The King and the Law:

Prerogativa Regis in Early Tudor England

by

Margaret McGlynn

A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy
Centre for Medieval Studies
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Thesis Abstract

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A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy at the Centre for Medieval Studies, University of Toronto, 1998.

This thesis examines the development of the royal prerogative by the legal profession through the medium of lectures or "readings" on the text Prerogativa Regis, between 1495 and 1549. The first readers, serjeants-elect Thomas Frowyk and Robert Constable, set the stage for the later readings. Besides beginning the process of structuring the law so that it could be more readily understood, they also established two opposing interpretations; Constable argued for an expansion of the king's rights and his ability to seize and investigate land held by his tenants, while Frowyk advocated a restriction of the king's rights to those which he believed were legitimately granted by the text. In outlining these positions the readers enunciated two conflicting interpretations of the law, and indicated the existence of two conflicting political positions. This dissertation thus follows these two themes; the development of the law within the Inns of Court and the political context within which the prerogative was working.

The 1495 readings were followed by lectures on the topic in 1521, 1531, 1545 and 1549. The later readers, Spelman, Yorke, Staunford and Willoughby, ratified or rejected the conclusions reached by Frowyk and Constable in the course of their lectures, providing some insight into the process of developing the law. Frowyk and Constable lectured in response to Henry VII's fiscal policies, and their successors also reacted to the political context within which their readings were delivered, providing insight into such controversial issues as the Statute of Uses and the dissolution of the monasteries.

In conclusion, this thesis examines what the process of negotiating the law, visible through the course of these readings, tells us about the law and politics of early Tudor
England. It argues that the legal profession saw themselves as guardians of the laws and customs of England, and, as a group, resisted any attempt to manipulate the law for royal convenience. Though individual lawyers were susceptible to pressure, the group memory of the Inns of Court played a vital role in the development and curtailment of a highly sensitive area of royal power and thus influenced the course of Tudor law, politics and finance.
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Introduction

In 1495 two men at the top of the legal profession decided to devote their course of lectures, delivered to the members of their respective Inns, to the text *Prerogativa Regis*. Though the text dates from the late thirteenth century,¹ it had never previously been the subject of a reading, and though once having entered the Inns, it was taught again in 1521, 1531, 1545 and 1549, it then disappeared from the curriculum as abruptly as it had appeared.² This phenomenon requires some explanation. Why did the lawyers turn their attention to this ancient text in these years, and why did they lose interest in it after the 1540s? The obvious answer is that the lawyers examined this outline of fiscal feudalism because it was a topic of concern to them and their contemporaries under both Henry VII and Henry VIII. Their treatment of the text illustrates what the most prominent lawyers of the period thought about the functioning of the prerogative, and gives us an insight into the development of the law over the period from 1495 to 1567. By examining the surviving texts of the lectures and comparing them with contemporary year books and reports, we can see how the law taught in the Inns affected the law practised in the courts and vice versa.

The broader and more significant question which requires an answer is why the lawyers were suddenly interested in fiscal feudalism in the 1490s. In this context it is worth remembering that the readers were not simply academics, but prominent and successful members of the legal profession. Both the timing of their readings and their treatment of the law were related to broader financial and political questions of the day. As a timely response to the changing royal policies of both Henry VII and Henry VIII, the readings suggest some of the problems and possibilities inherent in the prerogative, but beyond this, they

¹ The problems associated with the dating of *Prerogativa Regis* are covered in chapter 1, p.37.
² There may have been other readings on the subject which have not survived. The records of the Inns generally note the names of the readers, but not their topics, and so our knowledge of the pattern of readings depends on matching the names of known readers to surviving manuscripts.
demonstrate an influential element of the nation discussing the nature and range of the king’s power as feudal lord. This alone gives the readings an interest beyond that of the purely legal, and provides a new perspective on the question of royal power in the Tudor state. It would be too much to say that the king’s power was what the lawyers said it was, but their understanding of royal authority is surely central to any consideration of the Tudor monarchy.

Though the readers turned their attention to the text in response to the current situation, their lectures were not critiques of contemporary policy, but elaborations of the law. They did not respond directly to the practices of the administrators but they taught their students about the duties and obligations of the king and his tenants-in-chief. Although at first glance their treatments look like the dry technicalities of a complex legal system, they give us access to a detailed consideration of the nature of the feudal system in the sixteenth century. Historians have tended to assume that the feudal bond was moribund by this time, but the detailed attention given by the lawyers to the working of the system suggests that it survived in some form. Rather than castigating the Tudors for their exploitation of an out-dated idea for narrow financial ends, the readings seem to invite a re-consideration of the nature of the feudal bond under both Henry VII and Henry VIII. Thus an examination of these readings must focus on two separate but related questions: the long-term development and elaboration of the law of the prerogative by the legal profession and the broader political and cultural conception of the feudal bond. The technical nature of much of this material serves as something of a disincentive to its use, but the simple fact that the issues covered by the readers were of crucial importance to the lives and livelihoods of every tenant-in-chief of the king, as well as many other landholders, indicates its importance.

The reasons behind the commencement of the readings on Prerogativa Regis will be

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considered in more detail later, but a general overview of the state of fiscal feudalism under Henry VII will help to set the scene. From the beginning of his reign the first Tudor king paid close attention to the financial benefits due to him from his feudal prerogative. The king’s rights generally fell due on the death of a tenant-in-chief and governed the passing of land held of the king to his deceased tenant’s heir. Thus, for example, when a tenant-in-chief died leaving an heir under age, the king had the right to seize both the land and the heir and retain them until the heir reached his majority. The king also had the right to arrange the marriage of the heir, or to sell it to someone else.

These rights represented a valuable, if irregular, addition to the royal income, but when Henry came to the throne in 1485, they had been allowed to lapse in many cases. The king no longer knew who many of his tenants-in-chief were, and many of them had succeeded in settling their lands in a way which placed them out of the king’s reach. Henry VII set out to remedy this situation and regain the income to which he was entitled, and which he needed to establish himself securely on the throne. The resuscitation of Prerogativa Regis also had the benefit of allowing the king to assert his authority as feudal sovereign, a position which still held some meaning in fifteenth-century England. In order to carry out this plan the king constructed a new network to identify tenants-in-chief, evaluate their debt to the Crown, and collect and administer the feudal payments as they fell due.4

As we might expect, Henry VII’s new policy was not greeted with great enthusiasm by his tenants, and many historians have joined contemporaries in criticizing what has been called the “revival of feudalism”5 under the early Tudors. Hurstfield argues that already by the middle of the thirteenth century feudal wardship had “lost its chief moral and political justification.”6 The structures of feudalism were retained for their fiscal value to king and

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6 Ibid., 133.
lords, while they became increasingly unrelated to the realities of the developing economy and polity. Thorne believes that by the late fifteenth century it proved “impossible to justify or explain successfully all the aspects of an unpopular and paradoxical policy that set itself to meet the expanding financial requirements of a modern state by means of a set of rules framed for his tenants-in-chief by a feudal suzerain.” While the revival of Prerogativa Regis in the late fifteenth century was indeed unpopular, it was not as paradoxical as Thorne suggests. Henry VII was in many ways continuing and enlarging the practices of his predecessors, both immediate and more distant. He was not trying to create, nor did he realize that England was becoming, “a modern state.” In turning his attention to his feudal prerogatives, Henry was looking to a traditional source of income which played an important, if varying, role in the finances of the monarch from the Conquest to the fifteenth century.

The military importance of feudal tenures became subsidiary to their financial importance little more than a century after the Conquest. Richardson and Sayles argue that by the time of Glanvill “those who render and those who accept homage have no thought of arms, of service in the field: they think of reliefs, marriage and wardship, the profits, not the remotely ancient obligations, of military tenure.” Developments through the thirteenth century continued this trend. A royal ordinance of 1256 attempted to protect the incidents of feudal tenure by restricting the right of tenants-in-chief of the king to alienate lands held of him. Alienation at will meant that the king’s control over his lands was weakened by sub-infeudation, that is, the lengthening of the feudal ladder. Moreover, his dues were often reduced by the division of lands into parcels too small to return the appropriate services. After 1256 alienation was only permitted by license of the king. There is little evidence of the effect of this change under Henry III, but the records from the late thirteenth century

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7 Thorne, Prerogativa Regis, ix.
8 H.G. Richardson & G.O. Sayles, The Governance of Medieval England from the Conquest to Magna Carta (Edinburgh: Edinburgh University Press, 1963), 111. Susan Reynolds’ discussion of the confusion between some military and socage tenures suggests that the distinction was no longer considered crucial to the safety of the realm. She points out that Glanvill makes only passing references to serjeanty, while by the time of Bracton serjeanties formed an intermediate catch-all category and could include both military and socage tenures. Susan Reynolds, Feifs and Vassals (Oxford: Oxford University Press, 1994), 355.
suggest that licences were not easily available until the mid-1290s. At this point Edward I reversed his previous policy of opposing alienation of lands held in chief. Instead he granted licences to alienate, under which the alienee would hold the land in chief of the king and for which a fine was paid. Thus the king's financial incidents were safeguarded and he made money from the license. Bean sees this as part of the growing consciousness of the royal prerogative in this period and the increased interest in defining the king's rights. The statute of *Quia Emptores* of 1290 played a part in this process by conferring freedom to alienate on all men, but abolishing the process of sub-infeudation. Throughout this period of change there is no mention of any military drawbacks to alienation or sub-infeudation. Both the king and the mesne lords are concerned with protecting the financial value of the wardships, reliefs and escheats due from their tenants. Richardson and Sayles argue that by this time "the state is independent of feudalism, and if, perforce, its organization must at some points be accommodated to certain feudal ideas and forms, it cannot at any period be justly termed a feudal state."

Thus it can be argued that from the reign of Edward I and even before, England was not a feudal state, but that her kings used the feudal forms as a source of income. The importance of this income garnered from the king's tenants-in-chief varied over the centuries. Wolfe argues that the royal estate was of little economic importance to the Angevin kings, whose "political power as kings was so great that, by comparison, their financial resources as landlords were insignificant." He believes that English kings from

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10 Ibid., 70.
11 Bean concludes that *Quia Emptores* did not apply to tenants-in-chief. He argues that the ordinance of 1256 had settled the question of their ability to alienate and the fact that they continued to need licences to alienate demonstrates that the new statute did not affect their position. Ibid., 81-83.
13 Ibid., 40. Pocock makes a similar point when approaching the issue from the vantage point of the seventeenth century. He comments that Coke "knew all there was to know about feudal law in England, except the single fact that it was feudal." J.G.A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (New York: W.W. Norton, 1967), 66.
the Conquest onwards relied mainly on taxation to finance their government and that contemporaries expected nothing else. In the thirteenth and fourteenth centuries it was understood that the king would use the income from his own estates primarily to support his family, secondly, to provide patronage and finally, and only intermittently, to contribute to the expenses of government.\(^\text{15}\) Wolfe points out that the idea that the king should live of his own is relatively late and that the phrase occurs for the first time in 1311. At that time, contemporaries were arguing that the king should live off his rightful income and avoid the evil of purveyance, which was impoverishing the countryside. When they argued that the king should live of his own they considered "his own" to include all the royal income, including direct and indirect taxation, not just the income of the royal estates.\(^\text{16}\)

It was only with the accession of Henry IV and the addition of Lancastrian family lands to the royal income that the importance of the revenue of the Crown lands increased substantially. The overseas preoccupations of Henry V and the weakness of Henry VI meant that these resources were not exploited to their full extent and the Crown continued to rely heavily on parliamentary taxation to fund government. Wolfe maintains that when Edward IV became king he began a concerted effort to administer the Crown lands effectively. He applied the principles of private estate management to the Crown lands and resumed many of the estates granted away by his predecessors. Wolfe suggests that Edward IV was the first king to believe that the king should "live of his own" in the later sense of the phrase, rather than relying on taxation, and that he proposed to do so by the effective development of the Crown's landed base.\(^\text{17}\) Edward succeeded in making the royal estates profitable, but it was left to Henry VII to take the next logical step. Edward exploited the lands in his grasp effectively, but he made little progress in seeking out tenants-in-chief of the Crown who had managed to slip through the feudal net in the chaos of the fifteenth century or in extending

\(^{15}\) Ibid., 65.
\(^{16}\) Ibid., 40-51.
the services due to the king. In carrying out such a programme Henry VII was in many ways carrying Edward IV’s policy to a logical conclusion. It seems somewhat harsh to castigate Henry VII for attempting to return to the exploitation of “feudal” revenues which had ceased to be feudal some time in the late twelfth or early thirteenth century and which had provided a base for relatively stable government under Edward IV.

The first step in claiming feudal dues of the tenants-in-chief of the king was to establish just who those tenants were. From the turn of the fourteenth century the Crown had developed the office of escheator for that purpose. Each county had an escheator responsible for safeguarding the feudal incidents due to the king from his tenants-in-chief in that county. The escheator was to hold an inquisition on the death of a possible tenant-in-chief which would establish what land he held, of whom and how it was held, what it was worth, who the heir was and how old he was. This provided the necessary information to establish the king’s rights over the land in question. The escheator was then responsible for seeing that these rights were protected.

The inquisitions were often problematic. Inquisition juries were not always knowledgeable enough about the land under consideration. Worse still, they were not always impartial. They could be intimidated by the heirs of the deceased, or by the sheriff of the county, or they could be biased towards the heirs. In any of these cases an injustice could result. One of the major areas of difficulty lay in establishing the right to wardship of the heir. The basic criterion for wardship was that the heir be found within age (21 for a male and 16 for a female heir), and this was done at the inquisition. The age recorded by the inquisition was the age accepted by the law, even if it was incorrect. Thus if an heir of full

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18 Lander notes that under Edward IV, exchequer officials made extensive searches for information. He points out that in 3 Edward IV, the clerks of the Treasurer's Remembrancer were paid £20 for special work in compiling rolls of farms, wards, and marriages at the king's disposal, and the clerks of the Great Roll were also paid £20 for searching the rolls and books of the exchequer from Edward III to Henry VI. J.R. Lander, The Limitations of English Monarchy in the Later Middle Ages (Toronto: University of Toronto Press, 1989), 67-68, n.12.

19 Bean, The Decline of English Feudalism, 19.

20 A married girl would be considered of age at 14, but if she was unmarried she would not have her land until age 16.
age was found within age, or if an heir aged ten was found to be only a year old, he would be in ward until he reached the age of twenty-one, according to the information contained in the inquisition.21 This was clearly a serious problem, for the judges, meeting at Blackfriars in the first year of Henry’s reign, discussed this very question. They agreed that there was no remedy for this situation at common law and it is suggested that a remedy could only be provided through parliament.22

By the late fifteenth century the integrity of inquisitions was only one element of the problem of administering the prerogative.23 The growth of uses from the mid-fourteenth century onwards meant that the Crown was consistently being deprived of income from the lands of its tenants-in-chief. In its simplest form a use was where a tenant enfeoffed another with his land, thus transferring seisin,24 but kept the profits of the land for his own use. The feoffor was known as the cestui que use. Since the king’s prerogatives were due only on land held of him which passed by descent from a tenant-in-chief to his heir, if the tenant-in-chief enfeoffed another of his land, keeping the use of it for himself and then died, the king could not claim his feudal incidents, for the cestui que use did not hold the land at the time of his death. The heir of the cestui que use would have the use of the land as his ancestor had done, but since the land itself had not passed by descent, the king lost his prerogative rights in it.25

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21 Constable, 32.
22 YB Mich. 1 Hen. VII, p.3, pl.3. Brian points out that this is not the only problem of this kind, for if a man dies holding nothing of the king or any other lord in knight’s service, but an inquisition finds that he held of the king in chief, the heir will be in ward and will have no remedy. Townsend suggests that the heir would have remedy by traverse, but Vavasour argues that traverse is given by a statute of Edward III and does not cover this situation. He says that the only remedy at common law is a petition to the king. Catesby, however, denies that a petition is available, for he argues that a petition is only available in cases dealing with franktenement at least. The majority of the judges agreed with Townsend, but this did not mean that there was any change in practice. Constable notes that the ward will have no remedy beyond “grace & plesure le roy” which suggests that there had been no improvement in the situation by 1495. Constable, 32.
24 Seisin is possession of the land. It is similar in effect to ownership, but under common law only the king owned land. Everyone else held land of someone as a tenant, though they could only be deprived of their possession of it by their lord under the most extreme circumstances.
25 The owner would usually convey the land to a group of co-feoffees, thus ensuring that the land would not fall to the king through the death of the feoffee. The feoffees in turn would pass the land on to others before the last one of them died and so it would continuously change hands through conveyance without ever passing by
Not only did this practice rob the king of profit in the short term, but the complex conveyancing which accompanied it quickly obscured titles to land.

By the end of the fifteenth century both the ongoing practice of enfeoffment to use and the turmoil of the civil wars meant that the king had very little idea of who his tenants-in-chief actually were. The last feudal aid collected by a king was in 1428 when the commons made a grant of tonnage, poundage, a tax on parishes and towns and a levy on knight’s fees. Since then much had changed. The escheators were continuing with their inquisitions, but they do not seem to have sought out hidden titles. Instead, the kings of the late fifteenth century seem to have turned to the other means of holding inquisitions, by commission. Commissions to inquire of the lands of particular tenants-in-chief were quite common in the later years of Edward IV. These commissions were usually made up mainly of members of the local gentry and they were sent out with specific instructions to enquire into the lands of a particular tenant after his death. Edward’s commissions seem to have focused on prominent lords who could be expected to have extensive lands, or lords who had been attainted. Richard III continued this practice of sending out commissions, but he seems to have recognized that they could be used for wider purposes than simply examining the lands of particular tenants. Richard did not have time to develop the implications of the commissions, and it was left to Henry VII to bring them to their final pitch of development. Henry sent out commissions with a general brief to survey particular areas and to enquire into concealments of lands held of the Crown, suppressions of wardship and other feudal dues. He also staffed the commissions with lawyers as well as local gentry, and as his reign progressed, the lawyers came to outnumber the gentry. Henry’s aim in the early years of the commissions seems to have been mainly to find out exactly what he should have, and in this he was quite

descent. Simpson notes that “as an insurance against fraud eminent lawyers were often used as feoffees .... By choosing such respectable persons and not putting his trust in a single feoffee the feoffor could have considerable confidence that his wishes would be observed without the need for litigation.” A.W.B. Simpson, An Introduction to the History of the Land Law (Oxford: Oxford University Press, 1961), 171.
determined.27

Thus from the beginning of his reign Henry paid close attention to his feudal rights. The commissions were an obvious beginning, a way to establish the size of the problem, but they were only the beginning. The extent of the losses caused by feoffments to use was apparent, and in 1490 the Crown introduced its first statute aimed at dealing with uses.28 The 1490 statute confirmed the statute of Marlborough’s provisions against fraudulent enfeoffments and went on to ordain that if a tenant enfeoffed his land to use and died leaving an under-age heir without having made a will, the lord could sue a writ of ward to regain both the body of the heir and the land.29 If the heir was of full age he must pay relief as though the land was not enfeoffed.30 The statute was intended to fill a gap in the interpretation of the statute of Marlborough, and it was not conceived as a new assault on uses.31 Nevertheless, it offers an example of the revitalized royal machinery, for though the statute is framed to deal only with the tenants of mesne lords, rather than tenants-in-chief of the king, the main provision was in fact applied to tenants-in-chief of the Crown.32 If a cestui que use of land held of the Crown died intestate, the king would claim his heir and land.33

Royal administrators “realized that their efforts to expand feudal revenues would be

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27 Henry’s commissions were deeply resented by the population at large. In 1504 parliament refused to sanction the use of the commissions, and when Henry sought a feudal aid to marry his daughter and knight his son Arthur (then already dead) parliament voted instead to grant him a gift of £40,000. It was cheaper to give him the money than to be identified as a tenant-in-chief and made subject to the on-going claims of the prerogative.
28 A statute of 1483 attempted to deal with the problem of uses in the lands of the duchy of Lancaster, but the 1490 statute was the first attempt to deal with the problem nationally.
29 Chapter 6 of the statute of Marlborough (1267) was the first legislative attempt to deal with fraudulent feoffments. It forbade the two most common methods of avoiding the descent of lands. The first method was the simpler, for a father would enfeoff his heir with his lands during his lifetime. The second method was more complex. The father would lease his lands to a group of feoffees for a specific term of years (one which would run until the heir’s majority) and a stated, exorbitant rent. The deed would acknowledge that the rent was paid in full to the end of the term. When the father died the lord would have no right to the rent, which had already been paid. The rent was also set at a high-enough level that the lessees would have no incentive to retain the land after the heir reached his majority. For a further comment on the significance of this legislation, see T.F.T. Plucknett, The Legislation of Edward I (Oxford: Clarendon Press, 1949), 79-81; Bean, Decline of English Feudalism, 21-25.
32 This development is examined in more detail in chapter 2, pp. 88-95.
33 The king, of course, could not sue a writ of ward to regain his rights.
fraught with failure unless they at the same time took measures to bring uses under some sort of control.” The statute of 1490 was a small step towards this goal, but it was limited in its application. By this time uses were a fundamental part of the structure of English landholding and the landed classes responded negatively to any attempt to control uses which would affect the property settlements they had made over preceding generations. The Crown made no further attempt to deal with the problem by legislation until the 1530s, but it did not give up on the financial possibilities of the prerogative. Bean comments that having tacitly accepted the continuing employment of uses, the king had to consider other methods of increasing feudal revenue. It seems likely that at this point Henry turned his attention to Prerogativa Regis.

Henry sought to build up the Crown’s landed base from the very beginning of his reign. The resumptions and confiscations he made in the parliaments of 1486 more than doubled the value of the royal estates, and though that money was quickly devoted to other purposes, the attainders and resumptions of the next ten years further augmented royal holdings. The mere fact of acquiring land was only the beginning, however. By 1495, when the readings began, Henry was developing a formidable machinery to exploit his prerogative. Richard III had delivered much of the administration of the Crown lands to his household machinery, but on his death his household was dissolved. When Henry came to the throne he had no experience in land management, and the exchequer enjoyed a brief revival. The exchequer procedure was too cumbersome to manage the scattered Crown lands, however, and by the early 1490s Henry VII had begun to use his household in the same way as his predecessor. This machinery was governed simply by the king’s authority, and the informality of its methods, as well as the unpopularity of the policy itself, led to a number of objections to the revived prerogative.

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34 Bean, Decline of English Feudalism, 237.
35 Ibid., 256.
36 Dietz, English Government Finance, 25-26. Henry gathered to himself through attainder and forfeiture the estates of such men as Humphrey Stafford and William Stanley, while he also gained the lands of Cecily, duchess of York and Jasper, duke of Bedford.
Though it took the king some time to develop the structure he would use to organize the Crown lands, he began investigating their current administration almost immediately. In 1486 Sir Reginald Bray, chancellor of the duchy of Lancaster, was ordered to carry out a review of officials in charge of royal lands, and the following year parliament annulled all grants of such offices, as well as all leases on the king’s manors and lordships, in order to allow a complete overhaul of the system.37 The income garnered from this revitalization of the system was to be paid into the chamber, the financial office of the household, which was far easier to access than the exchequer. These activities in the early years of Henry VII’s reign established the core of his new system. Bray remained one of the king’s chief financial advisors until his death, and he was always closely connected with the administration of the Crown lands, while the chamber became one of the chief treasuries of the reign. The household system thus established by the king allowed him to control this administration personally.

This household system at the centre was linked with the localities through the officers appointed by the king. By May of 1488 a commission was appointed to nominate auditors and receivers, together with other accounting officers, to all Crown lands, and to let the lands themselves to appropriate tenants.38 Although no complete list of the appointees has survived, enough is known to make it clear that many of them had worked for the Yorkists, and were accustomed to working under the chamber system. While these officers managed the revenues of the known Crown lands, the king used commissions to identify concealed lands and investigate his feudal rights. Such commissions could issue on the death of a tenant-in-chief and take the place of the escheator’s inquisition, they could supplement a faulty inquisition, or they could have more general instructions to survey the area for evasions of the king’s rights. The success of the commissions in identifying and realizing the value of the king’s feudal incidents is made apparent by the need for a further refinement of

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37 Ibid., 26.
38 S. B. Chrimes, Henry VII (London: Eyre Methuen, 1972), 124.
the chamber system in 1503, when a surveyor of the king’s wards was appointed.39

The king’s prosecution of his feudal rights attracted comment even from outsiders; a Venetian observer at the turn of the century, describing the king’s regular sources of income concluded that “the King need never be in need of more money still, should he require it” because of his feudal rights, and estimated his income from “widows and wards” at 50,000 crowns per annum.40 The same author noted somewhat mysteriously that “if the King should propose to change any old established rule, it would seem to every Englishman as if his life were taken from him; but I think that the present King Henry will do away with a great many, should he live ten years longer.”41 In fact, Henry seems to have intended to resuscitate and adapt the old-established rules to his purposes, and the readings on Prerogativa Regis played a role in that process.

Besides administering the income from the Crown lands, the chamber treasury was also responsible for obligations and recognizances due to the king. Obligations and recognizances were bonds which provided for the payment of a debt due to the king, or the forfeit of a certain sum of money at some point in the future, contingent on a future event. Henry’s use of obligations and recognizances, as well as the officials who administered them, have become notorious, and, as they are connected with the administration of the prerogative, it is worth giving them some consideration before moving on. John Heron, the treasurer of the chamber, and another of Henry’s trusted associates, kept careful lists of the obligations and recognizances due to the king. They related to matters as varied as the hire of royal ships and the payment of customs duties, the restitution of bishops’ temporalities, pardons for murder, rape and felony, the sale of wards and the faithful performance of duties by the king’s officers.42 Thus they were generally either fees which were due to the king, or bonds

39 Ibid., 129.
40 Charlotte Augusta Sneyd, ed. and trans., A Relation, or rather a True Account, of the Island of England; with Sundry Particulars of the Customs of these People, and of the Royal Revenues under King Henry the Seventh, about the Year 1500, Camden Society, vol. 37 (London: John Bowyer Nichols & Son, 1847), 50-51.
41 Ibid., 36-37.
42 Dietz, English Government Finance, 39.
for good behaviour.

It has been argued that these bonds were used to keep the nobility in a state of submission to the king, and that many of the pardons were for offences committed under outdated statutes, discovered by paid informers and prosecuted by Dudley and Empson. It is true that Henry VII revived a number of statutes which had fallen into disuse during the period of civil war, but in doing so he was simply responding to a generally-felt need. Furthermore, there was no doubt that the king had the right to resuscitate a law that had fallen into disuse. It was generally accepted that "the force of statutes be suche that no continuance of tyme can gayne anye prescrption against them." More poetically, Fortescue tells us that

"oftentimes the written law lies as it were dead under a covering of words, though not wholly lifeless, and then the Prince, by means of equity, rouses its vital spirit as if from sleep, as a physician relieves a stupified patient in a syncope, so that then that saying of the Gospel may be used concerning two laws reposing under one covering - "There shall be two in one bed; one shall be taken and the other left." Often, also, the mind of the lawgiver did not perceive all that the words of the law embrace. Wherefore in such case the office of a good prince, who is called a living law, supplies the defect of the written law."

There is no doubt that Henry set his lawyers, particularly Empson and Dudley, to find and supply the defects of the written law. It is also true that paid informers were used to root out offenders, and these informers, particularly the infamous Grimaldi, were subject to particular vituperation. The system was not one calculated to make friends, and Empson and Dudley have borne the brunt of historical censure of this work. Much of their notoriety rests on the Historia Anglica of Polydore Vergil, which complains that "every day even laws which had

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44 S.E. Thorne, ed., A Discourse upon the Exposicion and Understandinge of Statutes (San Marino: Huntingdon Library, 1942), 165.
been anciently revoked and invalidated they [Empson and Dudley] called into use again, brought into the light of day and at their discretion whom they would they judged to have offended against these old laws. And they proceeded against ... even the intimates of the king himself, and any and every individual of fortune - not only the living, but the dying, and those who were long since dead, if by chance they had left property."

Though Vergil’s account must be treated with caution, there is no doubt that Empson and Dudley were assiduous in the king’s service, and that their activities were resented. The Great Chronicle of London fulminates against the treatment of Sir William Capell, one time mayor of London, who ended up in prison through the indictment of a jury which was “ffastly boundyn to the gyrdyllis of dudley and Empson.” We cannot prove or disprove Capell’s guilt, but it was well within the parameters of Henry’s policy to bring a prominent Londoner to heel, while the chronicle was inclined to presume his innocence. Taxation, in whatever guise, is never popular with the taxed, and taxation which targets the wealthy and powerful is likely to elicit complaints from the most vocal elements of society. This does not prove that Empson and Dudley were corrupt, but simply that they were efficient. As Dietz makes clear, Empson and Dudley’s primary targets were those who created disorder, by such activities as keeping retainers or ravishing women, and those who intruded on lands, thus compromising the royal prerogative.

There is no doubt that on occasion Empson and Dudley worked on the fringes of the law; in fact while imprisoned in the Tower Dudley himself put together a list of individuals he felt had been wronged by his activities. The brevity of the list is quite remarkable, however, in the light of their varied activities, and in general it would be more accurate to say that rather than working outside the law, they pushed the law to its furthest extent in the service of the king’s policies.

49 Dietz, English Government Finance, 44.
In the first ten years of his reign Henry VII showed himself to be a determined and resolute king, intent on maintaining his position by subduing foreign and domestic enemies and re-establishing the wealth and prestige of the monarchy. It was perfectly clear to Henry that his priority must be to restore royal control over the magnates. It has been demonstrated that, contrary to long-held beliefs, the higher nobility were not destroyed in the conflicts of the fifteenth century. Though some families clearly did suffer as a result of their political activities, their decline in the late fifteenth century was not significantly greater than would have been caused by natural factors. They did appear to be somewhat demoralized by the recent conflicts, but without strong royal leadership there was no guarantee that they would remain quiescent. Henry VII’s challenge was to develop a style of government which would allow him to keep the nobility firmly in their place, without depriving them of the wealth and authority which made them useful servants of the Crown. Christine Carpenter has criticized Henry’s approach to the nobility, arguing that he essentially misunderstood the relationship between king and nobility in seeking to control and intimidate the magnates, rather than working with them. She considers his emphasis on financial solvency to be misguided, particularly as it caused resentment among those whose support the king most needed. Carpenter’s emphasis on trust between king and magnates, though it may be good political theory, seems rather unrealistic for a king who grew up in exile and came to the throne as the third usurper in less than thirty years. For Henry it was far more important to be feared than loved.

The greater nobility were not only faced with a resurgent monarchy, they were also

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losing some of their influence in the localities. Carpenter suggests that during the course of
the wars the gentry began to move away from dependence on the greater lords, as such
dependence seemed too likely to involve them in war. She argues that they began to take
care of their own affairs and form their own connections without relying on patronage from
above. Having established this new pattern, they did not return to reliance on the nobility
with the return of peace. Though any report of the demise of the greater nobility is likely to
be exaggerated, these trends do suggest that they were weakened by the end of the fifteenth
century. The landed gentry could never replace the nobility, but they could temper their
influence. With a strong monarch and a more independent gentry, the nobility were
sandwiched in between, returned to their position as great lords, but no longer over-mighty
subjects.

On the basis of these developments, Henry VII could re-establish the hierarchy of an
erlier period, a hierarchy that had been severely shaken. The resuscitation of fiscal
feudalism was quite appropriate for Henry VII, for he sought to re-establish the feudal
hierarchy, adapted to his purposes. In order to achieve his ends, Henry VII believed that he
needed a healthy treasury and the means and the will to exploit his financial resources. In
turning to the possibilities inherent in the royal prerogative, Henry was looking at a source of
income which did not carry the political problems inherent in taxation, and which could serve
a double function in suppressing his domestic opponents and rebuilding his finances. He had
little difficulty in constructing a system to achieve his aims, but he had also to deal with the
question of whether such an exploitation of the royal prerogative fell under the provisions of
Prerogativa Regis.

Thorne's implicit assumption that the readings on Prerogativa Regis began in 1495 in
response to the need for a clear statement of the law does not make sense in light of the facts
of the situation. The commissions sent out by Edward IV and Richard III do not seem to
have affected the general administration of the prerogative to any great degree. It is really
only with the accession of Henry VII that the attitude of the commissions begins to change
and it is then that we might expect to see a change in the numbers and types of cases finding their way into the courts for settlement. As Thorne points out "by the tenth year of Henry VII the law of the prerogative, confused outside a core of generally acceptable rules and no longer amenable to simple treatment, stood urgently in need of elucidation and rationalization." Prerogativa Regis remained the foundation of the king's rights, and his servants had to follow its guidelines, but in their desire to extend royal claims as far as possible, they discovered that the general words of the old statute were open to a broad interpretation. The task of determining the range of the text was not in their hands, however, but in those of the legal profession, since any dispute between the king and his tenants-in-chief would come to the courts for resolution. For their part, the lawyers were limited in their ability to interpret the text in the course of a legal dispute, because the demands of the individual case took precedence over the broader determination of the law. The discussions of law in court were largely impromptu, and even a brief glance at the year books shows how quickly a legal discussion could move from the original topic. By bringing Prerogativa Regis into the Inns of Court, and examining it as part of the cycle of legal education, the lawyers were able to examine the entire body of the law in a controlled and considered way.

The question still remains, why did this examination come in the tenth year of Henry VII? We might expect that when cases arising from the work of the commissioners arrived in the courts, the legal profession, faced with the need to argue and judge elements of a law which had been dormant for many years, might turn to the readers at the Inns of Court for help. In fact, it seems that the courts had seen few, if any, of these new cases by 1495. There is no appreciable growth in the number of cases dealing with the prerogative which reach the court of king's bench until the early years of the sixteenth century. It seems likely that the impulse to begin reading on Prerogativa Regis in 1495 came from a different source. The

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54 Thorne, Prerogativa Regis, viii.
55 In the first fifteen years of Henry VII, three years see no cases dealing with the prerogative, seven years have one, three years have two and only two have more (3 Hen. VII sees 5 and 11 Hen. VII sees 6). From 16 Hen. VII the number grows steadily, with three in that year, followed by 6, 4, 5, 3, 5, and 12 to a high of 25 in 23 Hen. VII.
readers never discuss why they chose the particular topic, but there are three likely possibilities. One is that they had received direct royal influence, suggesting that appropriate readings on the statute would meet with royal approval and would serve to prepare the lawyers for the new material when it arrived. It is also possible that a reading on *Prerogativa Regis* might have been seen as a way to obscure the novelty of the work of the commissions and lend authority to the new administration of the law. By re-introducing the topic to the profession through the venerable institution of the readings and via a thirteenth-century text, the antiquity and authenticity of the king’s right to these profits could be emphasized. The final possibility is that senior members of the legal profession had noted the developments of the last few years and wanted to be ready to meet the new challenge when it arrived in the courts. Any one of these explanations is possible, and, of course, they are not mutually exclusive.

Thus the function of the readings on *Prerogativa Regis* in this period was to establish just how far the words of the text could be extended while remaining good law. The activities of the commissioners lent a certain urgency to the question, for they displayed that there were lawyers who were more than willing to interpret the law in the king’s favour. There were even readers, as we will see, who were inclined to extend the king’s rights. The process of negotiation which took place through the medium of the readings from Frowyk in 1495 to Willoughby in 1549 suggests that the legal profession as a whole was more difficult to convince. The context within which the readings took place changed from decade to decade, as royal policy changed. Henry VII’s commissions appear positively benign when compared to the pressure Henry VIII placed on both the lawyers and the prerogative in the controversy over the Statute of Uses, while his sale of church land in the 1540s extended the prerogative to a new generation of feudal tenants, and aroused a new level of resentment. The readers reflect these changes in their lectures, not through any overt discussion of policy, but through an attempt to frame their teaching to the needs of the moment.

Clearly, the importance of the readings does not lie only in the academic exercises
performed at the Inns of Court. The readings allow us to see the legal profession developing and refining their understanding of the law from the privacy of their Inns, but the law was not made or administered in this rarefied atmosphere. The lawyers were very much aware of the course of affairs in London and Westminster and used the readings to convey information on topics of vital need, like the prerogative. On occasion they were brought up short by legal and political developments outside the Inns which forced them to radically alter their approach to the topic, but they simply began the process of interpreting the law anew. As an institution, the Inns of Court had a central role to play in the development and conservation of the law, and it is to the Inns that we must turn.
Chapter One:

Readings on *Prerogativa Regis*

Lectures or “readings” on statutes were a regular part of the educational curriculum of the Inns, occurring twice a year, at Lent and Michaelmas. The readings in the autumn of 1495, however, were delivered by a group of lawyers recently called to the office of serjeant-at-law. Readings by serjeants-elect were special occasions, since a call of serjeants was made, on average, only once every decade. The new serjeants were always men noted for their learning, and their readings could be expected to attract a large and prestigious audience. When two of the serjeants-elect in 1495 chose to discuss the text *Prerogativa Regis*, it thus seems probable that the text was of particular interest. Their choice is particularly notable both because the status of *Prerogativa Regis* was disputed and because its subject-matter, as we have seen, was becoming a matter of some financial and political importance. The serjeants in 1495 were responding to a real need for guidance in the law, and in so doing they were fulfilling their role in the legal system. The readers and the Inns of Court played a crucial role in the attempt to develop the king’s financial prerogatives in the late fifteenth and early sixteenth century, for the interpretation and systematization of law was a major part of their function.

The structure of English law meant that the preservation and construction of law were inextricably connected. The administration of justice was based on the common law of the realm and statutory law. Statutory law could introduce new law or it could declare the common law more clearly, but in either case it had to be interpreted in light of the existing common law. This meant that in theory the entire body of existing law should be kept in mind when any new statute was being made. Though the king was at the head of the legal system, it was unrealistic to expect him to have this kind of knowledge of the law, as Sir John Fortescue’s *De Laudibus Legum Anglie* makes clear. When Fortescue’s chancellor urges the
young prince to learn the laws of the land he will one day rule, the prince objects, on the grounds that such knowledge takes many years to acquire. The chancellor responds that the prince need only know "the principles and causes of the law as far as the elements."¹ It was for others to know the details. This was an old issue, and one not confined to English law. Roman law placed a similar expectation on the king, requiring him to keep all the laws in the shrine of his breast.² The jurist Cynus of Pistoia (1270-1336) warned against a literal interpretation of this idea, arguing that it was to be understood in the sense of "his court which should abound of excellent Doctors of Law through whose mouths the most law-abiding prince himself speaks."³ Bracton presents a similar idea, but in his version the prince was counselled by the magnates of the realm, not doctors of law, and the prince, rather than the lawyers, was the voice of the law, for the promulgation of law was by his auctoritas.⁴

In his classic fifteenth-century exposition of English government, Fortescue presents kingship as dominium politicum et regale, where the king is limited, though not controlled, by parliament. There was no doubt that the king had the power to declare law, but it was equally clear that he could do this only in conjunction with parliament. The exact role that parliament played is not explicitly stated by Fortescue. Bishop Russell, in the draft of the sermon he planned for the parliament of Edward V, compared parliament to Moses and Aaron "whyche escend vnto the mount where the lawe ys geven. The peuple must stond a farr, and not passe the lymittes; ye speke with the prince, whyche is quasi deus noster in terris."⁵ Parliament thus appears as a mediator between the king and the people, intended to moderate the force of the king's presence. Bishop Russell pursues this idea further, pointing out that

² This maxim was later also adopted by the canon law.
The king’s personal administration of law was probably associated with extreme circumstances and harsh application because his judicial tours usually followed outbreaks of political violence. Under normal circumstances, according to Russell, while parliament represented the king’s wishes to the people, it was left to the judges and commissioners to put them into practice throughout the land.

Bishop Russell’s parliament is a rather passive body, and he has little to say about its role as counsellor or advisor in the law-making process. Nevertheless, this idea, of parliament as a repository of legal knowledge as well as a creator of law, was still important at the time he was drafting his sermon. Thus in the act recognizing Richard III’s right to the throne, it is stated that though his claim is lawful,

the most parte of the people of this lande is not suffisantly lerned in the abovesaid Lawes and Custumes, wherby the trueth and right in this behalf of liklyhode may be hyd, and nat clerely knowne to all the people, and thereupon put in doubt and question. And over this, howe that the Courte of Parliament is of suche auctorite, and the people of this Lande of such nature and disposicion, as experience teacheth, that manifestacion and declaration of any trueth or right, made by the three Estates of this Reame assembled in Parliament, and by auctorite of the same, maketh, before all other thynges, moost feith and certaynte.

Here parliament is presented as the guardian of the law, on behalf of the people. The act does not make or change any law, it simply states that according to the law of the land Richard III’s claim is good and it is expected that such a declaration by parliament will satisfy the people.

This situation, though instructive, was unusual. Parliament’s role as guardian of the law was generally much less dramatic. The king was still seen as the central figure in both

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6 Ibid.
7 Rotuli Parliamentorum, vol. 6 (London, 1832), 241.
creating and preserving the law. In his coronation oath Henry VII made the traditional promises to “keepe to the people of Englande the lawes and customes to them as olde rightfull and devoute kings graunted, and the same ratifie, and confirme.” to “make to be done after ... [his] strenght and power rightfull Justice in all ... [his] domes and iudgementes and discretion with mercie and trowth” and to “graunte the rightfull Lawes and customes to be holden and ... after ... [his] strenght and power such lawes as to the worship of god shalbe chosen by ... [his] people ... to be strenghthened and defended.”

Such a promise remained important, for it was still believed that the well-being and prosperity of the land depended on the king’s willingness both to protect the law and to listen to the advice of parliaments. This is clearly displayed in the act settling the crown on Richard III, where the ideal past when “this Lande many years stode in great prosperite, honoure and tranquillite; which was caused, forasmoch as the Kings then reignyng, used and followed the advice and counsaill of certaine Lords Spirituelx and Temporalx, and othre personnes of approved sadnesse, prudence, policie and experience, dreading God and havyng tendre zele and affection to indifferent ministracion of Justice, and to the common and politique wele of the land,” is contrasted with the more recent past.

In all this rhetoric, and in the sermons before parliaments of the late fifteenth century which deal with the question of law, it is notable that the protection of the law is seen to be of equal importance in the maintenance of the country as the declaration of new law.

Archbishop Warham touched on the crux of the issue in his sermon before parliament in 1503 when he quoted Ecclesiasticus “Rule is transferred from peoples to peoples because of injustice” and went on to argue that “Justice is the best founder of laws and the best conservator of these foundations; since otherwise laws are either founded unjustly, in which case their authors are cursed ... or well-founded laws are perverted.” The circumstances of

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10 Ecclesiasticus 10:8.
the late fifteenth century made this a powerful argument for the proper administration of justice. It is also worth noting that Warham was directing his sermon on the love of justice to the parliament at large, but especially to those “who undertake the care of administering the Republic.”

If we can thus assume that king and parliament together were seen to create well-founded laws, how was it possible to prevent those laws from being perverted? The structure of the law presented a problem by itself, for it was assumed that the common law and statute law together made up a complete and coherent body of law. As Kern argues, once the state had begun to create and codify law

it had set forth on the path which ended in the fiction that the written law is comprehensive, and the positive law a complete system. For the authority of legal scholarship or of the statute books, which is considered infallible, gives an answer even where it is silent. For this reason, the State, from the very first moment when it took upon itself to promulgate law, was compelled, in theory, to promulgate a complete law.

English law was far from being complete or systematic. Yet there were practitioners of law whose function it was to expound and apply the law in a systematic way. Fortescue could tell the prince that he need only learn the principles of the law because it was not expedient for him “to investigate precise points of the law by the exertion of ... [his] own reason, but these should be left to ... [his] judges and advocates who in the kingdom of England are called serjeants-at-law, and also to others skilled in the law who are commonly called apprentices.” It was up to these practitioners to determine whether any alleged custom was part of the common law, and it was up to them to interpret statutory law in the light of that law. They can be seen, in Barton’s words, as “repositories of the communal sense of right, with implied authority to consent to new customs on behalf of their fellow-countrymen.”

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12 Ibid.
14 Fortescue, De Laudibus, 23.
16 St. German, Doctor and Student, li-iii.
The legal profession occupied an ambiguous position in the system of governance. Fortescue presents the judges largely as an academic group. He describes a somewhat idyllic life in which, after they have spent the morning in court and meeting with counsel, they “pass the whole of the rest of the day in studying the laws, reading Holy Scripture and otherwise in contemplation at their pleasure, so that their life seems more contemplative than active.”

Dudley’s *Tree of Commonwealth* echoes Fortescue’s sentiment when discussing the localities, for it argues that the chancellor should appoint “good men and suche as will deale indefferently bytwene the subiectes, and in no wise to put in auctoritie those which are greate bearers of matters” to administer justice in the shires. This idealistic picture does not ring true, and indeed Fortescue’s own life gives the lie to any argument that the justices were free from politics.

The *Tree of Commonwealth*, however, goes on to deal with both the appearance and reality of judicial office in more detail. Dudley argues that Justice must be one of the roots of the tree of commonwealth and

> must nedes come of our souereigne lord hym self, for the whole auctorite therof is gyven to hym by god, to mynister by hym self or by his deputies to his subiectes. And though it be suffrid or permytted yt a prince make or ordeyne his deputies in euery parte of this realme to mynister iustice, as his Chauncellor, his iustices of both benches, and other generall and speciall comissioners in euery [countie] and Shere, yet the cheif charge is his owne. Wherfore, for the honor of god, lett it be forsene yt his grace may make his Iustices of them yt be well lernyd men and specially of good consciens.

Dudley is concerned that the king should appoint men of good conscience, for he recognizes the pressures to which the judges were subject. He exhorts the king to urge the judges to the true administration of justice, and argues that “by hym they must be enformid and put in corage so to do, and yt thei lett [not] for fere or displeasure of any of his one seruantes or counsellours to do trew iustice nor for fere of any great persons in his realme, for yt that thei

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17 Fortescue, *De Laudibus*, 129.
19 Ibid.
do is done by his auctorite, and not by ther owne." Here Dudley points out that the judges are often under pressure from great lords to bend the administration of justice in their interests and he returns to the fact that the judges act on behalf of the king. In this he agrees with Fortescue, who told the prince that "none of the kings of England is seen to give judgment by his own lips, yet all the judgments of the realm are his, though given through others.”

This raised a further problem for the judges, for the great lords were not the only ones who might seek to exert pressure on them to bend the law. What would happen if the king were to do the same? They acted by the king's authority and their judgments were in effect the king's judgments; did that mean that the king could require them to return the verdicts he wanted? Dudley replies in the negative, arguing that "though the causu toche hym self, yet he must put them in comfort not to spare to mynister iustice withowt fere: And this to do he shal have greate meede, for without doubt fere is a great impedyment of iustice emongst the judges and commyssyoners.” Dudley accepts that the king can interfere with the course of justice, but he cautions that he should not misuse his influence over the justices. Of course there was no guarantee that the king would restrain himself.

Thus the justices were in a difficult position. The law they administered was made by the authority of the king, but it could not be made or changed by his will alone without the consent of parliament. Their judgments were on behalf of and by the authority of the king, but they were expected to render judgment against the king when the law demanded it. They were guardians and interpreters of both common and statutory law and they were to protect the law against king, lords and commons. A task of this complexity could not simply be carried out as part of the day-to-day work of the courts, for individual judgments were subject to inconsistency and debate. The lawyers needed an opportunity to examine the law

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20 Ibid., 35.
21 Fortescue, De Laudibus, 23. This also echoes Cynus of Pistoia’s interpretation, above p.22.
22 Dudley, Tree of Commonwealth, 35.
23 Ibid., 36-7.
they practiced as a logical and coherent whole, and they could do this within the context of legal education.

By the Tudor period the major institutions of legal education were the four Inns of Court: Lincoln’s Inn, Gray’s Inn and the Middle and Inner Temple. The origins of these institutions are, however, obscure. They were not incorporated, and so there are no charters giving their dates of foundation. Their own records begin at different times; the Black Books of Lincoln’s Inn are the earliest, beginning in 1422, the records of the Middle Temple begin in 1501 and those of the Inner Temple in 1505, while Gray’s Inn has no records until 1569. There is no relation between the dates of the records and the actual origin of the Inns, for a call of serjeants in 1388 demonstrates that the Middle and Inner Temples and Gray’s Inn were established by that time. Baker argues on the evidence of this call that the Inner Temple was the largest of the Inns at this point and possibly the first, with the Middle Temple coming into existence to cope with the overflow from the Inner Temple. It is notable that Lincoln’s Inn is not represented in this call, and this, together with the lack of other contemporary evidence for its existence and the small number of students recorded when its Black Books open in 1422, suggests that it had in fact only come into existence shortly before that date.24 It is generally agreed that the Inns began as social communities and that the provision of an organized educational structure was a later development, though the date of this development is unclear.

The common law was in existence as a sophisticated system of practical law before the emergence of the Inns of Court and so some form of education must have been available to legal practitioners in this period. Apprentices of the law appear in the records from the end of the thirteenth century.25 They are generally referred to as “apprentices of the Bench”

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24 The distinction between the Inns of Court and Chancery also seems to be clear by this date; all the serjeants called in 1388 came from what became known as Inns of Court, and while a serjeant was called from Clifford’s Inn in 1396, this was unusual enough to merit a commemorative inscription in the hall window. J.H. Baker, “The Inns of Court in 1388,” in The Legal Profession and the Common Law (London: Hambledon, 1986), 4.
which suggests that the majority of their education came from the courtroom. This impression is supported by occasional remarks in the early year books and an ordinance of Edward I, which ordered the judges to select the best of the apprentices crowding the courtroom and oversee their education. While attendance at the king's courts at Westminster was the backbone of education in the legal system, it can be assumed that the technicalities of the arguments raised in court would often have been beyond the understanding of the students present. Some more personalized and simplified form of education was necessary.

Brand argues that this came from the Inns of Chancery. He suggests that many legal treatises from the end of the thirteenth century, such as *Brevia Placitata* and *Casus Placitorum*, actually began life as a series of lectures. The treatises are thus derived from the notes of the students attending the lecture, indeed possibly from more than one generation of students. He goes on to argue that texts such as the *Modus Componendi Brevia* indicate that senior chancery clerks were filling in gaps in the education of their juniors and he suggests that by 1300 registers may well normally have been transmitted orally and in the context of an organized educational course run by senior chancery clerks which was geared to the needs not just of junior clerks but also of others who wanted to gain a knowledge of original writs as a first step in acquiring a more general expertise in English law.

Thus by the beginning of the fourteenth century the Inns of Chancery seem to have established their role in providing a basic introduction to the law for young students.

The Inns of Chancery were not in a position to provide advanced instruction however, for this had to come from a more senior element of the profession. The evidence of the year books suggests that judges might take the time to explain a difficult point of law to students.

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26 It is now generally agreed that this does not mark the beginning of the educational function of the Inns of Court, but it does suggest that it was assumed that students would receive their education from senior practitioners in the field, rather than from teachers as such.


28 Ibid., 155. Brand points out that the *Modus Componendi Brevia* does not give either writs or the counts and defences for the writs. It does deal briefly with exceptions, a topic of little interest to the chancery clerks for whom the text was purportedly composed, but of considerable interest to a law student.
in the courtroom, but this did not provide a reliable method of instruction, for it depended on
the attitude of the individual judges and the pressure of business. Brand argues that the year
books themselves were being used as a tool in educating students, and notes interspersed
among two year book manuscripts suggest that senior lawyers, either recently raised to the
office of serjeants or just below that rank, were acting as teachers.  
Brand further argues
that the same manuscripts give evidence of the existence of some form of learning exercises,
and even rudimentary lectures on the statutes in the Inns of Court, in the first half of the
fourteenth century. Baker agrees that learning exercises existed in some form at this time.
He believes that the undated Hae sunt quaestiones compilatae de statutis was used in early
learning exercises. The statutes in this manuscript are arranged in order from Magna Carta
to the legislation of Edward I, while the cases cited are all from the early years of Edward III.
On the basis of this, and other internal evidence, he dates the text to the early 1340’s. If the
learning exercises did in fact begin in the early fourteenth century, this provides a possible
explanation for the dominance of the major statutes of the thirteenth century in the
curriculum of the Inns. There can be no doubt of the importance of these statutes, but it is
possible that if the learning exercises had begun at a later period, the inclusion of
contemporary statutes would have prevented their monopoly. The canon of statutes
appropriate for readings may, however, have been fixed by the early fourteenth century, and
the paucity of major new statutes in the following centuries would mean that this diet of
statutes would continue to form the staple of legal education until the early sixteenth

29 Ibid., 159.
30 Ibid., 162-63. He also suggests that while most of this legal education was centred in London, around the
courts, some of it might also be carried out at Oxford or even Cambridge, not as part of the university training
itself, but on the fringe. The legal profession also claimed an ancient tradition for their education. In 1632 Noy,
the attorney general, claimed that readings were being carried out in the mid-thirteenth century and offered the
evidence of a writ on the close roll of 19 Henry III to the sheriff of London ordering him to suppress any
schools in the city in which the law was read (brief fuit direct al vicont de London commandant a luy que si
fueront ascun schoolies en cee city en que le ley fuit lye que doit cee suppress). Noy also states that a similar
writ was directed to the archbishop of Canterbury, supporting Brand’s suggestion that early legal education was
not confined to London. BL. Harl. 980. f.153.
31 J.H. Baker, “Learning Exercises in the Medieval Inns of Court and Chancery,” in The Legal Profession and
While there is evidence that legal education took place in the Inns from an early date, probably virtually from their inception, it seems that this educational function was not formalized until the fifteenth century. In 1428 Lincoln’s Inn ordained that members from London and Middlesex should pay commons for the two weeks before the opening of the Hilary and Easter terms and the three weeks before the Michaelmas term. This seems to have been aimed at ensuring that those who had to pay would in fact be in attendance at the Inn during those weeks and thus available to take part in the learning exercises to be held at that time. This was extended in 1442 by another ordinance of the Inn requiring that every member, after having graduated from the status of student to fellow, should remain at the Inn for the three learning vacations for three years after his admission.

Thus by the mid-fifteenth century the Inns had established an educational system, together with an educational hierarchy. There were three basic ranks within the Inns, though there was some variation from Inn to Inn. These were: inner barristers, who sat within the bar at moots; utter barristers, who sat outside the bar at moots; and benchers, who made up the governing body of the Inn.

Later statutes do appear in the readings, but they generally appear as modifications of the major statutes of the thirteenth century rather than as subjects of readings in their own right. Cf. G. R. Elton’s argument about the basic requirements for reform and his contention that they only existed in the period of Cromwell’s ascendancy in G. R. Elton, English Law in the Sixteenth Century: Reform in an Age of Change (London: Selden Society, 1979), 7-11.


Ibid., 147.

Gray’s Inn differed from the others in this, as its governing body was made up of readers rather than benchers. In the course of the second half of the sixteenth century a separate class of “benchers” emerged within the Inn. They were usually men of some seniority within the Inn who had not read, whether for reasons of illness, pressure of business or something similar. The benchers shared some of the privileges of the readers, mainly that of eating at the high table. It was only with the decline of the importance of reading in the late sixteenth and early seventeenth century that the benchers came to exert as much influence as the readers, and eventually they came to dominate. The last reader was appointed in 1677 and in 1679 the first mass calls to the bench of Gray’s Inn are recorded. See A. W. B. Simpson, “The Early Constitution of Gray’s Inn,” Cambridge Law Journal 34 (1975): 140-41. Simpson also argues elsewhere that the benchers did not make up the executive body in Lincoln’s Inn until the end of the fifteenth century. He contends that the government of the Inn was democratic; it was run by governors acting in the name of the entire body of the members. In the late fifteenth century the benchers came to be associated with the governors in the administration of the Inn and by the early sixteenth century the benchers had assumed power. See A. W. B. Simpson, “The Early Constitution of the Inns of Court,” Cambridge Law Journal 28 (1970): 245-49.
educational function. The inner barristers were the entering students, and they usually held this status for about three years. The utter barristers were those obliged to attend a specified number of learning vacations after their admission as fellows of the Inn, though they retained this status unless and until they became readers. The readers were senior utter barristers who became benchers on the completion of their first reading, and usually completed a second or even a third reading before becoming serjeants, at which time they left the Inn.

At first there seems to have been no formal graduation from each degree to the next. Students became utter barristers when they had reached the appropriate standing within the Inn, as utter barristers became readers when they had reached the appropriate level of learning. The promotions were probably regulated by customs within the Inns, but it was not until the end of the fifteenth century that calls to the bar and bench began to become more solemn, while they were not recorded until the sixteenth century. Lincoln’s Inn first recorded its calls to the bar in 1518 and Simpson suggests that Gray’s Inn began its records in 1523, but the other Inns did not do so until the reign of Elizabeth. This indicates that progression through the Inns was a purely internal matter until at least the 1520s, when the call to the bar began to be seen as a basic prerequisite for practice in the central courts. The status of utter barrister, however, was only the beginning of a legal career for a man who wished to rise in the profession. It was possible to become an utter barrister after two or three years at an Inn, but Simpson argues that it could take anywhere from fifteen to over twenty years to become a reader and up to thirty to become a serjeant. Clearly only a very small number of the men admitted to the Inns reached this exalted status, and most probably did not intend to do so.

36 The number of learning vacations required varied from Inn to Inn. In Gray’s Inn there was an intermediate class between the utter barristers and readers, called the ancients. Members became ancients through a formal call or election, and the readers at that Inn were drawn exclusively from the ancients. Simpson, “Early Constitution of Gray’s Inn,” 143.


38 Most students attended the Inns in order to get a grounding in the law which would help them in their roles as landholders, on commissions or as justices of the peace. The Inns were also noted for their rich cultural life and they provided a useful place to make helpful contacts.
There were three main types of learning exercises in the Inns in this period: bolts, moots and readings. Bolts are frequently mentioned in the records of the Inns, though they seem to have been more prominent at the Inns of Chancery than the Inns of Court. While the word occurs fairly regularly, there is never any description of the activity, and scholars remain unsure of what bolts actually were. Moots were mock courts held in the halls of the Inns several evenings a week. In the moots the inner barristers read the count of the case to be disputed and the junior utter barristers argued it. This gave the utter barristers the opportunity to practise pleading under the tutelage of senior utter barristers and readers and allowed both inner and utter barristers to watch and learn from the pleading and the instruction given. Both the bolts and moots were regular exercises carried on during the legal term and conscientious students would have been kept busy preparing for them. While the cases presented at the moots were intended to allow students to develop their skills, they did not pamper them in any way. Some of the surviving moot cases are baffling in their complexity: Baker has remarked of one particularly tortuous case that no modern scholar could identify all the points of law contained in it with any confidence.

The readings on statutes were the most advanced and formal of the exercises. The system of reading became more fully developed with the formalization of the educational structure of the Inns. Simple readings were being given in the early fourteenth century, and they continued through the next one hundred and fifty years until by the mid-fifteenth century they “began to become elaborate and learned works.” Baker argues that the readings played a significant role in “the arrangement, consolidation and explanation of

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39 Some manuscripts of moots and moot cases have survived, though not in the same quantity as manuscript readings. The only moots in print are those in J.H. Baker, ed., Readings and Moots at the Inns of Court in the Fifteenth Century vol. 2, Selden Society vol. 105 (London: Selden Society, 1989).
41 Though legal scholars of the period agree that the readings deserve closer examination, they have not yet received it. The only modern editions of readings to date are Thorne’s edition of Robert Constable’s reading and those in S.E. Thorne ed., Readings and Moots at the Inns of Court in the Fifteenth Century vol. 1, Selden Society vol. 71 (London: Selden Society, 1954).
unwritten principles which are often glimpsed only fleetingly in the year books." Each reader built upon the arguments of his predecessor, endorsing what had been accepted as "good" law, raising new questions which had emerged in the courts since the last reading on the statute and discussing hypothetical questions. The reader was not imposing his view of the law on his audience, however, for his auditors were expected to make it clear when they disagreed with his interpretation, so that discussion could ensue. The readings were "the collective and growing wisdom of the profession" and their function was to "preserve and elaborate the common learning." The readers in the early Tudor period did not rely on a discussion of case law, whether recent or ancient. There are few year book references in the surviving lecture notes, and those few are often later additions. The readers instead seem intent on presenting the law as a clear and coherent structure which can be both explained and understood simply by the application of reason. As Ives comments, legal education in the late fifteenth century "was less a cramming course in ancient precedent than an endeavor to develop forensic ability." The year books provided useful illustrations of the law at work, but the readings were intended to explain why the law worked in that way.

The readings took place in the Autumn and Lent vacations, with the Autumn session usually being taken by a new reader, and the Lent vacation given to the more senior double reader. A report on the Inns of Court from 1540 states that the reader will choose to "reade some one such Act, or Statute as shall please him to ground his whole reading on." Though this was probably true by 1540, in the fifteenth century readers generally seem to have had little say in their choice of text.

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45 Ibid.
lectured on the statutes, following their predecessor in rotation through the major statutes from Magna Carta to the end of the reign of Edward II. In the early days the readings were brief, almost perfunctory, and the entire cycle could be covered in a few years. By the end of the fifteenth century, however, the cycle took ten to fifteen years to complete, as the readers expounded increasingly detailed interpretations of the statutes. The expectation that readings would be based, not only on a statute, but on an old statute, meant that the readers often had to strain their text artificially in order to cover the topic they wished to discuss. For example, in 1503 Thomas Marowe lectured on justices of the peace, but “instead of reading on an act of Edward III or Richard II that dealt specifically with justices of the peace, Marowe selected the opening chapter of Westminster first, enacted long before their institution.” It was not impossible to read on a more recent statute; Marow’s colleague at the Inner Temple, Gregory Adgore, lectured on a statute from 1483 in his first reading, given at the end of the 1480s. Adgore was flouting tradition, though, and it remained unusual for a reader to break from following the text expounded by his predecessor. In the normal course of events, each reader was appointed a year before his reading in order to give him time to prepare. This routine was sometimes upset by death or illness, and in these circumstances a bencher might step in to fill the vacant place and deliver a third or even a fourth reading. Similarly, when a new group of serjeants was called, the serjeants-elect were expected to deliver the next reading at their Inn, or if two were called from the same Inn, the junior man lectured. In either of these

Baker notes that in the two existing manuscripts the reading is incomplete and speculates that it may have been stopped.

50 Thorne, “Early History of the Inns of Court,” 148. The surviving records of the Inns note when readers were appointed and when they read, but they do not mention the texts covered. Thorne has reconstituted partial cycles of readings by matching known readings with known readers and has suggested dates for some anonymous and/or undated texts by attempting to fit them into the cycle. Thorne, Readings and Moots, ix-xviii. Others have tried similar methods to date the readings of particular lawyers, e.g. Eric Ives, The Common Lawyers of pre-Reformation England (Cambridge: Cambridge University Press, 1983), 45-46.


52 Adgore’s reading is undated, but it must be before 1491, since the sequence of Inner Temple readings is known from that date. J.H. Baker, ed., The Notebook of Sir John Port, Selden Society vol.102 (London: Selden Society, 1986), xxxiv. The reading mentions a statute of 1489, suggesting a date at the end of the decade, but it is not entirely clear if this is a later addition. I am grateful to Professor John Baker for bringing this to my attention.
cases the reader seems to have been allowed to expound any "old" statute that interested him.

It was under these circumstances that Robert Constable of Lincoln's Inn and Thomas Frowyk of the Inner Temple lectured on Prerogativa Regis in 1495. As already noted, both men were serjeants-elect. They had both delivered two readings already, and their third would carry a great deal of weight. That they both chose to read on Prerogativa Regis suggests that the text was of great interest at the time, particularly in light of the fact that it was not part of the cycle of readings. Though dating from the late thirteenth or early fourteenth century, Prerogativa Regis was not one of the classic statutes. It sets out the king's financial rights over his tenants-in-chief. The first three chapters of the text deal with the custody and wardship of the land and heir of the king's tenants-in-chief. Chapter one states that the king will have the custody of all the land of which his tenant died seised, of whomever it is held, as long as his tenant held something of him ab antiquo de corona, if the tenant should leave an under-age heir. Chapter two allows the king the marriage of any heirs in his custody, for whatever reason. Chapter three gives him primer seisin of all land held by his tenant on the day of his death, and the profits of all that land until an inquisition is held and the heir sues livery. Though there is much of interest in the readers' discussions of the later chapters, I have restricted this study to the first three chapters of the text, partly for reasons of space, but primarily because they comprise the foundation of the statute. They were also the chapters of most interest to contemporaries, as evidenced by the fact that only the lectures on the first seven chapters survive in Constable's reading of 1495 and only the first two in Willoughby's reading, delivered in 1549.

53 Constable's reading has been edited, but Frowyk's is still only available in manuscript, as are the later readings on the text. See bibliography for further information.
54 Chapter three assumes that the tenant dies leaving an heir of full age. The statute goes on to deal with widows and heiresses, alienation of lands, churches to which the king has right of presentation, custody of the lands of idiots and lunatics, right to wreck, whales and sturgeon, the escheats of lands of Normans and other foreigners and the king's right to the chattels of felons and fugitives.
55 George Willoughby's reading survives only in BL Harl. 1691, ff. 197-201. Only two of the surviving sets of lecture notes deal with the entire text, Frowyk's reading of 1495 and John Spelman's reading of 1521. Staunford deals with the later chapters in a cursory fashion. Frowyk and Spelman generally agree in their interpretation of the text and thus we have little evidence for differing views on the later chapters, especially compared with the conflicting views expressed by Frowyk, Constable, Spelman, Willoughby and Staunford on...
The status of *Prerogativa Regis* is something of a mystery. It is presented as a list of the king’s rights, for there are no words of promulgation in it, ordaining or commanding that these rules be kept. This, together with its somewhat anecdotal later sections, led Maitland to conclude that it is not in fact a statute, but a treatise written by a member of the legal profession. Scholars remain unsure of the origin of the document, and its subsequent history is as mysterious as its text. It is included in the *Statutes of the Realm*, but there it is included with the statutes of uncertain date. It is also in the early printed editions of the statutes, where it was assigned by tradition to 17 Edward II. It seems clear that it belongs to the reigns of either Edward I or Edward II, for the text refers to “King Henry, father of King Edward.” Maitland suggests that it belongs to the early years of Edward I, but a year book case from the reign of Edward III refers to it as being made in the time of King Edward the father of the present king, while Staunford, in the mid-sixteenth century, argued that it must date from the reign of Edward II, since otherwise the text would have referred to King Henry our father, rather than King Henry father of King Edward. Serjeant Kebell, however, recognized that the date of the statute was “doubteous” in 1497, and his verdict still holds. It seems likely that the date of the text will never be certainly known, and this has led to some discussion concerning its status, both among fourteenth and fifteenth-century lawyers and among modern scholars. *Prerogativa Regis* is usually called a statute, but in the period from which it dates, the two most common tests of authenticity for a statute were that

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56 The chapter on the escheat of the lands of Normans gives the example of the barony of Monmouth, while another chapter relates the experiences of Matilda, daughter of the duke of Hereford.
59 See, for example, *Magna Carta in F. wherunto is added more statutes than euer was imprinted in any one boke before this tyme* ... (London, 1529), f.98. It was assigned this position because the miscellaneous undated statutes were gathered together on the statute roll at the end of the reign of Edward II.
60 Maitland, “*Prerogativa Regis*,” 182-89.
62 William Staunford, *An Exposicion of the Kings Prerogatue collected out of the great Abridgement of Justice Fitzherbert, and other old Writers of the Lawes of Englande* (London, 1567), f.6-6v.
63 YB Trin. 12 Hen. VII, p.20, pl. 1.
it should be dated and sealed.\textsuperscript{64} \textit{Prerogativa Regis} meets neither of these criteria.

This need not necessarily pose a problem, for the definition of statutes in the thirteenth and fourteenth centuries was far from sophisticated. In this period statutes were a relatively novel means of achieving legal change. Plucknett has looked at the nature of legislation in the first half of the fourteenth century by focusing on the process of creating a statute and incorporating it in the common law. He argues that in the early years of the common law, legislation was hardly a distinct function of king or parliament, but simply one way of changing the common law, and that “change was easy and might be effected in very informal ways.”\textsuperscript{65} Thus in the reign of Edward I and for some time after it, statutes did not differ in their nature from other forms of legal instruction, such as the king’s instructions to judges on eyre, and might simply be the king’s expression of his role as lawmaker.

This raises the question of how some texts came to be accepted as statutes, while others were not. The most important enactments, such as Westminster I, are clearly statutes, but the status of many other texts produced by the legal profession of the first three Edwards is more questionable. Plucknett concludes that “the only safe course is to say, quite simply, that those things are statutes which contemporaries themselves describe by that word. In other words, the description of ‘statute’ is acquired by repute. We must regard as contemporaries, moreover, those who were best qualified to know - above all, the courts, for it was their duty to know.” He adds that “it seems unlikely that there was any diplomatic, or technical, or constitutional criterion; once again repute and practice would normally settle the matter quite early, for most statutes deal with matters of some urgency and so are likely to come before the courts fairly soon.”\textsuperscript{66}

Richardson and Sayles have considered the same problem of the early statutes, but

\textsuperscript{64} The seal was a simple guarantee of authenticity, but the lack of a date meant that it was difficult in some cases to establish when the statute could be applied. A statute passed in 1285, for example, could not be used in a case concerning an action taken in 1283. In practice this requirement became less of a problem with the passage of time, since a case argued in 1350, for example, was less likely to rely on an action from before the rough dating of the document.


\textsuperscript{66} Ibid., 11.
rather than approaching it through the nature and operation of the legal system, they have looked at the physical recording and transmission of the early statutes and particularly the statute roll. They argue that "the statute roll makes no attempt at completeness, and ... certainly before 1299 its texts cannot be relied upon as strictly contemporary or authoritative. ... little was added from other sources, and even after 1299 those responsible for keeping the roll did not regard it as necessary to enter every statute upon it."\(^6\) The impression of uncertainty is supported by Plucknett's assertion that "reference by the court to an official copy of a statute was decidedly unusual and ... the court did not possess a copy of its own for ready reference."\(^7\) On the other hand the statutes did circulate in private collections compiled for the use of lawyers. The collections were the result of private enterprise and were in no way standardized. They might include a variety of statutory texts, and *Prerogativa Regis*, for example, is found in only about 25% of the surviving manuscript statute books.\(^6\) Besides statutes, these books also contained collections of writs and other legal texts. Richardson and Sayles point out that "at any time in the thirteenth century, all the works of reference the practical lawyer needed could be contained in one moderate-sized volume: and the state of the texts is explained if we recognize such a collection for what it is, ... a *vade mecum* aiming at being inclusive, but with no high standard of accuracy and certainly making no contemporary claim to authority."\(^7\)

Thus the early statutes were recorded either on an incomplete and semi-official statute roll or in the catch-all unofficial collections of working lawyers. The situation was hardly conducive to the formulation of a definitive collection of authoritative texts or indeed an authoritative version of any one text. However, despite the confusion of the sources, Richardson and Sayles make at least a tentative attempt to define a statute. They conclude

\(^6\) H.G. Richardson & G.O. Sayles, "The Early Statutes," *Law Quarterly Review* 50 (1934): 215. They point out that there continued to be omissions on the statute roll until the end of the reign of Edward III and beyond, but argue that the statute roll gradually acquired a peculiar authority.\(^6\) Plucknett, *Legislation of Edward I*, 104.


\(^7\) Richardson and Sayles, "The Early Statutes," 544.
that there are three tests for a statute: "does the legislation arise from a petition of the commune; is it of general application; is it intended to be permanent? If the reply to any of these questions is in the negative then the legislation should not, apparently, strictly be described as a statute." 71 Though these criteria are simple, coherent and practical, the authors go on to warn that "although we may legitimately deduce these criteria from the formulas used in drafting statutes and ordinances, we must not lay any great stress upon them. It would almost seem as though there were in the background a draftsman of methodical mind who failed to win assent to his categories and terminology." 72

It seems, then, that modern scholars have found various methods of testing a text to determine whether or not it is a statute, but they warn that in the end none of these tests is beyond doubt. The safest method is simply to accept the word of contemporaries, for the practical needs of the court will determine whether a text has statutory force. The exact form or date of its origin was not the most important element in determining the authority of a text. A problem arises when we try to apply this criterion to Prerogativa Regis, for contemporaries remained uncertain as to whether it was a statute or not. Two year book cases were commonly given in reference to this question. The first dates from about 1370 and hinges on the question of whether, when the king gives the gift of a manor with an advowson attached, the advowson automatically goes with the gift, or whether this must be expressly stated. Since this falls into the area covered by Prerogativa Regis, the text itself is discussed by the serjeants present in court. Serjeant Candish argues that in the reign of Henry III the king was treated just like anyone else under the law, and that this changed with the statute Prerogativa Regis, made in the time of Edward II. 73 Kirton responds that Prerogativa Regis is not a statute, but a rehearsal of the king's prerogatives, since it is clear that the king had this prerogative before the time of the statute. 74 Fencot is in agreement with

71 Ibid., 559.
72 Ibid., 559-60.
74 Ibid.
Candish, that the words of the text clearly indicate that something new is being reserved to the king with this document, and therefore it is a statute.\textsuperscript{75} The main criterion here for a statute seems to be that it changes the common law in some manner, though in this case the lawyers disagree on what has been changed and to what extent.

The second case normally invoked to discuss this question dates from 1475 and it deals with the question of whether, if the king has the wardship of an heir of one of his tenants-in-chief, and the child inherits land held in socage, the king should have the wardship of this land also.\textsuperscript{76} In this case Serjeant Brian characterizes \textit{Prerogativa Regis} as an affirmation of the common law.\textsuperscript{77} Pigot argues, based on the previous case from 1370, that it is not an affirmation of the common law, but a statute.\textsuperscript{78} Littleton, however, chimes in on Brian's side, arguing that \textit{Prerogativa Regis} cannot be a statute, for it has no certain date and it is not obeyed in every point. He considers that it is just like the treatises \textit{Dies Communes in banco}, \textit{Dies Communes in Dote} and \textit{Expositiones Vocabulorum}, which were "written in our books and yet are not statutes, but were made for this purpose, that that which was in doubt in the common law should be made certain."\textsuperscript{79} It seems, therefore, that the course of almost two hundred years of practical application had not settled the status of \textit{Prerogativa Regis}. The text continued to be used and applied because its provisions were a reasonable statement of the king's financial rights over his tenants-in-chief and reason was the central criterion by which any text of the common law was judged. Any attempt to apply the text to a situation not explicitly contained therein, however, consistently led to discussion and debate about the nature and the applicability of \textit{Prerogativa Regis}.

When Constable and Frowyk chose to read on this text in 1495 they opened a new chapter in the debate over the text. \textit{Prerogativa Regis} had never formed part of the medieval

\textsuperscript{75} Ibid.
\textsuperscript{76} YB Mich. 15 Edw. IV, p.12, pl. 17.
\textsuperscript{77} Ibid., p.13.
\textsuperscript{78} Ibid.
\textsuperscript{79} Ibid. It is worth noting that just a few years earlier Serjeant Pigot had denied that \textit{Dies Communes in Banco} was a statutory affirmation of the common law, though the court had termed it a statute. YB Pas. 8 Edw. IV, p. 4, pl. 9.
cycle of readings, and while it was not uncommon for a serjeant-elect to read on a text that broke the sequence, reading on a text that had never been part of the sequence was more unusual. Bringing an old text into the cycle of readings was an innovation in itself, but to choose one that was not generally accepted as a statute was exceptional. Possibly for this reason, the readers began their lecture with a brief discussion of the text. Constable argues that *Prerogativa Regis* is in fact a statute, and he gives four reasons for this belief. He uses the case from 1370 mentioned above; he argues that after the statute a tenant alienating land without licence from the king had to pay a fine, that this is more than the common law requires and therefore the text must be a statute; he points to the fact that it appears on the exchequer roll of statutes made in the reign of Edward I, and is entered near the end of that king's reign, and he contends that it is "accepted, used and affirmed as a statute," in this latter point re-affirming the idea that practical use was the most important criterion in determining whether a text carried statutory authority.  

Frowyk, however, follows Littleton in arguing that *Prerogativa Regis* "is not a statute or a declaration, but a treatise made by some of the wise men of the law, like Bracton, Visus Franciplegiae, Modus Calumniandi, Hengham and other such books." The argument did not end here, for having entered the cycle, *Prerogativa Regis* became a popular topic for readings. The 1495 readings were followed by a reading in 1521 by John Spelman, serjeant-elect, in 1531 by Roger Yorke, serjeant-elect, in 1545 by William Staunford and in 1549 by George Willoughby. Besides these identified readings, there are several anonymous

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80 Thorne speculates that two anonymous readings on *Prerogativa Regis*, CUL Ee. 5.22. ff.338-363v and CUL Hh. 3.6. ff.55v-70 are earlier, possibly from 1486, but this has not been proved. Thorne ed., *Prerogativa Regis*, xlviii.
81 Constable, 2-3.
82 Frowyk, f.1.
83 Gray's Inn MS 25, ff.303-23 (hereafter referred to as "Spelman").
84 Only a fragment of this reading survives, BL Hargrave 253, f.77v.
85 This is only supposition, but it seems likely. Staunford read in Lent 1545 and in 1551 and he became a serjeant in 1552. The texts of his readings have not survived, but his *Exposicion of the Kings Prerogatiue* is dedicated to Nicholas Bacon in November 1548. It is probably based on a reading given by Staunford in 1545 on *Prerogativa Regis*.
86 Only the first three lectures of Willoughby's reading have survived, BL Harl. 1691, ff.197-201(hereafter referred to as "Willoughby").
readings on the prerogative in existence.\textsuperscript{87} These readers also picked up the question of the status of Prerogativa Regis. The author of the reading in CUL MS Ee 5.22 agrees with Constable that the text is a statute, adding that it was made “solement pur lauantage et profite de Roy.”\textsuperscript{88} One reader argues that part of the statute is an affirmation of the common law and part is not,\textsuperscript{89} and Spelman also appears to have taken this view. He argues, for example, that most of the first chapter of the statute was simply declaratory of the common law, but that the statute was made in order to except the lands of the archbishop of Canterbury, the bishop of Durham and the lords of the marches from the prerogative. Therefore, in Spelman’s view, “all this branch is a statute.”\textsuperscript{90} Frowyk’s side of the argument had its supporters through the period, however, for Davant said in 1497 that Prerogativa Regis was “no statute, but an affirmation of the common law, which was made to make the prerogatives more certain.”\textsuperscript{91} Caryll, in his report of the same case, agrees and adds that it was made because “before this declaration the king wished to use his prerogative divers times according to his pleasure and not according to common law,” suggesting that the text was intended to limit the king.\textsuperscript{92} The view of the text as an affirmation of the common law seems to have prevailed, for George Willoughby’s reading in 1549 again returns to Littleton.

\textsuperscript{87} At least some of these anonymous readings are probably versions of the known readings. Since the surviving manuscripts are all copies of notes taken by listeners, notes from the same lecture can be quite different. Mirov divides the surviving mss into two broad categories, “concise single-issue statements of substantive law” taken by younger students, and cases and arguments noted by senior lawyers “more interested in how arguments are formed and presented than in the basic principles of substantive law.” Matthew Campbell Mirov, “Readings on Wills in the Inns of Court, 1552-1631” (Ph.D diss., Cambridge, 1993), 109. Given the fact that many readings survive only in part and that it was the usual practice for readers to build upon the work of their predecessors, often in nearly identical words, it is difficult to ascertain when anonymous mss are in fact versions of named readings.

\textsuperscript{88} CUL Ee 5.22, f.338.

\textsuperscript{89} CUL Hh 3.6, f.55v. “Et semble que parcell de ce estatuit est en affirmatione del commen ley & parcell nemi.” He argues that the first article of the statute is an affirmation of the common law because according to this the lands of an under-age heir of a tenant-in-chief of the crown are held by the king for the defence of the realm (lez terrez dun enfant serra engarde del segnier est pur defence de roialme entant que le poiar le roialme ne serra enfeble per le nounage de tile enfant que ne able armer porte en guerre devant l’age etc.).

\textsuperscript{90} Spelman, f.303.

\textsuperscript{91} YB Mich. 13 Hen. VII, p.11, pl.12.

\textsuperscript{92} Robert Keilway, Relationes quorundam Casum selectorum ex Libris Roberti Keilway Armiger ... (London, 1602), Mich. 13 Hen. VII, p. 32b, pl.5. This collection, known by the name of Keilway, was in fact compiled by John Caryll. See A.W.B. Simpson, “Keilway’s Reports, Temp. Henry VII and Henry VIII,” L.Q.R. lxxiii (1957): 89-105.
Willoughby considers that *Prerogativa Regis* "is only a treatise and declaration of the prerogative of the king at common law and not a statute as is shown in 15 E4, for if this was a statute it would be observed in every point, but many articles of it are not held as law."93 He goes on to compare it to Magna Carta before its confirmation in the Statute of Marlborough, arguing that since that confirmation Magna Carta had been observed in all its articles, whereas before Marlborough it was only a treatise on the common law, just like the treatises *De Dies Communes in Banco* and *De Dies Communes in Dote*.94

This question demonstrates a problem facing the legal profession at the end of the fifteenth century. What Plucknett characterizes as the "more businesslike methods of Parliamentary procedure" meant that "Parliament considered not merely the general policy, but the exact wording of the proposed statute; and that wording had most often been settled in government offices."95 He argues that "when the time came for lawyers and judges to apply these statutes, they perforce approached them with the knowledge that not only their general drift, but also their detailed wording, was the result of careful thought."96 This is a very different attitude to statutes than that common in the period in which *Prerogativa Regis* was framed and indeed most of the period to the end of the fifteenth century. Lawyers were now faced with texts which differed greatly in their precision of wording and intent, all falling into the category of "statute." Furthermore, generations of lawyers and judges over the centuries had treated this body of statutes very differently. The need to reconcile "Dyer's attitude to the Statute of Uses" with "Bereford's treatment of the Statute *De Donis*"97 led to the emergence of the concept known as the equity of a statute. According to this theory, a statute in affirmation of the common law could be extended to include situations similar to

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93 BL Harl. 1691, f.197v.
94 Ibid. The question of a parliamentary confirmation of a declaration of the common law is also raised in one manuscript of Frowyk's reading, which states the question as whether *Prerogativa Regis* is a statute or not or if it should be seen as a declaration of the prerogatives of the king by the authority of parliament. CUL Hh. 3.6, f.71.
96 Ibid.
97 Ibid., 249.
those mentioned in the statute, while things which had not been in existence at the time when
the statute was made could be encompassed by it under the equity of the statute. For
example, it was questioned whether, when a tenant-in-chief of the king held lands of other
lords in socage or burgage and died leaving an under-age heir, the king should have wardship
of the lands held of the other lords, as well as the land held of him. In discussing such a case,
Staunford notes the argument that “the kynge shal haue prerogatiue in them ... for this statute
is but a confirmacion of the common lawe, and therefore shallbee taken by equities.” The
financial benefits of such an interpretation are clear. A treatise on the common law could not
be extended in this way. It was a declaration of the common law, and was thus open only to
interpretation, rather than extension. Frowyk presents the text as a treatise, and even in his
hands Prerogativa Regis was given a broad scope, but Frowyk generally interprets the text
more conservatively than Constable.

In the end Frowyk’s views seem to have prevailed. We have seen that Willoughby,
the last reader on the topic, followed Frowyk, and Staunford, author of the only published
treatise on Prerogativa Regis, did likewise. Staunford argues that while parliament set out in
writing the extent of the prerogative, it “maketh no part of the kinges prerogatife, but long
time before it had his being by thorder of the commen lawe, as plainlye may appeare by them

98 See S.E. Thorne, ed., A Discourse upon the Exposicion and Understandinge of Statutes (San Marino:
Huntingdon Library, 1942), 159-61. The corollary of this doctrine is that statutes abridging the common law
should be interpreted strictly. The author of the text adds that the same rules should apply to statutes abridging
the prerogative, such as Magna Carta cc 27 and 31. This is a late-sixteenth century text however, and this idea
was not common in the period under consideration. The case of William Stonor is an excellent example of the
judges considering the meaning and intent of the statute of 4 Hen. VII c. 17, and it is discussed further below.
chapter 2, pp.88-95. This discussion makes it clear that recent statutes were not always as carefully worded as
Plucknett suggests, for a wide variety of interpretations was put forward in the course of the discussion, which
involved twelve judges and serjeants. Much of the discussion focused on the elements to be considered in
interpreting the statute and Mordaunt (king’s serjeant) argued that the statute should be “interpreted as widely as
possible, for it is in affirmacion of the common law.” M. Hemmant, ed., Select Cases in the Exchequer
Chamber before all the Justices of England vol. 2, Selden Society vol. 64 (London: Bernard Quaritch, 1948),
165. Baker notes that the equity of the statute “gave the judges the same kind of freedom in expounding
legislation as they enjoyed when declaring the common law.” J.H. Baker, ed., The Reports of Sir John Spelman
99 Staunford, Exposicion, f.8v.
100 In discussing chapter two of Prerogativa Regis Frowyk reaches the same conclusions as Constable by
arguing that the king’s rights were granted by an earlier law and simply repeated in Prerogativa Regis.
However, in his discussion of chapter three, on primer seisin, this argument leads him to reach a more limited
interpretation than Constable.
that haue written before the making of the saide statute of prerogatife.” Staunford follows this idea through his discussion, for he begins chapter two with the statement that all that is containe in this Chapiter, was the kynges prerogatiue by the order of the common lawe, as it maye appeare in the bokes of Bracton and Britton ... and in a boke in the 24 yeare of kyng Edward the thyrde where it is sayde that no lorde can be more auncienter than the kynge, for all was in hym and came from hym at the beginnyinge.

He begins chapter three with a similar statement. Furthermore, Staunford concludes his discussion of the king’s rights over socage land held by his tenant with a comment on a case from 21 Henry III “[from] which text if a man will anything wrest, he may make the kinges prerogatiue more lyberall then is made or declared by this statute, or any other [previous writers] ... but forasmuche as the saide other writers haue written so plainlye in this matter, we will ... extende the prerogatiue no further.” Thus the lawyers seem to have managed to keep the extension of the royal prerogative within limits. This is clear, not only from Staunford’s words, but from Hatton’s comment that “Reason hath been so forcible against the words of Statutes, that even in the Princes Prerogative, the words of Statutes have been controlled.”

Constable and Frowyk took a controversial course in 1495. They introduced a minor thirteenth-century text into the cycle at a time when the classic statutes of the thirteenth century were still the most acceptable texts for readings. The text they chose, moreover, was clearly not universally accepted as a statute by the legal profession, and they felt compelled to justify their choice to their peers in the Inns. That this was unusual is clearly demonstrated by the fact that no reading on any other statute has a similar discussion of whether the text under consideration was a statute. In turning to an old statute, however, the readers were

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101 Staunford, *Exposicion*, f.5v.
102 Ibid., f.10.
103 Ibid., f.6.
104 Christopher Hatton, *A Treatise concerning Statutes or Acts of Parliament and the exposition thereof* (London, 1677), 53. The attribution of the text to Hatton has been disputed.
105 I have not examined every extant reading, but Professor John Baker tells me that this is the case. This would not be an issue for most readings of course, no-one was likely to doubt the status of Westminster II, but *Quo Warranto* was commonly read upon, for example, and its status was more questionable. Moreover, the novelty
simply expressing the prevalent feeling that while the realm did indeed need better
governance, that did not mean that it needed new law, but rather the proper application of the
old law. The judges, meeting at Blackfriars in the first year of Henry VII's reign, felt that
the present laws were sufficient, but that the country would not be reformed until "all the
lords spiritual and temporal are all agreed to execute them effectively for the love and dread
they have for God, or the King, or both." Henry VII was in a position to achieve this kind
of reformation, and to this extent at least, he was responding to popular legal feeling, when
he turned to Prerogativa Regis.

The text of Prerogativa Regis deals only with the definition of the king's financial
prerogatives, and scholars who have approached the question since have been unable to agree
on whether the royal prerogative extended beyond financial matters in the late fifteenth
century. Plucknett, while arguing that Serjeant Starkey introduces a new, political
conception of the word "prerogative" in a case from 1482, concludes that generally when
medieval lawyers referred to the prerogative they were thinking of the financial rights
included in Prerogativa Regis and some procedural advantages conceded to the king in
court. Chrimes, on the other hand, considers that there was a political element to the
prerogative throughout the fifteenth century, though it was never clearly expressed.

Richardson probably comes closest to an accurate description of the prerogative when he

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106 Marjorie Blatcher, *The Court of King's Bench 1450-1550: A Study in Self-Help* (London: Athlone Press, 1978), 100. This can be seen in Bacon's equation of Henry VII's lawmaking with that of Edward I. Bacon, *Henry VII*, 83. The comparison is quite unrealistic, but the Tudors saw themselves as returning to a more orderly system of government, comparable to that of Edward I.


108 Both Edward IV in his later years and Richard III had looked at re-introducing some of the provisions of Prerogativa Regis, but neither of them attempted anything on the scale of Henry's scheme.


describes it as "the sum total of the rights and privileges belonging exclusively to the king as sovereign and feudal suzerain, together with a vague reserve of power not explicitly denied him." He points out that Henry VII never tried to develop a theory of his prerogative, for he never needed to fall back upon the support of a theoretical right. Baumer, in looking for a theory of the prerogative under Henry VIII, marvels that Staunford's Exposition of the Kings Prerogativa "does not so much as mention therein the king's prerogatives as natural sovereign, much less does he attribute to the king a power above the law." Elsewhere he concludes that "sheer indifference to the subject of the king's relation to the law" meant that while "many writers had vague ideas about the king and the law, ... few developed full-fledged theories."

As we have already seen, there was a well-developed rhetoric concerning the king's role as maker and preserver of law, and the readings shed light on another aspect of the king's relationship with the law. They demonstrate that lawyers in the reigns of both Henries spent a great deal of time trying to ascertain just what the royal prerogative was. While most of the readers offer some explanation of the prerogative or seek to express their conception of the royal dignity, it is clear that they see Prerogativa Regis purely as a financial instrument, following the principle that a text must be interpreted in the light of its maker's intentions. Lawyers were far from unaware of the progression of the other kind of prerogative in this period. Sir Thomas More, for example, expresses his view of the over-riding authority of the crown thus: "After all, there are so many ways of justifying a verdict for the Crown. One can either appeal to equity, or to the letter of the law, or to some

113 Ibid., 126. Baumer does not recognize that Staunford's Exposicion is based on a reading on Prerogativa Regis and he does not include readings at all in his discussion. This is not surprising, for readings had not yet attracted much scholarly attention at the time he was writing. His ignorance of this source led him to conclude that "the materials for a study of the king's legal position are therefore scarce in the early sixteenth century."
114 For example, Frowyk says that "each judge derives his authority from the king and he is the supreme judge and test of the law, by which he can reasonably have these prerogatives." Frowyk, f.1. Staunford offers a longer and fairly standard opinion of the prerogative. Staunford, Exposicion, ff.5-5v. CUL Hh 3.6, f.58 offers a slightly novel view and exhibits an unusual interest in the king's rights in the duchy of Lancaster.
perversion of its meaning, or in the last resort to a principle which carries more weight with conscientious judges than any law on earth - the 'indisputable royal prerogative'.115 The readers' role, however, was to expound the meaning of the text they chose, and that text limited the prerogative to the king's feudal rights. This does not mean that later conceptions of the prerogative were irrelevant to the readings on Prerogativa Regis. While there is little mention in the readings of the extent of royal power beyond the purely financial, the growing power of the Tudor monarchy does seem to have been an issue which concerned the readers. They generally seek a strict adherence to the letter of the text, though usually recognizing that an over-literal interpretation of the law was unrealistic. By remaining close to the words of the text the readings and the readers made it difficult to strike too far out into uncharted waters and thus difficult to move the interpretation of the prerogative too far or too fast.

Chapter Two:

Tenures and Wardship

In order to understand why the content of the lectures delivered by the readers should be of interest to historians, it is necessary to consider the immediate context in which they took place. Studied simply as statements of the law, the readings may at first glance appear to be the arid learning of "that artificial Reason ... peculiar to this Honourable Science,"¹ and the knowledge displayed by Constable, Frowyk and their successors may seem to be of merely antiquarian interest. That this is not in fact the case can be seen by a consideration both of the readers themselves and of their audience.

The legal education given at the Inns of Court was unusual, because the most successful practitioners of the law were also the most respected teachers. Success in one sphere was intimately connected to success in the other. The simple fact that men called to the coif (the office of serjeant-at-law and the most profitable stage of a successful lawyer's career) were required to deliver a third reading makes this abundantly clear. Since the readers were chosen because of their practical knowledge and ability, we might expect that their lectures would be directed at conveying an understanding of a field of immediate relevance, and this is indeed the case.

The second group to consider is the audience at the readings. This included a large proportion of the members of the Inn, together with some serjeants and possibly even a judge or two who might return to his old Inn for the occasion. The members of the Inn covered the full range of knowledge, from the most junior student to advanced utter barristers, but to consider them simply as a group of serjeants in training is to misunderstand the nature of the Inns. Many of the students at the Inns had no intention of following a legal career. Young

¹ Robert Keilway, Relationes quorundam Casuum selectorum ex Libris Roberti Keilway Armiger (London, 1602), Note to the Reader.
men of good family often attended an Inn for a couple of years to gain a grounding in the
law, to enjoy the rich cultural and social life for which the Inns were famous, and to make
useful connections for the future. Other students intended to make the law their career, but
did not have the ability, the money or the connections to follow the full course of study and
enter the rarefied atmosphere of the Westminster courts. These men often returned to a legal
practice in their own community but retained a link to Westminster and their friends and
associates at the Inns. This multi-dimensional nature of the Inns of Court is often
overlooked, leading to a somewhat artificial distinction between lawyers and laymen.
Carpenter, for example, believes that the use made of law by landowners can tell us a great
deal about their ideas of governance, and recognizes that many landowners had “at least a
smattering of the law,” but she warns that we should remember “that it is the consumers of
the law, not the lawyers, that we want to learn about.”2 It is important to guard against this
reaction, for the lawyers, besides being significant consumers of the law, regulated and
determined the way in which the law was used, and were often the source for the
landowners’ law, both in terms of practical knowledge and in terms of legal ideas.

Thus when Constable and Frowyk delivered their lectures over the course of three
weeks in the autumn of 1495 they were not speaking into a vacuum. They were talking to
advanced and able students of the law as well as respected practitioners, who might be
expected to argue with their interpretations and help refine their understanding of the king’s
prerogative. They were also talking to young men who held or could expect to inherit land
which might be held of the king, men who would have a particular interest in understanding
the current state of the law and the new claims the king was making. Finally, they were
talking, directly or indirectly, to lawyers in the localities, men who provided a link between
their community and Westminster, and who would be expected to advise their clients on the
direction of legal change and the best way to avoid the long arm of the king.3

2 Christine Carpenter, “Political and Constitutional History: Before and After McFarlane,” in The McFarlane
Series no.1 (Stroud: Alan Sutton, 1995), 197.
3 E. W. Ives, The Common Lawyers of Pre-Reformation England (Cambridge: Cambridge University Press,
These men could not expect to find much coherent or comprehensive information on the working of the king’s prerogative outside the Inns; indeed we face many of the same problems that they did. Although Henry VII had been sending out commissions to investigate lands held by tenants-in-chief from the early years of his reign, there is little evidence of the activities of the commissions in the records of the courts in the years before the readings. Information on the administration of the prerogative is scattered, for several institutions had jurisdiction over the various processes involved in seizing lands and wardship, suing livery, seeking dower and so on. The chancery and exchequer are the most obvious sources of information, for chancery dealt with all kinds of inquisitions and exchequer was the central financial office. Wronged tenants could traverse inquisitions in the common law side of chancery, pointing out where the inquisition was mistaken or where its information was incorrect. The chancellor dealt with some of the traverses himself, but where the case required a fresh examination of the facts he had to send it into the court of king’s bench so that a jury could be called. Unfortunately only a small amount of the chancery material has survived for the reign of Henry VII, and these cases are clustered around the years 21 and 22 Henry VII.\(^4\) The king’s bench rolls, by contrast, have survived largely intact. Though they only provide information for cases which required a jury, they have the advantage of recording the entire course of the case; the inquisition, the chancery traverse, the presentation of the case in king’s bench, the calling of the jury, and the judgment when one is found. They are limited in number, with only fifteen cases involving the prerogative in the king’s bench rolls for the first ten years of Henry’s reign.\(^5\) Some of them involve wardship, but they usually turn on the issue of seisin of land held in chief. The plaintiff argues, for example, that the deceased did not hold the land, or that the land was not held of the king, and there is little in them to give us any insight into the state of the law. The king’s bench cases simply tried issues of fact; any issue of law was discussed and settled in

\(^4\) They comprise about 50 cases, and we will return to their significance below, chapter three, p.143.

\(^5\) Two cases in 1 Hen. VII, five in 3 Hen. VII, one in 4 and 7 Hen. VII, and two in 8, 9 and 10 Hen. VII. I have treated records in the same year dealing with the same person as one case.
court before the jury was called and had no place in the official record.

The yearbooks are a more fruitful source for issues of law, but even they are largely silent on the question of wardship in the years before 1495. The few cases which do merit a mention in the yearbooks deal mainly with questions of procedure, an issue of great interest to the lawyers throughout the period. For example, in a case in 1496 in which two different inquisitions found two different heirs to the same land, the reporter's interest was in how the right heir would be found, not in who the right heir was. Even when the statute of 4 Henry VII c.17 changed the law concerning the wardship of land enfeoffed to uses, the yearbooks show no early discussion of the issue. It seems that the readings delivered by Frowyk and Constable provided a much-needed systematic exposition of the prerogative, and a recognition of its new importance.

Since readings on statutes are a largely neglected source, it is worth spending a little time on the manuscripts themselves, and the problems and possibilities inherent in their use. The first and most obvious limitation is the fact that the readings exist only in the notes taken by auditors. Constable's reading survives in only one manuscript, while there are five extant copies of Frowyk's reading and three more which are possibly his. Though it is difficult to avoid presenting the texts as the words of the readers, we must always keep in mind that they are actually a record of the elements of the reading which were of most interest to the notetaker. This means that we have to be particularly careful in arguing from silence, for we have no guarantee that the notes do not simply omit a section of the lecture. This can cause problems of varying degrees. On the more basic topics of the prerogative, for example forms

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6 YB Pas. 1 Hen. VII, p.14, pl.1. It was generally agreed that the king would have the wardship of both, but the speakers disagreed over whether the heirs should interplead when they reached full age or whether there should be a commission to investigate which inquisition was false.

7 The first mention of the new statute that I have found in the yearbooks is from Mich. 10 Hen. VII, p.10, pl. 24.

8 William Staunford's _An Exposicion of the Kings Prerogative_ (London, 1567) gives us our only clear statement of the author's ideas.

9 There was a sixth in the custody of the Inner Temple library, but it was lost during World War II. It is described by Bertha Putnam, _Early Treatises on the Practice of the Justices of the Peace in the Fifteenth and Sixteenth Centuries_, Oxford Studies in Social and Legal History, ed. Sir Paul Vinogradoff, vol. 7 (Oxford: Clarendon Press, 1924; reprint New York: Octagon, 1974), 180.

10 There is a full list of manuscripts in the bibliography.
of tenure, where the readers are obviously in agreement, I have amalgamated the material covered by Frowyk and Constable in order to give a more complete picture of the law. I believe that this is justified, since the readers show no signs of disagreement. Furthermore, since this is one of the more basic elements of the lecture, and thus material with which the listeners were more likely to be familiar, it is probable that the auditors omitted it from their notes. Where the material is more complex or more original I have been careful to distinguish between the arguments made and omitted by the readers, and these points will be dealt with fully in the course of the discussion.

While the readings present certain problems of interpretation, they are also replete with possibilities. The readings were first and foremost learning exercises. They were presentations of the law as it was understood by senior members of the profession, intended to instruct students on the issues they would face in court. This makes them a peculiarly direct route to the law of the day, comparable to the year books for immediacy, but more detailed and comprehensive. Although, as we will see, the readings were not free of bias, they were not in their nature polemical statements. Individual readers might have different interpretations of what the law was, and thus provide insight into both the law and politics of the issue under discussion, but the readers could not create a political case without a very strong basis in law, if they expected it to be accepted by their audience. The readings could not afford to be arguments as to how the law should be, or how it used to be, except as part of an historical introduction to the topic, because that would not serve the needs of their audience. Those looking for an over-arching theoretical background for the readings will be disappointed, for they were simply expositions of the law as it stood, with little consideration of why it was that way, or whether it should be changed. The readers might, on occasion, express disapproval of a particular practice as being contrary to the law, but their reasons have to be inferred from the broader structure of their reading.

Readings varied from individual to individual, and while there are obvious similarities between the readings given by Constable and Frowyk, there are also some
significant differences, in organization as well as content. Baker suggests that the readings generally had two objects; “first, to expound the principles of law scientifically, in the way that Littleton had expounded the land law; and, second, to illustrate the law with dozens of particular cases which provided a spectrum of situations for discussion.” Constable and Frowyk both follow this pattern, though Constable’s text is significantly better organized than Frowyk’s, with much more frequent references to the structure of his presentation and a clearer connection between the principles he presents and the examples he gives. Frowyk’s reading, on the other hand, appears to be simply a string of examples, with very little linking material, though this is probably the fault of the note-taker rather than the reader. Both readers progress in a broadly similar way. They consider some of the general implications of the chapter they are covering and then they move through it clause by clause. They cover much of the same material, though they both digress from the words of the statute, often in different directions. There was obviously no template for the lectures and the readers dealt with the questions which interested them. I will focus mainly on the questions which both readers covered, since these are most likely to be the questions of general interest, and they also provide the best opportunity for comparing the attitudes of the readers. Because this material is not generally well-known, I will cover the text of the readings in some detail, both to give a clearer view of the methods of the readers, and to provide an introduction to the law as a grounding for some of the more complex matters covered by the readers.

The first three chapters of Prerogativa Regis deal with related issues. They detail what kinds of things could be held of the king, the various ways in which they could be held, and the rights such tenures gave the king over the lands and heirs of his tenants-in-chief. The readers cover each chapter in order, devoting one or two lectures to each. They begin their handling of each chapter with a discussion of the basic purpose of the chapter and its

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12 The readers cover the topics in a different order, so in the interests of clarity I have generally followed Constable, since Constable is both more organized and more comprehensive. One obvious point of interest in the different approaches of the two readers is that while Constable gives a fairly straightforward exposition of the extent of the king’s rights, Frowyk tends to emphasize the limits of his reach.
background. They present the history of the topic and how *Prerogativa Regis* does or does not change it. They then go on to discuss the application of the text in individual cases. While the first part of the lecture always deals with issues relevant only to that particular chapter of the text, similar cases are raised in the lectures on chapter one and two to explain the practical working of those topics. For this reason it makes sense to consider these two chapters together. The readers’ treatment of chapter three relies heavily on the previous material, but they depart quite substantially from the patterns they have established and therefore this chapter, on primer seisin, will be dealt with separately.

Chapter one of *Prerogativa Regis* gives the king custody of all the lands of which those who held of him in chief in knight service were seised on the day they died, with the right to hold such lands until the heir is of full age.\(^1\) The fees of the archbishop of Canterbury, the bishop of Durham between Tyne and Tees and the counts and barons of the March are excepted from the operation of the statute.\(^2\) Though the chapter outlines the king’s prerogative in very generous terms, it seems to operate as a general statement of the king’s rights, which the subsequent chapters then describe in more precise detail. The readers’ treatment of the material supports this assumption, for they do not discuss the broad implications of the chapter, but rather they examine the words used in it closely, in order to outline the ways in which lands could be held of the king. This was important, because the way in which a tenant held his land determined the services he owed.

The lecture on chapter one is thus an introduction to forms of landholding and their consequences, an issue central to any understanding of feudal tenure. The readers clearly intend their lecture to be understood by the younger students in their audience, for they open their exposition at a basic level. They begin by dividing the services due for land held of the

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\(^1\) *Statutes of the Realm* vol. 1 (London, 1810), 226.

\(^2\) The statute gives no reason for the exclusion of the archbishop of Canterbury. The earls and barons of the March are excepted because the king’s writ does not run in the Marches, thus it is effectively an independent jurisdiction. Durham is, of course, a palatine jurisdiction, and Constable concludes that the bishop was excepted from the royal prerogative by the normal course of the law, even without the statute. This being the case, he argues that the law also excepts the other counties palatine, Lancaster and Chester, even though they are not mentioned in the statute. Robert Constable, *Prerogativa Regis: Tertia Lectura Roberti Constable de Lyncolnis Inne Anno 11 H.7*, ed. S.E. Thorne (New Haven: Yale University Press, 1947), 26-27.
king into two categories; knight service and socage, and providing a description of each. Knight service was essentially military service, usually the actual provision of knights for the king’s army. It also included other kinds of service, however, such as scutage, which in most cases quickly replaced the obligation to provide knights. Scutage was a monetary sum assessed towards the cost of providing an army, and Constable concludes that it is “a clear payment for war.”15 There is also another element beyond the purely military in determining if a particular service is knight service, for if the tenant holding by scutage pays a set amount of money, such as 10s, regardless of the amount assessed, this is not knight service, whereas if he pays a proportional amount, for example 10s when scutage is assessed at 15s per knight’s fee, then it is uncertain scutage, and this is knight service.16 Castle ward, the duty of guarding a castle such as Dover in the event of a possible invasion, is similarly an uncertain duty and is also knight service. Thus knight service is, in essence, a military service that can be demanded at any time without warning.

There are other tenures that occupy a middle ground. Grand serjeanty, for example, is considered to be a form of knight service, for a tenant who holds by grand serjeanty is usually required to perform some particular personal service for the king in time of war, for example to carry his banner or to buckle on his armour. At the same time grand serjeanty did not carry all the burdens of knight service, for the tenant by grand serjeanty did not have to pay the feudal aids granted to the king to marry his daughter and knight his son,17 nor did he pay as heavy a burden of relief as the tenant of land held in knight service.18 Cornage also occupies a middle ground. This was the duty to blow a horn or light a fire to warn of an invasion, and if land was held of the king by cornage, that was knight service, but if it was held of an ordinary lord in cornage it was not.19

15 Constable, 3. “Cest clere paiement a guerre.”
16 Ibid.
17 Frowyk, f. lv.
18 Constable, 4. Relief will be considered in more detail later.
19 Ibid. This point is queried in the text, so it may have been considered knight service in either case. I have found no cases in which land was held by cornage, so it seems to have been largely an academic point by this date. See F.M. Nichols, “Observations upon the Nature of the Tenure or Service of Cornage.” Archaeologia 39 (1863): 349-56 for a further discussion of the origin of cornage.
The lowest form of tenure was socage tenure and this was simply the payment of a set sum. Though the sum was often a simple money payment, it could be something more complex. Petty serjeanty, for example, was a form of socage tenure. Like grand serjeanty, it involved the provision of something for the king, often something military in form, such as a bow or an arrow. It did not, however, require the personal service of the tenant in war, as grand serjeanty did, and thus it was a socage tenure. Other rents, such as the provision of a single red rose or a pound of white pepper, though not money rents, were socage rents.

The type of service due was established at the time the king granted land to his tenant. It was not possible for the king to grant land without requiring some service, however minor, in return. Thus if he made a grant of land without specifying service, the law assumed that it was given in knight service, since that was the best for the king. The assumption in the king's favour was a long-established element of the royal prerogative, given "because he is the conservator of the common weal, that is, the law, and for this reason he will be more favoured than any stranger who is only a private person."20 Similarly, even if the grant specifically stated that the land was given *absque aliquo reddendo* or if it ordained that the tenant was to pay 12d rent and render fealty (a socage tenure), but did not add that this was *pro omnibus serviciis*, then the land was held in knight service.21 Thus the king was free to grant land with whatever services he wanted, and he could reward friends or followers by granting lands at a nominal rent, such as a single red rose each year, but he was restricted by law from granting it without any services at all, because such a grant was completely outside the understanding of the law.

This point was of practical importance to the audience at the reading, because while it was unusual for the king to grant land without specifying service, by the late fifteenth century it was fairly common to find inquisitions returned in which the jury was unsure how the land was held. In this case the law would again presume the tenure most favourable for the king (knight service), and the escheator would seize the land in question. If the land was in fact

21 Frowyk, f.1v.
held in socage, it was up to the tenant to come to chancery and traverse the inquisition. The chancellor would then pass the case to the court of king’s bench to be put before a jury.

While the king’s bench records can tell us whether the land was returned to the plaintiff or not in any particular case, they give us virtually no idea of the legal arguments involved. However, Stonor’s Case, discussed before the justices in the exchequer chamber in 1497, dealt with the question of what was to be presumed when the inquisition jury was ignorant of the tenure of land, and provides some insight into the issues involved. Sir William Stonor died seised of an advowson held in chief of the king, and of the use of land held of another lord, service unknown. Serjeant Kingsmill accepts that the tenure should be presumed to be knight service, though he argues that this is not because that is the most favourable for the king, as some say, but because it is the most common tenure of all. Serjeants Segiswyk and Boteler, however, contend that the land should be presumed to be held in socage, Segiswyk arguing that fealty is incident to every tenure, and land held by fealty is socage tenure, to which Boteler agrees, adding that socage is the tenure most favourable to the tenant.

Boteler’s point is quite a departure from the regular tenor of such a discussion, for it was understood that when there were two possible interpretations, the law was to be interpreted in the king’s favour. No-one else picks up this thread in the argument though, and we can assume that Boteler’s view was not representative. Though the lawyers often disagreed about the extent of the prerogative, there was never any dispute about the king’s basic rights, including his favoured status under the law.

Frowyk took part in the discussion in Stonor’s Case, and he too believes that the land

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22 A meeting in the exchequer chamber had nothing to do with the regular functioning of the exchequer. Cases were adjourned to the exchequer chamber when they raised difficult points of law and they were discussed there in a meeting of all the judges of England, from king’s bench, common pleas and exchequer. The serjeants were, of course, also present. Cases adjourned to exchequer chamber were of particular interest to the reporters, both because they usually involved important issues, and because a statement by all the judges in the exchequer chamber was of particular authority.


24 Hemmant, Select Cases in Exchequer Chamber 2: 164.

25 Ibid., 162.

26 Ibid., 167.
should be presumed to be socage tenure, though for different reasons. He agrees that the
tenure should be presumed to be whatever is most favourable for the lord, who in this case is
the prior of St. Swithins. According to Frowyk "each tenant shall hold of his lord according
to the common law, just as his lord holds above: hence it shall be commonly understood that
the prior holds in frankalmoin, therefore it shall be said that the tenant holds of him in
socage, because this is the most favourable service there can be." There is no final
agreement in the discussion, but three of the five who give an opinion on this question
believe that socage tenure should be presumed.

The issue was relevant to more than this single case, for a large number of the king’s
bench cases hinge on the fact that the jury was ignorant of the tenure. It was also common
for a plaintiff to traverse an inquisition which returned that the land in question was held of
the king, by arguing that it was in fact held of another lord, and often the lord was a prior,
abbot or some other ecclesiastical foundation. Frowyk’s opinion is particularly relevant for
these cases, for the burden of holding land of a prior in socage was considerably lighter than
holding of the king in knight service. Caryll’s report of Stonor’s Case is instructive,
however, for he abridges the discussion considerably and concludes simply that when the
inquisition was returned with the jury unsure of the tenure “if it was of lands held of common
persons only, some held the inquisition void, because it was not certain,” but that “in this
case, because it was found by the said inquisition that the advowson is held of the king in
chief by knight service, now it will be taken as best for the king, that is, that the other land is
held by knight service, in the same way as if it was found that one held of the king, sed per
que servicia ignorant.” Thus, according to Caryll, it was concluded that the king’s
prerogative was broad enough to extend to the service due on lands which his tenants held of

27 Ibid., 165.
28 See, for example, KB 27/926 m.vii; KB 27/933 m.ix; KB 27/972 m.vii.
29 See, for example, KB 27/906 m.v; KB 27/926 m.vii; KB 27/932 m.v.
30 Keilway, Mich. 13 Hen. VII, p.33, pl.5. “sil soit de terre tenus dauters comon persons solement, ascuns
teignont loffice voide, pur ceo que il purport nul certeintie, ... mes en cest case pur ceo que il est trouve per le dit
office que ladvowson est tenus del roy en chiefe per service de chiualer, ore serra prise plus fort pur le roy, s.
que lauter terre est tenus per service de chiualer, en mesme le maner sicome fuit trouve que vn tient de roy sed
per que servicia ignorant.”
other lords. Though this year book discussion goes beyond the material covered in the reading, it reflects the basic principles being presented by the readers, and demonstrates how important an understanding of these ideas was. Year book discussions such as this rarely relied on a memorization of cases, but instead on an adaptation of the kind of principles covered in the readings.

The king not only granted land to his tenants, he could also grant other rights, such as the right to hold courts, to have the profits of courts, or to hold fairs or markets. All of these could be held in knight service in chief, though the king could grant them under any service he wished. However, unlike land, if the king did not state how fairs, markets, fee farms and so on were to be held, he did not have any special privileges with them. Skrene’s Case of 1475, in considering various kinds of tenure, raised this issue and suggested that holders of such rights were subject to the prerogative, though Nedham believed that markets were not held of anyone. This vacuum was apparently filled by 1495, and both Constable and Frowyk assert that these rights could only be held of the king, for no-one else was able to grant rights to such things as fairs and markets. They also confirm that all of these grants carried the prerogative with them in the same way as a grant of lands; thus if one died seised of a market held in chief of the king and lands held of other lords, the king would have his full prerogative in those lands.

The readers thus distinguish the various services by which land could be held and the various things which could be held of the king, but there is a further distinction, between land held in chief and in common tenure. Land in chief was originally held directly of the king ab antiquo. The land held of the king in this way is described as that land which had been King William’s on the day that King Edward was alive and dead, according to Domesday book.

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31 Constable, 5-6; Frowyk, f.lv.
32 Constable, 6.
33 YB Mich. 15 Edw. IV, p.12, 14, pl. 17.
34 Constable, 6; Frowyk, f.lv.
35 B.P. Wolfe, The Royal Demesne in English History: The Crown Estates in the Governance of the Realm from the Conquest to 1509 (London: George Allen & Unwin, 1971), 26. Wolfe points out that it was only in the twelfth and thirteenth centuries that this land became known as tenure in ancient demesne, the term does not date from the period of the Conquest.
together with some other manors that escheated to the king at such an early date that they are generally held to be part of the ancient demesne. Constable identifies these old escheats as the manors of Peverell in Nottingham, Bononie in Essex and Hagnett, whose location he does not know. The king had his full prerogative in the land held *ab antiquo* and in the ancient escheats.

Much of the land held of the king was held in common tenure, that is, as of a manor (*ut de manore*) which had escheated. The king got the same profit from such a manor as its lord had done before the escheat and he was entitled only to the same prerogative in the land as its lord would have had. This principle was established by chapter 31 of *Magna Carta*, and it continued to apply to lands which escheated to the crown in later years. Constable makes it clear that such extensive honours and manors as Windsor, Dover, Beyley, Clare, Winchester, Leicester, the Marches and the duchy of Cornwall were not subject to the full weight of the royal prerogative. The turmoil of the fifteenth century led to the extinction of many noble houses through death or forfeiture. The principle established in *Magna Carta* ensured that tenants were not exposed to the heaviest claims of the royal prerogative when...

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36 See A.W.B. Simpson, *An Introduction to the History of the Land Law* (Oxford: Oxford University Press, 1961), 155-56, for an introduction to the ancient demesne and Robert S. Hoyt, “The Nature and Origins of the Ancient Demesne,” *E.H.R.* 65 (1950): 145-74 for a more detailed historical exposition. Hoyt argues that by the end of Henry III’s reign there was a strong inclination to give the king greater rights over ancient demesne, even though the idea of ancient demesne was a relatively fluid one. This inclination was never developed to the point of allowing the king to resume all of the “ancient demesne,” but it was a useful support in any royal attempt to beef up the prerogative.

37 Frowyk does not go into this point in any detail. Sir James Ley, writing in the early seventeenth century, seems to include a larger number of ancient escheats. He lists Barkinstead, Newland, Rawleigh, and the abbey of Marle, but indicates that there are others. He does specify, however, that these are not exactly equivalent to land held of the crown, for a tenant of one of these honours can alien land without a licence from the king, while a tenant of the crown cannot do so. Sir James Ley, *A Learned Treatise Concerning Wards and Liveries* (London, 1642), 2.

38 Constable, 10.

39 Constable, 1, 10. Caryll in Keilway, 7 Hen. VIII, p.177b, pl.7 reports that the honor of Walingford was not bound by the prerogative, but notes that there was some disagreement as to whether that was the law or not.

40 Caryll notes that similarly, when the king purchases a manor the tenant holding of the previous lord in chief will owe the king the same services as he owed his lord “because the king by this purchase will not make the lower tenant change his tenure.” Keilway, Pas. 7 Hen. VII, p.177, pl. 5.

41 The duchy of Lancaster was something of a special case. The king had the same rights over his tenants who held of him as of the duchy of Lancaster as the duke would have had. This is the principle that applies to escheated lands, but the duchy differs from these “for it is separate from the crown and not parcel of the crown.” Constable, 24. Frowyk makes the point that grants of duchy land should be made under the seal of the duchy and not under the great seal. The duchy of Lancaster has its own administration and so the central administration and particularly “ceux del chauncery” have no involvement with it. Frowyk, f.1.
their lords suffered misfortunes.

Lands escheated for various reasons, including failure of heirs, treason or felony. Escheat for failure of heirs was fairly straightforward, for the land returned to the king because it was originally his land, granted to his tenant and his tenant’s heirs. The numbers involved indicate that this was a profitable prerogative for the king. According to Cooper, “33% of the families that held peerages in 1485 had come to an end for lack of male heirs by 1547; during the same period 31% of the families given new peerages died out in the male line.”

Escheat for treason or felony was more complex, and there is some dispute in the readings on this question. Constable presents various views on the question, in a manner typical of the readings. He says that some argue that if land comes to the king for treason, then the tenants of this land hold of the king in chief, for only the king can have escheats for treason. Others argue that whether the forfeiture is for felony or treason, if the land was held in chief of the king before the forfeiture, it will be held in chief of the king, by the tenant, after the forfeiture. After rehearsing various opinions on the question, Constable gives his own. He concludes that if a tenant-in-chief forfeits his land for felony or treason by order of the common law or if it escheats for failure of heirs, then the tenant holds in chief as the lord did. Thus any forfeiture given to the king by the common law will bring the prerogative with it. As a corollary of this, Constable argues that if the king has lands by parliamentary attainder and the holder of the lands was dead before the attainder, the lands are simply a parliamentary gift, and thus the king should have no prerogative in them. If the

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43 Constable, 11. The readers often set up the “some say ......, others say ......, but I say ....” paradigm.
44 Both Frowyk and Constable also raise the complex question of a mesnality held in chief of the king. By this they mean a tenancy created out of the lands of the crown to be held of the king as of a certain manor. The king then gives this tenancy to another lord, thus creating the regular hierarchy of king, mesne lord and tenant. If the mesne lord’s lands then escheat for felony or treason, the mesne’s tenant becomes a tenant-in-chief of the king, because his lands originally came from the king and were held of the crown ab antiquo. Constable, 11; Frowyk, f.1.
45 If, however, there are three or four lords between the king and the land of the manor, though these lordships are extinct by the forfeiture, the king will not have his prerogative of those tenants. Thus if A held land of the king and B held land of A and C held land of B and D held land of C and D’s land is forfeited to the king, A, B, and C’s lordship over the land is extinguished, but the king gains no extra rights over these men.
attainted lord is a peer of the realm, however, the king will have his prerogative. Therefore, in Constable’s view, though *Prerogativa Regis* is a statute, it operates only through the means of the common law.

Frowyk takes the opposite view on escheat for treason, but he gives almost the same reason as Constable. Where Constable argues that land which escheats to the king for treason is held of the king in chief because only the king can have such escheats, Frowyk argues that escheat for treason does not cause the tenant to hold in chief, for land will always escheat to the king in this case, even when it is held of someone else. Thus he believes that the tenant should not suffer for the misdeeds of his lord. If land escheats for felony, on the other hand, the tenant will bear the weight of the prerogative. This difference of opinion between the two readers is typical of their respective approaches, with Constable seeking the best position for the king, while Frowyk tries to balance the rights of king and tenant.

When the readers turn to discuss the re-granting of forfeited land, Frowyk, as we might expect, aims to preserve the pre-forfeit tenures as much as possible. He argues that if a man forfeits by parliamentary attainder and the attainder contains a proviso that the other lords of whom the attainted man held land should continue to receive the services from their land as they did before the attainder, and the king then grants the forfeited land to another, the new tenant holds his land from the other lords as well as from the king. Similarly, he believes that if lands come into the king’s hand by forfeiture under the statute de *Religiosis*, they must be returned to the lord who granted them to the religious institution in the first instance. The king could thus compel the original lord to return the services which were due from the land, but he could not grant the land to a stranger. Frowyk’s arguments reflect an older practice; it had been customary to return confiscated lands to the families who had lost them after the passage of an appropriate amount of time and/or service. Edward IV had

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46 Constable, 12-13. Constable is obviously thinking of the high court of parliament.
47 Frowyk, f.1.
48 If lands were alienated into mortmain without a licence from the king, the king could seize them. Alienation into mortmain deprived the king of many of his prerogatives, for the church was never under age, never died and never committed treason or felony.
49 Frowyk, f.1v.
tended to use such confiscations for his own purposes, often to settle loyal men in the shires, and Henry VII, in this as in many other things, had followed his example. Although the value of establishing servants loyal to the king throughout the country might seem self-evident, the disruption to local society caused by such interpolation could outweigh the benefits. Frowyk's arguments suggest an inclination within the law to preserve the inheritance lines, and thus the stability of local communities.

Though it quickly becomes apparent that Constable is more likely to stretch the law in the king's favour, while Frowyk is more likely to restrict it, it is important to note that the readers' positions cannot always be predicted, and their obligation to interpret the law faithfully could lead to conclusions inconsistent with their inclinations. We can see this in the confusion which arose when they came to consider what would happen when land held of the crown in chief *ab antiquo* was forfeit to the king and he re-granted it. Constable argues that though the king could grant the land to be held in chief, it was no longer held of the crown *ab antiquo*, and thus the king would not have his prerogative in the lands the tenant held of other lords. Frowyk, on the other hand, notes that "I have not seen any issue taken on this question, that is, whether they were held *ab antiquo de corona* or not, but whether they were held in chief or not." Thus according to Frowyk, *ab antiquo* effectively meant "in chief," and as long as the land was held in chief of the king, his full prerogative would apply, while Constable limits it to those cases where the land was held in chief *ab antiquo*. Constable's distinction seems to be a fairly academic one, given Frowyk's comment. Even according to Constable's own interpretation, the point is quite meaningless, for he gives the king as wide, or wider rights in the two most profitable areas of the prerogative, wardship and primer seisin, as Frowyk does. Thus his interpretation of the phrase *ab antiquo* in the

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51 Constable, 12.
52 Frowyk, f.1. "Ieo nay pas view ascun issue prise sur ceo scil: s'ilz fueront tenus ab antiquo de corona vel non, mez s'ilz soient tenus en chief ou nemy."
53 The text itself specifically states that the king has the right to wardship of his tenant's heir, no matter how he held his land of the king, while Constable interprets the king's rights to primer seisin to apply to land held in escheat as well as land held in chief. Both points are covered in more detail below.
opening chapter does not affect the rights he accords to the king in the later chapters. Frowyk quietly dismisses the issue, and it is probable that it was simply irrelevant by that date.\(^5^4\)

The same kind of rules governed the granting of lands by the king which he had acquired in other ways. The readers agree that if the king buys lands and gives them to hold of himself they are held in chief, but not \textit{ab antiquo}.\(^5^5\) The readers also agree that if a seigniory descends to the king through a collateral ancestor the tenant does not hold in chief.\(^5^6\) Constable adds escheats such as Nottingham and Walyngford, which came to the king by parliament and are not held in chief, together with land held of the county of Richmond, to the list of lands held outside the prerogative. The prerogative is also limited when land is in the king’s hands temporarily, such as by wardship, by lease for term of years or life or by forfeiture for outlawry by a tenant for term of years or life.\(^5^7\) Constable sums this up by concluding that the king “will never have any prerogative except where the ancestor held in chief and the king is seised of the lordship in chief by as high an estate as he is seised of his crown.”\(^5^8\)

In their treatment of the first chapter, therefore, the readers establish what the king can grant, how such grants can be held, and whether they open the holder to the burden of the prerogative in general terms. They build on this foundation in addressing chapter two of the statute, which gives the king rights to the marriage of under-age heirs in his custody. The rights conveyed by this chapter are wider than those in chapter one, for the statute explicitly states that the king will have the right to the marriage whether the land the heir inherits is

\(^{5^4}\) The pattern of moving through the statute clause by clause meant that it was difficult simply to avoid such obsolete phrases. Constable’s insistence on the point is odd, however, for in the rest of the readings he does not tend to stick to the letter of the law.

\(^{5^5}\) Frowyk, f.1; Constable, 24.

\(^{5^6}\) Ibid. If the prince buys land and gives it to hold of him and he then becomes king, the lands are not held in chief. On the other hand, if the prince gives lands in tail, becomes king and releases full rights in the land to the tenant, the tenant holds the land in chief.

\(^{5^7}\) Constable, 24. Constable returns to this point at more length later in the reading.

\(^{5^8}\) Constable, 25. “il naver uquez prerogatyf mez lou launcestor tient en chief & que le roy est seisi de cell seigniorie en chief de si haut estate come il est seisi de son corone.”
held *ab antiquo*, as of an escheat or of another lord.\textsuperscript{59} The words of the statute also convey an obvious limitation, however. The king is only to have the marriage of the heirs in his custody, thus if an heir is already married and over the age of consent in the life of his ancestor, he will not be in ward, even if he is still under age.

Constable and Frowyk disagree over whether this chapter gives the king any new rights. Constable argues that the king always had the right to the wardship of the heir of his tenant-in-chief by the common law, but *Prerogativa Regis* adds to this by giving him something new, namely the same right over heirs of tenants holding of the king as of an escheat or of the duchy of Lancaster “in which King Henry III had abridged his power by *Magna Carta*, that is, to have no other prerogative except what the lord of that honour would have had if it was in his hands.” The rights given up by Henry III were partly restored by *Prerogativa Regis*, which “grants to the king the ward of the body of any heir of a tenant who holds of the king as of these escheats or others, and the king will have the prerogative of the body of this heir even if he [the tenant] holds of another by priority.”\textsuperscript{60} Frowyk agrees that the king has the right to this broad prerogative, but he claims that *Prerogativa Regis* is not giving the king anything new here. He holds that the king always had this right, and when *Magna Carta* restricted the king’s rights in the lands held of an escheat, it had no effect on the king’s rights over the body of the heir.\textsuperscript{61} Thus, in order to maintain his view that *Prerogativa*

\textsuperscript{59} This makes it apparent that *ab antiquo* does in fact mean in chief, and renders Constable’s distinction irrelevant in this context.

\textsuperscript{60} Constable 27. “en queux le roy Henry le iij avoir abrigge son pouer per *Magna Carta*, [ca. 31] scilicet, daver null auter prerogatyf forseque come le seg nier de tile honour avera sil fuit in manu domini, ore cel estatut graunte all [roy] garde de corps dascun heir de le tenaunt que tient del roy come de ceux eschets ou auterz tilez, [&] voiet que le roy avera le prerogatyf del cors de cell heire coment que il tient auterz per priorite.”

As it became more common for tenants to hold land of many lords, the question of wardship was aggravated. It was easy enough to settle the wardship of the land by agreeing that each lord should have the wardship of the land held of him. The body of the heir was not divisible, however, and a rule had to be established to determine where the body of the heir would go. The obvious choices were the lord of whom the deceased tenant held the most land or the lord by whom he was first enfeoffed. The latter was known as the lord by priority, in contrast to the lord by posteriority.

Constable points out later that though this principle applied to land held of the king as of the duchy of Lancaster, land held of the duchy was handled by the offices of the duchy and not by the chancery. However, if it was found that a tenant of the king held land of another lord by priority and land of the duchy by posteriority, as duke the king lost the wardship, but as king he gained it. In this case, and only in this case, the ward had to sue livery of the king in the chancery and not in the duchy. Constable, 29.

\textsuperscript{61} Frowyk, f.2v.
Regis is not a statute, he must argue that the king's rights had been too narrowly interpreted, but that they had always been the same.

Both readers agree that the king's right to the heir of land held of him by posteriority comes from the common law, rather than from any statutory measure. Westminster II ca. 16 settled the dispute between priority and posteriority for mesne lords, but Frowyk points out that "the king is not bound by the said statute, for he is not named in the said statute." Constable gives a different interpretation of Westminster II, arguing that the king is not bound by the statute regarding anything that he holds "en droit de son corone." This statement is marked with a query in the text, for it seems to contradict his earlier statement, and it is likely that the note-taker was not sure of the distinction that Constable was making.

The actual patterns of landholding in early Tudor England were far more complicated than the provisions of the text might imply, and the readers recognize this by considering some situations likely to arise in practice, and explaining how the prerogative would work in these cases. These examples do not simply provide illustrations for their points; rather they allow the readers to develop their interpretation of the law and to construct a more complex, but still logical, framework of rights and obligations.

In their explanations the readers again begin with some of the more basic points of the prerogative. For example, they make it clear that the prerogative applied to land which passed by descent, but only when land passed by direct descent from the tenant-in-chief to his heir, whether an heir to land held in fee tail or fee simple. Land held in fee simple passed from the tenant to his heir without restriction. Land in fee tail passed from the tenant to his heir without restriction. Land in fee tail passed from the tenant to the heirs of his body, but it could not go to a brother or cousin. This restriction was known as a

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62 Frowyk, f.2v. "Vncore le Roy nest lie per lestatut entant que il est nosm en le dit estatut." This is a fundamental issue in statutory interpretation, and it was particularly important in the discussion surrounding Stonor's Case.
63 Constable, 28. Constable also adds that where the king has ward by reason of ward, (that is, where a tenant holding land of an heir in ward to the king dies and the second wardship falls to the king) he will have the same prerogative. Thus if the second ward held land of another lord by priority and of the king's ward by posteriority, still the king would have the wardship. Constable, 27-28. Constable comments that this "ne fuit ascun mischief coment que priorite ust tenuz lieu enter le roiy & auterz, mes purce que il est le plus digne person de le roialme pur ce cell prerogatif fuit done a luy ut supra."
fee tail general, but it could be further refined to a fee tail special, in which land would pass only to the heirs male of the tenant’s body, or to the heirs of the tenant begotten on the body of a particular woman. Thus if a man held land to the heirs of his body begotten on his first wife, any children born of his second wife would have no claim to it. It was fairly common for the heir general and the heir tail to be the same person. For example, when a tenant-in-chief held land in fee simple and land in tail to the heirs of his body begotten on the body of his first wife, and the couple had a son, this son would be heir general of the land in fee simple and heir tail of the land in fee tail. In this case the king would have his prerogative in all the land held.

On the other hand, it was quite possible that the heir general and the heir tail would not be the same person. Constable gives an example where a man had land held of the king in chief in fee simple and land held of another lord in fee tail to his heirs female. He had a son and daughter, both within age at the time of his death. In this case the king would have the wardship of the son and the land held in fee simple which descended to the son through the death of his father. He would not have any right in the land in fee tail which descended to the daughter. If a tenant held land in fee simple and land in tail with a remainder over and died without issue, leaving his under-age brother as his heir, again the king would have the wardship of the land in fee simple which descended from the tenant to his brother, but he would have no rights in the land held in tail, which would go to the remainderman. Thus the king had his prerogative in the land which passed from his deceased tenant-in-chief to the

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64 Littleton states that “if a man give lands or tenements to another, to have and to hold to him and his heirs males, or to his heirs females he, to whom such a gift is made, hath a fee simple, because it is not limited by the gift, of what body the issue male or female shall be.” Thus the fee tail had to state that the heirs be begotten on the body of the tenant, but it could then go on to limit the inheritance to heirs male or female. Sir Thomas Littleton, *Littleton’s Tenures in English* ed. Eugene Wambaugh (Washington: John Byrne, 1903), § 31.

65 Constable, 13-14. The king could seize all the land of which his tenant-in-chief died seised, no matter how it was held. Thus, he could claim land held in socage or burgage as well as in tail. Frowyk, f.1v.

66 Constable, 14.

67 When A gives land in fee tail to B and the heirs of his body begotten on C, remainder to D, if B and C have no children the land passes to D and he is the remainderman.

68 Constable, 14. Frowyk (f.1v) makes the point that if the king’s tenant gives lands in tail, remainder in fee, and the remainder escheats to the king, the tenant in tail will hold of the king in chief and the king will have the ward of the land. This point seems to have come up for discussion after the reading, for the note-taker has recorded further comments on the topic which Frowyk “dit apres” at the end of the lecture (f.2v).
heir of the land held in chief, but despite the words of the statute, he did not always have his prerogative in all the land of which his tenant died seised.

Frowyk agrees in substance with Constable’s assessment, though he presents it in slightly different terms. He gives the example of a tenant who held land of the king in general tail and bought land in special tail to him and his heirs female and died leaving a son and a daughter. The king will have the land held in general tail, which descends to the son, and not the land in special tail, for it is not held of the king and it does not descend to the son, but to the daughter. He also argues that if the tenant holds land of the king in tail and buys land in fee and has a son and daughter by one wife and a son by his second wife and dies, and then the elder son dies without issue, the king will have the land in tail which descends to the younger son, but not the land in fee which descends to the daughter.

Similarly, Constable argues that if land descended to the heir from another source than the tenant-in-chief of the king, the king would not have his prerogative in that. For example, if the heir of a tenant-in-chief of the king had land held of the king by descent from his father and land held of someone else by descent from his mother, the king would only have rights in the land which descended through the father and not in the land which descended through the mother. Constable concludes that “the prerogative holds for the king to have all the lands in tail and fee simple which descend to the heir only through the tenant who has died, and not of those to which he has no title.”

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69 i.e. to him and the heirs of his body.
70 Frowyk, f.2.
71 Frowyk, f.2. The question of descent was complicated by issue of different marriages. In this case the sister is the heir of her brother, in preference to their half-brother, because they were born of the same parents. The half-brother shares only one parent and so is more distant in blood (the relationship was called half-blood, demi-sanke). If there was no sister in this case the land in fee simple would have gone to the nearest heir of the full blood, for example the uncle of the deceased. The land in fee tail, on the other hand, descends to the issue of the body of the tenant, and with the death of the elder son, the younger son is the nearest male heir of his body. If the land was in fee tail special which restricted it to the issue of the body of the tenant begotten on the body of his first wife, it would not have gone to the half-brother, but to the sister. See Littleton, Tenures, § 6-8. Constable, 29 makes the same point more briefly. This situation is discussed in the context of London customs in YB Pas. 24 Edw. III, p.24, pl.4. In De Laudibus Legum Anglie, ed. S.B. Chrimes (Cambridge: Cambridge University Press, 1942), 14, Sir John Fortescue gives this example of a sister of the whole blood being preferred to a half-brother as something that might bewilder those not learned in the laws of England.
72 Constable, 14.
73 Constable, 14. “Issint que toutz foitz le prerogatyf tient liew pur le roy daver toutz lez terres taillez & fee
Thus Frowyk focuses on tenants who hold of the king in tail while Constable considers those who hold in fee, but the basic principle enunciated by both readers is the same. The king will only have his prerogative in lands which pass through the tenant-in-chief to the heir of the lands held in chief. Thus if the tenant-in-chief simply serves as a channel for lands held of another lord to pass to another heir, the king has no prerogative in these lands. Similarly, if the heir of the lands held in chief receives lands from a source other than the tenant-in-chief, the king has no rights in these lands. Lands of any kind, held of any lord, in any kind of service, which pass through the tenant-in-chief to the heir of the lands held in chief are, however, subject to the royal prerogative. This principle can be seen more clearly in the figures below.

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In the first two examples the king will not have the wardship of the lands on the right-hand side of the diagram, but he has all the lands in the other two examples. This principle was well-established by the time of the readings; in Skrene’s Case of 1475 Genney argued that “if a man had two sons and died seised of a manor held of the king and the king seised the body of the elder son, and the manor, and then the younger son died seised of another manor held of a stranger by knight service, so that the brother is his heir and he [the brother] enters into the manor, and the king in this case will never have the wardship of this manor, because this manor came to him by another ancestor, and note that this was granted by the Court.”

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simple queux descende a leire per celui que est mort tantum, & nemi de ce que il ad nulle title.”


75 YB Mich. 15 Edw. IV, p.11, pl. 17. The issue involved in Skrene’s Case was much more complicated, however, for there the ward had inherited land originally granted to his grandfather and grandmother and the heirs of the body of his grandfather. When his grandfather died his grandmother held the land until her death, by which time her grandson was in ward to the king for land his deceased father held of the king in chief. The discussion centres on how the ward inherited the land from his grandmother.
Though the king's prerogative was limited quite severely in this way, the readers point out that it was extended in other areas. For example, if a tenant of the king alienated his land in fee tail, the tenant in tail then held the land of the king but the donor also remained a tenant of the king. Land alienated in fee tail was often given to establish a junior branch of the family, usually on the occasion of a marriage. Since it was possible that the line would fail within a couple of generations, land alienated in this way often carried the condition that if the donee died without issue, it should revert to the donor or his right heirs, an estate known as a reversion. Although the reversioner might not actually hold the land, a reversion was not considered to be a future estate in law, for the reversioner, or his ancestor, had held the land and maintained a continuous interest in it, though he was neither lord nor tenant. Thus, as Brian pointed out, "if the reversion was in him [the ancestor], he was a tenant of the king, and he died seised of a tenement." In this situation, Constable argues that both the tenant in tail and the reversioner hold of the king. If the tenant in tail holds of another by priority and dies leaving an heir under age, the king will have the wardship of the body. Similarly, when the reversioner dies the king will have the wardship of the body of his heir, his land and the reversion, even if the tenant held of another by priority. Thus although only the tenant in tail actually derives any benefit from the land, both he and the reversioner are considered to be tenants of the king and subject to the prerogative.

Having demonstrated ways in which the law both limited and extended the prerogative, the readers go on to discuss the ways in which the rules of inheritance might give the king wardship of several children of any one tenant-in-chief. If the tenant leaves four or five daughters and no sons, the king will have his prerogative of them all if they are within age, even where their ancestor held of another by priority. If one or two of them are

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76 As a result of the statute Quia Emptores of 1290, which prevented sub-infeudation.
77 YB Pas. 11 Hen. VII, p.19, pl.2. The reporter notes that all the judges agreed with this, though Kebell appears to have had some reservations. Plucknett compares a reversion to a seigniory over the tenant in tail. T.F.T. Plucknett, A Concise History of the Common Law, 4th ed. (London: Butterworth, 1948), 529.
78 Similarly, if a tenant of the king leases land for term of life he holds the reversion of the land.
79 Constable, 30.
80 Constable, 32. Cf. YB Pas. 11 Hen. VII, p.19, pl.2.
within age and the others of full age, the king will have his prerogative in those still within age. Similarly, if a tenant who holds land of the king in gavelkind by knight service holds of others by priority and dies, leaving several sons under age, the king will have the ward of all. In both of these cases the sons and daughters are co-heirs and thus the king has a right to the ward of each heir. If a tenant holding land in borough English dies the king will have only the younger son in ward, for the younger son inherits the land under this custom.

The heir in the king's ward might also change according to circumstances. The most likely situation in which this might happen was if a tenant of the king died leaving his wife pregnant and his heir a daughter within age. Constable argues that the king would seize the wardship and marriage of the girl, but if the widow then bore a son, the king would seize him also. If the daughter was still unmarried when her brother was born she would be released from the king's ward, but if she was already married she had no remedy. Frowyk considers what would happen if the tenant held lands only of a mesne lord and died in the same situation, when the lands and the daughter would go to the lord of whom the lands were held. If lands held of the king then descended to the daughter and a son was born, the king would have the wardship of the son. If the same situation obtained but the child born was a girl, the king would have the ward of the second girl. If a widow had a daughter and married again and had another daughter and died and then land held of a lord descended to the girls, the lord would have the ward of the elder. If land held of the king then descended to the girls and the father then died, the king would have the younger girl.

81 Constable, 29.
82 Gavelkind was a customary tenure under which land was divided equally among the children of the deceased, also known as the custom of Kent.
83 Constable, 29. As in the previous case, if some of the sons are of full age, the king will only have the ward of those within age. Constable also describes how land in gavelkind might come into the king's hands.
84 Constable, 29.
85 Constable, 31.
86 Frowyk, f.3v.
87 Frowyk, f.3v.
88 A father always retains the wardship of his heir, even when he/she is the heir to lands held of another. In this case the elder daughter's father is dead and so the lord can have her in ward, but the younger daughter's father is still alive, so she will remain with him, even though the daughters are co-heirs.
89 Frowyk, f.3v.
The ward in the king’s hands might also change on entry into or departure from religion, which was similar in effect to death or birth. If a tenant of the king entered into religion seised of his lands, the king would have his prerogative as though the tenant had died naturally. Constable argues that if an elder son entered religion in his father’s lifetime and his father died seised of lands held of the king in knight service as of an escheat and other lands held of others by priority, leaving either a daughter or a younger son within age as heir, the king would have the ward of the heir. If the elder son then left religion, still within age, the king would seize him and the other son, or daughter, would be out of ward. If the younger son or daughter was married he/she would have no remedy, for “il est heire all temps.” Frowyk also addresses this question, but again he presents the situation where the father dies seised only of land held of another lord. The lord has the wardship of the heir and then land held of the king descends to the heir. If the elder brother then leaves religion, the king will have the ward of the elder son and will oust the lord from the land. If the elder son then dies, the younger son will be back in ward. Once again, the readers were not merely indulging in academic speculations on this issue, for Caryll reports a similar situation. He presents it as follows: a man has two sons and the elder enters religion in his father’s lifetime. The father dies seised of land held in chief of a lord and the body of the younger son is seized by another. The lord brings a writ of ravishment of ward and then the elder son leaves religion. The issue was whether the writ would then abate. Caryll’s case is presented as an

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90 This was not always the case. Caryll notes that if a tenant in tail aliens land and enters into religion, the heir will not have any remedy during the donor’s natural life. Keilway, Casus incerti temporis, p.104, pl.10.
91 Constable, 30.
92 Constable, 31.
93 Frowyk, f.3. Frowyk’s argument that the king will oust the lord is marked with a query in the text. It seems more likely that the lord would hold the land which had vested loyally in him (see below, p. 79) and the king would only have the body of the elder brother and the land held of him.
94 Keilway, Casus incerti temporis, pp.125b-126, pl.86. Caryll reports that it was argued that the writ would abate, for the elder son was then the lord’s tenant, and if he was still under age the lord would have him as heir. Kebell, however, argued that the common law provided the lord with a harsher remedy than was available under the writ of ravishment of ward and pointed out that if the younger son had not been taken the lord would have had the value of his marriage, whereas the elder son might be of full age and thus the lord would lose the value of the wardship. He concludes that the lord should get damages equivalent to what he had lost. The rights of the elder son leaving religion were complex and obviously a question of some interest to the courts. In 1494 the judges of the common pleas agreed that if an elder son entered into religion and his father died and then a
issue of procedure, while the readers’ cases are more substantive, but both are dealing with elements of the same problem.

There were some areas in which both readers allowed an extension of the words of *Prerogativa Regis*. The statute stated that the king had his prerogative only in the lands of which his tenant died seised, but the readers ameliorated that provision in the cases where the tenant had been disseised of particular land, but remained a tenant of the king. Thus Constable argues that if a tenant is disseised and dies leaving an heir under age and this is found in the inquisition, the king will have his land as if the disseisin had not taken place. Similarly, if the grandfather was disseised of land held of the king in chief and died seised of other land and the father dies leaving an heir under age and this is found by an inquisition, the king will have it all, both that remaining in the hands of the tenant and that held by the disseisor. If the disseisor dies while the disseisee is still living and his heir is within age, the king will have the heir and his prerogative. If the disseisee dies while the king has the heir of the disseisor, and his heir is also under age, and it is found that the heir of the disseisee should enter, then the king will have the ward of the disseisee as the heir of the tenant by right. This happens because “the king is judged rightful guardian of his ancient tenant etc. and he [the tenant] cannot decide from whom to hold, but the law judges right etc.”

Allowing the king the right to land of which his tenants had been disseised was one recovery was made against the younger son by an erroneous process and then the elder son left religion, he could not sue a writ of error for the return of the land, for he was not party to the action. Instead, the younger son would have to sue a writ of error, and then the elder son could enter. YB Pas. 9 Hen. VII, p.24, pl.10.

95 Constable, 14-15.
96 Constable, 15. “Et si le disseisor devie, vivaunt le disseisi, & son heire deinz age, le roy luy avera & son prerogatyf. Et quaunt le roy ad luy seisi, si le disseisi ust devie devaunt le disseisor, & son heire donquez & uncor deinz age, & celle speciall mater trove, issint que appert que lentre leire le disseisi fuit congeable, ore le roy poct seisir le gard leire le disseisi per reson de cell terre & cell terre est ore aiuge en luy per son auncien droit & come gardein de leire son tenaunt en droit.” Constable is here a little confused about the timing necessary in order for the double seizure to take place. Frowyk’s account makes more sense, for his version is: “Tenant le Roy est disseise et morust son heir deins age et devant office le disseisor morust son heir auxi deins age et cee troue per diuers offices le roy auera son prerogatiue dambideux.” Frowyk, f.2v. In 1475 Philpot made a similar argument during the course of *Skrene’s Case*, but “fuit et negatum.” Philpot was speaking in general terms of a lord’s rights, however, and not of the king’s.
97 Constable, 16. “uncor le roy est aiuge gardein en droit a son auncien tenaunt &c. & nest en son eleccion de tenir a quel il plisf, mez le ley aiugera droit &c.”
way of combating the more unorthodox transfers of land in the fifteenth century, but it did little to hinder the activities of those who took more proactive measures to avoid the king’s grasp. The most common method of evasion was to place lands in use, an action which could be considered alienation by collusion. Though uses were the most topical method of alienation by collusion, the readers do not address them immediately, but deal with the general principle first. Constable argues that if the tenant alienates land held in chief and this matter is found by inquisition, then the king will have all the alienated land as well as all the land which passed from the tenant to his heir. If the tenant alienated not only land held in chief but also land held of other lords, the king will have it all, for the principle is the same as above; the king would have had everything if there had been no collusion so he has everything when the collusion is discovered. Frowyk agrees with Constable concerning land held of the king in chief alienated by collusion. When it comes to land held of others, however, he argues that the king will not have the land. He claims that the king would have to aver covin by the statute of Marlborough, but he cannot do this, because the statute was made for the advantage of the lords and it cannot be used by the king. Awkwardly enough, the lords of whom the land was held have no remedy under Marlborough either. If they did recover the land alienated by collusion by the tenant-in-chief, it would go to the king with the wardship of the other lands. Thus the recovery would do them no good. Frowyk also argues that when the king’s tenant alienates by collusion and dies with an underage heir and his feoffee also dies leaving an underage heir, the king will have his prerogative of both.

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98 Constable, 18-19. Constable argues that a licence to alienate does not protect a tenant against this charge, for even alienation by licence can be collusive. In Stonor’s Case, however, Danvers J.C.P. thought that “the King cannot aver collusion contrary to his own licence, for if the tenant aliens, the King shall seize the land for the fine, and not because of collusion; and if he aliens by licence, the King cannot say that the feoffment was made to defraud him of the wardship where he himself is a party to the feoffment.” Hemmamf, Select Cases in Exchequer Chamber 2: 172.

99 Frowyk, f.2.

100 i.e. fraud

101 Frowyk, f.2. “Le tenant le Roy alien per collusion les terres tenus de auters le roy ne poit auerrer covin per lestatut de Marlborough pur cee que lestatut est fait pur ladvantage des seigniors et icy les seigniors naont remedy pur cee car si le tenant vst devy ils ne aueront le gard issint le feoffee tiendra les terres envers chescuns des seigniors.”

102 Frowyk, f.2v.
He points out that this is the same result as in the case discussed above, where the king’s tenant is disseised and dies leaving an underage heir, for in both cases the original tenant held of the king by right and the disseisor or the feoffee holds of the king in fact.

After dealing with the topic in general, Constable and Frowyk move on to the issue of uses, and the statute of 1490 which attempted to deal with the problem. This new statute confirmed Marlborough and enacted further provisions dealing with enfeoffment to uses. From this point on, if a tenant conveyed land to his use and did not declare a will, the lord had the same rights over the land as he would have had if the feoffment had not been made.\(^{103}\) Constable argues that if a will was declared, this excepted the land from wardship, but did not apply to the body of the heir.\(^{104}\) If, in the will, the land was enfeoffed to use for the purpose of paying debts or providing a marriage portion for children after the death of the tenant, the executors could retain the land until this purpose was fulfilled.\(^{105}\) If the heir was still under age at the fulfillment of the will, the land would then pass into the king’s hands. If the will simply stated that the land was enfeoffed to the use of the heir, then it was as if no will was declared and the land was immediately in the hands of the king.\(^{106}\) Thus, though the king is not mentioned in the statute, Constable argues that he had the same rights as the lords and could seize or recover land alienated in this way at his pleasure. He would also have his prerogative in the recovered land.\(^{107}\) If the tenant had only land held of the king as of escheat and of another by priority, still the king had the wardship of the heir and his prerogative.\(^{108}\)

Frowyk, however, equates the new statute with the statute of Marlborough, and argues that the same reasons which prevent the king from using Marlborough also prevent his use of the new statute. Thus if the king’s tenant makes a feoffment to use of land held of another lord, neither the king nor his lords have a remedy under the new statute for that

\(^{103}\) Stat. Realm 2: 541, 4 Hen. VII. ca. 17.
\(^{104}\) Constable, 36.
\(^{105}\) Constable, 20-21. It must be found by inquisition that such debts exist.
\(^{106}\) Constable, 21.
\(^{107}\) Constable, 37. He says that this also applied to collusive feoffments.
\(^{108}\) Constable, 32.
land. Frowyk's brief mention of the most recent statute relating to the question under consideration is striking, and the only explanation for his off-hand treatment is his obvious belief that the statute simply did not have any relevance for the king's prerogative, since the king was not mentioned in it. As Constable was equally obviously of the opinion that the king could use the statute, and neither reader mentioned a different interpretation of the law than his own, the stage was set for a new round in the struggle over the prerogative.

Thus far we have been considering individual landholders, but it was also common for land to be held in joint-tenancy, and this brought its own complexity. While alienation could prevent the king from claiming his prerogative, the existence of a joint-tenant could delay descent and thus delay wardship. Frowyk points out that if the king's tenant, A, and another, B, hold lands together and A dies, the king will have no right in the land, because B will hold it as survivor, with sole rights in the land. If, however, the land was given to A and B and the heirs of A the situation is changed. Here A is the tenant in fee and B is simply a tenant for term of life. When A dies, B continues to hold as survivor, but when B dies, the king will have rights in the land. The kind of rights the king has will vary depending on what kind of other lands A held and of whom. As we have seen, when A dies, the king will not have his land, for it goes to the survivor. Neither will he have his heir, for if A held land in socage of another lord which descended to his heir under age, the heir is in the wardship of his "procheyn amye," usually a close relative such as his mother or uncle. When B dies, and the land held in chief descends to the heir, the king will have the land held of him, together with the land held in socage and the body of the heir, if the heir is still under age. If, however, the land which descended previously from A to his heir was held of another lord in

109 Frowyk, f.2. The implication is that the restriction works in the same way and for the same reasons.
110 This makes a year book report in which Frowyk does apply the statute to the king all the more puzzling. The case in question is concerned with whether the inquisition must specifically find that the tenant died without declaring a will, or if the omission of any mention of a will is enough to justify seizure. It is asked if the king will have the ward and Frowyk is reported as responding that he will, under the statute of 4 Henry VII. The information given, however, does not indicate that the deceased tenant held any land of the king.
111 Frowyk, f.2.
112 Frowyk, f.2; Constable, 35.
113 Frowyk, f.2; Constable, 35.
knight service, rather than in socage, the lord will have the wardship of the heir and the land held of him, and he will retain the wardship of both body and land, even when the lands held by B descend to the heir. The king in this case has the wardship of the lands held of him and the wardship of those things which no other lord can have, but not the land which has loyally vested in the lord.114

This idea of land vested loyally in the lord operates in several situations. If the heir of a tenant-in-chief inherits land of another ancestor, such as his mother or brother, and this land is held of another lord, that lord will seize the wardship of his lands.115 When the tenant-in-chief of the king dies, the king will seize the body of the heir and the land held of him, but he will have no rights in the lands held of the other lords.116 This scenario assumes that the tenant-in-chief is the father of the heir, for the father always retains custody of his heir, even when the child inherits land from another relative held of another lord.117 If, however, A dies seised of land held of a lord with his son and heir, X, within age, the land and X will be seized by the lord. If B, A’s brother, then dies seised of land held of the king in chief, and X is found to be his heir, the king will have the wardship of the land held of him, but not the land held of the other lord, or the body of X, both of which have vested in the lord.118

Similarly, if the tenant-in-chief of the king leased his lands held of the king for term of life, the remainder to another in fee, and the remainderman dies seised of land held of other lords, the lords will seize the wardship of their land. The king has no right in the lands

114 Constable, 21-22.
115 Constable, 22. Frowyk also makes this point, f.2. Both readers refer here to Skrene’s case, YB Mich. 15 Edw. IV, pp10-11, pl.16; pp11-14, pl.17. This argument applies to socage land which descends to the heir from other ancestors, as well as to lands which he purchased or had by feoffment or grant.
116 Constable, 22. This is the same principle as on p. 71 above. The king has no interest in lands which descend to the heir by any means other than through the tenant-in-chief, whether the lands all descend to the heir at the same time or separately.
117 Frowyk, f.3; Constable, 39. A father will have the wardship of his son or daughter unless he is attainted of felony. If a father has a daughter and lands held of the king descend to her the king will have the wardship of the lands but not the body. If the father takes a second wife and has a son, however, the king may seize the body of the daughter. This is presumably because the daughter was her father’s heir, but with the birth of the son her role has been superseded. Frowyk also equates villeins to children here, pointing out that if lands held of the king descend to a villein the king will not have the body, but if he is manumitted the king may seize him. If the heir is still under age when the father dies, the king may then seize the wardship.
118 Constable, 22, 37; Frowyk, f.3. Constable makes reference at p.22 to Skrene’s Case. Cf. p. 71 above.
of the remainderman, for a remainder, unlike a reversion, is a future estate, and so the
remainderman is not a tenant of the king. When the tenant for term of life dies, and the
remainder in fee descends to the remainderman's heir, the king's right is activated. Since in
this case the heir's body has already vested loyally in another lord, the king will have only
the land held of him. If the heir's body had not vested in another lord, the king would
have the wardship if the heir was still within age, even if the same heir inherited land from
the tenant for term of life, held of others by priority.

The king's access to his rights might be delayed by a lease made by the tenant-in-
chief in other ways. Constable argues that if the tenant made a lease of land for term of life
by license and died leaving an under-age heir, the king will seize the body of the heir and the
reversion of the land held of him, but not the land itself. If the tenant reserved rent from the
land when he leased it the king will have that, but he will not have the land until the tenant
for term of life dies. Similarly, Frowyk argues that if the tenant made a lease of land held
of another lord for term of life and died and then the tenant for term of life died, the king
would have his prerogative in the land. If, however, the tenant-in-chief leased his land
held of the king for term of years and died seised of other lands held of other lords in knight
service, those other lords will have the wardship of their lands, for the tenure in chief is in
suspend until the term of years ends. When the term is finished the king will have the leased
land, if the heir is still within age. It is unusual to find the readers in agreement on an
interpretation which was unfavourable for the king, especially when their opinion was a
relatively new one. According to Baker, "the right of the [lessor's] lord to oust the termor
during the wardship of the lessor's heir had been settled law - indeed 'common learning' - in

119 This distinction and its effects was well established, cf. Skrene's Case YB Mich. 15 Edw. IV. p.11, pl.17 and
Pas. 11 Hen. VII, pp18-19, pl.2.
120 Frowyk, f.2, f.3. If the king had granted the remainder to be held of him, however, he would have wardship
of the body also.
121 Constable, 33-34.
122 Constable, 23.
123 Frowyk, f.2.
124 Constable, 24. Presumably the king will not have the body of the heir, which has vested in the lord.
the fifteenth century."\textsuperscript{125} He notes that some doubt had been cast on this idea in 1490\textsuperscript{126} and the readers certainly increased that doubt. The old opinion still had its supporters; in 1499 Higham believed that "the Guardian will put the termor out, for his title is the older."\textsuperscript{127} The opinion of the readers seems to have gained ground, however, and early in Henry VIII's reign the termor's right was confirmed by Fyneux CJ.\textsuperscript{128}

Frowyk gives an example in which the king lost a wardship because the heir's body had vested in another lord, but then the lord lost the land by which he held the ward. In this instance the king could seize the wardship of the body, even when there was another lord whose title was older than the king's title. If the lord then recovered his land, he would also recover the wardship out of the hands of the king.\textsuperscript{129} If the lord had already married the ward or if the ward had satisfied the lord for his marriage, the king would not have the ward when the lord lost his land. If, however, the lord had only granted the marriage of the ward to another before he lost the land, the king could seize it back.\textsuperscript{130} Similarly, if a tenant sold his heir's marriage and then died before the marriage was carried out, the lord would still have the wardship, despite the sale. If the tenant had made a will which left the custody of the heir to someone other than the lord, this too was void, for the lord had the wardship by reason of the tenure in knight service.\textsuperscript{131} Provisions such as these in the law envisage a close monitoring of the king's tenants and suggest the existence of an active and organized system which enquired into the status of land throughout the country on a constant basis and protected the king's rights whenever and wherever they fell due. Though in theory the system of commissions and the regular work of the escheators provided this system, it is not at all clear that Tudor England had the resources to bring it to fruition. Even if it did, it is not

\textsuperscript{125} Baker, Spelman's Reports 2: 182.
\textsuperscript{126} YB Trin. 5 Hen. VII, p.37, pl.3 per Townshend J.
\textsuperscript{127} YB Pas. 14 Hen. VII, p.22, pl.4.
\textsuperscript{128} Baker, Spelman's Reports 2: 182; 1: gardes, 142. The date of Fyneux's decision is unclear. Baker gives it as 1513 or 1523.
\textsuperscript{129} Frowyk, f.3v.
\textsuperscript{130} Frowyk, f.3v.
\textsuperscript{131} Keilway, Pas. 7 & 8 Hen. VIII, p.186, pl.1. Caryll notes that it was unclear whether a will would bar the guardian in socage.
clear that an authority which relied on the inquisition system could keep track of such activity. Whatever the weaknesses of the administration, there is no doubt that the law allowed the king to claim his full due whenever the system did bring such tenants to the fore.

We have already seen that Frowyk and Constable disagreed on their interpretation of the king’s rights over lands seized for treason or felony. This disagreement extends into their discussion of his rights over the heirs to such lands. Frowyk argues that the king will not have wardship of the heir of land in his hands by forfeiture for felony or treason. Thus if a man dies seised of two acres held of two lords, one by priority and one by posteriority, and the lord by posteriority is an outlaw in a personal action so that his land is in the king’s hands, the king will not have the body of the ward, because the ancestor did not hold the land of the king.132 Similarly, if the lord by posteriority is attainted of treason and before office found the tenant dies, his heir within age, the lord by priority will have the ward.133 Constable, however, holds the exact opposite view. He argues that the king will have his prerogative in the body and marriage of any heir who holds of any manor in the hands of the king as king. Thus if the king has the land of an idiot or land forfeit for felony by a tenant in tail or a tenant for term of life, and then one who holds land of such a manor in the hands of the king by posteriority and land of another by priority dies, the king will have the body of the heir “by the equity of this statute or implication, for they [the statutes] cannot express each case etc.”134 The same is true of land in the king’s hands for term of years or for other reasons, such as the vacancy of a bishopric, year, day and waste, alienation without license or primer seisin.135 Even if the manor was not held of the king, as was perfectly possible in many of these cases, he was to have his prerogative “for the king has all these as king and no

132 Frowyk, f.3v.
133 Frowyk, f.3v.
134 Constable, 39. “per equite de cel estatut ou implicacion, quar ilz ne poient expresser chescun case etc.”
135 Frowyk argues that if the king’s villein has a seigniory by posteriority and before office found the tenant dies, his heir within age, the lord by priority will seize the body. The king will seize the seigniory of the villein, but he will not have the body of the heir, which has already vested. Frowyk, f.3v. Constable, on the other hand, argues that the king is seised of the villein “en droit de son coron” and as a result will have the ward of the heir and his prerogative in the body. Constable, 40.
other person can have them by forfeiture by common law." Constable’s extension of the prerogative by the equity of the statute here vastly increases the wardships which would accrue to the crown, if the principle were accepted by the profession. It is also linked to his earlier argument that forfeitures to the king for treason or felony should be held in chief. Both rely on the idea that the king has his prerogative in those things which come to him as king.\(^{137}\)

Constable’s position is the more obviously royalist of the two readers, and it is tempting to see in his interpretation a new conception of the prerogative, one which seeks to give broader rights to the king as king. Though this might have been the final result of Constable’s argument, it is important to remember that his arguments are based on the principle that *Prerogativa Regis* is a statute, and thus can be extended by the equity of the statute to incorporate situations not explicitly mentioned therein. Constable has no new conception of the prerogative, but he is interpreting widely-accepted ideas to broaden the king’s rights. Frowyk, on the other hand, by rejecting the idea that *Prerogativa Regis* is a statute, rejects the kinds of extensions that Constable is making. He does not deny the king’s legitimate rights, and in some areas he is willing to extend them beyond the explicit words of the text, but in general he believes that any further expansion is beyond the limits of the law as it stands. Thus though the readers differ from each other in their interpretation of the law, and, presumably, in their political outlook, they do not differ on their essential understanding of the prerogative as the king’s legal rights as sovereign lord.

This basic disagreement over the foundation of *Prerogativa Regis* also permeates the readers’ treatment of the recovery of land by an heir. Constable argues that if the heir recovers the land through formedon or mort d’ancestor, he holds the land by descent (since

\(^{136}\) Constable, 39-40. “quar toutz ceux ad le roy come roy & quel null auter person poet aver per null forfeiture per comen ley.”

\(^{137}\) It is worth noting that Constable’s argument here also contradicts his point that the prerogative applies only to land held *ab antiqvo*, and his statement that the king has his prerogative only in land where the ancestor held in chief and where the king is seised of the lordship by as high an estate as he is seised of the crown. This further supports the idea that Constable’s discussion of this point is largely academic and has no real application to the body of the text.
that was the basis of the action) and if he recovers while he is under age he will be in ward to
the king.\textsuperscript{138} If part of the recovered land was held of the king and part was not, the king will
have all and he will oust the other lords of the wardship of their lands, for with the recovery it
is as though the alienation had never happened.\textsuperscript{139} After such a recovery, even if the heir
does not enter on the land, but the matter is found by inquisition, the king may seize the
body, but not before either the inquisition or the entry.\textsuperscript{140} If, however, the heir had
possession of land held of another by which he is in ward to another lord, and recovers land
by formedon, the king will not be able to seize the body, but only the wardship of the land
held of him, for the heir’s body was loyally vested in the other lord.\textsuperscript{141} Recovery made when
a condition of feoffment was broken was a parallel to recovery for disseisin. Such a recovery
would be possible if a tenant of the king who held of him as of escheat and of another by
priority alienated land in fee on condition of payment and the payment was not made, or for a
certain rent and the rent was not paid. Constable argues that if the tenant dies leaving an heir
under age and there is such cause for re-entry, the king will not have the ward of the heir
until the cause is found by inquisition or the heir himself enters. Without such an inquisition
or entry the king has no title to the land, and thus no right to the heir, for the feoffee’s title
was good before the default.\textsuperscript{142} Once the inquisition is found or the heir enters, the king has
the right to wardship. If the cause for reentry occurs after the death of the tenant, and the heir
is already in ward to another lord, the king will not have the body, but simply the land held of

\textsuperscript{138} Formedon is from the French “form de don”. By this action the plaintiff asserts his right to the land through
the form of the gift to his ancestor, as for example with a gift in tail. Mort d’ancestor asserts the claim based on
the fact that his ancestor died seised of the land and he is the heir of the ancestor.
\textsuperscript{139} Constable, 17-18.
\textsuperscript{140} Constable, 36. If a tenant in tail discontinued the tail to his heir and enfeoffed him of the same land under
age, the heir will still hold of the older tenure (remitter) and the king will have his prerogative based on that.
Constable, 32, and see Littleton, Tenures § 659. Caryll agrees with Constable that the king can enter in right of
the heir, even when the heir has not entered himself. Keilway, Mich. 13 Hen. VII, p.32b, pl. 5.
\textsuperscript{141} Constable, 37. According to Littleton, if the heir recovered by a writ of disseisin the king would be able to
seize the wardship of the heir and the land held of the other lord, as well as the land held of him. Such a rule
was hard on the lord who thought that the body of the heir was vested in him, and was received with some
surprise at the time, for Digas, who posed the question, thought that “this is amazing, for I was seised and in
\textsuperscript{142} If the feoffment was made by an infant or a lunatic, the feoffee’s title was voidable from the beginning.
Constable, 35-36.
him.\textsuperscript{143}

Frowyk argues for the opposite result in both cases. He believes that if the heir of the disseisee recovers the king will not have the wardship, for after the death of the disseisee the heir had only a right in the land and not possession.\textsuperscript{144} He later adds to his point by noting that while the king will not have the wardship when an infant in ward to another recovers land by an ancestral action, if the infant enters on the disseisor the king will have the wardship of all.\textsuperscript{145} He maintains the same position on recovery for a broken condition, and argues that the king will not have the wardship. In the reading he says that this is because the wardship of the heir had vested in the lord, but in Stonor’s Case, he adds that the king will not have land recovered because of a broken condition for the same reason that he will not have land recovered by an ancestral action; because the tenant did not die seised of the land.\textsuperscript{146} In the later case he appears to have developed his ideas somewhat since the reading, for he rejects the king’s right to wardship even if the heir enters on the land.\textsuperscript{147} Thus the essential condition of wardship for Frowyk is possession, rather than simply right to the land. Constable, on the other hand, is willing to allow the king his prerogative once the heir’s right to the land is established.

This issue had troubled the legal profession for some time and the disagreement between the readers indicated that it would continue to do so. Twenty years earlier the same issues were debated in Skrene’s Case. Then it was argued by Choke that “the king will have nothing by the death of his tenant where he had nothing but a right.”\textsuperscript{148} The point was hotly disputed, and several of the lawyers responded that the king often had his prerogative where the tenant did not die seised of land held of the king. Briggis instances the case where a

\textsuperscript{143} Constable, 37.
\textsuperscript{144} Frowyk, f.2. He reaches the same conclusion where the king’s tenant had land in tail held of another lord and discontinues the tail. He also makes the point that the law is the same when recovery is by any ancestral action. This statement is marked with a \textit{quer\textsuperscript{e} in the text, as is Constable's point.}
\textsuperscript{145} Frowyk, f.3.
\textsuperscript{146} YB Trin. 12 Hen. VII, p.20-21, pl.1.
\textsuperscript{147} Ibid. Kebell argued that if the heir entered on a stranger after the death of his father for a condition broken, following recovery by an ancestral action, the king was able to enter on him, even though the father did not die seised. Frowyk's reply is a direct answer to this.
\textsuperscript{148} YB Mich. 15 Edw. IV, p.13, pl. 17.
remainder descends to an heir in the king’s ward, a case very much like one posited by Constable in which there is a tenant for term of life of any lord with a remainder over in tail, remainder to the right heirs of the tenant for term of life. In this case, when the tenant for term of life, A, dies, his general heir, B, has a fee simple. B does not inherit the land directly from his ancestor, but he inherits a right in the land, which will come to him, or to his heir, when the tail is extinct. If the tenant in tail dies without issue while the general heir is still under age, Constable argues that he (in this example, C) will be in ward.

\[ \begin{align*} 
A &= \text{tenant for term of life} \\
\text{tenant in tail} &= X \\
B &= \text{A’s general heir} \\
\text{tenant in tail} &= Y \\
C &= \text{B’s general heir} \\
\end{align*} \]

line extinct, land descends to C

Constable admits that others say that the heir will only be in ward when both the fee simple and the franktenement (i.e. right and possession) are in the ancestor and descend together to the heir, thus in this case the heir would not be in ward.\(^\text{149}\) This is a variation on one of the arguments presented in 1475, when Brian argued that the king would only have ward when right and possession were joined, but according to Brian, if the heir recovered the land and entered that was enough, for as long as “possession is joined to right, the king will have the wardship.”\(^\text{150}\) In this view right and possession did not have to descend together; as long as they were joined at some point the king would have his claim. This is the position that Frowyk held in his reading, though he later came to reject it in favour of the more stringent view.

Having looked at the impact of a recovery on the heir of a feoffor, Constable also considers how a recovery for a broken condition affects the heir of the feoffor. He argues that the feoffor holds his land of the king, since the feoffor can only alienate land by substitution. If the feoffor dies with his rent in arrears and the feoffor enters, the king will

\(^{149}\) Constable, 34.
\(^{150}\) YB Mich. 15 Edw. IV, p.14, pl.17.
still have the ward of the body of the feoffee’s heir. When the inquisition finds that the
feoffee held of the king, the escheator will seize the land out of the hands of the feoffor,
“since land to which the king has title will never be lost because of a charge due on it.”\textsuperscript{151} If,
however, the feoffor had given the land in fee until his heir was of age, or until he had
married into a certain family, these would be good conditions. If the feoffee then died
holding this land of the king as of an escheat and land of another by priority, the king would
have the body of his heir until the land was loyally out of his hands by suit, and the feoffor
would have the land back.\textsuperscript{152}

Though the king’s rights to wardship were limited in several cases, usually where the
body of the heir had already vested in another lord, they were extended in another way. The
king could claim ward by reason of ward. This meant that if he had the custody of a ward
and a tenant of that ward died, leaving an heir under age, the king would seize the wardship
of that heir also. Since the king’s right was infinite, if a tenant of the second ward died
leaving an heir under age, the king would seize that wardship also, and so on. The king’s
right, however, lasted only as long as the first heir was in ward. When the first heir sued his
livery out of the hands of the king, the ward by reason of ward would remain in the hands of
the king, for his body had vested there. However, if this second heir died leaving an heir
under age, the wardship would go, not to the king, but to the first heir who had sued livery
and who held the land which the second heir was to inherit.\textsuperscript{153} Similarly, if the king had a
ward by reason of a seigniory which was parcel of the principality of Wales and then a prince
of Wales was created and restored to the principality and the ward died, the prince, and not
the king, would have his heir in ward.\textsuperscript{154}

Ward by reason of ward could accrue within one family. Frowyk gives the example

\textsuperscript{151} Constable, 38. “quar pur null charge issuaut del terre ou le roy ad title serra le terre perdu &c.”
\textsuperscript{152} Constable, 38. This was supported by Ursewike, chief baron of the Exchequer, in Skrene’s Case, though the
condition he suggests sounds like an ingenious way of avoiding wardship.
\textsuperscript{153} Frowyk, f.3v.
\textsuperscript{154} Frowyk, f.4. This was presumably not a common occurrence, but it was relevant at the time. Arthur was
created prince of Wales in November of 1489 and it is quite likely that wardships previously in the king’s hands
would be passing to him in the intervening years.
of a lord and tenant, both holding by knight service. The lord has a son and daughter and buys the tenancy to him and the heirs female of his body and dies seised of an acre held of the king. In this case the king will have the ward of both children. The seigniory descends to the son and the tenancy to the daughter. Thus the son holds of the king and the daughter holds of her brother. If both are under age the king will have the wardship of the son as heir of his tenant and of the daughter by reason of ward. Frowyk gives several other examples to demonstrate that this principle applies whether the lands are held in fee or in tail, or whether they descend to male or female heirs. The essence of his argument is that if a child of the deceased tenant inherits a seigniory held of the king and another child inherits a tenancy held of that seigniory, the king will have the ward of both.

The primary purpose of the readings was pedagogical and the readers were careful to build their arguments slowly in order to convey the reasoning behind them to their audience. The principles they are using thus emerge through their examples rather than being explicitly stated. The law concerning wardship evolved over a long period, and a core of accepted rules had developed in order to allow it to function. Once they moved beyond these basics, there were many points on which two readers differed, however. Though these differences appear at various stages of the readings, they can be reduced to the two basic principles which guided the readers. Frowyk believed that Prerogativa Regis was not a statute, and thus had to be interpreted strictly. This meant that when the text said that the prerogative only applied where the tenant died seised, it should be applied in that way. Constable, on the other hand, believed Prerogativa Regis to be a statute and frequently extended its range to give the king wider rights than were conveyed by the words of the text.

We can get some idea of the representativeness of the readers' opinions by looking at Stonor's Case, argued in the courts just two years after the readings given by Constable and Frowyk. It raised many of the issues covered by the readers, and demonstrated how

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155 Frowyk, f.4.
156 Frowyk, f.4.
157 Frowyk accepted that the king's prerogative applied when the tenant died seised of things other than land held of the king, but he was unwilling to go any further.
necessary an understanding of the rules governing both inheritance and the prerogative was to a practitioner of the law. Sir William Stonor died seised of an advowson held of the king in chief. He and Ralph Vyne were also enfeoffed of two manors, one held of the king in socage and the other held of the prior of St. Swithins, service unknown, to the use of Stonor and of his heir, who was within age at the time of his death. Following Stonor’s death, the escheators seized his land for the king, and the case came before the judges. The issues involved were important enough to merit a discussion before all the judges in the exchequer chamber in the fall of 1497, but the first report of the case is in the summer of that year. At that stage, the main argument in the court was whether the king should have the benefit of the statute at all. Marow points out that the enfeoffed land was held of another lord, and only the lord could have the benefit of the statute. He adds further that “this [statute] gives the king no prerogative ... therefore the king’s prerogative does not hold there; for to my understanding the king can have no prerogative except of things which have always been given to him by the prerogative, for a prerogative cannot begin at this time.”¹⁵⁸ He comes to the same conclusion as Frowyk’s reading, that under common law, if the tenant of the king makes an enfeoffment of land which he holds of another lord, and then dies with an heir within age, the king will not have the land out of the hands of the feoffee; this statute “is a special law which gives advantage to the Lord, and not to the King” and therefore the king will still have nothing.¹⁵⁹

Hobart, the king’s attorney, disagrees with Marow. He believes that the king will have his prerogative, arguing that the intent of the makers of the statute must be taken into consideration, and their intent was clearly that “the Lords should be in the same condition, when their tenants make a feoffment to their [the tenant’s] use and declare no will, as if they had died seised in their demesne as of fee with no feoffment made.”¹⁶⁰ The idea that statutes

¹⁵⁸ YB Trin. 12 Hen. VII, p.19, pl.1. “uncore ceo donera nul Prerogative au Roy ... Donques le prerogative le Roy ne tiend lieu la: car a ma entent le Roy ne poit aver nul prerogative sinon de chose que ad estre touts temps done a luy per Prerogative, car un Prerogative ne poit commencer a ceo jour.”
¹⁵⁹ Ibid.
¹⁶⁰ Ibid.
should be interpreted according to the intent of their makers was an old one, but it was usually used to cover flaws in drafting when the meaning was fairly obvious. It is not at all clear that this was in fact the intention of the makers of the statute; in fact Baker argues that the statute was intended to fill a gap in the descent of uses left by the statute of Marlborough.\textsuperscript{161} Hobart also makes the point that the king is included in the statute because all land is held of him, either immediately or mediately, and so he is lord to everyone.

Segiswyk disagrees with Hobart. He argues that there is a distinction between a prerogative which the king has at common law, which is then enlarged by statute, and something which is granted by statute. He uses the example of the king’s right to year, day and waste in the goods of felons. If a statute declared that it was a felony to forge deeds, then the king would acquire the right to year, day and waste in the land of convicted forgers, for the statute simply extended a prerogative he already had by adding to the list of felonies. If, on the other hand, the statute ordained that the lands of a convicted forger should escheat to his lord, the king would have no prerogative, because the statute was enacting something new. Segiswyk believes that the same thing is true of this new statute, for under common law the lord had no rights to the heir when the land was in use, but by the statute, where no will is declared the heir will be in ward and this “does not extend to the King and his prerogative, for there was nothing like this at common law, that any heir will be in ward in such case, nor the land of the feoffee; for which reason it seems to me that the king will not have his prerogative.”\textsuperscript{162}

Mordant next enters the argument on the king’s side and he returns to the principles of statutory interpretation for his case. He again notes that the statute should be construed according to the intentions of the makers and argues that if the king were excluded from the working of the statute, he would be in a worse position than a common person, which does not make sense. If a statute is made which restricts liberty, the king is not bound by it unless he is specifically named in it; on the other hand, if a statute is made which is beneficial to the

\textsuperscript{161} Baker, Spelman's Reports 2: 194.
\textsuperscript{162} Ibid., 19-20.
king, he will have the use of it even if he is not named. He concludes by referring to the
general point made by Hobart, that the makers clearly intended to restore the pre-enfeoffment
position. ¹⁶³ Kebell agrees with Mordant, using the same point as Hobart.¹⁶⁴

Frowyk is the final commentator in the report, and he believes, as we might expect,
that the king should not have his prerogative. His point here differs from that of his reading,
however. In the reading he based his argument on the similar restrictions in the use of the
statute of Marlborough and the new statute. Here, he simply points out that the words of
Prerogativa Regis give the king his prerogative where the tenant dies seised, and the tenant
did not die seised in this case. As well as this, he argues that the statute “gives the ward
solely by express words of the Statute to the Lord; thus if he recovers by force of the said
statute, it is not reasonable that the king should take this from him by his Prerogative.”¹⁶⁵
Thus Frowyk now believes that where the words of the statute give the lords a remedy, they
should be able to keep it against the king. He is also reiterating his stand that since
Prerogativa Regis gives the king his prerogative only where his tenant dies seised, the king
should only have it in that case.

The report of the case is inconclusive, and it was removed to the exchequer chamber
for further discussion. Segiswyk opens the report this time, and he makes the same argument
as before. Kingsmill responds with the argument that the makers of the statute intended the
king to have the benefit of the statute. Frowyk is the third speaker, and he has developed his
view of the case. His opening point is one not raised before. He reminds the court that
Stonor and Vyne were enfeoffed with the land to the use of Stonor and his heirs, and argues
that this means that Vyne holds the land as survivor. Therefore, the case is completely
outside the statute and the king cannot have his prerogative. He goes on to argue that even if
the case was within the statute, the king would still not have wardship, for any right to
wardship is given by the statute, and the statute only speaks of lands held in knight service

¹⁶³ Ibid., 20.
¹⁶⁴ Ibid.
¹⁶⁵ Ibid.
¹⁶⁶ Ibid.
and says nothing about lands held in socage.\textsuperscript{166}

Mordant replies to Frowyk's argument, and he is quick to bring the discussion back to safer ground. He opens with a return to the bastion of statutory interpretation as he points out that the statute is an affirmation of the common law and thus should be interpreted "as widely as possible."\textsuperscript{167} He continues by pointing out that under the common law the king would have the wardship, but that the deceit of the use kept it from him. Since the statute was designed to restore the common law, the king should have the wardship. He replies to Frowyk's point about the joint tenure by arguing that "this is not material, for the land in this case descends in conscience to the heir, just as though he alone had purchased the land and had made feoffment in fee to his use, for it is all one and a mischief to the lord."\textsuperscript{168} Mordant is followed by Boteler, who argues against the prerogative on the grounds that the king is not mentioned in the statute and is not immediate lord.\textsuperscript{169} Kebell then argues for the prerogative, using exactly the same argument as before\textsuperscript{170} and Wode agrees with Kebell on the grounds that the king will have the benefit of the statute even though he is not mentioned in it, and that the statute provides that the heir will be in ward as if his father had died seised, which would place him in the king's hands.\textsuperscript{171} The lines of argument were thus clearly established, and for the most part followed those given in the earlier rehearsal of the case. Vavasour, however, enters the fray at this point and takes a different position. He believes that the king should not have his prerogative and considers that this was not the reason behind the statute, "for no mention was made of this at the time of the making of the statute."\textsuperscript{172} He goes on to agree that if the tenant had died seised the land would have been in wardship, but points out that that is irrelevant, because "this statute declares which lord will have the wardship and to which lord the heir shall be in ward, to wit, the immediate lord shall have the wardship of the

\textsuperscript{166} YB Mich. 13 Hen. VII. p.5, pl. 3. Also printed, with translation, in Hemmant, Select Cases in Exchequer Chamber 2: 164.
\textsuperscript{167} Hemmant, Select Cases in Exchequer Chamber 2: 165.
\textsuperscript{168} Ibid., 166.
\textsuperscript{169} Ibid.
\textsuperscript{170} Ibid., 168.
\textsuperscript{171} Ibid., 169-70.
\textsuperscript{172} Ibid., 170.
lands held by knight's service and of no other lands, for the lord shall have no benefit by this statute of lands held in socage."  

He argues that since tenure in socage brings no wardship with it, it cannot be argued that a feoffment to use of such land was intended to defraud, and so the king cannot claim wardship on the grounds of collusion. Nor can he claim any such right by arguing that he is the lord, mediate or immediate, of such land, since the lord has no right to wardship. Fyneux takes up Vavasour's point, accepting that the king has no right to socage land by the statute, but he believes that the king will still have his prerogative in land held in knight service, for he argues that the statute expressly gives the lords the right to wardship because of their seigniory over the land. Thus, he argues, it is the tenure by which the land is held that conveys the right to wardship, even under the statute, and so the king will retain his prerogative by right of tenure.  

Davant speaks against any restriction of the king's right to wardship of land held in socage, arguing that it should be given by the equity of the statute. He considers that if the king is excluded from the statute, his prerogative will be completely defeated, and if land held in socage is excluded it will be restricted beyond reason.  

By this point the discussion has wandered from the case in question, and the justices appear to be no closer to agreement. Two distinct trends are clear in the protracted argument and they are of equal strength. Half of the disputants argued, essentially, that the statute should be interpreted according to the intention of its makers, keeping in mind that statutes were generally to be interpreted in favour of the king. The other party argued for a strict interpretation of the statute, keeping in mind the rules already established for wardship, especially the claims based on tenure. Fyneux was the only justice to concede a point to the opposition. Frowyk was a prominent member of the second party, but his arguments were

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173 Ibid., 171.
174 Ibid.
175 Ibid., 173-74. Danvers and Bryan spoke between Vavasour and Fyneux, but they introduced nothing of relevance to this discussion. Bryan raised some doubts about the validity of the inquisition which were taken up by Fyneux, but this is discussed below, chapter three, p.139.
176 YB Mich. 13 Hen. VII, p.11, pl. 12. This is a continuation of the discussion, printed separately in the year book. It contains Davant's views and a further section attributed to Segiswyk which mirrors Botelor's contribution.
different from all the others, and they continued to develop over the course of the discussion, suggesting that though the statute of 1490 did not bulk large in his reading, for the simple reason that he did not believe that it was relevant, its implications and the continuing development of the prerogative remained a topic of great interest to him. Frowyk’s arguments are also given at length by the reporter, suggesting that his special knowledge of the topic was recognized.

The year book gives no conclusion to the case, but in his abbreviated report of Stonor’s Case Caryll suggests that the king will have his prerogative in the land.177 The issue was clearly one which divided the legal profession, however, and whether Caryll is right in his conclusion or not, the position continued to shift, in the king’s favour, for some years after. Caryll reports a case where a man was seised of three acres of land, one held of the king in knight service in chief, one held of a common person in knight service and the third of the common person in socage. Thus seised, he enfeoffed another of the acre held of the king to his use and died with his heir within age. According to Caryll, it was decided by all the judges of England that the king should have the wardship of the land held of him and the land held of the other lord in knight service, but not of the land held in socage.178 The relationship between this decision and the earlier discussion in the exchequer chamber is unclear. Caryll reports that this case was discussed when Kebell was king’s serjeant, i.e. between 1495 and 1500, and presumably after 1497.179 Frowyk’s and Vavasour’s point about the king’s rights to socage land had been accepted by the profession, but they were over-ruled in their contention that the king should not be included in the statute. Since the land enfeoffed to use in this case was the land held of the king, this case does not throw any light on the king’s rights when his tenant enfeoffed lands held of others to his use. Caryll notes, however, that by 1515 “the common experience is that the king by his prerogative will have the wardship as well of the lands of which his ancestor died seised in use as in

177 Keilway, Mich. 13 Hen. VII, p.33b, pl.5.
178 Keilway, Pas. 21 Hen. VII, p.86, pl.15.
possession, as well of land held in socage as by knight service." His report of the case in 7 Henry VIII places this decision in 1506, stating that where "the king's tenant dies seised of land in chief and of lands in socage in use, the prerogative holds for the lands in use and in socage, according to all the justices of England in the exchequer chamber in the case between Coningsby and Throgmorton for the wardship of the Russell heir 21 Henry VII." This case perfectly answers the situation found in Stonor's Case, and Caryll's confusion over the dating of the shift, connecting it with a case of 1506 while reporting it as common experience by 1515, suggests the process by which it became accepted. In any case, it is clear that half of the justices in 1497 had attempted to restrict the extension of the king's prerogative under this new statute which made no mention of the king or of his prerogative. The weight of tradition in both statutory interpretation and the king's procedural prerogative seems to have been too much for them. The most Caryll could say to restrict the use of the new statute was that "the king will not have primer seisin of the lands of which his ancestor died seised in use, because the statute is only a remedy for wardship." Primer seisin was another burning issue at the end of the fifteenth century, and it is to this that we will turn in the next chapter.

The questions surrounding the statute of 4 Henry VII provide a useful illustration of the role of the readings. The discussion between the judges in court was generally unrehearsed and undirected. Even when a case was adjourned to exchequer chamber, giving the judges some opportunity to consider their positions, they were forced to respond to the statements made by their colleagues, rather than being able to control the direction of the discussion. Although interesting and useful points of law were raised in the course of these wide-ranging arguments, they did not even approach a systematic exposition of the topic. The confusion in the year books, and particularly in Caryll's Reports, over the later interpretations of the statute, also demonstrates why regular coverage of the law continued to be necessary. A student, left to find his way through the conflicting reports of the law and to

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181 Keilway, Pas. 7 Hen. VIII, p.176, pl.1.
derive the logic behind individual decisions from the statements of the justices, would be in difficult straits indeed without the framework of the readings.

The particular views expressed by Frowyk and Constable express, in legal terms, an on-going tension between the king's rights and the rights of his tenants. The complexity of the readings can seem somewhat intimidating, but it is simply indicative of the complexity of land relationships in early Tudor England. Part of the web of enfeoffment was a result of the attempts of landowners to evade feudal dues, but part was simply the result of their attempts to improve their position vis-a-vis their neighbours. As Harriss has pointed out, "as well as inbuilt stability landed society had an inbuilt fluidity; clinging to and competing for land was at the heart of its politics." 183 In order to be of any practical use, the readings had to address the variety of English methods of landholding so that both lawyers and landholders would have a clear picture of the obligations which bound their lands. The readers' exposition of the feudal burdens on the various kinds of lands and the ways in which such burdens might be evaded or delayed also gave the lawyers and landowners some insight into potential loopholes. If the king was going to establish any real claim to his feudal dues, he needed a strong and active programme of commissions and a system which would guard his rights as they arose. Part of the interest of Prerogativa Regis is that the king's resuscitation of the text, together with his revitalization of its administrative machinery, hit landed society where it was most sensitive, in its titles to land. The activity of the king's agents was bound to cause protest, and these protests have been a source of contention among historians.

In a brief but acerbic exchange forty years ago, G.R. Elton and J.P. Cooper debated the nature of Henry VII's financial policy and the response it generated. 184 Elton argued both

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184 In his England under the Tudors (New York: Barnes & Noble, 1959), 52-57, Elton assumed that Henry VII's reputation for rapacity was undeserved, and that his financial policy did not change from just to unjust exactions in the later part of his career. Though he thought that this was the generally held view, he discovered that this was not the case, and was challenged to prove his assertions. G.R. Elton, "Henry VII: Rapacity and Remorse," Historical Journal 1 (1958): 21-39. Reprinted in G.R. Elton, Studies in Tudor and Stuart Politics and Government, Papers and Reviews 1946-1972 vol.1: Tudor Politics/Tudor Government (London: Cambridge University Press, 1974), 45.
that there was no difference in the financial policy pursued by Henry at the beginning and end of his reign, and that his exactions were perfectly legal. Cooper argued against both points, but focused on the latter. Elton responded to Cooper at some length, and their debate remains the core of our knowledge of the topic. We will return to the first question, the development of Henry's financial policy, later, but the second, and to Elton's mind secondary, question also deserves some consideration. Though Cooper reacted more strongly than Elton against the idea that Henry's exactions were acceptable, even Elton was not wholeheartedly in favour of them. He accepts that Henry's methods were indeed legal, but argues that "the accusation traditionally leveled against his later methods - that the law was being exploited by chicanery - surely also applies to a policy which threatened everyone who held land with a visit from the king's tax-gatherers." The two historians examine the stated opposition to Henry's activities, from the king's will to the early acts of parliament of Henry VIII, not excluding chronicle evidence and the records of the chancery. Though Elton's position, that "the outraged protests read ... like those of men who know that they are guilty of practices in which 'everybody' indulges and who do not see why the law should pick on them," is the more convincing, neither historian turns from the literary and record sources of complaint to the other obvious consideration. The tenants-in-chief who were baulking at the burden of Henry's exactions were also lords, with many of the same rights as the king, albeit on a lesser scale. How did these men administer their own lands?

According to McFarlane, "if a general charge had to be preferred [against the nobility], it would ... be one of harsh efficiency; the commonest impulse detectable was to exploit every imagined right, to push every promising advantage to its limit." He points to

186 Chapter 3 below, pp.104-106.
187 In a notably over-wrought comparison, Cooper compared Henry VII to Hitler, arguing that just because Hitler's activities were legal did not mean that they were right and implying that the same could be said of Henry VII. Cooper, "Henry VII's Last Years," 103.
189 Ibid., 55.
evidence among the duke of Buckingham’s papers, most notably a book of informations
(based mainly on an enquiry on the duke’s estates in May 1516) and a notebook compiled by
the duke’s receiver-general in 1518-19. He argues that

both books were intended for Buckingham’s own perusal and both have marginal
evidence that he had read and considered them before referring particular items to his
council for legal action. Their purpose was to keep a better check upon local
officials, to make it more difficult for them, the tenants and their neighbours to profit
at the lord’s expense and to exploit every available source of revenue. The duke’s
ministers were encouraged to spy upon one another, to report any instances where
bribes had been taken or collusive bargains made. Entry fines were to be pushed as
high as possible, tenants forced to maintain their buildings in repair, prosperous
bondmen were to be detected and squeezed, and every waste of lord’s timber, every
evasion of his right of wreck, every poaching of his woods and warrens to be smartly
punished.191

The terms are very familiar, and if we were to substitute the king’s name for the duke’s, the
description would echo those given by Cooper and Elton. It seems that the king was not
indulging in extortion, but simply following standard practices of estate management,
although he may have been a little late in entering that arena. McFarlane goes on to
comment that “all the evidence suggests that most of the landowners of our period - all who
have left any records - were well able to take care of their property, and if they got the
chance, of their neighbours’ also. The indolent, the vacillating, or the feebly good-
intentioned would not long have had any estates to enjoy.”192 Henry VII could not have been
described as any of those things.

It seems, then, that at least some of the complaints of the landowners cannot be taken
as an expression of moral outrage, for the king was simply using the same methods as they
were. As expressions of political outrage, the lords’ complaints were more justified, for the
king was able to use these methods on a far grander scale, and to greater effect, than any
other landowner. The king also had an ulterior motive for pursuing his feudal dues. Land
was the life-blood of the nobility, and Henry’s commissions “touched on the sensitive nerve”

191 Ibid., 51.
192 Ibid., 53.
of that community. The commissions which he sent into the shires were a very visible sign of royal authority and "a new awareness ... was created of the power of the Crown as an active presence ... a presence moreover from which very concrete benefits could accrue, and which it would be perilous to ignore." James gives various examples of northerners, including Sir Robert Plumpton and Sir Robert Constable, who discovered that the Crown intended to take advantage of its rights, particularly where wardships and marriages were concerned.

Beyond raising awareness of the power of the Crown amongst its wealthier subjects, the commissions could be used to shake the power of the nobility. In 1505 a royal commission of concealments in Northumberland found that over twenty of the tenancies held of the earl of Northumberland were in fact held of the king. The earl's tenants were forced to take their cases to the court of king's bench for resolution. As James points out, "although most of the traverses were upheld, once again in a disquieting kind of way the royal power had made itself felt within a network of traditional ties of dependence, even in the remote backwoods of Northumberland." Some of the Percy tenants took the next available opportunity to become servants of the Crown, recognizing that there was a new vibrancy to the royal power in the north. Though the Percies remained strong, there could be no doubt that these royal activities were disconcerting.

The commissions against the earl of Northumberland brought in the biggest haul in terms of concealed lands, but he was not the only northern lord to suffer from the commissions. In 1504 the 10th lord Clifford also endured a commission of wardship and concealed lands which found that he had usurped the wardship and marriage of Thomas Blenkinsop of Helbeck and which claimed fifteen Clifford fees. Clifford was fined 1,300

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194 Ibid.
195 Ibid.
196 Ibid.
197 Ibid.
198 The cases relating to the earl's tenants are by far the largest number of cases concerning the prerogative to go through king's bench in any one year.
199 James, Tudor Magnate, 21.
marks. He went on to traverse the findings, and his tenures and offices were later confirmed. He received a general pardon in 1506, but his fine was not remitted.

Henry VII's concern with the northerners extended beyond the major lords. In 1489 he had an early experience of the self-imposed isolation of the inhabitants of Durham and York, when they refused to pay the tax voted for war in Brittany. According to Hall, the king commanded the erle [of Northumberland] in any wyse by distresse or otherwise accorndyng to hys discreccion, to exacte the money of the people and by compulsion to enforce suche to payment as whynded moost at it, least that it might appere that the decrees, actes and statutes, made and confirmed by him and hys high courte of Parliament, shoulde by hys rude and rusticall people be infringed, despised and vilepended.

The realization that his realm was divided, not only by political faction, but by geographical particularism, must have reinforced the importance of loyalty to the king as a unifying element within the realm. Support for the king's wars remained the central expression of such loyalty and Henry seems to have sought to encourage the personal involvement of his subjects. In 1492 he recruited an army by indenture with his leading magnates, but in 1495 a statute was passed ordaining that any one who held offices, fees or annuities of the king and did not "geve their attendaunce upon hym when he shall fortune to goo in Werres in his persone, in their persones, as their seid dutie bindeth them" would forfeit their office. A further statute of 1504 extended the provision to those who held lands of the king, on the grounds that "they ar more bounden to give ther attendaunce upon the King's moste royall persone in his seid Warres then other rehearsed persones havyng but fees offices and annuities for term of lyffe, aswell for the defence of his moste Roiall persone as for the defence of this his Realm." In taking this route the king was returning to an old ideal of feudal loyalty, but one which was capable of expression only in extreme circumstances. Given Henry's

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198 The commission also challenged Clifford's right to the hereditary sheriffwick of Westmorland. See C43/1/3 (unnumbered).
199 Edward Hall, _Union of the Two Noble and Illustre Families of Lancastre and Yorke_ ..., ed. Henry Ellis (London, 1809), 443.
unwillingness to engage in continental warfare, he obviously required a more quotidian method of enforcing his lordship, something the regular operation of the prerogative could provide. 

The experiences of the northern lords suggest that Henry VII was only beginning to test the efficacy of the commissions as a means of controlling powerful and/or distant lords. Though the traverses brought by the earl of Northumberland’s tenants were fairly straightforward, they took some years to work their way through the courts; they reached king’s bench in the summer of 1508, but the king’s death delayed them and judgment was not recorded until the summer of 1509. The process of traversing the inquisitions was time-consuming and expensive, but that added to their appeal from the king’s point of view; as long as the case was moving through the system the king’s power was kept firmly in the forefront of the plaintiff’s mind and that of his neighbours. Such methods would not break the power of the nobility, but that was not Henry VII’s intention, for a strong nobility was necessary for government. The commissions served to remind the nobility of the power of the crown and that was enough for the king’s purposes. It is probable that if Henry VII had survived there would have been more large commissions directed against powerful lords, but with his death that became unlikely

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203 KB27/ 988 mm v-xv d and KB 27/ 992 mm iii-viii.
Chapter Three:

Primer Seisin

Primer seisin was the king's right to seize lands held by his tenant-in-chief when that tenant died leaving an heir of full age, and to hold the land until the heir came to perform homage and sue livery. The logic behind this is clear; the heir would be the king's tenant and thus he must receive his lands directly from the king and swear homage to him as his lord. Although the king's seisin of the land was perfect until the heir completed this process, by the late fifteenth century there was no doubt that the heir would in fact receive his ancestor's lands. Nonetheless, primer seisin was unpopular with tenants. The immediate loss of income was one concern, both in the loss of issues while the king held the land and in the sum the heir had to pay for livery. Primer seisin also gave the king the opportunity to investigate the titles by which his tenants held their lands, and its reach was wider than wardship, for every parcel of land was open to primer seisin, while wardship could be avoided, either through natural good fortune or evasion. Effective implementation of the king's rights to primer seisin meant that over the course of a generation the king could, in theory, carry out a Domesday-like survey of landholding in England.

It is apparent from the readings that the government was interested in the possibilities inherent in primer seisin, but their ambitions were limited by the administrative capacity of the system and the complexity of land titles. The former was more immediately under the king's control than the latter, and Henry moved quickly to shape his financial offices to his new needs. Henry's exploitation of his feudal dues is closely connected with his development of the chamber as the centre of his revenue system. The chamber was the king's personal financial office, and its informality provided him with a more flexible tool for revenue control than was available from the
traditional methods of the exchequer. 1 Henry VII was not the only king to develop the chamber system, nor was he the first to do so. In fact, his immediate predecessors, Edward IV and Richard III, both used the chamber in preference to the exchequer for the receipt of income from crown lands. 2 In this, as in his continuation of the commissions, Henry was simply building on the work of the previous twenty years. 3 It seems, however, that in the early years of his reign Henry allowed the chamber machinery to decay. Wolffe argues that because of Henry’s ignorance of estate management (the kingdom of England was, after all, the first land he had owned and administered) he did not at first recognize the value of the system, and it was only after a few years’ experience that he appreciated the potential of the chamber. 4 He suggests 1491 as an approximate date for the revival of Henry’s chamber and the resuscitation of its administrative machinery. 5

Despite his concern with finance, Henry was distracted by other issues. Foreign policy and the stability of his throne remained of paramount importance. One pretender to the throne had already been disposed of, but in 1491 Perkin Warbeck appeared to worry Henry again. By 1493 Henry had determined the truth of Warbeck’s background and he gathered enough information about his supporters within England to pass a number of attainders in the parliament of 1495. 6 Though Warbeck was not arrested until 1498, the attainders of 1495 broke the conspiracy within England, and the failure of his attempted invasion from Scotland in September 1496 was the final proof that Warbeck was no real threat to Henry’s security. The whole incident was disturbing, however,

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1 See W.C. Richardson, Tudor Chamber Administration 1485-1547 (Baton Rouge: Louisiana State University Press, 1952) and F.C. Dietz, English Government Finance 1485-1558, 2nd ed. (London: Frank Cass, 1964) for detailed discussions of the chamber system.
2 Dietz, English Government Finance, 67.
5 Ibid.
6 S.B. Chrimes, Henry VII (London: Eyre Methuen, 1972), 84-85.
especially with the revelation that Sir William Stanley, Henry's step-uncle, was deeply involved. It is not coincidental that immediately after Bacon describes the king's profitable excursion to France and the threat from Perkin Warbeck, he notes that about this time [1495] began to be discovered in the King that disposition, which afterwards nourished and whet on by bad counsellors and ministers proved the blot of his times: which was the course he took to crush treasure out of his subjects' purses ... At this men did startle the more (at this time), because it appeared plainly to be in the King's nature, and not out of his necessity; he being now in float for treasure.  

For Bacon, then, the beginning of the king's fiscal drive was clearly noticeable, intimately associated with his success abroad, a political threat at home and not connected to financial need.

This raises a crucial question: what was Henry VII's purpose in seeking to enforce his prerogative rights? Was his aim purely, or even primarily, financial? There can be no doubt that wardship and primer seisin were quite lucrative. Though it is difficult to produce any hard and fast figures, Dietz estimates that the income from wards was less than £350 in 1487, rose to £1,588 by 1494 and by the fiscal year 1506-7 had jumped to more than £6,000. Wolfe found that the total revenues from crown lands brought Henry about £3,000 a year from 1487-89, rising to £11,000 a year between 1492 and 1495 and reaching £40,000 between 1502 and 1505. This includes a variety of other kinds of income besides wardships and primer seisin, but there is no doubt that they constituted a welcome addition to royal funds. This was not a great deal of money in absolute terms, however, and the hostility which met this new level of demand prompts the same question raised by Hurstfield in relation to later fiscal feudalism - why provoke so much resentment for so little return?

Elton has argued that “Henry faced the unpopularity involved in these measures because he wished to attack all forms of lawlessness and suppress those who thought themselves above the law, rather than because he wanted more money.” It appears that the king was using his undisputed feudal rights as a method of acquiring and keeping control of his subjects. Lander has argued that Henry used a system of bonds to keep peace among his nobility; this system required troublesome individuals or groups to post bonds for their good behaviour and often caught a group of men in one net by requiring them to guarantee each other’s behaviour. Though the sums involved were substantial, the king rarely collected all of the posted amount even when the individual broke the bond, but instead left him in debt to the king. Henry VII had no desire to impoverish his nobility, for that would have diminished their capacity to govern on his behalf, but he did want to control them. Bonds to keep the peace were one method of achieving this aim, commissions to investigate concealed lands and wardships were another. Both had the advantages of being relatively cheap, peaceful, and legal. No-one could dispute the king’s right to collect his feudal dues or to collect on a bond when the condition had been broken. The king could always choose to be lenient and remit payment of either, he could suspend payment during pleasure, or he could demand the full weight of the law.

Henry’s new policy had a number of applications. The king began this fiscal campaign at a time of financial security but during a time of potential political disaster. It is obvious that he understood clearly the advantages which could be derived from exploiting the relationship between political support and security of tenure. This, after all, was the principle behind attainder, and Henry attempted to use the principle to his own advantage. In the parliament of 1495, while the possibility of a landing by Perkin

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11 G.R. Elton, “Henry VII: Rapacity and Remorse,” in *Studies in Tudor and Stuart Politics and Government, Papers and Reviews 1946-1972 vol.1: Tudor Politics/ Tudor Government* (London: Cambridge University Press, 1974), 57. In this he agrees with Hall, though Hall does impute a financial motive to the king. In his view, however, Henry was more concerned with reducing the wealth of the nobility than with increasing his own. See also Dietz, *English Government Finance*, 44.

Warbeck still loomed, an act was passed which ordained that no one who assisted the
king in arms should later be impeached or attainted for their actions.13 As Bacon points
out, the act was "rather just than legal," for it was by no means clear that any parliament
could bind its successors in that way.14 It did, however, free men to support the king in
this crisis by guaranteeing that their land would remain safe. In the long-term, Henry
found it more convenient and safer to guarantee support by displaying that no tenant-in-
chief's land was safe from royal demands. Bacon noted that, "it may be justly suspected
... that as the King did excell in good commonwealth laws, so nevertheless he had in
secret a design to make use of them as well for collecting of treasure as for correcting of
manners; and so meaning thereby to harrow his people, did accumulate them the
rather."15

Though both political and financial circumstances seem to have been pushing
Henry to focus on his feudal revenue from the early 1490s, 1495 saw the policy begin in
earnest. This new drive coincided with the call of serjeants, including Constable and
Frowyk, in the autumn of 1495. A feast, paid for by the new serjeants and attended by
the members of the Inns and various notable figures, was a regular feature of the
celebrations surrounding a call of serjeants. Henry himself attended this feast with his
queen, being, as Bacon noted, "a Prince that was ever ready to grace and countenance the
professors of the law; having a little of that, that as he governed his subjects by his laws,
so he governed his laws by his lawyers."16

Though there is no direct evidence of royal intervention in the choice of readings
or in the substance of the readers' lectures, Constable and Frowyk's awareness of the

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13 Statutes of the Realm vol. 2 (London, 1816), 568, 11 Hen. VII, ca. 1. See also Chrimes, Henry VII, 178-
79.
14 Bacon, Reign of Henry VII, 135. Bacon calls this "the principal law that was made this parliament."
15 Ibid.
16 Ibid., 133. Weinberger points out that this comment is not in any of Bacon's sources. It is not clear
whether there was any significance to the king's attendance. Henry VII missed the serjeants' feast in 1486,
but he was present in 1503. Henry VIII's attendance record was not as good as his father's; he only
attended two out of six serjeants' feasts in his reign, those of 1521 and 1531.
significance of their discussion of primer seisin must have been heightened by the king’s interest. Primer seisin was to some extent a more sensitive topic than wardship, but the readers approached it in much the same way that they investigated wardship. Both opened their discussion with a brief history of the topic, accepting that the statute of Marlborough ordained that the king should have primer seisin of land held of him in chief, and that this was a confirmation of the common law.\textsuperscript{17} Constable points out that “it is reasonable that the king will give livery of the land which was held of him to the one who will be his tenant of record and will have the issues in the meantime.”\textsuperscript{18} Their interpretations of the common law differ, however. Constable argues that \textit{Prerogativa Regis} extended the king’s rights over his tenants-in-chief to include all the land of which the tenant died seised, even when it was held of other lords.\textsuperscript{19} Having thus extended the king’s rights when the tenant holds land of him in chief, Constable then treats of land held of the king as of an escheat. He argues that under common law the king had the right to primer seisin and the issues of all the lands of which his tenant died seised. \textit{Magna Carta} ca. 31 then restricted the king’s rights when his tenant held of him as of an escheat, so that he would have only the same as the lord would have had. This meant that he could not have the issues of the lands his tenant held of others. He did, however, retain the right to seize the land and to livery it, since this was his at common law.\textsuperscript{20} Thus, according to Constable’s reading, the king could seize all the land of which his tenant died seised: if the tenant held in chief he could hold all the land until livery was sued, with issues; if the tenant held as of an escheat, he could retain the issues of the land held of him but had to concede the issues of the land held of others.

Frowyk once again argues that \textit{Prerogativa Regis} simply confirms the common law. According to common law and the statute of Marlborough, the king had the right to

\textsuperscript{17} Constable, 41; Frowyk, f.4.
\textsuperscript{18} Constable, 41-42. “Et fuit raison que le roy livera le terre que fuit tenuz de luy a celui que serra son tenaunt de recorde & daver issues en le mesne temps.”
\textsuperscript{19} Constable, 42.
\textsuperscript{20} Constable, 42.
primer seisin of all his tenant's land when the tenant held of him in chief and the heir had
the obligation to sue livery, and Prerogativa Regis did nothing to change that. Frowyk
is quite explicit that the tenant must hold his lands in chief in order for the king to claim
primer seisin, and so we can presume that he thought the king had only the same rights of
seizure over lands held of escheat as the lord would have had. The difference in opinion
between the readers, though small, was significant. In effect, Constable allowed the king
more room to seize lands, though he recognized that the king did not have the right to the
profits of all the lands thus seized. Frowyk, on the other hand, believed that the king had
no right to seize lands when he could not retain the profits. Thorne points out that "both
were in substantial agreement as to the lands whose issues and profits came properly to
the king, and thus Constable's analysis, which allowed the seizure of other lands but
permitted their owner or owners to sue them out of the king's hands cum exitibus, with
the accrued issues, led to no greater financial loss than Frowyk contemplated."

Though this is true in the short-term, when Constable's and Frowyk's arguments
are placed in the context of Henry VII's policies at the time, it quickly becomes apparent
that more is at stake here than a difference in administrative procedure. Thorne accepts
that Constable's reading provides a more accurate representation of contemporary
practice, for the king's escheators were in fact seizing all the lands of tenants who held of
the king as of escheat. In light of this reality, Thorne presents Constable's reading as
"an attempt to rationalize current practice as a whole without dismissing, as Frowyk did,
some instances of the application of the prerogative as merely incorrect or unjustified."

Given both the circumstances under which the reading was delivered and the royal

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21 Frowyk says that "the king will have primer seisin of all the lands and tenements which his tenant held of
him, of which he died seised, as long as he held of him in chief, which the common law affirms." Frowyk,
f.4: "le roy aera le 1er seisin des tous terres et tenements des queux son tenant tenoit de luy et d'eux
morust seie issint que il tenoit de luy en chief le quel affirme le common ley." He reiterates this latter
point at f.6.
22 Thorne, ed., Constable, xxii.
23 Ibid.
24 Thorne, ed., Constable, xxiii.
interest in feudal income, it seems unlikely that Constable was performing an academic exercise in attempting to provide a justification for current practices. In fact, Constable was attempting to rationalize the king’s rights to seize as much land as possible into his hands in an attempt to track down his tenants-in-chief and establish what they held of him and how it was held. Once the king had seized land the rightful owners had to come to chancery to display their title and claim the land back from the king, with the accrued issues. They lost no money, at least in the short-term, but they were forced to make their title known and have it become a matter of record in chancery. By seizing all the land of which his tenants by escheat died seised, the king was greatly increasing the amount of land that could be investigated following any particular death.

Even without the complication of lands held by escheat, the extension of primer seisin to lands held of others had given the king new rights over his tenants’ lands. As Thorne points out, this “was a novel development. No direct help in solving the difficulties raised was to be found either in the Year Books of earlier reigns, in which any discussion of primer seisin is of the greatest rarity, or elsewhere. The expositions of the readers and their attempts at systematization were pioneer efforts.”25 Constable sets about dealing with the question in a very clear, logical manner. He first establishes that the king can have primer seisin of land held in chief, whether it is in fee simple, or tail, whether there are many heirs or one, and so on. He then discusses when the king will have primer seisin of land held as of an escheat and points out that the king will seize all the lands of which his tenant died seised, even lands which do not bring primer seisin by themselves, such as burgage lands.26 Having covered what the king can seize, he turns to what issues the king can keep. He discusses this in terms of suing livery, since the tenure by which the lands are held determines both the king’s rights to issues and the form of the heir’s livery. This leads him naturally into a discussion of the procedure to be followed

26 Burgage lands were lands held according to city customs.
in suing livery, and he covers this in some detail.

Frowyk’s treatment differs considerably from Constable’s, both in its level of organization and in its approach to the subject. As we have seen, Frowyk assumes that the king has no prerogative in lands held of him as of escheat, and this means that he does not have to discuss the king’s rights in this case. Instead, Frowyk focuses on the other major issue connected with primer seisin. Wardship provided a natural parallel to primer seisin, for the former applied to lands where the heir was within age, while the latter applied to lands where the heir was of full age. There was a temptation to assume that the king’s rights would be the same in the two cases, but Frowyk argues that this was not in fact the case. He thus directs his reading to this question and highlights the differences between the king’s rights to primer seisin and his rights to wardship.27

Constable deals with many of the same issues as Frowyk, but he does not highlight the comparison with wardship. It is thus possible to compare the readers’ expositions, but only in a limited way. In essence, the readers are giving lectures on different things. Frowyk concentrates his energies on showing that the king’s rights to primer seisin are quite different from his rights to wardship. Constable accepts this and shows little interest in any further consideration of the question, but focuses instead on proving that the king had rights to land held as of an escheat. The simple fact that their lectures differed so much provides a further indication of the confusion surrounding primer seisin and the lack of any established learning in the field.28 Though the theoretical questions they address differ considerably, both readers devote a considerable amount of time to discussing the procedure involved in primer seisin and livery, the most practically useful element of the reading for their audience.

The readers open their discussions with the principle that the king will have

27 Frowyk’s reading is not as clearly organized as Constable’s and it is impossible to establish a clear progression in his discussion of the topic.
28 In the readings of the sixteenth century these two issues are accepted as the topics to be discussed under primer seisin, and the views of both Constable and Frowyk undergo some modification.
primer seisin of all the lands held by his tenant, when the tenant held any land of him in chief and died leaving an heir of full age. The king’s rights to primer seisin were more extensive than his rights to wardship, for he had primer seisin when land was held of him in socage in chief as well as in knight service.\(^{29}\) Constable is concerned to establish the breadth of the king’s rights to primer seisin, arguing that he can seize the lands of tenants who held of him in chief whether they held in fee simple or fee tail and whether there are many heirs or one.\(^{30}\) The king will thus have primer seisin of all whether the deceased tenant was a sole tenant, joint tenant or tenant by right of his wife, as long as he held land in chief of the king and other land by estate of inheritance.

Constable goes on to give the example of two joint tenants who held land in chief. If the land was held by the joint tenants and to the heirs of the deceased, then the king would seize all the joint tenancy and the rest of the land held by the deceased, for in this case the deceased joint tenant held the fee simple.\(^{31}\) Frowyk admits that this is the current practice and that when a joint tenant dies the other tenant, often the spouse, must sue livery, which he considers to be unreasonable.\(^{32}\) Thus while Frowyk presents the same picture of reality as Constable, he differs from him in his view of what should be done. Frowyk’s view is more consistent with the readers’ discussion of chapter two of the text. In their discussion of wardship the readers agreed that the second joint tenant should retain the land as survivor, thus effectively becoming a tenant for term of life.

The king’s right to the wardship of an under-age heir was not activated until the death of

\(^{29}\) Constable, 47-48; Frowyk, f.4. In his attempt to preserve his argument that \textit{Prerogativa Regis} does not give the king anything new, Frowyk has to stretch this point. Marlborough does not say anything about socage tenure in chief in this context and so Frowyk comments that “cest statut misprise vn chose” in talking only about knight service. Thus he argues that primer seisin always applied to land held in socage in chief, but Marlborough omitted to mention it, rather than trying to suggest that \textit{Prerogativa Regis} altered the situation.

\(^{30}\) Constable, 49. I have elected to follow the structure established by Constable, since his reading is the more clearly organized of the two.

\(^{31}\) Constable, 49. The same applies when land is held by husband and wife and the heirs of the husband and then the husband dies.

\(^{32}\) Frowyk, f.5v. It was accepted that the survivor would have the profits of the land in the meantime, which mitigated the burden somewhat, but the tenant was still put to the inconvenience and expense of suing livery.
the survivor, but according to the description given by the readers, when the heir was of full age the king had an immediate right to primer seisin.

In general the readers agree that the king's right to primer seisin is broader than his right to wardship, though they emphasize different elements of the extension. Frowyk argues that if the king's tenant gives land to another in tail and dies, having reserved certain rent from the land, the king will have primer seisin of the rent.\(^{33}\) If the tenant in tail dies without issue, even after the donor's heir (who holds the reversion) has sued livery, the king will have primer seisin of the land.\(^{34}\) In this way the king has primer seisin when his tenant is the donor of a gift in tail, but he also receives the benefits of primer seisin when his tenant receives land in tail. Thus if lands are given to a tenant of the king and the heirs male of his body and he dies without male issue, the king will have primer seisin of all and the donor will have to come and sue *ouster le main* for the land.\(^{35}\) Frowyk also points out that if the king's tenant holds lands in borough English of another lord, and dies leaving two sons of full age, the king will have primer seisin of all, though if the sons were within age he would only have the wardship of the elder son's land, since the younger son did not inherit land held of the king.\(^{36}\) Constable deals with a similar issue connected to descent, pointing out that it is irrelevant for the purposes of primer seisin whether the heir inherits the land from different ancestors. With wardship, if the heir had land from his mother held of the king and land from his father not held of the king, the other lords would have wardship of the land held of them. If the heir in this situation is of full age, the king will have primer seisin of all the land.\(^{37}\)

Though some of the king's rights to primer seisin were wider than those he had with wardship, some were more limited. If the king's tenant died disseised of land held

\(^{33}\) Frowyk, f.4. If no rent was reserved, the king would have primer seisin of the segniory.

\(^{34}\) Frowyk, f.4.

\(^{35}\) Frowyk, f.4. *Ouster le main* (out of the hand) is sued when the king does not have the right to retain lands he has seized.

\(^{36}\) Frowyk, f.4.

\(^{37}\) Constable, 50.
of the king in chief, then the king would not have primer seisin, for the heir was old enough to enter. Frowyk considers that the king will not have primer seisin “for a right only without possession,” thus reinforcing the point that he made concerning wardship. Though Constable gave the king the right to seize in this situation when the heir was within age, in this case he agrees with Frowyk, and accepts that the king will not have primer seisin, “because the heir is old enough to enter.” Thus, although the deceased tenant had the right to the land the king could not claim primer seisin, because the tenant did not actually die in possession of it.

The readers apply the same principle to cases where the king’s tenant was not disseised, but conveyed his land to another for a particular purpose, for example by making a collusive feoffment or a feoffment to use. Constable adds a feoffment on condition or discontinuance of a tail to the list of cases where the king will not have primer seisin, but Frowyk moderates this. He argues that where the king gave lands in tail and the tenant discontinued the tail, the king will still have primer seisin, for “he [the tenant] is not able to discontinue the king’s reversion.” Again, if the tenant is not in actual possession of the land held of the king at the time of his death, the king will not have primer seisin, even if the conveyance was of doubtful legality. If the heir goes on to recover the land, Constable believes that the king will not have primer seisin; he will seize the land held of him, but he will not have any right to seize the land held of other

38 Constable, 53.
39 Frowyk, f.4v “pur vn droit solement sans possession.” See chapter two, p.85.
40 Constable, 53.
41 Constable points out that in this case the statute of 4 Henry VII ca. 17 provides the king with the right to relief, though not primer seisin. Frowyk denies the king’s right to primer seisin when his tenant enfeoffed another to his use, but he adds that it is “otherwise where he was within age, for there he would have the ward by the statute of the present King Henry VII.” Frowyk, f.4v: “auter sit fuit deins age car le il aueroit le gard per statut le Roy que ore est H7.” There is a similar comment later in the text at f.7. These are a direct contradiction to his views in the previous chapter and in the year books, where he argues that the statute of 4 Henry VII ca.17 gives the king no rights. It is probable that these comments are an addition by the note-taker or scribe, who is not aware of Frowyk’s stand. In his discussion of wardship Frowyk largely ignores the statute, rather than taking the time to argue that it is not relevant. Given the fact that later legal opinion gave the king the use of the statute, it is likely that the scribe simply added a note on the practice as he knew it, particularly if he was unaware of Frowyk’s year book arguments.
42 Constable, 53-54; Frowyk, f.4v.
lords.

While disseisin eliminates the king’s rights to primer seisin, Frowyk argues that if the tenant leases land for term of life this should postpone the king’s rights. Thus if a tenant of the king leases land for term of life and dies, having reserved certain rent, the king will not have primer seisin of the reversion or of the rent until after the death of the tenant for term of life.43 If, on the other hand, the tenant leases lands held of the king, but retains lands held of another lord, the king will have no access to the lands held of him, but he will have primer seisin of the lands held of the other lords.44 Thus while the king did not have right to primer seisin when his tenant had been disseised, he could claim the right to primer seisin through lands which were temporarily and voluntarily out of the hands of his tenant. Frowyk warns, however, that if the king’s tenant leased land to someone for term of life with the remainder over to another, and the remainderman dies, the king will not have primer seisin, for the remainderman has no rights in the land.45

Constable does not accept that a lease delays primer seisin and in fact emphasizes the ways in which a lease extends the king’s rights to primer seisin. For example, he argues that if a tenant was a lessee for term of life of land held in chief of the king, and died seised of lands held of other lords in fee, the king would have primer seisin of all the lands, both those held of him and those held of the other lords.46 This is also the case if the tenant had bought lands held of other lords. Thus if there is a tenant for term of life of lands held in chief of the king, who also holds lands in fee of other lords, and he dies,

43 Frowyk, f.4. This was different from wardship, for the king did claim the wardship of the reversion and the rent. See above, chapter two, p.72.
44 Frowyk, f.4. Frowyk also notes that if the king’s tenant dies seised of land held of other lords and a stranger enters the land while it is empty, the king will still have primer seisin, though he adds that in 10 Richard II the contrary view was held. (A stranger who enters on land vacant by death is called an abator rather than a disseisor, because he has not disseised any one.) This differs considerably from wardship, where a lease of lands held of the king delayed the king’s right to claim the lands his tenant held of other lords. See above, chapter two, p.80.
45 Frowyk, f.4v. Frowyk’s account of this issue is very short and it does not really explore the complexities involved. The distinction between the king’s rights to wardship with reversion and remainder are quite clear, but here they are more blurred.
46 Constable, 51. Lands held for term of life here include dower lands and land held by curtesy.
the king will seize all the lands, "even though they are not held of the king, to find out if the tenure was properly found and also to know who should hold the land." In this case, however, "whether other lands are seized or not, those who should have them ... will not lose the issues from them."\(^{47}\)

Constable’s interpretation again increases the king’s ability to investigate land tenure, but he further argues that whenever land held of the king changes hands the new tenant will sue livery, according to the common law, for "the king’s tenant will have the land from his hands at each change of tenant."\(^{48}\) He is effectively arguing that the king should have primer seisin every time land held of the king changes hands, whether permanently or temporarily, rather than simply when it descends from ancestor to heir. This would explain why he believes that the survivor should sue livery on the death of a joint tenant.\(^{49}\) Besides increasing the income from crown lands, such a policy would allow the king to keep track of every land transaction concerning land held of him, but would probably have been beyond the administrative abilities of the system.\(^{50}\) Frowyk does not approve of any move in this direction. He recognizes that it is becoming common practice, but argues that "it is not warranted by the law, but only by their fees in chancery."\(^{51}\) Though this practice would have increased processing fees, it is likely that the government was encouraging it more for its political than economic value, and Frowyk is reacting against it for the same reason.

Having established his right to primer seisin, the king could then seize all the land held by the deceased tenant-in-chief, as long as the tenant held it by an estate of

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\(^{47}\) Constable, 52. "coment que ne soant tenuz de roy, scilicet, pur aver notice si le tenour soit duement trove & auxi a conustre que avera le terre, [&] coment que auterz terreze serront seisiez ou nemi, ceux que averount ... ne perdra issuez deux."

\(^{48}\) Constable, 61. "le tenuant le roy avera le terre de son main a chescun chaunge de tenuant."

\(^{49}\) Above, p. 111.

\(^{50}\) Given the problems faced by government attempts to establish a system of enrolments of land transfers in the 1530s, such an informal move would also have been most unpopular.

\(^{51}\) Frowyk, f.5v. "Il est vse en le Chancery que le roy auera iler seisin apres le mort le tenant a terme de vie le remainder ouster quel nest garr per le ley mes solement per lour fees en le Channcery." Frowyk expands on the issue somewhat in a case of 1506, but there he is not referring specifically to the king, but to any lord. Keilway, Pas. 21 Hen. VII, pp. 83b-84, pl.17.
inheritance, even land held in burgage which was otherwise exempt from primer seisin. If the tenant had land for term of years or in ward, however, the king could not seize it, for he could not give livery of it.\textsuperscript{52}

The readers agree that primer seisin is occasioned by any land held in chief, but Constable argues that it is also caused by lands held of the king as of an escheat. Thus when a tenant of the king as of the duchy of Cornwall, the honors of Nottingham, Windsor, or any other escheat, except the duchy of Lancaster, dies with an heir of full age, the land will be seized by primer seisin "so that the heir will sue livery and make his services to the king and reserve the land from the hands of the king, and all the other lands will be seized also, that is, to find out if the tenure is well-found and to know who will have them."

If such lands were in the hands of a tenant for term of life, or a tenant by the courtesy or in dower, the king would seize them after the death of the sitting tenant and the reversioner or remainderman must sue them out of the hands of the king by livery and he will then "become tenant of record as is reason if no statute was ever made concerning this."\textsuperscript{54} If there are joint tenants who hold of the king as of an escheat and not in chief, when one dies the king will seize all. If they are tenants in common, the king will only seize half, except of those things which cannot be divided, such as a horse, or an advowson, and in this case he will have all.\textsuperscript{55}

Thus Constable argues that the king will have primer seisin when his tenant died

\textsuperscript{52} Constable, 51.

\textsuperscript{53} Constable, 55. "si leir soit de plein age cell terre serra seisi come primam seisinam per comen ley & per lestatut de Marlebrigge, & ceo a lentant que celui que est heir suera livere & ferra cez servicez all roy & reservera cell terre de main le roy & toutz lez auterz terrez serront seizez auxi, scilicet, pur aver notice si le tenour soit bien trove & a conustre que avera eux &c." The king will not have primer seisin of land held of the duchy of Lancaster when the tenant holds nothing else of the king, for it is separate from the crown. Constable, 56. Frowyk agrees and adds that the heir in this case will enter without suing livery. Frowyk, f.4v.\textsuperscript{54}

\textsuperscript{54} Constable, 55. "devenerount tenauntz de record come est reson si ascun statut must unquez est fait de ce."\textsuperscript{55} Constable, 55. It is not clear whether the king can seize the lands such a tenant by escheat held of others. At one point the reading says that "by such a primer seisin the king will not seize any other lands except those held in such a way" (per tile primam seisinam le roy ne seisiera ascuns auterz terrez forisque ceux terrez tantum), but it later concludes that "the king will seize all the other lands held and not held" (le roy seisiera toutz lez auterz terrez tenuz & nient tenuz &c). Thorne speculates that the first comment is an interpolation and this is likely, for Constable generally gives the king the broader right.
seised of land held of him in chief or as of an escheat which he held by inheritance.

However, if the tenant held of the king as of land in the king’s hands temporarily, such as by the forfeiture of a tenant for term of life, by seizure for alienation without licence, or by wardship of the lands of an idiot, and this was found by inquisition, then the king would not have primer seisin, though he would have wardship in that situation.56

Constable does make one exception to this rule, for when a tenant holding of a ward in the king’s hands died, all his land would be seized and livery would be sued of the land held of the ward and ouster le main of the other land, even though this land is only in the king’s hands temporarily.57 Frowyk thinks that this is “conter reason,” but admits that such a precedent was set in 28 Henry VI.58 The tide of opinion seems to have moved in Frowyk’s direction in the following years, for in 1516 it was agreed that the king would not have primer seisin by reason of ward, just as he would not have primer seisin where the tenant’s land was enfeoffed to his use.59

In general then, the king’s rights to primer seisin more closely follow the idea that he should have everything of which his tenant died seised than do his rights to wardship. The readers agree that the king can seize everything of which his tenant died seised, though they disagree on whether that should apply to tenants by escheat, and they agree that the tenant must die seised for the king to have his right. The only major restriction the readers place on primer seisin is where lands are in the king’s hands temporarily, such as forfeiture for alienation without licence.

56 Constable, 56.
57 Constable, 56. Constable later explains that this is because the king holds the land as guardian and so the second heir must sue livery and swear fealty. If the first heir sues livery before the second heir, the second heir must still sue from the king, for at the time of the death of his ancestor, the lands were held of the king. In this case he does not have to swear fealty to the king.
58 Frowyk, f.4v, f.8. He points out that there are some occasions where a ward in the king’s hands will not sue livery. If the king holds the ward because of a forfeiture or a grant the heir does not have to sue livery. Thus if a guardian is outlawed in a personal action the heir will not sue livery at full age, because the king does not hold the wardship by reason of any seigniory. If the king grants a seigniory for term of years and a wardship falls during the term and the heir is not of full age by the expiration of the term, the ward will not sue livery of the king. Frowyk, f.8.
59 Keilway, Pas. 7 Hen. VIII, p.176b, pl.2.
Having established where the king will have primer seisin, Constable goes on to consider where he will have all the issues and profits of the land he has seized, where he will have part and where none. He argues that this question can best be answered in conjunction with an examination of how land in the king’s hands will be retrieved by the heir, since both the king’s rights and the heir’s process are determined by the manner in which the land is held. Both readers agree that when the king has land by primer seisin and the inquisition which gives the king title is true, the heir will have the land from the king by writ of livery or ouster le main. If the king has the land by an inquisition held virtute officii or by an enquiry out of the exchequer, then the heir cannot have livery on the basis of such a title, even if it is true, but must sue a writ of diem clausit extremum, mandamus, or whichever writ is appropriate.60

This distinction between inquisitions is based on the source of the escheator’s authority, for he could carry out an inquisition either virtute officii, by virtue of his office, or virtute brevis, by virtue of a writ issued from chancery. An inquisition held virtute officii was returned by the escheator to the chancery or the exchequer. Having been returned, this writ meant that the lands in question were in the hands of the king as a matter of record. This was important, for in order for an aggrieved tenant to challenge the king’s right to any seized land, he had to be able to object to information on record. An inquisition virtute brevis could be called by one of four writs. The most common was the diem clausit extremum, which had to be issued from the chancery within a year of the death of the tenant-in-chief. As with the inquisition virtute officii, when it was returned to chancery it became a matter of record and the land was properly in the hands of the

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60 Constable, 57. Frowyk suggests that a special commission also gives the heir the right to sue livery, but Constable disagrees. Frowyk, f.6; Constable, 57. An exchequer enquiry into the lands of a tenant-in-chief would be ordered if it had other information that he had died and no inquisition had been held. The readers say that such an enquiry was sent to the sheriff rather than the escheator, but cf. Dominic Luckett, “Henry VII and the South-Western Escheators,” in The Reign of Henry VII: Proceedings of the 1993 Harlaxton Symposium, ed. Benjamin Thompson, Harlaxton Medieval Studies V (Stamford: Paul Watkins, 1995), 54-64.
The second writ used to call an inquisition was _mandamus_. This was much the same as the _diem clausit extremum_, but it was issued after a year if there had been no _diem clausit extremum_, or if the first writ had not been returned to chancery. The third writ was used if the king had an heir in ward and the heir died. This writ of _devererunt_ ordered the escheator to enquire what lands were in the king's hands because of his wardship, and it was effectively a new enquiry into the reasons why the king held the ward in the first place. It also sought the heir of the ward and the heir's age. The fourth writ was _amotus_. This was sent out when the first writ issued had not been returned. _Amotus_ rehearsed the first writ and required that it be returned. Beyond these four writs there were two others, but these could not be issued unless one of the four had first been issued and returned. _Que plura_ was applicable where, after the first writ was returned, the king was informed that his tenant held more lands than were named in the return. _Melius inquirendum_ was used when the first writ had been returned with some necessary information missing, as for example when the inquisition jury did not know of whom the land was held, or how, and it ordered a second inquisition to discover the missing information. Consequently, although an inquisition held _virtute officii_ gave the king title, it did not give the heir title and the heir had to go through the process of an inquisition sued on a chancery writ.

Livery could be with or without the issues of the land during the time it was in the king's hands, while _ouster le main_ was always with issues. The heir sued the land out of the king's hands according to the tenure by which his ancestor held it; thus he could have livery of part of the land seized, with or without issues, and _ouster le main_ of the rest.

The simplest situation is when a tenant-in-chief of the king held land in fee or in tail or

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61 The writ of _diem clausit extremum_ could only be sued once. In a case of 2 Henry VII before the justices in the exchequer chamber, a plaintiff sought a commission to enquire concerning his title to land in tail of which his brother had died seised, and the justices concluded that such a commission was in effect nothing but a _diem clausit extremum_, and so his request was denied. M. Hemmant, ed., _Select Cases in the Exchequer Chamber before all the Justices of England_ vol. 2 (London: Bernard Quaritch, 1948), 128.
62 Constable, 42-45.
63 Constable, 57.
for term of life and died leaving an heir of full age, who inherited all the land of which his ancestor died seised. In this case the heir will sue livery and lose the issues of the land, and the livery will be of the land held of other lords as well as of land held of the king.\textsuperscript{64} If there are heirs in gavelkind all of full age, or heirs female of full age, of land held in chief of the king, they will sue livery of all the land, but there they must each sue livery separately, for the land will have to be divided among them and divided in such a way that each holds land of the king, even if it is only an acre.\textsuperscript{65} In this way each co-heir becomes a tenant of the king and open to the charges of the prerogative on all of his or her land, whereas if the land held of the king had gone to only one heir, the others would have been free of the prerogative.

The deceased tenant might have different heirs to different parts of his land, but as long as the land was held in chief, all his heirs would have to sue livery. Thus if a tenant held land in fee simple in chief and land in fee tail to his heirs male in chief and the daughter of his elder son is the general heir and his younger son is the special heir, then each will lose the issues of the land and sue livery. If the land in fee simple was not held of the king, then the son would still sue livery of the king for the land in tail, but the grand-daughter would only sue \textit{ouster le main} with the issues, for she is not inheriting any land held of the king and if she does not hold any land of the king, then he cannot give livery.\textsuperscript{66} Similarly, if a tenant held land descended from his father and land descended from his mother, and parts of both were held in chief of the king, and he died without issue, both heirs would sue livery of the king. If all the land held in chief of the king was in one inheritance, for example the land descended from the mother, then the mother’s heir would sue livery and the father’s heir would sue \textit{ouster le main}.\textsuperscript{67} Thus Constable concludes that where land is held in chief of the king the heir will sue livery,

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\textsuperscript{64} Constable, 57.
\textsuperscript{65} Constable, 58.
\textsuperscript{66} Constable, 58.
\textsuperscript{67} Constable, 58.
but where land is not held of the king and the heir holds no land of the king, the heir will sue *ouster le main*. 68

Frowyk agrees with Constable on this issue, though he gives different examples. If a man held land in borough English in chief of the king and died seised of other lands held in chief of the king and had two sons, both sons would sue livery on an office found *virtute brevis*, since both are heirs to land held in chief of the king. 69 If the tenant held the land in borough English of a common person and other land of the king, the elder son would have livery of the land his father held of the king and the younger son would have *ouster le main* without issues of the land in borough English, for only the king’s tenant has livery of his land. 70 Similarly, if the king’s tenant had other lands, held of other lords, to him and the heirs female of his body and had a son and daughter and died, the son would sue livery of the land held of the king and the daughter would have *ouster le main* of the other lands. 71 Frowyk goes on to argue that in all cases where the king’s tenant died seised of lands held of another lord and a stranger (that is, someone other than the general heir) inherits this land, the stranger will have *ouster le main*, and he can have this on an inquisition held *virtute officii*. 72 Thus if the king’s tenant held land in gavelkind of another lord and had issue two sons and died, the younger son would have
ouster le main of his part, even on an inquisition found virtute officii. Frowyk also presents a situation where there are two sons, both holding land of the king. The elder gives his land to the younger in tail and the younger dies without issue. In this case the elder will sue livery of the land held by his brother, as heir to his brother, but he will have ouster le main of the land he gave to his brother, for he does not claim as heir, but by reason of the reversion. Thus the correct procedure ensures that the tenant pays relief only on the land held of the king and that the king will livery only the land held of him, and thus protects the heir against any financial depredations, but it is the original process of seizing which allows the king the right to investigate the lands.

When there are others besides the heirs who have a right to land seized by the king, they too will have livery of the land held of the king, whether it is held in chief or as of an escheat, and ouster le main of land held of other lords. Thus if the deceased was a joint tenant in land held of the king, and the alienation to them had been by licence of the king, or they had received a pardon for the alienation before the inquisition, the survivor would have livery with issues. If they had neither licence nor pardon, the survivor would not have livery until he had a pardon from chancery, but he would lose the issues of the land. This loss, however, is “because of alienation without licence and not because of primer seisin.” Frowyk agrees with Constable on the principle involved, but argues that the king does not have the right to the issues, but only to a fine for the alienation. He seems to have moderated this view in later years, according to a case reported in Caryll. Caryll notes that when the king’s tenant alienates without licence and this is found by inquisition, the king will have the issues of the land only from the time of the inquisition.

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73 Frowyk, f.7. The younger son will also have partition on this ouster le main.
74 Frowyk, f.7.
75 Constable, 58.
76 Constable, 59. “per cause alienacion saunz licence & nemi per cause de primam seisinam.” Frowyk deals with the same point, though not specifically in relation to joint tenants. He says simply that if a tenant of the king aliens without licence the king will seize the lands until a fine is paid for alienation. Frowyk, f.5v.
77 Frowyk, f.5v.
and not from the time of the alienation, and says that this was “clearly agreed by Frowyk and all the court.” Thus Frowyk apparently came to accept that the king did have some rights to the issues of these lands, but retained the principle that this was only because of the alienation without licence and not because of primer seisin.

Constable applies the same rules to others who had a right to land held by the deceased. If a man holds lands in right of his wife, for example, and she bears him a child and dies, he is tenant by the curtesy and he will have livery of the land held of the king and *ouster le main* of the other lands. After the death of such a tenant by the curtesy, or of a tenant for term of life by survivor or a tenant in dower, the heir will sue livery of the lands the tenant held of the king without the issues and *ouster le main* of the lands held of others. In these cases the temporary tenant is suing livery of the land held of the king and when he or she dies the heir sues livery again, giving the king two chances to investigate the lands held by the deceased tenant. Again, Constable is promoting the idea that every change in tenant should be recorded through livery. Frowyk does not deal with the issue in as much detail, but since he was opposed to the principle in relation to joint tenants, and tenants for term of life, it is most likely that he would object also in the other instances.

The readers agree that if a lease for term of life of land held in chief is made by licence, the remainder over in fee, tail or for term of life, the remainderman will have livery with issues, for the king has effectively licensed him to enter already by licensing the lease. If the alienation was made without a license but with a later pardon, there will be livery without issues of the land held of the king. Thus the remainderman sues livery of the land held of the king and *ouster le main* of the land held of other lords. If the tenant held land of the king which descended to the heir and land of others which descended to another as a remainder, then the heir sues livery of the land held of the king.

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78 Keiway, 19 Hen. VII, p.52b, pl.6.
79 Constable, 59.
80 Constable, 60.
and the remainderman has ouster le main of the land held of the other lords. If the remainderman also inherits land held of the king, he will sue livery for that land. Thus even though the king seizes all the land of which his tenant died seised, he will only have the issues of the lands held of him, and he will not always have those.

It is apparent that though the readers agree that the king’s rights to primer seisin are wider than his rights to wardship, his rights to the issues and profits of the lands thus seized more closely approximate those of wardship. Though he can seize all the land of which his tenant died seised, regardless of whether it comes from a different ancestor or descends to a different heir, he cannot keep the profits of the lands in those cases. The burden of recovery, however, lies on the tenant or lord of the land seized. The prerogative right to primer seisin ensured that a large amount of land would pass through the king’s hands and would be allowed to leave only when the king’s officials had securely established the plaintiff’s title to it.

Thus far the readers have dealt only with the issues of land held in chief of the king. Constable goes on to cover the issues of land held as of escheat and he admits that while the king can seize all the lands of which his tenant as of an escheat died seised, the other lords of whom the tenant held can sue to have their lands out of the king’s hands. Constable explains that this is because according to Prerogativa Regis the king will only have the issues of the land where the heir will have livery of all from the king, and against all other claimants the king is bound by the common law. He justifies this according to the construct he gave at the beginning of the discussion of this chapter, in which common law gives the king the right to seize all his tenants’ lands, but no right to their issues. Prerogativa Regis gave him the issues of lands held of him, but had no impact on the lands held of other lords. If the land held of the king is not held in chief,

81 Constable, 60; Frowyk, f.7v. Frowyk adds the point that if the king’s tenant leases land for term of life, remainder in fee and the remainderman dies, his heir of full age, the heir must have an inquisition by writ which finds his title. When the tenant for term of life dies the heir must then have an inquisition virtute officii proving the death.
the heir is bound by common law regarding the issues of all the other lands he holds. Thus although the king will seize everything, he will have no rights to the issues.  

If the king’s tenant died disseised and this is found, the king cannot seize the land, but if the heir is of full age and it is found in the inquisition that he has re-entered upon the land, the king can seize the recovered land held of him. Constable points out that this is not based on the statute, but on common law, for the heir is the king’s tenant in right and must sue livery and perform his services. If the heir recovers the land his ancestor held of others, however, the king has no right to seize it, for his tenant did not die seised. If the tenant did die seised of land held of others, but not of the land held of the king, the king still has no right to seize those lands following the re-entry of the heir, for his tenant did not die seised of land held of him. The same rule applies where the heir entered because of a broken condition or by recovery by formedon or mort d’ancestor. Thus Constable is willing to concede that the king’s rights are somewhat limited in land held as of escheat, where the tenant did not die seised.

This limitation is hardly restrictive, however, given the breadth of the king’s rights, especially as defined by Constable. Constable gives the king the right to primer seisin of all the lands of which his tenant-in-chief died seised, even when they descend to someone other than the heir, and the right to primer seisin again when they finally pass to the heir. He also gives the king the right to primer seisin of lands held of him as of escheat, though he concedes that the king can only take advantage of this right when the deceased tenant’s title was secure. Though Constable is willing to admit that the king has no right to the income from much of the land seized in this way, the simple right to seizure was onerous and intrusive. Frowyk recognizes this and emphasizes the fact that these newly extended rights are not reasonable, but simply increase profits. He freely

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82 Constable, 61-2.
83 Constable, 62.
84 Constable, 62.
85 Constable, 62.
admits that the king has the right to seize lands held of him in chief but makes no attempt to extend his rights beyond this. Frowyk and Constable were, of course, not lecturing in opposition to each other, and we cannot expect to find each responding directly to the argument of the other. Constable is more forward in advocating the extension of the king’s rights than Frowyk is in denying it. This may be partly because it was more likely to be profitable to speak loudly in favour of the king’s coffers than against them, but it is also probable that Frowyk was focusing on the needs of the lecture. He was more concerned to teach the law as he understood it to be, than to speak at length on why current trends were not conformable to that picture.

Though the readers obviously have significant differences of opinion concerning the extent of the king’s right to primer seisin, the discussion of this issue takes up only a small part of their lectures on chapter three of the text. They devote the majority of their time to a consideration of the process to be followed in suing livery or in disputing the king’s right to seize the land. This leads them into a lengthy discussion of the process involved in holding inquisitions, and the implications of the various methods by which inquisitions were held. Their discussions are complex and rather technical, but they are of great importance, for they deal with the king’s title to the land he has seized and the need for such title to be clearly established, so that a plaintiff can challenge it. Both the readings and the year books make clear the law’s desire to find and uphold clear titles, though even the briefest glance at the cases passing through the courts makes it clear that this was often no more than a pious hope. The profession obviously relied upon a strict adherence to the correct procedure to protect titles, and for this reason a thorough understanding of the subject was necessary for practitioners. This part of the readers’ lectures covers material of relevance to both wardship and primer seisin, for the ward who comes of age must follow a similar process to the heir of full age, though he has the added step of proving age.

The king’s right to primer seisin was based on the information given in the
inquisition, as with wardship, though here it relied on the heir being found of full age. The king could seize the land following an inquisition, no matter how the inquisition was called. However, Constable argues that the escheator was able to seize the land of a tenant-in-chief before an inquisition was held. He presents two arguments to support this position; the escheator was allowed to seize the body before the inquisition and since there was need for a rule that the king could not grant land away before inquisition, it was implied that the king was seizing the land before the inquisition. Frowyk takes the opposite view. He argues that the king cannot seize the land, for the king can only seize land by matter of record. If the king seizes before an inquisition is held, any party wronged would be without remedy, for the king's title must appear as a matter of record to which the party can respond. Frowyk agrees with Constable that the statute of 18 Henry VI ordained that the king could not grant a ward before the inquisition, but he interprets this to mean that the king cannot seize the heir before the inquisition, even though at common law the king could seize the body of the heir as he would seize any other chattel. Frowyk does accept that there are some cases in which the king can seize without inquisition, as where one seised of a ward is outlawed in a personal action. In such a case the king can seize the ward without office, but not the lordship. Similarly, if it is a matter of record elsewhere, for example in the records of parliament, that the tenant held the land of the king, the king can seize without an inquisition. In no case, however, he argues, can the king have primer seisin of land held of him in chief without

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86 Frowyk, f.6; Constable, 57.
87 Constable, 46.
89 Again, this is because the wardship is a chattel, while the lordship is not. Frowyk, f.5.
90 Frowyk, f.5. Frowyk gives various other examples which are mainly variations on this theme. He also argues that where the king seizes land before an inquisition the heir does not have to sue livery at all, but can just enter on the land.
an inquisition.\textsuperscript{91}

If there are ambiguities in the title found by the inquisition, the king will get the benefit of the doubt, as part of his procedural prerogative. We have already seen that if the inquisition finds that the tenant held of the king but does not expressly say that the tenure was in chief, the king will seize the land. Similarly, if the inquisition does not find of whom and how the land was held, or by what services, the king will seize.\textsuperscript{92} If an inquisition in one county found that a tenant died, his heir of full age, and an inquisition in another county found that the same tenant died seised of land held of the king, but did not specify an heir, the king could seize the land in the second inquisition, based on the information in the first.\textsuperscript{93} It was possible that the inquisition would return a finding which was at odds with other records. In this case the record would take precedence over the inquisition. Thus if the inquisition found that land was held of a certain lord, but it was recorded in chancery that the land was held of the king, then the king got primer seisin.\textsuperscript{94} If the inquisition found that the king’s tenant was attainted of treason or felony and there was no such attainder, the inquisition was void.\textsuperscript{95} It was also possible that the inquisition would not prove enough of a title for the king to seize the lands.\textsuperscript{96}

If the inquisition was mistaken, plaintiffs were given a month after the inquisition in which to traverse it.\textsuperscript{97} The king was unable to grant land away before the inquisition, or during that month. If a decision was found for the plaintiff, he would have the land out of the king’s hands. There were many different reasons for traversing an inquisition, and

\textsuperscript{91}Frowyk, f.5.
\textsuperscript{92}Frowyk, f.5. If no tenure is found the king will seize, but Frowyk argues that this is “vn nude et single title pur le Roy.” This kind of seizure was fairly common, see for example C/43/1/48 (21 Henry VII) where the king seized the land of which John Bromyche died seised. The inquisition found that he died in January 1485 and that his land was worth £8, but they did not know of whom or how it was held. His son John came to chancery arguing that the land was held of George, duke of Clarence, in socage.
\textsuperscript{93}Frowyk, f.5.
\textsuperscript{94}Frowyk, f.5.
\textsuperscript{95}Frowyk, f.5.
\textsuperscript{96}In this case the king had to sue scire facias. This is dealt with below, pp.136-139.
\textsuperscript{97}By the statute of 18 Hen. VI ca. 6, Stat. Realm 2: 306-7. In 1509 this was extended to three months because, according to Caryll, escheators were waiting until the law courts were on vacation to return their inquisitions so that plaintiffs could not bring their traverse within the specified month. Keilway, Pas. 7 Hen. VIII, p. 179b, pl.15.
the handling of the traverse varied depending on which part of the inquisition the plaintiff was challenging. If the inquisition was true in everything except in naming the heir, then the claimants to the land would interplead. 98 If the inquisition was false in all but the tenure, then on the traverse the aggrieved person would have livery. If an inquisition found that a man died seised of land held of the king and another inquisition found that the heir was dead, then there were two inquisitions which entitled the king. If an heir had a true title to the land he had to traverse both inquisitions. 99

If A was attainted of felony or treason and it was found by inquisition that he was seised of B’s land, then B could not traverse, for the king had the franktenement by two matters of record, the attainder and the inquisition. In this case B could have only a petition of grace. If, on the other hand, A simply died and it was found that he was seised of land which was actually held by B, and B did not hold the land of the king, B would go to chancery and traverse the inquisition. In his traverse he would recite the inquisition and demonstrate that such a person had enfeoffed him of the land, that it was not held of the king, and that A did not die seised of any part of it. 100 If B was successful, he would have a writ of ouster le main with issues. The law was the same if the inquisition found that the tenant died seised of land held of the king when in fact he held it of another lord, and his heir traversed the inquisition. 101 If it was found that the king’s tenant died seised

98 Constable, 70. In interpleader the claimants would accept the finding of the inquisition concerning the tenure of the land and plead between them to find which of them was the correct heir. This applied when different inquisitions found an elder and a younger brother to be heir. Frowyk, f.8. The claimants had to wait until they were of full age to interplead. YB Pas. 1 Hen. VII, p.14, pl. 1; Keilway Pas. 7 Hen. VIII, p. 177, pl. 4. Hussey thought that when one heir reached full age he could sue livery of the land found to descend to him, and when the other reached full age they would interplead. The reporter queries this argument (YB Pas. 8 Hen. VII, p.11, pl.2) and it was thought that the successful claimant would need a commission to find him heir in the counties where his opponent had previously been found heir, for “he will not have livery without an inquisition found for him” (YB Pas. 1 Hen. VII, p.14, pl.1). Interpleader was only to try nearness of blood, so if two inquisitions returned different verdicts on tenure, with one finding that land was held in general tail, so that a daughter was heir, while another returned that the land was held in tail male so that a nephew was heir, the claimants would not interplead. Keilway, Trin. 23 Hen. VII, p.94, pl.10.

99 Constable, 72-73. If only one inquisition was returned when they traversed, Constable argues that they should have judgment on that single traverse and the second inquisition would not interfere with that.

100 Constable, 70.

101 Constable, 71.
of land which in fact B had purchased, B could traverse the inquisition, but he would not have livery until he had paid a fine for the alienation or had a pardon for it. If B could show a licence or a pardon for the alienation he would have the land immediately. All of these actions lie on an inquisition taken either *virtute officii* or *virtute brevis*. If, however, the person traversing wished to sue as heir and the land was held of the king, he must still have an inquisition found for him *virtute brevis* before he could sue livery.\(^{102}\)

If it was found by the inquisition that the heir was within age when he was in fact of full age, he could not traverse the office, for the office did not deny his title to the land.\(^{103}\) If the inquisition found that the land was held by a greater tenure than was the case, or by a higher rent, or in fee simple when it was actually fee tail, the tenant would traverse and have a writ of *melius inquirendum* to establish the truth. If, for example, it was found that the heir held by knight’s service, then he could traverse that in fact he held only by homage and fealty and not by knight’s service. If the court found for him, then he would have his lands and the issues and he would not have to start again from the beginning with a new writ of *diem clausit extremum*.\(^{104}\) If the case was not found for the plaintiff then there was nothing more he could do, and he must sue livery on the original inquisition.\(^{105}\)

According to Frowyk, when the king and the plaintiff were at issue on the traverse the record was sent into king’s bench and the issue was tried there.\(^{106}\) Constable agrees with this, and notes that the judgment will be given in king’s bench rather than sending the case back to chancery for judgment.\(^{107}\) The judges in king’s bench were unable to grant livery, however, and so they would have to send the record back to chancery with

\(^{102}\) Constable, 70.
\(^{103}\) Constable, 73. The heir had no remedy in this situation and he would have to wait until he was of full age according to the inquisition.
\(^{104}\) Constable, 71. The same applies if the court finds that the land is held in serjeancy or barony, or any other tenure which implies homage and fealty or just homage.
\(^{105}\) Constable, 73.
\(^{106}\) Frowyk, f.9.
\(^{107}\) Constable, 84.
the judgment so that the heir could have his livery there.  

Frowyk notes that a traverse on an inquisition found *virtute officii* did not need to be sent to king's bench, but could be tried in the Exchequer by the barons.  

There were limits to the range of the traverse, for it could only be used where the inquisition was mistaken on facts. If it happened that B was disseised of land held of the king and the disseisor died without an heir, then B could not traverse, because the inquisition was true in its finding that the disseisor was a tenant of the king and that he died without an heir. In this case B must resort to a *monstrans de droit* or a petition.  

There was some confusion about the difference between the various actions in this period, and they were discussed in the year books with some regularity. In 1488 Kebell argued in exchequer chamber that in effect "every traverse is a *monstrans de droit* and more than that, for he shows his title and traverses the king's title, and in a *monstrans* he confesses the office and shows his right over." Some discussion seems to have ensued, in which it was argued that a *monstrans de droit* lay when the king was entitled by matter in fact and the party had a right to the land, while petition lay when the king was entitled by matter of record, but the discussion was not conclusive. In the following year the judges were back in the exchequer chamber to discuss the case of James Ormond. He was attainted during the reign of Richard III and lost his lands, but his heir claimed that the attainder was reversed by act of parliament and James was restored to his lands. All the serjeants believed that the heir should have petition and not *monstrans de droit*, because the king was entitled by matter of record. The judges agreed in principle, but argued that because in this case the heir's claim was by an act of parliament, a record as high as the king's, the plaintiff would not have petition, but neither would he have

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108 Keilway, Trin. 23 Hen. VII, p.94b, pl.10.
109 Frowyk, f.9.
110 Constable, 74.
111 Hemmant, *Select Cases in Exchequer Chamber* 2: 133.
112 Ibid.
traverse.\textsuperscript{113}

Frowyk does not have a great deal to say about the *monstrans de droit*. He agrees with Kebell that it is not very different from a traverse, except that the *monstrans de droit* confirms the king's title while the traverse voids it.\textsuperscript{114} He argues, however, that *monstrans de droit* lies where the king was entitled by a matter of record, and the plaintiff has a matter of record which proves his title to the land. In this situation the petitioner must send a bill to the king displaying his title and the king's title and asking for a commission to investigate.\textsuperscript{115} If the plaintiff is successful he will have the lands out of the king's hands, but if the title found for him is not the one he originally entered, the king will keep the issues of the land.\textsuperscript{116}

Frowyk also notes that if a plaintiff wishes to use the *monstrans de droit* he must have been expelled from the land by the inquisition. Thus if the plaintiff had a title to the land but was not on the land at the time of the inquisition, his only remedy was by petition.\textsuperscript{117} If the king's tenant was disseised of land held of the king, and the inquisition found that the disseisor died seised, the disseisee has no remedy until the heir sues livery, for a writ of right does not lie against the guardian. If, however, the heir had entered before the inquisition, then the disseisee could have *monstrans de droit* against the guardian.\textsuperscript{118} Constable has little to add, beyond the fact that the remedy applies whether the tenant was found to hold in fee simple, fee tail or even for term of years and whether the plaintiff held in any or all of those tenures.\textsuperscript{119}

Neither of the readers has much to say about the petition of right. This action lies where the plaintiff has a title to the land but is out of possession. If a disseisor enfeoffs

\textsuperscript{113} YB Pas. 4 Hen. VII, p.7, pl. 6.
\textsuperscript{114} Frowyk, f.9-9v.
\textsuperscript{115} He notes that before the statute of 14 Edward III the king's attorney could delay the action indefinitely by seeking writs to search the treasury for information on the king's title, but that statute limited him to four writs of search.
\textsuperscript{116} Frowyk, f.8v-9.
\textsuperscript{117} Frowyk, f.9v.
\textsuperscript{118} Frowyk, f.9v.
\textsuperscript{119} Constable, 79.
the king by a deed which was enrolled, the disseisee has no remedy but by petition.\textsuperscript{120} Constable notes that a petition of right can not be pursued in chancery, but only by commission. It applies equally to land and chattels and to any kind of tenure.\textsuperscript{121}

The readers thus made some attempt to address the question of process, but the rules were obviously still unclear. The state of knowledge of the profession was tested by a case in the first year of Henry VIII. An inquisition found that William Oldale was attainted of treason in 31 Henry VI and that by force of the attainder Henry VI seized his manor of Dytton Valence and granted it to Jasper, earl of Pembroke, his uterine half-brother. The inquisition further found that all the grants made to Jasper were confirmed by his nephew, Henry VII, in his first parliament. A further act in the parliament of 11 Henry VII ordained that when Jasper died all his lands should go to Prince Henry, who was then duke of York, and if Prince Arthur died, so that Henry became prince of Wales, that the land should then go to Henry VII. Arthur died, so when Jasper died the land descended to Henry VII, but the inquisition found that Sir William Capell intruded on his possession.\textsuperscript{122} Humphrey Conyngeby and William Mallom came to chancery and "began a plea according to the form of a traverse."\textsuperscript{123} They argued that it was true that Oldale was attainted in 31 Henry VI, and that the land was granted to Jasper, but they added that the attainder was reversed in 33 Henry VI and Oldale was restored to his lands by another act of parliament "by force of which he was seised of the said manor as of his ancient right."\textsuperscript{124} Oldale then died and the land descended to one Gorge and he entered and was seised, until Jasper put him out by virtue of the act of 1 Henry VII. By another act of 4 Henry VII that act was reversed and Gorge entered the land again. The plaintiffs accept that the act of 11 Henry VII gave the remainder of all the land held by Jasper to Henry VII, but argue that there was a proviso which excepted this parcel of land from the

\begin{thebibliography}{99}
\bibitem\textsuperscript{120} Frowyk, f. 9v
\bibitem\textsuperscript{121} Constable, 79.
\bibitem\textsuperscript{122} Keilway, Mich. 1 Hen. VIII, p.154, pl.5.
\bibitem\textsuperscript{123} Ibid., p.154b. The record of the case in the chancery is C43/2/35.
\bibitem\textsuperscript{124} Ibid.
\end{thebibliography}
act. They protested that “everything which would serve for the said King Henry VII, that is, the attainder of W. Oldale, and the grant made to the earl of Pembroke by King Henry VI and also the confirmation of the said grant in 1 Henry VII and also the conveyance of the manor to the said late King Henry VII by the said act of 11 [Henry VII] were found in the inquisition, and all those things which would help the said Conyngesby and Mallom were omitted.”\textsuperscript{125} They concluded that Gorge had conveyed the land to Conyngesby and Mallom and others and they were the only survivors and they prayed that they would be restored with issues.

The case provided the judges with much food for thought. Boteler concludes that the inquisition relies on the act of 11 Henry VII, but since it does not mention the proviso in that act, the inquisition is flawed and is not enough to entitle the king. He also believes that the plaintiffs should have monstrans de droit, because “where a man is put out of possession by reason of an act of attainder of treason and by reason of an inquisition found accordingly and afterwards such an attainder is reversed by another act and the party is restored, in this case he will be helped by way of a monstrans de son droit, because the act of restitution is of as high a nature as the act of attainder and thus in the case here.”\textsuperscript{126} Fairfax and Grevell agree with Boteler and rehearse various other cases in which the plaintiff would have monstrans de droit, concluding that it lay in those cases where the plaintiff was in the land by an ancient right and actually in possession before the inquisition which entitled the king.\textsuperscript{127}

Not all of the justices agreed, however. Brudenell argued that the plaintiffs should be put to their petition, because they were not mentioned in the inquisition and so could not sue monstrans de droit. The other justices were quick to deny this and pointed out that Conyngesby and Mallom were the freeholders of the manor and were harmed by

\textsuperscript{125} Ibid.
\textsuperscript{126} Ibid., p.155.
\textsuperscript{127} Ibid., p.155b.
the inquisition, and this was enough to admit them to the *monstrans de droit*.\(^\text{128}\)

Brudenell was unwilling to let the point go, and he reiterated his belief that the plaintiffs could only have petition because the inquisition did not find anything which would support their claim.\(^\text{129}\) Rede entered into the discussion to support Brudenell. He made what is probably the clearest statement about the difference between the various actions in the whole discussion. It begins by asserting what was commonly accepted; the king cannot have possession of any land except by matter of record. Therefore “if a common person in this case had title to the land, or to have rent out of the land, and has no matter of record proving his title, he will never have *monstrans de droit* ... but is put to his petition ... But if the one title is of record as well as the king’s title, then he will have *monstrans de droit*.”\(^\text{130}\) He concludes, however, with Brudenell, that in this case the plaintiff must sue a petition and he gives the same reason.\(^\text{131}\) Fyneux also agrees, pointing out that the proviso in the statute of 11 Henry VII is the central point of their plea, and “because this clause is so general, and it in no way helps or improves the inquisition, the *monstrans de droit* ... does not lie, and so they have no other remedy but only by a petition.”\(^\text{132}\) Fyneux also points out the biggest difference between a petition

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\(^{128}\) Ibid.

\(^{129}\) Ibid., p.156b. Brudenell entered a long digression which culminated in a review of the case of the earl of Kent and the attainder of his younger brother. He covered it in hypothetical terms, but the other justices recognized the case and joined the discussion. The earl of Kent’s younger brother was attainted of treason and died in his brother’s lifetime, leaving a son. The earl of Kent held land in fee tail and died without issue of his body, so that his nephew was heir to the land. His nephew sued a writ of *mandamus*, which found all this. The justices said that the nephew could sue livery on this because the earl had survived his brother and with his death the descent had passed directly to his nephew. If the younger brother had survived and had possession of the land in tail, his son would have been put to his petition for the land, since it would have been affected by the attainder. Keilway queries this conclusion, however, and believes that the nephew would have *monstrans de droit* if the tail was found. Ibid., 156-56b. A similar case arose in Henry VII’s time, and the result was what we might expect of that king. John de la Pole, earl of Lincoln, was attainted after fighting for Lambert Simnel during the lifetime of his father, the duke of Suffolk. After the death of the duke, the younger son, Edmund was allotted certain lands as though his brother had never been attainted, but only after the payment of £5,000 and the surrender of the dukedom. He was given the title of earl of Suffolk. Lander, “Bonds, Coercion and Fear,” 275. Thus Edmund was not completely destroyed by his brother’s attainder, but he had to pay a substantial sum to be allowed to rescue the family fortunes. He was attainted himself in 1504, and this attainder was never reversed.

\(^{130}\) Ibid. He expands on this at some length on p.157.

\(^{131}\) Ibid., p.157b.

\(^{132}\) Ibid., pp157b-158.
and a *monstrans de droit* or traverse. He notes that if the king grants a petition the party does not need any kind of judgment, because he did not choose to pursue the course of the common law, but turned to the king's authority. For the same reason, if the king denies his request, he has no remedy. Fyneux, along with the other justices, wanders widely over the course of his discussion, and concludes with the admission that "these cases do not have much to do with the matter, but I have shown them *pur cause de erudition*, but as for the principal case, I am clear in my opinion that the parties are put to their petition." Thus the justices reached agreement on the case at hand, and on the use of the *monstrans de droit* and petition. *Monstrans de droit* lay where the plaintiff had title by as high a record as the king, while petition was for those whose title was "a bare surmise or bare matter of fact, which is a long and tedious suit." Unfavourable as this was for their case, Conyngesby and Mallom were fortunate in bringing their complaint in 1509. Rather than being put to the uncertainty of petition, Caryll notes that the Chancellor, who had been present during all the discussion, "quietly gave judgment in the chancery that the king's hands should be removed [from the land]. And this was said to be against law, but it was said that he did this because the inquisition was found by the false subtlety of Sir Richard Empson and Dudley in the time of the other king, who were his high and cruel approvers."

In addition to all the actions that could be brought to challenge the king's title to the land, there was a further action called *scire facias*. This was a writ based on a record, sent to the sheriff. It required him to warn the party to whom it was directed to show cause why the person bringing it should not have the benefit of the record. It could be used in a variety of circumstances, such as when an inquisition gave the king a reason to seize land which was held by someone other than the deceased tenant. Frowyk argues

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133 Ibid., p.158.
134 Ibid., p.158b. Caryll reports on the use of the *monstrans de droit* again in Pas. 7 Hen. VIII. pp.177b-178, pl.9, but the comments there are simply a recapitulation of Rede's arguments in this case.
135 Keilway, Pas. 7 Hen. VIII, p.178, pl. 10 per Rede. This also is a recapitulation of the earlier case.
136 Ibid. The report gives the names of Empson and Audeley, but this must be a mistake for Dudley.
that in every case where a common person would have to sue an action to regain his land, the king could not seize simply on the basis of an inquisition, but must have a *scire facias*.

Thus he points out that the statute of Lincoln provided that when the heir had already sued land out of the hands of the king and a new title was found for the king, the king could not simply re-seize the land, but had to sue a *scire facias*.

Similarly, one who tendered a traverse must traverse all the inquisitions found before his tender, but not one found during it, for that would cause infinite delay. If the traverser was successful, then *scire facias* would issue for the king on the inquisition found during the traverse.

*Scire facias* was not only available to the king, however, for in cases of petition or traverse, if the king had granted out the lands before the petition or traverse, the plaintiff must sue *scire facias* against the grantee or patentee.

It was not always clear where the king was obliged to sue this writ, however, for his rights and obligations varied from case to case and the profession did not always agree on which circumstances obliged the king in which way. The question of the rules governing *scire facias* arose in Stonor's Case, and most of the viewpoints surrounding the question were presented in the course of the discussion. Stonor had died seised of an advowson held of the king in chief and the use of lands held of the king and of the prior of St. Swithins in socage.

It was questioned whether, if the king had the right to the wardship of Stonor's heir, he could simply seize the land enfeoffed to use and the body, or whether he had to sue *scire facias* against the feoffee. Frowyk raised this issue at an early point, making the same argument as in his reading, that the king could not simply enter in a situation where a common person would have to sue.

Though, as we have seen, Frowyk did not believe that the king was entitled to the wardship in this case, he

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137 Frowyk, f.5v.
138 Frowyk, f.4v.
139 Frowyk, f.9.
140 Frowyk, f.9.
141 See above chapter two. p. 88 for a fuller description of the case.
argued that even if he did have the benefit of the statute of 1489, the only remedy ordained by the statute was a writ of ward; thus if the king wanted to have the benefit of the statute, he should follow its rule and sue either writ of ward or scire facias. In the longer discussion of the case, Vavisour, Danvers and Segiswyk agreed with Frowyk, the latter adding that “it will be against reason to oust without process the feoffees who have franktenement and inheritance in the land.” Boteler also took this side, citing the provisions of the text and the right of the feoffees to challenge the king’s seizure.

There was substantial opposition to this position, however, and a number of the justices felt that the king could seize in this instance without a scire facias, most of them arguing that the king was not defeating the tenant’s right forever. Kingsmill and Wode believed that the king should seize the land, because, as Kingsmill put it “by this seizure no franktenement is vested out of the feoffee’s hand, for the king only obtains a chattel.” Mordaunt, the king’s serjeant, agreed with Kingsmill, pointing out that “the feoffees shall be put to their petition or to traverse the office; for it is not like the case of waste or cessavit, for there the king is defeating the interest of the tenant forever.”

Kebell joined in on their side, and he pointed out that the feoffee was in fact in a better position against the king than he would be against another lord, for he could not traverse a seizure by a lord. Kebell also challenged the idea that the king must sue scire facias in those instances where a common person would be put to his action, and cited examples where the rule did not hold.

Rede joined in to argue for seizure also, presenting much the same argument; the king sought only the wardship of the land, which was merely a chattel, and the feoffee suffers no loss, for if he can prove that a will was made, he can

143 Ibid.
144 Hemmatt, Select Cases in Exchequer Chamber, 2: 163.
145 Ibid.
146 Ibid., 164.
147 Ibid., 166. The two most common examples given in the course of this discussion were where a tenant of the king made a lease of land and an inquisition found that the tenant had committed waste, or where the tenant had ceased to pay his rent (cessavit). In both cases the king had to sue scire facias against the tenant before he could re-seize the land.
148 Ibid., 169.
have the land back.  

Bryan then joined the discussion and changed its direction somewhat. He argued that in this case the feoffee could not traverse the inquisition, for everything the inquisition said was true. If the inquisition had specifically said that the tenant did not make a will, when in fact he did, then it would be possible to traverse, but the inquisition did not mention a will at all.  

Bryan also believed that the inquisition was void because of the amount of information missing from it, however, and so he argued that the king could not sue scire facias on a void inquisition. Fyneux was quick to disagree with Bryan on both issues. He did not accept that the inquisition was void and argued that while the tenants could not traverse the inquisition in scire facias, they could still traverse it in chancery. He also believed that the king could seize the land and agreed with Kebell that there were many situations in which the king could seize when another lord would be put to his action.

The dispute visible in Stonor's Case appears several times in the year books, in different guises. The legal profession was divided over who should be given greater consideration when a title was in dispute. The dispute could be between two tenants, or between a tenant and the king. Disputes between two tenants appear in the year books early in Henry VII's reign. Thus in 1 Henry VII a plaintiff came to traverse an inquisition and after he had tendered his traverse but before any judgment the king gave livery to the heir. It was asked whether such livery was good or not, and the answer was that it was good, because "the one who has right can sue against the heir: and if the land is re-seized, [pending the traverse] the king will have the rent, and the issues etc. and if the traverse was found against him who tendered the traverse, this is a wrong against the heir."  

The same point arose in another case in the same year, and though Catesby and

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149 Ibid., 172.
150 Ibid., 173.
151 Ibid., 175. In a later case, however, Fyneux stated that whenever a common person was put to his action the king must sue scire facias. Keilway, Mich. 1 Hen. VIII, p.158b, pl.5.
152 Because the heir had lost the issues to the king. YB Hil. 1 Hen. VII, p.12, pl.24.
Suliard objected that the traverser had the right to have his case heard, the other justices all agreed that if the heir sought livery the king had no right to deny it. Again, they pointed out that the plaintiff could still sue the heir for his right. The same principle can be seen in Hussey's argument concerning interpleading. He believes that though the claimants cannot interplead until both are of full age, the first claimant to reach his majority may sue livery of his land rather than having to wait for the younger. Thus the general feeling was that the heir found by the regular course of the law should be allowed to sue livery of his land, whatever the claim against him. Any plaintiff coming to dispute the heir's claim was immediately at a disadvantage, but it was believed that if he had a genuine title to the land, he could prove his suit through the courts.

On occasion the plaintiff might be the king. Thus in the chancery in 4 Henry VII it was found that land had been alienated without licence of the king, and the feoffee came and wanted to pay his fine and have livery of the land. The king's attorney asserted that the land was enfeoffed to the use of the king, and asked that it should remain in his hands. It was felt that the king could not have remedy in this way, and the chancellor directed that the feoffee should have his livery, because the claim made for the king was only "a bare surmise," which would not delay the tenant in his right. It was generally accepted that if there was matter of record in the court which entitled the king, then the decision would be otherwise, and the serjeants took the opportunity to note that if the king had twenty titles the plaintiff would have to traverse every one of them, but since that was not the case, he had his livery.

That this whole question was of concern to the legal community at the time is clear from the chancellor’s comment that "this matter is a matter which touches the

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153 YB Trin. 1 Hen. VII, p.27-28, pl.5. It was agreed that if the heir delayed in suing livery the king had the right to the issues in the meantime, for such delay was the fault of the heir, but as soon as the heir who had proved age came to seek his land, the king had to give livery.
154 See above, p.129, n. 98.
155 YB Pas. 8 Hen. VII, p.11, pl.2.
156 YB Hil. 4 Hen. VII, p.5, pl. 10.
Community of the Realm in time to come,” as he made a stand for the tenant’s title against the king’s challenge. Any development which threatened an heir’s right to livery of his lands would shake the entire landholding system. The suggestion that the king should continue to hold lands which were in any kind of dispute until that dispute was resolved clearly did not appeal to the majority of the legal profession. Its appeal for the king was obvious; he would retain the income from the land until the dispute was settled, and he could require a thorough examination of the claims of both parties and their alleged titles to the land. Once the land was out of his hands, not only did he lose the immediate financial benefit, but it was always possible that the claimants would settle their dispute through arbitration and would thus keep their landholding arrangements obscure. The lawyers, however, clearly felt that the king could not refuse livery of his land to the heir named by the due process of law, regardless of any other claims on the land. Though their attitude put any particular claimant at a disadvantage, in general terms it upheld the tenant’s right to his land against the king’s interest in retaining it.

The number of reported cases which deal with this question in the early years of Henry VII’s reign suggests that there was more seizing and traversing going on than usual. This was probably the result of Henry’s more active fiscal policy, and it forced the courts to deal with a basic issue involved in both processes. The simple fact that the cases were reported indicates that the legal profession was not quite sure how to balance the rights of the respective parties, but the point seems to have been settled quite quickly. The case of 4 Henry VII is the last to deal with the issue directly, while Hussey’s argument in 8 Henry VII assumes the heir’s right to sue livery. The decision was overwhelmingly in favour of following the natural course of the law, both in assuming that the law had found the correct heir unless otherwise proved and in assuming that the law would prove otherwise if it had been mistaken.

The king was in a different position from any other plaintiff. He had no right to

157 Ibid.
traverse an inquisition if it found against him. Where the king had a better title than was found for him in the inquisition, there he could have a *melius inquirendum*, but only when he could produce a matter of record which displayed his better title. If the *melius inquirendum* found against the king he had no further recourse, but was bound to recognize its findings. The king, however, had enormous advantages in pleading and procedure and he had the whole machinery of the exchequer and chancery working to protect his rights. His escheators seized not only the large amounts of land to which he was entitled under the prerogative, but also those whose title appeared ambiguous in the inquisition. A determined exploitation of the king’s procedural prerogatives as well as his substantive rights meant that the royal officials could seize large amounts of land to which the king had no rights, as well as those which were properly his.

The new concern in the year books and in the readings for the niceties of procedure suggests that this was the focus of Henry’s attack. Most of the substantive rights he was claiming were known under his predecessor, but he was innovating in his exploitation of procedure. It seems that the profession was caught by surprise by this new tactic, and they had a two-fold response. First, as we have seen, they agreed that the rights of the heir by law were protected and that the ultimate decision regarding title was to be made according to the rules of the law. They then moved to elucidate the rules of procedure, to clear away confusion and ambiguity and ensure that both sides would follow the same rules. It took some time to achieve that end, and in the meantime the escheators were seizing land to which the king did not have title. These seizures relied on the findings of the inquisition juries, and one of the charges most commonly brought against Empson and Dudley was that of intimidating juries to find in the king’s favour. There is no doubt that the king’s “high and cruel approvers” were over-zealous on

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158 This was agreed in YB Mich. 4 Hen. VII, p.16, pl.1. Thus if the inquisition found a title for the king by matter in fact, when in reality he had a right by matter of record, the king could seek *melius inquirendum*.
161 Keilway, Pas. 7 Hen. VIII, p.178, pl. 10.
occasion, and that this was recognized by their contemporaries, as Conyngesby and Mallom discovered to their benefit.\textsuperscript{162} As Elton points out, however, it seems more likely that juries were more commonly bemused by the manner in which the landed classes had played about with their properties than constrained by threats to favour the Crown. The general state of the land law and the evasive ingenuity to which it had given rise, the particular policy of Henry VII to recover the Crown's rights over tenants-in-chief, the insufficiency of inquest juries who, even when they were not got at, could hardly always be aware of the whole jungle of facts - such points readily explain the feelings of men over whom the king had asserted rights they may not have been aware existed when they acquired the lands.\textsuperscript{163}

The simple fact that men intimately involved with the king's policy, such as Dudley and Bray, could fall foul of the commissions strongly indicates that the commissions had no individual bias; they simply swept through an area seizing whatever land they could for the king. As Guy puts it, "Henry's technique was to shoot first and ask questions afterwards."\textsuperscript{164}

That the king's aim was not simply to grab as much land as possible is apparent from the fact that Henry did in fact stop to ask questions. The first step in opposing a seizure was a traverse in chancery, as we have seen. Only about seventy chancery traverses have survived for Henry's reign, and over sixty of these are clustered around the years 19 - 23 Henry VII (1503-1507).\textsuperscript{165} Many of these traverses were probably a response to the proclamation of August 19, 1504, in which Henry stated that he had "a speciall regard, mynde and desire in noo manner wyse to doo any wronge or to be indebted to any personne ... ner to haue any mannys landes, goodes ner catalles otherwyse than good reason and conscience woll require, or that by the due order and cours of his lawes

\textsuperscript{162} Ibid. Above, p.136.
\textsuperscript{164} Guy, Tudor England, 69.
\textsuperscript{165} See Chancery Common Law Pleadings (C43, C44), List and Index Society vol. 67 (London: Private distribution, 1971), 3, for a brief description.
hath be adiuged.” 166 Anyone who felt that he had a claim on the king, either over a debt or a wrongful invasion of property rights, was to present his complaint within the next two years. 167 Such complaints were taken seriously and “in twenty one cases the Crown conceded the truth of the traverse without delay, and in five cases it admitted, without equivocation, that the inquest was ‘feigned’. ” 168 The king’s proclamation makes it clear that there had been some injustice, while the response to the proclamation suggests that tenants were unwilling to turn to the law without explicit encouragement from above, probably because they were intimidated by the activities of the commissioners. Nevertheless, it appears that plaintiffs who did bring a traverse to chancery could have a reasonable expectation that they would recover their lands.

It is a reasonable suspicion that these plaintiffs were successful because they acted under the auspices of the king’s proclamation and thus at a time when the king was looking to be merciful. The cases concerning the prerogative coming to the court of king’s bench suggest that this is not true. In all the cases in the reign of Henry VII, it is rare to find one where the plaintiff failed to recover his lands. Since almost every tenant who challenged the king’s seizure of his land in the court of king’s bench succeeded, it seems that either the court was heavily biased in favour of the plaintiffs, which is unlikely, or that the king was regularly seizing land to which he was not entitled, most likely because of confusion over title. It is probable that the king did not expect to be able to retain land seized in such a way, but the tenant’s recovery in king’s bench or in chancery meant that the tenure of the land was then made a matter of record. The king could not lose in this situation; either the tenant sought the return of his lands and produced evidence of his claim, in which case the king got the evidence on tenure that he was seeking, or the tenant did not come forward and the king continued to hold the land.

166 C66/594 m.27d, quoted in Elton, “Henry VII: A Restatement,” 70.
167 Ibid., 70–71. Elton presents this proclamation as proof against the argument that Henry’s will, which required that his executors should recompense anyone who had suffered from his financial exactions, is evidence of remorse on Henry’s part over the harshness of his fiscal policies.
168 Guy, Tudor England, 68.
The seizure of lands was not his primary aim, but for those whose titles were dubious, the prospect of challenging the king in court must have been intimidating, and the strict legality of his procedure of little comfort. Dudley’s advice in the *Tree of Commonwealth* that “subiectes neuer be lettyd or interruptyd by [the king’s] ... commaundymentes to his iudges or other officers, to haue the straighte course of his lawes, Beit traverse, tryall, processe, iudgement, sewing of lyuery or oyerwise,” seems to have been a reflection of Henry VII’s practice rather than an indictment against it.169

When the inquisition was carried out and no plaintiff came to traverse its findings the king held the land of which his deceased tenant had died seised until the heir came to sue livery. The heir had to make his homage before he could have livery, or he must have a license to free him from this obligation, and until he had one or the other he would not have livery.170 When he did sue livery he had to ensure that it was done properly, or it would be void. Thus the inquisition must have been held on a writ or commission171 and it must have found correctly, for there were many rules governing the holding of inquisitions. The penalty for a mistake could be high if, for example, the heir sued livery and it was later discovered that the deceased tenant died seised of more than was named in the inquisition.172 The king could then reseize the land and the heir would be left without remedy.173 The inquisition must also have been held on the correct writ, not *devenerunt* when it should have been *mandamus*, for example. If that happened the heir had to sue a new writ explaining the misuse of the first writ and enquiring as though the

170 Constable, 63. Constable goes on to describe the process involved in doing homage and the various administrative stages, 63-64. Frowyk, f.6v, gives a similar description.
171 Frowyk believes that the heir cannot sue livery on a general commission but he can do so on a special commission (f.6). He also discusses commissions on concealed lands. This commission issues after the heir has sued livery, and if it discovers concealed lands the king will have *a scire facias* against the tenant. If the king reseises the land the tenant has no remedy. There is also a writ of concealed lands, but this is only granted when there is a matter of record in chancery proving the concealment. Frowyk, f. 6-6v.
172 Constable, 64.
173 Frowyk, f.6, f.7v. He refers to a case of 44 E3 25 where the heir omitted an advowson in gross from his livery and the king reseized. Frowyk, f.7v.
first writ had not been issued.\footnote{Constable, 64-65. See introduction for a description of the main writs concerned. Constable, 41-42; Frowyk, f.6. If the escheator held the inquisition on the wrong writ then the inquisition was considered to be \textit{virtute officii}, for the escheator had the right to hold an inquisition on his own authority. The heir would still have to have an inquisition \textit{virtute brevis} before he could have livery. YB Mich 9 Hen. VII, pp.8-9, pl.5. cf Keilway, Mich 11 Hen. VIII, pp.189b-199, pl.1. Keilway devotes this part of his reports to covering the various writs used in inquisitions and the rules governing them. Ibid., 198b-202.}

Assuming that the tenant had sued the correct writ, the inquisition could only deal with the issues authorized by its writ. For example, the writ of \textit{diem clausit extremum} allowed the inquisition to find what lands and tenements the deceased tenant held of the king, by what services, how much they were worth, who the heir was and how old he or she was at the time of death. If it returned any more information than that it was void.\footnote{YB Mich. 15 Edw. IV, p.13, pl.17.} If there was information missing from the inquisition it was possible to have a commission to enquire further, but only if the new information agreed with that found in the inquisition. Thus in 2 Henry VII William Highford sought a commission to enquire further after the inquisition on his brother’s lands. The inquisition found that his brother died seised of land in chief held of the king and that he had three daughters. William asserted that part of the lands were actually held in fee tail and that he was the heir to those lands and sought a commission to prove his title. The court was unanimous that he could not have such a commission, for “he had his opportunity to show his title and interest before the Escheator when he was sitting upon the inquisition, whereby it was possible to find both the title for his heirs male and the other manors for his nieces.”\footnote{Hemmant, \textit{Select Cases in Exchequer Chamber} 2: 128. Kebell also refers to this decision in YB Mich. 4 Hen. VII, p.16, pl.1.}

Thus, once again, the judges seem to oppose any procedural tactics that would delay the livery of land to the heirs established by law.

The judges were generally reluctant to grant a new commission in such situations, but they recognized that on occasion that might mean that the king lost his right.\footnote{Of course the plaintiff could traverse the inquisition, or use one of the other methods outlined above.} Vavisour raised this issue in 4 Henry VII, and asked the other justices how the king
would have remedy, if, for example, an inquisition returned that the deceased did not die seised, when in fact he did. Fairfax promptly responded that the king would enter and the heir would have no remedy. His answer seems to have revealed the division among the justices. Vavisour simply commented that “that seems amazing,” but Kebell was more direct, remarking that “you and your company will say anything for your fee from the king.”

The readers agree that the heir must also sue livery of all his land at once and not in pieces, even if the land was scattered through various counties, and if he did not do this, or if he omitted any piece of land, the livery was void. If, however, the heir had part of his inheritance through his mother and part through his father by different inquisitions, he could sue livery as heir to his mother and heir to his father separately on those inquisitions. Constable argues that if the heir’s father was tenant by curtesy of his mother’s land and following the death of the father all the land descended to the heir, the heir had to sue livery of all the land at the same time. If the heir sued livery of all his lands when dowry was due from those lands the livery would also be void, whether the dowry was due by the same inquisition or another. In this case, however, the heir

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178 YB Mich. 4 Hen. VII, p.16, pl.1. It is not clear what Kebell meant by this gibe. Fairfax had been king’s serjeant from 1467-78 and he was a justice of the king’s bench at the time of the case. He might therefore be expected to protect the king’s rights, but Kebell’s remark suggests something more than professional care.

179 Constable, 65; Frowyk, f.7v.

180 Constable, 65. The same applied when he inherited land from any assortment of ancestors according to Frowyk. If the king granted the heir special livery of the land inherited from one ancestor, he would have to sue livery separately of the land inherited from another ancestor. Frowyk, f.7v.

181 Constable, 66. Frowyk disagrees, arguing that he should have one writ as heir to his mother and another as heir to his father, but he does accept that “le course en le Chancery est contrary.” Frowyk, f.7v. There was also some dispute in the year books on this question. It was agreed that an inquisition following the death of the father which found that he held land as a tenant by the curtesy was enough to entitle the king to seize both the mother’s and the father’s land, but it was not clear that this allowed the heir to sue livery of both. Hemmant, _Select Cases in Exchequer Chamber_ 2: 129-30; Keilway, Mich. 11 Hen. VIII, p.200b, pl.11. There were cases where it was difficult to be sure whether the heir should sue livery on one or two writs. Frowyk gives an example where the king’s tenant had other lands held of the king for term of life and the reversion of this land descended to his heir through another ancestor. He believes that when the tenant died his heir will have to sue two writs of _diem clausit extremum_, but notes that the judicial register allows the heir to have one writ for both lands. Frowyk, f.7v.

182 Frowyk, f.7v. If the dower due did not appear in any inquisition the widow could sue for it in chancery, and in this case also the livery would be void.
could sue livery again when the claim to dower was settled.\textsuperscript{183} If the land was to be divided among co-heirs, then each would sue livery separately of the part that was to descend to him.\textsuperscript{184}

If the inquisition did not accurately find the tenure by which the land was held, the heir’s livery might also be void. Frowyk instances a case where a husband and wife held land of the king in special tail\textsuperscript{185} and had a daughter, and the wife died. The husband then married again and had a daughter by his second wife and died. The inquisition following his death found that he died seised of this land in fee and that the elder daughter was daughter and heir and she had livery on this basis. Another inquisition found that the father had another daughter and because of this a \textit{scire facias} issued against the elder sister. According to the findings of the second inquisition the younger sister had a claim on the land as co-heir, and because the first inquisition did not report that the land was held in special tail the king could reseize the land.\textsuperscript{186} If, however, the tenant had had only one daughter and the inquisition had reported the tenure incorrectly, the king could not reseize, even if the truth later emerged, because the daughter was sole heir in both cases.\textsuperscript{187} Frowyk also relates a similar case where the king’s tenant had land in another county held in borough English, and had two sons, and died. An inquisition found the younger son to be heir in the county where the land in borough English was and another inquisition found the elder son to be heir in another county. In this case also the king has the right to reseize, for the first inquisition did not cite the fact that the land was held in borough English. Thus the inquisition was incorrect, for the younger son was not heir by blood. Again, if there had been only one son and the inquisition had not mentioned the custom, the king would not have the right to reseize.\textsuperscript{188} If, however, both

\textsuperscript{183} Frowyk, f.7v-8.
\textsuperscript{184} Constable, 66.
\textsuperscript{185} i.e. to the heirs of the husband begotten on the wife.
\textsuperscript{186} Frowyk, f.7v.
\textsuperscript{187} Frowyk, f.7v.
\textsuperscript{188} Frowyk, f.7v.
inquisitions had found the elder son to be heir and he had sued livery and the truth later emerged, his livery of the lands held by common law would remain good but the king would reseize the lands in borough English.\textsuperscript{189}

If the heir died before livery was sued, leaving an heir of full age, and this heir sued livery as heir of his father, without mentioning the first inquisition taken on the land after the death of his grandfather, then this livery was also void, for the land should remain in the king’s hands by the first inquisition.\textsuperscript{190} In this case the livery was faulty from the beginning and the land never really left the king’s hands. There were some cases where the livery was good at the time, but later information made it invalid, as where another was found to be a co-heir after the first heir had sued livery. In this situation the king would re-seize the land and the heirs would sue again.\textsuperscript{191} If the livery was insufficient from the beginning the king could reseize without a writ of \textit{scire facias}, but if the heir sued livery and a later inquisition defeated the heir’s livery the king needed a \textit{scire facias}.\textsuperscript{192} The king could use the technicalities of such a situation to his own advantage. Frowyk argues that if the heir is found to be a bastard before he sues livery, but after the inquisition, the king can reseize the land. If another writ finds that another is heir, the king can maintain against him that the bastard is heir, based on the first inquisition, and he can refuse livery to the bastard on the grounds of bastardy, and thus neither will have livery. Thus the technicalities of procedure could be used either to maintain strict justice or to manipulate it, and the readings emphasized the importance of a thorough knowledge of the subject for any practitioner.

With the complexity of these rules there was always the fear that any slip would invalidate the whole process, in which case the heir would have to start from the

\textsuperscript{189} Frowyk, f.8. This differed from the case above concerning dower due on the lands, because here the younger brother had the right only to the land in borough English, while the widow had title in each part of the land.
\textsuperscript{190} Constable, 65.
\textsuperscript{191} Constable, 65. The same rules applied to lands sued by \textit{ouster le main}.
\textsuperscript{192} Frowyk, f.8.
beginning again. Frowyk points out that if the heir entered on his land following the
death of his ancestor and received a pardon for all intrusions from the king before the
inquisition was held, he could avoid the whole process of holding an inquisition and
suing livery.\textsuperscript{193} If the inquisition was held before the pardon was granted, however, the
pardon would only apply to the profits taken by the heir before the inquisition.\textsuperscript{194} This
was not uncommon, but it was more usual to avoid general livery through suing special
livery by letters patent. By this method the king granted the heir the right to enter into his
entire heritage at once, without further enquiry, and it carried the same weight as livery
sued through chancery.\textsuperscript{195} Special livery also allowed the king to pardon or grant issues
and it could be sued before or after the inquisition was held. The advantages of such a
livery for the heir were clear, particularly for the heir of a large and scattered estate; it
gave him a secure title to all his land and saved him from the time and worry of suing
general livery. Special livery reduced the king's ability to establish the tenure of the land
held by his tenant, however, and he charged a heavy price for the privilege. There were
some risks attached to special livery for the heir also, as the duke of Buckingham found.
He appealed to the executors of Henry VII's will to restore the £3000 that he had paid to
Henry for his special livery, claiming that it was extortionate. The assembled company
had little sympathy for the duke and told him that "this special livery was solely at the
suit of the duke and his own act and is not at all like a general livery, for each general
livery is a matter of common course in the chancery, and the parties do not have to make
any other suit, but only in the chancery, and if the king or the chancellor deny any man
his general livery they deny justice."\textsuperscript{196} Special livery, however, was outside the
common law, and when the duke sought it "the king was rightfully able to deny it, and
this notwithstanding that the king, of his grace and for the said sum, granted the duke his

\textsuperscript{193} Frowyk, f.6.
\textsuperscript{194} Frowyk, f.6.
\textsuperscript{195} Special livery could also be granted to an heir within age, thus relieving him of the necessity to prove
age.
\textsuperscript{196} Keilway, Pas. 7 Hen. VIII, p.176b, pl.3.
wish, the money was well and loyally taken and thus the duke does not have cause for restitution.\textsuperscript{197} The fact that the king’s tenants were willing both to pay the high financial price of special livery, and to step outside the protection of the common law, suggests that the price of the king’s feudal rights was far higher.

The readers consider briefly such questions as how the issues due to the king will be calculated and what happens when rent does not fall due between the date of the tenant’s death and the date of the livery.\textsuperscript{198} Having dealt with such basic problems, the readers continue with a discussion of the process involved in proving age. This is not directly relevant to primer seisin, but Constable makes a connection by pointing out that everything he has said about suing livery is equally relevant for heirs who were in wardship, but they will have one extra stage to complete first. When it appears from the information in the inquisition that the heir is now of full age, he must sue a writ of \textit{etate probanda} directed to the escheator of the county where the child was born.\textsuperscript{199} If there were a number of inquisitions which found the heir of different ages, he cannot sue \textit{etate probanda} until he is of full age according to all the inquisitions.\textsuperscript{200}

The heir must find twelve people who will swear that he is now of full age and who will give a reason why they know this, for example that their own son was born at the same time, that they were present at the birth or baptism, or that they broke their leg that day. Each of the twelve \textit{proves} must be aged 42 if the heir is a boy or 37 if the heir is a girl, that is, they must have been at least 21 when the child was born, so that they could

\textsuperscript{197}Ibid., 176b-177. The justices agreed with this, but the duke was finally allowed £1000.

\textsuperscript{198} Constable, 67; Frowyk, f.5v. Frowyk also makes the point that if the king’s tenant dies seised of land in fee simple leaving an heir of full age and the heir dies seised before an inquisition is held, that his heir will be responsible for the issues of the land since the death of his grandfather. If, however, the land was held in fee tail the heir is responsible only for the issues since his father’s death and his father’s executors are responsible for the issues due from his father. Frowyk, f.5v.

\textsuperscript{199} Constable, 68.

\textsuperscript{200} Frowyk, f.6v. If another inquisition finds the heir within age after he has purchased the writ but before his age is proved, a writ of \textit{supersedas} will issue to the escheator to halt the process. If the heir’s age is proved before the new inquisition is returned, then it will stand, for it is “a perfect trial between the king and him.” Frowyk, f.6v: “vn parfitt triall enter le Roy et luy.”
be expected to have clear knowledge of the time of the child's birth. If the heir is not found of full age at this time, he must put off suing livery until this is found and he must then sue another writ. If he is found of age according to one inquisition but by an inquisition in another county he is found within age, he must also wait. If he does sue livery under these circumstances the escheator will be ordered to reseize the land until the king commands otherwise. If the king had granted the ward to another, then the guardian would receive a scire facias to come to the enquiry to show proof if the heir was not of full age. The guardian did not have to offer any proof against the heir, but if the guardian did not receive the scire facias the heir could not have livery and if he did sue livery under those circumstances it was void.

The business of traversing inquisitions and suing livery belonged in the chancery and the court of king's bench, but the exchequer also had its role to play. While chancery and king's bench dealt with wronged tenants, the exchequer worked to track down tenants who were evading their obligations. The records of the Lord Treasurer's Remembrancer indicate the on-going work of the exchequer in questioning titles to land and requiring tenants-in-chief who had remained undisturbed on their land from the time of their ancestor's death to pay relief and sue livery. The reach of the exchequer was long, as was its memory; it is not unusual to find it calling upon records from the time of Edward I to demonstrate that a parcel of land was held of the king. The exchequer was more interested in primer seisin than in wardship. This was largely due to the nature of its activities, for it was often seeking to enforce the king's right many years after it was due, when wardships would have long expired. This was a traditional part of the exchequer's function, and it does not seem to have changed significantly in this period.

The lectures delivered by Constable and Frowyk thus outline the king's substantive rights and cover the process to be followed both by the king in seizing those

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201 Constable, 68-69; Frowyk, f. 6v. Frowyk goes into what will happen if there is a difference of opinion between proves or between proves and jury.

202 Constable, 69. The same applied to a ward by reason of ward.
rights and by the heir in reclaiming his land. The readers disagree on both counts, with Constable consistently allowing the king greater latitude both to seize and retain land, while Frowyk champions the rights of the heir. The differences in their views, together with the year book interest in the issues they cover, indicate that there was little settled learning on the subject, largely because little attention had been given to it. Though the king's rights had not changed dramatically, the prominence accorded to them had, and increased enforcement rather than substantive change made primer seisin a topic of interest. This process was only beginning in earnest when Constable and Frowyk spoke in the autumn of 1495. By the end of the century the administration of the prerogative had grown to such an extent that the bishop of Carlisle was given jurisdiction over the north, as a general surveyor and receiver of the king's prerogative.203 We have seen that Henry had a particular interest in extending his power in the north, and this partially accounts for the new office, but it is also an indication of the growing volume of business.

The growing exploitation of crown finances in this period is further supported by the appearance, at about the same time, of the Council Learned in the Law. Somerville first identified the records he found among the duchy of Lancaster papers as relating to the Council Learned, a part of the king’s council, which seems to have begun operating around 1500. The Council Learned called defendants before it by writ, without giving them knowledge of the charge against them. The Council was largely concerned with government prosecutions, and evasions of feudal dues seems to have been a large part of its business. Its surviving records are meagre, but it seems clear that as Henry used the chamber administration to bypass exchequer control over the gathering of his feudal dues, he used the Council Learned to bypass its role in examining his rights in many cases. Bayne notes that “there is nothing in the [Exchequer] Recorda of Henry VII’s last

203 Richardson, Tudor Chamber Administration, 167-8. The exact date at which his jurisdiction began is not clear, but Richardson suggests 1499 at the latest.
few years from which it can be inferred that the Crown was unusually active in enforcing obsolete statutes or otherwise stretching the law. Obviously the Exchequer continued its leisurely course while the Council Learned applied the screw which it had devised."\(^{204}\) The surviving records of the Council Learned are not numerous enough to give us any definite idea of the size of its operation, but there is no doubt that its powers were great and its procedure irregular. There was nothing too unusual in this, however. Though Bayne obviously saw the Council Learned as somewhat sinister, it is more likely that it was "a typical enough court of the early Tudor type: a royal tribunal rather than a regular court of the realm, a weapon of the king’s policy rather than a means for settling the subject’s disputes."\(^{205}\)

It seems then, that Henry VII had a wide range of methods at his disposal to enforce his prerogative. Some were very traditional, some were traditional in form but innovative in procedure, and some were pure innovation. Working together, it seemed, they would ensure that nothing escaped the feudal net. Maintaining co-operation between these various mechanisms was not easy, however. At first Henry kept the administration of the prerogative under his direct control, but as the number of commissions in the counties grew and the business became more complex, he began to delegate part of the load. Sir Reginald Bray was one of Henry’s most trusted administrators, and he supervised the administration of wardships, operating by word-of-mouth command rather than under any official appointment. Bray died in August of 1503, and in December of the same year Sir John Hussey was appointed as Surveyor of the King’s Wards, the “chief intermediate officer for overseeing, managing and selling the wardships of all lands which may be in the king’s hands.”\(^{206}\) The description of Hussey’s role indicates that Henry intended to maintain his personal interest in

\(^{206}\) Richardson, *Tudor Chamber Administration*, 169.
wardships, but by 1507 it seems that he had ceased to pay much attention to them.  
Hussey became master of the wards in effect, if not in title, and when in 1508 Edward Belknap became Surveyor of the King’s Prerogative, a prerogative administration was in being, separate from the personal interest of the king. The simple fact that these offices were developed is enough to demonstrate that the prerogative had become big business by the end of Henry’s reign and that it had grown in profit and complexity to that point. It also suggests that Henry was satisfied with the way in which the commissions of enquiry had succeeded in keeping royal authority before the nobility. By 1507 Henry was secure, both politically and financially, and there was no reason for him to continue to give so much personal attention to the administration of his prerogative. He had achieved his immediate ends and he could rely on his trusted officials to keep the machinery running smoothly.

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207 Ibid., 174-75.
Chapter Four:

Spelman, Yorke and the Campaign against Uses

The next reading, the first in Henry VIII’s reign, came in 1521. John Spelman, also a serjeant-elect and also giving his third reading, chose to revive the topic after a twenty-six year gap. In the changed circumstances of Henry VIII’s rule, a new treatment of the law was necessary, one which would take into consideration both the earlier readings and the changes in law and society in the previous three decades. The timing of this re-reading requires some consideration. It was not simply a response to the new monarch, for Henry VIII had already been on the throne for twelve years. The vagaries of the calls of serjeants go some way to explaining why Prerogativa Regis had not been treated earlier in the reign, but a consideration of the policies of the king in this period is more informative.

When Henry followed his father to the throne of England there was a sense of a new beginning, but as far as the administration of the prerogative was concerned, the changes were more apparent than real. Henry VII’s financial policy had been cordially disliked, and his son clearly set out to soothe public opinion on this matter. Though he was generally successful on the propaganda front, his activities belied his words. On his accession Henry confirmed the pardon granted by his father shortly before his death and proclaimed a more ample pardon, but in true Tudor style he excepted debt.¹ His imprisonment of the hated Empson and Dudley was one of the most visible “repudiations” of his father’s methods. Spelman was one of many who took note, commenting that “the king by the advice of his Council committed Edmund Dudley and Sir Richard Empson ... to the Tower of London, with various other promoters who did not look after the common wealth but sought only to

¹ Letters and Papers, Foreign and Domestic, of the Reign of Henry VIII vol.1, 1509-1514, arr. and cat. J.S. Brewer (London: Longman, Green, Longman & Roberts, 1862), 1. The proclamations are dated 23 April 1509 and they are followed on 30 April by a list of persons excepted from the pardon, including Empson, Dudley, the informer John Batist Grimald, and others. Ibid., 5.
fulfill the covetous purpose of the said King Henry VII."² This imprisonment, together with
their subsequent execution, went a long way towards convincing onlookers that the financial
exactions of the previous reign were at an end. The chronicler Hall, for example, notes that
"in this yere kyng Henry the vii. his executours made restituccion of great sommes of
money, to many persons taken against good conscience to the sayde kynges use, by the
forenamed Empson and Dudley."³ The young king certainly gave the impression of
generosity and it was conveyed by those around him; Mountjoy exulted to Erasmus that
"avarice is exiled far from the people, liberality strews wealth with a bountiful hand. Our
king seeks not gold, gems nor precious metals, but virtue, glory and eternal fame."⁴ In
reality, however, as Miller points out, "so far as is known, no money was refunded for the
payments already made, although Edmund Dudley in the Tower, had recalled that Henry VII
had wanted restitution to be made to anyone wronged by him, and the king in his will had
instructed his executors to make reparation where necessary."⁵ The king’s executors did hear
cases brought by those who felt that they had been badly treated, but, as the duke of
Buckingham discovered, the administrators were not easily convinced.⁶

Henry did relieve some of those burdened by recognizances made during the previous
reign, but he carried out no wholesale repudiation of his father’s methods. In fact, in the
eyearly months of his reign he cancelled only a handful of recognizances, many of which had
simply been fulfilled, and there is no reason to believe that those who received genuine relief
did not remain burdened by other bonds.⁷ For example, the duke of Buckingham had a bond

Selden Society, 1977), 175.
³ Edward Hall, The Union of the Two Noble and Illustre Famelies ..., ed. Henry Ellis (London, 1809), 514.
no. 215, p. 450.
⁶ Robert Keilway, Relationes quorundam Casuum selectorum ex Libris Roberti Keilway Armiger (London,
1602) Pas. 7 Hen. VIII p. 176b, pl. 3. See chapter 3, p. 150.
⁷ See, for example, L & P Henry VIII, 1: 6, 32, 36, 38, 40, 43, 51. Most of the recognizances were made by
groups rather than individuals and the sums at stake range from £20 to 2,000 marks. This latter sum was owed
by Lord Dacre and was just part of his list of wrongful exactions. The number of remissions granted to
northerners is striking. Since it is unlikely that Henry was particularly generous to them, this supports the
argument that his father had in fact taken particular care to bind the northerners to him through financial
obligations (see above chapter two, pp. 99-101).
for £400 cancelled, but in 1515 he pleaded before the late king's executors that he had been wrongfully charged with debts of £7,179 and that he had lost a further £3,554 in legal expenses. Though £400 was a substantial sum and the remission of such a debt might give a nobleman cause to be grateful to the king, the remaining burden kept him securely within the king's power.

There were some real changes in the administration of the prerogative when Henry VIII became king. The new king was as untrained in the business of kingship as his father had been at his accession, though for different reasons. This meant that the system required some immediate change. As Dietz points out, Henry VII had worked fundamental changes in the organization of the financial system, as a result of which the king in person was his own chief treasury official. He personally knew all his receipts and expenditures; he personally gave acquittances or discharges to the special treasurers, and to him, as to the final officer of audit the great treasuries and revenue courts themselves submitted their accounts. The independence of the Exchequer was broken down in all its essential parts, and it, together with the new revenue bodies, were brought under the unified control of the monarch himself.

This worked well under Henry VII, but his son had no intention of investing the time in administration that such a system required, and so the first parliament of his reign passed legislation to place it on a statutory basis. The exchequer had already launched an attempt to regain the ground it had lost under Henry VII and was harassing receivers who continued to pay their money to John Heron, treasurer of the chamber, and to account for it before the General Surveyors. The new act relieved the receivers and ordained that "all Acquitances and Billes of Receyte heretofore made by the seid John Heron in the time of the seid late noble Kyng [Henry VII], and in the tyme of our Souveraign Lorde that nowe ys and hereafter

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9 As the second son, Henry was originally intended for the church, until the death of Arthur placed him in line for the throne. Although Arthur died in 1502, seven years before Henry VIII became king, their father seems to have been unwilling to expose Henry to the rigours of a royal training, possibly because he feared losing him.
11 Elton disapproves of the entire system. He concedes that it worked well enough under Henry VII, but argues that it could not have continued much longer, even if he had lived. G. R. Elton, The Tudor Revolution in Government: Administrative Changes in the Reign of Henry VIII (Cambridge: Cambridge University Press, 1953), 28.
to be made by the seid John Heyron ... be a sufficient discharge to every suche Persone ayenst the Kyng ... Aswell in the Kynges Eschequiour as in eny other of the Kinges Courtes.¹²

The same parliament continued the policy of making concessions to public opinion by passing an act which condemned the activities of Empson and Dudley and allowed those who had suffered from untrue inquisitions to traverse them, even if they had already sued livery.¹³ Though such a concession might prevent land-holders from suffering in the future, the effectiveness of the act as a remedy for past ills was reduced by a proviso which stated that tenants who traversed an inquisition successfully would not receive the money they had lost in the meantime.¹⁴ It is possible that this proviso rendered the act effectively useless to those who had suffered, or that the time and expense of traversing an inquisition on land that had already been liveried was more trouble than it was worth, but the fact remains that there was no rush to take advantage of the statute. There was no explosion in the number of traverses brought in 1510, nor even a considerable growth. Though trouble and expense may have been a factor in this, it also supports the argument that Empson and Dudley did not work outside the law, and it indicates that any moral outrage their methods might have caused could not be expected to stand up in court. It is clear that it was generally believed that there had been something rotten in the conduct of inquisitions, and another statute of the same parliament set out the rules to be followed by escheatours and commissioners, because

diverse of the Kynges Sugieectes lately have ben sore hurte troubled and some disherited by Escheatours and commyssyoners causyng untrue offices to be founden, and sometyme retornyng into the Courtes of record offices and inquisicions that warre never founde And sometyme changyng the mater of the offices that were truely founden to the greate hurte troble and disheryson of the Kynges true Sugieectes, that lyke before tyme have nott ben seen in this realm.¹⁵

If we can say nothing stronger, however, the quiet reception of the statute granting traverses

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¹² Statutes of the Realm vol. 3 (London, 1817), 2, 1 Hen. VIII ca. 3.
¹⁴ Ibid.
at least indicates that Empson and Dudley's activities were less burdensome than the process for reversing them.

Beyond the act which confirmed Heron's role in the financial administration of the prerogative, no further statutory changes were made in that year. Henry's policy of appeasement was so successful, in fact, that there were rumours that Sir John Hussey was to be removed from his office of master of the wards, as part of a general dismantling of Henry VII's system. Nevertheless, the chamber system continued to function. Sir Robert Southwell and Bartholomew Westby acted as surveyors of royal lands from at least the middle of 1510 onwards, and in 1511 the king issued a commission to them to survey and approve the royal lands in Wales, Cornwall, Chester, Flint, York, March and Richmond as well as other lands in royal hands through attainder or forfeiture. This does not seem to have been enough to restrain the exchequer, and in the parliament of 1511-12 Southwell and Westby were given "a further and strenger auctorite" when parliament "ordeigned, established and enacted ... that the said Sir Robert Southwell and Bartholomew Westby bee fromhensfurth general Surveiours and Approvers of all and singuler the Kings [lands]." The statute opens by rehearsing the system established by Henry VII and pointing out its advantages, namely that it was quicker and cheaper than the old procedure through the exchequer. There is no attempt to distance the new regime from the chamber machinery; in fact the act states that the new king desires "the same and semblable order of accompte to contynue to be had and used ... and to be answered of his revenues in his Chambre in maner and fourme abovesaid."

Though statutory regulation gave the chamber system authority it also greatly reduced its flexibility. Under Henry VII the chamber system took its authority directly from the king

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18 *Stat. Realm* 3: 45, 3 Hen. VIII, ca. 23. Bartholomew Westby was one of the barons of the exchequer.
19 Ibid.
and it needed no other. By removing the chamber from the personal direction of the king, Henry VIII made it both more independent and less powerful. The machinery remained more powerful than it had been in the early years of Henry VII, and it was well-established and well enough administered that it could run under its own steam. It survived into Henry VIII’s reign as an independent system and managed to resist the claims of the exchequer, but by 1515 the royal income from land had fallen to about £25,000 per annum, compared to £40,000 per annum at the death of Henry VII.\(^{20}\) Without the personal interest of the king and the stimulus of his own immediate political and financial plans, the chamber was just another financial office. The chamber system, and prerogative finance, would not receive much of Henry’s attention until money once again became a major issue.\(^ {21}\)

Henry’s grandiose foreign policy ensured that it was only a matter of time before he needed to make the most of his financial resources. There was a new interest in the reorganization of the administrative structure, and particularly in the administration of the prerogative, in the years after 1518. Bell points to new appointments to wardship offices between 1518 and 1520 as evidence of the revitalization of that area, and argues that it was made necessary because of the decay of Henry VII’s system.\(^ {22}\) He refers to a memorandum, undated but probably of this period, which complains that the practice of selling the lands of wards as well as their bodies had greatly reduced the king’s profits from his prerogative. It recommends that the king should rebuild an official structure to manage the lands of wards and guard his interests. The memorandum’s most telling point, however, comes at the end, when the author comments that

 голосы ут мей плесе вашля грец бэя сом нимыкяцион ин ут явлуйс. Анд то хайн цертен артиклс дравэн и субскурыд фо дэйпэйныс оф дэй самут ут явс испоузит ут.

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\(^ {21}\) However, the system continued to work to protect the king’s rights. For example, the Attorney-General investigated all collusive recoveries to ensure that the king’s fiscal rights were not infringed and “filled several rolls each term in the Common Pleas with recognizances taken from deforciants to ensure against any prejudice to the king’s wardships.” J. H. Baker, ed., *The Reports of Sir John Spelman* vol. 2, Selden Society vol. 94 (London: Selden Society, 1978), 208.

\(^ {22}\) Bell, *Court of Wards and Liveries*, 9-10.
wulbe long or this mater woll forward or come to eny good purpose.23

The problem was not so much in the structure of the administration, which had not changed greatly from Henry VII’s days, as in the attitude of the king himself.

It is clear that around this time the king’s attitude changed. At some time around 1519 Henry seems to have decided to take governing seriously, and he had a programme of reform drawn up which would have allowed him to rule in person. The reforms dealt with a variety of matters, and they included orders for John Heron and William Compton to make monthly reports of receipts and payments in the chamber, and for the surveyor of the king’s lands to make a yearly declaration.24 These plans were intended to restore the kind of government established by Henry VII; as Scarisbrick comments “it appeared that ... Henry had turned his back on the past and was preparing to become an industrious, working monarch bent on high purposes. Never had he looked so like his father.”25 Henry’s desire to change did not go unnoticed around the court. In 1519 a group of his personal friends were removed from attendance in the chamber and replaced by more seasoned courtiers. Starkey argues that this was part of Wolsey’s plan to keep Henry focused on business; he intended to remove the young men who played with Henry and replace them with older men who would work for him.26 The same basic points were made by the Venetian ambassador, Sebastian Giustinian, but with a significant difference in emphasis. He reported to the Doge that there were various rumours circulating concerning the expulsion of the gentlemen, one of which was that they were the cause of the king’s gambling, and that “on coming to himself and resolving to lead a new life, he of his own accord removed these companions of his

23 S.P. 1/159, f.47. Printed in full in Bell, Court of Wards and Liveries, Appendix 1, 187-89.
24 L & P Henry VIII, 3: 197. The memorandum also provides for such matters as the administration of the duchy of Lancaster, the settling of Ireland and regular reports from the justices of the central courts.
25 J.J. Scarisbrick, Henry VIII (Harmondsworth: Penguin, 1968), 170-71. Elton does not share Scarisbrick’s assessment of the reforms. He points out that the reforms “would not have provided the country with a ‘modern’ administration; they would merely have made its ‘medieval’ government more efficient by making it more personal.” Elton, Tudor Revolution in Government, 40.
Whether the impulse for reform came from Henry himself or, more likely, from Wolsey, there is no doubt that it was both genuine and short-lived. Though Wolsey did his best, there was no return to the personal government of Henry VII. Nevertheless, the reform proposals were born out of genuine need, and while Henry did not transform himself, there was a recognition of the need for more efficient government. As Richardson points out, "by 1521 the chamber treasury was temporarily empty. While the situation as yet was not particularly alarming, a general curtailment of expenses was desirable. In the retrenchment that followed, there was a systematic checking up on the revenue administrative system."28 This concern was clearly connected with the military capacity of the country, for in 1522 Wolsey carried out a military survey noted by Hall, who remarks that at "this tyme commission was geven throughout the realme, for general musters to be had to knowe what power might be made within thesame and also men sworne of what substaunce and landes thei wer of. And the Cardinal aduertised of thesame; not without grudging of the people, and marueilyng why thei should be sworne for their awne goodes."29 This survey was unusual, because for the first time in a hundred years it gave the exchequer a detailed listing of individual wealth.30 There was clearly a new concern with the financial state of the kingdom and a desire to establish a clear knowledge of the extent of the wealth of the people, together with their military obligations. This combination, the essence of the prerogative right, must have been joined to a new push in prerogative enforcement. Thus Spelman's reading, delivered in Lent of 1521, was a timely contribution to the growing interest in the

27 L & P Henry VIII, 3: 79. Cf. Hall, Chronicle, 598, which reports that the king's council recommended the dismissal to Henry, who left it to their discretion. Walker argues that the minions were expelled for their adherence to French fashions, which were considered both morally and politically dubious, rather than as part of a court coup. Greg Walker, "Faction in the Privy Chamber? The 'Expulsion of the Minions', 1519," in Persuasive Fictions: Faction, Faith and Political Culture in the Reign of Henry VIII (Brookfield VT: Scholar Press, 1996), 35-53.
28 W.C. Richardson, Tudor Chamber Administration 1485-1547 (Baton Rouge: Louisiana State University Press, 1952), 233.
29 Hall, Chronicle, 630.
reformation of the prerogative administration. Though the government of his time was concerned with financial retrenchment rather than political manipulation, once again a serjeant-elect chose to read on *Prerogativa Regis* at a time when the text was of great political interest.

In the traditional manner, Spelman built on the readings delivered by his predecessors. We have seen that Constable and Frowyk differed on many points in their interpretation of the statute, and Spelman’s reading gives us the first chance to determine whether Constable’s expansion or Frowyk’s restriction of the king’s rights had found greater favour with the profession. Spelman was well-placed to build on Frowyk’s arguments. In 1516 he acted as executor of Frowyk’s widow, and in that capacity he acquired some of Frowyk’s manuscripts. It is not clear which manuscripts Spelman owned. Baker cites a yearbook (Brit. Lib. MS Add. 37659) which belonged to both Frowyk and Spelman. Spelman maintained his connection with the Frowyk family, marrying Frowyk’s niece, Elizabeth, in the late 1520s. Baker, *Spelman’s Reports* 1: xii-xiii.

Though much of his reading does in fact follow Frowyk’s interpretation, it is clear that he also had access to Constable’s reading, and he prefers Constable to Frowyk on occasion.

The surviving manuscript of Spelman’s reading is much shorter than that of either Constable or Frowyk, suggesting that later readings served as a commentary on, or perhaps a supplement to, the earlier expositions. It is possible that Spelman’s reading differed in its structure from the earlier readings, but this is unlikely, for it faced the same need to be comprehensible to a mixed audience. It is more likely that the auditor who recorded the notes made the choice to preserve them in this form, retaining only the information of interest to one already familiar with the issues. Thus the manuscript does not cover the more basic topics, such as forms of landholding, but deals only with the issues surrounding the prerogative. In keeping with this, rather than examining Spelman in the same detail as the earlier readers, we will consider him only as he comments on and continues their work. His

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32 It would seem to be more than coincidence that Frowyk and Constable’s readings are considerably longer than any of the surviving manuscripts of their successors. Constable’s reading is of a comparable length to Frowyk’s, but it only covers the first seven chapters of the statute, while Frowyk deals with the entire text.
reading should indicate how their interpretations had been synthesized and developed by the profession in the twenty-six years since they lectured.

Spelman's treatment of *Prerogativa Regis* also allows us a closer glimpse into the process of constructing a reading. By the time he delivered the reading, his third, in 1521, Spelman had been at Gray's Inn for about twenty years. During that time he had been engaged in collecting reports of cases argued in the courts as well as discussions which took place around the Inns. His reports were arranged in alphabetical order, and a large part of the section titled *Prerogative* is made up of notes from a reading. The reading is undated and anonymous. Baker argues that this is not Spelman's own reading, but speculates that it is a paraphrase of Frowyk's reading, or of a reading which drew heavily on Frowyk. The notes begin with chapter one of the text, but are quickly interrupted by a memorandum on the death of Henry VII, the accession of Henry VIII, the imprisonment of Empson and Dudley and the swearing-in of the justices. More notes from a reading follow the memorandum, and they again begin with chapter one of the text. It is possible that they are a continuation of the earlier notes, but there is no clear evidence either way. The material is undated, but if the memorandum is contemporary with the paraphrase it would seem both that Spelman's interest in the topic dated from early in his legal career, and that manuscript versions of Frowyk's reading were in circulation at the time. Though the notes agree with Frowyk in the main, there are several places in which later additions have been made, suggesting that it was either based on a later unknown reading which followed Frowyk, or that Spelman himself had added material as he copied it. The paraphrase does not cover an entire reading, but it gives us an idea of the material available to Spelman when he went to construct his reading and allows us to see some of the places where he consciously chose to deviate from

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34 Ibid., 1: 174-83.
35 Ibid., 1: 174, n.1. It is possible that they were taken from a reading by Richard Hesketh, but this is only speculation. See below, n. 92.
36 It is also possible that Spelman had already made a connection with the Frowyk family and had borrowed a copy of the reading from the judge himself, but this is less likely, considering Spelman's junior status at that time.
the interpretations of his predecessors. The reasons for the choices he makes vary from topic to topic, suggesting that, like the earlier readers, Spelman was not driven simply by the desire to make a particular political point, but by the need to expound the law.

Spelman opens with the same central issue as the earlier readers, namely, what kind of tenure brings the royal prerogative. It is clear from the beginning of the lecture that Spelman is not following any one reader. He states that anyone who holds land which has escheated to the crown for felony, treason or failure of heirs, or which has come to the crown through purchase or descent, does not hold in chief.\(^{37}\) This statement is marked with a *quere* in the text, as it might well be, for it disagrees with both Frowyk and Constable. Spelman goes on to consider whether, when a mesnalty held of the king in chief escheats to the king, the tenant should hold of the king in chief as the mesne lord had done. He rehearses a variety of possibilities, as Constable had done, but he reaches no firm conclusion, for the issue turns on a difficult principle. His discussion ends with a succinct statement of the problem; that “it is not reasonable to put the tenant in a worse condition towards the king than he was towards the mesne, where he committed no fault. But others say that it is better that the tenant should lose than the king and it is not reasonable that the king should lose the advantage of his lordship where he committed no fault, and because of this the law favours the king.”\(^{38}\) Spelman’s explicit concern for the welfare of the tenant most closely echoes Boteler’s position in *Stonor’s Case*,\(^{39}\) though he does not go so far as to place the tenant’s rights above those of the king. Here Spelman takes the arguments made by the previous readers and reduces them to a point of principle, but he comes no closer to solving the problem.

When it comes to wardship Spelman’s interpretation does borrow from both of the earlier readers. He believes that *Prerogativa Regis* “is only a confirmation of the common law” but that before the text “if one held of the king as of escheat which is in his hand and

\(^{37}\) Spelman, f.303.

\(^{38}\) Spelman, f.304. “nest reson de fair le tenant estre en peir condicion vers le roy quil fuit vers le mesne ou nul defaut fuit en luy Et auters diont que le tenant pluisost auera perde que le roy & il nest reson que le roy perder lavantage de son segniorie lou nul defaut est en luy & pur ceo le ley favor le roy.”

\(^{39}\) See above chapter two p. 59.
not parcel of his crown there the priority will hold, as between common persons."
Thus he reaches much the same conclusion as Constable, that part of *Prerogativa Regis* is a
declaration of the common law, and part is new, though he approaches it from a slightly
different angle. Spelman appears to be evading the question of the status of *Prerogativa Regis*. He begins by stating that it is a declaration of the common law, but then he adds that it changes the law. He does the same thing in chapter one, where he says that "the *primisse* of this lecture is declaratory of the common law and this was the common law in perpetuity… and common reason gives this to the king … And for the exception *de feodis archiepiscopi* etc. all this branch is a statute because before this treatise the king had the
wardship of lands held of such persons." Thus he is unwilling to follow Constable completely and state that *Prerogativa Regis* is a statute rather than a treatise, but he admits that parts of the text establish new law. If we were to follow this to its logical conclusion, that a treatise by the sages of the law could change the law, the implications for the law-making powers of the legal profession, and by extension for the readers, are enormous. Spelman does not make such grandiose claims, but both his argument and the fact that it occasions no comment suggest that the inhabitants of the Inns were accustomed to think of themselves as law-shapers. By emphasizing that the text is a treatise, Spelman is placing himself among those who would wish to restrict the growth of the prerogative, but his recognition that part of the text makes new law is a concession to the reality of the situation. It demonstrates that both Constable’s and Frowyk’s readings had affected his perception of the text. It may also indicate that by 1521 the non-statutory nature of the text needed less emphasis and that Frowyk’s reading had done its work in inclining the profession towards a strict interpretation.

40 Spelman, f.304. “Cest article nest que confirmacion del comen ley mez devant cest estatut si vn tenoit de roy come deschet que est en son mayn & nest parcell del son coron la le priorite auera lieu come enter comen persons.”
41 Spelman, f.303. “le primisse de cest lecture est declaracion del comen ley & que ceo fuit le comen ley imperpetuum per magna carta … & comen reson don ceo all roy … Et per lexepcion *de feod archiepi* &c tout cest branch est vn estatut fait [quar] devaunt ceo treatise le roy auoit le gerd dez terrez tenuz de tielx persons.”
Spelman also raises some new questions, or at least questions which were not previously worthy of notice. He makes some very precise points with regard to the wording of grants. For example, he argues that when the king grants custody, this implies "the profits of the lands, but if the king grants the wardship of the body without speaking of the marriage, then grantee is not able to marry him [the ward]." Similarly, he is at pains to explain the implications of the different forms of grant. He points out that "if the king grants a ward durante minore etate sue this is until 21 years and after this the grantee will not have the ward, even if livery is not sued for 10 years, but it is otherwise if it [the wardship] is granted diu in manibus nostris fore contigerit." This is fairly straightforward, but Spelman then asks the obvious question; "if, after he is of the age of 21 years the king is able to grant the ward afterwards quam diu in manibus nostris fore contigerit?" There is clearly a desire to establish the exact implications of the various kinds of grant, and to determine how far the king can push the logical implications of his rights. The distinction Spelman makes between grants durante minore etate and quam diu in manibus nostris fore contigerit is quite logical, and the implication that a ward granted under the latter form of words would remain in the grantee's hands until he sued livery is not unreasonable. After all, it was up to the ward to sue livery, and such a provision would simply be an added incentive to do so without delay. To suggest, however, that the king might be able to grant wardships of those over the age of majority who had not sued livery, was to open a completely different issue. If applied, it would mean that wardships discovered years after the fact could be claimed and granted, and, theoretically at least, men in their sixties could find themselves in ward to the king and granted to others. There is no doubt that this would provide a powerful incentive to sue livery, but it would also arouse enormous resentment. It is unlikely that it was ever seriously

42 Spelman, f.303. "per ceo paroll custodia est empleye lez profetts del terres vncore si le roy grant le gerd de cors saunz parlez del marige le gratele[...] ne peult luy marie."

43 Spelman, f.304v. "Si le roy grant vn gerd durante minore etate sue cee est tanque al xxi ans & apris cee le grante nauera le gerd coment que ne sue liuerie per x ans mez auter est si soit grant diu in manibus nostris contigerit mez queere si apris que soit dage de xxi anz le roy peut grant le gerd apris quam diu in manibus nostris fore contigerit."
considered for general use, but the simple fact that Spelman raised the issue indicates that the law concerning wardships was being minutely scrutinized for new possibilities.

Spelman addresses other issues which suggest that the search for new wardships was not confined simply to the wording of grants. He argues that the king will have the wardship of the body of the heir of one who held land of him in chief or in escheat, even if his ancestor held land of the bishop of Durham or others mentioned in chapter one of the text, since chapter one refers only to lands. From this point he goes on to question whether the king would have wardship of the body of the heir when the king had bought, or inherited from a collateral ancestor, the manor from which the ancestor held. It was agreed that he did not have his prerogative in the lands of such manors, but did that prevent him from claiming wardship of the body? Spelman does not explicitly claim such rights for the king, nor does he suggest that he thinks that they would be appropriate. The simple fact that such tortuous claims were being raised, however, is an indication that they were at least being considered, possibly as a result of the revitalization of the wardship office. It is likely that Spelman’s reading was a testing ground for some new interpretations, though whether those interpretations were already being used in practice or were still in the realm of theory is not at all clear.

When it comes to primer seisin, Spelman follows Frowyk in broad terms. He does not accept Constable’s idea that the king should have primer seisin of lands held of him in escheat, and he has clearly given the question some thought. In his paraphrase of the earlier reading he notes that “the king shall have primer seisin of all the lands whereof his tenant died seised, if any parcel is held of the king in capite, whether held in socage or chivalry. But it must be held in capite.” Similarly, in his reading he states that the king has primer seisin of all the lands his tenant held of him by knight service or socage and of the lands he held of other lords by any kind of service, as long as he held any parcel of the king in chief.

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44 Spelman, f.304.
46 Spelman, f.306. “le roy auera le primer seisin si le tenant tient de luy en chief per socage auxibien come per
Thus Spelman’s reading, taken with his notes from the earlier reading, make it clear that on this question he followed Frowyk. Like Frowyk, he argues that *Prerogativa Regis* extends the statute of Marlborough by applying primer seisin to lands held in socage in chief and lands held of other lords. While Frowyk, concerned to prove that *Prerogativa Regis* is not a statute, argued that this had always been the case and Marlborough had simply been too narrowly interpreted, Spelman is quite happy to present the provisions of *Prerogativa Regis* as an innovation.47

There were some issues raised by this question of primer seisin over lands held in socage in chief which continued to be of interest from 1495 until after Spelman’s reading. In his paraphrase he notes that “if one holds of the king in socage *in capite*, and of another by knight service, and dies, his heir aged fourteen years; in this case the king shall have primer seisin of the lands held of himself, and the other person shall have the wardship of the other land.”48 There was, however, a problem with this, as Spelman noted, for the statute said that the king should have primer seisin of everything of which his tenant died seised. Spelman did not consider the issue in his reading, or at least no discussion has survived, but it was again raised at a later date and Brudenell, Coningsby and Fitzherbert agreed with the paraphrase and argued “that the statute must be taken [to mean] that the king shall have primer seisin of all the lands etc. where the land held of him is held by knight service and not otherwise.”49 Thus, though the king’s rights to primer seisin were extended to include lands held in socage, they were limited by the normal patterns of socage holdings. Though this may seem obvious, it is still worth noting that primer seisin was trimmed to fit with socage, rather than the reverse.

47 Spelman, f.306.
49 Ibid. The date of the discussion is not noted, but Baker suggests that it took place in the exchequer chamber or Serjeants’ Inn between 1523 and 1531.
Spelman’s interest in this issue and his general fidelity to Frowyk’s views suggest that he would incline towards limiting the king’s rights, and this is indeed the case. Probably the most convincing proof that Spelman did not accept Constable’s view of primer seisin is the fact that he provides no discussion of lands held of the king as of escheat. His concern, like Frowyk’s, is with the relationship between the king’s rights to primer seisin and his rights to wardship, though unlike Frowyk, he mixes the king’s rights to wardship and escheat. In discussing primer seisin, he often limits the king’s rights more than Frowyk had done. For example, he argues that if the king’s tenant-in-chief also holds lands in Borough English and has two sons and dies, the king will not have primer seisin of all, but only of that to which his tenant is heir. Frowyk gave the king the right to primer seisin of all, but in limiting primer seisin thus, Spelman is reducing it to the same range as the king’s right to wardship under the same circumstances. He makes the same argument where lands held of the father in chief and of the mother (not in chief) descend to the heir. In this case, he argues, the king will not have primer seisin of the land inherited from the mother.

Spelman’s reading does not merely reproduce Frowyk, or even intensify Frowyk’s restrictions on the king. There are places in Spelman’s lecture where he rejects the arguments made by the earlier readers, even when they were in agreement. Both Constable and Frowyk had argued that if the king’s tenant enfeoffed another of land held in chief in fee, or was disseised of it, the king would not have primer seisin of that land when the tenant died. Spelman agrees with them in the former case, because the deceased tenant is not a tenant of the land by right. He disagrees, however, in the case of disseisin, because the king’s tenant was a tenant by right in that case, even though he was out of possession. Thus Spelman is reversing Frowyk’s stand and arguing that right alone, without possession, is

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50 Spelman, f.306.
51 See chapter three above, p.114.
52 Spelman, f.306
53 Spelman, f.306.
54 Spelman, f.306.
enough to give the king primer seisin, at least in the land held of him. However, where the tenant gives away his right, even through a feoffment made without licence, the king has no claim to primer seisin.

According to the paraphrased reading in Spelman’s collection, “if the tenant is disseised, and dies, the king shall not have primer seisin thereof, but he shall have wardship. And if the heir enters, then the king shall have primer seisin.” Thus the paraphrase represents the position taken by both Constable and Frowyk and there is no query or argument appended to it. By the time of his reading Spelman’s view had changed, or developed, to the point where he believed that the king should have primer seisin in this case. He uses the same principle, i.e. that the king should have primer seisin of whatever his tenant held on the day of his death, whether in possession or in right, to argue that when the king’s tenant “made a lease for [term of] years or of life &c and died seised of the reversion and of lands held of others, the king will have the primer seisin of the reversion and also of all the other lands.”

In dealing with this question of leases Spelman was considerably clearer than his predecessors, probably as a result of having time to consider their arguments. Frowyk’s reading is somewhat obscure on leases, but seems to argue that while the king cannot have primer seisin of the land held of him unless the tenant has actual possession of that land, the right to primer seisin of land held of others will be passed even when the land held of the king is in the hands of another. In the end, Spelman and Frowyk agree on the final result, though their principles differ, and Spelman’s position was the more logical of the two. Frowyk would not have accepted Spelman’s statement that the king can have primer seisin even when his tenant dies only with either possession of, or right to land, but Frowyk’s own

55 If the king’s tenant was disseised of land held of another, the king would not have primer seisin of it, but only of the land held of him.
56 Baker, Spelman’s Reports 1: 182.
57 Spelman, f.306. “si come le tenant le roy face leez danz ou de vi &c & devi seisi de reuercion & de terres tenuz de auter le roy auera le primer seisin de reuercion & auxi de toutz auterz terrez.”
58 See above chapter two, p.114.
reading shows him to have been somewhat inconsistent. It is hard to blame him for theoretical weaknesses, for Frowyk’s reading shows little attempt at a consideration of the principles involved in the law under discussion. He is concerned mainly to show how the law worked in practice and to begin an examination of the theory. Spelman, on the other hand, had many years in which to consider the principles behind the law which Frowyk and Constable had expounded and to develop a clearer theory on which to rest his argument.

Though Constable’s reading was more theoretically unified than Frowyk’s, it did not gain Spelman’s approval. Spelman’s reading does not mention Constable’s argument that the tenant should sue livery whenever the land changes hands, whether the change in possession was temporary or permanent, but in his reports he takes care to note that “after the death of a joint-tenant the king shall not have primer seisin. And if the wife inherits and dies, and the husband has it by the curtsey, the king shall not have primer seisin.” Though, as we have seen, the notes from Spelman’s reports do not necessarily represent his own position, it is unlikely that any support given by him to Constable’s argument would have gone unnoticed in his reading, especially since it would have gone against his general inclination to interpret the text strictly. Constable’s interpretation was clearly novel in 1495 and would not have been standard by 1521.

Spelman also argues against Constable’s theories on the issue of leases. He says that “it is said that if the king’s tenant-in-chief makes a lease for term of life to my tenant, the remainder over in fee, in this case if my tenant dies the king will have the primer seisin of the land of which he was tenant for term of life, because he was his [the king’s] tenant of that. And also he will have the lands held of me, because of that.” This argument was Constable’s, and Spelman believes that it is not valid because “the one in the remainder will have livery of that [land] and my tenant [will have] livery of the land held of me and because

60 Spelman, f.306. “est dit que si le tenant le roy en chief fait leez a term de vi a mon tenant le remainder ouster en fee en ceo case si mon tenant devi le roy auera le primer seisin del terre dont it fuit tenant a term de vie pur ceo qu’il fuit son tenant deux Et auxi il auera lez terrez tenuz de moy pur ceo.”
61 See above chapter three, p.114.
the king's tenant will not have livery of all at one time and so he [the king] will not have primer seisin but of that of which his own tenant is able to sue livery."

Thus Spelman is rejecting Constable's argument that such tenants would first sue *ouster le main* of the king, and then, presumably, livery from their own lord. He returns to Frowyk's principle that the king can only have primer seisin when he can give livery, though he applies it even more strictly than Frowyk.

Spelman's reading indicates that the legal profession was not convinced by Constable's interpretation of *Prerogativa Regis*, or that it was worried by the rigorous application of the prerogative under Henry VII, and that it was more inclined to follow a strict interpretation of the text. In practice, this meant the rejection of any attempt to allow the king to seize lands which were not inherited directly by his tenant-in-chief, which were not changing hands permanently, and of which the king could not give livery. Like Frowyk and Constable, however, Spelman was directed more by his interpretation of the law than by his attitude to royal rights. Although he regularly seeks to restrict the king's claims, both in relation to primer seisin and wardship, he is quite happy to extend his rights where the logic of the law dictates that he should. Thus, having determined that the king can claim primer seisin when his tenant dies having land in possession or in right, he applies that principle equally. Spelman's reading seems to be oriented more towards a consideration of the principles underlying the king's rights than either of his predecessors, suggesting that the profession was developing a more sophisticated interpretation of the prerogative.

We have seen that besides furthering the discussion of issues raised by his predecessors, Spelman also highlighted issues to which the earlier readers had devoted little attention. His examination of the wording of wardship grants is one such example, and it

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62 Spelman, f.306. "pur cee que cestui en le remainder auera liuerie de cee & mon tenant liuerie del terre tenuz de moy & pur cee que le tenant le roy nauera le primer seisin mez de cee dont son tenant demesne peut suer liuerie."

63 Spelman does note a situation where the king could have primer seisin without a descent; if the tenant died without an heir, so that the lands escheated to the king, the king would still have primer seisin. Baker, *Spelman's Reports* 1: 182.
indicates the increased concern with exactitude in the administration of the prerogative.64

Another area which figures prominently in Spelman's treatment is uses and their effect on the prerogative. Spelman's discussion of uses makes it clear that the statute of 1490 had significantly changed the way in which land was handled and devised, in a way which had not been obvious to the readers in 1495. The earlier readers did not deal with uses in any detail and they did not consider the impact of wills on land held in use. Spelman's treatment, on the other hand, reflects the dispute presented in Stonor's Case, and the resolution noted by Caryll.65

Unlike the other readers, Spelman discusses uses in his lecture on chapter one of the text, treating them simply as another way of holding land. He points out that though "the letter [of the text] is that he [the deceased tenant] must be seised in fee ... the statute is not taken this way because if he was a tenant in tail, remainder in fee to another, it is all one."66 Thus even though the king's tenant did not hold the land in fee, as long as he held it at the time of his death the king would have his prerogative in it. The same logic is extended to land in use, so that if lands held of another were in use to the king's tenant, the king could claim his prerogative in them. He also argues that if lands held of the king and lands held of another were in use, the king would have his prerogative in them all.67 By treating uses as simply another form of landholding, Spelman is opening them up to the kind of extension the earlier readers had made, and allowing uses to attract the prerogative in both directions.68

Thus when the king's tenant was the feoffor, the king would have his prerogative and when the king's tenant was the feoffee, the king also benefited. This is a logical conclusion, based both on the decision of 1506 and on his own principle that the king should have his

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64 This is also reflected in the king's bench material concerning prerogative cases. As the years go on the records become increasingly precise and detailed, taking care not to omit anything which might make the case "minus sufficiens in lege." Though such a change is largely impressionistic and difficult to detail, it is quite clear.
65 Keilway, Pas. 21 Hen. VII, p.86, pl. 15. See above, chapter two, pp.88-95.
66 Spelman, f.303. "le letter est que covent estre seisi in fee mez ceo nest estatut pris quar si soit tenant in taill remainder in fee a auter est tout vn."
67 Spelman, f.303.
68 See above chapter two, p. 72.
prerogative whether the tenant died in possession of the land, or simply with a right to it. This interpretation also seems to have been generally accepted by the profession, for in 1522 Newdigate noted that if the feoffee or the cestui que use died with his heir within age the lord would have the wardship in either case "and thus he will have two wards for one tenancy." 69

However, Spelman does retain his desire to restrict the king's rights to the letter of the law. Though the decision in 1506 had allowed the king wardship "as well of the lands of which his [the tenant's] ancestor died seised in use as in possession, as well of land held in socage as by knight service," Spelman seems to have responded against the king's claim to land in socage. 70 His reading does not emphasize the point, but his reports note that though the land held of the king is in use, or in reversion, and the land held of the other is in possession, the king shall have the prerogative. But it is always necessary that the land held of the king should be held of him by knight service and in capite, and not in socage. And if one acre is held of the king as of his Duchy of Lancaster, by knight service, and another acre of the king by socage, yet he shall not have prerogative. 71

Though the manuscript of his reading does not develop the distinction between the king's rights to land in chief and in socage, it does echo the report in its argument that "if land is held of the duchy and also other land is held of the crown in socage, the king will not have it." 72 It thus seems likely that Spelman did in fact oppose the general view that the statute of 1490 gave the king prerogative rights over all lands in use.

Spelman's discussion thus far is based on the assumption that the tenant had not made a will. If the tenant had made a will, the situation was changed somewhat. If lands held of others were in use and the king's tenant disposed of them by will for a term of years, the king would have no prerogative in them for that term. If, however, the tenant merely disposed of

69 YB Mich. 14 Hen. VIII, p.5, pl.5. Newdigate's point is that the feoffee can upset the plans of the feoffor: "les feffees en divers cases peuvent changer l'entre le feoffor, & prejudice cestuy a que use, come s'ils meurt sans heir, le Segnior auera cee per eschet a son use demesne, pur cee que est le folie le feoffor, de suffrir eux de mourir seiss. Et issint s'il meur son heir deins age, le Segnior auera le gard, & auxy le Segnior auera le gard cesti a que use per Statut Anno 4 Henry 7 cap. 17 & issint il auera 2 gard pur un tenancy."
70 Keilway, Pas. 21 Hen. VII, p.86, pl. 15.
71 Baker, Spelman's Reports 1: 176.
72 Spelman, f.303. "Auxi si terre soit tenuz del duche & auxi auter terre est tenuz del coron in socage le roy nauera."
part of the profits from such lands, the king would have whatever was left. If the tenant held land of the king and of another in use and disposed of the profits of the land held of the king without any mention of the other land, the king would have his prerogative in that land. 73

Again, Spelman is assuming that the land in use, because it is held of the king, will transmit a right to the prerogative in the lands held of the other lords, though presumably only where the lands were held of the king in chief.

Besides the king’s general rights to lands in use, Spelman also considers the more specific questions of wardship and primer seisin. The statute of 1490 allowed the king to retain the wardship of the body of his tenant, and this led to some complications in process. For example, how were the feoffees to regain possession of the land held of the king? It seems that the most common method was by suing special livery, a method which would avoid many awkward questions, for the feoffees would simply pay a fee in order to get a blanket livery. Spelman argues, however, that “the law is that [the feoffee] will have ouster le mayn.” 74 He does not elaborate on the reasons why ouster le mayn is more appropriate than livery, but clearly he believes that since the feoffees hold the land in use rather than in fee, the king has no right to seize the land or to livery it to them. Once again, he is reacting against the kind of argument made by Constable that the king should livery land held of him every time it changes hands and is favouring the more restrictive idea that the king should livery land only when it passes by descent.

Wardship also allows Spelman another opportunity to present uses as simply another form of landholding. He questions what will happen if a tenant with feoffees to his use dies leaving an heir within age, who goes on to take the profits from the land during his non-age. If, when the heir comes to his full age, an inquisition finds that he was within age at the time of the death of his father, and now he is of full age, will he be able to sue livery or not? Spelman argues that under normal conditions, if an heir intruded without suing livery the

73 Spelman, f.303.

74 Spelman, f.306v. “Si home ad feoffees a son use & devi son heir deins age & in gerd le roy per reson del use est use que le feoffez auera especiall liuerie mez le ley est que auera ouster le mayn.”
king would reseize the lands, as would also happen if an heir intruded after the death of a tenant in dower. Though he does not state it explicitly, the implication is clearly that the heir of the *cestui que use* should also be subject to this penalty.\(^75\)

Though, in discussing wardship, Spelman tries to reduce uses to simply another form of landholding, it is clear that this was not universally true. Uses still retained some of the functions which had made them popular in the first place, and which had not been changed by the statute of 1489. Quite simply, as the paraphrase puts it, “if the lands were in feoffment to use, then the king shall not have primer seisin, for this is not remedied by any statute [in the way that] wardship is remedied.”\(^76\) This, along with Spelman’s treatment of wardships, indicates that the king still had much to do if he was to eliminate the effects of uses on his feudal revenue. His position was much stronger than Frowyk had allowed, and by 1521 there was no doubt that the statute of 1490 applied to his tenants. However, it only helped him when his tenant had died without making a will, and when he left an heir under age. On the other hand, while Spelman makes it clear that Frowyk was over-ruled in his exclusion of the king from the statute, he makes it equally clear that Constable’s over-enthusiasm for the king’s rights was also rejected. Uses had long been a standard element of landholding patterns, and by the time that Spelman lectured, the effects of the statute of 1490 had been thoroughly integrated into those patterns. He treats uses as a regular part of the system, and one which brought many of the same benefits and burdens as other methods of holding lands, but which retained its own peculiarities. Uses were still a convenient method of avoiding certain feudal burdens, despite royal attempts to curb them.

Spelman’s treatment of uses as part of the common law was made possible largely through statutes of 1484 and 1489. Richard III’s statute allowed the *cestui que use* to make a

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\(^{75}\) Spelman, f.306v. The manuscript, which is always difficult, is particularly obscure at this point, but this is quite clearly the general gist of his argument. “Et si home que ad feoffez a son use devi son heir deinz age que prist le profettes durant son inage & quant il vient a plein age est troue per vn office coment il fuit deinz age all temps de mort son pere & que ore est de plein age que si ore il suer liuerie ou nemi quar {_reb record semble que _} si le feoffez pur ceo que a __ il fuit deinz age vncore il a\(^1\) perd de toutz intrusions &c Et si femce que est tenant in dower de terrez tenuz de roy devi & leir enter devant liuerie deux ils serront reseise &c”

feoffment of land binding at common law. This was intended to protect the purchaser, but it had the effect of allowing titles to land to pass through uses and thus it presented the cestui que use as in some way the owner of the land. The statute of 1489, in allowing the devise of land held in use, had a different, but still profound effect. Though it made no statement on the status of the use, by allowing devises it tacitly accepted the situation and provided common law protection. As the years passed, lawyers brought uses into the common law family, as we have seen, until Dyer could say that “an use hath obtained the name of an inheritance, and is now reputed amongst the estates of land in our law; and therefore we say in speeches, and in penning of statutes, estates in possession and estates in use.”

That the fresh interest in the prerogative reflected in Spelman’s reading continued unabated is clear from the administrative changes of the following years. A statute of 1523 bolstered the office of the king’s general surveyors and laid out in detail both their scope and their authority, re-affirming their independence from the exchequer. In 1526 the Crown went beyond this when it began a new campaign to recoup its losses, with the appointment of William Paulet as joint master of the king’s wards. Although he shared the office, he combined it with that of receiver-general, prompting Bean to regard this as the development of a new phase in the administration of the prerogative and the beginning of the Court of Wards. In the same year “alienations by tenants-in-chief were only permitted on condition that prospective fiscal loss to the Crown was indemnified. Penal recognizances were devised in the case of each and every such permitted alienation, which were enrolled in chancery.” These methods are familiar, and they show the Crown relying on the combination of its traditional feudal right to licence alienations and the more recent development of the use of

80 J.A. Guy, *Christopher St. German on Chancery and Statute* Selden Society suppl. ser. vol. 6 (London: Selden Society, 1985), 78.
recognizances to enforce those rights. The campaign quickly moved beyond these fairly passive activities and in June of 1526 a meeting of the King’s Council commanded the king’s attorney and solicitor “that they shall have all such in action as alieneth any lands which are holden of the king as of his Crowne ymmediately and also as well those which selleth lands wherof the king is in the Reversion as them which make Alienacion whereby the king looseth livery or primer seisin.”

Though the implementation of these traditional methods of enforcement shows a renewed interest in the exploitation of the prerogative, they had little effect on the problems generated by uses, and by the end of the decade Henry VIII had decided that a frontal assault on uses themselves was necessary. There were many arguments against uses. The fact that they interfered with feudal incidents was a major irritant for the king, but that irritation was less for other lords, who compensated for the loss of their feudal incidents by depriving the king. Other facets of uses were of more concern to the general landholding public. The ability to direct land to others than the legitimate heir, which was one of the benefits of uses, was also one of its problems, and the obscured titles it caused increased the possibility for fraud.

Rather than seeking simply to enforce royal rights, two documents of this time sought to reform the way in which uses were administered by dealing with all of these problems. The documents are undated, but clearly belong to the period between 1529 and 1532. One is in the form of a draft bill, though its provenance is disputed, and the other is an agreement between the king and the nobility. The former sets out to deal with the confusions in title caused by both entails and uses, and would do this by abolishing entails entirely and invalidating uses unless they were recorded in the Common Pleas. The clear purpose of the

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82 Holdsworth and Bean believe that the draft bill is of government origin, while Ives sees it as the work of an enthusiastic amateur. W. Holdsworth, A History of English Law vol. 4, 3rd ed. (London: Methuen, 1966), 450; Bean, Decline of English Feudalism, 259-61; Ives, “Genesis of the Statute of Uses,” 677-80. These scholars disagree in many particulars in their interpretation of the events leading up to the Statute of Uses.

83 Holdsworth, History of English Law, 4: 572-73. The bill mitigates the abolition of entails by allowing nobles
bill is to ensure publicity in the transfer of lands. Not only does it require that uses be recorded, it also seeks to have all purchases of land read aloud in church on the Sunday following the sale and it prevents noblemen from selling any of their land without a licence from the king. Though this bill, if passed, would have done much to clear away the confusion surrounding titles to land and would have allowed the king to see clearly what was owed to him, it in no way helped him to get his due.84

The second document, the king’s agreement with the nobility, was closely connected with the first, and went a long way towards achieving the king’s wishes. The agreement would allow the nobility to continue to enjoy many of the benefits of uses, while giving the king guaranteed access to a certain proportion of his feudal rights. It opens with two statements, one clearly based on Prerogativa Regis and the other on the statute of 1489, which present the situation as it then stood.85 The agreement went on to state that feudal incidents would remain the same on land which was not in use or settled by will, but where land was so settled, the king would receive his dues on one-third of the land. Similarly, if a ward sued livery within three months of attaining his majority and guaranteed to pay the Crown one-third of a year’s profit on the lands in the Crown’s hands, he would be free from assessment on the rest. An heir of full age suing livery would be exempted on paying half a year’s profit.86 The agreement was meant as the foundation of a new piece of legislation, but until the legislation was passed, the signatories were to be bound by the terms of the agreement. The purpose of the arrangement was clear; the king was willing to concede the right to devise two-thirds of an estate in return for a guarantee of his rights on the remaining one-third. It had the added benefit, from the king’s point of view, of dealing with the livery of land under uses, something not covered by the statute of 1489. It gives some indication of

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84 This seems to be the main reason why Ives dismisses the possibility of an official origin for this bill.
the current level of evasion of feudal incidents that the king was willing to settle for a guaranteed one-third of his ostensible rights. The document also contained a provision against any attempt to manipulate the agreement, which states that

if any manner of person … make or cause to be made any guifl in taile to his heyre apparant or to any other to his use of any of his landes or tenements or an other thing doe or cause to be done whereby the Kinge his heyres or successors should or might be evicted or excluded from any benefit or profit of ward primer seison or liverie contrarie to the effect and plaine meaninge of any of the Articles above written, Or if any other imaginacion or invencion hereafter shall be found contrived or devised contrarie to the same, yet, that or any such thing notwithstandinge, the Kinges heighnes … shall have the full benefit and effect of his warded the bodyes and landes and primer seisons and liveries, accordinge to the plaine and true intent of the said Articles and every of them. 

The agreement not only binds the nobles not to seek loopholes, it also obliges the king to settle for his one-third as stated. This provision, like the rest of the agreement, foreshadows the king’s policies over the next several years. Henry’s desire was clearly to remove this gentleman’s agreement from the hands of the lawyers and the realm of the common law and the interpretation and manipulation that that would imply. He wanted his wishes to become law and to mean what he wanted them to mean. Trying to remove one piece of projected legislation from the body of the common law was completely unrealistic; it went against every principle of legal interpretation. As we will see, however, Henry continued to insist on intervening personally in the interpretation of his law.

The agreement, signed by thirty peers, i.e. a majority of the lay lords, states that it was to be introduced into parliament at the next session, but because the agreement is not dated, it is difficult to be sure whether this happened. Ives dates the bill to 1529-30, which would have seen the bill destined for the 1531 session. It was not, however, introduced until 1532, and Ives explains this by arguing that the government was unwilling to commit itself to an unpopular bill in 1531. Bean makes the more plausible argument that the various

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members of the nobility signed the agreement over a period of time up to January 1532. Its introduction into parliament then followed. Contemporaries, including Eustace Chapuys, the imperial ambassador, and Edward Hall, the chronicler, make it quite clear that the bill did not have an easy passage in the Commons, and in March Henry spoke sternly to a Commons delegation, warning them that “if you wyll not take some reasonable ende now when it is offered, I wyll serche out the extremitie of the lawe, and then wyll I not offre you so moche agayne.” Once again, Henry’s words were prophetic, but for the moment nothing happened. Parliament was prorogued for Easter and met again in April. Henry again submitted the bill, and this time it received two readings. Henry’s words appear to have had some impact, though not as much as he might have hoped. The Commons was clearly much more strongly opposed to the bill than the Lords. Ives suggests that the social character of the two houses was at least partly responsible for this, but he also attributes it to the intended effects of the bill, which, if passed, would make for easier and more efficient collection of the king’s feudal dues. Though in appearance the king was giving up part of his rights, in reality he would not have been so anxious to have the bill pass if he did not expect it to increase his total yield. The Commons was traditionally hostile towards taxation bills, and this was in effect an insidious and long-term tax. As Ives points out “a substantial number of the House clearly felt that the king was bluffing - the law was on their side, it was fixed and certain, and without the consent of the Commons it could not be changed.” The Commons had good authority for resisting the royal demand, for the law on the prerogative had been confirmed as recently as 1531.

The agreement with the nobility and the debate in parliament seems to have directed the attention of the legal profession to the prerogative once again, for the serjeant-elect Roger Yorke chose it as his topic in 1531. Only a fragment of Yorke’s reading has survived, but in the absence of a usable manuscript, Yorke’s casebook can give us some indication of his

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89 Bean, Decline of English Feudalism, 265-66.
90 Hall, Chronicle, 785.
knowledge of the prerogative and the probable direction of his reading.

It is readily apparent that Yorke relied heavily on Spelman in compiling his reports; the numerous mentions of Spelman's name in the section on "Gardes and Liveries," in particular, suggest that Yorke had access to Spelman's reading.\(^2\) The casebook has notes on many of the issues raised in the readings, most of which serve to clarify or confirm the direction in which the law was moving. For example, Yorke moves one step further in solving the problem of the service due when a mesnalty held in chief escheats to the Crown. Spelman's dilemma was to determine whether the tenant should render the same service as his lord had previously done, thus placing a heavier burden on the tenant when he had committed no fault, or whether the tenant should render the Crown the same service he had rendered the lord, thus depriving the king. Spelman's reading left the question unanswered, but Yorke is quite clear on the issue. He says that when a mesnalty held of the king, but not held in chief, escheats for lack of heirs, the tenant will hold of the king as he held of the lord. If the mesnalty is held in chief, the tenant will hold as the lord held. However, he goes on to argue that if, in the former case, the land escheated for treason "so that the king had this by reason of his prerogative and by reason of his crown and not by reason of any tenure, then all the tenants who previously held of such lords now hold of the king in chief."\(^3\) Yorke attributes the note to Frowyk and Spelman, but in fact it is an amalgamation of the principles and practices enunciated by the three previous readers, for his conclusion on escheat for treason clearly relies much more heavily on Constable than either Frowyk or Spelman.

Yorke's collection covers other similar issues, such as the effect on tenure when a lordship

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\(^2\) Yorke also tends to couple Spelman's name with "Hasket", possibly Richard Hesketh, also of Gray's Inn. Hesketh gave his second reading in the Lent vacation 1515, the year after Spelman gave his first. Yorke's constant coupling of the two names suggests that Hesketh was also recognized as an authority on the prerogative. It is possible that he had read on the topic, but the reading did not survive. Since Yorke also joins Spelman and Hesketh's names with Frowyk, on occasion, it is possible to speculate that Hesketh was a link between Frowyk and Spelman and perhaps even that the paraphrased reading in Spelman's collection was given by Hesketh. Spelman refers to Hesketh twice in his collection, under traverse and petition of grace. Baker conjectures that Hesketh's reading dealt with the statute of Marlborough. *Spelman's Reports* 1: 213.

\(^3\) Yorke's Casebook, MS Hargrave 388, f.243. "issint que le roy ad ceo per reson de son prerogative et per reson de son corone et nemi per reson dascun tenure donques toutz lez tenauntz que adevent tient tielx seigniourz ore tiendr del roy in capite."
purchased by the king escheats, and again attributes his conclusions to Frowyk and Spelman. Yorke obviously considered Frowyk and Spelman the best authorities on the prerogative, even though he had also been influenced by Constable. Though Yorke’s reliance on Spelman might be explained by the fact that they came from the same Inn, the same cannot be said of his bias towards Frowyk, and thus it does not provide an explanation as to why he does not mention Constable. This suggests that though the legal profession had rejected Constable’s overall interpretation of the prerogative, some elements of his reading had been incorporated into the general knowledge of the law.

Yorke also displays the same kind of detailed interest in wording that Spelman had done. He notes the points concerning the difference between grants of wardship ad plenam etatem and quam diu in manibus nostris fore contigerit made by Spelman in his reading, but he adds other notes. Where Frowyk had dismissed the requirement that land should be held “ab antiquo de corona”, noting that he had never seen issue taken on that question, but only whether land was held in chief or not, Yorke goes out of his way to note that tenure ab antiquo is “where continually he [the tenant] held of the king by knight service.”

Throughout the material, however, Yorke does not interpolate anything striking, nor does he query many of the notes. Though his expression of the law is a little more refined than Frowyk’s, his direct line to the earlier reader and the traditional view of the prerogative is clear in such statements as “all the land in the realm is held of the king, mediatly or immediately.”

Though, as the comparison between Spelman’s reports and his reading displayed, a casebook cannot be taken to represent a reader’s views exactly, in Yorke’s case it does indicate that much of his knowledge of the prerogative came from Spelman and largely followed his teaching. The fact that his reading did not survive is a further indication that

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94 Yorke’s Casebook, f.246v.
95 Frowyk, f.1. See above chapter two, p. 65.
96 Yorke’s Casebook, f.246. “quel tenure en chiefe est lou continually il tenoit del roy per service de chivalrie”
97 Yorke’s Casebook, f.247. “tout la terre deinz le realme sont tenuz de roy mediat ou immediat.”
there was nothing new or significant to be learned from it. If we assume that Yorke understood and represented the law on the prerogative as it was generally accepted, his casebook can be of further use in elucidating some of the consequences and limitations of uses as he understood them. The single most obvious danger with uses was that the feoffee held the legal title to the land, and any claims on his estate could be taken from the feoffor's land. Thus, as Yorke noted, if the feoffee granted a rent charge to a stranger, or died leaving a widow, the rent or the dower could be taken from the land he held to the use of the feoffor. In this case the grantee of the rent would be seised to the use for which the land had been enfeoffed and so the feoffor would not lose too much, but there were other situations in which he would not be so lucky. If the feoffee died leaving no heir and his land escheated to the lord, the lord would get the feoffor's land, but he would hold it to his own use. Similarly, if the feoffee was attainted or outlawed, the feoffor's land was vulnerable. The usual method of avoiding these problems was to enfeoff land to a group of feoffees, so that if one suffered the others could safeguard the use.

Of course one of the reasons for feoffments to uses was the benefit to be gained if any of these dangers threatened the feoffor. Yorke notes that "a use cannot be forfeit, for the lord is not able to have this, nor the king, except in a special case as where the use goes into mortmain." Similarly, if the feoffor died without an heir, then the feoffee would hold the land to his own use. This had the benefit of preventing the land from falling into the lord's hands and allowing the tenant to redirect it to a beneficiary of his choice.

Besides trying to avoid the dangers of confiscation or escheat, enfeoffments to use allowed the feoffor to dispose of his land after his death, and he often chose to do this

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98 Yorke’s Casebook, f.234. “Nota per Hasket et auterz que si ieo face feoffment a vn a mon vse et le feffe grant rent charge a vn estranger, ou prist ferne et devi, oe el serra indowe Et auxi le grannte del rent serr a seisi al primer vse adigue et il tiendr charge ou si le feoff devi saunz heire general ou especial que le Seigneor per eschete entre ore le Seigneor auera le terr a son vse demesne /ou si le feoffe soit attaint de felonie, il perdre et forfeur la terre /ou sil soit vlage en personel accon il forfeur toutz lesz profetz mez si si atteint de felonie il forfez forsque le 2 parte quod nota.”

99 Yorke’s Casebook, f.234v. “Nota que vn vse ne poet estre forfeit, quar le seignior ne poet auer ceo ne le roy, si non en especial case, come si le vse vient ad manuum mortuarum.”

100 Yorke’s Casebook, f.234.
through his will. However, there were some limitations to the way in which he could do this. If the feoffor put land in use and made a will ordering his feoffees to enfeoff his son and heir, and then died leaving his heir under age, the son would be in ward, even though his father had made a will in accordance with the statute of 1490. The reason, according to Yorke, was that “this will is as though void, for if he had not made such a will the son would still have the land.” If, however, the will directed the feoffees to convey the land to the son in estate tail, the body would be in ward, but not the land. There were also problems with willing uses in tail, as a later case demonstrates. Yorke reports a case where the tenant has a use in fee and makes a will that one JS should have the land to him in tail. The tenant then dies, leaving an heir within age. According to Yorke, the tenant’s heir will be in ward to the lord for the fee simple, while the heir of JS will be out of reach, because “these cases go according to the order of the common law so that there must be a will of the fee simple or otherwise the old tenant remains tenant to the lord.”

While all of these cases show that a landholder seeking to dispose of his land through uses had to be very careful that his wishes did not backfire through careless conveyancing, they also demonstrate that uses were clearly becoming part of the mainstream of common law, as Yorke argued in the example above. Though Yorke was a regular practitioner in chancery, and thus might be expected to display more interest than most in uses, there is nothing in his casebook which indicates an unusual attitude to uses or which indicates that they threatened the common law. Indeed, there is no reason to expect the majority of lawyers to object to uses on professional grounds. While the serjeants and judges of the common law courts lost the business which was drawn to chancery, other legal practitioners were as happy to work in chancery as elsewhere. Moreover, the conveyancing requirements for uses must have greatly increased the business available to some sections of the legal population.

101 Yorke’s Casebook, f.234v. “tiel volunt est come void quar sil navoit fait tiel volunt vncore le fitz auera le terre.”
102 Yorke’s Casebook, f.248-248v. “ceux casez va solonque le ordre del comen ley come covient auer volunte de fee simple ou auterment launcien tenant remain tenant al seignor.”
103 Guy, St German on Chancery and Statute, 66.
In fact, the only reasons to object to uses were those already named: the loss of feudal
dues, which affected the king most of all and troubled few others; the confusion of titles
which could harm the unwary buyer; and legal purism, which did not want to accept uses as
part of the common law. Though the proposed bill of 1532 would have dealt with the first
two to some extent, it was clearly not having an easy passage through the Commons, and so
the Crown seems to have turned to the final argument against uses, legal purism, to get its
way. This approach first came to prominence in the autumn of 1526 when Thomas Audley,
of the Inner Temple, read on the statute of 1490.\textsuperscript{104} Baker suggests that Audley “was either
already working for the Crown or seeking preferment,”\textsuperscript{105} but the former is the more likely of
the two. Audley first seems to have attracted attention in the parliament of 1523 and he
quickly began to gather offices. In 1525 he was appointed to Princess Mary’s council, and in
1526 he was appointed attorney of the duchy of Lancaster, a position closely associated with
the enforcement of the prerogative.\textsuperscript{106} Given this background, we might expect Audley to
object to the employment of uses, and indeed this is the case, though he approached the issue
with some subtlety. He pointed out that uses defrauded lords of their feudal rights, but he
emphasized most the problem of uncertainty, which for him was caused by the fact that uses
were not governed by the common law. He argued that

\textit{notwithstanding that these uses were at first imagined for good purpose ...}
\textit{nevertheless for the greater part they were pursued and connived at of ill purpose, to
destroy the good laws of the realm, which now by reason of these trusts and
confidences is turned into a law called ‘conscience’, which is always uncertain and
depends for the greater part on the whim [arbyrement] of the judge in conscience; by
reason whereof no man is certain of knowing his title to any land. For land now
passes by words and bare proofs in the Chancery, whereas by the common law it
could pass only by solemn livery on the land or something tantamount, or by matter
of record or writing. Also the trial of title to land in this realm was never by proofs,
but by verdict: but now it is contrary.}\textsuperscript{107}

\textsuperscript{104} By this time it was no longer unusual for a reader to choose to read on any statute which interested him.
\textsuperscript{105} Baker, \textit{Spelman’s Reports} 2: 198.
\textsuperscript{106} Stanford E. Lehmberg, “Sir Thomas Audley: A Soul as Black as Marble?” in \textit{Tudor Men and Institutions:
Studies in English Law and Government}, ed. Arthur J. Slavin (Baton Rouge: Louisiana State University Press,
1972), 7.
\textsuperscript{107} MS Hargrave 87, f.438, translated in Baker, \textit{Spelman’s Reports} 2: 198.
Audley's argument, as Yorke makes clear, was not really in the mainstream of legal opinion. It most likely represents an idea under consideration in government circles in the late 1520s, which seems to have gathered appeal as the agreement with the nobility foundered in the Commons. It also attracted some attention in the debates of the period and both sides of the argument were expressed in pamphlets written between 1530 and 1532. In the *Replication of a Serjeant*, which Guy speculates was written by St. German, the serjeant argues that uses beganne of an untrew and a crafty ynvencion to put the king and his subgyettes from that [which] they aughte to have of righte by the good, trewe common lawe of the realm: as the kinges highnes from his escheates, his wardes, and his prymer seasons, and from other thinges that nowe cumme not to my mynde; and his subgiettes from theyre escheates and wardes … the whiche they aughte to have by the lawes of this realme.

St. German's *Little Treatise concerning Writs of Sub Poena* responds to this, though not with much conviction. Though the treatise in general is a strong defence of the chancery jurisdiction through *sub poena*, St. German's argument in support of uses falls rather flat. He distinguishes between depriving someone of a right which is already his and preventing that right from coming to him. The former is wrong, the latter perfectly justified. Thus, if a man is dying and arranges the marriage of his underage heir to reap the financial benefits “he doth no wrong to ye lord.” The same principle applies “in al ye cases that be spokyn of in ye seid treatyce, where such titles be put awey by means of uses. And lyke wyse yf a man that hath no heir, general nor specyal, selleth his lande, or gyvyth it awey, to ye intent that it shuld not escheate, he doth no wronge to the lord.” St. German did not convince either side in the debate with this response, but the exchange indicates that Audley’s argument against uses was gaining attention. A few years later another tract, entitled *Dama Usuum*, made the same point, and suggested that “if the usez, which is in Regard but ye shadowe of the thyng

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108 See Guy, *St. German on Chancery and Statute*, 56-58 for the dating and authorship of the pamphlets.
110 Christopher St. German, *A Little Treatise concerning Writs of Subpoena*, ed. J.A. Guy in *Christopher St. German on Chancery and Statute*, 114.
111 Ibid.
and not ye thyng Indeyd, were clene put out of the lawe men yat had right should heraftur come to there remedyes.”

Henry’s threat to the Commons in 1532 that he would “serche out the extremitie of the lawe” suggests that the government was planning a move along these lines. In 1533, with the agreement with the nobility apparently dead in the Commons, the government got the opportunity to make good on the king’s threat. In that year Lord Dacre, one of the Crown’s major tenants-in-chief, died. Lord Dacre had not signed the agreement, and so his heirs were not bound by it, but he died leaving much of his estate in use and willed to others than his heir. The inquisition post mortem, held in January 1534, found that he had devised land in tail in order to defraud the king, but the feoffees protested that the will was not collusive, and this simple question became the central issue. Lord Dacre’s will was valid according to the orthodoxy of the day, but the government set out to prove that land could not be willed through uses. The case was argued in chancery in 1535 and the judges of both benches were present by the command of the chancellor, that same Thomas Audley whose reading previously argued against uses. Serjeant Yorke represented the feoffees, and once again presented the general understanding of the law, that

a use was at common law, for a use is nothing but a trust which the feoffors put in the feoffee upon the feoffment; and if we were to say that there was no use at common law, it would follow that there was no trust at common law, which cannot be: for trust or confidence is a thing which is very necessary between man and man, and at least no law prohibits or restrains a man from putting his confidence in another.

As proof that uses did exist at the common law, Yorke listed statutes made from the time of Richard II onwards dealing with uses in various ways. Because of this, he concluded that “it has been held for many years that a use was at common law, by the common opinion of the whole realm; and so it seems to me that it is no longer to be disputed for it cannot be said that all statutes made before now concerning uses are all void.” Yorke also tried to separate

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115 Ibid., translated in part in ibid.
the use from other methods of holding land by pointing out that “the use does not pass as land passes; for land cannot pass without livery, but uses [pass] on a bare word.”

Yorke’s statement was countered by Pollard, who attempted to cut the ground from under Yorke’s feet by arguing that

it seems that there is no use: for if there was any use, it must, of necessity, have had its foundation either in the common law or by statute; and it seems that there was no use at common law, for it is impertinent that I should enfeoff you of land, and so part with it, and yet that I should still have it, contrary to my feoffment and gift. There is no mention made of any use in old year books, and if there had been any use at common law it would have been specifically mentioned in the old books of our law … [also] no statute was made by which the use was made and thus there is no use.

Serjeant Pollard further covered his position by adding that even if the use did exist at common law, land in use could not be willed, for the common law did not allow wills of land.

Pollard was followed by Montague, who spoke on the nature of wills, and argued that uses did exist at the common law, for both uses and the common law are founded on reason. Leaving legal history aside, however, he concluded that the most important point was that

for a long time the law has been held thus and continuance of this makes a law. And if no reason proves this, in the civil law it is said that common error makes law. And it would be a great mischief to change the law now, for many inheritances in the realm depend on uses, so that there would be great confusion if this was done [Dacre’s will overturned].

Thus Montague followed Yorke and the common view in arguing that uses did exist at common law, but he recognized that the law could develop in unexpected ways, owing nothing to statute or to the ancient common law, but much to the necessities of the time and the ingenuity of the common lawyers. He recognized the larger problems which would follow a victory for the Crown and pleaded for a pragmatic acceptance of the legal developments of the previous fifty years.

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116 Ibid.
117 Ibid., f.9.
118 Ibid.
119 Ibid., f.10.
Yorke, Pollard and Montague present the three central views of *Lord Dacre's Case*; the tradition that uses had acquired validity at common law, the royal argument that they had no legitimate foundation and were fraudulent, and the pragmatic assertion that so much depended on them that any academic concern over their origins was out of place. The year book report gives no conclusion to the discussion, but according to Spelman, the case was argued for a long time by the apprentices and serjeants and was then adjourned to the Exchequer Chamber, where the chancellor, Cromwell, all the justices and the chief baron gave their views. Spelman identifies two questions in the debate. The first repeated the focus of the year book discussion, i.e. whether uses upon feoffments existed at common law, and "many of the justices were of the opinion that this word 'use' was in old times called 'trust' or 'confidence'". This seemed to dispose of this fairly satisfactorily, but the second issue was more troublesome. This was the simple question, "can *cestui que use* make a will of his lands?" On this point the group divided, with five, including Audley and Cromwell, arguing that such a will was void "for no land is devisable by will except by custom, since it is against the nature of land to pass in such a way." Four justices, however, were of the contrary opinion. According to Spelman, who was in the latter group, Justice Port also agreed with them,

but he spoke so low that the said Chancellor and Secretary understood him to be of the other opinion, and therefore they thought that the greater number of justices were of [the same] opinion as themselves. Therefore all the justices were commanded to appear before the king, who commanded them to assemble to agree in opinion, and those who were of opinion that the will was void would have the king's good thanks.

Then the justices reassembled before the said Chancellor and Secretary, and debated this question. And Fitzjames, Fitzherbert and Spelman, observing the opinion of the Chancellor, Secretary and other justices, who were men of great reason (and the number of them was greater), conformed with their opinion. But Shelley was not there because he was sick.

It is impossible to know whether Shelley's illness was strategic, and we can only sympathize

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121 Ibid.
122 Ibid. The others who held this view were Lyster, Chief Baron; Baldwin CJCP; and Luke JKB.
123 Spelman, JKB; Shelley and Fitzherbert JCP and Fitzjames CJKB.
124 Ibid., 230.
with him if it was, for the pressure placed upon the judges was immense. It is easy to conclude that the judges buckled under the royal will and abandoned their professional impartiality. However, it is difficult to argue that this situation is so clear cut. Though there is no doubt that the judges gave the king the result he wanted, there was clearly a strong argument for the king’s position; in fact his was the more technically correct. While Spelman’s account makes clear the royal bullying, it also demonstrates the justices’ discomfort with the whole issue. Under normal circumstances the case would probably have been left unresolved and the parties encouraged to come to terms, but the circumstances were not normal. Not only was the king taking a personal interest in the conduct of the case, he wanted a unanimous verdict from the judges, something of a rarity in any case. Nothing could more clearly demonstrate the importance of the case and the fact that the king intended it to have repercussions beyond this one estate, large though it was.

Indeed the repercussions from Lord Dacre’s Case were immense. The judgment itself was ironic, for while it had begun with the question of whether uses could exist at common law, it was decided on the basis that they could and did, that they therefore followed the nature of common law and thus could not be devised. The effect of the decision was certainly as Hall, a reader at Gray’s Inn himself, reports: “that lande coulde not be wyulled by the ordre of the common law.”¹²⁵ The decision in Lord Dacre’s Case must have caused a general panic, for it was retrospective, and, as Montague had predicted, meant that any landholder in England who traced his title through a feoffment to uses would be vulnerable. Something had to be done quickly to save the situation and the king was more than willing to comply, on his terms. Lord Dacre’s Case led directly to the Statute of Uses, which gave the king far more than he had originally sought in his agreement with the nobility. Rather than abolishing the use, the statute turned it from an equitable into a legal estate. The statute pursued the idea that uses followed the common law to the extreme and turned uses into a common law estate, joining the possession to the use. The cestui que use got no relief in his

¹²⁵ Hall, Chronicle, 785.
feudal incidents and land was no longer desirable by will. Though in his discussion of the negotiation over the proposed bill of 1532 Hall describes Henry as “an indifferent Prince, not willyng to take all, nor to lose all” it is clear that the king preferred the former alternative to the latter. It was a harsh settlement, but parliament passed it with hardly a murmur, for the alternative was too terrible to contemplate.

The preamble to the Statute of Uses makes no mention of Lord Dacre's Case, nor of the pressure under which the statute was framed. Instead it reads as a textbook exposition of the evils of the use, one which must have rejoiced the heart of the author of the Damna Usuum. The need for the statute, and its connection to Lord Dacre's Case are expressed most clearly in section nine of the statute, which states that

for asmoche as great ambyguytes and doutes may arysye of the validyte and invalidite of wylles here to fore made of any Landes Tenementes and Hereditamentes to the great trouble of the Kynges subjectes ... [all wills of persons dying before 1 May 1536] shalbe taken and accepted good and effectuall in the Lawe after such fashyon maner and fourme as they were comonlye takyn and usid at any tyme within forty yeres next afore the makyng of thys act; any thyng conteynid in thy acte or in the preamble therof or any opynyon of the common Lawe to the contrary therof notwithstonding.

Parliament was eager enough to pass the statute at the time, in order to nullify the recent “opynyon of the common Lawe,” but opposition to it grew quickly. The statute effectively restored compulsory primogeniture and thus, as Hall remarks, it “sore greued the Lordes and Gentlemen that had many chyldren to setf~rth.” The re-imposition of primogeniture also made it difficult to satisfy creditors in a will and this had the effect of reducing the financial flexibility of many families and jeopardizing their future economic stability.

Though the principle on which the statute was based was simple, it seems that conveyancers soon began to find possible ways around it. Indeed, opposition to the change was not confined to attempts to evade the statute, but quickly moved into a more dangerous

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126 Ibid. Hall also suggests that there were others at the time who recognized how far the king could carry the law against them.
128 Ibid., 541.
129 Hall, Chronicle, 785.
arena, that of rebellion. The Statute of Uses has the distinction of being one of the few English statutes to contribute to an armed rising, and the reaction can be blamed largely on its harshness. Given the compulsion under which the statute was passed, Henry was adding insult to injury when he deplored rebellion against “those lawes and Statutes, which by all the Nobles, knightes and gentilmen of this realme whom the same chiefly toucheth hath ben granted and assented to.” Smith comments on the number of men, most obviously Aske, with a common law education among the leaders of the Pilgrimage of Grace, and suggests that “such men may not have acted wholly out of loyalty to the Percy house. They may also have been convinced on grounds of principle that Lord Darcy was right in his opposition to Henry VIII’s new interpretation of the relationship between kingship and law.”

It is clear that Henry VIII preferred to manipulate the law more directly than his father had done. Some members of the legal profession were vehemently opposed to this encroachment on their territory by the king or by any of his representatives. The Replication of a Serjeant at Law, though focused on the iniquities of the sub poena, indicates how narrowly the proper sphere of influence of the king and chancellor could be viewed. The serjeant marvels at the Chancellor’s ability to make a writ of sub poena, which can halt process in the common law courts, “the whiche the kinge hym self cannot doo righte wiselye, for he is swome the contrary, and yt is said hoc possumus quod de iure possumus.” He carries on to point out the obligations of the judges “to mynystre his lawes of this realme

131 PRO E 36/118, ff. 99 -99v, quoted in Ives, “Genesis of the Statute of Uses,” 693; Hall, Chronicle, 821. As the king pointed out, the matter of uses “in no maner of thynges ... toucheth you the basse commons of our Realme,” (Hall, 821) supporting the argument that some of the gentry were involved in the rebellion as a consequence of the statute.
133 Edward IV had interfered with the judges, depriving Markham of his office in January of 1469, the only example of a king dismissing a judge in this period. More highlights the event in his History of Richard III, perhaps seeking to warn his audience about the dangers of royal interference with the law. The Complete Works of Sir Thomas More, ed. Richard R. Sylvester, vol.2, The History of King Richard III (New Haven: Yale University Press, 1963), 70.
134 Replication of a Serjeant, 100.
indeferentely to the kinges subgiettes" and of the serjeants to ensure that the king’s subjects are “justifiiede by the lawes of the realm.”135 Much to his disgust,

this notwithstandinge, if the kinges subgiettes, upon a surmysede bill put yn to the chauncerye, shalbe prohibite[d] by a sub poena to sue according to the lawes of the realme, and be compellede to make aunswere before my lorde Chauncellor, then shall the lawe of the reame be sette as voyde and takyn as a thing of non effecte, and the kinges subgiettes shalbe ordrede by the discreccion of the Chauncellor, and by no lawe, contrary to all goode reason and good pollycy.136

The serjeant’s distinction between the practices of chancery and the common law of the realm, though it might appeal to his colleagues, was not really justified, and St. German had little trouble in dispatching this argument with the rejoinder that “the kinges othe yn that poyncte is this, that he shall graunte to holde the lawes and custumes of his realme; and then if the lawes and custumes of his realme shall be understaunde aswell to be the lawes and custumes usede yn the chauncery as at the common lawe, as I suppose they be … then it is not againste the kinges othe.”137 St. German is returning to the basic premise that the king is the foundation of all law and whatever law is practiced under his authority is part of the law of the realm, no matter where it is practiced. In reality, the law has developed as the common law, administered by the judges and the serjeants, but, under St. German’s scheme, this is merely a matter of convenience. If the king wished to change the method of administration, he could, theoretically, do so and if he wanted to take over administration of the law himself, this could also constitute fulfilling his oath.

Though this had been a fundamental constituent of legal authority for centuries, it had also been largely a fiction. According to Britton, Edward I invoked this power when he appointed judges, but added “that our jurisdiction be superior to all jurisdictions in our realm; so that in all kinds of felonies trespasses and contracts, and in all manner of other actions personal or real, we have power to give, or cause to be given, such judgment as the case requires without any other process whenever we have certain knowledge of the truth, as

135 Ibid.
136 Ibid., 100-101.
137 St. German, Little Treatise, 122.
Though intervening kings had retained that authority, they exercised it rarely. Henry VIII, however, was keenly aware of this role, referring in 1532 to the "offyce of a Kyng which is a Judge" and his duty to "geue ... sentence." Not only was Henry enamoured with his role as a judge of the existing law, however, he was also convinced that he had the ability to change the law. His fascination with the imperial idea is well known and it extended to the imperial right to make law. In the *Collectanea satis copiosa*, a collection of sources gathered in the course of Henry's campaign against the church, Bracton's famous passage on the relationship between the king and the law was changed to increase royal power; from the statement that "the king should be under God and under the law, because the law makes the king" it has been altered to read that the king should be "under God. Not under the law, for the king makes the law." Furthermore, it seems that Henry even thought that the king could operate completely outside the bounds of the law. In his corrections to the Bishops' Book of 1537, which stated in its exposition of the fifth commandment that princes could kill and coerce their subjects "but by and according to the just order of their laws," he altered the passage to mean that only "inferior ministers," i.e. servants of the crown rather than princes, were restricted in this way. The change did not survive Cranmer's scrutiny, but though the archbishop moderated Henry's claims, his own interpretation of the commandment gave the prince a broad competence. Though he accepted that the prince must act according to justice, he relied heavily on the idea that the prince was the source of law, arguing that

when princes give pardons, placards, protections and licences, contrary to the common order of the laws, yet that also is done by the law, so that it be never done against justice and equity between party and party. And moreover it is not amply spoken that the inferior rulers should do nothing, but by the order of their laws; for

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139 Hall, *Chronicle*, 784.
141 *Collectanea satis copiosa* BL Cotton Cleopatra E vi f.28v. The Latin has been changed from "Rex debet esse sub Deo et sub lege, quia lex facit regem" to "Ipse [rex] non debet sub homine sed sub Deo. Non sub lege, quia Rex legem facit."
the laws be not theirs, but the princes, instead of whom they do minister the same
justice, that he would do himself by the common order of his laws, if it should happen
him to take the judgment thereof in his own hands.\footnote{143}

Although Cranmer does not come out in favour of the king’s views, his statement would
certainly not have gained favour with the serjeant of the \textit{Replication}, nor even, we can
assume, with St. German.

This sweeping and somewhat simplistic view of the king’s right, by returning to a
practical emphasis on the king’s role as creator of law, ignored the whole area of
administration of the law which had grown into a complex block of learning, outside the
understanding of the monarch. Quite apart from the bureaucratic nightmare it presented for
the professional lawyers, the idea of a king taking the law into his own hands would have
received little support among the educated sections of the populace. Indeed Elyot, just a few
years earlier, approvingly related the story of the emperor Alexander, who, informed that the
emperor did not have to obey his own laws, replied that he would never devise any laws for
his people which he would not himself obey.\footnote{144} Elyot’s moral is directed at lesser governors,
but by taking the emperor as his model he exhorts all rulers to “knowe the boundes of your
autorite, knowe also your office and duetie.”\footnote{145} Elyot gives an interpretation of imperial rule
radically different from the one Henry desired, and one probably more in tune with that of
the political community. Cranmer also allowed less than the king would have wished, but
more than the lawyers can have been comfortable with. More importantly, Cranmer’s
interpretation was impeccably orthodox, and his moderation of the king’s somewhat blunt
statement provided a possible avenue down which Henry could pursue his view of the
relationship between the king and the law.

Ambitious as Henry’s view was, it was neither practical, nor likely to gain general
acceptance. Henry had no real interest in the general administration of the law, and even

\footnote{143} Ibid., 105.
\footnote{144} Sir Thomas Elyot, \textit{The Boke named the Governour} (New York: E.P. Dutton, 1907), 203-4.
\footnote{145} Ibid., 204.
stalwart royal supporters like St. German believed that "princes were not learned enough to discover their power by themselves: they needed assistance lest they presume too much."\textsuperscript{146} The legal profession was indispensable and would remain in charge of the law, but Henry seems to have been determined to redress the balance of power within the legal system in order to gain the initiative in controlling its operation. There are various examples of Henry’s determination to bend the lawyers to his will and their ability to resist. In 1530 when a gathering of lawyers at Hampton Court decided that parliament could not enact that the king’s divorce should be granted by the archbishop of Canterbury, the king was furious and prorogued the next session of parliament, apparently to give him time to change the lawyers’ minds.\textsuperscript{147} The king also took steps to remove the lawyers from political influence, excluding them from the conciliar role they had held under his father, until, by 1540, the lord chancellor was the only legal officer in the privy council.\textsuperscript{148}

Not content with limiting the political role of the lawyers, Henry took the battle into their own camp. In 1540 he instituted an enquiry into the state of the Inns of Court. While this report provides much of our knowledge of the Inns at that date, the king’s reason for commissioning it is nowhere stated. It has often been seen as an expression of Henry’s interest in education, even a preliminary to the establishment of a new Inn under royal patronage which would discard the barbarities of traditional legal education in favour of a more “renaissance” approach. Rather than reflecting the king’s interest in education, however, it is more likely that the king was concerned with curbing the influence of the existing Inns. If he was thinking of establishing a new institution, it was most probably as a model Inn teaching the law under royal supervision and patronage, in the royal interest, rather than as an altruistic gesture to the new learning.\textsuperscript{149} Though we cannot prove Henry’s

\textsuperscript{146} Guy, St. German on Chancery and Statute, 40.
\textsuperscript{147} Ibid., 24-25.
\textsuperscript{149} See D.S. Bland, “Rhetoric and the Law Student in Sixteenth-Century England,” Studies in Philology 54 (1957): 500. The same interpretation can be placed on his establishment of the Regius professorships in the
intentions with regard to the enquiry, we have ample proof of his concern over the activities and influence of the Inns, particularly in matters concerning the prerogative. In 1540 Sir Humphrey Browne, king’s serjeant, Sir Nicholas Hare, speaker of the Commons and William Conyngesby, the attorney of the duchy of Lancaster, were committed to the tower for giving advice to one Sir John Shelton of Norfolk on ways to avoid the provisions of the Statute of Uses.¹⁵⁰ The king’s wrath was clearly roused by the fact that his serjeant and the attorney of the duchy of Lancaster were involved in trying to defraud him of the rights confirmed with such effort in the recent statute. Once again the king made clear his determination that the law should mean what he wanted it to mean, regardless of the subtleties of legal learning, and he took the opportunity to warn the entire legal community against opposing his will. In an extraordinary speech the chancellor opened this day the king’s majesty’s will and pleasure unto the readers of the inns of court and chancery and other learned men … admonishing and warning them in his majesty’s behalf not only truly and justly to interpret and expound his laws and statutes in the readings and moots but also to instruct, advise and counsel all the king’s loving subjects repairing to them for counsel in the law according to the very, just and true meaning of the laws and good statutes of the realm, without subtle practice, imagination, or deceit, and especially in such laws and statutes as be made for the maintenance aswell for the king’s right and prerogatives as for the interest of the nobles and other his loving subjects of the realm for wardships, primers seisins, reliefs, and such like services … so that thereby our said sovereign lord, nor any his nobles or other subjects, should be defrauded of their rights and interests that is due to them by reason of their tenures, by any subtle practices, or invention of crafty wits, contrary to the true and just intents of the statutes provided in that behalf, as they would avoid the king’s majesty’s high indignation and displeasure, and the danger of the laws.¹⁵¹

The surviving reports present Browne and his companions as humble penitents to the king, willing and eager to hand over their possessions and their persons in reparation for their


¹⁵¹ Baker, *Spelman’s Reports* 2: 351. Though Hall’s account is not nearly as detailed as Spelman’s, he echoes the central points of the chancellor’s complaint, that the lawyers acted “to the greate hynderaunce of the Kinges prerogatiue, and the true meanyng of thessaid statute, and also to the euill example of all other, that shoulde defraude the lordes of their seigniories.” Hall, *Chronicle*, 837.
impertinence. Browne got no relief, for it seems to have been generally agreed that he had advised the deceased Shelton and that he was wrong to do so, and so he was ordered to pay £1,000 in compensation. This was Browne's second offence against the king's coffers, however, and that may have contributed to the severity of his treatment.

Serjeant Browne's case set an ominous precedent, and though it was an unusually blatant example, it does not seem to have been the only time the king interfered in the activities of the Inns. A few years later in the Common Pleas, while the lawyers were discussing whether a copyholder could be ousted by his lord, Judge Browne noted that "in the time of the present king the matter was appointed to be argued; but on account of the mischief that would ensue thereby, if it was adjudged as your opinion is, [that he has no remedy] a command was sent by the King's Council that it should not be argued." Though Browne does not mention the Inns, he can only be referring to a learning exercise, and the casual mention of royal interference in the business of the Inns suggests that Henry was successful at some level in imposing his authority on the lawyers. The simple fact that Serjeant Browne had become a Justice of the Common Pleas in 1542, however, indicates that the weight of the king's displeasure was not enough to ruin a legal career. Though Browne was stripped of his position as king's serjeant in 1532 and 1540, he quickly recovered, and it seems likely that the lawyers discreetly rallied around him.

The ambiguity at the heart of the lawyers' role is made clear in these years; acting under the king's authority, but required to keep the king obedient to the law, their position could easily become untenable if the king refused to submit to their professional judgment and instead insisted on encroaching upon their territory. Without any independent source of authority, the lawyers had no choice but to bend to the king in any open and sustained

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152 In 1532 Browne was accused of advising felons to sell their goods to avoid forfeiting them. He was briefly imprisoned and lost his office of king's serjeant. He regained it in 1535. See Baker, Spelman's Reports 1: 184; Amanda Bevan, "The Role of the Judiciary in Tudor Government, 1509-1547" (Ph.D. diss., Cambridge, 1986), 29-30.


conflict. However, though they held their authority from the king, they seem to have retained an influence apart from his control. Henry’s very concern to muzzle the Inns and punish individual lawyers argues for their ability to act independently of royal authority. The Inns, as an institution, had a long memory and the ability to act as the repository of legal learning far beyond the exigencies of the day. In this context, it is significant that Hall specifies that when the chancellor assembled the lawyers to hear the king’s message in 1540, he called “foure readers . . . of every house of the foure principall Innes of Court one.”\(^{155}\) If the king was to usurp the lawyers’ position or to cow them effectively, he had to do so by dealing with the Inns as an institution. Individual lawyers could be imprisoned or fined, but the whole body could not be silenced, at least not indefinitely.\(^{156}\)

The final scene in the battle over uses effectively demonstrates the limits of the king’s power. In 1540 parliament passed the Statute of Wills, which ameliorated the harshness of the Statute of Uses. Its provisions are strikingly similar to those contained in the agreement with the nobility of 1529-31, for it allowed those who held land in knight’s service to devise two-thirds of their land, with the king retaining one-third in wardship or primer seisin. Land held in socage could be devised in its entirety.\(^{157}\) Though the terms were much the same as those proposed earlier, the events of the intervening years meant that this statute left mesne lords in a much better position that they would previously have been. With the conversion of uses to a legal estate, mesne lords regained access to wardships over lands which their tenant had enfeoffed to uses. The king was the loser under the Statute of Wills, and he lost a great deal.

\(^{155}\) Hall, Chronicle, 837.
\(^{156}\) The serjeants’ rings provide an interesting sidelight on this question. It was the usual practice for the serjeants to distribute a large quantity of rings on the occasion of their elevation to the coif. The rings were engraved with an appropriate motto, but were common to each serjeant. Relatively few of the serjeants’ rings have survived, and they are rare before the seventeenth century. The earliest surviving rings, from the late fifteenth and early sixteenth century, have the motto “Vivat rex et lex”. The motto for the 1531 call was “Rex est anima legis”, reinforcing the orthodoxy of the king’s centrality to the law. The motto for either the 1521 or the 1540 call, and it would be fascinating to know which, was “Legis executio regis preservatio”, again perfectly orthodox, but perhaps emphasizing the lawyers’ role in the enforcement of the law. For a full exposition of the history of the serjeants’ rings see Baker, Order of Serjeants at Law, 94-99.
There is some mystery surrounding the enactment of this statute in 1540. It was passed in the same parliament as the bill setting up the Court of Wards, but though both bills dealt with aspects of the prerogative, they were not introduced together. Bean has connected the Statute of Wills with Cromwell’s fall, arguing that the bill clearly had nothing to do with the minister and was hurriedly introduced at the time of his arrest.  

He points out that the bill did nothing to prevent the kind of conveyances made by Sir John Shelton, but merely reverted to the terms of the earlier agreement, thus necessitating a further statute in 1543 “for the explanation of the Statute of Wills.” By removing the statute from Cromwell’s influence Bean gives a convincing explanation for its failings, and he provides a plausible agent in the duke of Norfolk. What Bean does not explain, and what still remains obscure, is why the king suddenly gave up all the benefits he had acquired at such cost in 1536.

The obvious answer is that the reaction against the statute was so great that it forced him to back down, and without doubt that was a factor. The Pilgrimage of Grace was the most overwhelming expression of that reaction, but it was satisfactorily put down in 1536, suggesting that it was not an immediate impetus to change in 1540. The attempts of the lawyers to find ways around the statute may also have been a factor. Aske, a leader of the Pilgrimage of Grace, was already suggesting possible conveyancing methods for avoiding the rigour of the statute in the aftermath of the Pilgrimage, and his suggestions, though inaccurate, are strikingly similar to those suggested to Sir John Shelton by Browne, Hare and Conyngsby in 1540. The royal response on that occasion was swift and severe, but the realization that even royal officials charged with enforcing royal rights were counselling clients on ways to avoid the prerogative may have helped to convince the king that his original programme was the more effective one. Besides this, the constant legislative activity necessary to keep up with new methods of evasion may not have worried Cromwell, but most administrators must have baulked at such a task. If Bean is correct in seeing Norfolk’s

158 Bean, Decline of English Feudalism, 298.
160 See Bean, Decline of English Feudalism, 295, 296-97.
influence in the bill, it may also represent a move on the part of noble counsellors to restore the situation they had agreed to in 1529, for they had much to gain.

The change of heart seems to have been sudden, as evidenced by the timing and the content of the bill. The 1529-31 agreement had involved an understanding that neither side would try to evade the provisions of the bill, and this statute seems to have envisaged the same situation, for as we have seen, it did not make any provision for the kinds of evasion practised by Shelton and others. It is difficult to believe that the king could have been so naïve as to believe that after the bitterness engendered by the Statute of Uses, tenants would not have tried all means possible to evade their obligations. The Statute of Wills may have been a sweetener to make the establishment of the Court of Wards more palatable, or a concession to the nobility in the wake of Cromwell's fall, but it served to place the relationship between the king and his tenants on a firm, maintainable and reasonably satisfactory footing for the first time in many years. The Statute of Uses had been the result of a clever manipulation of the law, but it was a political mistake. The Statute of Wills restored the balance between the king's rights and his subjects' willingness to pay, though it did so with some inefficiency.

The whole controversy over uses kept the royal prerogative in the limelight throughout the 1530s. It is impossible to pretend that the new legislation did not affect the prerogative, since it fundamentally altered one of the most popular methods of landholding in the country. Similarly, the Statute of Wills changed the situation by officially limiting the extent of the king's rights to reasonable levels. The overall effect of these statutes on the king's prerogative rights was not as significant as it might seem at first glance, however. The Statute of Wills limited the amount the king could claim, but it did not affect the type of claims he could make, while the Statute of Uses restored the prerogative to many lords who had long since lost it. Though the practical application of the prerogative was changed by the statutes, the law contained in Prerogativa Regis was not.

The process of passing the statute demonstrates the natural limits of the lawyers'
authority. Though the law was moving to absorb uses, there was an argument against them, which was catapulted to the fore when it became expedient. The application of political weight to the minority side shifted the balance of opinion within the profession and allowed for the radical change in the law. In this way the controversy over uses also serves to bring the legal profession into the limelight, for it saw the king attempt to manipulate both the law and the legal profession in the most blatant manner. Though the lawyers appeared to bend before the king, both in *Lord Dacre's Case* and *Serjeant Browne's Case*, a closer examination of their behaviour is revealing. In the first case the king clearly had a good argument in the law to support his position, while in the second case he was relying on the weaker, but hallowed orthodoxy of the king's role as judge. In both cases the position adopted by the king was undermined. *Lord Dacre's Case* was the more significant of the two, at least as far as the realm at large was concerned, and in going against the tide of the common law the king was forcing approval of a politically dangerous position. Though the lawyers had little choice but to give in, the political nation took up the opposition to the king's actions. *Serjeant Browne's Case* is of more limited interest, but it demonstrates both the king's fervent desire to control the lawyers and their ability to protect their own. Neither case presents the lawyers in a particularly favorable light, and it is clear that they had no inclination towards political martyrdom, but it is equally clear that they were bound by their interpretation of the king's law, and that they had the political sense to bend to the king's wishes and live to fight another day.
Chapter Five:

Monastery Lands and Lordship

Though the statutes of Uses and Wills answered many of the legal controversies surrounding *Prerogativa Regis*, the text was aired again in the Inns in 1545 and 1549. These readings themselves are limited in what they can tell us, but once again the context is of some interest. The 1540s saw the distribution of ex-monastery lands, most of which were given to be held in chief of the Crown. Henry VIII was thus opening up the possibility of creating a new feudal group with this action. In the abstract, this is an unlikely activity in the mid-sixteenth century, and it raises certain questions about the nature and extent of the feudal bond at the time. The last chapter showed that though the feudal system might well be bastardized by this time, it remained a powerful element in political and economic matters. Though its importance in these areas is clear, the more intangible effects of the feudal bond on the nobility demand some further consideration.¹ As the chief landholders of the kingdom, the nobility bore the greatest burden of the prerogative, though, in theory at least, they were also the greatest beneficiaries of royal generosity. The reciprocal nature of the feudal bond implied both that the lords paid feudal dues to the king in return for his grants of land to them, and that the lords would alleviate the burden of their fiscal debt by the imposition of feudal dues on their inferiors.

Leaving aside the question of the “moral and historical justification”² of feudalism, we must consider whether the feudal bond between the crown and the nobility still existed in a recognizable form in the sixteenth century, and to what extent it was still marked by this

¹ I have neither the time nor the expertise to contribute to the large and growing body of information available on the nobility of late medieval and early modern England. Instead I hope to draw on this wealth of material to illustrate some of the problems and challenges facing the nobility and their monarch.

reciprocity, as well as the effects on the feudal bond of a changing market in land as the century wore on. The notion of a nobility without a feudal bond makes little sense in this period; as Watts points out with reference to the fifteenth century, “it was a grey area of political and chivalric thought whether lords had their authority independently as a function of their landed power and knightly right, or whether they received it from the king as a delegation of his rule, [but] there seems to have been little doubt that this authority was subject to royal overlordship.” Watts characterizes the attempts of the late fifteenth century to restore order as simply “a resumption of lordship,” the keystone of the medieval state.

In the last chapter we noted that Henry VIII largely continued the policy towards the nobility established by his father, keeping them bound to him through financial obligations. It is not difficult to find evidence of the active pursuit of this policy. Coward, for example, points out that in a list of debts to the Crown in 1514 the earl of Derby was bound to repay £505 a year on a total debt of about £5,000. By the time he died he had paid £1,066 13s 4d, but still owed over £3,000. Similarly, the claims of £7,200 made by the Crown on the duke of Buckingham at the time of his coming of age were not allowed to lapse; by 1514 he still owed £3,769, payable in annual instalments of 500 marks. The duke’s own books record a reduced debt to the crown of £1,322 by 1518, but by 1520 the king and his agents had obtained bonds from Buckingham for three separate sums totalling £2,855. Though the king was willing to relieve the duke on occasion, both political and financial pressures made him unwilling to let him extricate himself completely from the royal financial net.

Though the royal claims were doubtless burdensome, and probably resented, it is difficult to argue that the nobility regarded them as illegitimate. Great lords had no hesitation in applying the same kinds of methods to their own lands and Rawcliffe has pointed out

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4 Ibid., 46.
Buckingham's own use of sureties to enforce the obedience of his tenants and employees. As she argues, "his calculated approach to the law - in all probability modelled upon that of Henry VII - was far more than the expression of some personal idiosyncrasy. It was a vital part of his policy for the improvement of administrative standards and as such was geared to serve practical ends rather than abstract principles of justice."7 The ultimate vindication for the financial practices of Henry VII and Henry VIII, and the reason they were used by other lords, was that they were successful in maintaining the financial and political stability of the kingdom. Though such practices weakened the power of individual lords with regard to the king, by applying the policies to all the lords a balance was maintained, and the whole polity benefited from the increased stability.

The increased power of the monarch is clearly displayed in the fall of the duke of Buckingham in 1521. Rawcliffe argues that "by the time of Buckingham’s death in 1521 the nobility as a class had undoubtedly been weakened and its resolution undermined. The lack of positive reaction to his fall is symptomatic of the subservience to which Tudor policy had reduced the English baronage."8 Though Rawcliffe accepts that more stable government was the positive benefit of sterner government, she is not alone in implying that the trade-off may not have been worthwhile. Though the trial and execution of Buckingham does not show either the nobility or the king at their best, the duke’s behaviour was at best unconsidered and at worst treasonous. If the king was perhaps too willing to eliminate possible claimants to the throne, it is apparent that the nobility was equally unwilling to risk a return to civil strife.

The death and attainder of Buckingham serves to highlight another feature of Henry’s policies. One of the more distasteful aspects of his demise is the swift division of his lands among the peers, including many of those who condemned him. These lands marked an important boost to the volume of royal grants in this period, for while Henry VIII had restored forfeited lands and granted lands for limited periods of time to various noble

7 Ibid., 168.
8 Ibid., 186.
families, he was reluctant to give grants of inheritance. In fact he bestowed only two in the first seven years of his reign; one to Suffolk, his brother-in-law and the other to Norfolk, the victor of Flodden. He augmented his record with a handful of grants between 1516 and 1521, but the division of the spoils in 1522 was the single largest windfall for the nobility until the dissolution of the monasteries. Avarice may well have been a motive in the condemnation of the duke of Buckingham, but Rawcliffe adds that this alone would not have been enough without the success of the two Henrys in “establishing a court nobility dependent upon royal favour.”

The idea that Henry VIII in particular set out to create a courtier nobility is attractive, but as Miller has pointed out, there is no real justification for it. The ceremonial around the court was essential for royal magnificence, and Henry VIII demanded noble attendance on formal occasions, but there is no evidence that he attempted to dislodge the nobility from their local power by enforcing attendance at court, or even that he consciously used the court to strengthen ties with the nobility. Maintaining the personal care of noble wards would be one obvious way of inculcating loyalty, but as Miller points out, Henry did not even do that much. The ceremonial at court was necessary for royal prestige, but it advanced noble prestige at the same time. There were some members of the nobility, like the Howards and the Dudleys, who sought and made their fortune through advancement at court, but on the other extreme there were some, like the Lords Ogle, who never attended either court or parliament, but served their king by maintaining order in the locality. Both the Howards and the Dudleys demonstrate that the dangers of court life were as great as the rewards and perhaps the peaceful obscurity of the Ogle family had its benefits, but in reality the majority

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10 Ibid. In 1516 the king granted land to William, lord Willoughby de Eresby, in 1517 to lord Dacre of the North, and in 1521 to Norfolk.
12 Miller, *English Nobility*, 100-102.
13 Ibid., 100.
of the nobility fell between the two extremes. The court was the centre of the political nation, and any noble family seeking advancement was well-advised to maintain a presence there. This had long been so, and though Henry's court may have been more lavish than some of his predecessors, it was not staffed by a "courtier nobility" to any greater extent than that of his predecessors had been.

The nobility of the 1520s and 1530s was thus still largely cast in the medieval mould, something well within the Tudor tradition. Henry VII has traditionally been viewed as an administrator-king, but Gunn has recently pointed out that despite his rather colourless reputation, the monarch took an active part in the chivalric exhibition of his court, for "Henry VII, like Henry VIII, like Maximillian or Francis I, aspired to be the perfect knight as well as the perfect patron of learning, the perfect lawgiver, and so on."15 Henry VIII surpassed his father in chivalric activity, at least of the formal variety, and there is evidence that his nobility paid serious attention to both the practical and formal knightly rituals. Thus the duke of Buckingham took an aid from his tenants for the knighting of his son in 1517-18 (as indeed Henry VII had tried to do in 1504), and both Buckingham and Northumberland retained private heralds.16 As Gunn points out, these noblemen were neither unusual nor anachronistic in their habits, for many of the king's close associates retained private officers of arms.17

Knighthood itself, that most medieval of institutions, was still the perquisite of the well-born warrior; Leonard has calculated that of the 336 knights alive in 1523, 151 owed their knighthoods to war, 65 to ceremonial occasions and only 26 were known to be "civil knights", i.e. those honoured for administrative services.18 Civil knights were made in ones and twos, while large batches of knights were made only on occasions of war and ceremony.

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16 Ibid., 125.
17 Ibid.
18 H. H. Leonard, "Knights and Knighthood in Tudor England," (Ph.D. diss., London, 1970), 106. Leonard could find no records for the remaining 87, but he argues that even if all of them were civil knights, which is unlikely, civil knights would still have made up only one-third of the knighthage of 1523.
Knights could be made in order to confer prestige on the monarch, and Leonard suggests that “the two Henries may have felt that a monarch was judged partly by the size of his knightings.” He adds that “for Henry VIII, in addition, there may have been a personal need to satisfy the opinion he had of himself as a victorious warrior king.”¹⁹ Knighthoods could also serve as an incentive to service for those who received one, even in times of peace. Thus in 1532 the earl of Northumberland asked the king for permission to knight some men in the marches, thus “encouraging the hartes of gentilmen to serve me better under your gracious Highness.”²⁰

Northumberland’s request expresses perfectly not only the martial value of knighthoods, but the relationship between such a nobleman, the king and the “gentilmen” of his area. The nobility were still the effective governors of their localities, though they governed them under the watchful eye of the king. This was traditionally the most effective method of government, particularly for the extremities of the kingdom, and it remained so under the Tudors. Bernard notes with some surprise that “in some senses early Tudor England was a federation of noble fiefdoms,” but this is in fact the case, though we must recognize that the individual members of the federation had no rights of secession and only a fraction of the power of the king.²¹ Both Henry VII and Henry VIII used their noblemen to rule the country, for there was no realistic alternative. Gunn, though characterizing Henry VII as an anti-noble king, points out that nevertheless he appointed noblemen he trusted to rule in regions where they were available, men like Thomas Stanley, earl of Derby in the north-west; John de Vere, earl of Oxford in East Anglia; Giles, lord Daubeney in Somerset and Jasper Tudor, duke of Bedford in Wales.²² There were, of course, dangers inherent in such a policy, and both kings were careful to prevent the rise of over-mighty subjects. The fiscal policies of the early Tudors ensured that no nobleman had either the financial

¹⁹ Ibid., 109.
²⁰ Quoted in ibid., 241.
flexibility or the discretion to build up the extensive estates necessary to threaten the throne; this, combined with provisions against retaining, restricted the growth of private armies.

Though these policies worked fairly well in the southern and south-eastern portions of the kingdom, they could be counter-productive on the frontiers. Frontier lords needed a large, well-armed and well-trained following if they were to protect the borders efficiently. Lords like Dacre and Northumberland were essential to the preservation of the north, but they were furthest from effective governmental control. This reality posed a chronic problem for both Henry VII and Henry VIII; how could they acquire and maintain effective control over these lords, reducing them as political threats while preserving them as powers in their localities? As we have already suggested, Henry VII used inquisitions in the north to remind both Northumberland and Clifford and their tenants that he himself was the ultimate source of their power and authority. Hanging a financial and tenurial sword of Damocles over the head of a northern lord was an effective way to remind him and his tenants of their allegiance without compromising their martial ability. As Northumberland expressed it in 1532, the military power of the north would then serve the king through their local lord.

The reality was far more complicated, for northern lords themselves were under conflicting pressures in their efforts to carry out their duties. Lord Dacre, for example, tolerated a good deal of cross-border lawlessness among his followers in order to maintain their military support in times of crisis. Some of his dealings with the Scottish nobility were technically treasonous, but they were part of the reality of guarding border security. Dacre was a powerful feudal lord in the traditional mold, and there was nothing anachronistic about this, for he was carrying out his duties to the Crown in the only effective way possible. Though this was the case, Henry VIII, far from the northern border, was concerned about the growth of Dacre’s power. As Ellis argues, Henry “at times refused to acknowledge the simple fact that the effective exercise of these border offices was heavily dependent on a strong local following based on extensive landed possessions in the region. Dacre’s chief recommendation was that he could provide tolerably effective government cheaply and so
save the king the cost of a garrison.” As his reign progressed Henry became increasingly unwilling to tolerate the power of a lord like Dacre, and so he tried to remove him from political influence and replace him with a lesser lord under direct royal control. In thus moving outside the traditional feudal hierarchy, Henry left himself open to failure.

Following the disgrace of Dacre in 1534, the government lurched from one failure to another in its increasingly expensive attempts to manage the north. A feudal magnate like Dacre could not simply be replaced, for his following was something more than a collection of employees.

No one was more aware of this reality than the first earl of Cumberland, given the brunt of the burden of replacing Dacre. As Hoyle argues, Cumberland had an unenviable task to perform in trying to control the northern borders; he was an ineffective replacement for Dacre, not “because he suffered from some defect of personality which led him to extort money from his tenants, gentry or peasantry, and so prompted rebellion, or ... [because] his ambition led him into conflict with the Dacres, Northumberland and Norton, but ... [because] he was the friend and creation of the King.” The mere delegation of royal authority, even when accompanied by a large measure of royal favour, was not enough to rule a turbulent area without the solid base of local political and economic power. As Dacre’s career displays, it was infinitely preferable to have both, but local power was more crucial to the maintenance of order on the borders than royal support. Cumberland learned that to his dismay; Dacre probably always knew it; and Henry, to judge from the turbulence both in the north and in Ireland in the later years of his reign, was unwilling to accept it.

The Pilgrimage of Grace, on the other hand, demonstrates that mere local authority was not enough to overcome the power of the crown. Disturbing as the rebellion was, there was no real possibility that it would unseat the dynasty, and to that extent the policies of

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Henry VII and Henry VIII bore fruit: there was no single over-mighty subject and not even any coalition of nobles in the north with the power to overcome royal authority. As Smith points out, however, the Pilgrimage was more than just a failed feudal rebellion. Though the structure of the rebel armies was predominantly feudal and their demands were conservative, the presence of four men trained at the Inns of Court among the leaders of the rebellion indicates that this movement had a new element. Smith argues that the Pilgrimage of Grace "represents an important step in the transition from tradition towards modernity in political life. To say that by 1536 ideology had begun to count as a factor in politics is to draw attention to a neglected but very important aspect of the decline of feudal lordship." Smith's point is that by seeking to have all his subjects swear allegiance to him, Henry was breaking the feudal ties between his lords and their tenants which had threatened the monarchy in the past. This seemed like a positive achievement, but in weakening the feudal bond between lords and tenants the crown was effectively weakening the feudal bond between the crown and its chief lords. The feudal ideal was a large and complex mechanism guiding political society, and any interference with one part of the structure was bound to weaken other parts. By weakening the role of traditional lordship, Henry was also weakening the idea of traditional royal lordship. The feudal bond, in a practical sense, was alive and well throughout England during the reign of the early Tudors. It is part of the ambiguity of the Tudor monarchs that while they sought to exploit and even extend the financial reach of feudalism, they were attempting to undermine it in practice.

The single greatest opportunity to extend fiscal feudalism and to change the structure of the nobility came with the dissolution of the monasteries. The king's great matter and the religious changes that flowed from it are not part of our concern here, but the ancillary economic and political consequences are of vital importance. Indeed, though the dissolution of the monasteries is usually examined in the light of the religious changes, Hoyle has

26 Ibid., 261.
recently argued that it was predominantly and primarily an economic issue. He points out that there was a movement to suppress the monasteries in the 1529 parliament, long before the religious changes had begun. This idea was linked to a memorandum of Thomas, Lord Darcy, which “asked that all knights’ fees, baronies and earldoms be viewed to discover how many of them were in spiritual hands.”\(^27\) In the militaristic mood of the 1520s, there was clearly a concern that the military strength of the kingdom was being enervated by the extent of church landholding.

The idea went nowhere in 1529, but when a dissolution was proposed again in 1534 it was couched as an attempt to re-endow the monarchy with clerical lands. Once again, nothing came of the plan; Hoyle argues that it was presented to parliament and rejected in favour of the act for first fruits and tenths.\(^28\) This act led to the first group of visitations of the monasteries, for the combined purposes of valuing the properties for taxation and evaluating their moral state. The decline of morals was then used as an excuse for the dissolution of the smaller monasteries, but Hoyle argues that this left the crown in a difficult position when it came to covet the larger institutions. The failure of the 1534 proposal made it apparent that there would not be widespread support for a dissolution on purely financial grounds, but the 1536 act specifically praised the state of religious observance in the larger monasteries, precluding the possibility of using moral decline as an excuse for dissolution. It was at this point that the crown moved to the policy of “voluntary” submissions.\(^29\)

According to this interpretation, as Hoyle points out, “the history of the dissolution … comes to look like the chequered history of another piece of Henrician legislation with financial


\(^{28}\) Ibid., 291-93.

\(^{29}\) Ibid., 300. As the dissolutions became a reality, the reluctance to use religious lands to endow the crown faded. By the time Henry moved to dissolve the college lands in 1545, the act could state that the dissolution was intended “for the preservation and defence of us your saide subjects againste the invasions and malice of your enemies the Frenchmen and Scottes, who dayly do studdy devise and attempt to greive annoy and hum your saide lovinge subjectes, as also for the mayntenance of of your most roiall estate honor dignyte and estimacion, which all your saide lovinge subjectes of naturall duty ben bounde to conserve and increase by suche wayes and meanes as they can devise.” *Statutes of the Realm* vol. 3 (London, 1817), 988, 37 Hen. VIII ca. 4.
implications, the Statute of Uses." In both cases the Crown, faced with parliamentary opposition to its demands, resorted to extra-parliamentary methods to achieve its aims.

1536 saw not only the Statute of Uses and the act for the dissolution of the smaller monasteries, but also the establishment of the court of Augmentations. The court was necessary, not simply because of the anticipated profits from the confiscations, as the act stated, but because of crown policy from the reign of Henry VII onwards. Crown lands had been increasing steadily, even before the Reformation, through the accumulation of attainted property and estates acquired through purchase and exchange. The monastery lands and the lands attainted following the Pilgrimage of Grace, though they vastly augmented crown holdings, were an extreme example of the general fiscal policy. Although all three acts had different origins, together they had the potential to revolutionize the finances of the Tudor monarchy through the exploitation of the prerogative. The act establishing the court of Augmentations stated that all grants of any estate of inheritance were to be held by knight service and that the king was to reserve a rent of one-tenth of the annual value of the property. Thus, when the king granted out monastery lands, they would be held in knight service, guaranteeing to the king his full feudal prerogative without possibility of evasion thanks to the Statute of Uses, and he would, moreover, have a guaranteed yearly rent.

It is assumed that the early destination of the confiscated lands was the re-endowment of the Crown, and it was only as a result of the financial pressure accompanying the wars with Scotland and France that large quantities of land were sold off. The early proposals for confiscation focused on the possibilities of using the monasteries for re-endowment, and indeed, during the three years following the dissolution, only about one-eighth of the lands...
confiscated lands, totalling about £11,633 per annum, was granted out, mostly to servants of the crown.\textsuperscript{35} Not all of the grants were free gifts, but even those which were purchased were granted on favourable terms.\textsuperscript{36} Even though these grants represented only a small proportion of the lands in royal hands, they could have a significant impact on the balance of power. Although most of the lands granted went to the high nobility, most noble families received nothing. As Miller points out, members of the high nobility already advanced by Henry VIII, mostly important office-holders or known to the king through service at court, got grants, but only a couple of barons were so fortunate.\textsuperscript{37} The grant of lands could dramatically alter the balance of power in the localities, but Henry seems to have paid little attention to this, demonstrating once again an indifference to the realities of local politics. The main beneficiaries of royal munificence, then, were those with influence at the court.

Even leaving aside the implications of the royal grants in the localities, the simple logistics of royal grants caused problems. As long as every grant and long-term lease had to be made by the king himself, the pressure on him was immense. As well as being time-consuming, it was often difficult for him to refuse requests without causing political damage, either to himself or the petitioner. The solution was to sell lands rather than giving them away, and the move was more significant than it might appear at first glance. As Miller argues, "from that time on the acquisition of land from the crown was no longer indissolubly linked with influence at court. Noblemen, as other men, bought what they could afford, where it suited them."\textsuperscript{38} Gifts to favourites did not cease entirely, but they became far less common.\textsuperscript{39} This change had long-term ideological, as well as political, consequences. This

\textsuperscript{35} K. S. H. Wyndham, "In Pursuit of Crown Lands: The Initial Recipients of Property in the Mid-Tudor Period," \textit{Somerset Archaeology and Natural History} 123 (1979): 66. Wyndham calculates that between 1536 and 1540 the top magnates got more than 80% of the property conveyed by the Crown and more than half of the favourable grants.


\textsuperscript{37} Miller, \textit{English Nobility}, 246.

\textsuperscript{38} Ibid., 247.

\textsuperscript{39} Wyndham, "In Pursuit of Crown Lands," 66. Wyndham argues that once the sale of crown lands began in earnest the top nobility acquired far less lands than other grantees and got less than one-fifth of the favourable grants.
large-scale sale of lands on the part of the crown removed any implication of a reciprocal relationship between king and nobility; grants of land were no longer related to any kind of service to the king, but simply to the payment of cold hard cash. Thus, Smith argues, "in the disposal of monastic lands we see land not as a sacred trust but as the object of multifarious transactions whose ultimate objective was to gain more wealth." Though the concept of land as a sacred trust may seem a little idealistic, the divorce of grants of land from service had two important and related consequences for royal authority. Firstly, land remained the primary source of power and influence in the localities, but the path to land was no longer necessarily through royal favour. This was bound to diminish the power and prestige of the monarch as the source of power. Secondly, by removing the element of reward from grants of land, it was more difficult to expect grantees (effectively purchasers) to hold their land by the onerous burdens of knight's service.

In spite of this, the crown departed from its policy of granting land to be held in knight's service, stated in the act establishing the court of Augmentations, only with great reluctance. Sales of monastic land began in earnest in 1539. Dietz argues that they began in March and that by Michelmas of that year £80,622 had been received, but the official campaign began in December, when a commission was issued to Cromwell and Sir Richard Rich, chancellor of the court of Augmentations, to sell crown lands of the annual value of £6,000 at twenty years' purchase, that is, for a capital sum of twenty times their recorded annual value. The land was to be held by knight's service and a yearly rent of one-tenth the

40 Smith, Land and Politics, 259.
41 Both the larger monasteries in 1539 (Stat. Realm 3: 734, 31 Hen. VIII, c.13) and the colleges and chantries in 1545 (Stat. Realm 3: 991, 37 Hen. VIII, c.4) were expressly given into the administration of the court of Augmentations, thus automatically coming under the statute of 27 Hen. VIII c.27, which ordained that all land granted out from Augmentations would be held in knight service.
annual value of the lands was to be reserved. This gave the crown the prospect of having its
cake and eating it; not only did it get the capital sum at the time of sale and the prospect of
feudal incidents as they fell due, but it also had a guaranteed yearly income.

The reservation of military tenure on monastic lands would not be a particularly
heavy burden if the lands were granted to, or bought by, families who already held land by
military tenure, but it would represent a serious commitment for a family moving to build up
a landed estate. The decision to reserve military tenure on these lands suggests that the
crown was interested in extending the reach of the prerogative, or at least in establishing a
clear title through newly granted lands. Although there has been no systematic study of the
dispersal of monastic lands for the entire country, local studies suggest that a sizable
proportion of the monastery lands went to small purchasers. Although the large transactions
which established a new power in the localities, such as Russell’s grants in Devon, have
attracted most attention, Youings, for example, has discovered that most of the purchases in
Devon were small, generally worth less than £20 per annum.43

This conclusion is supported by Kew, who has studied the land market in Devon for
both monastic and private lands. He argues that the disposal of monastic lands was not as big
an event on the land market as might be expected, because the land market was fairly active
in Devon before the dissolution, though the actual extent of this activity is debatable.44 Much
of the market was for small parcels of land and sales of this kind of property were not
significantly affected by the dissolution, because the legal and administrative costs involved
in purchasing directly from the Crown were prohibitive for transactions of this size.45 On the
other hand, although the market in large estates was much more limited, it seems that
purchasers interested in large-scale purchases did not have too much difficulty in finding
lands for sale, as long as they were in a position to know when important landlords wanted to
sell. The biggest gap in the land market seems to have been for medium sized properties,

45 Ibid., 96.
worth between £5 and £15 per annum, properties which would sell for between £100 and £300. These properties would most likely be large farms or small manors, and they rarely appeared on the market, though they would be most likely to appeal to a successful merchant or lawyer seeking to establish a landed base. Kew discovered that only about 7% of the land purchases made in Devon before 1536 were in that range, while the proportion rose to 18% between 1536 and 1558, for much of the confiscated monastic property fell into this range.46

Important though the monastic lands were, then, the sale of monastic property probably did not dominate the land market in the 1530s and 1540s. Kew has calculated that between 1536 and 1558 there were approximately 3,000 to 4,000 transactions in the private land market in Devon, compared with 234 royal grants of land in the same period. The royal grants were generally of larger properties, as evidenced by the fact that the private transactions were worth about £8,000, while the royal grants were worth £6,000 to £6,500.47 Thus about 25-30% of land in Devon changed hands in the period between 1536 and 1558. This impressive figure is less startling, however, when we remember that up to 20% of Devon landowning families failed in the male line in each generation, causing a comparable volume of property to change hands for purely demographic reasons.48

Though these findings for Devon cannot, of course, be generally applied to the entire kingdom, they do suggest that the impact of the disposal of monastic property was less significant than has sometimes been assumed. Kew suggests that the main appeal of monastic property lay in the range of property available for purchase, both in terms of size and location, since the majority of purchasers were consolidating or extending their estates, rather than establishing new ones. Thus the sale of monastic lands probably stimulated activity on the private land market, as landholders sold small, scattered properties to raise the necessary capital to buy larger, more compact holdings.49 Other purchasers were from local

46 Ibid., 96-97.
47 Ibid., 102-3.
48 Ibid., 103, 105.
49 Ibid., 101.
landowning families who, having made their money in the law or some kind of royal service, took this opportunity to establish themselves in their home area, or to extend small patrimonies. Still other purchasers seem to have been tenants of monastery lands, who took the opportunity to purchase the lands they had previously been leasing. As Habbakuk points out, the simple fact that compact manors with a high proportion of demesne lands attached, the type of property described by Kew as most difficult to acquire before the dissolution and most suitable for the establishment of a new family, were sold at the standard rate of purchase, rather than above, indicates that they were not in particular demand. Most of the scholars who have looked at this question have concluded that the dispersal of the monastic lands did not in fact generally lead to the establishment of a new group of landholders. Though some of the purchasers were merchants or lawyers seeking to move into the landed classes, even many of this group seem to have been junior members of landed families, and in most cases, "the new owners usually came from, and were automatically absorbed into, the county gentry."

Though there is no doubt that the sale of monastic lands stimulated the land market, it does not seem to have greatly changed the patterns of landholding; it altered "the balance of property, and possibly of power, between families who were already landowners before 1540, rather than ... [affording] means for the founding of entirely new landed families."

It is also clear that monastic lands were not sold at bargain prices, as had once been thought. The lands were sold at the standard rate of twenty years' purchase, and though the annual value of the lands may have been underestimated, in general the surveys of the Valor Ecclesiasticus seem to have been remarkably accurate. The stability of the market for monastic property is highlighted by Habbakuk, who points out that the appearance of this

large quantity of land for sale did not depress the market price, while there is no evidence that competition over particular parcels of land ever forced the price of land above the standard rate. This suggests that the crown could always find enough purchasers at the market price to fill its needs, while purchasers were buying only the lands that suited them at the regular price. This is supported by the fact that the crown never put particular pieces of land on the market, but let the purchaser decide which parcels he was interested in. The overall picture given of the effect of the sale of monastic property is less dramatic than we might have expected. It is clear that some landed families did establish themselves in this period, and some scholars choose to emphasize this point, but in general it seems that the monastic lands were absorbed into the land market in a remarkably orderly fashion, and its purchasers were absorbed into the ranks of the gentry, from which most of them hailed in the first place, with equal ease.

Though the sale of monastic property may not have led to a social revolution, it did enlarge the number of tenants holding land in military tenure for the first time, though there is no definite information available on the numbers involved. Military tenure was a heavy burden for prospective purchasers, particularly those intending to buy only small parcels of land. For those who already held land in chief of the king, it was largely immaterial, since their lands already carried the burden of prerogative wardship, but for those branching out into the property market for the first time, or seeking to add to land held in socage or burgage, the prospect of becoming a tenant of the king can have held little attraction. It is apparent that some of these smaller purchasers quickly ran into difficulties in upholding their part of the bargain, and by 1544 an act was framed which gave commissioners selling lands worth less than 40s per annum the discretion to sell the land in knight’s service or in socage

53 Youings, Dissolution of the Monasteries, 118.
54 Bettey, for example, points out that “of the 211 leading families of Dorset at the beginning of the seventeenth century, 103, or nearly half the total number, had appeared for the first time in the ranks of the gentry between the meeting of the Reformation parliament in 1529 and the end of the reign of Elizabeth in 1603.” J. H. Bettey, The Suppression of the Monasteries in the West Country (Gloucester: Alan Sutton, 1989), 146. In the light of the decline of landed families through natural causes, this does not seem to be as dramatic a statement as its author seeks to imply.
or burgage, though the one-tenth annual payment was retained.\textsuperscript{55} This act alone does not seem to have been enough to reassure prospective purchasers, and in 1545 another act was passed which confirmed that any land sold under any tenure other than knight's service was to be held in socage or burgage and would descend from father to son without livery or 
\textit{ouster le main}.\textsuperscript{56}

This concession seems to have helped in the process of selling lands, and it quickly became an established policy. The commission for sales of 1546 did not give the commissioners the choice of selling smaller plots of land in knight service or socage; instead it ordered that all lands worth less than 40s \textit{per annum} should automatically be sold with a socage tenure.\textsuperscript{57} Again, however, the buying public required confirmation, and they received it in a statute of 1 Edward VI, which clarified the terms of holding land. It laid out that all tenants holding land of the king as of a dukedom, barony or honour did not hold of the king in chief, thus effectively confirming that they were not subject to the burdens of prerogative wardship by re-stating the principle established in \textit{Magna Carta}. The statute was careful, however, to point out that this only applied to lands obtained by the Crown through attainder, outlawry, and ecclesiastical surrender, and then regranted.\textsuperscript{58} It did not affect older tenures, either lands held in knight service in chief as of the king's person, or anyone whose ancestors had previously sued livery or \textit{ouster le main}.

The beginning of Edward's reign saw a further concession to prospective purchasers, for the commissions of 1548 once again allowed commissioners to grant lands in knight's service or socage, but this time the limit was raised to land worth £4 per annum. This, combined with the statute of 1547, quickly had an effect on the tenure under which land was granted to buyers. The granting of lands to be held "as of the manor of east Greenwich" seems to have become the standard for parcels of land worth under £4, and the purchasers

\textsuperscript{58} Stat. Realm 4: 9, 1 Edw. VI, ca.4.
were usually careful to have the monetary value of the purchase clearly stated also.\(^{59}\) It was worth their while to be careful; though the Statute of Wills of 1540 had ameliorated the effects of the Statute of Uses, the establishment of the Court of Wards made evasion of the royal prerogative increasingly difficult for those who fell under its jurisdiction.

Land continued to be sold in military tenure whenever possible, and of course, all land granted as a reward for services carried the burdens attendant on knight’s service, for the king had no need to make the package attractive to the grantee. For ordinary purchasers, however, the crown was forced to continue granting land in socage, and by the end of Mary’s reign the limit had gone up to £10, while by the end of Elizabeth’s it was £20.\(^{60}\) Though there is no doubt that the sale of monastic lands extended the reach of the royal prerogative, the change was not as dramatic as Hurstfield, suggests when he argues that “if we accept the estimate that the value of the church lands sold by Henry VIII amounted to as much as £90,000 p.a., a significant increase in the revenue from wardship could be anticipated, while the royal title to prerogative wardship offered intermittently the prospect of extending its claims over a still larger field.”\(^{61}\) If some of the purchasers of this land were subject to the claims of the prerogative through land they already owned, and others bought lands below the limit of £2 or £4 in socage, then the king’s gains would be limited.

The tenure by which monastic lands were held was only one problem facing buyers. Though, as we have seen, small purchasers were experiencing difficulty in paying the reserved rent on their lands, the crown abandoned this with even greater reluctance than it sold land in socage. Youings suggests that the reserved rent was intended to replace the clerical tenth lost with the dissolution of the monasteries, but it had added benefits beyond this. The ongoing rent allowed the crown to maintain a regular tenurial contact with these tenants, thus reinforcing the pseudo-feudal bond, while it also helped to avoid the evasion of

\(^{59}\) Hurstfield, “Greenwich Tenures,” 77. Hurstfield suggests that much of the land sold to London entrepreneurs, for example, was intended for re-sale and thus was sold in parcels of less than £4 with a clear socage or burgage tenure. Hurstfield, “Greenwich Tenures.” 78.

\(^{60}\) Ibid., 80.

feudal dues on lands held in knight service. However, the rent continued to be burdensome for purchasers and from the mid to late 1540s it began to be omitted from commissions for sale entirely. On the other hand, in December of 1544 tenants were allowed to buy up the rent reserved on lands purchased since June of that year, and in May of 1546 the offer was extended to all lands bought since 1536. For a short while in the mid-1540s, therefore, the crown was reserving rents on the land it sold at the same time that it was allowing tenants to buy up the reserved rent on land sold at an earlier date. This represents one of the more obvious attempts on the part of the government to make the monasteries provide both immediate cash and long-term income, though it seems to have given up the latter in preference for the former. The decision to drop the reserved rent made sound financial sense, because it not only increased the amount to be made from the immediate sale, but it reduced the administrative cost associated with gathering large numbers of small rents. As Youings discovered, however, tenants did not rush to take advantage of the offer, and some of these rents continued to be paid into the next century. Burdensome though such rents were, it is likely that tenants simply did not have the cash reserves to pay off the rent as well as the purchase price.

The sale of monastic lands, though it provided an immediate cash windfall and the prospect of long-term financial stability, was not an unmixed blessing for the crown. There was no social revolution in the ranks of landowners, but the sale created a new class of military tenants who had no direct connection to the medieval tradition of feudal landholding, and could not even regard the burdens attached to their lands as a consequence of royal generosity. For those who continued to owe reserved rents, this reminder of their burden must have been a constant irritation, while the possibility of wardship was an ever-present fear. This frustration is strikingly expressed by Henry Spelman, who graphically describes that immortal and incurable wound, which every day bleeddeth more than other, given

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63 Ibid., 27.
64 Ibid., 28.
to us and our posterity by the infinite number of tenures by knight’s service in capite, either newly created upon granting out of these monasteries and lands, or daily raised by double Ignoramus in every town almost of the kingdom. For as the abbeys had lands commonly scattered abroad in every of them, in some greater or lesser quantity, according to the ability of their benefactors, so the leprosy of this tenure comes as gradually to be scattered through the kingdom. And whereas before that time very few did hold on that manner besides the nobility and principal gentlemen that were owners of great lordships and possessions ... now by reason that those abbey lands are minced into such infinite numbers of little quillets, and thereby privily sown (like the tares in the parable) almost in every man’s inheritance, very few ... can assure themselves to be free from this calamity.\(^{65}\)

The fervour of Spelman’s words suggests that he was not alone in his resentment of the burdens of the prerogative. Although the unwelcome obligations attached to this tenancy cannot be ignored, for our purposes Spelman’s outbreak is equally important as evidence that, to at least a substantial proportion of the landholders of the later sixteenth century, this was an unfamiliar tenancy. The statute passed by Edward VI in 1547 is one indication that the tenurial law needed to be restated, and the plethora of self-help law books coming from the printing press in the same period suggests that many of the new owners wanted to learn something for themselves about the obligations and rights attached to their new property.

It is not surprising to discover, then, that Prerogativa Regis appeared in the readings in the Inns of Court twice in the 1540s, and that one of the readers, William Staunford, was the first to commit his work on the prerogative to print. Staunford probably read on the topic in 1545, and the compilation of his treatise also predates George Willoughby’s lectures in 1549, but Willoughby’s reading is treated first, for two reasons. Although the assumption that Staunford’s treatise is based on his reading of 1545 is reasonably safe, there is no direct proof of this, and his treatise, although dedicated in 1548, and possibly circulating within the legal profession soon after that, was not published until 1567. In terms of immediate impact Willoughby’s lecture may have pre-dated Staunford’s treatment. The other reason for dealing with Willoughby first is the difference in format between the two works.

Willoughby’s is a standard reading in the tradition of Constable, Frowyk and Spelman, while Staunford’s *Exposicion*, though it may have originated in the hall of Gray’s Inn, took on a new lease of life, and probably a new audience, when it appeared in print. The publication of Staunford’s treatise marks a new direction in teaching on the prerogative, as well as the end of the readings on the text, and needs to be considered in this light.

George Willoughby read on *Prerogativa Regis* in Lent of 1549 at the Inner Temple, breaking the recent Gray’s Inn monopoly of the topic. Only the first three lectures of the reading survive, covering the first two chapters of the text, on tenures and wardship. The manuscript of the reading covers the usual material, but it appears to be the work of a more senior auditor, for it does not cover as wide a range of topics as the earlier expositions, and the majority of the points noted are marked with a *quere*, as though the writer was interested mainly in the more difficult and controversial issues, rather than the basics of the law.

Willoughby places himself squarely behind Frowyk at the opening of his lecture, declaring that the text is “a treatise, a declaration of the king’s prerogative at the common law.”66 His fidelity to Frowyk is undermined, however, in his introduction to the material on wardship. Frowyk, when faced with the problem of reconciling *Prerogativa Regis* and Magna Carta, without allowing that the former granted the king new rights (which would have made it a statute) argued that the king had always had the rights stated in *Prerogativa Regis*, but that they had previously been interpreted too narrowly.67 Willoughby, on the other hand, recounts the developments in Magna Carta and Westminster II and adds the changes caused by *Prerogativa Regis* to this account, arguing that “by this article of the prerogative it is declared that the king will have the marriage of the heir within age who holds of him in chief or by escheat or because the lord of the heir is in ward to the king, having no respect to the priority of feoffment.”68 This pattern is typical of the reading as a whole; it is largely a

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66 George Willoughby, MS Harley 1691, f.197 (hereafter Willoughby). “ceo nest que vn treatice & declaration dell prerogatiue le Roy al Comen ley.”
67 See above, chapter two, p.67.
68 Willoughby, f.200. “per cest article del prerogatiue est declare que le Roy auera le mariage del heire esteant deins age que tient de luy en chief ou per ascun eschete ou per reason que le segnior de tiell heire est en garde
recapitulation of Frowyk, but with some significant differences. In this case the discrepancy is not very logical, and it gives the impression that Willoughby has not really thought through the implications of the two statements. It is difficult to tell whether his departures from his model are simply misinterpretations of the law, or whether he is attempting to present the most recent ideas on the topic, without having integrated them fully into the material he has taken from Frowyk.\textsuperscript{69}

Willoughby opens his reading with the usual material on tenures, discussing escuage, grand serjeanty, cornage, and so on.\textsuperscript{70} His reliance on Frowyk is confirmed by his attention to the idea of tenure \textit{ab antiquo}, which he defines as knight service which had continued from the time before which memory does not run, and his distinction that if the king purchases land and gives it to hold of him, it is in chief, but not \textit{ab antiquo}.\textsuperscript{71} Though Willoughby does not comment on the relevance of this distinction, even to point out that it was no longer relevant, it is marked with a \textit{quere} in the text, indicating either that the auditor did not see the point of the distinction, or did not agree with it.

Willoughby's debt to Frowyk is equally clear in his interpretation of the king's rights when land escheats to him for felony or treason. He argues that when a mesnalty held in chief of the king escheats for felony, the tenant holds of the king in chief, but when it escheats for treason, the tenant will not hold in chief.\textsuperscript{72} This is because the mesnalty which escheats to the king for felony was held of the king, and so the king will keep the tenure he had, while lands held of other lords may escheat to the king for treason. This argument goes against both Constable, who gave the king everything in chief, and Spelman, who gave nothing in chief, and as with many of the other points, the writer has marked the

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\textsuperscript{69}Although there were some inconsistencies in the earlier readings, and the manuscript of Willoughby does not preserve a complete text, the standard of learning in the readings given by the serjeants-elect does seem to be superior.

\textsuperscript{70}The manuscript does not deal with the more basic elements of tenure, again suggesting that the note-taker was fairly senior.

\textsuperscript{71}Willoughby, f.197v.

\textsuperscript{72}Willoughby, f.198.
disagreement.

Although Willoughby generally follows the pattern established by Frowyk, he does raise one issue absent from the earlier readings. He notes that when “one who holds of the king in chief holds also certain lands of another in socage and dies, his heir within age, the king will have his prerogative of the land held in socage until the full age of the heir and yet the words of the statute were only de quocumque tenuerunt per [huiusmodi] servicium.”

Thus, according to the strict words of the statute, the king should have custody only of the land in knight service. This issue had not been raised by any of the earlier readers, who all agreed that the king would have custody of all the lands passed from the tenant to his heir, no matter how they were held, as long as he held something of the king in chief. It is tempting to see here a new issue raised by those purchasers of monastic land who had previously only held land in socage and who resented their vulnerability to the imposition of the prerogative, particularly if the land held in chief represented only a small part of their total holdings. There is no way to prove this point, and Willoughby does not specifically refer to the monastic lands at any place in the surviving reading. This argument does stand out as one of the few places where Willoughby diverged significantly from the pattern of his model, and, not surprisingly, it is marked with a quere.

Though he relies on Frowyk, it is clear that Willoughby was not unthinkingly following his model, for besides adding to and moderating some of Frowyk’s views, he actively disagrees with him in his discussion of collusion. Frowyk and Constable agreed that where a tenant aliens land held of the king by collusion, and this is found in the inquisition, then the king would have everything, and Willoughby also accepts this. Frowyk, however, goes on to argue that if the tenant aliens land held of other lords, the king has no remedy, since he cannot aver covin under the statute of Marlborough, the usual practice, because the

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73 Willoughby, f.199. “Un qui tient de roy en chif tient auxi certeyn terres dun auter en socage & morust son heire deins age le Roy auera son prerogatiue dez terres temus en Socage tanque al pleine age leire & vncore lez parolx del prerogatiue ne fuit mesque de quocumque tenuerunt per [huiusmodi] servicium quere.”

74 See above chapter two, p.76, Willoughby, f.199v.
statute is only available to the lords. Willoughby, on the other hand, argues that the king can aver covin under the statute of Marlborough, and will have his prerogative in the land.\textsuperscript{75} Again, the auditor does not seem to have been convinced, and it is an odd argument. The most likely explanation for Willoughby’s divergence here is the impact of the statute of 4 Henry VII.\textsuperscript{76} Frowyk discounted this as an element in the interpretation of the prerogative for the same reason that he discounted the statute of Marlborough, because it did not name the king. Over the course of time, however, it was established that the 1490 statute did in fact apply to the king, and it is possible that Willoughby applied the same principle retroactively to Marlborough, as they had been linked by Frowyk. If this is the case, it is a small, but curious example of re-interpretation of the old law to conform with the new.

Willoughby, then, has little new to tell us about the development of the prerogative in the 1540s. The section of his reading that survives is a fairly faithful reprisal of Frowyk’s lectures. Given the level of similarity between the two readings, it seems probable that Willoughby worked from some version of Frowyk’s material, possibly a manuscript in circulation at the Inner Temple. Willoughby’s only original contribution, his questioning of the king’s right to claim lands his tenants held in socage, does not seem to have had any immediate impact, though we will see it appear again. The survival of Willoughby’s truncated lectures in a single manuscript further suggests that they were not considered particularly valuable at the time, though given the vagaries of manuscript survival, this is not a particularly compelling point.

The last reader to handle \textit{Prerogativa Regis} was William Staunford of Gray’s Inn. Staunford presents some problems for the present study. He was probably the first of the two readers in the 1540s, delivering his lectures in 1545, to the best of our knowledge. The reading does not survive, but in 1548 he compiled a treatise on the prerogative, presumably

\textsuperscript{75} Willoughby, f.199v. Constable does not deal explicitly with this issue. He says that if the tenant aliens land held of the king and other lords the king will recover it all, but he does not specify what would happen if the tenant aliens only land held of other lords by collusion.

\textsuperscript{76} See above chapter two, pp.88-95 above.
based on his earlier handling of the material. The treatise is rather different from the usual readings. Staunford makes it clear in the title that he is relying heavily on the material in Fitzherbert’s *Graunde Abridgement*, and he presents the treatise almost as a digest of the abridgment, though he does use other sources. This reliance on Fitzherbert is a new element in the treatment of the prerogative, but not an unexpected one. Baker points out that the publication of Fitzherbert’s abridgment “must have made a considerable impact on the techniques of research, the concept of ‘authorities’ and the framing of legal arguments in court,” and apparently it also had an impact on legal education. In using the abridgment, however, Staunford was closing a circle, for both Fitzherbert and Brooke regarded readings as suitable sources for their collections. Though the inclusion of Fitzherbert’s name in the title may indicate a new concept of authority, it is just as likely that it was a marketing ploy, to make the work more appealing to a lay audience. Besides using the most recent authorities, Staunford also uses Bracton and Britton more consistently than most of the readers on this topic. This impression of antiquarian learning is reinforced by his (very) occasional references to classical authors like Seneca. Though he follows the usual practice of the readings in examining the meaning of each chapter of the statute and explaining the chapters in turn with the use of examples, his examinations are much shorter than the usual treatment in the readings, his examples are fewer, and he separates his discussion of process from his consideration of the law. All of these peculiarities suggest that Staunford intended his treatise for a different audience than the reading, presumably for the new holders of land in knight service. Staunford’s reader would have required some knowledge of the law, his book is not aimed at the absolute beginner, but it does limit itself to the situations and

77 William Staunford, *An Exposicion of the Kinges Prerogatiue, collected out of the great Abridgement of Justice Fitzherbert, and other olde Writers of the Lawes of Englande*… (London, 1567).
problems most likely to arise in reality, rather than dealing with more technically challenging settlements.

All of these factors cast some doubt on the utility of comparing Staunford’s treatise with the earlier readings, but though it is rather more difficult to relate it to the range of situations envisaged by Constable, Frowyk and Spelman, Staunford is well worth attention. Firstly, even though his book is limited in the topics it covers, Staunford remains true to the traditions of the Inns by pointing out and examining the places where the law was, and remained, unclear. The fact that so many queres appear in a treatise of this kind indicates how unsettled the law on the prerogative remained, even at this late date. Secondly, the treatise seems to have found some favour with the legal profession. In his address to Nicholas Bacon, which prefaces the work, Richard Tottell notes that the “woorke ... is thought well of by the Sages of the law, and well worthy to be printed.”

Though Tottell might be thought to be promoting his new product, there is a good deal of truth to his claim, and Staunford does seem to have become the standard reference on the topic; Egerton owned a copy of the treatise, and one of the few clearly intelligible words in the existing fragment of Yorke’s reading is the word “Staunford”. Though this may partly have been because it was the only printed work on the topic, Staunford’s eminence, and the place of his treatise in the dissemination of knowledge of the prerogative, would alone justify consideration of his work. It is also worth remembering that a good proportion of the audience at the Inns did not intend to become professional lawyers, and Tottell at least sees them as potential readers, pointing out that if treatises such as this make the acquisition of legal knowledge easier, students “might both as they went and after they come to their iorneis end gather some other knowledge, not onely therewith to garnish theire owne science, but also the better to serue in such honorable rome as they be called to serue the kinge and soueraigne lord in.”

Despite the differing format of Staunford’s work, its handling of the first chapter of

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81 Tottell in Staunford, Exposicion (no pagination).  
82 Ibid.
the statute covers the same kinds of issues as the readings, establishing what kinds of tenures on what kinds of holdings bring the prerogative. Thus he points out that the prerogative applies to tenants by estate of inheritance or for term of life, to tenants in possession or reversion, and to services as well as lands. In all of these cases, and throughout this section, Staunford emphasizes that the usual interpretation goes beyond the words of the statute; for example, he points out that though the words of the statute are “in dominico suo,” “this woorde demeane is not here taken to bee the verie possession or takyng of the profits, for yf the kinges tennaunt dye seased but of a reuercion or of a remaynder in landes holden of a common person and duringe the minoritye of his sonne the particuler tennaunte dyethe, the kynge (this notwithstanding) shall haue this lande in warde as he hath the rest.” Staunford does not pursue the difference between a remainder and a reversion here, but he follows this point with a discussion of whether the tenant must die seised, as the statute says, in order for the king to claim his prerogative. He points out that if a tenant dies seised but a stranger then intrudes on the land, the heir will still be in warde, thus implying that the heir will be in warde because of his right to the land of which his ancestor died seised. From here he makes the logical progression to the question of whether, if the king’s tenant is disseised and dies, the king should have the prerogative, and concludes, with some trepidation, that he should. In this way Staunford follows Spelman in concluding that the heir’s right to the land, even without possession, will bring the prerogative, though the words of the statute limited it to cases where the tenant died seised in his demesne.

Staunford seems to place himself with those who believe that Prerogativa Regis should be interpreted narrowly, for he argued that parliament “maketh no part of the kinges prerogatife, but long time before it had his being by thorder of the commen law.” He does

83 Staunford, Exposicion, ff.6v-7v.
84 Ibid., f.8.
85 Ibid., ff. 8-8v.
86 Ibid., f.5v. Prerogativa Regis was simply a declaration of the prerogative made by parliament to clarify the situation. Staunford points to writers like Glanvill, Bracton and Britton, who discussed the prerogative before the statute existed, to demonstrate that it came from the common law.
Staunford emphasizes this issue in a particularly striking manner when he remarks that the statute gives the king custody of the lands the tenant held of other lords

Per huiusmodi servicium, that us to say by lyke seruice. Bye these woordes the landes that are holden of other muste bee holden allso by knyghtes seruice or else the statute extendes not to them, and yet the lawe is taken to the contrarye for yf the lands holden of other bee holden but in Socage or free burgage, the Kyenge shal haue prerogatiue in them as it appearethe in 24 E3 for this statute is but a confirmation of the common lawe, and therefore shallbee taken by equitie and namelye when the lawe was so taken in 9 H3 whiche was longe time before the makyng of this Statute. Howbeit Bracton & Britton dothe extende this prerogatiue no further then to landes holden of other by knyghtes seruice, therefore enquire for the cause and reason therof.\(^87\)

Staunford is raising the same doubt as Willoughby did here, though none of the earlier readers had questioned the king’s right to this land. The fact that Staunford had to go back to the thirteenth century to raise controversy over this matter indicates the difficulty of finding a contrary authority, while he himself recognizes that this issue was settled even before the statute came into existence, and so there is no real suggestion that it can, even if it should, be changed. Nevertheless, the coincidence of the two readers in the 1540s raising this same obscure issue is too much to ignore, and it reinforces the earlier suggestion that it was raised at the behest, or at least under the stimulus, of purchasers of monastic lands.

Though Staunford seems to believe that the words of the text should be limited to a strict interpretation, his understanding of the prerogative as an element of the common law causes him to expand it on occasion. In considering wardship, he asks whether, since “there bee diuers Statutes concernynge wardeshippe made aswell befoore as since the time of kynge Edward the seconde ... this prerogatiue wyll extende to those statutes or not, and it seemethe it dothe.”\(^88\) To support his point Staunford gives the example of the statute of 4 Henry VII,

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\(^{87}\) Staunford, \textit{Exposicion}, ff. 8v-9. Staunford’s argument that the text should be interpreted broadly because it was an affirmation of the common law was not unusual; Mordant made the same point in \textit{Stonor’s Case}. M. Hemmant, ed., \textit{Select Cases in the Exchequer Chamber before all the Justices of England} vol. 2, Selden Society vol. 64, (London: Bernard Quaritch, 1948), 165.

\(^{88}\) Staunford, \textit{Exposicion}, f.9.
which “prouidethe that the heire of the *cesty que vse* shall bee in ware.” He argues that if the king’s tenant-in-chief made a feoffment of lands which he held of another lord to the use of himself and his heires, and then died before the making of the Statute of Uses, the king would have his prerogative in those lands, and he cites Stonor’s *Case* in support of his argument. As the arguments in Stonor’s *Case* demonstrate, it took the lawyers some time to reach the conclusion that the king should have the benefit of that statute, with some disagreement on the issue continuing until the early sixteenth century. Staunford makes no mention of the debate, simply taking the final interpretation as supporting a broader reading of the king’s rights to wardship.

Staunford also opens up the king’s right to claim wardship over the lord by priority. He argues that according to Bracton and Britton “no lorde can be more auncienter then the kynge, for all was in hym, and came from hym at the beginninge. And therefore his highnesse muste haue prerogatiue in the bodye of whosoeuer the infaunte holdeth besides.” For this reason, Staunford gives the king the right to wardship of the body, in preference to the lord by priority, not only when the tenant held of the Crown, or of a new escheat or when a tenant was in ward by reason of ward, but even when the king purchased a segniory, or a manor held of one of his new escheats. In general terms Constable and Frowyk agreed that the king had this prerogative where land was held of the Crown or by escheat, and Constable extended it to a ward by reason of wardship. On the specific question of wardship, Constable argued that the king should also be preferred to the lord by priority.

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89 Ibid., f.9.
90 Ibid., ff.9-9v. He makes an identical point later, in his discussion of primer seisin, where he points out that before the Statute of Uses the heir of the *cesty que vse* had to sue an ouster le main sine exitibus, which he describes as “in nature of a livery for the heire of *cesty que vse* which had bene in ward.” *Exposicion*, ff.15-15v. Staunford’s mention of the Statute of Uses in these two places highlights the otherwise complete omission of the topic from his treatise.
91 See above, chapter two, pp.88-95.
93 As opposed to the “old escheats,” which had belonged to the crown since shortly after the conquest. See above, chapter two, p.66.
94 Staunford, *Exposicion*, ff.10-10v. He does concede that this gives the king wardship only over the body, and not the lands held of the other lords.
95 See above, chapter two, p.66-66.
whenever he held land as king, such as a forfeiture for treason, or the land of an idiot, though Frowyk did not take this view. In attaching the prerogative to land purchased by the king, Staunford seems to be pushing the prerogative in the same way as Constable, but with less justification. One possible reason for Staunford’s new approach to this issue is the framing of the act establishing the court of Augmentations, which gave jurisdiction over land purchased by the king to the court. This inclusion in the statute of lands purchased by the king with lands coming to the king through dissolution may have encouraged Staunford to assume that they would carry the same obligations, especially since he inclined towards blending statutory provisions. It was possibly this kind of confusion which led to the statute of 1547 to clarify tenures.

On the question of primer seisin, Staunford has little new to say. He does confirm indisputably the failure of Constable’s attempt to apply the claim to primer seisin to lands held of the king only by escheat, for he opens his discussion of this section with the statement that if the tenant does not hold of the king in chief “the kynge can haue noe primer seisin.” In fact, Staunford does not even raise the issue of lands held as of escheat. He does remark that this rule was questioned because a tenant holding lands in burgage in the city of London of the king had had his lands seized and sued livery, but he points out that this precedent was rejected by Markham CJKB in 1467, with the agreement of all the judges. He concludes from this that the tenant “must holde of the kyng in Capite, but whether he holde of the kyng by knights seruice or by Socage in capite it makethe noe matter so that he holde in capite, for the kinge in bothe cases shall haue primer seisin althoughe not wyth so large a prerogatiue in thone case as in the other.”

Staunford’s treatment of primer seisin also demonstrates that while Constable’s attempt to extend primer seisin to lands held in escheat had failed, Frowyk’s attempt to avoid

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96 See above, chapter two, p.82.
98 Staunford, Exposicion, f.13.
99 Ibid., f.13v.
a coincidence of the claims of primer seisin and wardship had also failed. He points out that where the tenant held land of the king by knights service in chief, "the kynge shall haue the same prerogatiue when the heire is of full age at the deathe of his auncester as he should haue hadde yf hee hadde beene wythin age,"\textsuperscript{100} i.e. prerogative in all the lands of the tenant, those held of other lords as well as the king, both in knight service and in socage. If the tenant held land in socage in chief of the king, on the other hand, the king had no claim to the lands held of other lords if they were held by knight service, while he had no right to primer seisin on the lands held even of himself in socage in chief if the heir was under the age of 14. In both cases the guardian of the body of the heir, in the first case the lord of whom the land was held in knight service, and in the second case the \textit{prochein amy}, would come and sue \textit{ouster le main cum exitibus}.\textsuperscript{101} It is only where the heir of land held in socage in chief was over the age of 14 at the death of his ancestor that the king could have primer seisin and the heir must sue livery. Staunford speculates that in this case the king will also have primer seisin of the lands held of other lords, even if they are held in chief, but he is unsure if this is so. Staunford's discussion of this question places him securely in the tradition of the readings, for we see him following the issues outlined by the first readers on the prerogative, demonstrating how the law had developed to his day, and presenting an aspect of the issue which remained doubtful. His doubt on this last issue comes from his attempt to reconcile the statute of Marlborough with \textit{Prerogativa Regis}, and this demonstrates again the desire of the lawyers to integrate the various statutes into a coherent interpretation of the law. It was this process which led to the identification of the king's rights to wardship and primer seisin, for Staunford consistently mingles the instructions of the statute, arguing that "these wordes [on primer seisin] may bee conferred and coupled with the firste chapiter of this statute of prerogatiue whiche hath the verye self same wordes. And therefore looke in what cases noted vppon the firste chapiter the king hath his prerogatiue by reason of wardship, in al the

\textsuperscript{100} Ibid., f.13v.
\textsuperscript{101} Ibid., ff.13v-14. Cf. Spelman, above chapter 4, p. 170, on wardship of heirs in socage. Willoughby also makes the point that an heir to land held in socage in chief will not be in ward, but will have to sue livery.
Having discussed primer seisin, Staunford moves on to suing livery, and again he gives a short, pithy and relevant discussion of the topic, providing the information most likely to be of general use. For example, he points out that even if an heir was in ward, the king would still have primer seisin and relief, and the heir would still have to sue livery, though in this case he would only pay half a year's profit for primer seisin, while if he was not in wardship he would pay a full year's profit. Staunford also lists other heirs whose lands might be seized by the king, such as wards by reason of wardship and tenants of bishop's temporalities in the king's hands because of vacancy, and he describes their responsibilities. Most of this material is fairly straightforward, but Staunford does raise a couple of disputed points. He asks, for example, if the king's tenant-in-chief dies, leaving an heir of full age, and one that holds of the heir dies before he has sued livery, does the king have primer seisin of the lands of the second heir, i.e. primer seisin by reason of primer seisin? Staunford concludes that he should, as a logical extension of his identification of the king's rights to wardship and primer seisin, but he recognizes that the point is doubtful, and in fact it had been explicitly denied in 1516. He also questions whether, if a tenant dies seised of a reversion with a rent reserved, the heir should sue livery immediately, or should wait until the reversion falls to him. He argues that the normal procedure with a reversion is to allow the heir to choose; if he decides to sue livery immediately, he only pays half a year's profit, while if he elects to wait for the death of the tenant in possession, he must pay a full year's profit. When there is a rent reserved, however, he believes that the heir suing livery during the life of the tenant should pay a year's profit of the rent as well as the half year's profit on the land, though again, he is not entirely sure if this is the case. Besides demonstrating the administration's concern to take its share of every part of the heir's

102 Staunford, *Exposicion*, f.14. The only exception he makes is for collusion.
103 Ibid., f.14v.
104 Ibid., ff.14v-15.
105 Keilway, *Pas.* 7 Hen. VIII, p.176b, pl.2.
income, this argument also highlights its preference for money in the hand rather than in the bush.

With the establishment of the court of Wards and Liveries, the process involved in holding inquisitions and suing livery was tightened up, and Staunford makes some reference to this. He points out that by a statute of 1542 (the Act concerning Wards and Liveries) it was ordered that no-one holding land worth more than £5 per annum could sue livery before an inquisition was held by the escheator or other commissioner, under the authority of the court of Wards. This opened up the holders of lands within this range to the activities of the officials of the court, and following the redistribution of monastic lands, the commissioners must have been eager to establish who had become a tenant of the king. They may in fact have been too eager, and their position certainly gave them the potential to greatly disrupt their neighbours' lives. Such activities may well account for one of the demands of Kett's rebellion that "nomen shalbe put by your Esthetory and Ffeodarie to ffynde eny office unles he holdeth of your grace in cheffe or capite above xli by yere." It is striking that the issue centred around the king's interest in lands worth £5 - £10 per annum, the very parcels which seem to have been of most interest to those entering the monastic land market.

The process of suing special livery for lands worth more than 20 marks per annum seems to have become standard by this period, for Staunford addresses the question of whether, if the heir holds lands in various counties and sues special livery, he must have an inquisition, and answers in the affirmative, "for the kinge can never be fulli enformed of his title vnlesse ther be an office found in euery shere, & also by finding of seueral offices one

108 F. W. Russell, Kett's Rebellion in Norfolk (London: Longman, Brown, Green, Longman & Roberts, 1859), 52. The enmity between Kett and the local escheator, John Flowerdew, may have made this a more prominent issue than it otherwise would have been, but it is still striking that it was important enough to be included in the list of the rebels' grievances. See S.T. Bindoff, Kett's Rebellion, 1549, (London: Historical Association, 1949), 15-16.
record may be better for the kinge then another, whereof his grace may take auantage, for the best shall be taken for the kinge.” The new court was clearly developing new protocols for the holding of inquisitions, and though it encouraged the suing of special livery for larger estates, thus reducing the risk of a technical error in the proceedings holding up the livery, it clearly had no intention of allowing this concession to undermine the king’s right to examine his tenant’s lands in detail.

Staunford’s approach to the prerogative confirms the attitude among the other readers, and indeed highlights it. We have seen that Constable, in presenting *Prerogativa Regis* as a statute, went on to extend the prerogative in the king’s favour in many ways, most notably in his treatment of primer seisin, while Frowyk, by insisting that the text was simply a declaration of the common law, limited it to a strict interpretation. Both readers, however, restricted or extended the law where their understanding of the material dictated it, even when such an interpretation ran contrary to their usual approach. Although their attitude to the law was consistent, neither reader sought to grant or withhold privileges that their reading of the law would not support, thus indicating that though they may have had sympathies in one direction or the other, their first loyalty was to the integrity of the law. Both Spelman and Willoughby followed Frowyk, though Spelman was a little more lax in his definition of the text, accepting that at least part of it made new law, but again they varied from their predecessors on occasion, not on ideological grounds, but on their interpretation of the law. Staunford, though he accepts that the king’s prerogative rights come from the common law, looks on *Prerogativa Regis* as a parliamentary confirmation of those rights, and thus he is positioning himself between the two groups. In presenting the text as a confirmation of the common law, Staunford is indicating his belief that it must be interpreted closely, except where it affirmed the common law, when it could be extended. By constantly drawing attention to the ways in which the text is not interpreted literally, Staunford seems to indicate a dissatisfaction with the extension of the prerogative, but at the same time, he seeks to

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extend the prerogative in some areas left untouched by the previous readers. Staunford again indicates the way in which the lawyers tried to balance their own feelings and inclinations with their understanding of the law, sometimes with incongruous results. He also demonstrates that the law continued to remain unclear in places, and the lawyers continued to debate it, even after the readings on the topic ended, and even in works directed at a more general audience.

Staunford's *Exposicion* is not only shorter and simpler than the readings, it is quite obviously in a different category for another reason. The readings sought, not only to expound the law, but to develop the legal sense of the students, their "forensic ability." The numerous cases given as examples by the readers served, not only to highlight issues that the apprentices might expect to see in practice, but to develop their ability to interpret the law in various situations. Staunford's book, though it points out areas of disagreement, is less concerned with this development of legal sense, than with giving a clear and practical overview of the prerogative as it was then understood.

Staunford's treatise remained popular, and it was reprinted and updated in subsequent editions. Staunford, however, was not the only lawyer to publish on the prerogative, though his successor did not present his work as an exposition of the prerogative, but as a treatise on wards and liveries. Sir James Ley became Attorney-General of the Court of Wards and Liveries in 1608, and his *A Learned Treatise concerning Wards and Liveries* was written during his tenure of that office, though it was not published until 1642. Ley's connection with the court makes him particularly well-equipped to write this treatise, and the dedication directs it specifically to the students of the law who hope to practice there. Ley's treatise moves us into a new era in legal education, for by the end of the sixteenth century the readings had often declined, partly because of treatises like this, into expositions of obscure and arid knowledge, rather than useful guides to the realities of practice. The dedication of the *Learned Treatise*, like the dedication of Staunford's *Exposicion*, remarks on the amount

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of labour needed to digest the law on any topic from the various year books and abridgments, and offers the work as a way around such a tedious task. It is clearly related to Staunford in structure as well as intent, for it also separates its discussion of the law from the discussion of process, but it is further removed from the readings than Staunford. Ley does not structure his treatise around *Prerogativa Regis*, and he avoids the earlier practice of beginning his discussion of each new segment with the words of the statute. Although he covers similar material, his work is more clearly presented as a text-book; for example, it breaks the question of tenures into separate sections under headings such as “Tenure in *Capite* by Knights service” and “Common Knights service of the King”. Like Staunford, Ley is also much more limited in the range of material he covers; his work is intended as an introduction to the principles of the law, but does not use examples to illuminate those principles.

Although Ley is clearly not within the tradition of the readings, it is worth taking a quick look at his treatise, for it is the last statement of the law in this period, and demonstrates the conclusions the legal profession had reached on the prerogative. Ley has little to say on the more basic questions of tenure, for they had remained the same through all the readings. He restates some of the basic points made by Frowyk and particularly relevant to the active land market of the later sixteenth century, for example that when the king grants lands out, it was customary for him “to restore the ancient Tenure of the Subject, and if a grant had been made otherwise, he of whom the lands were holden before, had his remedy by petition to the King.” Ley also indicates some changes made in the reign of Edward VI which Staunford did not cover. These changes support the idea that the process governing the administration of

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112 Ibid., 4.
the prerogative was tightened up under the court of Wards. Thus he discusses the statute of 1549 which ordained that when an inquisition could not discover the tenure by which land was held, or from whom it was held, it would not automatically be taken as a tenure for the king, as had previously been done. Instead a melius inquirendum would issue, to inquire further, but if the information was still not available, the king would then claim his traditional rights. The act also redressed a nagging injustice, remarked upon by the earlier readers, by allowing an heir of full age found to be within age to traverse the mistaken inquisition. The statute did not really deprive the king of anything, but it was intended to restrain the administrators of the prerogative from anticipating too much. Its preamble suggests that royal officials were, as usual, presuming on their office, for it states that the statute was framed expressly because copyholders and leaseholders were being ejected from their lands by inquisitions which found that the land was held of the king, and then had no remedy. The passing of the statute indicates a desire to conciliate these tenants by curbing the enthusiasm of the royal officials, but it must also be considered in conjunction with the rebellions of 1549.

Though Ley does cover the same kinds of issues as the readers, his simple formulations of the law seem to be miles away from the complex discussions of Frowyk and Constable. His statement that

To Knights service in Capite, are incident not only Ward, Marriage, Primer seisin, Reliefe, Livery, and Licence to alien, but also Prerogative to Wardships, and Primer seisin of all other Lands holden of common persons in Knights service, or in Socage, and of all other services, whereof the Tenant in Capite dyed sole seised in Fee, and Fee taile in his owne Right, or in the Right of his wife in Possession, Reversion, Remainder, or in Right which descended to the Kings ward, and not to any other customary heire, as the younger sons in Gavelkinds etc.

covers all the issues usually discussed by the readers and answers the simple question of what the king can claim, but with no indication of why or when. He does discuss some elements of the prerogative in a little more detail, but only as much as is necessary to make

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113 Ibid., 6. Ley dates the statute to 1 Edw. VI, but it is actually Stat. Realm 4: 47-48, 2 & 3 Edw. VI ca. 8.  
114 Ley, Learned Treatise, 10.
his point clear. Despite its indication in the dedication that this work is intended for students of the law, it is not a teaching tool in the same way as the readings.

The readings delivered in the 1540s, then, do not represent any significant development in the law. The changes that had the largest impact on the prerogative took place outside the Inns and outside the scope of Prerogativa Regis. With the Statute of Uses the law on the prerogative was returned to a more pristine state, while the Statute of Wills represented a practical compromise between the needs of the king and the landholders of England. These changes meant that the law was largely settled and the need to re-interpret the old statute had faded. The only significant changes left within the scope of Prerogativa Regis were procedural, and they were handled by the court of Wards and Liveries. Much of the vibrancy of the early readings disappeared in these later renditions, for the drama of the earlier period had disappeared. The law moved from readings designed to test and train the minds of the legal profession into textbooks for landowners uninitiated into the mysteries of the prerogative.

As both Staunford’s and Ley’s treatises demonstrate, this new market was looking for business-like texts which would guide them through the intricacies of the processes of the various courts which dealt with Crown land. This growing administrative structure, though necessary to deal with the burgeoning land market following the dissolution, made it increasingly difficult for the king’s tenants to feel any personal connection with their lord, even if they had been inclined to do so. The prerogative became a royal business, rather than a royal tool. Though Henry VII’s administration of the prerogative was highly developed and efficient, it retained the flexibility produced by the king’s personal involvement. It could be shaped and manipulated to produce the results most politically helpful as well as financially rewarding. His lords felt the weight of royal rather than bureaucratic attention. This change accentuated and accelerated the falling value of the feudal bond.

The Pilgrimage of Grace and the treatment of Dacre demonstrated a change at the top of the feudal chain, but the disruptions of 1549 were more indicative of the diminishing bond
at the lower end of the scale. The rebellions of Edward’s reign centred on religious and economic issues, but good lordship was also a concern, especially among those affected by enclosure. As the west-country rebellions demonstrate, there was a feeling that good lordship had declined, and that the lord who would provide for his tenants with fair rents, secure employment and legal protection had been replaced by the agricultural entrepreneur.\textsuperscript{115} The ideal of traditional good lordship was often more of a myth than a reality, and the older nobility was just as likely, in the economic circumstances of mid-century, to impose high entry fines and enclose lands, but the emergence of a new group of gentry following the dispersal of the monastic lands seems to have highlighted the change. As Bush points out, many of the risings were sparked by hostility to an individual figure “who was not of the long-established gentry but on the make as a landowner,” such as John Flowerdew in Norfolk.\textsuperscript{116} From this origin they could come to focus on the shortcomings of the aristocracy as a whole, the group who had failed to protect them from the economic turmoil of the period.

Kett’s rebellion, in its effort to turn the clock back and return to a purer form of feudalism, is indicative of the failure of the ideal in the new circumstances of the period. In the light of the changes associated with Henry VII’s reign, it is significant that the rebels seek a commission “to redresse and reforme all suche good lawes, statutes, proclamacions, and all other your procedyngs, whiche hath byn hydden by your Justices of your peace, Shreves, Escheatores, and other your officers, from your pore comons, synes the first yere of the reigne of your noble grandfather King henry the Seventh.”\textsuperscript{117} The rebels had other demands relating to the feudal structure, indicating both how widely the reach of the royal prerogative could be felt, and the weight of the burden of local lordship. In the first category, they asked that fishermen should be allowed to keep the profit from all of their catch, including whales

\textsuperscript{117} Russell, \textit{Kett’s Rebellion}, 55-56.
or sturgeon (reserved to the king under *Prerogativa Regis*), and though this was a provision particularly relevant to the Norfolk fishermen, others had wider application. The request that the feodary, the local officer of the court of Wards, should not simultaneously serve as counsellor to any individual, with the corollary that the feodary should be appointed by the local community, indicates the power this official had in the shire, and his potential for inconveniencing his neighbours or protecting his employer. The same concerns are demonstrated by the request, already mentioned, that no-one holding land worth less than £5 should be subject to inquisitions. Royal rights were not the rebels' only concern, however. Local tyranny is suggested by their desire to prevent anyone holding a manor on his own behalf from acting as bailiff to another, and in their concern that no-one should be allowed to sell the wardship of any child, but rather that the child should choose his own marriage. They except the royal right to wardship from this latter demand.\(^{118}\) This concession to royal rights may have been intended to curry favour, but given the impractical nature of many of the rebels' demands, this is unlikely. It is more likely that the distinction represents a recognition of the king's rights over his lords, along with the rejection of the local lords' rights over the rebels in the light of their failure of lordship. The reciprocity of the feudal bond was once again a source of weakness; as one party failed in their duty, the other party rejected their obligations.

There seems to have been some recognition of this failure among the gentry, and Sir Thomas Smith made the connection with monastery lands, when he had the knight in his *Discourse of the Commonweal* "confess that some of us, that had lands either given us by the King's Highness that belonged heretofore to the abbeys and priories and were never surveyed to the uttermost before, or otherwise descended to us, have enhanced, many of them, above the old rents."\(^{119}\) The connection between the changing attitude to land and the purchasers of monastery lands was not only apparent to tenants or observers like Smith, but was also

\(^{118}\) Ibid., 51-55.

accepted amongst the older gentry. The anonymous author of *The Institucion of a Gentleman*, for example, accepted that one of humble background could achieve gentle status through virtue and learning, but warned his readers against thinking that this could include those who "obteigned the name of gentleman, the degree of Esquiers, and the title of Knightes" by sharp dealing in monastic lands.  

Though the gentry may have recognized that this new attitude to land was not appreciated by either their traditional dependents or their more conservative peers, there was little incentive for them to conform to the older ideal, as the times were clearly changing. The value of good lordship as a road to political or administrative advancement was fading with the centralization of the Tudor state. As the role of the nobles became less important with the decline in their role as arbitrators, local peace keepers and representatives of their locality, their value to those on the way up also fell. Military participation in the retinue of a lord became less appealing when the likely result was a summons to Star Chamber. Even the military importance of the nobility in the defense of the country, the original foundation of the feudal system, suffered a crucial blow in this period. English armies were traditionally formed by the nobility raising their tenants, and this remained the case until 1544. In that year Henry VIII fatally wounded the system by summoning 4,000 militiamen to France to reinforce the army there. This was largely a measure of convenience, for most of the nobility were still in action in France and could hardly be sent back to England to raise men, but as Miller points out, the action heralded the end of the quasi-feudal army. The older system did not disappear immediately, for between 1544 and 1558 it was still the more common method of raising an army, but by the middle of the century it was apparent that it was not working properly. By 1560 armies were normally recruited on a county basis by muster-masters appointed by commission, rather than by royal letters to noblemen.  

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121 Gunn, "Off with their Heads," 64.  
122 Miller, *English Nobility*, 159.  
shift was mainly due to the changing composition of the landed classes. The crown had once been able to raise an army by sending out letters to a small number of lay and ecclesiastical magnates who held large estates and maintained a considerable retinue. By the 1540s, with the decline of some of the great aristocratic families, the success of the royal campaign against retaining, and the dissolution of the monastic estates, it was no longer clear who had the resources or the obligation to provide men for the army.\textsuperscript{124}

On the other hand, it appears that as the change in landholding obscured the obligations of the gentry to provide men, tenants were becoming increasingly unwilling to accept their duty to serve in the army. Goring points to a number of examples of tenants refusing to their landlords’ demands to serve in the army, on the grounds that their tenure did not oblige them to do so. Tenants of the manor of Ackleton in Shropshire, for example, argued that since they did not hold their lands “by knight’s service nor by any such service … for which they ought to go with them [the lords of the manor] in the wars” their duty was only to the king and his commissioners.\textsuperscript{125} The prevalence of the problem is indicated by the fact that parliament attempted to deal with it by a clause in the Act against Unlawful Assemblies of 1549, which ordered that leaseholders or copyholders who refused a military summons from the sheriff, justice of the peace or their lord, should be punished with the loss of their lands for the term of their lives.\textsuperscript{126} Henry VIII’s policy of requiring his subjects to swear allegiance to him and thus break the traditional chain of feudal loyalty was coming home to roost. The weakening of the loyalty between tenant and lord, the entry of a new group into the landholding class, and more business-like methods of farming all combined to reduce the influence of feudal ideals and the practical value of feudal obligations.

\textsuperscript{124} Goring, “Social Change and Military Decline,” 188-89. Goring points out that the Crown, when preparing its army in 1543, sent out letters to all those in the southern part of the kingdom thought to have the resources to provide soldiers, but it turned out that many of the addressees were dead or deficient in resources, while many of those who could have supported the obligation did not receive a letter.

\textsuperscript{125} Goring, “Social Change and Military Decline,” 189.

\textsuperscript{126} Stat. Realm, 4: 107, 3 & 4 Edw. VI ca.5. The statute was directed against attempts to attack privy counsellors or enclosures and was thus obviously a response to the turmoil of the rebellions. The fact that those objecting to enclosures seem often to have been of the same group as those refusing to serve in the army suggests that the act was aimed at two problems and may have been ineffective in both.
As the military value of the feudal system declined, to be replaced by a more bureaucratic army, so too the feudal idea of knighthood underwent the transformation into a civil honour. By 1550 the number of civil knights had risen from the 26 of 1523 to 141, and the number continued to grow. Under Elizabeth, as the possibilities for knightings in time of war and on ceremonial occasions fell, the numbers of civil knights grew in both absolute and proportional terms. Knighthood came increasingly to be seen as a social distinction rather than a military honour, and by 1589 Elizabeth had formulated a conscious policy of knightling men of good birth and sufficient wealth who had served her well, in order to establish a small and honorable group below the nobility. To maintain the value of the honour, it was necessary to restrict the number of knighthoods, and this, Leonard argues, was the reason for the queen’s anger when Essex knighted large numbers at war; such knightings caused resentment among those who had stayed behind in civil service in the hopes of earning advancement. Though the policy served the needs of the government well, it further highlights the decline in the feudal ideal through the sixteenth century.

The 1530s and 1540s, then, saw a sharp decline in both the theoretical and practical value of feudalism. The active land market led to a shift in the ownership of property, with greater numbers of “new” gentry becoming lords and more members of the lower orders buying their lands. As the lords became less lordly, and tenants became more substantial landholders, the boundaries between the various levels of the feudal hierarchy were becoming increasingly blurred. The shift towards more business-like agricultural practices further accentuated the new nature of lordship in the mid-sixteenth century, while the declining military role of the nobility reduced the practical value of the feudal system. Though these changes would probably have occurred in any case, the coincidence of the sale of monastic lands, the growth of enclosures and the decline of lordship served to highlight

128 Ibid., 113.
129 Ibid., 116.
130 Ibid., 117-18.
the shift.

At the same time that feudalism was declining in practice, it was being established on completely new foundations by the administration. The elements of *Prerogativa Regis* which had occupied the earlier readers, such as the king’s rights over lands held of escheat and the relationship between the king’s rights to wardship and primer seisin, had been largely settled by the 1530s, while the other big question, that of uses, was covered by the statute of 1536. By the time that the readers of the 1540s came to look at *Prerogativa Regis*, the administration of the prerogative had been revolutionized by the statutes of Uses and Wills, the establishment of the courts of Wards and Augmentations and the sale of monastery lands. Though all of these innovations depended on the basic provisions of *Prerogativa Regis*, they went far beyond the words of the text. Rather than trying to incorporate all of this new material into their readings, Willoughby and Staunford seem to have settled for a restatement of the work of their predecessors. The lawyers dealt with the changes through a more direct treatment of the new material; by the middle of the sixteenth century the taboo on introducing new material into the cycle of readings had disappeared, probably due to the pressure and importance of Henrician legislation. Readings on the statutes of Uses and Wills were a more appropriate and innovative method of dealing with the changes of recent years than another treatment of the time-worn *Prerogativa Regis*. The treatises of Staunford and Ley demonstrate that *Prerogativa Regis* had largely passed from the world of legal dispute to that of lay landowners and law students.
Conclusion

It is clear that the readings on Prerogativa Regis began in 1495 in response to a more intensive application of the prerogative by the servants of the king. The purpose behind that application is not as clear. The end result of the investigations was to increase the royal income, and it was this aspect of their activity which has attracted most attention, then and now, but it is not entirely clear that this was their primary objective. The acquisition of money alone would not seem to explain the assiduous attention the king paid to his tenants-in-chief. Rather, his inquisitions and commissions were intended to establish exactly who those tenants were, and how they held their land. This was a necessary first step in any evaluation of the king’s resources.

The readings of 1495 cast a certain amount of light on contemporary legal attitudes to the king’s rights. Constable and Frowyk, the readers in that year, are representative of two approaches to the prerogative. Both accepted that the king’s prerogative gave him the right to seize the lands of his tenants-in-chief on their death and to hold them until the heir was of age, performed homage and sued livery. They also agreed that these rights were a result of the king’s position as feudal lord and resulted from the tenure by which the land was held. Thus, they both approached the subject of the prerogative in the same light, but they differed on their interpretation of the details. Constable was far more inclined to extend the king’s rights over both wardship and primer seisin. He was willing to help the king to cast his net ever more widely, through a broad interpretation of both Prerogativa Regis and more recent statutes such as 4 Henry VII ca.17. Frowyk, on the other hand, was much more inclined to limit the king’s rights. He did not deny the king’s prerogative - no lawyer of the period would - but he resisted the attempt to make more of it than the text of the law would allow. Frowyk was much more concerned than Constable to balance the rights of king and tenant, and he did not hesitate to object to recent changes in practice which were not justified by the
law, but simply by the fees they garnered in the chancery.

If we characterize Constable as a royalist, we might expect to see him receiving the advancement which Thorne speculated would follow a pro-royal reading in 1495. In fact, Constable received no particular benefit from his reading, and rather faded away in the years before his death in November 1501, as least as far as any evidence of offices or grants is concerned. Frowyk, on the other hand, flourished, becoming chief justice of the Common Pleas before dying in the summer of 1506 “in florida juventute sua.”

Furthermore, Bacon singles Frowyk out as a particular servant of Henry VII. Commenting on the king’s willingness to employ men of ability, Bacon includes Frowyk in a list with Morton, Fox, Bray and Warham. How are we to explain this favour for the conservative Frowyk? One likely explanation of the phenomenon might lie in the fact that Frowyk’s reading found greater favour with the legal profession than Constable’s. Although he did not carry the profession with him on every issue, all of the later readings follow Frowyk’s lead rather than Constable’s. Frowyk’s reading, though it did not seek as much for the king, may have achieved more for him. It gave a clearer view of what the king could realistically hope to get in the light of the limitations of the administrative and political situation of the day. Thus the readings caution us against falling into the trap of believing that the more “royalist” reading of the law would necessarily reflect royal wishes or attract greater royal favour.

Why did the more conservative view of the law find favour with Henry? Bacon’s comment that “as he governed his subjects by his laws, so he governed his laws by his lawyers,” may provide part of the answer. Henry was determined to get everything that was due to him, but he was not seeking to oppress his subjects. It is generally recognized that Henry was concerned to re-establish the power and prestige of the monarchy, and his interest in his feudal prerogatives has been seen as the pursuit of wealth to that end. However, it is

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1 Robert Keilway, Relationes quorundam Casum selectorum ex Libris Roberti Keilway... (London, 1602), Pas. 21 Hen. VII, p.85b, pl.13.
3 Ibid., 133.
likely that the king was just as interested in the means as in the final result. The process of seizing land and liverying it was a profound expression of lordship, and the exercise of prerogative lordship was an equally profound expression of kingship. Welcome though the income was, the prerogative that allowed Henry to flex his royal muscles in every shire in the country must have been more welcome. It provided him with an economical way of reminding his tenants of the pervasiveness of royal power effectively applied, a point that needed to be made at the end of the fifteenth century.

The revival of a more active form of feudal kingship was not only a means for inculcating a healthy fear of royal power; it also had a positive value. With hindsight we are fully aware that the demands of sixteenth-century warfare and the stimulation of sixteenth-century humanism would combine to leave medieval feudal ideals in the dust, but the inexorability of progress was not so apparent at the end of the fifteenth century. K.B. McFarlane has pointed out that any usurper had to struggle to “restore and reimpose the crown’s shaken authority.” The forms of feudal intercourse may have appeared as a valuable aid to such a recovery. Though the shifting allegiances of the fifteenth century may argue against placing much faith in oaths of homage or fealty, the simple fact that they were still being made suggests that they continued to have some meaning. This particular currency must have been devalued by the turmoil of the period, but the connection between the taking of the oath and the holding of land ensured that the ceremony of homage and fealty would not become a completely empty formula. Historians of bastard feudalism have come to accept that phenomenon as “an adaptation of the forms of feudalism rather than as the manifestation of a radical change in social organization.” If we accept “fiscal” feudalism as an analogy to bastard feudalism, it is clear that the same can be said of it. The

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5 P.S. Lewis, in looking at feudal forms in France, argues that “the difference between the old, the ‘feudal’ form of contract and the new, the ‘non-feudal’ form, seems to find its crux simply in the question of whether or not homage was done.” “Decayed and Non-Feudalism in Later Medieval France,” Bulletin of the Institute of Historical Research 37 (1964): 160.
forms of fiscal feudalism, both in its financial claims and in the ties on which those claims were based, served as an active reminder of the bonds between king and tenant.

The simple fact that Henry VII exploited his feudal rights more efficiently than his immediate predecessors has suggested that he was exploiting an illegitimate or unacceptable power, but that was not necessarily the case. Even those lawyers who sought to keep the king's rights within bounds accepted that he had those rights, and, despite the loud complaints against the activities of the commissions, the broader population felt much the same way. While the extent of the king's rights was being debated, the exercise of those rights kept his role as feudal sovereign very much at the forefront of the political stage.

The readings delivered in the reign of Henry VIII took place in a different context. By 1521, when Spelman lectured, the novelty of the prerogative administration had faded. Constable and Frowyk's readings had provided a solid basis on which to develop the law, and the legal profession had had twenty-six years in which to build a reasonable consensus. The machinery of the prerogative administration was more firmly established, though rather less efficient than Henry VII's system. The political drive behind the prerogative was also less urgent. In the 1520s Henry VIII was firmly established on the throne and not yet worried about the future of the dynasty. He was concerned more with the financial possibilities of the prerogative than with the political value of the feudal bond.

Spelman's reading reflects these points. His text, as it survives, is shorter than either Frowyk's or Constable's, but it is more sophisticated. He has taken their introduction to the law and moved it to a greater level of coherence; rather than simply presenting a demonstration of the law as it is, he tries more often to bring out the principles motivating it. Furthermore, Spelman's reading displays a greater concern with the specific wording of prerogative procedure, suggesting that the administration was testing the limits of the law, while the kind of technicalities he discusses support the idea that economics rather than politics were driving the policy. Finally, Spelman spends more time on lands held in use

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7 See above, chapter two, p.99.
than either of his predecessors, indicating the growing interest in the relationship between uses and prerogative finance.

Though he differs from both Constable and Frowyk in places, Spelman’s treatment is clearly based on theirs, and indicates the continuing line of development of the law within the structure of the Inns. He reflects Frowyk’s desire to contain the king’s rights, but he is clearly aware of the tradition represented by Constable. His reading follows neither completely, but presents Spelman’s own idea of the law, as it was in his day. His focus on uses indicates an element of the law which stands against any royal interest in increased prerogative income, and suggests that a change in the law was imminent. Spelman’s reading and reports, together with Yorke’s reports, demonstrate the quiet and continuous development of the law on uses, a process which was soon to be rudely interrupted. The political negotiations and debates in the years before the Statute of Uses, on the other hand, show lawyers of various political persuasions presenting their arguments for and against the historical validity of uses and demonstrate the interaction of intellectual opinion, legal activity and political pressure in the effort to change a politically and economically sensitive topic. Taken together, these sources indicate the way in which the smooth development of the law could be interrupted by the intervention of political necessity.

Audley’s reading and the arguments in court in Lord Dacre’s Case make it clear that this was not a simple question of king against lawyers, however. The complexity of the relationship between the variety of the arguments presented by the lawyers and the end sought by the king indicates that the lawyers held a nuanced position in the political and administrative structure. Although they succumbed to the king’s wishes in the end, the body of justices were almost equally divided between two equally plausible interpretations of the law. Spelman’s report makes it clear that the king promised his favour to those who returned the result he sought, but there is no suggestion that those who presented the opposite view would suffer. Browne, Hare and Conyngesby were later arrested and imprisoned on a related question, but their fault was not in holding an opinion contrary to the law, but in advising a
tenant of the king on how to evade the law. Moreover, their punishment was exemplary rather than severe, since all were quickly released, their fines may have been remitted, and there is no evidence that their careers suffered in the long term. Browne was removed on two occasions from his position as king’s serjeant, but this did not prevent him from reaching the bench. There is no event in the reigns of Henry VII or Henry VIII comparable to Edward IV’s removal of Markham from the bench in retribution for an unfavourable verdict.

The lawyers thus seem to have had the benefit of a certain level of immunity from punishment, if not entirely from pressure. In this way they largely exemplified Dudley’s idea of a body which would preserve the law against the prince, when necessary. They also seem to have maintained a healthy balance between the needs of the king and the community. In all of the major disputes through the period the justices seem to have been fairly evenly divided between those who wished to concede more to the king and those who wished to limit his claims. Individual readings also tended to be finely balanced, with Frowyk, Spelman and Staunford all tending to restrict the king’s rights while allowing latitude in some areas. This creative conservatism served to maintain an equilibrium within the system, allowing a moderate development of the law, while preventing the advantage from moving either to the king or his tenants. The lawyers’ role was not heroic, but it was nonetheless important. As Baker comments, “it reflects credit on the Inns of Court that no one had to be martyred, even metaphorically, for the old learning. The year books were not burned; the images of Littleton were not smashed; few old beliefs were given up. There was instead a quiet reformation from within. What in the Church had called for fire and steel was achieved

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8 Amanda S. Bevan, “The Role of the Judiciary in Tudor Government, 1509-1547” (Ph.D. diss., Cambridge, 1986), 30-31. Hare was released within two days, while Conyngesby was promoted from attorney-general of the duchy of Lancaster by being created serjeant in June 1540 and a justice of King’s Bench shortly afterwards.
9 Ibid., 31. He was previously deprived of the office in 1532 and recovered it in 1535.
11 See above, chapter one, p. 27.
in the law by wit and stealth; for the new law of the renaissance period was made, not by flouting the old learning, but by sneaking round it.”\textsuperscript{12}

This apparent calm within the common law in a period of general turbulence brings us to Maitland’s famous Rede lecture, with its concern for the possible reception of Roman law.\textsuperscript{13} Since Maitland the question of “English Law and the Renaissance” has continued to exercise some fascination for prominent legal historians, from Thorne’s brisk demonstration that there is no real evidence of any desire for a reception, to Baker’s more subtle examination of changing approaches to the law.\textsuperscript{14} Although Maitland’s speculations about the dangers posed to the common law have long since been disproved, the basic attitude behind his query remains worthy of consideration. Law is a fundamental expression of the nature of the society in which it functions; if the society undergoes fundamental change, surely the law must display some upheaval? Legal historians have long been proud of the uniqueness of the common law tradition, but its uniqueness comes embarrassingly close to insularity if the members of this intellectual elite remained untouched by a Europe-wide revolution in thought. However, as Thorne points out, law “cannot fall victim ... to sudden changes in mere intellectual fashion, for it finds its justification independently in its success in dealing with the problems life presents to it.”\textsuperscript{15} Thus law is not simply an academic subject, but a reflection of society which, “however abstract it might become, ... was essentially an expression of contemporary life.”\textsuperscript{16} As society was convulsed by changes in religion and politics, law continued to express and direct the fundamental secular structure of English life; the common law, after all, governed land. The lawyers could not ignore the events of their day, and the readers clearly responded to the changing circumstances around them, but neither could they bend the necessities of the law to the wishes of the moment.

\textsuperscript{13} F.W. Maitland, English Law and the Renaissance (Cambridge: Cambridge University Press, 1901).
\textsuperscript{15} Thorne, “English Law and the Renaissance,” 194.
They were bound by the logic of a fairly inflexible system which "has rarely admitted openly to the possibility of change."\textsuperscript{17} The slow and cautious extension of the words of *Prerogativa Regis* by the readers give an indication both of the unwillingness of the profession to admit the possibility of change, and of the method by which change was achieved. As Baker has argued, "at one time it was fashionable to suppose that all legal change could be explained by social or economic factors, or by political events. Certainly the legal historian ignores such things at his peril. But the search for explanations external to the reasoning of the law itself is so fraught with difficulties that it is legitimate to question whether it is always necessary or correct. History is not in its nature tidy, and it should not be forgotten that law had an intellectual as well as a social history."\textsuperscript{18} Thus the insularity of the law in the face of broader cultural change can be seen as an expression of the integrity of its principles; it was in fact open to changes in method and approach.\textsuperscript{19}

If the law did express the fundamental structure of English society, then the readings indicate that that structure was still feudal in the first half of the sixteenth century. Moreover, there is no indication that even the English humanists had any real desire to change that. Thus when Richard Morison argued for a reformation in the laws of England, his interest was in form rather than content. Like most of the humanists who sought such a reformation, his primary concern was with the barbarity of law French and the confusion of the year books. He advocated a concordance of the existing law, rendered into Latin, and for those who argued that it was impossible, he drew "a rough plat in the Latin tongue of the tenures of land and of services that your subjects, being tenants, by the common laws of this your realm owe unto their lords."\textsuperscript{20} For Morison, the basic land structure of tenure and service was assumed. Indeed the commonwealth ideal was a hierarchical structure, in which "everyone is content with his degree, glad to do that that he may lawfully do, gladder to do that which he seeth

\textsuperscript{17} Baker, "English Law and the Renaissance," 50.
\textsuperscript{18} Ibid., 47.
\textsuperscript{19} Ibid., 56-61.
shall be for the quietness of the realm, albeit his private profit biddeth him do the contrary.”21

The higher levels of the hierarchy were to be occupied by those distinguished by virtue rather than simply birth, but there was no question that the hierarchy would continue to exist, or that it would continue to function in the same way. The scramble for land, wealth and title among the Tudor new men indicates that there was no rejection of the feudal ideal, or of the idea that service to the king would be rewarded through the grant of lands, though the type of men taking the path to the top might have changed.

For those further down the social scale, even this level of change was unacceptable. Morison writes, more in sorrow than in anger, that the rebels of 1536 were “angry that virtue should be rewarded when she cometh to men that had no lands to their fathers. They will that none rule but noblemen born.”22 Thus, despite the changes of the 1530s, it seems that the law expounded by the readers was not out of step with common assumptions about the structure of society.

By the time that Willoughby and Stanford lectured in the 1540s, the context had once again changed dramatically. Finance was now a less immediate issue, for the changes of the Reformation had brought the king a substantial income. Though the exploitation of this income depended largely on the manipulation of his prerogative rights, the establishment of the courts of Wards and Augmentations took the pressure off Prerogativa Regis. Furthermore, the statutes of Uses and Wills had solved the problem of land held in use. Many of the issues considered by the earlier readers were transformed by these pieces of legislation, but the prerogative was still in the limelight. The distribution of monastic land to be held in knight service had the potential to create a new class of feudal tenants, bringing a larger number of the king’s subjects into a direct feudal relationship with him.

As the second Tudor saw his dynasty hover on the edge of extinction, it is not surprising to find a growing emphasis on personal loyalty to the monarch. This is not an

22 Ibid., 115.
unfamiliar idea; Henry VIII’s insistence that all his subjects take an oath of allegiance to him is well known, but it is associated with the Reformation changes. This oath further seems to move us into a more modern era, for the allegiance is not based on a feudal relationship or sworn to the king as lord, but is based on loyalty to the king as king. It seems, however, that older ideas of swearing allegiance were still circulating earlier in his reign. In his reading on uses in 1526, Thomas Audley described knight service as “an actual and corporal service to be made ... in the person of he who ought to perform it to the person of him who ought to receive it and not by deputy or attorney.”23 He follows this with a description of the process where the man comes and “kneels etc. and the lord sits and he puts his hands between the hands of his lord. And as Bracton says the placing of the tenant’s hands etc. implies obedience and the closure of the lord’s hands implies defence and the tenant says I will be your man etc.”24 Such a description is more consonant with our concepts of the early days of feudalism than with its close. We can explain it away as an antiquarian flourish, or the words of an inveterate and romantic conservative, but Thomas Audley, the epitome of the Tudor man, does not fit either description. Nor does the setting support such suggestions, for the readings were oriented towards the practical. Audley was by this time in government service, and this suggests the most interesting possibility, that this picture of the forging of the feudal bond came from the government of the day. This was not necessarily the practice in the 1520s. Constable and Frowyk’s description of the heir of full age running from administrative office to office to fulfill the various demands for liverying his lands sounds more realistic.25 Both Frowyk and Constable refer to the performance of homage, and Constable even describes how the heir will “kneel before the king and put his hands into the king’s hands and the chamberlain will take his oath. And then he will kiss the king’s cheek

23 Hargrave 87, f.430v.  
24 Ibid., f.431.  
25 Frowyk, f.6v; Constable, 63-64.
and the chamberlain will have his fees."

Constable's mixture of the administrative and the feudal is echoed in Frowyk's description, but both readers agree that "to avoid charges the heirs purchase a privy seal directed to the chancellor to dispense with homage." Thus the performance of homage was an option as far as the earlier readers were concerned, but the suggestion is that even if the heir chose to exercise it, it was less personal and thus less attractive than the picture painted by Audley.

This picture of feudalism rising sits uneasily with the idea of Tudor monarchy, and indeed it seems that Henry VIII tried to exploit the forms of feudal intercourse without understanding their logic. His new class of feudal tenants did not have the links to royal service or royal tenancy which would promote a feudal connection. Nor was the personal basis of the feudal relationship easily transferred to a broader group of tenants. The king could not possibly be good lord to all the numbers of landholders of the Crown, and without the element of personal loyalty to mitigate the burdens of lordship, the imposition of feudal tenure on a new group seems to have acted as an irritant. Starkey expresses both sides of the argument in his *Dialogue between Pole and Lupset*. Lupset points out that when William the Conqueror came into England he gave out lands to be held in return for service "under such condycyon that when so ever they decessyd levyng theyr heyrys wythin age that then thes landys duryng the nonage schold retorne to the superior agayne by whose benefyte hyt cam to the famyly & stoke ... the wych me semyth much resonabul consyduryng they benefytys come al from hym by the wych the hole famyly schold be maynteynyd." This was the traditional rationale behind feudal dues and one which was generally accepted.

Nevertheless, by the mid-sixteenth century few tenants could claim a tenure dating back to the Conquest, or even in that vicinity. Newer tenants of the Crown were more likely

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26 Constable, 63. "genolaunt devaunt le roy & cez mainz iointes enter lez mainz le roy, & le chamberleyn avera a luy son serment. Et puis il baisera le cheke le roy & paiera fees all chamberleyn."

27 Frowyk, f.6v. "pur auoird les charges les heires vsont a purchaser un privy scale direct al channceleor pur respiter homage." Constable, 64, does not describe the process, but he assumes that the heir can dispense with homage in this way.

to identify with Pole's testy response, that "they wych gave theyr landys to theyr servantys myght put so such condycyon both of ward & maryage & so hyt may appere somewhat resonabul al theyr successorys to be bounden after that maner, to them wych consyndur the tyme of the tyranne, but we must loke a lytyl hyar & consyndur the tyme of nature." This dispute suggests a transitional view; those who had held of the Crown from the time of the Conquest, or presumably for any considerable period, could reasonably be expected to render the dues which were a natural part of that system, but for those who had acquired land in recent years, a more enlightened approach was required. The readings of Willoughby and Staunford both suggest a new interest in the restriction of primer seisin and wardship solely to land held in chief of the king, which must have appealed to this group of landholders, accustomed to holding land in socage and newly exposed to the prerogative.

The tensions inherent between the new aims of monarchy and the old methods of achieving those aims suggest that a further consideration of the impact of the redistribution of monastery lands on the political and tenurial framework of landholding might repay investigation. The sixteenth century saw enormous changes on the land, with the redistribution of Church lands, i.e. some 20-25% of the land of England, enclosures, agrarian development and geographical and social mobility of population. Economic historians have paid a great deal of attention to the lower levels of the rural population, and their attitudes to the land. They have also examined the effects of feudal conditions such as fines and rents on the exploitation of land by the peasantry, and the importance of such considerations relative to demographic change. There has been less consideration of the

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29 Ibid., 78.
effects and extent of royal lordship. The cumulative effect of centuries of escheat, division of land held in chief between co-heirs and the distribution of monastic lands placed a large proportion of the land of England under the direct lordship of the Crown, and brought a large number of landholders, from the higher nobility to holders of land worth £5-£10 per annum, into direct contact with royal administration. Both the political and economic impact of this change requires some investigation. How did the Crown administer its lands? Did its methods have any impact on those employed by its tenants? Were there differences between the administration of the older Crown lands, left in the hands of the General Surveyors and those in the purview of the Court of Augmentations? Who held the various lands? Thompson concludes that “until the mid-sixteenth century there was slight growth [in the relative importance of great estates]; there followed forty or fifty years to 1602 in which the net effect of active land transfers was a rough stability in the proportion.”\(^\text{32}\) Who was buying and selling this land, and of whom was it held? Attitudes to both land and lordship changed dramatically during the course of the sixteenth century, and it seems unlikely that the attitudes and practices of the Crown had no impact on these shifts. If the remarks of Henry Spelman are to be believed, they suggest that an upwardly mobile population was purchasing land held of the Crown and resenting the burden of feudal dues. This has both political and economic implications which deserve further study.

This final question to consider is why the readings end in 1549, but this is fairly straightforward. The relative flaccidity of the later readings indicates that the centre of interest had moved elsewhere. The law had been placed on a new footing by the legislation of the 1530s and 1540s, and *Prerogativa Regis* was looking increasingly time-worn. Elton argues that “the land law was revolutionized; despite the continued existence of the ‘feudal incidents’, the Statutes of Uses and Wills terminated the truly feudal era in its history.”\(^\text{33}\)

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now it should be apparent that any attempt to identify a “truly” feudal era is pointless, but there can be no denying that the landscape of the feudal law had been radically remodelled. The old idea of the prerogative was rather outdated, and the new conception, with which we are more familiar, had not yet emerged. On this note, it is striking that the readers and the readings betray no knowledge of the kinds of issues we associate with the later royal prerogative. There is no discussion of the distinction between the king’s absolute and ordinary prerogative, little consideration of why he has these rights and no attempt to provide any theoretical justification for them, beyond the simple fact of tenurial obligation. In fact, there is no theory of the prerogative evident in the readings, but rather a list of the specific prerogatives to which the king has a right. The discussion of Frowyk’s and Constable’s readings in chapters two and three best conveys the sense that the king’s dues were a rather miscellaneous collection of rights gathered together in the text *Prerogativa Regis*, rather than a coherent body of privileges derived from an overarching right. Thus from 1495 through to 1567, the readers were looking backwards to the king’s feudal rights, rather than forward to his absolute rights. Although Constable’s more royalist outlook might at times tempt us to look for a proto-absolutism in the readings, it is clearly not there. Nor does the process of development and discussion inherent in the readings suggest a path to absolutism through the legal profession for the king.

Though the eruption of parliamentary legislation in the sixteenth century has deservedly attracted much attention, it seems that the regular cycle of activity at the Inns of Court has a claim to some of that notice. Striking as the legislation of Henry VIII was, it affected only a small proportion of the litigation taking place in England at the time, and it had to be interpreted in the light of the body of existing law. Moreover, once it had been passed by parliament, it was handed over to the lawyers to be interpreted and applied. Their

34 Glenn Burgess comments that Staunford’s *Exposicion* is an example of the tendency of the common lawyers to list the king’s rights rather than theorizing on them, but he shows no awareness of the origin of the *Exposicion* in the Inns. *Absolute Monarchy and the Stuart Constitution* (New Haven: Yale University Press, 1996), 138.
development of the prerogative displays an example of their capacity to fine-tune the law on their own initiative and to resist the temptation to do more than fine-tune. If Constable’s attempt to exchange old law for new had succeeded, the implications for law-making and for the role of parliament are vast. His attempt failed, not because of any particular heroism on the part of the lawyers, but simply because such a change required the whole body of the profession to accept that his was a reasonable interpretation of the law. His words were not authoritative in any way and they were, in the final analysis, subjected to the test of reason and found wanting.

Thus, the lawyers seem to have followed their mandate to speak with the authority of the king, but to speak against the king when the law required it. Though they were the king’s servants, they proved that the law was not the king’s law, but that of king, parliament and people, or perhaps more properly, that of custom and reason. Henry VIII’s proposed changes to the coronation oath indicate the direction in which he wanted to take both the formation and preservation of the laws. He was willing to swear that

he shall graunte to holde lawes and approyde customes of the realme and lawfull and not preiudicall to hys crowne or imperiall Jurisdiction to his power kepe them and affirme them which the nobles and people haue made and chosen with hys consent, And the evill Lawes and customes hollie to put out, and stedfaste and stable peax to the people of his realme kepe and cause to be kept to his powre in that which honour and equite do require.35

Such a model of kingship would have placed England securely in the category of absolute monarchy and might have made Henry’s power in the temporal realm equal to his power in the spiritual realm. The simple fact that the monarch had to share both the making of law and the preserving of law meant that England had a structural safeguard against absolutism.

Appendix 1: Prerogativa Regis, cc. 1-3

Chapter 1:
Dominus Rex habebit custodiam omnium terrarum eorum qui de ipso tenent in capite per servicium militare, de quibus ipsi tenentes fuerunt seisiti, in dominico suo ut de feodo die quo obierunt de quocumque tenuerunt per huiusmodi servicium, dum tamen ipsi tenuerunt de Rege aliquod tenementum ab antiquo de corona, usque ad legitimam etatem heredum; exceptis feodis Archiepiscopi Cantuariensis Episcopi Dunelmensis inter Tyne et These, & feodis Comitum & Baronum de marchia, in marchia ubi brevia Regis non currunt, et unde predicti Archiepiscopus, Episcopus, Comites et Barones, habent huiusmodi custodias, licet alibi tenuerunt de Rege.

Chapter 2:
Rex habebit\textsuperscript{1} maritagium heredum, infra etatem \& in custodia sua existencium, sive terre heredum predictorum sint ab antiquo de corona, sive de escaetis que sunt in manu domini Regis, sive habuerit maritagium ratione custodie terrarum dominorum eorum heredum, nullo habito respectu quoad prioriatem feoffamenti, licet de aliis tenuerint.

Chapter 3:
Item habent\textsuperscript{2} primam seisinam, post mortem eorum qui de eo tenent in capite, de omnibus terris et tenementis de quibus ipsi fuerint seisiti in dominico suo ut de feodo, cujuscumque etatis heredes ipsorum fuerint, capiendo omnes exitus eorum terrarum \& tenementorum, donec facta fuerit inquisicio, prout moris est, \& ceperit homagium huiusmodi heredis.

\textsuperscript{1}habet Statutes of the Realm (translated habebit)
\textsuperscript{2}Item habebit in MS Cott; Rex habeat in MS Harl.
Notes on the Transcripts of the Readings

Four of the six texts on which this study is based are available only in manuscript, and so transcriptions are included for ease of reference. All four readings are included in collections of law reports or treatises. Frowyk’s reading has survived in the greatest number of copies (see bibliography for details). This transcription is taken from Cambridge University Library Hh.2.1, ff.1-10. The manuscript is in a clear hand of the late sixteenth or early seventeenth century. The format of the transcription reflects that of the manuscript, for it is laid out mainly in short paragraphs of only three or four lines, suggestive of the lecture format. Not all manuscripts of the reading follow this pattern, but it contributes to ease of understanding.

Spelman’s reading is preserved in only one manuscript, Gray’s Inn MS 25 (the Chaloner MS). This is the most technically challenging of the manuscripts, for it is in a heavily abbreviated and rather cramped cursive hand of the mid-sixteenth century. Furthermore, the text is in a continuous block, with no paragraph divisions. This is the only transcription with extended passages which remain obscure.

Yorke’s reading is also preserved in a single manuscript, BL Hargrave 253. Only a fragment has survived, and it is in a rapid and rather difficult cursive. It, like all of the manuscripts here, is obviously not contemporary with the reading, for it includes a mention of Stamford.

Finally, Willoughby’s reading is taken from BL Harley 1691. It is also the only version of the reading extant and it is preserved in a mid-sixteenth century collection. The reading is in a large, clear cursive hand which is easily read, and it is laid out in short paragraphs.

All four of the readings are given in diplomatic transcriptions. Abbreviations have been silently expanded, but otherwise the orthography and punctuation are those of the original documents. Words added above the line have not been indicated, except where there
is some confusion as to their meaning. Marginal comments are recorded in the notes. Blank
spaces in the text represent blank spaces in the manuscript, but blurred or otherwise obscure
words or passages in the text are underlined. Where possible, I have tried to represent as
accurately as possible the figures in the manuscript, even where the meaning is unclear.
Appendix 2: Frowyk’s Reading, Lent 1495

Frowekes lecture  A⁰x⁰ H⁷ prerogatiua Regis

[f.1]¹ Dominus rex habebit custodiam etc. devant ceux heures divers opinions ount estre si cest serra vn statut ou nemy, ou declaracion des prerogatiues le Roy per authority de parlyament, Pryssott quant a ceo dit anno 35⁰ H⁶ que ceo est statut et mesm l’opinion A⁰ 43⁰ E⁴: in le case de prior de Lantony, mes apres in anno 15 'E⁴ le contrary est tenus cest que nest pas estatut eins vn declaracion de les prerogatiues le Roy: Ideo entend que ceo nest pas ascun estatut ne declaracion come devant mes un tretes fait per ascun sages de le ley, que ount estre sicome Bracton, visus Francispliegiae, modus calumniandi, esson, hengam et auters tiels; Et si seroit estatut ceo seroit enterrement obserue de chescun poyn: Et plusors articles de cel ne sont my ley et plusion fueront ley devant le fesans de cel: Quel semble a lestatut de A⁰ 25⁰ .E³. de treasons Car ceo nest que vn exposicion dl common ley; et auxi nest semble al magna charta car ceo fuit fait estatut per Marlebridg cap: 4 et oustret si seroit estatut il voile appearer per les parolls de cel, cest ad parliamentum tentum apud etc ou tiels parolls semblables; ceus sont prerogatiues que sont done al common ley come ieo entend et poit estre per reason Quales iugdes/ ount prerogatiues devant plusors auters: Et chescun iugde [sic] deriue son aucthority dl Roy et il est supreme iudge et teste de le ley per que il poit auer reasonablement tiels prerogatiues; Le cause des prerogatiues est le tenure en chief, et le effect de cest article est, Si un tient de le Roy per service de chivaler que le Roy auera le gard de tous les terres, des queux son tenant morust seisie ³ pur que est A voyer queux terres seront dits tenus dl Roy en Chief, et queux nemy:

Home tient dl Roy per service de chivaler, quel ad continue de temps d'ont etc. cest expressemme tenure en chief per les parolls de cest article scil: (ab antiquo de Corona) vncore ieo nay pas view ascun issue prise sur ceo, scil: s'ilz fueront tenus ab antiquo de corona, vel non, mes s'ilz soient tenus en chief ou nemy:

Le Roy purchase vn segniory le tenant ne tiendra de luy en chief:

Vn barrony ou honnor eschete al Roy per felony chescun tenant que tient de le dit barronie ou honor tiendra de le Roy per autiels services come il tener de le barronye devant:

Et per le stat de magna charta, et auxi le nosm de barrony en le Roy et in tiels cases il nauera son prerogatiue:

¹ Marginal note: Cap: 1
² H added above E
³ Marginal note: Tenure 14

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Autrement est si le mesnaltie que est tenus dl Roy en chief escheate car la il auera le mesnalty en mesm le nature come il auoit le segniory issint diversity:

Vncore si le mesnaltie escheat al Roy per treason le tenant ne tiendra in chief car le roy ceo aueroit per tiel attainder, si le mesnalty vst estre tenus de ascun auter

Issint diversity enter Attainder de felony et treason et ceo appiert in A° 5° .E3. lou vn acre tenus d'un mannor en les maines le Roy escheat pur felony fuit tenus parcell dl mannor, et lou pur treason nemy:

Le Roy purchase terre et done ceo a tener de luy il tiendra en chief vncore ceo nest ab antiquo de corona:

Auter est si le Prince purchase terre et done a tener de luy et puis est roy nest tenus en chief

Mes sil ceux done en tayle ou a terme de vie et puis quant il est Roy il release al tenant donques le tenant tiendra en chief:

Segniory discend al Roy per ascun collaterall ancestor le tenant ne tiendra in chief

Si le Roy done ascun parcell dl dutcherie de Lancastar soutes le seale de dutchery come il doit le tenant ne tiendra en chief, Auter est lou le Roy grant parcell [f.1v] d'un honnor ou barony per son grand seale:

Le Roy purchase segniory et Releas al tenant il tiendra en chief: mesm le ley si soient diuers mesnes perenter le Roy et le tenant par auaile et le Roy releas al tenant tout son droit, les mesnes sont extinct et le Tenant tient en chief:

Le villein le Roy purchase segniory quel est troue per office la tenant ne tient in chief

En touts ceux cases de tenure en chief sils teignont per service de chivaler le Roy auera son prerogatiue:

Home conust en courte de Record a tener de le Roy en chief le segnior de que il tient in fait ne serra lie per cest conisans:

Mesme le ley si home luy mesm estopp per suer de livery ou auter vncore sil tient in socage d'un estranger et conust de tener en chief le Roy nauera son prerogatiue car l'estranger ne auera ascun perdue.

4Le Roy done terres a tener d'un IS per service de chivaler il tiendra de IS et auxi dl Roy en chief et auxi le roy auera le prerogatiue d'ambideux quere quia arguitur

5Et auxi bien que il poit doner terres reservant vn Rent a vn estranger il poit reseruer vn segniory a vn Estranger.

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4 Marginal note: Tenure F5
5 Marginal note: Reservacion 3
Mes si le Roy ad terres per forfeitur de lestatut de Religiosis, la il covient doner ouster les terres a tener dl chief seignior et ne poit granter eux a tener de ascun auter estranger, causa statut:

Home attaint per authority de parlyament ouesque un proviso en mesme l’act que chescun seignior auera ses services come devant le attainder et puis le Roy granta mesm le terre a vn auter le tenant tient de le Roy et auxi des auters seigniors

Le lettre est per servicium militare; et ceo ad estre monstre per auters parols pur que etc mes in le case le Roy, sil grant terres et express null service le granntee tiendra per service de chivaler:

Si le grant soit absque aliquo Reddendo seu reddendo xii\textsuperscript{d} per an et fealtie sil ne dit ne expresse en le grannte pro omnibus serviciis il tiendra per service de chivaler et cel appiért 44 E3.

Le Article est omnium terrarum, vncore il auera rents, avowsons, ingrosse commons en grosse, villeins proffitts, appreinder des queux gist assise et dum office d’enheriter et sil ne poit occupier per luy mesm il fiera deputy come de la office de\textsuperscript{6} le vic de vncore ceux choses ne gisont en tenure d’ascun auters:

Mes dl Annuity il ne auera le gard car nest real mes chose ensuant le person.

Les parolls dl diem clausit extremum sont tam in dominico quam in serviciis quel proue que le Roy auera plus que terres.

Le Article parle oustre de quocunque tenuerit per hiusmodi servicium vncore si le tenant tient terres en socage ou en burgage le Roy auera ceux vt patet A\textsuperscript{O} 24\textsuperscript{O} E3. tanque al plein age le heire:

\textsuperscript{7}Le Roy nad prerogatiue dun gard quel appent a luy per cause de gard.

Le Article est per servicium militare vncore si le tenant tient per grand Seriante\textsuperscript{8} le Roy auera son prerogatiue pur ceo que grand seriante done al roy le gard. tamen grand seriante nest pas service de chivaler, car il ne payera aid pur file marrier et auxi ne payera tiel relief come tenant per service de Chivaler car il payera le value de son terre per an vt patet ii H4 Ter? Tr:

\textit{In Dominico suo ut de feodo, etc} vncore si le tenant morust seisie des terres entayls il auera son prerogatiue: Et sic si le tenant le Roy done terre in tayle le remainder in fee et le Remainder escheat al roy le tenant in tayle tient dl Roy in chief, et le Roy auera le gard dl terre:

\textsuperscript{6} Marginal note: Tenure P
\textsuperscript{7} Marginal note: prerogat. 7
\textsuperscript{8} Marginal note: Tenure 10
En aucun cas lòu le tenant le Roy ne morust seisie le Roy auera le prerogatiue et in cest case lòu il morust seisie il nauera my sicome le tenant le Roy est disseisie des terres tenus des auters la il auera son prerogatiue.

Mesm le ley est de terres tenus des auters que sont lessees a terme de vie et le tenant morust et puis le tenant a terme de vie morust. Issint si tenant le Roy ad vn Remainder des terres tenus d'un auter, et morust, et apres cee le tenant a term de vie deuy le roy auera prerogative de cest terre quod vide le case de Skryne A° 15 E4: le Reason:

Le reason pur cee que le segniour auera le gard de issue son tenant est pur le defence dl realm et le Roy auera le gard pur cee que en luy est le entier defence dl Realm et il auera tout le terre pur cee que il ne poit auer Jointenant que luy:

Terres discendus d'un collateral ancescter le Roy tenus d'un auter; le Roy nauera son prerogatiue et cee fuit tenus en le cas de Skryne per toutes les Iustices:

Le tenant le Roy lessa certein terres tenus des auters a terme de vie rendrant certein rent et morust le Roy ad le reuercion et le Rent et le tenant pur terme de vie morust. Le Roy auera le terre et cest in A° 7 H6:

Le tenant le Roy lessa a terme de vie le remainder en fee celuy en le remainder morust seisie d'auters terres tenus d'un auter, le segniour auera les terres tenus de luy et si le tenant a term de vie morust, Le Roy n'auera sinon cel terre tenus de luy mesm solement:

Tenant le Roy ad terres tayles tenus d'un auter et discontinue et morust son heire apres son mort estant engard le Roy recouer per Formedon, le Roy nauera le gard des terres Recouer, Car le heire apres le mort le pier nauoit que vn droit a cel terre: quere quia arguitur:

Mesm le ley si le tenant le Roy soit disseise des terres tenus des auters et le heire le disseisor eins per discent, et le heire le disseissee Recouer:

Et issint est si le heire recouer per ascun accion ancestrall; Celuy que ad vn acre tenus de le Roy et mesnaltie d'un auter purchase le tenancy A terme de vie et morust le Roy auera le mesnalty que est Reuie:

Tenant le Roy est d'un mesnaltie en generall tayle et purchase le tenancy a luy et a ses heires females et ad issue fits, et file, et morust le Roy auera le menalty que est reuie per le mort:

Home tient vn mesnalty de le Roy en tayle et purchase le tenancy en fee et ad issue fits et file per vn venter, et fits per auter venter et morust l'eign fits en gard le Roy ou hors morust sans issue: le roy auera le menalty que descend al fits puisne et nauera les terres que discendont al file:

9 Marginal note: Garde x
10 Marginal note: Garde H
11 Le tenant le Roy alien per collusion les terres tenus de auters, le roy ne poit auerrer covin per l'estatut de marlebridget: pur cee que lestatut est fait pur l'avantage des seigniors et icy les seigniors naurent remedy pur cee car si le tenant vst devy ils ne averont le gard issint le feoffee tiendra les terres envers chescun des seigniors dier 174 contra adiudge.

Mesm le ley ou le tenant le Roy fait feoffment a son vse des terres tenus d'un auter le roy ne ses seigniors naueront advantage de le novell estate fait an 40 H7. mes sil alien per collusion le acre tenus dl Roy en chief le Roy auera advantage et auera ambideux acres dier 174 contra:

Home enfeoff tenant le Roy et vn auter, et le tenant le Roy morust, le Roy nauera ceo dont il fuit ioyntenant mes l'auter per le surviuror:

Auterment serra si le feoffment vst estre al tenant le Roy et a l'auter et al heires le tenant le Roy car si cestuy que ad estate pur vie survesquist et morust le Roy auera les terres per le prerogatiue:

Tenant le Roy ad terres en borough English, et ad issue deux fits et deuy le roy nauera le terre en borough English et coment que leign fits morust apres sans issue vncore le roy ne auera le gard des terres en borough English:

[f.2v] Terres done al tenant le Roy et a ses heires males que ad issue file le Roy nauera ceux terres.

Tenant le Roy ad terres en gavelkind et ad issue deux fits le roy nauera per son prerogatiue sinon le moity que affiert al eign fits:

Home tient terres tailes de le Roy en chief et tient auters terres en fee d'un estranger ad issue fits et file per vn venter, et fits per auter venter, et devy l'eign fits devy sans issue en le gard le Roy ou hors de la gard le Roy, le Roy nauera forsque les terres tayles.

Disuers terres discendont a vn feme couert que est tenus de le roy et auters terres des auters seigniors le baron ad issue deins age, et entre en les terres tenus de le Roy, mes nemy en les terres des auters seigniors le feme morust le seignior enter en les tenements tenus de luy et le tenant per le curtesie morust son heire deins age le Roy n'auera les terres tenus des auters:

Mes si les terres sont tenus en socage quere:

Le tenant le Roy dissesit son fits et morust le fits deins age le Roy nauera forsque les terres tenus de luy; mesm le ley si le fits ad title d'accion, quod est remitt in ambideux cases.

Tenant le Roy est disseise et morust son heire deins age et devant office le disseisor morust son heire auxi deins age et cee troue per disuers offices le roy auera son prerogatiue dambideux.

11 Marginal note: Collusion A Garde N
12 Marginal note: Df 174
Mesm le ley lou le tenant le Roy alien per covin et morust son heire deins age et son feoffee morust son heire deins age le Roy auera le prerogatiue d’ambideux come en l’auter case devant:

Le Article est exceptis feodis Archiepiscopi Cantuarensis Episcopi Dunelmensis inter Tyne et Tise etc cest entendre lou le tenant le Roy purchase terres tenus de lor ancient fees.
Car si leuesque de Canterbur purchase vn segniory et le tenant le Roy morust seisie d’ascun terres tenus de tiels segniers le Roy auera son prerogatiue:

Auxi l’euesque de Durham ad county palentine deins quel si le tenant le Roy ad ascun terres il nauera prerogatiue de ceux:

Auxi si le tenant le Roy morust seisie d’ascuns terres tenus de le Prince deins le County de Chester le Roy nauera prerogatiue car deins mesm le County le Prince auera prerogatiue, come le Roy ad

Et nota que il dit apres si mon tenant fait done en le taile le remainder en fee et celuy en le Remainder morust sans heire mon segniory est extinct.

Auter est si le Roy done terres en tayle remainder en fee et celuy en le Remainder morust sans heire issint que le Remainder escheat al Roy car la le tenant en tayle tiendra dl Roy en chief quod nota13: vide DF 154 de Remainder purchase per le Roy:

14 *Rex habebit maritgium*: leffect de cest prerogatiue est que le Roy auera le mariage de le heire son tenant, esteant deins age que tient per service de chivaler ou grand serieanty en quocunque manner que il tient solonque les parolls et effect de lettre tout soit que le tenant ne tient de luy en chief, et lestatut de magna charta cap: 28. ne fuit fait pur excluder le Roy de le gard dl corps; car devant cel estatut le common ley fuit que le roy aueroit touts foits le gard de le corps, Eins cel estatut fuit fait solement pur le terre:

Et si le roy auoit disseise vn baron et vn que tient de mesm le barony et d’un auter deuy le Roy eins per disseisin aueroit le gard de le corps:

Et issint aueroit le roy devant lestatut de Westminster 2. cap 16. quel estatut fuit fait devant cest tretes et per mesm l’estatut est misse incertain que le segnior per priority auera le gard de le corps, *nullo habito respectu*: Sicome le dit estatut expresse:

Vncore le Roy nest lie per lestatut, entant que il nest nosm en le dit estatut:

Le Article est que le Roy auera le gard de le corps: et le quel serra dit priority ou posteriority ad estre monstre devant per que etc et coment priority poit estre changes et come nemy:

13 Marginal note: DF 154b
14 Marginal note: Cap 2
Si vn ad tenus deux acres severallment de deux homes et ad tenus l'un per plus ancient feoffment de l'un que il ad l'auter acre de l'auter il est seignior per priority:

[f.3] En ascun case home auera le gard de le corps devant le roy Sicome pier et fits et terres descendont al fits tenus de le roy le fits deins age le pier auera le gard de son fits demesn, car il ne claym per ascun tenure et le Roy n'auera que les terres descendus issint a cel entent il est in melior condicion que auter person vncore a auter entent il est le pier et a plus pier condicion car il ne poit pas granter le gard de son fits a vn auter.

Et en mesm le manner le pier auera le gard de sa file et heire vide 90 E4.

Pere et fits, et terres tenus dl roy descend al fitz viuant le pier le pere est attaint de felony le Roy auera le gard de le corps viuant le pier: Et si le terre soit tenus de common person donque il auera come devant:

Le pere ad issue file et terre tenus dl Roy descend al luy le Roy auera le terre et nemy le corps mes si apres le pier prist 2d feme et ad issue fitz ore le Roy auera le gard de le corps le file: Terres tenus de le Roy descendont a mon villein, le Roy nauera le corps mes si soit manumisse apres le roy auera vide Fitzherbert 143.n.

Auter est si terres descendont a vn enfant que est fait vn Apprentice car la le common ley serra preferre: 8 .E4. 22.

Auxi ad estre agree que vn seignior ousta le termor et auera le gard de le tenancy vncore en ascun case vn common person auera le gard de le corps.

Sicome le seignior ad vn gard, et terres tenus de le Roy descendont a mesm le gard le Roy nauera le corps car fuit loyallment vestu.

Mes si terres tenus de le Roy et terres tenus d'un estranger descendont tout a vn temps le Roy auera prerogatiue de le corps come appiert en le case de le Counte de Warwick.

Terres descendont a vn enfant viuant le pier et puis terres tenus de le Roy descendont a mesm l'enfant, puis le pier morust le roy auera le gard de le corps.

Home seisie d'un remainder de terres tenus de le Roy et des terres tenus d'un auter morust seisie, le seignior seisist le gard le particular tenant morust apres le Roy nauera sinon les terres et nemy le corps:

Auter si le Roy vst grant le remainder a tener de luy car la per le mort il auera de tout: *quod nota bene*.

Vn enfant en gard d'un common person recouer terres tenus de le Roy per accion ancestrell le roy nauera le gard:

Mesm le ley si vn enfant enter en terres tenus de le Roy per reason d'ascun condicion fait per ascun de ses anncestors: car fuit loyallment vestu A devant:

Mes si cel enfant esteant en garde come en touts les cases avanndits appiert enter sur le disseisor son pier le Roy auera tout:
Feme ad issue et prist baron et puis terres tenus de le Roy et tenus d'auters descendont a mesm le feme le baron entre solement en les terres tenus de le roy et le feme morust, et l'auter segnior resist le garde et puis le baron tenant per le curtesie morust le roy nauera que les terres tenus de luy mesm:

Home ad issue deux fits deins age leign enter en Religion en le vie son pier et le pier morust seisie de terres tenus d'un segnior que seisit le gard dl puisne et puis terres tenus de le roy descendont a mesm le gard leign fits est deraign le Roy auera le gard de luy et oustera l'auter segnior de le terre (quere quia arguitur) et si leign morust apres le roy auera le gard de le puisne et auxi de terre que le segnior auoit

Mesm le ley si le tenant ad issue file et sa feme privenement enseint ouesque vn fits et morust seisie des terres tenus d'un common person que seisit le gard de le file et puis terres tenus de le Roy descend a mesm le file et puis le fits est nee, le roy auera le gard de fits le tenant.

[f.3v] Le tenant devie ayant issue vn file et sa feme privenement enseint oue auter file et terres tenus de le Roy descendont a mesm le file esteant en gard le segnior: le 2d file est nee le roy auera le gard dl 2d file:

Mesm le ley si vn feme ad issue file et prist baron et auoit auter file et sa feme morust apres que terres descendont a mesm les files tenus d'un estranger: le segnior seisist le gard leign, et puis terre tenus en Roy descend a mesm le file et puis le baron deuy le roy auera le 2d file:

Home que tient deux acres de terre l'un per priority et l'auter per posteriority morust seisie le segnior per priority seisie le gard et puis auters terres tenus de le Roy descendont a mesm le gard et puis le terre que le segnior per priority ad est evicte per recouery ou auter le roy auera le gard de le corps vncore le title le segnior per priority fuit devant le title le Roy et en ceo case si lissue port brefe d'error et reuerse le Judgment enuers luy le segnior per priority serra Restore al gard hors de le possession le roy.

Mes si le segnior per priority vst marry l'enfant ou si l'enfant vst luy satisfy pur le mariage nient obstant le terre issint devict le Roy nauera le gard vncore si le segnior vst grant le gard de le corps a vn estranger devant que le terre fuit issint devict le roy aueroit le gard

Home seisie de deux acres l'un per priority lauter per posteriority, le segnior per posteriority est vtlage en action personall le Roy nauera le gard de le corps, pur ceo que l'anncestor ne tenust de luy

Le Roy grant a mon tenant in chivalry per ses lettres patents vn acre de terre a tener de luy 20 ans per socage et apres per service de chivaler, et puis le tenant morust deins les 20
ans le heire deins age le seignior seisist le gard puis les 20 ans sont expire le roy nauera le corps.

Mesm le ley ou ascun tiel seigniory que fuit fait devant l'estatut escheate al Roy:

*Le Article est* que le Roy auera gard per cause de garde.

Vncore si vn tient dl 2d gard et morust son heire deins age le roy auera le gard de le tierce gard et sic infinite:

Si le Roy grannta vn seigniory de terres tenus en chief a term de vie le grantee nauera
prerogatiue quant al ascun terres auter est pur le corps et ceo appiert en 5 E3. 4 et ieo entend
le cause est que le grant de le seigniory ne changera le priority ne posteriority et issint est en
case d'un common person:

Mes si le Roy grannta son seigniory a term de vie et le tenant fait feoffment et reprist
estate a luy en fée areremayn des terres tenus de le Roy et morust le grantee le Roy nauera
le gard de le corps:

Si le Roy granta vn gard le conustee auera le prerogatiue d'ascun auter gard sicome le
roy mesm auera car il continue le possession le roy come appiert 12 H4 .25. en le case dl
County d'arundell et en cel case si le tenant change le tenancy come per feoffment et reprist
estate ne serra materiall, issint divers.

Mes si tiel conustee ad gard per cause de gard et vn tenant que tient dl 2d gard per
posteriority et d'un auter per priority morust son heire deins age le conustee nauera le corps
de 3d gard car il avoit le 2d gard de son droit demesne:

Segnior per priority et seignior per posteriority: Segnior per posteriority est attaint de
treson et devant ascun office toue le tenant morust son heire deins age le seignior per priority
auera le gard.

Mesm le ley si le villein le Roy ad seigniory per posteriority devant ascun office toue
le tenant morust le heire deins age, le seignior per priority seisist le corps et puis le Roy seisit
le seigniory dl villein, le Roy nauera le gard de le corps.

Le Roy ad gard per cause de garde le ier gard suist son liuery hors de maines le Roy
Le 2d gard morust deins age le Roy nauera le gard de son heire, mes celuy que ad sue liuery
ceo auera Et tiel case fuit 13E4./

[f.4] Le Roy avoit vn gard per reason d'un seigniory dl principality et puis le Prince
fuit create et restore al principality et puis le dit gard morust deins age le Prince auera son
heire en gard et nemy le Roy.

Segnior mesne et tenant chescun tient per service de chivaler, le mesn ad issue fits et
file et purchase le tenancy a luy et a ses heires females de son corps engendres et morust
seisie d'un acre tenus de le Roy, le Roy auera le gard de ambideux, cest de le fits pur ceo que
le menalty est reviue en luy per le mort son pier et le gard dl file come per cause de le gard dl fits.

Mesm le ley ou le mesnalty soit al heires males et le tenancy est done al mesn et a ses heires females et ad fits et file et morust.

Mesm le ley si tiel mesnalty soit en le tayle a ascun home que purchase le tenancy en fée et ad issue fits et file per vn ventre et fitz per auter ventre et morust seisie et l'eign fits enter et morust sans issue, ore le mesnalty est reviue en le puisne fits, et les terres descendont al file, et issint le Roy auera le gard de le fits per reason de le mesnalty et de le file per reason de le gard de le fits:

Le Roy segnior mesn et tenant le menalty esteant en tayle al heires females le mesne purchase le tenancy et devant lestatut de quia Emptores terrarum: il enfeoff vn auter a tener de luy per service de chivaler et ad issue fits et file et morust le roy auera le gard de le file et de le fits per cause de gard:

Item habebit primam seisinam etc le effect de cest article que fuit en le darrein temps le Roy E le ier est que le roy auera le ier seisin des tous terres et tenements, des queux son tenant tenoit de luy et d'eux morust seisie issint que il tenoit de luy en chief le quel affirmé le common ley et ceo appiért per lestatut de Marlebridge cap:16. que voet quod dominus Rex habeat liberam seisinam vt prius habere consueuit quel proue que cego fuit vn ancient prerogative en le Roy; liberam seisinam et ier seisinam sont tout vn et le dit estatut expresse que le heire suera liuery hors dl maine le Roy sicome ad este vse devant.

Vncore cest statut misprise vn chose cest que cego est entendre lou le tenant le Roy tient per service de chivaler et le ley est que le Roy auera ier seisinam lou son tenant tient de luy en socage sil tient de luy en chief mes n'auera le gard sinon que il tient de luy per service de chivaler:

Auxi appiert per lestatut de magna charta cap 27. si le tenant que tient de le roy en socage et d'auter per service de chivaler que le Roy nauera le gard mes les parolls de mesm lestatut sont nisi ipsa feodi firma debeat nobis servicium militare etc per queux parolls est implye que le common ley fuit que il aueroit le prerogatiue lou le tenant vst tenus per service de chivaler issint les dits parolls proue que le common ley est affirmé per les deux articles precedents et coment le title le Roy serra troue et le title le party et coment il auera le terre hors de le main le Roy ieo ay monstre le prochein iour:

15 Marginal note: Cap:3.
Tenant le roy lessa terre a term de vie rendrart certein rent et devy le roy nauera 1er seisinam de le reuercion ne de le rent tanque apres le mort le tenant a term de vie .7.H6 en le case de Gascaïn:

Auterment sil ad auters terres tenus des auters et lessa les terres tenus de le roy a term de vie et morust car la le roy auera primam sesinam des auters terres:

Mes il ne oustera le termor come le gard ferra:

Tenant le Roy done terre en tayle rendrart rent certein et devy le Roy auera primam seisinam et coment que le heire ad sue liuery si le tenant en tayle morust sans issue apres le Roy auera primam seisinam de le terre:

Et en mesm le case si null Rent vst estre reserve vncore le roy auera 1er seisinam de le segniory:

Ideo ay monstre le darrein iour que si le tenant le roy aueroit terres en borough

English: et auoit issu deux fits et deuy que le roy nauera le gard sinon les terres l'eign vncore en mesm le case il auera 1er seisinam de tout.

Issint est si terres sont done al tenant le roy et ses heires males de son corps engendres et le tenant morust sans issue male le Roy auera primam seisinam de tout et la il ne auoit le gard de tout et le donor suera ouster le mayn des terres tayles:

[f.4v] Oustre le Article est post mortem etc vncore le tenant le Roy lessa a vn estranger a terme de vie remainder en fee cestuy en le Remainder morust le Roy nauera primam sesinam.

En ascun case le roy auera le gard et nemy primam sesinam sicome tenant le Roy alien per covin et devy son heire de plein age le roy nauera primam sesinam auter sil fuit deins age car la il retenera le terre tanques liuery soit sue:

Mesm le ley si tenant le Roy enfeoffe estranger a son vse et devy son heire de plein age il ne auera 1er sesinam auter sil fuit deins age car la il aueroit le gard per statut le Roy que ore est H7

Le Roy done terres en tayle le tenant alien en fee et devy le Roy auera primam sesinam de ceo terre car il ne poit discontinuer le Reuercion le Roy.

Le Article est cuiusque ætatis vncore le tenant morust seisie des terres tenus de auters et morust sans heire le Roy auera primam sesinam de tout:

Home recouer terres tenus de le Roy per accion ancestral le Roy nauera primam sesinam.

Auter sil recouer per assise de mort d'anncestor.

Tenant le roy lessa a term de vie remainder en fee cestuy en le remainder morust le roy nauera le 1er seisin vncore si le heire recouer per brefe de Wast le roy auera primer seisin:
Tenant le roy morust seisie des terres tenus des auters et en mesm les terres tenus de les auters vn estrange home abate le roy auera ier seisin de tout vncore 10 R2. est le contrary tenus.

Tenant le roy est disseise et morust null ier seisin vncore auera le gard car il nauera ier seisin pur vn droit solement sans possession.

Le Article est cuiusque ætatis vncore si deins age il auer le gard et apres le plein age cest possession luy servera pur vn seisin tanque liuery:

Tenant le roy come de son dutchie morust seisie son heire de plein age le roy nauera ier seisin, mes le heire entra sans suer liuery vncore est tenus contrary 2.H6.

L'use en le channcery est que le roy auera ier seisin des terres queux sont tenus de son gard quel est conter reason come il semble mes tiel president fuit in 28.H6 que vn tiel suist liuery

L'article est omnium terrarum et tenementorum etc vncore le roy auera primer sesin de advowsons, et commons en grosse, Rents charge, et rents secks et tiels semblables.

L'article est capiendo exitus donec factu fuerit inquisitio provt moris est etc per que appiert que le roy poit seiser sans office que nest my ley ne bone reason a ore ne a mesm le temps fuit vncore per le statut 8.H6. appiert que il duissoit a devant mesmes les statuts seise sans office quel ne vnques fuit reason pur deux causes; l'un home ne poit riens auer de le roy per matter en fait et per mesm le reason le Roy nauera riens per matter en fait: Et auxi si le Roy puissoit seiser sans office le party serra sans remedy pur ceo que le title le roy doit appearer per matter de record a que le party poit auer respons et ore per le dit estatut de 18.H6. est ordeine que le Roy ne grant ascun gard sans office per quel est emply que il ne auera le gard sans office: vncore al common ley le roy puissoit seiser le gard de le corps, car ne fuit que chattell come Wreke et hiusmodi.

Si leschetor seisit devant etc il sera punished per assise vncore il ad sufficient garrant per les parolls dl diem clausit extremum de seiser al commencement mes cest ne que le forme dl brefe dl ancint temps fuit sicome les parolls de le grand cape:

Auxi appiert per lestatut de Lincoln que si vn sua liuery hors de mayn le roy et puis novell title est troue pur le roy vncore le roy ne resei sera sans scire facias et cel title covient este troue per vn office.

Le Article est primam sesinam le tenant que tient dl roy en chief morust le roy ne seisera le terre sans office:

Auter si il tient come de son dutchie ou d'auter segniory car la il seisera sans office

Home tient vn acre en chief et auter de le dutchery et morust seisie le heire deins age le roy seisit le acre tenus de le dutchery et grant ceo a vn auter troue est per vn [f.5] office que il morust seisie de l'auter acre tenus en chief ore le roy resei sera et recouera les terres
tenus de le dutchery car ore le roy les auera tanque le heire ad sue liuery que fuit deceiue en son grante.

En les cases ou le roy seisera sans office l'heire ne besoigne a suer liuery eins entre.

Home seisme d'un gard est vtlage en accion personall le roy seisera sans office.

Mesm le ley d'un termor que est issint vtlage:
Home tient vn segniory dl roy et est vtlage de felony et puis vn gard eschue al luy le Roy sensera le gard sans office mes nemy le Segniory:

Mesm le ley si vn gard eschue al villein le Roy le roy seisera le gard sans office mes nemy le segniory que le villein ad, ne terres purchases per luy.

Tenant le Roy morust sans heire, le roy entre sans office pur ceo que le ley gist le franktenement sur luy et null auter ceo poit prender et a cel intent il auera advantage sicome common person.

Le roy present a vn Esglise sans title et son clerk institut et induct cestuy que ad droit auera peticion.

Le roy grant terres en tayle ou a term de vie le tenant devy sans issue de son corps le Roy entre sans office:

Mesm le ley si terres discendont al roy per collaterall anncestor
Le Roy grant segniory a term d'ans a que le tenancy escheat et puis le term expire il seisera sans office.

Home atteint de treason per authority de parliament et en mesm le act est ordein que le roy grant ses terres a vn auter en tayl et puis le roy grantta accordant, et puis le tenant morust sans issue le Roy entra sans office et auera le terre:

Vncore si le tenant le roy alien en mortmayn le roy ne seisera sans office
Et en cases home poit doner al Roy sans matter de Record sicome leses a term de vie le remainder al Roy sans fait enrolle:

Auxi grant fait al roy d'un gard de le corps est bone sans matter de Record.
Terres escheat al villein le roy que il ad per reason de le Dutchie de Lancaster, le Roy entra sans office auterment est sil purchase terres.

Le Roy present a vn Esglise sans title et son clerk institut et induct le roy auera ladvowson per ce matter in fait, et cestuy que ad droit auera peticion:

En null case le Roy auera i^esesim sans office des tenants que tient de luy en chief car il ad ceo come Roy:

Le Roy est entitle per vn office que ne done a luy cleare title vncore il seisera sicome il est troue, come il tient dl Roy et ne troue expressment que il tient en chief le roy seisera
Mesm le ley si troue soit que il tient de le roy sed per que servicia * ignorant.*
Mesme le ley si trouve soit que le tenant morust seisis sed de quo et quibus ignorant: 
Issint lou null tenure est trouve le Roy seiser sicome le ley est prise, vncoire ieo entend que ceo nest forsque vn nude et single title pur le Roy:

Troue est per vn office que vn morust son heire de plein age et que il tient dun IS et appiert per matter de Record en le chancery que le terre est tenus de le Roy le Roy auera primam sesinam:

Mesme le ley si soit troue per un office en vn county que vn est heire al tenant le Roy et per auter office en auter County que le tenant morust seisis de certein terres le roy auera primam seisinam.

Troue est per office que le tenant le Roy est attaint de felony ou treason si null tiel atteinder soit le office est void.

Home en Court de Record confesse que son pier tient dl le Roy en chief et morust cest sufficient title pur le Roy de seiser et le Roy auera touts les issues apres le mort l'ancestor:

[f.5v] En precipe quod reddat le tenant dit que il tient a term de vie remainder al roy et devy le roy entrera sans office.

En ascun case le Roy ne poit solement seiser per l'office sicome vn Abbe de le foundacion le Roy alien et ceo trouve per office vncoire il ne poit seiser sans scire facias.

Et en chescun case ou common person est mise a son accion le roy ne poit seiser per vn office solement mes auera scire facias.

Come trouve soit per office que le tenant que tient de le Roy a term de vie ad fait wast ou que le tenant le roy ad cesse le roy ne seisera sans scire facias Vncoire en speciall case ceo ne tient lieu.

Sicome le tenant le roy alien per covin et devy et ceo trouve per l'office il seisera sans scire facias et le reason poit estre pur ceo que le roy nest lie per lestatut entant que il nest nosme.

Le Article est capiendum exitus donec facta fuerit inquisitio etc vncoire le roy auera touts issues de le terre de temps de son title accrew tanque al office trouve car en chescun case ou le Roy est entitle a ascun terre il serra respondus de les issues, sinon ou le tenant sue vn oustre le main cum exitibus sinon en speciall cases:

Sicome tenant le Roy alien sans lycence et ceo trouve per office long temps apres le roy seisera et nauera les issues en le meane temps car le Roy nauera le terre sinon come vn pledge pur le fine d'un alienacion:
Ou le roy auera issues il auera ceo solonque l'inquisition troue devant lescheator le transcript d'un quel serra mande en leschequer\textsuperscript{16} et sur ceo processe issera enuers le terre tenant ou le heire et il auera respons a ceo a dire que il ne amount a tant et auxi il ne serra charge sinon pur son ocupacion demesen issint chescun tenant de le terre en le mesn temps respondra des issues pur son temps et auera mesm le respons.

Tenant le Roy morust seissie son heire de plein age le quel entre et morust seissie et ceo troue per office sil morust destate de fee simple donque son prochein heire respondra des issues accreues apres le title le Roy; auxi bien en le temps son pier come en son temps demesn, mes sil morust seissie destate tayle il ne serra charge forseque en son temps demesn et les executors le pier pur son temps:

Tenant le Roy morust seissie lheire ne serra charge pur les issues pur le couper des bois.

Auter est si le roy est entitle a terres et l'escheator et lestranger coupe bois car la il ad title d'auer mesm le bois.

Tenant le Roy morust sa terre esteanct al value de x\textsuperscript{6} et lheire amend ou approue le terre al value de xx\textsuperscript{ii} le roy auera ses issues solonque le value dl\textsuperscript{17} cel.

Mes si le heire appiere le terre le roy serra responde solonque le value que le terre fuit al temps de le mort le tenant etc le roy serra responde des causuall profitts que il mesm puissoit prender sil mesm fuit en possession.

Sicome tenant le roy ad vn villein regardant et morust son heire de plein age quel villein purchase terre et lheire entre et tout cest matter troue per office le roy auera le terre purchase per le villein mes si lheire aueroit alien devant le office le roy serra responde solonque le value de le terre: Mesm le ley d'un gard que eschuet a luy:

Il est vse en le Channcery que le roy auera ier seisin aprs le mort le tenant a terme de vie le remainder ouster quel nest garrant per le ley mes solement per lour fees en le Channcery:

Et lestatut de Marlbridge parle quod dominus habeat simplicem seisinam ut pro dono cognoscatur queux parolls sont void, et l'auter case poit estre dit simplicem seisinam

Auxi ad estre vse que si deux ioyntts tenonts de le Roy et l'un morust que l'auter sueroit liuery que nest reson.

Mes le baron et le feme ioyntenants et le baron morust le feme suera liuery et ceo est A\textsuperscript{o} 11 E3 et quere de ceo

En le Article le darrein iour ieo ay monstre coment le roy auera iam sesinam quel il auoit al common ley come appiert per les parolls dl dit Article cest provt moris est et auxi per

\textsuperscript{16} "lescheator" in MS
\textsuperscript{17} "tre" crossed out
Lestatut de Marlebridge cap 17 que voit quod dominus Rex inde habebit liberam sesinam vt prius habere consueuit queux parolls implie que ier sesin fuit al common ley et auxi les parolls de mesm lestatut sont ne heredes nec alii se intrudant in hereditatem priusquam de manibus ipsius domini Regis etc. per queux parolls appiert que lheire suera liuery al common ley:

Ore coment et per queux brefes lheire suera liuery ieo monstayer, et auxi coment le Roy poit estre entitle; Car ascun office que poit entitler le roy ne serra sufficient pur entitler lheire.

Le roy poit estre entitle per vn office troue devant lescheator virtute officii ou virtute brevis ou per commission generall al auter ou especiall ou per null brefe.

Le Article est donec facta fuerit inquisicio prout moris est vncoore poit auer liuery sans ascun office ou inquisicion sicome per especiall liuery et ceo poit estre deins age come fuit en le case de Dutchesse de Buck A0 ij.0 ou le Roy grant a luy le gard quam diu in manibus suis fore contigerit et apres le Roy fist al gard un especiall liuery et per ceo le dutchesse fuit sans remedy:

Auter vst estre si le roy vst grant a luy le gard durante minori aetate et quam diu in manibus suis fore contigerit: Et puis le Roy fist al gard vn especiall liuery.

Et per auter voy lheire poit auer son liuery sans inquisicion sicome tenant le Roy morust son heire de plein age quel entra et devant ascun office troue le roy pardon a luy touts manners de Intrusions:

Mes si vn office soit troue devant le pardon donque le pardon ne servera sinon pur les proffits prises devant vncoore de droit home nauera vnque liuery sinon quod officium soit troue pur luy per brefe et nemy virtute officii:

Tenant le Roy morust le heire auera diem clausit extremum soit il deins age ou de plein age et cest brefe serra liuery al heire et pur ceo il viera a son perill que son title soit bien troue car auter il ne auera vnque liuery.

Tenant le Roy morust seisie de deux acres et per le diem clausit extremum il est troue que il morust seisie mes de l'un et quod non habuit plures terras nec tenementa et le heire a plein age suit liuery et puis per auter office troue est que il morust seisie des deux acres le Roy reseisera et null remedy pur le heire pur les deux acres.

Si lheire ad diem clausit extremum et puis l'eschetor est discharge de son office le nouell escheator poit enquierer per vertue dl mesm cl brefe et si ne voit le heire poit suer brefe que est appel amotus, deins l'an al nouell escheator et si l'escheator soit associate il poit auer auxi deins l'an vn especial comission et auxi vn supersedeas al escheator et si le office troue per le diem clausit extremum soit insufficient in parte vel in tout le heire auera melius enquirendum.
Si en le diem clausit extremum ceux parolls et non habet plures terras nec tenementa ne sont Retorne l'heire poit auer vn brefe appell que plura des terres omisses en le ier office et sur ambideux brefes il auera liuery et apres l'an et iour et xx ans apres l'heire auera brefe appell mandamus

Et si l'heire esteant engard le roy deuy son prochein heire auera brefe appelle devenerunt et per cest brefe ils poient trouver plusors terres que fuet en le ier office sicome le gard le roy auoit terres per purchase.

Si le title le heire soit troue per vn generall comission il ne poit suer liuery sur ceo quel ieo ay en experience, auter est sur especiall commission:

Auxi est vn Commission de terres coneles sicome le tenant le roy morust seisie de deux manors et l'vn troue per office et l'auter conceale et l'heire sue liuery donque issera le dit commission et apres que ceo matter est troue le Roy auera scire facias envers le Tenant et reseiserer et null remedy pur luy.

Auxi est vn brefe appell brefe de terres coneles et ceo ne serra grant sinon [f.6v] sur matter de record in le channcery provant le concealements.

Home ne auera que vn des brefes de diem clausit extremum ou mandamus ou devenerunt si ceo soit sufficientment retorne:

Lheire poit auer son terre per generall livery.

Auxi est vn ouster le mayn cum exitibus ouster le mayn sans exitibus et amoueas manum:

Lheire le tenant le roy est troue de plein age il ne auera ætate probanda auter est si soit troue deins age en quel case le brefe de ætate probanda ne serra grant a luy tanque al temps que il appiert per le Office le heire destre de plein age.

Le heire troue per office que il est 16 annorum et amplius il nauera advantage de cest paroll amplius et si soit troue deins age per vn office et de plus puisne age per auter office il nauera le dit brefe tanque il apparust de plein age per chescun office mes sil al plein age purchase le dit brefe et devant son age proue troue soit per auter office que il soit deins age supersedeas issera al escheator pur successor quant al process de son age vncore quant son age soit proue devant le office il auera liuery car ceo est vn parfitt triall enter le Roy et luy:

Cest brefe de ætate probanda poit estre direct al escheator ou al vicomte et ne serra direct sinon a\textsuperscript{18} vn County tantum et l'heire viendra et monstre le lieu de son nestre et en cel county le brefe serra direct et cest inquisition serra per 12 homes et auxi per prouesse et si vn fits port le dit brefe chescun des prouesse doient estre de le age de xlii ans al meins issint que les prouess doient auer reasonable Remembrance de son maister come appiert A\textsuperscript{0} ii .R2. et si

\textsuperscript{18} Characters blurred in MS
vn feme port l'accion ils serront de age de 37 que le heire femall auera cest brefe al age de 16 ans:

Feme poit estre proue en cest tryall et si le Jury luy trouvera de plein age et les prouesse luy trouveront deins age el nauera son liuery mes serra prise deins age et donque quant el vient a plein age solonque ceo que les proues ont troue il auera son liuery sans auter brefe de aetate probanda.

Et les proues en lour verdit doient monstre especiallment les circumstances de son age come lan le iour heure; et 19 et auter signes de l'an ensuant come thunder ou erthquake ou huiusmodi mes le verdit de 12 serra generallment cest deins age ou a plein age sans plus.

Le vicomte retorne deux proues et l'un dit que le heire est de l'age de 23 ans et lauter que il est de 22 ans lheire n'auera liuery car coivient al deux proues d'agreeer:

Auter si le Jury luy trouver 22 ans et les proues 23 ans car la il auera liuery

Troys proues et le Jury sont, et deux de les proues luy provant de plein age et le 3ce luy troue deins age il auera son20 liuery

Quater proues les 12 et deux proues trouveront lheire de plein age et les auters deux proues que il est deins age lheire nauera son liuery car les proues de deus est sufficient pur le Roy issint devant tiel liuery lheire coivient auer cest brefe.

Le Article est homagium eius capiit le order de facire homage quant l'age est proue d'auer brefe de le Clerk des rolles al gardein de le privy seale testmoignent l'age et de luy vn privery seale al Chamberlain le roy de Receuer son homage et quant il ad ceo fait il auera brefe de le Chamberlain al chancelor testmoignent que il ad Receaue son homage et sur ceo le channcelor agardera al heire ses brefes deliuer direct al escheator etc mes pur auoider les charges les heires vsont a purchaseur un privy seale direct al chancelor pur respiter homage et de ceo mittera transcript en Leschequer apres quel processe serra agard annuallment hors Leschequer pur faire son homage.

[f.7] Nota que tiel heire ne vnque auera liuery sinon lous son title est troue sufficient per lour brefe

Tenant le Roy alien terres tenus de roy per convyn et morust seisie d'auter parcel1 et ceo troue per office, lheire a plein age suera liuery de cest que l'anncestor morust seisie et le feoffee suera ouster le mayn sans exitibus et si lheire ne voit prouer son age le feoffee nauera remedy.

Mesm le ley lou le tenant le Roy fait feoffment a son vse de parcel, car le Roy ou segnier auera le garde per lestatut fait A0 40 .H7. vncore si le tenant le Roy fist feoffment per

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19 Blurred in MS
20 "remedy" crossed out
coup de tout le feoffee auera *aetate probanda* sinon que especiall ouster le mayn soit grant a luy.

Home ad terres en burghe english tenus de common person et morust seisie des auters terres tenus de Roy et ad issue deux fits et morust et cee troue per office, l'eigne auera liuery et le fits puisne auera ouster le mayn sans exitibus, car null auera liuery des terres sinon tenant le Roy.

Tenant le Roy auera auters terres tenus d'auter segnior a luy et a ses heires females de son corps et ad issue fits et file et devy le fits suera liuery des terres tenus de le roy et le file auera ouster le mayn.

Et en tous ceux cases lou estranger est heritable al terres tenus des auters devant le tenant le Roy morust seisie et lheire a cee nest heritable il auera ouster le mayn et cee poit estre per vn office troue sans brefe cest virtute officii:

Et en le case prochein devant si le file soit deins age le Roy nauera le gard et el auera ouster le mayn deins age:

Tenant le roy ad terres tenus des auters en Gavelkind et ad issue deux fits et morust le puisne frere auera ouster le mayn de son party mes que le matter soit troue virtute *officii* come devant et sur le ouster le mayn le puisne auera particion et coment cee serra fait ieo entend de monstre apres:

Deux fits chescun tient de le Roy l'eign done son party a le puisne en tayl quel morust sans issue de son corps et cee bone l'eign suera liuery pur le party son frere a que il est heire et de l'auter party il auera ouster le mayn entant que il ne cee claym come heire eins per reason de son reuercion.

Le meane que tient de le Roy son heire de plein age morust et apres le office troue le tenancy escheate al roy lheire nad remedy pur auer liuery de le terre car a luy l'office ne servera pur le tenancy quere quia arguitur:

Auter vst estre si lheire vst enter en lescheat devant le office troue car la il auera liuery de le terre et auxi le Roy auera et serra Respondus des proffitts de le segniory, devant l'escheat et des proffitts de les terres apres lescheate.

Tenant le Roy ad auter terres tenus de le Roy en chief en burghEnglish et ad issue deux fits et devy ils deux aueront seuerrall liuery per vn office troue *virtute brevis* mes covient a eux d'aver deux brefs de *aetate probanda* et si en cest case ils deux soient troue de plein age et apres per vn office troue virtute officii que l'eign est deins age le puisne ne auera liuery tanque apparust per le darrein office que leign est de plein age.

Mes si le puisne vst proue son age per *aetate probanda* devant le dit darrein office troue il auera advantage de cee et l'eign targera.
Troue est per vn office virtute brevis que le tenant le Roy morust l'heire de plein age et sur ceo le heire suist liuery et puis troue est per auter office virtute officii que l'heire est deins age le Roy Reseisera auter est si l'age vst estre proue per aetate probanda.

Tenant le Roy ad terres en fee simple et in fee tayle tenus de le Roy et ad issue fits et file per vn venter et fits per auter venter et morust et l'office troue virtute brevis et puis leign fits morust sans issue et puis cest matter troue per vn devenerunt le soer suera liuery come heire a son frere pur le fee simple car le possession le Roy fuit sufficient possession pur fair el heire a son frere et le fits de le demy sanke suera liuery des terres tayles.

[f.7v] Tenant le Roy lessa pur vie remainder en fee cestuy en le Remainder morust son heire de plein age, l'heire coivient d'auer vn office troue per brefe et puis le tenant a term de vie morust l'heire ne auera livery tanque auter office virtute officii soit troue provant son mort.

Tenant le Roy ad auter terres pur term de vie tenus auxi de le Roy le reuercion descend a son heire per auter anncestor et puis le pere morust la coivient al heire dauer deux brefes de diem clausit extremum vncore en le Judiciall Register appiert que il poit auer vn brefe pur ambeideux terres.

Tenant le roy est tenant per le curtesie d'auters terres tenus auxi de le Roy auxi et morust son heire doit auer vn brefe come heire a luy et auter brefe come heire a son mere vncore le course en le Channcery est contrary:

Mes si vn soit heire al baron et auter soit heire al feme la eux coivient d'aver seuerall brefes auterment ils naueront liuery

Nota que si l'heire dl tenant le Roy suit liuery il coivient que tous offices en tous countyes et de tous parcells d'ont il est heritable et des queux son anncestor morust seisie soient troues per brefe et que il suist liuery en tous les countyes et si ascun soit omissle le liuery ne vault.

Terres tenus de le roy done a vn home et a sa feme en especiall tayle et ouint issue file le feme devy: le baron ad issue vn auter file per auter feme et devy et troue per office que il morust seisie de cel terre en fee et l'eign file fuit file et heire sur quel el auoit liuery et puis per auter office troue est que le pere auoit auter file et sur ceo scire facias fuit agard vers le soer per lestatut de Lincoln que voient estre monstre le speciall tayle et non allocatur pur ceo que l'especiall matter ne fuit troue per le brefe et sur ceo le roy reseisera et pur cel cause le brefe de diem clausit extremum serra deliuer al heire.

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21 "le reuercion" crossed through after "Roy"
Mes si vos estre troue per le office que le tenant le roy morust seisie destade de fee simple et auoit issue forsque vn file et suist liuery et puis per auter office le verity soit troue le roy ne Reseisera.

Tenant le Roy ad terres en auter county tenus de le Roy en burgh English et ad issue deux fits et morust et per vn office le puisne est troue heire en le county ou les terres per le custome sont et per vn auter office l'eign est troue heire en auter county le Roy reseisera per scire facias pur cee que le custom ne fuit pas troue per le office car il nest heire de sank vncore en le case Suise cest si ne soit que vn fits et le custom ne soit troue en le office le roy ne reseisera.

Vn liuery covient estre fuit entierment come devant.

Tenant le roy morust seisie de deux mannors et per le office nest troue mes que il morust seisie de l'un si lheire suist son liuery et puis troue est per auter office que il morust seisie de l'auter mannor il reseisera touts et null remedy pur l'heire, car il ne auera forsque vn diem clausit extremum en quel il serra entierment troue et commission ne poit il auer pur cee que le diem clausit extremum est retorne.

Tenant le Roy d'un acre disseisinauter de auter acre et morust seisie, et cee troue lheire suera liuery de tout, vncore per especiall disagrement il luy dischargera des damages pur le acre per disseisin.

Si omission soit de parcell le liuery ne vault sicome le case de 44 .E3. 25 l'heir fist omission d'un advowson en grosse et pur cee le roy Reseisist:

Vncore en ascun case lheire suera liuery per parcells come terres tenus de le Roy descend a luy per diuers ancestors mesm le ley si le tenant le Roy morust seisie de deux acres en deux countyes et le Roy fait a luy speciall liuery d'un il suera liuery de l'auter.

Auxi lou liuery doit estre entierment vncore il poi estre troue que lheire sue liuery de tout le terre generallement lou il serroit retenta dote et le title de dower appiert per le office Le roy reseisera et si le title le dower ne appiert per mesm l'office eins per vn auter [f.8] le roy Reseisera, et si le title de dower appiert per null office le feme poit venir en le chancery et sur cel surmise el auera scire facias envers le heire mes in ceux cases le Roy lheire ad remedy per novell liuery.

Lheire al common ley sua liuery des terres al common ley et auxi des terres en burrough English et puis troue per office que il ad puisne frere vncore le liuery des terres al common ley est bone et nest semble a le case de dower a devant car la feme ad title en chescun parcell.

Lheire suist liuery et vn office est troue apres pur defeater le liuery le Roy ne reseisera sans scire facias mes sil suist liuery sur office insuffisent le Roy reseisera sans
scire facias come en le case devant, lou le tenant le Roy morust seissie de deux mannors en deux countyes et l'heire ne suer liuery forsooke de l'un.

L'heir devant le liuery est certify bastard le Roy resesiera sans scire facias et en ceo case si troue soit per auter brefe que l'auter est heire le Roy poit mayntener envers luy que cestuy que est certifie bastard est heire et envers le bastard que il est bastard et null deux auera liuery.

Si le puisne soit troue heire per brefe l'eign doit estre troue heire per auter brefe en auter county et donque ils Interpleaderont.

L'eign est troue heire virtute brevis le puisne virtute officii l'eign devant son liuery doit transfer son office:

L'eign troue heire virtute officii et le puisne per brefe null remedy pur l'eigne.

Tenant le Roy ad issue deux fits l'eign enter in religion en vie le pier le pere devy le puisne troue heire per brefe l'auter est derreigne et troue heir virtute officii null d'eux auera liuery.

Mesm le ley si home ad issue file le feme prement enseint et devy le file troue heire per brefe null remedy pur le fits.

Le Roy ad gard per forfeiture ou per grant l'heire ne besoigne suer liuery:

Le roy ad gard per cause de gard le 2d gard suera liuery per course de Channcery.

Le Roy grant son segniory pur term d'ans gard eschue deins les ans et devant le plein age les ans expiront l'heire ne suera liuery mesm le ley si le termor grant le gard al roy.

Home seisie de gard est vltage in accion personall l'heire a son plein age ne suera liuery car en ceux cases le roy nad le gard per cause de ascun segniory.

Et vn auter brefe est que est appell amoveas manum et ceo gist lou le Roy est entitle per vn insufficient office.

Home tient terres de le roy et morust son heire deins age prochein amy suera liuery vna cum exitibus mes sil soit de plein age il auera liuery sans exitibus.

Jay monstre coment le roy auera primam sesinam et coment il auera son prerogatiue de le gard ciby en de le terre come de le corps, et auxi come et in quel manner l'heire suera liuery hors de mayn le Roy.

Et a ore ideo intend a monstre quand le roy est entitle a ascun terre per ascun faux office covient le party que ad droit auera son remedy et en quel case le party auera son traverse ou partition ou son monstrans de fait:

L'estatut de A034 .E3. cap: 14 done que le party auera trauersse a vn faux office pur entitler le Roy come appiert per mesm lestatut et lestatut de 36 .E3. cap 13. done que apres que lescheator ad troue vn tiel faux office que il ceo mandera en le channcery deins le mois et s'il ne voit que le party auera brefe a luy a ceo certifier et que le party apres maintenant auera
son trauers ou monstrera son droit sans attendre auter mandament et auxi que le chancellor per son discretion poit lesser le terre al party al ferm trovant suerty come appiert per lestatut vide Statutum

Vncore al common ley home puissoit auer trauers pur vn chattell:

Sicome le tenant le Roy ad lesses et vn office vst estre trauve que il auoit alien [f.8v] sans licence lou il ne aliena pas en cest case il auoit trauerse mes nemy sans auter office troue pur le tenant que il ne aliena pas vide 12 E 4:

Mesm le ley si troue soit per vn office faux que mon tenant tient de le Roy en chief et morust son heire deins age si iay vn auter office troue pur moy ieo aueray trauerse pur le gard mes ore per le dit estatut le party auera trauers sans ascun office issint diuersity perenter l'order d'eux

Ascun foits lheire trauerse l'office, sicome vn estranger soit troue heire virtute officii

Si le very heire soist troue apres per brefe il auera trauerse al ier office et ne puissoit trauerse le ier office sans auter office troue pur luy pur ceo que adonque il aueroit liuery sur le ier office que ne done a luy ascun title.

Mes si troue soit per office que IS tient de le Roy en chief et morust lou il tient de moy ieo auers sans trauerse car la ne disaffirme le title le Roy et cel trauerse ieo aueray sans ascun auter office troue pur ceo per le dit estatut.

Mesm le ley lou trauue est que mon tenant tient de le Roy et que son puisne fits est son heire lheir auera son trauerse sans auter office.

Lou le title le Roy per l'office est troue voyer en ascun parcell le party nauera remedy sans peticion sicome troue est que le tenant le roy morust seisie et que vn tiel est son heire, et per auter office troue est que il morust sans heire null remedy mes peticion.

Auter si per le darrein office troue est que l'anncestor alien en mortmayn car la lheir trauersera l'alienacion en mortmayn pur ceo que en le primer case le office entitle auxi bien lheire sicome le roy et en le darrein case le office entitle le Roy solement car per tiel alienacion le Roy est entitle et nemy lheire en ascun party.

Troue est que le tenant le Roy morust seisie et que les terres sont tenus per service de chivaler et per vn auter office apres troue est que les terres sont tenus en socage sicome le verity est si lheire soit deins age il trauersera l'office et auera liuery cum exitibus et sil targeran tantque il vient a son plein age le nature de son liuery est change car donque il auera liuery sans exitibus vide Stanfford 24.

En ceux cases a devant lheire auera trauerse si office soit troue pur luy mes ore per lestatut lheir auera trauerse sans ascun office vncore en null case lou le party affirm le title le roy troue per office il ne auera trauerse:
Le dit estatut de 36 E3 et lestatut de 9 H6 cap: 16 done come devant et auxi que lescheator retornera son office deins le moys sur peyn de 20\textsuperscript{1} et que le dit office demurrera en le channcery per vn moys aprés le Retorne et ouster come appiert.

Et lestatut de 18 H6 ca: 6. done que null lettres patents soient fait a ascun person devant le inquisicion de le title le Roy prise et lestatut done ouster etc

Peticion fuit al common ley lou le Roy fuit intitle per faux Record et le order d'un peticion est que le party ferra vn bill al Roy comprehendant son title et auxi touts les titles le roy, et quant le Roy ad indorse le bill cest que droit a luy soit fait a vn comission serra agard pur enquirer de le title le party comprise deins son bill le quel serra retorne en le channcery et la l'attorney le roy poit maintener le title le title [sic] le Roy et trauerser le title le party que est troue devant et poit mitter le party al grand delay et al common ley devant lestatut de 14 E3.

a infinite delay car il puisset monstre al Court que dyvers evidences fueront en le tresury que fieren pur le title le Roy: et pria brefes de searches al Tresury et si tiels brefes ne vssent estre retorne ou que ils avoient retornes que ils ne avoyent pas pleinment search ceo ne vst estre ascun contempt pur ceo que ceux brefes fueront sues pur le advantage le Roy mes ore per le dit estatut est ordein que il nauera pluis ouster 4 brefes de searches et si le issue prise per le Attorney le Roy soit troue encontrar luy le Judgment serra que le party recouera Saluo iure regis a cest entendment lou il auer\textsuperscript{22} droit et nest mesm le droit que fuit troue a devant et en cest peticion il nauera son Judgment vna cum exitibus car cest son brefe de droit enuers le Roy et sicome il ne auera damages en brefe [f.9] de droit enuers common person il nauera exitibus envers le roy per le suer de son peticion.

En vn trauerse le party monstrera vn title title [sic] pur luy en le channcery et rerowsersa tout le office troue per le roy si soient 20 come adire compertum est quod etc.

Et en ascun case le roy doit mayntener touts les offices queux sont trauers et en ascun case nemy.

Et auxi le Roy poit eslier pur maintener son office ou trauerser le title le party cest le partie, et il poit prendre issue et relinquischer l'issue et demurrer en ley mes si apres lissue il demurre en ley il ne poit ressorter a l'issue en apres et apres mesm l'issue il ne prendra novell issue sinon que il soit mesm le term et si 12 soient iures, il ne demurrera en ley apres.

Si vn title soit troue pur le tenant per vn office il ne besoigne pur monster ascun auter title Sicome troue est que le tenant le roy alyen en fee sans lycence il trauersera l'alienacion sans faire a luy ascun auter title.

Mesm le ley si soit troue que il auoit alyen en mortmayn.

\textsuperscript{22} Written as "auter"
Auter est lou null title appiért deins le office pur le party et pur ceo en assise si le tenant dériue ascun title ou Interest de le pleintife il ne besoigne a le pleintife a faire title sicome le tenant dit que le pleintife luy lessa pur term de vie.

Et en tous ces cases de trauерse le party covient dire que il fuit seissie tanque per l'eschetor disseise colore officii predicti.

En les cases de peticion ou traughters si le roy ad grant les terres devant le peticion ou trauерse donque le party auera Scire facias vers le granntee ou patentee sil sach rien dire pur quel son patent ne doit estre repell.

Auter est si pendent tiel peticion ou trauерse le roy auer fait autiel grant:

Si en tiel case le granntee ou patentee fist default al ior de le scire facias retorn après que il ad estre garnie il ad forfeit son patent car per son default il serra repell maintenant.

Le Roy poit maintener chescun des offices troue pur luy que estoent ensemble sicome troue soit que le tenant le roy morust son heire deins age et per auter office que il alien en mortmayn vt patet 9.H4. 61.

Auter est si les offices sont repugnants comme si troue soit per vn office que tenant le roy morust son heire deins age et per auter office que il fist feoffment per collusion en ceo case le roy doit maynteyner l'un office a son perill car ceux sont repugnants vide 11.H4. 80. tiel matter.

Cestuy que tende vn trauерse doit trauerser tous les offices troues devant le tender de son trauерse mes nemy vn office pendant son trauерse troue car per tiel voice il poit estre infinite delay et si Judgment soit done per cestuy que tender le trauерse puis scire facias issera pur le roy sur le office troue pendant le trauерse.

Vncore vn office poit estre troue pendant le trauéer que mittera le party a son peticion et abatera cest trauерse.

Et si le roy et party sont a issue sur le trauерse le Recorde serra mand en Banco le Roy et le issue serra trie et l'attorney le Roy auera venire facias et ludge done per lestatut de Aο 34 E3.

Auter est ou vn trauéer est intend en Leschequer a vn office troue virtute officii car la les barrons de Leschequer ne manderont le record in bank eins eux mesmes trieront le matter.

Vn office troue per brefe est retorn en le channcery et auter office est troue de mesm le terre virtute officii cestuy que tende le trauéer auera certiorari al barons de Leschequer pur mannder l'office troue virtute officii en le channcery et la le party tendra son trauéer al ambideux.

Perenter monstrans de droit et le trauéer nest greind difference en le proces d'eux mes en le monstrans de droit il affirme le title le Roy et ceo avoid.
Et auxi vn auera monstrans de droit il esteant ouse de possession per mesm le office 
[f.9v] sicome tenant le Roy est disseise et alyen en mortmyn et le disseisee reenter et tout 
ceo matter troue per office il auera monstrans de droit mes sil nust reenter devant le office il 
serra mis a son peticion.

Vn disseisor enfeoffa le Roy per fait Inrolle le disseisee ne auera que peticion.

Mesm le ley si le tenant le roy soit disseise et le disseissee morust son heire auera peticion.

Le Prince purchase terres a que ieo ay droit et puis est roiy ieo auera peticion.

Faux office troue que estranger morust seisie de mes terres tenus de le roiy et que il 
morust sans heire ieo auera trauerser.

Auter est si troue soit que estranger soit attaint de felony ou de treason et quel fuit 
seisie de mes terres tenus dl roiy car la il auera peticion pur ceo que il ne poit trauerser 
L'attainder quel est matter de record.

Le disseisor enfeoffa le villein le Roy et cee troue per office le disseissee auera 
petition mes si le disseissee auoit enter devant le office troue donque auera monstrans de 
droit.

Mesm le ley si vn disseisor enfeoffa vn alien car la le Roy est entitle al franktenement 
per title defeisible.

Office troue sur matter de record que entitle le roy le party serra mise a son peticion 
et n'auera monstrans de droit.

Si vn moy disseisit des terres tenus de le Roy et morust seisie l'heire deins age ou de 
plein age et office troue null remedy tantque l'heir ad liuery car sil soit deins age null peticion 
vers le roiy pur ceo que brefe de droit ne gist vers vn gardein mes le franktenement est en 
l'heire vncore sil auoit fait continuall claym en enter devant office iaoveray monstrans de droit 
vers le gardein.

Mesm le ley si vn enfant soit disseise des terres tenus de Roy et le disseisor morust 
seisie et l'enfant enter devant office il auera monstrans de droit.

En ascun case le party nauera trauerser sinonque vn office soit troue pur luy virtute 
officii ou per comission hors de le channcery sicome baron et feme iojntenants des terres 
tenus de le roiy le baron morust seisie et troue est per vn office que il morust seisie solement 
le feme ne auera trauerser a cel sans auter office de son title troue pur luy comme appiert 15 E3. 
vide Pasch 12. H6, Trauerse 45.

Mesm le ley si troue soit que l'un iojntenant morust sole seisie.

Tenant le Roy enfeoffa vn auter et troue que le feoffor morust seisie le feoffee sur cee 
trauerser monstrera licence de le roiy de le purchase ou auterment le roiy retienda le terre pur 
le fine.
Tenant en tayle le remainder a vn auter en fee des terres tenus de le roy et troue est per office que il morust seisie en fee et que son frere est son heire si cestuy en le reuercion voile trauers l'office luy covient auer auter office troue pur luy.

Si troue soit que vn morust seisie des terres tenus de le roy son heire deins age ou il tient les terres d'auter segnier per service de chivaler le segnier auera son trauersse.

Mesm le ley si troue soit per faux office que vn estranger morust seisie des terres tenus de le roy dont vn auter est seisie.

Mes cestuy que ad rent charge, ou Rent seck, ou auter proffitts hors de le terre et puis le terre vient en mayn le Roy per faux office le party nauera trauersse eins serra mise a son peticion de grace vncore si le title cestuy que ad le rent ou tiels proffitts soit proue en le office il auera brefe al escheator de luy payer le Rent ou de luy suffer d'auer les proffitts et si le Roy fist vn patent dl terre le party distreynera le patent:

Deux Iointenants l'un attaint de treason et troue est que il de sole sans l'auter suera per peticion mes si le Ioyntenancy soit troue per l'office seuerans serra fait per lescheator vncore pur chose entier de quel ils fueront ioyntts, null remedy car nest seuerable:

Trois ou 4 offices troue pur le roy et le party trauersse touts forsque vn et troue pur luy et adiudg le roy reseisera sans scire facias car le title le Roy nest pleinment respondue come appiert per le trauersse mes s'il vst trauersse touts les offices come oportet et auoit iudgment erronious le roy ne reseisera, eins auera brefe d'error.

Mesm le ley d'un Judgment erronious done vers le roy in vn peticion vt patet 13 libr ass. et nest semble a vn liuery que appiert nest duement sue car le roy Reseisera sans scire facias vide 39 ass: 18.

Home tend trauersse et ne mainteyne ne pursua son trauersse cee serra peremptory et ne auera vnque auter trauersse car cestuy que tend vn trauersse est come des envers le Roy: Auter est lou home est nonsue in vn peticion.

Deux tendes trauersse et l'un ne pursua cel l'auter pursuera cel soule et auer ouster le mayn de le moiety pur metes et bondes.

Deux segniors tender trauersse pur le gard des terres et corps et lun non pursua l'auter pursuera et auera le moiety de les terres mes pur le corps il est sans remedy.

Deux tendont trauersse et lun ne pursua cel l'auter pursuera soule et auera ouster le mayn mes si soit pur vn advowson et l'un ne maynteyn son trauersse lauter nad remedy:
Tiel office troue pendant le trauersse que mittera le party a son peticon le trauersse abatera.

Traverse tende, et l'heir suist livery especiall ou generall pendant le trauersse ceo abatera le trauersse.

Mesm le ley lou party tende vn trauersse et soit a issue ouesque le Roy et pendant ceo auter estranger tende auter trauersse et Judgment done sur le ier le 2 trauersse est abatus per le Judgment.
Appendix 3: Spelman’s Reading, Lent 1521

[f.302] Dominus Rex ..... deuaunt cest estatut il fuit en werouste & dout que appent a roy per son prerogatif & pur ceo cest estatut est fait de mitter son prerogatif en certen Et coment que lestatut est terrarum vncore il auera le gerd de lour auoson /Auxi si seignior mesne & tenant sont & chescun tient dauter per service de chivalre & le seignior tient auterz terrez de roy en chief & devi son heir deinz age le roy auera le gerde del terre tenuz de luy & auxi del seigniorie & vncore nest terre &c auxi cest seigniorie nest tenuz dascun home mez le terre est tenuz mez pur ce qu'il est mesm le chose que serra en gerd a son seignior & auxi eschet Per mesm le reson il serra en gerd a roy {per servicium militare de quibuscumque etc die quo obierunt} si le tenant le roy en chief fait leez a term de vi per licence & devi son heir deinz age le terre ne serra en gerd & vncore toutz lez terrez qu'il ad & teneit dauterz per service de chivalre le roy auera per son prerogatif Auxi si le tenant le roy en capite soit tenant en taill remainderainder ouster & tient terres dauter & devi son heir deinz age le roy auera le gerd de toutz auxi sil soit tenant en taill dez auterz terrez tenuz dauterz per service de chivalre le roy auera le gerd de tout & vncore il ne fuit seisi en fait in dominico suo generalment mez per form del don auxi si le tenant le roy morust deuant ascun entry son heir deinz age le roy auera le gerd dez terrez terrez [sic] tenuz de luy & auxi dez auters terrez vncore ne fuit seisi en fait mez en ley Et si le tenant le roy soit diseisi de terres tenuz de roy ou dauters terres ou danes & devi _ _ son heir serra en gerd quar il fuit tenant en droit mez auter est ou lauower le roy ou dez auterz seigniors est change come si le diseisor¹ devi _ _ son heir deinz age lez seigniors auera le gerd dez terrez tenuz deux & coment que leir recouer le terre tenuz de roy vncore il ne deuester a lez estatutes lez seigniors mesm le ley sil soit diseisi dez terrez tenuz dauters & leir le disseisor est einz per discent mesm le ley si le tenant le roy fait feooffment en fee sur condicion & devi & apris leir enter pur le condicion enfreint mesm le ley si le tenant

¹ "___ de roy" written above line.
eit remainderainder en fee de terrez tenuz de roy & devi son heir deinz age lauterz segniors
auera le gerd & si apris le tenant a term de vi devi vncore si leir enter en son remainder le roy
nauera son prerogatif dez auterz terrez pur ce quil ne fuit tenant en fait al temps de son
morant Si mon tenant devi son heir deins age iavera le gerd & si apris terrez tenuz de roy en
chief descend a luy le roy auera le gerd deux mez nemi dez terrez vestuz en mon possession
mez si mon tenant ad fill & devi son feme privement ensent oue vn fitz iauera le gerd del fill
& terre & coment que apris auterz terrez tenuz de roy descend all fill vncore il nauera son
prerogatif mez si apris le fitz soit nee il auera le corps del fitz & ascun dicunt de mon terrez
mez ceo ne ieo cree pur ceo que son auncestor ne fuit vnques mon tenant per que le roy est
entitle mez son pere fuit mon tenant mez en tiel case si de lour pere remainder del terre tenuz
de roy descend all fill en mon gerd & apris le tenant sur que estatut le remainder depend devi
& apris le fitz est nee vncore le roy nauera son prerogatif quant al terre tenuz de moy &
vncore il auera le corps en gerd & le terres tenuz de luy quar ieo ne suis vnques [f.302v] seisi
de son corps mez en cest case si le fitz soit nee deuant le tenant a term de vi la iauera le gerd
del corps & non le roy pur ceo que al temps de son nester le roy na\textsuperscript{t} c\textsubscript{-t} a luy pur ceo que le
tenant a term de vi fuit son tenant & nemi leir Item si le baron tient de roy en chief & le
feme tient de moy & ont issue le feme devi en cest case ieo nauera le gerd del corps leir ne
del terre pur ceo que le tenant per le curtise est mon tenant quant a mon avower & si apris le
baron devi leir esteant deinz age le roy nauera prerogatif del terre le meer quar el ne fuit
vnques son tenant /\_ auter si le baron devi primez le roy auera le gerd del terre le baron &
auxi del corps & si le feme devi apris ieo auera son terre en gerd al quere tamen mez en tiel
case si le feme tient del roy & le baron de moy & le baron devi primez la iauera le gerd del
corps & auxi del terre & nemi le roy per le mort le feme causa ut prius etc. De quocunque
tenuerunt per idem servicium etc. le roy nauera le gerd per son prerogatif dez terres tenuz
de luy mesm en socage ne dauter en socage mez comment que ascun terre soit tenuz de roy
en chief per service militare & ceux parolx de quocunque etc serra entend per idem service
serra en gerd al roy & socage ne peut estre dicend service & pur ceo ne serra en gerd al roy
Et vncore et vncore [sic] ceux parolx {idem servicium} ___ si le service Et si home tient de roy per grand seriantie & de moy per service de chivalre vncore le roy auera son prerogatif quar toutz sont servicez de chivalre & vncore toutz ne sont grand seriantie. mesm le ley sil tient de roy per castell gerd ou cornage & de moy per service de chivalre mez vncore si soit troue per office que le tenant le roy tient de luy en chief per service militare & dauterz en socage toutz serra seisez & donquez le gerden en socage auera le terre hors del mayn le roy. mez per Auentor si leir soit pase lage de xiiij ans al temps de mort son auncestor ou le prochein amy ne sue liverie deinz lez xiiij ans est dit que leir nauera le terre en socage deuaunt lage de xxi ans pur ceo que son liverie covient destre entier & nemi per parcell mez quere quar nest merement liverie des terres en socage mez est vn ouster le mayn pur ceo que le roy nad title daver eux per loffice per cause del gerd mez per cause del primer seisin Et pur ceo nest ___ reson que leir auera eux hors del mayn le roy & apris liverie dez auters Dum tamen ipsi tenuerunt de rege aliquod tenementum etc. si launcestor tient de roy rent charge ou office ou profet apprender en cee tient lieu quar toutz ceux purront gist en tenor de roy mez nemi dauter person. Ab antiquo de corona etc le seignor mesne & tenant le mesne tient del roy en chief le menaltie eschete le tenant tiend del roy come de son corone pur ceo que le seignorie fuit parcell del coron & ore le tenancie est venuz en lieu de ceo. mesm le ley si le menaltie soit en gerd & le tenant tient auter terre dauter home le roy auera son prerogatif ___ ___ mez si le roy ad le mesnaltie per purchasez del mesne en fee ou a term de vie ou danz auter est ou per discent quar la vient __ ___ mesm le ley si le mesne alien saunz licens & le roy seisi per reson del fyn le tenant devi le roy nauera son prerogatif pur ceo que le menaltie nest annex al coron & vncore il ceo ad come roy mez en ascun case le roy nauera son prerogatif lou son tenant tient de luy en chief & fuit seisi en fee auxi iour de son morant come si ij seisez & all heir lun & cestui que ad le fee devi seisi son heir deinz age le roy nauera le gerd del terres ne corps quar le tenant a term de vi est tenant all roy Exceptis feodis Archiepiscopi cantuarensis & Episcopi Dunelmensis inter Tyn & Tes si ___ tenant le roy tient terre del fee deuesque cantuarensis & devi le roy auera le gerd de son
terre & leuesque de son terre mez si leuesque soit seignior mesne & tenant & le tenant tient
del roy en chief auterz terrez & devi quere si le roy auera son prerogatif quar nest preijdice
all euesque mez all mesne mesm est deinz le fee leuesque & en tiel case si leuesque ad le
mesne en gerd & le tenant que tient auxi del roy devi son heir deinz age leuesque auera le
terre tenuz de luy quar pur le terre il est seignior immediate &c
[f. 303] Dominus rex etc le primisse de cest lecture est declaracion del commen ley & que ceo
fuit le commen ley imperpt per magna carta ca 16 22 & 29/ & commen reson don ceo all roy Et
prerogatif _ auter forsque pre terres don a son tenant _ Et per lexepcion {de feodis
archiepiscopi} &c tout cest branch est vn estatut fait devaunt cest treatise le roy auoit le gerd
dez terrez tenuz de tielx persons auxi bien come dauters servic deuesque de durham Et in lez
countie de chester ___ & in tielx lieux ou le brefe le roy ne charge Et pur cest exepcion fuit
cest estatut fait quar tout le residue est ensuant le commen ley Et per cest paroll {custodian}
est emplye lez profetts del terres vncoore si le roy grant le gerd de cors saunz parlez del
mariege le grante ne peut luy marie {Omnium terrarum} est entend terres tenements rents
auowsons commens corrodies & chescun profit appendent offices & toutz choses
denheritance except annuities quar etc nauera {Que de ipso tenetur in capite per
servicium militare} in capite & de corona est tout vn Donquez est auoir que tient in capite
& ore que ceux que teign dascun honor ou seigniorie que est parcell del coron come de
Wyndesore Dover &c mez ceux que tient dascun honor ou seigniorie que est exchet pur
felone ou treson ne tient in capite quere tamen mesm ley est deux que tient donor ou
segniorie que eschet all roy pur default dair come wallynford & collyngborough ou per
purchase ou discent Si le roy don terre reservant certen rent a vn estranger auxi tiendra in
capite auer est si le roy seisi terrez pur forfetur in mortmayn & don etc a tenir de luy ceo nest
in capite Et si terre soit forfet per treson & per act de parlement Et est proviso in ceo scil.
quant le roy don etc. quil etc tiendr de lez segniorz & le roy don a tenir de luy vncoore nest in
capite Et si mon tenant confese in court de record a tenir de roy in capite vncoore ceo ne lier_moy Et si mon tenant sue liuerie saunz office ieo ne serra lie per ceo /auter est si soit office
quar ieo covent ceo traverse Si le roy release all tenant paravaill le tenant tient ore in capite Sivn tient 4 acres per 4d & le roy confirm son estatut in ij acre a tenir per vii^d donques il tient lez ij acres in capite per service de chivalre Sivn que tient de roy in capite don le terre in taill &c & le tenant in taill fait lez servicez all roy il tient in capite {Per servicium militare} est per homage fealte & escuage / Ore si soit saluo forinsico servicio sil servicio dni regi per scutagium per castilgard per cornage Et si le roy don terre absque aliquo reddendo est service de chivalre mez sil don terre a tenir de luy per fealte per absque service nest my service de chivalre {De quibus ipsi tenant fuer seisiti in dominico suo ut de feod.} le letter est que coment estre seisi in fee mez ceo nest estatut pris quar si soit tenant in taill remainder in fee a auter est tout vn / Et mesm ley est si lez terrez tenuz dauter soient in use al tenant le roy mez si lez terrez tenuz dauterz soient in feoffment per collusion le roy nauera &c Auxi si terre soist tenuz del duche & auxi auter terre est tenuz del coron in socage le roy nauera &c Et si le terre tenuz del roy & auxi dauter soient in use le roy auera tout Et mesm ley est si le terre tenuz del roy soit in reuercion & lauter in possession & ___ mez si lez terrez tenuz dauterz soient in lees pur term danz le roy nauera etc. Et si lez terrez tenuz dauterz soient in use & le tenant per son volunt ceo dispose pur ceo term danz le roy nauera ceo durant lez anz mez siil dispose forsesque parcell del profett pur term danz le roy auera le resid. Et sil dispose per son volunt le professtts del terre tenuz del roy pur term danz & rienz parle dauters terres le roy auera le prerogatif Si ii^e tenant tient de roy & lun devi le terre survesquerent & le roy nauera rienz {Exceptis feodis} serra entend dez auncient segniories quar sils purchase segnioriez a cest iour le roy ceo auera mesm ley est si larcheuesque alien vn segnorie per le chapiter generall & ceo purchase ___ ___ auter est sil recover vn manor per cessavit ou per forfeture ou mortmayn ou eschet per mesne segnorie Et si villein a vn manor que est parcell del coron purchase vn manor & le roy enter in ce donques serra a luy in capite Et si le tenancie eschete al menaltie tenuz in capite le mesne tiendront come il tenoit devant mez si le mesnaltie eschet al roy le tenant tiendra come le mesne tenoit quere tamen Et si le mesne icy soit socage le tenant tiendr in capite &c
Ca. 2

[f.304] Item rex habebit maritagium .... Ascuns diont que per le commen ley devant cest estatut le roy auera le mariége del cors lou lancestor tient de luy come de son coron & issint quant all mariége ab antiquo de corona cest article nest que confirmacion del commen ley mez devant cest estatut sivn tenoit de roy come deschet que est en son mayn & nest parcell de son coron la le priorite auera lieu come enter comen persons & ce semble bien garrant per lestatut de magna carta ca° xxx° que commence Si quis tenerit de nobis de honore &c Item semble que quant all corps soit il tenuz en chief ou per eschet del roy il auera le gerd comen que mesm le tenant ad terre deinz leueche de Durham ou auter &c pur cego que le primer article la sole all terre & nemi all corps mez quere si le roy purchasez vn manor ou honor ou auter seigniorie ou ad tiel chose per discent sil auera le corps la saunz auera regard al priorite quar lestatut ne parle forcque ou il tient deschette &c ou sivn alien purchasez tiel seigniorie & le roy cego seisist quar tielx ne sont eschettes Et auxi ascun eschettes sont parcell del coron Et diuers heirs enter sur cego diuers oppions ideo quere Ascun tient si le roy seignior mesne & tenant & le mesne tient de roy en chief & le mesnaltie eschet al roy pur defaut de heir ou pur felonie ou pur cego que il est alien en mortmayn ou que le roy recover per cessavit ou lou labbe alien terrez de son fondacion le roy & le roy enter en toutz ceux cases & auterz semble lou le mesnaltie tient in loco servicii parcelle corone/ il est parcelle del coron & chescun terres tenuz de cest mesnaltie est tenuz de roy come de son coron/ Ascuns diont que per leschet del mesnaltie le tenancie paravaill ne serra tenuz del roy come de son coron Saunz que lez services del mesnaltie fuit vn foitz parcelle del coron & commense per le roy auxibien come lez servicez del seignior paramount come en case que le roy don terre parcell de son coron a tenir de luy come de son manor ore commence les services per le roy & o.nt parcell del coron & apris le roy grant mesm le manor a estre tenuz de luy ore commence cell nouell seigniorie per le roy auxi & ore est le roy seignior mesne & tenant & si le mesnaltie eschet le tenant tiendr del roy en chief pur cego quil tenoit de roy en chief all commenc mez si le tenant
le roy devant lestatut don le terre a tenir de luy ou a tenant iour en taill a tenir de luy & le mesnaltie eschete ils diont que cell segniorie que commence per auter que per le roy ne serra parcell de son coron ideo quere quar nest reson defair le tenant estre en peir condicion vers le roy quil fuit vers le mesne ou nul defaut fuit en luy Et auters diont que le tenant pluistost auera perde que le roy & il nest reson que le roy perder lavantage de son segniorie lou nul defaut est en luy & pur ceo le ley favor le roy Mez sivn seisi dun manor soit atteint de treson le roy auera leschet coment quil ne tient de roy imediate & tiel eschet ne vient en lieu dez services & pur ceo ascun diont que ceux sont eschettes dont le roy nauera son prerogatif mez come le tenant auera que forfett accord all estatut de magn carta ut supra mez pur cest estatut le roy auera le corps de tiel eschett tamen quere quar per tiel eschet il est anex all coron auxint si tenant en taill ou a term de vie soit atteint de felonie le roy auera lour terrez durant lour viez Et sivn tenant que tient deux & dauter home devi le roy auera le gerd del cors per cest estatut mez si le roy grant son segniorie a term ou en fée le grantee nauera le prerogatif quor le prerogatif ne peut estre grant Item si le roy ad le gerd del corps en tiel case per son prerogatif per cest estatut & grant le gerd a auter & sic de herede in heredem quousque &c [f.304v] vnius hered veniat ad plenam etatem le grantee nauera plusiorz del heirez mez le primer pur ceo que le roy nest entitle a eux saunz per son prerogatif quell il ne peut granter tamen quere mez sil fait tiel fait de grantee de son segniorie desmesne auter est & si le tenant le roy prist baron & ount issue fill & le feme devi le baron est tenant per curtise & pur ceo le roy nauera le gerd quor il est tenant all roy mez si le tenant per le curtise prist mon tenant a feme & ad issue auter fill & le feme devi & apris le baron devi le roy auera le gerd dun fill & ieo auera lauter quor ils sont heirez a seuerall feez mez si le tenant le roy prist baron & ount issue fill & le baron devi & el prist mon tenant a baron & ount issue auter fill si le feme devi devant le baron ou eigne vncore le roy auera le gerd dambideux de lez filles quor ambideux sont heirez a son tenant que fuit lour meer & lun est heir mon tenant que fuit son pere &c Si feme deinz age soit en gerd & grant during minore etate Si el soit mare vncore le grantee auera luy tanque a xvi anz & donque el suera liuerie Si le roy grant vn gerd
durante minore etate sue ceo est tanque al xxi anz & apris ceo le grante nauera le gerd
coment que ne sue liuerie per x ans mez auer est si soit grant diu in manibus nostris fore
contigerit mez quere si apris que soit dage de xxi anz le roy peut grant le gerd apris quam diu
in manibus nostris fore contigerit

Ca. 3

[f.306] Item rex habebit ... devant cest estatut le roy auera le primer seisin come est resite per
lestatut de marlborough ca° xvi° que commence De hereditatibus que de domino Rege tenetur
in capite sic observandum est &c mez la il ad tiel clause Et hoc intelligatur de terris &
foediis que racione servicii militare vel serantie vel jure patronatur in manu regis esse
consueuerunt Et issint come appert per cest estatut le roy nauera primer seisin coment que
son tenant tient de luy en chief per socage Et auxi per cest estatut il nauera primer seisin de
nul terreuz mez deux que sont tenuz de luy mesm mez cest article enlarge le prerogatif le roy
en ceux ij points ouster lestatut de marlborough scil vn est que le roy auera le primer seisin si
le tenant tient de luy en chief per socage auxibien come per service de chivalre quar lestatut
est generall que de eo tenet in capite & ne dit per service militare lauter est enlarge scil que le
roy auera le primer seisin de tout le terre le tenant que tient de luy ou dauterz per socage ou
per service de chivalre sic tient ascun parcell en capite del roy quar lestatut est generall de
omnibus terres & tenementis de quibus ut supra Issint ore il auera le primer seisin de toutz
lez terreuz tenuz de luy mesm per service de chivalre ou en socage & dez terreuz tenuz dauterz
per ascun maner de service sil tient ascun parcell de roy in capite &c de quibus seisiti fuèrent
in feodo &c vncore en case il nauera le primer seisin ou son tenant fuit seisi en fee si son
tenant fait feoffment en fee dez terreuz tenuz de roy en chief per licens ou saunz licens le roy
nauera le primer seisin de nul de lez terreuz quar il ne fuit son tenant en droit mez sil fuit
disseisi dez terreuz tenuz de roy en chief le roy auera le primer seisin de tout pur ceo quil fuit
son tenant en droit mez per an etf sil fuit disseisi de terreuz tenuz dauter le roy nauera le primer
seisin deux mez solement dez terrez tenuz de luy mesm quere toutz lez casez de diseisin &c lestatut est seisiti fuurent come feodo que serra entend sil fuit seisi iour de son morant ou fuit tenant en droit iour de son morant Auxi le roy auera le primer seisin en cases lou il ne fuit seisi en fee iour de son morant si come le tenant le roy face leez danz ou de vi &c & devi seisi de reuercion & de terrez tenuz de auters le roy auera le primer seisin de reuerc & auxi de toutz auterz terrez & ou cest leir suer liuerie vivant le tenant a term de vi si luy pleist Et auxint est dit que si le tenant le roy en chief fait leez a term de vie a mon tenant le reuercion ouster en fee en ceo case si mon tenant devi le roy auera le primer seisin del terre dont il fuit tenant a term de vi pur ceo quil fuit son tenant deux Et auxi il auera lez terrez tenuz de moy pur ceo tamen quere quar semble dur & pur ceo que cestui en le remainder auera liuerie de ceo & mon tenant liuerie del terre tenuz de moy & pur ceo que le tenant le roy nauera liuerie de tout a vn temps coment quil nauera le primer seisin mez de ceo dont son tenant desmesne peut suer liuerie Si le tenant le roy soit seisi dvn manor tenuz de roy en chief & dauter maner en burgh ynglist & ad issue ij fitz & devi semble que le roy nauera primer seisin de tout mez de ceo dont son tenant est heir & nemi de ceo dont le puisne fitz est heir sinon que le puisne fitz soit heir all manor que est tenuz de roy auxibien come leign mesm le ley si terrez discend Et mon nevieve de part son pere tenuz de roy in capite & terrez tenuz dauterz discend a luy de partie son meer & il devi saunz issue le roy auera le primer seisin solement dez terrez tenuz de luy en chief & lauterz terrez que discend all heir de partie le meer ne serra en gerd pur ceo quil nest tenant al roy mesm le ley si le nevieve fait heir de lun partie ceo partie eschet & le roy nauera primer seisin pur ceo quil nest son tenant mez en ceo case sil devi saunz heir de lun partie & de lauter le roy nauera primer seisin de null _ _ il auera le terre tenuz de luy en eschet & lauterz eschettes a lour seignior Item fuit ² ... [f.306v] ou(?) p\textsuperscript{1} ou per don fait infra etatem ou non compos mentis ou en tiel accion lou per le launcestor de que seisin launcestor est p\textsuperscript{1} lauwer le roy est change la le roy nauera primer seisin quar il ne peut ceo auer all temps de morant dauncestor mez sil recouer per accion lou

² Bottom line obscured.
per le mort dauncestor le roy auera primer seisin il auera apris quar nullum tempus &c come en mort daiell & cosinage & ceo _t heir est sil recover terrez tenuz de roy mez sil rec terrez tenuz dauterz quere Et vncore sil que recouer soit deinz age il serra en gerd & auxi sil soit de plein age il paiera releif & auxi homage3 mez quere coment quar il nauera le primer seisin &c leir covient suer bref & auer office en chescun countie ou [il] ad terrez ou auer tout serra reseisi mesm le ley dun _ de son liuerie ne fuit sue 44f i7 & fa _ _ _ Si home ad feoffes a son use & devi son heir deinz age & in gerd le roy per reson del use est use que le feoffez auera especial liuerie mez le ley est que auera oustic le mayn Et si home que ad feoffez a son use devi son heir deinz age que prist le profettes durant son inage & quant il vient a plein age est troue per vn office coment il fuit deinz age all temps de mort son pere & que ore est de plein age quere si ore il suer liuerie ou nemi quar {_reb record semble que _ si lez feoffez pur ceo que a _ il fuit deinz age vncore il a1 perd de toutz intrusions &c Et si feme que est tenant in dower de terrez tenuz de roy devi & leir enter devant liuerie deux ils serront reisese &c {___ que il soient per _pe ___ gerd per cause de gerd suer liuerie de toutz lez terrez queux il tient del gerd que est in gerd t___ reson q___ quere si socage in capite ne suer liuerie & auxi si chescun service de chivalre tenuz de roy per reson de eschet ou in auter maner &c quere semble que est dter si gerd per cause de gerd vient a cez terrez scil al age de xxi & _ nemi quere si le roy auera prerogatif deuez scil. son gerd.

3 Something in margin.
Appendix 4: Yorke’s Reading, Lent 1531

le tenant le roy que tyent per service de chivaler fayt don en tayle a tenir de luy ___ il tyent ___ le ___ ter est ou il gist en le election le Roy de prender le done ou le donor pur son tenant ou nemi Semble ___ per Justice fytzherbert que il peut prender queux de eux il vuet arbitre a son plesure quere ouster

Staunford dit pur bon ley que si home suyt relyf en vn estatute merchant & puis est vtlage en vn accion personall que le roy prender toutz lez proffyttes veyaultz & surdamentz sur le terre durant le vtlahery/ come fayne & grayne & sauch boyes mez duilit de le sauch boyes/ mez il dysuyt si cestui que est vtlage fayt feoffment de cez terres cest feoffment clerement dishatcher le Roy & apres cest temps le Roy nentrmyther vt_sque le terre p__
Appendix 5: Willoughby’s Reading, Lent 1549

[f.197] Lectura prima Georgii Willowby Interioris Templis a\textsuperscript{4} in tempore quadragisima A\textsuperscript{o} Regis Edwardi vi Tertio super statutum de prerogativa Regis

Dominius Rex habebit custodia &c diuerz questions et oppinions ont estre deuant ceux heures, scil. cee seroit estatute ou declaration dez prerogatiues le Roy all Commen ley, Et nient obstant loppinion del liuer de 43 E3 en le cas del prior de lanton, ou il fuit sembl destre estatute moye semble que cee nest que vn treatise & declaration dell prerogatiue le Roy al Commen ley & nemi estatute Come il appert en 15 E4 4 que si cee serra estatute cee serra observe en chescun poyn’t, Et plusors articles des cell ne sount tenus pur ley et auxi en chescun estatute est limit en temps de quel Roy ce fuit fait et en quel liew, Et pur cee il est semble al treatice de Magna Carta davaunt le fesauns de lestatute de marlibryg ca. 6 lequel voet que\textsuperscript{1} magna carta soit observe in chescun article, ou auaunt il nest que treatice del Commen ley & molt destre resemble al treatice de dies communes in banco dies communes in dote & expositionis vocabulorum lez queux sont escript en nostre liuerz & ne sont estatutes, ny fuere faites a mitter tielx choses en certen que fuere dowtz al commen ley/

Et pur cee que lez parolx de prerogatiua regis sout Rex habebit custodya omnium terrarum eorum que de ipso tenent in Capite per servitium militare, Est primerment avoyer que est ou fait service de chiualer que solement de tiel tenure auera le Roy cee prerogatiue, Et donques queux terres sont ditz tenus de roy en Chiff & quex nemi.

Escuage est service de Chiueler tient aluy homage que est defaire corporall service en son proper person ou per son depute ou depaier pur cell & pur cee est service de chiualer/

\textsuperscript{1} “auxi ___ “ crossed out

308
Mez a payer pur escuage x° certeyng ceo nest que socage que il nest que come vn fyne pur escuage/

Graundeseriauntie nest service de chiualer que il ne paiera ayde pur file marier ne tiel Reliff
Come tenant per service de chiualer paiera que pur graundeserieauntye le tenant paiera le valew de son terre per vn an, et vncore graundesereauntye donat al Roy le gard del tenant que issint tient, Auterment est pur petit serientye que il nest que tenure en Socage/

Si vn tient de roy per Castelgarde ou a paies pur [ceo] chescun an moy ou chescun auter moyen quaunt enimes veigne xii° cest service de chiualer pur [ceo] qui le service est en certeng et est pur le guere. quer/

Et issint est si vn tient de Roy per Cornnage 's a Corn quant enimes veigne come ilz fount en Northethumberland cest service de chiueler/

[f.197v] Mes auterment est si vn tient de Roy a Corner a certen iour en lane pur pleasewre le Roy ou quant le Roy voit hunter ou destre panteler butler ou Coppe berer al Roy ceux sont tenures per graundserieantye & nemi tenurez per service de chiualer/

Home tient de roy pur traner vn home en sa gure per xl iourz a son cosates de mesme cest tenure per graundseriantie que nest destre fait per corps dun home et de necessite per son corps desesne sil ne poit troue auter

Home tient certen terre de Roy de render anuallment certen rent al gard & defence del Castell de Dover cest tenure en chiffe & per service de chiualer quere/

Home tient de Roy per service de chiualer quel tenure avoit estre continue de temps &c cest exspres tenure en chiff per lez parolx de ____ 's ab antiquo de corona

Le Roy purchace terrez & ceo dona a tenir de luy le tenant tiendra en Chiffe et vncore ceo nest ab antiquo de Corona/ quere/

Auterment est si le prince purchace terrez et eux dona a tenire de luy & puis est Roy le tenant vncore ne tiendra en chiff

Mez si le prince purchace terrez et eux done entaile ou pur vie & puis quaunt il est Roy il Relees tout son droit al tenant en fee donques le tenant tiendra en chiff
Segniorye discend al Roy per ascun collaterall Auncestre le tenant ne tiend en chif

Le Roy purchace segniory et puis il relez al tenaunt il tendra en chif

Mesme le ley est si sount plusieurs segnioryes perenter le roy & le tenant paravaile & le Roy relees al tenant tout son droit lez segnioryes sount la extinct & le tenant tiendra en Chiff

Le villen le Roy purchase segniory & ceo est troue per office le tenant ne tiend en chiff quere/ & issint serra si vn alien enmyy purchace segniory et ceo est troue per office les tenauntz ne tiend de Roy en chiff/ quere/

Vn home conust en Court de record a tenir de Roy en chiff le segnior en fait ne serra lies per cest connisance

Mesme le ley est si vn luy estopp per suer delyuery ou licence pur alienation vncore le segnior en fait ne serra lies per ceo/ Et vncore siun [sic] tient en socage dun estanger et conust en Court de record a tenir de Roy en chif il tend de Roy en chif/

[f.198] Le Roy done terrez a tenir de A.b. per service de chiualer le done tiend de A.b. per service de chiualer & auxi de Roy en chif quere/

Home seisi de certen terre est atteynte de treason per aucthorite de parliamant ouesque vn proviso en le dit Acte qui chescun segnior auera ces services Come devaunt letteynder & puis le roy graunt mesme le terre a vn auter le tenant tiend del Roy en chif & auxi dez auterz segniors per lour auncient servicez quere/

Mez Vnquore si le Roy ad terrez per forfaiture pur alienation fait enconter le forme destatute de religiosis il ne poit eux done a tenir de auterz que del chif segnior

Le Roy graunta certen terrez a vn home & ne exspres ascun service le graunte vncore tiend per service de chiualer en chif

Le Roy graunte a vn home certenge terrez a tenir de luy per fealte & xii2d per an si le roy ne exspres en son graunt per onmibus serviciis &c il tiendra per service de chiualer en chif.

Vn barony eschete al roy parsell chescun tenant que tient del dit barrony tiendra del roy per autiell services sicome il tiend del barronye deuant
Auterment est siun menaltye qui est tenus de Roy en chif eschete al roy pur felony le tenant tiend del roy en chif quere/ Et vncore si vn menaltye eschete al roy pur treson le tenant ne tiend del roy en chif et issint diuersici perenter atteynder de felony & atteynder de treason . quere/

Vn home que tient de roy en chif est atteynt aprez que il est mort la riens serra forfett saio[?] que latteynder soit per parliament & le forfeiture excspe en lacte/

Home tient vn honor ou manor de Roy en socage & ceo eschett al Roy pur default de heires, felony ou treason, le roy vncore nauera auterz services de ascun dez tenants del dit manor ou honor que ilz solement paiera avaunt leshete/

Le roy done terrez a vn home en le taile a tenir de luy per fealtye [&I tant pur toutz auterz servicez il ceo tient de roy en chif`s` per Socage en chif & nemi per service de chiualer & le roy nauera le garde de son heire pur tiel tenure mez leire suer luyery/

[f.198v] Le Roy done terrez a tenir de luy a trouver areparer ciez measnes ou a carier ou resparer lez gaurbage le Roy per vne ou plusours mez en lan ceo nest service de chiualer ne graundeseriaunte mez petit seriaunte/

Le Roy done terrez parcell del duchie desouth le seale le duchie a tenir de luy le tenant ne tient vncore en chif

Mes si tiel done est fait de sough le graunde seale le tenant tiendra en chif.

Finis per Wyllowby Lectore

Lectura Secunda

Ieo aye monstre a vous lauter iour qu'il chos est a faire service de chiualer &c & quex terres serrount ditz tenus de roy en chif & quex nemi. Ieo a ore monstre a vous quex choces poyent estre tenus de roy & queux nemi Et ou le prerogatiue en certen cases tiend lieu & ou nemi & donques les exceptions comprisez deins cest chapter
Lez parolx dell prerogatiue ne sont qui ou terrarum vncore le roy auera villeinz Commens
Engros Rentes avowsons engros profitz a prends dez queux ass gist & vncore ilz ne poient
estre tenus dauterz qui de roy & lez parolx de diem clausit extremum sont tam in dominico
quam in servicio qui proue qui le Roy auera plus que terres/
Le Roy done a vn J.S. & a ses heires loffice de vic. del Count de Wig. a tenir de luy per xii\textsuperscript{d}
per an, il ceo tiendra de roy per xii\textsuperscript{d} & service de chiualer en chif.
Home qui tient vn acre de terre de roy en Chif est auxi seisi en fee dun Anuitie il morust son
heire deins age le Roy nauera lanuitie come il auera toutz auterz terrez leire tanque a son
pleane age. quere/
Home qui tient de roy vn acre de terre en chif est auxi seisi dun wrek de mere a luy & a sez
heires & morust son heire deinz age le roy auera lez profetts del wreke come il auera lez
auters terres leire tanque a all pleine age leire quere/
Le Roy graunt a vn J.S. & a sez heires le fee ferme dun vill a tenir de luy si ceo J.S. est seisi
en fee dez auterz terrez tenus dascun auters segniers per service de Chiualer & morust son
heire deins age le Roy auera son prerogatiue del terre issint tenus de lauter segniers & auxi
del dit fee ferme tanque a all plene age leire, quere/
[f.199] Vn qui tient de roy en chif tient auxi certeyn terres dun auter en socage & morust son
heire deins age le Roy auera son prerogatiue dez terres tenus\textsuperscript{2} en Socage tanque al plene age
leire & vncore lez parolx del prerogatiue ne sont mesque de quocunque teneriit per
servicium quere
Terre tenus de Roy en chif discend a vn gard esteaunt en le custody dun estrange segnier le
Roy auera solement le gard dez terrez tenus de luy meme & nemi le prerogatiue dez terres
tenus de lauter segnier

\textbf{Larticle est auxi in dominico suo vt de feodo} & tunc si le tenaunt le roy morust seisi dez
terres en le taile le roy auera son prerogatiue

\textsuperscript{2} "de luy" crossed out.
Home qui tient del Roy en Chif done le terre en taile le reuertion en fée a vn auter & le
reuertion eschete all roy le tenant en taile tient de roy en chif & sil morust son heire deins age
le roy auera son prerogatiue de sez terres tenuz dez auterz segniors quere/
Le tenant le Roy ad vn Remainder en fée dun tenant pur terme de vi dez terrez tenus de vne
auter segnior per service de chiualer & morust son heire deins age & puis le tenant pur vi
devi le roy auera son prerogatiue de cell remainder quere/
Le tenant le roy est disseisi dez terres tenus dun auter segnior & devi son heir deins age qui
enter sur le disseisor, le roy auera lun terres & lauter durant le minorite quere
Terre tenus dun auter segnior discend all garde le Roy de vn Collaterall ancester le dit garde
le Roy nauera son prerogatiue de cell terre quere
Le tenant le roy face lease pur terme de vi le remainder en fée cestui en le remainder morust
seisi de auters terres tenus dez auterz segniorz son heire deins age lez segniorz averount lez
terres tenus de eux, Et si le tenaunt pur terme de vi morust apres le Roy nauera son
prerogatiue de eux quere/
Et vncore si le tenant le roy lessa pur terme de vi certeyne terre tenus des auters reseruant
rent & morust son heire deins age le roy auera le reverytion & le rent quere
Troue fuit per vn office en le Com de Wig en le xxvi an Iadez le roy henry le viij qui vn J.S.
fuit seisi de wayff & straye en fée deins certen precinct en meme le dit Com de Wig et ceo
tient de Roy en chif & morust son heire deins age `s` dun an & troue fuit ouster per meme le
office qui vn estranger fuit seisi en fée dun3 acre de terre en meme le Com tenus de A.b. per
service de chiualer qui avoit enfeoffe del dit acre de terre certeyn personz en fée al vse le
[f.199v] dit J.S. & ses heires
le dit Iadez Roy averoit son prerogatiue
dell dit vse en le dit acre de terre & vncore cest treatice ne parla qui de terre quere/
Le tenant le roy est auxi tenant en taile de terre tenus dun auter segnior per service de
chiualer & disconter lez terres tailes & morust son heire deins age & leire eteant [sic] en gard

3 "auter" crossed out.
le roy recouer lez terres issint disconter en vn formedon le roy nauera le prerogatiue de ceuxquerel.

Mes auter est ou leire recouer per Assise de mort dancester del son launcestor per qui mort il est en gard qui le roy auer son prerogatiue dell terre issint recouer quere

Le tenant le roy est disseisi de terres tenus de vn auter segnior & leire le disseisor enz per discent & puis le tenant le roy morust son heire deins age qui esteant en garde le roy recouer vers leire le disseisor le roy auera le prerogatiue del terres issint recouerz. quere

Et vnquore si [le tenant?] le roy face feoffment sur condition de certen terres tenus dun auter & morust son heire deinz age le quil esteant en garde le roy enter pur le condition enfrent le roy auer son prerogatiue de lez ditz terres. quere

Tenant le Roy seisi dun menaltie en le generall taile & purchace tenancy aluy & a sez heires females ad issue fitz & file per vn venter & fitz per auter venter & morust leigne fitz eteaunt deins age qui morust en garde le Roy sanz issuew le roy auera le prerogatiue del menaltye qui discend al fitz puisne & nauera le tenancie qui discend all file. quere.

Le tenant le roy alien per collusion lez terres tenus dauterz segniorz & morust son heire deinz age le roy auera le Covyn per lestatut de marlebrige. ca.7. & auera son prerogatiue dez terres issint alienes quere:

Et meme le ley est si le tenant le roy alien per collusion le tenancie tenus de Roy en chif & morust seisi de terre tenus des auters segniors le roy auera le prerogatiue si bien del terre tenus de luy meme come dez auterz. quere

Tenant le Roy ad terres en borogh englishe & ad issue deux fitz & devi leigne fitz eteaunt deins age le Roy nauera son prerogatiue del terres en borowghenglishe Et coment qui leigne fitz aprés morust saunz issew le puisne fitz eteant deins age le roy vncore nauera le prerogatiue dez terres en borrowghenglishe quere

Tenant le roy qui ad terres en gavelkynd ad issue ij fitz & morust leigne fitz eteant deins age le Roy auera son prerogatiue del lauter lez terres en gavell kynd. quere/.

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4 Two words appear to have been added above the line, but they are too small to make out.
Home tient terres tailes de roy en chif & ad auter terres en fee tenus dez auterz segniorz & ad issue fitz & file per vn venter & fitz per auter venter & devi son eigne fitz deins age qui apres eteant en garde le roy morust saunce issue le roy nauera prerogatiue dez terres en fee, quere Le tenant le roy disseisit son fitz & devi son fitz deinz age le Roy nauera le prerogatiue dez terres dont le disseisin fuet

[f.200] Le treatice est exceptis feodis archiepiscopis Cantuarensis & episcopis dunolmensis inter tren & tese, Ceo est detre entende ou le tenant le roy est seisi ou purchase terres de lour auncyent fees le roy nauera prerogatiue de eux Mesme le ley est de certen terres tenus del prince deinz le Com de chester le roy nauera prerogatiue de eux quar le prince ad prerogatiue la come le roy ad alo[ur?]z Et leuesque de durrham countepalentine deins quil si le tenant le roy ad ascun terres le Roy nauera son prerogatiue de eux. Mes si leuesque de durrham6 purchace cest iour segniorye inter7 tyen & tese & le tenant le roy qui tient de luy en chif ad ascun terre tenus del dit segniory & morust son heire deins age le Roy la auera son prerogatiue Et vncore si vn qui tient de roy en chif per service de chiualer tient auxi terre inter tyen & tese del archeeuesque del caunterbury per service de chiualer del auncyentle & morust son heire deinz age larche euesque auera lez terres tenus de luy en garde & le Roy nauera son prerogatiue de eux/

Lectura Tertia

Rex habebit maritagium hered &c avaunt le fesaunz de ceo treacye del prerogatiue il appert per lestatute de magn carta Ca.28. qui le roy nauera le custodye del heire en le terre tenus dascun auter segnier ratione alicuius feod firmie, socagii, vel burgagii ne auxi le custodie de ascun fee ferme sil nest tenus de Roy per service de chiualer ne le custody de ascun terre tenus de auters segnirs per service de chiualer per le reacon qui le tenant tient auxi de roy en

5 "tenant" crossed out.
6 "Canterbury" crossed out and "durrh." added in a later hand.
7 "tren" crossed out.
socage ou per petit seriantie &c Et il appert per ouster per magnam Cartam. Ca. 31. qui si vn tient del roy come de ascun barronye ou eschete le roy nauera auter Relif ou service qui serroit fait al baron si le tenant ne tient auter terre del roy en chif.
Et per lestatute de W.2. ca. 16. il appert qui si vn qui tient de ijè segniorz de lun per\textsuperscript{8} priorite & de lauter per posteriorite morust son heire deins age, le segnior de qui il tenoit per priorite serra prefaire dauer le garde del corps eyaunt nul respect al quantite del terre ou del service.
[f.200v] Et ore per cest article del prerogatiue est declare qui le Roy auera le mariage del heire eteant deins age qui tient de luy en chif, ou per ascun eschete ou per Reason qui le seisor de tiell heire est en grarde [sic] le Roy ayant nul respect all priorite de Feoffment del terre tenus dez auters segniorz
Et pur cee qui larticle est nullo habitu respectu ad prioritate feoffament leo monstra a vous qui serra dit priorite & qui posteriorite Et coment priorite poit etre change et coment nemi Et quex prerogatiues le [Roy] avera per ceux parolx dacu Escaets
Si vn home tient ijè acres de terre seuerallment de ijè heres Et ad tenue lun acre per plus eigne feoffement de lun qui il ad tenue lauter acre de lauter segnior cestui de qui le tenant ad tenue per plus eigne feoffement est segnior per priorite/
Home tient de vn segnior per priorite & dun auter segnior per posteriorite le segnior per priorite graunta son segniore a vn auter en fee & le tenant attorna le graunte auera le avauntage del priorite quere
Si Ieo tienge vne acre de terre dun home per priorite & il cee tient ouster dauter segnior Et ieo teigne auter terre dun auter home per posteriorite & puis ieo foringe le meme ore si ieo devi mon heire eteant deins age cestui de qui ieo teigne adeuant per posteriorite auera le garde & mariage de mon heire. quere
Si Ieo teigne le moite dun maner dun A. per priorite & lauter moite del dit maner de b. per posteriorite & puis ieo alien lentier maner a vn d & a sez heires .d. tiend de nul de eux per priorite. quere.

\textsuperscript{8} "service" crossed out.
Home tient de Roy per service de chiualer per priorite Et dun auter segnior per autiell service per priorite & morust son heire deins age le Roy auera le prerogatiue
Auterment serra si le Roy graunta tiel segniory per posteriorite a vn auter en Fee & le tenant qui tient auters terres dun auter segnior per priorite morust son heire deins age le segnior de qui le tenant tient per priorite serra preferre & nemi le graunte le Roy quar le graunte nauera le prerogatiue quere
[f.201] Et vncore si vn tient vn acre de terre de moy per posteriorite & auterz dun estrange per priorite, & ieo per fat en Roll dona mon segniorye all Roy & ces heires & le tenant attorne & puis devi son heire deins age le Roy auera le prerogatiue quere
Et Issint serra si le Roy dona arrere mon segniorye a moy a terme de ma vie & le tenant attorne Et puis le tenant devi son heire deins age auera le prerogatiue dauer le mariage de son heire & nemi le segnior de qui le tenant tenoit per priorite quere
Le Roy graunta son garde a vn auter per sez letterz patentes Et vn home qui tient certen terres de cell heire per posteriorite & auterz terres de auterz segniorz per priorite devi son heire eteant deinz age le graunte auera le prerogatiue del toutz les ditz terres de lun segnior & del auter per reason de cell garde. quere.
Home qui tient ij° acres de terre lun per priorite & lauter per posteriorite morust son heire deins age & le segnior per priorite seisist le garde & puis auterz terrez tenus de Roy en chif discend a mesme le garde Et puis le terre qui le segnior ad per priorite est Avith per Recouer le Roy ore auera le gard del corps, Et vncore le title lauter segnior fuit deuant le title le Roy quere
Et en cest cas si lenfaunt port bref derrour & Recouer le _a g° eue enuers luy le segnior per priorite serra restore al gard hors del possession le Roy quere
Home tient ij° acres de terre lun per priorite & lauter per posteriorite & le segnior per priorite est vlage en accion personall, Et puis le tenant morust son heire deins age le Roy nauera le prerogatiue dauer le gard del corps quere
Segnier per priorite & segnier per posteriorite le segnier per posteriorite est atteint de treason & deuant office troue le tenant morust son heire deins age le segnier per priorite auera le gard & le Roy nauera le prerogatiue. quere.
Glossary of Terms

advowson: The right to present to the living of a church.

borough english: (postremo geniture) A custom under which the youngest son inherited land to the exclusion of his elder brothers and all other children.

burgage: A form of free tenure peculiar to boroughs. Such tenements could be alienated freely, except for any borough restrictions, were free of feudal incidents and divisible at pleasure.

distrain: To take, without legal process, a personal chattel from a wrongdoer into the hands of the grieved party as a pledge for redressing the injury.

enfeoffment to use: Land conveyed into the hands of another (the feoffee) in whom the legal seisin of the land was vested, while the beneficial ownership or use was in the cestui que use (who could be the original holder or a third person).

escheator: An officer appointed to look after escheats, wardships and other casualties belonging to the Crown. Each county had an escheator, who would establish and then guard the king's rights.

estate probanda: A writ directed to the escheator of a county under which inquiry was made as to whether a tenant in chief, holding of the king by knight service, was of full age to recover his lands into his own hands.

fee simple: A freehold estate of inheritance, absolute and unqualified.

fee tail: An estate where the inheritance of the land is limited to a person and the heirs of his body.

franktenement: Freehold land (as opposed to copyhold) or life estate (as opposed to reversion).

gavelkind: A customary tenure under which land descends in the right line to all sons equally. The land must originally have been held by a higher tenure than socage.

hereditament: Every kind of property which can be inherited, whether acquired by purchase or descent. The term refers to both corporeal and incorporeal assets, i.e. land and rights attached to land, such as reversions, remainders, advowsons or rents. It is the widest expression covering real property of all kinds.
inquisition: An inquiry by jury before a sheriff, coroner, escheator or other officer of the
Crown or by commission specially appointed concerning any matter that entitled the
Crown to the possession of lands or tenements, goods or chattels e.g. by reason of
escheat, forfeit, idiocy or death.

interplead: The process by which it is determined which of two rival claimants has title to
lands or goods when they are in the hands of a third person.

livery: In general, the act of giving seisin. In terms of the prerogative it is the release from
wardship and the writ by which possession was obtained. The heir had to sue livery
and pay a portion of his year’s income. Livery could be either general or special (see
chapter three, p.150)

mesne: A lord who holds of a superior lord and of whom an inferior (tenant paravail) holds.

posteriority, lord by: See priority.

primer seisin: The king’s right to seize and retain lands held of him when his tenant died
leaving an heir of full age. The heir had to perform homage and sue livery in order to
take the land back. The payment was of one year’s rent if the inheritance was in
possession and half a year’s rent if in reversion.

priority, lord by: The lord of whom a tenant holds his most ancient feoffment. All other
lords are lords by posteriority.

seisin: Feudal possession: it is opposed to a) possession, which only applies to leaseholds
and other personal property and b) occupation, which signifies actual possession.

serjeant-at-law: The highest degree at common law. The serjeants had exclusive right to
audience in the court of Common Pleas.

serjeanty: A service due to the Crown for land held of it. It could be fixed or uncertain, but
could only be paid to the Crown.

socage: A form of tenure where the service were certain, temporal (as opposed to spiritual)
and originally agricultural.

virtute brevis: An inquisition held by virtue of a writ sent from the chancery.

virtute officii: An inquisition held by virtue of the escheator’s own authority.
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