Land Tenures in Medieval England and the Possessory Assizes

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Abstract: The Possessory Assizes were twelfth-century civil actions created to protect possession of land by English tenant farmers. Most directly, these actions provided additional crown revenue in the form of judicial rents. Less directly, they helped arrest the concentration of wealth and power in the hands of the Church and higher nobility who could potentially threaten the crown. In the twelfth century, English landownership was highly concentrated in the crown, the Church, and the nobility. If wealth and resources became too greatly centralized in any hands other than those of the crown, that could threaten the very stability of government and society. One result of protecting tenant rights against landowners was to promote decentralized wealth accumulation. Although efficient tax collection argues in favor of *greater* wealth concentration, an additional incentive for the crown's support of tenant rights was that free tenants had less ability to resist taxation. Furthermore, though probably not part of the government's intention, enhancing decentralized wealth accumulation was essential for investment, economic progress, and the growth of civil society.

Keywords: property rights, constitutional political economy, state capacity, residual claims, liberal order, civil society.

1. INTRODUCTION

This paper analyzes property rights in England in the twelfth and thirteenth centuries. The foundation for this system of concentrated ownership with dispersed occupancy and strong protections for tenant rights, were the four possessory assizes, *utrum*, *darrien presentment*, *novel disseisin*, and *mort d'ancestor*. During the reign of Stephen (b. 1092/1096?, reigned 1135-1154) a period also known as the Anarchy (Stubbs 1874-1878 I, pp. 350-355, 1887, pp. 22-28) secular courts met only irregularly and canon law courts increasingly settled secular disputes. The possessory assizes were instituted to restore secular jurisdiction over land tenures.

Since monopolistic judicial bureaucracies attempt to expand their resources and authority (Benson 1990, p. 127), the tension between secular common law and ecclesiastical canon law can be understood as a competition for resources. English common law offered special advantages, judicial writs and trial by jury, which canon law ultimately failed to imitate. Writs were already used extensively in common law proceedings in the twelfth century, with modern jury trials emerging over the three centuries following 1066 (Smith 1955, p. 53). Henry II (b. 1133, reigned 1154-1189) further regularized the forms of writs and began

replacing primitive practices like trial by ordeal and combat with jury trials. The four possessory assizes were central to Henry's legal reforms.

Effective institutions are one of the prerequisites for human flourishing and economic growth, as "a strong state is needed to control violence, enforce laws, and provide public services that are critical for a life in which people are empowered to make and pursue their choices" (Acemoglu & Robinson 2019, p. xv). For institutions to contribute to human flourishing, they need to limit the extent elites can exploit state capacity at the expense of the masses (Geloso and Salter 2020, p. 375; Salter and Young 2023, pp. 236-240). Although twelfth-century England was hardly an instance of human flourishing, Henry II's restoration of vibrant and lasting civil institutions after the Anarchy of Stephen was a clear prerequisite. Some of this progress would be lost under Richard I, John, Henry III, and Richard II, but the institutions themselves were more vibrant and lasting.

The rest of this paper is organized as follows: section 2 sketches the historical background from which the possessory assizes emerged; section 3 describes the four assizes in detail; section 4 discusses their practical and constitutional significance; finally, section 5 provides concluding comments.

2. HISTORICAL CONTEXT

After the fall of the Roman Empire, Western Europe's local nobility were subsumed into shareholder states where they continued to govern either in their own right or as vassals of successor kingdoms (Herb 2009; Salter and Hall 2015). These nobles comprised the feudal system where they were both residual claimants and providers of government (Salter 2015). In the absence of any check on the nobility, state legitimacy and the stability of the crown could be threatened (Johnson and Koyama 2017, p. 12).

In England, Henry II became king in 1154 under the terms of a settlement between rebelling nobles and his uncle Stephen, ending the Anarchy of 1138-1153 (Green 1889, pp. 14-15). Henry's reign was equally characterized by recurrent strife, generally instigated by his own family, as well as nearly continuous military operations in France, where Henry governed over half the country as a nominal vassal of the relatively weaker French kings.[1] Henry enacted important constitutional documents including his Coronation Charter (1154), the Constitutions of Clarendon (1164), the Assize of Clarendon (1166), the Inquest of the Sheriffs (1170), and the Assize of Northampton (1176). The term assize means a meeting and can refer to the council which approved a charter, the charter itself, or to the subsequent courts it authorized.[2]

The 1164 Constitutions of Clarendon attempted to restore traditional relationships between competing common and canon law courts (Mulligan 2004, 2005). The Constitutions implement new positive legislation, but always by mandating how new canon-law procedures which had emerged under Stephen were to be restored to the civil courts. Eight articles of the Constitutions limited the Church's jurisdiction over secular property, and three dealt with secular criminal offenses, removing the ecclesiastical privilege of benefit of clergy[3] by limiting Church jurisdiction over these offenses.

The Constitutions attempted to resolve a crisis between Henry and Archbishop of Canterbury Thomas Becket (1119/1120?-1170),[4] Henry's former chancellor (Green 1889, pp. 82-112). Becket renounced the document almost immediately, fleeing to Rome and appealing to Pope Alexander III (c. 1100-1105?/ reigned 1159-1181). Pope Alexander abrogated ten of the Constitutions' sixteen articles in 1166. Becket was martyred shortly after his return to England in 1170 and Henry formally renounced the Constitutions in 1172 before papal legates sent to absolve him of the murder. St. Thomas was canonized in 1173. Nevertheless, except for abolishing clerical immunity, every article of the Constitutions was enforced (Hogue 1966, p. 43; Berman 1983, p. 531; Barlow 1986, p. 273). Henry II's other reform legislation succeeded largely without opposition.

Henry convened the Assize of Clarendon in 1166, which focused almost exclusively on criminal justice, to formulate instructions for judicial visitations throughout England. Traditionally the king presided over these traveling courts, but Henry's frequent absence in France prevented this, and he probably appreciated the substantial income from these judicial circuits (Hollister and Baldwin 1978; Erdman 1997). The

1176 Assize of Northampton further expanded judicial visitations and royal jurisdiction over real property and civil disputes.

3. THE POSSESSORY ASSIZES

The possessory assizes were actions in English courts of assize. These were originally authorized by the Constitutions of Clarendon and the Assize of Northampton. They protected lawful possession of land, as opposed to ownership. Free tenants could possess land, but generally did not own it. At this time virtually all land in England was owned by a small number of nobles, directly by the crown, or by the Church.

Two of the possessory assizes, *darrien presentment* and *utrum*, dealt with Church lands and can be traced to Articles 1 and 9 of the Constitutions of Clarendon (1164), though these two were among the ten abrogated in 1166. They did not become accepted legal actions until the first judicial eyres authorized by the Assize of Clarendon in 1166.

a. DARREIN PRESENTMENT

Darrein presentment ("most recent presentation") implemented Article 1 of the Constitutions of Clarendon governing advowson (Stubbs 1870, p. 138; Henderson 1912, p. 13; Stephenson and Marcham 1937, pp. 73-74). This action enabled a lay landowner to obtain a verdict confirming their right to award an ecclesiastical benefice. Many estates included villages with parish churches and the privilege of awarding the office and income associated with these churches generally fell to the landowner. The Constitutions of Clarendon formally assigned jurisdiction over advowson to secular courts. Beneficiaries of an advowson had to be ordained priests but were not necessarily commoners, often being younger sons of the landowner, but keeping the Church from disrupting possession and administration of these properties helped secure the livelihoods of everyone who lived and worked there, including domestic servants, tenant farmers, and other workers.

The right of advowson was jealously guarded in the Middle Ages. Hume (1778 I, p. 495) relates an extreme penalty imposed by Henry's father Count Geoffrey of Anjou (1113-1151, Count of Anjou, Touraine, and Maine from 1129, Duke of Normandy from 1154) against a tenant religious community which attempted to choose their own leader. Papal abrogation seems to have had little effect. Henry's son John (b. 1166/reigned 1199-1216) was even forced to renounce this privilege in his Charter to the Church (1214) associated with Magna Carta, though the practice continued throughout the Middle Ages.

b. UTRUM

Utrum ("whether," from the first word of the Latin form of writ) was the second of the possessory assizes (Hogue 1966, pp. 161-162). Article 9 of the Constitutions of Clarendon gave lay juries authority to determine the secular or ecclesiastic character of all land tenures (Stubbs 1870, p. 139; Henderson 1912, p. 14; Stephenson and Marcham 1937, p. 75). Article 9 required a local lay jury to testify whether the land in question had been lay or ecclesiastic within living memory. Only if the jurors testified that the land in question had always been a Church tenure or had become one through donation within their memory could jurisdiction pass to a canon-law court.

William the Conqueror (b. circa 1028?/ reigned 1066-1087) had introduced sworn jury inquests from France, using them extensively in compiling the Domesday Survey (1089) providing the basis for taxation in Anglo-Norman England. In the Constitutions of Clarendon, Henry attempted to insert lay juries into various canon-law proceedings, which would have guarded against partiality, and Henry also greatly expanded their use in secular justice. By 1293 a special court, the *assize utrum*, was provided to make these determinations (Cockburn 1972, p. 17).

The *assize utrum* provided the crown significant judicial rents—a new and secure source of income apart from taxes—because it moved whole classes of high-value suits back into the royal courts which had held jurisdiction before the Anarchy. Benson (1990, p. 50) argues that Henry II's principal motivation for expanding both royal jurisdiction and the concept of felony was judicial rent seeking, though ecclesiastic courts competed for judicial rents (Barlow 1986, p. 91). Expanding felony as a legal principle allowed the government to replace traditional Saxon restitution with fines that provided royal revenue. The *assize utrum* also contributed to regularizing trial by jury (Hogue 1966, pp. 40-41, 161), an explicit policy objective of Henry's. Though Pope Alexander III prohibited the practice in 1166, the *assize utrum* was widely and successfully implemented.

The *assize utrum*'s chief significance lay in preserving the feudal system. Landowners frequently granted *frankalmoign* or free alms land to the Church. Alienation of a tenant's possession could deprive the landowner of the income they needed to provide feudal military service. Canon-law courts were widely seen as biased against secular litigants. *Utrum* decisions often allowed gifts to the church to proceed, but reserved at least a part of the land's income to provide the revenue and military service the crown relied on.

Stabilizing land possession and alleviating externalities through voluntary contracts was never an exclusively secular issue, which explains why the first two possessory assizes limited canon law jurisdiction over real property and advowson. Under Edward I (b. 1239/reigned 1272-1307), the statute *Quia emptores* (1290) prohibited subinfeudation, the practice of breaking up an estate among multiple beneficiaries. Subinfeudation dissipated feudal revenues and military service and complicated their administration The mere fact that statute limiting subinfeudation was called for over a century later clearly demonstrates that a cause of action like *utrum* was needed in England by 1164, the time of the Constitutions of Clarendon.

c. NOVEL DISSEISIN

Article 4 of the Assize of Northampton (1176) created the third and fourth possessory assizes which were both secular, *novel disseisin* ("new dispossession" or "recent eviction") and *mort d'ancestor* ("death of ancestor") (Stubbs 1870, p. 151; Stephenson and Marcham 1937, p. 81). *Novel disseisin* provided a remedy to free tenants wrongly evicted from their lands. A local jury would testify who had held the land, for how long, and how recently they had been evicted. The land was restored if the jury granted a verdict for the plaintiff, though they would still have to pay rent. *Novel disseisin* established two important principles:

(a) lawful possession of land, as opposed to ownership, would be protected by a remedy that was unusually rapid for the times—otherwise it would have offered little relief, and
(b) possession of a free tenure would be protected by the king, regardless of the landowner's rank (Pollock and Maitland 1898 I, p. 146).

Requiring landowners to go through the courts to evict their tenants also provided the crown judicial rents. Thus the king became protector of the common people against the nobility while enjoying a new source of income.

d. MORT D'ANCESTOR

Article 4 of the Assize of Northampton (1176) also established the fourth possessory assize, *mort d'ancestor*, protecting possession of land by people who could prove descent from the last lawful occupant (Stubbs 1870, p. 151; Stephenson and Marcham 1937, p. 81). This action essentially provided the same relief as *novel disseisin*, but for heirs rather than dispossessed freeholders. *Novel disseisin* and *mort d'ancestor* were often used against rival claimants within the same family, though they could also protect against predatory landlords and any interlopers they might install.

Though the Constitutions of Clarendon and the Assize of Northampton both presented unprecedented positive legislation, both introduced innovative practices by merging local judicial institutions, which were

Germanic, very ancient, and had emerged spontaneously, with the royal courts. The innovative features suggest elements of a design order. The royal judiciary was also an organically evolved institution but had been imposed by William the Conqueror who imported it a century earlier from France (Ertman 1997, pp. 163-164). This provides a clear example of highly successful positive legislation, and two likely reasons for this success are:

(a) the implementation of innovative practices merged with spontaneously evolved traditional institutions and implemented through them, and
(b) the positive measures aimed at implementing accepted customary procedures rather than imposing new ones.

Once judicial visitations authorized by the Assizes of Clarendon and Northampton had been repeated enough to become customary, they served to guide entrepreneurial expectations about how and when justice would be administered, though they were not designed with that in mind. If the traveling assize courts were intended as a unique enterprise, never to be repeated, the fact that they ultimately came to guide entrepreneurial expectations can only have come about spontaneously and as an outcome of their effectiveness in implementing government policy, as well as improving law and order, tax collection, and enhancing crown finances. The success of a cause of action in generating revenue for the government was only a function of its fulfilling the needs of the parties it enabled to bring suit. Essential features and significance of the four possessory assizes are summarized in table 1.

Table 1: The Possessory Assizes

	Origin	Details	Church or Secular
Darrien Presentment	Constitutions of Clarendon (1164) Article 1; Glanville no. 19; Magna Carta (1215) Article 18, but omitted from its reissues.	The owner who last presented an ecclesiastic benefice associated with land they owned, or their heirs, may sue to preserve that privilege.	Ecclesiastic offices associated with lay tenures—preserved lay supervision of lay tenures with associated ecclesiastic offices and supporting income.
Utrum	Constitutions of Clarendon (1164) Article 9; Glanville no. 24.	When the civil or ecclesiastic character of a land tenure is disputed, civil courts have exclusive jurisdiction and only after a civil court makes this determination can the suit be transferred to a canon law court.	Governs distinction between secular and ecclesiastic land tenures.
Novel Disseisin	Assize of Northampton (1176) Article 4; Glanville no. 33; Magna Carta (1215) Articles 18 & 39.	A tenant or their lawful heirs may sue to recover possession when they have been dispossessed.	Lay tenures—provides occupants protection from eviction.
Mort d'Ancestor	Assize of Northampton (1176) Article 4; Glanville no. 3; Magna Carta (1215) Article 18.	Lawful heirs of a deceased tenant may sue to recover possession when a third party has assumed occupancy.	Lay tenures—enables heirs of lawful tenants to preserve their possession and evict interlopers.

Note: See Stephenson and Marcham (1937): Constitutions of Clarendon pp. 73-76, Assize of Northampton pp. 80-82, Writs from Glanville pp. 82-84, Magna Carta pp. 115-126.

About twenty years after the Constitutions of Clarendon, and ten after the Assize of Northampton, the four possessory assizes were included in the thirty-nine writs described by Glanville (1187-1189?): *mort d'ancestor* no. 3, *darrien presentment* no. 19, *utrum* no. 24, *novel disseisin* no. 33 (Stephenson and Marcham 1937, pp. 82-84), showing these practices had been thoroughly regularized—even in the face of extraordinary papal interference. Introducing new causes of action promulgated positive law in specifying new procedures, but only to restore established custom (Thorne 1933).

4. DISCUSSION

Very few people owned land in medieval England, and the king could confiscate land to punish treason or disloyalty, transferring it to someone else as a reward for service, or keeping it himself. Prior to the Norman conquest, virtually all Anglo-Saxon estates had been allodial, owned outright and subject to voluntary alienation, that is they could be bought and sold. William the Conqueror had confiscated most of this property, and rather than following local Saxon custom in granting his Norman vassals allodial ownership, he imposed French customs on England, making his vassals tenants-in-chief through the process of *enfeoffment*. The king's chief tenants were required to pay tribute for this land and raise armies when called on. These obligations would filter through layers of subordinate nobles and landholders, ultimately resting on the people who occupied the land and produced its income (Pipes 1999, pp. 106-107). Neither land ownership or the feudal obligations that came with it could be sold or alienated.

Prior to 1066, allodial holdings were not transferred frequently, though in principle they could be bought and sold like modern real property. After the conquest, the king could and did reassign ownership from less-favored nobles—usually incidental to treason—to more favored or dependable parties. Any change in ownership might be accompanied by an effort to supplant the original freeholders with the new landlord's relatives, dependents, and followers. The Church was also subject to this incentive, which explains why two of the possessory assizes applied to ecclesiastic tenures and took jurisdiction away from the Church.

Minimizing the turnover of an estate's freeholders helped minimize disruption to the estate's income even if ownership changed hands. Protecting free tenants' long-term possession of land incentivized them to steward and improve the land, investing in capital equipment and infrastructure so they could pass on a more valuable asset to their descendants, even though they did not technically own the land. For example, reclaiming West Norfolk's marshy fenlands made vast tracts available for agriculture while simultaneously delivering efficient irrigation. Better agricultural practices enabled dramatically higher crop yields in Norfolk (Dyer 2009, p. 128).

Demsetz (1967, p. 348) suggests that property rights arise to internalize external costs and benefits. Free tenants could not do much to lessen externalities unless their possession was protected over time—no one would accept the transaction cost of contracting with a party who might be evicted in short order. For example, agreements to limit runoff or grazing, allow neighboring farmers to swap adjacent plots they could cultivate more efficiently, coordinate crop rotation, etc., become more difficult to reach or enforce without tenants holding secure and stable possession. Stabilizing legal possession encouraged freeholders to adopt lower time preference and discount rates, enabling them to better plan for the future and incentivizing them to invest in improving the real property they occupied.

Stronger and more dispersed property rights are a distinctively Western European institution associated with economic growth which ultimately outpaced the rest of the world (Jones 1981; Pipes 1998, 1999; Pomeranz 2000; McCloskey 2006, 2010, 2016). Salter and Young (2023, pp. 1-2, 235) argue that the growth due to better property institutions can take many decades to manifest but persist for centuries. Evidence to support this conclusion includes England's economic growth starting in the twelfth century. This can be seen chiefly through the dramatic population growth from 1.5 million documented in the 1086 Domesday Book to more than 4 million by 1300 (Cantor 1982, p. 18). As the population grew, more land was devoted to agriculture, partly to feed a growing population and partly to produce increasingly valuable export com-

modities like wool (Cantor 1982, p. 19; Bartlett 2000, p. 321).[5] Much of the land reallocated to agriculture between 1100-1300 was created from royal forests which had originally been hunting preserves.

The growing population's food needs were also met partly through draining swamplands and other land improvement projects (Cantor 1982, p. 19). Hundreds of new towns emerged throughout England (Hodgett 2006, p. 57; Pounds 2005, p. 15), providing increased demand for agricultural output and making the rural population increasingly prosperous (Dyer 2009, p. 14). Although agricultural technology appears to have been relatively static from about 1100-1300, the number of watermills constructed for grain or wool production increased from about 6,000 before 1066 to about 10,000 by 1300 (Dyer 2009, p. 131), supplemented with windmills along the coast (Danziger and Gillingham 2003, p. 47). Entrepreneurial landlords, particularly in Norfolk, introduced improved tillage practices, aeration, irrigation, and fertilizers, enabling them to realize dramatically higher yields not attained elsewhere until the 1700s (Dyer 2009, p. 128).

In comparison, France's population is estimated at 7 million in 850 (INSEE 2017) and 13.4 million in 1328 (Russell 1958, p. 106). England's population grew somewhat faster, nearly trebling over a shorter period. Russell's (1972) more conservative appraisal is illustrated in table 2. Although these figures indicate faster 1000-1340 population growth for France and the Low Countries, and for Germany and Scandinavia, the British Isles' growth, including-slower growing Scotland and Ireland, is greater than for any other part of Europe.

Table 2: Population Growth 1000-1340, Various European Countries and Regions

Year	1000	1340	%Δ	Annualized %Δ
Greece and the Balkans	5	6	20%	0.05%
Italy	5	10	100%	0.20%
Spain and Portugal	7	9	29%	0.07%
Total Southern Europe	17	25	47%	0.11%
France and the Low Countries	6	19	217%	0.34%
British Isles	2	5	150%	0.27%
Germany and Scandinavia	4	11.5	188%	0.31%
Total Western and Central Europe	12	35.5	196%	0.32%
Russia	6	8	33%	0.08%
Poland and Lithuania	2	3	50%	0.12%
Hungary	1.5	2	33%	0.08%
Total Eastern Europe	9.5	13	37%	0.09%
Total Europe	38.5	73.5	91%	0.19%
Source: Russell (1972, pp. 25-71)				

England's population growth is even more remarkable considering that William the Conqueror expropriated huge amounts of wealth and resources from his English territories to invest in Normandy (Douglas 1962, pp. 303-304). High medieval France was only about 2/3 the size of modern France. From 1154-1214 under Henry II, Richard I, and John, over half of France, comprising the dutchies of Normandy, Bretagne, and Aquitaine, and the county of Anjou, was governed directly by the English king. It is no exaggeration that the English nobility were as dependent on the English crown as the French crown was subordinate to

its relatively more powerful and independent nobility, first among whom was the English king. Henry II and Richard I spent most of their reigns in France, and England may initially have thrived more through benign neglect under these first two Angevin kings than from their direct administration. Nevertheless, as time passed, later English kings increasingly focused on England and less on their diminishing French territories.

Mitchell (1914, 1951) provides a thorough explanation of medieval taxation in England. Due to the civil war during the reign of Stephen, annual tax revenue fell from £66,000 in 1135 to £22,000 by 1154, but the ruthlessly efficient Henry II was able to exact a truly impressive £180,000 by 1159 (Stubbs 1874-1878 I, pp. 454, 457, Hogue 1966, pp. 37-38). However, tax data are somewhat ambiguous, since in 1189, the last year of Henry's reign, revenues fell to £48,000, though this is generally attributed to Henry's efficiency and frugality rather than any general impoverishment (Stubbs 1874-1878 I, p. 491).

Furthermore, it is abundantly clear that under Henry's more profligate and irresponsible successors—principally John, Henry III, and Richard II—tax revenues continued to rise dramatically (Mitchell 1914, pp. 341-346), strongly suggesting that England's wealth and population were also expanding. The government devised new forms of taxation to extract revenue from diversifying economic activities, e.g. tonnage, poundage, amercement (a tax on wool), carucage, burgage, payage, pontage, etc. Many of these new taxes applied specifically to urban commercial activity which traditional Saxon geld and hidage taxation on agricultural ouput overlooked.

Because medieval property rights were in effect shared communally between noble owners and free tenants, some features of communal property likely resulted in the land being overworked, overgrazed, overhunted, etc. (Demsetz 1967, p. 354). The possessory assizes acted to mitigate these problems by limiting the nobility's ability to infringe on free tenants' property rights and limiting the Church's ability to interfere with the rights of both groups.

Landlord-tenant incentives were largely congruent except with respect to the crown. The crown frequently levied extraordinary taxes, imposing lower investment horizons on both groups, but the nobility could better resist taxation and even threaten the crown when wealth became sufficiently concentrated in their hands. Limiting the nobility's power to exploit their tenants also limited their ability to overexploit their share of state capacity (Geloso and Salter 2020, p. 375; Salter and Young 2023, pp. 236-240), a problem recognized by Johnson and Koyama (2017, p. 12), Acemolglu and Robinson (2019), and others. Over time charitable gifts transferred more secular land to the Church, progressively making secular land more scarce and therefore more valuable (Mulligan 2005). However, this progressive transformation of lay fee into free alms tenures also shifted the burdens of taxation and military service to a diminishing stock of secular land. Nevertheless, the general non-transferability of both secular and Church tenures depressed their value below what it would have been otherwise. Uncertainty regarding free tenants' right to maintain possession would have further depressed the value of these tenures below what would have been dictated by their crop yield, rental income, and supply. The possessory assizes mitigated this problem by removing some uncertainty.

The possessory assizes benefitted the crown directly by generating additional royal revenue. However, they also promoted political stability and contributed to further concentrating power in the crown at the expense of the higher nobility who could potentially overthrow the king, which happened frequently enough anyway.

Efficiency considerations might argue in favor of greater wealth concentration to facilitate better tax collection, however, the free tenants who benefitted were generally less able to avoid taxation than nobles, so public finance may have also benefitted by focusing tax collection on commoners who were less able to avoid it. Medieval taxation is notable for its diversity of approaches to wealth extraction. Concentrated land ownership combined with dispersed occupancy and strong protections for tenant rights implemented through the possessory assizes encouraged decentralized wealth accumulation. This in turn enabled medieval England's economic growth to outpace that of other countries.

5. CONCLUSION

The four possessory assizes, *utrum*, *darrien presentment*, *novel disseisin*, and *mort d'ancestor*, were twelfth-century civil actions protecting tenant possession of agricultural land. Henry II instituted the assizes to restore secular jurisdiction over real property disputes. Church courts had assumed some of this authority during the civil war preceding Henry's accession, and restoring secular jurisdiction channeled judicial rents back to the crown. By giving free tenants a venue to challenge the authority of powerful nobles or the Church, the assizes acted as a check on powerful nobles' ability to threaten royal authority and succession. Directing these cases from nobles' own honor courts ultimately created a uniform national jurisprudence administered by the royal courts and supporting entrepreneurial planning uniformly across England.

After reviewing the colorful historical background which produced the possessory assizes they were defined with special reference to their constitutional significance. Concentrated land ownership contrasted with highly dispersed possession where the assizes protected tenant rights. The assizes strengthened the English monarchy by providing additional income from judicial rents and limiting the competing power of the Church and nobility. They also facilitated tax collection by distributing the burden across society, particularly on commoners who were less able to resist. The assizes were central to Henry II's reform scheme to restore civil institutions after the civil war which preceded his reign. These institutions survived into the twentieth century and still influence Anglo-American jurisprudence.[6]

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NOTES

1 These were Louis VII (b. 1120, reigned 1137-1180) and his son Phillip II Augustus (b. 1165, reigned 1180-1223). Eleanor of Aquitaine (1122/1124?-1204) first married Louis VII, reigning as Queen of France from 1137-1152. Eleanor and Louis had their marriage annulled in 1152, and she immediately married Henry Count of Anjou, who assumed the English throne on the death of his uncle Stephen in 1154 under the terms of the settlement of the civil war. Eleanor reigned as Queen of England from 1154 until Henry II's death in 1189. She remained Queen Mother and Duchess of Aquitaine until her death in 1204.

2 Assize courts continued to meet in England and Wales until 1972 when they were superseded by permanent Crown Courts under the Courts Act 1971 (Wasik 2015).

3 This is the only provision of the Constitutions of Clarendon which was an unambiguous failure. Various forms of benefit of clergy survived until they were explicitly repealed by the Criminal Law Act of 1827 (7 & 8 George IV chap. 28). By the Tudor era this privilege could only be claimed for a first offense, and from the seventeenth century onward, it was actually invoked more frequently by laypeople than clergy.

4 St. Thomas served Henry as Chancellor from 1155 to 1162, resigning shortly after he became Archbishop. He served as Archbishop until his martyrdom in 1170, though he spent the last six years of his life, 1164-1170, in exile in France under the protection of Louis VII. Pope Alexander III canonized St. Thomas in 1173.

5 Religious communities played a major role in expanding wool production, especially in Yorkshire and Northumberland (Dyer 2009, p. 115).

6 Thanks are due Ennio Piano and an anonymous reviewer for helpful comments and suggestions. I remain responsible for any shortcomings.