QUIA EMPTORES, SUBINFEUDATION, AND THE DECLINE OF FEUDALISM IN MEDIEVAL ENGLAND: FEUDALISM, IT IS YOUR COUNT THAT VOTES

Michael D. Garofalo

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APPROVED:

Christopher Fuhrmann, Committee Chair
Laura Stern, Committee Member
Mickey Abel, Minor Professor
Harold Tanner, Chair of the Department of History
David Holdeman, Dean of the College of Arts and Sciences
Victor Prybutok, Dean of the Toulouse Graduate School
The focus of this thesis is threefold. First, Edward I enacted the Statute of Westminster III, Quia Emptores in 1290, at the insistence of his leading barons. Secondly, there were precedents for the king of England doing something against his will. Finally, there were unintended consequences once parliament passed this statute. The passage of the statute effectively outlawed subinfeudation in all fee simple estates. It also detailed how land was able to be transferred from one possessor to another. Prior to this statute being signed into law, a lord owed the King feudal incidences, which are fees or services of various types, paid by each property holder. In some cases, these fees were due in the form of knights and fighting soldiers along with the weapons and armor to support them. The number of these knights owed depended on the amount of land held. Lords in many cases would transfer land to another person and that person would now owe the feudal incidences to his new lord, not the original one. This amount collected by the lord effectively reduced the payments to the original lord. During the early Middle Ages, feudal incidences began to change to a monetary exchange which would be used to purchase outside knights and soldiers. At this time, lords throughout England were losing revenue because of the subinfeudation. The Statute of Quia Emptores stopped subinfeudation and prevented lords from transferring land to another by any method except for substitution. The statute itself was short but it covered all land in England. I will argue in my thesis that this statute had more to do with the ending of feudalism than any other single event. I will further argue that it was not King Edward I’s intention to end feudalism. The ending of feudalism was an unintended consequence of the enactment of his statute in 1290.
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CHAPTER 1

INTRODUCTION

Prior to the year 1290, English land changed hands in one of two ways, substitution and subinfeudation. With substitution, the new possessor of the land completely replaced the alienor. This new tenant was in all ways responsible for all incidents and services due to the lord of whom the land was held. Subinfeudation, the second way of alienation, created a new level in the hierarchy between the king and the possessor of the land. In this case, a new lord would receive all of the incidents and services due for the land subinfeudated and the original lord would no longer receive them. This type of alienation prevented the larger lords from receiving income from the land that was subinfeudated, and this was the impetus behind the statute of *Quia Emptores*.

The leading landowners in England demanded the passage of *Quia Emptores* in 1290. This thesis will explain the precedent for these large landowners forcing the king to sign documents against his will, for example, *Magna Carta* in 1215 and the Provisions of Westminster in 1259. This thesis will also prove that the barons desired this statute passed not only to prevent the loss of revenue coming from their tenants but also to prevent the loss of rights brought on by their tenants abusing the system of subinfeudation to become lords themselves. Finally, this paper will prove that unintended consequences, such as legal issues for the tenants-in-chief, resulted from the passage of this statute. The statute itself was written by the leading landowners in England and states, “from henceforth it shall be lawful to every freeman to sell at his own pleasure his lands and tenements, or part of them; that the feoffee shall hold the same lands or tenements of the chief lord of the same fee, by such service and customs as his feoffer
held before.”1 It was the intention of the statute to allow all landholders of fee simple estates to alienate their land, as they wanted. Since the Norman Conquest in 1066, those that held directly from the king were required to purchase a license from the king to alienate their land. After the passage of the statute, the king’s court interpreted the statute, as those holding directly from the king were still required to purchase a license to alienate.

Chapter Two contains background of the feudal system in England and an overview of English Land Law. This chapter discusses the hierarchy of feudalism and the distribution of land from the time of the Norman Conquest. It also discusses the tenure system and its arrival in England. Knight’s service was the first type of tenure and there is an explanation of the process of this tenure and how the amount of land held determined the number of knights due. Additionally this chapter gives an explanation of subinfeudation and the statute of *Quia Emptores*. There is also a description of how land changed hands before and after the passage of that statute. Finally, this chapter breaks down and explains the complete text of the Statute of *Quia Emptores*.

Chapter Three discusses the relationship between the ancient witenagemot and the king. Early Anglo-Saxon England did not have one strong, sovereign king. Instead, seven large kingdoms each had their own king and witan. Early English kings were more often than not of the same family; kings at this time were not divinely ordained and had to be elected to that office. Because they were not divinely ordained, it was possible to depose the early English kings as long as those who elected them could agree.

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Chapter Four begins in the early twelfth century with kings being divinely chosen, kings were no longer elected. Although they were not entirely sovereign, they could not be deposed. The office of the king was handed down to the eldest son who was chosen king. During this period, the idea of the king having two different bodies developed. One is the earthly body that can own land, grow old, and die. The other is the godly body that is forever king. The office never dies and the king is above the law because he is divinely chosen.

Chapter Five discusses the English Legal System and its growth from customary law to statute law. Many changes to the legal system took place over the course of the twelfth and thirteenth centuries. Henry II was the first major innovator and changed the way the legal system worked. He created the writ and charter system. The writ system was nationwide at this time and was backed up by the Eyre Courts, which judicially centralized England. Edward I, referred to as the English Justinian, continued to innovate but changed from the writ and charter system to a system of statutes. These statutes created a countrywide system of laws that everybody would be aware of and live by.

Chapter Six discusses the specifics of the Statute of *Quia Emptores*. With the passage of this statute, subinfeudation was outlawed leaving only substitution as a method of alienation in fee simple estates. Prior to this statute, landowners were able to alienate in one of two ways. This chapter defines the differences between the two methods of alienation. The largest landowners wanted this changed and this chapter looks at the reasons behind this change. This Chapter gives specific information on how the statute of *Quia Emptores* effected English Land Law at the time it was passed and in the future. This chapter will delineate the reasons behind the statute, the timing of its promulgation and the results of its implementation.
Chapter Seven will discuss the unintended consequences of the passage of *Quia Emptores*. The largest landowners, those who held land directly from the king, needed to purchase a license from the king to alienate their land. The barons, in passing this statute, wanted to be free to alienate their land, as they desired. The wording of the statute explicitly states that all free men may alienate their land at their will. Unfortunately, for the largest landowners, after the passage of the statute, the courts agreed with the king that they would continue to need to purchase that license. Free alienation was the expected result of the passage of the statute but not the inability of the tenants-in-chief to do so. Free alienation was the most significant consequence of Quia Emptores and it accelerated the end of feudalism.

A general lack of scholarship on the Statute of *Quia Emptores* hampers its study. There are literally thousands of studies written on English Land Law, many by the “father of English Land Law,” referred to as “the best available introduction to English legal History.”

In *A Sketch of English Legal History*, written in 1915, Frederic Maitland does not even make mention of the Statute of Westminster III, also referred to as the statute of *Quia Emptores*, one of the most significant statutes from the year 1290 and one of the few statutes from the Middle Ages that is still actively valid in English Land Law. While Maitland’s *A Sketch*, meant to provide background in English Land Law, references several other books written on Edward I’s legislation, Maitland makes no mention of subinfeudation or the passage of *Quia Emptores*. This book discusses the end of the writ system in England by the time of Edward I and the creation of the King’s Court, but there is nothing on the changing of land ownership by subinfeudation.

Although Henry III was king of England during the Baron’s Revolts of 1257 through 1268, his son Edward was involved in the administration of the country during those turbulent

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times. Edward, as prince, was forced to swear an oath to the Provisions of Oxford in 1259. The Provisions of Oxford was a document sent to Henry III by a group of barons led by Simon de Montfort that forced Henry to accept control over the administration of the government by a Council of Fifteen. ³ Originally drafted as the “Petition of the Barons,” R. F. Treharne defined the Provisions of Oxford as “simply a memorandum of definitive grievances in administrative and legal matters and in judicial procedure.”⁴ Included in these provisions were specific arrangements for holding future parliaments, including its makeup. Provisions set up a Council of Fifteen to assist the king in administrative duties. This Council had the final word on all matters of government.⁵ These precedents eventually led Edward I to sign legislation into law that he did not want nor need as king. The background of the Baron’s Revolt and the precedent it set was discussed in the 1971 book written by R. F. Treharne. In The Baronial Plan of Reform, 1258-1263, Treharne explains the Baron’s Revolt of 1258 and the resulting documents. King Henry III and his son Edward I were both involved in attempting to control this revolt while keeping as much power in royal hands as possible. According to Treharne, “Edward having taken the oath to the Provisions [of Oxford], issued revocations to grants he had made to his uncles; John de Balliol, John de Grey, Stephen Lungenpee, and Roger de Montealt were appointed to assist and advise him, and effectively to control him.”⁶ The baronial plan included changing land law to allow the barons more control over their own demesne. The end of the revolt and the documents associated with it that Henry III issued, set a precedent that kings did

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³ Simon de Montfort was the Earl of Leicester. He led the barons during the Second Baron’s Revolt in 1263. He was the de facto leader of England for about one year and was defeated by Henry III’s forces led by Edward I, at the Battle of Evesham.
⁵ Treharne, The Baronial Plan of Reform, 82-83.
⁶ Treharne, The Baronial Plan of Reform, 79.
not yield ultimate power over the country, but were in fact responsible to those that lived and owned land there.

In regards to these precedents, William Stubbs wrote *The Constitutional History of England* in 1887. In this study, Stubbs discusses the early principles of what would eventually become the Statute of *Quia Emptores* as it pertained to religious houses and the transfer of land to them in the *Charter of the Forest* signed in 1217 by Henry III. According to Stubbs, this early charter laid the groundwork for the Petitions of the Barons in the spring of 1258, the Provisions of Oxford in 1258, the Provisions of Westminster in 1259, and the Statute of Marlborough in 1267. These documents along with the Dictum of Kenilworth, which was agreed to in 1264, were written as part of the downfall of Simon de Montfort and the revolting barons. The Dictum of Kenilworth contained the grievances contained in the Provisions of Westminster, which leading landowners in England wanted solved, and the changes they wanted the king to implement. Complaints about the inability to alienate freely land held by the leading landowners in England were among the issues landowners included in each of these documents above. For example, in the Dictum of Kenilworth, clause 12 states, “the person redeeming the land shall be free, within the said term, to sell all or part of the land in the manner above mentioned.”

Pollack and Maitland’s *The History of English Law before the Time of Edward I, Volume 1*, explains that the statute allowed each free man to alienate his land as he wished, but because of *Quia Emptores*, the new landholder would now hold of the original lord, not the alienor. Maitland further explains that the statute was a compromise between the barons and the king.

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Tenants wanted to be able to alienate their land freely. Their lords did not want to lose aids and incidents from their holdings and thus sought to end subinfeudation. Lords and tenants, in many cases, acted as both lord and tenant in different portions of their holdings. The statute ensured that any alienations would maintain the fees and incidents due to the lord without reduction. Maitland spends much more time explaining how subinfeudation, and the process behind it, had changed the feudal landscape in England for the previous two hundred years, than the Statute of Quia Emptores, which ended subinfeudation and continues to forbid subinfeudation for seven centuries.

In further explaining the lack of scholarship on this statute, Bryce Lyon wrote only that “the famous statute of Quia Emptores was enacted,” and later in this same work, writes that the statute ended subinfeudation and changed the process by which land transferred throughout England, including land transferred by feudal lords. This monograph explains the changes Quia Emptores made in English Land Law and that “the barons wished the practice [of subinfeudation] had never existed. . . .[because when it was used,] They lost all incidents over and income from the land.” This book does not go any further in explaining how or why this statute came into existence or any other ramifications of its passage.

The most comprehensive monograph reviewed was John Malcom William Bean’s The Decline of English Feudalism, written in 1968. Bean devotes more attention to Quia Emptores than other books, discussing the reasons behind it and the results of its passage. Bean states, “This passage of the statute laid down two rules for the future. Firstly, this statute conferred the freedom to alienate on all free tenants holding land in fee simple. Secondly, subinfeudation was

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11 Lyon, A Constitutional and Legal History, 459.
abolished."¹² Bean’s comprehensive book includes information on the signing of Magna Carta and the Baron’s Revolt of 1258, which provide precedent for the future passage of Quia Emptores. Bean also discusses the future of land law in relation to the tenants-in-chief after the passage of this statute. Bean spends a portion of his book discussing what subinfeudation is and how it influenced the country from the Norman Invasion through 1290 and beyond to the twentieth century. This current study will increase the scholarship of this momentous statute by explaining why the leading landowners of the time wanted it passed. It will also discuss the unintended consequences of the passage of the Quia Emptores.

The book written by Paul Brand, in 2003, Kings, Barons, and Justices: The Making and Enforcement of Legislation in Thirteenth-Century England, contains information on subinfeudation and the process, but there is only very brief information on the statute of Quia Emptores itself. This book is an examination of the changes that took place in the relationship between the barons and the King of England in the early to mid-thirteenth century. It provides background into the issues that the barons had with King John in 1215 that prompted the forcing of the king to sign Magna Carta. This book outlines the history of the Baron’s Revolt, 1258-1267, from its inception to the signing of the Provisions of Oxford in 1258, the Provisions of Westminster in 1259 and the Statutes of Marlborough in 1267, which were the first major pieces of legislation passed in England since Magna Carta.

Written in 1922, Theodore F. T. Plucknett’s book, Statutes and Their Interpretation in the First Half of the Fourteenth Century provides much-needed background into the unintended consequences of the passage of Quia Emptores. When this statute passed at the baron’s insistence, they did not see the interpretation of the statute in the courts as an issue. It was only

after the fact that they realized the courts would interpret the statute differently than what they had intended. Plucknett provides insight into the minds of the barons after the passage of the statute and how the king reacted to being pressured into signing something he did not want or need. These unintended consequences, according to Plucknett, occurred when “the courts made a practice of examining the intention of a statute in order to find a clue to its interpretation.”  

The passage of *Quia Emptores* in 1290 signaled the end of subinfeudation in all fee simple estates in England. Prior to the implementation of this statute, there were two ways to alienate land, substitution and subinfeudation. Substitution continued to be the only way to alienate land in a fee simple estate after 1290. The reason for this change was that the largest landowners in England were losing financially each time someone that held land of them alienated some or all of their land. This created a new lord and that new lord would receive the incidents and services from the land alienated. Because of the passage of this statute the tenants-in-chief, those that held land directly from the king ceased to lose those services but were unable to alienate their own land without the purchase of a license from the king to do so. This was the result of interpretation of the statute by the courts. The complete text of the statute read as follows,

For as Much as Purchasers of Lands and Tenements of the Fees of great men and [other lords,] have many times heretofore entered into their Fees, to the prejudice of the Lords, [to whom] the Freeholders of such great men have sold their Lands and Tenements to be holden in Fee of their Feoffors, and not of the Chief Lords of the Fee, whereby the same Chief Lords have many times lost their Escheats, Marriages, and Wardships or Lands and Tenements belonging to their Fees; which thing seemed very hard and extream unto those [lords and other great men] and moreover in this case manifest Dishertance: Our lord the King, in his Parliament at Westminster after Easter, the eighteenth year of his Reign, that is to wit, in the Quinzime of Saint John the Baptist, at the instance of the great Men of the Realm, granted, provided, and ordained,

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That from henceforth it shall be lawful to every Freeman to sell at his own pleasure his Lands and Tenements, or part of them; so that the Feoffee shall hold the same Lands or Tenements of the [Chief Lord of the same Fee, by such Service] and Customs as his Feoffor held before. And if he sell any part of such Lands or Tenements to any, the Feoffee shall immediately hold it of the Chief Lord, and shall be forthwith charged with the Services, for so much as pertaineth, or ought to pertain to the said Chief Lord for the same parcel, according to the Quantity of the Land or Tenement [so] sold: And so in this case the same part of the Service [shall remain to the Lord, to be taken by the hands of the Feoffee, for the which he ought] to be attendant and answerable to the same Chief Lord, according to the Quantity of the Land or Tenement sold, for the parcel of the Service so due.

And it is to be understood, that by the said Sales or Purchases of lands or Tenements, or any parcels of them, such Lands or Tenements shall in no wise come into Mortmain, either in part or in whole, neither by Policy ne Craft, contrary to the Form of the Statute made thereupon of late. And it is to wit, that this Statute extendeth but only to Lands [holden] in Fee Simple; and that it extendeth to the time coming; and it shall begin to take effect at the Feast of Saint Andrew the Apostle next coming. [Given the eighteenth year of the Reign of King Edward, Son to King Henry.]\(^{14}\)

The barons wanted the passage of this statute to stop the abuses by those holding land of them and to ensure that they did not lose out financially by the alienation of land by subinfeudation that was held of them. There were unintended consequences to the passage of this statute, the biggest being the tenants-in-chief inability to alienate without license. The paramount result of the statute is that although it was intended, free alienation had a considerable impact on the demise of feudalism in England. This allowed those holding land the ability to alienate whenever and to whomever they desired. Other unintended consequences involved legal issues with other statutes passed by Edward I and the ultimate end of feudalism in England.

\(^{14}\) Raithby, *Statutes of the Realm*, 106. Chief Lords are those landowners that have no one between them and the king. They control the land that was given to them by the king. Feoffee designates those landowners granted land in what is referred to as a Fee. A Fee is that land owned by someone that is required to pay the lord services of some kind, referred to as tenure. Feoffor is the lord that gives or sells land to another. Escheat is the process by which land reverts to the lord if there are no heirs available to inherit when the owner dies.
CHAPTER 2

BACKGROUND ON FEUDALISM AND LAND LAW

Feudalism is an economic, military, social, legal, and political system. Its social structure was referred to as the manorial system. A ruling elite consisting of the king and his tenants-in-chief controlled this system. These tenants-in-chief were large landowners who controlled land, in most cases, granted by the crown in exchange for some type of service, originally a military tenure. These large landowning barons held their land directly of the king. In England, they were referred to as earls, for example the Earl of Hereford, the Earl of Lancaster and the Earl of Warwick. King John called them his captales barones, (“capital barons”).

Below these ruling elite were the barons who held large amounts of land, holding land from the earls above them in the feudal hierarchy. Barons possessed different sizes of estates. The larger barons held land and owed scutages amounting up to 450 knights while others owed scutages of only one or two knights. Each of these barons owed scutages to the king. The difference between the largest and smallest is that the largest would be asked to attend court and offer advice to the king. Originally, knight’s service required the barons to provide knights to the king’s service upon his request. These barons would keep household knights and provide for them. These knights wanted to hold land of their own and eventually the barons subinfeudated land to the knights so that they were able to take care of themselves and their families. During the reign of Henry I, knight service changed to a scutage or cash payment in lieu of actual armed knights. Eventually, these knights, providing military service to the large tenants-in-chief,

2 Scutage is a monetary payment imposed on landowners in lieu of any military requirement that would normally be provided by a specific landowner.
wanted their own fief to have any “social prestige and economic security.” The larger barons would provide this land for these knights. Eventually these knights, no longer needed to fight for the king, would become minor barons serving different administrative functions for their lords. What typified this level of society was that they held enough land to require them to provide knights to the king upon his request.

Below these leading people were free tenants or vassals, who possessed their own land and paid feudal incidents to the local lord. Those incidents could be anything from a rose at midsummer, to rents, or other items noted in the contract between the lord and the tenant. In England at this time, the king owned all the land. All others only possessed the use of the land they held and terminology used said they held the land “of” their lord, whether that was the king or someone lower on the feudal scale. Possession of land gave these tenant’s rights as if they owned it outright; however there was no actual ownership. Because of this, services and incidents would be due to the lord who was above the possessor in the feudal hierarchy. Tenants would also provide specific services upon occasion.

Below the free tenants were villeins, considered non-free or bondmen who worked land at the pleasure of their lord. The difference between the vassals and the villeins was that the free tenants held their land with services due to the lord of whom they held their land and the villeins worked on land tied to a specific lord of the manor. The larger lords and the king kept possession of specific land, called their demesne, on which they would put castles or manor houses. After the Norman Conquest, these villeins held their land at the will of the lord. They did not have protection of the king’s court and would be subject to the lord’s jurisdiction. Because of the hold

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the lord had over these villeins, they were not included in the feudal system based solely on loyalty and contracts but they were required to pay homage to their lord.

Eventually, by the fifteenth century, this relationship changed and these villeins came to hold their land with rights and protections called copyhold. The lord’s own manorial court would need to side with the lord for the land to be taken away from these copyhold tenants. The courts consisted of other tenants of the manor so this was by no means a common occurrence. By the fifteenth century, these copyholds had access to the royal courts, not just the manorial ones.\(^4\)

In return for land, or the ability to live and farm on the land, these vassals contracted with the local lord for specific feudal incidents. Feudal incidents were anything that was contracted between the lord and the vassals, including rent, military service, and any other incidents included in the contract of feoffment. Other feudal services differed in that tenants paid them only on specific occasions. These fees were required to be paid at the knighting of the lord’s son, the marriage of the lord’s daughter, when one tenant died and his next of kin took control of the land or in an extreme case when ransom was needed for the lord’s life. Lastly, special incidents were paid when a tenant died without an heir, the land would escheat back to the lord, in recognition of the lord’s rights over the land.\(^5\)

Feudalism began in the ninth century in parts of France. By the time of the Norman Conquest of England in 1066, it had spread across the continent. Historians have debated the definitive characteristics of feudalism. Frederic Maitland suggested that jurisdictional tenure was the defining characteristic. According to Maitland, “A certain civil jurisdiction belongs to the lord as such; if he has tenants enough to form a court, he is at liberty to hold a court of and for


his tenants. This kind of seigniorial justice we call specifically feudal justice.” The lord in this case would be able to take care of most of the criminal and civil trials in his domain.

Both William Stubbs and John Round agree that military tenure is another impactful characteristic of feudalism. Round wrote, “of the institutional changes and modifications of policy resulting from the Norman Conquest, the most conspicuous phenomenon to attract attention is undoubtedly the introduction of what is convenient to term the feudal system. In the present paper, I propose to discuss one branch only of that process, namely, the introduction of that military tenure, which Dr. Stubbs has termed ‘the most prominent feature of historical feudalism.’” This military tenure requires knights to be supplied to answer the king’s call for soldiers. The amount of land owned, measured in hides, determined the wealth of the landowner, hence the total number of knights required. That was never an exact science and some land was valued more than others and thus the hide was used as a basic measurement to determine knight service, the value of individual lords would be valued either more or less in knight fees. For smaller landholders, instead of a knight, they would provide an agreed upon fee, which would be a portion of the cost of one knight. This “knight’s fee,” set at the time the land changed hands, was required to be provided upon request of the lord. Normally a full knight’s fee would be service to the king for forty days but these smaller landowners were required to provide less. Littleton’s *Tenures* stated that “he which holdeth his land by the fourth part of a knight’s fee ought to be with the king for ten days: and so he that hath more, more, and he that hath less, less.” Of tenure, Homans wrote,

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The free tenures were four in number. Frankalmoigne, the tenure by the duty of giving alms, was the tenure by which most of the religious houses held their land. Tenure by military service was the great feudal tenure. Tenure by sergeant was that according to which a man held land by doing one of the great variety of services, not necessarily military, such as the service of being hereditary steward of a great lord. Socage was the residuary class of free tenures. . . . Socage was the tenure of the lesser freeholders. 9

Depending on the definition of knight’s service used, there is evidence of early feudal preconditions existing in small pockets across England in pre-conquest years, which consisted of military tenure in exchange for land given. Knight Service was dependent upon the amount of land possessed. According to Bryce Lyon, all subject kings of England needed King Offa’s permission to alienate land to others, just as tenants-in-chief were required to since the Norman Conquest. 10 Lyon also mentions that the boroughs were assessed in units called hides and those hides were used for providing the support of military service. 11 The Anglo-Saxon Chronicle, from the year 1008, also mentions “This year the king commanded that ships should be speedily built throughout the English nation: that is then from three hundred hides and from ten hides, one vessel; and from eight hides, a helmet and a coat of mail.” 12 The amount of land required for one knight’s fee, according to John Round was, “that the Norman military tenure was based on the old service of a man from each five hides of land. . . [and that] recognized leaders of existing opinion on the subject cannot agree among themselves in giving us a clear answer, when we ask them what determined the amount of ‘service’ due [to the king] from a Norman tenant-in-chief.

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9 Homans, English Villagers, 233.
11 Lyon, A Constitutional and Legal History, 62.
or, in other words, how that “service was developed in unbroken continuity from Anglo-Saxon obligations.”\(^{13}\)

Feudalism in England began with the Norman Conquest in 1066. Once King William of Normandy finally gained control of England, his reward to his supporters for their assistance in conquering the country was to grant them large areas of land, called Honors. These grants sometimes included hundreds of thousands of square acres. According to William Douglas in his 1964 book, *William the Conqueror: The Norman Impact upon England*, “everywhere in England the Norman aristocracy was made to receive its land in conditions which increased William’s power as king.”\(^{14}\) In this book, Douglas discusses the development of feudalism in England and how the Norman Invasion influenced that development. This book provides information and background on the beginning of land ownership by both substitution and subinfeudation throughout England, and the effect of both on the advancement of tenure. Military tenure in England “must be regarded as one of the most notable of the Conqueror’s achievements.”\(^{15}\) For the hundreds of years of feudalism in England, military service was required of all landowners, large and small. Smaller landowners were required to provide a portion of a knight’s fee, normally in the form of a monetary settlement, with which the king would defend the country from invaders. Military tenure was not the same for the entire period of feudalism, as Maitland wrote, “military tenure of Charles I was very different from the military tenure of Edward I: but this again was very different from the military tenure of Henry I’s or even of Henry II’s reign.”\(^{16}\)

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\(^{13}\) Round, *Feudal England*, 234.


Tenure, substitution and subinfeudation are all part of English legal history, which has been a well-researched subject. However, there have not been many monographs written on the different statutes passed by King Edward I. For example, in 1290, Edward I signed the Statute of *Quo Warranto* instituting a legal platform, whereby he had the ability to require proof of franchise over all land in England. Franchise, according to Donald Sutherland were “royal rights in private hands.” Sutherland continued that Edward I, in an attempt to ensure his courts were giving good justice said “franchises were all naturally royal rights and that is was therefore sound policy to try from time to time the warrants [rights] by which subjects held them.” In response to the signing of that statute, the largest landowners in England pushed for the Statute of Westminster III, also known as *Quia Emptores*. Current scholarship mentions the statutes of Edward I as a whole, but the only complete monograph that has been written is on the Statute of *Quo Warranto*. There are no complete books written about the Statute of *Quia Emptores*. Signed by King Edward I of England, *Quia Emptores* effectively ended the process of subinfeudation throughout England. Considering this statute is one of the few medieval statutes still in use today, it is interesting that such a void in scholarship to this important piece of legislation exists.

Substitution and subinfeudation were the two ways in which land could change hands before *Quia Emptores*. Under substitution, the land remained under control of the same lord who was in control of the land before the alienation, with all rights and services due to him retained. Subinfeudation moved only a portion of the land, held under a specific lord, to another person who then held the land of the person alienating the land. For example, L holds land, and has T as his tenant. There are certain services and fees due to L by T specified in the terms of

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enfeoffment. In subinfeudation, T would then alienate land to a sub-tenant, ST. ST now holds of T rather than L. Any services or fees would then be due T instead of L for that portion of land, including wardship and marriage, which would cost L those fees. The reasoning behind the enactment of this *Quia Emptores* was the enormous loss of revenue to those barons who were having their land subinfeudated away from them. These barons pushed for its inception. Services to the original lord were diminished by the reduction in land held of them, but those barons would lose more than just the services from the land. The much more valuable fees were paid to the lord for the marriage of his daughter, wardship of those tenants not yet of age when inheriting land, and those who had died, as well as *escheats* of all the land returning to the lord for defect of heir or default of not paying incidents or services.

Those inheriting land, those who have reached the age of majority and those that have not, would be the oldest son based on the legal precedent of primogeniture. The Normans brought primogeniture to England in 1066. Prior to the Conquest, England had partible land, which allowed for the division of land between all of a man’s sons. Once William I conquered England, primogeniture became custom allowing only the oldest son to inherit. If there were no sons, the female children would divide the land evenly. The Statute of *De Donis* from 1285 changed the way land was inherited with gifts being allowed for younger sons and daughters. These younger children would still be required to pay homage to the oldest brother but the younger children still held their own land of their brother, once their father died. This system of gifting was in place until 1290 when parliament issued the statute of *Quia Emptores*. That statute

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19 The contract between the tenant and the lord specifying the services for land given.
eliminated subinfeudation in a fee simple estate and thus prevented younger sons from paying homage to the older son.\textsuperscript{20}

The leading barons in England, during the Easter Parliament in 1290, proposed, and the king acted, on the Statute of \textit{Quia Emptores} hastily. According to Maurice Powicke, “the long Easter Parliament in 1290 lasted for nearly three months. It could not have opened before 28 April . . . right through 8 July when the Statute of \textit{Quia Emptores} was conceded.”\textsuperscript{21} The text of \textit{Quia Emptores} is analyzed as follows: “For as Much as Purchasers of Lands and Tenements of the Fees of great men and [other lords,] have many times heretofore entered into their Fees, to the prejudice of the Lords, [to whom] the Freeholders of such great men have sold their Lands and Tenements to be holden in Fee of their Feoffors, and not of the Chief Lords of the Fee.”\textsuperscript{22} This section of the statute discusses the main motive behind the passage of the statute. The great lords had been hurt monetarily by subinfeudation before this time. The transfer of land by this method adds a layer of possession between the king and the lord holding the land, making escheats directly to the king more unlikely. In that case the lord loses some of the more valuable aids associated with the specific portion of land subinfeudated. As the text of the statute continues, “whereby the same Chief Lords have many times lost their Escheats, Marriages, and Wardships or Lands and Tenements belonging to their Fees; which thing seemed very hard and extreme unto those [lords and other great men] and moreover in this case manifest Disinheritance.”\textsuperscript{23} This section of the statute describes what the various aids are that these lords were losing. Escheats, marriages and wardships were those aids that brought more money to the

\textsuperscript{20} Theodore Frank Thomas Plucknett, \textit{A Concise History of the Common Law}, (Boston: Little and Brown, 1956), 527-528.
\textsuperscript{22} Raithby, \textit{Statutes of the Realm}, 106.
\textsuperscript{23} Raithby, \textit{Statutes of the Realm}, 106.
lord than all the feudal incidents, including rents, combined. Escheats allowed a lord to take back the possession of land for defect of heir or default of incidents or services. The lord could sell the marriages of women, who were subtenants, to those of the lord’s choosing. Wardships occurred when a possessor died leaving an heir not yet of legal age. Although the lord received the profits from the land as long as he held it in wardship, he was also required to maintain the heir as well as the property of the heir, so once the heir became the age of majority, he was able to inherit the land without loss of revenue. The section of the statute that reads, “Our lord the King, in his Parliament at Westminster after Easter, the eighteenth year of his Reign, that is to wit, in the Quinzaine of Saint John the Baptist, at the instance of the great Men of the Realm, granted, provided, and ordained, That from henceforth it shall be lawful to every Freeman to sell at his own pleasure his Lands and Tenements, or part of them; so that the Feoffee shall hold the same Lands or Tenements of the [Chief Lord of the same Fee, by such Service] and Customs as his Feoffor held before.”24 This section of the statute explained the timing of the enactment of the statute and explained what subinfeudation was and that it would no longer be allowed once this statute was enacted. “And if he sell any part of such Lands or Tenements to any, the Feoffee shall immediately hold it of the Chief Lord, and shall be forthwith charged with the Services, for so much as pertaineth, or ought to pertain to the said Chief Lord for the same parcel, according to the Quantity of the Land or Tenement [so] sold. And so in this case the same part of the Service [shall remain to the Lord, to be taken by the hands of the Feoffee,25 for which he ought] to be attendant and answerable to the same Chief Lord, according to the Quantity of the Land or

24 Raithby, Statutes of the Realm, 106.
25 Chief Lords are those landowners that have no one between them and the king. They control the land that was given to them by the king. Feoffee designates those landowners granted land in what is referred to as a Fee. A Fee is that land owned by someone that is required to pay the lord services of some kind, referred to as tenure. Feoffer is the lord that alienates land to another. Escheat is the process by which land reverts to the lord if there are no heirs available to inherit when the owner dies.
Tenement sold, for the parcel of the Service so due.” This was not the case before the passage of the statute. Prior to its implementation, those holding land in a fee simple estate were able to alienate their land by subinfeudation putting themselves in the position of lord. In that position they received all services and incidents from the land they had just alienated rather than the original lord getting them. After the passage of the statute, in order for the land to be alienated, unless it was the entire property, the feoffor would be required to ensure that the fees and aids due to the lord holding the land must remain at the same level they were before the alienation. “And it is to be understood, that by the said Sales or Purchases of lands or Tenements, or any parcels of them, such Lands or Tenements shall in no wise come into Mortmain, either in part or in whole, neither by Policy [or] Craft, contrary to the Form of the Statute made thereupon of late.” The alienation of land to a church or ecclesiastical person or organization in this case would be a violation of the statute. “And it is to wit, that this Statute extendeth but only to Lands [holden] in Fee Simple; and that it extendeth to the time coming; and it shall begin to take effect at the Feast of Saint Andrew the Apostle next coming. [Given the eighteenth year of the Reign of King Edward, Son to King Henry.]” The statute was intended to apply to only estates in fee simple. Subinfeudation was still available to estates where the land was only held for a number of years or was held in entail. It is explained that the time frame for the actual implementation of the statute allowed for the promulgation all over the country. The Feast of Saint Andrew in the year 1290 took place on November 30.

What this statute accomplished was to give every free tenant the right to alienate his own land, as he wanted as long as it was an estate in fee simple; the statute also prevented what had

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26 Raithby, Statutes of the Realm, 106.
27 Feoffor refers to the person alienating land to another.
28 Raithby, Statutes of the Realm, 106.
29 Raithby, Statutes of the Realm, 106.
been happening for years, lords obstructing the transfer of land by charging fees for those alienating land or those moving onto the land. Lords, prior to the passage of *Quia Emptores*, had the power to charge a tenant when he wanted to alienate land. The lord also had the power to charge a fee to the new tenant coming into possession of the land. The passage of this statute prevented lords from charging these fees. A free tenant is one who holds his land in fee simple. A fee simple estate is absolute and has no restrictions or qualifications to heritability.\(^{30}\) Before the passage of this statute, English law gave lords the right to prevent any feoffment of land detrimental to themselves by charging the tenants alienating the land a fee to allow them to do so. These lords also had the right to charge a fee to the new tenants taking possession of the land. That was finally ended by the reign of Edward III. The lords lost the services and incidents to the lords once the land was subinfeudated. Once subinfeudation took place, those services and incidents went to the newly created lord alienating the land. The original lord would lose that revenue. That was one of the major motivations behind the passage of *Quia Emptores*. After the passage of this statute, subinfeudation was only possible “if a tenant granted land for a term of years or [estates] in tail. . . . No doubt these exceptions to the rule laid down by the statute were permitted because such estates were not detached permanently from the tenant’s fee, but returned in due course to him or his heirs, to be held as before.”\(^{31}\)

One of the precedents for the barons forcing law on the king was the barons at Runnymede forcing *Magna Carta* on King John. Large landowners in England protesting actions by the King, who held himself above the law, proposed this document, signed in 1215, and


\(^{31}\) Bean, *Decline of English Feudalism*, 80.
reissued several times. These barons invested the money and labor to put together an army to force the King to sign *Magna Carta* and reinstate rights they thought were theirs.

In 1257, Henry III had begun negotiations with Pope Innocent IV for the crown of Sicily for his son Edmund. In 1258, the pope called in monies due by the king of England in order for Edmund to be crowned as King of Sicily, which would only take place once those monies were paid. The barons protested the scutage that King Henry III was attempting to collect in order to pay the monies to the pope. In order for the king to collect this money, the barons presented the king with several documents outlining his excesses and plans to realign the government giving themselves protections not afforded previously; this was called the Statutes of Marlborough. These are just two examples that set a precedent for controlling the king that continued for centuries.

Once Edward I signed *Quia Emptores* into law, the large landowners holding of the king, called tenants-in-chief, did not get exactly what they had anticipated. As the courts in England began to interpret this new statute it was determined only the tenants-in-chief did not have the same rights of free alienation as smaller landowners. They would be required to purchase permission in the form of a license from the king in order to alienate any of their own land. The larger barons and smaller landholders both had the ability to be at different times tenant and lord. When the tenants-in-chief fought for *Quia Emptores*, although they were fighting for their own rights of free alienation, they included in the text of the statute that all landholders, smaller and large also had that. This was one of the unintended consequences. Another unintended consequence of the passage of the statute was that although the smaller landholders were able to alienate at will, the tenants-in-chief could not. The Statute of *Quia Emptores* did not apply to the king. The king was always a lord, never a tenant and thus the statute did not apply to him.
Prior to the passage of this statute, the tenants-in-chief were required by the king to purchase a license to alienate their land. The tenants-in-chief, on the other hand, had the ability to ensure that those moving onto land under their control would pay fees before entering the land. One of the original purposes of the Statute of Quia Emptores was to give tenants-in-chief the right of free alienation. However, due to the court’s interpretation of the statute, that did not happen. The practice of the courts examining statutes had just begun and there were generally three stages of development. The first stage was that the judges who wrote the individual statutes were members of the legislature that passed them. These judges were able to examine the wording of statutes in order to verify the validity of what they had written. That validity allowed for the statutes passed to be recognized as valid by the courts that heard cases relating to them. The second stage involved the judges being involved in the arguments used to formulate the statutes. The judges were able to forestall problems in the future by being involved in the actual writing of the statutes. The judges would have already heard any arguments involved in the individual statutes that could be brought up during court cases involving the statutes. Lastly, in the third stage, since before the passage of this statute the tenants-in-chief did not have the ability of free alienation, the judges were able to infer the intention of the statute from history and the wording of the statute.32

Feudalism, being an economic, social, military, and political system had at its center a social structure called the manorial system. This system was controlled at its top by the king and below him, the largest landowners in England, the tenants-in-chief. These large landowners, referred to as earls, held their land directly from the king by providing military service to the king when requested.

32 Plucknett, Statutes and their Interpretation, 49-55.
Below these leading landowners, various levels of society possessed and worked the land in England. These people each owed their lord specific feudal incidents and service specified in the contract between them and their lord. Those that possessed land held that land by what was called tenure. Tenure was the different incidents and services owed in order to possess land, for example, military tenure required a certain number of knights, based on land owned, be sent to the king at his request.

The Norman Conquest, in 1066, brought feudalism to England. William the Conqueror provided land for those that supported him in his takeover of England. These large areas of land created tenants-in-chief that served as counsel to the king. Those landowners in turn, using subinfeudation, created other landowners below them creating a new social hierarchy in England.

Land law in England changed slowly over the next two hundred years as Henry II instituted the writ system. This writ system began to grow organically and by the reign of Edward I, a statute system replaced it in an attempt to centralize land law in England. Quia Emptores was one of the statutes implemented by Edward I and from 1290 going forward, land law changed forever in England.
CHAPTER 3

EARLY PARLIAMENT: THE RELATIONSHIP WITH THE KING

The relationship between the king and his barons developed in pre-conquest England. Early kings were in no way autocratic and needed the approval of those large landowners and in some cases, even approval from the shires, to go to war or exact scutages for other purposes. The early princes of England were not guaranteed accession upon the death of the previous king. Although, in most cases, the king elected was the dead king’s eldest son, the witan elected the most qualified person, not necessarily the king’s son; there are cases in which the king elected was not even from the dead king’s family.

The witan was the body made up of the richest landowners in England, called by the king when he needed advice. They did not have the power to meet without the king’s blessing except in very specific circumstances, for example, when voting for the next king once the old king was dead. They also had the power to depose a king, if the situation warranted it. These landowners, although not necessary, approved legislation put forth by the king. This assisted the promulgation and acceptance by all the people in England. Because of this, a relationship developed between the king and his barons that continued throughout medieval England.

Those Normans who supported William the Conqueror were rewarded with large areas of land. These honors in some cases contained hundreds of thousands of acres and were bestowed upon supporters who would be called to supply knights to the king upon his request. Only two Anglo-Saxon lords were allowed to keep their land after the Conquest.¹

The landowners who supported William in his conquest of England provided knights to the king for the protection of the king and the kingdom. They also provided advice and support

for the king when requested. The witan evolved into something more permanent, as the king needed a small council made up of those key barons and churchmen, who would provide counsel to the king. The large council acted as the highest court in the country. Both the small and large councils were called at the king’s request and were the predecessors of Parliament. The relationship between the king and parliament grew and evolved and by the time of the reign of Edward I, the Commons were being called along with the barons and the high-ranking ecclesiastics. By the reign of Edward III, the Commons were considered part of parliament and was called each time parliament met.

Once these high-ranking barons began to give steady, if not constant, counsel to the king, they developed specific powers regarding monetary issues. The king and these barons worked together in order to tax the kingdom. In some cases, the king took too much power onto himself and the barons revolted, as in the case of King John and his barons and the signing of *Magna Carta*. This change in the relationship between the king and his council would have dire consequences for some future kings of England.

Germanic kingship was weak; even great early Anglo-Saxon kings of England such as Offa and Ine were not truly sovereign. These monarchs were dependent upon the customary law and they were all below the law. In the Germanic States, those on the northern edges of the Roman Empire, such as Germany, the law was customary law. It was “the law of one’s fathers”\(^2\) The purpose of the state was to maintain the status quo, “the good old law.”\(^3\) There is not much evidence of the central administration of England until King Alfred in the tenth century. By that time, the witenagemot was a completely different organization than it had been before.\(^4\) By the

\(^3\) Kern, *Kingship and the Law*, 70.
tenth century, the makeup of this group of wealthy landowners and higher clergy of England was unclear and the group had no specific function nor did it have a specific meeting schedule. It was neither a small council nor was it a large group of counselors for the king, it could be either, and would be called at the king’s prerogative. In defining the makeup and nature of the witenagemot, using those sources still extant, it appears as an arbitrarily organized group completely undefined in composition.5

The laws the king accepted from local custom were not created with his authority alone; the witenagemot gave counsel to ensure that these new laws would fit within local custom and would not adversely affect the community at large. They also approved any monies requested by the king. Acceptance by the witenagemot aided acceptance of new legislation by the community at large. Since the witenagemot elected the new king and had the power to depose the king, it was essential for the king to cooperate with the members of the witenagemot; this cooperation between them and the king continued throughout the tenth and eleventh centuries.

In almost all cases, the witenagemot was not an independent organization. It was not able to legislate or give advice to the king without the king first requesting it. The king sought out the witenagemot’s advice, for example, when the king needed aids, in order to ensure cooperation of the large landowners throughout England, those who controlled most of the land and its wealth. Local hundred courts and shire moots had the ability to hear and complete all cases that came before them. Neither the witenagemot nor the king allowed any recourse after local justice except in extreme cases where local jurisdiction failed.6 There were only specific times when the witenagemot was able to call themselves together, as in the case of king’s death. Since it was

5 Lyon, A Constitutional and Legal History, 46.
responsible for the election of the king, “at least some members, and most likely bishops and ealdormen, must have possessed the generally recognized right to constitute it.”\textsuperscript{7} Another instance in which the witenagemot had the ability to convene without the king was in his absence. If, for example, an army needed to be gathered and provided for the king when he was out of the country, it was able to meet to assemble that army.

One of the powers the witenagemot had, involved the granting of land. The king would grant land with certain privileges attached. The witenagemot would sanction those grants of land acting as witnesses and ensuring “that the charter strengthened by the anathema that could only be pronounced by such great ecclesiastics as were members of the witenagemot.”\textsuperscript{8} This land was known as book-land, or charter land.\textsuperscript{9}

At this time, kingship was not necessarily a hereditary position. Although in most cases the kingship passed on from father to son, it was up to the witenagemot to elect the person most qualified for the position. In some cases, the most qualified candidate was someone other than the son of the dead king. Samuel Daniel wrote, “Ina . . . dying without issue, left the succession imbroiled, and out for the direct royal lyne as he found it. So that those foure Kings of the West Saxons, who severally succeeded him: Ethelard, Sigibert, Kenulph, and Britric, were rather Kings by election, and their owne power, than by right of deference.”\textsuperscript{10} Between the years 899 and 1016, there reigned eight kings, and only Edmund, Eadred, and Eadwig, gained kinghood by

\textsuperscript{7} Felix Liebermann, \textit{The National Assembly in the Anglo-Saxon Period}, (London: Hallie Max Niemeyer, 1913), 22.
\textsuperscript{8} George Osborne Sayles, \textit{Medieval Foundations of England}, 176.
\textsuperscript{9} Book-land is also known as charter land. It is held under a deed in certain rent, fee conditions, and is the same as free socage land.
hereditary right. The witenagemot voted in the other five.\textsuperscript{11} The witenagemot also deposed the king in several instances.

The witenagemot contained two different groups, the leading landowners and the leading bishops of the Church. Each of the major Anglo-Saxon kingdoms had their own witenagemot and each kingdom’s witenagemot was isolated from the other. Only the most powerful kings, such as Offa or Oswy, occasionally called ecclesiastical synods. These were the only meetings of members from all over England.

When the Normans took control of England in 1066, they kept the small and great councils and household offices that were useful parts of governmental administration, with only the names being changed.\textsuperscript{12} William and his sons called assemblies that included the newly created tenants-in-chief as well as the leading ecclesiastics, including both of the Archbishops. Although the types of people included were the same, it was not the parliament that Edward I would call in 1275.

As King William took control of England, the witenagemot continued to be part of governmental administration. Now called the \textit{Curia Regis} or Great Council, but also referred to as the witenagemot, it also acted as the King’s judicial court. The \textit{Curia Regis} consisted of the members of the king’s royal court, the leading barons and the justices of the various courts, who all acted as the king’s closest confidants.\textsuperscript{13} As late as the kingships of Henry I (1100-1135) and Stephen (1135-1154), elections still determined kingship. During the time of the Anarchy, in a speech “of Henry of Winchester, proposing the election of the Empress Matilda, it [the election

\textsuperscript{11} Stenton, \textit{Anglo-Saxon England}, 552.
\textsuperscript{12} Lyon, \textit{Constitutional and Legal History}, 44-50.
\textsuperscript{13} Hugh Evander Willis, \textit{Introduction to Anglo-American Law}, (Bloomington: University Press, 1931), 81.
of kingship] is expressly stated"\(^{14}\) At this time the creation of both a *Curia Regis* or Great Council and a Small Council began.

Parliament was a natural progression from the duality of the Great Council. It included both large landowners and the high clergy. The use of the term *parliamentum* “can be traced back to Henry II’s reign but it was first used by the chronicler Matthew Paris to describe such a meeting in 1239.”\(^{15}\) In 1213, two years before *Magna Carta*, John called a group of barons to discuss grievances at St. Albans, “to which was summoned four men and the reeve from each township on the royal demesne. . . . Eighty years were yet to pass however before a representation of the Commons or the communities of the realm would become for good and all a constituent element of that great council.”\(^{16}\) Thereafter, the term Parliament was used more often. It was used in the Provisions of Oxford and after 1275 parliament began to appear in official records.\(^{17}\)

English kings did not have complete sovereignty over their subjects. A relationship between the king and his advisors existed in order to ensure cooperation from the population throughout the country. These leading advisors, part of the witan had the power to vote in the king but also the power to depose the king should the situation call for it. This relationship also made the promulgation of legislation and taxes acceptable to the leaders of society.

Feudalism began in England in 1066 although there were preconditions existing prior to the Conquest. As William I distributed land to his supporters, he created a level of aristocracy below him that had not existed in England before. He gave huge tracts of land, called honors; to

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\(^{15}\) Lyon, *Constitutional and Legal History*, 413. *Parliamentum* comes from the French noun *parlement* derived from the verb *parler* meaning to talk. Until 1275 the term *concilium* was used interchangeably, 412, n.

\(^{16}\) Pollack and Maitland, *The History of English Law*, Volume 1, 68.

\(^{17}\) Lyon, *Constitutional and Legal History*, 413.
his supporters in return for military support in the form of knights should he need them for
defense of the country. Although not an independent organization, these same barons provided
counsel to the king when requested and assisted in legislation and the promulgation of taxes and
aids the king required. There were parts of the governmental administration that William I and
his sons, William II and Henry I found useful to them and although the names were changed,
they remained virtually the same. The small and large councils eventually became parliament
and although the original groups were fluid in both members and abilities, within 200 years,
Edward I would have a fully functioning parliament that would be a much more stable
organization.
CHAPTER 4

GOD AND KINGSHIP - A DIVINE KING

With the accession of Henry I to the throne of England, in 1100, an unknown cleric began to write about the dual nature of the king, and a Christ-like kingship began to take shape. This anonymous writer “was a Norman from Normandy and perhaps even a member of the Duchy’s high clergy... In fact, it is in that direction that the Norman Anonymous, one of the staunchest defenders of the spiritual essence of a Christ-like kingship, sends us and we can do nothing better than to take his hint and follow his guidance.”¹

Christ was considered king, or Christus, by the very nature of the Godhead, being his deputy on earth, and Christus by the grace of God. The Norman Anonymous wrote, “The power of the king is the power of God. This power, namely, is God’s by nature, and the king’s by grace hence, the king, too, is God and Christ, but by grace; and whatsoever he does, he does not simply as a man, but as one who has become God and Christ by grace.”² With the accession of Henry I, the election of the king was no longer necessary because God now chose the king.

It is with this Christ-like nature that the king was able to control those large landowners within the small council and those in the large council who would eventually become parliament. This Small Council was the nucleus of every parliament.³ The term parliament came to be used for this part of governmental administration in the early thirteenth century in the reign of Henry III. The relationship that formed between parliament and the king began in earnest during this time. Being only nine years old when he inherited the throne from his father John, Henry III needed regents to assist in the running of the country until he reached his majority. During this

² Kantorowicz, *The King’s Two Bodies*, 48.
³ Lyon, *Constitutional and Legal History*, 409.
time, the makeup of the Great Council began to change and the Great Council became a more permanent fixture. Early in Henry’s reign, the Great Council, as it was called, included barons and leading ecclesiastics. The reason for its existence included providing counsel to the king, helping him to legislate, tax, dispense justice, and assist in the administration of affairs of the king’s realm. By Henry’s reign in the thirteenth century, the Great Council was summoned for discussions of imperative matters of state, especially when the king wanted to sample public opinion for support from the largest landowners in England.⁴

The issues between King John, Henry III’s father, and the barons of England, began early in John’s reign. Several examples will be cited, beginning in 1207, when John “seized, throughout all England, a thirteenth part of all moveables and other property, whether belonging to the laity or to other men, ecclesiastics and prelates, all murmuring, though they did not venture to resist him: but still cursing him, and hoping that such plunder would not have a happy result.”⁵

John was responsible for losing most of the land that England held in what is now France. John also abused several of his feudal rights causing his barons to determine that he was not acting in a way that was subject to the law of the land. John was especially noted among other abuses, for abusing wardships taken by him as king. Wardships occurred when a tenant died with an heir below the age of majority. The lord of whom the land was held would take responsibility for maintaining the heir and was allowed to keep the profits of the land, which was one of the higher revenue feudal incidents that lords profited from throughout England. It was also the responsibility of the lord to ensure that the land was not wasted. When Magna Carta was written, several clauses addressed and attempted to eliminate abuses to wardship, including those

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⁴ Lyon, *Constitutional and Legal History*, 409-411.
of King John. Contemporary chronicler Matthew Paris wrote, “The king kept on oppressing one or other of the nobles of the kingdom, either by extorting money from them unjustly, or by stripping them of their privileges or properties; or some he seduced their wives, or deflowered their daughters, so that he became manifestly and notoriously odious and detestable both to God and man.”

By 1213, the large landowners in England began to align against the king. They believed John should be subject to the same law that they were. As king and the supreme authority in the country, it was his place to keep justice throughout England. That the king felt he was above the law and breached his obligations to the country was justification for rebellion against him. Frank Barlow wrote, “[Langton] regarded the remedy of wrongs and the establishment of a just government as a single problem.” The barons had no respect or trust for John, his character did not give any confidence to them or their vassals. John was known for his greed and there was a general mistrust of the king during his reign.

John did not foster any trust or loyalty in his vassals. Preparing for war with the French in 1212, because of rumors of treason in the ranks, John broke up his army. His leading barons had no reason to trust John because of his greed for money. In 1213, John once again attempted to find an army to invade France. Known for abusing his baron’s sources of feudal revenue, some of the barons in England rebelled and that eventually led to John signing Magna Carta. John claimed more rights to himself than had previous kings. The kings of England designated certain

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forests as their own. In order to hunt in these forests, the king or his representatives issued special dispensation. John took this one-step further. Matthew Paris wrote, “John asserted over the fowls of the air the same exclusive right that his ancestors had claimed over the beasts of the chase.”

The changes made to the legal system in England by John were not actually accomplished by him, but in spite of him. In 1213, problems between King John and the leading landowners in England escalated. John sent out letters instructing, as chronicler Roger of Wendover wrote, “earls, barons, knights, and all free and service men, whoever they be, or by whatever tenure they hold, who ought to have, or may procure arms, who have made homage and sworn allegiance to us... to be at Dover at the end of the coming Lent.” However, with the problems between the king and the barons, John was aware that his barons might not comply with the king’s orders for troops. Roger of Wendover continues “[John] feared, should he give battle to his approaching enemies, lest he should be abandoned to himself in the field by the nobles of England and his own people, or be given up to his enemies for destruction.”

Although there were contracts with the large landowners, John continued to commit feudal infractions. Rather than military service, John asked for scutage. Inflation in England devalued the money in England and the scutages received were insufficient. John lost at the Battle of Bouvines and still asked for money to continue his war with France. John also took land from those barons he accused of treason. Once he took the land from Baron William de Braiose, other barons felt that it could happen to them as well. John continued to take land from not only barons but also wives and children whose spouse or father had died. The barons attempted to

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redress these wrongs but the king refused to hear them. According to the *Annals of England*,

“The barons present their demands to the king at the New Temple in London, Jan. 6; he defers
till Easter.”¹³ Finally, in June 1215, at Runnymede, after almost two years of compromise, the
king signed *Magna Carta*. Although designated as void, there were major clauses contained
within *Magna Carta* that changed how the feudal system functioned. Still, the overreaching
component was that it put the king under the same law to which everybody else in England was
subject. The *Annals of England* states, *[Magna Carta]* promises peace and freedom of election to
the Church, a legal course of government, and a full redress of all grievances. It then proceeds to
concede all the barons’ demands . . . also makes special mention of, and promises redress for,
many unjust acts, not only of the king, but also of his predecessors. . . . *Magna Carta* also
requires the great tenants to concede to their dependents all customs and liberties as freely as
they are granted to themselves.”¹⁴ Because of the baron’s attempt to force the king to concede
erights to them, they were not in a position to prevent those same rights being granted to their
landholders.

For the next two years, the barons, led by Stephen Langton, the Archbishop of
Canterbury, worked, pressured, and threatened civil war with the king. Langton found in the
Coronation Charter of Henry I, precedent for forcing control of the crown by the barons. King
John signed *Magna Carta*, under duress, after years of tumult within his kingdom. On June 15,
1215, at Runnymede, the king affixed his seal, admitting that the same laws that applied to
everyone else in England also bound him. Although John did seal *Magna Carta*, because of the
force being used against a king, Pope Innocent III declared *Magna Carta* invalid two months

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¹³ *The Annals of England: An Epitome of English History, from Contemporary Writers, the Rolls of
later in August. Not only did the pope declare the Charter invalid, “he forbade John to keep his oath, and summoned the barons to account for their audacious designs: the return of the most powerful earls to the king’s side.”\textsuperscript{15} The barons did not end their attempts to control the king, but within a year John was dead, and his nine-year-old son, now Henry III was crowned king with several of the leading barons as his regents. The most powerful landowners and highest clergy in the country appointed William Marshal, the Earl of Pembroke, as \textit{rector regis et regni}, (the rector of the king and kingdom,) and other leading landowners as co-counselors with him.\textsuperscript{16} 

In 1217, after Henry’s accession, the regents controlling the country in the young king’s stead re-issued \textit{Magna Carta}. The original \textit{Magna Carta} issued by John in 1215 contained sixty-three clauses and although there were now only forty-two clauses, the main thrust of the document was still on point allowing the barons some measure of control over their own land and country. The problems in England between the crown and the barons did not end with the death of John.

Civil unrest remained in the country and the regents for the young king had to make concessions to those barons who had rebelled against the king. These concessions included the appointment of some of those barons to the council of regents for the newly crowned Henry. Led by William Marshal, one of the regent’s first acts was to reissue the Charter of Liberties, “the document had been most carefully revised, and its form shows that the act was the solemn outcome of deliberate policy.”\textsuperscript{17} Every relevant person present, ecclesiastic or lay, was named

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\textsuperscript{17}The Charter of Liberties was a document issued by Henry II in which he confirmed the liberties granted to the people of England by his grandfather, Henry I.
\end{flushright}
separately as a party to the decision.”¹⁸ By 1217, those in rebellion had made peace with the new king.

After William Marshal died in 1217, Hubert de Burgh and the papal legate Pandulf acted as co-regents. Pandulf departed England at the end of 1221 leaving just the Justiciar de Burgh in charge of the entire realm.¹⁹ In 1223, the pope declared Henry III to be of age and he was given his large seal with certain restrictions. Even though Henry III was in possession of the large seal, he still did not have the power to alienate so much as an acre of his land; neither could he write a charter allowing a man to establish a market.²⁰ By 1227, Henry was in his twentieth year and longer had any restrictions on the use of his seal. It was at this time that Henry desired to assert his own authority. To do so he would have to throw off the yoke of the leading baronial advisors, who, although they were ministers of the Crown, considered themselves the originators of baronial policy and were only required to obey the King as long as he followed the counsel of his magnates.²¹

Prior to Henry III, the Small Council was an immature institution. It consisted of men of the king’s choosing and it ebbed and flowed at the whim of the king. Like the witenagemot, no specific number of members attended and it did not meet with any regularity. Under Henry III, the Small Council became a defined body; specific members selected by the king took an oath to the king, and it became differentiated from the Great Council. Lyon wrote, “The great transformation undergone by the king’s council in the thirteenth century was the addition of the representative element. Simon de Montfort, the Earl of Leicester, was the first to utilize this

¹⁹ Powicke, King Henry III and The Lord Edward, 43.
²⁰ Powicke, King Henry III and the Lord Edward, 44.
²¹ Treharne, Baronial Plan of Reform, 20.
representative element of government. After the Battle of Lewes in 1264, Simon de Montfort was the de facto ruler of England until his death a year later. During the time that he led England, de Montfort called a parliament, which included four knights from every county, in order to gain support for his government. Early in 1265, de Montfort called two knights from each county and two burgesses from each borough to gain further support of his government and to discuss taxation. His initial intention was to broaden support for himself; however, this type of parliament would be the norm by the end of Edward III’s reign in 1377. De Montfort controlled the government of England until August 1265 when he was defeated at the Battle of Evesham by Edward I and his army. When in the course of the fourteenth century the representative element became a regular part of the king’s council, these assemblies were called parliaments and came to be differentiated from the king’s Small Council and from occasional meetings of the king with his barons in great councils.”

The earliest of such meetings took place in 1227. Henry III called two knights elected in each borough to meet with him in order to discuss complaints of wrongdoing by the Hundred Courts and the local county courts. This was an early example of local representation bringing local concerns to the king to be addressed. In 1253, King Henry III needed money to begin a crusade prompted by the pope. This is a perfect example of the relationship between the king and parliament. Although they worked together for the betterment of the realm, contention still existed between them. Concerning a specific tax requested by the king, it was said of Henry III that he resorted to not only extortion to get what he wanted but also confiscation of property.

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22 Lyon, *Constitutional and Legal History*, 343-344.
23 Lyon, *Constitutional and Legal History*, 413.
especially from those living in and doing business in London. This policy would cost him dearly in the future.\(^{24}\)

By 1250, during the reign of Henry III, all the parts, which later would be called Parliament, were in place: the king’s permanent small council, the great council, and local representatives in the body of knights and burgesses elected from each local borough.\(^{25}\) In 1227, the Commons were not yet normally called to parliament but Henry III did summon some knights who would be part of the Commons in the future. This was the first of such meetings of elected knights that were called to address complaints about how the sheriffs were convening the hundred and local courts. The next time the Commons were called was not until 1254. During the baronial crisis in 1258, Henry III and Simon de Montfort summoned the Commons, both attempting to gain popular support. By Edward I’s reign, the Commons were to gain almost as much control as, and have a larger impact on, the conduct of affairs throughout England than that of the greater nobility and the king himself.\(^{26}\)

Representative government in England did not begin with the calling of parliament. In the first parliaments called, no representation were called from the counties. The Commons were being called to parliament upon occasion but by no means was it a permanent part of parliament. There were only nine parliaments called between 1258 and 1300 that included representatives of the counties and boroughs. However, from the time of the Model Parliament in 1295, during the reign of Edward I, the Commons appeared more frequently. By the reign of Edward III, the Commons appeared in nearly every parliament held.

\(^{25}\) Lyon, *Constitutional and Legal History*, 415.
\(^{26}\) Wakeman, *Study of English Constitutional History*, 115.
Edward I, being the heir to the throne, was involved with the administration of the government by the mid-thirteenth century and involved with the early parliamentary process. During the baronial rebellions of 1257 and 1258, the barons forced Prince Edward to swear an oath to the Provisions of Parliament. The experience of doing something the leading landowners in England required eventually led to Edward I signing the Statute of *Quia Emptores*. Prior to the forced signing into law of that statute, in other instances leading landowners applied pressure to convince the king to sign a document against his will. The thirteenth century offers several such examples of attempts to convince the King of England he needed to sign documents to protect his position or to receive monies for which he petitioned. This symbiotic relationship was by no means perfect but it did allow the king and his barons to get what they wanted out of the relationship.

Throughout the early reign of Henry III, issues arose with the barons of the realm. Henry, in an attempt to overthrow the hold of his councilors, allowed the Poitevins to return to England. The Poitevins came to prominence as King John’s household officers but were expelled from England at the end of the civil unrest that took place at John’s death. Henry also returned to them the power they had before they had left the country in 1217. As Henry aged, he believed that the Justiciar, Hubert de Burgh, was exerting too much pressure on him and that he needed to gain control of his country back from him. By 1232, Henry gathered the strength to use Peter des Roches and Peter de Rivaux as officers in the King’s household, which Henry hoped would give him the ability to defeat the justiciar, de Burgh, and his allies.

As Henry gained royal power, one of the things he did to centralize his government was to give the Wardrobe greater power. Before this time, the Exchequer and the Chancery

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27 The Wardrobe was a household department created by Henry III to provide himself more control over the administration and finances of government.
controlled the general administration of the government. Henry made the Wardrobe equal in power with both the Exchequer and the Chancery and this was one of the governmental changes that eventually led to the Baron’s Revolt. “While Henry’s use of the Wardrobe was neither unconstitutional nor illegal, the scope of its activities and the amount of the sums which it handled brought it into the sphere of political interest, and ultimately made it a fit subject for the constitutional reform of 1258.”28 When Edward I became king in 1272, he increased the power of the monarch over the Wardrobe. In his wars against Scotland and Wales, Edward used the Wardrobe to supply funds for them.

The use of the Wardrobe was only a small part of what led to the Baronial Revolt in 1258. Henry, by bringing in some of his Poitevin relatives as councilors, excluded many of the leading barons in England. The barons protested as “evil councilors” those that the king had selected as his closest confidants. These barons did not seek control of the country, they thought Henry had “foolishly wasted the wealth of his kingdom, and brought England to shame and impotence, his whole administrative system pressed hard and unjustly upon all classes of subjects.”29

By 1258, the barons had fought against the administration of Henry III and finally, the king’s attempt to tax his way out of bankruptcy led to a revolt by the leading landowners. Beginning in 1257, a storm of crises hit Henry’s rule at the same time. A famine in England had thousands of people dying from starvation. There were defeats by the Welsh Marcher Lords, in the Welch Marches, and the Pope had given Henry until the summer of 1258 to pay the fees agreed to in order for Henry to keep control of Sicily. The king needed money and to get it he would have to accept some sort of conciliation with the barons who to this point had driven a

very hard bargain. During this time, aid and tallage had replaced carucage and scutage as a means of extracting revenue from the king’s realm. This led the way for the new parliamentary forms of taxation as the main form of revenue for the king. Henry III began to increase the power of the office of the Wardrobe, which received this revenue from the office of the Exchequer, paid the king’s expenses, and kept track of the king’s credit.\textsuperscript{30} In the thirteenth century began the system of modern taxation in England. The economy changed from a feudal society based on land to a more commercial society based on money; the taxes in England came more from the liquid wealth instead of landed wealth.

The barons had the king where they wanted him and in 1258, they began to make demands of him. One of the major issues was Henry’s use of foreign advisors. On April 30 1258, the barons demanded the expulsion of all aliens and the exclusive use of Englishmen as his councilors instead of foreigners. At this time, the barons began to meet and formulate a plan in order to further their control of the king. The Mad Parliament, as it was referred to by Henry’s supporters, met at Oxford on 11 June. At that parliament, the barons presented Henry with the Petition of the Barons. This petition contained a long list of grievances that touched on all of the transgressions that the king’s officers had made to the spirit or the letter of the charters that had come before it.\textsuperscript{31} The petition forced Henry to accept a Council of Twenty-Four that would be used in the selection of all household officers. They also named the fifteen councilors that would advise the king in all public matters. This council was able to counsel the king in good faith on all matters that concerned the government of the realm. They also had input into all other things that related to the king and the kingdom, to amend and redress all wrongs, which they deemed necessary to exercise control over the justiciar and all other members of governmental

\textsuperscript{30} Treharne, \textit{Baronial Plan of Reform}, 38.
administration.\textsuperscript{32} The twenty-nine clauses of the “Petition of the Barons, was neither a petition, nor map of reforms. Instead, it was a list of complaints. This document allowed that in the summer of 1258, the Council of Fifteen had the power of complete control of the administration and government of England.\textsuperscript{33} This “Petition of the Barons” became the Provisions of Oxford, promulgated in July 1259. It is the first document of the baronial reform that contained regulations. It was this document that Prince Edward was forced to acknowledge and to which he was forced to swear an oath. “Lord Edward answered by saying that although he had unwillingly taken the oath at Oxford he would do all he could for reform.”\textsuperscript{34} This was the first time that the barons insisted the prince swear an oath, and as part of the reform movement he had no choice but to swear that oath, and it set a precedent for later in his own reign when he was forced to put his seal on the Statute of \textit{Quia Emptores}.

Two other crucial documents came out of the Baronial Movement for Reform. Promulgated in October 1259, The Provisions of Westminster contained legal resolutions intended to correct the complaints made in the Provisions of Oxford. The original document is no longer extant but there are two versions of this document that exist today; one is in Latin and the other in French. They each contained different provisions, the French version being the stricter of the two documents. This document effectively ended the Council of the Twenty-Four but the Council of the Fifteen was still acting as counsel to the king. As part of the resolution to end this part of the Baron’s Revolt, both King Henry III and the Prince Edward agreed to abide by this document.

\textsuperscript{32} Stubbs, \textit{Constitutional History of England}, 76.
\textsuperscript{34} Treharne, \textit{Documents of the Baronial Movement}, 20.
The final major document issued during this time of reform, was the Statute of Marlborough. This document, issued in 1267, mainly consisted of many of the still unresolved concessions included in the Provisions of Westminster and the Dictum of Kenilworth, which the king and the barons had agreed to previously. The grievances addressed in this document included mostly those of the smaller landowners.\textsuperscript{35} The Statute of Marlborough, written once the insurgents were defeated at the battle of Evesham, contained many of the articles in the Dictum of Kenilworth and was the result of almost two years of negotiations between landowners and the king.

The relationship between the king and parliament allowed for a certain give and take when the situation required it. This allowed for the innovations in the legal system that continued throughout the thirteenth century. Prior to Edward becoming king, he was involved in running the country with his father, Henry III. During the Baron’s Revolts both Edward and Henry were forced into agreeing to documents to which they had no desire to be bound. By the end of the century, those involvements required Edward I to allow the barons to assist him in the governance of England as well as the management of monetary issues. These precedents made it easier for the barons to force Edward to affix his seal to the Statute of \textit{Quia Emptores}.

The relationship between the king, and his barons and the clergy changed over time beginning with the early witan and the small and large councils. As the king’s power expanded to more areas in England, the barons grew in power and wealth. The king was not at first a sovereign leader. He required approval from his supporters and if that support was not forthcoming, it was possible to depose a king. This changed with the coming of the Norman Conquest in 1066 as William gave away large tracts of land to his followers and those that

fought with him to acquire the country of England. William divided the land of England among his followers and his followers in turn subinfeudated. This was the beginning of feudalism, as we know it in England. William brought over from Normandy certain ideas about how to control a country; creating a small and a large council out of the witan was one of those ideas. William brought feudalism to England and along with that system he also brought the idea that support was needed from large landowners if he was to hold onto the country he just conquered.

When the king used the power at his disposal in ways not compatible with his barons, they revolted and showed that although the king was the leader of the country, he had a certain obligation to follow the advice of those that controlled the vast wealth England commanded. One example of that was King John in 1215. John took the law into his own hands and his barons revolted resulting in the signing of Magna Carta at Runnymede in 1215. Although the Pope issued a bull stating that Magna Carta was null and void two months later, once John had died and his son Henry III took the crown, Henry reissued that document, although changed somewhat, to show his support for the baron’s rights. It was Henry and his young son Prince Edward that were involved with the Baron’s Revolt in 1257 that resulted in other legal documents being forced on the king and his prince. This concession to the barons would result in a different relationship between Prince Edward and the barons once he became king.
CHAPTER 5
LEGAL SYSTEM FROM CUSTOM TO STATUTE

The English Legal System has been through several metamorphoses. Different Anglo-Saxon codes of the seven different kingdoms existed during the heptarchic era. Customary law became the writ and the charter systems, which actually used customary law as a base. Both writs and charters confirmed the local customs and granted new privileges to the realm. These writs specifically spelled out the duties of all local officials including sheriffs. Charters and writs were used by private persons and the church to grant land and privileges. The king used them to grant certain royal rights and exemptions to his vassals.\(^1\) Statute laws began during the reign of Henry III and Prince Edward, who was referred to as the “English Justinian,” because of the sweeping changes he made not only in the system of laws in England but also within the court system. According to Frederic Maitland, “Like the famous codifier of the Roman law, Edward stood at the end of a long period of legal development, and sought to arrange and systematize what had gone before him,”\(^2\) ending the organic growth of the writ system in England.

Roman law has been part of the legal framework in England since 43 C. E. when Rome invaded England for the second time. This time Rome occupied England for four centuries. Interaction with Rome by the local tribes brought Roman legal thought to England. The Germanic invasions brought Germanic law already tempered by Roman and Church law. The earliest of the Kentish laws were written in the seventh century during the time that Pope Gregory the Great sent Augustine to England to attempt to convert the population there bringing an influence of Canon law on the earliest laws of England. Augustine arrived at Canterbury in

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1 Lyon, *Constitutional and Legal History*, 110.
2 Maitland and Montague, *A Sketch of Legal History*, 92.
As evidence of the influence of Canon law in these first written laws, the compensation for the murder of a king was less than the compensation for the murder of a bishop.\footnote{The Laws of the Earliest English Kings, Frederick Levi Attenborough, ed., and trans. (Cambridge: Cambridge University Press, 1922), 170.}

Anglo-Saxon laws were initially custom-based; King Ethelbert of Kent issued the first set of written laws in approximately 600. Other sets of written laws came after Ethelbert’s laws for the next one hundred years. No changes were made to those written law sets until 890 when Alfred the Great wrote his laws. Using previous sets of laws Alfred wrote his laws in an attempt to standardize law throughout England. King Canute of Denmark, upon his accession to the English throne in 1016, changed English law little. Being diplomatic and sensitive to the native Anglo-Saxon feelings, his intention was to confirm all Anglo-Saxon laws and leave their administration in place. He also supported the Anglo-Saxon churches in order to appease any hostile reaction to his taking the throne. The changes Canute did make to English law in an attempt to standardize them throughout the kingdom, mostly changing criminal law addressing wrong doings with specific punishments.

William I, upon conquering England, in an attempt to keep peace, promised to keep the laws of Edward the Confessor. His sons, William Rufus and Henry I, promised to do the same. Neither of them kept that promise and changed laws as they needed to. Henry II made more changes to the legal system in England than anyone before him. The presentment jury, expansion of the Eyre Court system, the writ system, and the Grand Assize were innovations Henry II instituted.

Although Pope Innocent III nullified Magna Carta two months after it was written, John’s son Henry III reissued the document when he became king. Under Henry III, there were changes to the legal system forced upon the king by his barons but until Edward I, the English
Justinian, there were no major changes made to the legal system in England. By instituting a statute system throughout England, thereby standardizing the law, Edward changed the way the feudal system functioned in England and some of the statutes he created are still in place today.

The Roman and Germanic influences on English institutions can be traced to the kingdoms established by the Ostrogoths, Franks, Lombards, Visigoths, and Burgundians, all of whom established kingdoms on what was left of the Roman Empire in the west between the fifth and seventh centuries. Each of these peoples had direct contact with the Roman Empire and were influenced by Roman practices. These groups encountered Romans in trade and war. They were also military allies of the Romans and were introduced to all other aspects of Roman life. Once they conquered those areas vacated by the western Romans, they assimilated many elements of the old Roman culture that were more highly developed than those of their own.

After the fall of the Roman Empire, the Germans intermarried with the Romans, adopted Roman titles, and became kings in their own right. These Germanic peoples immigrated to and conquered Britain. According to the Anglo Saxon Chronicle, in the year 449 C. E., “there came men three tribes in Germany: from the Old-Saxons, from the Angles, [and] from the Jutes.” Each of these peoples settled into different areas in Britain. They brought with them the Germanic Law Codes. These codes were put into place to attempt to regulate conditions that would arise under which a man would have to resort to self-help to obtain his rights. For example, it was up to the offended party to serve notice to the offender and make sure the offender showed up in court. Use of the vendetta was a principal institution and if the death

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4 Lyon, *Constitutional and Legal History*, 11.
5 Lyon, *Constitutional and Legal History*, 11.
7 Lyon, *Constitutional and Legal History*, 99.
penalty was given for any specific crime, the injured party was frequently the executioner. By 600 C. E., the Germanic Codes gave way to the Anglo-Saxon laws promulgated by specific kings in the seven major kingdoms of England.

Anglo-Saxons were the peoples that came from a melding of the Angles and the Saxons tribes, beginning in the fifth century. Most of the Anglo-Saxon laws were unwritten customs, confined locally, normally under the auspices of the Church. Around the year 600, King Ethelbert of Kent put down the first set of written laws. According to Maitland, “the history of English law may be said to begin just about the time when the history of Roman Law- we will not say comes to an end, for in a certain sense it has never come to an end- but comes to a well-marked period. . . . Not only are Ethelbert’s the earliest English laws but they seem to be the earliest laws ever written in any Teutonic tongue.” At the end of the seventh century, other sets of Kentish laws were written and about 690, King Ine of Wessex wrote a set of laws. King Alfred wrote the next set of laws in England in approximately 890. Maitland wrote, “[this] shows us that during the last two centuries there had been no great change in the character of law of the legal structure of society.” In writing his laws, Alfred used previously written laws from Ine, Ethelbert and the king of Mercia Offa. After Alfred, came laws from Ethelstan, Edmund, and Ethelred. These laws remained the standard until Canute became king of England in 1017.

Canute, who reigned until 1035, did not change the laws of England on his accession to the throne. According to Roger of Wendover, “in 1022, the English and Danes held a council at Oxford, and agreed to keep the laws of King Eadward, the First. These laws were, by Canute’s direction, translated from the English tongue into Latin; and, for their equity, were commanded

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8 Lyon, Constitutional and Legal History, 99.
by the king to be observed.”¹¹ Those laws Canute enforced were, according to Maitland, “in the mouth of his predecessor had been little better than pious wishes; but [they] also contained many things that had not been said before.”¹² It was Canute for example, that first required every freeman to belong to a hundred and in a tithing, which was the impetus for frankpledge under Henry II.

These laws, as written, were extremely specific as to fines and payments. For example, injuries such as causing a wound an inch long must be compensated with a fine of one penny. Cutting off an ear cost the perpetrator thirty pennies and putting out an eye cost sixty-six pennies. However, these written laws did not just cover injuries; Lyon explains, “Theft was the crime with which the dooms (laws) were mostly concerned. From Hlothære to Canute there was legislation to make it more difficult for thieves to dispose of their goods and to make it easier for the man losing his property to recover it.”¹³ Maitland wrote, “Many of the dooms (laws) are concerned with [crime] prevention. A man who buys cattle must buy them in the presence of the official witnesses chosen from each hundred and borough, otherwise should he buy from one who is a thief, he is likely to find himself treated as a thief.”¹⁴

The process of writing laws down in books began with missionaries explaining to the newly converted English Kings that laws should be written down “after the examples of the Romans.”¹⁵ Beginning in the seventh century, there were a continuous series of English codes written down. King Ethelbert, king of Kent in the early seventh century wrote the very first set written codes in England. These laws placed the property of churches in a special category of

¹¹ Roger of Wendover, Flowers of History, 295.
¹² Maitland and Montague, A Sketch of Legal History, 10.
¹³ Lyon, Constitutional and Legal History, 93.
protection. The exact date is unknown but since King Ethelbert died in early 616, that is the latest they could have been written.\textsuperscript{16} It is no surprise that the first written laws in England concerned the church, for at this time the church began to keep specific records. This was the movement from oral custom to written law. That movement continued and with the arrival of the Normans in England, law began to be written down. William I, who reigned from 1066 to 1087, in the beginning, attempted to ensure he had the loyalty of the English people. In 1086, William I commissioned the largest set of written documentation to that date, Domesday. This two-volume set of books took into account all land throughout England in order for the new king to know exactly what he was able to collect in taxes. According to the local chronicler Saint Anselm, William’s son Henry I at his coronation, “pledged himself in a definite charter to undo the lawlessness of the last reign and restore the excellent customs of the Confessor. With equal emphasis, Henry promised to restore liberty to the Church. The sense in which this liberty was understood could be gathered from the specific pledge that vacancies of bishoprics and abbdacies were no longer to be artificially prolonged in order that the king might enjoy their revenues.”\textsuperscript{17} Henry’s charter continued that all of the feudal changes, the inordinately harsh and arbitrary reliefs and fines used by both William and William Rufus, and the abuse of wardships and marriage, and all of the oppressions from his brother’s and father’s reigns. Henry would also stop the despotic interferences with testamentary disposition, all of which had been common under William Rufus. The laws of Edward the Confessor would be put into place.\textsuperscript{18}

Henry II (1154 to 1189) is the king that changed the legal system in England more than anyone before him. Henry II came to the throne after what historians refer to as the “Anarchy,” a

\textsuperscript{16} The Laws of the Earliest English Kings, Attenborough, 2.
\textsuperscript{17} Anselm and His Work, trans. A. C. Welch, (New York: Charles Scribner’s Sons, 1091), 197.
\textsuperscript{18} Thomas Frederick Tout, An Advanced History of Great Britain from the Earliest Time to 1918, (Longmans, Green, and Co: London, 1920), 102.
nineteen-year period, between King Henry I and Henry II, when Stephen and Matilda fought for control of England. During this time, the kingship lost a lot of power to the church. One of Henry’s goals was to get that power back. One of the first things Henry did was to revamp military tenure. In 1159, Henry demanded and obtained a payment from his vassals in lieu of military service. This soon became an ordinary method of the collection of monies known as esuage or scutage, because it was a specific amount for each knight’s fee due.

Henry continued to make enormous changes to the legal system in England. Before Henry became king, the only way to get a case to court was through accusation. In 1166, Henry changed that system, with the Assize of Clarendon. One of its clauses created the presentment jury. This jury functioned as a grand jury does today. The presentment jury would determine if there were enough evidence to continue the case and would send cases to the Eyre Courts. Every county was to have a presentment jury to include twelve men from each hundred and four more from each village. These juries would hear cases involving crimes not witnessed by anyone. Called public fame, people would testify to crimes in which they had no direct knowledge but had heard rumors about. This information was a valuable source of information and was widely used by courts of that time.19 Henry also revamped the court system of England. He used professional judges who were experts in English law to fill the courts he created.20 One of the court systems he created was the Eyre Court system. These courts had traveling judges that had a specific circuit and had the power to try any type of case that came before them with the exception of those that affected the king directly. The King’s Court would adjudicate any cases that involved the king.

Henry II established the trial by jury in civil cases, with the Constitutions of Clarendon, in 1166. This jury, although it was not specifically called a jury at the time, was at this time for civil and land cases only. Initially called an inquest, the original use was to determine if land was private or ecclesiastical. Trial by battle was used prior to this innovation but the richer you were the better champion you could afford to buy. In order for this type of case to be reviewed by a royal court, a writ of right was purchased. This writ protected the landholder and if they did not get the justice from their lord in the manorial court, the case could be heard in a royal court. For that change to happen, Henry II developed this grand assize. According to Maitland, “Henry II by some ordinance, the words of which have not come down to us but was known as the grand assize, enabled the holder of the land to refuse trial by battle and to put himself upon the oath of a body of twelve neighbors sworn to declare which of the two parties had the greater right to the land.” This replaced trial by battle in England. For criminal cases, other methods of trial were used to determine guilt or innocence until 1226 when jury trials were available for criminal cases. The courts, whether “county court, or a hundred-court, or a court held by some great baron for his tenants. . . were held in the open air. . . . An officer presides over it-the sheriff, the sheriff’s bailiff, the lord’s steward.” Most if not all free landowners were required to attend, referred to as “owing suit.”

Before the advent of trial by jury in criminal cases, there were three ways to prove innocence or guilt; oaths, trial by ordeal, and trial by battle. Oaths were taken especially seriously in the twelfth century. If both of the litigants in the case gave an oath, the judgement would be left to God. At other times, the court would request a certain number of others to give their own oath to prove a case one way or the other. These oaths consisted of a specific set of

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21 Maitland, *Constitutional History of England*, 112
22 Maitland, *A Sketch of English Legal History*, 47.
words that must be pronounced correctly. Any mistake, stammer or error would spoil the oath causing your adversary to win the case. It was also common knowledge that if you perjured yourself, you ran the risk of being struck dead, reduced to the stature of a dwarf, or you may find that your hands or feet are permanently affixed to the relics that were defamed.23

When the oath did not determine the guilt or innocence, the litigants were left to the judgement of God. The ordeal was used to decide these types of disputed cases. This type of case called on God to determine guilt or innocence. This case used fire or water to test the truth of the claimant. The person involved would need to carry a heated piece of iron several steps, or was bound and thrown into a body of water. In both cases if they were telling the truth, God, through the works of local saints, would not allow any harm to come to them.

The third method used to determine guilt or innocence was judicial trial by battle. Again, in this case, God was also involved. The Church did not approve of this type of trial but did agree that the trial was not just a show of brute force. It was an actual appeal to God.24 The accused would not fight for his own cause but select one of his own men, normally a hired champion. Death was not normally the ultimate result of the battle; it was to make the other combatant cry out that what he was fighting for was a lie. In criminal cases of this type, the loser paid a large fine, went to the gaol (prison), or in extreme cases, faced either mutilation or the rope.

The writ of right, also called the Grand Assize, was a possessory assize that created trial by jury in 1179. Henry II made it possible for the defendant in a civil trial to choose a jury trial over trial by combat. It allowed better justice than what was possible in a feudal court. Maitland stated, “the person sued might refuse trial by battle and have the question ‘who has the best right

24 Maitland, *A Sketch of English Legal History*, 49.
to this land?’ submitted to a body of his neighbors sworn to tell the truth. [The] point is that by providing new remedies in his own court Henry began to centralized English justice.”  

Church courts in the twelfth century began to claim jurisdiction over all land that was held by the tenure of free alms. Problems arose when it was difficult to determine whether land was held at free alms or held under feudal tenure. A clause in the Constitutions of Clarendon, which was issued in 1164, stated that a jury in the royal court would have to answer this question. That clause stated that a jury of twelve men was to make the determination and under oath would be asked whether (utrum) the land was secular or church land. At Henry II’s death, his son Richard became king. This was the first of the assize of utrum, the final of the petty assizes.  

Richard I reigned from 1189 to 1199 and during that time, he was present in England only a total of about nine months. The changes to the legal system made by Richard were not overreaching. The largest change Richard made was an enormous push to raise money for his crusade. In order for Richard I to raise enough money for his plans for the Third Crusade, he sold special privileges to towns throughout England. These privileges, which were like those that William I had sold to London, gave those towns willing to purchase the charter a measure of independence. Richard accomplished a few other changes to the legal system. One of these changes was his reissue of the forest law. William I set punishment as blinding for stealing deer from the king’s land. That punishment changed to death under his son William Rufus. Under Richard, the main result of justice was mutilation and blinding of the offender.

26 Free Alms was a tenure where land was given to a church or abbot, or other religious person, also called tenure in frankalmoine, which is perpetual religious services or prayers.
27 Lyon, _Constitutional and Legal History_, 290.
28 Willis, _Introduction to Anglo-American Law_, 87.
29 Stubbs, _Lectures on Early English History_, 119.
John, Richard’s brother made sweeping changes to the English system of laws. He reigned in England from 1199 to 1216. Unfortunately, for the people of England, John, being the fifth son, was not groomed for kingship, but probably destined for priesthood. John was not known for his legal changes as much as his abuses of the legal system.

John died fifteen months later and his nine-year-old son Henry was crowned king. Because of his young age, Henry III began his kingship with regents ruling England in his stead. William Marshal and twenty-four other barons formed the Baronial Council that acted as regents. These leading barons took the step of reissuing *Magna Carta* in 1217. It contained less clauses than the 1215 version but still, this move made it constitutional. After the death of William Marshal in 1219, Hubert de Berg became justiciar effectively making him the ruler of England during Henry’s minority. It was during this time that Henry, although he could not select members of his Baronial Counsel, began selecting members of the Curia Regis. For these positions, he selected some of his relatives from the continent. That he selected foreigners as part of his court infuriated the barons acting as regents. Henry III came to his majority in 1232 and this was the beginnings of a constitutional government in England. Henry needed money and the way to get it was to meet with the leading barons and make compromises. This is also when the king reorganized the structure within his own household in order to gain more power. Henry increased the power of the Wardrobe to gain more control over the monies coming into the state treasuries.

By 1256, the barons threatened civil war unless Henry stopped using his “evil counsel,” those foreigners Henry used as his council, and began to take advice from the large landowners in England. The Baronial Council attempted to decentralize some of the government functions by moving them to the cities and towns throughout England. During this time, Henry III called the
House of Commons for the first time. It is not by any means a permanent addition to parliament but does meet three times during Henry’s reign. Parliament had power over the purse strings of England by this time but the king still had power over parliament by being able to select who sat in it. In 1258, the threat of civil war thrust the Provisions of Oxford upon Henry against his will. These provisions limited the power of the king and allowed a Baronial Council to select the administrators for all household positions including the Wardrobe and the Exchequer.

Through negotiations between the king, with his son Prince Edward, and his barons, the Provisions of Oxford of 1258 became the Provisions of Westminster in 1259 and the Statutes of Marlborough in 1267. These were the first major pieces of legislation since Magna Carta in 1215. The barons forced Edward to take an oath to the Provisions of Oxford in 1258. Prince Edward defeated Simon de Montfort at Evesham and put Henry III back on the throne of England.

The Chancellor was issuing writs using the king’s seal. The writ system was growing organically because of the huge increase in the number of writs issued. That expansion made it difficult to control. In order to centralize laws in England, Edward I began to issue statutes in an attempt to override the use of writs. Edward called parliament three times a year and through them began to change the legal system by issuing statutes in order to create a system of laws for the entire country, not just those with enough money to purchase a writ.

Beginning with the laws the Romans and other conquerors brought to England, custom slowly changed to written law. In all cases, there was an attempt by the king to standardize laws through England to make administration easier. Beginning with King Ethelbert of Kent, laws began to be written rather than by word of mouth. Until Canute became king in 1016, previous kings had written laws they needed to keep control of the country. Canute’s laws became much
more specific as to criminal fines and punishments. The conquest of England by William I of Normandy had lasting effects on the laws of England. Although William and his sons promised no changes to the laws of Edward the Confessor, they each broke that promise; in turn, each changed the laws as required. William I conducted the largest survey of a country to that date. *Domesday Book* allowed taxes to be collected in a much more efficient manner. King John signed *Magna Carta* and changed the powers a king controls.

Edward I changed the legal system from a writ system to a system of statutes creating a standard of laws throughout the country. Land law and feudalism changed in Edward’s reign and statutes he passed are still in use in England today, such as the statute of *Quia Emptores*, the most sweeping change to land law in England that he signed in 1290.
CHAPTER 6

SUBINFEUDATION AND THE STATUTE OF QUIA EMPTORES

Although Edward was not yet king when Henry III was involved with the Baron’s Revolts, the barons insisted that he submit an oath to the Provisions of Oxford in 1259. Edward was involved in ruling England from an early age. Edward changed the legal system to one of statutes, laws available for everybody in England, rather than writs that could be purchased by anyone with the money to buy justice, which had grown organically out of control. Edward’s relationship with parliament began to change once he became king. Edward fought many wars, which required large sums of money; the barons extracted concessions from the king whenever they agreed to supply this money. These large landowners in some cases had held their land since the time of William I. They had been granted honors by William I in some cases containing hundreds of thousands of acres. This was the basis of the feudal system in England. They held their land directly from the king, and would support the king in all things militarily and monetarily. These tenants-in-chief subinfeudated land to those who supported them, in whole or partial parcels. This subinfeudation was necessary to put knights on their own land.

Subinfeudation of land created more levels between the king and the smallest landowners in England. Each time land was subinfeudated, it created another level between the two. Substitution was the other way land could change hands. In this case, the person alienating the land gave up all rights to it and the new tenant stepped in holding land from the original lord. Land could change hands in England only in these two ways.

The statute of Quia Emptores ended the subinfeudation of land in a fee simple estate. In other types of estates, for example freehold, subinfeudation was still possible. These types of estates were only for a specified amount of time and they would eventually revert to the original
lord. Conditional gifts such as those given under the statute of *De Donis*, if in a fee simple estate could not be subinfeudated because the statute of *Quia Emptores* prevented it, even if *De Donis* was enacted. *Quia Emptores*, instigated by Edward’s barons, was an attempt to prevent the creation of new levels of lords between them and their feudal incidents. They were losing money by subinfeudation and this statute would prevent that loss. Land law in England being what it was at the time, did not allow these tenants-in-chief to alienate land as they wanted, they needed permission of the king, and it was their hope that with the passage of this statute that they would gain that ability.

The writ system had been growing organically for some time. Once Edward I became king, he began to call parliaments on a semi regular basis. His relationship with parliament was one in which he depended on their acquiesce in order to receive the taxes he needed. In June 1275, Edward received a letter from Pope Gregory X in which the pope demanded the payment of monies owed by England since John was king. Of Edward’s response to that letter, Maurice Powicke wrote, “in [Edward’s] letter, Edward defined his relationship to parliament. Without the counsel of the prelates and magnates, he could not give the pope an answer, for he was bound by his coronation oath to preserve uninjured the rights of the realm and, without such counsel, to do nothing which affected the crown of the realm.”¹ This coronation oath was no different from past ones given by Edward’s ancestors, for example, Henry I promised to keep the law and as Edward did, take counsel from his barons. Edward I’s reign is the period in which parliament began to gain the rights to the purse strings of England.

In 1290, Edward, attacked Scotland. He had already fought wars with Wales and France and was still looking for more funds to continue fighting. Each time Edward wanted to tax

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England, he called parliament. Beginning in 1290, Edward wanted the consent of the entire country in order to impose taxes. He began to call knights to parliament, representatives from each borough, which was the beginnings of the House of Commons. Each town and borough elected knights as representatives to the Commons. Although elected from each town, the largest landowners elected them so they were not in fact representative of everybody in each town or borough. Each town had representation in the voting on the implementation of these taxes. This was the beginning of taxation with representation in that, not only the barons, but it was thought that it was also the common people in England who were gaining a say in when a direct tax could be imposed and how much tax was going be collected. During the early part of Edward I’s reign, he dominated parliament only calling it together when he felt the need. In these early parliaments, Edward had enough power over the members of parliament to ensure that they would rubber stamp whatever provisions he needed. Later in his reign, those years that included the wars with Wales and the Scottish Wars of Independence, Edward I began to treat parliament differently. Although, the king understood he had almost a complete sovereign control over the country, Edward had been involved with his father, Henry III, during the Baron’s revolts from 1257 to 1268. During that time, his barons had limited his power. During that tumultuous time, Edward understood that the largest landowners in England had the power, because of their wealth, to fight the king and, as demonstrated in Magna Carta, the king needed to listen to those holding the purse strings. Because of the king’s need for money, a symbiotic relationship developed on both sides allowing the barons to get some sort of representation and the king to get the monies he needed. That symbiotic relationship allowed for the passage of the Statute of Quia Emptores.
Before the Statute of *Quia Emptores*, the transfer of land took place in one of two ways. Substitution of land required the ownership of land to change hands entirely from one person to another. In this case, the original lord remained the lord of that land and all services and aids due to him remained in their original form. There was no loss of income for the lord holding the land and the new occupant paid homage to the lord just as the old occupant of the land had.

Subinfeudation was the other process by which land changed hands. Just as in substitution, the transfer of land was done for a variety of reasons, including the payment of debts by those alienating the land. In post-conquest England, subinfeudation began when William I rewarded those who fought alongside him in his bid to conquer England. What William I did in England was to establish the original “honors.” Early subinfeudation was a Norman institution that began in Normandy in the eleventh century. David Douglas wrote, “William was concerned to represent himself as king of England by due succession, and it was under the guise of an astute conservatism that the redistribution of English lands took place.”

The reason for the immediate distribution of land was twofold. First, William needed to reward those who supported his bid for the English crown. He distributed large portions of English property to the Norman nobility, who supplied knights to conquer England. William’s half-brother, Odo, received most of the county of Kent. The Counts of Eu and Mortain received Hastings, Penvensey, Lews, Arundel, and Bramber. Hereford, Chester and Shrewsbury were entrusted to William Fitz Osbern, Hugh, son of Richard, *vicomte* of Avranches and Roger of Montgomery. These areas of England included hundreds of thousands of acres. The land given to the Norman aristocracy was in most cases taken from Anglo-Saxon earls. Those Anglo-Saxon “Earls, Prelates, and chief Thegns of England had had to subordinate themselves to the new

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power of the Conqueror. They craved, so the Norman writers tell us, William’s pardon for anything that they had done, or even thought, against him, and threw themselves and all that they possessed on his mercy.”

Once William conquered England, very few Anglo-Saxon nobles still owned land there. According to Douglas, the Normans who received the land were “precisely that group of Norman Magnates which had most consistently supported William in Normandy, and which now was to receive the largest share of the landed wealth in England.”

The second reason for the distribution of land in England to his followers was in order for William to keep the country he had just taken. William needed armies to hold England. Charles Homer Haskins wrote, “The Norman Barons before the Conquest held their lands from the duke by military service.” That relationship continued after the Conquest of England. Several rebellions took place in the early years after 1066. The barons that had land bestowed upon them were required to provide a specified number of knights to the king when requested. This knight’s service was the beginning of the introduction of tenure and feudalism in England. Douglas opined, “The successful imposition of tenure by service upon his magnates in respect of their English lands must be regarded as one of the most notable of the Conqueror’s achievements. Not only did it establish his followers as a dominant aristocracy in England, but also it made their endowment meet the defensive needs of his realm. The conditions under which these men received their lands supplied the king with between 4,000 and 5,000 trained troops.”

Originally, the lords of these honors used subinfeudation to reward other supporters of theirs. Pieces of land were given to underlings who then were responsible for providing the

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knights that William needed when he invaded England. These men in turn subinfeudated more land, further spreading tenure and the feudal system throughout England. By 1290, although, the tenants-in-chief holding land legally could not alienate any land without license from the king, smaller landowners preferred it to substitution because subinfeudation allowed for the smaller landowner now to be a lord in their own right and able to receive feudal incidents and aids from those holding land of them.

Each person holding land of a lord owed specific services, based on the agreement between the lord and the alienee of the land. One of those services was Knight Service. These knights were often household knights kept by the lord in the event the king required them. To maintain these household knights was expensive for these vassals. It was up to the vassal to house and maintain these knights. In order to improve their own social status, these knights wanted to possess their own land and share in the profits of that land. Eventually, vassals that were required to provide knights to the king alienated land to their knights so they were no longer required to pay for the support of their knights. They would still be required to provide knights to the king when required but they would no longer be responsible for the care and maintenance of those knights. These knights were now responsible for their own maintenance and were still available for knight service if the king or their individual lord required it.8 Those knights would eventually do the same and require knight service from their own vassals. The main result of all of this subinfeudation was that it added layer upon layer of lords between the king at the very top of society and the smallest landholders at the bottom.

The advantage of holding land in medieval England included profits from feudal aids, called pecuniary contributions, which were paid on three specific occasions. The lord demanded

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8 Lyon, Constitutional and Legal History, 131.
them when his eldest son was knighted, when his daughters were married and when he was captured for ransom in war.\textsuperscript{9} Tenure, in Medieval England, included many different incidents and services. There were those with the smallest value, such as a rose at midsummer, and those with the highest value, such as homage or military service. A lord demanded military service for not only knights, but also for arms and armor from those holding land too small to supply an entire knight’s fee. The aids, knighting of the lord’s son, marriage of the lord’s daughter and ransom of the lord if required were very economically profitable for the lords and each time subinfeudation took place, it diminished those aids the lord could collect. Once land was subinfeudated, the land was held of the person alienating the land and because of that, the aids now went to the new lord and the original lord was not able to avail himself of those monies.

Using the text of the Statute of Quia Emptores, it became lawful for every freeman, holding a fee simple estate, to alienate at his own pleasure his lands or tenements, or the subdivision or part thereof. Substitution would now be used so that the feoffee held the same lands or tenements of the same chief lord of the fee, with the same services and customs as his feoffor held before the alienation.\textsuperscript{10} Removing the possibility of subinfeudation in a fee simple estate was the beginning of the end of feudalism. Without the possibility of creating more layers between the chief lord and those holding below him, the amount of services and incidents began to decline. “In socage tenure, when no rent was payable and no value attached to the service, there was no motive for keeping up the empty ceremony of fealty, and thus in many cases the relation of lord and tenant became altogether obliterated.”\textsuperscript{11} When the magnates wrote the text of

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\item \textsuperscript{9} Lyon, \textit{Constitutional and Legal History}, 131.
\item \textsuperscript{10} Anson Bingham and Andrew J. Colvin, \textit{A Treatise on Rents, Real and Personal Covenants, and Conditions}, (Albany: W. C. Little, 1857), 36.
\item \textsuperscript{11} Kenlem Edward Digby, \textit{An Introduction to the History of the Law of Real Property with Original Authorities}, (Oxford: Clarendon Press, 1876), 200.
\end{itemize}
*Quia Emptores*, the primary objective was to ensure that the losses caused by subinfeudation, and the subdivision of tenements resulting from this did not continue. Even present day in England, any land held in fee simple would need to have been alienated from the lord prior to the statute passed in 1290. Since that time, all transfers of land would be a complete transfer of land from one person to another. This gradually weakened the relationship between the chief lord, the king, and all freeholders. With the change to a socage tenure, landholders kept their land by the act of paying a specified rent at specific intervals. With land held by a rent payment and nothing else, no value could be attached to fealty. This changed the motivation for keeping up the action of fealty. With that gone, the relationship between lord and tenant began to break down; the rights of a lord to jurisdiction over his own demesne and those whom held land of him. The Tenures Abolishment Act enacted by King Charles II, in 1660, abolished knight-service and converted that tenure to socage making all freeholders the actual owners of the soil and effectively ending feudalism in England.¹²

The statute itself states “Our lord the King, in his Parliament at Westminster after Easter, the eighteenth year of his Reign, that is to wit, in the Quinzaine of Saint John the Baptist, at the instance of the great Men of the Realm, granted, provided, and ordained, That from henceforth it shall be lawful to every Freeman to sell at his own pleasure his Lands and Tenements, or part of them; so that the Feoffee shall hold the same Lands or Tenements of the [Chief Lord of the same Fee, by such Service] and Customs as his Feoffor held before.”¹³ Politically, it was expedient to include the smaller landowners to create a compromise with the text of this statute. Prior to the passage of *Quia Emptores*, tenants had the ability to alienate their land freely as long as the lord approved the transaction. The tenants-in-chief, on the other hand, were required to buy a license

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from the king to alienate their land both before and after the passage of the statute. It was the tenant’s responsibility to ensure that the lord’s incidents remained whole. Lords typically charged a fee for the alienation of land held of them and charged the new tenants a fee to move onto the land. Tenants did not want to lose what power they had to alienate freely and by 1315, in the reign of Edward II, legislation ensured that those to whom they alienated were not required to pay a fee to the lord to move onto the land. The lords, on the other hand, did not want to lose the incidents of tenure, which were very lucrative for them. The passage of Quia Emptores created a compromise between the larger landowners and the smaller landowners. It had the effect of ensuring that the lords and their tenants were not forming two separate classes, in that they were both tenants and lords in certain parts of their property.\textsuperscript{14}

Motivation behind Quia Emptores included abuses of alienation by the smaller landowners and losses to the barons through the subinfeudation of land. Smaller landowners were abusing the process of subinfeudation by transferring all or parts of their land to the Church. The Church in turn would then send the land back to the landowner, giving the landowner the same rights he originally had to the land without having to pay services and incidents to his lord. This caused several issues for the lord that held the land. The problem for the lord was that the Church never married, never had children, and never died. That left the more lucrative feudal aids unavailable for the lords to collect. Because the Church never died, there were no inheritance fees. Because the clergy and monks never married, there were no children to become wards of the lord. Because the Church never died or needed to pay feudal incidents, the land never escheated back to the lord. Another abuse was these smaller landowners giving parts of their land to their children for very small incidents, for example a rose at

midsummer, thereby preventing the original lord from receiving his services and incidents as the original lord. Those losses incurred by the lords in that instance continued through normal subinfeudation.

When the land held of a lord was subinfeudated, the original lord lost the most expensive of the feudal aids available to him. Prior to the passage of Quia Emptores, land held of a lord L could be alienated by tenant T, T in subinfeudation to a subtenant. That subtenant would then hold the land of T instead of L and all feudal incidents and aids would then be due to T. L would lose that part of the incidents because he no longer was lord over that land. L lost wardship, and the other aids normally due. The lords could no longer prevent the alienation of land and finally during Edward II’s reign the lord could no longer charge the alienee taking possession of the land. The statute of Quia Emptores ended that process and prevented the loss of those monies by the lord.

The Easter Parliament of 1290 began after Edward I’s return to Westminster from Gascony. Several major pieces of legislation came out of this parliament. According to contemporary chroniclers, the king established many new laws.\(^{15}\) The beginning of the parliament saw the Statute of Quo Warranto, on May 21, known as Whit Sunday. On July 8, the same day as the passage of Quia Emptores, the king’s daughter was married to John of Brabant. In addition, a royal edict expelled all Jews from England. In this expulsion, they were allowed to take personal items and were not to be molested by anyone in the realm.\(^{16}\) The Easter Parliament was supposed to meet on 22 April, which was three weeks after Easter, but the king was not at Westminster. He returned on April 28 and that was the first possible date for Parliament to meet.


\(^{16}\) Powicke, The Thirteenth Century, 513.
It was in session on 10 May and continued through 8 July. On that day, July 8, the king and the magnates compromised on the statute of *Quia Emptores*; it was probably the last item conducted by this parliament. This parliament could not have been in session past 21 July because the king had left Westminster by that date.\(^{17}\) The king had called the Commons and the passage of *Quia Emptores* may have waited for the concurrence of those knights called by the king; this statute was most likely the only reason he called them.\(^{18}\) The effective date of the statute was set to be on the Feast of Saint Andrew the Apostle next coming, which was 30 November 1290. The end of subinfeudation was the goal of the Statute of *Quia Emptores* and the reduced aids were one of the major motivating factors behind the Statute. The statute itself states “at the instance of the great men of the realm, granted, provided, and ordained, that from henceforth it shall be lawful to every freeman to sell at his own pleasure his lands and tenements, or parts of them.”\(^{19}\) The king affixed his seal to the statute and promulgated it to the country. Discussions between parliament and the king have not been discovered at this time and although the king did not benefit directly from its passage at this time, he would eventually benefit as more land began to escheat up to him. The king was still gaining monetarily each time a license or pardon was issued by him.

Benefits resulted for both the king and the magnates of England. The magnates were still legally prevented from freely alienating their own land but after the passage of the statute, they did not lose feudal incidents and services that were lost to them before the statute’s passage. The magnates no longer had any control over alienation of land they held but any alienation of land of a fee simple estate could now only occur by substitution. Substitution had been in use prior to

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the statute being passed and once it was passed, *Quia Emptores* ensured that in fee simple estates, that was the only way land could be alienated; subinfeudation could still occur with other tenures throughout England. The king was in the position to increase the royal revenue once the statute became law. Prior to the passage of *Quia Emptores*, tenants-in-chief were required to purchase a license in order to alienate their land. After the passage of the statute, the courts interpreted the statute to mean that the free alienation of a freehold did not apply to the land held by the tenants-in-chief. The king was still able to require the purchase of a license for them to be able to alienate any of their land. Since the king was always lord and never tenant, the statute did not affect the king legally and he was in no danger of losing any feudal incidents. According to Maitland, “Nothing was said about the king’s rights and no one seems to have imagined that the tenants-in-chief of the crown were set free to alienate without royal licence; on the contrary, it is just at the moment when all other tenants are gaining perfect freedom, that the king’s claim to restrain any and every alienation by his tenants in chiefs attains its full amplitude. . . . The one person who had all to gain and nothing to lose by the new law was the king.”\(^{20}\) With the end of subinfeudation, the gradual diminishing of the mesne tenures meant that the king would receive more incidents and more land would escheat up to him.

During the Middle Ages, the Fine Rolls were used to account for all fines paid to the crown. The earliest rolls began with the reign of King John and continued through the year 1641. After the passage of the 1290 statute, they were drawn up into separate lists, containing fines, for each year, that were referred to as *Grossi Fines*. Contained within the Patent Rolls and the Charter Rolls, these entries consisted almost wholly of fines made for licenses and pardons for the alienation and acquisition of land, all of which had some direct or indirect financial interest

for the king.\textsuperscript{21} The licenses purchased from Edward I by the tenants-in-chief were recorded in the Fine Rolls; they also recorded the fines received for the issuance of pardons, if these tenants-in-chief alienated land without first obtaining a license.

The king received financial remuneration each time a request for alienation was presented to him. He also had the power to grant pardons, and he gained financially each time he granted one to those tenants-in-chief who had not gained his permission to alienate in the first place. This did not change with the passage of \textit{Quia Emptores}. In the courts, this idea of licenses and pardons prevented the free alienation by the tenants-in-chief after the passage of the statute. These barons were still required to receive a license from the king to alienate their land even after the promulgation of \textit{Quia Emptores}. Between the years of 1291 and 1310, there were 556 licenses issued to those tenants-in-chief who wanted to alienate their land.\textsuperscript{22} Between 1323 and 1331 there were 336 pardons issued by the king for land that had been subinfeudated without license. In each of these cases there were fines attached to the payment of either the license or pardon.\textsuperscript{23}

The following five cases are illustrative of the power the king had over the alienation of land in England. Whether a pardon or a license was requested, the king had the final decision on both. During the Easter Parliament in 1290, a license for the alienation in mortmain was issued to Geoffrey de Picheford to allow him to alienate land to the Friars of Cambridge. Once the statute became law, there was no time wasted in cases where the king was asked for licenses to allow alienation of land. Since the courts ruled that the tenants-in-chief did not have the right to

\begin{itemize}
\item \textsuperscript{22} John Malcolm William Bean, The Decline of English Feudalism, 1215-1540, (Manchester: University Press, 1968), 82.
\item \textsuperscript{23} Bean, The Decline of Feudalism, 100.
\end{itemize}
alienate their own land freely, the first court case after passage of the statute took place less than one month later. Because of the court ruling in favor of the king, in October 1290, Gilbert Umfraville was required to petition the king for a license to alienate land held by him to his wife Margaret and his eldest son that Umfraville held at the manor at Overton. The king in this instance refused to grant the license to Umfraville.24

In September 1296, Walter de Cambhou died while holding land of Hugh de Gosebeck. Gosebeck was a tenant-in-chief of the king in the county of Northumberland. Upon the death of de Cambhou, the king held an inquisition through the escheater, this side of Trent, John de Lythegreynes.25 Hugh de Gosebeck had in turn alienated the land to Hugh de Reymes and his son Robert. The result of the inquisition was that the land Gosebeck alienated to de Cambhou and in turn de Cambhou to Reymes, was done so without either of the alienators acquiring a license of the king. As a result, the king took this land back into his own hand. The son, Robert, petitioned the king for a pardon. The king agreed to a fine for the pardon and homage from Robert and returned the lands to him.

This case was different from the case of Gilbert Umfraville in that there is much more information extant about the case. The King’s Court had determined that tenants-in-chief needed permission from the king to alienate any of land held directly of the king. In this case, the land had been alienated without securing a license from the king. The king requested an inquest at to the alienation and it was determined that no license was issued. The king issued his edict that he would take the land back into his own hands. The alienor of the land, Robert de Reymes was

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25 At this time there were two Escheators, one on “this side (north) of the Trent” and one “on the other side (south) of the Trent.”
required to purchase a pardon from the king in order to keep the land. The king issued the pardon for the required fine and de Reymes was allowed to keep the land that was alienated to him.

In 1303, the king issued a license for alienation. The fine was normally paid to the treasurer but in this case, the fine was paid to Phillip de Wylughby, in the treasurer’s place, and the barons of the Exchequer. The Master of the Knights’ Templars in England paid the fine to Wylughby, which included land alienated in mortmain by Roger le Blake of Madebrok. The land alienated contained a toft, and two acres of land in Eastwode. Additionally, alienated to the Knights’ Templar was a messuage in the street of la Cherryngg, in the parish of Saint Martin’s in the Field; a messuage and twelve and a half acres in Little Stocton alienated by Robert de Gunwardeby. William de Wengrace alienated another messuage and ten and a half acres of land in Little Stocton, and Hugh de Stocton alienated another two acres of land in Little Stocton. Finally, Robert de Carleton of Cranewell alienated a messuage and two bovates of land in Cranewell to the Master of the Knights’ Templars and his brethren. This case is different in that the license was purchased before alienation and therefore there was no need for pardons or fines.

In 1305, King Edward I was petitioned for a pardon for violation of the statute of *Quia Emptores*. On July 29 1305, William de Ballecote petitioned the king for a pardon, which was issued once a fine was paid to the treasurer and barons of the Exchequer. The Exchequer had made an inquisition *ad quod damnum* (to the loss) of an alienation that Walter de Ballecote had made to Geoffrey de Ballecote, his brother. The size of the property alienated was two messuages, seven virgates, and six acres of land in Hamptonet, Cherlington, Chiriton, and Tettebury. Matilda de Mortno Mari, now deceased had held the land in chief and had given it to

Geoffrey in fee tail. That grant of land was confirmed with a license issued by the king to Matilda de Mortno Mari for her alienation to Geoffrey de Ballecote. The king had not been petitioned nor had a license been issued to Geoffrey for his alienation to his brother Walter. Since there was no license for that alienation, the land escheated back into the king’s hands. Once the fine for his pardon was paid, the king made allowance to Walter and allowed him to pay for the license.\textsuperscript{27}

In May of 1305, there was an “order to the escheator on this side of Trent\textsuperscript{28} to inspect a writing of agreement made between Hugh de Sanco Phileberto, deceased, tenant-in-chief, and Benet de Blakenham.”\textsuperscript{29} The agreement stated, “Hugh [alienated] for life to Benet the manor of Soulham and certain lands in Pangeburne, Purle, Tyghelhurst, Leghyng, and la Hyde with the right to enter the same if Benet did any waste or alienation thereof.”\textsuperscript{30} Also in this agreement, it was stipulated that if Benet wanted to alienate any of the land, because a tenant-in-chief has held it, he must petition for and receive a license from the king before said alienation took place. Benet then alienated portions of the land to John, son of and heir of Hugh de Sanco Phileberto without receiving that license. Since there was no license received for the alienation of the land, once the king’s inquisition was completed, the king took the lands from Benet into his own hands. Benet received no financial remuneration for the land but also was not fined for having alienated land without the license of the king. John was not yet of age when his father died. Sanco Phileberto was a tenant-in-chief and as such, the king would take the wardship of his son John. This case is unusual in that John was a ward of the king; John’s land would be taken into

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\textsuperscript{27} Calendar of the Patent Rolls, Edward I 1301-1307, 375.
\textsuperscript{28} At this time there were two Escheators, one on “this side (north) of the Trent, and one “on the other side (south) of the Trent.
\textsuperscript{29} Calendar of Fine Rolls, 520.
\textsuperscript{30} Calendar of Fine Rolls, 520.
\end{flushleft}
the king’s hand until John became of age. Since the king took the wardship, the court found that no license or pardon was needed in order for John to receive the land when he became older. John was still the king’s ward and it was the responsibility of the king to keep the land for the ward of his tenant-in-chief until he came of age.31

In the alienation of land in this case, no license was purchased prior to alienation. The actual alienor was not a tenant-in-chief although a tenant-in-chief had held the land previously; it was included in the contract of alienation that a license would be purchased before any land changed hands. No license was purchased and the possessor of the land died with an heir who was below the age of adulthood. Since no license was issued for the alienation, the king took the land from the intended alienee, who did not pay for a license but also did not receive any payment for the land, into his own hand. The land would have reverted to the tenant-in-chief had a license been issued and in this case, the heir became under the king’s wardship and it was the responsibility of the king to maintain the land for the heir. Because of this unique circumstance, once the heir became of age he was allowed to take possession of the land.

The following case differs from those previously discussed in that the alienation of land took place prior to the passage of the Statute of *Quia Emptores*. In 1292, the King’s Bench sent to the sheriff of Somerset, an order of summons to Maurice of Membury, that the sheriff was supposed to deliver. The summons required Membury to answer Richard of Windsor about a surety bond, in the amount of two hundred pounds; Windsor claimed that Membury was unlawfully keeping the surety bond from him. 32 The case states, “whereas Richard of Windsor had by our writ impleaded Maurice of Membury in our court before the justices and their

31 Calendar of Fine Rolls, 520.
32 A surety bond is a specified amount of money held to ensure a specific performance, in this case the transfer of specific land, within a specific time frame.
fellows, our justices of the bench, that Maurice should give up to the aforesaid Richard the surety bond of two hundred pounds. Richard had asserted that the surety bond, in accordance with a certain covenant made within that deed, between Richard of Windsor and James, had been handed over to Maurice of Membury to be held in trust so that it should be delivered to either of the aforesaid Richard and James without consent of both of them.” The case continues, “The same Maurice came in the same court and said that the same Richard and a certain James of Wyville handed that deed to the same Maurice to be held in trust until a certain fine of certain tenements in Bicknoller had been levied in the king’s court between the aforesaid Richard and the aforesaid James, he was to cause the aforesaid James to know that he was to be here on this day, to show if he had anything or could say anything on his own behalf whereby the aforesaid deed ought not to be handed over to the aforesaid Richard.” Membury was holding the bond as surety in the case between Richard of Windsor and his wife, Juliana “and James de Wyville concerning the transfer of land from one to the other. According to the case, the surety bond was given to Maurice of Membury to hold until the outcome of the case was decided for either Membury or Richard of Windsor and James de Wyville. The text of the case stated, “Windsor wanted the bond returned to him, claiming there was no longer a need for the bond to be held as the case had been settled in his favor. The sheriff originally answered that Wyville had also approached him for the return of the bond to him. Membury informed Windsor that he could not return the bond to him without a signed release from Wyville, per the instructions from the justices. The bond was put into place to ensure that the lands were transferred to the aforesaid James before the specified date, with respect to this the same James put forward in judgement.

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34 *Select Cases in the Court of the King’s Bench Under Edward I, Volume II*, Ed. George Osborne Sayles, (London: Bernard Quaritch, 1938), 162.
against the same Richard a certain deed of covenant and offered to prove that the aforesaid lands and tenements were not handed over to him on the aforesaid day according to the form of the aforesaid covenant.”

The facts of the case concern a land transaction that occurred between the time that the agreement was reached in Parliament, for the enactment of the statute of *Quia Emptores*, and the statute actually becoming law. Richard of Windsor agreed to alienate lands in Bicknoller in Somerset County, to James de Wyville. The original intention of the contract between the two parties, in 1290, was to get a deed through the royal courts and to transfer the freehold to Wyville, before the implementation of the statute. The deed contained very specific arrangements, such as; Wyville brought an assize of novel disseisin against Richard de Windsor and his wife for land that had previously been in possession of Henry de Wyville, James’ father. The assize of novel disseisin was brought in the county court before Walter of Wimborne and his fellow justices. The reason for this assize being brought up was that James’ father was in possession of the land before he died and Richard de Windsor agreed to subinfeudate the land to James de Wyville. It was the intent of the contract to conclude the subinfeudation before the enactment of *Quia Emptores*, which would have outlawed the subinfeudation of the land. Wyville claimed that he should hold the lands for himself and his heirs from Windsor, his wife, and their heirs by the due and accustomed services required. Windsor surrendered the land to Wyville and he took possession of all the property before 29 September, which was *Michaelmas*, in 1290. The deed specified that Wyville was to pay for the issuance of a writ of warranty of charter, in which Richard of Windsor would warranty the ownership of the land by Wyville, before the implementation of *Quia Emptores*, in time for the case to go into the Common Bench.

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by the Quinzaine of Martinmas. Martinmas was held on November 10 in 1290, which would put the Quinzaine fifteen days later on November 25. The consequences of this case would be to allow Richard and his wife to levy a fine to the king for a license so that they were able legally to give Wyville permanent and secure ownership by the Octave of Trinity in 1291. As a guarantee that Windsor would complete the arrangements, an agreement of a bond of two hundred pounds was made and it would be given to a third party, Maurice of Membury. Membury would give the bond to Wyville if Robert and his wife defaulted. Both parties were given a date of two weeks after Easter to appear in court and the guarantee specified that neither party would apply for essoin. Wyville alleged that the agreement had not been kept because he had not received the entire property until Easter 1291 and by that time the statute of Quia Emptores had prevented subinfeudation and Wyville could no longer hold the land by Richard but must hold it from Richard’s lord via substitution. Because of the change from alienation by subinfeudation to alienation by substitution, there was a consequential change for Wyville. Instead of a payment of two shillings to Richard and his wife, Wyville was now responsible for the payment of two and a half knight’s fees to the original lord that held the land from the king.36

Wyville’s contention was “that on Tuesday before the Feast of Michaelmas in the eighteenth year of the present lord king’s reign, [26 September 1290], there had been a covenant between that James and the foresaid Richard and Julianna, his wife, in this form, that is to say, that when the same James had brought before Walter of Wimborne and his fellow, the justices appointed in the same county, a certain assize of novel disseisin against the aforesaid Richard and Julianna with respect to all the lands and tenements which Henry de Wyville held in Bicknoller, the same Richard and Julianna should give the aforesaid seisin to that James and put

him in seisin thereof this side the Feast of Michaelmas in the same year, to have and to hold for ever to the aforesaid James and his heirs from the aforesaid Richard and Juliianna and their heirs by the due and accustomed services therefrom.  

It was James’ contention that if Richard and his wife had levied the fine when legally required the Quinzaine of Martinmas, (25 November), the court would have sided with the sanction and the covenant of *Quia Emptores* would not have applied. The text of the statute of *Quia Emptores* specified that it would not come into effect until November 30 of 1290, which was after the agreement in the covenant between the parties.

Wyville petitioned the court and demanded that Membury give the surety bond to him. Richard and his wife counter-sued and stipulated that it was Wyville’s responsibility to obtain the writ warranty of the charter, not Robert’s. Robert also claimed that Wyville agreed to the fine being paid at Easter 1291 and accepted his portion of the chirography, which was made in triplicate with no protest at all. Robert alleges that by doing so, Wyville acknowledged that the covenant had been fulfilled within the agreed upon period. Richard demanded the return of the bond to him. The Court of Common Pleas agreed with Richard and returned the surety bond to him. The judgement of the court stipulated Richard was not at fault in that he had no control over when the king enacted *Quia Emptores* and Richard was at no time in default. The court ordered the bond returned to Windsor and his wife. The court also stipulated that Wyville could not deny that there was an accord between him and Windsor and he did accept the agreement as stated. The court also found that Wyville at no time challenged Richard about anything with respect to the final accord between the parties nor did he challenge Windsor with respect to the non-observance of any part of the covenant. The court ordered that the previous record stand firm. Wyville attempted to take his case to the King’s Bench to get a reversal of the decision on the grounds of

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error but the court found no grounds for appeal. The bond was returned to Richard, there being no cause for referral to the higher court, and that “the aforesaid Richard is to go thereof without day.”

“Without day” was the court’s final disposition, meaning that there would not be a day when the party or parties would have to return to court.

The original subinfeudation of the land in this case was to be completed prior to the enactment of *Quia Emptores*. Within the contract, it was stipulated that the current holders of the land would issue a warranty to the alienee and in order to ensure that the warranty was issued before the enactment of the statute, a surety bond of 200 pounds was given to a third party. James de Wyville was to receive the land and in this case, the codicils of the contract were not fulfilled to Wyville’s satisfaction. He sued Richard de Windsor for the return of the 200-pound surety bond on the grounds that he was unable to receive the land due to the enactment of the statute of *Quia Emptores*. In this case, the court found in favor of Wyville and issued a ruling that Wyville be given the surety bond. The court also found that there were no discrepancies in the case and that there would be no day for both parties. No day indicates that there is no day in the future when either party would be able to return to court and reopen the case.

The cases involving *Quia Emptores* continued throughout the Middle Ages. On October 27, 1374, King Edward III issued a license to alienate some land, belonging to various churches, to William de Feriby, the previous parson of the church at Stokesleye, in order for Feriby to alienate in mortmain with an annual rent of twenty marks. The land Feriby intended to alienate with the license from the king, lands he held in York, Hothun, Northcave, Melton, Feryby, Swanlond, and Elevleye. “A messuage of land in York is held of the king and the remainder is held of others, to five chaplains, to wit, two in the church of St. Peter, York, two in the chapel of

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St. James, Melton, and one in the church of Northferiby.”39 The reason William wanted to alienate the land was to be able to “celebrate divine service according to his ordinance, and now the said William has prayed the king that, whereas he has granted the said 20 marks of rent—not being sufficient for the sustenance of five chaplains—issuing out of all the said lands, except the said messuage in York then alienated by him, to three chaplains only, to wit, one in the church of St. Peter and two in the said chapel, to celebrate divine service as above.”40 The king granted the license to alienate the land with the exception of the messuage in York, which was part of the king’s demesne. The cost of the license from the king was forty shillings paid by William.41

*Quia Emptores* had a huge impact on English Land Law centuries after its becoming law. The following case illustrates how land alienated before the statute became law could affect that same land over eight hundred years later. In 1203, King John granted a charter for a manor held by knights’ service. In 1607, King James reconfirmed the charter by letters patent. According to the facts of the case, “In 1837 the then lord of the manor enfranchised the land held by a tenant of the manor to such tenant to be held by him of the lord of the manor in free and common socage.”42 In this case, enfranchisement is a term in English Land Law that indicates the change of tenure from copyhold to freehold. In 1910, the successor of the enfranchised tenant, of the land transferred in 1837, Thomas Holliday, died without being married and with no heir to carry on his name. He died intestate and he was a bastard as well. The lord at the time claimed the land as an escheat and sold it to another tenant.43

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The crown asserted that the lord had no legal right to subinfeudate the land in 1837 because of the passage of *Quia Emptores*, and that the land is legally required to escheat to the crown, not the lord. The crown held an inquisition in 1921 and the jury found that the lands had devolved, which English Land Law defines as the transfer from a dying person to a living person, and the king by right of Royal Prerogative, because of *Quia Emptores*, had the right to escheat the land to himself. The purchaser of the land filed suit to retain the land purchased. The court found that because of the passage of *Quia Emptores*, the lord did not have any right to subinfeudate the land in 1837, and when the tenant died in 1910, there was no legal right for the lord to sell the land. According to the court, the land will escheat to the crown.44

The writ system had been the norm in England and Edward I, began to follow the example of his great grandfather, Henry II, and redefine the legal system in England. He reduced the use of writs in lieu of a system of written statutes in order to create a more equitable legal system. The writ system in England, had grown organically, and in order to gain more control, a statute system was introduced. Edward I began to implement these new statutes, beginning with the statute of Westminster I in 1275. In order to standardize the law throughout England, a system of statutes needed to be introduced and passed by parliament, whose involvement would make these new statutes more palatable to the average Englishman. The involvement of parliament was not necessary although it did make the transition to a centralized legal system more palatable to the larger landholders throughout England. Edward I began to call the Commons to Parliament but the requirement for the inclusion of parliament in the legislative process that allowed for the involvement of the entire country in the adoption of new legislation was not completed until the reign of Edward III, beginning in 1327. The Commons

consisted of representatives from the towns and boroughs. They represented the common people of England in parliament and once new legislation was signed, that involvement would smooth the transition to new legislation and taxes throughout the country.

Prior to the fourteenth century, parliament acted as a court of justice, not an administrative assembly. By the early fourteenth century, the term parliament applied to more important assemblies and courts that were called by the king. Included were the greater landholders and ecclesiastics from all over England. Also called were elected representatives from counties and towns from the entire country. This was the beginning of the transformation of parliament from a court of justice to a legislative body. This had the ultimate outcome of a representative type government and eventually a Constitutional Monarchy. In the early to mid-thirteenth century, the barons of England had shown that they were not above forcing a king to move against his will. John was forced by his barons to sign *Magna Carta*, which his son, Henry III, reissued. Later in Henry’s reign the Baron’s Revolt forced the king to issue other documents, such as the Provisions of Oxford and the Statute of Westminster, giving the barons more rights. The king now had specific responsibilities to his subjects when it came to changes in the law.\(^{45}\) Edward I had concluded that although the knights and burgesses could be useful to the king in acting as his agents or in giving occasional advice on matters of importance to local government, the crown’s need of money was the most immediate reason for summoning representatives of the counties and towns to parliament.\(^{46}\)

The process of subinfeudation created new levels of lords between the king and the smallest landowners in England. When alienating land, the person alienating the land became the lord to the new possessor of the land. The benefit for those alienating, other than land being held


\(^{46}\) Haskins, *English Representative Government*, 57.
of them, was they would now receive services and aids from those holding that land. Substitution was an alternative but held no benefits for those alienating land because the person now in possession of the land would hold of the original lord for the original services and incidents, and thus subinfeudation was used on a more consistent basis because it created a lord of the alienor. Originally, William I used that system to reward his supporters who assisted him in gaining control of England in 1066. Those supporters in turn subinfeudated to their followers. In the Easter Parliament in 1290, Quia Emptores became law. It ended subinfeudation in fee simple estates. The motivation behind its passage was the loss of revenue by the tenants-in-chief. Those losses include the loss of wardships and the loss of the marriage fees. The cases above illustrate the impact of this statute on land law after it was passed and up to the twentieth century. The reasons for bringing these suits to court included the request for a pardon from the king for land that had been alienated without license. Another reason for bringing suit involved the wardship of a tenant-in-chief who had not yet attained the age of majority. A suit was brought before the king to ensure the tenant did not lose seisin of his land once he became of age. There were lawsuits brought before the king for the purchase of a license to alienate land held of the king. Finally there was a lawsuit brought that began well before the passage of Quia Emptores that was not resolved until the early twentieth century.

Throughout the last seven hundred years, the Statute of Quia Emptores has been valid and is currently in use today to manage the transfer of land. The cases illustrated cover three different circumstances of land, specifically involving fee simple estate. Other types of tenure were still able to subinfeudate. First, land of a fee simple estate was alienated without license from the king and the property was taken into the king’s hand. Once in the king’s hands, the land either remained attached to the king’s demesne or possibly returned to the original holder after
the payment of a fine and the issuance of a pardon. The second circumstance involved the holder of the land and their appeals to the king for a license to alienate and pay a fee for said license. In the third case, the king was petitioned for license to alienate land in fee simple and the king simply refused to allow that alienation. The large landowners in England in essence forced the king to agree to the passage of the statute of *Quia Emptores* but in all these cases, the tenant-in-chief had no recourse against the king’s decision. The only appeal would be to the king at some future date. In each case, the king received financial remunerations up to and including the receipt of more land. There were licenses and pardons issued by the king from the year of the statutes passage; the king would profit in both ways. *Quia Emptores* changed land law in England in major ways at the time of its passage and these changes persist today.
CHAPTER 7
UNINTENDED CONSEQUENCES

Edward I changed the legal system in England beginning in 1275 when he began to issue statutes to change and centralize English Law. In 1290, Edward and Parliament issued the statute of *Quo Warranto* and the statute of *Quia Emptores*. These two statutes forever changed how land law was used to control the possession of land in England. With *Quo Warranto*, Edward I attempted to change jurisdiction over land in England by requiring that those lords in possession of land who held jurisdiction over that land, must prove that their family had been in possession of that land back to the reign of Richard I. Law suits were filed by the thousands but because of the war with Gascony, Edward I allowed them to lapse by not pursuing them. The other statute that was responsible for changes in English land law and is still in use in England today was the statute of *Quia Emptores*.

Although *Quia Emptores* effectively ended subinfeudation, along with the ending of subinfeudation, there were unintended consequences. *Quia Emptores* rendered other statutes Edward I had passed unusable. For example, *De Donis* could no longer divide land up between children as gifts. Frankalmoin was not valid because of the inability to subinfeudate land. The text of the statute said that free alienation was available for all free men but the courts interpreted the statute to mean that it did not apply to the tenants-in-chief. No longer could lords prevent anyone from alienating as they wanted. Alienation of land in a fee simple estate now had to be by substitution, which would prevent the loss of services, and incidents the lord received because the alienor stepped into the land completely. This land was now held of the original lord with all feudal services in place as before.
The most decisive unintended consequence of this statute was the ending of feudalism. Since there was no possibility of creating new lords using subinfeudation, over time those lords dying without heirs would have their land escheat back to their lord or the king depending on their level in society. This would have the result of having all of the land in England escheat back to the king over time.

When the Statute of *Quia Emptores* became law, the framers did not foresee all of its consequences. This statute, along with the statute of *Quo Warranto*, were in response to a crisis in the King’s Bench whereas the new Chief Justice, the new Chief Justice of the King’s Bench, Gilbert de Thornton, was requiring a very high level of proof for seisin of franchises, even seisin of franchises from time out of mind. Long standing seisin would no longer be enough proof to warrant the tenure of franchise. Franchises did not always involve judicial or administrative powers, some were completely financial.¹ The king had been to Gascony and the royal coffers were dangerously low. Parliament had granted a tax on the marriage of the king’s daughter but that was still not enough to pay the king’s debts. The passing of these two statutes during the Easter Parliament of 1290 was a concession by the king in asking for another tax of one-fifteenth of the revenue on moveable goods such as wool. The king in passing *Quo Warranto*, moved the date in which seisin must be proven forward to the reign of Richard I in 1189. Numerous lawsuits had been filed concerning this issue, and this statute helped in alleviating the backlog of some 250 cases in the king’s court by moving these cases to the Eyre Courts.² The statute stated, “That all under [the king’s] allegiance, whatsoever they be, as well spiritual as other, which can verify by good enquest of the country, or otherwise, that they and their ancestors or predecessors

have used any manner of liberties, whereof they were impleaded by the said writs, before the time of King Richard our cousin, or in all his time, and have continued hitherto.”³ Sutherland wrote that there was a crisis in the courts and in the country because of the number of lawsuits in defense of jurisdictions that had been filed, over sixteen-hundred, that were fostered under that environment.⁴ Prior to the passage of this statute, in many court cases landholders sued the king to have land returned that had been taken by writs of Quo Warranto. The Calendar of Close Rolls for the year 1289, specifically September 14, for example, states that “John son of Robert [who] came before the king, on Saturday after the Exaltation and sought to replevy to himself certain liberties of Gilbert de Lindeseye in his manor of Mulisworth, which were taken into the king’s hands for Gilbert’s default against the king in a writ of Quo Warranto concerning such liberties.⁵ This is signified to the treasurer and barons of the exchequer.”⁶ Because of the royal scandals while Edward was out of the country, (1286-1290), the eyre courts were suspended. When they resumed in 1292, all of the pending Quo Warranto cases were moved to the counties and would be heard when the eyre courts arrived there.⁷

The war with France again caused the suspension of the eyre courts again in 1294. Following that suspension, during Michaelmas, Parliament Edward I issued the order, “The Lord King . . . has granted for the favour of his people and on account of the impending war in Gascony that all his writs, both those of Quo Warranto and those in pleas of land, shall at present stand over without day, until he or his heirs desire to speak thereof.”⁸ The war and this order

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³ Raithby, Statutes of the Realm, 107.
⁴ Sutherland, Quo Warranto, 15.
⁵ Replevy is the return of goods seized using the procedure of Replevin. Replevin is a court ruling giving conditional return of goods until the outcome of a court action that would decide which party had legal right to them.
⁷ Sutherland, Quo Warranto, 30.
⁸ Sutherland, Quo Warranto, 30.
effectively ended the *Quo Warranto* campaign. The barons had no way of knowing if the “desire to speak thereof” would happen or not, although the proceedings did not continue and the impact to the large landowners was minimal. A petulant king could at any time try to exercise his sovereignty by taking jurisdiction from his barons as King John had done earlier in the century.

Unintended consequences of the Statute of *Quia Emptores* included interference with several laws already in existence; such as, the Statute of Westminster II and *De Donis Conditionalibus*; interference with the use of frankalmoin, and interference with the ability of the tenants-in-chief to alienate land, as they desired. These changes ultimately led to the end of feudalism in England. Part of the Statute of Westminster II, *De Donis Conditionalibus*, was concerned with conditional gifts of land, to whom they may be given, and for how long they could be given. Prior to 1285, the legal principle of primogeniture gave land to the eldest son, not providing for any younger children at all. If there were no male children, the female children would divide the property evenly. Even if the owner of the fee simple fief wanted to give land to a younger son or daughter, prior to 1285 there existed no clear path to heritable land. The process was not clear and in some cases involved a great deal of legal maneuvering to divide land between offspring. There was one exception, a gift of a marriage portion, could be given to a daughter as a gift to the woman and her children, called a *maritagium*. If there were no children or they died, the property would revert to the donor. The Statute of *De Donis* created specific situations that explained who and how someone other than the eldest son was able to receive a gift of land.

The Statute *De Donis* created a tenure called estate in tail. This statute related to children born to both spouses and stepchildren being born to either spouse, and included those born of marriages both prior and current. Land in fee-simple was heritable land and primogeniture
indicated that the oldest son would inherit. According to Thomas Glyn Watkin, *De Donis* and “the development of the entail as a freehold estate in land is one of the most mysterious episodes in the history of English Law. It is usually traced to the needs of thirteenth-century fathers who wished to provide grants of land for their daughters and younger sons,”9 The Statute of *De Donis*, allowed for the alienation of land to the children of the possessor or those designated by the possessor, either once he had died or with specific language transferring land to a child such in the case of *maritagium*, when a daughter married and received a gift of land. It will continue to be heritable land until those to whom it was alienated fail to have children, even if that failure were three generations hence, and at that point, the land would revert to the lord of whom it was held. Before the passage of *Quia Emptores*, in order to transfer the ownership of this free hold land, subinfeudation was used. The younger sons and daughters were still required to pay homage to the older sibling and would hold their land of the eldest son. In 1290, the Statute of *Quia Emptores* changed the way *De Donis* would allow the transfer of land. In a fee simple estate, even under the rules of *De Donis*, those younger siblings receiving land by subinfeudation and would be required to pay homage and some services, no matter how insignificant, to the older sibling. *Quia Emptores* invalidated subinfeudation in fee simple estates and in this case prevented any transfer of land under *De Donis*.

Although *De Donis* applied to all land, not just freehold land, subinfeudation was used to transfer land to the other family members. *Quia Emptores*, since it applied to freehold land, forbade the transfer under *De Donis*. Homage given would create a new lord in the structure of feudalism and the statute outlawed that possibility. According to Watkin, “*De Donis*, indicated that after the grantee’s death his heir could demand that his fee tail estate be converted into a fee

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simple one by the taking of homage, while another statute, *Quia Emptores*, forbade the taking of homage in such a situation, as it would amount to an alienation of the fee simple by subinfeudation.”

*Quia Emptores* prevented the tenants alienating land under *De Donis* from doing so. No longer would fathers be able to give land to their children if homage was a condition of alienation. After the passage of *Quia Emptores, De Donis* no longer provided for the younger children, Watkin wrote, “as a result of *Quia Emptores*, homage could no longer be taken so that again the gift was frozen in its original form, inalienable and descending in perpetuity to a closed class of heirs.”

Another instance where *Quia Emptores* interfered with contemporary legislation was with the tenure of frankalmoin. Frankalmoin involved a donor giving land to a church. According to the tenure, no services or incidents were due from that land any longer. The Church could not die so no fees of inheritance would ever be collected; neither were there services due, so an escheat would never take place. This was one of the abuses that tenants perpetrated against the lords of whom they held lands. Tenants would alienate land to the Church and the Church would grant the land back to the original grantor. Once land was alienated to the Church, the lord no longer received services or aids from that land. In addition, since the tenure for that land had changed, no military service was due. According to Lyon, “the prelate could still do homage and be invested with the fief but he had to provide the military service through subinfeudation of land to knights.”

*Quia Emptores* outlawed that transfer of land to the knights in fee simple and thus, the knight service was no longer required from the land now held by the Church. *Quia Emptores* did, on the other end of the spectrum, halt the abuses of those holding of a lord in which people

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10 Watkin, “Quia Emptores and the Entail,” 370.
12 Lyon, *Constitutional and Legal History*, 132.
alienated land to the church in frankalmoine and the church gave it right back to the alienator thereby preventing the lord from collecting services from that land.

Prior to the Statute of *Quia Emptores*, any lord had the ability of alienating land held in fee simple, as he desired, using either substitution or subinfeudation. This was possible for all landowners with the exception of tenants-in-chief. The tenants-in-chief had been required to purchase a license from the king to alienate their own land. Failing to obtain that license, they would be required to pay the king for a pardon to be able to allow for any alienation already given by them, or if the king refused that pardon, the tenant-in-chief would lose the land into the king’s hands, meaning the land in question would become part of the king’s demesne. The magnates assumed that when the statute stated that all free men had the right to freely alienate, this included them. *Quia Emptores* ended the practice of subinfeudation for all fee simple estates and left substitution as the only recourse for alienating land to another. After the signing of the statute, the king still had the power to require his tenants-in-chief to petition for and receive a license in order to alienate land held by them.

The king did benefit from this statute once it outlawed subinfeudation; substitution was left as the only way to alienate fee simple holdings. Since his tenants-in-chief were not able to alienate land without the king’s license, the king profited from the fees for the license to alienate their land and from fees for pardons for those that alienated without the kings license. The king also profited from wardship in which the tenant-in-chief was under age. If the land were subinfeudated before the death of the tenant-in-chief, there would be a newly created level of lord and the king would lose the wardship of any heir under the age of majority. With substitution, there is no new lord in place and the king would continue to receive his escheats and wardships.
The barons, by 1256, were not able to charge the same licensing fees to those who wanted to alienate land held of them. However, they did have the right to charge fees of the alienee when he wanted to move onto the land. By 1315, however, in the Hilary Parliament, “it is agreed by the archbishops, bishops, abbots, priors, earls, barons, and others of the realm, in our lord’s parliament which was summoned at Westminster in the octave of Hilary [12 January 1315], in the eighth year of his reign, that they will henceforth not demand or take any fine from free men to enter lands and tenements which are of their fees, provided always that such feoffments are not separated from their services, nor their services withheld.”\(^\text{13}\) Prior to the Hilary Parliament of 1315, barons, although they could not require those holding land of them to pay fees to alienate their land, they did charge fees for the new possessor of that same land. The Hilary Parliament in 1315 changed that, so lords were no longer able to charge fees for those alienating their land nor for those moving onto the land. This only applied when land was subinfeudated, which was not allowed in fee simple estates because of *Quia Emptores*, or when land was substituted. The changes in law during this Parliament did not affect the heriot, which took place at the death of the person currently in seisin of the property where it is left to family member.

In 1290, these barons still had the right to receive payment from those holding land of them in different situations; for example; upon the death of someone holding land of them, called the heriot, or the knighting of the lord’s son, or a wardship when the holder died and left an heir not yet of age. Although the king had always had the power to license his tenants-in-chief to alienate their own land, it was the king’s prerogative to do so. Wardship and these other payments were the impetus behind Edward’s insistence in licensing his tenants-in-chief to

alienate their land. With licensing, Edward kept the ability to profit from each of these occasions, from his tenants-in-chief. Edward was doing his best to elevate the entire grouping of landowners in England to the level landholders with no lord. His ultimate goal, like William I did at Salisbury before him, was to obtain the counsel and control of the entire realm, by receiving direct fealty from each landholder in the country.\textsuperscript{14} Once again using the text of the statute itself, the tenants-in-chief expected that they would be able to alienate their land like all of the other holders of fee simple estates in England. William I had passed legislation preventing tenants-in-chief from alienating land without license from the king. The Charter of 1217 restated that requirement. Giving that legislation, the tenants-in-chief expected, because of the text of the statute, that they would no longer need a license from the king to alienate their own land. Courts interpreted the statute, based on the language contained in the Charter of 1217 and the ordinance issued by Henry III in 1256, which forbade the tenants-in-chief from alienating their land without a license issued directly from the king, as free alienation not applying to superior lords, those holding directly of the king. The alienation of the tenants-in-chief also would remove the incidences of wardships and marriages from the king.\textsuperscript{15} Edward I’s courts, interpreted the statute the same way. The barons could not freely alienate their own land after the passage of the statute and that was an unexpected result of its passage. This continued until 1327 when by statute the tenants-in-chief could alienate as they wanted with a fine being paid to the king. The king had lands that he could alienate as he wanted which made him different from those tenants-in-chief to whom free alienation was the ultimate goal of Quia Emptores. The king however stood on a higher plane than even the largest landowners in England.

\textsuperscript{14} Stubbs, \textit{Constitutional History of England}, 110.
The king consisted of two different bodies; the corporeal body that will at some point in time die, and the kingly body, and as such anointed by God that will never die. The corporeal body of the king owns land as a lord; he receives services and incidents like any other lord in England. The kingly body is his incorporeal eternal office. The two different bodies of the king are the, body natural and the body politic. His body natural is a body mortal, subject to all infirmities that come by nature or accident, to the imbecility of infancy or old age, and to the like defects that happen to the natural bodies of other people. But his body politic is a body that cannot be seen or handled, consisting of policy and government, and constituted for the direction of the people, and the management of the public weal, and this body is utterly void of infancy, and old age, and other natural defects and imbecilities, which the body natural is subject to, and for this cause, what the king does in his body politic, cannot be invalidated or frustrated by any disability in his natural body.16

The king was both above and below the law. These differences in the two bodies of the king especially would become prominent in relation to land law. According to Henry de Bracton, a jurist and cleric who lived and wrote during the reign of Henry III, “Alongside the king, indeed above the king stands the royal law that makes him king. This let the king obey; so doing he loses no whit of majesty or power, becomes subject to none but himself. Our blessed Lady, even our Blessed Lord were thus obedient to the law for man.”17 This quote explains that in order for the king to have royal power that power needs to be derived from the law. Even though it is the king that made the law, there was no absolute sovereignty and the king was under the law.

The royal demesne was considered property of the king in his person as private owner of land. However, that same land belonged to the body of the royal king and as such was considered

16 Kantorowicz, The King’s Two Bodies, 7.
inalienable, always to be in the hands of the king, part of the ancient demesne. The king as lord was able to receive wardships and escheats as any other lord in the land was able to do, the difference being that once these lands were escheated to the king, they would be part of the royal demesne forever belonging to the royal body of the king. Any tenant-in-chief in England dying without an heir would have his land escheated up to the king to return as part of the royal demesne, until the king decided that the land would be alienated to another, creating a new tenant-in-chief holding of the king. If the earthly body of the king died without heir, the office of the royal king would still exist and although the king would not be a direct heir of the previous one, the new king would still hold the royal demesne without question or legal issue.

The most meaningful unintended consequence of the Statute of *Quia Emptores* was the ultimate end of the social system ingrained in the English people since 1066, feudalism. According to Holdsworth, “the ultimate effect of the statute *Quia Emptores* was to increase the number of persons who held directly of the king to increase therefore the number of cases in which the king was directly entitled to scutage,”\(^\text{18}\) thereby increasing his control over more land in England. Perhaps returning England to a state similar to that directly after the Norman Conquest in 1066 when the king had direct control over much of England. If the tenants-in-chief were unable to subinfeudate land, without heirs that land would eventually escheat back to the king. If smaller landowners were in the same predicament, that land would eventually escheat back to the lord from whom it was held. That would have the ultimate effect of removing levels of baronage between the king and the lowest landowner in England and thereby effectively, if not actually, ending feudalism in England. According to William Stubbs, *Quia Emptores* “was

\(^{18}\) Holdsworth, *History of English Law*, 44.
only one of a series of measures by which Edward attempted to eliminate the doctrine of tenure from political life.”

During the thirteenth century, smaller landholders wanted the freedom to alienate land as they wanted. The larger lords opposed that because of the loss of revenue via subinfeudation discussed previously. Although it was an intended outcome of the statute, based on the text, the passage of *Quia Emptores* created free alienation by all landowners of fee simple estates in England except the tenants-in-chief. Prior to the statute’s passage, free alienation was possible but lords had the ability to demand payment from those alienating land and the alienee before he was allowed to possess the land alienated to him. These lords could also prevent alienation of any land under their control if they felt it was detrimental to themselves. Maitland wrote, “we do not find it laid down that the consent of [the lord] is necessary for this; the royal judges, like all lawyers, seem to have favored free alienation; but we do find that the consent of the lords is commonly asked for, and we do find that the view taken by the lords is that their consent is necessary.”

The tenants-in-chief wrote the statute to stop their tenants abuses of subinfeudation. The passage of *Quia Emptores* changed alienation of land in England. The statute stated, “they will henceforth not demand or take any fine from free men to enter lands and tenements which are of their fees, provided always that such feoffments are not separated from their services, nor their services withheld.”

The statutes also stated that all free men were allowed to freely alienate their land, or any part thereof, as they wanted. This alienation would be by substitution, which would completely remove the alienor and replace him holding of the lord with the alienee.

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No longer did any lord have the right or legal ability to charge a fine for the alienation by anyone holding land of them. Although these same lords still had the legal right to charge a fee for the alienee of any land they were lord over, Edward II outlawed that practice in 1315, and after that, there could be no fees charged by anyone except the king, from anyone alienating their land.

Free alienation in a fee simple estate could now only be by substitution. Although lords would no longer be able to charge fees to alienate land, they also would no longer lose any of the services or incidents as they did prior to the passage of Quia Emptores. The loss of those, especially wardships and marriages was the impetus behind the passage of Quia Emptores. During the reign of Edward I, Royal Courts interpreted alienation to a person to include his heirs, not just the alienee. This interpretation by the courts interfered with the tenets of the statute De Donis in that no longer would law allow conditional gifts using subinfeudation in a fee simple estate. In order for free alienation to occur under the statute of De Donis, there would need to be the creation of the fee tail estate, which allowed for the transfer of land to children but greatly restricted inheritance and sale of the land in the future. This only allowed this estate to be created if the land was divided evenly between the children under De Donis.22

Feudalism, whether the incidents or aids were homage, rent or military service, required subinfeudation and the further creation of lords in order to keep the system alive. Without further subinfeudation creating new levels of lords between the king and the smallest landowners, if a lord died without an heir, the land went back to the lord holding the land or if it was a tenant-in-chief, the land escheated to the king’s hands. With the banning of subinfeudation, no new lords

22 Lyon, *A Constitutional and Legal History*, 461. An estate that can be inherited but only by a select class of heir. The heir needs to be heirs of the body of the ancestor holding the land, for example a son of the husband and wife.
were created and over time the king would once have all land in England in his demesne. The fabric of the feudal system, even with all of its faults and problems of tyranny, was based upon the requirements of honor and fealty, which included mutual help and service. Social unity, mutual obligation, and regular subordination by both lords and tenants were the thread that held that fabric together.\textsuperscript{23}

*Quia Emptores*, by ending subinfeudation, began to change the makeup of the feudal system. By the end of the thirteenth century, feudalism was in a period of decline. Tenure was changing into a monetary system and “the rights and powers of a tenant holding by free socage have come into line with the rights and powers of the tenants holding by the other free tenures.”\textsuperscript{24} Land law at this time, for all but those holding of the king, was becoming almost entirely property law and money payments as rent were becoming the norm throughout England; these money payments as rent were becoming the most valuable of tenures. The tenants-in-chief were the only ones that were under both socage and knight service.\textsuperscript{25} Tenants were no longer required to provide knight service to the lords above them and since there was no longer military service due; tenure by knight service was no longer a valid tenure for all but the tenants-in-chief. They were still required to provide knights at the king’s request. It was up to the tenant-in-chief if he would provide knights or use the money payments from his tenants to buy foreign mercenaries. Since tenure was, at this time, rent only, the lord was no longer able to claim any interest in wardships or marriage of his tenant’s heirs. This type of changes in tenure included those small landowners who were paying rent to a local lord up through those large landowners holding of the king, the tenants-in-chief. The feudal rights of a king could not be mistaken to mean that his

\textsuperscript{24} Holdsworth, *History of English Law*, 52.
rights are an amplification of those rights that barons or other landowners have. The king’s rights as lord were different from that of any other landowners in England. The king could never be a tenant, only a lord while other landowners in England were always tenants of someone, for example, the largest landowners in England, the tenants-in-chief, are tenants of the king. According to Ludwik Ehrlich, “if a manor was organized as a kingdom in little, it does not follow that the kingdom was a manor in large.” The “king’s legal position … has been characterized by describing the king’s rights as intensified private rights.” Nobody else in England could claim that same status because even the largest landowners in England were the tenant of the king.

Edward I wanted to bring about the end of feudalism in England to benefit the crown financially. The king, being the ultimate lord, gained financially if his tenants-in-chief lost land through an escheat to the king, if the tenant-in-chief died without heir. Although Quia Emptores was not done at Edward I’s instigation, it served his purposes. The statute, by ending subinfeudation in fee simple, ended the process of giving homage to the new lord. Homage was the process whereby a tenant gave an oath directly to his lord that he “is his man.” The oath of homage not only bound the tenant to the lord but also bound the lord into a position of protection of the tenant. Fealty is different in that it is given by anyone who holds land of another and gives fidelity to the lord. The major difference between fealty and homage is that a steward or bailiff can take fealty and only a lord can take the oath of homage. According to Holdsworth, “the oath of fealty is the oath which the tenant swears to be faithful to his lord. ‘Fealty’ it is said does not make the tenant; for that is only the acknowledgment of the services: but homage makes the

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tenant.”

Digby wrote of the ending of feudalism, “Gradually by successive alienations the tie between the chief lord and the freeholder becomes weakened. In socage tenure, when no rent was payable and no value attached to the service, there was no motive for keeping up the empty ceremony of fealty, and thus in many cases the relation of lord and tenant became altogether obliterated.” With the changes in the process of alienation, the king became the lord over more land and increased the demesne of the king, increasing his wealth and power. This process took place over two centuries. This process was in place for decades and did not affect escheats and jurisdiction until 1660.

The passage of *Quia Emptores* in 1290 in and of itself did not end feudalism. That system had been in effect in England for over two hundred years and it would take more than one statute, and many years, to remove it completely. What did happen after the passage of that statute is that some of the main tenets of feudalism changed forever. Because of the passage of *Quia Emptores*, homage to a new lord was no longer legal to give in a fee simple tenure; substitution was the only way that property could change hands and with substitution, there was no new lord created. With the ending of subinfeudation, the levels of ownership between the king and the lowest landowners would eventually be removed, leaving the king as the only lord. The passage of this statute did not end feudalism but it was a major contributing factor to its downfall.

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29 Digby *Introduction to History of Law*, 200.
CHAPTER 8
CONCLUSION

The feudal system arrived in England with William the Conqueror after the Battle of Hastings in 1066. Once William I began his rule he rewarded his followers with large areas of land consisting of hundreds of thousands of acres in exchange for military service. These newly created tenants-in-chief, the aristocracy from Normandy, in turn rewarded their followers with pieces of land with which they were able to become the aristocracy of England. After the Norman Conquest, those knights who had supported the now tenants-in-chief, wanted to become part of the aristocracy in England themselves and needed land to do so. These knights would now owe a military obligation, in the form of knight’s fees, to the lords who alienated land to the knights. The process by which this land was divided was subinfeudation. The land was further divided down creating new levels of lords between the king and those on the lowest rung of society, those in the servile class that did not own any land of their own, but worked on land, owned by someone else.

In between those at the top of society and those in the servile class at the bottom, were those classified as villeins. They were smaller landowners that owed allegiance to their lords. Feudal incidents and aids must be paid to remain on the land. There was no ownership of any land in England except for the king. All others were in control of the land they occupied but there were no ownership, they only had possessory rights. The king could remove them from the land at any time as long as he had a valid reason, such as failure of feudal incidents or defect of heir. Those incidents, referred to as tenure, were originally military in scope with landowners being required to send a specified number of knights and armaments to the king when requested. Both William Stubbs and John Round agree that military tenure was a very important component
of feudalism in the eleventh and twelfth centuries. Eventually, this military service evolved into a monetary system whereby monies were sent in place of the knights and the king would hire paid mercenaries to fight his wars.

The aids that were due to the lords were required in very specific instances like the knighting of the lord’s son, the marriage of one of his daughters, or when the need arose for him to be ransomed. Also required of each landholder was homage to the lord. All tenants in fee simple or fee tail were required to pay this homage. The process for this homage required getting on their knees and pledging their loyalty to the lord in all things and announcing that they were the lord’s man.

Even the early English kings were not completely sovereign. With the early witenagemot, voting the king of England to his position, it was possible for them to vote their own person in rather than follow the family line of the sitting king. This required a symbiotic relationship between the king and the leading landowners in England. This process continued even after the Norman Conquest. Although some kings were more autocratic than others were, they all realized that they needed the support of the barons in England. The witenagemot became the curia regis and eventually by the thirteenth century, that became Parliament.

The change in the English Legal System from oral to custom to written law began in the seventh century. The Anglo-Saxon laws were mostly unwritten custom, but beginning with King Ethelbert in Kent, laws began to be written down. There were still many differences in the laws between the different areas of England. King Canute standardized laws throughout the country with very specific fines for crime. William the Conqueror, in his coronation oath, said that he would keep the laws of the Confessor in order to win over the English people. The “Provisions of
Oxford” and the “Provisions of Westminster” were extensions of the *Magna Carta* that Pope Innocent III had nullified. At this time, the writ system was being used throughout England.

   Henry II made major innovations and changes in the legal system during his reign after what was referred to as the Anarchy. His trial by jury in civil was one of the major changes made. By the late thirteenth century, Edward I began to change the legal system further by issuing statutes that would decrease the need for writs throughout England. Edward I was referred to as the English Justinian by historians of the nineteenth century. His statutes of *Quo Warranto* and *Quia Emptores* changed the legal landscape in England permanently. Some of the statutes Edward I signed into law were at the insistence of his magnates.

   Precedent for kings signing laws with which they did not agree began in the thirteenth century with King John. The threat of civil war convinced John that it would be in his best interest to sign *Magna Carta*. Even though it was declared null by the pope ten weeks later does not negate the fact that a king of England was forced by his barons to sign something into law that was against his best interests. Henry III, Edward I’s father, began the change in the central administration of England. The increase in power of the Wardrobe, among other changes caused conflict between the king and the barons. The years 1257 through 1267 led to the creation of several legal documents that Henry III signed against his will. Edward I was involved with his father during this period and was forced to swear an oath to the Provisions of Oxford. This set a precedent that a king could be forced to sign and agree with something that was not of his creation. Edward I was the first king to call any type of regular parliament and by the end of his reign, his parliaments included the knights and burgesses, referred to as the Commons. The inclusion of the Commons was not permanent until the reign of Edward III beginning in 1327, Edward I began to call them when the need for money arose.
These precedents made it possible for the magnates in England to create an environment where they were able to negotiate what they wanted from the king upon occasion. Edward I needed money and the support of the population of England for wars with Wales and France. Concessions were made between the king and the magnates and in 1290, the magnates, at their instigation, worked with Edward to pass the statute of *Quia Emptores*. This statute ended subinfeudation for all fee simple and fee tail estates. That action changed feudal tenure in England by ending the creation of mesne lords, which was the foundation of the feudal system there. That was not the only change the year 1290 brought on the administration of English land law.

The statute of *Quia Emptores* became law in 1290. This statute ended the process of subinfeudation, which had created more layers between the king and the smallest landowners in England. Prior to the enactment of *Quia Emptores*, land changed hands in one of two ways. Substitution, which replaced the original owner completely, and subinfeudation, which changed large landowners who were losing profit from land being subinfeudated away from them.

The king gained financially and politically from the passage of this statute in several ways. First, the license that he issued once a tenant-in-chief wanted to alienate land. This did occur before the passage of the statute but the courts interpreted the statute that “free alienation” did not include them. Thus, even after the passage of the statute, the king still gained from the issuing of licenses. Politically, he gained in strength by allowing these large landowners the ability to “alienate freely,” albeit with a small financial outlay. If an alienation did take place without the approval of the king, once an inquest was completed the king would not only stop the alienation but would take the land into his own hands. This allowed the king to profit once again by issuing a pardon once a fine was paid.
There were unintended consequences to the passage of *Quia Emptores*. The original intent of the statute was to allow any tenant of a free simple estate to be able to alienate their land, as desired. This was in direct conflict with the Statute of *De Donis*, which became law in 1285. This new statute did not allow *De Donis* to work as it was intended. The tenure of frankalmoin allowed estates to be transferred to the Church. The Church in some cases would then allow the grantor to stay on the land and receive profit from it. *Quia Emptores* prevented that transfer thus ending one way in which the Church gained in property and wealth.

The text of the Statute of *Quia Emptores* itself stated that it was at the instigation of the magnates in England. Their intention was to allow any holders of fee simple estates to be able to alienate at will. The courts interpreted this statute differently and although most holders of fee simple could, the tenants-in-chief required a license from the king in order to alienate their own estates. The king was able to extract monies from his magnates for them to alienate their own land as all other fee simple estates could.

The ending of subinfeudation allowed the king to be able to escheat more land to himself. As time went on, because of the lack of subinfeudation, the number of tenants-in-chief began to diminish with more land being held directly of the king. Subinfeudation was one of the major foundations of feudalism and with the passage of this statute, it signaled the beginning of the end of feudalism in England. The English Law System was changed several times over the last one thousand years, beginning with Canute and his written laws and moving on to Edward I and *Quia Emptores*.

In the year 1290, Edward I passed several monumental statutes, none more far reaching than the Statute of Westminster III, more commonly referred to as *Quia Emptores*. This statute changed forever the alienation of land in fee simple estates. Before the passage of this statute,
land held in fee simple could change any time and this increased the number of demesne lords throughout England. Not only did this dilute the mesne lords in England, the original lord was no longer able to recover the land if there were any defaults in services or payments. After the passage of the statute, that portion of land subinfeudated was no longer to be able to be recovered. This loss also included revenue lost from the loss of escheats, wardships, and marriages services.

Free alienation was one of the major forces behind the passage of *Quia Emptores*, monetary gain being another. Of these two factors, free alienation proved to have the more crucial impact. Most fee-simple landholders could now alienate their land as they desired. Feudalism was declining primarily because of the strictures this statute placed on subinfeudation, and free alienation increased the speed at which feudalism ended. This statute permanently changed English land law for the seven hundred years since its passage. *Quia Emptores* remains valid in England and cases as late as 1910 show the tenets of the statute still at work. There are not many medieval statutes that affect the law in England today, but even more significant than *Quia Emptores*’ modern standing, is its vast historical impact on English law and society. *Quia Emptores*’ check on subinfeudation, along with the free alienation of land which *Quia Emptores* facilitated, were fundamental, decisive forces in the decline of English feudalism; as such, the background and consequences of *Quia Emptores* constitute a most consequential, though relatively unrecognized, chapter in the emergence of early modern England.
GLOSSARY OF TERMS

Alienate-The transfer of land from one individual to another normally through the process of either substitution or subinfeudation.

Alienee- The one to whom land is alienated.

Alienor- The one who alienates land

Amercements- A monetary penalty or fine issued by one of the lesser courts that must be paid within a specific amount of time. This penalty would be utilized for crimes of a lesser type.

Assize of Clarendon- A document issued by Henry II in 1166 that included clauses that began changes in the legal structure of English law. These changes created trial by jury stated how the guilt or innocence would be determined, among other major changes.

Assize of novel disseisin- A case brought to regain property that had been unlawfully taken from its rightful owner.

Book Land- Land that was granted by charter of the king allowing for outright ownership and was in most cases exempted from the normal burdens normally associated to land.

Bovate- Also called an Oxgang; it is an amount of land varying in size from eight to twenty acres depending on the type of land involved. Normally based on the amount of land that can be plowed by one ox in the plowing season, averaging fifteen acres.

Charter of Liberties- Issued by Henry I on his accession to the throne as “a deliberate expression of the articles of the covenant made by the king with his people, in consideration of which he receives the threefold sanction of election by the nation, unction and coronation by the Church, and homage from the feudal vassals. Further it is a deliberate limitation of the power which had been exercised by William the Conqueror and William Rufus.”

Chief Lord- Also called Tenant-in-Chief to the King, owns land given by the king directly to a tenant-in-chief. Especially important after the Norman Conquest when large Honors were provided to William I’s supporters who came to England with him from Normandy.

Conveyance- The legal process of transferring land from one owner to another.

Copyhold- Tenure by copy of a court roll. When a tenant receives land from the lord of a manor, the services and incidents due in exchange for the land is recorded by the lord in the manor’s court roll. A copy of that record is given to the landholder and he is called a copyholder. This type of land holding is specific to the individual lord of whom the land is held.

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Council of Fifteen- Created because of the Provisions of Oxford. This council was instituted to advise the king on all matters as they pertained to the governance of England. They were also responsible for addressing and redressing all of the items listed in the Provisions of Oxford that needed addressing.

Carucage- A tax based on how much land could be ploughed by a single plough by a single man in a year and a day.

Demesne- Land attached directly to the manor. It also includes any land under the lord’s immediate control.

Devolution- In English Land Law, this is the transfer of land from a dying person to a living person, normally his heir.

Enfeoffment or Feoffment- The deed of property given in exchange for either a service or payment in lieu of service. The service involved could be anything that was worked out between the lord and the vassal. This is also referred to as a freehold.

Enfranchisement- A term in English Land Law that indicates the change of tenure from copyhold to freehold.

Essoin- Legal reason for not appearing in court. Generally, a new court date is given as long as the reason for essoin is valid.

Escheat- The right, under English law, whereby the lord of the land can take possession of property under his control, from a free tenant or one that just works the land, should the tenant die without an heir, commit any form of felony, or default on the feudal incidents due.

Estate in Tail- Tenure in which land is heritable for a specified time or as long as there are children born to those holding the land. Once there are no longer any children, the land escheats back to the lord.

Esuage- Scutage (see scutage) where the amount of monies paid to the lord, or the king, is fixed at a certain monetary value regardless of knight’s fee.

Fee or Fief- The central tenet of feudalism where a lord grants property rights to a vassal. These rights are heritable and include some type of payment to the lord in the form of fealty (commonly referred to as “in fee”) and service.

Fee Simple- Land that is held of a lord but is possessed by a man and his heirs absolutely without restriction. “It is the largest possible estate in perpetuity. It is where lands are given to a man and to his heirs absolutely without any end or limitation put to the estate.”

Fee-Tail – An estate that can be inherited but only by a select class of heir. The heir needs to be heirs of the body of the ancestor holding the land, for example a son of the husband and wife.

Feoffee- The person that alienates land to another.

Feudal incidents- Often called tenures, these incidents were the payment that was required by the lord, whether the landowner or the king, in order to maintain lordship over the land. Failure to pay these incidents could lead to the land reverting to the previous owner, called Escheat.

Frankalmoin- Also called free alms, and is a case where no feudal incidents are due. The Church that is now in possession of the land offers only prayers for the donor.

Frankpledge- Each person within a hundred, normally all those living on land that is one hundred hides in size, (a hide is approximately 120 acres of usable land) is responsible for crime committed. They act as a neighborhood watch for crimes committed in their town or borough.

Free Alms- See Frankalmoin.

Freehold- An estate that lasts for an unspecified time and will end during the life of a non-specified generation. See also Enfeoffment.

Grand Assize- A trial by jury instituted by Henry II. This offered an alternative to the choice of the defendant or tenant in a writ of right instead of trial by battle.

Heptarchic era- Period from the sixth through the eight centuries in England when there were seven individual kingdoms in England. These were Wessex, Sussex, Mercia, Kent, Essex, East Anglia, and Northumbria.

Heriot- A customary tribute, in English Law, normally paid in goods or chattel, to a lord on the occasion of the death of the holder of the land so children can remain on the land with the same incidents and services paid.

Hide- Areas of land measured in acres, usually 120 or 140 acres depending on where the land was located and how much of it could be farmed. Maitland explained that hides “contain some 120 acres of arable land together with stretches, often wide stretches of wood, meadow and waste, the extent of which varies from case to case.”

Honors- Large tracts of land, sometimes covering many square miles, originally given to the Norman supporters of King William I after the Norman Conquest. There were not many English landowners left after 1066.

Hundred- A division of a county originally consisting of one hundred hides of land, others of ten tithings, or one hundred free families. It differed in size depending on where in England it was.

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Hundred Court- A court that would handle jurisdiction of the hundred that it comprised.

Jurisdictional tenure- Tenure given to a landowner by the king that allows a lord to administer justice on the land that he controls.

Justiciar- A judge or justice, possibly one who presides over an entire court. In addition, one who is the second most powerful man in the kingdom also acts as king when the king is out of the country.

Knights Fee- Each section of land in England is required to provide a specific amount of knights to the lord or King in the case of Tenants-In-Chief. Based on amount of land owned, the possibility exists that the landowner would provide a monetary relief instead of a knight if his portion of land were too small to provide one knight. A knight was provided from a specific amount of land and those who held smaller portions of land paid a fee rather than provide a knight.

Manor- A house, residence, or habitation where the lord resides. Part of the lord’s demesne.

Marcher Lord- Between England and Wales there is an area of land known as the Welsh Marches. These nobles owned land in these areas to protect England from encroachment from Wales. The areas included in these marches would be Shrewsbury, Hereford and Chester for example.

Mesne Lord- An intermediate level of landholders between the king and the smallest landholder. They were created when a lord subinfeudated land, which creates another level of lordship under the king.

Messuage- In a conveyance, it is synonymous with the house that includes all buildings whether attached directly to the house or not, called appurtenances and all belongings in it. This includes the garden, curtilage, and orchard along with the close land on which the house is built.

Mortmain- Land in England that is held in an inalienable state by a church or other ecclesiastical organization.

Owing Suit- A tenant owes participation in the jurisdiction of the local lord. Each free landholder is required to attend court at intervals designated by the lord. These tenants acted as a jury in the manorial court.

Provisions of Oxford- A list of reforms that came out of the Barons Revolt of 1258 agreed to by Henry III in exchange for financial support from the leading barons in England.

Replevin- A court ruling giving conditional return of goods until the outcome of a court action that would decide which party had legal right to them.

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Replevy- The return of goods seized using the procedure of Replevin.
Rose at Midsummer- Midsummer being between the 19th and 24 of June, a rose was a symbolic payment of rent from, normally, a son to a father, or a brother to a brother. Once land was alienated to a close relation this payment was needed to fulfill the contract of enfeoffment.

Scutage- A monetary payment imposed on landowners in lieu of military requirement that would normally be provided by a specific landowner.

Seisin- To be in actual possession of land. This could be either legally or illegally. The courts would determine legality of possession.

Socage- A type of tenure that is something specific and is not knight service. For example, a rose a year, acting as an executioner, and will eventually become rent payments. This was considered a free tenure. It also meant a tenure that had specific rights on an ancient demesne.

Statute of Mortmain- Prior to this land could be granted to the Church without consent of the local lord. Once the Church was granted control of any land, that land was no longer in control of the lord and unlike other land under their control, this land could not be taken back from the Church. This statute mandated that the local lord give his written consent before land could be granted to a Church.

Statute of Quo Warranto- Prior to the statute being passed in 1290, families of the large barons had owned and lived on their land for generations, and prior to the 1290 proceedings were set to prove ownership but the absence of any legal precedence created a lack of power on the part of the king. Once the king signed this statute into law, any barons who held lands from their ancestors were able to continue with land ownership. The consequence of this statute was to give the king royal control over these large baronial tracts of land in such a way that the barons were no longer willing to fight the king for control.

Tallage- The term in English law denoting tax, customs or anything that could be used to raise revenue

Toft- A piece of land where a house once stood which has been destroyed by time or torn down by some other means. This would be the same amount of land included in a messuage without the buildings on it.

Tenant-in-Chief- Any landowner in England who held his land directly from the king.

Tenure- The rule of law that covers different types of ownership of land in feudal England to include who could own specific land, for very specific periods of time, and for specific uses. Each person of land in England, no matter how much land they are in possession of, holds that land from somebody. Even the largest landholders hold land from the king. In each different situation, there are specific services that must be paid by the landholder to his lord. That service is called tenure.
Tithing- A surety for every man that will “be bound to produce him in case of litigation and answer for him if he were not forthcoming.”

Vassal- A person, in feudal law, who holds land from a lord in exchange for feudal incidents. A vassal can also be a lord if there are people holding land of him.

Villein- A person who is attached to a specific manor and is not only at the lowest level of society but cannot leave the manor as they choose. They perform menial labor at the behest of the lord of the manor.

Virgate- Land surrounding a house, normally arable land, and normally equal to one-quarter of a hide or thirty acres.

Wardrobe- A subordinate part of the chamber of the king that saw increased power under Henry III in order to combat the baron’s hold on the Exchequer and the Chancery. Henry used the Wardrobe to control most of the revenue of the crown.

Witan- See Witenagemot.

Witenagemot-This was the great council of the king. It began as an assembly of the largest landowners in England and by the tenth century the higher clergy, called by the king as advisors. They also were responsible for electing the king when the current king died. In the future, this would transform into what we now know as Parliament.

Writ- A writ is a legal document written by the Chancellor using the small seal of his office, or by a legal court, as a command to perform a specific duty or service. Edward I reduced the use of writs by the implementation of a statute system throughout England.

Writ of Right- A writ used in all property cases where a fee simple tenure is at law.

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5 Stubbs, Constitutional History of England, 94.
BIBLIOGRAPHY

Primary Sources


Secondary Sources


