation of the same chapter, beginning: ‘He cels qui se plurent en certe assise, si en la paine...’. The rest of the text is in French, although oddly divided by continuing Latin rubrics throughout. Although it is not complete, the French ‘version’ of the treatise in *M* is very similar to, although not identical with, that in the other French manuscripts studied. All in all, *M*’s version of *Glanvill* is a highly puzzling text. Although it is tempting to assume that its unusual status reflects the process of translation, it cannot be the original text of the translation, given that it is more recent than *Nf* and that, like it, it lacks the translator’s preface which is only in the later MS *J*. We may guess that its error-prone copyist,

¹⁴⁰ Ibid, p. lxxvii.

¹⁴¹ The numbers are taken from *ibid*, p. liii.

¹⁴² These exemplars must at minimum have included a Latin *alpha* text, a Latin *beta* text (given that there is no evidence of any *beta* translation into French) and almost certainly also a French *alpha* translation of the treatise. For further discussion of *M*’s basis on another French MS, see below.

¹⁴³ At f. 17^v.

probably working from several exemplars, chose to switch to French early on in the text, as a language in which he felt more confident. However, having started in Latin, he carried on in the main with a system of Latin *alpha* rubrication. He may perhaps have consciously attempted a reconciliation of *alpha* and *beta* exemplars, aiming to give his text the benefits of both rubrication and numbering and therefore *M* reflects the process already described of conscious later attempts to rationalize different *Glanvill* manuscripts, but it remains a manuscript that raises more questions than it answers.

If the translation was made in the late thirteenth century, the treatise was clearly still being read and disseminated in Latin at this date, and indeed to a greater extent than at earlier or later times. Why then bother to translate it into French? Plucknett believed that the translation was intended: ‘for the business man as well as for the lawyer’.¹⁴⁴ He thought that the tendency to translate legal works into the vernacular betokened a radical change in the readership of English legal material, suggesting: ‘that law and business are sharing the services of a new class of lettered laymen who understand Latin but are really fluent only in French’.¹⁴⁵ For Plucknett, the rise of French not just as the language of pleading, but increasingly as the language of the common law, symbolized the advance of the ‘philistine’ lay readership, deliberately cut-off from the universities and from the Roman and clerical traditions of the learned law.

¹⁴⁴ Plucknett, *Early English Legal Literature*, p. 38.

¹⁴⁵ *Ibid*, p. 81.

Such a view is an oversimplification. The status of French as the increasingly dominant language of legal argument and instruction by the thirteenth century does not automatically betoken a dramatic change in the character and education of those making or enforcing the law. The translation of the treatise into French may, however, imply that *Glanvill* had a wide readership in the thirteenth century, perhaps including litigants and potential litigants, as well as those acting for them and perhaps also apprentices at the Common Bench and other law students. These are groups in particular who would have been more naturally confident in French, particularly as a spoken language.¹⁴⁶ The translation of the treatise into the language of law as practised implies that *Glanvill* was being read at this level and it may perhaps evidence some informal educational role for the treatise. The translation fits into a context of a wider trend in which other legal works were increasingly either written in, or translated into, French over the course of the thirteenth century.¹⁴⁷ It is noteworthy that the hand responsible for *Glanvill* in *M* also copied other French works into the volume, including a translation of the *Articuli Willelmi* and French verses on accountancy. Together, these look very much like an attempt to make these basic legal texts more accessible to a wider audience than merely justices and their clerks.

¹⁴⁶ See Baker, *CELM*, p. xxxvi for a discussion of the growing status of French as the dominant language of the common law.

¹⁴⁷ So, for example, French translations also exist of *Judicium Essoniorum*, *Modus Componendi Brevia*, *Hengham Magna* and *Parva*; the tremendously popular *Britton* was written in French as was much of the shorter more clearly pedagogic literature of the late thirteenth century (Baker, *CELM*, pp. 79, 56 and 64-5 respectively). French was not the only vernacular language of the common law: one remarkable late thirteenth-century manuscript survives in which some of these texts are translated into English (Bodleian Library MS Rawlinson B.520). For discussion of this volume, see P. Brand, 'The Languages of the Law in Later Medieval England', in *Multilingualism in Later Medieval Britain*, (ed.) D.A. Trotter (Cambridge, 2000), p. 76.

The fact that the translation of *Glanvill* survives in as many as four manuscripts, and that there were almost certainly more of these, implies that it had success. That someone took the trouble to translate the treatise about a century after it was written indicates that the treatise was still being read and actively engaged with and evidences an apparent desire to use it practically. However, although translating the text was arguably in itself an attempt to keep it up to date and useful, there was no parallel attempt to update the text itself, and ironically, the four surviving French manuscripts attest to particularly little usage of the treatise.

Other Contents of *Glanvill* Manuscript Volumes

From soon after its appearance, *Glanvill* was attached to other works and circulated along with them. There has not yet been any systematic study of who and what *Glanvill* was bound up with, and it is hoped that this will throw some light on the text and how medieval readers approached it. Appendices 3 and 4 give a simplified contents table for all the known *Glanvill* manuscripts. Although some manuscripts of the treatise are clearly composite, at least 12 of the volumes are written in one hand throughout; with another 15 or so largely written in the hand responsible for the treatise. The manuscripts therefore allow us a glimpse both of what original copyists originally copied alongside the treatise and what others chose to add to it over time.

Seven of the 41 known manuscripts feature *Glanvill* alone.¹⁴⁸ Four of these (*Hl*, *Ht*, *I* and *Ln*) are *alphas* and three *betas* (*R*, *T* and *V*). These seven manuscripts are not, as might

¹⁴⁸ There is no clear evidence of whether these texts were once bound up with other materials.

perhaps have been expected, strikingly early in date but instead span the whole of the thirteenth century, possibly just into the fourteenth. Another manuscript, *Col*, is only a fragment of *Glanvill* on the end leaf of an unrelated printed book of 1535. The remaining 33 *Glanvill* volumes all include other material of varying nature. The texts of *Glanvill* are often the first item in these volumes;¹⁴⁹ and they are never the last. In general, *alpha* *Glanvill* texts tend to come later in their respective volumes than *betas* do. Only one volume contains two different *Glanvill* texts (*Nf* and *No*, in Alnwick, Duke of Northumberland MS 445), a French *alpha* and a Latin *beta* respectively. There are early notes in the same hand on both of the volume's versions of the treatise that suggest that they were bound together from an early date.

Perhaps unsurprisingly, *Glanvill* texts are almost always bound up with other material of a legal character. 21 of the manuscripts contain either one or two registers of writs which almost invariably date from the thirteenth century.¹⁵⁰ These are very often written in the same hand responsible for copying the volume's *Glanvill*. A particular register of relatively early in Henry III's reign and opening with a writ addressed to Robert Neville, appears in a number of *Glanvill* volumes, generally immediately after the treatise and without much of a break from it, and it seems that the two texts may to some extent have circulated as a pair.¹⁵¹ Another other strikingly common material for the text to be bound up with consists of thirteenth-century statutes in Latin and/or French, generally ranging

¹⁴⁹ This is the case for at least 12 of the manuscripts and in composite texts the treatise often opens its section of the volume.

¹⁵⁰ Of the 21 manuscripts which include registers, five include two registers in one volume. Of these, 19 are dated by Hall (E. De Haas and G.D.G. Hall (eds.), *Early Registers of Writs* (Selden Society vol. 87; London, 1970), pp. xxiii-v).

¹⁵¹ In MSS *Br*, *F*, *N* and *W*. The register is discussed by Hall, *ibid*, p. xli, who thought that Neville might have been, but was not necessarily, the exchequer official and occasional judge under John and Henry III.

from Magna Carta to the late thirteenth century, often but not always in broadly chronological order.¹⁵² Finally, a similarly large number of *Glanvill* volumes also contain one or more examples of thirteenth-century legal literature, including a variety of tracts and treatises such as *Britton*, *Hengham Magna* and/or *Parva*, *Judicium Essoniorum* and some of the more clearly pedagogic tracts such as *Casus Placitorum*, *Brevia Placitata*, the ‘Court Baron’ or *Modus Componendi Brevia*. The text of the treatise is only bound up with the most famous and longest example of later legal literature, the treatise known as *Bracton*, in three manuscripts, of which two only include extracts from the later treatise.¹⁵³ It is noteworthy that these three commonest co-materials with the treatise are often found in the same individual volumes: of the 19 volumes which include at least some statutes, 15 also include a register and there are 12 volumes whose contents include a register, statutes and thirteenth-century legal literature. It is therefore possible to characterize the most common volumes of the treatise as including at least some of these three types of text, possibly alongside other material, all of which appears highly functional for learning or administrating the law.

In general, whether or not they contain a register, statutes and/or later legal literature, the volumes in which *Glanvill* appears tend to include other material of a legal character. Although the majority of the volumes’ contents evidence a clear interest in what would have been contemporary law as practised in the thirteenth/fourteenth century, a number of the volumes also include earlier English laws or law books of both genuine and spurious character, most commonly various Anglo-Saxon codes, the *Leges Edwardi Confessoris*,

¹⁵² At least 19 manuscripts contain such statutes.

¹⁵³ These are MSS *J*, *M* and *Wr*, of which only *Wr* has the later treatise in full.

Leges Henrici Primi, and sometimes the *Leis Willelmi*, *Articuli Willelmi* or Henry I's Coronation Charter. Of these, the only text commonly present is the *Leges Edwardi Confessoris*, which is in 15 manuscripts alongside the treatise and fairly often bound up immediately after it. Other legal materials present in some but not a majority of the texts include early law reports, present in at least three manuscripts and dating from the 1270s-90s,¹⁵⁴ Anglo-Saxon *Expositio Vocabulorum* lists,¹⁵⁵ as well as a variety of short treatises on accounting and estate management.¹⁵⁶ *H* is the only volume to include canon as well as common law,¹⁵⁷ and there is no evidence for the coexistence of *Glanvill* and Roman law texts. Other noteworthy legal miscellanea in individual manuscripts include the 'Libertas Civium Londoniensis' of the early twelfth century;¹⁵⁸ the occasional summons to or report from a local eyre;¹⁵⁹ notes on the jurisdictions of various courts, secular and ecclesiastical;¹⁶⁰ a short introduction to criminal procedure in eyre;¹⁶¹ the so called 'Consuetudines Diversarum Curiarum', a tract on proceedings in ecclesiastical and secular courts of c. 1243;¹⁶² a student's note on law lectures of c. 1276/8;¹⁶³ a variety of Scotland-related material in one volume including the law of the Marches of 1249, the 'Leges Scocie', purporting to be Scottish royal legislation, and the 'Laws of the Four

¹⁵⁴ These are MSS *J*, *Lan* and *M*, all of which are described and dated in P. Brand (ed.), *The Earliest English Law Reports*, i (Selden Society vol. 111; London, 1996), pp. c-cii, lxxxvii-xci and cviii respectively. It is perhaps a little surprising that more versions of the treatise are not bound up with reports.

¹⁵⁵ In MSS *A*, *C*, *Co*, *D*, *G*, *L* and *Or*.

¹⁵⁶ MSS *E*, *M*, *P*, *S*, *W* and *Y*, described in D. Oschinsky, (ed. and trans.), *Walter of Henley and Other Treatises on Estate Management and Accounting* (Oxford, 1971), at pp. 17, 29-32, 237-9 and 264-95, 39, 41-2 and 43 respectively.

¹⁵⁷ It includes a heavily glossed fragment of the *Constitutionum Clementinarum*, as well as part of book II of the Decretals of Gregory IX (ff. 13^r-22^v and 23^r-38^v).

¹⁵⁸ In, for example, MSS *D*, *E* and *F*. *D* also contains a variety of other London-related legal material.

¹⁵⁹ For example, MSS *C* and *H* include copies of a Lincolnshire summons in 1234, *E* includes articles of the Hereford eyre of 1248 and MS *J* includes reports from the 1279 Northumberland eyre and two from the 1285 Northamptonshire eyre.

¹⁶⁰ MS *J*, f. 113^v.

¹⁶¹ MS *P*, ff. 77^r-78^r.

¹⁶² MSS *S* and in part in MS *P*.

¹⁶³ MS *J*, ff. 143^r-158^v, and described in Brand, *MCL*, pp. 61-2.

Burghs' (Edinburgh, Roxburgh, Berwick and Stirling);¹⁶⁴ and even a prayer for litigants.¹⁶⁵

It is possible to characterize various groups within the corpus of *Glanvill* manuscripts, formed by virtue of what legal matter the treatise is bound up with. One such group sees an early and good *beta* text immediately followed by a version 1 text of the *Leges Edwardi Confessoris*, up to 34, 1a (MSS *B*, *Ls*, *No*, *W* and *Wr*).¹⁶⁶ However, there is no correlation between these volumes' other contents. In the well-known 'Guildhall group', *Glanvill* comes near the end of a comprehensive collection of laws and charters, some of which were produced in London during John's reign. There is evidence for this collection having been made in London during John's reign, from when the earliest of the group's manuscripts, hybrid *D*, originates. *Alpha* MSS *G*, *Co* and *Or* are all fourteenth-century versions of the collection, not directly descended from *D* and adding to the material in it, although also apparently originating in London, possibly put together under the aegis of Andrew Horn the Chamberlain.¹⁶⁷ As discussed above, another group of texts of the treatise (MSS *Br*, *F*, *N* and *W*) all appear alongside a register opening with a writ addressed to Robert Neville. Much has been made of the mini manuscript groups in the versions of the text known as *Glanvill Continued*, surviving in *beta* MSS *C* and *H*,

¹⁶⁴ MS *Be*.

¹⁶⁵ MS *P*, f. 87^r.

¹⁶⁶ Discussed by Hall, 'Introduction', p. lvii; F. Liebermann, *Über die leges Edwardi confessoris* (Halle, 1896), pp. 125-6.

¹⁶⁷ For discussion of this group and its convoluted but interesting textual history, see J. Catto, 'Andrew Horn: law and history in fourteenth-century England', in *The Writing of History in the Middle Ages. Essays Presented to Richard William Southern*, (ed.) R.H.C. Davis, and J.M. Wallace-Hadrill (Oxford, 1981), pp. 367-91, F. Liebermann, *Über die Leges Anglorum... Londoniis collectae* (Halle, 1894), Wormald, *The Making of English Law: King Alfred to the Twelfth Century*, i, pp. 237-8 and Ker, 'Liber Custumarum', 37-45.

which contain very similar lists of early thirteenth-century ordinances and a register,¹⁶⁸ and of the texts known as *Glanvill Revised* in *beta* MSS *P* and *S*, which contain a wider variety of material in common, both of which will be further discussed below. MSS *F* and *E* are very closely related, with much of the same material and in a similar order, but *F* contains a *beta* and *E* an *alpha* text of the treatise.¹⁶⁹ Their relationship but textual differences may indicate the one-time presence of a wider manuscript group from which they both derived. Finally, MS *Ab* begins with the unusual title: ‘Incipit prologus in librum qui vocatur curialis in quo continentur leges Anglie’. Hall believed that a collection known as the ‘liber curialis’ may once have existed, containing the *Tripartita*, a version of the *Expositio Vocabulorum*, an *alpha* *Glanvill* as well as the Assize of Northampton.¹⁷⁰ It is interesting that the texts of the treatise in these groups by contents of volumes are not always discernibly similar, so we should not make too much of these groupings.

There is also some non-legal material of note in the volumes. Relatively common items include Norman ducal genealogies, sometimes including Norman and Angevin kings of England;¹⁷¹ arithmetical tables of numerals;¹⁷² letter collections of varying types, royal, ecclesiastical or private;¹⁷³ kalendars, sometimes Paschal;¹⁷⁴ geographical discussions of

¹⁶⁸ Hall, ‘Introduction’, pp. lvii-iii; Richardson, ‘Glanville Continued’.

¹⁶⁹ Liebermann noted the relationship between the two manuscripts, but stressed that neither manuscript depends upon the other, and that both must therefore go back to an earlier text: F. Liebermann ‘On the Instituta Cnuti Aliorumque Regum Anglorum’, *TRHS*, New Series, vii (1893), 106.

¹⁷⁰ Hall, ‘Introduction’, p. lvi.

¹⁷¹ For example MSS *A*, *Be*, *C*, *E* and *F*.

¹⁷² MSS *N*, *W*, *Wr* and, in arabic, *E*.

¹⁷³ Including MSS *Ab* (copies of royal and ecclesiastical letters to/from among others Henry III, Bernard of Clairvaux and many connected with Burton Abbey, Staffordshire); *H* (letters from the Roman curia and pertaining to the Roman curia); *M* (including three letters of Pope Boniface VIII in the mid 1290s and

the number of provinces and hides and other geographical or political divisions of England and sometimes on the country's longitude and latitude;¹⁷⁵ and *provinciales* listing prelates and sometimes accompanied by lists of bishoprics.¹⁷⁶ Finally, something of a link between law and poetry is apparent, with a number of *Glanvills* appearing alongside classical or contemporary poetry, and even including a thirteenth-century rhyming lament on legal changes in England.¹⁷⁷ The treatise very occasionally appears alongside a chronicle, such as the famous text of *Glanvill* in MS *A* with Roger of Howden's *Chronica*,¹⁷⁸ or alongside Geoffrey of Monmouth's *Historia Regum Britannie* in *Ab2*,¹⁷⁹ or with an extract from Henry of Huntingdon's *Historia Anglorum* on Cnut in *F*. Other one-off miscellanea with which the treatise is bound in individual manuscripts includes a French work on Merlin (*F*), a tract on veterinary medicine (*E*), recipes (*Ab2*, *Nf/No*) and a variety of other local materials, legal and ecclesiastical, some of which will be discussed below. Finally, *Z* uniquely appears immediately after the Herefordshire Domesday.¹⁸⁰ However, although there is considerable and sometimes noteworthy non-legal content bound up with the treatise, of the manuscripts which contain more than just the treatise by itself, only *X* and *K* are completely non-legal in content, containing Latin and French poems and medical and astrological collections respectively.

several relating to Luffield Priory, on the border between Northamptonshire and Buckinghamshire); *Y* (a 1260s letterbook connected with William Wickwane, Archbishop of York) and *W* (a legal formulary of letters, some of which relate to Berkshire).

¹⁷⁴ For example MSS *M*, *P* and *S*.

¹⁷⁵ MSS *C*, *E*, *F*, *G*, *Or*.

¹⁷⁶ MSS *O*, *W*.

¹⁷⁷ MSS *B* (the lament), *Ls*, *M*, *N*, *Nf/No*, *W* and *X*. There are also songs in MSS *F* and *W*.

¹⁷⁸ For discussion, see Hall, 'Introduction', pp. lv-lvi; W. Stubbs, 'Introduction', *Chronica Magistri Rogeri de Hovedene*, i (Rolls Series; London, 1868), pp. lxxiv-viii; D. Corner, 'The earliest surviving manuscripts of Roger of Howden's 'Chronica'', *EHR*, xcvi (1983), 297-310.

¹⁷⁹ This is MS 6 in J.S. Crick (ed.), *The Historia Regum Britannie of Geoffrey of Monmouth III. A Summary Catalogue of the Manuscripts* (Cambridge, 1999), pp. 8-10.

¹⁸⁰ See V.H. Galbraith and J. Tait (eds.), *Herefordshire Domesday, circa 1160-1170: reproduced by collotype from facsimile photographs of Balliol College manuscript 350* (Pipe Roll Society, 63: London, 1950), and discussion below.

Appendix 3 shows how the materials with which the treatise was bound changed over time. It is apparent that the treatise's earliest manuscripts were in fact the most idiosyncratic in content, containing a wide variety of material, some of it non-legal. These earlier volumes are also more likely to open with the treatise, perhaps indicating its higher status and/or practical use at this time. It is, however, interesting from this perspective that volumes containing the treatise by itself continued to be produced across the whole of the thirteenth century. Anglo-Saxon texts, genuine or spurious, are more likely to appear in later volumes of *Glanvill*, perhaps indicating the text becoming more of a historical record and/or ornamental. Unsurprisingly, registers, statutes and thirteenth-century legal literature are the most popular companions for the treatise at all times, but increasingly so over time. Appendix 4 shows volume contents by *alpha/beta* manuscript traditions. Although *beta* texts are more likely to open with the treatise and *alphas* more likely to include statutes and legal literature, there are not many firm rules to be extrapolated about what texts of the two traditions are more or less likely to be bound up with.

In general, and despite their wide variety of other contents, it can be clearly seen that the treatise was widely bound up with legal and practical materials. Most of its volumes look by their wider contents like unofficial and useful books for individuals or institutions. The volumes are characterized by the inclusion of at least some contents of private and ordinary local concerns as well as more general legal and administrative texts. An ecclesiastical link is apparent from the contents of a number of the manuscripts, but this

is perhaps unsurprising, given where texts would be kept and copied.¹⁸¹ The text is bound up with geographically wide-ranging local materials, indicating its widespread popularity.

Evidence of Early Ownership and Use of the Manuscripts

Although there is no evidence, internal or external, for some of the manuscripts' ownership during the middle ages, it has been possible to elucidate or at least suggest the early ownership of some of the volumes, and sometimes also of their origins. It is immediately clear from the contents of volumes and additions or notes on them that early ownership of the texts, although particularly common in the south of England, was geographically spread across England and perhaps even just into Scotland.¹⁸² Almost all of the texts which contain any clues towards medieval ownership seem to have been owned by private individuals or by religious foundations, with at least some of the manuscripts of the treatise definitely originating in such foundations. The famous 'Liber Luffield' (*M*) was clearly written in the small Benedictine Priory of Luffield on the borders of Northamptonshire and Buckinghamshire, possibly compiled by the 'John of Oxford' mentioned in the volume and the author of some of its sections.¹⁸³ There is

¹⁸¹ For this and the next point, see further discussion of manuscript usage below.

¹⁸² To give some idea of this, individual volumes may be at least tentatively linked by content and/or evidence of early ownership with: Kent (*T*); the Isle of Wight/Hampshire (*P*, *S*); Hampshire (*O*); Winchester (*Ab2*); Suffolk (*X*); London (*Co*, *D*, *Or*, *G*); Berkshire (*N*, *W*); Buckinghamshire (*M*, *Q*); Warwickshire (*Lan*); Herefordshire (*Wr*, *Z*); Cheshire/Herefordshire (*E*); Staffordshire (*Ab*); the Midlands (*F*); Lincolnshire (*C/H*); Yorkshire (*Y*); Durham (*Ca*) and the Borders/Scotland (*Be*). It is particularly striking that the text should be associated with the London-centric material and usage in the Guildhall manuscripts, given that the treatise would not have been particularly useful in respect of the city, which had its own customs.

¹⁸³ See Maitland, *Collected Papers*, ii, pp. 190-201 for the argument that John was responsible for the compilation of the whole collection in *M*. It is possible that John was the 'John de Houton' elected prior in 1287, who may possibly have studied draftsmanship at Oxford (G.R. Elvey (ed.), *Luffield Priory Charters*, ii (Welwyn Garden City, 1975), pp. xxiv-vi).

clear internal evidence that *Ab* was produced at the Abbey of Burton-on-Trent, Staffordshire; *Ab2* either originated in, or was held from a very early date at, the Benedictine Abbey of Hyde, Winchester; *Ca* may perhaps be linked by internal evidence to the Priory at Durham; there is evidence that *O* belonged to Titchfield Abbey, Hampshire by at least c. 1400; *T* may possibly be linked to Christ Church, Canterbury; *W* may be linked to Reading Abbey; *Wr* had come to Worcester Cathedral by at least c. 1400; *Y*, as discussed above, seems likely to have originated in the scriptorium at York and to have been written by and for the Dean and Chapter there, and remained in the area until at least the fourteenth century. It is very striking that so many of the *Glanvill* volumes which contain evidence of early ownership should have been owned or originated in religious houses. Of course to some extent, this is commensurate with those houses being the centres of learning and repositories of texts, but the prevalence of law books in those libraries must also indicate a strong desire at these foundations to defend their rights by recourse to the law if necessary and to be learned in the common law. It is particularly noticeable that such small foundations as the priory at Luffield should have such a comprehensive legal collection.¹⁸⁴

However, there is also evidence for private individual ownership of some volumes by lawyers or men of business. Thus, for example, *beta Be* seems to have been the *vade mecum* of a practitioner with clients in both England and Scotland in the late thirteenth century. Cooper went so far as to suggest northern attorneys Richard Foxstone or

¹⁸⁴ Oschinsky observed that Luffield priory is reputed only to have had three priest monks in the thirteenth century (*Walter of Henley*, p. 29).

Thomas de la More as possible candidates for its compilation.¹⁸⁵ *Alpha Lan* was almost certainly owned, and probably compiled, by a Warwickshire serjeant, possibly an Alexander of Coventry, in the 1270s, and appears to have been owned by a second serjeant, Adam des Okes of Whitley, in the early fourteenth century.¹⁸⁶ There is some internal evidence for *Wr* having been used by a lay lawyer working in the diocese of Hereford before c. 1400.¹⁸⁷ There is evidence that MSS *S* and *P*, the texts of the treatise known as *Glanvill Continued* were compiled and copied by Robert Carpenter II, a bailiff and local man of business with public and private duties on the Isle of Wight, and his son, Robert Carpenter III in the 1250s and then in the 1280s respectively. A number of other manuscript volumes include snippets of names and/or usage that might connect them to such legally-minded individuals, but without enough evidence to do so definitely.¹⁸⁸ It is significant that the treatise should appear in these notebooks of legal practitioners and men of business, and it seems very likely that more of the volumes about which there is no surviving evidence of ownership must have been similarly owned. It is noteworthy that the treatise continued to be copied into such practical notebooks into the late thirteenth and possibly into the early fourteenth centuries, indicating some level of continuing practical usage of this type.

Early *alpha* MS *Z* is exceptional in its unique putatively official link. In *Z* the text of *Glanvill* follows a Herefordshire Domesday of 1160-70, which can with certainty be

¹⁸⁵ T.M. Cooper, 'The Authorship of the Berne Manuscript', *SHR*, xxvii (1948), 114-23. Also H.L. MacQueen, 'Scots Law Under Alexander III', in *Scotland in the Reign of Alexander III 1249-1286*, (ed.) N.H. Reid, (Edinburgh, 1990), pp. 74-102.

¹⁸⁶ Brand, *The Earliest English Law Reports*, i, pp. lxxxvii-xci.

¹⁸⁷ See R.M. Thomson and M. Gullick (ed.), *A Descriptive Catalogue of the Medieval Manuscripts in Worcester Cathedral Library* (Cambridge, 2001), p. 56.

¹⁸⁸ Thus, for example, MS *C* includes references to Simon de Redyngges and William de Weston.

attributed to the royal scriptorium and seems to have originated within the Exchequer itself in 1160-70.¹⁸⁹ Although the volume's text of *Glanvill* is slightly later (c.1200), and in a different hand, it too may have 'official' Exchequer links. Although written in different hands, parts one and two of this volume have a relatively homogeneous outward appearance and are produced and pricked in a consistent manner which shows that neither was cut down to fit the other, and it is just possible that it, too, was produced in the Exchequer. However, there is no formal evidence of this; none of the scripts or names in the gloss on Domesday appear to be older than c.1200 and later addenda suggest that the manuscript passed into private hands at some point during the thirteenth century, in Herefordshire. We are left with hypotheses: 'We cannot be sure when the two works came together but the possibility – probability even – that this text of Glanville was in the Exchequer in the early thirteenth century gives its text a special claim to our consideration'.¹⁹⁰ As discussed above, MSS *D*, *Co*, *G* and *Or*, the so-called 'Guildhall group' of volumes all have a semi-official connection in their apparent origination, and certain early ownership in, the Guildhall. However, as discussed above, at least the later three of these volumes may have been produced as a result of the interests and antiquarianism of Andrew Horn, the Chamberlain and this, together with their relatively late date, means that the treatise was not necessarily being as much or as practically used in the Guildhall as in other places. The only other text for which anything like an

¹⁸⁹ This part of the text is written in the distinctive formal set hand of the royal *curia* and the text contains very valuable addenda in multiple curial hands apparently editing and modernizing the Domesday text, including the number of hides beside individual place names and the names of their recent holders, all of whom may be positively identified as tenants living at some time under Henry II (Galbraith, *Herefordshire Domesday*, p. xviii). Galbraith believed that Master Thomas Brown, the exile from the court of Roger II of Sicily, might just be behind the volume's production (ibid, pp. xxiii-iv). On Brown, see: D.J.A. Matthew, 'Brown, Thomas (d. 1180)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/27202>].

¹⁹⁰ Southern, 'A Note', 86.

‘official’ link has been posited is the version known as *Glanvill Continued*, in MSS *C* and *H*, which Richardson believed to have been the work of a chancery clerk.¹⁹¹ However, study of these manuscripts casts considerable doubt upon Richardson’s suggestion and there is in fact more evidence of the two volumes having been privately owned.

The picture presented by both the wider contents of the volumes and their early ownership is supported by what limited evidence can be adduced of their early usage. Most of the texts include some level of early engagement with the text of the treatise, not in the scribe’s own hand. At times, this clearly evidences legal work and, perhaps unsurprisingly, one of the most manifestly heavily used manuscripts is *beta Wr*, having been owned by the Hereford lay lawyer. The volume, like some others, is characterized by heavy and evidently legal-minded annotation, such as ‘nota casum de... contra...’, ‘nota pro...’. Legal notes in French have been added to some volumes, particularly beside individual writs and descriptions of procedure.¹⁹² A large number of the texts contain at least some marginal annotations, underlinings, pointing hands, black crosses and small alterations of the treatise.¹⁹³ Some manuscripts feature very heavy but small-scale corrections of the original text in later hands.¹⁹⁴ At times, such interest is evidently specific, in some volumes London-centric and in others to particular legal processes.¹⁹⁵

¹⁹¹ Richardson, ‘Glanville Continued’, and see further discussion in chapter 2 below.

¹⁹² As in MSS *W* and *J* from the late thirteenth-early fourteenth centuries.

¹⁹³ All of MSS *A*, *Ca*, *Co*, *E*, *G*, *I*, *J*, *K*, *L*, *Lan*, *Ln*, *M*, *Nf*, *O*, *Or*, *P*, *S*, *X*, *Z*, *D*, *Ab*, *Ab2*, *B*, *Br*, *Be*, *C*, *F*, *H*, *Ht*, *Ls*, *N*, *No*, *T*, *W* and *Wr* include at least some such visible evidence of later engagement with the text of the treatise.

¹⁹⁴ MS *Ht*. MS *X*, for example, critically glosses the writ in i, 6 (p. 202) with ‘sed hoc breve non habet locum...’.

¹⁹⁵ For London-related insertions, see *Co* and *G* and for, for example, notes with a particular interest in the process of swearing in court in different circumstances, see MS *K*.

There are written comments on some of the texts dating from as late as the fifteenth century.¹⁹⁶

The best evidence of direct later engagement with the text of the treatise itself is in the ‘version’ of the text known as *Glanvill Revised*, described in detail below. However, there is some evidence of small changes being made to the text by different hands than those responsible for their copying in many of the manuscripts. In general, these are very small-scale alterations that are not necessarily legally significant, or simply involve highlighting the text in particular ways, often to highlight lists of procedures such as essoins or the titles of writs for ease of reference. There is also some attempt in some of the manuscripts to stigmatize outdated or archaic law in the treatise or occasionally perceived mistakes in it. Some manuscripts contain a number of marginal ‘vacat’s, in general very specifically tied to the whole or parts of individual chapters.¹⁹⁷ Some of these are the same across all of these manuscripts, for example vii, 1 on marriage portions, which is designated ‘vacat’ in MSS *Be* and *T* and in the fuller and far more significant rewrite of the treatise in the *Glanvill Revised* manuscripts *P* and *S* is designated ‘ius antiquum’.¹⁹⁸

One of the clearest conclusions from a study of such later usage, and one that clearly correlates with what has been seen of the treatise’s textual development over time, is the

¹⁹⁶ See, for example, the extensive comments on, and numbering of the treatise in, MS *O*, which include a cross-reference on the *alpha* text with the *beta* tradition, and the comments in three different fifteenth century hands on *L*.

¹⁹⁷ See, for example, *beta Be* (some but not all of the ‘vacat’s on which are noted in N.R. Ker, *Medieval Manuscripts in British Libraries*, ii (Oxford, 1977), p. 583) and *T* and *alpha O*, *P* and *S*.

¹⁹⁸ At *T* f. 36^v and *Be* f. 14^v.

evidence of cross-referencing of different manuscript traditions with one another, not only by scribes but by later readers and users of the text. As has been seen, French *alpha Nf* and Latin *beta No*, although written in different hands, were bound together from an early date and there are notes in the same early hand on both texts. There is considerable evidence, some of which has been described above, for the adding of complete or some rubrication to *beta* manuscripts and of numbering to *alphas*, often in a haphazard and clearly superimposed fashion that must suggest cross-referencing between manuscript traditions.

Thus, there is clearly some ongoing attempt over time to engage with the treatise, both for increased practical utility and to correct its errors. That this process so clearly included comparison of different *Glanvill* texts suggests the early prevalence of manuscript copies of the text, many of which must now be lost, as well as a serious attempt to study and understand it. It is significant that the treatise was manifestly being read and used, at least on some levels, as late as the fifteenth century. In general, however, all such later usage has to be seen as relatively limited. It is most often the case that such usage is small-scale and/or clearly not legally significant. Moreover, it is often less than the usage on other items in individual volumes, particularly when directly compared with examples of thirteenth-century legal literature and sometimes statutes of this date, i.e. the law in its more evidently up-to-date versions.¹⁹⁹

¹⁹⁹ There is no evidence of use of *Glanvill* on the same scale as some texts of *Bracton* (see, for example, the description of the heavy usage of the *Bractons* in Cambridge University Library, MS Dd.7.14 in Baker, *CELM*, p. 72) or on the extracts of *Bracton* in MS M.

Preliminary Conclusions

More systematic study of the manuscripts has cast some light on the nature of the treatise itself and even the complicated question of who wrote it. It has also elucidated *Glanvill's* textual development over time. It is clear that neither *alpha* or *beta* manuscript traditions should be seen as monolithic, and that there are far more considerable overlaps, textual and structural, between them than has traditionally been thought. The supposedly defining characteristics of each tradition – *alpha* rubrication and *beta* numbering – appear not to be original in the treatise, or even original within their traditions. It has also evidenced a very strong and continuing desire to compare, and sometimes to rationalize, existing older manuscripts, sometimes of both traditions.

More than this, however, working upwards from the manuscripts it is possible to gauge some idea of the function of the treatise itself and how it was used and perceived over time. *Glanvill* was clearly a practical text: most of its 41 surviving manuscripts are relatively simple and legal in form and look as if they are designed to be used, and indeed many of them bear clear signs of such usage. The number and nature of manuscripts clearly attest to the treatise's ongoing popularity and prove that it continued to be produced into the fourteenth century, and to be read beyond that. Indeed, it is striking that, judging by the surviving texts, the treatise had its heyday in terms of copying in the late thirteenth century, about a hundred years after it was first written. Moreover, the manuscripts attest to an ongoing process of textual alteration which demonstrates the continuing engagement with and usage of the treatise over time as well as an apparent desire to make it more user-friendly. Such efforts include, amongst others, the re-write

that produced *beta*, all the various different attempts to introduce numbering or rubrication to the treatise and other small alterations, its gloss and its translation into French. And this picture is fully borne out by the functional and legal materials with which the treatise continued to be bound, as well as the fact that it continued to be bound by itself until the late thirteenth century.

However, despite its functional text and appearance and manifest signs of usage, a study of *Glanvill* manuscripts over time raises a central paradox: why should so much effort be put into the copying, small-scale alteration and use of manuscripts of the treatise over time without any serious or general textual updating? Why was it relevant to take steps to make the treatise more accessible and user-friendly without any meaningful updating of the law it contained? How was it that, although across its manuscripts the text of the treatise itself is not nearly as variable as might be expected from their different divisions and structures, *Glanvill*'s most common period of production was the late thirteenth century? Such questions can only be answered by reference to the audience reading and using *Glanvill* over time and the specific ways in which they were using the text. The treatise looks informal, both in its text and from its manuscript appearances and there is no evidence of the sort of general re-write that we might expect if it were functioning in any way officially or as a general training manual. Although it may perhaps have fulfilled some informal educational role,²⁰⁰ there are no commentaries or other explicit indications of the classroom and the gloss does not look academic. The manuscripts

²⁰⁰ The educational functions of both registers and statute books, with which the treatise was so often found, have been particularly emphasized (D.C. Skemer, 'Reading the Law: Statute Books and the Private Transmission of Legal Knowledge in Late Medieval England', in J.A. Bush and A. Wijffels (eds.) *Learning the Law. Teaching and the Transmission of Law in England 1150-1900, Proceedings of the 13th British Legal History Conference, Cambridge, 1997* (London, 1999), p. 114; Brand, *MCL*, (London, 1992), p. 65).

therefore support Brand's assertion that it 'seems doubtful whether *Glanvill* ever was used as its author may have intended within a classroom'.²⁰¹ Indeed, other texts were produced in the thirteenth century that would have been far more useful classroom texts.²⁰² Yet *Glanvill* was still being copied, read and used but evidently in a very specific fashion that did not seem to be premised on the treatise being kept up to date.

Turner suggested that *Glanvill* was written as a practical guide for justices and clerks of new royal court at Westminster.²⁰³ This seems unlikely given that, although the text was clearly much used over time, so little seems to have been done to keep it up to date with the ever-changing law. *Glanvill Revised*, discussed in the next chapter, is the only manuscript evidence of a serious attempt to modernize the treatise. However, 'the very existence of this text highlights the fact that there is no other earlier (or later) evidence of the kind of process of continuing revision which would have been needed if *Glanvill* really was intended for use or actually used as an authoritative book of practice'.²⁰⁴ Brand argues that the treatise was written for litigants and potential litigants and particularly for their attorneys. Manuscript evidence suggests that this was indeed the case.

²⁰¹ P. Brand, 'Legal Education in England before the Inns of Court', in J.A. Bush and A. Wijffels (eds.) *Learning the Law. Teaching and the Transmission of Law in England 1150-1900*, p. 56.

²⁰² As discussed in chapter 3.

²⁰³ Turner, 'Who was the Author', 111-2.

²⁰⁴ Brand, 'Legal Education in England before the Inns of Court', p. 54. It seems most improbable that, were it functioning as an authoritative book of practice, there would be such a surprising number of seemingly impracticable texts characterized by their lack of division, mistakes, impracticable glossing etc.

CHAPTER 2

Glanvill Continued and Glanvill Revised

Two ‘versions’ of *Glanvill* have long been highlighted as being of particular interest and constituting attempts at continuation and revision of the treatise. Hall characterized both as ‘attempts to make the treatise more serviceable’.²⁰⁵ Contained in probably the best known of all the *Glanvill* manuscripts, these versions have been cited as the exceptions to prove the rule discussed in the previous chapter of a general lack of significant engagement with the treatise over time. Both of these versions warrant further study, and detailed assessment of their manuscripts and secondary literature has enabled the drawing of some new conclusions about both *Glanvill Revised* and *Glanvill Continued*.²⁰⁶

Glanvill Continued

H.G. Richardson drew attention to British Library, MSS Additional 25005 and Harley 323 (MSS *C* and *H* respectively) in a well-known article in the *Law Quarterly Review* in 1938.²⁰⁷ He considered these two volumes to constitute a distinct ‘version’ of the treatise and to represent a significant attempt at expanding and modernizing *Glanvill* for a mid thirteenth-century audience, to catch up with the rapidly developing common law. He christened his so-called ‘version’ of the treatise ‘Glanville Continued’, based largely on the material with which the treatise is bound up in these two volumes. However, closer

²⁰⁵ Hall, ‘Introduction’, p. lvii.

²⁰⁶ The section below on *Glanvill Continued* is partly based upon my article ‘*Glanvill Continued: a reassessment*’, in A. Lewis, P. Brand and P. Mitchell (eds.), *Law in the City, Proceedings of the 17th British Legal History Conference, London, 2005* (Dublin, 2007), pp. 15-23, but appears in revised form here.

²⁰⁷ Richardson, ‘Glanville Continued’, 381-99.

study of these manuscripts and of Richardson's arguments about them raises a number of problems with his thesis.

Richardson believed that the two manuscripts of his 'version' both dated from the reign of Edward I, but that they were later copies of a once more extensive earlier collection made in around 1240. He described *H* as the more accurate but unfinished text, and *C* as being neater and fuller than *H*, but particularly error-ridden. He showed the comparable sections of both manuscripts to begin with a *beta* version of *Glanvill*, and then to continue with the same miscellaneous collection of twenty-one statutes, writs and ordinances of Henry III. He listed this collection, ranging from the 1225 Magna Carta and Charter of the Forest to the 1236 Provisions of Merton and showed that all but seven of its items could be precisely dated to between April 1233 and January 1236. This collection contains a variety of general writs and ordinances as well as several concerning the changing fortunes of three connected parties: Richard Siward, the Basset family and the disgraced justiciar Hubert de Burgh, all implicated in rebellion against Henry III, but subsequently pardoned.²⁰⁸ Several writs in this section also deal with a 'Robert of London', upon whose identity – if he existed as more than just a scribal fiction – contemporary chancery rolls do not throw any more light. Richardson described the better manuscript (*H*) as breaking off after this collection, but the more careless *C* as continuing with a contemporary register of writs and a version of the short treatise

²⁰⁸ For background, see D. Crouch, 'Siward, Sir Richard (d. 1248)', *Oxford Dictionary of National Biography*, 50 (Oxford, 2004), pp. 814-5; or F.M. Powicke, *King Henry III and the Lord Edward*, (Oxford, 1950), especially pp. 129 and 140-1.

Judicium Essoniorum, which – following Woodbine’s incorrect dating of the *Judicium*’s composition – he wrongly deemed to have been a later addition to the volume.²⁰⁹

The essence of Richardson’s view of the significance of these manuscripts is twofold. First, he believed that the collection of statutes, ordinances and writs which follows the treatise in both manuscripts should be viewed as a deliberate continuation of the treatise, and that it comprised material specifically chosen to fit with and expand *Glanvill* and bring it up to date.²¹⁰ Second, he believed that the nature of this ‘continuation’ section proved that the collection as a whole was put together by a chancery clerk. He believed that this section evidenced the clerk’s efforts in the mid 1230s at collecting a variety of precedents and memorabilia, largely avoiding conventional charters or writs *de cursu* that he might find in existing chancery formularies. Rather, Richardson argued, the clerk set out to collect ‘the kind of thing that would strike an intelligent man as useful, curious or important’.²¹¹ Richardson stressed the very miscellaneous and unusual nature of some of these items to demonstrate that they must have been copied in the chancery. He cited in particular one of the section’s ordinances of four articles concerning relations between Christians and Jews, and providing for the expulsion of those Jews who were not serviceable to the king.²¹² He deemed that, because the ordinance does not survive anywhere else, but appears authentic, it must have come from within the chancery.

²⁰⁹ Woodbine erroneously dated the composition of the short treatise to 1267-75 (*Four Thirteenth Century Law Tracts*, ed. G.E. Woodbine (Yale, 1910), pp. 116-142). However, Brand has shown the treatise in fact to have been written in c.1218/9-30, meaning that it no longer needs to be explained away as a late inclusion in MS C (P. Brand, ‘“Nothing Which is New or Unique”? A Reappraisal of ‘*Judicium Essoniorum*’, in P. Birks (ed.), *The Life of the Law, Proceedings of the 10th British Legal History Conference, Oxford, 1991* (London, 1993), pp. 1-7).

²¹⁰ For Richardson’s discussion of this section, and his attribution of it to the chancery, see in particular ‘*Glanville Continued*’, 388-92.

²¹¹ *Ibid*, 391.

²¹² *Ibid*, 392-4, and printed in full on 393.

Although primarily basing his chancery ascription on this miscellaneous section of statutes, writs and ordinances, Richardson argued that the register which follows this section in the better manuscript (C) further substantiated the collection's putative chancery origin. He based this on the register's expanded discussion of the writ of peace and the grand assize, that is, the writ directed to a feudal or county court to stop proceedings in an action for the recovery of a proprietary right and to compel trial by grand assize jury rather than battle (examples of which may be seen at *Tractatus*, ii, 8 and 9). Basing his judgement largely on the fact that C's register adds to the information in *Glanvill* itself on this writ and the procedure of obtaining it – from the chancery – Richardson concluded that: 'the register which was added as a supplement to *Glanville* was originally compiled in the chancery of Henry III, for the guidance of chancery clerks, and that it gave them something that *Glanville* did not give'.²¹³

To emphasize the significance of his collection, Richardson drew explicit parallels between *Glanvill Continued* and the more famous attempt at updating and actually revising the text of the treatise, discussed and described by Maitland as '*Glanvill Revised*'.²¹⁴ Indeed, following what we now know to be Maitland's mis-dating of *Glanvill Revised* to c. 1265, Richardson believed his collection to be of particular significance as the earlier of the two notable 'attempt[s] at modernizing *Glanville*'.²¹⁵

In summary, if Richardson's 'strong presumption' that the collection originated in the chancery was correct, this would indeed make this collection interesting: as has been

²¹³ *Ibid*, 388.

²¹⁴ Maitland, '*Glanvill Revised*'.

²¹⁵ '*Glanville Continued*', 381.

seen, only one other *Glanvill* manuscript has any significant suggested 'official' connection and that a notably unsubstantiated one.²¹⁶ Moreover, if he was right that his collection did indeed represent a specific attempt at continuing and modernizing the treatise which would sit alongside *Glanvill Revised*, *Glanvill Continued* would indeed be significant in the broader context of *Glanvill* scholarship and could be used to throw light at once on the treatise and its transmission and development over time, the changing common law that it embodied and the relationship between the two. In other words, it would provide a neat view in microcosm of the crossover between the theory and practice of the developing common law.

Richardson's thesis has been generally accepted. It received a short but ringing endorsement by Powicke, who deemed our hypothetical chancery clerk to have been indeed 'a man with an historical mind'.²¹⁷ Although Hall made rather less of *Glanvill Continued* than might have been expected, he too followed Richardson's assessment.²¹⁸ Despite, or perhaps because of, this general acceptance, there has been almost no critical work on *Glanvill Continued* since Richardson. In fact, however, Richardson's thesis now warrants reconsideration on several levels. There are reasons for doubting some of his factual description of these manuscripts. More importantly, his characterization of their significance as a modernized version of *Glanvill* that originated in the chancery of Henry III is at best questionable.

²¹⁶ See discussion of MS Z, its Herefordshire Domesday, and its possible origination in the Exchequer in the previous chapter.

²¹⁷ Powicke, *King Henry III and the Lord Edward*, p. 770.

²¹⁸ Hall, 'Introduction', pp. lvii-iii.

Richardson seems to have made some factual errors in the dating and description of the contents of these two manuscripts. He dated both manuscripts of *Glanvill Continued* to the reign of Edward I.²¹⁹ Hall, following him, dated both manuscripts more specifically to around 1300.²²⁰ In fact, however, whilst this dating may be accepted at least for the earlier parts of the composite MS *H, C*, the fuller of the two volumes, is considerably earlier and may instead be dated to the mid thirteenth century.²²¹ In other words, *C* may be the original manuscript of this collection and not, as Richardson was forced to argue, a later copy. Richardson's argument that there must once have been substantially more of the manuscript, and in particular more of the miscellaneous collection of statutes, writs and ordinances of which he made so much, is based more on *H*, in which many sections including its *Glanvill* are either unfinished or incomplete. However, with the apparently complete *C* as the earlier, possibly original, manuscript of the collection, there is no evidence for anything being missing.

Moreover, Richardson also made some surprising omissions in his description of the contents of these two volumes. He failed, for example, to note the contents of the earliest folios of *C*, which precede *Glanvill* and, as with the rest of the volume, are written in the same hand as the treatise.²²² He also failed to mention specifically that MS *H* only opens

²¹⁹ 'Glanville Continued', 381.

²²⁰ Hall, 'Introduction', p. lviii.

²²¹ This dating is largely based on internal evidence. The hand responsible for *C* is clearly considerably earlier than those responsible for *H*. Similarly the register in *H* (ff. 69^r-88^r), although in a different hand to that manuscript's *Glanvill*, is later in date than that in *C* (ff. 67^v-73^v). Hall dated the register in *C* to earlier than 1236 and that in *H* to before 1275 (*Early Registers of Writs*, p. xxiii). In other words, the register in *C* predates the 1236 Statute of Merton, whilst that in *H* must have been written after it.

²²² These folios include an outline summary schema of *Glanvill* which has not been found in any other manuscript of the treatise; a short section in French on distinctions of lettering and numbering; a French copy of the *Expositio Vocabulorum*; a Norman ducal genealogy down to the succession of John; a

mid-way through the treatise and that its second section – of statutes, writs and ordinances – is not as full as that in *C*, breaking off unfinished before the Provisions of Merton. Although these are small variants, and sections of the two manuscripts are undoubtedly very similar, it may be argued that Richardson over-simplified his description of the contents of both volumes in order to enhance their similarities.

Second, Richardson's firm ascription of *Glanvill Continued* to the chancery warrants reappraisal. As has been noted, the evidence for this attribution essentially comes down to the nature of the miscellaneous collection of statutes, writs and ordinances which comes after the treatise in both manuscripts, and to the register which follows them in *C*. Richardson argued that the unusual and lesser-known nature of the miscellaneous section following the treatise supports its supposed chancery origins. In fact, however, this argument is entirely based on conjecture. The unusual nature of many of these items is not particularly surprising in a period where there was still no general enrolment of legislation. It is therefore not a compelling argument that they could only have been collected in the chancery. Indeed, if this was the case and they were put together by a chancery clerk with broad access to draft material and presumably wide professional interests, why does the collection only represent such a short chronological period? This seems particularly surprising if, as has been suggested, Richardson may not have been correct in his view that the original collection was once much fuller than what now survives.

discussion of the longitude and latitude of England, also giving the country's size, its main roads, its counties, bishoprics and some of its laws and the Assize of Bread.

Indeed, it might be argued that this section's pronounced local flavour – something not commented upon by Richardson – might rather imply private compilation. All of the items in this section which are not either statutes, general ordinances or the four writs relating to Richard Siward and others may be connected with Lincolnshire. Writs concerning Boston Fair would seem to have held more interest to a local man of business whose interests included law and legal administration than to a chancery clerk.²²³ The same is true of a copy of a general summons of the Lincolnshire eyre issued in September 1234. The otherwise unidentifiable 'Robert of London' who features in a number of the items in this section, is described as having held land in Wainfleet, Lincolnshire, in which county he acted as coroner, and is distrained in another of the items in the section to appear as a witness at the next Lincolnshire county court.²²⁴ It is conceivable that Robert might have fitted the bill as the Lincolnshire-based man of business who would have been a more plausible original compiler than Richardson's anonymous chancery clerk.²²⁵

Richardson also based his chancery ascription on the early register of writs which follows the section of statutes, writs and ordinances in *C* only. Although he was correct to notice the extended description of the writ of peace and the grand assize in this register, this is not unique. Indeed, there are at least two other registers of a similar date which contain

²²³ There are two such Boston fair-related writs, addressed to a sheriff and concerning the safeguarding of the local roads during the fair and the bailiffs of the count of Brittany to be present there (*C*, f. 65^v).

²²⁴ The undated writ addressed to the sheriff of Lincolnshire (*C*, f. 66^f) orders the election of a new coroner in place of Robert. He is distrained to appear in court together with three other knights, 'William, Thomas and Gilbert' in a writ on f. 65^v, and there are various other references to his land or interests.

²²⁵ It is just possible that Robert might even have himself been implicated in rebellion or perceived rebellion against the king in the 1230s, which would explain his interest in the cases of Siward et al. This suggestion might be supported by the evidence of one of the writs in question which grants the customs and services at Wainfleet, earlier given by Robert 'as ransom', to Hawise (de Quincy), sister and coheir of Ranulf, last earl of Chester and Lincoln (osp. 1232). The reference to 'ransom' sounds sufficiently implausible that it might just be true.

virtually identical discussion at this point. These are the second of the two registers in Corpus Christi College, Cambridge MS 297 (ff. 115^v-23^r) and the register in British Library, MS Additional 8167 (ff. 107^r-13^r).²²⁶ More importantly, although the register does contain, albeit not uniquely, extended explanatory notes on the writ of peace, a writ – like many others – obtainable from the chancery, there is no compelling reason as to why this should have been produced by and for chancery clerks, as Richardson suggested. The added detail in the register in *C* on the process of the demandant obtaining the writ – over and above its briefer description in *Glanvill* itself – would have been at least as useful to a litigant or his advisor as to a chancery clerk, and arguably perhaps even more so. The register nowhere reads as if it were specifically written for those in the chancery as opposed to outsiders dealing with it. Moreover, there is nothing else in the manuscript's register which particularly seems to reflect the sort of routine day-to-day activities of the chancery which one might expect if this were a collection, as Richardson suggested, specifically designed for chancery clerks.

Thus, it seems that even if a chancery clerk were responsible – and there is no specific or compelling evidence that he was – he must have undertaken the collection in a private capacity and unofficially. A simpler argument, and one for which there is at least as much evidence, is that the collection was compiled by a private individual with Lincolnshire connections, just possibly 'Robert of London'.

Finally, the third major area in which issue may be taken with Richardson's argument is his emphasis on *Glanvill Continued*'s status as a 'version' of the treatise. Nowhere in his

²²⁶ Hall discussed these in *Early Registers of Writs*, p. xcvi-civ.

article does he talk specifically about the text of the treatise itself as it appears in these two manuscripts. Extensive comparison of the two has shown widespread textual similarities to the extent that the later *H* must have been copied from another manuscript very like, but probably not actually, *C*.²²⁷ There are some points of intrinsic interest in these texts, some of which are described in the previous chapter, not the least of which is their status as completely un-numbered *betas*, and in *C*'s case also containing some rubrication.²²⁸ However, there are no substantial or legally significant textual variants in the treatise as it survives in these manuscripts, and certainly no serious engagement with, or modernization of, the text itself. It therefore seems dubious to characterize the manuscripts on this basis as containing a particular, identifiable, version of the treatise.

If, on the other hand, Richardson's assessment of the collection's 'version' status was made purely on the basis of the material with which the treatise is bound up in these manuscripts then this, too, is decidedly shaky. First, there is no particular connection between the treatise and the other material, in particular the miscellaneous section which follows it. There are no internal cross-references between them. The second section and the register of writs in *C* undoubtedly add to the information contained in the treatise. But if this automatically provided grounds for seeing the remainder of the collection as a deliberate continuation of the treatise, and in this respect a 'version' of it, then the majority of the other 39 manuscripts of the treatise in which *Glanvill* is bound up with a

²²⁷ *H* does not share any of *C*'s most extreme textual variants in *Glanvill* and it is noteworthy that, for example, it does not contain the unusual traces of rubrication found in *C*.

²²⁸ *H* is also significant for the unique coexistence of the treatise bound up with canonical material, including letters and dicta relating to the Roman curia (ff. 1^r-12^v) a heavily glossed later fragment of the *Constitutionum Clementinarum* (ff. 13^r-22^v), part of book II of the Decretals of Gregory IX (ff. 23^r-38^v), Innocent III's 'Tractatus de miseria humane condicionis' (ff. 89^r-100^v) and Bernard of Pavia's *Breviarum Extravagantium* (ff. 101^r-187^v). However, the volume is clearly composite and perhaps only bound together at a relatively late date.

wide variety of material, most of which might be seen to add substantively to the information in the treatise, might similarly be described as *Glanvill Continueds*.

Not only did Richardson make some small errors and surprising omissions in his description of these two manuscripts, but his attribution of them to the chancery, and his claims for them of a status as a *bona fide* modernized version of the treatise are, at best, much shakier than has traditionally been thought. The collection in these manuscripts is unusual, particularly for its inclusion of some of the lesser enactments of Henry III. If anything, however, as it has been argued, the collection's unusual status derives from its very miscellaneous and local nature, rather than for any official connection. If there are reasons for doubting Richardson's attribution of the collection to a chancery clerk, it may be suggested instead that it was produced by a private individual associated with Lincolnshire, whose interests included law and legal administration. If the thesis of private compilation is accepted, this makes the collection significant not for its suggested official status, but as a notably early example of a private statute collection. There was limited ready access to written legal enactments before the coming to prominence of the Statute Roll in the course of the fourteenth century, and there are very few other early private statute collections until the 1280s and 90s.²²⁹

How then should these two manuscripts be seen in the context of other *Glanvill* texts?

We may reluctantly have to abandon their putative 'official' connection and their exalted

²²⁹ P. Brand, 'English Thirteenth Century Legislation', in *...colendo iustitiam et iura condendo... Federico II. Legislatore del Regno di Sicilia nell'Europa del Duecento*, ed. A. Romano (Rome, 1997), pp. 325-44, and particularly 342-3. For a study of statute books after the 1280s, see Skemer, 'Reading the Law: Statute Books and the Private Transmission of Legal Knowledge in Late Medieval England' and, for a general overview, see H.G. Richardson and G.O. Sayles, 'The Early Statutes', *LQR*, 50 (1934), 201-23 and 540-71.

status as a legitimate ‘version’ of the treatise. The manuscripts should not be seen, as they traditionally have been, alongside other recognised attempts at making the text of the treatise more serviceable over time. Richardson’s own comparison with *Glanvill Revised* ironically only brings this into clearer focus. Richardson was wrong to predicate the treatise’s continuing usefulness over time on its being kept ‘reasonably up to date’ – this is simply not borne out by the evidence.²³⁰ This in turn has implications for our view of the function of the treatise over time. However, just because there was no serious attempt to bring the text of the treatise in these two manuscripts up to date does not mean that they were not designed to be, or that they did not function as, useful legal texts in the mid to late thirteenth century. Indeed, the manuscripts of *Glanvill Continued* in fact tie in very neatly with the general picture presented in the first chapter of texts of the treatise being copied over time and bound up with useful legal material without necessarily themselves being significantly updated. If anything, these manuscripts, in particular the earlier C, are notable for the manifest and extended – probably private – use of the treatise that they evidence. If we may no longer call them ‘*Glanvill Continued*’, they at least represent the continuing use of *Glanvill*.

Glanvill Revised

Glanvill Revised, in contrast with *Glanvill Continued*, is arguably the only true attempt at an alternative ‘version’ of the treatise, and it represents a unique and genuine effort to modernize the text of the treatise in the thirteenth century. This version of the text is found in two legal manuscripts dating from the second half of the thirteenth century,

²³⁰ ‘Glanville Continued’, 381.

Gonville and Caius College, Cambridge, MS 205/111 (S) and Cambridge University Library, MS Mm.1.27 (P). *Glanvill Revised*'s importance amongst manuscripts of the treatise should not be understated: as the only attempt at revising *Glanvill* for a later audience it reflects not only on the treatise itself and its continuing usage over time but on the changing common law context in which it must be seen. Although it has received scholarly attention, this has tended to focus on the technicalities of who copied it into its surviving manuscripts, to the possible detriment of the study of the wider nature and implications of the text itself.

Maitland brought to light and christened '*Glanvill Revised*', even though he had only seen it in one of its two known manuscripts, P.²³¹ Although he recognised that this volume was 'a very important and curious book', Maitland was unaware of the existence of what has subsequently been proved to be a second, earlier, manuscript of the version, S.²³² Despite only having seen the version of the treatise in one of its two manuscripts, Maitland realised that its 'revised, expanded and modernised edition of Glanvill's treatise' represented something unique amongst known *Glanvill* texts, as a genuine attempt to get to grips with the treatise and to bring it up to date in the thirteenth century.²³³ He characterized *Glanvill Revised* as the work of an author 'with the intention of explaining difficulties, correcting statements which had become antiquated, and inserting new writs and new rules at appropriate places'.²³⁴ Although some of Maitland's conclusions have themselves been revised over time, and there is certainly more to be

²³¹ Maitland, 'Glanvill Revised', where some of P's major variants are also printed.

²³² W.P. Baildon and F.W. Maitland (ed.), *The Court Baron* (Selden Society vol. 4; London, 1891), p. 6.

²³³ Ibid.

²³⁴ Maitland, 'Glanvill Revised', p. 271.

said about this unique attempt at revising the treatise, his characterization of *Glanvill Revised* and its significance still stands.

Almost all of MS *P* is written in a single late thirteenth-century hand, and its section relating to the baronial rebellion of 1264-5 includes in the same hand the somewhat enigmatic attribution that Robert Carpenter of Hareslade ‘wrote this’ (‘hic hoc scripsit’), dated in various ways to 1265.²³⁵ Maitland therefore concluded that Carpenter must have compiled and copied *P*, although he withheld judgement on whether he was responsible for the composition of individual sections in the manuscript, and in particular its revision of *Glanvill*.²³⁶ Although he was unable to identify Robert Carpenter precisely, he tentatively located him in the Isle of Wight or the environs of Southampton or Portsmouth, based on their repeated insertions in several sections of the volume. He dated the text’s composition and copying to between c.1265 and the 1280s, deeming its version of *Glanvill* to have been written ‘within a short space on one side or the other of 1265’.²³⁷ Subsequent commentators took their lead from Maitland, but quickly realised the existence of the version’s second manuscript (*S*). As early as 1907 M.R. James had suggested that the connection between the two manuscripts deserved further

²³⁵ ‘Anno regni Regis Henrici filii Regis Johannis xlix^o et anno Domini m^o cc^o lxxv ad Pentecosten scripta fuit hec subsequens pagina in capella Sancti Edwardi apud Westmonasterium et extracta a cronicis in quodam parvo rotulo per manus Roberti Carpentarii de Hareslade et hic hanc scripsit’ (*P*, f. 67^v). The dating to 1265 is then given by reference to Henry III’s first and second voyages to Gascony, the beginnings of his new work at Westminster and the battle of Lewes.

²³⁶ Maitland, ‘Glanvill Revised’, pp. 267-271.

²³⁷ *Ibid*, 271.

investigation.²³⁸ Woodbine noted that the two manuscripts' versions of *Glanvill* 'agree closely with one another' and 'abound in readings peculiar to themselves alone'.²³⁹

The first to explore the relationship between the two manuscripts systematically was Denholm-Young, who printed a list of their overlapping contents to show that the first half or so of *P* contained virtually all of the same contents as *S*, but in a slightly different order.²⁴⁰ He used two unusual and independent items which occur in *S* but not *P* to cast light on the Carpenter family. These are a liturgical kalendar (pp. 1-12) in which the births and deaths of various members of the family are recorded, and a brief section of annals dating from 842 to 1340 (pp. 231-54), which include further information on the family and their locality.²⁴¹ Denholm-Young concluded from these that the Robert Carpenter referred to in *P* must have been Robert Carpenter II (d. 1280) of Hareslade (Haslett) in the west of the Isle of Wight.²⁴² He used the various references in both volumes to the manor of Shorwell, Isle of Wight, about half a mile north-west of Haslett, to argue that Carpenter must have been not only the scribe but the author of much of *S*.²⁴³ Noting that the only family other than the Carpenters mentioned in both volumes, and featuring in *S*'s kalendar, are the de Lisle family of Wootton,²⁴⁴ Denholm-Young

²³⁸ M.R. James (ed.), *A Descriptive Catalogue of the Manuscripts in the Library of Gonville and Caius College*, i (Cambridge, 1907), pp. 238-42.

²³⁹ Woodbine, *Glanvill*, p. 19.

²⁴⁰ N. Denholm-Young, *Collected Papers on Mediaeval Subjects* (Oxford, 1946), pp. 96-110.

²⁴¹ For a discussion of the self-conscious aggrandizement of the family, and the erasing of 'Carpenter' and substituting of 'de Hareslade' in *S*, see C.A.F. Meekings, 'More about Robert Carpenter of Hareslade', *EHR*, lxxii (1957), 268.

²⁴² His genealogy of the three successive Robert Carpenters may be found at *Collected Papers*, p. 97.

²⁴³ For example the dedication of Shorwell chapel is given in red in *S*'s kalendar on p. 6.

²⁴⁴ Although Maitland noticed allusions to the Lisle family, he grouped them with the inserted reference in the volumes' *Glanvill* to Baldwin de Redvers, Earl of Devon and his family, known as de L'Isle ('*Glanvill Revised*', p. 269). In fact, however, Denholm-Young showed that, excepting the reference in *Glanvill* to Baldwin, the volumes' other references are to the lesser Lisle family, also known as 'de Insula', who held Shorwell from the lords of the Island.

suggested that Robert Carpenter II was probably a free tenant of, and may in the late 1250s have acted as bailiff for, William de Lisle (succeeded 1252, dead by c. 1267).²⁴⁵ He showed that William de Lisle was a knight of Philip Basset, that he acted as one of the guardians of the vacant bishopric of Winchester in 1258 and that he attended the Oxford Parliament of 1258 with Aymer, bishop-elect of Winchester. He suggested that such a relationship might explain Carpenter's apparent interest, as manifested by the contents of *S* and *P*, in accounting and the details of practical estate administration, and in particular in ecclesiastical administration.²⁴⁶

Jacob had suggested that Carpenter might have been acted as clerk to Roger de Thurkelby, royal justice in eyre and of the Common Bench, whose opinions are cited several times in MS *P*'s version of *Placita Corone*, and even that Carpenter might himself have been the author of that tract.²⁴⁷ Denholm-Young noted that the *Placita* only appeared in the later of the two *Glanvill Revised* manuscripts, *P*, and not in that part copied from *S*, and that therefore Robert Carpenter II could not have been its author.²⁴⁸

However, he retained the idea of a link between Carpenter and Thurkelby as the best explanation for Carpenter's apparently privileged early access to the documents of the

²⁴⁵ Denholm-Young, *Collected Papers*, pp. 98-100.

²⁴⁶ The volumes' treatise on accounting includes a secular model account for Shorwell, and that in the earlier MS *S* also includes an ecclesiastical model account for Merewell (Marwell), also in the Isle of Wight, and belonging to the see of Winchester. Denholm-Young suggested that Carpenter may well have been acting in Marwell on behalf of de Lisle whilst he was guardian of the vacant see (ibid, p. 101). For Carpenter's suggested link with Roger of Thurkelby, see discussion below.

²⁴⁷ E.F. Jacob, *Studies in the Period of Baronial Reform and Rebellion*, Oxford Studies in Social and Legal History, viii (Oxford, 1925), pp. 78-9. His suggestion of a link between Carpenter and Thurkelby was followed by W.H. Dunham (ed.), *Radulphi de Hengham Summae*, Cambridge Studies in English Legal History (Cambridge, 1932), p. lxi and H.G. Richardson and G.O. Sayles (ed.), *Select Cases of Procedure Without Writ Under Henry III* (Selden Society vol. 60; London, 1941), p. cxciv. For Thurkelby, see D. Crook, 'Thirkelby, Roger of (d. 1260)', Oxford Dictionary of National Biography, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/27401>].

²⁴⁸ Moreover, *P*'s copy of *Placita Corone* has subsequently been shown not to have been the earliest extant copy of that tract (Meekings, 'More about Robert Carpenter of Hareslade', 261).

Provisions of Westminster, and thought that Carpenter must have used his newly acquired leisure after Thurkelby's death in 1260 to write *S*.²⁴⁹ However, Meekings has convincingly argued that Carpenter may have copied the articles of the fiscal eyre of 1255 pleaded by Thurkelby not because he was Thurkelby's clerk but because he, as well as his father and his son before and after him, almost certainly attended this and other eyres as a hundred juror for the West Medina.²⁵⁰ Further, having shown that there is no reason to link Carpenter with Thurkelby, Meekings suggested that if Carpenter ever acted as clerk to a justice, it is far more likely that he might have acted as clerk to one of Thurkelby's colleagues, John de Wyvill (d. 1263).²⁵¹ Justices frequently took into their service clerks from districts in which they had lay or ecclesiastical interests; Thurkelby had no such interests anywhere in southern England, whereas Wyvill's principal residence was at Whitefield, in the Isle of Wight. Wyvill was William de Lisle's colleague in the investigation of the revenues of the bishopric of Winchester in 1258, and which Denholm-Young argued might have led to Carpenter's interest in ecclesiastical accounting as manifested in *S*. This theory is supported by the fact that *S* also includes a copy of a writ tested by Wyvill at Whitefield in September, 1260.²⁵² Moreover, such a link might explain the copy of provisions concerning a judicial circuit visitation in 1260, which is in *S* but was not copied into *P*, in which Wyvill is listed amongst others as having responsibility for the counties of Somerset, Dorset and Devon.²⁵³ However,

²⁴⁹ Denholm-Young, *Collected Papers*, pp. 101-3.

²⁵⁰ Meekings, 'More about Robert Carpenter of Hareslade', 264.

²⁵¹ *Ibid*, 263.

²⁵² *Ibid*, 264. The writ (*S*, p. 200) is an example of the writ which issues to the sheriff when anyone recovers seisin by a possessory assize before an assize commissioner and concerns an estate at Rockley, three miles from Shorwell, that Wyvill had tried at Newport.

²⁵³ *S*, pp. 460-1. A slightly different text of these provisions is printed in R.F. Treharne and I.J. Sanders (ed. and trans.), *Documents of the Baronial Movement of Reform and Rebellion, 1258-1267*, Oxford Medieval Texts (Oxford, 1973), pp. 158-65.

tempting as this hypothesis is, we do not have to assume that Carpenter must have acted as a clerk to a royal justice in order to explain the contents of *S*. Instead, his access to documents connected with the contemporary programme of baronial reform may instead be explained by his connection to William de Lisle, whose connections and activities have been discussed above.²⁵⁴

Recognising that *P* must be a later copy of *S*, Denholm-Young suggested that Carpenter wrote most of *S* in c. 1261-2, making some additions during the next few years up to 1265, and that the part of *P* based on *S* must have been copied in c. 1283.²⁵⁵ The hand responsible for the first half of *P* which is clearly copied from *S* was responsible for the copying into *P* of the statute of Acton Burnell (1283) on f. 108^v, but nothing later. He suggested that the second section of the later manuscript, in the same hand but not based on *S* (ff. 86^r-143^r), was copied by the end of the century. In fact, his dating of the sections of the volume not based on *S* is unduly late. The second section is written in the same hand as the first part of the volume, based on *P*, and contains nothing later than Acton Burnell, and we may therefore also date it to c. 1283. Denholm-Young was unclear about whether the volume's third and final section of slightly later statutes (ff. 144^r-69^v) was also in this hand. In fact, it is certainly a once-independent later addition, in a different and more formal hand, and must have been added to the volume between the mid 1280s and c. 1290.²⁵⁶

²⁵⁴ See Brand, *MCL*, p. 336 for a summary of Carpenter's closeness 'at one remove' to the political decision-making process in the late 1250s.

²⁵⁵ Denholm-Young, *Collected Papers*, pp. 103-4.

²⁵⁶ Given the dates of the items in this section (the statutes of Westminster II and Winchester (both 1285) and *Circumspecte Agatis* (1286)), there is no necessary reason for Baker's assertion that they must have been added to the volume as late as 'in or after the 1290s' (Baker, *CELM*, p. 476). Instead, it would be surprising, if it had been copied/added to the volume as late as Baker suggests, for such a section not to

What is clear is that Robert Carpenter II could not have written *P* as well as *S*: the volumes are written in different hands and the latest contents in *P*'s original hand date from three years after his death. Instead, Denholm-Young plausibly suggested that the later volume might have been copied by Robert's son, Robert Carpenter III (b. 1258). The suggestion is supported by the fact that the principal hand of *P* is also responsible for various short Carpenter-related insertions in *S*, including Robert Carpenter II's obit (p. 6) and the insertion of the birth of Robert Carpenter III's son, John Carpenter in 1290. Denholm-Young explained the allusion to Robert Carpenter II's copying of the documents concerning the baronial war at Westminster which appear only in the later *P*, and not in his own volume, *S*, by suggesting that his son must have copied not only *S* but also other material compiled by his father into his own later manuscript.²⁵⁷ It seems that at some point soon after his father's death, Robert Carpenter III set out to copy his father's notebook, together with other information his father had collected in 1265,²⁵⁸ and another legal textbook unconnected with the Carpenter family which contained many of the important statutes and legal treatises of the thirteenth century.²⁵⁹ Shortly after this,

include the 1290 *Quia Emptores*, and it seems much more likely that this section must have been copied before that time.

²⁵⁷ Ibid. These documents in *P* include copies of letters exchanged between Simon de Montfort, King Henry and Richard of Cornwall before the battle of Lewes (May, 1264), a writ to the mayor and bailiffs of York to proclaim the peace and various means of dating the battle of Evesham of August, 1265 (ff. 66^v-7^v).

²⁵⁸ It is possible that Robert Carpenter II's Westminster notes were contained in another volume, were written in a short roll by themselves, or perhaps even that they were originally copied into a now-lost part of *S*, although there is no physical evidence of this.

²⁵⁹ Robert Carpenter III's reasons for taking on such a large undertaking as copying his father's book remain slightly enigmatic, particularly if – as may be inferred – his father's book had come to him anyway. If *P* were a conspicuously grander volume, this might explain the effort of such copying, but it is not. Perhaps he wanted an extended, possibly more functional, collection all in one volume and used the act of copying and compiling it to make the text literally and perhaps also symbolically his own. It is just possible that he feared that he might lose access to his father's volume for some unknown reason and/or perhaps he had started copying it before his father died.

either he or someone else must have added the final short section of later statutes, written in another hand.

Robert Carpenter III copied virtually all of the contents of *S* into the first half or so of *P* (ff. 1-86), although in a different order and with some small variants and omissions. A comparative list of the overlapping contents of the two manuscripts is given in Appendix 8 below. It shows that he chose to omit the personal Carpenter and Isle of Wight-related information contained in his father's volume's kalendar and annals.²⁶⁰ He omitted a French version of the Provisions of Westminster to go alongside the Latin version in both manuscripts, as well as a 1216 version of the Magna Carta to go alongside the 1225 version in both volumes, and he left out several shorter notes including the provisions concerning a judicial circuit visitation in 1260 which included John de Wyvill. He seems to have been significantly less interested in ecclesiastical administration than his father had been and omitted both the section of the manual on procedure in different types of courts known as *Consuetudines Diversarum Curiarum* concerning church courts, and the ecclesiastical section of *S*'s treatise on accounting, modelled on Marwell in 1265. Rather carelessly, he sometimes either failed to date items which are dated in *S*, or mis-copied dates from the earlier manuscript.²⁶¹ It seems that, despite these failings, he set out to regularize his father's volume by reordering its material for greater practical utility,²⁶² omitting sections he deemed unnecessary or too personal and by adding a large number

²⁶⁰ Note that Meekings was wrong to state that *P* included these sections ('More about Robert Carpenter of Hareslade', 260).

²⁶¹ For items where dates given in *S* are omitted, see *P*, ff. 64^v, 68^r and note that 1268 is given on f. 78^r for a writ dated 1258 in *S*.

²⁶² The broad order of *P* with its registers and *Glanvill*, followed by statutes and other miscellaneous legal documents and ending with more practical manuals on accounting and legal proceedings in courts is more logical than *S*.

of practical manuals, treatises and statutes that add substantively to the collection derived from *S*.

In summary, following Denholm-Young, there has been broad agreement amongst subsequent commentators that Robert Carpenter II was responsible not merely for the compilation and copying of *S* in the 1250s/60s, but also at least some of the authorship of material in both volumes, and that his son had copied the related part of *P* from *S*, also adding a significant amount of other legal material to the collection, by around the mid 1280s.²⁶³ From the evidence of their books, although neither Carpenter seems to have been a particularly competent scholar or Latinist,²⁶⁴ both were clearly capable and acquisitive men of business who set about collecting anything which seemed relevant to the practical application of their private and public local duties. This interpretation is supported by the material form of their volumes, both of which are relatively small compared with other *Glanvill* manuscripts and of unexceptional quality.²⁶⁵

Although there is little specific evidence of the early owners of the two manuscripts after Robert Carpenter III, it seems that both volumes remained in Hampshire for some time. Both volumes include short added local references up until the fifteenth century.²⁶⁶

²⁶³ See Meekings, *ibid*; H.G. Richardson, 'An Oxford Teacher of the Fifteenth Century', *Bulletin of the John Rylands Library*, xxiii (1939), 449-50; P.R. Robinson (ed.), *Catalogue of Dated and Datable Manuscripts c.737-1600 in Cambridge Libraries*, i (Cambridge, 1988), p. 75; Hall, *Tractatus*, 'Appendix', pp. 195-8.

²⁶⁴ In addition to their numerous shared and individual small errors, see for example Robert Carpenter II's botched attempted reference to Henry I in ix, 13: 'tempore Henrici Regis tercii avi nostri Regni Henrici filii Johannis Regis'. Henry I was, in fact, Henry III's great great grandfather, and not his great grandfather.

²⁶⁵ *S*'s folios measure 169 x 121mm and *P*'s c. 212 x 137mm.

²⁶⁶ Thus, for example, *P* contains a fourteenth-century addition of the copy of an appointment of an attorney by Isabel Bardolf to perform suit in the court of Woodmancott, Hants. in 1309 and, on the same folio, the copy of a writ to the mayor and bailiffs of Winchester concerning wool, added in the fifteenth century (f.

Thereafter, the volumes were clearly separated and each passed through a number of well-known later hands. *S* is known to have come to Gonville and Caius College from William Moore (bap. 1590, d. 1659), librarian and collector of manuscripts.²⁶⁷ *P* may have been owned by Richard Smethley, admitted to Lincoln's Inn in 1506 and a bencher from 1520.²⁶⁸ 'Smethley' is inscribed at the top of f. 30^r at the start of the treatise's *Glanvill*, possibly in the hand of Francis Tate (1560-1616), who was in the habit of naming his manuscripts after their former owners in this way.²⁶⁹ At some point during the seventeenth century the volume was acquired by John Moore, bishop of Ely (1646-1714) as part of his extensive library.²⁷⁰ It was subsequently purchased and presented to Cambridge University Library, together with the rest of Moore's library, by the Crown in 1715, and a George I bookplate survives inside its back cover.

Both manuscripts' unusual and corrected *alpha* texts of the treatise break off unfinished mid xi, 3 ('uxor quoque maritum'),²⁷¹ after which immediately follows the same unusual register of writs, which will be further discussed below. It is clear that the earlier *S*'s

143^r). *S*'s kalendar includes a number of fourteenth and fifteenth century insertions, including a reference to Hareslade.

²⁶⁷ James, *A Descriptive Catalogue of the Manuscripts in the Library of Gonville and Caius College*, i, p. 238. For Moore, see R. J. Roberts, 'Moore, William (bap. 1590, d. 1659)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 (<http://www.oxforddnb.com/view/article/19152>).

²⁶⁸ Baker suggested that, although Smethley came from Yorkshire, he might have obtained *P* from a Hants. member of Lincoln's Inn (Baker, *CELM*, p. 477). He also notes that this or another Smethley was under-clerk of the warrants in the Common Pleas prior to 1505.

²⁶⁹ Although, Baker does not cite Tate's ownership in the entry on this manuscript in his catalogue, the manuscript is listed as 'ex Tate' in Baker's copy of John Moore's catalogue (*ibid*, p. lxxii).

²⁷⁰ P. Meadows, 'Moore, John (1646-1714)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 (<http://www.oxforddnb.com/view/article/19126>). The manuscript is listed as 774 in Bernard's Catalogue of Moore's manuscripts (reproduced by Baker, *CELM*, p. lxxii). For a possible route by which Tate's manuscripts came to Moore see pp. xlix-l.

²⁷¹ It is noteworthy that another *alpha Glanvill* manuscript, *K*, dating from the mid thirteenth century, also ends (always) unfinished at mid xi, 3, although a sentence or so earlier than *S/P* at '... parte litis amovere'. Although *K*'s version of the treatise has little otherwise in common with *S/P*, there may have been a number of unfinished texts of the treatise in circulation which ended at this chapter. This evidences against the traditional view that the revised version of the treatise in *S/P* must have been abandoned in failure.

version of the treatise was always unfinished, as Robert Carpenter II's hand continues with this register below the treatise on the same folio. Both manuscripts' texts of the treatise are very similar indeed and share a large number of textual variants specific to themselves and no other *Glanvill* manuscripts which will be further discussed below. Together, they also include many times more small textual alterations than any other texts of the treatise. Despite their similarities, there are a number of small and insignificant variations of copying between them. Like *S*, *P* is characterized by notable amounts of marginalia generally, although not always, in the same places in the text as in the earlier volume. Occasionally the later manuscript gives such entries at slightly different, and sometimes less sensible, points in its text than *S*.²⁷² In *P* attention is drawn to these marginal additions more explicitly than in *S*, and they tend to be more often marked 'Extra' or 'Addicio'. Both manuscripts include as part of this marginalia, and generally at the same places in the text, a greater than usual number of 'nota', 'questio', 'solutio', 'objectio' or 'distinctio' comments.²⁷³ Occasionally *S*'s shorter marginal entries are either incorporated into the text of the later manuscript or omitted entirely. There are also a large number of small textual variants in *P* compared with *S* such as changes in the orderings of pairs of words. *P* occasionally corrects small errors in *S*, but more than compensates with a number of its own erroneous readings in place of accurate ones, and in general there are more mistakes and careless copyings in the later volume. Overall, however, the two texts' versions of the treatise are very similar, and what differences

²⁷² Thus, for example, the long addition which begins 'Item moderno tempore si quis summonitus fuerit ad respondendum de terra...' which is given beside i, 7 in *S* on pp. 20-1 appears instead, and much less logically, between i, 8 and i, 9 in *P* on f. 31^r.

²⁷³ Occasionally *S*'s pointing hands have become 'questio' or 'nota' in *P*, as at vii, 3 or vii, 5. Sometimes these occur in the same places as those in some of the other manuscripts to feature such marginalia, such as *Ca*, *E*, *Lan* and *Z*, discussed in the previous chapter, and it is possible that these are a throwback to an early or original form of division.

there are in *P* when compared with its exemplar are meddlesome and/or erratic, rather than legally significant.

S/P's text of the treatise is clearly *alpha* and appears under the short and unusual incipit: 'Hic incipit tractatus de constitutionibus legum ac iurium tempore secundi Henrici regis'. As described in the previous chapter, they are unique in their division of the treatise into ten numbered *tractatus* sections which are underlined in red in *S*, before breaking off unfinished in the middle of the tenth *tractatus*.²⁷⁴ Corresponding to *alpha* textual references and to the list of civil pleas given in *i*, 3, it is just possible that these are almost the only survivors of what was the treatise's original system of division before either rubrication or numbering, or at least something close to it. They are often but not always in the same places as book divisions would be in the standard version of the treatise. *Tractatus* divisions in the earlier *S* are not themselves subdivided, although those in *P* are further separated into numbered chapter divisions, but containing far fewer of these than there would be chapters in a standard version of the text.²⁷⁵ As Hall observes, they form a sensible attempt at reconstructing the author's original plan up to the beginning of *tractatus* viii, but *tractatus* ix 'De placitis que super possessione loquuntur' (covering *x*, 14-18) and *tractatus* *x* 'De placitis que per recognitiones terminantur' (*xi*, 1-3) seem to be foolish attempts to make *S/P*'s shortened version of the treatise fit the schema taken from *i*, 3.²⁷⁶ The possible parallels with the early and unusual textual divisions into ten *cause* and then into *questiones* in MS *Ca* have been discussed above. Like *Ca*, *S/P*'s text of the

²⁷⁴ Hall has listed the *tractatus* divisions where they occur in 'Introduction', p. xx.

²⁷⁵ *P* is therefore one of the very few versions of the treatise to include both some numbering and some rubrication.

²⁷⁶ Briefly discussed by Hall, 'Introduction', pp. xlix-l.

treatise also includes a much smaller than usual number of underlined rubrics for ease of reference.²⁷⁷ These are often different from those in the printed *alpha* textual tradition, and tend to draw attention to writs more specifically and explicitly than in the traditional version of the text. Sometimes they are merely the opening lines of capitalized chapters or writs underlined for ease of reference.²⁷⁸ Capitals in *S/P* are approximately incident with the number of initials that would appear in a similar *alpha* text, but do not always appear in the same places as they would in the standard version of the text.

The treatise is followed immediately and without significant division in both manuscripts by an unusual register of writs (*S*, pp. 152-200; *P*, ff. 55^v-64^v), of which much has been made. This register opens unusually with a writ of novel disseisin, rather than a writ of right, and continues in an irregular order.²⁷⁹ All of its dated writs fall between 1256 and 1259.²⁸⁰ It appears to be the work of Robert Carpenter II himself, and includes a number of writs related to the Isle of Wight.²⁸¹ In the later MS *P* the register is numbered as part of the tenth *tractatus* of *Glanvill* and ‘explicit summa que vocatur glaunvile’ is given at the end of the register on f. 64^v. Having only seen *P*, Maitland believed that the reviser of the treatise must have abandoned his work in failure, and merely allowed the treatise to degenerate into this series of writs.²⁸² Following him, subsequent commentators all dated the revision of the treatise to the same period as the register and the copying of

²⁷⁷ As, for example, at *S* pp. 22, 42 or 61 or *P* f. 35^r. Some titles of writs are underlined different places in each manuscript.

²⁷⁸ As at *S*, p. 71 at the start of v, 3.

²⁷⁹ Noting that the register’s writ of right dated 20 April 1256 is at the start of a new quire on p. 161 in *S*, Hall suggested that the register’s unusual order might be explained by its compiler having first written this and the following quire, before returning to fill in pp. 153-60 (*Tractatus*, ‘Appendix’, p. 196).

²⁸⁰ Hall dated it to the late 1250s (*Tractatus*, ‘Appendix’, p. 196; Hall, *Early Registers of Writs*, p. xxiv).

²⁸¹ For example, the register’s writ of right (at p. 161 in *S*) is directed to ‘custodibus terre et heredis Baldewyni comitis Devonie’.

²⁸² Maitland, ‘Glanvill Revised’, p. 267.

much of the rest of the volume, i.e. the 1250s/60s, and were generally inclined to link the revision of the treatise to the apparent compiler of the register, Robert Carpenter II.²⁸³ However, of all the version's commentators, only Maitland addressed the 'surprising' and ultimately 'unsuccessful' nature of an attempt to bring *Glanvill* up to date at such a late date, after *Bracton*. He noted the great changes to have taken place in the law over the almost a century since *Glanvill*'s original composition and commented on the reviser's lack of success in reflecting these. The absence of any reference, for example, to the 1236 Statute of Merton or its effects is remarkable, particularly as there are a number of places in the text of *Glanvill* where their inclusion would be appropriate.²⁸⁴

However, as Hall argued, closer study of the earlier MS *S* warrants reconsideration of this traditional treatment of the register and the revised *Glanvill* as a coherent section. Although the register follows the treatise in the same hand in this manuscript and was clearly copied at or around the same time, it is not – unlike in the later MS *P*, studied by Maitland – numbered as part of *Glanvill* and includes no explicit for the treatise within or outside of the register.²⁸⁵ What is more, although the register follows on from the treatise in the same hand on p. 152 in *S*, it is in a different ink and slightly more carelessly written than the *Glanvill*. If Carpenter had produced both the revised treatise and the register together as part of a single unit with the second as a degeneration of the first, we might reasonably expect the register to fit in far more precisely with what is and is not in the

²⁸³ Thus, for example: 'Robert Carpenter was the scribe and ... [it is] difficult to doubt that he was also the author' (Denholm-Young, *Collected Papers*, p. 103).

²⁸⁴ See Hall, *Tractatus*, 'Appendix', p. 197, ns. 4 and 5.

²⁸⁵ Hall suggested that there might once have been an explicit at the end of the treatise, now excised and written over as the beginning of the register (ibid, p. 196). This seems unlikely as, although there are clearly several excisions here, they are small and scattered at various points in the register's opening text.

revised treatise. There is therefore no reason for seeing these two sections as a coherent whole or for assuming that they were necessarily written, or even definitely copied, at the same time. In other words, Carpenter copied, compiled and wrote some sections of *S* in the 1250s/60s including its register, but although he definitely copied the revised *Glanvill*, there is no evidence that he was responsible for its revision.²⁸⁶

In fact, having in turn removed the various arguments for dating the composition of all of the contents of MS *S* to the 1250s/60s,²⁸⁷ there is no positive evidence for dating the text of the revised treatise itself to that time, or for attributing its composition to Robert Carpenter II. Instead, there is evidence for the treatise having been originally revised at a substantially earlier date. Both of the treatise's chirographs (at viii, 2 and 3) are dated, uniquely, to 13 Henry III i.e. 1228/9 as, still more significantly, is a variant writ of debt added to the treatise as part of its revision.²⁸⁸ It would seem most unlikely that if Carpenter was revising the treatise in the 1250s/60s he should have consistently used this particular date and particularly in an inserted writ, and much more probable that the treatise was originally revised at this earlier stage. If *S*'s original revision of the treatise was made in c. 1229, this would broadly fit with some of the other dateable contents of the volume, most notably the majority of the *Consuetudines Diversarum Curiarum* (pp.

²⁸⁶ Ibid, pp. lviii and 195-8.

²⁸⁷ Thus, almost all of Maitland's dating criteria (in other words the date vouched in *P* when Robert Carpenter 'copied this' and the fact that most of the volume's other contents are dateable to this period, in particular the register which had been treated as a coherent unit with the treatise '*Glanvill* Revised', 269-71) are invalidated as not in the text of *Glanvill* itself, but only in other sections of the volumes. And there is even evidence that the few remaining dating criteria Maitland used that actually occur in the text of the revised treatise may themselves be later additions by Robert Carpenter II on an already-revised text (see the detailed discussion of Robert Carpenter's re-revisions below).

²⁸⁸ The chirographs are both at *S*, p. 111. Although there are exceptions, such as MS *H1* described in chapter 1, these are generally dated in almost all texts of the treatise to 1187. The writ of debt dated, more specifically, to 3 May, 1229, is at p. 134.

409-29) and the various short tracts on letter writing and conveyancing (pp. 255-301), which Richardson dated to around the 1220s/30s.²⁸⁹ As there is some reason to link the latter section with Oxford, it is just possible that they and the revised *Glanvill* were produced at a similar time in that city.²⁹⁰ If *Glanvill Revised* was produced in the 1220s/30s, this would also answer Maitland's questions concerning its failure to get to grips with the legal changes of Henry III's reign. We may much more reasonably assume that the treatise must have been first revised before the 1236 Statute of Merton than that it ignored its and almost all later statutory provisions, or omitted them in ignorance or error.

Having understood that the treatise was originally revised about thirty years before Robert Carpenter II copied it into his book, it is much easier to study the nature of the treatise's revision systematically. In fact, the revision of the treatise takes two principal – and almost certainly distinct – forms. The first and more significant of these consists of reordering and alterations of the text of the treatise itself, generally taking the form of the insertion of writs and comments into the body of the text, or at the top or bottom of folios, sometimes marked 'Addicio' or 'Extra'.²⁹¹ There are occasional textual omissions, sometimes even of whole chapters, although these do not always modernize the treatise and may sometimes be simple errors.²⁹² The second form of revision consists of the addition of some names and places into the text itself, together with a large number of much shorter marginal and interlinear insertions throughout the text. These qualify

²⁸⁹ Richardson, 'An Oxford Teacher of the Fifteenth Century', 449; Richardson and Sayles, *Select Cases of Procedure Without Writ*, pp. cxci-cv.

²⁹⁰ *Ibid*; and for the putative Oxford connection of the tracts, Richardson, 'An Oxford Teacher of the Fifteenth Century', 450.

²⁹¹ Added writs include those in *S* on pp. 61 (after iv, 4) 'Quare impedit' and 'De ultima presentatione' or 69 (after v, 1) 'de nativo habendo', all marked 'Extra'. A writ of escheat is inserted in the middle of vii, 16

²⁹² Chapters omitted entirely include i, 16 and vi, 18. Both of these look like straight errors as they contain perfectly good and continuing law.

and correct but only on a very limited scale and are occasionally erroneous, and almost always pedantic in nature. They include numerous often gratuitous insertions of single words such as ‘placitum’,²⁹³ and synonyms often introduced by ‘id est...’.²⁹⁴ Finally, this second revision also stigmatizes some passages of the text as ‘lex antiqua’ or ‘ius antiquum’ and contrasts these to what is done ‘moderno tempore’.²⁹⁵

The first form of revision, engaging with the text itself, is by far the more significant and represents a serious attempt to keep the treatise up to date. However, because the text is all written in one hand in *S*, it can be difficult to distinguish one stage of revision from the other. Although many of the later revisions are given marginally, some have clearly found their way into the text itself. Equally, some of the marginalia, in particular the text’s stigmatizations of old-fashioned law and its markings of ‘Questio’ etc, seem to be earlier revisions which have remained in the margins alongside Carpenter’s later additions. However, there are points in the text where the two different revisions may be clearly seen together, and thus on *S*’s p. 25 which includes, as part of the first revision, a schematic list of essoins and their lengths before i, 18, the original revision’s listing of ‘de infirmitate de reseantisa’ is then unmistakably re-revised with an interlinear: ‘scilicet cum residenciam fecerit si langorem si de malo lecti’. Hall believed that the text’s reordering into *tractatus* divisions may have been made by Carpenter as part of the second and less significant re-revision of the text.²⁹⁶ In fact, however, it seems much

²⁹³ As on p. 20.

²⁹⁴ Examples, from many, include the prologue’s ‘stilo vulgari et verbis (vulgaribus et) curialibus’ (p. 19), or ‘placitum de dotibus (mulierum) unde mulieres ipse nihil perceperunt’ (i, 3; p. 20), with interlineations bracketed. The text’s re-reviser was also fond of glossing very simple words with ‘id est’, such as ‘proceres, id est, barones’ or ‘equidem, id est, certe’.

²⁹⁵ As at *S*, pp. 20, 34 or 75.

²⁹⁶ Hall, *Tractatus*, ‘Appendix’, p. 197, n. 8.

more likely for a number of reasons that this was part of the text's first and principal revision, or perhaps even pre-dated it. As discussed above, excepting *tractatus* ix and x, they are an intelligent and reasonable attempt at dividing the treatise, of which Carpenter would not necessarily have been capable. Moreover, this system – perhaps together with the volumes' 'questio's etc as further subdivisions – fits suspiciously well with the evidence of other manuscripts of the treatise, such as early and apparently unrelated MS *Ca* for it to have merely been a superimposition on the text by Carpenter in the 1250s/60s. Finally, there is internal evidence that the treatise was copied with these divisions as an integral part of it, and that they were not merely superimposed onto an already-written text. The opening initials of *tractatus*, but not other, divisions are much more decorated than any other capitals. It is easier to believe that, if anything, Carpenter may have been responsible for the botched attempt at fitting the last two *tractatus* divisions onto the unfinished text than for the overall system of division.

In fact, legally significant variants in the later revisions by Carpenter are limited. There is some evidence of the growth of an increasingly technical language, in particular for *essoins*, which simultaneously indicates Carpenter's apparent familiarity with French. Thus *Glanvill*'s *essoin* 'de infirmitate de reseantisa' becomes 'de malo lecti' or 'mall de lith' as opposed to 'mal de venue'.²⁹⁷ Where vii, 5 traditionally contains a somewhat ambiguous and general reference to 'voluntas secundum has sicut et secundum alias quaslibet leges', Carpenter interlineates: 'secundum has leges Anglicanas et secundum alias leges, scilicet, Romanas', subtly changing the meaning of the title but vouching

²⁹⁷ On pp. 25-6, where Carpenter describes the *essoin* 'de malo veniendi' as 'essonium principale'.

nothing more specific to show precisely what if anything this statement is based on.²⁹⁸

There are only very occasional insertions of names or places, but there can be no doubt that these are the work of Carpenter rather than our anonymous original reviser. There are various inserted references in the text and margins to Baldwin de Redvers, earl of Devon, the overlord of the Isle of Wight, and his family. Thus the text of the writ prohibiting a plea in ii, 9 gives ‘custodibus terre et heredis Baldewini de Riveris Comitibus Devonie’, instead of the text’s usual impersonal ‘N’.²⁹⁹ Isabella (‘de Fortibus’), who succeeded her brother Baldwin, the Seventh earl, in 1262 is mentioned twice in Carpenter’s register.³⁰⁰ ‘La Scherde, Billingham’ is inserted into the text of ix, 13, presumably for the manor of Billingham, south-east of Shorwell, and Southampton is interlineated in v, 5.³⁰¹

The most immediately apparent and significant of Carpenter’s later revisions of the treatise is that certain sections of the revised text specifically stigmatize outdated law, sometimes in contrast to modern practice.³⁰² There is evidence of the gradual falling

²⁹⁸ *S*, p. 96.

²⁹⁹ *S*, p. 43. This is most likely the Seventh and last earl of Devon (d. 1262), although his father, the Sixth earl (d. 1245), had the same name. This attribution fits the timeframe generally used and of Carpenter’s register of writs and the references to Isabella, his sister and heir. A further reference to Baldwin is interlineated at p. 78, and he is mentioned several times in Carpenter’s register which follows the treatise. Carpenter’s insertion of Baldwin into both the text of the revised treatise and as an interlineation definitively shows that he was happy to make alterations to the text itself, and not just marginally. It seems, however, that these were the exceptions to prove the rule, and that his preferred system of revision was by the margins.

³⁰⁰ *S*, pp. 174 and 176.

³⁰¹ ‘...in aliqua villa... (ut in suthamptona)’, p. 74.

³⁰² Some of the most significant textual variants are printed from MS *P* in Maitland, ‘Glanvill Revised’, pp. 275-84. However, this omits a large number of variants, does not distinguish between the two different revisions and, of course, does not reference the earlier and better MS *S*. Moreover, several of Maitland’s ‘variants’ are actually standard parts of Hall’s printed text.

away of restrictions on inheritance in favour of the right to choose one's heir.³⁰³ Chapter vii, 1 where it is stated that a father cannot give away part of the inheritance to a younger son without his heir's consent, is marked 'ius antiquum'. In the same chapter the passage concerning an older brother's heritable granting of land to a younger brother who then dies without issue, the subsequent taking back of the land by the older brother and the seeking of mort d'ancestor against him by his own sons because no-one can be both heir and lord, is marked 'lex antiqua'.³⁰⁴ The clauses in vii, 17 on the lord's right to hold tenements when there is dispute between two heirs are also marked as 'lex antiqua'.³⁰⁵ Chapter vii, 7 which gives the writ for upholding a reasonable testament is entitled 'Antiquum breve. De faciendo stare...'.³⁰⁶ We can also clearly see a decline in the enforcement of services through lords' courts. Brand has showed that the latest in the series of early thirteenth-century cases which refer to distraint by the fee as part of the process of securing the attendance of a tenant to answer in his lord's court for arrears of service dates from 1228, and that after that references to distraint of chattels to answer in a court for arrears of service are very rare.³⁰⁷ A long addition in ix, 1 overturns the statement in the treatise that a lord may distraint his man to come to court to answer a complaint by the lord that he is withholding service with or without a royal command. Instead, it states that although this used to be the case 'secundum quosdam antiquos',

³⁰³ This fits in very much with the position described, for example, in J.L. Barton, 'The Rise of the Fee Simple', *LQR*, 92 (1976), 108-21; or S.F.C. Milsom, *The Legal Framework of English Feudalism* (Cambridge, 1976), for example pp. 149-50.

³⁰⁴ In fact, however, there is evidence from not long after the date at which Carpenter was writing of people doing exactly this: Brand, *Earliest English Law Reports*, ii, 1286.3 (pp. 231-42).

³⁰⁵ It appears that the stigmatization here is wrong and that in the mid thirteenth century it was still arguably the case that a lord could hold land until a claim had been made good. The same chapter likewise includes the addition: 'Sciendum quod si quis convictus fuerit de felonia et uxorem habuerit, ipsa uxor nunquam dotem habebit de terra que fuit viri sui de felonia convicti', which Maitland cited as 'a very doubtful point in the thirteenth century' ('Glanvill Revised', p. 281).

³⁰⁶ Maitland discussed this writ's early disappearance (P&M, ii, p. 332).

³⁰⁷ Brand, *MCL*, pp. 314-5.

now ‘secundum alios modernos’ the lord cannot so distrain his man, who is not obliged to answer for his free tenement or anything touching it other than with the king’s writ. An added writ opening: ‘Precipimus tibi quod non implacites A. de libero tenemento suo...’ follows. In other words, a tenant could refuse to answer such potentially anomalous cases by claiming the protection of the ‘free tenement’ rule, and in effect lords might be prevented from bringing this litigation in their own courts. Some of the treatise’s more impracticable clauses are also labelled out of date in this way. Thus, the statement in v, 6, where the text states that a set of children born of the villeins of two different lords should be divided between the two lords, is stigmatized ‘ius antiquum’; and the same is given, more puzzlingly, at i, 32 where the treatise states that a defaulting appellor be immediately imprisoned in criminal cases.³⁰⁸ It is clear that many of these revisions which stigmatize parts of the treatise as being out of date are in fact far more definitively expressed than was warranted by the legal situation in the mid-late thirteenth century, in which many matters had not changed as absolutely as Carpenter’s labels suggest. It seems that Carpenter was simply giving his view, at times possibly wrongly. We certainly have a unique insight into the changing common law and these revisions reaffirm that Carpenter’s re-revision was a personal and not an authoritative statement of the thirteenth century’s legal changes in general.

The earlier far fuller set of revisions arguably much more precisely and accurately evidence legal advances in the years after the treatise’s completion. Some of these evidence an increase in the technical language of the law. This is particularly true of the reviser’s pronounced tendency to insert the titles of writs, which are often highlighted in

³⁰⁸ *S*, pp. 34 and 75. Again, however, this was still being done in the second half of the thirteenth century.

red or by underlining, usually when a writ is being introduced for the first time.³⁰⁹ The revised text also adds a number of references to both the Chancery and the Bench where the traditional text of the treatise only refers to the king and/or his justices.³¹⁰ At times the revised text simultaneously removes some of *Glanvill*'s references to trial before the king in person, reflecting a post-Magna-Carta world where ordinary civil litigation no longer comes before the king.³¹¹ Where the traditional text of the treatise states that only the king's court has record (viii, 9), *S* reads: 'Sciendum quod tres sunt homines in Anglia qui recordum habent, videlicet iusticiarii, coronatores, viredarii, non alii'.

Another significant aspect of the original revision is its large number of inserted new or alternative writs, together with the omission of some writs apparently deemed no longer applicable or old fashioned. We may see clear evidence of the expansion of available original writs, and in particular of the rapidly increasing number of alternative writs offered for particular actions. Thus, for example, writs are added throughout the text, such as those at iv, 4 where after the standard text's writ of advowson, there is added 'Aliud breve fere simile quod dicitur Quare Impedit', followed by another inserted writ of last presentation.³¹² Likewise, a writ 'de nativo habendo' follows v, 1; a writ of escheat is added to vii, 16; a writ opening 'Precipimus tibi quod non implacites A. de libero tenemento suo...' follows ix, 1 and a further writ directing a perambulation of boundaries

³⁰⁹ Thus the end of i, 5 (*S*, p. 20) reads: 'tale breve de summonitione quod dicitur precipe', and i, 7 includes references to 'breve quod dicitur parvum/magnum cape' and ends 'quod dicitur breve de waranto de diem salvando' (p. 21).

³¹⁰ i, 5 has: 'Cum quis conqueritur domino regi vel eius iusticiariis vel cancellariis... [sic]' (p. 20). References to 'iusticiariis nostris de banco' may be found for example at pp. 24 and 25.

³¹¹ Thus i, 19 that would normally read 'quod sit coram me vel iusticiis meis...', reads instead 'quod sit coram iusticiariis nostris de banco' (p. 25).

³¹² *S*, p. 61. For the invention of quare impedit, probably between 1187 and 1196, and discussion of how it quickly became a remedy of general application in disputes involving advowsons, see J.C. Tait, 'The origins of quare impedit', *JLH*, xxv (2004), 203-19.

is added to ix, 14. More information is given on the writ of peace, including the statement in ii, 9 that after putting oneself on the grand assize, in most cases one must then go in person to procure a writ of peace. Chapter x, 1-2 includes a different writ concerning the debts of laymen from that in the standard text, which is not a precipe but a justices writ, instead addressed to a sheriff in the king's name from the chancery. It allows that a charter may be demanded, and explains how chattels should be treated in such a case.³¹³ We can see detinue of charter and chattels on their way to being seen as separate actions from debt. Chapter x, 5 includes an extra writ compelling the principal debtor to acquit his sureties, and allowing that the writ may be removed from the county court to the Bench but suggesting that it will not be granted for a sum of more than 40 shillings, except as a favour.

The original revision also omits occasional writs, including – for no apparent reason, given that it continued in general use – the writ for measuring dower in the case of a woman having more dower than she should (vi, 17-18). The revised text includes no writs of trespass, although the earliest known examples of these are to be found in Carpenter's register.³¹⁴ Their omission supports both the argument that Carpenter cannot have himself revised the treatise and the conclusion that its principal revision must have occurred before trespass became a common action in the 1260s. Of all the treatise's

³¹³ 'Eodem modo de catallis, sed catallum non oportet poni in brevi nec debet sed eius precium quia diversa catalla petuntur aliquando et non particule debiti separate... si precium catallorum xxx marcas in brevi excesserit, debet petens dare terciam partem domino Regni pro hoc supradicto breve habendo quia breve illud tunc non est de cursu'.

³¹⁴ These are printed by Hall (G.D.G. Hall, 'Some Early Writs of Trespass', *LQR*, 73 (1957), 67-9). For discussion of writs of trespass and their development as a catch-all action, also see Hall, *Early Registers of Writs*, p. cix, F.W. Maitland, 'The History of the Register of Original Writs', *Harvard Law Review*, iii (1889), and A.Harding, *England in the Thirteenth Century* (Cambridge, 1993), pp. 203-13 and *The Roll of the Shropshire Eyre of 1256* (Selden Society vol. 96; London, 1981), pp. xxxii-vi.

original or added writs, only one contains a limitation which does not necessarily fit with the suggested dating of the main revision to the 1220s/30s. This is the added writ after v, 1, which references ‘the last return of King John from Ireland’, and which corresponds to the legislation of 1237.³¹⁵ In fact, there is a marginal note by Carpenter stressing this point, and it is therefore possible that he was responsible for its inclusion as part of the later revision.

We may also discern a clear and ongoing clarification, rationalization and speeding up of legal processes through the treatise’s original revisions. Thus, the treatise’s essoins are classified into tabular form together with their lengths before they are discussed individually.³¹⁶ Chapter i, 7 omits any reference to the sending of a messenger as an alternative to coming to court oneself or to sending an essoin.³¹⁷ The same chapter makes the process of dealing with a summoned party who does not appear on time less dilatory, and where the treatise only mentions writs *precipe*, explicitly expands this to include those summoned by writs of right or entry.³¹⁸ The classification of actions for the purpose of rules about essoins is showed by the addition in i, 31 of cases of ‘ultima presentacione et... aliis consimilibus’ to those of novel disseisin and writs *de fine facto* in which tenants may find sureties for appearing in defence.³¹⁹ The revised text omits the treatise’s statement that public acts such as summonses or the taking of sureties must be

³¹⁵ *S*, p. 69. Also see Hall, *Tractatus*, ‘Appendix’, p. 197. For discussion of this limitation date, see P. Brand, ‘The Age of Bracton’, in *The History of English Law. Centenary Essays on ‘Pollock and Maitland’*, (ed.) J. Hudson, Proceedings of the British Academy lxxxix (Oxford, 1996), p. 69.

³¹⁶ This is given after i, 17 on p. 25.

³¹⁷ At p. 21.

³¹⁸ At pp. 20-1. This fits with the expansion of writs of entry after 1216, although we might expect the parallel disappearance of the writ *precipe* after this date. In general, this correlates with the picture described by Brand of the reduction in opportunities for delay in the essoins process (P. Brand, *The Origins of the English Legal Profession* (Oxford, 1992), p. 35).

³¹⁹ At p. 33. See Maitland, ‘Glanvill Revised’, p. 276.

made in public.³²⁰ There is some indication of counts becoming more standardized and more complicated, for example the exemplar demandant's claim concerning a writ of right in ii, 3 is threshed out in greater detail, tracing his ancestry much more thoroughly.³²¹ The text twice includes the interesting statement that recognitors in the grand assize are not to swear, as some other recognitors do, 'amuncient', but merely to swear who has the greater right.³²² Maitland took this to be *a mun scient*, meaning 'to the best of my knowledge'.³²³

The revision includes some legal advances as well as tactical advice for women. Thus, for example, the traditional text of the treatise at vi, 4 reads that if, following her husband's death, a widow entered on the vacant part of her dower she should then use a writ of right against her warrantor to obtain the remainder owed to her. Instead, *S* suggests that the widow should not accept any part of her dower, if she is unable to get the whole of it, so that she can have access to the more rapid 'dower unde nihil habet'. At vi, 17 the following is added to the chapter on the necessity of the presence of the heir in dower cases, and marked 'extra':

Unde si aliquis liber homo qui tenebat de marito dicte mulieris sine aliquo herede obierit, et ipse liber homo ipsi mulieri in dotem assignatus fuerit, ipsa mulier de terra que fuit dicti liberi hominis sine aliquo iuris impedimento liberam habebit dispositionem ad ipsam cuicunque voluerit dandam in perpetuum, salvo servicio heredis quod ipse liber homo facere consuevit pro dicta terra marito dicte mulieris et eius antecessoribus.

³²⁰ At i, 16 and 30.

³²¹ For discussion of this development, see Brand, *MCL*, pp. 38-9.

³²² At ii, 11 and ii, 17.

³²³ 'Glanvill Revised', p. 274.

In other words, the doweress both gets escheats and can grant them herself. Later in the same book where the treatise disallows a woman from claim to dower for ‘turpitudinem’ and subsequent separation from her husband during his lifetime, *S* gives the noteworthy addition and reference ‘... turpitudinem, scilicet propter fornicationem et propter blasphemiam ut dicit aug’ mag’...’.³²⁴ Maitland believed this to refer to a passage from Augustine that had subsequently passed into Gratian’s *Decretum*.³²⁵ Its inclusion might just support the view that the principal revision was made in Oxford.

The revised treatise also makes some interesting changes concerning the role of the church and ecclesiastical courts. Chapter vii, 15 states that a plea of special bastardy (whether or not a child was born before marriage) may be decided either in the ecclesiastical court or by an assize of 12 men. It is followed by the surprising statement at the beginning of vii, 16 that although in the past when anyone died intestate all their chattels went to their lord(s), now (‘tempore moderno’) they belong to the king by the concession of the pope.³²⁶ Although traditionally the legitimacy of one born before the marriage of his parents was tried in the same manner as any other issue of bastardy, this issue became controversial in the 1220s/30s, and was the cause of serious difficulties at Merton in 1236, with the church increasingly asserting its right to judge such cases.³²⁷ The inclusion of such a statement is yet another reason for dating the treatise’s initial revision to this period. A further shift in jurisdiction is signalled in vii, 8 which re-

³²⁴ At vi, 17. *S* then omits the traditional text’s reference to the case of divorce because of consanguinity. No other references to divorce for blasphemy have been found anywhere.

³²⁵ ‘Glanvill Revised’, p. 274.

³²⁶ ‘Si quis autem intestatus decesserit omnia catalla sua domini sui [olim] intelliguntur esse, et tempore moderno domini Regis concessione domini Pape’. Maitland was wrong to state that this only referred to the goods of bastards (ibid, p. 274).

³²⁷ See J.L. Barton, ‘The Mystery of Bracton’, *JLH*, xiv (1993), 10-15.

emphasizes that jurisdiction in testamentary matters lies in the church courts and is no longer available from royal courts.³²⁸ However, there is some counterbalancing of this in iv 9, which makes it clear that bishops should be held personally responsible for distraining clerks who fail to attend after three summonses, and that the bishop may even be disseised of his 'baronia' as security in such a case.³²⁹

Other miscellaneous revisions include the revised text sometimes giving different or more specific figures from those in the traditional text, and thus the fine for recreancy in ii, 3 is 40, rather than 60 shillings.³³⁰ Chapter vii, 12 contains the information that women come of age in their fifteenth year. The opening of book viii gives further details about the making of final concords and in particular about the three parts of chirographs, with one part always being held by the king, clearly reflecting the importance of Hubert Walter's innovation in 1195.³³¹ We are told that no woman can be essoined in the service of the king.³³² Chapter vii, 1 on marriage portions adds that if a father has two sons and the elder commits a felony and is then arrested and imprisoned, and the father subsequently dies, the younger brother will not inherit anything unless the elder brother had predeceased the father. Interestingly, all of these attempts at greater clarification and at modernizing the treatise sit alongside a number of self-conscious but always vague

³²⁸ 'et modo moderno tempore vetiti in curia regis' is added to the chapter's opening before 'aliquid contra testamentum...' on p. 98.

³²⁹ *S*, p. 64.

³³⁰ Maitland was probably correct in regarding this as a simple error ('Glanvill Revised', p. 276), and there is later evidence of the fine being sixty shillings (see, for example, Cambridge University Library, MS Dd.7.14, f. 369^v). However, it is worth noting that the same figure also appears in early *alpha* MS *L*. The revised text adds that the punishment for recreancy falls on the vanquished champion unless his hirer raises him from the field, exposing himself to the fine.

³³¹ For discussion of the first chirograph, see for example P&M, i, p. 97, or M.T. Clanchy, *From Memory to Written Record: England, 1066-1307* (Oxford, 1992), p. 68.

³³² At i, 17, p. 25.

inserted references to ‘consuetudinem Anglie’ or the old ‘leges Anglicanas’ and references to ‘antiquum statutum’ or ‘constitutum’. Thus, i, 12 allows an essoiner to find pledges ‘according to the old statutes’, rather than simply swearing an oath as has become customary.³³³ The revision even includes an attempt to answer one of the questions left unanswered in the treatise itself. In iv, 9 where the question of what would happen in the case of a clerk whose summoned patron fails to come to court and where the demandant gains seisin of the advowson is raised (marked in the margin of *S* with a ‘Questio’), ‘Solucio. Etquidem non amittet ut inferius monstrabitur’ is added.³³⁴

In summary, the original revision of the treatise is made on a large scale and evidences fairly wide-ranging legal changes, all of which fit in with its suggested dating to the 1220s/30s. The thirty-forty years following the treatise’s completion have manifestly seen an increase in the technical nature of the common law. There are more original writs, couched in increasingly technical language and forms. The revised text’s emphasis on these, both in terms of their addition and revision and of the way in which they are highlighted in the text, is indicative of their centrality in the treatise’s ongoing role over time.³³⁵ At times the text reads like an expanded and explanatory register, and it can be no coincidence in this context that the text of the treatise is sandwiched between two different registers in the later MS *P*. At the same time we can see some of *Glanvill*’s

³³³ ‘vel plegios inveniet, scilicet, secundum antiquum statutum aut fidem dabit’ (*S*, p. 23). There is some evidence for the continued finding of pledges by barons in the mid thirteenth century, although most people would have given faith. The two systems seem to have continued to some extent side by side.

³³⁴ *S*, p. 64.

³³⁵ In general, the titles of writs are given far more than they are in the traditional text, and are often underlined, sometimes in red. They therefore function, even more than the *tractatus* subdivisions, as the most immediately apparent division of the text. See for example ‘... tale breve de summonitione quod dicitur precipe’, with ‘precipe’ in red (i, 5; *S*, p. 5), or ‘quod dicitur breve de waranto de diem salvando’, with ‘salvando’ in red (end i, 7; p. 21).

anomalies being tidied up, and at times can see lord's courts suffering as a result. Equally, ecclesiastical courts have a more defined and assertive role, while judicial reference to the king in person has visibly declined. There is evidence of both concepts and procedures being further worked out and clarified, and there has clearly been an unambiguous attempt at speeding processes up. The revision reflects a genuine attempt to engage with the open-ended nature of *Glanvill*, and even to provide answers to some of the questions the treatise raised but left unanswered. Perhaps aware of all of these changes, our anonymous reviser's repeated inserted references to the old laws and customs look like a rather defensive attempt at couching the modernized common law in the legitimizing veil of antiquity.

Instead of having to puzzle over why a text apparently revised after *Bracton* contains so few of the thirteenth century's legal changes, we have a revision produced at about the same time as much of that treatise, and fulfilling a very different and much more practical role. *Glanvill Revised* is undoubtedly the most significant of the so-called 'versions' of the treatise, both because of what it tells us about the changes in the thirteenth-century common law as reflected in the earlier treatise and about the treatise's ongoing usefulness over time. The fact of the version's bipartite revision is itself interesting, proving that two different individuals thought it worthwhile to get to grips with *Glanvill* at different points in the thirteenth century. No other text of the treatise evidences any significant attempt at revision, let alone two together. That the original reviser's efforts were crowned with substantially more success reflects as much on Robert Carpenter as the increased difficulty of his task by the 1260s. The first revision is at once fuller and more

subtle than Carpenter's. It corrects and updates by omission, insertion and altering which stand in stark contrast to Carpenter's later, and by no means always accurate, marginal stigmatizings. It is clear that Carpenter must have been copying a previously revised text and given this, *S* cannot be the original text of *Glanvill Revised*, and must have been based on a now-lost original manuscript, possibly produced in Oxford, which may or may not itself have been complete. Although it is a shame that the revised version of the treatise is incomplete, and that we do not have the reviser's thoughts in particular on books xiii and xiv, we no longer have to see *Glanvill Revised* as having been abandoned in failure. Instead, it consists of two separate private and unofficial revisions of the text. It is not an overarching attempt at rewriting the treatise, but it does represent a serious effort to get to grips with it about forty years after it was completed, as a practical guide to the law and its administration. The text is highly significant for its unique tractatus divisions, because of the evidence for the antiquity of its underlying base text, and for its revision and re-revision.

Conclusion

Despite the fact that both of the two supposedly updated versions of the treatise have traditionally been misdated, both were in fact produced at similar dates in the second quarter of the thirteenth century. It is clear that, although both undoubtedly demonstrate an ongoing interest in *Glanvill*, one is of far greater use and significance than the other. *Glanvill Continued* has perhaps been paid too much scholarly attention and *Glanvill Revised* not enough. In fact, *Glanvill Continued* has been seen to be a fairly typical attempt to bind the treatise up with other useful material, whereas *Glanvill Revised* shows

the treatise actually being revised and then re-revised as clear attempts to make it more relevant and, at least in the case of the primary revision, such efforts are relatively comprehensive, accurate and successful. It has been argued that the official status traditionally accorded to *Glanvill Continued* is unwarranted. Equally, despite their unusual nature and importance, it is also clear that neither revision in *Glanvill Revised* should be seen as official. Thus, both texts affirm the ongoing usage of the treatise over time, but do not paint a picture of *Glanvill* being used or updated as an authoritative book of practice. It seems that *Glanvill* continued to play a role in the century after its completion and beyond, but it was never deemed an authoritative enough exposition of the law to be fully modernized. At the end of the day, even *Glanvill Revised*, the only true attempt to re-edit the treatise 'seem[s] never to have got beyond the stage of private experiments which did not reach the general public'.³³⁶ If *Glanvill Revised* stands very much as the exception to prove the rule that there was very little genuine attempt in the thirteenth century and beyond to engage with, and modernize, the treatise for a later audience, it is nonetheless a very significant exception and comparison with *Glanvill Continued* only re-emphasizes this.

³³⁶ T.F.T. Plucknett, *A Concise History of the Common Law* (5th edn., London, 1956), p. 257.

CHAPTER 3

Thirteenth-Century Legal Literature

‘The change in the general character of law books during the period from *Glanvill* to [the late thirteenth century] is one of the striking features of the history of English legal literature’.³³⁷

There is clear reason for seeing *Glanvill* in the context of the legal literature that came immediately after it. Maitland heralded the pronounced expansion of legal literature after *Glanvill* by noting that ‘the thirteenth century might be called “the period of the law books”’.³³⁸ Although specific examples of thirteenth-century legal literature have been edited and/or received scholarly attention, there is arguably a paucity of general overviews of the period and relatively little discussion linking the later literature back to *Glanvill*.³³⁹ A preliminary attempt will be made here to sketch the development of different types of legal literature produced under Henry III and Edward I and to begin to compare these with one another and with *Glanvill*. It is hoped that this exercise will throw light upon the various legal works themselves as well as on their inter-relationship with the changing common law. The nature, popularity and fate of such later texts can tell us vicariously about attitudes to *Glanvill* and similarities and differences between them and the earlier treatise can show continuities or repudiations of the system of law embodied in its text. We may get an idea of the different roles and functions of the

³³⁷ H.D. Hazeltine, ‘General Preface’, *Radulphi de Hengham Summae*, (ed.) W.H. Dunham (Cambridge, 1932), p. xi.

³³⁸ F.W. Maitland, ‘The Materials for English Legal History. II’, *Political Science Quarterly*, iv (1889), 635-6.

³³⁹ The notable exception to this rule was Plucknett’s *Early English Legal Literature*, which is now in many respects superseded.

common law and the works of literature that contained and propagated it in the century or so after its first proper exposition.

Bracton:

The starting point for a consideration of the legal literature after *Glanvill* must of course be the treatise with the same title, the *De Legibus et Consuetudinibus Angliae*, commonly known as *Bracton*, described by Maitland as ‘the crown and flower of English medieval jurisprudence’.³⁴⁰ The popularity of this later and much longer treatise is attested by its survival in over 50 manuscripts.³⁴¹ The traditional attribution of at least the major part of the work to royal justice Henry of Bracton/Bratton (d. 1268) now seems highly unlikely.³⁴² Instead, it seems that the main part of the treatise was composed in the 1220s/30s, probably at least under the inspiration of justice of the Common Bench William Raleigh, characterized by Thorne as the ‘prime mover’ behind the *De Legibus* and by Brand as ‘a plausible author for most, if not all, of the various constituent parts of the treatise’.³⁴³ Thorne has suggested that Bracton, Raleigh’s former clerk, may have

³⁴⁰ P&M, i, p. 206.

³⁴¹ Baker, *CELM*, p. 68, adds five more manuscripts to the 49 listed by Woodbine in his edition of the text.

³⁴² The treatise was associated with Bracton from a very early date and was clearly circulating linked with his name from very soon after his death. The first folio of one of the earliest surviving manuscripts of the treatise (OA) has an inscription noting that this is ‘principium libri domini H. de Bratona’, and there is a reference to a copy of the treatise (‘librum quem dominus Henricus de Breton’ composuit’) being loaned in 1278 (Brand, ‘The Age of Bracton’, p. 74). Scholarly attempts have been made to defend Bracton’s authorship of the majority of the treatise (J.L. Barton, ‘The Mystery of Bracton’, *JLH*, xiv (1993), 1-142); these have been convincingly refuted by Brand, ‘The Age of Bracton’, pp. 65-8. For biographical detail on Bracton, see P. Brand, ‘Bratton, Henry of (d. 1268)’, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/3163>].

³⁴³ S.E. Thorne, ‘Translator’s Introduction’, in *Henrici de Bracton. De Legibus et Consuetudinibus Angliae*, (ed.) G.E. Woodbine, (revised and trans.) S.E. Thorne, iii (Cambridge, Mass., 1977), p. xxxvi; Brand, ‘The Age of Bracton’, p. 79. See, too, D. Crook, ‘Raleigh, William of (d. 1250)’, *Oxford Dictionary of National Biography*, Oxford University Press, Sept 2004; [<http://www.oxforddnb.com/view/article/23042>]: ‘Raleigh has been plausibly credited with the authorship, or at least the patronage, of the treatise *De legibus et*

revised the treatise over a period after 1236.³⁴⁴ This would explain some of the treatise's inconsistencies and repetitions as well as its unfinished nature, with its revision apparently having been abandoned in 1256, some twelve years before Bracton's death.³⁴⁵ If, as seems likely, Bracton was the text's reviser, this premature cessation of writing may reflect the tumultuous political circumstances of the mid 1250s, or possibly a recognition on Bracton's part that the task of revision of an already-outdated treatise was impossible and/or one of which he was not himself capable.³⁴⁶

Most of what is in *Glanvill* is covered in the ten times longer *Bracton*.³⁴⁷ The two treatises arguably employ the same overarching rationale and, broadly speaking, *Bracton* is what we might expect of a legal treatise in the *Glanvillian* tradition but produced thirty years later and then added to over another twenty years or so. Its author states his intention in thoroughly *Glanvillian* terms as being to treat of: 'the judgments and the cases that daily arise and come to pass in the realm of England' and to 'instruct and teach all who desire to be taught what action lies and what writ... according to English laws and customs'.³⁴⁸ Although in greatly expanded form, *Bracton* sets out like *Glanvill* to work through the English common law in particular in the king's courts thoroughly and systematically. Both treatises have been defined as ambitious 'attempts to divine the

consuetudinibus Angliae'. Thorne is clear that much of the treatise must have been produced earlier than the Statute of Merton of 1236 ('Translator's Introduction', *Bracton*, ii, p. xiii).

³⁴⁴ Ibid, p. xxx: 'We may identify [the reviser], at least tentatively, with Raleigh's fellow Devonian... 'Henry de Bratton''.

³⁴⁵ It does not, for example, include any references to the effects of the Provisions of Westminster of 1259.

³⁴⁶ Brand, 'The Age of Bracton', pp. 75 and 89.

³⁴⁷ There are exceptions to this rule, for example *Bracton* is arguably less specific on the topic of debt than book x of *Glanvill*.

³⁴⁸ *Bracton*, f. 1^b (ii, p. 20). Note that the less *Glanvill*-like preceding statements about laws and customs often being 'misapplied by the unwise and unlearned who ascend the judgment seat before they have learned the laws...' (ibid, p. 19) is in fact part of a later insertion (see Brand, 'The Age of Bracton', p. 77 for discussion).

inherent “structure” of the common law,³⁴⁹ and are written by involved observers with similar political outlooks and views of royal justice and its functions.³⁵⁰ *Bracton*’s list of royal pleas is essentially very similar to that at the opening of *Glanvill*’s first book.³⁵¹ Even *Bracton*’s far more formalized structural divisions between the acquisition of things and of civil actions arguably follow the basic division present in *Glanvill* between possession and right, merely taking this further through a more planned division of substance and procedure.³⁵² It is clear that *Bracton* used *Glanvill* and indeed sometimes lifted whole sentences and paragraphs from the earlier treatise, generally paraphrasing rather than quoting it.³⁵³ *Bracton* appears to have used an *alpha* text of *Glanvill*, and indeed, like early *alpha* texts of *Glanvill*, the later treatise seems originally to have been written as a series of rubricated titles which called themselves *tractatus*.³⁵⁴ Although the ordering of the two works is different, there are clear parallels in their emphases on writs and on actions, although in *Bracton*’s case much less exclusively than in *Glanvill*’s.

³⁴⁹ D.J. Seipp, ‘Bracton, the Year Books, and the “Transformation of Elementary Legal Ideas” in the Early Common Law’, *Law and History Review*, 7 (1989), 179.

³⁵⁰ Although *Bracton*, unlike *Glanvill*, explicitly references enacted law from the period after *Glanvill*, both treatises broadly gloss the differences between enacted and unenacted law, in contrast with some of the literature that follows them. Moreover, although there are explicit references to Magna Carta, no overwhelming accompanying changes in the law itself or in royal authority are apparent compared with *Glanvill*’s day. Noting that all franchises in *Bracton* clearly belonged to the crown, Holt stressed that: ‘a generation from Magna Carta the superiority of the Crown was changed, not defunct. On the ruins of his feudal lordship the king’s men were building a doctrine of royal prerogative’: J.C. Holt, *Magna Carta* (2nd ed., Cambridge, 1997) p. 179.

³⁵¹ *Tractatus*, i, 3 and *Bracton*, f. 106 (ii, p. 301).

³⁵² See discussion by Hall, ‘Introduction’, p. lix. And see below for further discussion of *Bracton*’s divisions.

³⁵³ The debt to the earlier treatise is immediately manifest in *Bracton*’s prologue which includes considerable overlaps. Intriguingly, the complete *Glanvillian* prologue appears in two *Bracton* manuscripts, one of which even includes a complete *Glanvillian Incipit* (see Woodbine, *Glanvill*, p. 184), perhaps indicating cross-referencing of the two treatises over time. Hall cited *Bracton*’s debt to the earlier treatise in particular in the substantive treatment at ff.7^b-98, and the discussions of wardship, homage and relief, sale and hire, and testaments (‘Introduction’, p. lix). See also H.G. Richardson, *Bracton. The Problem of His Text* (Selden Society Supplementary Series vol. 2; London, 1965), p. 61 and F.W. Maitland (ed.) *Bracton and Azo* (Selden Society vol. 8; London, 1895) for other examples. In general, the use of the earlier treatise is heaviest in the first half or so of *Bracton*.

³⁵⁴ *Bracton*, f. 1^b (ii, p. 20). For discussion of the treatise’s textual history, see Hall, ‘Introduction’, p. lix and n.3. Although most manuscripts divide the treatise into a varying number of books, this seems to have been superimposed on the original text at a later point.

There is, of course, considerably more in *Bracton* than in the earlier treatise, both quantitatively and qualitatively. This includes simple updating of and adding detail to the earlier treatise as well as the incorporation of new areas of the law, notably the great expansion in original writs, with both a much wider choice of writs on pre-existing themes as well as in such new areas as entry and trespass.³⁵⁵ We can see also advances and alterations in the specifics of certain writs in the later treatise.³⁵⁶ Although both treatises give the text of writs, these are far more central to the structuring of *Glanvill*, and much more immediately obvious within its text. When compared with *Glanvill*, *Bracton* also clearly evidences the increasingly complicated nature of the common law in the thirteenth century. The growth of ever more technical, specialized language and procedure is immediately apparent. Counts are more complex and standardized than in *Glanvill*'s day and it is no coincidence in this respect that, unlike the specimen counts in *Glanvill* in the first person singular, those in *Bracton* are in the third person, or in other words rather than the form of a litigant speaking on his own behalf, the form of a serjeant speaking for him.³⁵⁷ *Bracton* contains far more on the essoining process and on exceptions than *Glanvill* and much more extended and specific discussion of the role of juries and assizes 'in modum juratae'.³⁵⁸ Detinue has developed as a separate action from debt. We can see, for example, advances in the law such as the role of trial by battle beginning to fall into desuetude. In *Glanvill* the appellee in pleas of felony seems to have

³⁵⁵ Some of the changes and developments between *Glanvill* and *Bracton* are described in Brand, *The Origins of the English Legal Profession*, pp. 31-54.

³⁵⁶ Thus, for example, *Glanvill*'s assize of *darrein presentment* (xiii, 19) has no command to have the church viewed, but *Bracton*'s does: 'in the meantime let them see that church...' (*Bracton*, f. 238 iii, p. 206); *Bracton* gives the same writ of novel disseisin as *Glanvill*, but is careful to say that the procedure has changed and that the tenement is not to be resealed of its chattels, but damages are to be given instead: 'Illud hodie non observatur...' (f. 186^b; iii, p. 75).

³⁵⁷ Discussed by Brand, *The Origins of the English Legal Profession*, p. 54.

³⁵⁸ For discussion of some of the changes in essoining, see Brand, *ibid*, pp. 35-7.

been bound to defend himself by battle, only refusing this ‘on account of age or of serious injury’ (xiv, 1), in which case he must purge himself by ordeal, whereas by the time of *Bracton*, he could defend himself ‘by the country’.³⁵⁹

As well as these general changes in the law and its processes, one of the most immediately apparent differences between the treatises is that *Bracton* is far more concerned with criminal law than *Glanvill* had been, and devotes a considerable part of his treatise to this subject. *Glanvill*’s rather token book xiv appears decidedly meagre beside *Bracton*’s more extended exposition at ff. 115^b-55^b, but even in this section there is clear evidence of *Bracton* using and expanding the earlier treatise.³⁶⁰ *Bracton* is also a fundamentally more jurisprudential work than *Glanvill* and tends to draw on its legal sources – other than *Glanvill* itself – in a much more explicit way than the earlier treatise.³⁶¹ Its size, scope and sources allow for a theoretical exploration of large maxims about the universal and natural laws and abstract discussions of seisin, right and possession that are far removed from the minor theorizings and precise practicality of the earlier treatise. As part of this, *Bracton* makes direct use of older English and learned law in a way that *Glanvill* seems intentionally to avoid, and this is clear from his early announcement that the whole of the law in the treatise will relate either to persons or to things or to actions (*pertinet vel ad personas, vel ad res, vel ad actiones*).³⁶² This is not

³⁵⁹ *Bracton*, f. 138^b (ii, p. 390).

³⁶⁰ See, for example, the notes in Woodbine, *Glanvill*, pp. 294-99.

³⁶¹ See O’Brien, ‘The Becket Conflict and the Invention of the Myth of Lex Non Scripta’, p. 13 for discussion. Identified sources of *Bracton* include Justinian’s *Institutes*, and possibly *Digest* and *Code*, the gloss of Accursius on the *Corpus Iuris Civilis*, together with *Gratian* and the gloss of Johannes Teutonicus, Raymond of Pennaforte, John de Sacrobosco, Rogerius, John of Salisbury, Cassiodorus, the Dialogue between Solomon and Marculf and, two *summas* by Azo on the *Institutes* and the *Code*: on which, see for example, Plucknett, *Early English Legal Literature*, p. 53.

³⁶² *Bracton*, f. 4^b (ii, p. 29). In fact, however, the author had very little to say on ‘persons’, which only comprise 7 folios relative to over 90 on ‘things’ and about three quarters of the volume on ‘actions’. For

the place to repeat any of the considerable debate on the extent of *Bracton's* Romanism. What is relevant here is that although both treatises borrow the opening of their prologues from Justinian's *Institutes*, *Bracton* follows that work's vocabulary, philosophy and organizing principles far more closely than its predecessor, in particular on areas about which English law had little or nothing to say.³⁶³ Where *Glanvill* contained smatterings of Romanism, *Bracton* is most accurately seen as an attempt to integrate the common law and learned law traditions in England.³⁶⁴

For Plucknett, *Bracton's* first 'capital contribution', over and above merely updating the law in *Glanvill*, was his Romanism; and his second the treatise's use of cases.³⁶⁵ At the same time as making more manifest use of the learned law, *Bracton* also – and uniquely among the treatises of the common law – cited specific cases as authorities. He referred to around 500 cases from the plea rolls, some of which were just possibly taken from the 2000 or so transcripts copied into British Library MS Additional 12269, discovered by

discussion of some of *Bracton's* Roman and canon law influences and borrowings, see Thorne, 'Translator's Introduction', pp. xxxiv-vi, and for discussion of *Glanvill's* relatively limited Roman influences of both language and ideas, see chapter 1. At times *Bracton's* learnedness undoubtedly strays into pedantries the like of which would have been anathema to the far pithier author of *Glanvill*. In fact paradoxically his learnedness and desire to transplant this to English law occasionally caused him to make errors that *Glanvill* avoided: as discussed in chapter 1, *Glanvill* manages the distinction between Roman *dos* and English dower simply and effectively, whereas *Bracton* at one point botches this. See for example J.H. Baker, *The Common Law Tradition: Lawyers, Books and the Law* (London, 2000), p. 231 for discussion of this and for other potential confusing comparisons of Latin and English concepts such as *Bracton's* 'servus' probably being a Roman slave rather than a villein, his 'possessio' not necessarily approximating seisin and his 'tutela' not being wardship.

³⁶³ See, for example, Milsom's discussion of *Bracton's* significantly more Roman treatment of the *magna differentia* between loans for consumption and for use than *Glanvill's* mere nod in x, 12-13 in acknowledgement of this principle but reluctance to draw any conclusions from it: S.F.C. Milsom, *Studies in the History of the Common Law* (London, 1985), p. 177.

³⁶⁴ Brand, *MCL* (London, 1992), p. 73. Maitland's perception of the treatise as 'Romanesque in form, English in substance', albeit immediately qualified, (P&M, i, p. 207) cannot stand; instead the treatise is better seen as a synthesis of learned and common law, with the learned laws very much as the subsidiaries in the equation. Where *Glanvill's* explicit Romanism is limited to essential distinctions of civil from criminal and possessory from proprietary and then elements of vocabulary (for which, see chapter 1), *Bracton's* thought is altogether more delineated by distinctions of public from private, real from personal (for which *Glanvill* had no comparable classification), and contractual from delictual.

³⁶⁵ Plucknett, *A Concise History of the Common Law*, pp. 259-61.

Vinogradoff in 1884 and christened by Maitland 'Bracton's Note Book'.³⁶⁶ The ramifications of the 'marvellous feat' of citing these cases are considerable, not least in their effective bolstering of customary law.³⁶⁷ However, *Bracton's* case citation may also make the treatise in some ways less reliable and arguably in some senses less like a modern legal textbook than the more generic writ-based *Glanvill*. *Bracton* is extremely selective in terms of the cases he cites: 'We are almost justified in saying that what [the author of the treatise] writes is a treatise on the law of England as administered by two judges, Martin Pateshall and William Raleigh'.³⁶⁸ This selectivity of content may or may not have been a deliberate authorial choice. If we are correct in seeing Raleigh and then Bracton's hands in the treatise, *Bracton* is undoubtedly the product of a judicial dynasty of sorts: Raleigh was Pateshall's clerk and then Bracton was Raleigh's. What this may also have meant is that both Raleigh and Bracton only had access to the rolls of these particular justices.

If the 'Note Book' was indeed, as Maitland suggested, copied perhaps together with another volume that is now lost, by Bracton amassing material to go into his treatise, then this reflects on this loyal or forced selectivity of cases. The 2000 or so transcripts of entries of the plea rolls of the Common Bench, King's Bench and eyres from between 1217 and 1239/40 that are contained in the Note Book are from only those courts where Pateshall or Raleigh were acting as justices. Thorne attempted to distance the Note Book from Bracton himself, arguing that although the Note Book may have been in his

³⁶⁶ F.W. Maitland (ed.), *Bracton's Note Book* (3 vols.; London, 1887); Brand, 'The Age of Bracton', p. 83. For further discussion of the Note Book, see immediately below.

³⁶⁷ The quotation is from Pollock and Maitland: P&M, i, p. 183. Citing cases as an extension of customary law fits in with *Bracton's* strong emphasis on the customary from the opening of the treatise. See for example Woodbine (ed.) *Bracton*, ii, pp. 19 and 21-3.

³⁶⁸ Maitland (ed.), *Bracton's Note Book*, i, p. 45.

possession, much of it must have been produced in the 1220s and 30s by someone other than Bracton, and that it did not play a significant part in the production of the treatise.³⁶⁹ Instead, he rather imprecisely speculated that the Note Book might have been compiled for the instruction of enrolling clerks or attorneys, rather than with the writing of the treatise in mind.³⁷⁰ In fact, the collection may actually have had a closer link to Bracton himself than Thorne suggested, albeit of a different nature to that suggested by Maitland. Brand has raised the possibility that the Note Book may have been put together after all or part of a first version of the treatise itself, with a view to its revision by Bracton, possibly as *pièces justificatives* to accompany and evidence the revised treatise.³⁷¹ Following on from this, recent scholarship has cast some doubt on the - previously assumed – authority of the treatise as a statement of the common law in the early to mid thirteenth century. Brand has argued that not only was Henry of Bracton not the major figure within the judiciary he has traditionally been assumed to be, but that the treatise as a whole should not automatically be accepted as the reliable guide that it purports to be as to what was actually happening in general in the royal courts under Henry III.³⁷²

Ultimately, although they have a great deal in common, *Bracton* represents a point at which great advances had been made in the common law since its tentative written beginnings in *Glanvill* and it is a much more learned text than the earlier treatise in various respects. Regardless of Bracton's position in the judiciary, the treatise that has taken his name seems to have been produced by men of a higher status than the author of

³⁶⁹ 'Translator's Introduction', *Bracton*, iii, p. xxxiv.

³⁷⁰ *Ibid*, p. xxxviii.

³⁷¹ Brand, 'The Age of Bracton', p. 83

³⁷² *Ibid*: 'Several passages in *Bracton* do not describe the legal doctrine or practice of the king's courts at any specific date, whether in the 1220s, the 1230s or 1250s' (p. 85). Also see Barton, 'The Mystery of Bracton' for a discussion of where the treatise may represent 'the doctrine of the author rather than of the judges'.

Glanvill. Written by those with direct experience of the Common Bench and of the eyre as justices, it can be more judging-focused and highbrow than the earlier treatise which is so firmly oriented around the procurement of actions and remedies.³⁷³ It is just possible that *Bracton*'s composition may have been formally connected to very early oral instruction in the common law. Brand has raised the possibility of the existence of a putative London law school in the early thirteenth century, teaching a synthesis of Roman and common law like that embodied in the treatise, until the royal prohibition against the teaching of the 'laws' in London in 1234.³⁷⁴ It is not impossible that Martin of Pateshall and/or William Raleigh might have been involved with such a school.³⁷⁵ If *Bracton* is indeed the product of such a course it would explain the treatise's apparent loss of its main impetus in terms of revisions and additions, after this date. It is perhaps surprising that *Bracton* did not immediately and automatically eclipse *Glanvill*, but the earlier treatise continued to be copied, sometimes even alongside *Bracton* or extracts from it.³⁷⁶ This should not simply be attributed to *Glanvill* still being read and copied as a historical text. Despite its superiority on many levels, *Bracton* necessarily lacks the clarity and precision of the earlier treatise, given its greater length, combination of compilers and unfinished status. *Bracton*'s inconsistencies and broken promises to continue topics at a

³⁷³ 'Bracton took immense strides in the direction of scientific exposition. Where *Glanvill* had confined himself to what would now be called the law of actions, Bracton devoted a quarter of his book to the law of things, and in that quarter he made valiant efforts to state our law in general terms, as a body of principles, independently of the actions which served to enforce them' (Plucknett, *Early English Legal Literature*, p. 80).

³⁷⁴ Brand, 'Legal Education in England before the Inns of Court', pp. 33-50.

³⁷⁵ Elsewhere, Brand also considers the not mutually-exclusive possibility that the starting point of the treatise might have been the skeleton of the common law produced in the now-lost Irish charter of 1210. He states that it is not impossible that Simon of Pateshall or his clerk Martin might have been involved in the drafting of the charter. (Brand, *MCL*, p. 447).

³⁷⁶ See chapter 1. It is, however, worth noting in this context that these manuscripts tend to evidence much heavier usage of their *Bractons*, for example and notably in *Wr*, apparently having been owned by a Herefordshire advocate of c. 1400 and we may infer that he found his *Bracton* to be of far greater utility than his *Glanvill*.

later point stand in contrast to the precision and accuracy of *Glanvill*. Its sheer size and learnedness must also have put off some users, particularly at a time when the evidence of *Glanvill* manuscripts is that they were being mined for writs and even transported around in portable booklet form. The later treatise was also arguably hampered by being out-of-date before it was even circulated.

Intermediate-Length Descendants of *Bracton*:

It is clear that for a number of reasons *Bracton* was crying out for abridgement and updating in the second half of the thirteenth century when it was first disseminated. Just as *Bracton* tends to be mentioned in apposition to *Glanvill*, three medium-length thirteenth-century legal treatises are often mentioned together as *Bracton's* most manifest successors. Together, these works clearly demonstrate the vital significance of *Bracton* and behind it at some remove, *Glanvill*, as the basis of some later legal literature. Traditionally dismissed as mere 'epitomes' or 'abbreviations' of the *De Legibus*, all three have begun to receive the attention they merit on their own account both in terms of their content and relationship to *Bracton* and of what can be gauged of their function.

***Thornton*:**

The first of this trio is the abridged *Bracton* in treatise form known as Gilbert of Thornton's *Summa de Legibus*. The treatise was first noted by Selden who possessed a mutilated manuscript, now lost, and currently survives in only one copy which is attributed to Thornton in its *Incipit*, even though it is not his original copy and seems to

have been produced shortly after his death.³⁷⁷ There is, however, another closely related extant manuscript abridgement of *Bracton* also attributable, although not explicitly linked in its *Incipit*, to Thornton, which seems to be an earlier version of the same work.³⁷⁸ The two manuscripts together may attest to an ongoing process of abridgement with, as Thorne convincingly demonstrates, the former (Thornton's *Summa*) being abridged from the latter (the Lincoln's Inn manuscript) or something like it, rather than directly from *Bracton* itself. The re-revised manuscript is shorter than the version from which it was made and reduces *Bracton* even more drastically, but it omits all of the same areas from the *De Legibus* as its model, in the Harvard manuscript, and even makes the same errors.³⁷⁹ The earlier of the two versions of *Thornton* can be internally dated to between 1285 and 1290 and the later to the period between 1290 and 1295, given that it incorporates slightly later legislative material.³⁸⁰ Gilbert of Thornton was one of the most prominent serjeants of the first half of Edward I's reign and he had become justice of the court of King's Bench by the end of Hilary term 1290, and chief justice of King's Bench perhaps in late February and almost certainly before the beginning of the Easter term,

³⁷⁷ See *Iohannis Seldeni. Ad Fletam Dissertatio*, (ed. and trans.) D. Ogg, p. 9. The surviving manuscript is Harvard Law Library MS 77, on which see: T.F.T. Plucknett, 'The Harvard Manuscript of Thornton's Summa', *Harvard Law Review*, li (1938), 1038-56. For biographical detail on Thornton, see P. Brand, 'Thornton, Gilbert of (b. in or before 1245, d. 1295)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/27356>]. The prologue to the Harvard MS reads: 'Incipit summa de legibus et consuetudinibus Anglie quam composuit Magister Henricus de Britonia tempore Henrici regis filii regis Johannis, quam quidem summam Dominus Gilbertus de Thorntona cum capitalis iusticiarius Domini regis Edwardi filii regis Henrici secundum leges Anglicanas in presencia usitatas ad comodum posteriorum abbreviavit. Anno regni regis Edwardi primi vicesimo', dating itself in other words to the 20th year of Edward I's reign (1291-2). There is other internal evidence of Thornton's authorship, including the fact that the treatise's only cited case seems to have been drawn from Thornton's own knowledge of the people and places involved: S.E. Thorne, 'Gilbert de Thornton's Summa de Legibus', *The University of Toronto Law Journal*, vii, 1 (1947), 19.

³⁷⁸ This is Lincoln's Inn MS Hale 135, which is known to have been owned by Thornton's son, Alan (*ibid*).

³⁷⁹ *Ibid*, 8.

³⁸⁰ The revised version incorporates references to two of the legislative enactments of 1290, *Quia Emptores* and the Statute of *Quo Warranto* (Brand, 'Thornton, Gilbert of', *Dictionary of National Biography*). The attribution in the *Incipit* to 1291-2 may be correct.

1290.³⁸¹ It is clear that Thornton amassed a considerable fortune through his judicial career, which allowed him to make extensive acquisitions of land in his home county of Lincolnshire.³⁸² Thornton died in office as chief justice in 1295 and there is no pressing reason to doubt his authorship of either text.

Thornton's *Summa* consists, like many manuscripts of *Bracton*, of eight books and, unlike the other two treatises with which it is often grouped, begins and ends as *Bracton* does. Indeed, it has been described as the least deviant of the three comparable treatises from its *Bractonian* model.³⁸³ It is therefore, like *Bracton* itself, unfinished. As with the two subsequent treatises, *Bracton's* citation of individual cases and writs is omitted as well as much of his philosophical legal discussion. So, too, is other 'elementary, obsolete, and unimportant' material and the whole is summarily rephrased.³⁸⁴ Thornton also incorporates post-*Bractonian* statutory changes into the body of his text. He presents 'with detailed clarity the alterations of the first great statute of Westminster and the effects of its provisions upon the rules of the common law', for example in his efforts to accommodate the new concept of an estate in fee tail to the existing corpus of real property law.³⁸⁵ He explicitly disagrees with *Bracton* generally on small points, where he gives *Bracton's* formulation under the *Glanvillian* rubrics 'some say', but then supersedes it with 'what others say'. The latter seems to be his assessment of the more modern and better view and, as in *Glanvill Revised*, he sometimes emphasizes this by

³⁸¹ Brand *The Earliest English Law Reports*, ii, pp. cviii-cxv.

³⁸² *Ibid*, p. cxvi; A.L. Spitzer, 'The Legal Careers of Thomas of Weyland and Gilbert of Thornton', *JLH*, vi (1985), 63 and 68.

³⁸³ *Ibid*, 67.

³⁸⁴ Thorne, 'Gilbert de Thornton's *Summa de Legibus*', 6.

³⁸⁵ *Ibid*, 19.

stressing their application in modern times (*modernis temporibus*).³⁸⁶ Given that *Thornton* excises almost all of *Bracton*'s writs and cases, it is noteworthy that he at one point addresses an issue not raised in *Bracton*, and this throws some light on Thornton himself. The treatise addresses the status of the wife and children of a man who is married but then takes holy orders or acts as a priest or a rector. He seems to have been very aware of the ambiguities inherent in a situation where the priest could not canonically remain married, but his wife could not be canonically 'unmarried' and the possible repercussions of such confusion.³⁸⁷ It seems that Thornton believed that a married man could not take holy orders and keep his wife, but that he seems to have avoided such a situation in his own life by probably not taking orders until after the death of his wife. Overall, *Thornton* is undoubtedly, whilst based on *Bracton*, 'a rigorously practical text',³⁸⁸ and in some ways closer to *Glanvill* than to *Bracton* as a cut-down summary of the principles of the law and legal actions, omitting some of *Bracton*'s more academic jurisprudence and all of his cases.

Thorne suggested that Thornton's somewhat surprising decision to abridge his existing abridgement within such a short time frame may possibly have been motivated by the direction of Edward I.³⁸⁹ A more convincing explanation may be presented by another work of Thornton's, the *summa de casibus* of c. 1272-5. The *summa* contains a brief précis of individual points of law but also a more detailed discussion of such procedural

³⁸⁶ Spitzer, 'The Legal Careers of Thomas of Weyland and Gilbert of Thornton', 67. One such section, taken from early in the Lincoln's Inn MS and on the subject of the writ of entry, is printed by Thorne: 'Non enim excedit istud breve tempus quod de visu et auditu proprio probari non possit, et currit istud breve temporibus modernis de tempore coronacionis regis Henrici tertii et de eodem tempore currit breve assise mortis antecessoris...' ('Gilbert of Thornton's Summa de Legibus', 5).

³⁸⁷ Spitzer, 'The Legal Careers of Thomas of Weyland and Gilbert of Thornton', 72-3.

³⁸⁸ Thorne, 'Gilbert de Thornton's Summa de Legibus', 6.

³⁸⁹ *Ibid*, 21.

topics as exceptions, warranty and appeals of felony, in a mixture of Latin and French.³⁹⁰ Dating from the period when Thornton was acting as a serjeant, the *summa* may evidence his involvement in legal education. This may in turn throw some light on Thornton's later treatise: 'If Thornton was involved in legal education, as the evidence of the *summa de casibus* suggests, it is possible that his epitome of *Bracton* was also undertaken with educational purposes specifically in mind'.³⁹¹ An educational function is a more plausible explanation than royal interference for Thornton's apparent abridgement of his existing abridgement. Indeed, the *summa de casibus* itself exists in at least three surviving versions, seemingly indicating a writer updating and honing his work for such a practical purpose, perhaps even incorporating changes highlighted by the text's use in a classroom context. It is possible that both texts in their various forms represent changes in Thornton's teaching over time. The abridgement and then re-abridgement of *Bracton* may have been intended for the growing group of legal apprentices at the Common Bench.

***Fleta*:**

In essence another descendant and summary of *Bracton*, *Fleta* appears to be internally dateable to the early 1290s.³⁹² Like *Thornton*, it only survives in a single manuscript in Latin (British Library MS Cotton Julius B viii) and, like both *Thornton* and *Bracton*, it is unfinished, ending like *Bracton* mid explanation of procedure initiated by the writ of right. The most convincing, although not undisputed, candidate put forward for its

³⁹⁰ Brand, 'Legal Education in England before the Inns of Court', p. 78; Baker, *CELM*, pp. 231-2.

³⁹¹ Brand, 'Legal Education in England before the Inns of Court', p. 79.

³⁹² For general discussion of the text, see D.J. Seipp, 'Fleta (fl. 1290-1300)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/9716>].

authorship is Matthew Cheker, also known as Matthew ‘of the Exchequer’, a yeoman of the royal household and lawyer.³⁹³ Not only does the name Matthew appear in the treatise where Bracton had apparently inserted his own name *exempli gratia*, but Cheker was imprisoned in the Fleet prison for forgery for two years in 1290, a possible explanation for the punning title of the treatise and the assertion in its preface that it ‘might well be called *Fleta* because in *Fleta* it was written’.³⁹⁴

While it is true that *Fleta* is essentially a derivative work, based primarily on *Bracton*, like *Thornton* it is more than a mere abridgement: Maitland’s description of it as: ‘little better than an ill-arranged epitome’ does not do the treatise justice.³⁹⁵ Like *Thornton*, *Fleta* omits all of *Bracton*’s citations of individual cases. However, the treatise is also characterized by more independent efforts to bring *Bracton* up to date, such as the enlargement of the concept of felony or the contradiction of *Bracton*’s insistence that litigation over lost property remained a criminal rather than a civil action.³⁹⁶ Like *Thornton*, the treatise omits many of *Bracton*’s digressions and in their place incorporates

³⁹³ Denholm-Young, *Collected Papers*, pp. 68-79; Brand, *The Origins of the English Legal Profession*. The text’s most recent editor, however, doubted Matthew’s credentials for authorship (volumes ii and iii of the text were edited by H.G. Richardson and G.O. Sayles (ed. and trans.), *Fleta* (Selden Society vols. 72 and 89; London, 1955 and 1972) and volume iv was edited by Sayles alone (Selden Society vol. 99; London, 1984), with discussion of Matthew Cheker at p. xxv. A projected introductory volume i never materialized). Thomas Bek (d. 1293), keeper of the wardrobe and then bishop of St David’s, has also been posited as a possible author, though his suggestion has not been subsequently taken up: B.M. Komar, ‘Two Claims to *Fleta*’s Honors’, *West Virginia Law Quarterly*, clxvii (1924), 172.

³⁹⁴ Seipp, ‘*Fleta*’, *Dictionary of National Biography*, makes the point that this might also refer to the brevity of the treatise, playing on the word fleet (Anglo-Saxon *fléot*), meaning both swift and a watercourse, a word often used in English place names.

³⁹⁵ P&M, i, p. 210. Having said this, less damning criticism might be made of the treatise’s lack of serious attempt at engagement with actions not in *Bracton*, such as trespass or with procedures such as the jury or the final concord, which might have featured in *Bracton*’s unfinished section on the writ or right and the grand assize: C.A.F. Meekings, ‘*Fleta*. Vol. ii. Edited with a translation by H.G. Richardson and G.O. Sayles’, in *EHR*, lxxiii (1958), 674.

³⁹⁶ Sayles (ed. and trans.), *Fleta*, iv, p. xvii.

provisions from Edward I's legislation.³⁹⁷ Richardson and Sayles went so far as to state that: *Bracton's* 'disorder was reduced to order by the master's disciple who used the treatise as the basis for the orderly *Fleta*'.³⁹⁸ Noteworthy original material is found in the long book ii, which includes perhaps the earliest discussion of the juridical powers of parliament and detailed seemingly first-hand discussion of the law courts and the royal household and offices thereof, perhaps derived from firsthand experience.³⁹⁹ The treatise is particularly full on the Steward's Court and Sayles speculated that the author might have been in some way associated with it.⁴⁰⁰ Certain areas, namely co-ownership, dower, entry and warranties, seem also to have been of particular interest to the author and to have merited individual and interesting commentary.⁴⁰¹ Most strikingly, *Fleta's* text is put into a more coherent and less Roman order than *Bracton*, although clearly based upon it. Following the earlier treatise's division of the law of persons, things and actions, *Fleta* opens: 'Actions are either personal, real or mixed' and its six books are divided into personal actions, including villeinage, wardship and marriage as well as criminal actions and civil actions arising from obligations of debt (books i and ii), real actions with a long section on gifts (book iii) and the complex procedures required in real actions of possession and property (books iv, v and vi).

³⁹⁷ So, for example, the contents of the Statute of Marlborough are included in what is otherwise a very *Bractonian* discussion on wardships in book i, c.11, 9 (*Fleta*, ii, from p. 21). For Sayles, this sensible and coherent incorporation of Edward I's legislation was *Fleta's* greatest addition to *Bracton*.

³⁹⁸ H.G. Richardson and G.O. Sayles, *Law and Legislation from Aethelberht to Magna Carta* (Edinburgh, 1966), p. 79.

³⁹⁹ Plucknett, *Early English Legal Literature*, p. 78; Denholm-Young, *Collected Papers*, p. 70. H.M. Jewell, 'The Value of *Fleta* as Evidence about Parliament', *EHR*, cvii (1992), 90-4, stresses that this part of the treatise is not an attempt to describe parliament generally, but merely its judicial functions and that *Fleta's* very vagueness on this subject reflects the newness of that court and the fact that it had not been discussed by previous authors.

⁴⁰⁰ Sayles, *Fleta*, iv, p. xxiii.

⁴⁰¹ *Ibid*, p. xviii. Neither *Glanvill* nor *Bracton* specifically mention an appeal by a woman for the death of her unborn child, but *Fleta* expressly includes this together with the form of accusation.

Fleta really stands out from *Bracton* and its other co-descendants because of its ‘marked financial bias’, and in particular its pronounced interest in both royal and seignorial administration.⁴⁰² Indeed, part of book ii (ff. 62^v-68^v) of the treatise which deals with the legal procedure for making stewards and bailiffs account to their lords includes a conflation of the administrative tracts known as the *Seneschaucy* and *Walter of Henley*, in Latin, and revised to apply to smaller seignorial estates.⁴⁰³ Intentionally closer to the *Seneschaucy* than to *Walter*, the author of *Fleta* nonetheless definitely used both texts and his own independent contributions and variants seem to indicate some knowledge on his own part of estate management.⁴⁰⁴ Like the two administrative works he used, it seems the author of *Fleta* attempted in this part of the treatise to produce a useful aid to accounting. Thus, even more than *Thornton*, *Fleta* is a fundamentally more practical book than *Bracton* just possibly with some kind of educational function that included instruction not of, as *Bracton* seems to be premised upon, judges, but more like the apparent audience of *Glanvill*, humbler men of business and apprentices who would be interested in such practicalities. However, having said this, its author also clearly had knowledge of Roman and canon law, in particular the papal decretals, with which he added to the material in the earlier treatise and overall it is also a more original work than *Thornton*.⁴⁰⁵

It is clear that *Fleta*’s author used more than only a text of *Bracton* in the production of his treatise. *Fleta* is a learned work and contains many allusions to other, including non-

⁴⁰² Denholm-Young, *Collected Papers*, p. 79.

⁴⁰³ Oschinsky, *Walter of Henley and Other Treatises on Estate Management and Accounting*, p. 20 and tables illustrating the conflation at pp. 106-12.

⁴⁰⁴ *Ibid*, p. 106.

⁴⁰⁵ Seipp, ‘Fleta’, *Dictionary of National Biography*.

legal, literature.⁴⁰⁶ Indeed, if the author wrote the work's prologue, then he must have had access to a copy of *Glanvill* as *Fleta*'s prologue is largely an *alpha* text of *Glanvill*'s prologue applied to Edward I.⁴⁰⁷ However, intercalated passages in the *Glanvillian* prologue are also borrowed from Petrus de Vinea's *Eulogy* for Frederick II and the *Laudes de domino Odduardo* and encomium from the praise of the king of Castile of Stephen of San Giorgio (p. 233-41).⁴⁰⁸ This borrowing from Stephen of San Giorgio may support Matthew Cheker's candidacy for authorship of the treatise: the two men were employed in the royal Wardrobe. Kantorowicz conjectured that 'the prologue to *Fleta* indicates that Matthew Cheker made use of the writings of his Wardrobe associate, Stephen of San Giorgio, and there is no reason to assume that he did not get these panegyrics from the "horse's mouth"'.⁴⁰⁹ It is possible that Cheker possessed a copy of *Glanvill*: a 1292 inventory of his goods and chattels including his library listed a *summaria de curia regis*.⁴¹⁰

***Britton*:**

Although *Fleta* appears to have been a failure in its own account, surviving in only one manuscript, its influence lived on and achieved considerable popularity in a third and slightly shorter descendant of *Bracton* in the form of the treatise known as *Britton*.

⁴⁰⁶ Sayles, *Fleta*, iv, p. xix.

⁴⁰⁷ It seems likely that *Fleta*'s prologue was written after the main body of the work, given the book and chapter list which follows it; it therefore may or may not be original.

⁴⁰⁸ E.H. Kantorowicz, 'The Prologue to *Fleta* and the School of Petrus de Vinea', *Speculum*, xxxii (1957), 231-49.

⁴⁰⁹ *Ibid*, 245.

⁴¹⁰ Other contents of his library included a roll of bishoprics under Rome; Magna Carta and forms of pleading; abbreviated statutes and a *summa* by Hengham; 26 *sixteria* of *Bracton*; collections of pleas; Gratian's *Decretum*; the *Digestum Novum* and he also possessed Matthew of Vendôme's *Tobias*; a 'Poytrie'; a 'Romauns'; an alchemical *summa*; a *Disciplina Scholastica*; a primer and a copy of a treaty between Sicily and Aragon (Denholm-Young, *Collected Papers*, p. 194 and R.J. Whitwell, 'The Libraries of a Civilian and Canonist and of a Common Lawyer, an. 1294', *LQR* 21 (1905), 393-400).

Britton must be later in date than *Fleta*, given that it seems to use the latter treatise more than *Bracton* itself, but not much later, and its editor dated it to 1291-2.⁴¹¹ Like the previous two treatises, *Britton* is unfinished. There is evidence that the work was intended to include a chapter on vouching warrants in proprietary actions.⁴¹² The authorship of the treatise is still more obscure than that of *Fleta* and remains enigmatic. It has traditionally, but probably mistakenly, been linked with John le Breton, bishop of Hereford (1268-75),⁴¹³ although Selden suggested that it may have taken its name from a corruption of the text on which it was based i.e. *Bracton/Bratton*.⁴¹⁴ The treatise survives in at least 49 manuscripts.⁴¹⁵ It is striking that the numerous extant *Britton* manuscripts either lack a title or have one which does not describe their contents.⁴¹⁶ In many respects very like *Fleta*, *Britton* contains much of *Bracton* whilst omitting its citations of cases and speculative jurisprudence, within a rearranged order. *Britton* is, however, crucially different from the previous two treatises and their exemplar, *Bracton*, in that it is written in French and also unique in that the whole book is put into the mouth of Edward I. It

⁴¹¹ F.M. Nichols (ed. and trans.), *Britton*, i (Oxford, 1865) p. xviii, noting that it referred to *Quia Emptores* of 1290 but as ‘une novel constitutione’. *Britton* also includes more than one description of proceedings in the steward’s court apparently derived from *Fleta*.

⁴¹² *Ibid*, p. xlv.

⁴¹³ For biographical detail on le Breton/Bretun, see A. Harding, ‘Breton, John le (d. 1275)’, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/3340>]. On his death in 1275 certain chronicles including the *Annals of Six Reigns* of c. 1320 by Nicholas Trevet described him as an ‘expert in English laws, who had written a book about them called *le Bretoun*’. Le Breton’s background would have put him in a good position to have written the treatise: he acted as a clerk and then sheriff of Hereford (1254-7), as constable and bailiff for Lord Edward at Abergavenny in 1257 and was later made justice of the King’s Bench in 1265 and acted as a justice in eyre in Yorkshire in 1268 and was finally made bishop of Hereford in 1269. However, he cannot have written *Britton* in the version in which it has survived because it refers to statutes from the later thirteenth century after his death, either indicating someone else’s responsibility for the treatise or its updating over time.

⁴¹⁴ *Iohannis Seldeni. Ad Fletam Dissertatio*, (ed. and trans.) D. Ogg, p. 11. Selden believed that the words attributing the text to le Breton in some annals must have been later interpolations attributing the book to him *ex post facto* because of the similarity in names.

⁴¹⁵ To the 26 manuscripts described by Nichols (*Britton*, i, pp. xlix-lii), should be added another 23 listed in Baker, *CELM*, p. 63.

⁴¹⁶ Winfield, *The Chief Sources of English Legal History*, p. 162.

opens: ‘Edward, by the grace of God, king of England... to all his faithful people and subjects... we have caused such laws as have heretofore been used in our realm to be reduced into writing according to that which is here ordained’ (*fet mettre en escrit solum ceo qe cy est ordeyne*).⁴¹⁷ Although *Glanvill*, and following it, *Bracton* and its other descendants all imitate Justinian’s *Institutes* in places, *Britton* is the only treatise which so emphatically claims royal backing.⁴¹⁸ Ironically, it sounds more Roman than *Bracton*, albeit without the earlier treatise’s degree of genuinely Roman learning and citation.⁴¹⁹ Its code-like appearance is furthered by a writ ordering its observance as well as an ongoing concern with the profits and interest of the crown that makes it stand out from *Bracton* and its other co-descendants. Nichols and Plucknett both suggested that such remarkable pretensions must have had some grounds in reality and raised the possibility of Edward I, ‘the English Justinian’, having flirted with the idea of codifying English law.⁴²⁰ This argument is, however, unconvincing and there is no other evidence for any official codification of English law under Edward.⁴²¹ Moreover, it seems unlikely that Edward was in a position to impose such a scheme at this time. Instead, *Britton*’s claims

⁴¹⁷ *Britton*, i, Prologue, p. 1. It continues in i, 4: ‘We will that our jurisdiction be superior to all jurisdictions in our realm...’ (p. 3) and standard openings of later titles are ‘We will that...’ (*Nous volums qe...*), ‘And also our will is’ (*Ausi volums nous qe...*) or ‘We forbid that...’ (*Defendoms...*). Statutes are often referenced: ‘as is contained in our statute of...’.

⁴¹⁸ ‘In fact the royal authority throbs through every page of Britton’: H.L. Carson, ‘A Plea for the Study of Britton’, *Yale Law Journal*, xxiii (1914), 667.

⁴¹⁹ *Britton*’s author for example misunderstands the very Roman passage in *Bracton* and, following it, *Fleta* on the *magna differentia* between a loan for consumption and a loan for use (described above). Its author has gathered that there is a question about liability, but not that it depends on a factual difference. See Milsom, *Studies in the History of the Common Law*, p. 177.

⁴²⁰ ‘It is difficult to suppose that a work would be prepared or published in such a form, at the period to which this book belongs, without express authority’ (Nichols, *Britton*, i, p. xvii); see, too, Plucknett, *A Concise History of the Common Law*, p. 265. Harding, too, thought that it was just possible that Le Breton had been involved in the devising of a project of legislative reform originating in Edward I’s first parliament (DNB).

⁴²¹ A kind of codification of English law for use in Wales exists in the Latin Statute of Wales. However, analogy between it and *Britton* cannot be pushed too far: Edward had a *tabula rasa* in Wales as a conquered land which he emphatically did not in England.

to authority look, like those in the *Leges Edwardi Confessoris*, spurious. Although it contains much in common with *Bracton*, and through it the tradition begun by *Glanvill*, its code-like tone stands in striking contrast to the relative informality and speculation of the earlier treatises and, in particular, to *Glanvill* and *Bracton*'s at times slightly self-conscious mixture of enacted and customary law.

Like *Thornton* and *Fleta*, *Britton* is far from an unthinking abridgement of *Bracton*. As in the earlier treatise, Edward I's statutory legislation and occasional other new material is coherently incorporated into *Bractonian* common law.⁴²² The treatise is particularly concerned with writs and procedures used to prove title or gain possession of land.⁴²³ Plucknett deemed *Britton* the most neatly arranged of the three *Bractonian* descendants and 'a model of clarity and conciseness'.⁴²⁴ The main reason for this characterization is that in place of *Bracton*'s *Institutes*-based division into discussion of persons, things, obligations and actions, *Britton* is arranged similarly to *Fleta* by the legal processes by which laws might be enforced, dividing the treatise principally between personal and real pleas and actions.⁴²⁵ This, combined with its use of French, makes *Britton* look particularly practical, as a functional legal text in the language of courtroom pleading and divided for easy reference therein. In one manuscript (Cambridge University Library MS Dd.7.6), the treatise has an early, careful and elaborate gloss, in French, dating from

⁴²² See, for example, references to 'our Statutes of Westminster' (xv, 1; p. 46), the assize of bread (xxxi, 1; p. 153) and Magna Carta (lv, 1, p. 467). It is striking that *Britton* includes new material on trial by battle, about which *Bracton* had relatively little to say and which had seemed to be falling into desuetude in the earlier treatise and xxiii, 14 (p. 89) includes extended discussion on armour and weapons not taken from *Bracton* or any of the other treatises.

⁴²³ J.R. Strayer, 'Britton', in *The Dictionary of the Middle Ages*, (ed.) J.R. Strayer, vol. ii (New York, 1983), p. 382.

⁴²⁴ Plucknett, *Early English Legal Literature*, p. 79.

⁴²⁵ Nichols, *Britton*, i, p. xxx. Like *Fleta*, *Britton* is in six books divided essentially into personal pleas or actions and real pleas, with much greater emphasis on the latter which occupy five out of the six books.

before 1316, evidencing its usage.⁴²⁶ Nichols attributed this gloss to John de Longeville of Northampton, who seems to have been a justice of assize and who died in c.1324/5. This gloss deserves further attention, perhaps evidencing educational usage of the treatise, and certainly as a commentary on *Britton* by a lawyer who may have been practising at the time of the treatise's publication. All in all, like *Thornton* and *Fleta*, it is a more practical text than *Bracton*, and in fact it is the most original of the three *Bractonian* descendants. All three of these treatises are in some senses closer to *Glanvill* than to *Bracton* in their procedural emphasis and concision, but ironically they have arguably moved away from the enquiring and speculative spirit of that treatise, to which *Bracton* is a more natural heir. This divergence is epitomized by the differences between *Glanvill* and the latest and most popular of the three *Bractonian* descendants, the prescriptive *Britton*.

Registers of Writs:

Another key element in thirteenth-century legal literature was the large number of registers of writs produced over the century. These functioned at once as sources for and as replacements of the treatises above, and their role is central to the development of the common law over the century. *Glanvill* may or may not have been based upon a register; it must at the least have been built upon some kind of collection of writs.⁴²⁷ Maitland stressed what he saw as the similarity between *Glanvill*'s 'legalis ordo', beginning – unlike *Bracton* – with right and ending with possession, and early Edwardian and

⁴²⁶ Ibid, i, pp. lxi-iii; Baker, *CELM*, p. xxvi.

⁴²⁷ Hall, 'Introduction', p. xxxiii. *Glanvill*'s book xii with its sequence of writs without explanation looks particularly close to the format of a register.

subsequent registers.⁴²⁸ De Haas, however, disagreed perhaps too strongly: 'It is of some interest that the order of writs in the registers follows neither Glanville's nor Bracton's exposition, nor, in turn, were the authors of these treatises influenced by the order of writs in a register'.⁴²⁹

If the author of *Glanvill* did use a register, it no longer survives. The earliest extant register is in British Library MS Cotton Julius D. ii, sent to Ireland by Henry III, and now dated to 1210.⁴³⁰ Registers survive in some quantity from the mid thirteenth century onwards, and at least seven appear to predate the 1236 Statute of Merton.⁴³¹ Like the treatises mentioned above, registers seem to have been essentially private compilations and tended to be owned by individual lawyers or corporations such as monasteries. Registers may, however, have had a more 'official' role than this suggests. It is possible to date major revisions in the content and style of the registers and these tend to be adopted with the kind of 'remarkable uniformity' that might suggest chancery directives.⁴³² The question of the existence of an official master register remains open.⁴³³

The organic and ever-expanding nature of the registers enables a more definite assessment of the manner in which they change over the course of the century. It is possible to trace the appearance of newly-invented writs such as trespass from c.1261-5, appearing either as appendices or in the body of the text.⁴³⁴ As well as containing more

⁴²⁸ Maitland, *Collected Papers*, ii, pp. 126 and 160.

⁴²⁹ De Haas, 'General Introduction', in Hall, *Early Registers of Writs*, p. xviii.

⁴³⁰ Brand, *MCL*, p. 453.

⁴³¹ *Ibid.*, p. 450.

⁴³² Hall, *Early Registers of Writs*, p. cxxii.

⁴³³ *Ibid.*, p. cxviii.

⁴³⁴ For discussion of the invention of such new writs and some of the large literature on this, see chapter 2.

Latin writs, thirteenth-century registers increasingly included connective narrative material between writs which was sometimes in French.⁴³⁵ The tone of this material is educative and it has been suggested that 'by 1300 the register of writs may have formed the subject of an organized educational course', perhaps transmitted orally.⁴³⁶ This conjecture may be evidenced by the accumulated gloss of *notae* and *regulae* which registers began to acquire, and which have been a traditional hallmark of a text's usage in a classroom setting. The link between the registers and education may also be supported by the large number of registers which appear with other legal texts, notably *Glanvill*, the statutes and the shorter thirteenth-century tracts and treatises which will be described below.⁴³⁷ It appears that a number of *Glanvill* manuscripts seem to have increasingly been functioning at least in part as registers over time and the expansion and updating of registers themselves to become more treatise-like must have rendered the treatise considerably less useful over time.

Statute Books:

Another legal literary genre which embodied common law enactments in an unofficial form was the statute book. Statute books, of which there are many extant, seem to have assumed a recognizable form from the 1280s, but to have been commercially copied before that date.⁴³⁸ Such books might typically include a section of the great thirteenth-century statutes from Magna Carta to Westminster II, then other statutes, ordinances,

⁴³⁵ De Haas, 'General Introduction', in *Early Registers of Writs*, p. xvii.

⁴³⁶ Brand, *The Origins of the English Legal Profession*, p. 119; Brand, *MCL*, p. 65.

⁴³⁷ Hall, *Early Registers of Writs*, p. cxxv.

⁴³⁸ Described in Skemer, 'Reading the Law: Statute Books, and the Private Transmission of Legal Knowledge in Late Medieval England', pp. 113-131. See, too, the brief discussion of statute books in chapters 1 and 2.

writs, tracts and other texts originating under Henry III and Edward I, often bound up with some of the relatively brief instructional treatises described below. Like registers of writs, statute books had a composite character and were added to over time. Skemer suggests that they may well have been organized by serjeants.⁴³⁹

We hear of a distinct group of legal apprentices at the Common Bench from the 1280s. Such a group must have needed to know, and often to memorize, the statutes and they are a plausible audience for the statute books. By the 1290s someone had put at least one major statute into French verse, apparently as an aide memoire. Bodleian Library MS Douce 139 contains a French rhyming version of the Statute of Westminster II of 1285.⁴⁴⁰ However, as with the registers, it seems likely that the statute books' audience was a broad one. Skemer describes their 'broad educational purpose', describing their readership as the legally literate and those who aspired to be so, including large landowners, the church, merchants, public officials, lawyers as well as perhaps law students.⁴⁴¹ A signpost to their clear usage is the incorporation over time of academic reference tools such as contents tables, and later indexes. The statute books evidence private reading and study, whether as part of 'formal' legal education or not, as a means of acquiring legal knowledge. But they offered a very different education from *Glanvill* and the treatises which followed it, attesting the increasing importance of enacted law in contrast with the picture in *Glanvill* of an author happy merely to incorporate Henry II's

⁴³⁹ Ibid, p. 116.

⁴⁴⁰ Brand, 'Legal Education in England before the Inns of Court', p. 69.

⁴⁴¹ Skemer, 'Reading the Law: Statute Books, and the Private Transmission of Legal Knowledge in Late Medieval England', p. 114.

enactments into his general picture of the common law without explicit acknowledgement.

Other Noteworthy Smaller Scale Legal Treatises

Other significant law books of the thirteenth century were smaller and had a more limited scope than either *Bracton* and its three most manifest descendants or formularies such as registers or statute books. Four examples will be given of the variety of small tracts and treatises that appeared in which specific, and generally procedural, aspects of the law were considered. These works were very often bound up together.

Judicium Essoniorum:

Brand has attempted to rescue this minor treatise from neglect and disparagement.⁴⁴² It is unique in its form as a series of questions and answers and exists in two distinct manuscript rescensions, the more common being the later. Dating the eminently practical treatise to c.1218/9-30, Brand has suggested that it may have started its life as a consultation rather than a tract, in the form of a set of questions sent by a man who was perhaps about to serve as an itinerant justice, or just possibly as a clerk, to a colleague and friend who may have filled the same office in the past.⁴⁴³ Its title is misleading in that it deals with considerably more than merely essoins and includes a number of other litigation-related topics. It is noteworthy because of its early date and, despite not having

⁴⁴² P. Brand, "Nothing Which is New or Unique"? A Reappraisal of 'Judicium Essoniorum', in P. Birks (ed.), *The Life of the Law, Proceedings of the 10th British Legal History Conference, Oxford 1991* (London, 1993), pp. 1-7. The treatise is printed in G.E. Woodbine (ed.), *Four Thirteenth Century Law Tracts* (Yale, 1910), pp. 116-142.

⁴⁴³ Brand, *ibid*, p. 6.

been written as a treatise or for purposes of general instruction, it seems to have been very popular in the late thirteenth and early fourteenth centuries and almost all of the at least 88 extant manuscript copies seem to come from this period.⁴⁴⁴ There is a late thirteenth-century English translation in Bodleian Library MS Rawlinson B 520 and a French translation in British Library MS Additional 38821, again implying its contemporary popularity.⁴⁴⁵

Fet Asaver:

Another very popular tract was the French *Fet Asaver*, which survives in at least 89 manuscripts largely from the late thirteenth and early fourteenth centuries.⁴⁴⁶ The work's author is unknown, but he probably wrote shortly before 1263, and perhaps in the 1250s.⁴⁴⁷ Plucknett described the treatise as 'tiny but heroic' for its *Glanvillian* attempt at analysis of rights on a general scale.⁴⁴⁸ It is concerned with procedure in the various actions which can be brought in the king's court, in particular with essoins, defaults, the view, voucher to warranty and the different means of ensuring the defendant's appearance in court. It opened with what was to become a popular alternative to the division of actions into real and personal, instead dividing royal pleas into 'pleas of land' or 'of trespass' or both. It is possible that the treatise may derive from some sort of oral

⁴⁴⁴ Ibid, p. 1; Baker, *CELM*, pp. 78-9.

⁴⁴⁵ Ibid, p. 79.

⁴⁴⁶ Printed by Woodbine, *Four Thirteenth Century Law Tracts*, pp. 53-115. To Woodbine's list of 14 manuscripts containing the treatise, should be added another 75 described in Baker, *CELM*, p. 64.

⁴⁴⁷ Ibid. The work's *terminus ante quem* is the 1263 reissue of the Provisions of Westminster which authorized the omission of all stages in the mesne process in personal actions between the second attachment and the grand distress, on which see Brand, 'Legal Education in England before the Inns of Court', p. 61, n. 34, who notes that the failure to mention the abbreviation in mesne process and shortened adjournments between stages in *quare impedit* and *darrein presentment* may point to a date prior to 1259.

⁴⁴⁸ Plucknett, *Early English Legal Literature*, p. 94.

programme of instruction, although the internal evidence is not enough to prove this.⁴⁴⁹

Like the *Judicium Essoniorum*, it was translated into English in the late thirteenth century in Bodleian Library MS Rawlinson B 520.

Hengham Magna and Hengham Parva:

Like *Judicium Essoniorum*, the so-called ‘Hengham Magna’ was a short and popular treatise, surviving in over 87 manuscript copies.⁴⁵⁰ It is largely but not exclusively concerned with the subject of procedures available in land litigation initiated by the writ of right and may be internally dated to between 1260 and 1272.⁴⁵¹ Much of the work is built around the increasingly complicated system of legal delaying tactics and the advantages that could be wrung from them. All of the treatise’s manuscripts are unfinished and confused, perhaps suggesting the influence of a *Bractonian* redactor. Its first four chapters seem to show the influence of a register and of *Glanvill*.⁴⁵² Brand has overturned its traditional ascription to chief justice Ralph of Hengham and instead suggested John Blundel, keeper of the rolls and writs of the Bench, as ‘at least a strong possibility’ for authorship.⁴⁵³

⁴⁴⁹ Brand, ‘Legal Education in England before the Inns of Court’, p. 61.

⁴⁵⁰ Dunham lists 44 manuscripts containing both *Hengham Magna* and *Hengham Parva* and a further 14 containing only *Hengham Magna* (Dunham (ed.), *Radulphi de Hengham Summae*, pp. lxxiii-viii). To these should be added the 29 others listed in Baker, *CELM*, pp. 64-5.

⁴⁵¹ Brand suggests that the text’s modern editor, Dunham was too late in his 1272-5 dating: Brand, *MCL*, p. 369.

⁴⁵² Winfield, *The Chief Sources of English Legal History*, p. 275.

⁴⁵³ Brand, *MCL*, p. 391. For biographical discussion of Hengham, see P. Brand, ‘Hengham, Ralph (*b.* in or before 1235, *d.* 1311)’, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/12924>].

Since Selden printed them together in 1616, *Hengham Magna* and the still shorter, *Hengham Parva* have been linked. It is now clear, however, that the two treatises are not by the same man.⁴⁵⁴ It is possible that Ralph of Hengham may in fact have been responsible for the *Parva*, and it may have derived from lectures given by him.⁴⁵⁵ Both Dunham and Brand date the composition of the smaller treatise to c.1285-90.⁴⁵⁶ It deals with the different kinds of essoin, the different kinds of dower action, rules on the viewing of land in land actions and the working of the assize of novel disseisin, within a statutory framework.⁴⁵⁷ Like *Hengham Magna*, it seems to have been a very popular text and survives in at least 107 manuscripts,⁴⁵⁸ one of which (Bodleian MS Douce 139) has been shown to represent an earlier version of the treatise with its material in a different order.⁴⁵⁹ Brand deemed it ‘possibly significant’ that the manuscript which contains the earlier version is a manuscript connected with Coventry cathedral priory that also contains a copy of the text of Hengham’s consultation on *quo warranto* law.⁴⁶⁰ The *Parva*’s contents suggest that its intended audience may have been those wanting to be or just beginning as professional attorneys.⁴⁶¹ A translation of both ‘Henghams’ into English was made in the late thirteenth century in the same manuscript as both *Fet Asaver*

⁴⁵⁴ Brand, *MCL*, pp. 383-5.

⁴⁵⁵ Brand, *The Origins of the English Legal Profession*, p. 119. Hengham seems to have been responsible for two consultations, one on points of *quo warranto* law written in 1285 for the justices of the Northamptonshire eyre, the second written some time after 1285 in response to a question from justices in Ireland (Brand, ‘Hengham, Ralph’, *Dictionary of National Biography*).

⁴⁵⁶ Dunham, *Radulphi de Hengham Summae*, p. lxii; Brand, *The Origins of the English Legal Profession*, p. 118.

⁴⁵⁷ *Ibid.*, p. 119.

⁴⁵⁸ Dunham listed 44 manuscripts containing both ‘Henghams’ and a further 17 including only *Hengham Parva* (*Radulphi de Hengham Summae*, pp. lxxiii-viii). To these should be added another 46 listed in Baker, *CELM*, p. 65.

⁴⁵⁹ *Ibid.*; Brand, *The Origins of the English Legal Profession*, p. 80.

⁴⁶⁰ Brand, ‘Legal Education in England before the Inns of Court’, pp. 80-1.

⁴⁶¹ Brand, *The Origins of the English Legal Profession*, p. 119.

and *Judicium Essoniorum* also appear.⁴⁶² All of these short and highly procedural treatises were evidently popular and evidently widely read by an audience that may perhaps not have been entirely comfortable with Latin, in contrast with the expectations of Roman and canon learning upon which *Glanvill* and *Bracton* are premised.

More Clearly Pedagogic Literature

Finally, another discernible genre of thirteenth-century legal literature consists of still shorter and even more clearly instructional works. Much of this literature seems almost certainly to have developed from lectures on the common law and these works are more like formula books or manuals than treatises in their own right. They may be defined as collated formularies with limited and fairly basic practical exposition. They are practical works of generally very limited scope and focus almost exclusively on applied rather than speculative law, sometimes illustrated with either real or hypothetical cases. They resonate of instruction and of a classroom environment.

The work known as *Brevia Placitata*, a small and basic tract of c.1260 giving fairly basic specimen writs, counts and defences for pleading in the king's courts, is noteworthy within this genre.⁴⁶³ It contains almost no expository material, excepting very limited comment on the writ of right.⁴⁶⁴ Unlike the registers, *Brevia Placitata* renders its writs into French. Turner speculated that its compilation might have something to do with

⁴⁶² Baker, *CELM*, p. 65.

⁴⁶³ G.J. Turner and T.F.T. Plucknett (ed.), *Brevia Placitata* (Selden Society vol. 66; London, 1951). To Turner's list of 16 manuscripts of the work should be added another 20 listed by Baker, *CELM*, p. 156. Also see discussion in Brand, 'Legal Education in England before the Inns of Court', p. 59, who stresses how much the treatise 'sounds like a teacher at work'. The year 1260 is consistently used for illustrative purposes in the text.

⁴⁶⁴ Plucknett, *Early English Legal Literature*, p. 85.

John fitz Geoffrey, son of former chief justice Geoffrey fitz Peter and his appointment as justiciar in Ireland in 1245.⁴⁶⁵ There is, however, little evidence for this attribution. Whether or not fitz Geoffrey was involved, there is internal evidence, in particular in its connective material, for seeing *Brevia Placitata*'s origins in lectures on the common law.⁴⁶⁶ What *Brevia Placitata* did for pleading in the royal courts, the approximately contemporary collection of tracts we know as the 'Court Baron' seems to have done for manorial courts. It, too, is a French collection of precedents for pleading including counts and defences.⁴⁶⁷ Although, like the *Brevia Placitata*, there are variations across the different manuscripts of the *Court Baron*, the same *incipit* is found in at least 11 manuscripts.⁴⁶⁸ Beckerman examined the treatise/formulary known as *Curia Placitata*, one of the *Court Baron* group. His findings of two versions of the treatise and description of its analytical method, didactic rhetoric, use of mnemonics and reports of cases all seem to indicate that it played a role in formal law teaching in the late thirteenth century.⁴⁶⁹

The closely-related so-called *Casus Placitorum* is an amorphous book of notes which changes considerably in length and content across its at least 31 extant manuscripts.⁴⁷⁰

⁴⁶⁵ Turner and Plucknett, *Brevia Placitata*, pp. xxvi-xxxi. In most of the manuscripts of *Brevia Placitata* the opening writ of right is addressed to John or what sounds like a variant of his name. Turner therefore thought that John as recipient might have been being written into the formulary as a compliment, or perhaps that he had something to do with its compilation.

⁴⁶⁶ Brand, *MCL*, p. 63, n.28.

⁴⁶⁷ Baildon and Maitland (ed.), *The Court Baron*, printed four different texts and listed seven manuscripts.

⁴⁶⁸ Baker, *CELM*, p. 346.

⁴⁶⁹ J.S. Beckerman, 'Law-Writing and Law Teaching: Treatise Evidence of the Formal Teaching of English Law in the Late Thirteenth Century', in J.A. Bush and A. Wijffels (eds.), *Learning the Law. Teaching and the Transmission of Law in England 1150-1900, Proceedings of the 13th British Legal History Conference, Cambridge, 1997* (London, 1999), pp. 33-50.

⁴⁷⁰ Brand, *MCL*, p. 63; W.H. Dunham (ed.) *Casus Placitorum and Reports of Cases in the King's Courts, 1272-1278* (Selden Society vol. 69; London, 1952). To Dunham's list of 19 manuscripts should be added another 12 listed in Baker, *CELM*, p. 80.

The names of justices who are vouched as authorities in the text enable an approximate dating of 1250-60. Some of the work's notes seem to derive from real cases and therefore represent some of the earliest law reports, containing something of the disputations which characterized the Year Book reports.⁴⁷¹ The *Casus* may be characterized not as a treatise, but as a compendium of precedents, judgements and procedural rules in no particular order. It has been suggested that 'what we have in the notes of the *Casus Placitorum* are no more than extracts from lectures taken out of their original context'.⁴⁷² The extracts in the *Casus* might represent only those parts of lectures where the teachers departed from the standard law remedies of writ, count and defence which feature in *Brevia Placitata* and the 'Court Baron'.⁴⁷³ As with the 'Court Baron', both of these works include early mnemonics which further attest to their educational usage.

The same kind of audience which was served by texts like *Brevia Placitata* and the *Casus Placitorum* seems slightly later to have been the target of lectures on the common law in London. By 1278 at the latest these were being given, probably in or around Westminster, to provide a basic introduction to the nuts and bolts of litigation. Two surviving manuscripts (British Library MS Lansdowne 467, which is *Glanvill* MS J, and Cambridge University Library MS Hh.3.11) seem to be a student's reports on such a lecture series and through them we may hear echoes of distinctively didactic classroom

⁴⁷¹ P. Brand, 'The Beginnings of English Law Reporting', in C. Stebbings (ed.), *Law Reporting in Britain, Proceedings of the 11th British Legal History Conference, Exeter, 1993* (London, 1995), p. 6.

⁴⁷² Brand, *MCL*, pp. 63-4.

⁴⁷³ *Ibid*, p. 64.

talk.⁴⁷⁴ The lectures seem to have involved description of different types of action, sometimes in detail and reproducing a specimen count and defence. In other words, like *Brevia Placitata* and the *Casus Placitorum*, they were a concise and practical general guide to the day-to-day practical aspects of the common law. Further, it seems that the lecturer sometimes used real cases as a ‘hook’ to capturing the interest of his listeners.

Like the previous works, *Modus Componendi Brevia* is a short Latin text, dating from c.1285 and probably originating in spoken lectures on various specific topics such as actions relating to title and land and advowsons, replevins, pasture rights and exceptions.⁴⁷⁵ Unlike the previous works, however, it does not give the writs, counts or defences themselves. Although it purports to be the work of a senior chancery clerk writing for the instruction of his junior colleagues, it may also have been oriented towards law students and like the *Casus*, it may have developed from oral form.⁴⁷⁶ Like the previous texts, its contemporary usefulness is attested by its survival in a considerable number of manuscripts.⁴⁷⁷ A second treatise, *Natura Brevium*, dates from very shortly after the *Modus*.⁴⁷⁸ It is a general introduction, in French, to the most common types of writ and mesne process. Although fuller than the *Modus*, it likewise omits the text of the writs themselves and again does not produce specimen counts or defences. Again,

⁴⁷⁴ Brand, ‘Legal Education in England before the Inns of Court’, pp. 76-7: ‘I could say much more on this matter but I cannot cover everything...’, ‘Here let us leave this matter. We will speak now of entry. Now hear what I have to say...’ and even includes visual aids and references to these ‘... this can easily be seen in the figure below...’. The copying of *Glanvill* into this manuscript may indicate the treatise being read for educational purposes at this point.

⁴⁷⁵ Edited in Woodbine, *Four Thirteenth Century Law Tracts*, pp. 143-62. See also Brand, *MCL*, p. 64.

⁴⁷⁶ Brand, ‘Legal Education in England before the Inns of Court’, p. 79.

⁴⁷⁷ Baker, *CELM*, p. 56 lists 86 known extant manuscripts.

⁴⁷⁸ Brand, *MCL*, pp. 64-5.

internal evidence suggests that this ‘treatise’ may also have started life as a lecture or series of lectures on the common law.⁴⁷⁹

Finally, tracts such as the *Exceptiones Contra Brevia*, *Exceptiones Generales* and the closely related *Articuli qui in narrando indigent observari* and, to a lesser extent, the *Divisiones Brevium* that frequently appear in manuscripts together, also seem to have originated in lectures on the common law.⁴⁸⁰ Philbin speculates that the *Exceptiones Contra Brevia* and the *Exceptiones Generales* together formed a set of lecture notes on exceptions, probably compiled sometime shortly after 1285, which was closely related to the *Articuli*, notes on the points to be made in the making of counts. Although it is difficult to be sure what their main method of transmission was,⁴⁸¹ together they may have been the major parts of a late thirteenth-century Latin course on pleading. It is ironic that the thirteenth-century ‘literature’ of the common law should increasingly derive from oral instruction and courtroom practice and this emphatically represents a moving away from the written treatise form established by *Glanvill* and followed by *Bracton* and its descendants.

Conclusions:

This has only been a preliminary sketch of some of the legal literature produced in the century or so after *Glanvill*. It nevertheless permits some conclusions to be drawn both

⁴⁷⁹ Brand, ‘Legal Education in England before the Inns of Court’, p. 80.

⁴⁸⁰ P.F. Philbin, ‘The *Exceptiones Contra Brevia*: A Late Thirteenth-Century Teaching Tool’, in *Learning the Law. Teaching and the Transmission of Law in England 1150-1900*, (ed.) Bush and Wijffels, pp. 133-156. Also see Baker, *CELM*, p. xxv, n. 30.

⁴⁸¹ Brand, *The Origins of the English Legal Profession*, p. 113.

about specific examples of thirteenth-century legal literature and about such literature in general and compared with *Glanvill*. It is important to note that, although on the whole later legal literature moved in different directions from those taken in *Glanvill*, the treatise continued to have a role both in its use – direct and indirect – in later works, and in the fact that it continued to be read and bound up alongside almost all of the texts mentioned here, across the spectrum ranging from *Bracton* to *Brevia Placitata*.⁴⁸² It clearly continued to add something, and perhaps this is best explained by its status as a compromise between the learnedness and impracticalities of *Bracton* and the specificity of some of the other literature. This may partly also be explained by *Bracton*'s disadvantages of being outdated before it was disseminated and its unfinished status and impracticable layout. It seems that: 'Bracton's Roman learning did not well suit the practice of his contemporaries on the bench' and that its heavy emphasis on cases did not take off.⁴⁸³ Perhaps *Glanvill* continued to be copied and read in part as a reaction to this, by the very groups who may have been finding *Bracton* difficult.

Maitland wrote that *Bracton*: 'stands a head and shoulders taller than [all of his successors]... Just so long as his influence was powerful lawyers could produce such fairly readable books as those which we call Britton and Fleta; serviceable epitomes, what is good in them is Bracton's'.⁴⁸⁴ For Plucknett, 'coming to these small tracts [*Brevia Placitata etc*] after reading Bracton produces something of a shock as we leave

⁴⁸² For example *Glanvill* was bound up beside texts of the *Casus Placitorum* genre in at least 7 volumes (*Ab2*; *Ca*; *F*; *J*; *M*; *Nf/No*; *P* and *W*); with *Brevia Placitata* in at least 3 volumes (*Ab2*, *M* and *W*); with the *Judicium Essoniorum* in at least 4 volumes (*C*; *J*; *Or* and *P*); with *Hengham Magna* and/or *Parva* in at least 5 volumes (*J*; *Lan*; *M*; *Or* and *P*); with *Britton* in 2 volumes (*Ca* and *Z*) and with *Bracton* or extracts from it in three volumes (*J*, *M* and *Wr*).

⁴⁸³ Seipp, 'Bracton, the Year Books, and the "Transformation of Elementary Legal Ideas"', in the *Early Common Law*, 182.

⁴⁸⁴ Maitland (ed.), *Bracton's Note Book*, i, p. 7.

the splendour of the master's work and approach the squalid, disorderly little tracts where nothing seems to count except points of practice'.⁴⁸⁵ This study has, however, shown that the traditional view of *Bracton* presiding magisterially over a degenerating vista of all subsequent legal literature is misleading. First, although the *De Legibus* undoubtedly represents a startling achievement, recent research has begun to question its hitherto accepted place as reliable exposition of the law of the king's courts *par excellence*.⁴⁸⁶ Second, the reputations of the descendants of *Bracton* known as *Thornton*, *Fleta* and *Britton* have all begun to be rejuvenated in their own right. Rather than being mere epitomes, they all, following *Glanvill* and *Bracton* – but in contrast with the other legal literature of the century – have the same grand ambition to reduce the whole of English common law into writing and to state that law within its own independent analytical framework. Thirdly, it is misleading to see a simple degeneration from *Bracton* to the smaller thirteenth-century tracts and treatises.

Simply to compare *Glanvill* or *Bracton* with the *Brevia Placitata* and to bewail the inexorable literary debasement between the two is to miss the point. *Glanvill*: 'reflects a world where there already existed some specific rules of the common law which needed to be learned and some procedures followed by the common law courts of which litigants or their agents needed to have knowledge, but in which the demand for instruction in those rules and procedures was insufficient to support the emergence of a specialist oral education in the common law'.⁴⁸⁷ Brand has styled *Glanvill* a 'conversion kit' for men with Roman and canon law training – the only oral education in law available in the late

⁴⁸⁵ Plucknett, *Early English Legal Literature*, p. 93.

⁴⁸⁶ Barton, 'The Mystery of Bracton'; Brand, 'The Age of Bracton'.

⁴⁸⁷ Brand, 'The Age of Bracton', p. 55.

twelfth century. Despite its dilemmatic method, *Glanvill* was neither itself the product of a system of oral education nor does it appear to have been used in a classroom setting. In contrast, the shorter tracts and treatises of generally the second half of the thirteenth century almost all seem to be connected in some way with legal education. Moreover, they are specifically concerned with education in the common law itself.

Such education clearly took varying forms. Some of the literature is manifestly for beginners, such as the *Brevia Placitata*, *Natura Brevium* or the use made of the registers of writs. Other literature used for educative purposes looks more sophisticated, for example the lectures of the 1270s. Whether this literature takes the form of teachers' texts of lectures or students' notes, whether its focus is one specific topic or more general, its defining characteristics are brevity and plain didacticism. But the salient point is that in works designed for or deriving from the classroom, this is not surprising and, if anything, laudable rather than derisory. It seems that much of this literature was aimed at the emergent group of 'apprentices of the Common Bench'. It should not be surprising that these tracts and treatises did not consciously arrogate learned law structure, concepts and vocabulary to the common law in the way that *Glanvill* and, to a particularly great extent, *Bracton* had done. They do not seek to locate the common law they impart in that particular learned framework, because the common law was being taught for itself, in London. Moreover, such works had the luxury of specializing on ever-more complex and specific areas of law and procedure and aiming at different particular groups when *Glanvill* and *Bracton* had by necessity to take a more catch-all approach to both audience and content. The considerable utility and popularity of these later thirteenth-century

tracts and treatises is more than evidenced by the survival of such large quantities of extant manuscript versions.

The three descendants of *Bracton* – *Thornton*, *Fleta* and *Britton* – are, of course, slightly different. They are consciously closer to *Bracton*, and may to some extent be a deliberate reaction against these smaller tracts and treatises, perhaps attempting to fill a specific gap in providing a general legal overview – something more akin to *Glanvill* or *Bracton* – but also a practical guide to the law, too. It is, however, far from impossible that these longer treatises may also have had an educational role. An educational context seems the best explanation for Thornton’s ongoing abridgements and the gloss on *Britton* may evidence its use in a classroom setting. It seems likely that serjeants must have been responsible for much of the legal education available by the end of the century; ‘official’ or less official; written or oral. It is noteworthy in this respect that at least two of the suggested authors of the three treatises, Gilbert of Thornton and Matthew Cheker, had been serjeants.

The three *Bractonian* descendants have much in common. Each is a summary and commentary on *Bracton*, excising most of the earlier treatise’s writs and cases, reflecting legislative and other changes in the interim period and introducing some original and other matter into the text. Each has subtly different interests and contents which support the argument that they should be treated on their own merits and not as a group of mere epitomes of *Bracton*. The coincidence that all three are, like *Bracton* itself, unfinished,

warrants further exploration.⁴⁸⁸ In this context, it is significant that of the three, *Britton* was clearly so much more successful than the other two treatises, which each only survive in a single manuscript. Plucknett attributed this discrepancy to *Britton*'s use of French, the language of pleading, claiming that the success of the French treatise reflected a new, lay and 'thoroughly philistine' reading public.⁴⁸⁹ This is, however, again misleading. In fact, the more likely secret of *Britton*'s relative success is its layout. Its arrangement by legal actions would have been much more useful to the legal practitioner than the more conventionally jurisprudential arrangement of *Bracton*, which both *Thornton* and *Fleta* are closer to.

This usefulness to the legal practitioner is the critical development underlying the thirteenth-century legal literature. *Glanvill* appears to have been written for litigants or potential litigants or for attorneys acting for them, who might have had some Roman or canon law training. In contrast, by the late thirteenth century the beginnings of a distinctively English legal profession are clearly visible. Brand notes the significant development that nowhere in *Glanvill* is there any mention of the 'pleader' and that counts in the treatise are all in the first person singular, but that the majority of counts in *Bracton* are in the third person and that *Brevia Placitata* and *Hengham Magna* both mention 'le cuntur'.⁴⁹⁰ By the end of the thirteenth century it had become the norm for representatives to speak on the behalf of litigants throughout legal proceedings. Much of the literature considered is aimed at this new class of professional pleaders who

⁴⁸⁸ This may indicate that they, like their exemplar, were to some extent out-dated before even being finished, or may simply reflect on their ongoing, possibly educational, revisions or the vicissitudes of life in the late thirteenth century.

⁴⁸⁹ Plucknett, *Early English Legal Literature*, p. 93.

⁴⁹⁰ Brand, *The Origins of the English Legal Profession*, pp. 47-8.

articulated the increasingly complicated and technical common law. This is exemplified by the culmination of thirteenth-century legal literature, the Year Books, featuring reports of dialogue in court between pleaders and the king's justices in French. Instead of trying to impose an analytical framework on the law like *Glanvill* or *Bracton* from above, they represented it growing piecemeal from below. The replacement of the treatises known as *Glanvill* and *Bracton* was mirrored by the replacement of their type of royal, possibly ecclesiastically trained, civil servant with professional lawyers.⁴⁹¹ The literature therefore epitomizes the thirteenth-century emergence of the legal profession and of the education involved in creating and perpetuating that profession. The paradox is that such education, although ever more increasingly complex and specialized and spawning an ever-increasing literature, became less rather than more speculative and ambitious and thus moved away from the trail blazed by *Glanvill* that had first enabled it.

⁴⁹¹ We can only speculate that this situation might have been reversed, and later legal literature along the lines of *Glanvill* and *Bracton* produced in at least much greater quantities, had the common law been taught at universities: 'The common law tradition of legal education produced tough and sharp thinkers, but not generally speculative ones' (Brand, 'Legal Education in England before the Inns of Court', p. 84).

CHAPTER 4

Regiam Majestatem

The treatise known by its opening words as *Regiam Majestatem* has long been regarded as the pre-eminent Scottish medieval legal text. It purports in its preface to have been enacted by famous Scots law-maker David I (1124-53),⁴⁹² and was officially recognized by the Scottish Parliament in 1425 as, together with the shorter treatise *Quoniam Attachiamenta*, constituting the ‘bukis of law of this realme’. However, the *Regiam* has been no stranger to controversy with protracted debate over its authorship, date and nature and, in particular, its relationship with *Glanvill*. Discussion of the treatise has arguably become so embroiled with other issues, not least those of nationalism, as to have worked to the detriment of scholarly attention to the text itself. Instead, there has been a tendency amongst historians of the *Regiam* merely to bemoan the treatise’s obfuscation: ‘Thick Cimmerian darkness girds the *Regiam* round; its date, its object, its history, lie in the primeval doubt’;⁴⁹³ ‘The *Regiam* is a curious book whose purpose and inspiration are uncertain’.⁴⁹⁴ Although such determined uncertainty may have helped to ensure that no modern scholarly edition of the text has appeared,⁴⁹⁵ such fatalism is not entirely warranted. Although much concerning the *Regiam* is undoubtedly complicated and uncertain, it is hoped that a systematic study of what is known of the treatise and its

⁴⁹² ‘Horum itaque quandam particulam ad mandatum domini regis David cum sano consilio totius regni sui, tam populi quam cleri, in scriptis redigere decrevi, stylo vulgari...’ (*Regiam*, i, 10).

⁴⁹³ G. Neilson, ‘The Study of Early Law I’, *JR*, iii (1891), 17.

⁴⁹⁴ Hall, ‘Introduction’, p. lxi.

⁴⁹⁵ References to text from the *Regiam* will be given by the edition of T. Thomson, and C. Innes, in *The Acts of the Parliaments of Scotland*, i (Edinburgh, 1814). These may be easily cross-referenced with those in the later edition, unfortunately based upon Skene’s criticized 1609 first edition, by Cooper: Lord Cooper (ed. and trans.), *Regiam Majestatem and Quoniam Attachiamenta Based on the Text of Sir John Skene* (Stair Society vol. 2; Edinburgh, 1947). See below for further discussion of Skene’s edition of the text.

problematic relationship with *Glanvill* will throw light not only on the *Regiam* itself, but also upon Scots law, and the role and applicability of *Glanvill* in medieval Scotland.

Historiography

After its 1425 and subsequent recognitions by Parliament, the *Regiam* enjoyed the authorized position as the foundation of the canon of Scots law.⁴⁹⁶ This long established position made the later discovery of the text's close relationship with the English *Glanvill* all the more significant. The considerable overlaps between the two treatises seem to have first been noticed during the early seventeenth century.⁴⁹⁷ The 1604 second printed edition of *Glanvill*, entitled: *Tractatus de legibus et consuetudinibus regni Angliae... Qui nunc imprimitur post 50 annos a priori et prima impressione, quia in pluribus concordat cum antiquo libro legum Scotiae vocato Regiam Majestatem precipue in locis hoc signo notatis* *, may have been responsible for first bringing the relationship to the public eye.⁴⁹⁸ Each chapter of the edition is marked according to whether or not it also appears in the *Regiam*. The edition's preface, by its printer, Thomas Wight, states that: 'a Professor of the Lawes of this Realme, reading a book, called Regiam Maiestatem, of the auncient Lawes of the Realme of Scotland, found this and that to agree much, & in many

⁴⁹⁶ In 1469 the Scottish Parliament again referred to a committee to advise and report on the reduction of the *Regiam* and other Scots laws into a single volume and in 1566 and again in 1574-5 commissions were appointed to see and correct 'the laws of the realm', again explicitly starting with the *Regiam*. See *The Acts of the Parliaments of Scotland*, ii, pp. 10 and 97. It is noteworthy that before 1425 and other than in those manuscript collections containing the treatise itself, nothing was heard of the *Regiam*.

⁴⁹⁷ H.L. MacQueen, 'Glanvill Resarcinate: Sir John Skene and *Regiam Majestatem*', in A.A. MacDonald, M. Lynch and I.B. Cowan (ed.), *The Renaissance in Scotland. Studies in Literature, Religion, History and Culture Offered to John Durkan* (Leiden, 1994), pp. 385-403.

⁴⁹⁸ This edition, published in London by Thomas Wight, is further discussed in the following chapter. Its relationship with the *Regiam* is discussed by R.J. Ross, 'The Commoning of the Common Law: The Renaissance Debate Over Printing English Law, 1520-1640', in *University of Pennsylvania Law Review*, 146 (1998), 439-40.

places word for word...’, and that the ‘Professor’ had therefore persuaded him to print the text, together with several comparative tables of extracts from both treatises.⁴⁹⁹ This statement of the relationship between the two texts is couched very much in the language of discovery, and it is plausible to assume that this was the first time the link between the treatises was noticed, and that subsequent commentators took their lead from the unknown ‘Professor’.

It is clear that the 1604 republication of *Glanvill*, and the ensuing controversy over its relationship with the *Regiam*, must be seen in the context of the question of legal union current after 1603.⁵⁰⁰ The seventeenth century witnessed several unsuccessful attempts at a unification of Scots and English law. The question of which of the two treatises had been copied from the other without acknowledgement consequently resonated politically north and south of the border. With the constitutional and legal autonomy of Scotland – and/or perhaps even England – perceived to be under threat, it is unsurprising that with the link between the two treatises having been pointed out, debate as to which came first rapidly polarized. In the first printed edition of the *Regiam* in 1609, Sir John Skene dismissed *Glanvill* as merely a copy of the bona fide Davidian Scots treatise, adapted to English needs.⁵⁰¹ Others, most notably Craig,⁵⁰² followed by Stair,⁵⁰³ disagreed,

⁴⁹⁹ MacQueen goes on to speculate inconclusively as to the identity of the unknown ‘Professor’ responsible for the edition, considering the claims amongst others of Sir Edward Coke, John Cowell and George Saltern (MacQueen, ‘*Glanvill Resarcinate: Sir John Skene and Regiam Majestatem*’, 389-95).

⁵⁰⁰ H.L. MacQueen, ‘*Regiam Majestatem*, Scots Law, and National Identity’, *SHR*, lxxiv (1995), 13-17; B.P. Levack, *The Formation of the British State. England, Scotland, and the Union 1603-1707* (Oxford, 1987), p. 97.

⁵⁰¹ MacQueen, ‘*Glanvill Resarcinate: Sir John Skene and Regiam Majestatem*’, p. 385. It may, in fact, be possible to trace a connection between Skene and the unknown ‘Professor’ of the 1604 edition of *Glanvill* in that both may be linked to the text of the *Regiam* in British Library Harleian MS 765 which includes extensive annotations referring to *Glanvill* as well as a ‘*tabula indicando concordantias*’ between the two treatises (ibid, pp. 397-402). For biographical detail on Skene, see: A. Murray, ‘Skene, Sir John, of

denouncing the *Regiam* as: ‘undoubtedly a blot on the jurisprudence of our country... the work of some obscure plagiarist’.⁵⁰⁴ Stair wrote: ‘Craig doth very well observe... that these books called *Regiam Majestatem* are no part of our law, but were compiled for the customs of England... and by some unknown and inconsiderate hand stolen thence’.⁵⁰⁵ Deeming that the original sources of the law should be free from blemish, proponents of this view even suggested that the *Regiam* should be expunged altogether from Scots legal history. Heated debate which tended not to focus so much on the texts themselves as the national issues they had come to represent, continued for the next 200 years. Even Sir Walter Scott entered the fray, deeming the *Regiam* to have been a cynical design by Edward I to Anglicize Scots law.⁵⁰⁶ By the late eighteenth century, however, the balance seems to have begun to swing in favour of the priority of *Glanvill*. In 1776 Houard was sure that the *Regiam*’s preface had been copied from *Glanvill*’s,⁵⁰⁷ and in 1792 Davidson published a clear and systematic textual exposition of the *Regiam*’s reliance on *Glanvill*. In a thorough and accurate discussion of the two texts he noted the *Regiam*’s internal references, like those in *Glanvill*, to *tractatus* divisions, into which the Scottish text is not

Curriehill (c.1540–1617)’, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/25669>].

⁵⁰² See J.W. Cairns, ‘Craig, Thomas (1538?–1608)’, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/6580>].

⁵⁰³ J.D. Ford, ‘Dalrymple, James, first Viscount Stair (1619–1695)’, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/7050>].

⁵⁰⁴ J.A. Clyde, (ed. and trans.), *The Jus Feudale. Sir Thomas Craig of Riccarton* (Edinburgh, 1934), vol. i, p. 108. Craig continued: ‘[the *Regiam*] contains nothing profitable for the study of Scottish legal institutions as we know and practise them, and, further, that the author who composed it never entertained the notion of performing a service to Scotland or of describing her laws’ (ibid), and went on to state his intention of making the *Regiam* the subject of a ‘special monograph’ which never subsequently materialized.

⁵⁰⁵ J. Viscount of Stair, *The Institutions of the Law of Scotland (1693)*, (ed.) D.M. Walker (Edinburgh, 1981), p. 88.

⁵⁰⁶ Cooper, *Regiam Majestatem and Quoniam Attachiamenta*, p. 8, citing the introduction of Scott’s *The Border Antiquities of England and Scotland* (1814–17). For a summary of early modern historiographical discussion of the treatise, see D.M. Walker, *A Legal History of Scotland*, i (Edinburgh, 1988), p. 119.

⁵⁰⁷ D. Houard, (ed.), *Traité sur les Coutumes Anglo-Normandes*, ii (Rouen, 1776), p. 36: ‘Cette préface est copiée mot-à-mot sur celle du Recueil de Glanville’.

in fact divided and the fact that the *Regiam* answers some of the questions posed by *Glanvill* to state that: ‘these things coincide entirely with the supposition, that Glanville’s book was an original, but seem wholly incompatible with its being a transcript of the *Regiam Majestatem*’.⁵⁰⁸

More recent historiography will be treated in more detail in the course of this discussion. In brief, *Glanvill*’s priority has now been universally accepted and this has led to the *Regiam* being viewed from a much more balanced perspective. In other words, while it is accepted that the treatise was copied without acknowledgement from the earlier English law book, the *Regiam* has still been treated as interest-worthy and revealing in its own right. It is agreed that the treatise is far from the unthinking act of theft portrayed by Craig et al. In particular, there have been efforts to assess how critical and/or consistent was the *Regiam*’s use of *Glanvill*, and where it does diverge, to ascertain what other sources may have been used in its compilation. Some attempts have been made to put the *Regiam* into historical and legal context. There has also been considerable discussion of the treatise’s date. After Skene’s widely criticized 1609 edition of the text with its uncritical acceptance of the *Regiam*’s authenticity,⁵⁰⁹ Thomas Thomson printed a more accurate second edition in 1844.⁵¹⁰ Buchanan’s seminal article in the *Juridical Review* in 1937 introduced scientific method modelled on that used in *Glanvill* scholarship by

⁵⁰⁸ J. Davidson, *Observations on the Regiam Majestatem* (Edinburgh, 1792), p. 15: ‘the result of the whole seems to be pretty certain, that the *Regiam Majestatem* is a book copied from Glanville’.

⁵⁰⁹ Thus, for example, ‘Skene was a careless, if not an unfaithful publisher’: Sir D. Dalrymple, *An Examination of Some of the Arguments for the High Antiquity of Regiam Majestatem and an Inquiry into the Authority of Leges Malcolmi* (Edinburgh, 1769), p. 4. Skene did not make it clear which manuscripts he had used in his edition of the text. For further criticism, see Walker, *A Legal History of Scotland*, p. 95.

⁵¹⁰ Thomson and Innes, in *The Acts of the Parliaments of Scotland*, i, pp. 1-40.

Woodbine into the study of the manuscripts of the treatise.⁵¹¹ Sadly, his suggested line of approach was not taken up by the text's subsequent, and most recent editor and translator, Lord Cooper, who in 1947 produced a text essentially based on that of Skene.⁵¹² Cooper's edition is not only textually unsatisfactory, but leaves a great number of questions on the *Regiam* unanswered. Since then, several significant articles have been published on different aspects of the treatise.⁵¹³ There is, however, still a compelling need for a modern scholarly edition of the text and for an accompanying overview of the treatise and not least a more precise elucidation of its relationship with *Glanvill*.

Manuscripts

There are at least 21 extant manuscripts of the *Regiam*.⁵¹⁴ These are broadly dateable to between the late fourteenth and the late sixteenth centuries.⁵¹⁵ As with *Glanvill*, there is evidence of the treatise having been translated into the vernacular. There are four Scots manuscripts,⁵¹⁶ and one partly in Scots and partly in Latin (National Library of Scotland MS 25.4.11). The latter manuscript, *J*, consists of a digest of extracts of the *Regiam* with

⁵¹¹ J. Buchanan, 'The MSS. of Regiam Maiestatem. An Experiment', *JR*, xlix (1937), 217-31.

⁵¹² Cooper, *Regiam Majestatem and Quoniam Attachiamenta*.

⁵¹³ These are H.G. Richardson, 'Roman Law in the *Regiam Majestatem*', *JR*, lxvii (1955), 155-87; A.A.M. Duncan, 'Regiam Majestatem. A Reconsideration', *JR*, new series vi (1961), 199-217; P. Stein, 'The source of the Romano-canonical part of Regiam Maiestatem', *SHR*, xlvi (1969), 107-23; A. Harding, 'Regiam Majestatem Amongst Medieval Law-Books', *JR*, new series, xxix (1984), 97-111; MacQueen, '*Glanvill* Resarcinate: Sir John Skene and *Regiam Majestatem*', pp. 385-403 and MacQueen, '*Regiam Majestatem*, Scots Law, and National Identity', 1-25.

⁵¹⁴ To the 20 listed by Buchanan ('The MSS. of Regiam Maiestatem. An Experiment', 218-9), should be added British Library MS Additional 18111 (Duncan, 'Regiam Majestatem. A Reconsideration', 202). Skene used at least two manuscripts in the production of his 1609 edition of the text, but these remain problematic and may perhaps be lost. Also see Thomson and Innes, in *The Acts of the Parliaments of Scotland*, i, pp. 179-210.

⁵¹⁵ Buchanan, 'The MSS of Regiam Maiestatem: An Experiment', 218-9. For example, of the 14 *Regiam* MSS in the National Library of Scotland, seven are dateable to the mid-late fifteenth century and five to the sixteenth century: *National Library of Scotland. Summary Catalogue of the Advocates' Manuscripts* (Edinburgh, 1971), p. 72.

⁵¹⁶ *Ibid*, Buchanan did not, however, list these manuscripts and it has not been possible to find them described elsewhere.

other law tracts.⁵¹⁷ The oldest extant manuscript of the treatise is the Bute manuscript (National Library of Scotland MS 21.2.46), dating from the late fourteenth or early fifteenth century.⁵¹⁸ The Cromertie manuscript (National Library of Scotland MS 25.5.10) is also of known antiquity, and appears to have been written in two mid fifteenth-century hands.⁵¹⁹ Duncan pointed out another very early manuscript of the treatise in British Library MS Additional 18111, which he deemed to be ‘the earliest known version of the text’, if not necessarily the oldest manuscript.⁵²⁰ The version of the text in these early manuscripts seems most closely to resemble the text of *Glanvill* itself.⁵²¹ As with *Glanvill*, however, there seems to be no definitive original manuscript version of the treatise, and it therefore appears that all the surviving manuscripts are copies of a lost original.

Textual History

It is clear that, as with *Glanvill* itself, the textual history of the *Regiam* is complicated and warrants closer investigation.⁵²² There are both textual and structural variations across the different manuscripts. As a general rule, however, these are not of legal

⁵¹⁷ Buchanan suspected that the Elvetham Hall Yelverton manuscript (now British Library MS Additional 48032) had much in common with *J*, but was not able to compare them in the production of his article. Some extracts from *J* are printed by Buchanan.

⁵¹⁸ Buchanan dated the Bute MS to c.1384 (ibid, 218). However, more recently Stein refused to date the volume so precisely: P. Stein, ‘Roman Law in Scotland’, in *Ius Romanum Medii Aevi*, Part v, 13b (Varese, 1968), p. 7.

⁵¹⁹ Ibid. Fergus dates it to c.1470: T.D. Fergus, (ed. and trans.), *Quoniam Attachiamenta*, (Stair Society vol. 44; Edinburgh, 1996), p. 5.

⁵²⁰ Duncan, ‘Regiam Majestatem. A Reconsideration’, 202.

⁵²¹ Buchanan, ‘The MSS of Regiam Maiestatem: An Experiment’, 228; Duncan, ‘Regiam Majestatem. A Reconsideration’, 202.

⁵²² See for example T.M. Cooper, ‘Regiam Majestatem and the Auld Lawes’, in *An Introductory Survey of the Sources and Literature of Scots Law* (Stair Society vol. 1; Edinburgh, 1936), pp. 70-81.

significance.⁵²³ Like *Glanvill*, the *Regiam* is divided into books which are in turn subdivided into chapters. Although all printed editions of the text are, like the majority of the manuscripts, divided into four books, often thought to have been chosen in imitation of the *Institutes*, the earliest manuscripts feature only three books.⁵²⁴ Again, as with *Glanvill*, the original number of chapters within each book is uncertain and the total number of chapters varies considerably across the different manuscripts from 153 to 220 chapters, although there are most commonly 212.⁵²⁵ It may well be the case that, as happened with *Glanvill* and *Bracton*, this structural division into books was superimposed on a treatise originally written as a series of titles.⁵²⁶ Although there is no evidence of substantially different manuscript versions of the treatise along the lines of *Glanvill's alpha* or *beta*, it is possible to make various tentative manuscript groupings.⁵²⁷

Other contents of *Regiam* Manuscript Volumes

Virtually no historical attention has been paid to the other matter to appear alongside the *Regiam* in its manuscripts. Although no systematic study of this material has been undertaken here, it is still possible to draw some preliminary conclusions about who and what the *Regiam* tended to be bound up with. It is clear that the treatise generally appears alongside other material of a legal character. A significant number of the early manuscripts contain what purports to be enacted legislation attributed to Scottish kings

⁵²³ Duncan, 'Regiam Majestatem. A Reconsideration', 199.

⁵²⁴ O.F. Robinson, T.D. Fergus and W.M. Gordon, *European Legal History* (3rd edn.; London, 2000), p. 163.

⁵²⁵ *Ibid.*, p. 74; Thomson and Innes, *The Acts of the Parliaments of Scotland*, vol. i (Edinburgh, 1844), pp. 179-210.

⁵²⁶ Harding, 'Regiam Majestatem Amongst Medieval Law-Books', 105.

⁵²⁷ Buchanan, 'The MSS of Regiam Maiestatem: An Experiment', 217-31. It is surprising that no-one has made a more recent assessment of all of the manuscripts following the guidelines set out by Buchanan.

such as David I, William the Lion (1165-1214) and Alexander II (1214-49). It is now clear that not only are many of these attributions arbitrary, but that much of the material to which they refer is not in fact enacted. Such items therefore look, like the *Regiam*'s own attribution to David, like spurious attempts to portray current law in the veiling legitimacy of old and established practice and/or legislation. The manuscript volumes also typically include collections of burgh laws, especially the so-called *Leges Quatuor Burgorum*,⁵²⁸ registers of writs and various treatises or collections of juristic material such as the so-called *Liber de Judicibus* (discussed in greater detail below).⁵²⁹ The treatise frequently appears alongside *Quoniam Attachiamenta*, and, after Skene's first printed edition in 1609, the two texts have subsequently always been printed together. The *Quoniam* is, like the English *Court Baron* tracts which are so often bound up with *Glanvill*, a manual of procedure in feudal courts, and as such it provides an obvious counterpart to the *Regiam*'s emphasis on royal justice.⁵³⁰ Again, as with *Glanvill*, it seems that the treatise was often bound up with practical manuals with guidance on accountancy and administration. Robertson has drawn attention to the small treatise *De Composizione Cartarum*, which appears, often untitled, in at least 11 of these volumes, offering advice on the preparation of charters and their drafting.⁵³¹ Perhaps unsurprisingly, the *Regiam* is never bound up alongside a *Glanvill* and, until Skene's

⁵²⁸ These, too, were attributed to David I, although almost certainly compiled after his reign and perhaps as late as the thirteenth century: see H.L. MacQueen, *Common Law and Feudal Society in Medieval Scotland* (Edinburgh, 1993), p. 87.

⁵²⁹ See, for example, Stein, 'Roman Law in Scotland', p. 7; Lord Cooper (ed. and trans.), *The Register of Brieves as Contained in the Ayr MS, the Bute MS and Quoniam Attachiamenta* (Stair Society vol. 10; Edinburgh, 1946), or Thomson and Innes, *The Acts of the Parliaments of Scotland*, i, pp. 179-210.

⁵³⁰ For discussion of the *Quoniam*, see for example, Cooper, *Regiam Majestatem and Quoniam Attachiamenta*, pp. 47-51 or Fergus, *Quoniam Attachiamenta*.

⁵³¹ J.J. Robertson, 'De Composizione Cartarum', in *Miscellany One* (Stair Society vol. 26; Edinburgh, 1971), pp. 78-93.

work in the early seventeenth century, there is no evidence of the treatise having been read or owned anywhere other than in Scotland.

Dating

Although it has long been agreed that the *Regiam* cannot be the Davidian promulgation its prologue proclaims itself to be, there has still been some disagreement amongst historians over the date of the treatise. There seems to have been a feeling prevalent amongst some early commentators that the treatise must have been produced under James I of Scotland (1424-37), who had spent some time in England and whose parliament in 1425 had first recognized the text.⁵³² Subsequently, although there had been some suggestions – following on from those of Sir Walter Scott et al – that it must have been produced under Edward I, Maitland had stated his doubts on this front, writing:

Of all the various theories that have been started, that which ascribes this book to Edward I. will seem to an Englishman the most improbable. If Edward had attempted to foist an English law book on Scotland, that book would have been founded on Bracton or Britton and not on the antiquated Glanvill. The English law that is borrowed is distinctly law of the twelfth century.⁵³³

⁵³² Thus, for example, Fabian Philipps wrote in his *Ursa major & minor, or, A sober and impartial enquiry into those pretended fears and jealousies of popery and arbitrary power with some things offered to consideration touching His Majestie's league made with the King of France upon occasion of his wars with Holland and the United Provinces* (London, 1681): 'Our King James being born and bred in the Kingdom of Scotland, where their Laws are mingled with some Neighbour English Customs, drawn out of our Glanvil, brought thither by their King James the First, who lived some time here in England, and afterwards so much Compounded and over-born by the Civil Law: brought out of France long after by King James the Fifth, which with some part of their Common Law, makes them to be so overmuch Civil and Canon, and a Miscellany of them as they are very much different from ours, had so great an affection to the Civil Laws; and those of his own Countrey' (p. 43).

⁵³³ P&M, i, p. 223, n. 1. He echoed these sentiments in his letter to Neilson in P.N.R. Zutshi (ed.), *The Letters of Frederic William Maitland*, ii (Selden Society Supplementary Series vol. 11; London, 1995), p. 48: 'I have sent my readers to you for the as yet last word about the Regiam, but have expressed a strong opinion that Edward I had nothing to do with it...'

Cooper strongly argued that it must be dateable to c.1230-50, a period he characterized as the epoch when Scoto-Norman law began to diverge notably from Anglo-Norman law.⁵³⁴ Deeming the *Regiam* accurately to describe practised Scots law at the time of its compilation, he argued that to posit a later date for the treatise would make its compiler ‘a juristic Rip Van Winkle’ in deliberately choosing to base his text on *Glanvill* long after that treatise had been outdated. Other commentators, most notably Richardson, followed Cooper’s mid thirteenth-century dating.⁵³⁵ Richardson reaffirmed this dating by reference to the fact that the *Regiam* betrays no hint of *Bracton*’s influence and by the compiler’s neglect of legislation ascribed to Alexander II (d. 1249). He thought that the unknown compiler of the treatise was therefore a precursor of *Bracton*’s, perhaps even working in the same ‘school’. More recently, however, Duncan has convincingly argued for a substantially later date of around 1318 or later for the treatise’s compilation.⁵³⁶ Duncan pointed out that the *Regiam*’s book i, 10 repeats much of clause 19 of the – dateable and authentic – Scottish legislation of 1318. Moreover, this material is not interpolated in the *Regiam*, but if anything, expanded. The reforming legislation of 1318 also seems to have percolated its way into the treatise’s discussion of the writ or right in a fashion suggestive of original compilation, rather than subsequent gloss: ‘We must reach the logical conclusion that RM was compiled after 1318’.⁵³⁷ The treatise’s *terminus ante quem* is its first manuscripts from the late fourteenth/early fifteenth century, but it was probably written during the reign of Robert I (1306-29).⁵³⁸

⁵³⁴ Cooper, *Regiam Majestatem and Quoniam Attachiamenta*, pp. 43-5.

⁵³⁵ Richardson, ‘Roman Law in the *Regiam Majestatem*’, 161.

⁵³⁶ Duncan, ‘*Regiam Majestatem*. A Reconsideration’, 199-217.

⁵³⁷ *Ibid.*, 211. The legislation in question may be found in *The Acts of the Parliaments of Scotland*, i, pp. 466-74.

⁵³⁸ See discussion of the politics of this period from p. 174 below.

Contents of the *Regiam*

The printed *Regiam* is divided into four books. Book one, *de preparatoriis iudiciorum*, details the jurisdiction of various courts and describes the procedure in an ordinary civil action ending with procedural discussion of essoining and vouching to warranty and the subject of pacts.⁵³⁹ It is based on *Glanvill*'s books i to iii, with extracts of the English treatise's book viii as well as some other extraneous insertions. Book two, *de iudiciis*, discusses arbitrations and widely varying other topics including serfdom and manumission, dowry, wardship, homage, succession and wills. It initially uses *Glanvill* book v together with a wider variety of other sources than the first book, but at ii, 12 the editing stops and from ii, 13 to iv, 8 consists mainly of extracts from *Glanvill*'s books v to xiv, sometimes verbatim. Book three, *de placitis civilibus*, describes obligations, pledges and securities, loans, contract, appeals, court records and ends with the main forms of assize, with chapters on mort d'ancestor, darrein presentment, utrum and novel disseisin. It is mainly taken from *Glanvill*'s books x to xiii. In the earliest manuscripts books two and three appear together as a single book. Like *Glanvill*, the treatise ends with a final book, *de placitis criminalibus*, on criminal law and procedure. The *Regiam*'s fourth book is initially based on *Glanvill*'s eight chapters, but then contains a mass of other miscellaneous Scottish materials in rather disordered form. Criminal pleas, therefore, receive considerably more space in the *Regiam* than in *Glanvill*, where book xiv reads as a cursory add-on to the main body of the treatise. As well as the detail contained in the earlier treatise, the Scottish treatise includes, for example, discussion of

⁵³⁹ For a discussion of the treatise's structure, see Walker, *A Legal History of Scotland*, pp. 113-4.

such diverse and specific topics as possession of stolen goods, the weregild of a thief, allegations of theft of a horse, the hue and cry, hounds on a trail and restitution to felons.

The *Regiam*'s Relationship with *Glanvill*

Whilst it is true that the unknown compiler's 'chief source and model was *Glanvill*',⁵⁴⁰ the *Regiam* is far from an unthinking wholesale reissue of the earlier treatise. About 90% of what is in *Glanvill* appears in the Scottish treatise, sometimes verbatim. However, there are some omissions from the earlier treatise including 30 of *Glanvill*'s chapters in their entirety.⁵⁴¹ It is also notable that the *Regiam* omitted many of *Glanvill*'s texts of writs, perhaps indicating that these had been superseded and/or that there were different Scottish forms.⁵⁴² Moreover, although roughly two thirds of the *Regiam* is clearly derived from *Glanvill*, the other third (around 75 chapters) of the treatise is not based on the earlier treatise.⁵⁴³ The compiler was clearly capable of making omissions, amendments, clarifications and additions to his text of *Glanvill*. This is manifest from the opening words of the treatise's prologue where Justinian's 'imperatoriam majestatem' and *Glanvill*'s 'regiam potestatem' are elided into the compromise 'regiam majestatem'.⁵⁴⁴ At the opening of the treatise itself, the compiler adds to the basic

⁵⁴⁰ Hall, 'Introduction', p. lx.

⁵⁴¹ These include *Glanvill*'s i, 30; ii, 21; v, 6; x, 3; x, 11 and xi, 2.

⁵⁴² These were particularly omitted in the *Regiam*'s earliest sections. It is striking that English manuscripts of *Glanvill* seem to have been making more of the treatise's writs over time and that the *Regiam* should deliberately excise them.

⁵⁴³ Cooper, *Regiam Majestatem and Quoniam Attachiamenta*, p. 33 and 'Regiam Majestatem and the Auld Lawes', p. 74. And for discussion of the *Regiam*'s non-*Glanvillian* sources, see below.

⁵⁴⁴ Watson points out that the term 'regia majestas' had currency in France as a mode of address by 1238: A. Watson, *Legal Transplants. An Approach to Comparative Law* (2nd edn.; Athens, Georgia, 1993), p. 37. It first appears in Scotland in documents of Robert I: MacQueen, *Common Law and Feudal Society in Medieval Scotland*, p. 91; K. Reid and R. Zimmerman (ed.), *A History of Private Law in Scotland*, i (Oxford, 2000), p. 43. The term was also used in English petitions at around this time. Kantorowicz's suggestion that the *Regiam*'s use of *Glanvill*'s prologue suggest that it 'survived independently as a piece of

division of civil and criminal pleas in *Glanvill* that civil pleas involve monetary damages, whereas criminal pleas involve the penalty of blood (*pena sanguinis*), such as the lopping of head or limbs, and that in the case of treason this was punishable for intention as well as for accomplishment.⁵⁴⁵ Likewise, he expanded *Glanvill's* list of pleas of the crown to include the falsifying of measures, charters and money.

The *Regiam* often substitutes Scottish terms and situations for English ones from *Glanvill*.⁵⁴⁶ Thus too, the varying jurisdictions of different courts in Scotland are also taken into account.⁵⁴⁷ Whilst *Glanvill* focuses almost exclusively on the king's courts, the relative weakness of the Scottish curia regis meant that the *Regiam* attributes some of the same pleas to feudal courts, sheriffs or justiciars and church courts.⁵⁴⁸ Some of the 'enormous influence of canon law and procedure in Scotland' is apparent here.⁵⁴⁹ Likewise, the compiler includes description of the distinctively Scottish system of pleading by laymen in actions initiated by pleadable brieves.⁵⁵⁰ The compiler also makes some changes which simply illustrate the passing of time and changing of practice

panegyric rhetoric' is wholly implausible given the extent of the treatise's use of *Glanvill* anyway: E.H. Kantorowicz, 'The Prologue to *Fleta* and the School of Petrus de Vinea', 249.

⁵⁴⁵ *Regiam* i, 1: 'Placitorum aliud est criminale, aliud civile. Placitum civile est in quo veritur pena pecuniaria ut actio fundi. Criminale est in quo veritur pena sanguinis vel capitis vel membrorum truncacio... Ad coronam domini Regis pertinet crimen quod in legibus dicitur crimen lese maiestatis, ut de morte vel sedicione domini Regis vel regni vel exercitus. Et hi non solum facto puniendi sunt sed eciam de proposito'.

⁵⁴⁶ Thus, for example, i, 6's reference to the King's Mair or his Toschederach (*Marus Domini Regis, vel Toscheoderach ipsius*).

⁵⁴⁷ See the table in Cooper, *Regiam Majestatem and Quoniam Attachiamenta*, p. 35. For example where *Glanvill* puts pleas regarding 'dos' into the king's courts, the *Regiam* attributes them to the church courts and lists a number of pleas on such subjects as homage, breaches of fines and 'de baroniis' again attributed in *Glanvill* to the royal courts as pertaining to the sheriff.

⁵⁴⁸ The greater jurisdiction of church courts in Scotland is also evidenced by the addition of causes belonging to the church into the opening of the treatise (*Regiam*, i, 3).

⁵⁴⁹ Stein, 'Roman Law in Scotland', p. 5.

⁵⁵⁰ H.L. MacQueen, 'Pleadable Brieves, Pleading and the Development of Scots Law', *Law and History Review*, iv (1986), 407. The *Regiam* contains a chapter 'De his que per brevia placitantur coram Justiciario vicecomite et burgorum prepositis' which lists the writs of right, de nativis, mort d'ancestor, novel disseisin and distress (*Regiam*, i, 4).

between *Glanvill* and the early fourteenth century. Thus, trial by combat, which had played a considerable role in *Glanvill*, is entirely expunged from the *Regiam* as a means of proving or disproving personal liberty or right, perhaps because it was falling into desuetude.⁵⁵¹ So, for example, wherever *Glanvill* in dealing with the ordinary plea of land in a writ of right allows a choice to be made between battle and the grand assize, *Regiam* offers only the assize.⁵⁵² Similarly, the *Regiam*'s compiler restricted the lord's power to distrain for aids to the tenant's chattels, omitting *Glanvill*'s alternative of distraint by the fee 'if necessary', again perhaps implying that this was falling out of use.⁵⁵³ There are also a number of small semantic updatings such as the general insertion of justiciars to replace *Glanvill*'s justices.⁵⁵⁴

Perhaps the single most important of the compiler's changes to the text of *Glanvill*, and the one most reflective of a genuine attempt to get to grips with, and to update and revise, the earlier treatise, is the *Regiam*'s answering of some of the questions famously posed but left unanswered in the earlier treatise. So, for example, where *Glanvill* asks whether a seller can resile from the contract of sale without financial penalty,⁵⁵⁵ the *Regiam* answers from Roman law that in such a case the seller would be privileged, and holds that

⁵⁵¹ Cooper, *Regiam Majestatem and Quoniam Attachiamenta*, pp. 35-8; G. Neilson, *Trial By Combat* (Glasgow, 1890), p. 93.

⁵⁵² *Ibid.*, pp. 35-8 and 106-7. Cooper noted that in the portions of the *Regiam* which most closely corresponded to the *Tractatus*, of six references to *duellum* in the earlier treatise, five are omitted, with the single exception being the passage in *Glanvill*'s v, 4 in which it is stated that recourse to battle in cases proving or disproving freedom is not available. There is also widespread evidence of the compiler of the *Regiam* substituting *lex patrie* (i.e. a jury inquest) for *Glanvill*'s *lex apparens* (ordeal or combat) for which, compare for example *Glanvill*'s xiv, 1 with the *Regiam*'s iv, 1.

⁵⁵³ For discussion, see MacQueen, *Common Law and Feudal Society in Medieval Scotland*, p. 115. See, too, the related discussion in chapter 2 above.

⁵⁵⁴ As in *Regiam* i, 1 or i, 5. This may represent a simple updating of the word in its English sense, as in *Glanvill Revised* and/or it may perhaps also reflect on the Scotticization of the treatise, with justiciar in a Scottish sense meaning one who presides but does not actually judge in a court.

⁵⁵⁵ *Tractatus*, x, 14.

he would therefore be bound to restore twice the amount of *arra* previously received.⁵⁵⁶ The treatise also answers *Glanvill*'s questions on the expulsion of unpaying lessees or the number of possible essoiners on behalf of a principal amongst others.⁵⁵⁷ In general, the compiler seems to have made many sensible small changes to his exemplar, and at least in places, to have engaged with the argument of the earlier treatise and genuinely tried to bring it up to date.

Having said this, the editorial procedure behind the compilation remains enigmatic. The use made of *Glanvill* is far from uniform across the four books of the *Regiam*. In fact, it is possible to discern three different parts of the treatise, the earliest of which (to ii, 13)⁵⁵⁸ is the most carefully revised and in many respects the closest to being original, the second (ii, 15 – iv, 8) only lightly revised, although still omitting all of *Glanvill*'s writs and the third (iv, 9 – end) is native law of an assorted nature with nothing from *Glanvill* at all.⁵⁵⁹ Although occasional chapters based on other sources interrupt this outline, a clear pattern nevertheless emerges. There are, moreover, some odd anomalies in the text. Following *Glanvill*'s distinction of the two possible meanings of 'dos' in vii, 1, there is some confusion between the Roman and Scottish uses of the term 'dos' in the *Regiam*. The author of ii, 12, *de donationibus inter virum et uxorem*, uses 'dos' in its proper Roman sense to mean dowry, or the Scottish 'tocher'. However, the next chapter, an almost verbatim transcript of the opening of *Glanvill*'s book six uses 'dos', as *Glanvill* does, to

⁵⁵⁶ *Regiam*, iii, 8.

⁵⁵⁷ *Tractatus*, x, 18 and xi, 5 respectively. Discussed by Stein, 'Roman Law in Scotland', p. 16. For a list of other *Glanvillian* questions answered, see Cooper, *Regiam Majestatem and Quoniam Attachiamta*, p. 34.

⁵⁵⁸ Cooper's first section included ii, 14, but Duncan has subsequently proved this to have been properly a part of book four: Duncan, 'Regiam Majestatem. A Reconsideration', 205.

⁵⁵⁹ Cooper, *Regiam Majestatem and Quoniam Attachiamta*, pp. 21-2; Hall, 'Introduction', p. lx.

describe the English dower or Scottish 'terce', i.e. the life interest enjoyed by a widow in one third of her husband's land.⁵⁶⁰ It is surprising that the term should be used so differently in these two adjoining chapters with no explanation.

Such internal confusion, of content, terminology and editorial process, may well indicate that the treatise was abandoned unfinished. Cooper cited the fact in support of this thesis that, despite their general excision from the treatise, seven *Glanvillian* writs end up being reproduced in the *Regiam* as if by accident. They seem to have been randomly selected and sometimes to have no known Scottish parallels.⁵⁶¹ Other anomalies also persist in the text which look distinctively un-Scottish.⁵⁶² This conclusion may also be borne out by the haphazard nature of book four which, after dealing with the scanty list of criminal pleas taken from *Glanvill*, degenerates into a sort of unedited appendix of miscellaneous native material. Duncan believed that: 'the writer of RM did not suffer from waning interest. He was evidently interrupted at his task'.⁵⁶³ He pointed out that, at the break between 'parts' one and two, i.e. between full and light revision of *Glanvill*, there is a totally unrevised *Glanvillian* section (ii, 14), which properly belongs to book four. Although unable to offer an explanation for this oddity, he suggested that its position in the text was not coincidental. The possibility of multiple authorship of the treatise should

⁵⁶⁰ Pointed out by Stein, 'Roman Law in Scotland', p. 17; 'The source of the Romano-canonical part of *Regiam Maiestatem*', 107. Also see Robinson, Fergus and Gordon, *European Legal History*, p. 164.

⁵⁶¹ Cooper, *The Register of Brieves as Contained in the Ayr MS, the Bute MS and Quoniam Attachiamenta*, pp. 6-8, listing the seven reproduced writs on p. 7. Also see discussion by Walker, *A Legal History of Scotland*, pp. 261-2: 'It must accordingly be doubted whether in this passage the *Regiam* was properly recording Scottish practice'.

⁵⁶² Thus for example MacQueen pointed out that the *Regiam* is the only Scottish source to refer explicitly to a time limit beyond which novel disseisin is not available, in a passage based on *Glanvill* and that although the *Regiam* reproduced the *Glanvillian* passage stating that burgage could not be recovered by mort d'ancestor, that there was no evidence of such legislation in Scotland (*Common Law and Feudal Society in Medieval Scotland*, pp. 146 and 176).

⁵⁶³ Duncan, 'Regiam Majestatem. A Reconsideration', 205.

not be excluded. It is possible that, like *Bracton* a century or so earlier, the treatise was left in the hands of less ambitious continuators after having been abandoned for whatever reason by its principal compiler.

It is possible at least to speculate as to which *Glanvill* manuscript the *Regiam's* compiler/s may have worked from. Innes put forward the candidacy of the only *Glanvill* MS known to have been in or around Scotland, the Berne manuscript (*beta Be*):⁵⁶⁴ 'It is a curious circumstance that we have still extant a single volume which may have furnished the whole materials for the compilation of the 'Regiam Majestatem''.⁵⁶⁵ However, Buchanan stressed this attribution to have been impossible because *Regiam* is essentially based on an *alpha*, rather than a *beta*, version of *Glanvill* such as *Be*.⁵⁶⁶ Furthermore, there are passages in the *Regiam* which are not contained in *Be*. However, Buchanan also proved that the text of *Glanvill* used, although itself an *alpha*, must have also had some *beta* readings.⁵⁶⁷ Although he was unable to find the *Regiam's* *Glanvill* manuscript ancestor, he posited Bodleian Library, Oxford, MS Rawlinson G 109 (*X*), an *alpha* text dating from around 1200, as the treatise's 'nearest extant relation'. In fact, however, more systematic study suggests that the *Regiam* may more plausibly be based on a manuscript like *E* or one that is now lost. It transposes some of the marginal names vouched in some manuscripts of *Glanvill* into its text and cites Rannulf Glanvill and Richard de Lucy for

⁵⁶⁴ H.M. Register House, Edinburgh, Berne MS, discussed in chapter 1, and known to have been in the Borders from the thirteenth century.

⁵⁶⁵ C. Innes, 'Preface', *The Acts of the Parliaments of Scotland*, i, p. 42.

⁵⁶⁶ Buchanan, 'The MSS of Regiam Maiestatem: An Experiment', 227.

⁵⁶⁷ *Ibid*, 228.

different opinions on the *casus regis* question in its text.⁵⁶⁸ The two men are listed separately as holding contrasting opinions in a number of *beta* texts, but in only one *alpha*, *E*. It is just possible that *E*, which does have pronounced crossover characteristics between *alpha* and *beta* traditions, or another text like it, may have been used to make the *Regiam*.⁵⁶⁹

Other Sources of the *Regiam*

Although the majority of the *Regiam* is based on *Glanvill*, other sources were also clearly used in its compilation. In particular, much of book four on criminal law and procedure, seems to have been drawn from the various statutes and assizes ascribed to the Scottish kings. The *Regiam's* compiler must have used a collection very similar, although not identical, to that contained in either the Berne or Ayr manuscripts.⁵⁷⁰ However, there are also native chapters of the *Regiam* which do not seem to occur in any existing collection of Scots laws, so the treatise must have been based either on a collection which no longer survives or on a mass of independent materials, only some of which have survived through inclusion in other, similar, volumes.⁵⁷¹ The compiler introduced some Roman and canon law into the treatise, and did so in an intelligent and sophisticated fashion.⁵⁷² At the end of book one and the beginning of book two there is a series of chapters which has long been recognized as deriving from the learned law. Richardson thought that what

⁵⁶⁸ 'Dicunt quidam scilicet Ranulphus de Glanvilla filium postnatum rectiorem esse heredem quam nepotem... Aliis vero visum est contrarium ut Ricardo de Lucy talem nepotem de iure avunculo suo esse preferendum' (*Regiam*, ii, 27).

⁵⁶⁹ Further work is clearly needed on this and at any rate, the various known *Glanvill* manuscript hybrids clearly warrant more precise textual comparison with the *Regiam*.

⁵⁷⁰ H.M. Register House, Edinburgh, Ayr MS.

⁵⁷¹ Duncan, 'Regiam Majestatem. A Reconsideration', 208-9.

⁵⁷² Cooper printed specimen parallel passages from Azo's *Summa Aurea* and the *Corpus Juris Canonici* beside the *Regiam* in *Regiam Majestatem and Quoniam Attachiamta*, pp. 30-2.

he deemed to have been *Bracton's* principal three Roman sources – Azo's *Summa Codicis*, Tancred's *Ordo Iudiciarius* and Raymond de Peñafort's *Summa de Casibus* and *Summa de Matrimonio* – had also been used in the making of the *Regiam*.⁵⁷³ Indeed, he used these Romanesque parts of the *Regiam* to relate its compilation to the history of the English common law and place it within his enigmatic and unsatisfactory so-called *Bractonian* 'school': '*Regiam Majestatem* is essentially a book of English law, albeit with a Scottish reference'.⁵⁷⁴ In fact, however, there are Romanesque passages in the *Regiam* which are not accounted for in any of these works and Stein has proved that many of the Roman law incorporations into the *Regiam* were in fact mediated through canon law.⁵⁷⁵ Goffredus de Trano's *Summa in Titulos Decretalium* of 1241-46 accounts for all of the Roman-style material and can therefore be said to be 'the certain source of *Regiam*'.⁵⁷⁶ There is consequently a strong case for presuming the unknown compiler to have been a canonist rather than a civilian lawyer.

Manifest Use Made of the *Regiam*

In the absence of a systematic study of all of the manuscripts of the treatise, it is impossible to say a great deal regarding manuscript signposts to subsequent use of the treatise by others than the compiler himself. However, two of the earliest manuscripts, Bute and Cromertie, both contain extensive canon and civil law glosses.⁵⁷⁷ There is also

⁵⁷³ Richardson, 'Roman Law in the *Regiam Majestatem*', 155-87. Richardson gave parallel text examples of the *Regiam* and these works at 170-87.

⁵⁷⁴ *Ibid.*, 155.

⁵⁷⁵ Stein, 'The source of the Romano-canonical part of *Regiam Maiestatem*', 107-23. The compiler must, however, have definitely also known Justinian (see, for example, Reid and Zimmerman, *A History of Private Law in Scotland*, ii, pp. 305-7).

⁵⁷⁶ Stein, 'The source of the Romano-canonical part of *Regiam Maiestatem*', 109.

⁵⁷⁷ Duncan, '*Regiam Majestatem*. A Reconsideration', 216.

some evidence that users of the treatise were acquainted with contemporary English law. The Cromertie MS also contains a number of references to *Hengham Magna* and *Parva*.⁵⁷⁸ Similarly, some texts of the treatise incorporate sections of the English *Prerogativa Regis* and *Bracton*. These sections were traditionally deemed to be original, and voiced in the argument for a thirteenth-century dating for the treatise. In fact, however, Duncan has proved them to be the insertions of fourteenth-century users of the treatise, acquainted with different aspects of the law, and clearly seeking to locate the *Regiam* within a broader British context. Their co-incidence shows that Scottish readers who knew *Bracton* were still apparently quite happily reading and using a text based on *Glanvill*. If the treatise was originally written as a series of titles, then even the later division into three and then four books implies an attempt to make the text more user-friendly. This division into four books may also imply a conscious desire to Romanize the text along Justinianic lines.

The Function of the *Regiam*

Discussion of the use made of the manuscripts of the treatise leads to a consideration of the function of the *Regiam* as a whole. Questions have long been asked about its purpose and application, although generally without being satisfactorily answered. Given that the *Regiam* was in large part based upon an English common law treatise written up to 200 years previously, could it really represent contemporary Scots law? What was the point of taking an apparently antiquated English treatise as the basis of a fourteenth-century Scottish work? ‘Glanvill was therefore an important text in Scotland; the problem is to

⁵⁷⁸ Ibid.

elucidate why this was so'.⁵⁷⁹ Assessing the extent to which the treatise is representative of medieval Scots law necessarily involves the paradox that it is also by its nature the basis and key source of such law. Even if the treatise, based on the English *Glanvill*, did have much in common with Scots law, was this practised or merely *de iure* law? Cooper saw the treatise as 'a practical guide to current practice', a book that 'bears to be, and obviously is, a practical manual'.⁵⁸⁰ He thought that it could not be very far out as 'a general description' of contemporary Scots law.⁵⁸¹ Of course, Cooper dated the treatise to the mid thirteenth century. Others, however, whilst accepting a later date for the treatise, also saw the *Regiam* as necessarily representative of contemporary, fourteenth-century, Scots law: 'We have a fourteenth-century Scot who passed over Bracton and the Edwardian writers on English law, and took as his basis a book about one hundred and fifty years old, perhaps because that book had more in common with the law of fourteenth-century Scotland after the struggle for independence'.⁵⁸² Hall believed that the *Regiam*'s representativeness of Scots law in general was likely to remain uncertain, but that even in the fully revised sections, it should be suspected that the author must often have been stating *lex ferenda* as opposed to *lex lata*.⁵⁸³

Duncan, in contrast, stressed that there is no evidence that contemporary Scottish and English law had much in common.⁵⁸⁴ Harding believed that the treatise was not so much

⁵⁷⁹ MacQueen, *Common Law and Feudal Society in Medieval Scotland*, p. 90.

⁵⁸⁰ Cooper, *Regiam Majestatem and Quoniam Attachiamenta*, pp. 20 and 44 respectively.

⁵⁸¹ *Ibid.*, p. 47.

⁵⁸² Hall, 'Introduction', p. lxi. Maitland wrote: 'it seems clear enough from abundant evidence that, at the outbreak of the war of independence, the law of Scotland, or of southern Scotland, was closely akin to English law' (P&M, i, p. 223).

⁵⁸³ Hall, 'Introduction', p. lxi.

⁵⁸⁴ Duncan, 'Regiam Majestatem. A Reconsideration', 216.

a general description of Scots law as a ‘political theology’ in itself.⁵⁸⁵ He wrote that the object of the work was not so much to give an account of the law, but to send out a propagandist image of arrogated Henrician royal jurisdiction at a time when, just after the wars of independence, Scottish national identity was under threat. For Harding, the *Regiam*’s relationship with *Glanvill* has caused the misunderstanding of the Scottish treatise: ‘The perception of its use of *Glanvill*, a work based on writs and the starting-point for any history of the English forms of action, narrowed the field of comparison so effectively that *Regiam Majestatem* is taken for a treatise on procedure, as *Glanvill* is’.⁵⁸⁶ MacQueen deemed this alternative view of the propagandist purpose of the treatise ‘an attractive hypothesis’, particularly within the background of Edward I’s use of law and jurisdiction in his struggle for the mastery of Scotland.⁵⁸⁷ He suggests that the prologue’s attribution to David I, and the contemporary emphasis on the Davidian tradition, may have been deliberately fostered by Robert I.⁵⁸⁸

It seems that the purpose and function of the treatise must lie between these two views. Harding’s argument for the symbolic value of the *Regiam* within an early fourteenth-century context is persuasive and does much to explain the original compiler having chosen to base his text on *Glanvill* rather than another English work. A propaganda drive based, however tendentiously, on the royal jurisdictional authority of David I and Henry II seems highly plausible especially at a time of such chronic political instability.⁵⁸⁹

⁵⁸⁵ Harding, ‘*Regiam Majestatem* Amongst Medieval Law-Books’, 97-111. For Harding, the treatise was a prime example of what he calls a ‘legal transplant’.

⁵⁸⁶ *Ibid.*, 98-9.

⁵⁸⁷ MacQueen, ‘*Regiam Majestatem*, Scots Law, and National Identity’, 5.

⁵⁸⁸ *Ibid.*, 8.

⁵⁸⁹ Although there is debate about the extent to which the wars of independence caused a serious break in continuity with the past (on which, see for example Lord Cooper, *Selected Papers 1922-1954* (Edinburgh,

However, it would be wrong to take this view to the extent of arguing that the treatise had no practical utility. Indeed, use of the *Regiam* is attested by its survival in such a significant number of manuscripts, and the extensive – and learned – subsequent interaction with the treatise evidenced therein. If the production of the treatise had been exclusively propagandist, we might expect hyperbolic alterations to the plain style of the main body of *Glanvill*'s text, with more explicit references to the might of royal authority and the system of law it personified. It is clear that the *Regiam* was being read and used by those both learned and practically involved in the law.⁵⁹⁰ While Cooper's suggestion of its role as a courtroom manual seems unlikely, an educational role seems altogether more plausible. Such a role is given credence by the nature of the material often bound up with the treatise and by the existence of a gloss on its earliest manuscripts. It therefore seems that the *Regiam*'s function was at once both useful and symbolic, and it is just possible that it may have had 'official', rather than 'private' origins, perhaps even in a royal commission.⁵⁹¹ Moreover, there were practical as well as symbolic reasons for the compiler choosing to base his text on *Glanvill*, rather than other English legal literature such as *Bracton* and its descendants. *Glanvill* was arguably in some respects much more applicable to fourteenth-century Scotland than, for example, much of the thirteenth-century English legal literature. Whilst thirteenth-century English law was becoming more complicated and developing more, and ever-narrowing, forms of

1957), p. 175 as against MacQueen, 'Pleadable Brieves, Pleading and the Development of Scots Law', 403-22.), there can be no doubt that it was still a politically sensitive time for the new king.

⁵⁹⁰ The *Regiam* was evidently a practical text, practically used and this is attested at once by its fifteenth century usage, described by MacQueen in *Common Law and Feudal Society in Medieval Scotland*, p. 92, and its translation into the vernacular.

⁵⁹¹ *Ibid*, p. 91. It is noteworthy in this context that the compiler seems to have intended the work to be regarded as legislative: In changing a passage from Goffredus, he replaced a tentative 'puto' with 'volumus' (Stein, 'Roman Law in Scotland', p. 21). However, if this were the case, we might perhaps expect some surviving evidence of such origins and/or more notice being taken of the text during its early life.

action, Scots law had retained an older less centralized system with fewer, broader, forms more similar to that found in *Glanvill* and ‘Thus an early fourteenth-century compiler of *Regiam* might well have found *Glanvill* more suitable as a model than later English works, even than Bracton’.⁵⁹²

A Scottish Context for the *Regiam*

There is a contemporary Scottish context in which the *Regiam* should be, but has generally not been, seen. Another treatise, the so-called *Liber de Iudicibus*, follows a similar pattern including extracts from *Glanvill*, together with Romano-canonical material and items of a local, often customary, nature.⁵⁹³ Although relatively ignored until recently, the *Liber* appears in at least 21 manuscripts. Unlike the extant version of the *Regiam*, it has no discernible structure, having been definitely written as a series of titles.⁵⁹⁴ Intriguingly, there are three Scots texts of the *Liber*, all of which are relatively short and contain no passages from *Glanvill*. These may perhaps represent an earlier stage in the textual development of the treatise. It has only recently been realized that the *Liber* is the same as the treatise previously described as the *Leges Portuum*, and that the variations between the two merely attest to an apparently ongoing editorial process. Despite textual variation, a core text is discernible. Windram believed the final version of this text may have been established by the early fourteenth century.⁵⁹⁵ The *Liber* is

⁵⁹² Ibid, p. 22. *Glanvill*'s relative simplicity together with its emphasis on writs must have made it an easier text to work from and around.

⁵⁹³ H. MacQueen, ‘Note: The Scottish Legal History Group: W.J. Windram, ‘What is the *Liber de Iudicibus*?’, *JLH*, 5, (1984), 176-7.

⁵⁹⁴ It is, of course, possible and even likely that, as mentioned above, the *Regiam* was itself written in this form and that the structure of three or four books was subsequently superimposed, but the *Liber de Iudicibus* is still a much less structured work.

⁵⁹⁵ Ibid, 177.

bipartite, its first half is interspersed Roman and Scottish material with sporadic *Glanvill* extracts. Its second half, however, is taken almost exclusively from *Glanvill* and in the order in which it appears in the English treatise, sometimes even repeating extracts used in the first half of the text. It principally includes *Glanvillian* material also found in the *Regiam*, but also incorporates some different passages,⁵⁹⁶ implying that its extracts from the earlier treatise are independently derived, and not through the medium of the *Regiam*. Like the *Regiam*, it sometimes revises passages from *Glanvill*. Although the *Liber* is an altogether less comprehensive and less sophisticated treatise than the *Regiam*, its existence and nature makes it clear that *Glanvill* had an influential role in medieval Scots law, and that this role warrants further attention:

The ghost of Henry II's justiciar stalked for a second time through the pages of a Scottish legal treatise, and on both occasions all but eluded detection. Destiny was evidently determined that, whether she knew it for what it was or not, Scotland must at all costs absorb the teaching of the *Tractatus*.⁵⁹⁷

Conclusion

Scholarship of the *Regiam* has tended to focus on specific questions relating to the treatise's date, sources or correct text at the expense of tackling the larger questions of its purpose, function and relationship with *Glanvill*. There is a compelling need for a systematic analysis based upon all the surviving manuscripts of the treatise themselves, as the most authentic witnesses at once of the compiler's purposes in writing and of the

⁵⁹⁶ For example it does include reference to trial by battle where the *Regiam* avoids these. It edited some passages from *Glanvill* that were not edited in the *Regiam* and vice versa. Walker argues that the *Regiam* and the *Liber de Judicibus* may be variants, descended from a common archetype (*A Legal History of Scotland*, p. 121). The *Liber*, and its precise relationship to both the *Regiam* and to their common exemplar, *Glanvill*, warrants further scholarly attention.

⁵⁹⁷ Cooper, *Regiam Majestatem and Quoniam Attachiamenta* ii, p. 6.

text's subsequent reception and use by others. It has, however, been possible at least to draw some preliminary conclusions here. In summary, the *Regiam* looks like a much more genuine and a much more interesting attempt at re-editing *Glanvill* than has traditionally been thought. In fact, it is as significant as '*Glanvill* Revised' from this perspective, and considerably more influential than that private revision. The *Regiam* brought *Glanvill* – albeit indirectly and anonymously – to the public eye in Scotland in a way that the private attempts at revising the treatise in England never managed. It has been suggested here that the *Regiam* was the perhaps officially-inspired product of an intelligent and capable Scottish canonist, but that it was left off unfinished and perhaps edited by other hands. Questions remain about the *Regiam* to which satisfactory answers are still needed: why was it unknown for so long and why do even its oldest manuscripts seem to date from about a century after its compilation? A temporary abandonment, *Bracton*-like, for some reason might explain such anomalies. What is important here is that the *Regiam*'s suggested status as both useful and symbolic suggests that aspects of *Glanvill* may have been surprisingly applicable in early fourteenth-century Scotland: 'It was therefore entirely appropriate for contemporary Scots lawyers to look to *Glanvill* for statements of the principles on which the land law rested; his world, and the problems faced by the courts of his time, mirrored those in early fourteenth-century Scotland'.⁵⁹⁸ It has been suggested that the law of fourteenth-century Scotland, even if it was both conservative and acquisitive, had genuine parallels with the English common law of the twelfth century and this area deserves further scholarly attention. Perhaps *Glanvill* was relevant in this context because, like the *Regiam*, it represented the (written) beginnings

⁵⁹⁸ MacQueen, *Common Law and Feudal Society in Medieval Scotland*, p. 254. Its applicability can only be supported by the coincidence of the *Liber de Iudicibus*'s basis on *Glanvill*.

of a legal system; they were the starting points of further legal reform. Moreover, the *Regiam* should certainly not be dismissed as mere plagiarism of *Glanvill* and what precisely it uses and alters from the earlier treatise is of considerable interest. One of the strongest themes to emerge from this study has been the use of law to promote national identity. The paradox of the *Regiam* is its dual status as an assertion of Scots law and sovereignty through being an unacknowledged copy of the English treatise. It is no coincidence in this context that it was both first compiled, and then first printed three centuries later, at times of perceived threat to Scottish autonomy.

CHAPTER 5

Owners and Users of *Glanvill* from c.1475

In a law report of 1587 *Glanvill* was referred to as an *actor*, rather than an *author*, *legis* and therefore of consequently ‘great authority’.⁵⁹⁹ However, it was stressed in a state trial of the mid 1660s: ‘nor... [was the treatise] ever reputed of authority... and not one case in one hundred of Glanvil is law’.⁶⁰⁰ John Beames summed up some of the different views of the treatise’s status over time in his edition and translation of 1812:

the fate of [*Glanvill*] has been most singular. Indebted to its intrinsic merit alone for the high compliment it has long enjoyed, in being looked up to as an authority from which there was no appeal, curiosity has given way to an opinion, that whilst it was venerable for its antiquity, it was also useless, for it was obsolete.⁶⁰¹

Beames’s sentiments do not do full justice to the great number of later editions of the treatise, and to its ongoing citation and use in court and other arenas as a source, varying, of law, history and philosophy. The treatise was last cited in court as recently as 1992,⁶⁰² and was still being cited as the foremost of the ‘highest authorities’ in a law report of the mid nineteenth century.⁶⁰³ Despite such ongoing and, at times, laudatory later use, there has been surprisingly little attempt to consider the fate of *Glanvill* after the thirteenth century. The large number of extant manuscripts of the treatise (41) evidences a clear and ongoing attempt to preserve copies. However, very few of these were made after the late thirteenth century and the latest manuscript versions date only from the early

⁵⁹⁹ Zouch v. Bamfield, Common Bench (74, *English Reports* (henceforth *ER*), 76). Note that the case is misdated to 1687 here.

⁶⁰⁰ Maynard, in the trial of Edward, earl of Clarendon for high treason and other crimes in 1663-7 (6, *State Trials* (henceforth *ST*), 345.

⁶⁰¹ J. Beames (ed. and trans.), *A Translation of Glanville* (London, 1812), p. xx.

⁶⁰² House of Lords, *Appeal Cases*, 1, 614, on rape.

⁶⁰³ Francis Hart Dyke v. Thomas Walford, 1846 (130, *ER*, 573).

fourteenth century,⁶⁰⁴ although the treatise was not printed until 1554. The history of engagement with the treatise, both before and after its printing, warrants more attention. The changing status of the text over time from a living ‘authority’ of the common law to a limited and incomplete historical ‘memorial’, together with its use in the fields of law, politics and history, is illuminating. The changing fortunes of the text in both legal and historical contexts and in particular the ideas framed around *Glanvill* and the medieval common law it contains – sometimes genuine and sometimes tendentious – reflect upon the treatise as well as the later nature, history and use of the changing common law.

Engagement with the Treatise Before its First Printing

There is some evidence of reference being made to *Glanvill* during the period before its printing. It was cited by Morgan Kydwelly in his reading on Magna Carta of 1482/3.⁶⁰⁵ Dyer, who owned a manuscript *Glanvill* (*Ls*), first cited the treatise in his reports in its year of printing.⁶⁰⁶ Despite citing *Bracton* more frequently, he treated *Glanvill* with *Bracton*, *Britton* and *Fleta* as working sources of authority in the common law. Thus, in his advice to the Council in December, 1555 on gold and silver mines, he described

⁶⁰⁴ These are *Glanvill* MSS *Co*, *G*, *H*, *J*, *No*, *Or* and *Q* of which two (*J* and *Q*) are French translations of the text. See chapter 1 and Appendices 1 and 2 for details.

⁶⁰⁵ J. Baker, *The Oxford History of the Laws of England VI 1483-1558* (Oxford, 2003), p. 23, n. 96. By the mid fifteenth century such expositions of the old statutes, particularly Magna Carta, Merton, Marlborough, Westminster I, Gloucester and Westminster II, as supposedly instructive in fundamental law were common (see S.E. Thorne (ed.), *Readings and Moots at the Inns of Court in the Fifteenth Century* (Selden Society vol. 71; London, 1954), p. xvii and Baker, *CELM*, pp. xxxii-v for general discussion, and 209-10 for description of Kydwelly’s reading in Cambridge University Library, MS Ee.5.18). Kydwelly (d. 1505) was a governor of the Inner Temple in 1486 and attorney-general 1483-5. His reading is on Magna Carta, c. 11, treating of various courts and their jurisdictions.

⁶⁰⁶ J. Dyer, *Reports of Cases in the Reigns of Henry VIII, Edward VI, Queen Mary and Queen Elizabeth*, (ed. and trans.) J. Vaillant (3 vols.; Dublin, 1794), where the treatise is cited in 1554 on defaulting tenants and the grand assize (Lord Windsor v. St John, 98a) as well as in 1555/6 on fathers not being able to divide their land without the assent of their heir (127b); Also see J.H. Baker (ed.), *Reports from the Lost Notebooks of Sir James Dyer* (Selden Society vol. 109; London, 1994), pp. xxviii-xxix. For other early citation of *Glanvill*, see the discussion of Sir William Stamford/Stauford (1509-58) below.

fruitlessly searching *Bracton*, *Glanvill* and *Britton* on the subject of treasure trove and likewise in reporting *Prichard v. Jones* (1568) he referenced *Glanvill*, book xiii on the authority of the justices of assize.⁶⁰⁷ Moreover, although manuscript copies of the treatise ceased to be made after the early fourteenth century, there is clear evidence that such volumes as remained extant were highly valued in the period up until the printing of the treatise and after it. The table of later owners of manuscript *Glanvills* appended below (Appendix 9) evidences a significant number of sixteenth-century owners, including two archbishops of Canterbury as well as a variety of noteworthy legal and antiquarian figures.⁶⁰⁸ We know that one John Lucas was so distressed by the loss of his manuscript of the treatise in 1529 that he deemed it worth petitioning Henry VIII to aid in its recovery, on the grounds that its loss to the king and realm was so overwhelming:

If it be not recovered it will be a great loss to your Majesty and to your whole realm of England, by the loss of such necessary memorials as are contained in the said book, the like whereof your said subject, who hath seen very ancient things, did never see nor read, and he verily thinketh, without the said book they be not to be seen nor read.⁶⁰⁹

However, although the most erudite of common lawyers of this period must have owned or known about manuscript copies of the text, its limited practical use is strongly suggested by the fact that manuscript copies had ceased to be made two centuries before it was first printed in 1554. Hall stressed that ‘for ‘Glanvill’ there was a dark age of more than two centuries’.⁶¹⁰ He deemed the treatise not only to have been outdated and overshadowed by *Bracton*, but to represent a liberal tradition of English legal writing

⁶⁰⁷ *Ibid*, pp. 15 and 148. For discussion of Dyer’s learning and range of citations and sources, see L.W. Abbott, *Law Reporting in England, 1485-1585* (London, 1973), p. 171.

⁶⁰⁸ This has been constructed from evidence in the manuscripts themselves, as well as from manuscript catalogues and occasionally other sources.

⁶⁰⁹ J.S. Brewer (ed.), *Letters and Papers, Foreign and Domestic, of the Reign of Henry VIII*, iv, 3 (1529-30) (Vaduz, 1965), p. 2734, no. 6125.

⁶¹⁰ Hall, ‘Introduction’, p. lxii.

which fell out of favour after the thirteenth century. Most of the available evidence supports this view. Virtually all of the extant *Glanvill* manuscripts had been produced by the turn of the fourteenth century. In contrast, of the 48 *Bracton* manuscripts discussed and dated by Woodbine, the majority are dateable to the fourteenth century and clearly show that the later treatise was still being assiduously copied when *Glanvill* was not.⁶¹¹ Moreover, there is much more evidence of citation of *Bracton* than of *Glanvill* in the early Tudor period and before the printing of the two treatises.⁶¹² Thus, the Year Books, law reports and state papers of Henry VIII's reign all refer only to the later of the two treatises.⁶¹³ Early Tudor readings and arguments in the Inns of Court generally referenced the Year Books instead of legal textbooks, although *Bracton* was also read and quoted, in particular in relation to criminal law.⁶¹⁴ In general, however, what limited recourse was made to medieval law during this period was often supplemented, or sometimes entirely eclipsed, by references to more recent and practical printed legal works.

⁶¹¹ Woodbine (ed.) *Bracton*, i, 'Introduction'. Woodbine dated 25 of his 48 manuscripts to the fourteenth century, with a further 12 dateable to the 'thirteenth-fourteenth century' and 4 to 'c. 1300', leaving only 7 MSS as definitely thirteenth century. It is, however, also clear that as with the earlier treatise, the copying of manuscript *Bractons* had also ceased by the end of the fourteenth century. Baker added six further manuscripts to Woodbine's total, but did not date them (*CELM*, p. 68).

⁶¹² For subsequent usage of *Bracton* in general, see D.E.C. Yale, "'Of No Mean Authority": Some Later Uses of Bracton', in *On the Laws and Customs of England. Essays in Honour of Samuel E. Thorne*, (ed.) M.S. Arnold, T.A. Green, S.A. Scully and S.D. White (Chapel Hill, North Carolina, 1981), pp. 383-96.

⁶¹³ See, for example, J.H. Baker (ed.) *Year Books of Henry VIII, 12-14 Henry VIII, 1520-1523* (Selden Society vol. 119; London, 2002), pp. 83-4; J.H. Baker (ed.), *Reports of Cases from the Time of King Henry VIII*, Selden Society vols. 120-21 (2 vols.; London, 2003-4), ii, p. 292; and, for example, Robert Catlyn's citation of *Bracton* to Cecil in 1561 on the law for the punishment of witchcraft in R. Lemon (ed.), *Calendar of State Papers. Domestic Series. 1547-1580* (London, 1856), p. 174; and the reference to *Bracton*'s views on the public use of river banks in the 1594 report by Popham and Anderton in M.A.E. Green (ed.), *Calendar of State Papers. Domestic Series. 1591-1594* (London, 1867), p. 501.

⁶¹⁴ S.E. Thorne and J.H. Baker (ed.), *Readings and Moots at the Inns of Court in the Fifteenth Century*, ii, Selden Society vol. 105 (London, 1990), p. lxxi. For other citations of *Bracton*, also see G.W. Prothero (ed.), *Select Statutes and Other Constitutional Documents Illustrative of the Reigns of Elizabeth and James I* (4th edn.; Oxford, 1963), pp. 115, 121 or 409.

The Treatise's First and Subsequent Printings

The commencement of *Glanvill's* rehabilitation may, however, be precisely dated to its first printing by Richard Tottell in 1554.⁶¹⁵ From this point onwards, interest in and referencing of the treatise became widespread in legal and historical sources. The treatise was published after *Britton* (1540), the priority of which may have been due to its having been written in French, but before the much larger *Bracton* (1569). *Glanvill* was one of the first books printed by Tottell, who went on to use the monopoly on law printing, granted him by Philip and Mary and then, for life, by Elizabeth, to employ over 90% of his printing capacity in the production of law books.⁶¹⁶ Tottell's impressively competent edition of the treatise was published without preface and based on an unnamed *beta* manuscript or manuscripts. A small and clearly practical volume, it includes a number of 'useful' marginal notes and legal cross-references and ends with a book and chapter list. The treatise's second edition, a reprint of Tottell's version published in London in 1604 by Thomas Wight, chief law printer at the turn of the seventeenth century,⁶¹⁷ stated that the first edition was printed 'by the procurement of Sir William Stamford'.⁶¹⁸ This suggestion is entirely plausible: Stamford/Stauford (1509-58) was a member of Gray's Inn, and a Reader there in 1545 and 1551 and a judge of the Common Pleas from 1554 until his death in 1558. He cited the treatise repeatedly in both of his well-known works,

⁶¹⁵ Details are given in *A Short Title Catalogue of Books Printed in England, Scotland, and Ireland and of English Books Printed Abroad 1475-1640*, i, first compiled by A.W. Pollard and G.R. Redgrave, second edition by W.A. Jackson, F.S. Ferguson and K.F. Pantzer (London, 1986), p. 525, no. 11905.

⁶¹⁶ H.S. Bennett, *English Books and Readers*, ii (Cambridge, 1965), p. 166; C. Clair, *A History of Printing in Britain* (London, 1965), pp. 73-4; H.J. Byrom, 'Richard Tottell – His Life and Work', *The Library*, viii (1927-8), 199-232; A. Greening, 'Tottell, Richard (b. in or before 1528, d. 1593)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/27573>].

⁶¹⁷ Wight had bought the patent as chief law printer in 1599: Bennett, *English Books and Readers*, iii (Cambridge, 1970), p. 119. For discussion of this edition of the text's links with the *Regiam Majestatem*, see the previous chapter.

⁶¹⁸ *A Short Title Catalogue*, i, p. 525, no. 11906.

Exposicion of the Kinges Prerogative (written in 1548 and published posthumously in 1568),⁶¹⁹ and *Les Pleees del Coron* (1557).⁶²⁰

The preface of the 1604 edition of the treatise suggested that Tottell's edition had not made quite as much impact as it might have done, and that there was greater demand for the treatise in particular now that a link had been posited between *Glanvill* and the Scottish *Regiam Majestatem* in the politically sensitive period of union at the beginning of the seventeenth century:

This Booke was first printed above fiftie yeares now since... and hath of many yeares not been to be had in any shoppe, nor asked for and little regarded by them which had it, till of late a Professor of the Lawes of this Realme, reading a booke, called Regiam Maiestatem, of the auncient Lawes of the Realme of Scotland, found this and that to agree much... And therefore perswaded me to print these bookes, to the end that others might know how the same ancient laws of both these realmes did then, and yet doe agree in most point which have not been altered by statutes since.⁶²¹

⁶¹⁹ W. Staunford, *An Exposicion of the Kinges Prerogative* (London, 1568). For references to *Glanvill*, see for example, ff. 5^b, 20^a, 20^b, 23^b, 24^a, 30^a, 38^a and 39^b.

⁶²⁰ W. Staunford, *Les Pleees Del Coron*, (ed.) P.R. Glazebrook (London, 1971), see for example, ff. 1^b or 58^b-59^a. For biographical detail, see J.H. Baker, 'Stanford, Sir William (1509–1558)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/26238>]. Stamford must have had access to a MS *Glanvill*, given that he cited the treatise several times in his *Exposicion*, written six years before the treatise was first printed. Reeves noted that Stamford: 'ventured to cite and argue from [*Bracton*] upon the bench, at a time when it was the fashion to consider Bracton and Glanville not as authors in our law, but to be quoted, if at all, only for ornament in discourse, and for consonancy and order, where they agreed with better authorities' (J. Reeves, *History of the English Law*, iv (2nd edn.; London, 1787), pp. 570-1).

⁶²¹ For MacQueen's speculations concerning the identity of the 'Professor' in question, see chapter 4. The coming to prominence of the *Regiam* and its relationship with *Glanvill* led to a flurry of, generally bald, statements of the texts' relationship over the course of the seventeenth century, and perhaps also encouraged comparisons of *Glanvill* with other early legal texts. Whilst tying himself up in knots on the question of English law and parliamentary precedent before William and the Normans, Bulstrode Whitelocke noted that the Grand Coutumier of Normandy has 'many of our laws and the same form of parliament', but that this could be explained as it 'was a meer translation of our Law Book Glanvill; as the Book of Regia Majestas, of the Laws of Scotland is': *Memorials of the English affairs, or, An historical account of what passed from the beginning of the reign of King Charles the First, to King Charles the Second* (London, 1682), under the year 1650.

Although a reprint of Tottell's text and containing the same marginal notes and final book and chapter list, the second edition is preceded by a short new referenced index.⁶²² As with the text's first edition on which it was based, it featured no direct references to named manuscript sources, merely stating that several manuscript *Glanvills* had been consulted. The 1604 edition is bound up in some volumes with a Latin edition of St German's *Dialogue between a Doctor and a Student* of the 1520s, also printed by Wight and in the same year, seemingly indicating a happiness to juxtapose older and more recent legal 'authorities' as a single printed set.⁶²³

There was a further reprint of the same text in London in 1673, by J. Streater, H. Twyford and E. Flesher, which opened with a more confident note to the reader asserting that:

This Book heretofore printed, and now reproduced by his majesties Printers for the Law, is offered to the Publick, whereto it may be very serviceable; It has been of great use to the students of the Law and still keeps it's [sic] reputation, being well accepted, whenever quoted in any of the Kings Majesties Courts of Record at Westminster.

In 1776 David Houard gave the same text with some notes in French.⁶²⁴ Four years later John Rayner printed the same text which was published by J. White and E. Brooke in London. Arguing that there was evidently no single perfect manuscript and that 'none of the manuscripts are without many and evident faults', he included some useful variant

⁶²² For discussion of the small changes in the treatise's numbering in its first two editions, see Hall, 'Introduction', p. liv, n. 4.

⁶²³ As, for example, in the volumes that are Bodleian Library, Oxford Dunston A 56 (1), Keble College, Oxford Special Collection STC 11905 or Harvard Law School Library, Rare STC 11906 (Hollis number 003976169).

⁶²⁴ Houard, *Traité sur les coutumes Anglo-Normandes*, i, pp. 373-581, with an introduction on Henry II and containing biographical detail on Ranulf Glanvill with the slightly equivocating statement: 'le Traité des Procédures & des Coutumes Anglaises, a été composé & mis au jour par l'ordre de Glanville', together with an extended discussion on Anglo-Norman 'counsel' and the consent of the people. Houard (1725-1802) was a jurist and member of parlement from Dieppe. His interest in Anglo-Norman law at this date merits further consideration.

readings taken from four manuscripts (*H*, *G*, *V* and *D*) which had ‘formed part of the amusement of a gentleman of the profession some years ago’. It has been suggested that the gentleman in question was John Wilmot, master in Chancery.⁶²⁵ These variants were omitted from the 1828 edition of the text by G. Phillips, who included a discussion of the treatise as a whole in German.⁶²⁶ The same text was published once again in the 1844 *Acts of the Parliaments of Scotland*, and collated with *Regiam Majestatem*. Thirty years later Stubbs printed limited extracts from the treatise in his *Select Charters*, avoiding the traditional text in favour of *alpha* MS Z: ‘the text of the seventeenth-century editions is faulty, and we have followed that of the Balliol College MS, which is one of the oldest and most accurate’.⁶²⁷ Sir Travers Twiss, who had produced a six volume edition of *Bracton* between 1878 and 1883, was commissioned in 1884 to produce a new edition and translation of the treatise for the Rolls Series.⁶²⁸ In fact, his edition of essentially the traditional text with some arbitrarily chosen variants fell stillborn from the press in 1896 and was actively suppressed in 1900, three years after his death, although three copies survive at the National Archives.⁶²⁹ However, as Hall pointed out, Twiss’s ‘great

⁶²⁵ Winfield, *The Chief Sources of English Legal History*, p. 258.

⁶²⁶ G. Phillips, *Englische Reichs- und Rechtsgeschichte* (2 vols.; Berlin, 1827/8), i, pp. 231-42 (discussion) and ii, pp. 335-473 (text).

⁶²⁷ W. Stubbs and H.W.C. Davis, *Select Charters and Other Illustrations of English Constitutional History*, (9th edn.; Oxford, 1921), p. 190.

⁶²⁸ M. Lobban, ‘Twiss, Sir Travers (1809–1897)’, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/27919>].

⁶²⁹ For Maitland’s criticism of Twiss’s edition, see his letters to Sir Henry Maxwell Lyte at the Public Record Office in Fifoot (ed.), *The Letters of Frederic William Maitland*, i, pp. 154-7. Hall recorded that six copies of the text were preserved in total, with three going to the PRO, one (now lost) to Maxell Lyte and two to I.S. Leadam and thence to the USA (‘Introduction’, p. lxiv, n. 6). Twiss’s edition has a long but slightly convoluted introduction in which he mentions at least 17 manuscripts in a fairly unscientific fashion. He believed that MS *A*, ‘a noble manuscript’, proved that the treatise must indeed have been written by Ranulf Glanvill, given that Howden was his contemporary, and anyway that the treatise was ‘assuredly [written in] the language of a high judicial functionary, and it is not a rash opinion to hold, that no subject of King Henry the Second other than his chief justice could have ventured to undertake such a task’: National Archives copy: Sir T. Twiss, *Tractatus de legibus et consuetudinibus regni angliae tempore regis henrici secundi* (Rolls Series; London, 1896), p. xvi, and went on to use Coke heavily for biographical details about Glanvill. He believed without any particular evidence that certain parts of the

achievement' was the realisation that the treatise might initially have been divided by rubrics with a book and chapter structure being superimposed upon it at a later date.⁶³⁰ A replacement edition by I.S. Leadam appears as 'contemplated' in the Selden Society list of publications, but never materialized.⁶³¹

The first printed translation of the treatise was produced by John Reeves, whose first volume of the *History of the English Law* included a translation of the whole of the treatise, based on the same text as previous editions with some notes and small changes of order.⁶³² However, there is also evidence of a private translation of the treatise having been undertaken in Ireland in 1783 by Richard Colles (admitted to the Middle Temple

text of the treatise must have been later *Bracton*-style additions and that, for example, the sentiment that 'melior est conditio possidentis' in the discussion of the *casus regis* in vii, 3 must be an addition 'because it does not reflect the facts of Glanville's day' (ibid). He believed that the superimposition of a numbered book and chapter framework proved that the treatise was being adapted to the uses of the king's justices (p. xxi) and, more puzzlingly, that the treatise in its current form is unfinished and that it was originally intended to include a more complete discrete survey of criminal law and to discuss those criminal and civil pleas which pertained to the sheriffs' courts much more fully (p. lviii). Twiss felt that this at once reflected Ranulf Glanvill having to leave to go on crusade and/or that he had the intention of producing a more complete survey of criminal law at a later date. Without any supporting evidence, he believed that the treatise must have come to Glanvill's nephew, Hubert Walter, while his uncle was on crusade and after his death, and that while Walter was chancellor, his uncle's treatise 'was adapted to the purposes of a manual for the uses of the king's justices' and then dignified by the title, as in MS *Ab*, of *Liber Curialis* (pp. lxvi-ii). Twiss's text is serviceable but imprecise and severely hampered by his stated editorial decision to 'refrain from commenting on the various readings of Glanville's text' (p. lii), with the text apparently only being based on a very small number of unspecified manuscripts. There are only occasional notes beside the text, for example with sporadic references to *Regiam Majestatem*. Maitland was right to stress that 'here the sins are mostly of omission' (Fifoot, *Letters*, p. 186). His letters reveal his dilemma about whether or not to urge the text's suppression and, although he stressed his fear that 'little improvement is possible', he concluded that only in extreme cases should such a publicly-funded text be suppressed and that 'now I am not prepared to say that in the present state of affairs this book is grossly scandalous' (ibid).

⁶³⁰ Hall, 'Introduction', p. lxiv.

⁶³¹ See *Centenary Guide to the Publications of the Selden Society* (London, 1987), p. 43. Maitland wrote repeatedly and excitedly about this possibility and the importance of a good modern edition of the text: see for example Zutshi (ed.), *The Letters of Frederic William Maitland*, ii, p. 210. The twentieth-century edition of the text by George Woodbine and edition and translation by Derek Hall are discussed in chapter 1.

⁶³² Reeves, *History of the English Law*, i pp. 97-203. He doubted that Ranulf Glanvill had been responsible for the treatise but did not offer an alternative authorial candidate.

1779, called to the Irish bar 1783).⁶³³ John Beames produced a new translation in 1812, which was reprinted by Joseph H. Beale in Washington D.C. in 1900.⁶³⁴ Beames's edition included some notes made on a copy of the printed 1673 edition of the treatise by Anglo-Saxon scholar William Elstob (d. 1715) and which had belonged to well-known justice John Fortescue Aland (d. 1746).⁶³⁵ In general, the large number of reprints and translations of *Glanvill* contrasts markedly with the far fewer printings of the much more impracticably sized *Bracton*.⁶³⁶ However, although the text of the treatise was undoubtedly popular, it is clear that it never attained anything like the status of the hugely influential practical student primers in the law such as St German's *Doctor and Student* or Littleton's *New Tenures*, printed more than 60 times in the sixteenth century alone.⁶³⁷ But, even if it may not have been as popular or as useful as these treatises, and although its ongoing editions reveal little significant development in the understanding of the text

⁶³³ Colles presented his translation to James Hewitt, first Baron Lifford, Lord Chancellor of Ireland (d. 1783), and later recovered it after the death of Lifford's son. The text is now Harvard Law School, MS 2038: J.H. Baker, (ed.), *English Legal Manuscripts in the United States of America, Part II: 1558-1902* (Selden Society; London, 1985), p. 155, no. 685.

⁶³⁴ J. Beames, *A Translation of Glanville* (London, 1812); reprinted by J.H. Beale (Washington D.C., 1900). Beames's somewhat equivocating introduction to the treatise made heavy use of Coke. He also took the opportunity to exhort his readers that: 'the Law of Modern Times is intimately connected with that of our Forefathers and the decisions of the present day are not infrequently built upon principles that are enveloped in the almost impervious mist of far distant ages... [Coke et al] considered nothing useless, though it possibly might happen to be obsolete, which tended to enlighten their minds, and shew them the fundamental principles of those Laws, which they afterwards no less admirably illustrated, than ably administered. But the brightness of the example instead of exciting emulation seems to have depressed it: and Glanville, Bracton, and Fleta have been suffered to crumble on the shelf, whilst Edition has rapidly followed Edition of those more modern Authors, who have advocated their cause' (pp. xxi-ii). He, like Reeves, also considered in some detail the question of whether the text's title in some manuscripts as 'leges Henrici Secundi' proved that it must have been an official text, written by Glanvill.

⁶³⁵ *Ibid*, pp. xxxii-iii; D. Lemmings, 'Aland, John Fortescue, first Baron Fortescue of Credan (1670-1746)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/271>]. This text is also noted by Baker, *English Legal Manuscripts in the United States of America, Part II*, p. 347, no. 1392. A more thorough study of the evidence of owners and users of the early printed *Glanvills* and other texts of the early common law in general would certainly be illuminating.

⁶³⁶ After its printing by Tottell, and a second edition re-printing of Tottell's version in 1640, *Bracton* was not printed again until Twiss's late nineteenth-century edition.

⁶³⁷ Baker, *The Oxford History of the Laws of England VI*, p. 502.

itself over this period, there was evidently a clear and sustained demand for printed editions of the treatise from the mid sixteenth century onwards.

Early Owners of Manuscript *Glanvills* and The Elizabethan Society of Antiquaries

The date of the treatise's first printing by Tottell coincided with an upsurge of interest in antiquarianism and there seems to have been a marked period of acquisition and exchanging of the manuscript *Glanvills* themselves in the second half of the sixteenth and early seventeenth centuries.⁶³⁸ A substantial proportion of this interest may be explained by the foundation in 1584-6 of, and the prevailing atmosphere of antiquarianism reflected and generated by, the Elizabethan Society of Antiquaries.⁶³⁹ There is evidence for the ownership and keen exchanging of early legal manuscripts within this circle, amongst whom some of the manuscript *Glanvills* seem to have passed with some rapidity.⁶⁴⁰ The antiquarians often signed their manuscripts and sometimes inserted personal material into

⁶³⁸ See Appendix 9.

⁶³⁹ The earliest history of the Society is discussed by P. Styles, 'Politics and Historical Research in the Early Seventeenth Century', in *English Historical Scholarship in the Sixteenth and Seventeenth Centuries*, ed. L. Fox (London, 1956), p. 51 and J. Evans, *A History of the Society of Antiquaries* (Oxford, 1956), especially pp. 7-14.

⁶⁴⁰ MSS *G*, *M* and *Or* were all owned by at least two of the three sixteenth-century antiquaries and founding members of the Society, William Fleetwod, Francis Tate and Robert Cotton, and Tate also owned *Ls*, *P* and *Q* and Matthew Parker MS *Co*. The fate of the so-called Guildhall manuscripts gives some indication of the sharing and reshaping of manuscript volumes by the antiquaries. Tate dismembered what had been two original Guildhall manuscripts, keeping part of each and giving the remainders to fellow antiquary Cotton. Following negotiations which had been in progress since at least 1601, the manuscripts were again divided, with Tate recovering those parts of the two volumes most concerned with the City of London from Cotton and returning them to the Guildhall in 1608/9 to be bound together as what is known as 'Liber Custumarum'. Tate also presented Oriel College, Oxford, with the parts of the different manuscripts that he had kept, bound together as MS *Or*, at around this time. An unsuccessful second attempt by City officials to lobby Cotton for the return of the remainder of the parts of the manuscripts still in his possession was made in 1611, and these parts were bound together as what is now MS *G* and were eventually bought for the nation in the early eighteenth century. Thus by the seventeenth century three separate volumes had been created and bound in a new order from two original manuscripts. See, for example, Ker, 'Liber Custumarum', pp. 41-2 or the introduction to H.T. Riley (ed.), *Munimenta Gildhallae Londoniensis*, ii, 1 (Rolls Series; London, 1860) for discussion of these manuscripts' sixteenth-century adventures.

them.⁶⁴¹ They also left a number of visible signs of their historical interest on the surviving manuscripts of the treatise, evidencing detailed comparisons with the printed edition of the text,⁶⁴² attempts to make individual manuscripts more user-friendly by adding contents tables and sometimes making small alterations to the text itself such as adding sub-headings or numbers and in one case attempting to make the text's original gloss more practicable,⁶⁴³ and sometimes even took the trouble to copy and insert other texts into pre-existing *Glanvill* manuscript volumes.⁶⁴⁴

The Society, initially consisting of a group of friends formed of scholars and men of affairs interested in the past, flourished and had regular meetings and a membership of 24 by 1591. High profile members such as William Cecil and Matthew Parker illustrate some of the Society's crossovers between the scholarly and the political worlds.⁶⁴⁵ This potentially dangerous mix almost certainly helped lead to the refusal by Elizabeth I to establish the Society formally with an attached library in 1602 and to its subsequent

⁶⁴¹ Tate's signature appears in *Or* and Cotton's in *M*. Cotton had a particular propensity for inserting his coat of arms in proprietorial fashion into his manuscripts, and this appears superimposed on the original text with his signature on f. 4^r in MS *G* and at least 21 times thereafter. A description of the descent of the Lumley family has been added to *A*. A number of the volumes containing *Glanvills* were also bound at this date, such as for example MS *V* as well as the Guildhall MSS.

⁶⁴² See, for example, the notes in *Or* comparing it with Tottell's printed edition (ff. 73^r -74^r) or the extracts from the printed version of the text copied into *Br* (f. ii^v).

⁶⁴³ Contents tables have been added in sixteenth/seventeenth-century hands to MSS *M* (by Tate) and *E*; *T* has book numbers inserted that had originally been left blank referencing and rendering useful the (original) gloss on that manuscript; The first and last folios of Howden's *Chronica* in MS *A*, which must have been lost or damaged in the period since it was produced at the beginning of the thirteenth century, have been recopied in an imitation gothic sixteenth-century bookhand, possibly under the aegis of Thomas Cranmer, whose signature appears on the new first folio; Manuscripts such as *B*, *E*, *F*, *M*, *O*, *T* and *X* all include inserted, sometimes extensive, notes from this period in Latin and/or English.

⁶⁴⁴ For example a copy of a passage from a 'Latin chronicle' purporting to relate to the privileges of London has been added to *T* in a sixteenth-century hand.

⁶⁴⁵ For discussion of Parker's extensive library, see M. McKisack, *Medieval History in the Tudor Age* (Oxford, 1971), pp. 26-7.

wilting away under the disfavour of James I in c. 1607.⁶⁴⁶ However, although short-lived, there is evidence that the Society – many of whose members were trained lawyers – actively encouraged and perpetuated a genuine interest in the origins and history of the common law. *Glanvill* was cited in several of the Society’s early discourses, as printed by Thomas Hearne, on subjects as diverse as ‘sterling money’ and fines, etymology, legal periods of time and limitation dates and writs.⁶⁴⁷ Thus, it was legally-minded antiquarians rather than lawyers per se who spearheaded the real revival of interest in and genuine engagement with both the treatise and the early common law on their own terms. This fits very much with the evidence in Appendix 9 of the surprisingly few practising lawyers amongst the recorded early owners of manuscript *Glanvills*.

Citation of the Treatise in Cases and Law Reports after its Printing

However, there is also considerable evidence that the treatise was being read and cited by lawyers from this time. From the time of the treatise’s printing, its quotation and referencing in law reports and in printed works on the law increased exponentially. It is cited, and generally precisely referenced, increasingly frequently in reports from the reign of Elizabeth onwards and notably heavily from the time of James I. Its earliest reported citations after printing all occurred in Coke’s Reports, of cases dating from 1587, 1591-2,

⁶⁴⁶ To understand the dangerous threat to royal authority that antiquarian learning could be seen to pose at this time, one only has to look at the closure of the library of Sir Robert Cotton in 1629. For discussion of Cotton’s library, those who consulted it, and its fate in the 1620s, see K. Sharpe, *Sir Robert Cotton 1586-1631. History and Politics in Early Modern England* (Oxford, 1979) or S. Handley, ‘Cotton, Sir Robert Bruce, first baronet (1571–1631)’, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/6425>].

⁶⁴⁷ T. Hearne (ed.), *A Collection of Curious Discourses* (Oxford, 1720), pp. 25 or 57-8. The discourses feature only one reference to *Bracton* (p. 68).

1604, 1609, 1610 and 1615.⁶⁴⁸ It seems that Coke's relatively heavy use of the treatise made its citation fashionable and thereafter it is cited fairly frequently from the mid seventeenth to nineteenth centuries in both the Common Pleas and King's Bench. Lord Chancellor Sir Thomas Egerton cited the treatise in 1608 in the case of the Post-nati in the Star Chamber,⁶⁴⁹ Coke cited it in parliament in 1610 to assert that: 'license of alienation is not by common law', and others followed suit.⁶⁵⁰ Having said this, in general the citation of the treatise in the law reports is of a limited nature, and often merely semantic and/or for scholarly effect or sometimes even evidently spurious. It stands in contrast to the more historical and genuine engagement with the text by the early antiquaries. Thus, as late as 1591/2 Coke cited the treatise's description of ordeal and trial by combat in a report from the King's Bench, as in effect an interesting digression, 'worthy to be imparted to the studious reader'.⁶⁵¹ The treatise was often cited, together with other early 'authorities' or 'old books' such as *Bracton*, *Britton*, *Fleta* and the *Mirror* to show that a contemporary and generally uncontroversial action broadly fitted with 'the ancient law'.⁶⁵² It was referenced fairly frequently on particular subjects

⁶⁴⁸ See *ER* 77, pp. 525; 779; 1415; 1436; 632 and 1202 respectively.

⁶⁴⁹ L.A. Knafla (ed.), *Law and Politics in Jacobean England. The Tracts of Lord Chancellor Ellesmere* (Cambridge, 1971), p. 217. Sir Thomas Egerton's (1540-1617) law books have been catalogued and his use of them analysed. He is not known to have owned a *Glanvill*, although he did possess a *Bracton* (L.A. Knafla, 'The Law Studies of an Elizabethan Student', *The Huntingdon Library Quarterly*, xxxii (1968-9), 221-40).

⁶⁵⁰ E.R. Foster (ed.), *Proceedings in Parliament 1610*, i (New Haven, 1966), p. 213. Sir Dudley Digges cited the treatise in discussion in parliament in 1628 of the 'ancient common law' being 'grounded in reason' and it was cited by William Noy and others in a debate in the same year on whether the king was entitled to the estate of a bastard dying intestate (R.C. Johnson and M.J. Cole (ed.), *Commons Debates 1628*, ii (London, 1977), p. 334 and M.F. Keeler, M.J. Cole and W.B. Bidwell (ed.), *Commons Debates 1628*, iv (London, 1978), p. 452 respectively), and see *Lords Proceedings* (volume v by the same editors: London, 1983) for citation of the treatise in the House of Lords in the same year (pp. 162 and 173).

⁶⁵¹ The Case of the Abbot of Strata Marcella (77, *ER*, 779), cited by Coke, for whose treatment of the treatise in general and the wider influence of this, see below.

⁶⁵² See, for example, 130, *ER*, 573 (1846) or 169, *ER*, 1414 (1863).

such as ‘reliefs’, loans and debts: ‘reliefs sont ancient’.⁶⁵³ It was also often cited in precise expositions of the historical vocabulary of the old common law.⁶⁵⁴ Its referencing in *Attorney General v. Mewtis* (1627) on the issue of whether a person who is bound to keep a bridge in repair can have contributions from others similarly bound, which featured *Glanvill*’s statement in viii, 1 that diverse controversies may be determined *per amicabilem compositionem*, is fairly typical.⁶⁵⁵

Some later legal citations evidence an anachronistic misunderstanding or manipulation of the treatise. In *Richard Godfrey’s Case* of 1615 ‘excessive or unreasonable fines’ are deemed to be against the law according to ‘*Glanvill*, lib. ix, f. 70’.⁶⁵⁶ This is in fact a reference to the treatise’s treatment of reliefs and other feudal aids in ix, 8, and as such a dubious transference of the late twelfth-century law in *Glanvill*. Equally, and in contrast, we hear that a defendant in 1587 ‘argued much upon the dignity of fines out of Bracton and Glanvil, whom he called actores, non authores legis; & that fines at the common law were of great authority...’.⁶⁵⁷ Late sixteenth-century lawyers and commentators also referred intensively and unhelpfully to the treatise in debates concerning the defence of the Common Pleas from the encroachment of the King’s Bench and the nature and remit of the Court of Exchequer. There was a fairly widespread misunderstanding of *Glanvill*’s

⁶⁵³ 82, *ER*, 263 (1662). For examples of the treatise’s citation on loans, see 89, *ER*, 488 and on the deduction of debts by administrators on intestate estates, see 124, *ER*, 987.

⁶⁵⁴ See *Regina v. Silas Thomas and Stephen Willett* in 169, *ER*, 1414 (1863) in which the meaning of ‘*fraudulosa*’ is discussed with reference to *Glanvill* i, 2 and xiv, 2, *Bracton*, *Fleta* and *Britton*, or the discussion of the differences between a justice and a justiciar in 92, *ER*, 908 (1748). For discussion of the growth of the genre of legal etymologies in the seventeenth century, see below.

⁶⁵⁵ W.H. Bryson, *Cases Concerning Equity and the Courts of Equity 1550-1650* (Selden Society vol. 118; London, 2001), p. 533. There is a similarly vague and unhelpful reference to the treatise’s description of purprestures in ix, 11 in *Attorney General v. Taylor* (1631) on the ownership of river banks (p. 611).

⁶⁵⁶ 77, *ER*, 1202.

⁶⁵⁷ *Zouch v. Bamfield*, *Common Bench* (74, *ER*, 76).

‘curia regis ad scaccarium’ in relation to the much more specialised contemporary court of Exchequer. Thus in a case of debt brought by writ in the Court of Exchequer in 1559 in which there was debate as to whether the court had jurisdiction to deal with such a common plea, Saunders C.B. upheld the broader jurisdiction of the court, anachronistically citing the *beta* section of *Glanvill*’s incipit: ‘et illas solas leges continet et consuetudines secundum quas placitatur in curia regis ad scaccarium’ to suggest that the Exchequer was not only the original court of the realm but had also originally been the king’s only court.⁶⁵⁸ William Lambarde answered this argument and those like it in his *Archeion* by recourse to much less superficial study of the text of the treatise.⁶⁵⁹ He argued that the incipit was probably not the work of the text’s author; and – spuriously – that even if it was his work, the incipit might suggest three separate courts with the judicious insertion of a comma after ‘regis’ in ‘secundum quas placitatur in curia regis ad scaccarium, et coram iustitiis ubicumque fuerint’. He wrote: ‘I undertake to shew you, not by the Title, but by the Text of Glanvilles own Booke; that in his time the Kings Court was one, and the Exchequer was another...’⁶⁶⁰

However, Lambarde’s serious if flawed engagement with the text of the treatise is very much the exception to the rule amongst contemporary lawyers and law reporters, and it was not undertaken in the context of reporting the law. In general, legal citation of the treatise seems to have consisted very heavily of mined snippets for courtroom use rather than active engagement either with the text as a whole or its more specific arguments. It

⁶⁵⁸ See F. Thompson, *Magna Carta. Its Role in the Making of the English Constitution. 1300-1629* (Minneapolis, 1950), pp. 171-2; and *Stowel v. Lord Zouch*, Common Bench, 1816 (75, ER, 320).

⁶⁵⁹ *W. Lambarde, Archeion or, a Discourse upon the High Court of Justice in England*, (ed.) C.H. McIlwain and P.L. Ward (Cambridge, Massachusetts, 1957), pp. 22-4.

⁶⁶⁰ *Ibid.*

was seldom cited where its contribution might radically go against received legal ideas and practice or in genuinely contentious situations. Equally, however, *Glanvill* was still cited in court and with increasing frequency over time. This meant that it could be upheld as a meaningful legal ‘authority’ whenever further support was needed for a statement or to convey the sanctity of very long term usage onto an argued, or accepted, point. Thus the treatise’s description of testaments and reasonable dower could be safely used to uphold the uncontentious sentiment that: ‘the right of the widow, and children, and next of kind, are coeval with the Common law, and have never been lost sight of, but have been considered as sacred rights by the highest authorities’.⁶⁶¹ There appears to have been a safe and mutually-enforcing position with ‘old law’ supporting new at times when there may be a shortage of other authorities to be cited or when an appeal to the remote past seemed particularly relevant. Paradoxically, however, *Glanvill* and the old law it contained was generally cited in uncontroversial positions when its support was not necessarily needed, arguably simultaneously highlighting the shaky nature of the practical support the treatise could provide.

The treatise was also cited with similar frequency, but not necessarily with greater force or scope, in state trials from the time of its printing. In particular, it was repeatedly referenced in attempts to define treason over time. In the trial of Edward, earl of Clarendon for high treason and other crimes in 1663-7, *Glanvill* was twice adduced in opposing arguments on the precise meaning of ‘seductio Domini Regis’.⁶⁶² Similarly, the

⁶⁶¹ Francis Hart Dyke v. Thomas Walford, 1846 (130, *ER*, 573), citing *Glanvill*, vii, 6 and xii, 20.

⁶⁶² 6, *ST*, 343 and 345, cited by Mr Vaughan and Sir R. Temple: ‘And there is a passage in Glanvil, called ‘Seductio Domini Regis’ that is, deceiving the king to what is pernicious to him, and his people...’ (Vaughan) and, in contrast, ‘Glanvil &c who say, that giving advice to overthrow the realm is treason by

treatise was cited in the 1605 case of mixed money in Ireland to show that for anyone other than the king to make or coin money within his dominions was definitely treasonable.⁶⁶³ *Glanvill* xiv, 1 was referenced alongside *Bracton* and *Fleta* in the case of William, Lord Russell in 1683 to show that: ‘This was the sense of the old law [concerning treason], and is very appositely applicable to the case in question’.⁶⁶⁴ These citations of the treatise were no more legally significant than those in lesser civil cases and often fulfilled a very similar role, particularly in the absence of noteworthy criminal law ‘authorities’.

Citation of the Treatise in the Cases and Political Polemics of the Civil War

The polemics and trials brought about by the lead-up to, and aftermath of, the civil war greatly intensified the treatise’s citation. It was cited particularly heavily in the protracted debate over Ship Money and taxation in general. In his judgment for the king in the hugely controversial and significant 1637 trial of John Hampden for his refusal to pay Ship Money, Sir Robert Berkley stressed the treatise’s Roman borrowings:

Bracton and Glanvill, in the front of their books, published that the King must have arms as well as laws; arms and strength against foreign enemies, laws for doing justice at home. Certainly if he must have these two necessaries, he must be enabled with means for them, and that of himself, not dependent ex aliorum arbitrio...⁶⁶⁵

common law’ (Temple). See, too, for example, 2, *ST*, 1087 ‘Glanvil defines treason to be...’, and further discussion of some of the state trials explicitly linked to the civil war below.

⁶⁶³ 2, *ST*, 116, referring indirectly to *Glanvill*, xiv, 7. The citation here is by Sir John Davis, himself a law reporter and here reporting himself. It is noteworthy that he had also been a member of the Elizabethan Society of Antiquaries.

⁶⁶⁴ 9, *ST*, 767. For other citations of the treatise on the question of treason, see for example, 2, *ST*, 1087 (1619) and 9, *ST*, 567 (1683).

⁶⁶⁵ 3, *ST*, 1099. Also see the citations of the treatise in the same case by Thomas, Lord Coventry, Sir Edward Littleton and Sir John Banks (3, *ST*, 877, 926 and 1045). Note that Coventry slightly misquoted the opening of the prologue: ‘Glanvill, in the beginning of his Book, saith, “Regiam Majestatem armis contra gentes sibi regnoque insurgentes oportet esse decoratem”...’. Later, in his vindication of the

The temptation to appeal to the veiling legitimacy of the distant past flourished in the political and legal uncertainties of the seventeenth century. It is perhaps only natural that at times of such intense political instability, appeals to the remote past should become more prevalent. The antiquarianism of the previous century had paved the way technically for the dissemination and study of the treatise, enabling both royalist and parliamentary commentators to access and mine the early texts of the common law for ‘immemorial’ constitutional precedents in the battle to prove that common law was subordinate to king or vice versa. The early common law therefore found itself at the centre of newly-vigorous constitutional debates on kingship, parliament and the rule of law and clearly achieved considerable political authority, manifested in its many references by both sides.⁶⁶⁶

The early common law in general, and the treatise in particular, were initially seized on by the parliamentary side. Building on the work of legal thinkers such as St German in the previous century,⁶⁶⁷ the common law’s association with the customary – highlighted by re-emphasizing the assertion in *Glanvill*’s prologue that law could be unwritten – was stressed as never before and common law was presented as fundamentally customary

Restoration and of monarchical government in general, Fabian Philipps made exactly the same point: ‘Glanvil, and Bracton, being of Opinion with the Emperour Justinian, that the King must have Armes as well as Laws to govern by...’: *A Vindication of the Government of the Kingdom of England Under our King and Monarchs* (London, 1686), p. 166, and the Roman theme was taken up by subsequent royalist commentators, with Edward Waterhouse writing with deceptive fluency in 1663 of: ‘those pristine Lawyers, Pomponius, Cajus, Aquilius, Servius, Papianus, Bracton, Glanvil, Littleton, Gascoyn and others...’: E. Waterhouse, *Fortescutus Illustratus, or A Commentary on that nervous Treatise De Laudibus Legum Anglie* (London, 1663).

⁶⁶⁶ See R. Colls, *Identity of England* (Oxford, 2002), p. 24 or P. Styles ‘Politics and Historical Research in the Early Seventeenth Century’, in *English Historical Scholarship in the Sixteenth and Seventeenth Centuries*, (ed.) Fox, pp. 49-72 for a summary.

⁶⁶⁷ ‘And these be the customes that proprely be called the common lawe’: *St German’s Doctor and Student*, ed. T.F.T. Plucknett and J.L. Barton (Selden Society Vol. 91; London, 1974), p. 47.

law.⁶⁶⁸ In this form it could be made to act as an ideal bulwark against the more extreme pretensions of royal prerogative by monarchs from James I onwards. The common law was presented, entirely spuriously, as immemorial and therefore taking precedence over royal or statutory enactments, which merely articulated it. Moreover, the common law was increasingly tied at this point to the eternal ‘law of reason’ to strengthen its claims to authority still further. This great parliamentary hardening of the common law in the service of the common weal was spearheaded by its champion, Sir Edward Coke.⁶⁶⁹ Thus, for example, great if historically dubious emphasis was placed on the treatise’s terminology for ‘parliament’. The anonymous 1640 tract ‘The Power of the Lords and Commons in Parliament in Point of Judicature’ cited the ‘supreme court... [called] by Glanvile, Magnum et Commune Consilium coram Rege et Magnatibus suis’ alongside certain ‘charters of the Conqueror’ in an attempt to superimpose contemporary parliamentary ideals on a more distant past.⁶⁷⁰ It even referred to the historical existence of a ‘general assembly’ in the time of *Glanvill*. Others took up the issue – equally tendentiously – in the pamphlet debates of the next thirty years, including the notorious William Prynne who cited both *Glanvill* and *Bracton* on early names for ‘parliament’, ‘procerum consilium’ and ‘concilium regni’ respectively.⁶⁷¹ Sadler in his 1649 *Rights of*

⁶⁶⁸ For discussion of these themes, see J.G.A. Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge, 1987), for example, p. 30.

⁶⁶⁹ See discussion below.

⁶⁷⁰ This appears to be a mis-reading of the prologue’s ‘procerum quidem consilio...’. This tract has generally been attributed to Henry Scobell, and ‘HS’ is given in some early editions. It is not clear why it subsequently appeared in J. Howell (ed.), *Cottoni Posthuma* (London, 1651), pp. 343-51, with *Glanvill* references at pp. 345 and 346, inscribed: ‘Written by a learned Antiquary, at the Request of a Peer of this Realm’.

⁶⁷¹ W. Prynne, *Brief Animadversions on, Amendments of, and Additional Explanatory Records to, the Fourth Part of the Institutes of the Lawes of England* (London, 1669), p. 2. He is here citing *Glanvill*’s prologue, p. 2, and actually from the sentence of the treatise that includes ‘hoc ipsum lex sit ‘quod principi placuit, legis habet vigorem’’. Prynne went on in the remainder of this work to cite the treatise extensively, but never particularly significantly (see, for example, pp. 87, 98, 177, 232 and his quotations from the prologue in his introduction).

the Kingdom cited *Glanvill* amongst ‘the old lawyers’ to build up the image of the common law as substantively the same over time. He stressed that *Bracton* and *Fleta* borrow from *Glanvill*, who in turn borrows from the laws of Henry I.⁶⁷²

Such statements clearly relied on tendentious and unhistorical readings of the treatise. Ultimately, however, even the most temptably quotable sections of *Glanvill* in the parliamentary cause came from sections of the text which were evidently royalist in origin and meaning. The role of custom in the treatise is altogether more ambiguous than these references suggest and its author was ultimately happy to reiterate in his prologue, albeit with some qualification, ‘quod principi placuit legis habet vigorem’. The treatise’s historical context, that both royal courts it describes – the Exchequer and curia regis – were essentially the creations of Henry II’s reign and particular to it, was ignored entirely. Having said this, even the most dubious readings of *Glanvill* were unable to add significantly to the most extreme parliamentary arguments of the view of parliament as sovereign. Instead, *Bracton* was cited much more often, although at times equally unhistorically, and in particular that treatise’s convenient dicta that the king was ‘vicarius christi’ quoted by Cromwell himself, and that ‘the Law makes the King’.⁶⁷³ However, as

⁶⁷² J. Sadler, *Rights of the Kingdom* (London, 1649), p. 27, para 69 or p. 29, para. 79. This idea of legal continuity outlasted the debates that had fostered it, and for example political theorist and historian James Tyrrell was very happy to cite in 1694 ‘divers Authorities out of our Antient as well as Modern Lawyers; viz. Glanvil, Bracton, Fortescue, and Sir Edward Coke’: J. Tyrrell, *Bibliotheca Politica, or An Enquiry into the Ancient Constitution of the English Government* (London, 1694).

⁶⁷³ G.R. Elton, ‘The Political Creed of Thomas Cromwell’, *Historical Studies of the English Parliament*, ii (ed.) E.B. Fryde and E. Miller (Cambridge, 1970), p. 203. See, too, for example, the extensive citation of *Bracton* in Hobbes’s *Dialogue between a Philosopher and a Student of the Common Laws of England*, (ed.) A. Cromartie (Oxford, 2005). This particularly heavy parliamentary use of *Bracton* may have caused something of a royalist backlash after the Restoration, perhaps evidenced by the interesting, if convoluted, later discussion of the relative merits of *Glanvill* and *Bracton* by the Cambridge historian, Robert Brady, who dismissed the later treatise on account of its dangerous Romanism. He wrote that when the ‘scholastic and dilatory method’ of the ‘Caesarean and canon law’ was introduced and mixed with ‘feudal or national law’, ‘with the design to over-rule and Baffle it’, then ‘quick justice was laid aside’ and that: ‘This is clear

the ambiguities in the old treatises were gradually realised, royalists slowly became aware that a common law case could be made for the crown as well as against it and soon the same law was being used both to attack and defend royal prerogative. Salmasius invoked *Glanvill* on treason in his *Defensio Regia pro Carolo I* of 1649 and Milton, rebutting him in his *Pro Populo Anglicano Defensio* of 1651, replied: ‘in vain do you vex and distress yourself with old books of English laws; in the ratifying or repealing of these the authority of parliament has always prevailed’.⁶⁷⁴ Edward Chamberlayne in his strongly monarchist description of the state of England *Angliae Notitia* of 1669 reiterated *Glanvill*’s description of the common law as ‘lex non scripta’, but inverted its relationship with royal prerogative compared with the arguments of the parliamentarians, stressing: ‘Where the Common-Law is silent, there we have excellent Statute-Laws’.⁶⁷⁵ After the Restoration, with commentators vying to proclaim and endorse royal sovereignty, such arguments became general, and were even taken up by some former parliamentarians. Prynne himself notably changed his tune after the king’s execution and, having been the staunchest of parliamentarians and having cited *Glanvill* in this cause,⁶⁷⁶ then went on to make an unlikely use of the treatise on the other side of 1649 to assert that: ‘as the Writs of the Common Law are the foundations whereby the whole

from the Consideration of the Works of Glanville, and Bracton, who Wrote within an hundred years of another; How Plain, Easie, Short and Open is the First; How Intricate, Involved, Subtile and Nice the Second’ (R. Brady, *A complete history of England, from the first entrance of the Romans under the conduct of Julius Caesar, unto the end of the reign of King Henry III* (London, 1685), general preface). For general discussion of Brady, see J.G.A. Pocock, ‘Robert Brady, 1627-1700. A Cambridge Historian of the Restoration’, *Cambridge Historical Journal*, x, 2 (1951), 186-204.

⁶⁷⁴ See *John Milton. Political Writings*, (ed.) M. Dzelzainis (trans.) C. Gruzelier (Cambridge, 1971), p. 244: ‘I appeal to Glanville himself, whom you produce...’.

⁶⁷⁵ E. Chamberlayne, *Angliae Notitia or the Present State of England* (London, 1694), p. 455.

⁶⁷⁶ In addition to his discussions of parliament in his *Brief Animadversions*, discussed above, he had stressed in *The Sovereign Power of Parliaments and Kingdoms* (London, 1643) that ‘to conspire or levy warre against the Parliament, or Kingdom, to dissolve, or destroy it, or the Members of it, is no less than High Treason; as has been solemnly adjudged in Parliament... And before this, in Glanvil, who declares it to be Treason, even at the Common Law, Si quis machinatus fuerit vel aliquid fecerit in seditionem regni’ (p. 108).

Law, and subsequent proceedings do depend, as Glanvil... and others of later time resolve', so if writs are lacking in true royal authority, the whole ensuing parliamentary process may be seen to be fundamentally flawed.⁶⁷⁷

More General Citation of the Treatise in Printed Works on the Law and its History

Even after the treatise's printing, some early commentators ignored *Glanvill* completely. As late as 1588, lawyer and prolific author Abraham Fraunce wrote: 'wee have our Common lawe penned after the self same methode twoo hundreth yeares agoe, by that famous and learned Iudge Henry de Bracton'.⁶⁷⁸ It is not coincidental that the works of Sir John Fortescue enjoyed a great retrospective popularity in the late sixteenth and early seventeenth centuries. His *De Laudibus Legum Angliae* of c. 1468-71 was first translated into English in 1567 and went through eight editions up to 1609. Fortescue had emphasized the primordial and unchanging nature of the common law as proof of its conformity to the eternal law of reason and cited the common law as being more 'rooted in antiquity' than the laws of the Britons, Romans, Saxons, Danes or Normans: 'Hence there is no gainsaying nor legitimate doubt but that the customs of the English are not only good but the best'.⁶⁷⁹ It is perhaps not surprising that Fortescue and the tradition that followed him should overlook the role of *Glanvill* within such a tendentious view of legal history. Indeed, if Fortescue knew of the treatise, he conveniently overlooked its inclusion of the *lex regia*: 'among the civil laws there is a famous sentence, maxim or

⁶⁷⁷ W. Prynne, *The first part of a brief register, kalendar and survey of the severall kinds, forms of all parliamentary writs* (London, 1659), pp. 421-2.

⁶⁷⁸ A. Fraunce, *The Lawier's Logike*, (ed.) R.C. Alston (London, 1588; reprinted Menston, 1969), f. vi^r; W. Barker, 'Fraunce, Abraham (1559?-1592/3?)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/10133>].

⁶⁷⁹ Sir John Fortescue, *On the Laws and Governance of England*, (ed.) S. Lockwood (Cambridge, 1997), pp. 26-7.

rule, which runs like this, “What pleased the prince has the force of law”. The laws of England do not sanction any such maxim’.⁶⁸⁰

In general, however, the treatise was cited with ever-increasing frequency in the growing literature of the common law after its first printing. It was admittedly often only mentioned generally and as a show of learning, as ‘a booke of the common lawes of England, which is the auncientest of any extant’.⁶⁸¹ In scarcely more useful vein William Lambarde, lawyer and member of Lincoln’s Inn, mined the ‘olde histories’ for historical legal terminology. His *Eirenarcha* of 1581 opened with reference to *Glanvill*’s original writs and cited the treatise on the powers of the ‘Chief Justice of England’.⁶⁸² Thomas Smith in his *De Republica Anglorum* completed in 1565 and first published in 1583, only referred specifically to ‘Briton’, possibly meaning *Bracton*, but included many references to ‘the elder bookes of our lawes of the Realme’.⁶⁸³ It is clear that, like some of his political contemporaries and like Fortescue before him, Smith was very keen to see the old common law reflected in the contemporary situation and vice versa. He therefore gave trial by battle, alongside the judgement of parliament and the grand assize, as one of the three manners in which absolute judgement is given in England, acknowledging that ‘this is at present not much used’ but not abrogated... and ‘the maner of it is thus described in Briton...’.⁶⁸⁴ This position was taken to extremes by the treatise’s great

⁶⁸⁰ Ibid, p. 48, and for similar sentiments, see also pp. 17 or 91. Of course, as discussed in chapter 1, although *Glanvill*’s prologue includes this maxim, it is immediately glossed in a distinctly un-Roman and un-absolutist manner, but Fortescue’s statement is still suspiciously bald, given that the phrase is in *Glanvill* and from there also makes its way into *Bracton*, perhaps giving the impression that his non-citation of the treatise is intentional.

⁶⁸¹ J. Cowell, *The Interpreter* (Cambridge, 1607; reprinted Amsterdam, 1970) under ‘GI’.

⁶⁸² W. Lambarde, *Eirenarcha or the Justices of the Peace* (reprinted Amsterdam, 1970), p. 3.

⁶⁸³ *De Republica Anglorum. Sir Thomas Smith*, ed. M. Dewar (Cambridge, 1982), ii, 22, p. 109.

⁶⁸⁴ Ibid, ii, 7, p. 89.

publicist Sir Edward Coke, who liberally acknowledged his debt to *Glanvill* in terms of the highest encomium in the Preface to his Eighth Report and made widespread but unhistorical use of it as an authority in his *Institutes*.⁶⁸⁵ Coke is known to have owned copies of both the 1554 and 1604 printed editions of *Glanvill*,⁶⁸⁶ and wherever possible he cited the treatise alongside other ‘old’ authorities to show the existing and fundamental common law. He was fond of such metaphors as: ‘Now as out of the old fields must come the new corne, so our old books do excellently expound, and expresse this matter, as the Law is holden at this day, therefore Glanvill saith...’.⁶⁸⁷ In general, however, such citations were all notably uncontroversial and ranged from academic discussions of homage to the familiar question of the nature of treason. Coke also cited the treatise repeatedly on old legal vocabulary and this, together with the printing and dissemination of *Glanvill* and other texts of the early common law, arguably paved the way for the emergence of a genre of historico-philological works on the interpretation of obscure legal terms in which the treatise was often referenced in a limited fashion.⁶⁸⁸ Coke only occasionally made modern updates to the old common law apparent and only when absolutely compelled to do so, as in conceding that a widow no longer needs her lord’s consent to remarry as was ‘used of ancient time’. Fully accepting Glanvill’s authorship of the treatise which bore his name and in token of thankfulness and in honour of ‘that worthy Judge whom I cite many times in these Reports’, Coke published some

⁶⁸⁵ *The Selected Writings of Sir Edward Coke*, ed. S. Sheppard (3 vols.; Indianapolis, 2003), i, p. 253. Also see *ibid* (Reports), pp. 61, 62, 76, 175, 252 and 337-8 and vol. iii (Institutes), pp. 691, 796-7, 801, 810, 813, 829, 847 and 959.

⁶⁸⁶ W.O. Hassall, *A Catalogue of the Library of Sir Edward Coke* (New Haven, 1950), no. 379.

⁶⁸⁷ *Ibid*, iii, p. 801.

⁶⁸⁸ See, for example, T. Blount, *Nomo-lexikon, A Law Dictionary* (London, 1670), who cited *Glanvill* for example on the meaning of justiciar, common pleas and maritagium; E. Leigh, *A Philologicall Commentary, or An Illustration of the most obvious and useful words in the law with their distinctions and divers acceptations* (London, 1658); Sir H. Spelman, *Of the Law-terms* (London, 1684) or Cowell, *The Interpreter*, all of which reference the treatise for the exposition of old legal vocabulary.

biographical detail on Ranulph de Glanvill from an unnamed manuscript in his possession.⁶⁸⁹ Following Coke's publicization of it, the treatise was also often drawn into specific historical debates, such as the particularly extended and vitriolic disagreement between legally-trained antiquaries and manuscript collectors Sir Thomas Mainwaring (1623–1689) and Sir Peter Leicester (1614–1678) concerning the legitimacy of their common remote ancestrees, Amicia, daughter of Hugh Cyveliok, earl of Chester.⁶⁹⁰

A more historical and detached understanding of the treatise and the early common law only first became apparent in the seventeenth century works of Selden and Hale who neither needed to superimpose the present anachronistically back onto the remote past nor treated the past merely as a reference for the legal arguments or political polemics of the present. Instead, we may see an altogether more genuine engagement with the treatise, relocated in its own historical context, as part of a coherent historical approach to the common law.⁶⁹¹ Selden specifically commended Henry II for: 'putting forth that Primrose of English Laws, under the name of Glanvil; letting all men know, that thenceforth England would no more veil itself in an unknown Law, but explain itself unto the World to be a regular Government'.⁶⁹² Indeed, he was the first to raise the question of

⁶⁸⁹ *The Selected Writings of Sir Edward Coke*, i, p. 253.

⁶⁹⁰ See Sir P. Leicester, *Historical Antiquities*, i (London, 1673), pp. 134 and 136 and Sir T. Mainwaring, *A Defence of Amicia, Daughter of Hugh Cyveliok, Earl of Chester* (London, 1673), pp. 11, 30, 32, 35, 36-7 and 40.

⁶⁹¹ For discussion, see Brand, *MCL* (London, 1992), pp. 78-9.

⁶⁹² N. Bacon (ed.), *An Historical and Political Discourse on the Laws and Government of England from the Notes of John Selden* (London, 1689), p. 105. For other examples of Selden's extended use of and references to the treatise, given both marginally and in the text, see for example pp. 119, 120, 122-7 and 160-1.

Ranulph de Glanvill not necessarily having written the treatise which bears his name.⁶⁹³

As mentioned in chapter 1, Selden stated that:

some of the best and ancientest copies [of the treatise] having the name of E. de N. which I have heard from diligent searchers in this kind of Learning affirmed to have been sometimes E. de Narbrough, and not R. de Glanvilla, it hath thought to be another's work.⁶⁹⁴

Hale, too, emphasized the historical role of Henry II and his reign in the creation of the common law as it appears in the treatise.⁶⁹⁵ Hale reiterated doubt as to Glanvill's authorship in his *History of the Common Law*, published posthumously in 1713, and again sought to locate the treatise in its historical context:

the Tractate of Glanville, which tho' perhaps it was not written by that Ranulphus de Glanvilla, who was Justitiarius Angliae under Hen. 2, yet it seems to be wholly written at that Time; and by that Book, tho' many Parts thereof are at this Day antiquated and altered, and in that long Course of Time, which has elapsed since that King's Reign, much enlarged, reformed, and amended; yet by comparing it with those Laws of the Confessor and Conqueror, yea, and the Laws of his Grandfather King Hen. I which he confirmed; it will easily appear, that the Rule and Order, as well as the Administration of the Law, was greatly improved beyond what it was formerly..., if compared with Glanville's Tractate of our Laws.⁶⁹⁶

Thereafter, references to the treatise in legal literature are mixed. Blackstone praised it in 1765-9, citing 'authors to whom great veneration and respect is paid by students of the common law. Such are Glanvil and Bracton, Britton and Fleta, Littleton and Fitzherbert,

⁶⁹³ *Iohannis Seldeni. Ad Fletam Dissertatio*, (ed. and trans.) D. Ogg, p. 5.

⁶⁹⁴ *Joannis Seldeni jurisconsulti Opera Omnia*, (ed.) D. Wilkins (London, 1726), p. 1669. It is unclear which manuscript Selden is referring to here, and John Beames noted as much as early as 1812 (*A Translation of Glanville*, p. xvii). In fact, his 'E de N' was probably a mis-reading (see chapter 1).

⁶⁹⁵ *Sir Matthew Hale. The History of the Common Law of England*, (ed.) C.M. Gray (Chicago, 1971). See, for example, chapter iv, p. 39: 'the common law, as it is now taken, is otherwise than it is in that particular part, or point, in the time of Henry II when Glanville wrote...; - yet it is not possible to assign the certain Time when the Change began'. Like Selden, he cited the treatise extensively and accurately, as for example at pp. 147, 157, 168 or 189. See too, M. Hale, *The History of the Pleas of the Crown*, (ed.) S. Emlyn and G. Wilson (2 vols.; London, 1800), i, p. 76.

⁶⁹⁶ M. Hale, *The History of the Common Law of England* (2nd edn.; London, 1716), p. 138.

with some others of ancient date, whose treatises are cited as authority'.⁶⁹⁷ However Reeves, writing in the 1780s, stated rather dismissively that: 'if Glanville confines himself to a part only of our law, he treats that part with such conciseness, and sometimes in so desultory a way, that his book is to be looked upon rather as a compendium, than a finished tract'.⁶⁹⁸

Glanvill in Colonial America

It is also interesting as an epilogue to this study to consider the role of the treatise and the early English common law in colonial and revolutionary America. Early American lawyers were initially almost completely dependent on printed law books imported from England, and even this scanty supply was severely depleted at the time of the Revolution by the flight of Tory lawyers.⁶⁹⁹ As a partial consequence of this, they seem to have particularly relied upon editions of the first treatises of the common law both because of the scarcity and difficulty of procuring more modern books and law reports,⁷⁰⁰ and perhaps also because of the embryonic state of the law in America:

⁶⁹⁷ W. Blackstone, *Commentaries on the Laws of England. A Facsimile of the First Edition of 1765-1769* (Chicago, 1979), i, p. 72. See also vol. iv, p. 414.

⁶⁹⁸ Reeves, *History of the English Law*, i, p. 222.

⁶⁹⁹ C. Warren, *A History of the American Bar* (Cambridge, 1912), p. 163. In the early eighteenth century a significant number of American lawyers had been educated at the Inns of Court and this number reached a peak in the run-up to the Revolution. Levy cites the statistic that c. 60 lawyers had been educated at the Inns before 1760 and that triple that number had been by 1776: L.W. Levy, *Origins of the Fifth Amendment* (New York, 1968), p. 369. Such training can only have made fledgling 'American' law all the more highly imitative of English law.

⁷⁰⁰ See, for example, B. Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Massachusetts, 1992), p. 30. While it is difficult to obtain an accurate picture of ownership of copies of the treatise, we know that, for example, Colonel William Byrd, lawyer, soldier and politician, had a copy of the treatise in his library in 1744: W.H. Bryson, *A Census of Law Books in Colonial Virginia* (Charlottesville, Virginia, 1979), p. 51. After the burning of its library in a fire in 1764, the Harvard College library consisted for some years of the 7 volumes presented by Thomas Hollis, of which a 1604 printed *Glanvill* was one. The others were: Bacon's *Historical Discourse* (1647); Burns' *Ecclesiastical Law* (1763);

Partly because of the undeveloped state of the law of business and personal relations, a student spent most of his time on the subjects of real property and pleadings as found in the rigorous pages of Coke on Littleton, and often in the still more refractory volumes of *Bracton*, *Britton*, *Fleta* and *Glanville*.⁷⁰¹

If they were in reasonable supply in colonial America relative to other legal works, this reinforces the view that the dissemination of early printed *Glanvills* had been fairly widespread. Thus John Adams lamented: 'I was desirous of seeking the Law as well as I could in its fountains and I obtained as much Knowledge as I could of Bracton, Britton, Fleta and Glanville, but I suffered very much for Want of Books'.⁷⁰² Just like in the English Civil War in the previous century, the flourishing pamphlet literature of the American Revolution favoured 'fundamental law' as the best bulwark against perceived injustice, and the colonists consciously chose to associate themselves with the tradition of the English common law against unpopular parliamentary legislation. Both *Glanvill* and *Bracton* were cited to claim that the Stamp Act and 'Intolerable Acts' were void because they contravened the common law, which was higher than any statute.⁷⁰³ There was a conscious affirmation of Coke and his view of the transcendental quality of the common

Carpenter, D.P., *Glossarium etc* (1766); *Codex Theodosianus*; Horne's *Mirror* (1642) and Prynne's *Sovereign Power of Parliaments* (1643). (Warren, *A History of the American Bar*, p. 164).

⁷⁰¹ Ibid, p. 173. Coke seems to have had a tremendous influence in the Colonies and we must infer that he popularized *Glanvill* there in the same way that he did at home (see, for example, E. Simien Jr., 'It is a Constitution we are Expounding', *Hastings Constitutional Law Quarterly*, 18 (1990), 112).

⁷⁰² L.H. Butterfield (ed.), *Diary and Autobiography of John Adams*, iii (Cambridge, Massachusetts, 1961), p. 274. See also Jefferson's learned citation of almost every early common law source other than *Glanvill*, including amongst others, *Bracton*, *Britton*, *Fleta*, *the Mirror of Justices*, *Stamford* and Coke (M.D. Peterson (ed.), *Thomas Jefferson. Writings* (New York, 1984), pp. 350-64). Jefferson had been taught by one of the most prominent colonial lawyers, George Wythe, b. 1726, admitted to Bar, 1756, made inaugural Professor of Law in the College of William and Mary, 1780 and sole chancellor of the Court of Equity in 1788, who is known to have been 'well read in *Glanvill*' as well as *Bracton* and to have 'taken a delight in the Year Books' (H.D. Hazeltine, 'Law Schools and Legal Practitioners in the United States of America', *Law Quarterly Review*, 33 (1917), 328 and Warren, *A History of the American Bar*, p. 46). Wythe also instructed Marshall, Madison and Monroe in the law.

⁷⁰³ C.F. Mullett, 'Medieval English Law and the American Revolution', *Virginia Law Review* (1934), 524, although he does not cite his sources any more specifically.

law by dint of its innate ‘artificial rationality’ and great antiquity.⁷⁰⁴ It is perhaps unsurprising that the views of the generation who framed the Constitution could at times be even less historical than Coke’s and Jefferson was therefore able to argue that the American constitutional system restored to mankind the lost polity of Anglo-Saxon England.⁷⁰⁵ In general, however, as with its role in seventeenth century England, *Glanvill* was of less practical political use than *Bracton* in such cases, and the later treatise was consequently cited much more often in American courts and legal literature.⁷⁰⁶

Conclusion

The importance of the treatise’s first printing cannot be overstated. It was undoubtedly at this point that the text’s status as legal ‘classic’ was first publicly cemented. Before that time, its citation was rare and the cessation of the production of manuscript copies suggests that its use as anything other than historical and/or legal curiosity, and then only amongst the best informed of lawyers, was extremely limited. Thereafter its popularity was assured and its citation in cases as well as legal and other literature increased exponentially. Ironically, *Glanvill* was cited with ever-increasing frequency in court over time as the law it contained became ever more clearly obsolete. The treatise’s application – however tendentious – to the political polemics of the sixteenth and seventeenth centuries served to fan the flames of its popularity. However, almost all of this

⁷⁰⁴ See E.S. Corwin, ‘The “Higher Law” Background of American Constitutional Law’ i and ii, *Harvard Law Review*, xlii (1928-9), 170.

⁷⁰⁵ *Ibid*, n. 66.

⁷⁰⁶ See, for example, C.F. Mullett, *Fundamental Law and the American Revolution 1760-1776* (New York, 1933), p. 33.

engagement with the treatise was fundamentally limited. *Glanvill* tended to be cited in uncontroversial circumstances and this was increasingly the case over time.

Over the years of its use and citation, ongoing questions were raised about the treatise's status as authority. If there was serious disagreement in a case in which *Glanvill* had been cited, there very often followed a denigration of its significance as part of the living common law. Thus when the treatise had been cited in the state trial of Edward, earl of Clarendon in 1663-7 on the nature of treason, Lord Maynard responded definitively:

If you go to treason at common law before 25 Edward 3, you fly out of sight... nor were those authors ever reputed of authority. It is true they are sometimes quoted for ornament, but not argument, and not one case in one hundred of *Glanvil* is law... By writs and oratory that may be made treason which is not.⁷⁰⁷

We may infer that while citation of the treatise was deemed to be useful in broadly uncontroversial circumstances, its authority was not enough to go without challenge in more contentious cases. The paradox of its simultaneous citation and repudiation is neatly encapsulated by Saunders C.B. who, despite having himself cited the treatise in the Exchequer Chamber debate in *Stowel v. Lord Zouch* in 1565 in which much of the general discussion had been referenced to the old common law, went on to dismiss *Glanvill* 'not as an author in the law, for he said that Bracton and Glanvil were not authors in our law, but, he said, he cited him as an ornament to discourse where he agrees with the law'.⁷⁰⁸ Catline C.J. agreed that he 'did not cite him as an author in our law, but for consonancy and order where he agrees with better authorities'.⁷⁰⁹ We may infer that

⁷⁰⁷ 9, *ST* 345.

⁷⁰⁸ 1, *Plowden*, 357; 75, *ER*, 542.

⁷⁰⁹ 1, *Plowden*, 358; 75, *ER*, 544. Saunders' and Catline's thoughts were echoed in 1794 in *The King v. Berchet and Others* (89, *ER*, 488).

the treatise was generally used and deemed useful in court, but only up to a certain point, and only on the terms, and at the whim, of the present.

Even Coke, the treatise's great apologist, effectively summarised the situation in his report of Paine's Case (1587): 'it is well observed that Glanvil, Bracton, Britton and Fleta, may be vouched for antiquity and ornament in cases where they concur with the later authority of law and do not impugn the common experience and allowance in judicial proceedings at this day'.⁷¹⁰ Paradoxically, whilst at once proclaiming the 'inflexible rigour' of the immutable and unchanging common law, there seems to have been a tacit, but at times very deliberate, agreement to treat *Glanvill* and other early sources of the law much more flexibly.⁷¹¹ The treatise was cited, and talked up as authority, when it suited an argument but its status denigrated when it did not. It seems that after its printing the treatise was generally read extremely selectively for snippets of law or legal philosophy, but seldom engaged with significantly or as a whole. Instead, *Glanvill* and the law and admittedly limited legal philosophy it contains were almost invariably subordinated to contemporary political or legal argument or, at best, merely represented as fairly insignificant flourishes of erudition. What is clear is that the original author of the treatise would have been mystified by the application of his text – effectively intended as a scheme of royal justice – to such varied political and legal circumstances. Much of the more political use of the text can only be seen as naïve or, at worst, disingenuous. The author of *Glanvill*, although he stressed that the 'law' could still be binding even if un-written, was ultimately happy in the same sentence to stress

⁷¹⁰ 77, *ER*, 526.

⁷¹¹ W. Lambarde, *Archeion*, p. 49.

quod principi placet, legis habet vigorem. Nowhere in the treatise did he proclaim that the law is either above the prince or immutable.

However, the exception to prove the rule of such limited or pernicious early treatment of the treatise was the activities of the short-lived Elizabethan Society of Antiquaries which arguably made the first steps towards the detached academic study of the text in its historical context. These first moves towards legal history were taken up by later Stuart scholars such as Selden and Hale and, although the utilitarian and legally insignificant courtroom citation of the treatise described above continued after this point, from this time onwards we may see genuine historical engagement with the common law and in particular with *Glanvill* as its first treatise.

CONCLUSION

This study has enabled a number of important conclusions that reflect on the nature of the treatise itself and on the changing function and use of *Glanvill* as well as the developing common law. Equally, it has highlighted a number of areas that warrant extended future study. Perhaps the most notable of these is the need for a more detailed textual analysis of *Glanvill* and the Scottish treatise for which it was used as the, admittedly unacknowledged, basis. A full textual comparison of the *Regiam Majestatem* and its English exemplar, based upon the manuscripts of both treatises, is necessary, especially given the fact that the *Regiam* has been shown to be far from the unthinking (mis-) appropriation it has sometimes been characterized as. Moreover, the related and intriguing *Liber de Judicibus* warrants detailed consideration in its own right, for its relationship with *Glanvill* and for any light which it may throw on the processes by which *Glanvill*'s twelfth-century English common law made its unheralded way into Scotland. Such study might further illuminate the irony described here of the law in the twelfth-century English treatise seeming to have been surprisingly applicable in early fourteenth-century Scotland. Additionally a detailed comparison of the *Regiam* and *Bracton* might allow for some interesting contrasts and an indication of the divergences in later English and Scottish usage and alteration of *Glanvill*. Further work could also be undertaken based upon the findings of chapter 5 and the history and usage of the treatise after its manuscripts ceased to be copied. Provisional attempts to throw more light on later medieval use of *Glanvill* have been unsuccessful, but there must be more to be said on this subject and there is potential to mine the Year Books as well as more of the early readings at the Inns of Court for further reference to and usage of the treatise. It would

also be valuable to study later owners and users of early printed *Glanvills* more systematically and to assess the types of usage that may be revealed in those volumes and perhaps to compare more precisely how *Glanvill* was used in this period relative to other texts of the early common law.

However, although this study has raised some important and interesting questions, it has nonetheless cast considerable light upon the treatise itself and the ways in which the common law was being read, learned and practised over time. The first conclusion of this thesis must be the fundamental importance of basing study of *Glanvill* upon its manuscripts and that these represent a vital resource of information about the treatise and its later reception and use and themselves warrant further exploration. Working upwards from the manuscripts, considerable light has been thrown upon the nature of the treatise itself. It has been strongly argued that it was an unofficial, extremely practical work in both conception and earliest usage. Unlike most of the thirteenth-century legal literature which followed it, the treatise does not seem to have been the by-product of an oral teaching process, but was instead a textbook, designed to be read. Some clarification on the long-vexing question of the treatise's authorship has been offered and if no definitive authorial candidate can be suggested, this should be seen as further evidence of the text's unofficial and private origins. It has been seen that the treatise's *alpha* and *beta* manuscript traditions are more confused, and characterized by far more textual and structural overlaps, than has traditionally been thought. In explaining and elucidating this, this study has offered the fullest exposition yet of the treatise's development and textual history, illuminating the processes that produced the text as we now know it. On

a simpler level it has also highlighted a number of manuscripts of particular interest, of which more might be made in future studies.

Some of this study's most major conclusions have reflected on the engagement with and usage of *Glanvill* over time. It is clear that the treatise was being widely read right across England from the period of its compilation and that manuscript copies proliferated in the late thirteenth century, a hundred years or so after the treatise had been completed, and continued to be made into the fourteenth century. More importantly, its manuscripts clearly attest not only to the treatise being read, but to a wide-ranging engagement with its text. We may see the text being altered in a number of small ways clearly designed to make it more functional and user-friendly throughout the thirteenth century. The treatise's manuscript volumes themselves correlate with this picture, suggesting a surprisingly degree of cross-referencing of different manuscripts and manuscript traditions with one another over this period, and not only by scribes but by readers and users of the text. There was undoubtedly a clear and continuing desire to compare and to rationalize existing *Glanvill* manuscripts over time and to engage actively with the text. All of this again strongly attests to the role of the treatise as a practical text both written to be, and being, read and used.

It is surprising in this respect that there are not more major or legally significant alterations or updatings of the text. It is clear that there was no overarching or truly substantive revision of the treatise and there seems to have been very little 'official' or classroom engagement with its text at a later date. Richardson's thesis that *Glanvill*

Continued constituted a significant modernized and official ‘version’ of the treatise has been discredited in all respects. Instead, it has been argued that the interest of *Glanvill Continued* lies in its indication of continuing private and unofficial usage of *Glanvill*, but not the continuation of the treatise and in these respects it seems very typical of manuscripts of the treatise in general. There are, however, some notable exceptions to this general trend of small-scale but fairly insignificant engagement with the treatise, including the treatise’s translation into French and its gloss, both of which have been analysed in new detail here. There is also the exceptional version of the treatise known as *Glanvill Revised*, the importance of which as a major attempt to keep the treatise up to date and to edit it at two different points in the thirteenth century has been explored and emphasized. However, although these represent serious efforts to increase the treatise’s functionality and at times to update it, the French translation, the gloss and *Glanvill Revised* all seem to have been – like the original text itself – undertaken in a private and unofficial capacity and not to have reached the general reading public. It is symptomatic that, even if we no longer have to see it as necessarily having been abandoned unfinished in failure, even *Glanvill Revised* does not contain a full version of the treatise. The question has been posed as to why the treatise continued to be copied and engaged with so assiduously but on the whole in such relatively limited fashion.

The same question emerges from a consideration of *Glanvill* within the context of the thirteenth-century legal literature that came after it. It is clear that the treatise played a role, both direct and indirect, in the production of such literature. It is striking that the earlier treatise was not superseded by *Bracton* or indeed by any, or the sum of, the many legal works that followed it, nor was it significantly updated as a result of them. Instead,

Glanvill continued to be copied beside these works and by itself and its manuscripts continue to evidence the small-scale processes of amendment and alteration described above. It has been suggested that the treatise had a brief period of hiatus between its last manuscript copies and its first printing, followed by an Indian summer of heavy use in the sixteenth and seventeenth centuries.

All of this adds up to paint a fairly homogeneous picture: the text clearly still had a role that continued over time. There is, however, a central paradox in the nature of this role. Although the treatise was clearly a practical text – borne out by its own text, the nature of its manuscripts and what the treatise was bound up with as well as what can be gleaned of its usage – and although it clearly continued to be engaged with and used in a variety of practical ways, why was it not more significantly or substantially updated as time passed and how did this not critically impede its usefulness? It has been suggested that the answer to this question is complicated and multi-faceted. It cannot simply be a reflection of the proliferation of other, more-specialised legal literature, given that *Glanvill* continued to play a role. It has instead been suggested that *Glanvill*'s usefulness was not necessarily predicated upon the treatise being kept legally up to the minute, but that it fulfilled a very specific role as a general introduction to the law for litigants, potential litigants and, certainly initially, their attorneys. In these respects and for this audience the treatise continued to have a function that kept it alive. It seems that *Glanvill* gave this audience, and perhaps more specifically an audience that decreased in status and education over time possibly coming increasingly to include a new breed of private legally-minded men of business and administration, something distinct that subsequent

legal literature did not necessarily offer. Its status as a proto-textbook remained, perhaps surprisingly, almost unique and represented what seems to have been an appealing compromise between the learnedness and impracticalities of *Bracton* and the specificity of some of the other thirteenth-century legal literature. Its general scope and elements of the speculative within the strict parameters of concise procedural practicality therefore enabled it to remain useful long after it might have been entirely superseded or rendered merely a historical curiosity. It was not merely its antiquity that rendered *Glanvill* so eminently usable even as late as the sixteenth-seventeenth centuries. Even if the common law itself moved in some respects away from *Glanvill* and the scheme of justice it represented, it is clear that it would be wrong to see the treatise's life as coming to an end either with the dissemination of *Bracton*, or with the production of its last manuscript copies or indeed with the end of the middle ages; instead *Glanvill* lived on long after *Glanvill*.

Appendix 1. List and Schematic Chronology of all Known *Glanvill* Manuscripts

MS	MS Group	MS Title	Approximated Date
<i>A</i>	α	British Library Royal 14 C ii	xiii ⁱⁿ
<i>Ca</i>	α	Cambridge University Library, Additional 3584	xiii ⁱⁿ
<i>Co</i>	α	Corpus Christi College, Cambridge, 70	xiv ¹
<i>Col</i>	α	Colchester Public Library, Harsnett K a 13	xiii ¹
<i>E</i>	α	British Library Additional 35179	xiii ²
<i>G</i>	α	British Library Cotton Claudius D ii	xiv ¹
<i>Hl</i>	α	Harvard Law School 180	xiii ²
<i>I</i>	α	British Library Harleian 1119	xiii ^{med}
<i>J</i>	α	British Library Lansdowne 467	xiv ¹
<i>K</i>	α	British Library Royal App. 6	xiii ^{med}
<i>L</i>	α	Lambeth Palace Library 429	xiii ¹
<i>Lan</i>	α	British Library Lansdowne 564	xiii ²
<i>Ln</i>	α	Lincoln's Inn Library, Misc. 3	xiii ⁱⁿ
<i>M</i>	α	Cambridge University Library Ee 1.1	xiii ²
<i>Nf</i>	α	Alnwick, Duke of Northumberland, 445, ff.1-48	xiii ²
<i>O</i>	α	Cambridge University Library Kk 5.33	xiii ¹
<i>Or</i>	α	Oriel College, Oxford, 46	xiv ¹
<i>P</i>	α	Cambridge University Library Mm 1.27	xiii ²
<i>Q</i>	α	Cambridge University Library Ll 1.16	xiv ¹
<i>S</i>	α	Gonville and Caius College, Cambridge, 205/111	xiii ^{med}
<i>X</i>	α	Bodleian Library, Oxford, Rawlinson G 109	xiii ¹
<i>Z</i>	α	Balliol College, Oxford, 350	xiii ⁱⁿ
<i>D</i>	hybrid	British Library Additional 14252	xiii ¹
<i>Ab</i>	β	National Library of Wales, Peniarth 390C	xiii ²
<i>Ab2</i>	β	National Library of Wales, Llanstephan 176	xiii ²
<i>B</i>	β	British Library Additional 24066	xiii ⁱⁿ
<i>Br</i>	β	British Library Additional 44842	xiii ^{med}
<i>Be</i>	β	H.M. Register House, Edinburgh, Berne MS	xiii ²
<i>C</i>	β	British Library Additional 25005	xiii ^{med}
<i>F</i>	β	British Library Harleian 746	xiii ^{ex}
<i>H</i>	β	British Library Harleian 323	xiv ⁱⁿ
<i>Ht</i>	β	Harry S. Truman Library 64050	xiii ²
<i>Ls</i>	β	London, The Law Society's Library	xiii ⁱⁿ
<i>N</i>	β	Cambridge University Library Ii 6.13	xiii ²
<i>No</i>	β	Alnwick, Duke of Northumberland, 445 ff.62-9	xiv ¹
<i>R</i>	β	Gonville and Caius College, Cambridge, 130/70	xiii ²
<i>T</i>	β	Bodleian Library, Oxford, Bodley 595	xiii ²
<i>V</i>	β	Bodleian Library, Oxford, Bodley 564	xiii ¹

<i>W</i>	β	Bodleian Library, Oxford, Douce 137	xiii ^{med}
<i>Wr</i>	β	Worcester Cathedral Library F. 87	xiii ²
<i>Y</i>	β	Bodleian Library, Oxford, Rawlinson C 775	xiii ²

Dates have been ascribed by reference to printed manuscript catalogues, where possible, and by personal study of each of the volumes.

Summary

Late twelfth century/c.1200:	6	(4 <i>alpha</i> ; 2 <i>beta</i>)
Early thirteenth century:	5	(4 <i>alpha</i> ; 1 <i>beta</i>)
Mid thirteenth century:	7	(3 <i>alpha</i> ; 4 <i>beta</i>)
Late thirteenth century:	16	(6 <i>alpha</i> ; 10 <i>beta</i>)
Fourteenth century:	7	(5 <i>alpha</i> ; 2 <i>beta</i>)

1b. Manuscript Dates More Precisely and Organised by Manuscript Tradition

MS	MS Group	Date
<i>A</i>	α	c. 1200
<i>Ca</i>	α	c. 1200
<i>Co</i>	α	1313 - 14
<i>Col</i>	α	1200 - 1225
<i>E</i>	α	1250 - 1275
<i>G</i>	α	c. 1321
<i>Hl</i>	α	1272 - 1307
<i>I</i>	α	c. 1250
<i>J</i>	α	1300 - 1325
<i>K</i>	α	c. 1250
<i>L</i>	α	1200 - 1225
<i>Lan</i>	α	c. 1275
<i>Ln</i>	α	c. 1200
<i>M</i>	α	1280s
<i>Nf</i>	α	1250 - 75
<i>O</i>	α	1225 - 50
<i>Or</i>	α	1300 - 25
<i>P</i>	α	c. 1283
<i>Q</i>	α	1300 - 1325
<i>S</i>	α	1250/60
<i>X</i>	α	c. 1210
<i>Z</i>	α	c. 1200
<i>D</i>	hybrid	1212
<i>Ab</i>	β	1250 - 75
<i>Ab2</i>	β	1250 - 1300
<i>B</i>	β	c.1200
<i>Br</i>	β	c. 1250
<i>Be</i>	β	c. 1272
<i>C</i>	β	c. 1250
<i>F</i>	β	1275-1325
<i>H</i>	β	c. 1300
<i>Ht</i>	β	1275 - 1300
<i>Ls</i>	β	c. 1200
<i>N</i>	β	1250 - 75
<i>No</i>	β	1300 - 25

<i>R</i>	β	1275 - 1300
<i>T</i>	β	1250 - 1300
<i>V</i>	β	1200 - 1250
<i>W</i>	β	c. 1250/60
<i>Wr</i>	β	1275 - 1300
<i>Y</i>	β	1250 - 1300

Appendix 2. Average Manuscript Dimensions

MS	MS Group	Folio Length (mm)	Folio Width (mm)
<i>A</i>	α	334	241
<i>Ca</i>	α	224	160
<i>Co</i>	α	293	195
<i>Col</i>	α	160	110
<i>E</i>	α	232	170
<i>G</i>	α	335	313
<i>Hl</i>	α	29600	184
<i>I</i>	α	274	192
<i>J</i>	α	277	196
<i>K</i>	α	220	169
<i>L</i>	α	205	137
<i>Lan</i>	α	199	141
<i>Ln</i>	α	182	135
<i>M</i>	α	290	195
<i>Nf</i>	α	215	146
<i>O</i>	α	249	178
<i>Or</i>	α	347	250
<i>P</i>	α	212	137
<i>Q</i>	α	210	144
<i>S</i>	α	169	121
<i>X</i>	α	170	104
<i>Z</i>	α	280	176
<i>D</i>	hybrid	214	156
<i>Ab</i>	β	237	165
<i>Ab2</i>	β	191	142
<i>B</i>	β	182	131
<i>Br</i>	β	151	104
<i>Be</i>	β	215	140
<i>C</i>	β	192	138
<i>F</i>	β	256	160
<i>H</i>	β	253	181
<i>Ht</i>	β	260	156
<i>Ls</i>	β	153	112
<i>N</i>	β	167	123

<i>No</i>	β	215	146
<i>R</i>	β	224	165
<i>T</i>	β	243	181
<i>V</i>	β	251	176
<i>W</i>	β	234	170
<i>Wr</i>	β	346	210
<i>Y</i>	β	179	120
TOTAL AVERAGE		231	162
ALPHA AVERAGE		242	172
BETA AVERAGE		219	151

Appendix 3. A Simplified list of *Glanvill* Manuscript Contents by Date

MS	MS Group	Average Date	(Opens with <i>Glanvill</i>)	<i>Glanvill</i> Only	Anglo-Saxon Laws	LEC	LHP	Register of writs	Acc/EM	CL	Bracton	Statutes	C13th LL	Law Reports
<i>A</i>	α	1200				*								
<i>B</i>	β	1200	*			*						*		
<i>Ca</i>	α	1200						**					*	
<i>Ln</i>	α	1200		*										
<i>Ls</i>	β	1200	*			*							*	
<i>Z</i>	α	1200												
<i>X</i>	α	1210												
<i>D</i>	hybrid	1212	*					*				*	*	
<i>L</i>	α	1212										*	*	
<i>Col</i>	α	1215												
<i>V</i>	β	1225			*									
<i>O</i>	α	1237	*			*		*				*		
<i>Br</i>	β	1250	*					*				*	*	
<i>C</i>	β	1250						*				*		
<i>I</i>	α	1250		*										
<i>K</i>	α	1250	*											
<i>S</i>	α	1255						*	*			*	*	
<i>W</i>	β	1255				*		*	*			*	*	
<i>Ab</i>	β	1262			*			**						
<i>E</i>	α	1262			*	*		**	*			*	*	

Appendix 4. *Glanvill* Manuscript Contents Organised by Manuscript Group

MS	MS Group	Average Date	(Opens with <i>Glanvill</i>)	<i>Glanvill</i> Only	Anglo-Saxon Laws	LEC	LHP	Register of writs	Acc/EM	CL	Bracton	Statutes	C13th LL
<i>A</i>	α	1200				*							
<i>Ca</i>	α	1200						**					*
<i>Ln</i>	α	1200		*									*
<i>Z</i>	α	1200											
<i>X</i>	α	1210						*				*	
<i>L</i>	α	1212										*	
<i>Col</i>	α	1215											
<i>O</i>	α	1237	*			*		*				*	
<i>I</i>	α	1250		*									
<i>K</i>	α	1250	*										
<i>S</i>	α	1255						*	*			*	*
<i>E</i>	α	1262				*		**				*	*
<i>Lan</i>	α	1275						**				*	*
<i>P</i>	α	1283											
<i>Hl</i>	α	1289		*									
<i>Or</i>	α	1312				*	*	*				*	*
<i>Co</i>	α	1313				*	*	*				*	*
<i>G</i>	α	1321				*	*	*				*	*
<i>Nf</i>	α (Fr)	1262	*			*		*				*	*
<i>M</i>	α (Fr)	1280				* (Fr)		*	***		* (ext)	*	*
<i>J</i>	α (Fr)	1312						*			* (ext)	*	*
<i>Q</i>	α (Fr)	1312										*	
<i>B</i>	β	1200	*			*						*	
<i>Ls</i>	β	1200	*			*						*	
<i>V</i>	β	1225		*									
<i>Br</i>	β	1250	*					*				*	

Appendix 5. Breakdown of Gloss in All Glossed Manuscripts

MS	Simple numbered cross-references	Numbered cross-references with explanatory notes	Notes without numbered references	Names	Notes of the 'obiectio'/'solutio' variety	Sub-headings	Other	Total number of references in MS
<i>B</i>	152	51	5	4	8	4	10	234
<i>Be</i>	7	1	3					11
<i>E (α)</i>	87	40	9	3	3			142
<i>F</i>	4							4
<i>Ls</i>	142	68	8	4	6	1		229
<i>R</i>	89	32	12	3	4	2		142
<i>T</i>	106	44	13	3	4		2	172
<i>V</i>	100	31	14	3	1			149
<i>Wr</i>	127	63	8	4	5			207

5b. Book-by-Book Breakdown of Glossed Manuscripts

MS	Gloss in Book i	Book ii	Book iii	Book iv	Book v	Book vi	Book vii	Book viii	Book ix	Book x	Book xi	Book xii	Book xiii	Book xiv
<i>B</i>	31	8	6	12	8	12	43	3	15	14	3	16	39	24
<i>Be</i>	0	0	0	0	0	2	4	0	0	0	0	0	2	3
<i>E (α)</i>	27	7	0	9	7	9	20	2	8	12	0	9	18	14
<i>F</i>	4	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Ls</i>	30	8	6	12	8	12	41	2	15	14	3	16	38	24
<i>R</i>	29	7	0	8	5	7	26	2	10	14	1	9	15	9
<i>T</i>	34	7	0	11	8	10	26	3	10	13	0	12	21	17
<i>V</i>	31	8	0	11	4	7	22	2	10	12	1	10	17	14
<i>Wr</i>	25	7	6	12	8	10	40	2	14	13	3	14	33	20
Total per book	211	52	18	75	48	69	222	16	82	92	11	86	183	125

Appendix 6. Early Annotations on MS Z and their Location in the Text

Mark	Location
Qti ⁻ o	iv, 2 (chapter list)
Qui ⁸ o	vii, 1 (chapter list)
Q ^o , S ^o	ii, 3
Q ^o , S ^o	ibid
Dubitatio	ii, 20
Q ^o ,	iii, 5
Distinctio	iv, 1
Q ^o , S ^o	iv, 4
Q ^o ,	iv, 9
Q ^o , Sol ⁻ o	iv, 10
Q ^o , Sol ⁻ o	iv, 12
Q ^o , Sol ⁻ o	vi, 10
Questio	vi, 17
Q ^o , S ^o	vii, 1
Dub ⁻ o	vii, 3
Q ^o	vii, 12
Q ^o , S ^o	vii, 16
Q ^o	viii, 8
Q ^o , S ^o	ix, 1
Q ^o , S ^o	ibid
Q ^o , S ^o	x, 5
Q ^o	x, 13
Q ^o	x, 14
Q ^o	xi, 3

Appendix 7. French text from MS Q, i, 1-8 (ff. 100^r-1^r)

Deus maneres de playz encore e nent plus
Lune sy est de crime coe fet asaver quant li
hom ad sour roy tel ret dount forfeit ou membre
ou vye. Lautre manere de play si est de terre de
ceste terre diron nous apres de playz de crime sunt les playz
de coroune cili quy apertynient al roy soulement
cely autre aferient a viscomites des playz qui a viscomites (ou a sa iusti') ou
a hundrez deyvent estre le duyt. Le playz de la corone
si sunt cest de la mort le roy ou de sa trayson ou de sa regne ou
de son ost de tresor trove e pus qui le felonousement qui
freynte de ocision de homme ou de femme de fause chartre ou
faus bref ou de fausyne de oxneie ou dautr' faucyne dunt lem
forfeit vie ou membre. Ly autre sunt playdes e fynes en contes
come de larcyne de medlees quant le playnte vent a viscontes
pur faute de seigneurages de latines de ? si li apelieres
ne met la pays le roy.

De plays de terre ly un sunt plaide e fyne en la cort
Le roy soulement. Ly autre en comtes devant les
Viscontes. En la cort le roy sunt cest. les baronyes
les avouesons des eglises. les franchises prover. les doaires
as dames dunt eles reu nont eu dy fyn fete en la cort le
roy qe priuis nest terme. de homages arere e de relefs a prener
de porprestures. de dettes entre lays hommes. Ces plais sunt
maynt? sires tant qil ensort getes per autre comandement
ayes de ceux de perdunt de saisyne soulement e per reconyssance
sunt fyne ? luis est sil durons a viscontes asertest play
play de droit de frank tenement par le bref le roy la ou
len prove les cors a seigneurages de failler de droit sere si or-
res apres coment le deit prover. play de vendre vies per les bref les...

Quant nuls se clayne al roy ou a ses iustices de son
fie de son frank tenement si la parole est tele quele doigne
ou ke le roy voile quele seit duite en sa cort ...

cil qe pleynt tel bref de somondre son adversaire a la premereyne tel...

Li rois salue le viscontes comandes a celui qil per dreit
e sans delay rendre a cel autre une hide de terre en cele
vile dont il se playnt ke il. le deforce e cil nel fet somones
le per bon somonors qil seit la lendemeyn des octaves
close paskhe devant moy ou devant mes iustices a mostrer puis
quey il nel ad fet e qe tu eyes les somonors e cest bref testmonyne
Ranolf de Glanvill

Ore estest asaver ke len est aserte se sil ly somons est
A la premerayne somonce ne vent ne ne sessoigne sy
nul rene fest. celui que demande vers luy se deit demonstrer devant
iustice e soi profrer a oir que nus ly est. ? le fra atendre
treis iours plus apres a la coure son adversaire e sil le quart
ne venoit e ly sumonor venysant en coure e desissent qil le vissentor
ben somons e coe offrissent aprover a les agard de la court d...
ferroit il per esguard somons per un autre bref a terme
de quynsayne a meyns e ferrer le bref tels quil verrost a
responde e de cel chef play e de la sorsise de la premerayne sour...
le e quart il eust teles treis somonores fetes sil a la
quatre peche ne venist nil ny envoyast len prendreit la
terre en la mayne le roy e mayndrent si xv iours sy
dedans xv iours ne venoyt ly apeleres comporterat le
saisyne per iuggement si qil nec responderont mes fors
par bref le roy de dreit e de son franc tenement. Sil dedens
les xv iours venoyt pour replevyr son tenement per comandement
atendront quatre iours en la court e al quart iour averoit
son iugement e par tout averoit sa saisyne recoveres mes
sil a la terte somonce venuist et reconuist teles les autres
somonces [gap] perdreit la somons sil ne pust des iours
salve per garant del roy e per son bref quil en syre mustrat.
Li rois salue ses iustices coe garantes celui qil fui la e
Per mon comandement cel iour eu mon servyse et...

() interlineated text

... text that is now illegible or excised from the page

Appendix 8. Glanvill Revised MSS S and P: Comparative Contents Table

MS S (not including the MS's short additions in later hands. Contents not copied into P are marked ##)	First Section MS P (Contents copied from S are given in bold. Where items are significantly shortened, compared with S, they are marked **).
Kalendar with Carpenter references etc (pp. 1-12) ##	Contents table (ff. 2 ^r -6 ^v)
Paschal tables (p. 13) ##	Register of writs, temp. Edward I (ff. 7 ^r -28 ^v)
Narracio brevis de recto (pp. 14-15), followed by two writs of Henry III, dated 1260 and 65 (pp. 15-16)	Glanvill (ff. 30 ^r -55 ^v)
Note on the measures of distance (p. 16) ##	Register of writs, 1250s (ff. 55 ^v -64 ^v)
Glanvill (pp. 17-152)	Narracio brevis de recto, followed by writs of Henry II (with only the second of which dated) (f. 64 ^v)
Register of writs, 1250s (pp. 152-200)	Chapters of the eyre and fiscal eyre 1255/6 (ff. 65 ^v -6 ^r)
Sentencia lata, 1252 (pp. 201-2)	Assisa Panis et Cervisie, 1204 (f. 66 ^v)
1225 Magna Carta/Charter of the Forest (pp. 202-21)	Notes/documents on baronial war of 1264-5 (ff. 66 ^v -7 ^v)
Writ of indicavit re Shorwell church, 1261 (p. 221)	Note on will-writing (undated in P) (f. 68 ^r)
Chapters of the eyre and fiscal eyre 1255/6 (pp. 222-9)	Casus Placitorum notes (f. 68 ^r)
Assisa Panis et Cervisie, 1204 (pp. 230-1)	Sentencia lata, 1252 (f. 69 ^r)
Annals with Carpenter references (pp. 231-54) ##	1225 Magna Carta/Charter of the Forest (ff. 69 ^r -72 ^r)
2 tracts on letter/charter writing (pp. 255-301)	Writ of indicavit re Shorwell church, 1261 (f. 72 ^r)
Example formulae of bonds, charters and other instruments, mentioning the bishops of Winchester in the 1240s-60s, and the first of which dated 1258 (pp. 301-40)	Provisions of Merton, 1236 (ff. 72 ^r -3 ^r)
Treatise on accounting – with secular (Shorwell, 1258) and ecclesiastical (Marwell, 1265) exemplars (pp. 341-408)	A writ headed 'Provisio de armata' (f. 73 ^r)
Consuetudines Diversarum Curiarum, c. 1220-43 (pp. 409-29)	Providencia Baronum, 1259 (ff. 73 ^v -74 ^r)
Provisions of Merton, 1236 (pp. 431-8)	Provisions of Henry III, 1259 (ff. 74 ^r -5 ^r)
French Provisions of Westminster (pp. 438-48) ##	Latin Provisions of Westminster, 1259 (ff. 75 ^r -6 ^r)
Providencia Baronum, 1259 (pp. 451-6)	A writ of 1256 addressed to Isabel, Countess of Devon (f. 76 ^r)
Provisions in the name of Henry III, 1259 (pp. 457-60)	Consuetudines Diversarum Curiarum, c. 1220-43 (omitting the first, ecclesiastical, section) (ff. 76 ^v -7 ^r) **
Provisions concerning a judicial circuit visitation, 1260 (pp. 460-1) ##	Introduction to criminal procedure in eyre, including summons dated 1256 (ff. 77 ^r -8 ^r)
Assisa Panis (pp. 462-3)	Example formulae featuring bishops of Winchester (ff. 78 ^r -83 ^r) (with the first wrongly dated 1268)
Note on will-writing, dated 1258 (pp. 467-8)	Treatise on accounting – only including secular exemplar (Shorwell, 1258) (ff. 83 ^v -6 ^r) **
Misc. religious notes (pp. 469-74) ##	
1216 Magna Carta (pp. 474-89) ##	
Latin Provisions of Westminster, 1259 (pp. 490-94)	[There follows in P a long section of statutes, tracts and treatises not taken from S]

Appendix 9. Later Owners of *Glanvill* Manuscripts

MS	Fifteenth-Century and Later Owners of <i>Glanvill</i> Manuscripts
<i>A</i>	Thomas Cranmer, Archbishop of Canterbury (1489-1556), and then antiquaries Henry Fitzalan, twelfth earl of Arundel (1512-80) and John, Lord Lumley (c.1533-1609). Then in the royal library until gifted to the nation by George II
<i>Ca</i>	Thomas Essex (lawyer, admitted to Inner Temple, 1521); in the library of Walter, first lord Aston (d. 1639) and remained in the possession of his family until the death of Sir Frederick A.T. Clifford Constable (d. 1894)
<i>Co</i>	Matthew Parker, Archbishop of Canterbury (1504-75)
<i>Col</i>	(old MS section in a separate early printed volume belonging to Samuel Harsnett, Archbishop of York (bap. 1561, d. 1631))
<i>E</i>	Benjamin Gardiner (?); and antiquaries Edward Umfreville (bap. 1702, d. 1786), Richard Heber (1774-1833) and Sir Thomas Phillipps (1792-1872)
<i>G</i>	Lawyers and antiquaries William Fleetwood (c.1525-94) and Francis Tate (1560-1618) and Robert Cotton (1571-1631), antiquary and politician
<i>Hl</i>	
<i>I</i>	John Anstis, antiquary (1669-1744); Edward Harley, second earl of Oxford, collector and politician (1689-1741)
<i>J</i>	Henry Powle, lawyer, politician and antiquary (bap. 1630, d. 1692); Thomas Hearne, antiquary (bap. 1678, d. 1735); William Petty, first marquess of Lansdowne, prime minister (1737-1805)
<i>K</i>	John, lord Lumley, possibly from Henry Fitzalan, then in the royal library until gifted to the nation by George II
<i>L</i>	'R Thekeston' appears in a C16 hand. Acquired by the Archbishop of Canterbury's library at Lambeth Palace at an unknown date
<i>Lan</i>	William Petty
<i>Ln</i>	William Selwyn, lawyer (d. 1817)
<i>M</i>	Priory of Luffield to 1494; Robert Cotton; Francis Tate; John Moore, bishop of Ely (1646-1714)
<i>Nf</i>	Acquired by the Duke of Northumberland's library at Alnwick Castle at an unknown date
<i>O</i>	John Moore
<i>Or</i>	William Fleetwood; Francis Tate; Robert Cotton
<i>P</i>	Richard Smetheley (lawyer, admitted to Lincoln's Inn in 1506); Francis Tate; John Moore
<i>Q</i>	Thomas Bedell (? d. 1528 in Buckinghamshire); Francis Tate; John Moore
<i>S</i>	William Moore, antiquary (bap. 1590, d. 1659)
<i>X</i>	Walter Vaughan (? Of Llanelli, d. 1683); William Collen (?); antiquaries Richard Graves, (1677-1729) and Thomas Hearne; Richard Rawlinson, collector and bishop (1690-1755)
<i>Z</i>	Dr George Coningesby, antiquary (d. 1766)
<i>D</i>	Jeremiah Milles, antiquary and dean of Exeter (1714-84)
<i>Ab</i>	Robert Vaughan, antiquary and collector (1591/2-1667); William Wynne, antiquary (1801-80)
<i>Ab2</i>	Charles-Geneviève-Louis-Auguste-André Timothée d'Éon de Beaumont, diplomat and famous transvestite (bap. 1728, d. 1810); Sir Thomas Phillipps, antiquary (1792-1872); Sir John Williams, physician (1840-1926)
<i>B</i>	John Lilly (? Music master at Cambridge mid C17)
<i>Br</i>	'Richard Byrd' in an early C16 hand
<i>Be</i>	Jacques Bongars, scholar and diplomatist (1554-c.1612)
<i>C</i>	Samuel Lysons, antiquary (bap. 1763, d. 1819); Francis Palgrave, antiquary and archivist (1788-1861)

F	Edward Harley
H	Edward Harley
Ht	Harry S. Truman, President, USA
Ls	James Dyer, judge and law reporter (1510-82); given to Francis Tate by a George Writhington, lawyer in 1600; John Anstis, and antiquaries Richard Blyke (d. 1775), John Topham (1746-1803) and William Illingworth (bap.1764, d. 1845)
N	John Moore
No	Acquired by the Duke of Northumberland's library at Alnwick Castle at an unknown date
R	William Moore
T	
V	Edward Fleetwood (?)
W	'Mr Waring' of Edwardstone, near Sudbury (?); Francis Douce, antiquary and collector (1757-1834)
Wr	Remained at Worcester Cathedral Library
Y	Lent by a 'Mr Hill, rector of Stanhoe' (Norfolk) to bishop and antiquary Thomas Tanner (1674-1735)

Compiled from notes and references in the manuscripts themselves, printed manuscript catalogues and other sources.

BIBLIOGRAPHY

Manuscript Sources

Glanvill manuscripts:

Alnwick, Duke of Northumberland	445
Balliol College, Oxford	350
Bodleian Library, Oxford	Bodley 564 Bodley 595 Douce 137 Rawlinson C 775 Rawlinson G 109
British Library	Additional 3584 Additional 14252 Additional 24066 Additional 25005 Additional 35179 Additional 44842 Harleian 323 Harleian 746 Harleian 1119 Lansdowne 467 Lansdowne 564 Cotton Claudius D ii Royal App. 6 Royal 14 C ii
Cambridge University Library	Ee 1.1 Ii 6.13 Kk 5.33 Ll 1.16 Mm 1.27
Colchester Public Library	Harsnett K a 13
Corpus Christi College, Cambridge	70
Gonville and Caius College, Cambridge	130/70 205/111
Harry S. Truman Library, Missouri	64050

Harvard Law School Library	180
HM Register House, Edinburgh	Berne
Lambeth Palace Library	429
Lincoln's Inn Library	Misc. 3
London, the Law Society's Library	(un-numbered)
National Library of Wales	Llanstephan 176 Peniarth 390C
Oriel College, Oxford	46
Worcester Cathedral Library	F. 87

Other manuscripts:

Bodleian Library, Oxford	Douce 132
Cambridge University Library	Dd.7.14
Harvard Law School Library	193
Trinity College, Cambridge	O.3.52

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Cairns, J.W., 'Craig, Thomas (1538?–1608)'
Crook, D., 'Raleigh, William of (*d.* 1250)'
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Crouch, D., 'Siward, Sir Richard (*d.* 1248)'
Ford, J.D., 'Dalrymple, James, first Viscount Stair (1619–1695)'
Greening, A., 'Tottell, Richard (*b.* in or before 1528, *d.* 1593)'
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