Legal Aspects of Seignorial Control of Land
in the Century after the Norman Conquest.

J.G.H. Hudson, Worcester College.

Thesis submitted for degree of Doctor of Philosophy, Trinity Term, 1988.

ABSTRACT.

In order to reveal the functioning and development of lordship and law within society, this thesis examines the control of land and other immoveable possessions during the century after 1066. This involves subjects central to the emergence of the Common Law: how notions of property developed, how succession and inheritance evolved, how disposal of land was controlled by various interests, and how lords enforced the services owed to them.

I argue that a view too narrowly restricted by modern legal definitions can miss important developments, and seek to place the various developments in their social and political context. By examining cases, I introduce the element of power as a determinant of the operation and development of law, a feature some recent writings lack. The answers to the questions posed above are thus of interest to all historians of this period, since they illuminate the distribution and functioning of power within Anglo-Norman society. I also align the changes with other developments in thought. In particular, I suggest links between the church reform movement and developing notions of land tenure.

I take issue with some legal historians who argue that property, strictly defined, only emerged from the third quarter of the twelfth century. They define property as involving the tenant's secure possession of land for life; his freedom to dispose of that land; and the automatic inheritance of the land by his heir. All these required regular enforcement by the external authority of law administered by royal power. In the century after 1066, they argue, land-holding was controlled by the personal relationship of lord and man, within

sovereign lordships. Royal involvement was exceptional. In the later twelfth century, property emerged with a shift of control to royal jurisdiction. I argue that a similar, if limited, shift of control occurred under Henry I, particularly in relation to ecclesiastical lordships.

Abstract.

Historians of England in the century after 1066 have generally agreed that lordship was a crucial bond of society, and most hold that the honour was a key unit. Yet the functioning and development of this 'crucial bond' and 'key unit' have been surprisingly little studied. A few historians have analysed individual honours; I adopt a different method, examining not one honour, but one aspect of lordship, the control of land.

The thesis, therefore, also concerns another historiographical tradition, that of legal history. In such terms, it can be seen as an examination of the origins of Common-Law ownership. However, I stress that legal aspects of seignorial control of land must be studied in their own context, not simply as precursors of Common Law. I have sought to overcome the division which has unfortunately existed between studies of power within the honour and of land law. Differing approaches and vocabulary have rendered dialogue difficult. Mutual recrimination occurs, historians of lordship being accused of careless terminology, legal historians of anachronism or model-making. I attempt to examine simultaneously the power of lordship through certain aspects of land-holding, and the functioning and development of law within society through seignorial control of land.

I have concentrated on land law, partly because of the importance of land in medieval society, partly because of the available sources, and partly because of historiographical tradition. I recognise the limits of this approach, and touch very briefly on other rights, such as tolls, and other themes, such as the relevance of possession of chattels to notions of orwnership. Within land law, I concentrate on three areas again central to previous writings, a position they owe partly to modern definitions of ownership, partly to their historical

importance: heritability; alienability, that is, the freedom to grant lands and other possessions; and the exaction of services. My intention, therefore has been to bring different evidence and new interpretations to an area of established importance.

Stenton's First Century of English Feudalism remains, after almost sixty years, the principal work on lordship in England in this period. He wrote of the honour as a 'feudal state in miniature', 'independent of the king's direction or control.' Yet he was also aware of royal influence on the honour. This contradiction can be explained by Stenton's desire to restore a balance to historical writing, 'to leave the stand-point of the king and his court, and to consider, from within, the community of knights and barons over which they presided.'

Stenton's picture has gradually been modified. Recent studies of individual honours, such as those by Mortimer and Crouch, emphasize the multiplicity of the bonds of society, notably those of kinship and locality. In addition, they consider royal power as an element in the working of the honour. This thesis contributes to such reinterpretations of the role of lordship.

Amongst historians of land law, the century after the Conquest has been somewhat neglected. Maitland was primarily interested in 'the law of the age that lies between 1154 and 1272', and Milsom seeks 'to reconstruct what may be called the feudal component in the framework of English society in the years around 1200.' Still, Maitland took the system in the century after 1066 as fundamentally similar to that of the Common Law, with certain differences: thus a tenant enjoyed a kind of proprietal right over his lands, but a one constrained by the rights of his lord and kin. Some historians have continued to use Maitland's framework; for example, Holt has made notable advances in

dealing with practices and perception of succession.

However, the framework itself has been contested by the works of Thorne and Milsom. In particular, Milsom rejects the notion of ownership as inappropriate for the analysis of pre-Common-Law land-holding: the essential relationships were personal - between man and lord - , not proprietal - between man and land.

I have sought to draw on the analytical tools offered by Thorne and Milsom, whilst arguing that their emphasis on strict Common-Law definitions can limit our view of how contemporaries perceived land-holding and the functioniong of law. I see such an explicit mixture of analysis in both the terms of the past and of the present as essential for understanding and explanation.

My emphasis on contemporary perceptions of land-holding is connected with a third strand of argument, in addition to those traditional to honorial and legal history. I see the study of the history of law as particularly revealing of the effect of intellectual changes upon practical thought. I suggest connections between the Church Reform movement and developing abstract notions of land-tenure, and in turn the effect of these upon seignorial control of land.

The ideal history of land law and seignorial control of land might be written from official normative texts and from a variety of official and unofficial records of conveyances and disputes. Yet we have no such normative texts from before 1166, few dispute narratives, and scarcely any information on the negotiations which surely occurred before land transactions. Although use of Glanvill remains necessary, I have avoided as far as possible working back from the offical records which begin in the 1190s or from later legal texts.

Instead, charters have been central to my work, as they have been to

historians of the honour but not to legal historians. They provide a sufficiently large body to allow methodical study, although the lack of documents from before 1100 and the preponderance of ecclesiastical documents are major problems. I have worked on groups selected on various bases, for example by honour or by ecclesiastical beneficiary. Unfortunately Barraclough's Charters of the Earldom of Chester appeared too late to be incorporated, but I have now started to work on a separate article concerning these.

Charters provide few dispute-narratives, for which one must turn to chronicles. Occasionally comparisons of these narratives with charters referring to the same disputes allow a crucial glimpse into what lies behind other charters. Limitations of space led to the exclusion of a chapter devoted to the most useful of the monastic chronicles, that of Abingdon, but many examples from it are dispersed throughout the thesis. A long-term project remains a new edition of the Chronicon Monasterii de Abingdon.

I have not undertaken a complete new study of the twelfth-century Leges. Their treatment of land law is often distant from that of other sources, both in vocabulary and substance. My examinition of Glanvill suggests that it should be seen not as a prescriptive rule book but as a manual, similar to the Dialogue of the Exchequer - a view compatible with Hyams' description of it as a 'coutumier'. I have been careful neither to limit myself to subjects discussed by Glanvill, nor to assume that there is one reason for all his silences.

Although no official royal legal records survive from this period, other royal records do. As other historians have noted, the Pipe Rolls give some important information on land-holding and royal administration of justice. Rather newer is my emphasis on the Cartae Baronum of 1166 as a source revealing the balance of power within the honour.

I have employed two main methods to uncover the perceptions and practices of land-holding. One has been to examine disputes, genealogy, and the descent of lands, the other to analyse charter language. The former is in many ways preferable. It can reveal the arguments employed by parties in disputes, and other tactics they used to obtain their ends. It can also show what outside authorities became involved in disputes, obviously a crucial question when considering the extent of royal control of land-holding. Genealogical study reveals the consistency of certain descent patterns, suggesting the strength of norms governing succession.

Yet this approach alone is not sufficient, largely because of the problems of evidence. Case histories are few, and generally involve at least one ecclesiastical party. Almost all come from partisan sources, on occasion written some time after the actual dispute. It is also likely that a disproportionate number of cases involving the king survive in written records: it seems possible that the very existence of a royal document encouraged the chronicler to provide additional narrative.

Studies of genealogy and the descent of lands can partially overcome these problems, but are difficult except for the highest levels of society. Even there, limited information may hide many complications: for example, it can rarely be told whether succession was simple or disputed.

Like others before me, I have therefore supplemented such evidence with analysis of charter language. I have examined the verbs used to record a regrant by a lord to a dead tenant's heir, hoping to illuminate the degree of seignorial discretion over such grants. I have investigated the emergence and nature of inheritance language. And I analyse charter records of the consent of various parties - kin, lords, monastic convents - to gifts.

Such analysis must be very cautious. The problems are not limited to the

pattern of surviving evidence, for example the preponderance of ecclesiastical charters. Nor is it only that charters use Latin, whereas the original grant was probably made in French. In addition, a word such as 'heres' might appear in charters of 1100 and of 1200, but its implications for the heritability of land would be affected by changing circumstances, for example the regularity with which the king would enforce heirs' claims.

Charter wording was greatly affected by attitudes to the written record - attitudes which might themselves affect the working of law. Thus a late eleventh-century charter might not mention the donee's heirs, simply assuming that they would succeed; by the late twelfth-century a similar omission might be taken as grounds for denying the heirs succession.

Furthermore, it is quite likely that most charters recording conveyances between laymen before the second half of the twelfth century concern grants made in difficult circumstances. Charters might deliberately seek to conceal the circumstances of a grant. A long dispute might occur before a lord granted land to a dead tenant's heir, yet the language of the consequent charter might be that of a peaceful regrant as the parties emphasized their reconciliation.

Despite these problems of evidence and analysis, various important conclusions emerge. The first is that Henry I - if not his two predecessors - exercised considerable influence in matters of land-holding. This may not have amounted to the general royal regulation of the later Common Law, but there is strong evidence that lords had to take notice of the possibility of royal involvement in their affairs, and modify their actions accordingly.

A second, connected conclusion is that ecclesiastical lordships - neglected by Stenton and Milsom - probably had a special role in the development of the Common Law. In many ways their land-holding in the twelfth century resembled

later ownership. Not only did they enjoy theoretically lasting tenure, but they also helped to promote royal control of land-holding. We see ecclesiastical lords apparently regularly turning to Henry I during land disputes. As the number of religious houses grew during the twelfth century, so too must requests for royal help have increased.

As lay lords saw such actions, they too must have taken advantage of royal support. In addition to its implications for legal history, such a view also helps break down an overly confrontationist view of Anglo-Norman history, expressed, for example, in terms of royal 'interference' in the honour: kings and lords were sometimes in opposition, but they also had many shared interests.

Thirdly, therefore, the view of the honour as a sovereign, 'feudal state in miniature' requires modification. It may have some truth for the greatest honours, especially of those lords whom the king trusted - a paradoxical kind of sovereignty - , but these appear not to have been typical. The lack of autonomy may, in its legal aspects, be reflected in the apparent lack of variety between customs. I set out expecting to find regional or honorial variation. Instead, as soon as sufficient evidence survives, early in the twelfth century, even groups such as the Breton settlers of the honour of Richmond apparently shared the same customs as other groups, areas, and honours.

Overall, this picture of land law and lordship under Henry I more closely resembles that under his grand-son than some writers have allowed. I suggest various explanations. One is the shared interests of lords and king, which encouraged royal participation, at the request of lord or tenant. However, I also argue that the king did intend to spread his influence. This certainly did not take the form of a legal policy, producing pre-planned changes. Yet kings were aware of their duty to dispense justice and of the profits and influence which might thereby accrue. I also suggest that attempts to deny royal

intention to control lordship neglect the royal duty to maintain the peace, and royal concern with violence. I see an intimate link between Henry I and II's moves against crime and their exertions concerning land-holding.

A further element may be the complexity of lordship and land-holding in England. Men were not simply tenants of one lord, nor were their neighbours necessarily men of the same honour. Such a situation surely increased the likelihood of standardised customs between honours. Moreover, it may also have led men involved in disputes to seek help from another of their lords, and also have eased access to the king.

I also tentatively suggest that social change may have weakened lordship. At the time of Domesday Book, subinfeudation was limited. Many lords may have relied heavily on household knights to perform military service. Such knights could also help a lord to enforce his will within the honour. Eighty years later, the Cartae Baronum reveal some lords with tenants considerably more powerful than themselves, others who had enfeoffed a large proportion of their land to one vassal. The Cartae also repeatedly record lords, many ecclesiastical but some lay, who were unable to enforce their will on their tenants.

Lastly, I suggest that changes in thought, notably some connected to the Church Reform movement, affected the development of land law. Ways of land-holding were contrasted with one another, certain general notions of tenure emerged. These, I argue, could limit a lord's discretion, and, in connection with the other changes mentioned above, often strengthened the position of the tenant and his heirs.

Omissions and limitations suggest future projects. The balance of power between lord and tenant concerning land-holding could be tested in other ways. Possessive adjectives are certainly not indications of proprietal relationships,

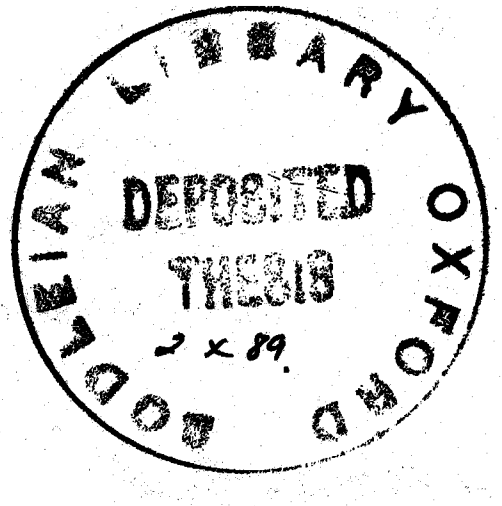
but analysis of the complex structure of their use might well be revealing of attitudes. Other subjects merit investigation, notably possession of chattels and the control of other rights. More generally, greater analysis of Norman practice is surely desirable for a period in which kingdom and duchy shared much of an aristocracy. Lastly, the study could well be extended beyond 1166 to 1189 or even 1216. Under Henry I, it was still to an extent the possibility of royal involvement which encouraged conformity with the norms of land-holding: under the Angevins, actual involvement became more regular, more automatic.

John Hudson

Worcester College

Oxford.

LEGAL ASPECTS OF SEIGNORIAL CONTROL OF LAND IN THE CENTURY AFTER THE NORMAN CONQUEST.



D. Phil thesis submitted

September 1988. [ie. 1989] HT

CONTENTS.

Abbreviations. ... iii.

Chapter One: Introduction. ... 1.

*

Part One: Succession and Inheritance.

Introduction. ... 27.

Chapter Two: The Evidence of Charter Language. ... 32.
Section one: The Language of Regrants.
Section two: Inheritance Language in Charters.
Section three: The Limits of the Use of Inheritance Language.
Section four: Inheritance Language: Claim, Intent. or Tenure?

Chapter Three: The Practice of Succession and the Development of Inheritance. ... 110.
Introduction.
Section one: Did the grant to the Decedent Permit Succession?
Section two: Was the Claimant the Closest Heir?
Section three: Other Claims to Succeed.
Section four: The Conduct of Succession Disputes.

Conclusion. ... 170.

*

Part Two: Participation in Alienation.

Introduction. ... 176.

Chapter Four: Heirs' Participation. ... 181.

Chapter Five: Lords' Participation. ... 223.

Chapter Six: Prelates and Church Lands. ... 253.

*

Part Three: The Exaction of Services.

Chapter Seven: Distress. ... 275.

*

Chapter Eight: Conclusions. ... 312.

* * *

Appendix A: Terminology for Types of Grant. ... 320.
B: Scribes and Charter Wording. ... 321.

Bibliography. ... 323.

Abbreviations.

(i) Official Records.

C. Ch. R.: Calendar of Charter Rolls Preserved in the Public Record Office, (6 vols., 1903-27.)

C. P. R.: Calendar of Patent Rolls Preserved in the Public Record Office, (in progress, 1891-present).

C. R. R.: Curia Regis Rolls, (in progress, 1922-present).

Domesday: Domesday Book, ed. J. Morris et al., Phillimore edition, (Chichester, 1975-85), references by folio and by Phillimore entry number.

PR 31 HI, PR 2 HII, etc.: Pipe Rolls, published by Pipe Roll Society.

R. C. R.: Rotuli Curiae Regis. Rolls and Records of the Court held before the King's Justiciars or Justices, ed. F. Palgrave, (2 vols., Record Commision, 1835).

(ii) Periodicals and annual publications.

Anglo-Norman Studies:	Proceedings of the Battle Conference on Anglo-Norman Studies.
B.I.H.R.:	Bulletin of the Institute of Historical Research.
C. Hist. J.:	Cambridge Historical Journal.
C. Law. J.:	Cambridge Law Journal.
E.H.R.:	English Historical Review.
J. Med. H.:	Journal of Medieval History.
L.Q.R.:	Law Quarterly Review.
P. & P.:	Past and Present.
R.H.D.F.E.:	Révue d'Histoire de Droit Français et Etranger.
T.R.H.S.:	Transactions of the Royal Historical Society.

(iii) Others.

H.M.C.: Royal Commission on Historical Manuscripts.

V.C.H.: Victoria History of the Counties of England.

CHAPTER ONE: INTRODUCTION.

Control of land was a crucial aspect of seignorial power in the century after the Norman Conquest. Land-holding has been central to legal historians' consideration of the same period. Yet studies of power within the honour of land-law have remained largely separate. Differing approaches and vocabulary render dialogue difficult. Mutual recrimination occurs, historians of lordship being accused of careless use of terminology, legal historians of anachronism or model-making. This thesis attempts to integrate the two approaches: to examine simultaneously the power of Anglo-Norman lordship through certain aspects of land-holding, and the functioning and development of law within society through seignorial control of land.[1]

Maitland wrote that

> In any body of law we are likely to find certain ideas and rules that may be described as elementary. Their elementary character consists in this, that we must master them if we are to make any further progress in our study; ... as regards the law of the feudal time we can hardly do wrong in turning to the law of land tenure as being its most elementary part.[2]

I have followed this tradition, whilst recognising its limits. Hence I do not, for example, discuss the relevance of possession of chattels to notions of ownership.[3] I consider only briefly, in my conclusion, control of other important rights. Within land law, I concentrate on three areas again central to previous writings, a position they owe partly to their importance in modern definitions of ownership, partly to their historical importance: heritability; alienability, that is, the freedom to grant lands and other possessions; and the exaction of services.[4] My intention, therefore, has been to bring different evidence and new interpretation to an area of established importance.

*

Historiography: The Conceptual Framework.

Most historians concerned with the law regarding land-holding in the upper levels of society see the Norman Conquest as a major break. For example, even those who perceive feudalism as a concept usefully applied to Anglo-Saxon society, admit that notions such as book-land were of limited consequence after 1066. The conquerors brought their customs with them. The next transformation is seen as occurring from *c.*1166 with the 'Angevin legal reforms', the spread of royal control of justice. Whilst writers argue about the causes and nature of this transformation, most agree that it was crucial to the emergence of the Common Law.

This interest in the period from 1166 has led to neglect of the preceding century. The dominant interpretations of Anglo-Norman law are by historians more concerned with the later period. Thus Maitland's main interest was 'the land law of Henry III's day', or, more generally, 'the law of the age that lies between 1154 and 1272',[5] whilst Milsom seeks 'to reconstruct what may be called the feudal component in the framework of English society in the years around 1200.'[6] Those primarily concerned with Norman England have generally examined law only in terms of royal administration of justice.[7]

I analyse previous historians' views of specific subjects where relevant in the main body of the thesis. Here my prime interest is their interpretative frameworks. These involve the relations of lord, vassal, and land, and of land-holding, jurisdiction, and norms. They have generally been presented in terms of rights, interests and claims in land and on persons, although it is sometimes hard to discover exactly how an individual writer defines these terms or distinguishes between them.[8]

Basic to Maitland's framework is his belief that, in this period, 'at the

same moment several persons may have and be actually enjoying rights of a proprietary kind in the same plot of land.'[9]

> The tenant in demesne, the tenant on the lowest step of the feudal scale, obviously has rights in the land, amounting to a general, indefinite right of using it as he pleases. But his lord also is conceived as having rights in the land. We have not adequately described his position by saying that he has a right to services from his tenant. Of him as well as of his tenant it may be said that he holds the land, not indeed in demesne but in service, that the land is his land and his fee, and even that he is seised, that is, possessed of the land.'[10]

'When land escheats the lord's superiority swells into simple ownership; all along he has had rights in the land.'[11] The totality of each person's rights Maitland referred to as their interest in the land.'[12]

Dependent tenure consisted not only of these rights in land, a form of what lawyers term 'real rights'; rather, it was a complex of such 'real rights' and of 'personal rights'. Of the latter, Maitland wrote 'the lord has rights against his tenant, the tenant rights against his lord: the tenant owes services to his lord, the lord, at least normally, owes defence and warranty to his tenant.'[13] Moreover, 'the mere bond of tenure is complicated with another bond, that of homage and fealty,' which was personal in nature.'[14]

Maitland sometimes sought to keep separate analysis of personal and of real rights, but elsewhere let the distinction disappear. Thus he noted 'an indeterminate right of the lord to prevent alienations which would seriously impair his interests',[15] but did not define whether this was a right in relation to his tenant or his tenement.

Maitland saw it as a characteristic of the eleventh century that 'rights of sovereignty shade off into rights of property', and also that 'mere tenure gives to every lord, who has the means of exercising it, a jurisdiction over his tenant.'[16] However, he did not regard changes in jurisdiction, in the distribution of authority, as directly affecting the *nature* of rights in land. Rather, the Angevin legal reforms resulted in rights in land, of an unchanged

nature, being treated in different tribunals.

On the other hand, such shifts in jurisdiction might affect the *balance* between the various holders of 'real' rights in one piece of land. Thus Maitland saw royal justices as favouring freedom of alienation: hence the transfer of jurisdiction to royal courts increased the tenant's right to alienate land, decreased the lord's right to prevent grants prejudicial to his interests.[17] Similar changes occurred for other reasons. For example, the lord's rights in the land were reduced by the hardening of the customs of inheritance.[18] It was, therefore in jurisdiction and in the balance of rights that land-holding under the developed Common Law differed from that in the Anglo-Norman period.

Most studies subsequent to Maitland simply take over his framework of a complex of rights in land and rights in the person, without any great self-consciousness. Historians have concentrated on the chronology of development, and on providing a context and explanation for Henry II's reforms. Joüon des Longrais and van Caenegem both traced the forms of common law writs to the early post-Conquest period.[19] They also emphasized the impact of Roman and canon law from the 1140s as establishing the intellectual climate for the Angevin reforms. Holt has examined the relationship between politics and the development of land-holding, and has sought to establish a chronology for the emergence of secure succession, working from genealogy, toponymic names, and the appearance of inheritance language in charters.[20]

None of these studies showed any great interest in re-assessing the importance or internal workings of the honorial court. Since the 1930s, the classic description has remained Stenton's First Century of English Feudalism.[21] Stenton's aim was 'to leave the standpoint of the king and his court, and to

consider, from within, the community of knights and barons over which they presided.'[22] Stenton was not primarily interested in law, and certainly not intent on modifying Maitland's legal framework. However, he did produce important evidence on, for example, the composition of courts.[23] He also noted the flexibility of the norms by which the honorial court worked and connected this with its sovereignty, the fact that it was an autonomous 'feudal state in miniature.' However, here Stenton's picture is sometimes troubled by contradiction. He was intent on restoring a balance within contemporary historiography, by showing a feudal honour 'independent of the king's direction or control', but was also well aware of the effect the king and his court could have upon the internal affairs of the honour.[24]

Stenton's work was an important influence on Thorne's 'English Feudalism and Estates in Land', the first major step away from Maitland's framework.[25] Thorne implicitly emphasised the importance of a strict definition of ownership. Although his definition is not stated, inheritance and freedom to alienate were clearly important to it, for he was intent on arguing that Maitland dated the existence of these too early, and hence that the tenant only became a true owner of the land in *c.*1200. Previously, seignorial control was fundamental in a way which Maitland had not allowed: the tenant's holding of the land was based on acceptance by the lord. In the early twelfth century, when a tenant died, 'land which had been the lord's all along, subject to the tenant's interest, became his free of that interest ... , his rights in it revived in their entirety.' The dead tenant's heir 'had no rights in the land but merely a claim to succeed his ancestor as the lord's feudal man.'[26] During the twelfth century, the tenant's heir's claim to succeed became a right against the lord. His interest in the land, being less reliant on the lord, became proprietary, and

> as the tenant's proprietary interest grows, the lord's interest becomes incorporeal. He has a right to the services for which the tenant is

> enfeoffed, he is seised of the seignory ... but no longer of the land; the tenant is seised of that, he is seised in demesne, he is its owner.[27]

Unfortunately, Thorne only published one of his Maitland Memorial Lectures on land-law. A more complete new framework was provided by another set of the same lectures, given by Milsom.[28]

For Milsom, a right involves an external enforcement agency. By definition, no such agency existed in Stenton's world of the sovereign honour, which Milsom takes as his model for society before the Angevin reforms. He therefore rejects the notion that in the twelfth century dependent tenure consisted of various people holding rights in one piece of land: 'rights cannot be good against a seignorial world, only a Roman or a modern world.' For the seignorial world, 'the appropriate language is that of obligation', not of rights. Land-holding rested on the personal bond of man and lord, 'a relationship of reciprocal obligations', within the sovereign honour. The only title which a man could have was that he had been seised by his lord in his court.[29]

Thus for Milsom, land-holding, jurisdiction, and the nature of norms are inextricably linked:

> For us, proprietary rights have some absolute existence, and the jurisdiction protecting them is a secondary matter having no effect on the substantive rules ... On this basis we have assumed that the growth of royal jurisdiction over land was a process of transfer, analogous to the transfer of personal actions from local to royal courts.[30]

It was the *emergence* of royal jurisdiction which, he argues, *created* the substantive rules and framework of rights in land described by Maitland.

According to Milsom, Henry II was only attempting to use royal authority 'to make the seignorial structure work according to its own assumptions.'[31] In the event, such assertion of royal authority destroyed the sovereignty of the honour.[32] A claimant could now force an unwilling lord to accept his claim by resort to royal authority; he can thus be seen as asserting not a claim but a right to the land. 'The tenant's right to his tenement and the lord's rights to

his dues become independent properties.'[33] This change from claims and obligations to real rights, from personal to proprietal relationships, constituted 'a transformation of elementary legal ideas.'[34]

Milsom's analysis is gradually being adopted by other writers. Whereas Simpson's Introduction to the History of Land Law, published in 1961, presented a Maitland-style view with minor modifications, his 1986 revised version contains a summary of Milsom as essential to the understanding of Anglo-Norman land law.[35] General historians of the period feel bound at least to mention Milsom, although sometimes only to suggest that seignorial courts were important before *c.*1166.[36]

However, a few historians have sought to modify Milsom's views, implicitly or explicitly. In particular, they have placed greater emphasis on stated eleventh and twelfth-century perceptions of land-holding and legal change. M. Cheney has stressed the influence of canon law on *ecclesiastical* views of land-holding, rather than directly on legal reform. Prelates' attempts to resume alienated lands, as canon law directed, may provide a political context for the assize of Novel Disseisin. She also suggests that a regular method for transferring cases to the royal court existed under Henry I, and was revived by Henry II. She demonstrates men's awareness that the result was a loss of business for honorial courts, an increase for royal ones.[37]

Hyams has sought to go beyond Milsom's model, notably by drawing more deeply on twelfth-century sources, some of which he has re-assessed, by analysing the importance of power in the working of law, and by seeking a Continental context for English law. This has led him, for example, to deny that the honour was sovereign in the way Milsom believes. He questions the applicability to twelfth-century England of the rigid distinction between personal claims and property rights, and suggests a more gradual pattern of

development than many historians have allowed.[38]

In my analysis below, I pay close attention to the usages of the period. However, modern terms are also necessary for explanation.[39] I use the term *right* when a general external authority existed, *claim* when there was no such authority. However, I see the two as opposite ends of a continuum, and am largely interested in shifts along the intermediate range.

I shall define other terms in the relevant sections, but must here clarify usage concerning norms. Whilst I of course pay full attention to the phraseology of the time,[40] modern terms again provide useful analytic tools. These must be carefully defined beforehand: usage is not settled amongst lawyers, and differing definitions have produced disagreements between historians.[41] I shall distinguish in my own analysis between principles, norms and rules.[42]

Principles and norms arguably are better seen as a continuum than two discrete categories. Principles are the more general. One such might state that all interested parties should be consulted. They are not essentially connected with specific contexts, such as land-holding or disputes, although they may be stated in these contexts. Their weight varies with circumstances.

I distinguish norms from principles by their lesser breadth and their limitation to certain contexts, for example land-holding. Thus a principle that a man should keep his word might be expressed in the norm that an heir must not discontinue his father's gift if he himself consented to it. Norms too vary in weight. The principle that a man must act well towards his family produces the norm that a man must not disinherit his heir, but the closeness of the relationship between heir and donor may affect the influence of the norm in a particular case.[43]

Norms may be important in obtaining outside help during a case, but the

outside authority's decision is also affected by other considerations such as his favour or disfavour to the claimant. Even so, the weight of a norm may suffice to force men generally to obey it.

One principle or norm may outweigh another in a case. However, because of their nature and because of the absence of a strict notion of precedent during this period, the defeated principle or norm, though possibly weakened, need not be invalidated for another, similar case.

Rules I take to be certain norms regularly enforced by superior authority. If a situation fits a rule, no explicit, or even conscious, attention would commonly be paid to other factors.

This definition of a 'rule' is similar to Milsom's,[44] and since royal authority in the period 1066-1166 did not function by general enforcement of strict rules in this sense, it is a truism to say that royally enforced legal rules did not then exist. However, the possibility of intervention, even in the absence of routine royal enforcement, demonstrably led men to modify their action in accordance with certain norms.

Moreover, the king was not the only external authority. The church had rules affecting land-holding, which were supposed to be regularly enforced.[45] Yet since the weight of the church's authority might be exceeded by another authority, by physical force, or by other principles and norms, even rules need not be decisive in a dispute during this period. Nevertheless, even if the practical effect of such rules was not very different from that of more flexible norms, men's *perception* that certain rules did exist and should ideally be enforced remains important.

The Sources.

In England in the century after 1066, transactions concerning land functioned largely through the spoken word; we must extract their history from written sources.[46] Historians have generally used three types of evidence. Firstly, there are the very full sources from *c.*1190-1230. At times, Maitland's History of English Law becomes dominated by his 'Bracton and Beyond' approach, tracing the earlier development of practices described in the De Legibus et Consuetudinibus.[47] Milsom's starting point is the royal court rolls, surviving from the 1190s onwards. Secondly, there are the twelfth-century texts sometimes taken as normative, the various Leges and Glanvill.[48] Thirdly, there are the various royal charters and writs. Legal historians have largely neglected the broad range of sources used by those studying seignorial power: these provide the core of my research. In particular, I make extensive use of chronicles and private charters. Obviously I have not been able to read every charter, nor construct the genealogy and descent of lands of every family. Nevertheless, I have taken pains to select as representative a portion of the evidence as possible.

Before beginning to examine individual types of evidence, I here consider three preliminary problems. Firstly, with the special exception of Domesday Book, evidence is very sparse before 1100. A major theme of the thesis will be similarities between Henry I's involvement in land disputes, at least during the latter years of his reign, and Henry II's involvement in the early years of his. Even this analysis requires working back from the relatively plentiful evidence of the 1150s and 1160s to traces in Henry I's reign. But may the conclusions apply to the reigns of Henry's brother and father? Land-holding may have been somewhat unstable, royal discretion considerable, in the first generation after

1066.[49] However, one might suppose that the Conqueror, at least, allowed his great men to deal with many problems, as he was heavily involved in securing the Conquest. Royal intervention would be limited to major problems, with the Domesday Inquest a one-off attempt to resolve the problems resulting from independent action by barons and royal officials. Even those who emphasise the power of the eleventh-century state see an increase in royal contact with individuals from Henry I's reign.[50] On the other hand, Domesday Book suggests considerable use of royal documents for the distribution of land.[51] Very few of these documents have survived, and administrative documents are still more likely to have been lost.[52] Even so, the land disputes involving the Abbey of Ely produced numerous royal documents.[53] From Rufus' reign, at least, come hints of practices of which we have fuller evidence under Henry I.[54] Conclusions about land law and the administration of justice before *c.*1100 are likely to remain tentative.

Secondly, even after 1100, the evidence is preponderantly ecclesiastical. Our knowledge of the lay honour and its court remains limited, especially away from the great magnate families. Most mentions of the honorial court show it witnessing grants or agreements; few record procedure in disputes, and several of these only exist because of royal involvement. It is, for example, uncertain how far the court was limited to the affairs of the lord and his immediate tenants, or whether it was important for sub-tenants.[55] The relationship with the communal courts is unclear.[56] Moreover, we know little of the changing importance of the court within the period. Broad conclusions have been drawn from documents of Stephen's reign, often from areas especially affected by disorder: even if these do show a world in which the honour was 'a feudal state in miniature', they are far from proving that such a world existed at other times.[57]

Material concerning ecclesiastical honours obviously cannot wholly compensate for deficiencies in the lay material. Yet many ecclesiastical and lay honours may have differed little. It may be that ecclesiastics - whilst by no means timid, meek men - had not the strength to enforce their will on their vassals as a great baron might. Yet this must have been a problem for many lay lords as well, with similar results.

Even were there general and significant differences between some lay and ecclesiastical honours, the latter cannot simply be ignored, as by Stenton and Milsom. Stenton explicitly concentrated on lay honours:

> the fiefs of abbots and bishops, large as some of them were, answered when all is told, for only a small proportion of the knight-service which the Norman kings could claim from their tenants in chief, and the feudalism which they represent has a certain artificiality which makes it unsafe to generalize from their history.[58]

What exactly he meant by artificiality is unclear. Milsom makes no such distinction: he simply ignores ecclesiastical lordships.

Churches may have supplied only a small part of the king's knight-service, but they held a quarter of the land in England in 1086.[59] The number of religious houses increased more than tenfold in the century and a half after the Conquest.[60] The evidence often shows ecclesiastics turning to the king for aid. Moreover, lay lords would have been aware of how churchmen acted. They were present at the county court which dealt with some of the relevant writs. They may even have been themselves victims of ecclesiastics armed with royal orders. They surely cannot have ignored the advantages of obtaining royal help. In this way ecclesiastical lords helped to create the royal remedies which were to be generally adopted under Henry II.

The third problem is that ideally the history of land law and of seignorial control of land would be written from official normative texts and from a variety of official and unofficial records of conveyances and disputes.[61] We

have no normative texts, few dispute narratives,[62] and scarcely any information on the negotiations which must have occurred before land transactions. Even genealogical evidence is difficult for the early part of the period, and remains so below the top level of society. One is driven to place greater reliance than one would wish on analysis of charter language,[63] almost entirely in Latin, whereas the words spoken in court, for example in gift ceremonies, would generally have been in French.[64]

I now turn to individual categories of sources. Many narratives not primarily concerned with land-holding contain useful information.[65] Central to the study are those monastic chronicles, one of whose main purpose of which was to record the house's lands and rights: the Abingdon Chronicle referred to itself as 'liber ... terrarum huius ecclesie Abbendonensis.'[66] A few were written before 1150, but most are from Henry II's reign. The decision to write the Ramsey Chronicle was taken at the end of Stephen's reign on account of the external and internal troubles the abbey had suffered. This, together for example with the dating of the Abingdon Chronicle to the late 1160s, suggests that such chronicles were part of a broad movement which helped to produce Henry II's reforms rather than being stimulated by those reforms.[67]

These chronicles vary in form, some consisting largely of documents, others of narrative.[68] They provide a large proportion of surviving dispute records, supplementing the few in charters or independent documents.[69] Comparison of narrative and charter evidence occasionally allows a crucial glimpse into what lies behind other charters. From this point of view, the Abingdon Chronicle is the most useful. Many Abingdon examples, dispersed throughout the thesis, come from an excluded chapter devoted to the Abingdon material.

Chronicle accounts are partisan, but one can sometimes turn this bias to positive advantage. A greater problem is that many of the disputes occurred

long before the chronicle was written. From where did the chronicler derive his narrative? Memory and oral tradition must have provided some of the information, but earlier writings may also have played a part. Many chroniclers must have had special links to the church archives.[70] This may well have led to a greater emphasis on cases in which the king was involved, since royal involvement often produced documents. Conceivably, some memorable incidents were recorded soon after they happened. John of Salisbury wrote that he had seen 'notes of remarkable things' in church archives.[71] The Priory of Stoke by Clare kept records of land grants in addition to charters.[72] Yet, for example, the Abingdon chronicler's style seems consistent, at least from 1066, so he must have reworked any earlier narratives. Such methods of composition pose problems for the historian. Earlier events may have been forgotten or distorted. In re-writing, or writing down memories, the chronicler might well use the vocabulary and the ideas of his own day. These therefore must be checked closely against writings contemporary with the events themselves.

Charters are my second main source.[73] I have examined all the royal charters from 1066-1154, and a large proportion of Henry II's deeds.[74] I have also analysed a large sample of private charters, both lay and ecclesiastical, aiming at a reasonable geographical spread.[75] Unfortunately, the great majority of charters come from after 1120. Most record grants to churches, and those recording transactions between laymen are few, even late in the period. A very large proportion of written administrative orders must have been lost.[76]

The function of documents has been disputed.[77] Orders could be sent, land conveyed, without the use of writing.[78] The major function of charters was evidentiary. They were to prevent memory of a deed from dying with the witnesses to it: 'Quoniam ea que a nobis rationabiliter facta sunt posteris nostris nota fieri uolumus, ne transcursu temporis super his aliquid dubium

oriatur, ea scripto reservanda commisimus. Sciant tam posteri quam presentes quod ... .'[79] Yet it may be wrong to deny that charters were in any sense dispositive. References exist to gifts 'per cartas'.[80] The charter itself might be transferred in the symbolic livery of the gift.[81]

However, charters sometimes conceal the circumstances of a grant. Behind many documents appearing to record a lord simply regranting land to a dead tenant's heir lie disputes.[82] It seems probable that most charters from before *c.*1150 recording grants to laymen by laymen, other than the king, were the product of *unusual* circumstances: the need to end a dispute or to prevent potential strife led to the use of writing.

A second problem is the production of charters. Even some of Henry II's were drafted by the beneficiaries; under William I and II such practice was common.[83] Kings also occasionally used local scribes. C.R. Cheney wrote of episcopal charters that 'the aspect of originals surviving from the first half of the twelfth century does not suggest that there was then, in any English bishopric, a highly organized office-staff engaged in writing letters.'[84] Great laymen seem to have developed writing-offices in the second quarter of the twelfth century,[85] but many of their charters are written by beneficiaries. They also used scribes of monasteries of which they were benefactors.[86] Lesser families developed writing-offices even later. The relative importance of benefactor, beneficiary, and scribe on the wording of charters is therefore difficult to calculate.[87]

In entering upon close diplomatic argument, one must therefore remember that the documents come from a variety of sources. However, this is not a reason to abandon such arguments. If, say, documents from various sources use the same phrases to record a certain type of grant, this surely indicates some consensus on the nature of such grants. Had all the documents been from one

source, say the royal chancery, uniform drafting practices within that source might hide variations in attitudes to the grants.

A third group of sources are those purporting to lay down or describe law. I have not made a major new study of the composition and nature of the various collections of Leges. Problems remain concerning the date of some, the authorship of all. What is certain is that the collections most important to my study, the Leges Henrici Primi and the Leges Edwardi Confessoris, were assembled by learned men, working in part from written sources. These sources sometimes predominate over any attempt to describe contemporary practice. For example, the Leges Henrici's treatment of inheritance is derived largely from the Lex Ribuaria, with an important addition based on Alfred's code.[88] Some of the vocabulary and the practices described find no echo in any other English document of the period.[89] I have therefore been careful and sparing in my use of these sources, checking when the authors are working from specific sources, and comparing their statements with contemporary usage.[90]

Although written in the late 1180s, following two decades of important legal change, the Tractatus de Legibus, known as Glanvill, remains essential for the study of earlier land law. Generally it has been taken to record legal rules. However, Yver noted its similarity to the French *Coutumiers*, and Hyams has developed this idea.[91] Glanvill's language is descriptive, rather than prescriptive: 'uerum est'; 'generaliter uerum est'; 'tunc satis constat quod...'; '*generaliter liceat* cuilibet de terra sua rationabilem partem pro sua uoluntate cuicumque uoluerit libere in uita sua donare'; 'quia id intelligitur secundum consuetam regni interpretationem ...'.[92] These phrases resemble those of Richard fitzNeal describing the practices of the exchequer and the laws relevant to it.[93] Such is the language of a manual, rather than a legal rule-book.

Lastly, there are royal records. Domesday Book provides crucial

information on the distribution of land, and allows some analysis of notions of land-holding before charter evidence becomes plentiful. It also includes numerous disputes, but generally in too brief a form to permit detailed examination. The Domesday satellites and later revisions have similar uses.

The Pipe Rolls include various entries concerning land-holding and justice. Again, the laconic nature of the entries restricts their usefulness: for example, does the phrase 'pro recto' indicate a payment for a writ or for a judgement? Moreover, the Rolls do not provide a complete account of offerings made to the king concerning justice. For example, gifts to the king as he travelled the country may have passed directly to the chamber.[94]

The royal surveys made in Henry II's reign contain useful information, for example in the scant surviving returns to the Inquest of Sheriffs.[95] The Cartae Baronum's descriptions of disputes are generally brief, but provide vital evidence on seignorial control of vassals.[96] Again, they are partisan statements of the lord's case, but the fact that they have not been rewritten by royal clerks means that we approach the barons' own views.

I have also analysed disputes from this period which appear in the first royal court rolls. Similar problems arise as with the chronicle accounts of earlier disputes. Not only were the statements made in court affected by partisanship, distorted memory, and linguistic change, but the records were also structured by the interests and requirements of the royal justices and clerks.

Certain omissions should be noted here. Some are geographical. I have not dealt in depth with Normandy, as ideally one would for the sake both of comparison and completeness. The omission is partly a matter of space, partly of the still sparser evidence, and partly of the existence of important, soon to be published, work on the Duchy.[97] Secondly, whilst I have examined the

possibility of regional and honorial variation of custom, I have made no special study of the marcher lordships or of the honours which were to develop into the great palatinates. My primary interest has been in those areas which were to be directly controlled by Common Law.

The problems of evidence have led me to concentrate on the higher levels of society. Hence I deal primarily with land held for military service, and do not, for example, consider the development of socage tenure. Certain other forms of land-holding have been examined only in passing, for example dower, or omitted altogether, for example curtesy.[98] Nor have I written specifically on certain rules and distinctions which became clear during Henry II's reign, and the origins of which have tested historians. Rather I aim to shed light on these by examining the earlier period for its own sake.[99] I have concentrated on illuminating seignorial power through the working of law. I have sometimes drawn on other evidence in order to modify received views of the honour, but have not attempted the thorough political and social re-assessment which is needed. For example, I have not made a general analysis of the effect on seignorial power of 'feudal geography', the distribution of fees within the honour.[100]

I hope throughout to explain the functioning and development of law both through underlying structures and through eleventh and twelfth-century perceptions of lordship and land-holding. In particular, I stress two themes which have been lacking in previous writings: firstly, the importance of intellectual changes from the second half of the eleventh century on reasoning concerning law and land-holding;[101] secondly, the importance of power in the development of law and lordship.

Both of these features will become apparent in my discussion of cases. Milsom's treatment of 'the ancient pattern of law-suit', crucial to his overall model, is somewhat rigid.[102] He claims that no distinction was made between abstract statements of law and specific facts. There was no argument, simply statement of claim and formal denial. The crucial stage was proof - ordeal or battle - which gave a decisive result. Examination of eleventh and twelfth-century evidence suggests that in fact men did sometimes make abstract statements concerning land-holding, and that anyway certain principles and norms helped to form the arguments they might present. Negotiation was important, courts might hear arguments, proof need not simply have been by ordeal or battle. Moreover, the conduct of the dispute, and the settlement - very often a compromise - , would also reflect the power of the parties and other interests. Such a view of disputes allows a more nuanced picture of the working of law within society.[103]

I pay considerable attention to the 'grey areas', for example between a man having a purely personal claim to succeed and a legal right to inherit. This involves a renewed interest both in variations existing at any one time and in chronological development. I seek to establish that the period before 1135 saw important changes, perhaps a first shift of control, similar to, if more limited than, that which occurred under Henry II.

These emphases reveal the contrast between my approach and that, to an extent, of Thorne and more particularly of Milsom. Milsom's world is made up of, on the one side, lords, on the other, vassals. He juxtaposes common law ownership with the pre-common-law lord-tenant relationship, which he sees as necessarily lasting only for life. He contrasts common law rules, regularly enforced by external authority, with preceding custom. I accept the usefulness of such firm distinctions as analytic tools, but feel that such a rigid

framework gives only a partial explanation of legal functioning and change. So I also contrast pre-common law grants to a man and his heirs with those made specifically for life, grants 'in fee and inheritance' with those 'in alms', and suggest that such contrasts were critical to the working and development of law. I see strong norms and weak norms: custom said that the closest heir should succeed, be he son or cousin, but the norm in favour of the son was the more likely to outweigh other considerations which might arise at time of succession. Men were not always vassals of just one lord: they might have many lords, and themselves be both lord and vassal. Their views could vary according to which rôle they had at any moment. By taking such problems into account, I hope to produce a greater understanding of the functioning of law in the century after 1066.

CHAPTER ONE: INTRODUCTION: Notes.

1) Examination of the functioning and development of law within society is only one form of legal history. Other forms, such as the tracing back of single procedures, may be valid within their context.
2) Sir Frederick Pollock & F.W. Maitland, The History of English Law before the Time of Edward I, (2nd. ed., re-issued with a new introduction and select bibliography by S.F.C. Milsom. 2 vols., Cambridge, 1968), i 231. (Henceforth Pollock and Maitland.)
3) I touch on grants of chattels, below, pp. 232-3.
4) I have found very useful as a legal introduction A.M. Honoré, 'Ownership', in Oxford Essays in Jurisprudence, ed. A.G. Guest, (Oxford, 1961), pp. 107-147.
5) Pollock and Maitland, ii 1 & 672 respectively.
6) S.F.C. Milsom, The Legal Framework of English Feudalism, (Cambridge, 1976), p. 1. (Henceforth Milsom, Legal Framework.)
7) E.g. Royal Writs in England from the Conquest to Glanvill, ed. R.C. van Caenegem, (Selden Soc., vol. 77, 1959). (Henceforth van Caenegem, Writs.)
8) Confusion is increased by the varied meanings of one word, such as 'right'.
9) Pollock and Maitland ii 35.
10) Pollock and Maitland, i 236-7.
11) Pollock and Maitland, i 351; see also ii 82. For Maitland's consideration of whether a man's heirs might be considered to enjoy rights in his inheritance during his lifetime, see below, p. 181, and Pollock and Maitland, ii 13, 19.
12) E.g. Pollock and Maitland, i 355; in rather similar contexts, Maitland also used 'interests' in the less technical sense of the lord or tenant's 'advantage': e.g. Pollock and Maitland, i 346.
13) Pollock and Maitland, i 236.
14) Pollock and Maitland, i 296.
15) Pollock and Maitland, i 346.
16) Pollock and Maitland, i 68 & 585 respectively.
17) Pollock and Maitland, i 344.
18) Pollock and Maitland, i 327.
19) F. Joüon des Longrais, La Conception Anglaise de la Saisine du xiie au xive siècle, (Paris, 1924), (henceforth Joüon des Longrais, Conception de la Saisine.); 'La Portée Politique des Réformes d'Henry II en matière de Saisine', R.H.D.F.E., 4e Ser. xv, (1936), 540-571. Van Caenegem, Writs. Also F.W. Maitland, The Forms of Action at Common Law, (Cambridge, 1936), p. 21.
20) J.C. Holt, 'Politics and Property in Early Medieval England', P. & P., 57 (1972), 3-52; 'Politics and Property in Early Medieval England: a Rejoinder', P. & P., 65 (1974), 127-135. (Henceforth Holt, 'Politics and Property', 'Rejoinder'.) What's in a Name? Family Nomenclature and the Norman Conquest, (Stenton Lecture, 1981; Univ. of Reading, 1982). (Henceforth Holt, What's in a Name?) 'Feudal Society and the Family in Early Medieval England': 'i: The Revolution of 1066', T.R.H.S., 5th. Ser. 32, (1982), 193-212; 'ii: Notions of Patrimony', T.R.H.S., 5th. Ser. 33 (1983), 193-220; 'iii: Patronage and Politics', T.R.H.S., 5th. Ser. 34 (1984), 1-25; 'iv: The Heiress and the Alien', T.R.H.S., 5th. Ser., 35 (1985), 1-28. (Henceforth Holt, 'Revolution of 1066', 'Patrimony', 'Patronage and Politics', 'Heiress and Alien'.)
21) F.M. Stenton, The First Century of English Feudalism, (2nd. ed., Oxford, 1961). (Henceforth Stenton, First Century.)
22) Stenton, First Century, p. 6.
23) Stenton, First Century, caps. 2 & 3
24) Cf. Stenton, First Century, p. 51, from where the quotations come, with pp. 218-222.

25) S.E. Thorne, 'English Feudalism and Estates in Land', C. Law J., 75 (1959), 193-209. (Henceforth Thorne, 'Estates'.)
26) Thorne, 'Estates', 196-7.
27) Thorne, 'Estates', 209.
28) Milsom, Legal Framework. See also his introduction to Pollock and Maitland, his Historical Foundations of the Common Law, (2nd. ed., London, 1981), (henceforth Milsom, Historical Foundations), and the essays collected in Studies in the History of the Common Law, (London, 1985). Milsom's framework is closely followed by R.C. Palmer, who aims to 'complete' the picture by providing a chronology of change and an explanation for the innovations which led to the development of ownership; 'The Origins of Property', Law and History Review, 3 (1985), 3. See also 'The Feudal Framework of English Law', Michigan Law Review, 79 (1981), 1130-1164. (Henceforth Palmer, 'Origins of Property', 'Feudal Framework'.)
29) Milsom, Legal Framework, cap. 2, quotations at pp. 37, 39.
30) Milsom, Legal Framework, p. 36.
31) Milsom, Legal Framework, p. 186.
32) Milsom, Legal Framework, p. 38.
33) Milsom, Legal Framework, p. 38.
34) Milsom, Legal Framework, p. 37.
35) A.W.B. Simpson, An Introduction to the History of Land Law, (Oxford, 1961); revised as A History of the Land Law, (Oxford, 1986). (Henceforth Simpson, History of the Land Law.)
36) E.g. M. Chibnall, Anglo-Norman England, (Oxford, 1986), cap. 6, esp. pp. 172-3; J.A. Green, The Government of England under Henry I, (Cambridge, 1986), p. 105; D.B. Crouch, The Beaumont Twins, (Cambridge, 1986), pp. 159-160. (Henceforth Green, Government under Henry I; Crouch, Beaumont Twins.)
37) M. Cheney, 'The Litigation between John Marshall and Archbishop Thomas Becket in 1164: a Pointer to the Origin of Novel Disseisin?' in Law and Social Change in British History, edd. J.A. Guy & H.G. Beale, (London, 1984), 9-26; 'Inalienabiltiy in mid-twelfth century England: Enforcement and Consequences', Proceedings of the Sixth International Congress of Medieval Canon Law, edd. S. Kuttner & K. Pennington, (Monumenta Iuris Canonici, Ser. C, subsidia vol. 7, Vatican City, 1985), 467-478; 'A Decree of Henry II on Defect of Justice', in Tradition and Change: Essays in Honour of Marjorie Chibnall, edd. D.E. Greenway, C. Holdsworth, J. Sayers, (Cambridge, 1985), 183-193. (Henceforth Cheney, 'Novel Disseisin', 'Alienability', 'Decree of Henry II'.)
38) P.R. Hyams, review of Milsom, Legal Framework, E.H.R., xciii (1978), 856-861; 'The Common Law and the French Connection', Anglo-Norman Studies, iv (Woodbridge, 1982), 77-92, 196-202, (henceforth Hyams, 'French Connection'); 'Warranty and Good Lordship in Twelfth Century England', Law and History Review, 5 (1987), 437-503, (henceforth Hyams, 'Warranty'); '"No Register of Title": the Domesday Inquest and Land Adjudication', Anglo-Norman Studies, ix, (Woodbridge, 1987), 127-141, (henceforth Hyams, 'Domesday Inquest and Land Adjudication'); 'Observations on the Charter as a Source for the History of the Early English Common Law', (forthcoming).
39) Compare the relative emphasis on medieval terminology in Holt with that on modern terminology in Milsom.
40) E.g. see below, p. 16 on Glanvill.
41) E.g. see below, p. 177.
42) My thinking here starts from H.A.L. Hart, The Concept of Law, (Oxford, 1961). J. Raz, Practical Reason and Norms, (London, 1975). The Philosophy of Law, ed. R.M. Dworkin, (Oxford, 1977). R.M. Dworkin, Law's Empire, (London, 1986).

S. Roberts, Order and Dispute, (Harmondsworth, 1979), c. 10, 'Rules and power.' I do not follow any one of these in my terminology; thus my 'rules' resemble Raz's 'norms', my 'norms' his 'reasons'.

43) E.g. see below, p. 203.

44) E.g. Milsom, Historical Foundations, p. 107. Also cf. Raz's notion of his 'norms' as 'exclusionary reasons', i.e. reasons which exclude any other possible consideration.

45) E.g. see below, p. 185 on prescription.

46) See generally M.T. Clanchy, From Memory to Written Record, (London, 1979). See also, however, J. Campbell, 'The Significance of the Anglo-Norman State in the Administrative History of Western Europe', Reihefte der Francia, 9 (Munich, 1980), 122-4; 'Some Agents and Agencies of the late Anglo-Saxon State', in Domesday Studies, ed. J.C. Holt, (Woodbridge, 1987), 214-5 on the importance of writing in royal administration. (Henceforth Campbell, 'Significance of the Anglo-Norman State', 'Agents and Agencies'.)

47) Henry de Bracton, De Legibus et Consuetudinibus regni Anglie, ed. & tr. S.E. Thorne, (4 vols., Cambridge, Mass., 1968-1977). (Henceforth Bracton with folio no., Thorne with page no..) Milsom, Historical Foundations, p. vi, argues that Maitland's ideas on twelfth-century land-holding stemmed from Bracton, and hence were influenced by Roman Law.

48) Leges Henrici Primi, ed. & tr. L.J. Downer, (Oxford, 1972). (Henceforth L.H.P. with chapter number, Downer with page number.) For the other Leges, Die Gesetze der Angelsachsen, ed. & tr. F. Liebermann, (3 vols., Halle, 1903-16). (Henceforth Liebermann, Gesetze.) Tractatus de Legibus et Consuetudinibus Regni Anglie qui Glanvilla Vocatur, ed. G.D.G. Hall, (Edinburgh, 1965). (Henceforth Glanvill with chapter no., Hall with page no..)

49) J.C. Holt, '1086', in Domesday Studies, ed. J.C. Holt, (Woodbridge, 1987), 58-9. (Henceforth Holt, '1086'.) Lords other than the king might also have exercised such discretion in the early post-Conquest period.

50) E.g. Campbell, 'Significance of Anglo-Norman State', 122-7.

51) Campbell, 'Agents and Agencies', 214-5.

52) Campbell, 'Significance of the Anglo-Norman State', 123-4.

53) See E. Miller, 'The Ely Land Pleas in the Reign of William I', E.H.R., lxii (1947), 438-456. (Henceforth Miller, 'Ely Land Pleas'.)

54) R.W. Southern, 'Ranulf Flambard', in his Medieval Humanism and Other Studies, (Oxford, 1970), 188-9, 194-5. (Henceforth Southern, 'Ranulf Flambard'.) E. Mason, 'William Rufus: Myth and Reality', J. Med. H., 3 (1977), 11.

55) See below, e.g. pp. 40, 161, on Robert de Tosny's court.

56) I return to this subject in my conclusion, p. 313. The actual division of business between lay and ecclesistical courts is also somewhat unclear. It is sometimes impossible to tell whether a court was ecclesiastical or lay; mixed bodies may have met.

57) See esp. Stenton, First Century, pp. 47-51, Milsom, Legal Framework, pp. 183.

58) Stenton, First Century, p. viii.

59) D.C. Douglas, William the Conqueror, (London, 1964), p. 269.

60) D. Knowles & R.N. Hancock, Medieval Religious Houses: England and Wales, (Revised ed., London, 1971), p. 494.

61) For an analysis based on more than one type of record, see M.T. Clanchy, 'A Medieval Realist: Interpreting the rules at Barnwell Priory, Cambridge', in Perspectives in Jurisprudence, ed E.A.G. Attwooll, (Glasgow, 1977), pp. 176-94.

62) Professor van Caenegem's Placita Anglo-Normannica, to be published by the Selden Society, will gather the various texts including procedural material.

63) See esp. Thorne, 'Estates'; Holt, 'Politics and Property', 'Patrimony'.

64) Hyams, 'French Connection', 91-2.
65) See below, e.g. pp. 129-30, on the Beauchamps and Bedford castle.
66) Chronicon Monasterii de Abingdon, ed. J. Stevenson, (2 vols., London, 1858), i 487 fn. 1. (Henceforth C.M.A..) See also e.g. the history of the Bishopric of Somerset in Ecclesiastical Documents, ed. J. Hunter, (Camden Soc., 1st. Ser., viii, 1840), p. 9.
67) Pre-1150: e.g. Chronicon Abbatiae de Evesham ad annum 1418, ed. W.D. Macray, (London, 1863), contains a portion probably written *c.*1100. (Henceforth Evesham Chron..) Hemming wrote a narrative concerning the losses of the church of Worcester; Hemingi Chartularium Ecclesie Wigorniensis, ed. T. Hearne, (2 vols., Oxford, 1723), i 248-288. (Henceforth Hemming, Cartulary.) Orderic Vitalis, Historia Ecclesiastica, ed. & tr. M. Chibnall, (6 vols., Oxford, 1968-1980), includes extensive coverage of his Norman monastery of St. Evroul. (Henceforth Orderic.)
For the suggestion that Henry II's reforms led to the composition of the chronicles, see A. Gransden, Historical Writing in England *c.*550 to *c.*1307, (London, 1974), p. 269. (Henceforth Gransden, Historical Writing.) On the writing of the Ramsey Chronicle, see Chronicon Abbatiae Rameseiensis, ed. W.D. Macray, (London, 1886) p. 4. (Henceforth Ramsey Chron..)
68) Cf. Ramsey Chron., consisting largely of documents, with The Chronicle of Battle Abbey, ed. & tr. E. Searle, (Oxford, 1980), which mentions, but does not reproduce, many documents. (Henceforth Battle Chron..)
69) E.g. 'De Iniusta Vexatione Willelmi Episcopi per Willelmum regem filium Willelmi magni', in Symeonis Monachi Opera Omnia, ed. T. Arnold, (2 vols., London, 1882-5), i 170-195. (Henceforth Simeon of Durham. See also D.R. Bates, 'The Land Pleas of William I's Reign: Penenden Heath Revisited', B.I.H.R., li (1978), 1-19. (Henceforth Bates, 'Penenden Heath'.)
70) Eadmer was the keeper of Anselm's chapel and relics, where the archives were probably kept; Gransden, Historical Writing, p. 139. See also Hemming, Cartulary, i 284-5, on the care of the Worcester archives.
71) John of Salisbury, Historia Pontificalis, ed. & tr. M. Chibnall, (Edinburgh, 1956), p. 2.
72) Stoke by Clare Cartulary, BL Cotton Appx. xxi, ed. C. Harper-Bill & R. Mortimer, (3 vols., Suffolk Charters iv-vi, 1982-4), iii 51-3. (Henceforth Stoke.) See also e.g. the Gloucester Abbey chronicle, in Historia et Cartularium Monasterii Sancti Petri Gloucestriae, ed. W. Hart, (3 vols., London, 1863-7), i 1-125. (Henceforth Gloucester Cartulary.; refs. to documents by number, others by page.)
73) I have generally followed the editors concerning dates and authenticity, and have not made use of forgeries unless for a special reason.
74) Almost all the royal charters of 1066-1154 are contained in Regesta Regum Anglo-Normannorum, 1066-1154: vol. i, 1066-1100, ed. H.W.C. Davis, with the assistance of R.J. Whitwell, (Oxford, 1913); vol. ii, 1100-1135, ed. C.J. Johnson & H.A. Cronne, (Oxford, 1956); vol. iii, 1135-1154, ed. H.A. Cronne & R.H.C. Davis, (Oxford, 1968); vol. iv, Facsimiles of Original Charters and Writs of King Stephen, the Empress Matilda, and Dukes Geoffrey and Henry, edd. H.A. Cronne & R.H.C. Davis (Oxford, 1969). (Henceforth Reg. I, Reg. II, Reg. III, Reg. IV.) The Angevins' acta are being collected by Professor Holt and Dr. R. Mortimer, whom I would like to thank for access to the material.
75) The following sets of charters provide the main sample for my analysis:
    a) the appendix to Stenton, First Century.
    b) the Kirkstead, Bullington and Duchy of Lancaster charters in Documents Illustrative of the Social and Economic History of the Danelaw, ed. F.M. Stenton, (London, 1920). (Henceforth Danelaw Documents.)

c) Sir Christopher Hatton's Book of Seals, edd. L.C. Loyd & D.M. Stenton, (Northants. Record Soc. & Oxford, 1950). (Henceforth Book of Seals.)
d) The Beauchamp Cartulary: Charters 1100-1268, ed. E. Mason, (Pipe Roll Soc., New Series, xliii, 1980). (Henceforth Beauchamp.)
e) Earldom of Gloucester Charters: The charters and scribes of the Earls and Countesses of Gloucester to A.D.1217, ed. R.B. Patterson, (Oxford, 1973). (Henceforth Earldom of Gloucester.)
f) 'Charters of the Earldom of Hereford, 1095-1291', ed. D. Walker, in Camden Miscellany xxii, (Camden Soc., 4th. Ser. i, 1964), 1-75. (Henceforth Hereford.)
g) The Registrum Antiquissimum of the Cathedral Church of Lincoln, edd. C.W. Foster and K. Major, (10 vols., Lincoln Record Soc., 1931-1973). (Henceforth Registrum Antiquissimum.)
h) Charters of the Honour of Mowbray, 1107-1191, ed. D.E. Greenway, (London, 1972). (Henceforth Mowbray.)
i) Facsimiles of Early Charters from Northamptonshire Collections, ed. F.M. Stenton, (Northants. Record Soc., iv, 1930). (Henceforth Northants..)
j) Facsimiles of Early Charters in Oxford Muniment Rooms, ed H.E. Salter, (Oxford, 1929). (Henceforth Oxford Charters.)
k) all charters possibly from before 1150 recording grants to laymen and before 1110 recording grants to churches, in Early Yorkshire Charters, vols. i-iii ed. W. Farrer, (Edinburgh, 1914-6); Index to vols. i-iii, edd. C.T. & E.M. Clay, vols. iv-xii ed. C.T. Clay, (Yorks. Archaeol. Soc. Record Ser. Extra Ser., 1935-65). (Henceforth E.Y.C..)
l) Early Charters of the Cathedral Church of St. Paul, London, ed. M. Gibbs, (Camden Soc., 3rd ser., lviii, London, 1939). (Henceforth St. Paul's.)
m) Stoke charters.
n) The Cartulary of Worcester Cathedral Priory, ed. R.R. Darlington, (Pipe Roll Soc., New Series, xxxviii, 1968). (Henceforth Worcester.)
o) charters of the Earls of Leicester.
p) charters of the Earls of Warwick.
q) abbots' charters in Feudal Documents from the Abbey of Bury St. Edmunds, ed. D.C. Douglas, (London, 1932). (Henceforth Feudal Documents.)
r) Honour of Richmond charters, in E.Y.C., iv & v. (Henceforth Richmond.)
s) charters from before 1100.

I should like to thank David Crouch for access to the charters which he has collected for his project on 'The Social Structure of the Medieval Aristocracy', especially those of the Earls of Leicester and Warwick. The other charter collections consulted will appear in later footnotes.

76) T.A.M. Bishop, Scriptores Regis: Facsimiles to Identify and Illustrate the Hands of Royal Scribes in the Original Charters of Henry I, Stephen, and Henry II, (Oxford, 1961), p. 32. (Henceforth Bishop, Scriptores Regis.) Campbell, 'Significance of the Anglo-Norman State', 123-4.
77) E.g. V.H. Galbraith, 'Monastic Foundation Charters of the Eleventh and Twelfth Centuries', C. Hist. J., iv (1934), 205-222, 296-8.
78) See Clanchy, Memory to Written Record, pp. 203-211.
79) A. Saltman, Theobald, Archbishop of Canterbury, (London, 1956), no. 97. (Henceforth Saltman, Archbishop Theobald.)
80) See e.g. Reg. II, nos. 982, 1758; see also Domesday references to gifts by the king's writ, e.g. Domesday, i f. 57d (=Berks., 1, 38.)
81) Clanchy, Memory to Written Record, p. 205.
82) See below, p. 34.
83) Bishop, Scriptores Regis, pp. 9-10.
84) C.R. Cheney, English Bishops' Chanceries, 1100-1250, (Manchester, 1950), p. 45.

85) E.g. Earldom of Gloucester, p. 27. Crouch, Beaumont Twins, pp. 151-3, on 'scriptores' of Robert Earl of Leicester, and a chancellor of Waleran de Meulan, certainly by the 1140s and possibly by 1120. Cf. Mowbray, p. lxvi, 'The clerical staff of the Mowbray household advanced during the second half of the twelfth century to become a genuine chancery.'

86) P. Chaplais, 'The original charters of Herbert and Gervase Abbots of Westminster (1121-1157)', in A Medieval Miscellany for Doris Mary Stenton, edd. P.M. Barnes & C.F. Slade, (Pipe Roll Soc., N.S. xxxvi, 1960), p. 96. (The volume hereafter referred to as Stenton Miscellany.)

87) See appendix B.

88) L.H.P., 70 18-23, Downer, pp. 224, 385-6.

89) As far as I can discover, the only eleventh or twelfth-century use of the word heredipeta, apart from L.H.P., 70 19, is in a decree of a council at Compostella in 1114; J. Saenz de Aguirre, Notitia Conciliorum Hispanie, atque Noui Orbis, (Salamanca, 1686), pp. 266-7. I have yet to establish any connection between these two instances.

90) Such learning is of course important in itself; see below, pp. 74-5.

91) J. Yver, 'Le Bref Anglo-Normand', Tijdschrift voor Rechtsgeschiednis, xxix (1962), 313-330, esp. 324. Hyams, 'French Connection', 81-4.

92) Glanvill, vii 1, Hall, pp. 69-74

93) Richard Fitz Nigel, Dialogus de Scaccario, ed. & tr. C. Johnson, rev. F.E.L. Carter & D.E. Greenway, (Oxford, 1983). (Henceforth Dialogus.)

94) On the chamber, see Green, Government under Henry I, p. 31; H.G. Richardson and G.O. Sayles, The Governance of Mediaeval England from the Conquest to Magna Carta, (Edinburgh, 1963), pp. 229-49, and p. 170 on the limits of the exchequer's interests. (Henceforth Richardson & Sayles, Governance.)

95) The Cartae are contained in Liber Rubeus de Scaccario, ed. H. Hall, (3 vols., London, 1896), i 186-445. (Henceforth Red Book.)

96) The few surviving returns are contained in Red Book, ii cclxvii-cclxxxi.

97) E. Zack Tabuteau, Transfers of Property in Eleventh-Century Normandy, (forthcoming, Chapel Hill, 1988).

98) Such omissions lead to others; e.g. I do not examine in depth wives' participation in alienation since this would require previous analysis of dower; see below, pp. 178-80. On socage, see Pollock and Maitland, i 291-6; R.J. Faith, 'Peasant Families and Inheritance Customs in Medieval England', Agric. Hist. Rev., xiv (1966), 77-95; B. Dodwell, 'Holdings and Inheritance in Medieval East Anglia', Econ. Hist. Rev, 2nd. Ser. xx (1967), 59-60.

99) One example is the need for a royal writ in order to force a man to answer concerning his free tenement; see below, pp. 154-5 on cases in honour courts started by writ.

100) Some advance have recently been made in social and honorial history; e.g. R. Mortimer, 'Land and service: the tenants of the honour of Clare', Anglo-Norman Studies, viii, (Woodbridge, 1986), 177-197. Dr. Crouch's project cited above, fn. 75, should clarify much. On lordship, see also Hyams, 'Warranty'. On social change, see below, p. 173.

101) For a much broader - and controversial - discussion of the effect of these changes on Western law and society, see H.J. Berman, Law and Revolution: the Formation of the Western Legal Tradition, (Cambridge, Mass., 1983).

102) See Milsom, Legal Framework, p. 2. Also S.F.C. Milsom, 'Law and Fact in Legal Development', Toronto Law Journal, xvii (1967), 1-19.

103) A similar point is made by S.D. White, 'Inheritances and Legal Arguments in Western France, 1050-1150', Traditio, (forthcoming). (Henceforth White, 'Inheritances and Legal Arguments'.)

PART ONE

SUCCESSION, INHERITANCE, AND SEIGNORIAL CONTROL OF LAND IN THE CENTURY AFTER THE NORMAN CONQUEST.

Control of succession was a very important aspect of lordship over land. How much choice did a lord have on the death of a tenant? Did, for example, custom, the attitude of his court, or his strength relative to his aspiring vassal constrain him? If his choice was restricted, what could he do when unable to get his own way immediately? What could a man do if he felt his claim to succeed was unjustly rejected?

Dealing with these questions clarifies the move from succession to inheritance, a central issue in discussions of the development of ownership and the emergence of common law. No-one disputes that in the century after the Conquest lands characteristically passed from father to son, from ancestor to clear heir, and thus that *succession* was normal and routine. However, as Thorne argued, this need not imply that land was heritable in the modern lawyer's strict sense.[1] When inheritance exists, at the death of a tenant, the land does not pass back into the lord's hands; rather, the heir succeeds directly and by right to the land which his predecessor had held. The lord is left with only incorporeal rights.[2] Thorne contrasted inheritance with what lawyers term succession, and illustrated the latter by an example:

> If I hire my gardener's son after his father's death, and my son hires his son after him, the place as gardener has descended through three generations of the same family. Yet it is obvious that it has come to each by gift, and that the son and the grandson of my gardener can in no way be said to have inherited it. What we have is a fief held by successive tenants in return for service, each succeeding by gift.[3]

Thorne stressed that in the early post-Conquest period 'succession' existed, but no real 'inheritance'. He argued that the lord had considerable control at a tenant's death:

> land which had been the lord's all along, subject to the tenant's interest,

> became his free of that interest. He could take it into his own hand if he so wished, expelling the heir, but whether he did so or not, his rights in it revived in their entirety.[4]

If the heir succeeded, it was by the lord's gift; 'the tenant's heir had no rights in the land but merely a claim to succeed his ancestor as the lord's feudal man'.[5] Thorne continued that, in the early twelfth century, if the lord died, 'the estates of his grantees had fallen to the ground.'[6] A new gift to the old lord's tenant was necessary for the tenure to be re-established. If the tenant owed knight service, the lord's heir was bound to make the gift, but, in Thorne's words, 'it was a gift nonetheless, for which a relief might be asked.'[7]

The distinction between succession and inheritance - which has caused some confusion amongst historians - is an analytical one, based on modern legal terms. It focusses attention on the extent of seignorial power. It has been discussed on two main grounds; the degree to which the lord is making a new gift and the degree of choice he has as to his new tenant. The two problems are closely connected. If pressure was exercised from outside the relationship of lord and claimant, the lord's choice was restricted. Therefore, even though he had taken the land back into his own hands, his new grant was never a wholly voluntary gift.[8]

Debate has tended to identify outside involvement with royal enforcement. Yet other types of outside involvement existed. Some scholars write of customary succession whilst emphasizing that succession is a personal relationship between lord and man. This takes custom as a force internal to the relationship of lord and man.[9] Custom can also be seen as an external constraint. At the very least, it existed within the context of the honorial court. This might be taken as part of the personal power relationships of lord and claimant, but this line of argument stretches the meaning of 'personal'.

Milsom criticizes Thorne along these very lines,[10] but his work, like that

of Thorne and the recent studies by Palmer, has a strong individualist bias. Notably little is said about counsel and the rôle of the barons of an honorial court. The individual relationship of man and lord is stressed, neglecting the part played by others in negotiation. The intensely personal formalised relationship manifested in the homage ceremony gained its power not so much by typifying normal life but by contrasting with it: after a difficult negotiation over a claim to succeed, the many supporting actors are expelled into the role of spectators.

Further external influences existed. A man denied his inheritance might weel seek help from his overlord or some other great man of the area.[11] In particular, written records of grants to a man and his heirs acted as an external control of a lord's later actions.[12] However, all these restraints, even the charters, lack the regularity and authority which ultimately came to reside in royal involvement. Hence, rather than allowing a legal rule of inheritance to exist, they produce 'grey areas' between the absolute personality of Thorne's succession of gardeners - a situation which never existed in post-Conquest England - and strict inheritance.[13] It is with these markedly changing shades of grey that I am concerned.

Thorne sketched a chronology for the development from succession to inheritance. By the second quarter of the twelfth century, 'holdings devolved by hereditary right',[14] but the holdings were not fully heritable, for regrants after the death of lord or tenant were still very important. By the third quarter of the century, homage, which traditionally 'had disappeared with the death of either of the parties to it, ... was regarded as continuing for a longer time. It disappeared only when both were dead, subsisting as long as either survived.'[15] The personal element in the relationship was thus in decline, a major step towards full heritability of land. Yet it did not complete the transformation

from succession to inheritance since a renewal of homage and a regrant were still necessary when both parties had died. By the assize of *mort d'ancestor* in 1176, however, 'there was no reversion in fact and thus no gift. The way had opened for the idea that an heir inherited directly from his ancestor.'[16] Holdings were fully heritable by *c.*1200.

I shall argue that by the latter part of Henry I's reign, the heir's claim to succeed was considerably stronger than Thorne allows. External enforcement may have been sufficiently common to force many lords to modify their actions. Under Stephen, the descent of lands was disrupted by political disorder, but notions of succession were not weakened. The first dozen years of Henry II's reign saw at least the restoration of the situation which had existed in the 1120s and 1130s, and the need to settle disputes arising from the previous reign may well have led to considerable royal involvement. A further hardening of inheritance occurred in the last third of the twelfth century.

In order to establish a chronology for the emergence of inheritance, I have combined analysis of the relatively abundant evidence of charter formulae with that of the scarcer but crucial evidence of cases. In dealing with the formulae, I firstly adopt Thorne's method of examining the granting words in order to estimate the degree of a lord's discretion on the death of a tenant. Secondly, I examine the frequency of the use of inheritance language, and thirdly I discuss the wider meanings and the limits of that language. I then turn to genealogy and case histories in order to examine the practice of succession and the resort to external authority.

PART ONE: **SUCCESSION, INHERITANCE, AND SEIGNORIAL CONTROL OF LAND**: Notes.

1) Thorne, 'Estates in Land'. Interpreting Thorne is made more difficult by the absence of dates in his writing. I have sought to make his chronology as clear as possible.
   In addition to the points made in the following paragraphs, it should be noted that, for inheritance to exist in its strictest sense, the heir must succeed not because he shared in the original gift to the 'donee and his heirs' but because he has a hereditary right to the lands the decedent holds at his death: I deal with this aspect in my discussion of alienation, below, pp. 176-7.
2) Thorne, 'Estates', 202. See also Milsom's description of fully developed inheritance: 'When the ancestor dies, the heir is at once entitled under abstract rules of law and enters without anyone's authority'; Milsom, Legal Framework, p. 154.
3) Thorne, 'Estates', 196.
4) Thorne, 'Estates', 196.
5) Thorne, 'Estates', 196-197.
6) Thorne, 'Estates', 199.
7) Thorne, 'Estate', 199.
8) See also my definitions of grant and gift, appendix A.
9) Palmer, 'Origins of Property', 5: 'claims to land were claims for the benefit of a personal relationship.'
10) Milsom, Legal Framework, p. 180. On the rôle of baronial counsel in relation to one aspect of succession, see E. Searle, 'Women and the Legitimization of Succession at the Norman Conquest', Anglo-Norman Studies, iii (Woodbridge, 1981), esp. 159-160. (Henceforth Searle, 'Women and the Legitimization of Succession.')
11) See the possible example below, p. 161.
12) Some charters state, for example, that 'N. is to hold as the charter which he has witnesses.' These earlier charters were probably brought to the lord's court. Sometimes they may have decided a dispute. Perhaps more often they gave their possessor so strong a claim that no dispute arose.
13) Palmer, 'Feudal Framework', brings out clearly Milsom's jurisprudential emphasis on the need for regular outside enforcing authority in order for legal rules to exist. See above, pp. 8-9.
14) Thorne, 'Estates', 196-197.
15) Thorne, 'Estates', 200-1.
16) Thorne, 'Estates', 201-2.

CHAPTER TWO: SUCCESSION AND INHERITANCE: THE EVIDENCE OF CHARTER LANGUAGE.

I: The Language of Regrants.

Introduction.

Thorne's arguments rested partly on the language used to record regrants. Here I concentrate on regrants to the heirs of dead tenants, leaving those on the succession of a new lord for my discussion of alienation.[1] Thorne's view that during the twelfth century regrants became limited to when both parties to the homage bond had died cannot be maintained. The increased frequency with which charters after 1150 mention the fathers of current lord and successful claimant stems rather from the desire to record long tenure, preferably from Henry I's time.[2]

Thorne wrote of the early twelfth century that when an heir succeeded to a fief, 'if a charter was drawn the words "*reddo et concedo*", even the verbs "*do et concedo*" proper to a new and original gift were quite appropriate'.[3] This phraseology indicates considerable seignorial control and a weak position for the old tenant's heir. In the third quarter of the century,

> if a charter were drawn the proper words were "*concedo et confirmo*," denoting an act of confirmation, rather than the "*do et concedo*" which had formerly been appropriate; though not found earlier, charters of this kind have survived in considerable numbers from the third quarter of the twelfth century.[4]

Here he omitted the phrase 'reddo et concedo' which he had included three pages earlier. He did not consider these changes to have been limited to grants by knight service,[5] although he stressed their special significance for such grants.

This linguistic argument and its implications for seignorial control of land are not easy to test. In the sparse evidence, it is often unclear which charters concern regrants. Our restricted knowledge of what contemporaries meant by individual words limits the potential for sophisticated linguistic analysis.

Thorne explicitly presented his view as a hypothesis, based largely on the charters in Stenton's First Century of English Feudalism and Documents Illustrative of the Danelaw and in Sir Christopher Hatton's Book of Seals. I therefore test the hypothesis against charters from a much wider range of sources, as Thorne himself intended to do, but even so the number of relevant documents is small.[6]

Regrants are often hard to distinguish from confirmations made a considerable time after the heir's succession or from restorations of lands after disputes. The wording of the charter provides only limited help. The statement that 'N. is to hold as his father did of me' suggests a regrant, as may one that 'N. is to hold as his father did.' But what of the charter recording that 'N. is to hold as his father held of my father'? This does not exclude the possibility that the claimant's predecessor had held of the current lord,[7] but on occasion may indicate that the tenure of the claimant's family had lapsed.

Contemporaries wrote and read charters with knowledge we cannot hope to regain. The occasional survival of additional evidence, which aids the interpretation of one charter, displays how easily others can be misinterpreted. A charter of Stephen begins 'sciatis me reddidisse et concessisse Johanni de Argentein totam terram que fuit patris sui ... cum ministerio suo.' This sounds like a regrant until one consults the Pipe Roll and finds that Reginald was already dead in 1130! Most probably, John was carefully obtaining a confirmation from Stephen.[8]

This shows the danger of assuming that twelfth-century charters recording lords granting to heirs lands their relatives had held necessarily coincide with the heirs' succession. Such an assumption allowed Thorne to compare the vocabulary of all such charters with that of later confirmations acknowledging the heir inheriting from his predecessor. Yet some of the earlier charters may,

for example, record confirmations some time after succession, and if so, Thorne was not comparing like with like.

Moreover, it may be particularly true of regrants that most charters to laymen before *c.*1150 record unusual cases. Especially if he already had a record of the grant to his predecessor and heirs, an heir succeeding with ease might not require a charter; the very act of succession would anyway strengthen the family's long-term title.

Many charters apparently recording regrants may hide disputes. A charter of Duke Henry's, probably from January 1154, concerns Brockenhurst in Hampshire:

> sciatis me reddidisse et concessisse et confirmasse Willelmo Spilemanno servienti meo sicut iusto heredi in feodo et hereditate sibi et heredibus suis totam terram que fuit Edwardi Unnithingi et Hugonis fratris sui et Alveredi parvi, sicut ipsi melius et liberius unquam tenuerunt tempore Henrici regis aui mei et antecessorum meorum.[9]

This might sound like a regrant, but the phrase 'sicut iusto heredi' suggests a dispute. Possibly also in January 1154, Stephen 'gave back and granted' to Alvric of Brochelea land in Brockenhurst and his grandfather's inheritance in Hampshire and Wiltshire.[10] William and Alvric look like rival claimants. If so, we have the interesting situation of Henry and Stephen supporting different parties even after the Treaty of Westminster. The dispute probably ended with Stephen confirming Henry's grant to William. Both this charter and Henry's confirmation of the settlement as king in 1155x8 state that Henry had 'given and granted' the land to William.[11] In Stephen's eyes, the grant to the claimant he had opposed may have amounted almost to a new gift, but the use of dare in Henry's charter would certainly have been strange had William's succession been uncontested.

Should disputes wholly exclude the charters from an analysis of the language of regrants? Thorne seems to have been talking of peaceful succession. Yet in a world of real seignorial control, where lords had a significant choice about regranting land, the acceptance of an heir might frequently involve

negotiation or even dispute. The lord might hold an inquiry into the claimant's right, especially if there was no clear heir, or he might withdraw special benefits granted to the decedent. The process of succession may best be seen as a continuum from the simple regrant to a full-blown dispute.[12] To the lord and the successful heir, once the disputed claim had been vindicated, the language of a simple regrant might seem appropriate, indeed might emphasize their reconciliation. On the other hand, a dispute might well affect the language used in a charter, and it is therefore desirable, wherever possible, to examine the circumstances of issue when considering the language of any charter.

There are problems too with Thorne's use of the linguistic evidence. Even when a Latin record survives, we cannot determine the exact French words lords used in their courts. Beneficiary-drafting takes us still further from the lord's words, and may increase the variety of phrases used. Even in royal charters, Latin granting formulae remained somewhat unstable. Thorne's initial identification of a few set phrases with set types of grant, the basis of his analysis, derives in part from thirteenth-century Common Law. It is too rigid for satisfactory analysis of twelfth-century granting language.

Thorne also failed to make explicit his analysis of the meaning of the individual granting words. Can one assume, as Thorne seems to, that confirmare can happily be identified with the English 'to confirm'? In what other contexts was it used? One word may have several meanings, simultaneously or over a period of time. If so, what do the other meanings tell us of the one that is relevant here? Take the examples of dare and of 'to give'. If dare was used in a regrant, did contemporaries really believe that it meant the same as in a gift? Or could it be used, heard and read in various ways according to circumstances? 'To give' in English can, but need not, mean a permanent transfer of ownership.

Charter draftsmen in the early twelfth century did not strictly define their

terms. Although the use of Latin no doubt encouraged men to attribute technical meanings, the emergence of legal terms of art must have been slow. For all these reasons, Thorne-style linguistic analysis ought to proceed with great care.

*

The Charter Evidence.[13]

I begin by examining the charters Thorne himself cited. Since his argument rested on change in charter wording between 1066 and *c.*1176, it is surprising that all but two of his eight charters come from *c.*1150-1175.[14] Moreover, four concern lands in Lincolnshire, and another lands in that county, Nottinghamshire and the East Riding of Yorkshire.[15] A sixth probably concerns Norfolk, although it too may refer to Lincolnshire.[16] Only two concern central counties, Warwickshire and Buckinghamshire.[17]

Few record peaceful regrants of land at the tenant's death. Some most likely concern disputes,[18] including one probably not at the time of the heir's succession.[19] Another refers to a grant at reduced service,[20] and a further one is concerned with a grant of the father's land to the son in the father's life-time.[21]

Another charter, of Ranulph Earl of Chester, may be a regrant primarily of the office of cook. The situation as to inheritance of offices differed from that concerning lands.[22] In the case of a cook, one might expect something closer to Thorne's gardeners. Certainly the transmission of skills between generations may have made succession desirable. However, refusal of a cook's claim would not threaten the prospects of succession for the barons of the court: they would have been much more interested in the treatment of their peers.

The charters which do record peaceful regrants of land do not support

Thorne's chronology. He provided no example of dare et concedere from the twelfth century. A charter of *c.*1170 used reddere et concedere, a phrase he believed to be falling from use at that time.[23] His only example of dare in fact comes from the early thirteenth century.[24] The best conclusion to draw from Thorne's charters would be that the words reddere or reddere et concedere were the appropriate ones in the period 1140-1170.[25]

Even amongst royal documents, evidence is very sparse until *c.*1120. No obviously relevant charters of William I or II survive, nor any from the first decade of Henry I's reign.[26] The one definite regrant from the second decade of the reign opens 'sciatis me reddidisse et concessisse Rotberti de Areci totam terram patris sui Normanni post mortem predicti Normanni.'[27] The other two possible regrants from the same decade simply use concedere, but neither is typical of later regrants of land held for military service in fee and inheritance. One stated that Henry had 'granted' to Jocelin son of Wulward of Wangford two manors which his father had held, at the farm his father had paid.[28] Wulward held of the abbey of St Edmund and the king was acting in place of the lord abbot during a vacancy. Concedere may have been used because the land was held at farm, not in fee. The other charter, of 1107×1116, 'granted' to the wife of William sheriff of Oxford and their sons thirty solidatae of land which William had held of the king in Kineton, and namely 'Swinlinc.'[29] This was in exchange for land which had been held in Bloxham, Oxfordshire. They were to hold free of farm, service and custom. In contrast a royal charter of 1123×1126 stated that Henry had 'given back and granted' these lands to Miles and the other sons of William of Oxford, 'as I gave and granted it to them and their mother in exchange for the land they held at Bloxham.'[30] They were to hold free of all farm, service and other custom, 'in feodum et hereditatem.' Why is concedere

used for the first grant, reddere et concedere for the second? The first might refer to William's wife's dower, and only to the sons as holding after her. For this, concedere might well be appropriate.[31] Alternatively, before 1120, concedere may have been considered suitable for a regrant.[32]

After 1120 documents become more plentiful. Some simply order that a man hold as his ancestor had, and use no granting verb.[33] Only one possible instance of dare et concedere survives. A charter probably of 1126 stated that Henry had 'given and granted' to Robert fitzPayn the land in Kilham which his uncle Everard fitzJohn had held, at the same farm and rent as his uncle had.[34] Too little is known to be certain whether this was a regrant, a restoration or effectively a new gift.[35] No inheritance language was used; maybe Everard had held for a restricted term at a money rent, so the language of a gift seemed appropriate. The standard formula was reddere et concedere.[36] Thus a charter of 1130x1135 began 'sciatis me reddidisse et concessisse Alberico de Danmartin totam terram patris sui de manerio Norton, ad tenendum de me in capite sicut pater eius tenuit.'[37] Another charter used only reddere.[38] Just one used confirmare, stating that Henry 'gave back and granted and by this my charter confirmed' to William fitzOther the goldsmith various lands and offices his father had held.[39]

Four of Stephen's charters possibly recording regrants use reddere et concedere.[40] One, datable only 1139x1154, uses dare et concedere.[41] It was a grant 'in fee and inheritance' to Hugh fitzPinceon of the houses which had belonged to Geoffrey the Constable, his cousin. However, it may have been issued well after Geoffrey died and hence not be relevant here. Or perhaps Geoffrey had held not in fee, but by some lesser tenure. None of the grants use confirmare. Both the Empress's relevant charters, to Roger de Valognes and Aubrey de Ver, use reddere et concedere,[42] as does her son's to Aubrey.[43]

Charters from the first twenty years of Henry II's reign show continuing

diversity. Early in his reign, Henry 'gave and granted' to Ralph Purcell the office and lands of Robert Burnell, his uncle.[44] I have been unable to date Robert's death: Eyton suggested 1155, but this charter seems his sole evidence.[45] If Robert did outlive Stephen's reign, this probably was a regrant. Conceivably, the fact that Robert was not Ralph's father might explain the use of dare. However, both lands and office were held in fee and inheritance, and the choice of verb may simply be an unusual piece of drafting.

Reddere remained much more common than dare. John the Marshall died in 1165 and his son Gilbert had died before Michaelmas 1166. This left as heir John the younger, the oldest son by John the elder's second wife. Henry issued a charter in his favour: 'Sciatis me concessisse et reddidisse et presenti carta confirmasse Johanni filio Johannis Marescalli ministerium suum et omnia tenementa que ipse debet tenere de me citra mare et ultra.' The editors of the Book of Seals wrote of 'concessisse et reddidisse' that 'it would appear to be the correct technical term for the admission to an inherited office of this kind.'[46] Yet reddere et concedere was almost certainly appropriate for regrants of land too. In 1155, Henry 'gave back and confirmed' to Fulk in fee and inheritance all the lands and tenures of his father, with the office of the forest in three counties, as his father had held them in the time of Henry I.[47] Fulk's father was Viel Engayne, who came into his land and office probably shortly before 1130. When he died is uncertain, but 1154x5 would fit the date of his succession and the fact that his son Fulk lived until 1185.[48] This, therefore, probably was a regrant. That the lands are mentioned before the office suggests they were the charter's primary concern and have determined the granting language.[49]

However, there are signs that the formula concedere et confirmare was becoming more common for regrants of land. Henry 'granted and by the present charter confirmed' to Eustace Cade son of William Cade ten librates in Navenby,

Lincolnshire.[50] Eustace and his heirs were to hold of the king and his heirs the lands whence he had done homage to the king, as well as William ever had. The charter seems to be a regrant, since it is datable to 1163x6 whilst William appears regularly in the Pipe Rolls until 1165-6 and never thereafter.[51]

My substantial sample of private deeds provides only two possibly relevant charters from before 1130. In 1120-1, Robert son of Henry I instructed William of Eynesford and his wife Hawisia that he had 'given back to William Mauduit the land which Robert Mauduit his brother held from me.'[52] Robert Mauduit had drowned in the White Ship and his younger brother had no known difficulty in succeeding. The charter, whilst primarily concerned with services, uses reddere to describe the regrant. The other charter, granted by Robert de Tosny in *c.*1102x1126, also uses reddere, but may concern a dispute rather than a peaceful regrant.[53]

I have found no relevant charters from 1126-35. The formula dare et concedere, which Thorne regarded as appropriate in the early twelfth century, first appears in my sample in the latter half of the 1130s. The Latin of the charter is poor, perhaps not helped by Dugdale's transcription. Robert, Earl of Leicester, 'gave and granted' to Geoffrey son of Osmund the archer all his father's lands in Thorpe, after his father's death. Heritability is not mentioned, and the service specified was one sparrowhawk.[54]

Two other possibly relevant charters from Stephen's reign use dare in combinations not considered by Thorne. A charter of 1138x54 records Roger de Mowbray's grant to Ralph son of Aldelin of most of his father's land, using the phrase 'reddidisse et dedisse et concessisse', but may record the settlement of a dispute.[55] The other charter, of 1141x54, records that the Earl of Lincoln 'gave and gave back' to Alan de Welton son of William, the land William, his father, had

held in Hundelby, Lincs., 'as his father held it in the time of King Henry and in the time of the Countess Lucy my mother.'[56] Despite the emphasis on William's tenure in earlier times, the opening phrase of the charter suggests that he had also held of the current earl, and so the charter may well record a regrant.

Further mid-twelfth-century charters use reddere, without dare. In 1145x6, Count Alan of Brittany 'granted and gave back' to Robert de Musters the land Robert his grandfather, Liserus his uncle, and Geoffrey his father had held, whilst retaining in his own hand the land of Geoffrey Trehampton.[57] An ancestor of Geoffrey's had probably held the latter lands from Robert de Musters the elder, but by *c.*1115 the Trehamptons held directly from the lords of Richmond.[58] Thus the Musters had lost their services long before the charter to Robert. The mention of the loss conceivably reflects a dispute in the 1140s, but the language can probably be taken as that of a simple regrant.[59] Reddere et concedere was also used of non-military tenures. Between 1140 and 1168, Robert Earl of Leicester 'gave back and granted' to Nicholas of Southampton all the land of the carters of Southampton.[60] Nicholas and his heirs were to have it as Robert and William his brothers had held. This appears a normal regrant.

The phrase concedere et confirmare, which Thorne failed to find earlier than the third quarter of the twelfth century,[61] probably appeared before 1150. A charter of Alan Earl of Richmond, from 1136x1145, states 'sciatis me concessisse et hac presenti carta confirmasse' Masham to Roger de Mowbray, to hold as Nigel d'Aubigny, Roger's father, had held it from Count Stephen, Alan's father.[62] This was not a simple regrant. Problems over the gaging of Masham may have produced the charter. Moreover, Nigel d'Aubigny had died in 1129, whilst Roger was only knighted in 1137 or 1138;[63] the charter may well have been issued on his coming of age.[64] However, in the century after 1066, the same language may well have been appropriate for simple regrants and regrants on an heir coming of age; the

lord would not take homage and deliver seisin to a minor until he reached majority.[65]

It is also very likely that dare continued to appear in regrants after 1150,[66] although perhaps not for lands held by knight service. Between 1153 and 1184, William Earl of Warwick 'granted and gave' to Alan son of Richard the cook for his homage and service the office of the kitchen which Richard had held in William's own house and his father's, together with specified lands.[67] Alan and his heirs were to render William and his heirs a glove every Easter as all the service for these lands. The specification that *Richard* gave William ten shillings, twelve geese and one sextary of wine for this gift and confirmation, which proves it no simple regrant, surprised a later improver of the charter, who wrongly changed the name to Alan.[68] Richard perhaps paid to ensure his son's succession, when he felt himself near to death or wished to leave office. Yet such sweeteners from a man to his lord may have been common. The use of dare especially contrasts with Rannulf Earl of Chester's use of reddere in his grant of the office of the kitchen to Wimund son of Robert the cook in *c.*1150.[69]

Between 1137 and 1161, Savaric, abbot of St. Mary's York, had given Ketel of Acaster five bovates in Acaster in fee and inheritance for 16s. a year.[70] Between 1161 and 1184, Clement, Savaric's successor, 'granted and gave' Hugh son of Ketel five bovates to hold of the church 'in fee and inheritance freely and quit as our other free-holders hold from us.'[71] Although these seem to be the same five bovates, the verbs used are concedere et dare. However, the grant differs from a simple regrant in reducing the rent from 16s. a year to 12s..[72]

Reddere remained the most common verb describing regrants in the third quarter of the twelfth century. It is used of regrants of lands with no office involved, as well as grants of office and land.[73] Probably before 1174, William Earl of Warwick 'gave back' to Roger Murdac son of Robert Murdac Compton Verney

in Warwickshire, which Robert had held, for his homage and just relief.[74] This seems to be a simple regrant.[75]

Concedere was sometimes used alone, perhaps particularly for grants to lesser men. Thus William, Earl of Gloucester between 1147 and 1183, 'granted' to Kenaithur son of Herbert son of Godwinet and to Blethein, William, Keinwrec, and Rigered his brothers the land of Kelleculum in Glamorgan which Herbert their father had held.[76] This appears to have been a regular regrant.[77]

Confirmare became increasingly frequent after 1150.[78] A charter of Margaret de Bohun for Roger fitzOsbert of Westbury, datable only to 1165x*c*.1197, stated

> Sciatis me concessisse et hac carta mea confirmasse Rogero filio Osberti de Westb' in feudo et hereditate ... terram de Westb' de feudo meo ... quam comes Milo pater meus dedit Osberto patri suo pro seruicio et homagio suo in feudo et hereditate tenendam de se et de heredibus suis ... .[79]

Even though the charter does not state that Osbert held of Margaret, it probably does record a normal regrant. However, the formula concedere et confirmare remains far from standard in the third quarter of the century.

Conclusions.

Changes in the wording of regrants do not support Thorne's chronology for the development of inheritance. As soon as relevant charters survive, contemporaries are seen generally to distinguish between regrants and new gifts.

Scarcely any royal evidence survives from before 1120, when kings may have had greatest control over succession. After 1120 until at least 1154, regrants regularly reddere et concedere, whereas dare was extremely rare. Confirmare appeared in phrases other than concedere et confirmare, and continued to do so after 1154. Concedere et confirmare did not become the sole 'proper words' for

regrants in the third quarter of the century, as Thorne would have us believe.[80] Furthermore, increased use of confirmare after 1154 hardly proves a development towards automatic confirmations. It was generally used to show not that the king was simply confirming to an heir his father's lands but rather that he was strengthening his grant by the use of writing. This was also its common use in other granting contexts throughout the period.[81]

Variations in royal use of language suggest that the granting verbs still were not technical terms of art, applied automatically by chancery clerks for specific situations. It is notable that royal confirmations of regrants by other lords do not automatically use concedere et confirmare even when that formula was becoming common in royal regrants; rather, they tend to use the formulae of the original grants.[82] This surely indicates that royal clerks did not see phrases such as reddere et concedere as incompatible with regrants.

A clear development from dare et concedere to concedere et confirmare by *c.*1175 is no more evident in private charters. Dare does not appear in the earliest surviving regrants but thereafter was used rather more frequently than in royal regrants: the royal chancery may have been more careful or regular in its use of words. But were writers of private charters really treating regrants like new gifts when they used dare? If dare was only appropriate for a new gift and reddere was inappropriate for such a gift, the phrase dare et reddere should not have been used in regrants.[83] Contemporaries no doubt knew what dare meant in each case. Witnesses to the grant could testify to the charter's meaning. By the time all the witnesses had died, the land was likely to have descended in the family and thus their right still more established.

Stenton, in the very passage from which Thorne's argument developed, warned that the language 'proper to a new and original gift', dare et concedere, sometimes occurred in regrants during the third quarter of the twelfth

century.[84] His example concerns land held in fee and inheritance for knight service, but only one of my charters from *c.*1150-75 using dare et concedere involved land held in fee and inheritance, and that for a money rent.[85] Perhaps the use of dare was starting to reflect the weaker position of an heir claiming a holding in non-military tenure. Beyond this, there is little sign that dare was used when, for example, the heir was some kin remoter than the decedent's son.[86] Nor is there evidence of significant regional, honorial, or family variation.

Confirmare appears in private charters from before 1150 and the combination concedere et confirmare becomes more common thereafter. The later examples of its use concern land held by military service. However, as with royal charters, confirmare was most commonly used to stress the strengthening effect of the written record.

Reddere is again the most common verb before 1154, although it is not quite so predominant in private as in royal charters, because dare is used more often. Even after 1154 reddere remained frequent. It was appropriate to grants just of land as well as those involving office. It could also appear with confirmare in phrases such as reddere et concedere et presenti carta mea confirmare.

Reddere, therefore, demands closer examination. It may suggest a stronger position for the aspiring heir than Thorne allows. To seek to clarify one meaning of a word by its other meanings, though not conclusive, is illuminating. Thus reddere was used for the payment of rents, of dues. In this, there is no sense of choice. Reddere was also used in settlements: lands to which a man had proved his right would be 'given back' to him.[87] It was a new grant in the sense that homage might well be taken, and one must not underestimate the importance of such ceremonies. However, *in the terms of the time*, the tenant had far more than a claim; he had proved his right, or at least his maius ius, to hold the

land.

If reddere has similar implications of right when used in regrants, one is reminded of a provision in that summary of good theory and bad past practice, Henry I's Coronation Charter: heirs shall not *buy back* their predecessors' lands, as in William II's time, but shall relieve them by a just and legitimate relief.[88] Rufus, and no doubt his barons, had been seeking to behave as Thorne's lords customarily would, demanding almost a fresh purchase of the land before they may made a new 'gift'. Despite the continuing exaction of heavy payments for succession, it is very notable that such demands were regarded as an abuse as early as 1100. Taken with the evidence of the language of regrants from the 1120s, this suggests that the development from succession to inheritance had proceeded considerably further by Henry I's reign than Thorne would allow.

Note on regrants after the death of both parties to the homage bond.

Thorne's argument that regrants became necessary only when both parties to the homage bond had died is a weak one. He cited in his support charters from the third quarter of the twelfth century which refer to the tenant's father having held of the lord's father.[1] Thus in *c.*1170, Bernard of Saint Valéry 'granted and by the current charter confirmed' to Bernard son of Miles Darreyns and his heirs two and a half hides in Mixbury, Oxfordshire, as Miles had held of Bernard of Saint Valéry's father.[2] Miles had probably held these lands in the 1120s; the 1130 Pipe Roll records that he was pardoned 10s. geld in Oxfordshire.[3] Bernard's father was called Reginald and held land in Oxfordshire at least as early as 1138.[4] He is surely identical with the Reginald of Saint Valéry who appears in the 1130 Pipe Roll.[5] However, tenure was probably traced back to the participants for another reason: to establish legitimate tenure from Henry I's time.

This and other examples suggest that mention of both the current parties' fathers was simply intended to stress long tenure.[6] Some such charters come from before 1150,[7] but the troubles of Stephen's reign increased the need for such legitimizing records of long tenure.[8] Henry II emphasized tenure under his grandfather in his own grants and private charter writers may have copied this practice.

It is notable that two of the charters Thorne cited in this context are also mentioned by Stenton. However, he simply stated of them 'it was evidently wise for an heir on his succession to obtain from his lord a new charter restoring or confirming his father's lands to him.'[9] I follow Stenton in taking these charters as recording normal regrants.

CHAPTER TWO: SUCCESSION AND INHERITANCE: THE EVIDENCE OF CHARTER LANGUAGE:
I: The Language of Regrants: Notes.

1) Below, pp. 231-3.
2) See extended note at the end of this section, p. 47.
3) Thorne, 'Estates', 199.
4) Thorne, 'Estates', 202.
5) Thus he cited a grant by the Earl of Chester to the son of his cook: Thorne, 'Estates', 199, fn. 26. The charter is Stenton, First Century, no. 24.
6) In this section, I concentrate on charters partly because Thorne did so and partly because they provide the sole body of material large enough to allow chronological comparisons. In addition, most regrants mentioned in chronicles were exceptional. Pipe Roll statements are rarely helpful as to granting verbs, and anyway do not exist for most of the period.
7) E.g. Richmond, no. 47: Roald may have been Earl Conan's first constable.
8) Reg. III, no. 23. PR 31 HI, p. 95. Throughout the thesis, when to 'give', to 'give back', to 'grant' and to 'confirm' appear between inverted commas they are translations of dare, reddere, concedere and confirmare respectively. I use no other English words to translate the Latin ones.
9) Reg. III, no. 130.
10) Reg. III, no. 129.
11) Stephen's charter, Reg. III, no. 131; Henry's as king C. Ch. R., iv 442.
12) See Stenton, First Century, no. 35 for a regrant explicitly following some sort of dispute.
13) For my sample of private grants, see above, pp. 24-5, fn. 75.
14) The exceptions are Stenton, First Century, no. 24, Book of Seals, no. 374.
15) The four are Stenton, First Century, nos. 24, 25 and Danelaw Documents, nos. 457, 518. The other is Stenton, First Century, no. 26.
16) Book of Seals, no. 374.
17) Stenton, First Century, no. 43, Book of Seals, no. 50.
18) Stenton, First Century, nos. 24 - note the use of 'sicut ius suum et hereditatem suam' - , 26.
19) Danelaw Documents, no. 457.
20) Danelaw Documents, no. 518.
21) Stenton, First Century, no. 43.
22) Stenton, First Century, no. 24. On inheritance of office, see Holt, 'Politics and Property', 27-9; J.O. Prestwich, 'The Treason of Geoffrey de Mandeville', E.H.R., ciii (1988), 306-310.
23) Book of Seals, no. 50.
24) Book of Seals, no. 374.
25) See also Stenton, First Century, no. 25, from *c.*1142.
26) Reg. II, no. 843 is an agreement for the descent of the Count of Meulan's lands, to take effect after his death..
27) T. Foulds, 'The Lindsey Survey and an Unknown Precept of King Henry I', B.I.H.R., lix, (1986), 212-5. (Henceforth Foulds, 'Lindsey Survey'.)
28) Reg. II, no. 1226.
29) Reg. II, no. 1151. The lands are in Warwickshire.
30) Reg. II, no. 1446.
31) Reg. II, no. 729; but cf. no. 1224, although the use of reddere et concedere may there be linked to a dispute.
32) A charter of 1129 records the king 'granting' to Gilbert de Meinil all his father's lands as his brother when he died, just as Edward of Salisbury, the lord of the lands, had given and granted them. Here concedere is really used for a confirmation to a sub-tenant, not a regrant: Reg. II, no. 1583.

See Reg. II, no. 1984 for a possibly comparable charter also using only concedere. I take Reg. II no. 1326 as a confirmation, not a regrant; the king granted William fitzUlf *his* land, rather than his father's land.

33) Reg. II, nos. 1465, 1621, 1780.

34) Reg. II, no. 1464. Kilham is in the East Riding of Yorkshire.

35) E.g. V.C.H., A History of the County of York: East Riding, ii, ed. K.J. Allison, (London, 1974), pp. 251-255.

36) Reg. II, nos. 1552, 1556, 1563, 1710, 1760, 1809, 1934.

37) Reg. II, no. 1934.

38) Reg. II, no. 1639.

39) Reg. II, no. 1524.

40) Reg. III, nos. 41, 129, 312, 577.

41) Reg. III, no. 317.

42) Reg. III, no. 634, 911. See also no. 277 which survives only as a note.

43) Reg. III, no. 635.

44) The Cartae Antiquae, Rolls 1-10, ed. L. Landon, (Pipe Roll Soc., New Series, xvii, 1939), no. 200. (Henceforth Cartae Antiquae, 1-10.)

45) R.W. Eyton, Court, Household and Itinerary of King Henry II, (Dorchester, 1878), p. 9.

46) Book of Seals, p. 193, no. 280.

47) H. M. C., Report on the Manuscripts of Lord Middleton, (London, 1911), pp. 2-3.

48) The Complete Peerage of England, Scotland, Ireland, Great Britain and the United Kingdom, by G.E.C(ockayne), eds. V. Gibbs et al., (15 vols., London, 1910-1959), v genealogy betwen pp. 72 & 73. (Henceforth Complete Peerage.)

49) See also Ancient Charters Royal and Private Prior to A.D. 1200 , ed. J.H. Round, (Pipe Roll Soc., x, 1888), no. 34 concerning a regrant at the end of a minority, (henceforth, Round, Ancient Charters.) cf. I.J. Sanders, English Baronies; a Study of their Origin and Descent, (Oxford, 1960), p. 125, (henceforth Sanders, Barony; I cite baronies by name, other information by page). Also G.H. Fowler, 'A Digest of the Charters preserved in the Cartulary of the Priory of Dunstable', Bedfordshire Historical Record Society, x, (1926), 305. Within the terms of Thorne's argument, such a regrant might well have been recorded in phrases similar to those of a normal regrant: in both cases, it was only with the rendering of homage and relief that the lord lost his immediate control of the land.

50) Round, Ancient Charters, no. 39.

51) See also Henry's grants to William Mauduit III, Beauchamp, no. 176; and to Robert de Vaux, Cartae Antiquae Roll 28, m. 1d, no. 20; (photo courtesy of Prof. Holt).

52) Earldom of Gloucester, no. 152. See also Beauchamp, pp. xxvj-xxvij. Henry I's charter, Reg. II, no. 1255, purports to confirm this regrant, but is spurious.

53) Beauchamp, no. 355. On this case, see below, p. 161.

54) Oxford, Bodleian Library, ms. Dugdale 17, p. 60. The witnesses suggest that the charter was given in Normandy: Geoffrey perhaps travelled abroad to get his regrant. The phrase stating that he was to hold after his father's death may indicate that this was not a regrant but a promise that Geoffrey should succeed. See also Hereford, no. 53, which includes a regrant of a mother's lands to her son and uses dare et concedere. However, the wording is determined by the new gift which is the charter's prime concern.

55) Mowbray, no. 383; see below, p. 147; also Mowbray, p. 115, note on no. 150.

56) Registrum Antiquissimum, no. 1869.

57) Richmond, no. 26.

58) The Trehampton lands appear to have been Lea and Gate Burton, Lincs.; Richmond, part ii, p. 242. The evidence for Lea, but not for Gate Burton, is reasonably clear. The Domesday tenant of Lea was Robert de Musters, the Count of Brittany's man; Domesday, i f. 347a (=Lincoln, 12, 4.). However, the Lindsey Survey of 1115x8 stated that Count Stephen had five carucates in Lea, Somerby and Heapham, which Geoffrey son of 'Treatune' held; The Lincolnshire Domesday and the Lindsey Survey, edd. C.W. Foster & T. Longley, (Lincoln Rec. Soc., vol. 19, 1924), p. 242. (Henceforth Lindsey Survey.)

59) Mowbray, no. 374 is also a regrant and uses the phrase 'reddidisse et concessisse et presenti carta mea confirmasse.' That it also concerns an additional gift on marriage is no reason to deny that it records a regrant. Richmond, no. 102 survives only as a notice, but suggests that the original charter used reddere to record a regrant.

60) The Cartulary of the Priory of St. Denys near Southampton, ed. E.O. Blake, (2 vols., Southampton Record Soc., vols. 24 & 25, 1981), no. 66, dating by Dr. Crouch.

61) Thorne, 'Estates', 202.

62) Richmond, no. 19.

63) Sir W. Dugdale, Monasticon Anglicanum, edd. J. Caley, H. Ellis & B. Bandinel, (6 vols. in 8, London, 1817-1830), v 349. (Henceforth Monasticon.)

64) See also Richmond, part i, p. 21.

65) See above p. 49, fn. 49.

66) Thorne, 'Estates', 202, thought otherwise.

67) Warwick Record Office, ms. CR 26/1(i)/Box 1/W2, transcript courtesy of Dr. Crouch.

68) Book of Seals, no. 526.

69) See above, p. 36.

70) Richmond, no. 87.

71) Richmond, no. 88.

72) For another regrant using dare, see Danelaw Documents, no. 534. Richmond, no. 47 uses concedere et reddere for a regrant of offices and lands; see also Richmond, no. 178. Oxford Charters, no. 49 also uses dare, but probably records a restoration rather than a regrant. Book of Seals, no. 217, which uses dare et concedere, may be a regrant, possibly involving a dispute. It is datable only to the twelfth century.

73) See above. p. 39.

74) 'Mordak charters in possession of Lord Willoughby de Broke', Miscellanea Genealogica et Heraldica, 5th. Series 6, (1926), 97-8. (Henceforth 'Mordak Charters'.) The dating is from PR 21 HII, p. 94, which mentions Roger Murdac.

75) Charters had appeared in the relationships of the earls and the Murdacs since before 1130; 'Mordak Charters', 97. See also Mowbray, no. 397, pp. xxvij, 253; which could involve a dispute; Earldom of Gloucester, no. 48, uses reddere et concedere but could record a restoration; Stenton, First Century, no. 2, almost certainly is a restoration.

76) Earldom of Gloucester, no. 75.

77) For another regrant using just concedere see St. Paul's, no. 214.

78) See also Danelaw Documents, no. 508, which may, however, concern a dispute. Book of Seals, no. 88, probably of c.1160-1176 may be a regrant and uses concedere et confirmare. Book of Seals, no. 132, which uses concedere et hac carta mea confirmare, can only be dated to Henry II's reign. Book of Seals, no. 330 probably concerns a confirmation by a new lord to an existing tenant and a restoration.

79) Earldom of Hereford, no. 122.

80) Thorne, 'Estates', 202.
81) E.g. Stenton, First Century, nos. 3, 9, 15 etc.
82) E.g. H. M. C., Reports on Manuscripts in Various Collections, (8 vols., London, 1901-14), i p. 365.
83) For examples of such use, see above, pp. 40-1.
84) Stenton, First Century, p. 162.
85) See above, p. 42.
86) See above, pp. 38, 39.
87) See The Chronicle of Jocelin of Brakelond, ed. & tr. H.E. Butler, (Edinburgh, 1949), p. 49 for one such use of reddere in a settlement.
88) Liebermann, Gesetze, i 521.

Regrants on the death of both parties: notes.

1) Thorne, 'Estates', 201, fnn. 30 & 31.
2) Stenton, First Century, no. 34.
3) PR 31 HI, p. 5.
4) Sanders, Baronies, p. 9.
5) PR 31 HI, pp. 151, 152.
6) E.g. Book of Seals, no. 88.
7) E.g. Richmond, no. 19.
8) On the impact of the end of Stephen's reign, see Hyams, 'Warranty', app. III: 'The Treaty of Westminster 1153 and Legal Change.'
9) Stenton, First Century, p. 162.

II: **Inheritance Language in Charters.**

Introduction.

I now propose to examine a different linguistic argument, the emergence of inheritance language in charters. By inheritance language, I mean in the first instance words based on the Latin heres. In this section I simply examine the frequency of occurrence of any such word. I shall later look at the various meanings of the words and phrases and at their changing implications, extending my scrutiny to words and phrases based on succedere or feudum.[1]

The inclusion of inheritance language depended on attitudes to the written record.[2] By Bracton's time, a charter had to include inheritance language if the grant were to be heritable, but there was no such requirement until many years after the Conquest.[3] For temporary grants, the memory of witnesses of the gift ceremony may often have been considered sufficient security. A grant to a man and his heirs should have outlived these witnesses and therefore required a more lasting record. The continuing relevance of charters recording long-term grants probably increased their chances of survival. These considerations invalidate any statistical approach linking charter wording with the overall pattern of land tenure. The numbers cited simply indicate the approximate proportion of charters which may have used inheritance language.

I do not wish to imply that the frequent appearance of inheritance language proves that land was heritable in the lawyer's strict sense.[4] A dead tenant's son stood in a different relation to the lord in 1200 than in 1100, even though at both times he would have been referred to as heres. The implications of heres changed with the ability to force a lord to regrant the hereditas. Nevertheless, the appearance of inheritance language is significant. It shows concern with preserving promises of benefits to heirs, with reinforcing custom,

and perhaps with the nature of tenure. Also, before routine royal involvement in succession cases, a convincing charter may have been an important aid in getting royal help.[5]

Moreover, the very inclusion of inheritance language in charters limited the lord's autonomy. Take the following case. A tenant died, leaving a son. Usually, his lord would have accepted the son as the decedent's successor and his new tenant. Sometimes, however, the lord might have wished to give the land to some other applicant, or keep it in demesne. This was not customary but a truly sovereign lord would have been free to do so, and certainly to reserve his position in that regard.[6] The decedent's son then produced a charter stating that the land had been given to his father and his heirs.[7] The lord might not have felt bound to accept the claimant just because of this charter, especially if he had not personally given the charter. Yet its very existence must have affected his decision if he desired to appear a good lord. He would not wish to appear perfidious, or disrespectful of his ancestor's gift. The barons of the court would have feared lest their own charters from the lord be rendered worthless. Thus a charter recording a lord's gift to a man and his heirs was, in a sense, an external authority, restricting the lord's freedom of choice. The spread of charters using inheritance language therefore marks a stage in the shift from a dead tenant's heir having a claim to his having a right, from succession to inheritance.

The Charter Evidence: (i) Royal Charters, 1066-*c.*1170.

In 1067, William I's charter to the burgesses of London clearly recognised the practice of succession in the city: 'and I will that every child shall be his father's heir [yrfnume] after his father's day.'[8] However, only four or five of William's charters mentioning grants to individual laymen survive.[9] In some, the nature of the grant may have made inheritance language inappropriate,[10] and it was concern with limiting the duration of tenure which produced the one use of inheritance language. At the king's request, Bishop Walkelin of Winchester granted to the king's cook, William Escudet, land in Alton Priors, Wiltshire, from the sustinence of the monks of the episcopal church. The cook was to serve the Bishop for life, whereafter the land would return to the monks' sustinence 'sine calumnia alicuius hereditatis'.[11]

Slightly more charters mentioning grants to laymen survive from Rufus's briefer reign.[12] Again few explicitly refer to succession.[13] Between 1087 and 1093, Rufus granted a house in Hertford with mills and their multure and the manor of Bayford to Peter of Valognes 'in feudo'.[14] This phrase, which I discuss later, may well have implied that Peter's heirs were to hold. Before 1116, Henry I also 'granted' the two mills to Peter 'in feudo'.[15] Only in Stephen's reign did a royal charter use language based on heres for the tenure of these lands.[16]

Rufus's only charter using inheritance language to describe a lay tenure is again concerned with preventing succession.[17] In 1093x1100, Guy d'Oilly 'gave back' to God, St. Mary and the Bishop of Lincoln the land he held of the bishop. At the king's prayer, the bishop 'gave back' the land to Guy's brother Nigel for life. After his death, the land was to return to the church's demesne 'soluta et quieta sine clamora [sic] et querela alicuius heredis uel hominis qui predicti Nigelli terram habeat.' The assumption clearly is that heirs would normally claim

what the decedent had held.

Henry I's Coronation Charter uses words such as heres in a way not dissimilar from later usage, and his grants to laymen used inheritance language increasingly frequently.[18] Only one of nine royal charters recording gifts of land made to laymen between 1100 and *c.*1110 uses inheritance language.[19] Such language would be inappropriate for some,[20] but might later have been expected in others. Five charters recording gifts survive from *c.*1110-1120, and two use inheritance language, including a grant in fee farm.[21] Inheritance language might be appropriate for four charters from the 1120s, and two of them do use it.[22] A third is to Hildred of Carlisle and his son, of the lands of Gamel son of Bern and Glassin son of Brictric, the king's *drengs*. The mention of his son may imply heritability, or may be a grant for two lives.[23] In Henry's last five years, inheritance language appears in the only gift of land where it might be expected.[24] It also appeared in all three surviving charters whereby laymen granted land to the king who then granted it to another layman. The earliest is of 1129: Ranulf earl of Chester 'demised and granted' to Henry various lands in Leicestershire so that Henry might grant them to the Earl of Leicester 'to have heritably with his other fee.'[25]

The pattern for regrants is harder to interpret. Fewer charters exist, and, and as we saw above, the nature of the grants which they record is sometimes uncertain.[26] Moreover, throughout the twelfth century such charters quite frequently omitted inheritance language apparently because mention of the grantee's predecessor rendered it unnecessary.[27] This was particularly so if the heir had a charter in favour of his predecessor which stated that the land was to be held heritably.[28] Bearing these qualifications in mind, Henry's surviving regrants still suggest an increasing use of inheritance language.[29]

Other types of grant survive, for example, confirmations that lands be held

as originally given. In 1107x1109 Henry granted Snettisham to William de Albini and his heirs hereditarily, as Rufus had given it to him.[30] From after 1120 survive several confirmations of other men or churches' grants to laymen. Their drafting may well have reflected the original donor's charter, although the precise phraseology might differ. A charter possibly of late August 1127 granted to Richard, nephew of Ranulph Bishop of Durham, the land which Ranulph had given him. He was to hold by hereditary right.[31] A charter purporting to be Ranulph's records the gift to Richard and his heirs in fee and inheritance.[32] However, this may be 'a later rehandling of an original authentic charter'. Its editor wrote

> This considerable and in part contentious grant, made during the bishop's decline to one of his relatives and witnessed by five or six more, rather than by the feudal tenants and members of the episcopal household who were normally present at such enfeoffments ... , may have been procured in somewhat surreptitious fashion by family pressure when the bishop was failing.[33]

A dubious grant had special need of royal support.

In general, royal confirmations may only have been worth obtaining for long-term grants, and they frequently include inheritance language.[34] Such confirmations are especially significant for the development of inheritance. They might be deemed promises of outside enforcement of an arrangement for future succession.[35]

Henry's grants of office show a quite similar pattern, although too few survive for firm conclusions. For example, in the restoration or confirmation to Other the Younger of his father's mint did not use inheritance language. In contrast, the charter of 1116x1127 recording the regrant to Other the Younger's son William stated that William and his heirs were to hold the lands and offices as freely as Other had.[36]

Henry's only charter recording the grant of a shrievalty, that of Worcestershire to Walter de Beauchamp in 1114, expresses, without recourse to

inheritance language, the king's wish that Walter should hold as well as had any of his predecessors as sheriff.[37] Walter's most recent predecessors were Urse, Roger and Osbert d'Abitot. Urse was Walter's father-in-law, Osbert his brother-in-law. Although Walter probably was sheriff until his death, the office was not yet the preserve of the Beauchamps. It is conspicuously absent from Henry's restoration of Walter's lands to William de Beauchamp I in 1130-33, possibly in order to prevent the growth of a hereditary claim. However, by 1139, Walter was sheriff,[38] and in 1141 the Empress's charter to him stated 'dedi ei et reddidi uicecomitatum Wygorn' et forestas ... in feodo et hereditate.'[39]

All four of Henry's grants of office in England after 1120 use inheritance language. Thus he gave Aubrey de Ver and his heirs the master chamberlainship of all England in fee and inheritance.[40] Aubrey was not related to earlier chamberlains and this gift was the basis of the hereditary chamberlainship.[41] Lesser offices were also granted hereditarily; Henry gave back hereditarily to William de Glanvill, his sergeant, the office and land his uncle had held.[42]

Thus by 1130-5, inheritance language was very common in royal charters, and so it remained. Of Stephen's eleven charters recording gifts of land to laymen, nine use inheritance language, and in one of the two exceptions such language would not be appropriate.[43] Of the Empress's six, five do so.[44] The one relevant joint grant by the Empress and her son includes inheritance language,[45] as do three of Duke Henry's four gifts to laymen.[46] Henry's charters as king to laymen almost invariably include inheritance language where appropriate.[47] Inheritance language was also very common, although not universal, in such charters as confirmations of other men's grants, of the the king's predecessor's grants, and of lands held by the grantee's predecessors.[48]

As for regrants, four of Stephen's possible five contain inheritance language.[49] Thus Roger fitzMiles' father-in-law, Payn fitzJohn, died in the

spring of 1137. Probably in December 1137, Roger obtained a charter from Stephen stating that he had 'given back and granted' to Roger and to Cecily his wife, the daughter of Payn fitzJohn, 'in feodum et hereditatem hereditarie omnem hereditatem et omnia acata ipsius Pagani que ipse tenebat die qua uiuus et mortuus de quocumque tenuisset.'[50] Both of the Empress's regrants include inheritance language,[51] as does the one joint regrant by the Empress and her son,[52] and Duke Henry's only relevant charter, made when he was a child.[53] However, a notable number of Henry's regrants as king do not use such language.[54] Most of these specified that the grantee was to hold as his father or ancestors had held, sometimes adding that this tenure had been in Henry I's reign. Again, the mention of the ancestor's tenure, by establishing the heir's claim to succeed, may have rendered inheritance language unnecessary.[55]

What of the absence of inheritance language in other charters after 1135? Sometimes the nature of the *document* is the likely explanation. Duke Henry's only gift not to use such language is a very brief charter.[56] Two writs of Stephen survive, ordering that Eustace de Barrington have his lands, and another ordering that his son Humphrey should do so.[57] Eustace had a charter of Henry I, Humphrey in addition a charter of Stephen stating 'sciatis me reddidisse et concessisse in feudo et hereditate Umfrido filio Eustachii forestarii totam terram patris sui de Hatfeld' et de Vritela.'[58] The existence of the longer charters may have made inheritance language unnecessary in the writs. Moreover, whilst their very survival strongly suggests that these writs still had some evidentiary value, men may already have been ceasing to regard such orders as long-term evidentiary documents. In Henry II's reign, they came to be sent by writ close, the authenticating seals of which were broken on receipt. Inheritance language might be irrelevant to such ephemeral documents.

Sometimes the nature of the *grant* made inheritance language inappropriate

or unnecessary. A grant of a house by Stephen to Miles of Gloucester may have been temporary, or may not have merited a charter long enough to include such language.[59] Grants of Waltham by Stephen to his Queen and by the Empress to Adelicia, wife of Henry I, survive,[60] both closely reproducing Henry's grant of Waltham to his first wife, Matilda.[61] Because the land pertained to each queen individually, inheritance language was inappropriate. Only exceptionally is there no clear reason for the absence of inheritance language.[62]

Stephen's reign was peculiar in the extent of heritability of office. According to Holt, 'formal confirmation of hereditary title to the office [of sheriff] was unusual, except under Stephen.'[63] Six charters from his reign record grants of shrievalties and all were explicitly heritable.[64]

Succession to the great offices such as butler had often been secure in previous reigns.[65] In Stephen's, the shifts of power and the great officers' switches of allegiance produced grants re-affirming this heritability: all the relevant charters of the reign use inheritance language.[66] Thus Humphrey de Bohun was Stephen's steward in 1135, but went over to the Empress in 1139. In 1144 the Empress and her son confirmed his land and office of steward, 'tenenda in foeudo [sic] et hereditate sibi et heredibus suis de nobis et de heredibus nostris.'[67]

Four charters recording grants of Earldoms survive and all use inheritance language.[68] Although the Empress's grant of the Earldom of Cambridgeshire to Aubrey de Ver in 1141 includes no inheritance language referring specifically to the earldom, it did state that all the 'tenementa' granted should be held hereditarily.[69] In addition, three charters include grants of 'totus comitatus', possibly meaning 'all the rights of the ruler within an area defined by reference to a recognized administrative district, but excluding certain fiefs and holdings

within that district.[70] One is in fee and inheritance, one to the grantee and his heirs. Only the Treaty of Westminster uses no inheritance language for the grant of Norfolk to William son of King Stephen.

Twelve charters survive concerning grants of castles; some specify the office of custody of the castle, others only mention the castle.[71] The Empress's first charter to Geoffrey de Mandeville granted him the custody of the Tower of London, the second simply the Tower.[72] In some cases, the distinction may not have been of great practical importance. As Holt has written, 'the distinction between royal and private castles was blurred ... by the creation of hereditary castellanships and by a prerogative right of seizure.'[73] Inheritance language was generally used irrespective of whether custody or the castle itself was granted. Only one of the twelve charters lacks such language: Stephen gave William de Roumare, Earl of Lincoln, Gainsborough castle with all the free customs with which any Earl could hold his castle.[74]

Thus almost all charters of Stephen and his rivals recording grants of office, castles, and forest[75] used inheritance language. This very heritability may have earned them their charter record, the donee wanting a written record of his privilege. The implications for the heritability of other offices are necessarily unclear. The majority of the charters were to earls, probably particularly capable of demanding concessions of heritability.[76] However, whilst lesser men and offices are greatly under-represented, the few royal charters concerning them do include inheritance language.[77]

Some of Henry II's charters granting offices did not use inheritance language, including some concerning the great offices. These record regrants or restorations and emphasize the tenure of an ancestor of the grantee, hence rendering inheritance language less necessary. In general, inheritance language remained common. Most notably, Henry 'gave back and granted' to Richard de Haye

his constableship of Lincolnshire, the custody of the king's castle of Lincoln and all his father's lands in Lincolnshire.[79] Richard and his heirs were to hold these in fee and inheritance of the king and his heirs. This contrasts with Stephen's attempts to keep at least some control over Lincoln castle. Henry's charter comes from 1155x8, the very time at which he was seeking to reassert royal rights over castles.[80]

Yet this charter is exceptional in the office granted. More important is the lack of charters granting shrievalties, local justiciarships and castles. Such charters may once have existed, their failure to survive explicable by the temporary nature of their grants. Alternatively, charters may not have been so necesary for non-heritable grants. Either explanation would fit the argument that Henry II sought to prevent the inheritance of such offices.[82]

*

(ii) Private Charters, 1066-*c*.1170.[83]

Very few private charters recording grants to laymen survive from before 1100. A large proportion record grants by churches for limited terms of lives.[84] Several of these involved lands from the prelate or monks' supply, against the permanent alienation of which there existed strong feeling.[85] Such charters do not use inheritance language, but this often did not prevent the grants from becoming hereditary.[86]

Inheritance language is not totally absent from charters in favour of laymen which may date from the late eleventh century:

> Haec est conuentio quam Pleines de Slepa, cum duobus filiis Willelmo et Ricardo, cum Aldwino abbate de Ramesia totiusque capituli conuentu fecit de feudo suo, id est, terra unius hidae et terra xxviii agrorum quos ipse ante hanc in suo possederat dominio. Hic autem ex his decem cum praefata hida iure hereditario possidebit; agros reliquos uero Deo et Sancto obtulit Yuoni.

This does not indicate the routine heritability of land by the eldest son, for

the charter went on 'post decessum uero eius filius quem sibi elegerit haeredem hanc praefatam terram cum omni debita sibi absque omni releuatione possidebat subiectam', but whichever son was chosen as heir might use this charter to support his claim.[87]

Inheritance language begins to appear quite frequently amongst the few surviving charters concerning grants to laymen between 1100 and 1120. A notable charter of 1109x1114 records how Nigel d'Aubigny constituted his brother William as his heir and how he himself had given back the lands of men whom he had disinherited.[88] Two charters of Ralph de Tosny from 1102×1126 also use inheritance language.[89] That charters as soon as they appear employ inheritance language suggests that such language had earlier been used in oral grants.

From 1122-37 comes the first large group of charters for laymen from a single donor, St. Mary's, York. Ten survive, all using inheritance language.[90] For example, Abbot Geoffrey and the chapter 'granted' one carrucate to Richard son of Godive 'in feodo hereditabiliter', as freely as the monastery's other free tenants held.[91] Inheritance language was also used of smaller grants.[92]

Although the St. Mary's charters share certain characteristics which amount to a house style, they are not atypical in the *frequency* of their use of inheritance language.[93] In 1121x2 William Peverel of Dover gave various lands to his steward Thurstan and his heirs, to be held of William and his heirs in fee and inheritance.[94] The earliest surviving charter of a count of Brittany in favour of a layman in England comes from *c.*1130. Count Stephen stated 'sciatis me dedisse et concessisse Roaudo filio Harscodi constabulario meo et heredibus suis Bernincheham scilicet vi carucatas terre in feudo et hereditate.'[95] Most instances where inheritance language might have been expected but did not appear are explicable.[96]

Charters to laymen become more common in the 1130s. Earl Roger of Warwick

granted to Swain Heved a hide which Swain had bought in Roger's presence from Robert the doctor. Swain and his heirs were to hold by hereditary right.[97] Once charters of lesser laymen survive, they use inheritance language as readily as those of their superiors. One of 1130x8 states that Alan de Percy and William de Percy his son 'gave and granted and by this present charter confirmed' to Haslat of Lecingfield and his heirs half a carucate to hold of them and their heirs in fee and inheritance.[98]

Thirteen Bury grants to laymen can be broadly dated 1121x1148.[99] All but three use inheritance language. One exception is a grant 'in feudum perpetuum'.[100] The other two concern restorations, regrants or confirmations of lands a predecessor had previously held.[101]

The situation remains the same in the 1140s. All the Bury grants use inheritance language,[102] as do those of Savaric, Abbot of St. Mary's, York, between 1137 and 1161.[103] T he only exceptions amongst the charters of Roger, Earl of Hereford between 1143 and 1155, are a gift of shops and a life grant.[104] The sole relevant charter of William Earl of Gloucester from this decade mentions a gift to Robert fitzHarding 'in fee and inheritance.'[105]

This pattern continues after 1150 and beyond. Exceptions amongst the charters of the Earls of Richmond and Gloucester are very rare.[106] All the charters of Earl William of Warwick include inheritance language where it might be expected.[107] So too does the only charter to a layman surviving from Henry of Hereford.[108] Charters of ecclesiastical grantors and of lesser laymen give a similar pattern.[109]

From the 1120s, the absence of inheritance language in private deeds is generally explicable by the same reasons as applied to royal charters. Many are restorations, regrants, or confirmations of land held by a predecessor.[110] Elsewhere, its absence may be explained by the nature of the document.

Sometimes the charter is more concerned with enforcing services than with emphasising the lord's tenure. Thus a charter of Roger de Tosny I from 1126x1162 is addressed to the whole soke of Necton and reads 'scitote quia concedo G. filio Estangrini totam firmam quam habuit a me, et omnia sua feoda, ex integre sicut unquam melius habuit, et seruite ei sicut unquam melius seruistis sibi uel patri suo.' The brevity of the document, its function and the existence of a longer charter confirming to William his father's lands explain why it did not use inheritance language.[111] Again only very rarely can no reason be suggested for the absence of inheritance language.

Few extant private charters record grants of office to laymen. Presumably few were ever written: lords knew their officers personally. Grants of office were peculiarly internal to the honour: unlike grants of land, no-one could challenge a grant of a chamberlainship, by claiming to hold it of another lord. Charters were therefore not needed as defences against outsiders.

Only eight grants of office, together with two grants of castles, figure in my sample. The earliest is a charter of Albold, Abbot of Bury from 1114 to 1119, which grants to Maurice of Windsor the office of steward with the lands of his predecessor. This charter exists in various versions: only the latest cartulary copy uses inheritance language.[112]

Three office grants come from Stephen's reign, and two of these use inheritance language. Thus in 1136x1153, Earl Roger of Warwick granted Geoffrey de Clinton and his heir the county, that is the shrievalty, of Warwickshire to hold hereditarily from him and his heirs, as Roger held it of the king.[113] It is notable that the one charter which does not use inheritance language is primarily concerned with a regrant of land and office.[114]

In addition, two treaties betwen magnates refer to grants of castles. One

records a temporary grant. The other specified that 'comes Rannulfus [of Chester] dedit et concessit Roberto comiti Legecestrie castrum de Montsorel sibi et heredibus suis tenendum de eo et heredibus suis hereditarie, et sicut carta ipsius comitis Rannulfi testatur.'[115]

All relevant charters from after 1154 use inheritance language.[116] For example, between 1147 and 1171, Earl William of Gloucester 'gave back and granted' to Gilbert fitzJohn of Hanley his father's land and office of the forest. Gilbert and his heirs were to hold of William and his heirs in fee and inheritance as John had held of William's father.[117]

Overall, the use of inheritance language in private charters concerning grants of office resembles its use in other charters, except that relevant charters only become at all numerous from *c.*1135. Thereafter inheritance language is commonly included where it might be expected. Grants of shires and castles only survive from during Stephen's reign, but they too use inheritance language.

*

Conclusions.

Thus very few late eleventh-century charters include explicit statements which future heirs could use to support their claims to succeed. On the other hand, many men certainly did succeed to their family's lands. Ignorance of inheritance language cannot explain its absence. The Normans came to England familiar with it.[118] At least some writers used inheritance language in other circumstances.[119] Several charters state that William I came to the realm 'iure hereditario'.[120] The brevity of some charters to laymen may be one reason for the absence of inheritance language. Writers of charters may not have thought

of including statements of heritability; if a man had a son it might be assumed that he would succeed unless special reasons existed to the contrary. Sometimes a statement that the grantee was 'to hold as N. had held' might sufficiently define the conditions of holding. Until concern about tenure and the desire for a more precise written record increased in the century after 1066,[121] the production of a charter using inheritance language might often result from the unusual or difficult circumstances of a grant.

It is therefore very notable that the only two charters of William I and II using inheritance language concerning laymen were intent on preventing succession. The lands being reserved for the sustinence of the monks, the prelates were under a special duty to prevent their permanent alienation.[122] Both examples are unusual because of close royal involvement with the initial arrangements. However, it is striking that these two powerful ecclesiastical lords looked not exclusively to their seignorial sovereignty but also to the support of specific provision, backed up by a royal charter, in order to prevent succession.[123] Similarly the prevalence of private charters recording life-grants does not indicate that this was the usual form of grant between 1066 and 1100. The various precautions specified in royal and private charters say much for the strength of customary succession. Meanwhile, the compilation of Domesday Book may suggest that a fairly stable pattern of land-holding was expected.[124]

During Henry I's reign, the number of surviving charters to laymen increases, probably reflecting an increase in the number written.[125] A growing proportion mention inheritance, but in the 1120s, a significant number still lack inheritance language where it later would have been used. In the 1130s such language becomes general. Although charters are few, the change seems to have occurred by 1135.[126] Therefore, suggestions that the troubles of 1135-1154 caused the regular use of inheritance language seem ill-founded.[127] Rather,

within Stephen and Henry II's reigns, the frequency of appearance of inheritance language changed little.

Perhaps surprisingly, inheritance language is rather more common in private charters than in royal ones in the period 1100-*c.*1130. Is this the result of the production or survival of charters, or does it reflect a real difference in the nature of grants? Perhaps private grantors, particularly lay ones, were less likely to produce charters for any but long-term grants, although we have seen that a large proportion of ecclesiastical documents before 1100 were specifically intended to enforce short-term grants. Perhaps the preservation of royal charters was particularly desirable, whatever the nature of the grant, and even if they did not use inheritance language. Yet the pattern might not just be determined by the survival of documentary evidence. Conceivably the king was in a stronger position than some lords to refuse to make explicitly heritable grants, or for political reasons he was less willing to do so.

What explanation can be given for the appearance of inheritance language? The most obvious is probably the most important. Men recognised the importance of a mention of their heirs in the gift ceremony. As they began to obtain charters to record the grants, they had their heirs written into the charters. Once negotiations and court hearings revealed that these mentions increased the security of a disposition, all would desire such passages in their charters. This very proliferation of charters using inheritance language can be seen as a step from sucession towards inheritance.

Other causes may also have contributed. Political disturbance would have made explicit mention of inheritance desirable. Doubts about the royal succession, perhaps from *c.*1086 and certainly from 1120 may have encouraged men to demand written promises of inheritance from the king. And problems about the royal succession may well have provoked more general discussion of succession.

Other factors, such as the introduction of knight service, the Domesday survey, and debate concerning church temporalities may also have provoked men to think about tenure, and demand descriptions of it in their charters. In the next two sections I analyse the connections between such considerations of tenure and the development from succession to inheritance.

II: Inheritance Language in Charters: Notes.

1) See below, pp. 75-6, 79-82 on successor, 99-100 on feudum.
2) See above, pp. 14-5 on other problems with arguments from charter language.
3) See below, pp. 119-120.
4) See S.D. White, 'Succession to Fiefs in Early Medieval England', P. & P., 65 (1974), 118. (Henceforth White, 'Succession to Fiefs'.)
5) See e.g. Reg. II, no. 1629 where a lord uses a cirograph to help to prove in the royal court that his tenant did not hold by hereditary right. See also Richmond nos. 47, 178 where the existence of an earlier charter may well have helped a man get royal help against his lord early in Henry II's reign.
6) For Milsom on the sovereignty of the lord's court and Thorne on succession, see above, pp. 6, 27-8.
7) Regrants which mention earlier charters surely imply that the claimant's case was strengthened by his possession of a charter; see e.g. Reg. II, no. 1395 and Reg. III, no. 389. Courts did ask for written evidence of heritability; see the case of Grenta, discussed below, pp. 140-2; Two Chartularies of the Priory of St. Peter at Bath , ed. W. Hunt, (Somerset Record Soc., vol. 7, 1893), no. 49. (Henceforth Bath Chartularies.)
8) Reg.I, no. 15.
9) Reg. I nos. 44, 84, 226, 270. No. 435 could either be of William I or Rufus. These are charters *mentioning* grants to laymen: only no. 226 is specifically a notification of a grant by the king.
10) See esp. Reg. I, no. 44.
11) Reg. I, no. 270. The use of 'hereditatis' is strange. Later, 'heredis' would probably have been used. Henry I's relevant charter also uses 'hereditas', Reg. II no. 884, so it is not just a slip by the charter roll copyist.
12) Reg. I, nos. 346, 395, 399, 435, 442, 466, 479. No. 456 is a charter of Rufus or Henry I. No. 349 is dubious. No. 444 is to the London *Cnihtengild*.
13) E.g. none of Rufus's three charters to Eudo *dapifer* use inheritance language, and nor do any of Eudo's charters from Henry I: Reg. I, nos. 399, 435, 442. Reg. II, nos. 519, 552, 564, 661, 688. Cf. Ramsey Chron., p. 207.
14) Reg. I, no. 346. Despite the use of 'concedere' in the charter, this was almost certainly a new gift, for the king held the lands in 1086, Domesday, i f. 133a-b (=Herts., 1, 18). On feudum, below, pp. 99-100.
15) Reg. II, no. 1121.
16) Reg. III, no. 911.
17) Reg. I, no. 466.
18) The Leges Henrici's inheritance terminology is idiosyncratic: see above, p. 26, fn. 89.
19) Reg. II, nos. 519, 661, 707, 818a - a charter of Queen Matilda, 848, 849, 998, 1120 do not use inheritance language, no. 793 does. Some of the Latin in no. 793 is unclear; I suspect that the seventeenth-century transcript which preserves the charter is inaccurate. I think this must be a new gift, despite the use of 'concedere', which may be used because of the money rent, or just be casual drafting. Henry's gift of the city and castle of Colchester to Eudo Dapifer, Reg. II, no. 552, does not use inheritance language. On grants of castles, see below, pp. 60-1, 64-5.
20) E.g. Reg. II, no. 661 is a temporary grant.
21) Reg. II, nos. 987, 992, 1062, 1119 are from the first half of the decade no. 1357 from the second; nos. 987, 992 use inheritance language, the latter being the grant in fee farm. See also no. 1163.
22) Reg. II, nos. 1256, 1395. No. 1279 does not use inheritance language.
23) Reg. II, no. 1560. The places became Gamelby and Glassonby, an interesting

late example of place names based on Danish personal names. On grants to a man and his son, see below, pp. 118-9.

24) Reg. II, no. 1723.

25) The charter quoted is Reg. II, no. 1607. Of the three grants, only this one used dimittere, perhaps to avoid any suggestion of subordination on the part of the grantee, the king, or perhaps to denote the formality of the grant which created no lasting relationship. The other grants are Reg. II, nos. 1668, 1719. On this form of alienation, see below, pp. 244-6.

26) On the problems of identifying regrants, see above, pp. 33-5.

27) A possible example from Henry I's reign is Foulds, 'Lindsey Survey', 212.

28) See the regrant to Alan son of Reginald Belet, Reg. II, no. 1809, and the charter in favour of his father, no. 992.

29) 1100-1110: Reg. II, no. 843, although not a standard regrant, uses inheritance language and, unusually, refers to itself as a 'hereditamentum'.

1111-1120: Foulds, 'Lindsey Survey', 212, definitely a regrant, used no inheritance language. Reg. II, nos. 1151, 1226 may be regrants and do not use inheritance language.

1120-1130: Reg. II, nos. 1446, 1524 do use inheritance language; nos.1552, 1639, which probably are regrants, and 1556, 1563, 1809 which may be, do not use inheritance language. I exclude nos. 1465, 1621, 1653 since inheritance language was generally not present in such brief orders.

1131-1135: Reg. II, nos. 1710, 1760 include inheritance language, 1934 does not. I exclude no. 1780 as an order, possibly not concerning a regrant.

30) Reg. II, no. 911. No charter of Rufus survives concerning this gift.

31) Reg. II, no. 1603. I follow Offler's dating: Durham Episcopal Charters, 1071-1152, ed. H.S. Offler, (Surtees Soc., clxxix, 1968), pp. 106-107. (Henceforth Offler, Durham Charters.)

32) Offler, Durham Charters, p. 101 and pp. 100-106 generally.

33) Offler, Durham Charters, p. 103, 105-6.

34) E.g. Reg. II, nos. 1268, 1603, 1722, 1758, 1778; no. 1498 is an exception.

35) See above, p. 53.

36) Reg. II, nos. 543 & 1524 respectively.

37) Reg. II, no. 1034. See Beauchamp, pp. xlviij-xlix.

38) Reg. III, p. xxv. A charter of Stephen's for Worcester Cathedral was addressed to Waleran de Meulan, who was Earl of Worcester, and Phillip de Belmeis and all their officers of Worcestershire and Staffordshire; Reg. III, no. 966, datable 1136x1140. Conceivably, Phillip was addressed as sheriff of Worcestershire.

39) Reg. III, no. 68.

40) Reg. II, no. 1777.

41) Complete Peerage, x, App. F, 'The Office of Lord Great Chamberlain of England', esp. pp. 47-57. See also App. G., 'The Rise of the Marshall', esp. p. 92, fn. g.: Gilbert the Marshall and his son John successfully maintained their right to the office of Marshall, which was challenged by Robert de Venoiz and William de Hastings.

42) Reg. II, no. 1835. See also nos. 1518, 1749, 1947, the last being Henry's grant of the pantry in Normandy.

43) Reg. III, nos. 179, 201 are the exceptions. The nine using inheritance language are nos. 174, 175, 176, 177, 276, 319, 437, 493, 494. No. 437 uses 'reddidisse et concessisse' but there is no evidence that it is a regrant or restoration; I follow Reg. III in taking it as a gift. I exclude no. 915, a

gift to the Queen.
44) Reg. III, nos. 274, 275, 316a, 393, 634. No. 392 is the exception.
45) Reg. III, no. 111.
46) Reg. III, nos. 180, 438, 439 use inheritance language, no. 320 does not.
47) E.g. C. Ch. R., ii 34, iii 477-8, iv 83. Round, Ancient Charters, no. 40.
48) Present in e.g. Reg. III, nos. 166, 307, 386, 387, 912; Beauchamp, no. 176. Absent from e.g. Reg. III, no. 413; E.Y.C., i no. 286.
49) Reg. III, nos. 41, 129, 312, 317. The exception is no. 577.
50) Reg. III, no. 312. The date is from Round, Ancient Charters p. 37. On this charter see also below, pp. 196-7.
51) Reg. III, nos. 634, 911. No. 277 is a note of a lost charter strongly suggesting that the original used inheritance language. No. 581 confirms Henry I's regrant, Reg. II, no. 1719.
52) Reg. III, no. 43.
53) Reg. III, no. 635. No. 130 probably concerns a dispute, not a simple succession. No. 653 was issued some time after the ancestor's death. No. 311 is forged.
54) E.g. C. Ch. R., ii 137(2), The Cartae Antiquae, Rolls 11-20, ed. J.C. Davies, (Pipe Roll Soc., New Series, xxxiii, 1960), no. 535, (henceforth Cartae Antiquae, 11-20); E.Y.C., ii no. 1240.
55) Some of Henry's regrants as king do use inheritance language, e.g. Beauchamp, no. 176.
56) Reg. III, no. 320.
57) Reg. III, no. 39, 40, 42.
58) Reg. II, no. 1518, Reg. III, no. 41.
59) Reg. III, no. 392.
60) Reg. III, nos. 915, 918.
61) Reg. II, no. 525.
62) E.g. Reg. III, no. 179, Recueil des Actes de Henri II, edd. L. Delisle & E. Berger, (4 vols., Paris, 1909-27), i nos. CCLXXII, CCLXXIII. (Henceforth Recueil.)
63) Holt, 'Politics and Property', 28. See above, pp. 56-7, for the Beauchamps and the shrievalty of Worcester.
64) Reg. III, nos. 274-6 to Geoffrey de Mandeville; nos. 386, 388 to Miles of Gloucester; no. 68 to William de Beauchamp. Nos. 274-6 are the only grants of local justiciarships, all to Geoffrey de Mandeville and all apparently heritable.
65) Reg. II, p. xiii. See above, p. 57, for the Chamberlain.
66) Reg. III; Steward: nos. 111, 438, 439; Chamberlain: nos. 582, 634; Constable: no. 68.
67) Reg. III, no. 111.
68) Reg. III, nos. 273, 274, 393, 634.
69) Reg. III, no. 634.
70) Reg. III, nos. 180, 272, 437. On such grants, see P. Latimer, 'Grants of "Totus Comitatus" in Twelfth-Century England: their Origins and Meaning', B.I.H.R., lix (1986), 137-145, esp. 141-2, whose definition I quote. I am somewhat doubtful about it, for example because of the reservation of royal justice in the grant to William son of King Stephen.
71) Reg. III, nos. 387 (custody), 388 (custody), 391, 393, 394 to Miles of Gloucester; nos. 274 (custody), 275, 276 (custody) to Geoffrey de Mandeville; nos. 68, 180, 437, 494 ('castrum suum', i.e. the grantee's castle) to others.
72) Reg. III, nos. 274, 275.
73) Holt, 'Politics and Property', 25.
74) Reg. III, no. 494.

75) Reg. III, nos. 68, 391.
76) Twenty-three relevant charters: thirteen to earls, Reg. III, nos. 180, 273, 274, 275, 276, 437, 438, 439, 494, 634, 635; four to Miles before he became an earl, nos. 386, 387, 388, 391; five to others, nos. 23, 68, 111, 129, 433, 501, 582.
77) E.g. Reg. III, nos. 129, 130. No. 131 does not include inheritance language. Stephen's general confirmation to Reading, Reg. III, no. 675, which is certainly genuine, contains a clause similar to that in the 'improved' foundation charter of Henry I, Reg. II, no. 1427.
78) Cartae Antiquae, 11-20, no. 553, granting the Earldom of Norfolk to Hugh Bigod; The Cartae Antiquae, Rolls 1-10, ed. L. Landor, (Pipe Roll Soc., New Series, xvii, 1939), no. 277, grant of the office of usher. (Henceforth Cartae Antiquae, 1-10.)
79) Round, Ancient Charters, no. 36.
80) Holt, 'Politics and Property', 25-6.
81) E.g. Book of Seals, no. 280.
82) Holt, 'Politics and Property', 28-29.
83) On my sample of private charters, see above, pp. 24-5, fn. 75.
84) E.g. J. Armitage Robinson, Gilbert Crispin, Abbot of Westminster, (Cambridge, 1911), p. 38. (Henceforth Gilbert Crispin.) V.H. Galbraith, 'An Episcopal Land Grant of 1085', E.H.R., xliv (1929), 371-2. (Henceforth Galbraith, 'Episcopal Land Grant'.) See below, pp. 113-8.
85) See below, Chapter Six.
86) See below, pp. 113-8.
87) Ramsey Chron., pp. 235-6. On the choosing of heirs, see below, pp. 141-5. For an incidental mention of a man's heres, see Ramsey Chron., p. 234.
88) Mowbray, no. 3.
89) Beauchamp, nos. 355, 356. See also E.Y.C., i no. 25, a gift to a layman and his son 'in feudum.'
90) E.Y.C., i nos. 310-2, 340, 460, 637; iii no. 1303; ix nos. 134, 135; Richmond, no. 105.
91) E.Y.C., iii no. 1303.
92) E.g. E.Y.C., i no. 311.
93) See also Hyams, 'Warranty', 456 on charters of St. Mary's.
94) Stenton, First Century, no. 29.
95) Richmond, no. 9.
96) Examples where there is no obvious explanation include Hereford, no. 61, Stenton, First Century, no. 40.
97) BL. Add. Ch. 21493.
98) E.Y.C., ii no. 970.
99) Feudal Documents, nos. 115-127 inclusive.
100) Feudal Documents, no. 116.
101) Feudal Documents, nos. 115, 120.
102) Feudal Documents, nos. 128-135.
103) The only exception amongst the charters of all grantees in E.Y.C. is E.Y.C., i no. 534.
104) Hereford, nos. 39, 52 respectively.
105) Earldom of Gloucester, no. 11.
106) The only exception amongst the Richmond charters is no. 40, confirming a vassal's gift as the donor's charter witnessed, and that charter included inheritance language. The only exception amongst the Earldom of Gloucester charters is no. 97, which concerns an urban holding.
107) E.g. Oxford, Bodleian ms. Dugdale 13, p. 35.
108) Hereford, no. 84. See also no. 64.

109) The only exception amongst the Abbots' charters in Feudal Documents where inheritance language might be expected is no. 136, a regrant mentioning the grantee's father. For grants by lesser laymen, see e.g. Richmond, nos. 181, 191, 196, 267; all such charters in the appendix to Stenton, First Century include inheritance language if it would be appropriate: e.g. nos. 3, 26, 28.

110) E.g. Oxford Bodleian ms. Dugdale 17, p. 60, a grant by Robert Earl of Leicester to Geoffrey fitzOsmund.

111) Beauchamp, no. 358. Cf. the longer restoration, no. 357.

112) Feudal Documents, no. 108. See also no. 109. On the Abbot of Bury's stewards, see L.J. Redstone, 'The Liberty of St. Edmund', Proceedings of the Suffolk Institute of Archaeology, xv (1913-5), 207 and Feudal Documents, p. cxxxviii. The only hint that Maurice may have been related to the earlier Ralph is that Maurice's own successor was his nephew, also called Ralph. This is too tenuous a link to establish any kinship, and none is specified in Feudal Documents, no. 87, Henry II's confirmation to Ralph of Hastings, Maurice's nephew.

113) Beauchamp, no. 285. Stenton, First Century, no. 24, also uses inheritance language.

114) Feudal Documents, no. 136.

115) Hereford, no.15; Stenton, First Century, no. 48. For the circumstances, see E. King, 'Mountsorel and its Region in King Stephen's reign', Huntington Library Quarterly, xliv (1980), 1-10.

116) Richmond, no. 47; Beauchamp, no. 10; Feudal Documents, no. 166.

117) Earldom of Gloucester, no. 48.

118) Holt, 'Notions of Patrimony', 199-205.

119) E.g. William of Poitiers, Gesta Guillelmi Ducis Normannorum et Regis Anglorum, ed. R. Foreville, (Paris, 1952), pp. 30, 88, 100; Evesham Chron., pp. 92, 97.

120) E.g. Reg. I, nos. 231, 272.

121) See below, esp. pp. 119-120.

122) Cf. Palmer, 'Origins of Property', 6, assumes that lords always wanted succession, so does not consider prevention of succession a valid test of seignorial power.

123) Such a use is also prominent in the first decade of Henry I's reign: Reg. II, nos. 966, 967.

124) See Holt, '1086', Hyams, 'Domesday Inquest and Land Adjudication'.

125) See Bishop, Scriptores Regis, p. 30, on the increase of royal scribes in the chancery from two in 1100 to at least four in *c.*1130.

126) See above, p. 57, 62-3.

127) Cf. R.H.C. Davis, 'What Happened in Stephen's Reign', History, 49 (1964), 1-12, esp. 12. Also Holt, 'Politics and Property', 39.

III: The Limits of the Use of Inheritance Language.

In the previous section, I assessed only the frequency with which inheritance language was used. I now analyse its meaning more closely and discuss its increasing precision and abstraction. I compare usage with regard to ecclesiastics and laymen. Next, I examine the replacement of inheritance language by alms language to describe the holding of land by churches. I then show that in the second half of the eleventh century, the word elemosina came to be used in an abstract way, as what I shall call a description of tenure, that is, *of how lands are held, with implications for the future and possibly the past.*[1] In the following section, I will argue that inheritance language was used in a similar way at least during the twelfth century.

I do not wish to suggest that a fixed set of tenures, equivalent to those of the later Common Law, existed in this period. Nor do I mean that men distinguished between the concrete and the abstract in the same way as they do today, or did in Bracton's time, or even Glanvill's. Yet some men at least considered land-holding in certain abstract ways, and this influenced the development of land law.[2]

Some of the underlying impetus for such increasing precision and abstraction came from major intellectual developments, most clearly the intellectual and political changes which constituted the church reform movement. The reformers emphasized the special characteristics of ecclesiastical land-tenure. This provided a contrast with lay land-holding which must in turn have stimulated more abstract thought on the latter. Great laymen were not necessarily incapable of abstract thought, nor wholly cut off from the intellectual changes of their day, particularly those affecting a subject like land-holding which necessarily concerned them. There was no lack of channels

through which reform ideas might permeate the circles which determined the conditions of lay land-holding. Churchmen figured prominently among lords and royal advisers and officials. Laymen attended great trials, such as that of William of St. Calais, at which land tenure was discussed. At the same time, political change and governmental action, perhaps most notably the Domesday Inquest, were also forcing consideration of the way in which land was held.

This abstraction has implications which are difficult to reconcile with land-holding based solely on personal relations. Milsom emphasizes the importance of the relationship betwen lord and man, plays down that between man and land. The increase in abstract thought concerning tenure weakens this argument. When a succession dispute arose, the lord was restricted not only by custom and by his desire to appear a good lord, but also by the nature of the decedent's tenure of the land.[3]

For grants to clerics, a distinction between succession and inheritance language existed throughout the period. Clerics under the influence of the Reform movement were bound to avoid heres with its connotations of blood relationship. Some grants to bishops or abbots mentioned their successors. Thus three of William I's charters, all from after 1080, mention the successors of a great ecclesiastical beneficiary, as do four or five of Rufus's.[4] This usage continues in royal and private charters throughout the twelfth century.[5] After 1100, a few charters survive recording grants to the canons of a church and their successors.[6]

Successor was also used of great clerics in other circumstances. To my knowledge, the first post-Conquest example is a grant by Archbishop Thomas I of York to the monks of St. Germain of Selby in 1070x1081.[7] The charter ended

'hoc autem rogo et humiliter meos successores admoneo ne hanc caritatis donationem uiolare uel adnullare aliquatenus presumant ... .' Henry I's Coronation Charter promised that he would make the church free: 'nec, mortuo archiepiscopo siue episcopo siue abbate, aliquid accipiam de dominio ecclesie uel de hominibus eius, donec successor in eam ingrediatur.'[8]

Only rarely did grants to heads of lesser churches and to lesser clerics use successor. Rufus gave the manor of Prestpiddle to Christchurch, Twynham, and to its dean, Ranulph Flambard, and his successors.[9] Ranulph's personal importance might explain the peculiar usage. Alternatively, successor may have been used for Rannulf in his *office* of dean. Certainly successor was sometimes used because the cleric was an office-holder. For example, between 1111 and 1127, Bishop Robert I of London announced to the dean and chapter that he had established a dwelling in the corner of the tower for Hugh the master of the schools and his successors.[10]

Bishops, abbots and canons might also be seen as ecclesiastical office-holders. What other circumstances contributed to the inclusion of successor? At times it seems peculiarly frequent for certain prelates, but this might result from one drafting clerk's practice or the copying of formulae from earlier charters.[11] Hardly surprisingly, it was often included when the perpetuity of the grant was stressed but this was not universally true.[12] More interestingly, it tended to be used when the grant did not mention the monks or canons of the prelate's church, but again there were exceptions.[13]

Inheritance language was very rarely used concerning great clerics. The first surviving royal example, a charter of 1121, records a land plea between Robert Bloet, Bishop of Lincoln, and St. Augustine's Canterbury.[14] Robert's archdeacon, Henry of Huntingdon, wrote that the Bishop, in the last year of his life was twice impleaded by the king through an ignoble justiciar and afflicted

with great damage and shame.[15] Ours may be one of the cases, for Robert died barely a year later, in January 1123. It was decided in the royal court that the land was of the fee of St. Augustine and that Robert should hold it of the abbot. The abbot therefore granted it to Robert for services, except ward and military service during the Robert's life. If, after the bishop's death, his heir held the land by the king's assent, he should do all services without exception. If, however, the king gave the bishop's acquisitions to anyone other than his heir, the abbot was to do the heir right in his court. Whilst chancellor of William I, Robert had produced a son, Simon.[16] The charter's mention of an heir probably refers specifically to Simon, and that the king was preserving his discretion as to the succession of a cleric's bastard son to his father's acquisitions. It might be objected that the word heres could not apply to an illegitimate son. Usage surely was more flexible than this; everyone at the time would have known to whom the word referred. The case is thus an unusual but interesting one.

Stephen's gift of seven bovates in Cawood to Archbishop Thurstan of York is the only royal grant 'in fee and inheritance' to a bishop which I have found in the century after 1066.[17] Other charters describe Cawood as of the fee of St. Peter and the lord archbishop, or the fee of the archbishop.[18] This was, no doubt, a gift to the archbishop to be held for military service, the word hereditas only appearing because of poor drafting. Even this charter does not refer to the Archbishop's heirs.

Very few private charters use inheritance language for great clerics. A charter of Earl Alan of Richmond, probably from the mid-1140s, that does so shows a clear awareness that a bishop could not have heirs in the normal sense:

> Sciatis me dedisse et concessisse Alexandro episcopo Linc' et *heredibus suis quibus eam dare uoluerit* Knivetunam cum omnibus pertinenciis suis in feudum et hereditatem scilicet tenendam de me et de heredibus meis per seruicium unius militis, *et nominatim Robertus de Aluers filius neptis eiusdem*

Alexandri episcopi sit heres ejus nisi ipse alicui alii heredum suorum eam in uita sua in hereditatem concesserit.[19]

In addition, occasional grants for a canon to hold 'iure hereditario' survive.[20]

Royal charters to lesser clerics are very scarce before 1100, and none use inheritance language. A few of Henry I's do use such language, almost all for clerics closely connected to his household.[21] Thus a grant of two manors to William, Archdeacon of Ely and the king's chaplain, was to be held by hereditary right.[22] Although archdeacons were frequently exhorted at this time to enforce clerical celibacy, William, like some other archdeacons, was married and had produced a son.[23] Only one charter uses inheritance language for a cleric not clearly linked to the royal household. In 1131 Henry gave 'Mara' in Wilton 'by hereditary right' to Peter, clerk of St Martin's for the making of houses or cells.[24] Grants to lesser clerics are scarce in Stephen's reign and the first twenty years of Henry II's, but inheritance language still occasionally occurs.[25]

Private charters to lesser clerics are rare, especially before *c.*1135. Thereafter, approximately half of those using inheritance language concern clerks closely connected to the donor or his household. Thus in the 1160s, Bishop Robert II of Lincoln granted Malger of Newark, his clerk, and his heirs a messuage in Nettleham.[26]

In most royal and private charters using inheritance language, the lesser churchman is referred to either as clericus or capellanus, very rarely as, say, presbyter or persona.[27] An exception is a grant of 1154×63: Hugh de Plugeney gave to Ralph the priest of St. Martin's a piece of land to be held of Hugh and his heirs by hereditary right. Ralph had been married and, according to the editor of the charter, was

> of that type of clergy which came to an end after the twelfth century. They were married and apparently without irregularity as they were not beneficed or in holy orders. When their wives died, they became rectors and may have received priests' orders, though it was not so necessary for a rector in that century as afterwards.[28]

However, such problematic examples are very rare, and it may well be that use of inheritance language was generally limited to grants to clerics still in sufficiently low orders to marry and have children.[29]

Occasionally, individual charters illustrate men distinguishing between where inheritance language and where succession language should be used. Thus, when Henry I gave Calne Church in prebendam to the Church of Salisbury and Nigel of Calne, the royal *chaplain*, and his *successors*, he also gave various lands in prebendam to Salisbury and to Arnold the Falconer, a layman, and his *heirs*.[30] Then, probably in the 1150s, Bishop Robert II of Lincoln gave two bovates in Bishop Norton to the chapter of Lincoln, to hold freely save the right of Miles the clerk of Norton and his heirs.[31] The chapter's charter for Miles distinguishes between the language of succession appropriate for the canons of a church, and the language of inheritance which might be used for a lesser clerk: they gave and granted the two bovates to Miles 'et heredibus suis ad tenendum de nobis et successoribus nostris in perpetuum tenendas.'[32]

Thus for clerics, inheritance and succession language were distinguished throughout the period. The former referred to a genealogical claim, the latter did not. Succession involved choice, in ecclesiastical terms this might be 'election', whereas inheritance followed customary descent norms. Succession language was primarily for greater clerics, especially those holding the office of bishop or abbot, and also for canons. Some lesser clerics were also office-holders, and succession language was used for these too. Inheritance language was sometimes used for grants to lesser clerics, particularly household clerks. This capacity of twelfth-century draftsmen to distinguish the appropriateness of certain forms for certain situations must be borne in mind when considering other aspects of wording.

Did men also discriminate between successor and heres when referring to

laymen? Was the latter perhaps limited to the holding of offices which did not pass hereditarily? I concentrate on the noun form, successor, since in the absence of a common verb based on heres, meaning 'to inherit', succedo was widely used in combination with inheritance language: men might 'succeed by hereditary right.'[33]

Kings were in a peculiar position since they held an office which, despite the element of electio and the uncertainty on a king's death, descended by hereditary right. The Treaty of Westminster makes no clearly discernible distinction between 'heres' and 'successor': 'sciatis quod ego rex Stephanus Henricum ducem Normannie post me successorem regni Anglie et heredem meum jure hereditario constitui.'[34]

Pro anima clauses of the charters of the Conqueror and Rufus mention only 'successors', and these but rarely.[35] Henry I's charters made no clear distinction betweeen heres and successor in such clauses. One grant was made for the souls of all the king's successors *and* heirs.[36] This surely is rhetorical emphasis, not an attempt to cover all eventualities. As one might expect, the use of the terms increased as the king grew older, successor always being the more common.[37] Successor continued to appear in pro anima clauses in Stephen's reign, with mention of sons, rather than heirs, as the most common alternative.[38] Presumably because of his youthfulness, few of Henry II's charters in the first half of his reign included pro anima clauses mentioning sons, heirs, or successors.[39]

William I and his sons referred to their successors in other contexts, often concerning alms.[40] Charters of Henry I provided that churches were to hold from him and his successors in alms,[41] or were not to answer to any of his successors.[42] Use of successor rather than heres may reflect ecclesiastical views, although successor is not peculiarly common in beneficiary-drafted

documents.

In the royal charters of Stephen's reign, successor only appeared once outside pro anima clauses, when the Empress spoke of Rufus as William I's successor.[43] I have found no example of Henry II referring to his successors.

The scarcity of evidence may explain why royal charters do not refer to other laymen as having 'successors' before Henry I's reign. Then successor sometimes clearly referred to office-holding. A writ of 1120x1122 was addressed to William the Chamberlain and Aubrey de Ver and all their successors as chamberlains and sheriffs of London.[44]

Sometimes, however, Henry's charters used successor to refer to laymen in contexts concerning land, in particular land held by churches. A settlement of 1109x1132 between the abbot of Ramsey and Payn Peverel stated that the disputed land was to remain with the church and abbot free of all claim of Payn and his successors.[45]

There is no clear chronological change in Henry's reign, but references to lay landholders' 'successors' are much rarer under Stephen. Only a group of three charters, all written at York in February 1136, all possibly by a single scribe, used successor where heres might have been expected.[46] In one, Stephen confirmed the gifts of Thurstan, archbishop of York, and Eustace fitzJohn to Fountains, free of pleas, gelds and other things 'quod mihi uel archiepiscopo Eboracensi uel Eustachio uel successoribus meis uel eorum unquam pertineat.' The other two confirm Walter Espec's foundations of Rievaulx and Warden abbeys. In both cases, the grants are to be held quit of earthly services 'quod mihi uel Waltero uel successoribus meis uel suis umquam pertineat.' The Rievaulx charter was based on Henry I's confirmation which contains a similar phrase.[47] Mention of Henry's successors may have caused the word to be applied to Walter, and copying would have preserved the usage. The mention of the Archbishop's

successors may further have influenced the wording of the Fountains confirmation. None of Stephen's other charters, nor any of those of Henry II which I have examined, use successor to refer to other laymen.

Private charters reveal no such dramatic decline, but are too few to rule out early changes in attitude and oral usage. As with royal charters, successor was usually only employed in very particular contexts. Again it is most common in pro anima clause,[48] sometimes of charters which use inheritance language elsewhere.[49] The great majority of other uses of successor also concerned gifts of alms to churches. The donor's successors, or heirs and successors, were to preserve the gift, or not impede it. Or it was ordered that the gift be held freely of the donor's successors.[50] Other uses, for example charters addressed to the grantor's successors,[51] or referring to the addressees' successors,[52] are extremely uncommon.

Thus in the first half of the twelfth century, use of successor was increasingly confined to situations particularly concerned with the spiritual welfare of those denoted and their relationship to churches. Its continuing appearance in pro anima clauses may owe much to its symmetry with the word antecessor. Any hint in Henry I's charters that it might come to be used of office-holding does not develop. Instead, inheritance language dominates the charters of Stephen's reign concerning both land and office. Under Henry II, despite the restriction of heritability of office, there is no consequent growth of succession language for lay office-holders.

*

Let us now turn to ecclesiastical tenure. According to Holt, in Normandy 'the whole language of inheritance was first generated' in the records of

endowments of churches and monasteries. A grant to a church, Holt argues, was a transfer of the donor's right, and a man could only give what he held by hereditary right. Words such as hereditas were 'part of the common jargon of conveyancing. They were shared with the Anglo-Saxon *landbocs* and the Carolingian *diplomata*.'[53]

Three of the Conqueror's four charters using inheritance language in favour of churches are diplomas. Two diplomas and the one charter grant lands to be held iure hereditario for the sustinence of monks or canons.[54] A dubious diploma confirms all the lands Peterborough had held under ['sub'] the Confessor 'hereditarias et liberas.'[55]

The only surviving example from Rufus's reign is a diploma for St. Pierre-au-Mont-Blondin at Ghent.[56] The king granted it the manor Lewisham and Greenwich, its 'hereditas' which it had long held, with appurtenances 'et omni integritate illius hereditatis.' Henry I's confirmation of 1114x1116 was by writ, a form of document with no tradition of including inheritance language for churches. He ordered that the manor be held as the Confessor and William I's charters witnessed.[57] Spurious charters of the Confessor and William survive, the latter ordering that St. Pierre hold various lands 'sicut ius hereditarium.' We do not know when this charter was made, but the '*sicut*' may suggest worry about the phraseology.[58]

Both the diploma and the use of inheritance language to churches were declining forms, partly adopted from pre-Conquest England. Copying formulae from old deeds may explain the persistence of such language in beneficiary-drafted documents, trustworthy and suspect. It is notable that one of the latest examples of such usage comes from Rochester and appears in the Textus Roffensis.[59] A Rochester or Canterbury scribe wrote the document, which is of mixed form, a notification with signa rather than witnesses. In 1111, Henry I

confirmed his own gift of the city of Bath to the see of Bath, Bishop John, and his successors, 'iure perpetuo et hereditario', the document again being of mixed form.[60] Lastly there is Henry's solemn charter renewing his predecessors' gifts to the see of Exeter 'hereditario iure inperpetuum.' This too may have been beneficiary-drafted and is of dubious authenticity.[61] Both relevant charters purporting to be Stephen's are closely based on charters of Henry I and are very dubious.[62] None of Henry II's charters which I have examined use inheritance language to describe church tenure.

The lack of early private charters may hide uses of inheritance language. In the 1090s, Hemming used such language in his narrative on the unjust losses incurred by Worcester.[63] From Henry I's reign come very occasional grants in fee to churches.[64] Inheritance language was occasionally used after 1150.[65] An example of 1171x84 is particularly surprising, since the grantor was Geoffrey, Duke of Brittany and Earl of Richmond, son of Henry II: the church and canons of Easby were to hold their lands, tenures, and possessions 'de me et de heredibus meis hereditarie, in puram et perpetuam elemosinam.'[66] This instance is unique amongst twelfth-century charters of the Earls of Richmond. Geoffrey's only other grant to a church as Earl was 'in elemosinam'.[67]

What caused the change? The replacement of solemn diplomas by writ-charters clearly was important, but cannot fully explain the change in terminology. There seems no intrinsic reason why charters should not have used inheritance language for churches; one of William I's and some private charters did so. The same impulses that made churchmen use such language in documents they wrote for themselves might have made them demand it of charters written in the royal chancery. If an overall policy decision seems unlikely, numerous individual decisions must have been taken in the chancery.

These decisions produced wording which reflects deeper intellectual

changes. The aspirations of the church reformers discouraged the use of inheritance language to describe ecclesiastical tenure. Their fight against clerical marriage and nepotism militated against ideas of inheritance. Yet it is the *beneficiary-drafted* documents of Henry I and Stephen which tend to mention inheritance. Perhaps the frequency with which royal scribes wrote charters was already producing standardisation. Perhaps they, even more than some churchmen, were sensitive to the importance of different descriptions of tenure.

In this context, two groups of charters from Stephen's reign are especially notable. Probably in the 1130s, Rainald de Chukes gave 'his vill' of Yanworth to St. Peter's, Gloucester, in fee and inheritance, to possess by perpetual right and inheritance.[68] However, Stephen and Duke Henry's confirmations used 'in elemosinam.'[69] Similarly, in 1153, Earl William of Gloucester announced that Alexander de Alnoio and his brothers and Beatrice his mother had given Cameley, Somerset, to St. Peter's, Bath 'in elemosinam et feodo totum liberum et quietum in perpetuo a se et ab omnibus coheredibus suis et successoribus.'[70] Duke Henry's confirmation in 1154 stated that the donors had sold the manor to the monks and 'granted it into perpetual alms.'[71] As we have seen, royal clerks did not change the grantor's language when confirming regrants.[72] Here they did. This is the strongest possible evidence that, by 1150 at the very latest, royal authority saw inheritance language as inappropriate for grants to churches.

When royal clerks 'corrected' the wording of these charters, they replaced mentions of fee or inheritance with the words <u>in elemosinam</u>. This term, rather than words such as <u>in perpetuum</u>, replaced inheritance language as it disappeared from grants to churches. <u>In perpetuum</u> was common before and after 1066 and used in combination with both inheritance and alms language.[73]

Anglo-Saxon charters had sometimes used the word 'alms'. Thus King

Athelstan ordered that the 'almslonde' which he gave to Milton Abbey be free, and 'in rigte clene almesse.'[74] However, the word was fairly uncommon before 1066. Its increased use surely reflects the influence of the reform movement.

What variety of meanings could elemosina have?[75] It could describe a gift, the alms a person gave a church. It could describe certain lands of a church, its alms,[76] or the use of lands, ad opus elemosinae.[77] It could also describe how the land was held, as a statement of tenure. The meanings were interlinked. Alms given would be held 'in alms.' A charter of Henry I records Ralph de Limesi's gift 'into alms' to St. Mary's Hertford, and ordered that the church should hold these things 'just as befits alms.'[78] Other charters stated that lands were to be held 'sicut elemosina'.[79] Translation reveals the mixed nature of these meanings. Tenere in elemosina is fairly clearly a statement of tenure, although there is a more physical shade, 'in the church's alms.' Harder to translate is dare in elemosina(m). The accusative and ablative were used fairly indiscriminately, the accusative generally being much the more common. The phrase could be regarded as meaning 'I give in alms', i.e. this is my charitable gift. Or, particularly when the accusative is used, 'I give into alms', i.e. into that body of the church's lands known as alms. But it was also a statement of tenure.[80]

I am not here concerned with the exact nature of tenure in alms. Rather, I wish to examine the emergence of the more abstract use of elemosina as a statement of perpetual tenure. Yver has traced such developments in Normandy.[81] The word elemosina appeared in charters from the early eleventh century. After 1060, the phrase in elemosina emerges, signifying not only the inspiration of the gift 'mais le caractère qu'ils entendent imprimer à l'objet donné, son statut en quelque sort.' Two decades later charters began to speak of men holding in alms. For Yver, this phrase suggests the development of a

specific ecclesiastical tenure, and he cites a particularly illuminating charter of 1088, a grant of land 'non in feudo, ut prius, sed in elemosynam.'[82]

The Normans thus came to England with a developing terminology. In the Conqueror's charters concerning England, the word 'alms' generally referred to the actual gift. He confirmed his barons' gifts to the priory of St. Pancras, Lewes; the monks were to 'possess the alms which I granted to them.'[83] In 1070x1071 he granted a church and certain lands to Battle Abbey to hold 'sicut dominica elemosina mea.'[84] The words <u>in elemosina</u> appear only once: in 1070x1084, the king granted that Abingdon might have certain lands in demesne, as Turkill of Arden 'gave in alms'.[85]

However, Domesday Book reveals many instances of lands being held <u>in elemosina</u>,[86] as well as other uses of the word 'alms'. This contrast with the charters produces three possibilities. The first is that the phrase was common before 1087, but that customs of drafting or chances of survival have excluded it from the charter evidence. Thought about land tenure must already have been stimulated by the initial imposition of knight service and the land disputes of the Conqueror's reign. Yet the term *alms* does not appear in the accounts of the trial at Penenden Heath, for example.[87]

The second possibility is that Domesday at least sometimes used <u>in elemosina</u> rather differently from twelfth-century usage. It applies the phrase to individuals. Some were clerics,[88] but others almost certainly laymen. Edric the Cripple had held in alms from King Edward.[89] A certain blind man held one bovate in alms from the Conqueror.[90] These sound like charitable grants, quite possibly rather different from later tenure in alms. They may have been life grants, or even more precarious.[91] Some of the statements that individual clerics held in alms may have had similar meanings. Grants using similar wording continued in the twelfth century. As late as 1180, Henry II contrasted

life-grants of churches 'in alms' to William, clerk of Holme, with heritable grants to him pertaining to lay fee.[92]

The instances referring to individuals reduce the contrast between the frequency of in elemosina in Domesday and its rarity in William I's charters. However, such considerations do not affect all Domesday's statements that lands were held in alms. 'The abbey of Almeneshes holds Climping from the Earl in alms'; 'St. Martin of Sées holds [Easter]Gate in alms from the Earl': these sound very like later statements of alms tenure, even if its exact nature was still barely developed.[93]

A third possibility is that the Domesday survey itself forced the use of in elemosina, and especially of tenere in elemosina. The question 'how is the land held' must often have arisen, implicitly or explicitly. Tentatively, I suggest that the survey was another important stimulus to thought about tenure.

In Rufus's charters, elemosina still sometimes refers to the actual gift.[94] However, particularly from *c.*1093, gifts 'into alms' were much more common than they had been in his father's reign.[95] Statements that a church should hold 'in elemosinam' appear. Especially notable is a charter of 1093, which contrasts holding 'in fee' with holding 'in alms'.[96] The king gave to the church of Durham in alms all those lands which Bishop William had held in fee, so that he and his successors should have them in alms, as the church had its other lands and benefices in alms.[97] This may have involved the freeing of the lands from secular services. It anyway shows men distinguishing two forms of tenure.

A few private charters mention gifts in elemosinam in the late eleventh century. A charter of Archbishop Thomas I of York giving Monk Fryston and Little Selby to the monks of Selby between 1070 and 1081 did not use the phrase,[98] but it was used in a second charter recording Thomas's gift of the same lands together with Hillam, from 1078x*c.*1087.[99] The usage habere in

elemosinam may begin almost as early. Robert de Lascy confirmed the 'gift and alms' which his father had given to Selby: 'ut monachi eiusdem ecclesie libere et quiete in puram elemosinam iure perpetuo habeant.'[100] Other churches seem to have used the word only in its more physical sense. Both the early examples in the Worcester Priory cartulary are of this nature.[101] It is notable that Heming did not use the phrase in elemosinam in his narrative on Worcester's unjust losses, although he used elemosina by itself elsewhere.[102]

In the twelfth century, the phrase in elemosinam predominates in both royal and private deeds. The accusative form is much the more frequent, except in Henry I's charters before 1110.[103] Throughout the century, there are considerably more statements that lands are *given* in alms, rather than *held* thus. Commonly, it is stressed that the lands *given* in alms are to be *held* freely and in perpetuity. Meanwhile, the use of elemosina to refer to a charitable gift or to certain lands of a church continued.[104]

Just sufficient charters survive from the late eleventh century to allow conclusions to be drawn. The reform movement discouraged use of inheritance language for church tenure and brought the phrase in elemosinam into more common use. These developments were still new in Normandy in 1066, and in William I's reign, the phrase in elemosinam was unusual, inheritance language for churches relatively frequent. The Domesday survey may have furthered the use of in elemosinam, which became much more common in Rufus's reign. Controversies such as those involving William of St. Calais and Anselm must have encouraged churchmen to obtain charters stressing the special nature of their tenure. Inheritance language meanwhile became rarer. These developments coincided with a change in the standard form of document from the diploma, which had a tradition of using inheritance language for churches, to the writ

charter, which had none. Such trends continued so that, by the mid-twelfth century at the latest, royal draftsmen were prepared to correct the use of inheritance language for a church by replacing it with the phrase in elemosinam. Adjectives were added to emphasize the freedom, purity and perpetuity of such grants, contrasting them with lay land-holding. Alms tenure continued to develop and grow more defined after the mid-twelfth century, but this did not involve another shift in vocabulary.

Thus in a period of considerable intellectual upheaval, the use of inheritance language became restricted. In the next section I shall discuss the meaning of the components of that language and consider their implications for thinking on inheritance and lay tenure.

III: The Limits of the use of Inheritance Language: Notes.

1) On later division of tenures, see Simpson, History of Land Law, cap. 1. Earl Jowitt, The Dictionary of English Law, (2 vols., London, 1959), ii 1734: 'Tenure in its general sense is a mode of holding or occupying.'
2) See also the stimulating ideas of A. Gurevic, 'Représentations et attitudes à l'égard de la propriété pendant le haut moyen âge', Annales E.S.C., XXVII (1972), 523-547, who is pessimistic about the possibility of such abstract thought. (Henceforth Gurevic, 'Propriété'.)
3) See below, pp. 113-120.
4) Reg. I, nos. 231, 272, 288e, 326, 337, 338a, 372c, 378, the last being very dubious. See also private charters from the late eleventh century, e.g. Book of Seals, no. 431.
5) E.g. Reg. II, nos. 864, 1093, 1475; Reg. III, nos. 4, 142; C.M.A., ii 217, 220; Recueil, no. CCCXXXVII; Registrum Antiquissimum, no. 136.
6) E.g. Reg. II, no. 1343. Henry II: Registrum Antiquissimum, nos. 118, 119, 122.
7) E.Y.C., i no. 41.
8) Liebermann, Gesetze, i 521.
9) Reg. I, no. 361.
10) St. Paul's, no. 273. See also e.g. Reg. II, no. 1164, to a royal chaplain.
11) For example, the Bishop of Ely obtained three charters in favour of himself and 'omnes successores episcopos' in the latter part of Henry I's reign. Two, Reg. II, nos. 1420 and 1421, were issued at the same time; the third is no. 1656. Other charters of the period to the same bishop do not include the phrase, e.g. no. 1576.
12) Included in e.g. Reg. I, nos. 288e, 337; Reg. II, no. 1477. Absent from e.g.Reg. I, no. 272.
13) The division is very clear in a grant by Henry I to Salisbury, Reg. II, no. 1162, see also no. 1972. He gave the tithes and underwoods of the New Forest and other forests to the canons 'ad communam canonicorum', but those of hunting to Bishop Roger and his successors. Grants to a prelate, his successors, and the monks/canons include Reg. II, no. 831, Reg. III, no. 4.
14) Reg. II, no. 1283.
15) 'De Contemptu Mundi', in Henry, Archdeacon of Huntingdon, Historia Anglorum, ed. T. Arnold, (London, 1879.), p. 300. (Henceforth Henry of Huntingdon.) See R.W. Southern, 'King Henry I', in his Medieval Humanism and Other Studies, (Oxford, 1970), pp. 224-225. (Henceforth Southern, 'Henry I'.)
16) Henry of Huntingdon, pp. 305-306.
17) Reg. III, no. 980.
18) E.Y.C., i nos. 39, 357, 358.
19) Richmond, no. 15. The land is Kneeton in Nottinghamshire.
20) E.g. Registrum Antiquissimum, nos. 914, 915.
21) E.g. Reg. II, no. 1134. See also no. 1872.
22) Reg. II, no. 1502.
23) See M. Brett, The English Church under Henry I, (Oxford, 1975), p. 203. Also E. Miller, The Abbey and Bishopric of Ely, (Cambridge, 1951), pp. 168-169. (Henceforth Brett, English Church; Miller, Ely.)
24) Reg. II, no. 1709. See also on this land Reg. III, no. 793, The Register of S. Osmund, ed. W.H. Rich Jones, (2 vols., London, 1883-4), i 337. (Henceforth Reg. S.Osmund.)
25) E.g. Reg. III, nos. 15, 897; Henry II: PRO DD. 664/1, to William clerk of Holm.
26) Registrum Antiquissimum, no. 614; sometimes inheritance language is used for a cleric with no clear connection to the donor: e.g. Registrum Antiquissimum, no. 1295, Richmond, no. 57.

27) Reg. III, p. xi: 'the two terms "clerk" and "chaplain" of the king seem to have been used synonymously.'
28) Oxford Charters, no. 77 and note.
29) See C.N.L. Brooke, 'Gregorian Reform in Action: Clerical Marriage in England, 1050-1200', C. Hist. J., xii (1956), 1-21.
30) Reg. II, nos. 1164, 1163; see Brett, English Church, pp. 188-189.
31) Registrum Antiquissimum, no. 1192.
32) Registrum Antiquissimum, no. 1191.
33) E.g. Reg. I, no. 341; Registrum Antiquissimum, no. 907, a charter of *c.*1163; L.H.P., 70 20a, Downer, p. 224. See also Reg. II, no. 886, a writ to the king's faithful of Norfolk and Suffolk, beginning 'Notum sit omnibus uobis et his qui uobis successuri sint.'
34) Reg. III, no. 272.
35) Reg. I, nos. 160, 232, 326; and two dubious charters nos. 35, specifying successors by hereditary right, and 348a.
36) Reg. II, no. 1014.
37) Reg. II; heres: e.g. nos. 1290, 1795; successor: e.g. nos. 1289, 1292, 1711. The donor's age surely affected the pro anima clauses of many men, but very rarely do sufficient closely datable charters survive to reach firm conclusions.
38) Successors: Reg. III, nos. 606, 663, 810, 843, 850, 851, 964.
Sons: e.g. nos. 163, 192, 300.
39) Heirs: Registrum Antiquissimum, no. 194. Sons: Danelaw Documents, no. 156.
Successor: Registrum Roffense, ed. J. Thorpe, (London, 1769), pp. 35-6.
40) E.g Reg. I, nos. 301, 302. See also Reg. I, no. 8.
41) Reg. II, nos. 822, 1969.
42) Reg. II, no. 1751. See also nos. 1047, 1691, 1740.
43) Reg. III, no. 20, datable 1133×1139.
44) Reg. II, no. 1377. See also Reg. III, no. 506, which is not a charter but refers to the successor of the castellan of the Tower of London. Reg. II, no. 1468 confirms all the gift's which Robert d'Oilly and his successors had made to the church of St. George in Oxford castle. Robert was castellan of Oxford, and successors may here refer to later holders of that office.
45) Reg. II, no. 1751.
46) Reg. III, nos. 335 for Fountains, 716 for Rievaulx, 919 for Warden.
Bishop's scribe xiii wrote both original charters surviving from this occasion; nos. 99 and 716. The scribe wrote several other charters, including one of the surviving manuscripts of Stephen's 'Oxford Charter', Reg. III, p. 97; his work does not show any major personal peculiarities.
47) Reg. II, no. 1740.
48) E.g. Hereford nos. 23, 25, 47, 48; nos. 94, 95 use heres. Earldom of Gloucester, e.g. nos. 68, 84, 86, 156, 177.
49) E.g. Earldom of Gloucester, no. 156.
50) Not impede: e.g. BL ms. Harley 3650, ff. 21v-22; see also e.g. Book of Seals, no. 287. Hold of me and my successors: e.g. Danelaw Documents, no. 522.
51) Worcester, no. 117.
52) E.g. Hereford, no. 17.
53) Holt, 'Patrimony', 199-200. See also F.M. Stenton, Latin Charters of the Anglo-Saxon Period, (Oxford, 1955), pp. 87-88. For references to Norman charters, see footnotes accompanying Holt's text. My summary examination of Anglo-Saxon Charters, ed. & tr. A.J. Robertson, (2nd. ed., Cambridge, 1956), suggests that pre-1066 English examples are rather less common than Holt and Stenton imply: e.g. nos. XXI, XXXI, XLI, CI. These are P.H. Sawyer, Anglo-Saxon Charters: an annotated list and bibliography, (London, 1968), nos.

1289, 1292, 1458, 1471. (Henceforth Stenton, Latin Charters; Robertson, Anglo-Saxon Charters; Sawyer.)

54) The diplomas are Reg. I, nos. 135, from the Queen, and 28, on which see Stenton, Latin Charters, pp. 87-88. The charter is no. 160.

55) Reg. I, no. 8. Reg. I, p. 3: 'Though the charter is irregular in form (perhaps translated) it may be accepted as correct in substance.' However, the charter refers to 'suprascripti reges' which must mean kings mentioned earlier in the cartulary; hence the charter is very suspicious in its current form.

56) Reg. I, no. 323.

57) Reg. II, no. 1148.

58) Reg. I, no. 141. The Confessor's charter is Sawyer, no. 1002, Cartae Antiquae, 11-20, no. 581.

59) Reg. II, no. 636. Reg. III, p. 265 notes that Chaplais considers this charter genuine.

60) Reg. II, no. 988.

61) Reg. II, no. 1391; Reg. III, p. 107.

62) Reg. III, nos. 284, 718.

63) Hemming, Cartulary, i 250, 263.

64) E.Y.C., iii no. 1622; Feudal Documents, no. 114. These grants show no association of fee with military or any other particular kind of service.

65) E.g. Stoke, no. 569; cf. nos. 565, 566 which concern the same gift but do not use inheritance language.

66) Richmond, no. 81.

67) Richmond, no. 80

68) Gloucester Cartulary, no. DCCXXV and the chronicle entry at i 90 which suggests the 1130s as the date of the gift; see also no. DCCXXVIII.

69) Reg. III, nos. 361, 362; Henry's confirmation as king, Gloucester Cartulary, no. DCCXXX, is almost identical to that he granted as Duke. See also no. DCCXXVI for Ralph de Southley's gift which used in elemosinam. Ralph and Rainald seem each to have held part of Yanworth; a general confirmation by Henry II to St. Peter's stated that the abbey held 'from the gift of Rainald de Chukes and Ralph de Southley', Gloucester Cartulary, no. DCXXX.

70) Earldom of Gloucester, no. 5.

71) Reg. III, no. 49.

72) See above, p. 44.

73) See below, p. 208, on the absence of perpetuity language in grants to laymen.

74) Robertson, Anglo-Saxon Charters, no. XXIII, Sawyer no. 391.

75) Literature on alms tenure in this period is limited. F.W. Maitland, 'Frankalmoign in the Twelfth and Thirteenth Centuries', in The Collected Papers of Frederic William Maitland, ed. H.A.L. Fisher, (3 vols. Cambridge, 1911), ii 205-222, remains vital. (Henceforth Maitland, 'Frankalmoign'.) See also E.G. Kimball, 'Tenure in Frank Almoign and Secular Services', E.H.R., xliii (1928), 341-353, (henceforth Kimball, 'Frankalmoin and Secular Services'), 'The Judicial Aspects of Frank Almoign Tenure', E.H.R., xlvii (1932), 1-11. 'Changes in the Assize *Utrum* between the Constitutions of Clarendon and Bracton', ed. A. Nicol, in Medieval Legal Records edited in Memory of C.A.F. Meekings, edd. R.F. Hunnisett and J.B. Post, (London, 1978), pp. 17-24. A.W. Douglas, 'Frankalmoign and Jurisdictional Immunity: Maitland Revisited', Speculum, liii (1978), 26-48, 'Tenure *in elemosina*: Origins and Establishment in Twelfth-Century England', American Journal of Legal History, xxiv (1980), 95-132, (henceforth Douglas, 'Tenure *in elemosina*').

76) Reg. I, no. 269.

77) E.g. Reg. II, no. 1092
78) 'Sicut decet elemosinam': Reg. II, no. 1150.
79) E.g. Reg. II, nos. 1156, 1969.
80) See above, p. 74.
81) J. Yver, 'Une Boutade de Guillaume le Conquérant: Note sur la Genèse de la Tenure en Aumône', in Etudes d'Histoire du Droit Canonique, dédiées à Gabriel le Bras, (2 vols., Paris, 1965), i 784-786. (Henceforth Yver, 'La Tenure en Aumône'.)
82) Yver, 'La Tenure en Aumône', i 788.
83) Reg. I, no. 232; see also nos. 140, 192, 237a.
84) Reg. I, no. 58.
85) Reg. I, no. 200.
86) E.g. Domesday, i f. 22a, 58b, 63d, (= Sussex 10, 73; Berks., 4, 1; 65, 13).
87) Bates, 'Penenden Heath', 3-4. J. le Patourel, 'The Reports of the Trial on Penenden Heath', in Studies in Medieval History presented to Frederick Maurice Powicke, edd. R.W. Hunt, W.A. Pantin, R.W. Southern, (Oxford, 1948), pp. 21-26. On knight service, J.C. Holt, 'The Introduction of Knight Service in England', Anglo-Norman Studies, vi (Woodbridge, 1984), pp. 89-106. (Henceforth Holt, 'Knight Service'.)
88) E.g. Domesday, i ff. 22a, 104b, 146a, 345a, (= Sussex 10, 73; Devon 13a, 2; Bucks. 11, 1; Lincs., 7, 55.)
89) Domesday, i f. 100c (= Devon 1, 11).
90) Domesday, i f. 293b (= Notts. 30, 53).
91) Maitland, 'Frankalmoign', 207.
92) PRO DD 664/1. See also e.g. Reg. II, no. 848.
93) Domesday, i ff. 25a, 25c respectively (= Sussex 11, 75 & 93); Maitland, 'Frankalmoign', 208.
94) Reg. I, no. 468a.
95) Reg. I, nos. 228 - Reg. II, p. 396 on dating -, 301, 326, 338a, 361, 421.
96) Reg. I, no. 338a.
97) Cf. Reg. I, no. 372c: Rufus granted to St. Paul's the whole fee of Bishop Maurice, which Maurice had held of him, so that the bishop and his successors might hold the land 'in episcopatu' as it previously was. Again this may have freed the land from secular service.
98) E.Y.C., i no. 41.
99) E.Y.C., i no. 42.
100) E.Y.C., iii no. 1484.
101) Worcester, nos. 3, 147.
102) Hemming, Cartulary, ii 422.
103) Reg. II; in elemosina: nos. 571, 673, 674, 679, 742, 813, 996; in elemosinam: 602, 779, 781, 822, 831, 876, 927, 939, 1117. No. 848 uses in elemosinam with reference to an individual cleric.
104) E.g. Reg. II, nos. 570, 888, Reg. III, no. 11.

IV: Inheritance Language: Claim, Intent, or Tenure?

Introduction.

Holt has argued that inheritance language was first used 'to express not an intention but a fact, to describe property which *has been* or *is now being* inherited ... . The use of the formulae to express intent only came in gradually.'[1] This suggestion might be taken to support Thorne and Milsom's arguments. The first uses of inheritance language would be factual, a statement of the basis of a claim to a one-off relationship, not implying any future obligation on the lord. Later usage would give the tenant's heirs, if not a right, at least a strongly reinforced claim against the lord.[2] However, Holt's chronology does not coincide with the developments for which Thorne and Milsom argue. Most recently, he has suggested that as soon after 1066 as new gifts to laymen were recorded in writing, at the latest in Rufus' reign, inheritance words expressed intent, whereas in Normandy before 1066 they expressed the fact of past inheritance.[3]

The ability to make new grants using inheritance language, Holt argues, broke down the distinction between inherited lands and acquisitions. This was important since, relative to the lord who had given him the land, the tenant's 'title to an acquisition was not so strong as title to ancestral possessions.' Relative to his own heir, on the other hand, the tenant was freer to alienate his acquisitions than his inheritance.[4]

I now argue that the dichotomy into claim and intent is of limited applicability.[5] It is often difficult to separate past or present claims from statements denoting intent. Past facts legitimated future intent. When the Anglo-Norman kings used the phrase iure hereditario to emphasize the legitimacy of their succession in the past, they were also implying that their heirs should

succeed to the throne 'by hereditary right', since their position was just.[6] This in itself weighs against such a division. I argue instead that from an early date at least some of the terms were statements of tenure, of how the land was now held, with implications for the future and sometimes the past. We have already seen that, from the late eleventh century, in elemosinam was used thus, and could be contrasted with holding in feudo.[7]

To test these ideas, I now examine the words which constituted inheritance language, in itself a valuable exercise. Sometimes a grant was simply described as to a man and his heirs. Sometimes phrases were used, often hereditario iure or in feudo et hereditate, or an adverb, hereditabiliter or hereditarie.

One must not assume the degree of precision of these words. Individual benefactors favoured certain words. Thus the phrase hereditario iure was fairly unusual in the charters of lay grantors and of many churches but peculiarly common amongst those of the Cathedral churches of Lincoln Worcester.[8] Phrases were sometimes piled up for rhetorical effect: 'in feodum et hereditatem hereditarie omnem hereditatem et omnia acata' ran a charter of Stephen in favour of Roger fitzMiles.[9] Sometimes a variety of formulae appear within one document. A charter of Christmas 1141 records various grants by Stephen to Geoffrey de Mandeville: some were in fee and inheritance, some simply to him and his heirs, and some used no inheritance language, although mentioning that his grandfather had held them. A clause at the end of the charter stated that all the above were granted 'in feodo et hereditate de me et de meis heredibus sibi et heredibus suis pro seruicio suo.'[10] The exact wording of each grant does not seem to have been vital.

The Charter Evidence.

Hereditario iure was a broadly applicable phrase. No king would say that he held the realm in feudo et hereditate - which might suggest dependence - but he could easily use iure hereditario. It could easily refer to claims based on the past; men described themselves as having 'succeeded by hereditary right.'[11] However, when the words first appear, soon after 1100 in royal charters[12] and after 1120 in my sample of private charters,[13] they were not *only* used to indicate claims to land held by relatives in the past. Between 1102 and 1106, Henry granted various lands to a certain Hardulf and his heirs 'in feudum et ius hereditarium'.[14] Since this was a new gift, ius hereditarium cannot refer to the past. Iure hereditario grew more common in Henry I's later charters, slightly rarer in Stephen's and Henry II's.[15] Sometimes, as in the Empress's restoration to William de Beauchamp, the words could have referred to a claim based on the past: 'sciatis me dedisse et reddidisse Willelmo de Bellocampo hereditario jure castellum de Wigornia.'[16] However, the phrase continued to be used of new gifts, private[17] and royal. In 1139x1140, Stephen made Geoffrey de Mandeville Earl of Essex hereditarily; 'quare uolo et concedo et firmiter precipio quod ipse et heredes sui post eum hereditario jure teneant de me et de heredibus meis.'[18] Geoffrey does not seem to have claimed that the earldom belonged to his ancestors.[19] The phrase 'hereditario jure' could mean that his heirs were to have the earldom after him by hereditary right, thus stating in advance a claim based on current seisin. Or perhaps it was intended to allow only the succession of heirs from within the family, preventing the creation of an heir. Neither solution is very satisfactory. The problem seems better reconciled by taking iure hereditario as a statement of tenure with possible implications for past, present, and future.[20] This is both the easiest and the most obvious reading of

many of the statements that men should hold, or had held, land iure hereditario.[21]

The adverbs hereditabiliter and hereditarie seem not to have differed greatly in meaning from one another. The charters of honours which frequently used one rarely used the other.[22] That hereditarie was more common than hereditabiliter in royal charters was probably simply a matter of standardised vocabulary choice, not different meaning.

Hereditabiliter would seem most obviously to refer to the future, of land which could be inherited. It was an uncommon word, and I have found very few instances in private charters.[23] Before 1135, it appears in only one surviving royal charter referring to England.[24] After 1135, the word appears in one of Stephen's charters and three of the Empress's. Two were to clerics,[25] but private charters do not associate the word peculiarly with clerics. It remains very unusual in Henry II's charters, although Glanvill frequently used it.[26]

Hereditarie appears before hereditabiliter in royal charters and is slightly more common in Henry I's reign. In 1107x9 Henry 'gave back and granted' to William de Albini his butler and his heirs 'hereditarily' Snettisham in Norfolk, together with various rights, 'just as King William my brother gave and granted to him.'[27] The word's use in Henry's charters increases at roughly the same rate as the number of surviving charters to laymen, becomes rather less common under Stephen and considerably rarer under Henry II.[28] It is peculiarly common in grants of office, sometimes in combination with lands. Thus three of the four instances from the last five years of Henry I's reign were regrants or restorations which included offices.[29] There is no such association of the word with office in private charters. The word appears as charters to laymen become more common and there is an increase, not a decline, in frequency after 1150.[30]

Sometimes hereditarie might be taken as stating intent. Often, however, it is better taken as a statement of tenure. Thus the Empress's second charter to Geoffrey de Mandeville stated that William of Eu was to have Lavendon 'sicut rectum suum hereditarie.'[31] This stresses William's hereditary claim, as well as promising that he should hold 'hereditarily.' Moreover, hereditarie could be used in the same context as in feudo et hereditate or iure hereditario. Conan Earl of Richmond gave to Wimar fitzWarner all his demesne in Wicken 'hereditarily for his service.' Wimar and his heirs were to hold 'in fee and inheritance.'[32] A Bury charter employed the phrase 'in fee farm and hereditarily.[33] Such usage confirms that hereditarie could be used as a statement of tenure. That I have found no such uses of hereditabiliter need not reflect on its inherent meaning.

The phrase which came to predominate for military tenure was in feudo et hereditate. It emerged slowly. Domesday Book uses in feudo, but only rarely.[34] The Domesday Monachorum of *c.*1090 several times uses 'in feudo' where it was absent from the equivalent Domesday Book entry.[35] The first trace in a charter is Rufus's grant to Peter de Valognes 'in feodo.'[36] From 1106 comes Henry I's grant to Hardulf 'in feudum et ius hereditarium.'[37] Then in 1107x1116, he gave lands in Berkshire to Robert Achard his master and his heirs 'in feudo et hereditate.'[38] The phrase only became at all common after 1120, being used in eleven of Henry's charters. For example, it appears all three of his charters using inheritance language for gifts to laymen.[39] Occasional appearances of the phrase in Stephen's reign reveal no clear chronological change. Of Stephen's nine gifts to laymen including inheritance language, three use the phrase[40] and another 'sicut feodum suum et hereditarie.'[41] Of the Empress's five, two contain 'in fee and inheritance.'[42] Amongst Henry II's charters to laymen during the first half of his reign, considerably fewer than half of those which include

inheritance language use 'in fee and inheritance.'[43]

In private charters, the phrase generally appears from the 1120s, as soon as written grants to laymen survive in any numbers.[44] Thereafter, the ratio of charters using the phrase to those using any inheritance language remains fairly stable. Amongst most of the sets of charters which I have examined, for example those of Bury, Richmond, and the Earls of Hereford, the majority of charters using inheritance language specify grants 'in fee and inheritance.'[45] Only occasionally do a smaller proportion use the phrase, as in the case of the charters of Lincoln Cathedral.[46]

Henry I's charters use the accusative in feudum et hereditatem and the ablative in feudo et hereditate approximately equally.[47] After 1138 the accusative becomes very rare,[48] being used in no more charters of Stephen, the Empress or Duke Henry and in very few of Henry's once he was king.[49] Private charters indicate a fairly similar chronology. The Bury series uses the accusative very frequently before the late 1140s, considerably less thereafter.[50] In series where the phrase appears from the 1130s-1140s the ablative is much the more common.[51] Neither case is associated with any particular sort of grant.

Statements that lands are *granted* in fee and inheritance are rather more common than that men should *hold* thus in Henry I's charters, and even more so in those of Stephen, the Empress and Duke Henry. However, in Henry's charters as king, statements that lands are thus held are the more common.[52] Problems of dating prevent firm conclusions about private charters, but statements that lands are *granted* in fee and inheritance seem the more common before *c.*1150, the less common thereafter, and fairly rare from the 1160s.[53] The context of a 'granting' or a 'holding' verb did not determine the case of the nouns.

Did the phrase 'in fee and inheritance' create a special tenure? Stephen's confirmation of an agreement between Christchurch Canterbury and Matilda of

Saint-Saens might illuminate the phrase's meaning by negating it: Matilda was to hold 'sine feodo et sine hereditate omni, ita ne heredes sui nec maritus uel aliquis qui sibi cognatione uel affinitate pertineat aliquid in manerio post obitum ipsius Mathildis clamare possit.'[54] But surely this was no different from a grant to be held iure hereditario? Would not simply 'to N. and his heirs' have done equally well?

Let us look more closely at the elements of the phrase. The usual meaning of feudum in the century after 1066 was a holding. Domesday generally uses it for large holdings, notably those of Odo of Bayeux.[55] However the entry for Starston, Norfolk, stated that Roger Bigot claimed the land as the holding of his free men ['reuocat ad feudum'].[56] A similar use appears in the charter of the Conqueror's reign concerning the enfeoffment of the knight Peter with possessions of the Abbey of Bury, which names the fees given: 'Edrici ceci terra cum XIIIIor liberis hominibus et totidem rusticis ... Et Guthredus et eius terra ... .'[57] Here fee is used of land and men; a writ of 1122 uses the same word concerning a church. Absolom of Sandwich was to do full right to the abbot of St. Augustine's Canterbury, in the abbot's court, about the fee he held of St. Augustine and the abbot, namely the church which he claimed to hold of the abbot in fee and inheritance. Otherwise, the abbot was to recover his fee ['ipse recognoscat se ad feodum suum'].[58] Such a use is unusual. Commonly in the twelfth century feudum appears to have referred primarily to the lands of a man's holding, together with the appurtenances. Such, for example, is Glanvill's usage.[59]

For Thorne, by the mid-twelfth century 'lords had come to regard their fiefs as divided into two clearly distinguished portions: lands subinfeudated to others for military service and lands not so subinfeudated, *feudum* and *dominium*.'[60] The evidence is far from conclusive. Domesday Book gives an early suggestion of such a distinction in the entry for Sotwell, Berkshire: 'Ipsa abbatia [Westminster]

tenuit SOTWELLE in dominio de uictu monachorum T.R.E.. Modo tenet Hugo de Port de abbate in feudo.'[61] However, one of the most common uses in charters was when the lord 'of whose fee' the land was confirmed his vassal's gift.[62] 'Fee' here could refer just to the land the lord had subinfeudated, but could equally well mean his entire holding.

Feudum had connotations of lasting tenure, be it the occasional references to a church's fee, the much more common ones to lands held in fee by military service, or those held in 'fee-farm' for a fixed rent. Domesday sometimes used it as an equivalent for bocland. The Leges Henrici use 'primum feudum' to mean a man's physical 'hereditas',[63] and in one passage seems to use 'feodum' by itself in this sense.[64] However, exceptional mentions for example of fee-farms held for life still occur even after 1150.

Feudum generally implied that the holding owed temporal service. In Rufus's reign, lands which a bishop had held in fee were given so that he and his successors could have them in alms.[65] The implication seems to be that the lands would no longer owe secular service. However, a few charters refer to lands held in fee and alms. This apparent contradiction suggests that the temporal connotations of feudum were not always overwhelming, at least until the 1150s when royal scribes, distinguishing more clearly and firmly between types of tenure, began to exclude such usage from their charters.[66]

Sometimes feudum, owing military service, seems to be contrasted with firma, owing fixed rent, although Lennard suggests that such a distinction only grew firm in the century after 1066.[67] The Empress's charter to Aubrey de Vere granted him his father's lands and tenements 'in terris, in feoudis [sic], in firmis, in ministeriis, in uadiis, in emptionibus, et hereditatibus.'[68] These terms are not all mutually exclusive, but the juxtaposition of fees and farms may have significant implications for their heritability and the type of service

required from them.[69] However, lands to be held by a man and his heirs for set rent were sometimes referred to as held in fee farm, sometimes as 'in fee and inheritance'. Here fee seems to be used to emphasise the durability of the grant rather than the nature of the service.[70]

Hereditas translates happily as 'inheritance'. Like elemosina, it had several, interconnected senses.[71] It could mean the lands a man's predecessors had held and he hoped his descendants would hold, heritable tenure, and also the actual inheriting or the right to inherit.

These meanings suggest that the phrase 'in fee and inheritance' was most appropriate for heritable grants by secular, and probably military service, although these limits only grew strict during the twelfth century. It is difficult to determine the strength of the military connotations. Charters often do not specify services. When a private charter does so, the dues may be additional to the routine knight service with which the land was already burdened. Amongst the few royal charters which detail services from grants 'in fee and inheritance', a greater proportion of Henry II's than of his predecessors' specify military service.[72] This suggests a narrowing of the phrase's use, although the spread of military tenure by subinfeudation ensured that it was used of small holdings and minor men.

Within these limits, 'in fee and inheritance' acted as a statement of tenure, probably with the same implications for heritability as the more widely applicable iure hereditario. As noted above, wording often varied within individual charters. A charter that granted Brompton in Pickering Lyth to Eustace fitzJohn 'in feudum et hereditatem' also granted him a mill 'in feodo et hereditario iure' as Rabel de Tancarville had given it to him.[73] The two were surely synonymous in their ultimate effect.[74] Chance and fashion must also have influenced which formulae caught on; 'by hereditary right' seems to have had a

burst of popularity late in Henry I's reign before a relative decline. From the second half of the twelfth century, in feudo et hereditate was the more common phrase, within its limits.

Did the use of inheritance language in new gifts, and thus the creation of heritable tenure from scratch, break down the division between acquisition and inheritance?[75] Support for this argument might come from a mid-twelfth-century charter, which records that Geoffrey Belvagio gave Roger fitzWilliam and his heirs all Badsley to hold in fee and inheritance for homage and service.[76] It ends 'si autem hanc predictam terram ei warantizare non potero, eam ei de hereditate mea uel de questu qui hereditarius mihi sit ad precium suum excambibo.' The charter thus treats some 'hereditary' acquisitions in the same way as inherited lands.

Other charters hint at similar possibilities by specifying that newly received lands were to be held heritably with, or like, the grantee's other fee. Henry I gave the land of Bicknor to Miles of Gloucester 'into fee and inheritance' to hold 'by hereditary right' with the same liberties and customs as he held 'his other fee.' In 1139 Stephen gave a house and various lands to William Earl of Lincoln to hold 'sicut feodum suum et hereditarie de me et de heredibus meis.'[77] Such phrases might mean that the donees gained the same rights as over their families' traditional holdings.

Moreover, bearing in mind that feudum and hereditas could mean physical pieces of land, the phrase 'in fee and inheritance' might be expected in regrants, confirmations, and perhaps especially in restorations, emphasizing that the lands were now part of the family's traditional holding, the hereditas. Under Henry I the more common form of the phrase was in feudum et hereditatem, literally '*into* [?the?] fee and inheritance.' This seems rather inappropriate for gifts, which

one might suppose became part of a man's acquisitions not his inheritance. Could it be that such a gift placed the land immediately amongst a man's hereditas rather than his acquisitions? Grants to churches made in elemosinam immediately became part of the lands regarded as the church's elemosina.

For several reasons such arguments are not convincing. The association of new gift with old fee would be more compelling evidence if feudum had always had the sense of *inherited*, as opposed to potentially heritable, land. This was not so, at least in the early twelfth century. Henry I confirmed to Peter de Valognes in fee the two mills of Hertford to hold with his other fee. The mills had been a new gift in fee to Peter, but all his English lands were acquisitions since he was the first of his family to settle in the country.[78] Conceivably the charter could mean that he was to hold the gift with his old 'fee' across the Channel, but I think this unlikely.

Problems also exist with the suggestion that grants 'into fee and inheritance' placed newly given lands immediately into the family's physical inheritance. The grammatical case of feudum and hereditas seems to have fluctuated inexplicably in Henry I's reign, and use of the accusative declined thereafter. In addition, I have emphasized the abstract meaning of 'in fee and inheritance' as a statement of tenure; hence the implication that gifts immediately became part of the physical hereditas is not so strong.

Anyway, were grants directly into the family's hereditas possible, Glanvill's discussion of alienability would be hard to understand: all lands granted by heritable tenure would form part of the 'inheritance', leaving as acquisitions only temporary grants and possibly those not specifying how they were to be held.[79] Certainly the former of these were not so freely and lastingly alienable as Glanvill states acquisitions to be.

Rather than weakening the distinction between inheritance and acquisition,

the use of inheritance language in new gifts would have hardened distinctions amongst acquisitions. Some would be held for a fixed term, some for no explicit length, and others by the donee and his heirs.[80] The donee's hold over the third, and possibly the second group, was greater than over the first, and in this sense such lands might have been considered closer to the family's inheritance. In turn, because of the nature of the donee's tenure, such acquisitions could be lastingly alienated. The specification in Geoffrey de Belvagio's warranty clause, that an exchange should come from his inheritance or his hereditary acquisitions, is surely a promise to the donee that the exchange will come from lands which Geoffrey could alienate lastingly. Hence, if they came from his acquisitions, they must be lands he had acquired heritably.

Conclusions.

At least from the time of Domesday, charter draftsmen used inheritance language to describe how land was held, with tenurial implications for past, present, and future. Whether the emphasis was on past or future was determined by context and sometimes reflected in the word used.

New inheritance vocabulary had not created after the 1120s. Thereafter, it was in part the continuing increase in precision and abstraction that changed the connotations of words and phrases. These reveal to the historian interested in the development from succession to inheritance the distancing of succession from the field of purely personal relationships. The words' implications were also affected by the changes in the practice of succession and its enforcement by external powers, and it is to these topics that I now turn.

IV: Claim, Intent, or Tenure?: Notes.

1) Holt, 'Politics and Property', 40.
2) See above, pp. 27-8. This connection, I stress, is not made by Holt.
3) Holt, 'Notions of Patrimony', 216; cf. 'Politics and Property', 40.
4) Holt, 'Politics and Property', 19, and also 51. Glanvill, vii i, Hall, pp. 70-71.
5) Holt's notion of intent is in fact in many ways similar to my statements of tenure, with implications for the present holding of the land, although Holt does emphasise the future element.
6) William I referred to himself as king 'by hereditary right', Reg. I, nos. 21, 231, 272. Rufus and Henry I referred to their father having succeeded 'by hereditary right', Reg. I, no. 349; Reg. II, no. 919. Henry early in his reign talked of those things he had received by hereditary right from his ancestors, Reg. II, no. 544. See also G. Garnett, 'Coronation and Propoganda: some Implications of the Norman Claim to the Throne of England in 1066', T.R.H.S., 5th. Ser. 36 (1986), 91-116.
7) See above, p. 87. See also F.W. Maitland, Domesday Book and Beyond, (Cambridge, 1897, reprinted with introduction by E. Miller, 1960), pp. 190-193. (Henceforth Maitland, Domesday Book and Beyond.)
8) E.g. Registrum Antiquissimum, nos. 907, 1200, 1313; Worcester, nos. 179, 439, 488.
9) Reg. III, no. 312.
10) Reg. III, no. 276.
11) See e.g. L.H.P. 70 20a, Downer, p. 224, from *Lex Ribuaria* 56. 3.
12) The phrase is used earlier with reference to the king, above pp. 65, 95. The three royal diplomas from the Conqueror's reign which use the phrase refer to gifts by the king, the queen, and a bishop, Reg. I, nos. 160, 135, 128 respectively. Since they were not by ordinary laymen, who according to Holt had no 'ius hereditarium' to give, they do not trouble his theory; Holt, 'Notions of Patrimony', 214-215.
13) E.g. E.Y.C., i no. 460.
14) Reg. II, no. 793.
15) Reg. II, nos. 1502, 1607, 1709 (to a cleric), 1719, 1722, 1723, 1758, 1760, 1777. Reg. III, nos. 43, 44, 68, 273, 925; see also nos. 284, 718, dubious charters to churches; 272, the Treaty of Westminster. Henry II: e.g. Cartae Antiquae, Roll 24, m. 2, no. 15. (Photo courtesy of Professor Holt.)
16) Reg. III, no. 68. Henry I's charter granted that William and his heir after him hold 'hereditarie', Reg. II, no. 1710. See also e.g. Reg. II, no. 1760.
17) E.g. Registrum Antiquissimum, nos. 611, 916; Worcester, no. 439.
18) Reg. III, no. 273.
19) See C.W. Hollister, 'The Misfortunes of the Mandevilles', History, 58 (1973), 18-28, who shows that many of Geoffrey's claims were based on ancestral rights, but does not mention the earldom. (Henceforth Hollister, 'Misfortunes of the Mandevilles'.)
20) See above, p. 74.
21) Reg. II, nos. 1502, 1607, 1719, 1723, 1758, 1760. Reg. III, nos. 273, 925; see also nos. 43, 44, 284.
22) E.g. Bury Abbey charters use hereditarie several times, e.g. Feudal Documents, nos. 142, 148, 149, but never hereditabiliter.
23) E.g. E.Y.C., iii no. 1303.
24) Reg. II, no. 1607. 'Hereditabiliter' is also used in no. 1946, a charter concerning Normandy.
25) Reg. III, no. 15 is Stephen's, nos. 274, 275, 897 are the Empress's; nos. 15, 897 to clerks.

26) E.g. Recueil, i no. CCCLXIII. Glanvill, e.g. vii 1, Hall, pp. 71-73.
27) Reg. II, no. 911.
28) Reg. II, nos. 1710, 1749, 1778, 1835; Reg. III, nos. 68, 174, 175, 273, 275, 308, 312, 390, 437, 493, 494, 634; e.g. C. Ch. R., iv 257, Cartae Antiquae, 1-10, no. 141.
29) Reg. II, nos. 1710, 1749, 1835.
30) E.g. Feudal Documents, no. 142 from 1148x6; nos. 148, 149, 165, 167 from 1156x1180.
31) Reg. III, no. 275.
32) Richmond, no. 65.
33) Feudal Documents, no. 127.
34) E.g. see below, p. 103.
35) The Domesday Monachorum of Christ Church Canterbury, ed. D.C. Douglas, (London, 1944), pp. 82, 84, 93. (Henceforth Domesday Monachorum.)
36) Reg. I, no. 346.
37) Reg. II, no. 793, above, p. 98.
38) Reg. II, no. 1134.
39) Reg. II; Gifts: nos. 1256, 1395, 1723. See also no. 1719 where land was demised to the king who then granted it in fee and inheritance. Confirmations: nos. 1326, 1446; Regrant: no. 1984. See also no. 1778; cf. no. 1722 where the original gift is said to have been given 'in hereditatem'; nos. 1314, 1872, 1913 which are all confirmations of others' grants; no. 1369: Alfred of Lincoln to have 'in feodo' the land of Holme as Grimbald the physician sold it to him. The wording of such confirmations probably reflects that of the original gift.
40) Reg. III, nos. 177, 276, 319.
41) Reg. III, no. 493.
42) Reg. III, nos. 316a, 393.
43) E.g. of charters using the phrase: Cartae Antiquae, 1-10, nos. 141, 293; C. Ch. R., iv 83, 257.
44) E.g. Feudal Documents, no. 119; E.Y.C., i no. 340.
45) Feudal Documents, nos. 108, 109, 118, 119, 121, 123-5, 129-132, 134, 139, 141, 143, 144, 147, 152, 155, 156, 161. See also nos. 108-9.
Counts and Earls of Richmond, nos. 9, 14, 22, 47, 52, 65.
Other Richmond charters, nos. 87, 88, 106, 118, 119, 181, 189, 196, 267, 281, 331, 364.
Hereford, nos. 7, 45, 53, 64, 84, 117, 118, 122.
46) See Registrum Antiquissimum, no. 1295. Lincoln charters frequently use the phrase iure hereditario.
47) Reg. II; accusative case: nos. 1395, 1446, 1722, 1872, 1913, 1984; ablative case: 1256, 1314, 1326, 1719, 1778.
48) An example from 1137 is Reg. III, no. 312.
49) E.g. Recueil, i no. XI; C. Ch. R. iv 83.
50) Feudal Documents, no. 144 is the only example of the accusative case definitely from the second half of the century.
51) E.g. Earldom of Gloucester, nos. 11, 48, 158 etc..
52) Reg. II; granting lands: e.g. nos. 1134, 1326, 1984; men to hold lands: e.g. nos. 1314, 1446. Reg. III; granting lands: e.g. nos. 41, 316a, 438; men to hold lands: nos. 43, 44, 111, 394, 912, and see 393. None are Stephen's, but one charter of his, no. 493, states that the grantee is to hold 'sicut feodum suum et hereditarie.' Henry II charter stating that lands are to be held thus, e.g. Beauchamp, no. 176, Recueil, i no. CCCXI.
53) A late example with a granting verb is Feudal Documents, no. 139.
54) Reg. III, no. 148. Cf. no. 147 which states simply that Matilda held at farm

and for life, and that the land was to return to the church at her death. Her husband and heirs were not to be able to claim it. The agreement between the church and Matilda survives in the Canterbury archive, S 313, and its wording is reflected in Reg. III, no. 148. It is rather strange that a fairly familiar phrase needed such lengthy exposition. This draftsmen clearly felt that care in wording was important.

55) E.g. Domesday, i ff. 143a, ii f. 55b (= Bucks. B, 12; Essex, 28, 9); Odo of Bayeux's fee: i ff. 10d, 11a, 16b, 62c, 63d, 146a, 199b, 219a, 220b, ii 17b, 26a, (= Kent, 5, 168 & 184; Sussex, 1, 2; Berks., 44, 2; 65, 19; Bucks., 11, 1; Cambs., 26 [28], 2; Northants., B, 30; 2, 9-10; Essex, 9, 1; 20, 1.)

56) Domesday, ii f. 186a (= Norfolk, 9, 167.)

57) D.C. Douglas, 'A Charter of Enfeoffment under William the Conqueror', E.H.R., xlii (1927), 247.

58) Reg. II, no. 1314.

59) Glanvill, e.g. ix 1, 8, Hall, pp. 104, 105, 112.

60) Thorne, 'Estates', 200.

61) Domesday, i f. 59d, (= Berks. 10, 2.)

62) E.g. Reg. II, nos. 1681, 1738, 1895; Reg. III, no. 40.

63) L.H.P., 70 21; cf. 88 14a and 70 21a; see also 48 11; Downer, pp. 224, 274, 224, 160 respectively.

64) L.H.P., 88 15, Downer, pp. 274-6: 'feodo uel alio conquisito.'

65) Reg. I, no. 338a. See also no. 372c.

66) See also above, p. 85.

67) Lennard, Rural England, pp. 111-2. See also Pollock and Maitland, i 234-5, who suggest that fee may for a short time after 1066 have had connotations of military tenure, but soon came to imply no more than heritability.

68) Reg. III, no. 634. See also her son's confirmation of this grant, no. 635, the wording of which is very closely based on her own charter.

69) See also Reg. III, no. 675, Reg. II, no. 1427.

70) E.g. Reg. III, no. 319. Cf. Simpson, History of Land Law, pp. 77-8.

71) See above p. 86.

72) E.g. Cartae Antiquae, 1-10, no. 293, Recueil, i no. CCCXI.

73) Reg. II, no. 1722.

74) The different wording may reflect the donors' charters, which do not survive. See Reg. II, no. 793 for another grant 'in feodum et ius hereditarium.' On one lord's obligations to his tenant concerning a grant in fee and inheritance, see below, p. 243. My conclusions here suggest that those obligations arose from the grant being hereditary, not from its being specifically 'in fee and inheritance'.

75) Holt, 'Politics and Property', 41-2.

76) Oxford, Bodleian Library, ms. Dugdale 13, p. 35.

77) Reg. II, no. 1723, Reg. III, no. 493. See also e.g. Reg. III, no. 180.

78) Reg. II, no. 1607, 1121. Reg. I, no. 346.

79) Glanvill, vii 1, Hall, pp. 69-71; see also below, Chapter Four.

80) See below, pp. 113-20.

CHAPTER 3: THE PRACTICE OF SUCCESSION AND THE DEVELOPMENT OF INHERITANCE.

Introduction.

In previous sections I have analysed ideas of succession as revealed by language, especially that of charters. The disadvantages of this approach are no doubt almost as notable as its strengths. For example, granted that a charter recording a grant to 'N et heredes sui' strengthened some heir's claim to succeed, the questions arises as to how far this would help a first cousin as opposed to an only son?

To overcome such problems, one must turn to the practice of succession. Here the main source is records of disputes, which most clearly reveal the interaction of the principles and norms affecting succession with the workings of power. Moreover, it was at least partly within disputes that such principles and norms were developed and clarified. Sometimes they acted as important constraints on the arguments which participants put forward, sometimes they were made explicit, examined, contrasted.

I now consider who might be an heir; what methods might be used to ensure that future succession would or would not take place; in what circumstances succession tended to be disputed; and what actions the parties in such disputes took. I thus cover both the practice of succession and the development of inheritance enforced by external authority.

Although historians dispute the degree of discretion a lord had, they agree that succession involved the claimant's acceptance by his lord.[1] Various situations might arise. The tenant had to make at least a formal claim, whether or not he was in physical possession of the land. The lord might accept this, or reserve judgement, possibly doubtful of the claim's validity, or seek to deny the claim and retain the land in demesne, possibly later to grant it to another

party. Or he might be faced with rival claimants.[2] In the period with which I am concerned, three questions may often have arisen when the claim was made: was the grant to the predecessor such as to permit succession; was the claimant the closest heir; was there perhaps some other reason why a claimant should succeed?

It is by these three questions that I define succession cases. I thus exclude disputes where, for example, a man is disinherited for failure to perform services. These concern not the nature of tenure, but the fulfilment of its terms. However, I am interested in this man's descendant who later claims the land as his inheritance. In practice, the distinction between succession cases and others is often blurred. I include cases arising from life-grants by churches, when the grantee's heir seeks to succeed, but not cases concerning a convent's consent for a grant. Yet in both situations, the question might revolve round the legitimacy of long-term alienation from the church's supply. In these instances, I let the terms used by contemporaries determine my assignment of the case.

CHAPTER 3: THE PRACTICE OF SUCCESSION AND THE DEVELOPMENT OF INHERITANCE:

Introduction: Notes.

1) E.g. Holt, 'Notions of Patrimony', 193.
2) C.f. Milsom, Legal Framework, pp. 71-87.

I: Did the Grant to the Predecessor Permit Succession?

A grant, be it recorded in a charter or not, might be expressly to a man and his heirs, for a specific limited period, or neither. If the grant mentioned the grantee's heirs, or stated, for example, that the land was to be held hereditarily, the lord could not deny an heir's claim on the grounds that the grant to the decedent forbade succession, except by claiming that the original grantor had acted wrongly. However, he might still refuse to regrant the land to the heir on other grounds, for example because he considered someone else a more suitable claimant.

Something like this must be what Thorne meant by saying that, in a lawyer's strict sense, feudal tenure in the twelfth century was only life-tenure.[1] For contemporaries, a grant for life meant something different: charters record grants specifically for life or lives, and include reversion clauses and disclaimers of future attempts to succeed.[2]

The distinction is illustrated with particualr clarity by settlements which reject a claim to hold heritably, but permit the unsuccessful claimant to hold for life, whereafter the land should return to the successful party. These life-tenures frequently led to disputes, one of which I discuss later. The Treaty of Westminster, aided by the rapid demise of the life-tenant Stephen, was an unusually successful example of such a settlement.[3]

Grants for life, even apart from settlements, met varying success. I have already cited Bishop Walkelin of Winchester's life-grant, made at William I's request, to the king's cook William Escudet of certain lands in Alton Priors from the sustinence of the monks of the episcopal church. Domesday simply records that William held three hides of land in Alton Priors from the Bishop. The land is next mentioned in a royal charter of 1108: Henry I granted to the Prior and

monks the land which the Conqueror had 'borrowed ['mutuauit'] from them out of their sustinence for the use of William Escudet for as long as William lived.'[4] They were to hold it quit, without any claim of inheritance, as the king's father had ordered by his writ. Conceivably, a dispute at William Escudet's death necessitated the second document. Equally possibly, the monks were simply obtaining a writ to prevent future trouble. In this they were successful.[5]

Here the life-grant worked well, perhaps partly because of the royal involvement. In other instances, these late eleventh-century life-grants resulted in great difficulties for the ecclesiastical grantors and sometimes in lasting alienation from the church's demesne.[6] Walter de Lacy held Holme Lacy from the Bishop of Hereford, in return for the service of two knights, possibly for an undefined period or perhaps specifically for life. Certainly the land was of the church's supply and returned there until his son Roger sought it from the Bishop through his friends and money. Although the grant to Roger was again for knight service, it was emphatically only for life. Yet, as its name suggests, the land descended in the family.[7]

The number of charters recording life-grants by churches during the late eleventh century is striking, especially when compared with the total number of surviving charters. The prevalence of life-grants may in part reflect a conservative retention of pre-Conquest practice.[8] However, such grants continued during the twelfth century. The genuine foundation charter of Reading Abbey in 1125 does not survive, but it may well have prohibited all grants in fee, permitting only grants for annual rent or service.[9] Henry II enforced this provision: 'Volo et firmiter precipio quod omnes terras et tenuras uestras teneatis in dominio uestro liberas et absolutas, ita quod nemini detur in feudum sicut rex Henricus auus meus precepit per cartam suam.'[10]

From the mid-twelfth century, some charters reinforced life-grants with

phrases such as 'in uita sua tantum, non iure hereditario', or 'sine omni hereditate et absque ullo feudo ad firmam tantum quam diu uixerit.'[11] The latter is from a charter of Archbishop Theobald, which shows a claimant exploiting a temporary lapse in seignorial control. A certain Ansfrid had held at farm the manor of Stisted, Essex, but never had 'any inheritance or any fee in it.' In the vacancy after Archbishop William's death, Ansfrid's son violently occupied the manor. Despite Theobald's efforts and royal intervention, Ansfrid's family were to regain control of the lands and hold them for the next two and a half centuries.[12]

A final case illustrates the extent of troubles a grant for lives might cause. In 1088 Abbot Herbert of Ramsey gave William Pecche the fraternity of the congregation and granted that he might have under his custody, for his own and the abbey's profit, the land of Over in Cambridgeshire:

> Uxor uero eius quam hodie habet, scilicet Alfwen, si superuixerit ei, tenebit ipsam terram in uita sua ... sed post decessum uitae eius recedet in manum abbatis ... absque ulla calumnia et obloquio, et tam bene uestita ut fuerit in die qua ipsam Alfwen mortalis infirmitas preoccupauerit.[13]

Clearly that grant was intended to prevent inheritance! Nevertheless, the problems it produced lasted for a century and a half. From 1109x1129 comes a royal charter dealing with a dispute after William Pecche's death:

> coram me testificatum et recognitum est per barones de honore Ramesie et per cyrographum ecclesie eiusdem quod Willelmus Peccatum et Elfwenna uxor sua non debuerunt tenere terram de Oura de feudo abbatis Ramesie nisi tantummodo in uita sua ... sed post decessum eorum debuit terra illa redire in dominio ecclesiae et abbatis absque omni calumnia.[14]

The king ordered that the church and abbot have the land in demesne, 'solutam et quietam ab omni calumnia et reclamatione heredum et posterorum Willelmi Peccati et Elfwen uxoris sue.'

Why did the case go to the king? Surely it was a matter for the seignorial court: the claimant should have come to the lord and requested his inheritance. The lord would have refused, on the grounds that the claimant's

father had only held for life. The court, it seems, would have backed their lord. Conceivably Hamo, William's son by his second marriage and his heir, had sought the king's help after his claim was refused. He may have been a royal favourite.[15] Alternatively, Hamo was already in possession or had seized the land and the abbot looked to the king for support in ejecting him. Between 1123 and 1130, the king confirmed all the lands which abbot Rainald had brought into demesne since becoming abbot, and these specifically included Over.[16]

However, the troubles did not stop. Henceforth we rely partly on the Ramsey cartulary's reports of pleas in the 1220s and 1230s.[17] Obviously these may be biased, giving only memories of the twelfth century but they suggest what must have happened. In 1228 the abbot admitted that on the death of William and Elwin the land was regranted to Hamo for life, at the king's request, since Hamo was a royal favourite. The rent was increased to twenty shillings.[18] To fit the dating of the charter quoted above, William must have died by 1129, so the king concerned was Henry I. His action here is hard to reconcile with his charter of 1123x1130 confirming Over to the abbey's demesne. Perhaps he was promoting compromise, reconciling his general support for the abbey with personal favour for Hamo. Or perhaps memories had grown confused and it was King Stephen who promoted Hamo's cause.

The abbey was unhappy with the arrangement. Stephen seems not to have helped them, be it because he supported Hamo or because he was weak. Instead, the abbey looked to the Pope, Innocent II; 'Sancimus etiamne in possessione et loco Overe, quod proprie uestrum est, ullus hominum, uobis inuitis, iure successionis, possit sibi quippiam uendicare, uel quicquam calumnie uel molestie uobis inferre.'[19] This bull's effect is unclear. At some time before his death in 1178x1185, Hamo enfeoffed his younger son Gilbert with the lands.[20] In 1178, the abbey obtained another bull, closely repeating Innocent's provision.[21]

However, the dispute rolled on for another half century, only being concluded under Henry III when Gilbert's son Hamo unsuccessfully impleaded the abbey for the lands.[22]

The case is notable with regard to heritability in three main respects. It shows the pressure on churches, and perhaps other lords, to allow succession and promise future heritability. The later Pecches probably saw themselves as pressing a valid claim, for the land certainly had been in their family for a considerable time. Secondly, we see the church looking for outside help, taking matters of succession outside the honour. Thirdly, such disputes must have stimulated thinking on tenure: it had to be established *how* the lands were held, the peculiarity of life-grants must have been stressed and at least implicitly contrasted with heritable grants.

Charters of lay grantors provide little evidence of grants for life or lives. Most notable is a surrender of land by Ralph fitzPichard to Margaret de Bohun, daughter and heiress of Miles of Gloucester.[23] The charter states that, following Ralph's exile from Winchester in which he lost his houses and chattels, Miles granted him for life all the lands which Ralph held there as sustenance for himself and his family. Ralph swore that he would never attempt any trick by which the land he had received would be alienated from Miles' heirs. Mindful of this kindness and his oath, he now recognised Margaret's right and gave back the lands of his own free will, 'omni reclamacione ex parte mea uel parentum meorum postposita et sopita.' He requested that she grant the lands to the canons of Llanthony.

The preponderance of ecclesiastical grants for life may just reflect the production and survival of charters. Lay lords may often have made grants for life, as Miles did to Ralph. Glanvill's discussion of grants without livery of seisin, lasting only for the grantor's life-time, possibly indicates that short-

term allocations, including life-grants, were quite common.[24] Even before livery of seisin became vital for full alienation, such temporary allocations may have involved less formality than a lasting gift.[25] If so, this, along with their short-term nature, decreased the chance of their being written down.

Alternatively, churches may have been especially concerned with preventing permanent alienation of lands detailed for their support. They may also have been especially careful to restrict the terms of their grants because they were particularly threatened. A connected possibility is that lay lords really did have more discretion over regranting a dead tenant's lands, and hence did not need to make specific life-grants. However, I argue below that if a close relative survived, lords rarely exercised such discretion, certainly not in the twelfth century.[26]

Closely connected to grants for limited periods may be charters recording gifts to a man and his heir. Almost all were for rent, not military service. Was such a grant limited to two lives, an attempt to prevent succession? Or was it heritable?

Round regarded these grants as leases for two lives, even if they used phrases such as 'in fee and inheritance.'[27] On the other hand, Lennard felt that they may have created 'fully hereditary tenure', especially if such additional phrases were included. He found no reversion clauses such as occurred in grants specifically for lives.[28] Holt follows Lennard, and also argues that the writers of charters 'varied the number of the noun quite inexplicably.'[29]

Like Lennard and Holt, I have found no reversion clauses in such charters. The number of the noun varied even within individual charters.[30] A charter of Reginald, abbot of Ramsey significantly begins with the plural, 'concessimus Widoni tam sibi quam heredibus suis unam hidam terrae apud Burewellam', before

continuing that 'tam ipse Wido quam heres ipsius dabit per singulos annos abbati Ramesiensi uel cui abbas iusserit quinque solidos pro predictae hidae decima.' When Reginald's successor confirmed the gifts, the rent and tithe was to be paid by Wido and his heirs.[31]

Future tenure need not always have been the draftsman's main concern. The presence of the son and heir at the gift ceremony may have determined the charter's wording.[32] However, a son's presence cannot explain every instance of the phrase. In 1131 Henry I restored to William fitzWalter de Beauchamp all his father's lands and the office of dispenser, which William and his heir after him were to hold hereditarily. William had no son at this time.[33]

Thus gifts specified as 'to a man and his heir' do not appear to have been carefully worded attempts to limit tenure to two lives. The absence of reversion clauses and the presence of other inheritance phrases on balance suggest that these grants might be heritable. The specific mention of the heir gave him a very strong claim to succeed. Once he had succeeded, the land might be seen as part of the family's hereditas, which should pass to later heirs.[34]

The phrase was always more common in private than in royal charters, even when the latter were confirming private grants. Its decreasing frequency after 1150 points to a change not in the nature of the grants but in the care and consistency of charter wording.

By Bracton's time, a grant had to be made to 'N. and his heirs' for it to be heritable. A grant to 'N.' was only for life.[35] Earlier, the distinction was less clear. A grant just to 'N.' did not necessarily prevent the heir from succeeding to the land.

From the mid-twelfth century, charters stating not only that grants are for life but that they are not in fee and inheritance hint at requirements for

stricter wording concerning tenure.[36] The most notable evidence, however, is a charter of Archbishop Theobald, from 1154x1161.[37] A dispute had arisen between a certain Peter and the canons of St. Paul's concerning possession of lands pertaining to the archbishop's manor of Wimbledon and Barnes. A royal writ had ordered that the case be settled in the archbishop's court. Peter demanded the land since his father, so he said, had possessed it at the death of Henry I and his mother had had the same possession until she had been violently ejected. However, there was no mention of inheritance or fee, and the canons denied that his father and mother's possession was such that succession was owed to him or anyone. Since Peter could produce no documents or witnesses as proof, and judgement went against him, saving the question of right.

Thus by Henry II's reign, the omission of inheritance language for a grant might prevent future succession. Such strict construction of wording increased in particular the power of charters as external authorities determining the relationship of claimant and lord. Once lords took the absence of inheritance language to give them an explicit right to deny succession, the presence of inheritance language surely strengthened still more the heir's claim to succeed.

The nature of other grants might prevent succession by relatives. Thus a prebend was not to pass to lay relatives.[38] However, my concern here has been grants to laymen. The wording of grants mattered. Throughout the century after the Conquest, certainly ecclesiastical lords and possibly lay ones considered it prudent to specify if a grant were for a limited term. Towards the end of the period, the omission of inheritance language from the grant, and from the charter recording it, could seriously jeopardize succession. Yet however carefully a grantor sought to protect himself through his charter, persuasion and power might force him to permit succession.

I: Did the Grant to the Decedent Permit Succession?: Notes.

1) Thorne, 'Estates', 195.
2) See also above, pp. 54-5, for life-grants and reversion clauses.
3) Reg. III, no. 272. For the case of the Abbey of Abingdon and Simon the king's dispenser, see below pp. 157-8.
4) Reg. I, no. 270, Domesday, i f. 65c (= Wilts. 2, 3), Reg. II, no. 884.
5) V.C.H., Wiltshire, xi 192. See Reg. II, nos. 874, 883 for William Escudet's holding from Romsey; J.H. Round, The King's Serjeants and Officers of State, (London, 1911), pp. 10-11. See also Reg. I, no. 466, discussed above, p. 54-5.
6) E.g. Eadmer, Historia Nouorum in Anglia, ed. M. Rule, (London, 1884), p. 219; F.R.H. Du Boulay, The Lordship of Canterbury, (London, 1966), cap. 3. (Henceforth Eadmer, Historia Nouorum; Du Boulay, Canterbury.) Miller, Ely, p. 167.
7) Galbraith, 'Episcopal Land Grant'. For the estate's later history, see H.M. Colvin, 'Holme Lacy: an Episcopal Manor and its Tenants in the Twelfth and Thirteenth Centuries', in Medieval Studies Presented to Rose Graham, edd. V. Ruffer & A.J. Taylor, (Oxford, 1950), 15-40.
8) Galbraith, 'Episcopal Land Grant', 354, 367-8; Lennard, Rural England, (Oxford, 1959), pp. 159-170. (Henceforth Lennard, Rural England.)
9) Reading Abbey Cartularies, ed. B.R. Kemp, (2 vols., Camden Soc., 4th. Ser., xxxi, xxxiii, 1986-7), i no. 1. (Henceforth Reading Cartularies.)
10) Reading Cartularies, i no. 27. Cf. Liber Eliensis, ed. E.O. Blake, (Camden Soc., 3rd. Ser., xcii, 1962), p. 303. (Henceforth Liber Eliensis.)
11) E.Y.C., i no. 414. Saltman, Archbishop Theobald, p. 271, no. 44.
12) A.E. Conway, 'The Owners of Allington Castle, Maidstone (1086-1279)', Archaeologia Cantiana, xxix (1911), 12-13. See below, p. 158, for the aspiring heir of a life-tenant of Abingdon exploiting a vacancy in the abbacy to press his claim.
13) Ramsey Chron., p. 233.
14) Reg. II, no. 1629.
15) Cartularium Monasterii de Rameseia, edd. W.H. Hart & P.A. Lyons, (3 vols., London, 1884-93), i 124. (Henceforth Ramsey Cart.) PR 31 HI, p. 99: Hamo pardoned 28s. 7d. geld in Suffolk.
16) Reg. II, no. 1686.
17) Ramsey Cart., i 123-127.
18) Ramsey Cart., i 124.
19) Ramsey Cart., ii 144.
20) Complete Peerage, x 331-2.
21) Ramsey Cart., ii 137.
22) On the later stages of the dispute, see Ramsey Cart., i 124, 126, ii 147; Ramsey Chron., pp. 296, 300, 323; R. C. R., i 2, 87, ii 122; C.R.R., i 292, xiii no. 1141, xiv no. 194.
23) D. Walker, 'Ralph son of Pichard', B.I.H.R., 33 (1960), 201.
24) Glanvill, vii 1, Hall, pp. 69-70.
25) See S.E. Thorne, 'Livery of Seisin', Law Quarterly Review, lii (1936), 345-364 (Henceforth Thorne, 'Livery of Seisin'.)
26) See below, pp. 123-134.
27) J.H. Round, 'The Burton Abbey Surveys', E.H.R., xx (1905), 279; White, 'Succession to Fiefs', 119-120.
28) Lennard, Rural England, p. 173.
29) Holt, 'Rejoinder', 130.
30) See also e.g. Reg. II, no. 1778, which begins with the plural before slipping into the singular.

31) Ramsey Chron., pp. 261, 271.
32) Lennard, Rural England, p. 174 fn. 1.
33) Reg. II, no. 1710.
34) The singular is also sometimes used in clauses specifying that a man and his heir should not be placed in plea; e.g. Reg. III, nos. 386, 582. In these cases the beneficiary may only have paid enough to cover himself and his heir; e.g. PR 31 HI, p. 87. Even so, later heirs may have used such privileges to support their own claims.
35) Pollock and Maitland, i 308; Bracton's Note Book, ed. F.W. Maitland, (3 vols., London, 1887), iii 16-17, 248-9, 620, (= pleas nos. 964, 1235, 1811).
36) See above, pp. 114-5.
37) St. Paul's, no. 163.
38) Reg. III, no. 434.

II: Was the Claimant the Closest Heir?[1]

If the grant to the claimant's predecessor permitted succession, the claimant would usually have sought to prove that he was the closest heir. Often this would have been a matter of common knowledge, particularly if there were a son. But who else might be termed heir? Contemporary guidelines varied. The Leges Henrici stated that the closest relative up to the fifth joint might succeed 'by hereditary right'.[2] The passage is based on the Lex Ribuaria, and I have found no other contemporaries using such terminology.[3] Glanvill distinguished between the 'closest' and 'more distant' heirs:

> Closer heirs: sons and daughter.
>
> More distant heirs, in order of decreasing proximity:
> (i) grandchildren and their descendants.
> (ii) brothers and sisters, and their descendants.
> (iii) paternal and maternal uncles, similarly aunts, and their descendants.[4]

A passage closely following suggests that no more distant heir would be considered; listing possible heirs, it concludes 'lastly aunts and their children.'[5]

I now examine the position of the various relations who might be heirs. I argue that lords rarely denied legitimate sons, daughters, grandchildren, brothers and sisters their inheritances. Nor was their claim to be the closest heir often contested by a rival. The claims of more distant relatives were less certain of undisputed acceptance.

The strength of customary succession by the eldest son to the bulk of the patrimony in the century after 1066 is generally recognised.[6] Although some of the patrimony might have been granted to younger sons during the father's life-time,[7] radical departures from the above pattern are rare.[8] Occasional

divisions of land held by military tenure did occur,[9] but Holt rightly argues that such sub-division 'was unusual even in the generation immediately following the Conquest and later examples are exceptional.' He also mentions the percentage of parents who would have twins, and notes that 'it may simply be coincidental that this matches the known cases of partition."[10] In Kent, land held for military service and that held in gavelkind may sometimes have grown confused, but it was never considered that lands held for military service should, per se, be divided.[11] Even groups such as the Bretons who came from areas where division of the patrimony may have been common, generally practised primogeniture in England.[12]

Did lords ever seek to prevent sons from succeeding, except on the grounds that their fathers had held specifically for life? Unfortunately the evidence before 1100 is very sparse. However, although Henry I of course did disinherit disloyal vassals, he did not retain baronies when a son survived a baron who died seised. When other lords denied eldest sons their inheritances, the sources usually give specific reasons for their unusual action.[13]

Justification of female inheritance appears outside law-books. In 1143x1144 Gilbert Foliot wrote to Brian fitzCount, setting down the Empress Matilda's claims.[14] He stated that Robert Duke of Gloucester - who had himself obtained the barony of Gloucester through marriage to Mabel, heiress of Robert fitzHamo - was fond of quoting the last chapter of the Book of Numbers in the following way:

> Salphaat homo erat Iudeus de tribu Manasse; huic filie tantum erant et nullus filius. Visum est quibusdam illas sexus ob inbecillitatem non debere in bona patris admitti. De hoc requisitus Dominus legem promulgauit, ut filiabus Salphaat totum cederet in integrum quod fuerat ab earum patre possessum.

In fact the biblical passage does not question women's right to succeed, but concerns the marriage of daughters outside the tribe, another subject relevant

to the Empress. Even so the version in the letter remains very significant. In the 1160s, both parties to the Anstey case accepted that 'filiam nepoti in paterna hereditate preferendam.'[15]

Milsom and Holt have discussed at length succession by daughters. Holt has clarified a change in the 1130s from succession by a single heiress to the division of land between coheiresses.[16] The latter arrangement may have caused some problems,[17] but otherwise there is no sign that their successions were particularly marked by disputes. The king did not deny inheritance by daughters. Many baronies passed to daughters without apparent dispute, some more than once. William de Arques held Folkestone, at first from Odo of Bayeux and then from the king. At his death in *c.*1090, he left only an heiress, Emma. She married Nigel de Manville, and they left another heiress, Maud. She married Rualon d'Avranches and this couple at last produced a male heir, William.[18]

A few grants, generally family arrangements, restricted succession to heirs of the grantee's body, sometimes further limited to the children of a particular wife. An early example is the agreement made in 1091 between Duke Robert and Rufus: 'if the Duke died without a son born in lawful wedlock, the king was to be the heir of all Normandy. By the same agreement, if the king died, the Count was to be heir of all England.'[19] In 1123, the marriage settlement between Richard Basset and Matilda, daughter of Geoffrey Ridel, involved a restriction to the children of the specified wife.[20]

Rather more such grants survive from the second half of the century. Richard de Moreville gave William de Rudeville his cousin the vill of Lindley, Leicestershire, in exchange for the land of Withybrook.[21] If William died without heir from his wife, Lindley was to remain in the hands of Richard and his heirs. If he did produce such heirs, they were to hold of Richard and his heirs in perpetuity. However, a few examples were not family settlements.

William de Roumare gave Reinold de Neufmarché two bovates 'pro hummagio et seruicio suo tenendas de me et heredibus meis in feudo et hereditate si habuerit heredem de uxore desponsata.' If he had no such heir before he died, the land was to return to William's demesne.[22]

I have found no disputes arising from such grants. They were not widely adopted by lords to preserve their discretion against the hardening custom of succession. Usually they were employed by families in order to control the descent of their lands.

I turn now from Glanvill's 'proximi heredes', sons and daughters, to those he termed 'heredes remotiores'.[23] First came grandsons and grand-daughters. When Henry I took into his hand the lands of Eudo *dapifer*, who had drowned with the White Ship, he may have disinherited two grandsons in the female line, who would still have been minors.[24] Generally, however, grandchildren's claims appear generally to have been accepted. For example, the barony of Stainton-le-Vale passed from Ralph de Criol to his grand-daughter Bertha.[25] However, their position may have been weak if a younger brother of their deceased father survived. This is the casus regis, which I discuss below.[26]

After lineal descendants, according to Glanvill, came brothers and sisters. Again there are many examples of peaceful succession.[27] I have found no case where the king denied succession to a brother's lands. When Walter succeeded his brother Roger Earl of Hereford in 1155, although he lost the county of Hereford and the city of Gloucester, he did receive the whole paternal inheritance of lands. These later passed in turn to his brothers, Henry and Mahel, and to his sister, Margaret.[28]

Nephews and nieces often succeeded to their uncles' lands as heirs.[29] However, this may be the stage where succession became less secure. The Relatio de Standard records of Walter Espec that 'nempe cum liberis careret

heredibus, licet ei nepotes strenui non deessent, de optimis tamen quibusque possessionibus suis Christum fuit heredem.'[30] In Stephen's reign, William II Peverel and Walchelin Maminot shared the inheritance of their uncle, Hamo Peverel, who died probably in 1139. However, Henry II never recognised Walchelin's claim to the Peverel lands.[31]

Succession by uncles, aunts, and their descendants was uncommon,[32] probably because they were rarely the closest heirs, but also because lords did not accept their claims. Robert of Torigny wrote that Walter Giffard died heirless in 1164, but by Glanvill's standards, Walter did have heirs, for his aunt, Rohese, had descendants. Nevertheless, Walter's English earldom and Norman lands returned to Henry II's demesne.[33], and his heirs only obtained their potential inheritance at the beginning of the next reign.[34] In 1120, Ranulf le Meschin succeeded his cousin Richard as Earl of Chester.[35] However, he had to pay a very heavy relief and surrender his rights to his wife's inheritance. Lords exploited the weakness of the more distant claims, even if they did not refuse to regrant the land.

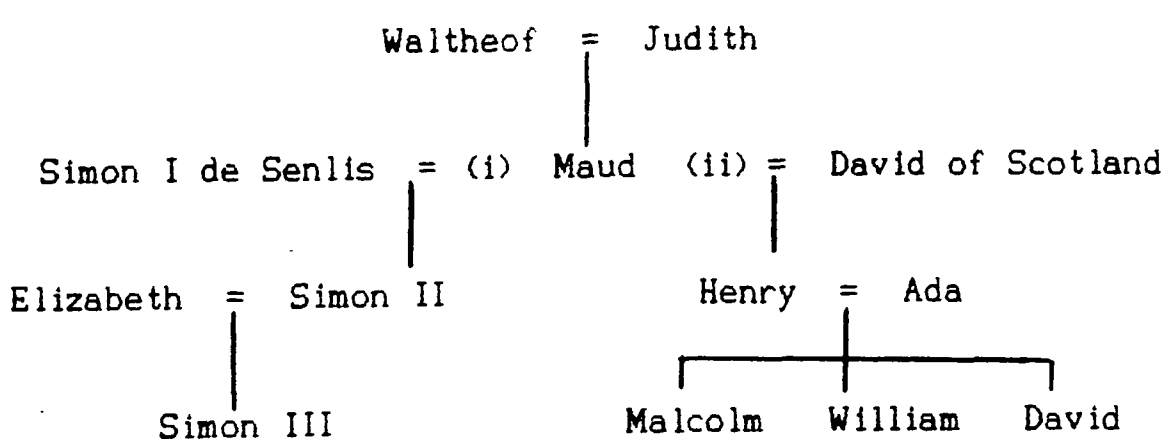
Thus succession by the more remote relatives could be vulnerable. Towards the closer end it was generally secure and followed a consistent pattern. Milsom suggests that succession norms for lands held by military tenure would have differed between honours, as they later did lower in society.[36] However, there is no suggestion that division amongst heirs, nor any other peculiar succession pattern, was customary in any honour, group of settlers, or region. Part of the explanation for this uniformity must be the complexity of land-holding in England.[37] Another element, I shall suggest, were the external powers which could become involved in succession cases.[38]

Disputes concerning the closer heirs generally arose in two situations. In the first, the heir was clear, but in a peculiarly weak position, personally or politically; in the second, there were problems deciding who was the closest heir.

The youth or absence of an heir might cause problems. I have found no English examples of heirs who were conceived but not yet born when their fathers died, but this must occasionally have occurred.[39] The fictional Raoul de Cambrai found himself in this situation as he relaxed in his mother's womb.[40] Succession by minors was common, and would have been the more threatened the less close the kinship of heir to decedent.[41]

Sometimes the closest heir must have been of age but absent, even perhaps his existence unknown. Although I have found no disputes arising from a man's claim that he had been passed over in this way, the accessions of Henry I and Stephen showed the advantages of swiftly pressing a claim when their rivals were absent.[42]

The personal situation which has left most evidence of causing succession disputes is that of the heir whose mother remarried. One such dispute stretched through the twelfth century.



Earl Waltheof married Countess Judith and they produced a daughter, Maud.[43] In *c.*1090 she married Simon I de Senlis who died in 1111x1113, leaving a son Simon

II. Maud then married David of Scotland, and Simon, still a minor, became his step-father's ward. In 1124 David became King of Scots and Simon passed into the wardship of his great uncle, Stephen Count of Aumale. Maud died in 1131 and David held her lands until he resigned their custody to his son Henry in 1136. However, Simon II was proving himself a loyal follower of Stephen and by 1146 was probably in control of his mother's lands. When he died in 1153, his son Simon III was a minor, and the lands passed back to the King of Scots, now Malcolm, who held them until he died childless in 1165. They then passed to William the Lion, but he forfeited them after his invasion of England in 1174. They were granted to Simon III but he too died childless in 1184 and the lands returned to William the Lion. The original remarriage, the succession of minors and the deaths of holders without children ensured an unstable descent for these lands.

The turn the dispute took under Stephen also reveals how politics could affect a succession. Daughters were supposed to inherit before nephews, but early in Stephen's reign a dispute arose between the daughter and heiress of Simon de Beauchamp and his nephews. Miles, the most prominent, was castellan of Bedford, and, with his brothers, resisted royal demands for the surrender of the castle. According to the Gesta Stephani, Miles claimed that the castle was owed to him 'ex paterno iure'. Orderic gives a rather different explanation:

> It was not that they intended to withhold the obedience and service due to their lord, but having heard that he had given the daughter of Simon de Beauchamp in marriage to Hugh le Poer with her father's honour, and fearing to lose their ['sua' = his?] whole inheritance, they had taken the advice of friends to put up a stout opposition.[44]

According to Orderic, the Bishop of Winchester persuaded Miles to surrender the castle. However, Hugh le Poer and his wife only enjoyed it until the Empress's period of dominance in 1141. The Gesta Stephani records that

> Hugh, surnamed the Poor, who by the king's permission had obtained the Earldom of Bedford when Miles de Beauchamp was dislodged, behaving carelessly and slackly (for he was a dissolute and effeminate man) willy-

> nilly handed over the castle to Miles, and by a just judgement of God became in a short time a knight instead of an earl and instead of a knight a very poor man.[45]

Further instances are considered below, in relation to heirs seeking to persuade their lords to accept them because of the political advantage which would result.[46]

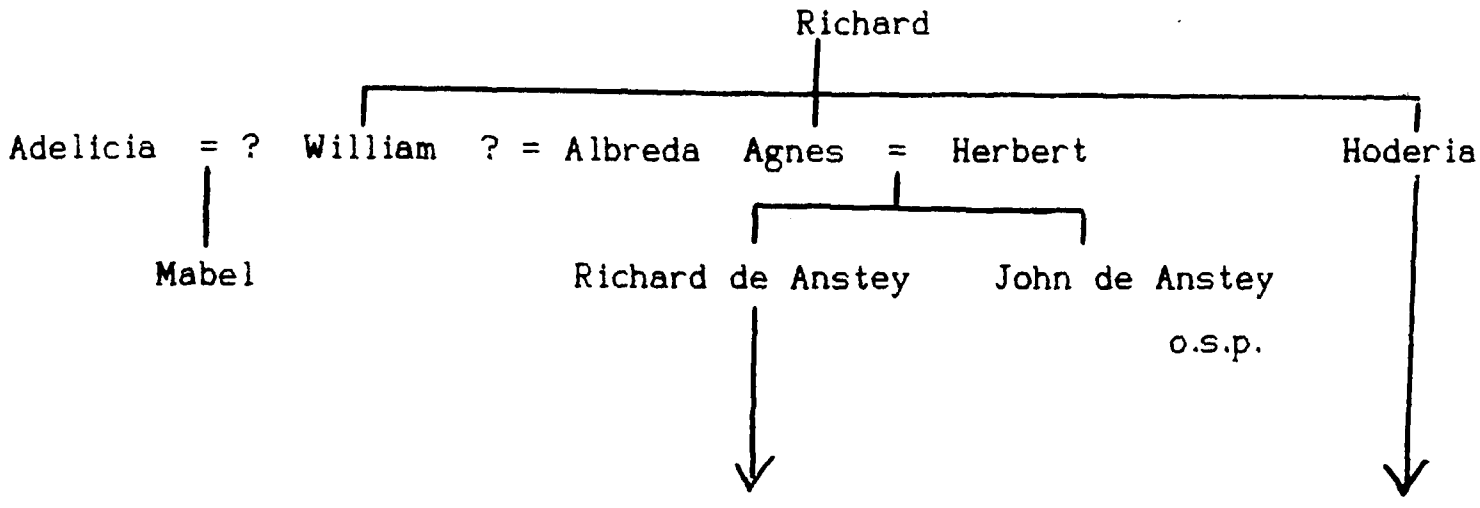
In addition to cases where the heir was clear but circumstances produced a dispute, it was sometimes unclear who was the closest heir. The most famous example is the casus regis, summarised by Glanvill in the following way:

> When .... anyone dies leaving a younger son or daughter, and a grandson born of an eldest son already dead, a great legal problem arises ['magna ... iuris dubitatio solet esse ...'] as to which is to be preferred to the other in that succession ... . Some have sought to say that the younger son is more rightly heir ['rectiorem esse heredem'] than such a grandson, on the ground that since the eldest son did not survive until the death of his father he did not survive until he was his heir; and therefore, so they say, since the younger son survived both father and brother, he rightly succeeds to his father. Others, however, have taken the view that such a grandson ought in law to be preferred to his uncle; for, since that grandson was born to the eldest son and was heir of his body, he ought to succeed to his father in all the rights which his father would have if still alive.[47]

Unless it could be proved that the deceased son had done homage to the chief lord, 'the position at the present day as between uncle and grandson is that the party in possession will prevail.' I have found no such cases between 1066 and 1166; maybe disputes did occur, but left no trace, or maybe succession was peaceful, settled by individual decisions and honorial custom. Alternatively, the problems of the late twelfth century may not have been the product of doubts about custom but have produced those very doubts.[48] If so, it reveals how custom could still change, despite the hardening of inheritance rules.[49]

The heir might also be in doubt when the validity of the decedent's marriage was disputed. Such was the situation in the Anstey case, much cited as evidence of the tardiness and expense of medieval justice, but strangely ignored in discussions of inheritance.[50] The dispute was between William de

Sackville's daughter Mabel de Francheville, and his sister's son, Richard de Anstey, who left a memorandum of the case.



Richard asserted that William had contracted to marry Albreda de Tresgoz but broke his promise and deserted her.[51] He proceeded to take to wife Adelicia, daughter of Amfrid the sheriff, who bore Mabel and other children. The couple went through a form of marriage, despite Albreda's protests during the ceremony. According to Mabel, the contract to marry Albreda did not constitute marriage and had been annulled by mutual consent. The dowry had been refunded, as witnesses would establish, and Albreda's father had approved the marriage to Adelicia, which was duly consummated. However, according to Richard, Albreda then persuaded the papal legate, Henry Bishop of Winchester, to order William to return to her. The pope confirmed this decision, and 'from that date to the last days of his life William abandoned the adulteress and clove to his former wife.' Mabel denied that a proper divorce had taken place. Only after Adelicia had been violently ejected from the house, and the Bishop of Winchester bribed, were William and Albreda married in church.

William died between 1149 and 1152, and the dispute started, in the court of Theobald, Count of Blois, who appears to have been lord of the Sackvilles 'iure feodi', at least in France. Following the advice of the leading bishops of

France and of other wise men, he recognised William and Adelicia's children as legitimate heirs. Whether they obtained possession of the English lands is uncertain, for it is unclear who held these when the process recorded in Richard's memorandum began in late 1158.[52]

Richard obtained a writ from Henry II, who was in Normandy, to the Queen, who issued another writ which Richard took to Richard de Lucy.[53] The latter was justiciar, but may also have been Richard de Anstey's lord.[54] The writ's exact nature is not revealed. Anyway, the case was adjourned to the court of Archbishop Theobald, since it turned on the legitimacy of William's marriages. After further long delays, Richard took his case to Pope Alexander III. A surviving letter from Theobald to the Pope outlines the parties' positions.[55] Richard stressed the validity of William and Albreda's marriage based on the consent of the parties, the authority of the divorce, and produced witnesses who stated that 'he had been appointed as heir by his uncle William, while the others had been disinherited as being bastards.'[56] Mabel claimed, among various pleas, that consent was not enough to establish marriage, that the divorce was not valid, and 'maxime patris nouissime uoluntati innitebatur et iudicio comitis Theobaldi.'[57]

The Pope delegated the dispute to the Bishop of Chichester and the abbot of Westminster, describing it as

> causa que inter Riccardum de Anestia et Mabiliam de Franceuill', super eo quod ipse Riccardus eandem Mabiliam de illicito matrimonio asserit esse genitam et inde ad bona auunculi optinenda petitioni hereditatis insistit diutius agitatur.[58]

The judges delegate decided for Richard, and in December 1162 Alexander issued his sentence accordingly.[59] Further delays occurred before obtaining a judgement in a lay court. In July 1163 the parties appeared before the king at Woodstock, bringing the case to an end. Richard's account puts it thus: 'Et tandem, gratia Dei et regis, per iudicium curie sue adjudicata est mihi terra

auunculi mei, et ibi dispendidi vij libras et x solidos.'[60]

The editors of Archbishop Theobald's letter outline four mid-twelfth-century views of what constituted marriage,[61] all of which Alexander held at different points in his life. At the time of Richard's appeal Alexander held that 'the consent of the parties alone - i.e. betrothal without consummation - made a binding marriage.' In this, Richard was fortunate, since certainly two of the other views might have caused him greater problems.[62]

*

The Anstey case again puts the development of inheritance into a wider context of changing ideas. Strict legal rules of inheritance required not only regular enforcement by lay authority, but also the definition of issues in which the church was intimately involved. The Anstey case was particularly difficult, but the more general question of succession by bastards must have been settled by a mixture of lay and ecclesiastical attitudes. In 1035 William the Bastard succeeded in Normandy. According to Orderic, in 1103 the Normans chose to accept William de Breteuil's illegitimate son Eustace as his successor, rather than his legitimate heirs who were a Breton and a Burgundian.[63] However, in 1091 William Rufus and Robert made each other their heir in the absence of any legitimate child.[64] In 1135, Robert of Gloucester was not seriously considered as a contender to the throne. In the Anstey dispute, Mabel stressed her legitimacy, never a right to succeed despite illegitimacy. Glanvill included an exception of bastardy in his discussion of mort d'ancestor.[65] Whilst pre-Conquest English custom may have treated bastards more harshly than did Continental, after 1066 the teachings of the reform movement on proper marriage clearly had an important effect.[66]

Increased definition of marriage could strengthen a lord's position. The

tale of Raoul de Cambrai suggests a tension in lay attitudes to succession by bastards. Ybert de Ribemont, Count of Vermandois, produced a son, Bernier, by an illicit liaison. Although Ybert had brothers, the mother told Bernier concerning his father's patrimony that 'he has no other heirs, you cannot lose it.'[167] Ybert informed the king that he had given his lands to Bernier, to which the king replied 'has then a bastard a right to claim a fief?'[168] From the king, and any other lord's point of view, to deny a bastard's right to succeed was to increase his own seignorial discretion and the likelihood of escheat.

Thus the church and lay society narrowed the definition of an heir, a process vital to the settling of strict rules of inheritance. Yet difficult cases remained, even in the next century. Theobald's letter to Alexander III stated that

> There are occasions when the clemency of the law spares those who, though debarred from marriage by reason of their kinship, have married in ignorance, and frees from infamy and the loss of their inheritance the children of those who have been wrongfully joined together in ignorance by the Church.[169]

Although the reference is to the clemency of canon law, this clearly affected lay succession, and the canonical position remained unchanged in the thirteenth century. The increase in abstraction and definition which I see as an important element in the development of inheritance was a gradual process. The Anstey case provides a notable illustration of how far it had gone by the *c.*1166.

II: Was the Claimant the Closest Heir?: Notes.

1) Ideally one would examine Anglo-Norman customs in the context of North-West France. See Hyams, 'French Connection'.
2) L.H.P., 70 20a, Downer, p. 224; the source is Lex Ribuaria, 56 3. On counting by digits, see Pollock and Maitland, ii 307.
3) Reg. III, no. 148 specified that Matilda of Saint-Saens should hold Stisted 'sine feodo et sine hereditate omni, ita ne heredes sui nec maritus uel *aliquis qui sibi cognatione uel affinitate pertineat* aliquid in manerio post obitum ipsius Mathildis clamare possit ... .'
4) Glanvill, vii 3, Hall, p. 75.
5) Glanvill, vii 4, Hall, p. 79.
6) Holt, 'Politics and property'. R. DeAragon, 'The growth of secure inheritance in Anglo-Norman England', J. Med. H., 8 (1982), 381-391. (Henceforth DeAragon, 'Secure Inheritance'.) On secure succession within honours, see e.g. Du Boulay, Canterbury, p. 61.
Chroniclers sometimes wrote as if the word heres was only proper for a son; e.g. Chronicles of the Reigns of Stephen, Henry II, and Richard I, ed. R. Howlett, (4 vols. London, 1886), iv 308, iii 183. (Robert of Torigny and the Relatio de Standard.) (Henceforth Chronicles Stephen, Henry II, Richard.)
7) See below, pp. 209-11.
8) The descent of the lands of Siward of Arden, son of Turkill of Warwick may be one such case. Siward's lands were divided between his three sons, Hugh, Henry, and Osbert, the smallest portion going to the last. A case of 1208, C. R. R., v 241, makes Osbert the son of a second marriage, in which case the arrangement might not be very unusual. However, a charter of Hugh of Arden refers to his older brother Osbert; P.R.O. E. 13/76, m. 71, transcript courtesy of Dr. Crouch. Perhaps Siward had two sons named Osbert. Possibly there was only one Osbert who was Hugh's full older brother, but born before their parents were married and hence excluded from the main inheritance. Or perhaps this really is an exceptional succession arrangement.
See above, p. 26 fn. 98, on socage, below, p. 151, on Ernulf de Mandeville.
9) E.g. Sanders, Baronies, Caxton, Rayne, Skirpenbeck. Early Yorkshire Families, edd. C.T. Clay & D.E. Greenway, (Yorks. Arch. Soc. Record Series, cxxxv, 1973), pp. 55, 92.
For a bestiary text, originating in the fifth century but circulating in early twelfth-century England, which criticizes man for concentrating his fortunes on one son, whereas the crow takes care of all its offspring, see The Book of the Beasts, tr. T.H. White, (London, 1954), 142-3.
Leges Willelmi, 34, Liebermann, Gesetze, i 514, specifies that if the 'paterfamilias' died intestate, his sons were to divide the paternal inheritance equally between them. Use of 'paterfamilias', mention of testamentary disposition, and the fact that the clause appears in the midst of a section largely derived from the Digest, suggests strong Roman influence.
10) Holt, 'Politics and Property', 11 and fn. 46.
11) Du Boulay, Canterbury, pp. 67-75.
12) M. Jones, The Creation of Brittany, (London, 1988), pp. 84-6.
13) See below, pp. 138-149.
14) The Letters and Charters of Gilbert Foliot, edd. A. Morey & C.N.L. Brooke (Cambridge, 1967), no. 26. (Henceforth Letters and Charters of Gilbert Foliot.) Also D.B. Crouch, 'Robert, Earl of Gloucester, and the Daughter of Zelophehad', J. Med. H., 11 (1985), 227-243; A. Morey and C.N.L. Brooke, Gilbert Foliot and his Letters, (Cambridge, 1965), cap. 7, esp. p. 117.

15) The Letters of John of Salisbury, edd. W.J. Millor, H.E. Butler, C.N.L. Brooke, (2 vols., Edinburgh and Oxford, 1955-1979), i 227. (Henceforth Letters of John of Salisbury.)
16) Holt, 'Heiress and Alien'; S.F.C. Milsom, 'Inheritance by Women in the Twelfth and Early Thirteenth Centuries', in On the Laws and Customs of England: Essays in Honor of S.E. Thorne, edd. M.S. Arnold, T.A. Green, S.A. Scully, S.D. White, (Chapel Hill, 1981), 60-89. (Henceforth Milsom, 'Inheritance by Women'.) See also Searle, 'Women and the Legitimization of Succession.'
17) P.A. Brand, 'New Light on the Anstey Case', Essex History and Archaeology, 15 (1983), 68-83, suggests that a dispute over the division of lands between heiresses arose after the settlement of the Anstey case, discussed below, pp. 130-3. (Henceforth Brand, 'Anstey'.)
18) Sanders, Baronies, Folkestone.
19) The Anglo-Saxon Chronicle, edd. D. Whitelock, D.C. Douglas, S.I. Tucker, (London, 1961), p. 169. (Henceforth A.S.C..)
20) Reg. II, no. 1389.
21) J. Nichols, The History and Antiquities of the County of Leicester, (4 vols., in 8, London, 1795-1815), iv pt. 2, 645.
22) Danelaw Documents, no. 519.
23) Glanvill, vii 3, Hall, p. 75.
24) DeAragon, 'Secure Inheritance', 384.
25) Sanders, Baronies, Stainton-le-Vale.
26) See below, p. 130.
27) E.g. Sanders, Baronies, Beckley, Clare, Hook Norton, Okehampton by brothers, Belvoir, Bourn, by sisters.
28) Hereford, pp. 9-10.
29) E.g. Sanders, Baronies, Bourn, Castle Combe, Ellingham.
30) Chronicles Stephen, Henry II, Richard I, iii 183.
31) The Cartulary of Shrewsbury Abbey, ed. U. Rees, (2 vols., Aberystwyth, 1975), i 43b. (Henceforth Shrewsbury Cartulary.)
32) For an example of an aunt succeeding in *c.*1190, Sanders, Baronies, West Greenwich. See also Gesta Stephani, ed. K.R. Potter, intro. R.H.C. Davis, (Oxford, 1976), pp. 200-2, for Earl Gilbert of Pembroke claiming that the castles which Stephen had confiscated from his nephew, Gilbert fitzRichard Earl of Hertford, should be his 'by hereditary right', even though Gilbert fitzRichard was still alive. (Henceforth Gesta Stephani.)
33) Chronicles Stephen, Henry II, Richard I, iv 222.
34) Sanders, Baronies, Long Crendon; Complete Peerage, ii 386-7.
35) Holt, 'Politics and Property', 51-2.
36) Milsom, Legal Framework, p. 176.
37) 'Epistolae Fiscannenses: lettres d'amitié, de gouvernement et d'affaires', ed. J. Laporte, Revue Mabillon, xi (1953), 29-31, esp. the statement concerning England on p. 30, 'locus iste autem tot dominis subiacet quot uicinis.'
38) See below, pp. 152-166.
39) Registrum Antiquissimum, no. 953 stated that if Fulk Basset died before his wife had *conceived*, the land which the Bishop of Lincoln had granted him were to pass to his brother Thomas.
40) 'Fiefs, Feuds and Justice in *Raoul de Cambrai*', in The History of Feudalism, ed. D. Herlihy, (London, 1970), 133. (Henceforth Raoul de Cambrai.)
41) For a minor son losing his inheritance in Stephen's reign, see R. C. R. i 440-1. See Sanders, Baronies, Hunsingore and E.Y.C., x pp. 1-6 for a possible example of a minor nephew losing his land in Stephen's reign; if William Trussebut the elder died soon after 1138, the heir to Geoffrey fitzPain's land was William Trussebut the younger, probably his nephew born

c.1130. See also the case of the Clintons, D.B. Crouch, 'Geoffrey de Clinton and Roger, Earl of Warwick: New Men and Magnates in the Reign of Henry I', B.I.H.R., lv (1982), 120.

42) White, 'Inheritances and Legal Arguments', suggests that Earldom of Gloucester, no. 186 is one such case from Normandy.
43) Complete Peerage, vi 640-7; Sanders, Baronies, Fotheringay.
44) Gesta Stephani, pp. 46-50. Orderic, vi 510.
45) Gesta Stephani, p. 117.
46) See below, pp. 147-150.
47) Glanvill, vii 3, Hall, pp. 77-8.
48) Much will be illuminated by Professor Holt's forthcoming book. He suggests that the Beauchamp family dispute over Bedford castle in Stephen's reign may have arisen from such an inheritance problem, but the Beauchamp genealogy is unclear. See Orderic, vi 430 for a casus regis situation in the descent of Burgundy in the eleventh century.
49) The effect of changing custom at this period, however, would be different from earlier since it had to be fitted into a more rigid system by men increasingly inclined to think in terms of abstract rules.
50) P.M. Barnes, 'The Anstey Case', in Stenton Miscellany, pp. 1-2 and notes. (Henceforth Barnes, 'Anstey'.)
51) The remainder of this paragraph is based on Letters of John of Salisbury, i 227-237 (Letter 131); see also L. Voss, Heinrich von Blois, Bischof von Winchester, 1129-1171, (Historische Studien no. 210, Berlin, 1932), pp. 166-7. (Henceforth Voss, Heinrich von Blois.)
52) Barnes, 'Anstey', pp. 17-23.
53) Barnes, 'Anstey', pp. 4-5, 17.
54) Barnes, 'Anstey', pp. 3 fn. 4, 21.
55) Letters of John of Salisbury, i 227-237.
56) Letters of John of Salisbury, i 228-9, 234.
57) Letters of John of Salisbury, i 230-4, 235-7.
58) Barnes, 'Anstey', p. 24.
59) Voss, Heinrich von Blois, pp. 167-8.
60) Barnes, 'Anstey', p. 21.
61) Letters of John of Salisbury, i 267-271.
62) Letters of John of Salisbury, i 270-1. See also C. Donahue, 'The Policy of Alexander the Third's Consent Theory of Marriage', Proceedings of the Fourth International Congress of Medieval Canon Law, (Mon. Iuris Canonici Ser. C. Subsidia, vol. 3, Vatican City, 1976), pp. 251-281.
63) Orderic, vi 40, 44, 56, 188, 210-214.
64) See above, p. 125.
65) Glanvill, xiii 11, Hall, p. 154.
66) See also C.W. Hollister, 'The Anglo-Norman Succession Debate of 1126: Prelude to Stephen's Anarchy', J. Med. H., i (1975), 24.
67) Raoul de Cambrai, p. 146.
68) Raoul de Cambrai, p. 172.
69) Letters of John of Salisbury, i 235.

III: Other Claims to Succeed.

Not all claims to succeed were based on genealogical proximity. Although bequests of land by written will were disappearing, there is some evidence in this period for men creating heirs. Such designation might diminish the lord's discretion concerning the regrant of a dead tenant's land.

Various charters use the verb hereditare, 'to make an heir'.[1] The Leges Henrici state

> si quis in necessitate mortali uel infirmitate uel egestate superuacue deserat patrem uel parentem suum, et aliquis propinquus uel extraneus in tanto uite necessario succurret ei, et hereditet eum in fine cum testibus et filium sibi constituat de feodo uel aliquo conquisito, sapientium hoc inter heredipetas iudicio terminetur, sicut acciderit.[2]

No obvious written source exists for the statement and it may reflect current opinion. Glanvill's discussion of forisfamiliation and the casus regis reveals a preference for the child who remained at home and hence was the 'hearth heir'.[3]

However, this contrasts with Glanvill's statement that a man 'cannot make another his heir, whether a [religious] community or a man; for only God, not man, can make an heir.'[4] The Treaty of Westminster of 1153 also gives the impression that the creation of heirs was unfamiliar. Henry of Huntingdon wrote that 'ipsum [Henry] siquidem rex in filium suscepit adoptiuum et heredem regni constituit.'[5] Henry had probably grasped a Roman law term, adoptiuus, then in circulation, but not used technically.[6] The Treaty itself used neither adoptiuus nor a word such as hereditare:

> Ego rex Stephanus Henricum ducem Normannie post me successorem regni Anglie et heredem meum iure hereditario constitui, et sic ei et heredibus suis regnum Anglie donaui et confirmaui. ... Ego etiam securitatem sacramento duci feci, quod ... sicut filium et heredem meum in omnibus in quibus potero eum manutenebo et custodiam contra omnes quos potero.[7]

The impression is of a struggle with language. Stephen avoided calling Henry simply filius, whereas he referred to his own son William as filius but never heres. Yet the analogy of kinship was still introduced: 'sicut filium et

heredem'. Stephen made Henry 'successorem regni Anglie' but also stated that he had *given* Henry the kingdom. The parties could not turn to contemporary practice, or to Roman Law, for a brief formula to cover the situation.

In most lay cases before *c.*1150, the heir 'created' was in fact the genealogically closest. For example, in 1085x97, Geoffrey de Mandeville with his wife made a grant to Westminster Abbey 'concessione filii mei Willelmi quem mihi heredem facere disposui.' William was Geoffrey's eldest son.[8]

From after 1150 come very occasional suggestions of laymen choosing heirs other than the genealogically closest. For example, Henry II granted Hugh de Hameslape one hundred acres of assarts, 'et quod hereditet inde quem uoluerit.'[9] Such grants resemble licences for clerics to create heirs,[10] and also coincide with the first mentions of assigns in charters. However, cases from the fifty years after 1166 indicate that lords still retained some control over these arrangements.[11]

If 'creating' an heir generally involved only the special nomination of one likely to succeed anyway, it resembles other methods of reinforcing an heir's claim. He could be presented to his lord for acceptance during his father's life-time, a process Milsom calls 'accelerated inheritance'.[12] Thus a charter of Hugh de Bolbec opens

> Sciatis quia Roberto del Broc reddidi totam terram patris sui. de Cestreham. et del Broc. et inde homagium ab illo accepi et suum releuamen mihi dedit. rogatu patris sui. et aliorum amicorum eius. qui illum mihi presentauit sicut filium et heredem suum.[13]

Such a transfer of land to the son at this point might well be desired to give him wealth and independence from his father.

The son's position could also be strengthened by granting him a charter when his father was enfeoffed. Between 1148 and 1164, the chapter of Lincoln gave William Basset and Fulk his son and their heirs land in Shutford to be held hereditarily, as the Bishop already had given it to them. Another charter,

probably of the same date, records the same gift made just to Fulk. Were he to die before his wife conceived a child, the inheritance was to pass to Fulk's brother Thomas and his heirs.[14] Similarly, the very few surviving examples of bequests of land by will were to heirs who had a strong claim to succeed.[15]

In the majority of these cases of the creation or nomination of an heir, or the reinforcement of an heir's claim, the lands concerned were acquisitions. Given also that the heir concerned was usually the genealogically closest, such practices may have been intended to prevent later challenges by others, notably younger sons, who saw themselves as having a strong claim to receive the decedent's acquisitions.[16]

Did these practices restrict seignorial control?[17] They may often have been for potentially complex situations, such as succession by twins.[18] Lords may happily have consented to these, seeking to prevent future trouble although sacrificing some discretion - a sacrifice no doubt eased by a sweetener from the current tenant. If the nomination were made without the lord's consent, it certainly did not bind him, but the additional publicity for the heir, together with a possibly solemn ceremony of nomination, must have reinforced opinion in favour of the custom of succession.

However, we only see a dispute arising when a doubt existed about the decedent having been in a position to name an heir. The case of the Cathedral Priory of Bath's land at North Stoke is fascinating for the history of inheritance.[19] It involves not only the issue of the creation of an heir, but also - according to the successful party - a man seeking to turn a life grant into hereditary tenure, and suggests considerable royal involvement even in minor disputes as early as the 1120s. A narrative in a Bath cartulary supplements royal documents.

The claimant Modbert's case rested on his disputed nomination as heir by

the previous tenant, Grenta. Unfortunately, we know nothing of activity before a writ from William the King's son was brought to Bishop John of Bath: 'Precipio ut saisias Modbertum iuste de terra quam tenuit Grenta de Stoca, sicut hereditauit eum in uita sua.' If we believe the cartulary account the Bishop's court immediately latched onto the word 'iuste'.[20] The Bishop told the court that he would obey the order, if the court decided it was just.

The convent's case did not centre on the possibility of creating an heir to heritable, lands, but on whether Grenta's tenure permitted succession. The prior held counsel with the monks and then addressed the court. The lands had been given to the monks' own use. Grenta, when dying, had refused advice to set an heir in his place by a testament; the prior put a speech into Grenta's mouth - 'Haec est hereditas seruorum Domini quam uice stipendie non hereditatis lege quoad uiuerem tenere permissus, ipsum me, cum terra, fratribus, quibus id iuris est, nunc moriens relinquo.'

Those who had witnessed these statements confirmed the prior's case. A charter of King Cenwulf was also produced and read out, complete with impressive witness list and awe-inspiring anathema clause.[21] This left the court divided and Modbert again claimed that he was Grenta's heir. He had married Grenta's daughter and been adopted during Grenta's life as his son. He should inherit because Grenta had held not in farm but hereditarily.

The Bishop asked those who were followers of neither party to decide the case. The men greater by birth or more experienced in law reached a decision and gave their judgement: he who called himself heir by right was to prove this claim by at least two witnesses, free and law-worthy men of the <u>familia</u> of the church, to be named on that day and produced in a week's time, or/and ['uel'] by a chirograph. If he failed to do either 'ne quidem audiatur in reliquum.' All agreed. The claimant was silent. The prior and the monks won their victory.

What does the case reveal about the meaning of hereditare? Had just the royal writ survived, we might have thought that Grenta had no heirs, or at least no children, and therefore created an heir from outside his family. In fact we have a son-in-law claiming that he had been adopted. Did Grenta have other children, whom he was passing over in favour of Modbert? There is no evidence of this and hereditare again seems only to mean the special nomination of one who would have been heir anyway.

A man might claim that, if not the closest heir, he was the most suitable. Orderic presented Robert Curthose as incapable of maintaining his father's inheritance,[22] thereby losing his right to be its ruler. This did not make Henry the natural heir but justified his conquest of Normandy. A very unusual advance written agreement that the more suitable heir might succeed concerns twins. Robert Count of Meulan provided that his lands be divided between his two sons, Robert and Waleran:

> Et si predictus Robertus moritur, uel talis fuerit quod non ydoneus ad terram regendam, istud idem hereditamentum Walrano fratri suo concedo, et equo si Walranus moritur uel non sit ydoneus ad terram possidendam, concedo hoc Roberto cum feodo Normannie.[23]

Examples of lords choosing a suitable heir rather than the closest are not recorded in charters but in other sources. Personal capacity to serve clearly was important.[24] The 1208 Pipe Roll recalls that Henry I, 'per uoluntatem regis', enfeoffed the son of a second marriage with the barony of Marshwood because he was a better knight than the son of the first.[25] A case probably of 1199 records that Bernard le Franceis, who died in the time of Henry I, had two sons, the elder named Osmund, the younger John.[26] 'Per inpotentia' of Osmund, John possessed the inheritance, by the grant of the lords of the fee to whom he

did service. John held at the death of Henry I. We cannot know how frequent were such rearrangements. We only know of these because the elder line later claimed the holding. Many an unsuitable heir may have produced no children. Whatever the form of their inpotentia, the fact that they had been, or were held likely to be, denied their inheritances in favour of another heir can hardly have made them attractive marriage prospects. In addition, such arrangements need not always have been unpopular with the family, who wished the inheritance to be held by a man who could maintain it. In the century after the Conquest, the unsuitability may in some cases have been so clear as to produce consensus, in others questionable enough to produce disputes.

Past service might express suitability. More remote heirs claimed inheritances because of their faithful service to the decedent's lord, despite the existence of closer heirs. A certain Robert, 'nepos comitisse', appears to have done outstanding service to Lucy, mother of William I de Roumare.[27] In *c.*1135, William granted him the land of Ivo and Colsuen his uncles, to hold in fee and inheritance. Most unusually for a grant to a laymen, the charter specifies that the gift was for Lucy's soul. It ends by stating that the gift was made 'pro seruitio quod ipse Robertus fecit matri mee.' Later evidence reveals that at least Ivo had a child, whose presumably better claim was passed over because of Robert's service to Lucy.[28]

Gilbert I de l'Aigle received various lands in England and Normandy after William Count of Mortain's forfeiture in 1106. Possibly just before Gilbert's death in 1114x1118, his eldest son Richer rebelled with William Clito against Henry I. Henry denied Richer's claim to his father's lands in England, 'saying that Geoffrey and Engenulf his brothers were serving in the king's household and faithfully waiting for the same honour by hereditary right.' Richer's

repeated requests ended with Henry refusing outright, and Richer turned to Louis VI of France for help. However, Richer's uncle, Rotrou Count of Perche, persuaded Henry to regrant to Richer all he sought. Richer was delighted, but now found himself at loggerheads with Louis. After further difficulties, Richer finally acquired all his father's lands in England and Normandy. Thus the dispute reveals both the possibility of a claim based on loyal service and the strength of the claim of the closest heir, even when his loyalty was in doubt.[29]

Those who had been denied their inheritances might also seek to regain them through service. On leaving for Rome in 1097, Anselm preached to the monks of Canterbury on the ways in which men might serve God. He drew an analogy with the soldiers of a prince's court:

> Habet nempe qui pro terris quas de se tenent seruitio suo inuigilant. Habet qui pro stipendiis in militaribus armis sibi desudant. Habet etiam qui pro recuperanda hereditate quam in culpa parentum suorum se perdidisse deplorant, inuicta mentis uirtute uoluntati sue parere laborant.[30]

These last, according to Anselm, were peculiarly loyal.[31]

Robert III de Stuteville was one such striver after his inheritance. His story, particularly his relations to the Mowbrays, illustrates the influence of service and of politics on questions of succession. In 1106 Robert I de Stuteville forfeited all his lands because he had supported Curthose at Tinchebrai. Many of his lands were granted to Nigel d'Aubigny from whom they passed to his son, Roger de Mowbray. However, King Stephen showed some favour to Robert I's grandson, Robert III, who served him faithfully at the Battle of the Standard. Robert regained parts of his grandfather's honour which had not passed to the Mowbrays and received fresh royal gifts.

He continued to claim certain lands in Yorkshire which had passed to Roger de Mowbray.[32] The history of the foundation of Byland Abbey describes one dispute arising from these claims.[33] Written by Abbot Phillip in 1197, it was based on information from Roger, abbot between 1142 and 1196, from other men,

and from the monastic archives.[34] The history's account begins by stating that Roger de Mowbray was in Normandy in 1146-7; he was in fact on Crusade but the editor of the Mowbray charters feels that the rest of the story is trustworthy.[35] Robert de Stuteville and his brother William claimed all the land in Coxwold, in the North Riding of Yorkshire, which Roger had given to Byland, and moved a plea against Roger in the royal court.[36] The neighbours generally witnessed that the Stutevilles had good right in their claim. The abbot took counsel with the convent and then crossed the Channel. Having failed to obtain help from the general chapter at Savigny, he hurried on to Roger. Whilst Roger was unable to return immediately, his friends in England, the Earl Marshall and the Earl of Warenne, persuaded the king to swear that Roger 'would not lose one foot of land in England through a plea in his court while he was outside the kingdom.' The account presents the settlement on Roger's return as an overwhelming victory for the Mowbrays and Byland. Robert and William quitclaimed their right in the land and the site of the abbey, Robert by a knife which he placed on the high altar at 'Stockyng', William by a charter.

In the wider struggle, this was a limited victory for the Mowbrays. A general settlement was reached early in the next reign.[37] As Roger of Howden later recalled, Robert had claimed a barony against Roger, 'et conuenit inter eos sic, quod Rogerus de Mubrai dedit Roberto de Stuteuilla Kyrkebi Moreshefd, cum pertinentiis suis pro feodo decem militum, pro homagio suo, et pro quieta clamantia calumnie sue.' Howden emphasized that the agreement was not confirmed in the king's court nor by a royal document.[38] His account may mislead slightly, as the Mowbray carta of 1166 records Robert holding only nine, not ten fees,[39] but is otherwise very plausible. This settlement did end the trouble. The rise of the Stutevilles in the service of Henry II, helps to explain Roger's participation in the revolt of 1173-4, and discord continued into

the thirteenth century, with further concessions by the Mowbrays in 1201.[40]

Political considerations played a notable part in other restorations of inheritances, particularly in the mid-twelfth century.[41] Stephen acknowledged John Count of Eu's claim to the honour of Tickhill, doubtless because the Count was a valuable supporter.[42] In 1140, anxious to pressure his enemies in the Marches, he granted Robert Earl of Leicester the Earldom of Hereford, Robert's wife being the great niece of Roger Earl of Hereford who had forfeited in 1075.[43] Political considerations continued to influence settlements early in Henry II's reign.[44] Take the inheritance which Treaty of Westminster granted William the king's son, consisting of all the lands Stephen had held before he became king and further extensive holdings. Apart from having to surrender his castles in 1157, William held these lands until he died in 1159, serving Henry on the Toulouse campaign. He produced no children and his closest heir was his sister, Mary abbess of Romsey. Henry's wish to control Boulogne, which was held of the king of France, made desirable the continuing support of the family. Mary was extracted from the cloister to marry Matthew of Flanders. Henry retained most of the family's English lands, compensating Matthew with money. Despite further concessions in 1167, Matthew died a rebel in 1173, the effective end of the honour of Boulogne in England.[45]

Did such political considerations affect succession lower in society? Service and patronage must have influenced regrants and settlements. Yet it was the divided royal succession which produced the forfeitures of the late eleventh and early twelfth centuries and which ensured that in the mid-twelfth century two parties were bidding for support with grants of lost inheritances.[46] Lengthy succession disputes producing similar violence seem not to have occurred at the baronial level, except perhaps under Stephen.[47] Then parties may have built up within honours, backing the disputing lords. This would have

produced rival grants of lands and have left multiple claims to inherit.

The compromises of early in Henry II's reign must have reflected honorial politics as lords sought to establish peace, and in some cases to reassert their authority. In the Mowbray honour, a certain Aldelin had held Winterburn in 1135. However, when Roger de Mowbray regranted to Ralph fitzAldelin his father's lands, Winterburn was not amongst those named, and Stephen's reign left it in the possession of William de Graindorge. When Roger granted Furness abbey the service of half a knight in Winterburn he provided that 'preterea si Willelmus Graindorge in aliquibus forisfecerit elemosina ista prenominata in pace quieta sine omni uexatione erit.'[48] The possibility of William forfeiting may well have arisen because of Ralph fitzAldelin's claim to the land. However, Ralph then issued a quitclaim in favour of Furness. It seems that the claimants and their lord managed to arrange a settlement which left all parties sufficiently satisfied to prevent any later succession claims.[49]

All these claims - nomination, suitability, service, political advantage - would have been helped by proffers of gifts and money. So too must have been claims based on being the closest heir, especially if the claimant were one of the more remote relatives. Proffers might also persuade a lord to regrant land which the claimant's ancestor had held only for life.[50]

Such gifts might merge into reliefs, especially if the latter were not simply payments by an accepted tenant but also bids to be accepted. According to Richard fitzNeal, children should not be denied their inheritances because of failure to pay relief. Presumably this means that homage had to be taken, and only thereafter might the relief be exacted by distress. In addition heirs might have been allowed to pay their relief by instalment. However, Richard also recorded another opinion, 'that those who owe reliefs to the king and fail

to pay on summons ... shall not receive their grants.'[51] This recalls Henry I's criticism of Rufus for forcing heirs to buy back their fathers' lands:

> Si quis baronum meorum, comitum siue aliorum qui de me tenent, mortuus fuerit, heres suus non redimet terram suam sicut faciebat tempore fratris mei, sed legitima et iusta relevatione relevabit eam. Similiter et homines baronum meorum legitima et iusta relevatione relevabunt terras suas de dominis suis.[52]

'Redimet terram suam' implies that if payment were not made, the land was not restored. If other lords acted thus, succession was less secure in the late eleventh century than it was soon to become, but there is little evidence either way. Henry I charged high reliefs, particularly of more distant heirs, but apparently allowed sufficient time for payment that inheritances were not lost through lack of money. However, a late twelfth-century case shows that even then money might be vital in complicated succession disputes. The Mandeville family in 1189 was faced with a situation similar to that of the royal house ten years later. Geoffrey fitzPeter claimed the inheritance as husband of the grand-daughter of William de Say and Beatrice de Mandeville and representative of the elder line. Geoffrey de Say claimed as William and Beatrice's surviving son. Geoffrey de Say outbid Geoffrey fitzPeter for the inheritance but failed to fulfil his payments and the lands passed to Geoffrey fitzPeter.[53]

*

In the previous sections I have dealt with three questions: Did the grant to the predecessor permit succession; Was a claimant the closest heir; Was there some other reason why a claimant should succeed? Glanvill's writ of mort d'ancestor only addressed the first two: 'si O. pater predicti G. fuit saisitus in dominico suo sicut de feodo suo de una uirgata terre in illa uilla die qua obiit, ... et si ille G. propinquior heres eius sit.' The third question may in practice sometimes have been raised, but its absence from the writ might

suggest a hardening of succession customs, a disappearance of seignorial discretion.

Milsom and Palmer attribute the disappearance of the lord's discretionary powers and the honorial variations in custom to the regular royal enforcement of succession norms in the late twelfth century. Yet what is striking even earlier in the twelfth century is the rarity and lack of success of claims other than being the closest heir, especially in time of peace. Palmer has written that succession was an obligation of the lord to the former tenant, but it 'was equally well fulfilled if the eldest son, a scoundrel, was passed over in favour of the second son.'[54] However, very few, if any, examples survive of sons being passed over for such reasons.[55] Nor is there much evidence of other exercise of seignorial discretion or the existence of honorial variation. Milsom and Palmer stress that custom was congruent with the lord's interest and that the eldest son would usually have been a suitable tenant. To this, I would add the various outside influences which I suggested above, such as the existence of charters. These reasons must explain the consistency with which the king followed custom, a consistency particularly notable in cases such as that of Richer l'Aigle, where the claimant hardly appears desirable to the king. For other lords, a further explanation is possible. I shall argue in the following section that Henry I was sufficiently involved in seignorial affairs not only to affect individual cases, but to force lords to take the possibility of royal involvement into account in their regular dealings with their tenants.

III: Other Claims to Succeed: Notes.

1) E.g. Stenton, First Century, no. 7.
2) L.H.P., 88 15, Downer, pp. 274-276.
3) Glanvill, vii 3, Hall, p. 78. See also Pollock & Maitland, ii 285.
4) Glanvill, vii 1, Hall, p. 71. The phrase may only mean that all is uncertain until the hour of a man's death, which only God knows. A son, by God's will, might predecease his father. A Ramsey charter of 1081 granted full fraternity 'pro ... filio qui eius *erit* heres'; Ramsey Chron., 234.
5) Henry of Huntingdon, p. 289.
6) Henry also used adoptiuus of the agreement between Edmund Ironside and Cnut after the Battle of Assenden; Henry of Huntingdon, p. 185. See also Reg. III, no. 928, a Westminster charter forged between 1138 and 1157, using adoptiuus of the relationship of the Norman kings to the Confessor.
7) Reg. III, no. 272.
8) Gilbert Crispin, p. 139 no. 15. See also Mowbray, no. 3, on which below, pp. 211-2; hereditare in PR 31 HI, pp. 87, 106; Eadmer, Historia Nouorum, p. 290.
9) Cartae Antiquae, 11-20, no. 411.
10) See above, pp. 77-8.
11) Milsom, Legal Framework, pp. 107-9, 150-1.
12) Milsom, Legal Framework, p. 147, and above, pp. 36, 42, for possible examples.
13) Stenton, First Century, no. 43. See also e.g. Warwick Record Office ms. CR 26/1(i)/Box 1/W2: transcript courtesy of Dr. Crouch.
14) Registrum Antiquissimum, nos. 952, 953.
15) Reg. II, no. 843; E.Y.C., ii no. 778. See also below, pp. 140-2, for the case of Modbert and North Stoke; despite mention of the decedent's 'testamentum' and 'nouissima uerba', there is no sign in the case of a written will. On bequest of land by will, see Holt, 'Revolution of 1066', 197-8; M.M. Sheehan, The Will in Medieval England, (Toronto, 1963), pp. 107-119. (Henceforth Sheehan, The Will.
16) See below, pp. 209-11.
17) See also Pollock and Maitland, i 345, Milsom, Legal Framework, pp. 104, 146-153.
18) See also the claims of the parties in the Anstey case to have been nominated heir, above p. 132.
19) Bath Chartularies, pp. 49-51. See also Reg. III, no. 47.
20) See also van Caenagem, Writs, p. 274.
21) Sawyer, no. 265. The charter is probably genuine.
22) Orderic, vi 56-8.
23) Reg. II, no. 843.
24) See C.M.A., ii 6-7 for the story of a knight who, despite having lost his legs when attacked by pirates, was still granted the land promised him; the story's clear implication is that it was a special act of generosity to allow lands to a man incapable of service.
25) PR 10 J, p. 113 fn. 8.
26) R. C. R., i 360.
27) Danelaw Documents, no. 507.
28) Danelaw Documents, no. 510.
29) Sanders, Baronies, Pevensey; Orderic, vi 188, 196-8, 250.
30) Eadmer, Vita Anselmi, ed. R.W. Southern, (Edinburgh, 1962), p. 94. (Henceforth Eadmer, Vita Anselmi.) On such 'feudal imagery', see R.W. Southern, St. Anselm and his Biographer, (Cambridge, 1966), pp. 107-114. (Henceforth

Southern, St Anselm and his Biographer.)

31) See also Eadmer, Vita Anselmi, p. 95.

32) Mowbray, pp. xx, xxviii-xxxi.

33) Monasticon, v 351b-352a.

34) Gransden, Historical Writing, pp. 290-1.

35) Mowbray, p. xxviii fn. 3.

36) Conceivably the Stutevilles originally made their claim against the sitting tenant, Byland, which then vouched Roger de Mowbray as warrantor, but the account does not mention this.

37) E.Y.C., ix no. 42, although a later narrative, is strong evidence that the settlement was after 1154, Mowbray, no. 239 suggests that it was before 1157.

38) E.Y.C., ix no. 42.

39) Red Book, i 419-20.

40) Mowbray, pp. xxix-xxx and references; E.Y.C., ix nos. 42-44.

41) See e.g. Hollister, 'Misfortunes of the Mandevilles', 18-28. For a debate on the importance of the succession claims behind such grants, see E. King, 'The Tenurial Crisis of the Early Twelfth Century', P. & P., 65 (1974), 110-117, and Holt, 'Rejoinder', 127-9.

42) Holt, 'Politics and Property', 52.

43) Holt, 'Politics and Property', 22 fn. 99; Crouch, Beaumont Twins, pp. 48-9, 87.

44) See Palmer, 'Origins of Property', 8-13. This must be read in the light of Hyams, 'Warranty', app. III; the latter, amongst certain other advantages, does not contradict the chronicle evidence, cf. 'Origins of Property', 9 & fn. 32.

45) J.H. Round, Studies in Peerage and Family History, (Westminster, 1901), pp. 168-180.

46) Holt, 'Politics and Property', 36.

47) E.g. the dispute over the Huntingdon inheritance, see above, pp. 128-30.

48) Mowbray, nos. 383, 150 respectively.

49) Cf. the case of Stephen Dammartin and Pitley, below, p. 162.

50) Galbraith, 'Episcopal Land Grant', 372.

51) Dialogus, p. 121.

52) Liebermann, Gesetze, i 421. The use of the verb 'releuare' may be notable, pointing to a time when relief was not an institutionalised payment but an act, a relieving of lands from others' claims. On such 'action' words, see D. Daube, Roman Law, Linguistic, Social and Philosophical Aspects, (Edinburgh, 1969), pp. 1-63; also Milsom, Legal Framework, pp. 184-5 on 'seisio' and 'seisina'.

53) Personal communication from Professor Holt on casus regis. See also Complete Peerage, v 123.

54) Palmer, 'Origins of Property', 6 fn. 20.

55) The passing over of Geoffrey de Mandeville II's eldest son, Ernulf, in favour of his next son, Geoffrey, might be seen as one such instance. However, the case against Ernulf was not simply that he was a 'scoundrel' - however much he may have been! He had rebelled against Stephen, which was surely grounds for disinheritance. He was exiled and also excommunicated. See J.H. Round, Geoffrey de Mandeville, (London, 1892), cap. 10. (Henceforth Round, Geoffrey de Mandeville.) On a later attempt by Geoffrey III to control Ernulf, see below, p. 229.

IV: The Conduct of Succession Disputes.

I shall now concentrate on the tactics used during succession disputes, some of which have been revealed by the cases already discussed. How autonomous was the honour? What authorities were invoked? Where were cases treated? When did the king start to be significantly and regularly involved in disputes within honours? These are vital issues in the development from succession to inheritance. Because evidence for the early part of the period is so scarce, I generally begin with the situation in the 1150s and 1160s, and then consider the earlier material in the light of this.

Succession disputes must often have been dealt with in lords' courts. For example, the lord might take the lands into his own hand. The aspiring heirs would bring their claims to his court. Succession would depend on the acceptance of one party by lord and court.[1]

From 1148x1155 comes an agreement between Earl Roger of Hereford and his brother-in-law, William de Braose, which provides a rare description of a succession case exactly as it might occur in a world in which the honour was sovereign.[2] One of its provisions concerned William's claim to 'Langefort':

> si testimonio baronum meorum evidens rectum predicti Willelmi intellexero ipsam ei sine querela et causa restituam, quod si aliter fuerit infra XV dies submonicionis sue rectum ei de predicta terra in curia mea tenebo. Et si aliquis hominum suorum rectum aliquid in terra aliqua que de feudo patris eius fuerit intra potestatem meam clamauerit, rectum ei in curia mea tenebo.

In this case, there seems to have been no outside order that the lord do justice. However, the phrase 'rectum ei ... tenere' recalls Glanvill's breue de recto.[3] Glanvill specifies that this must be sent to the lord of whom the claim was made, and some, although not all, of those writs which may be taken as precursors of the breue de recto were addressed to the lord.[4] Before mort d'ancestor, such writs must often have concerned succession disputes, and they

are a further indication that the lord's court might be the appropriate forum for such cases.[5]

Unfortunately, the only court that can be watched in detail is that of the king dealing with his tenants-in-chief, be they great men or fairly minor royal servants.[6] The 1130 Pipe Roll reveals Henry I doing his men justice concerning succession. 'William de Merlay owes one palfrey for justice [rectum] about the land from [de] his brother.' 'Roger fitzGeoffrey owes ten marks of silver that he may have justice [rectum] concerning his father's acquisitions.'[7] In Stephen's reign, too, at least some tenants-in-chief brought their cases to the king. The Stutevilles did so with their claim against Roger de Mowbray and the abbey of Byland, although it is unclear where the final settlement was made.[8]

Evidence is very sparse concerning courts of other lords, especially those other than churchmen or the greatest laymen. The Mowbray-Stuteville settlement of 1154x1157, made outside the royal court, left no surviving record.[9] Charters recording regrants may well hide judgements in seignorial courts.[10] In other instances, it is unclear whether a dispute which certainly was settled by judgement of the lord's court centred upon inheritance.[11]

The first royal court rolls recall some settlements in honorial courts earlier in the twelfth century. The family of Ingoldsby, descended from Colegrim, were tenants in Lincolnshire of the lords of Richmond. A case of 1208 reveals that following the death of Osbert son of Colegrim, Osbert's younger son John intruded himself into all the lands which should have passed to the elder son, Alexander.[12] This occurred in Stephen's reign. According to the claim of Alexander's grandson Osbert, which was accepted by the royal court in 1208, John proceeded to give the land at Fulbeck to a certain Maud, wife of Suspirus. John then disappears from the account, but Alexander impleaded Maud and Suspirus in Henry II's time, in an unspecified court. Alexander died during the case, but

his son Nigel continued the plea in the court of Richmond at St. Botolph. The parties came to an agreement. Maud quitclaimed the disputed land to Nigel, and in exchange he granted her land at Bourn for life.[13]

Occasionally a chronicle reveals a succession case in a lord's court. Vincent abbot of Abingdon had granted land near Cumnor, Oxon., to a certain Roger for life. During Stephen's reign, Roger's son Robert retained it by force, with the help of his friends.[14] With much trouble Abbot Ingulf got Robert into his court, where Robert and his heir quitclaimed the land. Money was useful in preventing as well as obtaining succession and Robert was given twenty shillings lest he feel harmed or renew his evil deeds.

In many of the recorded cases in lords' courts, the aspiring heir brought not simply a claim but a royal writ to his lord. It is hard to tell how far this preponderance is because the production of a writ increased the chance of our knowing of the case, be it through the writ itself or through other sources, notably chronicles, which drew on such documents.[15] However, from 1153 or 1154, the need to settle disputes arising from Stephen's reign seems to have stimulated demand for writs and moved Henry II towards regular involvement in land cases. The impetus need not all have been from the consumers: the king as supplier had advertised his promise that the disinherited should be restored, an invitation to request royal help. The case between Peter and the canons of St. Paul's concerning the manor of Wimbledon and Barnes is one of several from this period begun in a lord's court by a plaintiff bearing a royal writ.[16]

How common was such use of royal writs before Henry II's reign? The clearest evidence comes from Henry I's reign. The case between Modbert and the priory of Bath concerning North Stoke, discussed earlier, surely could have been dealt with solely by a seignorial court.[17] Even if he was already in physical possession of the land, the claimant, Modbert, should have gone to his lord and

requested his predecessor's lands. The lord would have refused the claim on the grounds that Grenta held only at farm, not hereditarily, and that would have been the end of the matter. In fact, the claimant looked to an outside authority and obtained a royal writ ordering Bishop John, as lord of the abbey's lands, to seise him justly of the lands of which he had been made heir.

How typical is Modbert's case? Though an isolated example in our records, little else suggests that it is exceptional. The 1130 Pipe Roll, and other evidence, shows Henry involved in various kinds of disputes within honours.[18] There is no sign that Modbert had any special link to the royal household or was a particularly rich or powerful man. There is no mention of extraordinary difficulties before he turned to the king, nor in obtaining a writ. The cost of the writs in the 1130 Pipe Roll is high compared with Henry II's reign, but this one must have been sufficiently cheap to be worth paying for in order to obtain the land.[19] Modbert seems to have acted rather as a man might have sixty years later: when denied his claim, he sought a royal writ.

Further evidence of royal involvement at the claimant's request comes from cases heard in the king's court, or before a royal official. Let us again start with the early years of Henry II's reign. M. Cheney has recently discussed a case between John Marshall and the new Archbishop Thomas Becket.[20] Whether or not the case itself concerns succession, it is certainly relevant to the development of inheritance. Becket had obtained a royal licence to recall estates wrongly alienated by his predecessors or seized by laymen. These included Bosham, which had been granted to John, or possibly to his father. Howden alone states that John claimed it <u>iure hereditario</u>, which might indicate that John's father had held it,[21] but the silence of the other writers may reflect their desire to show John's case as weak. In Becket's court, John allegedly swore on an old troper that the court had failed to do him justice.[22]

John was probably exploiting a recent royal enactment.[23] According to Guernes' Life of St. Thomas:

> If anyone pleads about land in the court of his lord, he should come with his supporters on the first appointed day, and if there is any delay in the case, he should go to the justice and make his complaint. Then he shall return to the lord's court with two oath helpers, and swear three-handed that the court has delayed in doing him full justice. By means of that oath, whether it is false or true, he shall be able to go to the court of the next higher lord, until he comes to the court of the king.[24]

As a result of John's oath, Becket was summoned to the king and eventually answered the charge at the council of Northampton. He argued that 'there was no reason [nulla ratio] by which he could be compelled to answer outside his own court on this business',[25] and that John had sworn on a troper whereas it had been decreed in the kingdom that 'whoever wished to falsify the court of another should swear on the Holy Gospels.'[26] The king did not accept these arguments and the barons of the court decided that Becket was in the king's mercy. The story shows well the problems that could be caused for any lord by his men looking to the king for justice.

Under Rufus and the Conqueror, the evidence concerning royal involvement in succession cases within honours is minimal. The Domesday inquest shows that there could be extensive exertions of royal power, but took place before many genealogical succession claims could arise.[27]

A writ of 1088x1107 orders Nicholas de Stafford, sheriff of Staffordshire, to let Atsor the Englishman have his land of Edingale and hold it for the same service as his father had. Domesday shows Henry de Ferrers holding one carucate in Edingale, and another two are recorded under lands of the king's thegns. The latter had been held by Algar, who was probably Atsor's father. The writ probably concerns these two carucates, and therefore was dealing with a tenant-in-chief, not a sub-tenant, although Atsor's family did later hold of the Ferrers.[28] No other evidence of the first two Norman kings supporting a

sub-tenant's succession claim against a lord has survived.

If one concludes that royal involvement was restricted before 1100, by 1135 a first, if limited shift of control had occurred: Henry I was considerably involved in succession disputes, at least in ecclesiastical honours. M. Cheney argues that the process of transferring cases from the seignorial court, known as tolt, existed under Henry I, and Palmer agrees that there is much evidence of this practice 'when the lord held the land after the death of a tenant.'[29] The Leges Henrici reveals transfers of cases because of delay or denial of justice. It also suggests that judges other than the lord and barons might be present in a seignorial court, and contemporary cases show such procedures in action.[30]

The large number of Henry's servants, which has recently been emphasized, must have stimulated royal involvement in land cases. They might enjoy special access to the king's support, their opponents would often need royal help in order to restrain the official from perpetuating the case. A further Abingdon case illustrates Henry being drawn into a dispute because one party was a royal servant who turned to him in a matter otherwise internal to the honour.[31] Following a dispute, Abbot Rainald's son William had been permitted to keep the church of Marcham and some land at Garsington for life. When, a few years later, William felt himself close to death, he gave back the Church and the land, and became a monk of Abingdon. However, in the vacancy following Abbot Faritius' death in 1119, Simon the dispenser of Henry I suggested to the king in Normandy that, since he was a relation of William, the church of Marcham and the lands which William had had by Abbot Rainald's gift pertained to himself by hereditary right - this despite William's holding being limited to life and his subsequent quitclaim.[32] According to the chronicler, Simon's sister was Rainald's niece. If she and Simon were full siblings, Simon was William's cousin.[33] The chronicle does not specify this, if anything trying to make the

relationship sound somewhat tenuous. We have already seen that lords did not always accept the claims of such distant heirs even when the predecessor had not held specifically for life. However, perhaps because of the vacancy, no-one resisted the claim, and by the king's order Simon gained seisin of the land and church, and held them until Vincent became abbot in 1121.

Whether Simon had obtained any acceptance from the abbey and its tenants is uncertain. Vincent moved his claim in the king's court. This may suggest that Simon had turned to Henry for a royal favour, rather than simply as lord 'in loco abbatis' during the vacancy. Otherwise the honour court might have dealt with the matter. Alternatively, the parties may have worked out a deal before coming to the royal court. Certainly there is no sign of a judgement and the two sides came to an agreement, described by the chronicler as a fine. Simon quitclaimed everything which he had held of the abbey's possessions before Vincent became abbot. The abbot, wishing to keep Simon, 'a good and prudent man', in his service, granted him the land in Garsington which he had held, 'in feudo, sibi scilicet suisque post eum heredibus', and also the manor of Tadmarton in fee farm. Thus, even though the case originally concerned preventing succession, the abbot was prepared to make a hereditary grant in order to keep his tenant. Still, the abbot's control over the new grant was emphasized. It was laid down by common decree that if Simon or his heirs failed to pay the farm, the abbey could take back Tadmarton into demesne with no appeal allowed.[34] Further ceremonies followed, including Simon's homage.[35]

The 1130 Pipe Roll provides particularly significant evidence since it reveals the king involved in the affairs of a lay honour. William de Hotot owed twenty marks for justice ['pro recto'] concerning his father's lands from William de Albini Brito, who was his lord.[36] Whether the payment was for a writ or for justice in a royal court is not clear.

However, an ecclesiastical honour provides the strongest evidence for the regularity of Henry I's involvement. Many charters of St. Mary's, York, state that the abbey would not provide exchanges in the event of the loss of the lands granted. In 1122x*c*.1137, the abbey granted a messuage in Fossgate, which Richard Tortus had held of them, to Ougrim de Frisemareis and his heirs to hold in fee: 'si aliquis heres Ricardi torti poterit illam mansuram terre adquirere de rege uel dirationare erga nos uel erga eundem Authgrim et heredes ejus non dabimus escambium.'[37] Charters, chronicles and the Pipe Roll show us individual instances of claimants obtaining Henry's help. This charter suggests that lords *expected* disappointed claimants to do so, and modified their actions accordingly.

Evidence of Stephen or the Empress and her son becoming involved at the claimant's request in succession cases is much scarcer. Another charter of St. Mary's York, this time of c.1137x1161, specifies that no exchange will be given if the land is lost 'per uim siue per iustitiam regis.'[38] Even if the document is of Stephen's reign, it is less notable than the earlier example, since it may result from the reproduction of stock phrases. However, a Ramsey charter of 1134x60 records an agreement restoring land in Hemmington to Berengar the monk:

> sub hac conditione quod si aliquis superuenerit qui rectum in predicta terra clamet, et oportuerit me regis iustitia seu alterius primatis coactum inde rectum tenere, si predictus Berengarius terram illam iudicio curie nostre amiserit, decem marcae mihi remaneant ... .[39]

No earlier Ramsey charter contains such a clause. Certainly Stephen's court did hear cases of various sorts concerned with the internal affairs of honours,[40] but the impression of reduced royal involvement will be confirmed when we look at the other methods men used to regain their inheritances.[41]

Lords, as well as claimants, requested royal help. In the case of Abingdon and Simon the dispenser, the claimant's turning to the king forced the lord to do likewise, in that of the Ramsey lands of Over, the lord may well have been the first to seek royal aid.[42] Writs for the resumption of their demesnes

helped churches to reclaim lands originally granted for life but which had been retained by the grantees' heirs.[43]

That a lord turned to the king suggests that he needed help in controlling his honour. Royal involvement was a matter of power as well as of jurisdiction or the logic of land-holding. Abbot Ingulf of Abingdon's troubles in making the knight Robert answer in his court in Stephen's reign might well have been avoided under Henry I, through royal help.[44] Such practices were almost certainly not restricted to churches. Weak lords, or ones facing particularly powerful vassals, might also turn to the king? And if they acted thus, might not any lord do likewise, if he felt he could rely on royal favour, and wished to bring every possible force into winning a succession dispute?[45]

*

Were cases taken to courts other than that of the lord of whom the claim was being made, or of the king? Glanvill expressly forbade that a writ of right be addressed to the overlord: it was to be sent only to the lord of whom the demandant claimed to hold.[46] However, such opposition to overlords hearing cases seems to be a development of the latter part of Henry II's reign. The 'constitution' early in the reign on the transfer of cases certainly allowed overlords' courts to hear cases of denial of justice in succession claims.[47] Probably in 1162x3, John de Berges brought a writ of right in the court of John de St. Clair, a tenant of the Archbishop of Canterbury, seeking a hide of land in Berges against Gilbert de Preston.[48] He then went to the county court and stated that John de St. Clair's court had failed to do him justice. The Archbishop's seneschal also arrived, and sought the case for his master's court. There, the parties prepared for a duel concerning that hide and another in the vill of Preston, but before they could fight, they were brought to agreement

through the license of the court. Gilbert recognised both hides to be John's right and inheritance. John granted him the hide in Berges for life and gave him twenty marks.[49]

Earlier evidence of overlords hearing succession cases is scarce, but a Tosny charter probably of 1102x1126 suggests that such hearings did occur:[50] 'Sciatis quod Ricardus de Porton' reddidit coram me Ricardo de Neketon terram que fuerit Bunde aui sui et Ade patris sui, ipsi et heredibus suis, de se et heredibus suis hereditarie [sic] iure.' This is more than a confirmation of a vassal's regrant: the regrant took place 'coram me'. Perhaps the regrant was a simple one. Richard de Porton may have had no court and hence sought the publicity provided by his overlord's. However, the production of a charter for a simple regrant would be surprising at this early date. Could it be that Richard de Necton had looked to Ralph for justice against Richard de Porton? There is no firm evidence for this, except that a royal charter which stated that 'N., coram me, gave back to M. his father's lands for M. and his heirs to hold of N. and his heirs' would suggest just such a resort to higher authority by the claimant. If this argument is acceptable, evidence for overlords' courts is more plentiful than some have thought. It may well be that in the late eleventh and early twelfth centuries a lord's court sometimes dealt with business between his vassals and their tenants.[51]

In France, locally dominant magnates were crucially involved in succession cases.[52] One notable piece of evidence suggests that they had some part to play in England too, at least in the late eleventh century. The first witnesses of the priuilegium by which Roger de Lacy received Holme Lacy were the Earl of Shrewsbury, his sons Hugh and Everard and his countess, Adeliza.[53] There followed some of the earl's men, including his sheriff and constable. Roger de Lacy was one of the earl's vassals, and perhaps the earl had been the most

powerful of the 'friends' who persuaded the Bishop to make the grant to Roger. Probably, though, the earl witnessed as the dominant lord of the area. Possibly the settlement was made in the earl's court. At the very least, his witnessing must have constituted a promise to help enforce the agreement. His or his descendants' power was likely to influence any dispute arising from the grant.

Scholars writing on the development of inheritance have generally concentrated on the role of the honorial and royal courts. I have just examined the part other lords' courts might play, but in addition much succession business took place outside courts.

The threat or use of force was one option open to the parties. Often an aspiring heir would already have had effective control of the land, and would refuse to surrender it if his claim was refused. This occurred in the disputes over the Abingdon lands near Cumnor and over the barony and castle of Bedford early in Stephen's reign.[54]

If they were not already in possession, disappointed claimants might violently seize the land. Probably in the mid-1170s, Richard de Clare wrote to six of his beloved men who had been ordered to swear before the king's justices that they had seen Stephen Dammartin seised of the land of Pitley as of fee and inheritance.[55] He informed them that he had learnt the truth about this matter from older men. Stephen, while he was steward and master of all Earl Gilbert's lands, had occupied 'iniuste et contra racionem' the land, which had belonged to William the reeve of Bardfield and his heirs. He had cruelly and unjustly had one of William's sons killed since he knew him to be 'propinquiorem ... ad hereditatem patris sui de eadem terra possidenda.'[56]

An heir might also turn to others to support his claim. Such help might involve peaceful urging of the lord and his court. A charter of *c.*1160x1170

records that William son of Siward and his heirs granted William son of Swetin the lands his father had held in Henry I's time and after. This was done 'by the request and grant of William fitzRalph.' Swetin had probably been a moneyer and a William fitzRalph certainly was, so William son of Swetin appears to have profited through the professional or amicable connection.[57] At other times the urging was less peaceful. When the father of Robert, the knight of Abingdon mentioned above, died, Abbot Ingulf had seized certain lands he had held for life lands. However, Ingulf kept them for only four years before, worn down by the demands of Robert and his friends and afraid of their strength in war, he leased them to Robert.[58]

This case comes from Stephen's reign, in which we also see other men seeking help simply to seize their inheritances rather than to urge their lords to regrant them. This is one major concern of the treaties between magnates. In 1141x1143, Robert Earl of Gloucester promised Miles Earl of Hereford aid

> ad custodiendum sua castella et sua recta et sua hereditaria et sua tenementa et sua conquisita que modo habet et que faciet et suas consuetudines et rectitudines et suas libertates ... et quod sua hereditaria que modo non habet ei auxiliabatur ad conquirendum.[59]

Between 1148 and 1155, Miles' son, Earl Roger promised his brother-in-law, William de Braiose, help in obtaining from Gilbert de Lacy land which was William's by right.[60] Nor was it only the greatest magnates who made such agreements. Roger of Benniworth and Peter of Goxhill joined to seek the inheritance which had been Odo of Benniworth's.[61] There is no sign that Peter had any hereditary claim to a share in the fee, and Roger apparently was offering land in return for money and physical support.

Were such alliances, together with violence, used in England to any significant extent only under Stephen? The scarcity of evidence before 1100 and the comparative abundance from the mid-twelfth century may exaggerate the relative level of disorder under Stephen. The written treaties provide a unique

kind of record, while similar oral agreements could have been common earlier. Perhaps Hamo Pecche forcibly resisted the Abbot of Ramsey's attempts to repossess Over late in Henry I's reign.[62] However, Orderic's anecdotes strongly suggest that violence and alliances were a more regular part of continental succession disputes early in the twelfth century than of English ones.[63]

The very conditions of Stephen's reign may have created the need for such alliances. Whilst Richard de Anstey's memorandum warns against underestimating the cost of even peaceful disputes, the likelihood of armed resistance under Stephen surely raised the cost of obtaining an inheritance. Under Henry I, a Roger of Benniworth might have been able to regain his inheritance by himself, be it through the king or the peaceful help of others. At least as far as the twelfth century is concerned, Stephen's reign was unusual in the importance of physical threat and action in succession disputes.

Under Stephen, churchmen increasingly turned to ecclesiastical authorities, instead of the king, during succession disputes. We have seen the Abbot of Byland seek help from the general synod of the order of Savigny, but more importantly churches turned to the Pope.[64] The Abbot of Ramsey's attempts to regain Over had rested on the king until Henry I's death, but thereafter he looked to the Pope.[65]

This reflected not only royal weakness but also increasing papal influence. It is therefore unsurprising that churches continued to look to the Pope under Henry II, especially when the king was not showing them favour. Matthew Paris's much later account of a dispute early in the reign seems plausible. It again starts with a life grant, by Abbot Paul of St. Albans to Peter de Valognes, in 1077x1093.[66] The wood concerned, Northawe, was later given in turn to Peter's son and grandson for life. The grandson, Peter II, confessed as he was dying

that his predecessors had not held hereditarily, and at his death Abbot Robert repossessed the wood. However, some men believed that Peter's brother and heir Robert had a hereditary right to the land. Robert's claim was repeatedly refused by the abbot, so he obtained a writ from Henry II, which prohibited 'ne quid quod antecessores eiusdem Roberti, iustitia dictante, hereditarie possederant, a quolibet iniuste ei auferre liceret.' The abbot refused to answer in person before the justiciar and Robert was given possession. The abbot then obtained letters from Queen Eleanor and the Pope. The latter stated that Robert held the wood 'contra iustitiam' and ordered his excommunication. However, the prelates addressed feared to offend the king by excommunicating a tenant-in-chief, and the abbot had to turn again to Henry before at last getting a royal judgement in the abbey's favour.[67] The case thus shows that if the Pope originally became involved in succession cases as a substitute for the king under Stephen, he remained involved as an additional weapon under Henry II.

What conclusions can be drawn? Evidence for before 1100 gives only the barest hints. The government of William I and II clearly was capable of extraordinary exertions. Whether they were regularly involved in the affairs of honours is unclear. The priuilegium concerning Holme Lacy suggests that men sometimes looked to the greatest figures of the region rather than the king. Under Henry I, there is sufficient evidence to suggest that cases were often heard in an honorial court, whether that of the lord immediately concerned or of an overlord. However, the evidence for extensive royal involvement is also quite strong, particularly in the latter years of the reign, and for ecclesiastical honours. Those who felt that they had suffered injustice turned to the king and his officials, as did some lords when faced with difficult vassals. Men with fairly minor claims obtained royal writs. Often these writs

ordering the lord to do right in his court were addressed to the lord, but it is notable that some precursors of the breue de recto were addressed to the sheriff, suggesting at least some supervision of the seignorial court by such an official.[66] Certain lords expected royal involvement and planned accordingly. The involvement of royal power in the control of land during Henry I's reign at least foreshadows the Angevin shift of control.

Royal involvement continued under Stephen, but to less effect. Churches which had previously relied on the king turned to the Pope. The sources may distort the level of violence compared with other reigns, but men do seem to have relied on force far more than in Henry I's England. Whether the restoration of order began before Henry II's accession remains a moot point. The dispute over Brockenhurst, discussed earlier, is the only extensively documented case which I have found datable precisely to 1153x4.

Under Henry II, royal power was reasserted. The early years of the reign show many cases in honour courts being started by royal writ. However, there were still limits to royal involvement. According to Howden, the settlement between the Stutevilles and the Mowbrays in the early years of the reign was neither made in the royal court nor recorded in a royal document. The constitution on defect of justice allowed and perhaps ordered that cases be taken to overlords' courts before the king's.[67]

Moreover, even under Henry I and Henry II, royal involvement might be of limited effect. Henry I adjudged and later confirmed Over to Ramsey Abbey, but it passed from their demesne again, possibly before his death and by his influence. Nor did Henry II's involvement bring a decisive end to the dispute. During periods of extensive royal involvement, lords had to take the king very much into consideration in their actions, but having done so, they might still seek their own ends even against the royal will.

The Conduct of Succession Disputes: Notes.

1) E.g. Milsom, Legal Framework, p. 177; N. Hurnard, 'Magna Carta, Clause 34', in Studies in Medieval History Presented to F.M. Powicke, edd. R.W. Hunt, W.A. Pantin, R.W. Southern, (Oxford, 1948), 158-9. (Henceforth Hurnard 'M.C. 34'.)
2) Hereford, no. 15. See above, pp. 3-6 on the world of the sovereign honour.
3) Glanvill, xii 3, 4, Hall, pp. 137-8; Palmer, 'Origins of Property', 11-12, fn. 38.
4) Glanvill, xii 8, Hall, p. 140; e.g. Van Caenegem, Writs, nos. 19, 25, see also nos. 11, 16, (= Reg. II, nos. 1201, 1685a). However, see below, p. 313, on similar writs being addressed to the sheriff.
5) See Milsom, Legal Framework, pp. 80-85.
6) For minor officials, see e.g. above, p. 34, on the Brockenhurst serjeanty.
7) PR 31 HI, pp. 36, 137.
8) See above, p. 145.
9) See above, pp. 145.
10) See above, p. 34.
11) E.g. Earldom of Gloucester, no. 106.
12) C. R. R., v 181-2, vi 17.
13) See also e.g. R, C, R., i 440-1.
14) C.M.A., ii 202.
15) See above, pp. 13-4.
16) St. Paul's, no. 163. See also e.g. van Caenegem, Writs, no. 19, although this did not concern succession. Becket's action against John Marshall began with a royal license - presumably a writ - , even though it concerned the internal affairs of the honour, below, p. 155.
17) See above, pp. 140-2.
18) See esp. the case recorded in Reg. II, nos. 975, 997, Northants, pp. 12-15. E.g PR 31 HI. pp. 20, 33, 85, 114, 123.
19) Cf. Gilbert Foliot, in the late 1160s, refusing to act on a royal writ concerning half a virgate of land in his lordship; he explained his action by stating that the matter was trivial, the claimant 'fere rusticus'; Letters and Charters of Gilbert Foliot, no. 196.
20) Cheney, 'Decree of Henry II', 'Novel Disseisin'.
21) Chronicon Magistri Rogeri de Hovedene, ed. W. Stubbs, (4 vols., London, 1868-1871), i 224. (Henceforth Howden.)
22) Materials for the History of Thomas Becket, ed. J.C. Robertson, (7 vols., London, 1875-1885), iv 41. (Henceforth Materials Thomas Becket.)
23) Materials Thomas Becket, iv 40-1.
24) M. Cheney translation of Guernes de Pont-Sainte-Maxence, La Vie de Saint Thomas Becket, ed. E. Walberg, (Paris, 1936), ll. 1396-1460.
25) Edward Grim, in Materials Thomas Becket, ii 392.
26) Howden, i 224-5.
27) One possible case is recorded in Domesday, i f. 373c (=Yorks., CE 29). Note also the Domesday pleas based on the claim that an English antecessor had held; see esp. Hyams 'The Domesday Inquest and Land Adjudication.' Such pleas often occurred in the shire court, before the royal commissioners.
28) Reg I, no. 456 = Reg. II, no. 865. See I.H. Jeayes & G. Wrottesley, 'The Rydeware Chartulary', (William Salt Soc., O.S. xvi, 1895), 230-8.
29) Cheney, 'Decree of Henry II', pp. 189-192. See also R.C. Palmer, The County Courts of Medieval England, 1150-1350, (Princeton, 1982), pp. 137, 144-5, 156, 298-9. Palmer, 'Feudal Framework', 1141-2, argues that tolt was at most very exceptionally used when the lord was presented with a claim to land on which there was an accepted tenant. Even if this is correct, it does not warrant his conclusion that 'tolt procedure prior to the reign of

Henry II will not form the basis for defeating Milsom's depiction of an immoveably biased lord's court.'

30) L.H.P., 9 4, 4a, 5; 10 1; 33; 59 19; Downer, pp. 104-8, 136, 188. Reg. II, no. 975, Northants, pp. 12-15, on which see below, p. 313. See also e.g. C.M.A., ii 129, where a sheriff, with no tenurial connection to the abbey, witnesses a settlement apparently in the seignorial court. The other witnesses named may be present for their importance as officials rather than simply as tenants.

31) On this dispute and settlement with William, son of Abbot Rainald, see below, p. 258. On the number of royal servants, see Green, Government of Henry I, esp. the biographical appendix.

32) C.M.A., ii 130-1, 166-9.

33) C.M.A., ii 37.

34) I comment on such explicit clauses concerning distress below, p. 280.

35) On a later dispute involving these lands, see C.M.A., ii 183-6.

36) PR 31 HI, p. 88.

37) E.Y.C., i no. 310.

38) Richmond, no. 118.

39) Ramsey Chron., p. 273.

40) E.g. C.M.A., ii 183-5.

41) See below, pp. 162-5.

42) See above, pp. 115-6, 157-8 respectively. Also e.g PR 31 HI, p. 53, concerning Hasculf de 'Taneia' may involve a lord seeking royal support in a succession dispute; see also below, fn. 45.

43) On such writs, see below, pp. 261-3.

44) C.M.A., ii 202; see above p. 154.

45) See e.g the entry in PR 31 HI, p. 29: William de Albemara owed 100m. 'ne placitet uersus homines suos de terra quam pater suus tenuit in dominio.' This might well concern tenants claiming land by hereditary right.

46) Glanvill, xii 8, Hall, p. 140. See Hurnard, 'M.C. 34', 160-1.

47) See above, pp. 155-6.

48) C. R. R., iv 264-5.

49) Hurnard, 'M.C. 34', 162, argued that the actions of the Archbishops of Canterbury may have been exceptional. However, she did not take into account either the 'constitution' on defect of justice, or the earlier evidence for the actions of overlords' courts.

50) Beauchamp, no. 355.

51) See also above, p. 152, where the Earl of Hereford seems to be offering justice to William de Braose's men. See below, pp. 288, 292 for further comments on overlords' involvement in disputes.

52) On the situation in France, see e.g. G. Duby, 'The Evolution of Judicial Institutions', in his The Chivalrous Society, tr. C. Postan, (London, 1977), 15-58; F.L. Cheyette, 'Suum Cuique Tribuere', French Historical Studies, 6 (1970), esp. 291-3; also White, 'Inheritances and Legal Arguments.'.

53) Galbraith, 'Episcopal Land Grant', 359-60.

54) See above, pp. 154, 129-30.

55) Stoke, no. 50 (= Stenton, First Century, no. 21.)

56) Stoke, no. 538 records Gilbert son of Stephen Dammartin's grant of the land to Stoke.

57) Oxford Charters, no. 84 and accompanying note. See also e.g. Galbraith, 'Episcopal Land Grant', 372, where the claimant came to the lord's court accompanied by his friends.

58) C.M.A., ii 200-1; see above, p. 154.

59) Earldom of Gloucester, no. 95.

60) Hereford, no. 15.
61) Stenton, First Century, no. 6. Danelaw Documents, no. 474 has Roger and Peter as joint addressees.
62) See above, p. 115-6.
63) See e.g. above, pp. 143-4; Richer l'Aigle, on being refused his inheritance, immediately turned to the king of France for help.
64) See above, p. 145.
65) See above, pp. 115-7. On early appeals to the Papacy, see also M.G. Cheney, 'The Compromise of Avranches and the Spread of Canon Law in England', E.H.R., lvi (1941), 177-80.
66) Gesta Abbatum Monasterii Sancti Albani, ed. H.T. Riley, (3 vols., London, 1867-9.), i 63. (Henceforth Gesta Abbatum Monasterii Sancti Albani.)
67) Gesta Abbatum Monasterii Sancti Albani, i 159-166.
68) E.g. van Caenegem, Writs, nos. 6, 15; (= Reg. II, nos. 654, 1551.)
69) In passing, it may be noted that the Statute of Mortmain of 1279 also provided for lords to enforce its measures, but that soon the king, through licensing, came to be the crucial controller of grants into mortmain; T.F.T. Plucknett, Legislation of Edward I, (Oxford, 1949), pp. 99-102.

SUCCESSION, INHERITANCE AND SEIGNORIAL CONTROL OF LAND.

Conclusions.

Introducing this section on heritability, I stated that my interest was in the 'grey areas' between purely personal succession and inheritance in its strict legal sense. I argued that these areas were created not only by the changing power of royal enforcement but by various other factors. I have examined both the language of charters and the practice of succession in order to map these developments.

The conquerors of England in 1066 were familiar with customary succession. The settlement of the country, together with the political disturbances of the decades following 1066, disrupted the descent of some lands, but in peaceful circumstances succession was normal for the closer heirs. Whilst descent norms also favoured the succession of more distant heirs, their position was more likely to be influenced by other factors.

The language recording regrants of a decedent's lands to his heir does not suggest that the grant amounted to a new gift. The heir was *seen* as having a certain right to the land, rather than simply a claim to a personal relationship. By the 1130s, an increasing proportion of the growing number of charters recording grants to laymen use inheritance language. This reflects partly an increased use of writing, partly a greater concern with succession. At the same time, notions of land-holding were growing more precise and more abstract. These changes limited a lord's discretion at the death of a tenant and hence constitute a step from succession towards inheritance.

Evidence of the extent of royal involvement in succession cases is extremely scarce before 1100. Henry I was sufficiently involved in the internal affairs of at least ecclesiastical honours for some lords to modify their actions accordingly. If this does not constitute the regular external

enforcement authority which lawyers regard as necessary for the existence of inheritance, it still creates a situation far from purely personal politics within autonomous honours.

Such a chronology contradicts any suggestion that the Anarchy *caused* the shift from succession to inheritance. During Stephen's reign, political struggle threatened the practice of succession. At least for extensive periods and in many regions, royal authority was less effective than under Henry I. However, there is no sign that notions of the correctness of succession declined. Political uncertainty could encourage men to obtain written promises that grants were heritable.

Under Henry II, the practice of succession became more stable again. Furthermore, the problem of sorting out disputes from Stephen's reign produced royal involvement on a probably unprecedented scale. Even so, royal authority was not necessarily omnipotent when brought to bear on succession cases.

Such is my chronology for the 'grey areas' between succession and inheritance which existed in the century after 1066. Why did this shift from customary succession through various stages towards inheritance occur? Firstly, because of the definition of inheritance, it is a truism to say that increased royal involvement was a cause. However, in the light of M. Cheney's recent work, it is worth re-asserting that such increased involvement was in part a conscious effort to extend royal power, not simply a way of making the feudal courts work within their own terms.[1] Henry was pledged to help resolve succession disputes, for he had promised to restore to the disinherited their rights.[2] He must also have wished to prevent the continued use of violence as a strategy for pursuing inheritance claims.

Secondly, simple long tenure must provide part of the answer. In

contemporary eyes, land-holding was not simply a relationship between man and lord. A close relationship undoubtedly could exist between man and land, strengthening as the land remained in the family for an extended period.[3] Occasionally, heritability is identified with the land itself, apparently detached from questions of lord and tenant. Orderic wrote of the Fleming Gerbod's 'hereditary honour'; a Ramsey charter of 1114x1130 records a gift 'in feudum hereditarium'.[4] Such ideas must have greatly strengthened the right of the men who held these lands. More generally, such ideas are reflected by the fact that the lord's control of tenants' acquisitions was stronger than over inheritances.[5] Gradually the proportion of inheritance to acquisition increased and the claim of heirs to succeed was thus strengthened.

Thirdly, the relative power of lord and vassal was of importance. When faced with an heir unwilling to leave his predecessor's land for which his claim had been rejected, the threat of exerting physical power must have been a vital weapon. The same threat might also have deterred the claimant who considered seeking outside, perhaps royal, help.

I have argued that inheritance, in its strict sense, may have developed first in ecclesiastical honours. This perhaps reflects ecclesiastical lords' unwillingness and inability to enforce their will physically upon recalcitrant tenants. I am not suggesting that ecclesiastical lords were necessarily pacific men: much evidence exists to the contrary. On the other hand, they may have been more reluctant than laymen to use force, and not have maintained the large military household which a lay lord would have seen as a vital sign of his power.

The relative strength of lord and vassal varied not only according to whether the lord was a cleric or a layman. The complexity of tenure ensured that the minor tenant might have a powerful backer. Or he might be an office

holder, with access to a royal or baronial patron.

Social change may have shifted the balance of power towards the tenant. At the time of Domesday, subinfeudation was limited. Many lords may have relied heavily on household knights to perform their military service. Such knights could help a lord enforce his will within the honour, especially since they might desire the reward of the land denied to an aspiring heir.

Some historians have suggested that the meaning of the word miles changed during this period, being applied to men of greater status. This could suggest the growth of a rank of tenants who would not have been easily controlled by their lords.[6] Moreover, the troubles of Stephen's reign may have accelerated such change. The treaties between the magnates during the last years of the reign had the reassertion of control over lesser men as one of their concerns. Henry II may well have come to the throne at a time when men were particularly unwilling to take the decision of the honour as final. With the reassertion of peace, the disgruntled claimant could no longer fight, but he might turn to the king against his lord.

The Cartae Baronum of 1166 help to reveal enfeoffment at a stage of development far beyond that of Domesday Book. Occasionally lords had tenants considerably more powerful than themselves.[7] Other lords had enfeoffed a large proportion of their lands to one vassal.[8] The Cartae repeatedly record lords, many ecclesiastical but some lay, who were unable to enforce their will on their tenants.[9] Moreover, the Cartae illuminate only the relations of king, tenant-in-chief and vassal. Subinfeudation would have had similar effects lower down the social scale. Thus social change, by weakening seignorial control, may have furthered the move towards inheritance.

I have also argued that changes in thought encouraged the development of inheritance. Ways of land-holding were contrasted with one another. The

contrast between alms and fee, in terms of services owed, became increasingly clear. For lay land-holding, the important contrast in terms of permanence was between life-grants and those which were potentially heritable.

These distinctions were made explicit in some disputes,[10] and are also very clearly illustrated by the royal charters to Reading Abbey.[11] The lands of the church were its alms and hence not to be alienated permanently, although they might be granted for rent: 'Nemo de possessione Radingensis monasterii aliquid teneat feodaliter absolutum, sed ad censum annuum et seruitium abbati et monachis debitum.' The phrase 'aliquid teneat feodaliter absolutum' seems to attribute to the tenant a considerable right in the land. The logic of the contrasts in this charter, and surely more widely, may be seen as forcing men towards notions of ownership.

Historians agree that in terms of the descent of lands, the customary succession of the eleventh and twelfth centuries may not have differed greatly from the common law inheritance of the thirteenth. However, the phrase 'customary succession' can give too static a view of the situation before the Angevin reforms. If it took regular royal enforcement finally to bring into existence inheritance according to strict rules, various forces, including royal involvement, were already working in the same direction during the century after 1066.

1) On Cheney, see above, p. 7. Cf. Milsom Legal Framework, esp. pp. 1-8, 182-6. On royal intention, see also below, pp. 316-7.
2) On the provision of the 1153 settlement laying down that the disinherited were to receive back their right, Gesta Stephani, p. 240; Chronicles Stephen, Henry II, Richard, iv 177.
3) See Gurevic, 'Propriété'. Also M. Mauss, The Gift, tr. I. Cunnison, (London, 1954). (Henceforth Mauss, The Gift.)
4) Orderic, ii 260. Ramsey Chron., p. 262-3. See also e.g. Book of Seals, no. 50; also William of Malmesbury, De Gestis Regum, ed. W. Stubbs, (2 vols., London, 1887-9), ii 294 on Count Alan of Brittany.
5) See below, pp. 234, 239-40.
6) See S. Harvey, 'The Knight and the Knight's Fee in England', P. & P., 49 (1970), 3-43; R.A. Brown, 'The Status of the Norman Knight', in War and Government in the Middle Ages, ed. J. Gillingham & J.C. Holt, (Cambridge, 1984), pp. 18-32.
7) Outstanding examples of powerful sub-tenants include William de Beauchamp, Red Book, i 269, 278, 287, 300, 302 - see 299-300 for his tenancy in chief; Geoffrey de Ver, Red Book, i 217, 226, 298, 352, 355 - see 274 for his tenancy in chief.
Ralph de Chahaines, who owed four knights in all, had Walter Giffard amongst his tenants, Red Book, i 218. See also William de Bosco, who was not a tenant in chief, but held of many lords: Red Book, i 203, 217, 291, 360, 362, 395, 397; he may well have been more powerful than, for example, Geoffrey de Valognes, from whom he held one knight, Red Book, i 349. Also the sub-tenancies held by Philip de Kyme, Red Book, i 375, 377, 381-3, 390, 416.
8) E.g. Red Book, i 219, 229.
9) See especially the problems of the Earl of Warwick, Red Book, i 326-7; see also e.g. Red Book, i 196, 228, 243, 254 for lay lords, 200, 204, 251 for ecclesiastical lords.
10) E.g. see above, p. 120.
11) Reading Cartularies, i nos. 1, 8, 27; Reg. III, no. 675.

PART TWO

PARTICIPATION IN ALIENATION.

Introduction.

Participation, counsel, and consent figured prominently in many spheres of eleventh and twelfth-century life. When describing Anselm's youthful contemplation of his future, Eadmer paraphrased *Ecclesiasticus* xxxii 24: 'Omnia fac cum consilio et post factum non paenitebis.'[1] In vernacular literature, consent was sought for numerous purposes. In Chretien de Troyes' Cligés, from the 1170s, we hear of Alexander son of the king of the Greeks. He had learnt of the deeds of Arthur and desired to join him, but had to obtain *his father's permission* before proceeding to Britain and Cornwall.[2] He married Soredamors with the *approval and permission* of her brother Gawain and of Arthur.[3] Having returned to the East, he died, begging his son to heed his *counsel* and follow in his footsteps to Arthur's court.[4]

Participation in land grants was thus one manifestation of a network of obligations and interests. Pre-1066 Norman evidence records such participation. Thus in 1050, Duke William confirmed numerous gifts his men had made to St. Evroul:

> dedit Robertus Helgonis filius, consencientibus et condonantibus eius dominis Willelmo atque Roberto cum filiis ac nepotibus eorum, ecclesiam Sancti Martini et in eodem loco terram presbiteri cum alia terra VIII carrucarum ... . Omnia ergo monasteria que in potestate sua habebat Willelmus heres supradicti Willelmi, annuente Geroio fratre eius ac cognatis eius uidelicet Geroio atque Fulcoio, tribuit memorato loco ... .[5]

Occasional Anglo-Saxon examples also show that kin felt they had an interest in some lands held, and possibly granted, by their relatives.[6]

For legal definition, such participation is important in two connected ways. Firstly, freedom of alienation is integral to the standard common law definitions of ownership.[7] Secondly, freedom to alienate without the heir's

consent is necessary for inheritance to exist in its strictest sense.[8] The need for such consent may indicate that a gift 'to N. and his heirs' entitles the heirs to the entire gift: the gift is 'to N. *and to* his heirs.' In such circumstances, modern lawyers term 'to N. and his heirs' *words of purchase.* Inheritance strictly speaking only exists when the gift gives nothing to the heirs, and they succeed by hereditary right only to what is left at the ancestor's death. Here, 'to N. and his heirs' only indicates the possible duration of the gift, and is termed *words of limitation.*

Participation in alienation is of equal interest in revealing the land-holder's power and obligations in relation to others. Careful study of such ties reveal wider attitudes to relationships between men and land which a strict legal approach risks may miss.[9]

Continental historians have examined participation in alienation more fully than have English.[10] They have disagreed, in particular, as to whether the kin's consent, the laudatio parentum, was in some sense mandatory, a lasting gift impossible without it. Beneath their disputes lies a wider disagreement over the definitions of 'rule'.[11] Is it just a strong custom? Or must it be strictly enforced? My own analysis rests on the framework of principles, norms and rules outlined in my general introduction.

Before proceeding, one must recall the distinction between the two main forms of alienation. Subinfeudation involved a gift by the tenant for which the donee, if a layman, would do homage. The relationship of an ecclesiastical beneficiary would also be with the donor. By substitution, the donee became the tenant of the donor's lord. The donor's right in the land was thus extinguished.

In the following sections, I examine alienation by laymen, and by clerics giving their personal possessions. I analyse participation by the heirs,

succeeding, expectant, or potential, and by the lord. Lastly, I turn to alienation of Church lands by prelates.

Other people might also participate. Potential claimants might be persuaded to consent to a grant, often no doubt in return for a suitable reward. Most notably, wives often joined in grants. Sometimes a wife had a personal claim to the gift, be it her inheritance, the maritagium which she had brought into the marriage, or her potential dower.[12] Because I have not treated these subjects in depth, I omit an extended analysis of wives' participation. Generally, charters of great men rarely mention their consent, especially after 1150. Amongst lesser men's charters, the proportion recording wives' participation remains fairly stable, or increases slightly, in the second half of the twelfth century.[13]

PART TWO: **PARTICIPATION IN ALIENATION**: Introduction: Notes.

1) Eadmer, Vita Anselmi, p. 10. The Vulgate *Ecclesiasticus* reads 'Fili, sine consilio nihil facias, et post factum non poenitebis.'
2) Chrétien de Troyes, Arthurian Romances, (tr. W.W. Comfort, London, 1975), p. 92; (Henceforth Chrétien de Troyes.) Cf. L.H.P., 43 2, Downer, p. 152.
3) Chrétien de Troyes, p. 121. Record evidence and chronicles also show that marriage was of crucial concern to the lords of the marriageable and to their families.
4) Chrétien de Troyes, p. 125.
5) M. Fauroux, Recueil des Actes des Ducs de Normandie, (Mémoires de la Société des Antiquaires de Normandie, xxxvi, Caen, 1961), no. 122; see also e.g. nos. 153, 206. (Henceforth Fauroux.)
6) For a challenge by kin to a grant by will, see The Will of Aethelgifu, ed. D. Whitelock, (Roxburghe Club, 1968), discussed below, p. 215. (Henceforth The Will of Aethelgifu.) Alfred's laws, c. 41 restricts alienation of bookland outside the kin.
7) See e.g. Jowitt, Dictionary of English Law, ii 1283-4.
8) See White, 'Succession to Fiefs', 122-3.
9) Such an approach need not wholly abandon modern notions of ownership as useful working tools. Thus Hyams has written 'The historian wishing to determine the location of 'ownership' of land in anything resembling the modern lawyer's sense needs to assess this rough balance of power between lord and man with care'; 'Warranty', 440.
10) E.g. F. Olivier-Martin, Histoire du Droit Français des Origines à la Révolution, (Paris, 1951), p. 271; M. Bloch, Feudal Society, (2 vols., tr. L.A. Manyon, London, 1961), i 130-3; G. Duby, La Société aux XIe et XIIe Siècles dans la Région Mâconnaise, (Paris, 1953), pp. 221-4, 366-8; R. Fossier, La Terre et Les Hommes en Picardie jusqu'à la fin du XIIIe siècle, (2 vols., Paris, 1968), i 263-5.
11) See S.D. White, Custom, Kinship and Gifts to Saints: the *Laudatio Parentum* in Western France, 1050-1150, (forthcoming, Chapel Hill, 1988). (Henceforth White, Gifts to Saints.) I would like to thank Professor White for allowing me to see the text of his book before publication.
12) E.g. wife's inheritance: Earldom of Gloucester, no. 119. Maritagium: Richmond, no. 73. Dower: Stenton, First Century, no. 46.
13) For women's control of land, see Holt 'The Heiress and the Alien'; Milsom, 'Inheritance by Women'; Searle, 'Women and the Legitimization of Succession'. Legal approaches should be combined with ones reflecting wider attitudes, e.g. P. Schine Gold, The Lady and the Virgin: Image, Attitude and Experience in Twelfth-Century France, (Chicago, 1985).

Wives' participation:
Richmond: Pre-1150: no. 186.
1150-1175: nos. 91, 133, 149, 150, 231, 294, 319, 393.
Hereford: pre-1126: no. 62.
pre-1150: nos. 2, 3.
Gifts to Stoke: pre-1150: 273, 335, 560.
late twelfth century: 228, 461.

Examples of increase in later twelfth century:
Gifts to Bullington: pre-1175: Danelaw Documents, nos. 92, 93.
datable only to Henry II's reign: nos. 59, 71, 87, 98.

post-1175: 6, 20, 33, 36, 42, 46, 48, 61 (post 1169), 99.

Gifts to Lincoln: 1150-*c.*1175: Registrum Antiquissimum, nos. 911, 1793, 1935, 2001.
datable only to Henry II's reign: nos. 1382, 1383.
*c.*1175-1200: nos. 1111, 1578, 1579, 1621, 1634, 1635, 1644, 1682, 1712, 1748, 1749, 1788, 1953, 1958, 1959, 1977, 2018.

The wife is sometimes specified as having counselled the gift: e.g. Book of Seals, no. 185.

Wife participates in family gift: e.g. Book of Seals, no. 48.

Wife participates in gift made specifically for her spiritual benefit: e.g. Oxford Charters, no. 65; Danelaw Documents, no. 167.

Wife witnesses gift: Earldom of Gloucester, e.g. nos. 34, 49, 283.
Robert Earl of Leicester: Oxford, Bodleian Library, ms. Dugdale 12, pp. 7, 372; Monasticon, v 367; BL ms. Harley 4714, f. 1^{v}.

CHAPTER FOUR: HEIRS' PARTICIPATION.

> Haec nimirum carta consilio sapientium facta est contra cupidos heredes, qui singulis annis elemosinas parentum suorum diripiebat, et cum magno rerum ecclesiasticarum detrimento monachos crebro placitare cogebant.
>
> Orderic on Henry I's general confirmation to St. Evroul in 1113.[1]

Introduction.

In this introduction, I examine historians' main arguments concerning heirs' participation in alienation. I then discuss the nature of those twelfth-century texts which some have taken as normative.

Maitland wrote that

> Down to the end of the twelfth century the tenant in fee who wished to alienate had very commonly to seek the consent of his apparent or presumptive heirs. While this was so, it mattered not very greatly whether this restraint was found in some common-law rule forbidding disherison, or in the form of a gift which seemed to declare that after the donee's death the land was to be enjoyed by his heir and by none other. But early in the next century this restraint silently disappeared.[2]

Maitland did not make clear whether he saw consent as an absolute requirement, although he did refer to 'the *necessity* for the heir's concurrence'.[3] He regarded consent as having two main purposes. For the donee, it was to ensure the security and permanence of the gift, for the donor's heirs, an equal division of lands between them, in Maitland's view the correct inheritance pattern in the century after 1066.[4] The restraint disappeared for three reasons. Firstly, primogeniture removed one purpose of consent. Secondly, royal justices favoured freedom of alienation. Thirdly, there was 'the rebutting effect of warranty': 'this doctrine perhaps performed its first exploit when it enabled the tenant in fee simple to disappoint his expectant heirs by giving a warranty which would rebut and cancel their claims upon the alienated land.'[5]

Maitland's argument concerning the emergence of primogeniture is weak: succession to the patrimony by the eldest son was the common pattern for

military tenure throughout the Anglo-Norman period.[6] The supposed bias of royal justices for freedom of alienation has been dismissed as reminiscent of 'Adam Smith rather than of the *curia regis* of the late twelfth century.'[7] The effect of the homage and warranty bars is still accepted, on varying grounds.

Thorne argued that Maitland was wrong to consider the tenant as an owner.[8] He was far from being one, since alienation of land beyond his death 'apparently required the consent of his expectant heirs.' Thorne explained this requirement in terms of the vassal being only a life-tenant. His heir did not inherit but succeeded by a new gift from the lord and therefore received the land *free of his ancestor's alienations.* After *c.*1150, succession by hereditary right grew stronger so that a man's heirs succeeded to his life-estate after him 'no longer by successive gifts and homages renewed but by force of the original gift made to him and his heirs and the original homage.' However, consent was still required: since the words of the original gift were in effect words of purchase, the gift *in its entirety* was promised to the donee's heirs. On succession, the heir had to consider which gifts to renew. According to Thorne, he was required to continue those for military service since they were for the defence of the realm.[9] Gifts to churches were *prima facie* reasonable and hence often confirmed. However, the prudent donor would make his heir either join in the gift as co-donor, or consent or at least witness it.

After the third quarter of the twelfth century, according to Thorne, the charters which heirs issued for their late ancestors' beneficiaries came to record more of a confirmation, less of a new gift.[10] They used confirmare instead of concedere. At the same time consent clauses were disappearing. It appears that Thorne would explain both developments by the homage and warranty bars. Previously, a donor's warranty would have had 'no special power to bar his immediate heir, to say nothing of his later ones.' However, royal authority

and notably *mort d'ancestor* ensured that homage once taken, descended upon the donor's heirs, binding them to warrant the land to the donee and his heirs as long as the latter continue. An express warranty clause had the same effect for land granted free of service. Thorne argued that this change was not complete by Glanvill's time, but by *c.*1200 the tenant was uerus dominus, the true owner, and free to dispose of his land as he wished.

Unlike Thorne, Milsom does not take into account the hardening of succession by hereditary right in the twelfth century and rejects the idea that 'N. et heredibus suis' were words of purchase. So long as the lord and his court were sovereign, a *substitution* was effective provided they accepted it; 'it is of royal interference that ... subjected it to the will of the natural heir as well as of the lord.'[11] His discussion of *subinfeudation* is based on the 'detailed rules' which he finds in Glanvill.[12] These, Milsom suggests, are entirely concerned with gifts free of service. He bases this suggestion on Glanvill's statement that a man can give a certain part of his free tenement to whomsoever he wishes 'in remunerationem seruicii sui', and on the assumptions firstly that such gifts would be made free of service, secondly that Glanvill's later references to alienation to 'whomsoever' the donor wishes are similarly limited to rewards for service.[13] These are sweeping assumptions. By no means all gifts for past service were made free of future service,[14] and Glanvill elsewhere seems to emphasize the donor's complete freedom of choice: if a man possessed only inherited land, 'poterit ... ex eadem hereditate quandam partem donare ut dictum est *cuilibet* extraneo *cuicumque uoluerit.*'[15]

Milsom continues that the framework in which Glanvill's rules make sense is one where

> there was no ownership to pass or not by a valid or invalid grant. The ancestor made an allocation from his inheritance, and undertook as a matter of obligation that he and his heirs would maintain it. When he died, his heir had to decide whether to honour that obligation, or rather his court had

> to decide whether the circumstances were such that he was not bound to honour it.[16]

Glanvill summarises the customs governing the heir's decision, and includes 'a procedural discussion showing how they are brought to bear. It is very short: the heirs of donors are bound to warrant gifts rightly made.'[17] Milsom concludes that Glanvill's 'rules' perished because they could not well be enforced in the king's court. Instead, the royal court came to force the heir to warrant his ancestor's gifts and therefore to accept the sitting tenants.[18]

Milsom concentrates on areas discussed by Glanvill, but these are far from exhaustive.[19] Thus he neglects alienation to churches which requires discussion if family participation is to be fully understood. He suggests that Glanvill's discussion is concerned entirely with gifts free of service.

Furthermore, these arguments bring to the fore the way in which Thorne and Milsom's works rest heavily on their premise of a structure, not necessarily perceptible to men of the time, of land-holding based on successive life-tenures. Modern categories certainly can be useful analytical tools, but even were it correct to argue that a tenant *really* only had a life-tenure, it would be dangerous to explain the laudatio parentum by this deeper *reality* alone. Contemporary views of land-holding also determined such participation and men in this period did not see all their lands as held merely for life. If one thing is certain, it is that the alienability of land held - in twelfth-century terms - heritably, was greater than that of land which - in the same terms - was held only for life. Were all eleventh and twelfth-century land-holding as temporary in the minds of men of the time as it is in Thorne and Milsom's, it is hard to believe that the laudatio parentum would have existed. Those consenting would only have had a claim to participate based on another future claim to succeed, and anyway their long-term interests would not have been so threatened by

grants which lasted only as long as donor and donee both survived.

I have anyway argued that the premise is flawed: not only did men perceive of lands as descending in families, but outside forces strengthened the claim to succeed.[20] Moreover, Thorne and Milsom appear to allow each successive heir equal discretion over past gifts. In fact, the grantee's long tenure had an effect. Most specific confirmations of predecessors' gifts are by immediate successors; later successors' confirmations are usually more general, perhaps suggesting that they did not really consider discontinuing each individual gift.[21] Certainly grandsons occasionally went back on their grandfather's gifts,[22] but the nature of land-holding need not have entitled them to do so. If a real renewal were needed with each generation, one would also expect such renewals to include the <u>laudatio</u> as often as do original gifts. They do not.

Moreover, an heir seeking to discontinue a gift to the church confronted well-organized pressures and arguments. Gifts to churches were intended to be perpetual. Old English land-books, which sometimes played a part in post-Conquest cases, stressed such perpetuity, often protecting it with anathemas.[23] If the gift was of long standing, the challenger also faced the canonical doctrine of prescription.[24] This laid down that churches were entitled to possessions which they had held securely, for a period generally of thirty years. This rule certainly affected tithe litigation, a matter for church courts,[25] and was probably also raised in land disputes.[26] Through these cases, and through channels such as ecclesiastics acting as royal justices, the idea of prescription may also have influenced vaguer lay ideas that long-tenure strengthened the holder's title.[27]

Holt develops a very different argument from Thorne and Milsom's, and one very much based on eleventh and twelfth-century categories.[28] He is sceptical of the heir's practical ability to revoke his predecessor's gifts. Had this

ability existed, one might have expected a donee to be obliged to pay a relief on the succession of the donor's heir, but this was not so. The confirmations which donors' heirs issued were no doubt granted at a price, but 'such payments arose from the exercise of the new lord's will rather than the terms on which his predecessors had enfeoffed their tenants.' For their money, the tenants may have been seeking 'the convenience of a primitive form of warranty in a world in which actions of right were determined in feudal courts.'

Holt concentrates on the distinction between inheritance and acquisition, at least the strong form of which he suggests was a product of the Conquest.[29] Inherited lands generally passed to the eldest son, but acquisitions might be granted more flexibly. In the first generation after 1066, almost all lands in England were acquisitions, but the process of succession ensured that the proportion of *hereditas* gradually increased.[30] Younger sons had been major beneficiaries of grants of acquisitions and indeed may have claimed some right to them.[31] As acquisitions grew scarce, another way of endowing younger sons was needed, and this was found in enfeoffment. Holt gives no clear reason for Glanvill's requirement that heirs should consent to such grants but seems to regard it as a transitional phase: 'the distinction betwen inheritance and acquisition was being replaced by alienability applied to the whole property.'

Next let us examine the texts which some have taken as normative. I discuss below how far their descriptions match twelfth-century practice. Here my concern is the nature of the norms and analysis. The Leges Henrici's treatment of alienation is brief.[32] When discussing succession, the author stated that 'primum patris feodum primogenitus filius habeat, emptiones uero uel deinceps acquisitiones suas det cui magis uelit.' This is based on no written

source known to the editors and coincides sufficiently with contemporary practice to be taken as stating custom.[33] The passage continued 'si bocland habeat quam ei parentes sui dederint, non mittat eam extra cognationem suam, sicut prediximus.'[34] In fact it is later that the author returns to the subject: 'Et nulli liceat forismittere hereditatem suam de parentela sua datione uel uenditione, sicut diximus, maxime si contradicat et peccuniam suam in ea mittere.'[35] The former part of this clause, and the one cited above, are both based on Alfred c. 41.[36] However, the latter part of the second clause records a form of retrait lignager, the kin's right to pre-empt any sale. Bateson held this to be 'the general law', which later became limited to boroughs.[37] However, evidence for its existence outside boroughs is extremely scarce whereas it certainly was established in towns in the first half of the twelfth century.[38] The author may have based his statement on urban custom.[39]

Glanvill's basic premise is that a man can give 'a certain part of his free tenement to whom he pleases in recompense of his service, or to a religious place as alms.'[40] Unless seisin follows the gift, nothing can effectively be sought against the heir, since according to the interpretation customary in the realm such is a naked promise rather than a true gift. If seisin does follow 'the land will remain forever with the donee and his heirs, if it was given to them by hereditary right.'

Having discussed death-bed gifts, Glanvill considers how much land held by knight service might be alienated. He draws in the distinction between inheritance and acquisition. If a man has only inherited land, he can give a certain part of it to any stranger he wishes. However, grants to younger sons cannot easily be made, 'except with the consent of the heir.' If a man has only acquisitions, he can give some to whomever he wishes, but should not disinherit any child he may have by giving away all his acquisitions. In the absence of

children, remoter heirs are no bar to complete alienation of acquisitions. If he has both inheritance and acquisition, he can give a large part or all of the acquisition to whomever he wishes and also reasonably give from his inheritance, as described above. A shorter discussion of socage follows.

Milsom writes of Glanvill's 'detailed rules'. Glanvill's language is far from that of mandatory rules. He invokes principles, for example against unreasonable acts caused by excessive emotional attachment, in a discussion of norms which generally or customarily hold true. He states that a man cannot 'easily' give 'as much as he likes' to his younger son, despite his emotional inclination so to do; '*generaliter liceat* cuilibet de terra sua rationabilem partem pro sua uoluntate cuicumque uoluerit libere in uita sua donare.'[41] No specific amounts are defined, whereas the Norman Très Ancien Coutumier was later to specify one-third as a reasonable part.[42] Possibly the proportion alienable was customary within any honour, a point Glanvill might omit because his prime interest is the curia regis. However, a charter of 1145 shows that no rigid customs existed, at least in the mid-twelfth century. Roger of Valognes was making a gift to the church of St. Mary, Binham. As a good man, he listened to counsel, especially that of Archbishop Theobald, who reasonably showed him that 'uir nobilis et liberalis qui feodum habet sex militum, non solum terram tercie partis militis, sed etiam tocius integri uel eo amplius pro sua suorumque salute deo et sancte ecclesie largiatur.'[43] Glanvill's emphasis on reasonableness better fits such flexibility than a concealed framework of rules. Yet meanwhile the royal power which Glanvill describes, and the intellectual changes of which his very work is a major sign, were helping to transform his norms into legal rules.[44]

In the following sections, I again examine charter formulae and cases. The former are here peculiarly problematic. The words denoting assent give little indication of the form, or necessity, of participation. The most common are consensu, assensu, and concessu / concessione / concedente. Slightly less frequent are annuente and consilio, and further variations exist such as per bonam uoluntatem. No word or phrase seems to be linked to a particular set of circumstances, and combinations of the forms occur.

Further difficulties exist, of which I now touch on only some of the most important.[45] Firstly, when more than one record of a gift survives, it becomes clear that charters cannot be relied on to mention assent actually given.[46] Perhaps charters did not record a practice so much a part of men's thinking that it was assumed. Secondly, how should the various forms of participation be viewed relative to one another, from witnessing, through the consent clause, to the joint grant? Thirdly, only great families left substantial series of charters. Where a lesser family has left many charters, one beneficiary often dominates, so the charters may well reflect that beneficiary's drafting practice. Fourthly, the attendance of kin at a gift might well vary for non-legal reasons, for example with the occasion of giving.

Therefore, my figures cited in the text are only indications of approximate proportions of charters recording the laudatio.[47] For practical reasons, I pay less attention to witnessing than to joint gifts and assents: many charters only survive in cartulary copies without witnesses, and anyway it is often impossible to identify relationships to witnesses in lesser families.

The relevant cases fall into no discrete category. I concentrate on those concerning the continuation, on the original donor's terms, of a gift which both parties accepted had been made. Most involve an heir seizing back lands his ancestor had given, but sometimes the heir may have been seeking service from

lands his ancestor had granted free of dues; this too involved the heir going back on the terms of his ancestor's gift. The two types of case are closely connected. The heir would demand services from the beneficiary of a grant made free of service. If his demand was successful, he would allow the grant to continue. If services were refused, he would then seize back the land.

I exclude some rather similar cases. A donor might give the same land to two beneficiaries, one of whom later accuses the heir of not maintaining the gift. I exclude such cases since they involve the original donor going back on a gift.[48] Nor do I consider disputes about the amount of the ancestor's gift, though an heir who claimed that a beneficiary was holding more than had been given might appear to that beneficiary to be reneging on the initial gift.[49]

I now argue that kin participation in grants was not a necessity, its absence automatically preventing a permanent grant. Rather it was the product of principles, norms, and obligations of varying strength. The grantor and the grantee both wished the grant to be as secure as possible, so that it fulfilled its intended function. The donor's kin might desire this, but also feel that their other interests were threatened . Participation was intended to reconcile these possible tensions. Some consent clauses must hide tough negotiation.

This does not exclude the possibility that decisive arguments sometimes could be based on participation. The heir's previous consent might provide such an argument for a grantee seeking that the heir continue his predecessor's gift. In unusual circumstances, such as death-bed gifts, the absence of consent might decisively invalidate the grant. However, in each instance the relative importance of the norms and obligations would be affected by the particular power circumstances.

Gifts to Churches.

Miles of Gloucester's foundation charter for Llanthony Secunda reveals one form consent might take in a gift ceremony:

> Hanc donationem uxor mea Sibilla, et filii mei Rogerus, et Walterus, atque Henricus, in ecclesia canonicorum apud Glocestriam, fecimus, ita quod Rogerus, iam miles, et uxoratus, iurauit super altare Marie, et quatuor euangelia, quod de illo manerio nunquam deinceps faceret eis iniuriam, uel perquiret damnum, siue diminutionem in aliquo, neque per se neque per alium: idem iurauit et Walterus filius meus.[50]

The motives for participation in such gifts to churches were various. The participants wished their names to be recorded so that they might reap due benefit in heaven: they might also appear in the charters' pro anima clauses.[51] Donors too desired the inclusion of kin for their spiritual benefit: 'Et hoc donum Deo et Sancto Petro cum uxore mea Letselina concessione filii mei Willelmi ... quos etiam huius elemosine participes fieri per omnia uolo, super altare predicti apostoli Petri presentaui', declared Geoffrey I de Mandeville.[52]

Participation emphasized the religious and emotional tie between family and church.[53] The relationship involved not only the head of the family who would be the main donor; other family members might, for example, be buried at the church. Solidarity would be most clearly expressed on special, emotional occasions. Thus a charter of early in Henry II's reign records that Philip de Kyme and his heirs 'gave and granted' the church of Ingham to Bullington Priory:

> Hanc donationem fecimus eis in manu domni Rodberti secundi Lincolniensis episcopi in die translationis matris mee quando posita est iuxta patrem meum in capitulo sanctimonialium pro anima patris mei et matris et omnium fidelium et mea meorumque salute.[54]

The attachment of family to church helps explain the frequent mentions of consent in some groups of charters, such as those of the Kymes to Bullington.[55]

Consent, and confirmations after the donor's death, also expressed family solidarity:

> si heres eius elemosinam que quasi pons inter ipsum patrem et paradysum interponitur per quem pater transire ualeat auferre conatur utique et a regno celorum idem heres quantum in ipso est patrem eius exheredat, unde nec reliquam heres hereditatem iure optinebat, qui sese filium non esse

testatur ubi patrem suum occidit.[56]

The son who did not confirm his father's gift was sinning not only against God, the saints and the church, but also against his father.

Concerns more directly connected to control of land also encouraged participation in alienation. Even if it was morally wrong to discontinue any gift which aspired to perpetuity, men certainly did so in practice. This might be the product of sin, an exertion of force with no colourable justification, or an assertion of a claim which the heir, and others, believed justified.

There are some signs that the donee provided the main impetus for obtaining consent. The frequency of consent clauses varies between ecclesiastical beneficiaries, suggesting that the church determined their inclusion.[57] Moreover, consent clauses appear most frequently in beneficiary-drafted documents: the draftsman wished to protect his church, and valued the role of carefully phrased writing in so doing.[58]

However, such records were also in the donors' interests, for they too wished their gifts to remain firm. An heir's assent to the gift greatlyweakened his ability to discontinue it must have been greatly weakened.[59] Consent involved publicity which would later increase at least the moral pressure on him to maintain the grant. Further publicity and greater moral pressure could be obtained by presenting counter-gifts to the donor and those consenting. These might amount to payments for purchase, but a charter of Conan Duke of Brittany and Earl of Richmond reveals another motive: 'et ut heredes mei hoc firmiter teneant sciendum quod recepi a monachis L. marcos argenti pro ista confirmatione facienda et donatione mea guarentizanda.'[60] Charters perpetuated publicity: men must keep their word, and a charter might record that word.[61]

These pressures did not always prevent the heir from trying to discontinue the gift. He might plead extenuating circumstances,[62] or rely on naked power.

However, in some disputes which did arise, the claimant's earlier consent was decisive. In 1154x8, Ralph Carbunel gave the canons of Easby two carucates, to hold of him and his heirs in pure and perpetual alms.[63] One and a half were to be held in demesne, the remaining half by Ralph's brother Ernald for an annual service. Ernald solemnly promised that his part, like all the rest, would remain with the church and canons in perpetuity. Soon afterwards, Richard de Rollos confirmed various of his men's gifts to Easby, including Ralph's, and Earl Conan of Richmond quitclaimed the canons of all his services from the lands they held of his men, including these carucates.[64] Yet Ernald still sought to overturn the gift in the court of Richard de Rollos at Richmond, with the help of a royal writ.[65] How far his case went is unclear, but one of the two charters recording the settlement states that Ernald 'gave and granted and by his charter confirmed' to the canons the two carucates which his brother had previously given *with his consent*. They were to hold free of vexation from him and his heirs. The prominent mention of consent suggests that the canons saw this as their vital argument.[66]

The recording of consent and the granting of confirmations were not only concerned with preventing claims by kin, but also intended to provide protection against other threats.[67] The donor or his heirs' officials might oppress the beneficiary, against their master's will. Outsiders, with or without a claim, could threaten a gift. Walter of Hereford confirmed his predecessors' grants to Llanthony Secunda: 'Hoc modo filii patribus in hereditate iure succedunt quando eorum elemosinas in quantum possunt manutenent et augent.'[68] Manutenere surely meant that the heir should not only continue the gift but also protect it.[69] Similarly Osbert de Wancy made a gift to Biddlesden during Stephen's reign:

> Hanc donacionem feci et concessi consilio uxoris mee Aaliz et Roberti filii et heredis mei et ceterorum filiorum et amicorum meorum pro salute anime mee et omnium antecessorum meorum, liberam et quietam ab omni consuetudine seculari et exaccione erga me et heredes meos defendendam et manutenendam

contra omnes qui ecclesie predicte aliquam calumpniam inferre temptauerint.[70] Such concern with outside challenges also throws a different light on heirs' charters of confirmation. As well as being renunciations of any claim the heir might have, they were literally strengthenings of the gift, promises of help should the church's tenure be threatened.[71]

The donor was thus obliged to protect the church by obtaining his heir's consent. Heirs were obliged to the donor, the church, and their own salvation, to maintain the gift. The donor also had obligations to his heirs, and probably to the wider kin. If a son acted ill by disinheriting his father of his heavenly inheritance, his father acted ill by depriving his heir of an earthly one. He did so if he alienated too much of the family land.

Even a gift requiring the church beneficiary to perform temporal services could entail a loss of control over the land compared with a similar gift to a layman. It is notable how few charters to churches state that the gift was to be held of the donor and his heirs,[72] whereas most grants to laymen included such a phrase, thus emphasizing the bond of lordship. Also, distraining churches might involve particular difficulties.[73] If the gift to the church was made free of temporal service, earthly disherison was still clearer. Such gifts required care. In Glanvill's terms, the donor must act reasonably.[74]

Throughout the period, this must have been the crucial criterion in heirs' decisions whether to consent to gifts, and must lie behind simple statements of consent. Refusals leading to the abandonment or reduction of the proposed gift were unlikely to be recorded; none survive in the evidence which I have examined. Nor have I found cases where the heir attempted to justify his discontinuance of a gift on the grounds that it was to his disinheritance, although such cases probably occurred and Milsom has found some partially

hidden in the early plea rolls.[75]

However, we do have a general statement of the norm in a confirmation issued by Archbishop Theobald to Stoke by Clare in 1150x61: it records that Gilbert de Clare had ordered his barons to give to the said church as much of their lands, churches and tithes as they wished, 'absque exhereditacione successorum suorum.'[76] This instance is particularly notable for two reasons. Firstly, it shows that the interests of the donor's heir and the donor's lord might be united against excessive alienation free of service.[77] Secondly, it shows at least some acceptance of the norm by the church, and similar statements appear in canonical collections.[78] These must be taken as a balance to the view, expressed by Orderic, that those who piled up treasures for their heirs were piling up greater evil and wretchedness for themselves.[79] Ecclesiastical views were neither simple, nor universally opposed to lay-generated norms such as this. However, a gift which seemed reasonable to the ecclesiastical beneficiary may often have seemed unreasonable to the donor's heir. There was plenty of room for dispute.

Was family participation *required* for permanent alienation to churches from a man's inheritance? I think not. Glanvill's statements on alienation do not constitute strict rules.[80] That churches clearly wished to have a record of the heir's consent and his confirmation of his predecessor's gifts need not mean that any such legal rule existed - they were prudential, intended to prevent future *unjust* action.

The absence of any explicit statement of the requirement of the heir's consent within, for example, charters or dispute records, is not compelling evidence against the existence of such a norm. Very few such general

statements exist. It may be notable that no trace survives of an heir in England pleading that his discontinuance of a gift was just since he had never consented to it, whereas such arguments were put forward on the Continent.[81] Admittedly, this could result from the noteworthy fact that English documents generally give fewer details of disputes. Ecclesiastics anyway wished to record their own strongest arguments, not those of their opponents. One must look for other indications as to whether such a norm existed. I shall argue that the evidence for the necessity of renewal by heirs on their succession is weak, and that consent clauses are so far from universal in England that the laudatio can hardly have been a necessity there.

Did the nature of succession prevent an individual from making a lasting gift, and hence require family participation for any grant which aspired to perpetuity? Two charters for St. Mary's Lincoln suggest that heirs succeeded to their father's lands free of all alienations, that the words 'N. et heredibus suis' were words of purchase, and hence that a gift had to be renewed by the heirs on succession if it were to be lasting. One charter, of Simon de Chauncy, is only datable *c.*1150x1200 and 'grants' his father's gift of fifteen *solidatae* of land for the restoration of Corringham church which he had burnt. It begins 'Que a patribus rationabiliter fiunt iure a filiis rata conseruantur qui eis *in uniuersitate possessionis* succedunt.'[82] The other charter, of *c.*1163, records that Alan de Meering gave two bovates to the chapter of Lincoln. Soon afterwards his nephew and heir Henry fitzIvo the Falconer confirmed this:

> Nouerit uniuersitas uestra me dedisse et concessisse et hac carta presenti confirmasse ecclesie sancte Marie Lincoln' terram que fuit Alani auunculi mei in quam uidelicet iure hereditario successi in perpetuum iuxta tenorem carte eiusdem auunculi mei possidendam.[83]

However, these Lincoln charters are unusual, and may be contemporary with one another. Occasional charters point in another direction. In 1137, Stephen's

regrant to Roger fitzMiles and his wife Cecily, daughter of Payn fitzJohn, gave them not all the lands which Payn had ever held, free of alienations, but only those which he had on the day when he was alive and dead.[84] Another significant example is a grant by Philip de Kyme to Bullington, made soon after his father's foundation of the priory in 1147x50. He stated that he had assented to his father's gift, which included some churches, and so that the grant remain strong he gave from his own part the same churches 'in as much as they pertain to me who am his heir.'[85] He seems to have felt that he had an interest in the family possessions even during his father's life, but that this need not constitute a right to succeed to all the possessions.

Secondly, the granting language of charters clearly distinguishes between the original gift and the heir's confirmation.[86] Thorne argued to the contrary that at first the heir had to make a new grant, but that 'after the third quarter of the century the heir's charter becomes less a new grant and more a confirmation, the verb "*confirmo*" rather than "*concedo*".'[87] It is unclear whether Thorne thought that dare was ever appropriate for such grants. In fact, confirmare, although not by itself, appears from the late eleventh century and in the majority of such grants during the first three-quarters of the twelfth.[88] Concedere does not cease to be used.[89] Even dare occasionally appears in the late twelfth century.[90] The language of heirs' confirmations thus gives no indication of changing ability to discontinue a predecessor's gift and only reveals that confirmations did not amount to new gifts.

Thirdly, some gifts mention ceremonies of seisin,[91] heirs' confirmations do not. Had heirs on their succession resumed seisin of their predecessors' gifts in any meaningful way, one would surely expect at least rare mentions of reseisin.

A final question turns on why, if the heir was entitled to the entirety of

the gift to his predecessor, and consent was in a sense the waiving of this entitlement, consent was not equally necessary for the alienation of acquisitions? Thorne's argument falls down at this point and Milsom's different line provides no explanation.

Grants to a man and his heirs did not give the heirs any clearly defined entitlement. The words 'N. et heredibus suis' are best taken neither as words of purchase nor as words of limitation. Rather they gave the heir an interest, which the father was obliged not to extinguish unreasonably. Succession, therefore, did not necessarily bring into question all the decedent's gifts.

For these reasons, the laudatio cannot be considered an *essential* means of ensuring that the heir waive his right to discontinue the gift on succession. Nevertheless, I shall examine the frequency with which charters record the laudatio, since this gives at least some indication of the importance contemporaries attached to it.

In England, most mentions of the laudatio come in records of original gifts: few appear in lords' confirmations, scarcely any in heirs' confirmations.[92] Whilst it is often impossible to discover whether a gift was from the donor's inheritance or acquisitions, it is clear that even amongst charters recording gifts from the donor's inheritance to churches, many do not include consent clauses.

Charters recording royal grants only rarely mention the laudatio. Most examples of royal family participation in the Conqueror's reign are signa in diploma or mixed-style documents. A diploma of 1069, written by an English clerk, records that William and his Queen 'cum prudenti consilio procerum nostrorum' conferred the church of Deerhurst, Gloucestershire, on St. Denis. The witness list states that Richard the king's son 'most willingly agreed' to his

father and mother's gift and that Count Robert the king's brother 'benevolently consented'.[93] Robert, Rufus and Henry appear approximately equally in their father's grants of lands and rights in England.[94] Mention of the king's son as witness in a writ charter is extremely rare.[95] In Rufus's grants, the signa of his brother Henry appears only twice, in mixed-style documents.[96]

Henry only had a legitimate son until 1120, and William's participation is mentioned but twice in the main body of a charter.[97] Even though he was often away from the king, it is perhaps surprising that he witnessed only five of Henry's surviving charters, the first in 1115, and placed his signa on two others.[98] No potential successor was singled out late in the reign through involvement in grants.

Few of Stephen's charters refer to Eustace's consent, although Eustace did witness several of his father's charters, all to the church, and in some cases issued his own charter of confirmation.[99] Several joint grants of the Empress and Duke Henry survive. In part, this may reflect Angevin practice: the counts' charters record the participation of their kin much more often than do those of the kings of England. However, it is notable that when Henry appears in charters with the Empress, even in his father's life-time, he is described not as consenting but as joint grantor. Henry was not simply heir to Geoffrey and the Empress. In the 1140s and early 1150s he was claimant to the throne. Joint grants advertised his claim, even at a very young age.[100] Moreover, grantees desired his name on their charters for future security.

I am yet to find a clause recording the consent of Henry's heirs amongst his charters as king up to *c.*1170. Very occasionally one of his legitimate sons witnessed a grant.[101]

The laudatio is also rare in great laymen's charters recording their gifts to the church, particularly after 1100. Only two eleventh-century Mandeville

charters are relevant. One records the consent of the donor's son and heir. The other contains a curse against any heirs who did not maintain the gift.[102] The donor was Geoffrey I, the first member of the family to hold lands in England, so both gifts consisted of acquisitions. No further charters in the period 1100-1166 mention the heir's consent even to gifts from the inheritance, although the foundation charter of Walden Abbey, from 1140x1144, curses anyone interfering with the gift.[103]

Of the gifts to the church by Henry and Roger, Earls of Warwick from 1088 to 1153, only one mentions the heir's consent.[104] Several of Roger's are witnessed by his brothers.[105] Of the eight relevant charters of Roger's cousin, Earl Robert of Leicester, two mention the assent of Robert his son.[106] Robert the younger also witnessed three of his father's gifts to the church.[107] Robert's foundation of Luffield Priory in 1124 was almost certainly before his son's birth, and was done by the counsel of the Earl de Warenne, Nigel d'Albini and Waleran de Meulan, Robert's brother.[108] The charters of other families show similarly few mentions of the laudatio.[109] Occasionally a charter is addressed to the donor's sons, or orders his heirs to preserve the gift.[110]

Lesser men's charters present fresh problems, especially the lack of long series from single families and the difficulties of tracing the history of portions of land below the top level of society. In order to overcome these problems at least partially, I examine some sample groups selected on various bases. First, let us consider the relevant charters in Stenton's First Century, the Book of Seals, and Salter's Oxford Charters. Although numbers are small, these give a reasonable geographical spread. From the 1130s to the 1170s, approximately one-third mention the laudatio.[111]

Our next grouping is an honour, that of Richmond. Unfortunately, charters

from *c.*1130-1150 are very scarce. Only one of the nine from the 1120s mentions assent, and this for a gift of an acquisition,[112] but thereafter until the 1170s between half and two-thirds do so.[113] In the last quarter of the century, participation becomes rarer.[114]

Thirdly, let us examine individual beneficiaries, whilst noting family variations. The few surviving charters to Abingdon rarely record the laudatio.[115] Of grants to Stoke by Clare, two of the five definitely from the early twelfth century include assent, as do five from the early to mid-twelfth century.[116] Thereafter, the laudatio disappears, apart from very isolated instances in the decades either side of 1200.[117]

Signs of decline from *c.*1160 appear in the Kirkstead charters published in Stenton's Danelaw Documents. All four gifts by lesser laymen before 1160 mention assent.[118] Grants datable to the 1160s are scarce, but fewer than half from the 1170s mention heirs' participation, and thereafter very few do so.[119]

Bullington Priory was founded in 1147x50, and many of its charters appear in Danelaw Documents. Well over half the Kyme family's charters record heirs' consent to gifts, and there is no sign of a decline during Henry II's reign.[120] Amongst the gifts of other donors, three of the four charters from *c.*1150x1170 mention family participation.[121] Therafter, decline occurs: of those datable only 1154x89, three out of ten do so, as do only four of the twenty-one from *c.*1170x1200.[122] Thus the pattern for the Kyme family is exceptional.

Among the gifts of diverse origin to St. Mary's, Lincoln, assents remain at a relatively low level throughout the twelfth century, with no sign of major chronological change.[123] An exception is a group of three charters of Hugh Malet, datable only to 1154x89, all from his inheritance and all of which mention family participation.[124] Elsewhere, our evidence shows assents as relatively uncommon in gifts to other Cathedral churches.[125]

Why are consent clauses more common in the charters of lesser men than in those of their superiors? Conceivably different norms might exist for great men and for lesser, but, apart from the frequency of consent clauses, there is no evidence for this. Certainly Glanvill makes no such distinction. Other, probably sufficient, reasons exist for the difference. I suggested above that consent clauses tend to appear in beneficiary-drafted deeds; these remain more important for lesser grantors than for great. Secondly, lesser families often concentrated their patronage on one church, and the close bond possibly encouraged family participation. Unusually close ties helped to produce the few concentrations of consent clauses in grants by greater families, for example those of the family of Miles of Gloucester to Llanthony Secunda.[126] Thirdly, families with concentrated lands were more likely to be present in large numbers at gift ceremonies. Occasionally, as with the Kyme's, the recording of participation may have amounted to a family custom, although as always the copying of formulae may have had an effect.[127]

Records of consent are too irregular even in lesser men's charters to demonstrate that the laudatio was a requirement. Their scarcity in greater men's charters strongly suggests that it was not. Could a rule preventing lasting gifts without the heir's participation really have existed when there was such ideological pressure for the maintenance of such gifts? Fearsome curses protected some gifts. Stephen Count of Brittany's charter of 1125×1135 in favour of St. Mary's York does not mention his heirs' consent, nor is it witnessed by them, but it closes

> Hanc uero carte auctoritatem et sigilli mei confirmacionem, si quis heredum meorum uel quilibet alius, diabolico furore instigatus, uiolare uel infirmare presumpserit, nisi cito emendauerit, maledictionem Dei et mei et omnis celorum milicie et tocius catholice ecclesie possideat.[128]

Certainly we know most about moral pressure from the church, and there were counter-pressures. However, it seems much better to take family participation

not as obedience to a rule, but rather as one way in which prudent donors and donees might protect their gifts.[129]

We have, therefore, not a mandatory rule but a norm of varying strength. This norm sometimes helped to persuade men to obtain consent for alienations of acquisitions, more often if they were granting inherited possessions. What else affected its weight? Firstly, one must wonder about the heir's ability to refuse to assent. The younger the heir, the less likely he was to be able to do so.[130] He might later claim the excuse either of his youth or duress, but such were likely to be points of debate rather than knock-down arguments. Documents do not stress that consent should be voluntary, and some record that the father was to make his family assent.[131]

Secondly, the closeness of the heir's kinship to the donor probably affected his say in the gift. Often those consenting are referred to only as heirs, but rarely is any relationship specified except that of son, or more unusually brother. Obligations to other kin seem inEngland to have been weaker, even if they were the closest heir. We have already seen that, according to the Relatio de Standard, Walter Espec founded the monastery of Kirkham, thus making Christ heir of some of his best possessions, since he lacked children as heirs, even though he had 'nepotes strenui'.[132] Glanvill made no such distinction for the alienation of inherited land. However, he wrote that if a man held only acquisitions, and had no children of his body, he could give some or all of his acquisitions heritably to whomsoever he wished.[133] Thus the proximity of the heirs again affected their control of alienation.

Thirdly, in certain circumstances the desirability of an heir's consent strengthened towards a requirement, both to prevent unreasonable gifts and to protect those reasonable ones which were made. The clearest is the death-bed

gift.[134] The Liber Eliensis presents a model instance, probably from the 1090s.[135] Harscoit Musard had always been a friend of St. Etheldreda and her monks. Falling severely ill, he persuaded them to accept him as a monk, promising to give them his manor of Easton together with himself. He was accepted - and so was his gift. The donor and beneficiary were clearly determined to show the propriety of the grant for it was sealed in the sight of clerics and knights, and Harscoit's son Robert quitclaimed his father's gift from himself and his heirs to the church.

Pressing desire to reach heaven might separate the interests of a dying man from those of his heir. Previously, both had earthly interests. Now the dying man might think it perfectly reasonable to use his possessions to save his soul. To others, such actions might seem less reasonable, especially if they seemed to result from excessive clerical pressure.[136] Glanvill therefore takes the death-bed gift as an exception to a person's freedom to give a reasonable part of his land to whom he pleased. If a dying man acted contrary to his previous wishes, it was assumed that mental turmoil was the cause. However, a gift in ultima uoluntate could be lasting if made with the heir's consent and confirmed by his consent.[137] The slightly contorted Latin attempts to cope with a procedural point. A dying man would have difficulty delivering seisin. Formal livery may not have been needed earlier in the period, though some ceremony was desirable,[138] and by performing one, an heir might complete his dying relative's gift. Thus a charter of *c.*1087 records that a certain Swain had given land at Whatley to Westminster Abbey, and that Swain's son and wife made the gift on the altar of St. Peter on the day that Swain was buried, with their barons watching and in the presence of the abbot and monks.[139]

Nevertheless, disputes arose over death-bed gifts, even when heirs confirmed them. Probably in 1127, the dying Ralph Basset gave Abingdon Abbey

four hides in Chaddleworth.[140] This may have fulfilled an earlier promise,[141] but the chronicler presents it simply as a death-bed gift. The land was seised into the church's demesne, and confirmed by Ralph's sons who were present. However, Ralph's grandson, Richard son of Thurstan, on his succession moved a claim for the lands.[142] He was defeated by the monks through the help of Henry II. Richard's charter recording the settlement acknowledges his father's agreement to the original gift by attributing it to both Ralph and Thurstan.

Assent may also have been particularly necessary if a healthy donor was about to become a monk. Earl Roger of Hereford became a monk in 1155. Although he died within the next nine months, his taking the habit may result from the defeat of his rebellion against the king rather than from ill health. Between 1155 and 1160 his brother and heir Walter granted various lands to St. Peter's Gloucester, in exchange for the 100 solidates which Roger, with Walter's assent, had granted when he became a monk.[143] The frequency of consent in such circumstances may also reflect the presence of relations at a ceremony which had important consequences for the family.[144]

Other circumstances may have made participation particularly desirable. An exceptional series of Yorkshire charters would fit perfectly the world Milsom describes. The donor is obliged to obtain the consent both of the heir and of the lord, otherwise the gift will fall through.[145] Assents are obtained. The lord's charter confirming the gift describes his own part with the verb dare. He also promises to warrant the land or give an exchange when the donor's heir came of age, suggesting that the heir would have real discretion over the continuation of the gift on the donor's death.[146] The heir in fact did confirm the gift, using in his turn the verb dare to describe his action.[147]

These charters may be the product of unusual family arrangements or politics. Or they may result from the donor being a woman. It was Tiffany

daughter of Roald the constable who made the gift in alms to Easby Abbey in 1158×71. One charter simply mentions the assent of Conan her son and heir and of Alan, her brother and lord.[148] It is the survival of another document which casts a special light on the case:

> ego Thephania filia Roaldi debeo facere quod heres meus et frater et dominus meus Alanus constabularius coram sufficientibus testibus et cartis suis confirmabunt donationem terre de Warth et cartam meam quam dedi ecclesie et canonicis sanctae Agathe ... . Et si hoc facere non potero quod absit reddam canonicis sancte Agathe xx marcas argenti quas mihi dederant infra breuem terminum sicut eis placuerit. [Seven men are then listed as sureties.] Et pecunia ista sine omni occasione canonicis redditura, si terram predictam per heredes meos amiserint. Et insuper malediccionem Dei et meam habeant qui eam eis abstulerint.[149]

The wider significance of this unusual document is hard to assess. It is presumably earlier than the charter recording the assents as given. Its terms are not those of a temporary grant to be extended to permanence by obtaining consent, but of a permanent grant as yet incomplete. Why were the arrangements written down and why was the document preserved, despite the obtaining of consent rendering it irrelevant? Did many grants pass through this stage, and were records of them written but lost because of their ephemeral value? Or was this document the product of unusual circumstances? The large proportion of women's grants which record the heir's participation do suggest a special requirement for consent, even to alienation of her own inheritance.[150] Again. beneficiaries must have felt it prudent to obtain such consent, perhaps fearing that an heir would claim that the donor, as a woman, had acted unreasonably, probably because they desired male protectors to maintain the gift.

The heirs' participation was thus most desired when donors themselves were least able to maintain their gifts and to influence the actions of their heirs. This illustrates my general contention that power and individual circumstances affected the weight which norms carried. I now go on to analyse the weight and functioning of these and similar norms when gifts were made to laymen.

Gifts to Laymen.

Charters recording gifts to laymen outside the kin mention the laudatio much less frequently than do gifts to churches. Various explanations are possible. There was not the same incentive of spiritual reward for participation. The draftsman might have no direct interest in the preservation of the grant and hence have taken less care in recording assents. Perhaps, in the more oral lay world, the act of consent was enough, without it being written down.

Explanations more closely connected to the nature of land-holding are also relevant. Could heirs on their succession discontinue grants to laymen more easily than those to the church? Such need not have been an arbitrary action. Heirs would have held enquiries into the standing of their predecessors' tenants before deciding which grants to continue.[151] Certainly a significant proportion of charters recording renewals to laymen use the verb dare, suggesting some equation with new gifts.[152] However, the rarity of such renewals suggests that they often record abnormal instances. The absence of a regular, formal payment by an existing tenant to a newly succeeding lord, which would parallel the relief paid by a newly succeeding tenant to an existing lord, also weighs against the argument that a new lord had a regular power to discontinue his predecessors' grants to laymen.[153]

In addition, I argued above that laymen saw their family's hold on land as lasting. Moreover, even before the Angevin reforms, the tenant rejected by a new lord could look to outside support. He might, for example, seek royal help in forcing his lord to grant an escambium.[154]

However, there may be some truth in the idea that consent was less important for grants to laymen because they were less permanent than grants to

churches. Charters to laymen generally avoided the perpetuity language which was common for churches.[155] Lay families did die out, and the donor was his lay grantee's ultimus heres;[156] a church had no ultimus heres for it never died. Lay tenants might forfeit for breach of homage, a church would not.

Moreover, for the donor's heir, gifts to laymen did not involve such a loss of worldly resources or control as gifts to the church, especially those in free alms.[157] His predecessor's gift left a vassal, who would swell his entourage and do services. Unlike some churches, lay tenants do not, for example, seem to have had special protection against distress, and so were easier to compel to perform service and to answer in court concerning any misdeed. A lay vassal's loyalty might be divided between his various worldly lords, but were not complicated by other obligations which ecclesiastical tenants had.

The lay donee anyway may have been less concerned to obtain the assent of the donor's heir. He might rely more on the support of the seignorial court. On a new lord's succession, all the peers of the court faced a threat to their continuing tenure. Sometimes they may have been happy to see one of their number rejected, but usually they cannot have encouraged seignorial discretion. Some sense of their common interest would help to pressure the new lord to maintain his father's gift, increase his shame if he sought to break his father's promise that a grant would be heritable. Churches may have been excluded from such solidarity, churchmen socially separated from the barons of the court, and sometimes perhaps resented if they did not contribute to the services owed by the honour.

Given these various reasons for the rarity of charters mentining the heir's participation in gifts to laymen, it is notable that some of the few which do record consent are for reduced or nominal service. Thus in 1155x65, Richard de Rollos gave 46 acres to Godric de Skeeby in fee and inheritance, free of all

services, in return for one sore sparrow-hawk a year. The gift was made with Richard's son and heir, William, 'granting and witnessing.'[158] In such cases, the obtaining of consent was presumably aimed at preventing a future claim by the heir himself, who might feel that his inheritance had been diminished. On other occasions, the heir's consent seems rather to be a promise of protection against outsiders. Thus in 1147x63, Bertram de Bulmer gave eleven bovates in Flaxton to Asketil son of Gospatric, in exchange for the carucate Asketill held of his fee in Welburn. Bertram's son, also called Asketill, witnessed and granted the gift and Bertram promised that he and his heirs would warrant Asketill son of Gospatric and his heirs against all whose land it had been and all others.[159] The need for protection against outsiders, claimants and ex-tenants, may also explain heirs' participation in other instances, for example when the donor was a woman.[160]

Lastly, I turn to family grants. These might, for example, provide for younger sons who would not inherit lands, or endow daughters at marriage. The *Cartae Baronum* reveal that such grants were already quite common before 1135, and increasingly so thereafter.[161] However, as with all grants to laymen, few charters survive.[162]

The principles involved in family grants may not have differed greatly from those in other grants, but their weight may. Consensus was especially needed in family affairs; a conflict within the kin was seen as particularly undesirable. Moreover, as Glanvill stressed, the greater emotion involved could lead to unreasonable acts. In his opinion, a gift from inherited lands to a younger son required the heir's consent:

> Si ... plures habuerit filios mulieratos, non poterit de facili preter consensum heredis sui filio suo postnato de hereditate sua quantamlibet

> partem donare. Quia si hoc esset permissum, accideret inde frequens priusnatorum filiorum exheredatio propter maiorem patrum affectionem quam sepe erga postnatos filios habere solent.[163]

Although the logic of his norms worried Glanvill, since it left the illegitimate younger son better off than the legitimate, he accepted the result.

The laudatio is common in the few surviving charters for younger sons. The earliest examples I have found both concern substitution, the possible reasons for which I consider later.[164] Between 1120 and 1140, William d'Anesye 'gave and granted' certain of his acquisitions to his son Richard, 'by grant and will' of William his heir.[165] The charter goes on to describe the form the transaction took. William the elder, by the counsel of his friends and peers, and by the assent of his heir, gave back the fee to his lord, Henry de Port, who then seised Richard and received his homage for the service of one knight, as William had served.

A charter of *c.*1145 records another substitution, in Ralph de Tosny's court.[166] Ernald de Powis 'gave and granted' to William his son land in fee and inheritance, by the grant of his lord, Ralph de Tosny, and of his own son and heir Walter, and of his other sons Roger and Urse. Again the lands were acquisitions, which Ralph had given to Ernald for his service and homage. Ralph received William's homage and relief, and granted him the land hereditarily.

The first charter which I have found recording the subinfeudation of a younger son comes from *c.*1160x80.[167] By the consent of Ralph his son and heir, Baldwin fitzRalph de Bramhope gave two bovates to another son, Peter, for his homage and service. Peter was to hold of Baldwin and his heirs in fee and inheritance. The earlier tenurial history of these lands is uncertain, so we cannot know whether they were Baldwin's inheritance. An oddity is the large number of clerics amongst the witnesses: possibly Baldwin was dying.

The practice of obtaining consent for gifts to younger sons thus goes

beyond Glanvill's requirement, which is limited to gifts from the inheritance.[168] Why was the heir's assent obtained for alienation from acquisitions? Substitution may have been felt to extinguish the heir's interests particularly fully: he would not even receive his brother's homage and services. However, the donor may simply have wished to strengthen his gift by obtaining his heir's consent, even thought this was less necessary than for a gift from the inheritance.

Glanvill makes only a general statement about grants to other relatives.

> Potest itaque quilibet liber homo terram habens dare quandam partem terre sue cum filia sua uel cum alia qualibet muliere in maritagium, siue habeat heredem siue non, uelit heres si habuerit heredem siue non uelit, imo eciam eo contradicente et reclamante.[169]

However, as one might expect from a family occasion like marriage, some charters concerning maritagium do record family participation, particularly when they also mention the actual giving of the daughter. Thus in 1156x83 Roger Earl of Warwick gave Agnes his daughter as wife to Geoffrey the chamberlain, 'consilio regis et episcopi Wynton', et comitis Warr', et Roberti fratris mei, et aliorum meorum fratrum et meorum hominum, in maritagium.'[170] There is no sign of variation in the frequency of consent according to the size of grant, nor of decline during the twelfth century.

A potentially difficult situation was that of an elder brother making a grant to a younger. Sometimes there was no danger of disinheriting sons, living or as yet unborn. The donor might be a priest, unable to have legitimate heirs of the body.[171] Other donors, perhaps close to death, may have been unlikely to produce heir of the body. In 1109x1114, Nigel d'Aubigny, believing himself mortally ill, constituted William his brother as his heir. This is a slightly unusual instance in that William was the elder brother who held the family's continental inheritance.[172] In fact, Nigel survived until *c.*1129. William out-

lived him by ten years, but his nomination as heir had no lasting effect and Nigel's lands passed to his young son, Roger.

Unusual circumstances cannot explain all such grants to brothers. Unborn sons had no chance to object to the alienation of pieces of their inheritance. Young sons must have had little more choice about consenting to the actions of their elders. Thus a charter of 1161x6 records an elaborate exchange between Henry and Sewall the sons of Fulcher. Henry, the first born, made Sewall 'dominum et antenatum.'[173] Fulcher, Henry's son, became Sewall's man. How willing a party was Fulcher is unclear.

Grants to nephews survive from *c.*1130 onwards and seldom mention consent.[174] Occasional charters record gifts to sisters. Henry of Arden gave land to his sister Felicia, 'concessu Oliue uxoris mee et Willelmi filii mei.'[175] She and her heirs were to hold of him and his heirs in fee and inheritance. The minor service, one sore-hawk a year, may be the reason for the family's consent. However, not all mentions of consent can be explained as gifts at reduced service. In an exchange of *c.*1150, Bernard de Balliol gave certain lands to Gerold de Dumart, his 'cognatus', and his heirs, to be held of Bernard and his heirs in fee and inheritance. Gerald was to do the service of four knights, as Bernard's sons, Guy and Bernard, granted.[176]

Thus gifts to kin other than younger sons seem to have needed family assent no more than did those to other laymen. Sometimes assent may have been unnecessary because the grant was for full military service, but in others the freedom of the gift was stressed. Assent may have been particularly desirable when a likely outside threat existed, but, overall, family participation was rarely recorded.

Conclusion.

Family participation was intended to reconcile various potentially conflicting pressures, notably the donor and donee's desire to ensure the permanence of the gift with the donor's obligations to maintain his family's lands. The heir's prior consent greatly weakened his chances of discontinuing the gift. On the other hand, the absence of his consent did not *entitle* him to discontinue his predecessor's gift, and he was under many other pressures to continue it.

Various norms affected family participation. Their weight varied in relation to one another and to circumstances. Some, for example the necessity of the heir's consent for a lasting death-bed gift, might be almost mandatory, but even these may have been weaker where, for example, only distant relatives survived.

These norms were not mutually exclusive. Obtaining the heir's consent for a gift of acquisitions probably shows the donor's prudence, not the decline of the distinction between inheritance and acquisition. The more norms to which one could appeal, the better.

The laudatio parentum seems to have been notably less important in England than in France.[177] Mentions of family consent are fewer. Rarely are wide groups of relatives named, normally only heirs and, for different reasons, wives. From Normandy, unlike England, there survive strong suggestions that an heir might successfully plead that the absence of his consent entitled him to discontinue his predecessor's gift.[178]

The continuing prevalence of the diploma on the Continent can explain some of the difference, but surely not all of it. Family participation developed along different lines in England from Normandy and other areas of France. In

England, requirements for the heir's consent, and mentions of it in charters, disappear in the decades following Glanvill. In Normandy, they continued, and the Très Ancien Coutumier, of 1218x23 noted the restriction of gifts in alms or for service to one-third of the donor's free tenement.[179] Moreover, in Normandy the retrait lignager developed. In England, there is scarcely any evidence for this outside towns.[180]

One plausible explanation of the relative weakness of the laudatio is the Conquest itself. Almost all lands in the first generation after 1066 were acquisitions. The redistribution of lands in the following half century ensured that a substantial proportion of acquisitions remained. Even when lands were inherited for the first time, alienation may have remained fairly easy. Men are occasionally seen treating their *father's* acquisitions as more freely alienable than the family's ancient inheritance: a charter of 1174x85, containing no mention of family participation, emphasized that the lands which one brother gave the other were 'de conquisto patris mei.'[181]

The effect of the Conquest sounds like a sufficient explanation, but the extent of royal power in England was another force for alienability. Royal justice certainly did not pursue a free market policy, but may well have provided an important extra force for the perpetuation of gifts, particularly those to the church.[182]

The preponderance of ecclesiastical records is one reason why most, although not all, recorded cases show the king supporting the church against heirs' claims.[183] However, the bias of the evidence may not be the sole explanation for the pattern. Some general royal favour for the church may have existed. Certainly the circumstances of each case would affect the royal attitude, but the king had a special duty to protect the church, expressed, for example, in the Coronation Oath. If a church complained to him that an heir had

discontinued a gift made in perpetuity, the king might well grant his support: good men should keep their own, and their fathers', word; gifts to the church should be lasting.

There were also many clerics amongst those responsible for royal actions. As well as some bias to the church, they must have brought canonical ideas to royal justice. Even though notions such as prescription did not become part of the Common Law, this canonical background surely influenced the decision of at least some cases in the century after 1066.[184]

Moreover, royal confirmations, or at least those written down, were much more common for churches than for laymen. According to Glanvill, the royal court did not interest itself in priuatae conuentiones, and this statement may have an applicability broader than Glanvill's immediate context. A royal confirmation would take a grant outside the field of priuatae conuentiones.[185] Whether or not this is a correct interpretation, such confirmations anyway constituted promises of future help.[186]

That royal power could be seen as a way of securing gifts is also clear from Anglo-Saxon wills, addressed as they so often are to the king and queen.[187] That the threat often came from family claims in the eleventh century is clear from the will of Aethelgifu.[188] Her husband had bequeathed lands to her 'to give to whom she wished', and she now wished them to be her alms 'because they were her lord's acquisitions.' Even so, the grant was challenged by his kinsmen, but with royal help Aethelgifu was able to defeat the claim. In the Anglo-Norman period, the similar security which royal power afforded a gift may have made the laudatio seem less necessary than it did on the Continent.[189]

CHAPTER FOUR: HEIRS' PARTICIPATION: Notes.

1) Orderic, vi 174.
2) Pollock and Maitland, ii 13. Like Maitland, I use the word 'heirs' to indicate both actual and potential heirs.
3) Pollock and Maitland, ii 309.
4) Pollock and Maitland, ii 309.
5) Pollock and Maitland, ii 312-3.
6) See above, pp. 123-4.
7) Thorne, 'Estates', 195, following Plucknett.
8) For this paragaph, see Thorne, 'Estates', esp. 202, 205-6.
9) For this paragaph, see Thorne, 'Estates', 206-8.
10) Thorne cited no evidence in support of this opinion.
11) Milsom, Legal Framework, p. 109.
12) Milsom, Legal Framework, p. 121.
13) Milsom, Legal Framework, p. 122.
14) E.g. Danelaw Documents, no. 507, a grant in return for the service of one-quarter of a knight.
15) Glanvill, vii 1, Hall, p. 70; Hall's translation of 'extraneus' as stranger may be questionable. The word might mean 'someone outside the family.'
16) Milsom, Legal Framework, p. 131.
17) Milsom, Legal Framework, p. 131.
18) Milsom, Legal Framework, pp. 121-142.
19) When discussing lords' participation in grants, Milsom stresses that Glanvill does not treat every possible topic of land law; see below, pp. 224-5.
20) See above, Part One; see also Hyams, 'Warranty', 468.
21) Specific confirmation of a grandfather's gifts: Stoke, no. 36; Stoke, no. 29 includes a general confirmation of predecessors' gifts, together with some specific confirmations.
22) English Episcopal Acta II: Canterbury, 1162-90, edd. C.R. Cheney & B.E.A. Jones, (London, 1986), p. 197.
23) Perpetuity and anathemas: e.g. C.M.A., i 279-80, Robertson, Anglo-Saxon Charters, no. CXX, (= Sawyer, nos. 732, 1032). For a pre-Conquest charter playing a part in a post-Conquest dispute, see C.M.A., ii 35.
24) See Collectio Lanfranci, Cambridge, Trinity College, ms. B 16 44, pp. 246, 323, F.K.P. Hinschius, Decretales Pseudo-Isidoriani, (Leipzig, 1863), pp. 286, 369; Gratian, Decretum, C. xvi q. iii.
(References to the Collectio Lanfranci henceforth by ms. page no. and Hinschius page no.. The Trinity Cambridge ms. was probably produced at Bec in the late eleventh century. Matters concerning the Collectio Lanfranci will be clarified by Mark Philpott's on-going Oxford D. Phil thesis, Archbishop Lanfrance and Canon Law.)
25) E.g. cases concerning tithes given to the monks of Belvoir: H. M. C., The Manuscripts of His Grace the Duke of Rutland, 4 vols., London, 1888-1905), iv 129, 149, 158-160; Reg. II, nos. 1458, 1495, 1521; Reg. III, nos. 82, 83.
26) See e.g. E.Y.C., xii no. 76 for use concerning the donor's tenure of land he was giving to the church.
27) E.g. Oxford Charters, no. 21.
28) For this paragraph, see Holt, 'Rejoinder', 133-5.
29) For this paragraph, see Holt, 'Politics and Property', 12-19, 41-4; 'Revolution of 1066', 198-9, 205-6; 'Notions of Patrimony', 213-6.
30) See also above, pp. 95, 104-6, on Holt's argument that use of inheritance language in gifts, creating 'inheritances' from scratch, weakened the distinction between inheritance and acquisition, thus affecting alienation.

31) Churches too seem sometimes to have claimed some sort of right to a man's acquisitions.
32) On the Leges treatment of land law, see above, p. 16.
33) L.H.P., 70 21, Downer, p. 224. However, a similar distinction between inheritance and acquisitions may have existed in the Anglo-Saxon period: see The Will of Aethelgifu, p. 14, on which see below, p. 215.
34) L.H P., 70 21a, Downer, p. 224.
35) L.H.P., 88 14a, Downer, p. 274.
36) The translation differs markedly from that in the Quadripartitus, Liebermann, Gesetze, i 75.
37) M. Bateson. Borough Customs, (2 vols., Selden Soc. vols. 18, 21; 1904, 1906), ii lxxxvii-xci, quotation at lxxxvii. (Henceforth Bateson, Borough Customs.)
38) Town customs: Earldom of Gloucester, no. 46, Feudal Documents, no. 113. Stenton First Century, no. 7, is a rare, non-urban example of a similar kind of arrangement between brothers. On the possible existence of the retrait lignager in Anglo-Saxon England, see J.R. Goody, The Development of the Family and Marriage in Europe, (Cambridge, 1983), p. 123. For its possible later existence at lower social levels, see P. Hyams, Kings. Lords and Peasants in Medieval England, (Oxford, 1980), p. 79. (Henceforth Hyams, Kings, Lords and Peasants.)
39) The inheritance:acquisition distinction also lasted longest in towns: see e.g Bateson, Borough Customs, ii 92-3, 98-9 for examples from the thirteenth and fourteenth centuries.
40) Glanvill, vii 1, Hall, p. 69.
41) All from Glanvill, vii 1, Hall, pp. 69-74. Hyams 'Common Law and French Connection', esp. 81-4.
42) Coutumiers de Normandie; i Le Très Ancien Coutumier de Normandie, ed. E-J Tardif, (Soc. de l'Histoire de Normandie, Rouen, 1881), lxxxix, pp. 99-100. (Henceforth T.A.C. and chapter no., Tardif and page no..)
43) Stenton, First Century, no. 5.
44) A. Murray, Reason and Society in the Middle Ages, (Oxford, 1978), pp. 121-4 discusses the importance of manuals. (Henceforth Murray, Reason and Society.) For an anthropologist's view of the influence of writing on the emergence of rules, see J.R. Goody, The Logic of Writing and the Organization of Society, (Cambridge, 1986), cap. 4.
45) On the problems of evidence, see also White, Gifts to Saints, caps. 1 & 2. The usual problems, such as dating and the possibility that charters apparently recording simple grants in fact hide disputes, also apply.
46) E.g. Worcester, no. 116, a donor's charter recording his gift, does not mention consent; the donor's lord's confirmation, no. 117, attributes the gift jointly to the donor and the donor's wife and sons.
47) Because of the small numbers of charters, the large number of variables, and the problems of dating I do not represent these figures graphically.
48) E.g. the problems over the church of Dungleddy: Worcester, pp. xxxj-xxxiij, nos. 252-255; Reg. II, nos. 1754, 1755, 1938; Gloucester Cartulary, nos. CXX, CXCVIII-CCVII.
49) E.g. Reg. II, no. 803.
50) Hereford, no. 2. This is a composite document, recording gifts made on more than one occasion.
51) E.g. Registrum Antiquissimum, no. 1297, Danelaw Documents, no. 167.
52) Gilbert Crispin, p. 139, no. 15.
53) Thinking here must start with Mauss, The Gift, as in White, Gifts to Saints.
54) Danelaw Documents, no. 58. On the early history of the Kymes, see B. Golding, 'Simon of Kyme, the Making of a Rebel', Nottingham Medieval Studies

xxvii (1983), 23-6.
55) See below, p. 201.
56) Stenton, First Century, no. 5.
57) The prevalence of mentions of heirs' participation in royal diploma and mixed-style documents probably in part reflects beneficiary drafting; below, pp. 198-9.
58) See below, p. 202.
59) See below, p. 193.
60) Richmond, no. 56.
61) E.g., in a slightly different context, Richmond, no. 174.
62) See Milsom, Legal Framework, p. 124; also White, Gifts to Saints, pp. 44-5, 51, 82.
63) Richmond, no. 242. The charter reveals Ralph carefully publicising his gift.
64) Richmond, nos. 235, 39 respectively.
65) Richmond, no. 245. There is no information about the nature of the writ.
66) Richmond, no. 245. The other charter, no. 244, is termed a conuentio. For later cases, see Milsom, Legal Framework, p. 123 fn. 4.
67) This dual aspect of foreswearing interference and promising protection against others resembles the two aspects of warranty referred to by Hyams, 'Warranty', esp. 440, as repectively the negative and the positive commitments of the warrantor.
68) Hereford, no. 69.
69) See Hyams, 'Warranty', 448-451.
70) Stenton, First Century, no. 46.
71) E.g. Worcester, nos. 146-154, 159, esp. 152. See also below, pp. 227-8.
72) Examples where it is specified that the church should hold of the donor and his heirs: Stoke, no. 37; Danelaw Documents, no. 157. An exceptional group are charters to Easby, many of which contain such references: Richmond, nos. 36, 149-52, 197, 200-1, 211, 213, 235, 242.
73) See below, p. 295 and fn. 126 on p. 310.
74) See below, p. 250, on rationabiliter.
75) On such disputes in western France, see White, Gifts to Saints, pp. 76-7, 79, 146-8.
76) Stoke, no. 137.
77) See further, below, p. 228.
78) E.g. Ivo of Chartres, Decretum, pars XVI, cap. 261.
79) Orderic, iii 262.
80) See above, p. 188.
81) See White, Gifts to Saints, pp. 48-51, 61-2, 77-8.
82) Registrum Antiquissimum, no. 328. On the date of the charter, see E.Y.C., ii pp. 174, 176; there were two Simon de Chauncys, the first dying in 1168. The charter may well be his, since many such reparations were made in the wake of Stephen's reign.
83) Registrum Antiquissimum, no. 907.
84) Reg. III, no. 312. Cf. the problem concerning whether dower constituted one-third of the husband's lands at the time of marriage, or one-third of his lands in his life-time; Pollock and Maitland, ii 420-1.
85) Danelaw Documents, no. 2.
86) As with regrants on the succession of a tenant, such charters may often be the product of difficult circumstances: see above, p. 34.
87) Thorne, 'Estates', 206.
88) Confirmare in late eleventh century: Reg. I, no. 314a; E.Y.C., iii no. 1484. Twelfth century: e.g. Book of Seals, no. 507; Hereford, nos. 1, 6, 11, 44, 46, 69, 75, 76, 81, 82.

89) Concedere in second half of twelfth century: e.g. Stenton, First Century no. 5; Danelaw Documents, nos. 19, 94, 164; Hereford, nos. 81, 82, 101.
90) Hereford, nos. 75, 86 (dono), Registrum Antiquissimum, no. 1936; Stoke, no. 316.
91) E.g. for gifts, Book of Seals, no. 301; see also Hereford, no. 71.
92) For an exceptional case, see Mowbray, no. 390. Example of confirming lord's heir participating, Hereford, no. 82.
93) Reg. I, no. 26.
94) Reg. I, nos. 105, 232 include Robert's signum; nos. 105, 149, 192, 206, 237a Rufus's; 135, 149, 232, 237a Henry's. Of these, no. 105 is an untrustworthy document, no. 135 a charter of the Queen, and no. 149 a joint grant by the King and Queen.
95) Reg. I, no. 247.
96) Reg. I, nos. 301, 398.
97) Reg. II, nos. 1091, 1223.
98) Reg. II, nos. 1098a, 1102, 1131, 1224 are witnessed by William; nos. 1092, 1204 include his signum. He also witnessed no. 1108, a charter of his mother's. See also no. 1015a.
99) E.g. Reg. III, no. 694, Eustace's own charter of confirmation no. 694a; see also e.g. nos. 327, 551.
100) Reg. III, no. 372 is from *c.*1144, nos. 88, 836 from 1150x1. In addition, nos. 705, 708 recall joint grants now lost. On Henry as the main claimant to the throne see Warren, Henry II, pp. 32, 38; Z.N. & C.N.L. Brooke, 'Henry II, Duke of Normandy and Acquitaine', E.H.R., 61 (1946), 81-5. Angevin practice: e.g two of Count Geoffry's three grants to the Cathedral of Angers mention his sons' participation: Cartulaire Noir de la Cathédrale d'Angers, ed. C. Urseau, (Paris & Angers, 1908), nos. CXXXVIII, CCX; the exception is no. CCXI. None of these is a standard gift of land. See also Reg. III, no. 21, Duke Henry, together with his brothers confirms a gift to the Abbey of St. Sergius, Angers. See also Reg. III, nos. 19, 20.
101) Early in his reign, Henry's brothers sometimes witness: e.g. Round, Ancient Charters, nos. 34, 36, 38. Later, his sons may act. Henry the young king witnessing, see G. Wrottesley, 'The Staffordshire Chartulary III', (William Salt Arch. Soc., iii, 1882), 226. Two charters with John witnessing in the decade after 1175, Monasticon, vii 2; Cartae Antiquae, 11-20, no. 518.
102) Gilbert Crispin, p. 139, no. 15; Stenton Miscellany, pp. 107-8.
103) Monasticon, iv 148-9.
104) Oxford, Bodleian Library, ms. Dugdale 12, p. 267.
105) E.g. Monasticon, vi 1326, nos. iv, v.
106) P.R.O. C. 146 / C. 6859 (at least in part from the inheritance); Nichols, Leicestershire, iii pt. 2 814.
107) Nichols, Leicestershire, iii pt. 2 814; BL., Add. Chart, 47384; D.B. Crouch, 'The Foundation of Leicester Abbey, and Other Problems', Midland History, xii, (1987), 9. (Henceforth Crouch, 'Leicester Abbey'.)
108) Luffield Priory Charters, ed. G.R. Elvey, (Northants. Record Soc., vols. xxii, xxvi, 1968 & 1975), no. 1.
109) Earldom of Gloucester: no examples of laudatio for male donor;
heir witnesses nos. 34, 283;
a gift of countess Mabel, no. 167,
mentions her heir's participation.

Richmond: no examples of laudatio for gifts.
gifts certainly from the inheritance without laudatio,
e.g. nos. 3, 12, 13, 28.

Hereford: gifts with laudatio, nos. 2, 3, 82 (inheritance, see V.C.H.,

Wiltshire, x 62), 99, all to Llanthony Secunda; no. 62 to St. Peter's, Gloucester. It is unlikely that any of these lands were Roger's acquisitions. gifts certainly from inheritance without laudatio, nos. 90, 94, 119.

110) E.g. Richmond, no. 11 addressed to sons, no. 8 anathema against heirs violating gift.

111) 1130s: Oxford, no. 65 (probably from inheritance); see also Stenton, First Century, no. 37, wife as co-donor.
1140s: Stenton, First Century, no. 38 (inheritance).
1150s: Stenton, First Century, no. 46.
1160s: Oxford, nos. 52, 83; Book of Seals, nos. 221, 355.
1170s: Book of Seals, nos. 143 (probably inheritance).
E.g.s of gifts definitely from inheritance without laudatio, Book of Seals, nos. 152, 509; Oxford, no. 76.

112) Richmond, no. 358. (Acquisition, see Richmond, pp. 297-8).

113) Richmond: gifts probably from inheritance with laudatio, nos. 133, 179, 192, 227, 235, 256, 257, 367.
gifts probably from acquisitions with laudatio, nos. 150, 186, 222, 296.
other gifts with laudatio, nos. 91, 156, 158, 173, 187, 231, 343, 353, 384.
gifts definitely from inheritance without laudatio, e.g. nos. 129, 134, 337.

114) Richmond, nos. 93, 96, 114, 132 (inheritance), 293, 305.

115) E.g. Oxford, Bodleian Library, ms. Lyell 15, f. 88v, a charter of William de 'Lega' from 1164, makes no mention of assent.

116) Stoke, no. 264, where the heir receives a gift, 531, from early in the century; nos. 273, 282, 308, 335, 560.

117) Stoke, no. 333 is from 1156x73, no. 169 from the early thirteenth century: see also nos. 267, 620 from *c.*1200.

118) Danelaw Documents, nos. 167, 176, 202 (inheritance - see Danelaw Documents, pp. lvii-lviii), 203.

119) Danelaw Documents, nos. 170, 173, 175, 181, 188, 189, 190, 206, 210.

120) Danelaw Documents, gifts definitely from inheritance with laudatio, nos. 20, 48, 61.
other gifts with laudatio, nos. 3, 58, 59, 71, 89.
Exceptions are nos. 28, 56, 100, 103 (a temporary gift from acquisitions.)

121) Danelaw Documents, nos. 57, 92, 93. See also no. 94.

122) Danelaw Documents, nos. 87, 98, 113 from Henry II's reign; nos. 6, 21, 42, 106 from *c.*1170-1200.

123) Pre-1160: Registrum Antiquissimum, no. 2001.
Pre-1170: nos. 1297, 1935, 2065.
*C.*1170: no. 1146.
Later twelfth century: e.g. nos. 1111, 1114, 1117, 1144, 1257, 1342 & 1344 (grants by a woman from her dower), 1435.

124) Registrum Antiquissimum, nos. 1381, 1382, 1383, all from his inheritance, see Lindsey Survey, p. 245.

125) One example is Worcester, no. 119; the history of these lands is somewhat confused, V.C.H., Worcestershire, iii 284-5; see also nos. 117, 120.

126) Hereford, nos. 2, 3, 99

127) See above, p. 206, for the Kyme grants.

128) Richmond, no. 8.
129) Murray, Reason and Society, pp. 132-6, illuminates the two connotations of prudence in the period: it was a Christian virtue, but could also mean worldly-wise, possessing foresight. Clearly both meanings are relevant in this context of gifts to churches and their preservation.
130) See the case discussed by Milsom, Legal Framework, p. 124.
131) E.g. Stenton, First Century, no. 37; Gloucester Cartulary, no. DCCXXVIII.
132) Chronicles Stephen, Henry II, Richard, iii 183.
133) Glanvill, vii 1, Hall, p. 71.
134) On death-bed gifts, Pollock and Maitland, ii 323-9, Sheehan, The Will, pp. 115-9, Milsom, Legal Framework, pp. 121-2.
135) Liber Eliensis, p. 277; for the date, ibid., pp. 207-8.
136) Sheehan, The Will, p. 270, argues that 'the emphasis on the limitation of ecclesiastical greed is largely based on a text from Glanvill.' However, there are other examples of ecclesiastical pressure: see e.g. Henry of Huntingdon, p. 307, where the Count of Meulan resists clerical requests to return lands which - according to the clerics - he had taken by force, rather than to pass them on to his sons. From the Count's point of view, the churchmen's urgings probably sounded like clerical greed. See also e.g the twelfth-century *chanson de geste*, Garin de Loherain, where the inability of the Franks to resist the Vandal invasions is blamed on excessive death-bed gifts to the Church; White, Gifts to Saints, p. 77.
137) Glanvill, vii 1, Hall, p. 70.
138) Thorne, 'Livery of Seisin'.
139) Gilbert Crispin, p. 135, no. 8.
140) C.M.A., ii 170-1.
141) Oxford, Bodleian Library, ms. Lyell 15, f. 87, and the Abingdon Cartulary in Chatsworth Library, f. 111v., copy a charter of Ralph recording his grant. It is witnessed by Hugh de Bocland, who probably died in 1119, whereas Ralph probably only died in 1127.
142) C.M.A., ii 188-90.
143) Hereford, no. 76.
144) See also White, Gifts to Saints, pp. 33, 165.
145) Richmond, no. 228.
146) Richmond, no. 237.
147) Richmond, no. 229.
148) Richmond, no. 227.
149) Richmond, no. 228; also concerned with this gift are nos. 230, 239. For a charter recording a male donor's promise to make his lord and kin consent to a gift, see Stenton, First Century, no. 37.
150) E.g. Danelaw Documents, nos. 113, 210; Earldom of Gloucester, no. 167; Richmond, no. 256.
151) Milsom, Legal Framework, pp. 47-50; Hyams, 'Warranty', 460-3. Henry of Blois' description of his administration of Glastonbury abbey is largely concerned with cases arising from such enquiries: Adami de Domerham Historia de Rebus Gestis Glastoniensibus, ed. T. Hearne, (2 vols., Oxford, 1727), ii 305-315. (Henceforth Adam of Domerham.)
152) E.g. Hereford, nos. 45, 54; 'Mordak Charters', 97; Stenton, First Century, no. 31; see also Feudal Documents, no. 103.
153) Holt, 'Rejoinder', 133.
154) Hyams, 'Warranty', 466.
155) Perpetuity language for laymen: e.g. Reg. II, no. 1562; Oxford Charters, no. 49, Book of Seals, no. 528, Feudal Documents, nos. 149, 158.
156) Glanvill, vii 17, Hall, p. 90.

157) See above, p. 194. It should of course be remembered that a donor's heir might also benefit in many ways from a gift to the church
158) Richmond, no. 196.
159) E.Y.C., ii no. 782.
160) E.g. Book of Seals, no. 145.
161) S. Painter, 'The Family and the Feudal System in Twelfth-Century England', Speculum, xxxv, (1960), 10-11; Holt, 'Politics and Property', 43-4.
162) Hyams, 'Warranty', 475 fn. 162, remarks on the surprising scarcity of charters recording gifts in frankmarriage.
163) Glanvill, vii 1, Hall, p. 70, also p. 72.
164) See below, pp. 239-40.
165) Book of Seals, no. 301.
166) Stenton, First Century, no. 41.
167) E.Y.C., xi no. 217.
168) Glanvill, vii 1, Hall, p. 70.
169) Glanvill, vii 1, Hall, p. 69.
170) Beauchamp, no. 285.
171) E.g. Northants., no. xxii.
172) Mowbray, no. 3.
173) Stenton, First Century, no. 7. The reasons for this peculiar transaction are unclear.
174) E.g. Stenton, First Century, nos. 27, 32; Danelaw Documents, no. 476.
175) Book of Seals, no. 48.
176) Book of Seals, no. 302; see also the accompanying note, pp. 208-9, for the relationship between those involved.
177) Cf. above, pp. 198-201, with White's findings concerning western France, Gifts to Saints, esp. p. 42. See also e.g. Hyams, 'Warranty', 468-9.
178) E.g. Reg. II, no. 1921.
179) T.A.C., lxxxix, Tardif, pp. 99-100.
180) See above, p. 187; on western France, see White, Gifts to Saints, cap. 6.
181) Danelaw Documents, no. 171. See also Holt, What's in a Name?, esp. pp. 17-20, on the varying speed with which Norman families adopted English toponymic names.
182) This could explain why, in the 1180s, Glanvill did not discuss assent for grants to churches, whereas family grants were still matters more internal to the kin. However, I consider the fact that Glanvill was far from exhaustive in his coverage a much better explanation for the absence.
183) For an example of a laymen obtaining a royal writ in support of his claim, see above, p. 193. See Ramsey Chron., pp. 247-8 for an heir obtaining a royal writ in order to support his claim.
184) On prescription, see above, p. 190. However, the number of royal justices who were ecclesiastics has sometimes been exaggerated, at least for the later twelfth century; R.V. Turner, The English Judiciary in the Age of Glanvill and Bracton, c.1176-1239, (Cambridge, 1985), p. 291, 'about half of the [royal] judges were laymen ... even as early as the time of Henry II.'
185) Glanvill, x 8, 18, Hall, pp. 124, 132 on priuatae conuentiones; Hyams, 'Warranty', 470, argues in favour of a wide interpretation of the phrase.
186) See below, p. 267; see also A. Harding, 'Medieval Brieves of Protection and the Development of the Common Law', Juridical Review, (1966), 115-149.
187) Sheehan, The Will, pp. 43-4, 49; Anglo-Saxon Wills, ed. & tr. D. Whitelock, (Cambridge, 1930), e.g. nos. XVI, XXI, XXIX.
188) The Will of Aethelgifu, esp. pp. 14-16.
189) See also below, p. 313, on the Anglo-Saxon origins of the power of the Anglo-Norman state.

CHAPTER FIVE: LORDS' PARTICIPATION.

Introduction.

I now turn to the lord's participation in grants. This time, I do not deal separately with grants to laymen, clerics, and churches, but still suggest that the type of donee affected the need to obtain the lord's assent.[1] As with the laudatio parentum, seignorial participation had many aspects beyond legal ones: it was the product of social and spiritual ties, and in turn reinforced these.

Again, however, historians have dealt with seignorial participation in largely legal terms. According to Maitland, lords sometimes contested grants made without their assent. This was not because of a threat to services, for

> nothing that the tenant can do without his lord's concurrence will remove from the land the burden of that service which is due to his lord from him and from it. The tenement itself owes the service; the 'reality', if we may so speak, of the burden can be brought home by means of distress to any one into whose hands the land may come.[2]

A grant might nevertheless harm a lord. Substitution might, for example, leave him with an enemy as a vassal. It anyway enfeebled the 'solemn bond of homage.' Subinfeudation might threaten the incidents due to him.[3] Maitland hesitated as to whether there was a rule against alienation without seignorial consent, but concluded that the situation was not clear cut:

> The tenant may lawfully do anything that does not seriously damage the interests of his lord. He may make reasonable gifts, but not unreasonable. The reasonableness of the gift would be a matter for the lord's court; the tenant would be entitled to the judgement of his peers.[4]

Thus Maitland presented seignorial consent as an important condition for a vassal's gift, but distinguished the lord's and the vassal's rôles in a grant.

Holt has argued, along similar lines, that charters of confirmation show that 'the service with which the land was burdened gave the superior lord so great a say that a grant made without his approval was infirm.'[5] The lord's say was particularly great in alienation of land he himself had given to the

aspiring donor.[6] From soon after 1066, lords began to move from confirming 'the particular grants of each of their tenants to enunciating general rules governing such alienations', their motive presumably being administrative ease. However, even in the early thirteenth century, 'the general licence to alienate was still not so strong that detailed confirmation would not strengthen it.'[7]

Thorne and Milsom have criticised such arguments which tend to separate giving and consenting. For Thorne, the twelfth-century tenant was not the owner of the land.[8] At first the real owner was the lord, who was thus also the real donor. Later, as customary succession hardened, ownership was divided between lord and tenant, and so the lord must still join in the gift. A grant for full service caused no difficulty, but the tenant had to ensure that any gift free of services was reasonable if the lord's co-operation were to be gained. This needed a judgement by the lord and his court that sufficient lands remained for the tenant to fulfil his services. By the late twelfth century, Glanvill's silence reveals that the lord's consent was no longer necessary. Whereas the lord's interest had been evident so long as the vassal could be regarded only as a life-tenant, royally enforced inheritance ended this. By Bracton's time, the lord's interest was only incorporeal, and he was seised of homage and services, not in demesne. The tenant was uerus dominus of the land.

Milsom does not employ such ideas of divided ownership.[9] Twelfth-century land-holding was a matter not of ownership but of personal relationship;

> before royal control, and in particular before mort d'ancestor allowed an heir to feel that he entered in his own right rather than under a grant to himself from the lord, no tenant could think he had something which he could by himself give for ever to an institution which would last for ever: of course the lord must join in. His confirmation would not just add some marginal advantage to a self-sufficient gift. The gift was unthinkable without it.[10]

According to Milsom, Glanvill does not consider seignorial assent because it was not a problem at the time he wrote, certainly not a problem for the king's

court.'[11] However, the shift of control changed the situation. A lord previously had only a life-tenant, who could therefore give only for life. His son might renew the gift but had also to consider his other obligations, especially the 'over-riding' one to his lord. Royal control produced a title for the tenant which he could transfer as his own, although perhaps with some marginal loss to the lord. The royal court would also make the donor's son honour the grant even if it left him too little in demesne to support his lord's services. 'Royal control is creating a sort of ownership, which in this as in every other respect is incompatible with a system of truly dependent tenures.'[12]

Again Milsom is concerned with the underlying structure of land-holding relationships, partly at the expense of contemporary perceptions.[13] I suggested above that vassals saw themselves not only as more than tenants for life, but also as capable of making lasting alienations, and that the heir's discretion over the renewal of gifts was limited.

The Leges and Glanvill provide little help here, mentioning only the vassal's general obligations to his lord. Thus the Leges Henrici state that 'omnis homo fidem debet domino suo de uita et membris suis et terreno honore et obseruatione consilii sui, per honestum et utile, fide Dei et terre principis salua.'[14] Similarly Glanvill wrote 'generaliter nihil de iure facere potest aliquis salua fide homagii quod uertat ad exheredationem domini sui uel ad dedecus corporis sui.'[15] Such are the principles which underlie lords' participation in gifts.[16]

As usual, one is left relying on charters and cases, with the same difficulties as for heirs' consent. Moreover, mentions of lords' consents are too few to give a clear indication of chronological change. A detailed numerical analysis is therefore beside the point and excluded.

Subinfeudation.

I begin with subinfeudation. Firstly, I examine why the lord's assent was requested and why it was given. Secondly, I ask whether lord and vassal were essentially associated in the act of *giving*. I show that contemporaries were quite clear thet donor and lord had very different roles. Thirdly, I argue that the need for the lord's participation varied with circumstances.

With respect to land-holding, lords' participation had two purposes. It was intended both to increase the security of the gift and to protect the lord's own interests, by preventing grants to his enemies or loss of services. It constituted a promise that the lord himself would not interfere with the gift and that he would attempt to maintain it against threats from others.[17]

Both donor and donee sought the lord's confirmation. In 1135, Stephen, Count of Brittany, addressed to Henry I a charter recording his gift of lands in Cambridge to Bury abbey. He prayed that Henry 'grant this and make it hold in perpetual stability.'[18] Donees' desire for confirmations is clear, for example from their obtaining charters by which a lord confirmed all his men's gifts to them.[19] A donee might also make a lord a gift in return for his confirmation.[20]

The lord himself would be the main threat to any vassal's gift which displeased him. Only records of completed gifts generally survive, so information is very scarce on lords refusing to permit grants, or seizing back gifts to which they had not consented.[21] However, explicit statements in gifts that the donee might do as he wished with the land indicate some sacrifice of control on the part of the donor, who was now the donee's lord.[22] The occasional descriptions of gift ceremonies involving the lord's consent show real negotiation. In 1147x1187 William Earl of Gloucester 'granted and by his charter confirmed' Walter de Claville's gifts of alms to Canonsleigh Abbey. He

did so at the petition of Walter and his son and heir, made in his court in the presence of his barons. Walter and his son then undertook to acquit the alms against the Earl and his heirs of all secular service. It appears that the confirmation was made in return for the donor's promise to retain responsibility for the services.[23]

The lord's heirs might also be a threat. In the 1150s, Roger de Aske founded the convent of Marrick. Warner fitz Wimard, steward of the Earl of Richmond, confirmed the gift by his charter, 'ne prolixitate temporis obliuioni tradatur aut aliquis heredum meorum hoc denegare presumat.'[24] Late in the same decade, Peter de Studley confirmed Nicholas de Bealy's gift to Bordesley Abbey, in perpetual right, to be held 'absque ulla heredum meorum uexatione.'[25] The word uexatio, reminiscent of the writ ne uexes, may suggest that the immediate concern was that the lord's heir would seek services from the gift, rather than simply seize it back. Repeated refusal to answer concerning services might itself lead to the lord reseising the land.

The lord's confirmation could also provide protection against the misdeeds or mishaps of the donor himself. Between *c.*1155 and 1177 Robert fitzHugh de Tateshale confirmed a gift by William fitzHervey to the Templars.[26] If William and his heirs were unwilling to hold to the gift, at William's request Robert and his heirs were to 'justice' them to do so.

In addition, the lord's confirmation might secure the gift against the donor's forfeiture or escheat. The Norman Très Ancien Coutumier of *c.*1220 states that 'si autem donator sine herede decesserit, uel terram forisfecerit, ad dominum redibit totum feudum, non obstante donatione, nisi assensum prebuerit.'[27] Charters suggest that this is applicable to twelfth-century England. In 1123x53 Earl Roger of Warwick 'granted' Hugh fitzRichard's gift of Bearley to John of Kington, to be held of Hugh and his heirs: 'et si in manum

meam inciderit, similiter tenendum de me et de meis heredibus.'[28]

The lord's help was also requested to force the donor's heirs to maintain the gift. A royal writ of 1130 illustrates the danger of the lord and the donor's heir co-operating against a gift: Walter Espec and Eustace fitzJohn were to ensure that whatever Robert Fossard or Bertrand de Bulmer had seized since the death of Ansketill de Bulmer was to be entirely restored to Nostell Priory. Robert was Ansketill's lord, Bertram his son.[29]

Lords might provide protection against other parties. In 1164x81, Richard de Rollos confirmed the abbey of Humbye's gift to Easby, of the alms which he had given Humleye. No-one, 'either heir or anyone else at all', was to molest the canons.[30] The lord might provide further protection by not simply confirming the gift but also adding privileges. Thus Henry I ordered that the abbey of Romsey hold various gifts from Stephen fitzArard, especially the tithe of Whitsbury, and not be impleaded concerning it except by the king's command.[31]

Outside interference might well result from a claim against the lord for the land. The lord's confirmation constituted a promise that the land had been his, or his predecessors', to give in the first place. Thus in 1157x8, Warin fitzGerold and his brother, Henry, gave land in Sawbridgeworth, Hertfordshire, to Robert Blund of London. Geoffrey de Mandeville III, Earl of Essex, confirmed the gift. Geoffrey may have been routinely acting as a good lord, his confirmation the more necessary because the lands were Warin and Henry's acquisitions.[32] However, it is also notable that whilst Sawbridgeworth had been held by Geoffrey de Mandeville I in 1086, it was later lost to the family and only returned to Geoffrey in *c.*1141.[33] Geoffrey's confirmation thus emphasized that the land had been his to give, despite earlier tenurial quarrels.

The effect of a lord's confirmation was not entirely limited to his own

time. A predecessor's confirmation would encourage a lord to intervene in a dispute, even if he could not be forced by law to do so. In 1156x1166, Geoffrey de Mandeville wrote to his brother Ernulf.[34] The abbot and monks of Colchester had complained to Geoffrey that Ernulf had unjustly and without judgement disseised them of land in Nuthampstead, Hertfordshire, which Ralph de Nuers had given them and placed on the altar in alms, and which they had held in Geoffrey's father's time. Ernulf was to reseise them or do them full justice in his court 'since my father loved and maintained the church of Colchester and confirmed their tenures. And I too wish to confirm and maintain them in similar fashion for the love of God.'[35]

Why did the lord consent to his vassals' grants? In part, no doubt, it was simply assumed that men would grant away lands. Confirmations also reinforced the bond between lord and vassal. They were manifestations of good lordship.

Hardly surprisingly, confirmations did not come free. The 1130 Pipe Roll records that Richard Guiz owed two destriers for the grant of the land which Hugh de Laval had given him.[36] Occasionally charters record gifts to the lord confirming. These may have been not merely payments but also a way of symbollically making the confirmation binding. In 1137, Earl Roger of Warwick granted to Swain Heved one hide in Oxhill, Warwickshire, which Swain had bought, in the Earl's presence, from Robert the doctor. Swain gave the Earl half a mark for the concession.[37]

The lord might also benefit from the closer link established with the sub-tenant, in unusual instances entering into a direct relationship with him. In 1144x8, Earl Gilbert de Clare granted the agreement which Hugh Tirel, his cousin and vassal, had made with Gervase de Cornhill about his manor of Langham, Essex, which was of the Earl's fee.[38] Gervase gave Gilbert a silver cup 'pro hac

guarhanto faciendo.' Here the word 'warrant' seems to be equated with 'confirmation', an unusually clear sign of the purpose of such grants. From *c.*1153 comes a second charter, of Earl Roger, granting the same 'agreement and gift' on the same terms, and specifying that for the agreement Gervase had given Hugh 100m. of silver for his journey to Jerusalem.[39] If Hugh's heirs were unwilling to keep the agreement, the Earl was to warrant it for Gervase and his heirs. And if the manor fell into the Earl's hands, Gervase and his heir [sic] were to hold of the Earl and his heirs 'in capite finabiliter' for the service of one knight. The relationship of sub-tenant and confirming lord was sealed by Gervase becoming the Earl's man and giving him a good horse.

If the grantee was a church, the lord would expect his share of spiritual benefits in return for his confirmation. In 1107x8, William Guizenboth gave the Abbey of Abingdon a hide in Dumbleton, by the consent of his lord, Robert Count of Meulan, of whose fee he held that hide. Robert's confirmation charter records that William and William's friends and his own barons had asked him to grant this hide which William had given in his and his barons presence: 'quod libenter annui, et uoluntarie concessi, quia de feudo meo erat, pro remissione peccatorum meorum et anime mee salute.'[40]

In such a context, it is not surprising that some seignorial confirmations included spiritual threats, in addition to the physical support they offered. William Earl of Gloucester's confirmation of Robert fitzHamo's gift to Cranborne Priory ended 'Qui autem hanc meam concessionem et confirmationem meam fregerit uel minuerit, anathema sit nisi ad emendationem ueniat.'[41]

Donors who included their lords in pro anima clauses must have hoped for such confirmations. In 1152x73, William son of Angot made a gift to Stoke by Clare, for the soul of Earl Gilbert de Clare and the salvation of Earl Roger his lords, and for his own salvation and that of his ancestors. His charter,

addressed to Roger and all friends and neighbours, closed

> quare uolo et desidero, precor et ex parte Dei et Beati Johannis Baptiste obnixius obtestor quatinus hanc elemosinam pro salute uestra et omnium uestrorum prenominatis monachis in fide et dileccione manuteneatis, ut et ipsi attencius et deuocius Christi misericordiam pro salute dominorum meorum et mea, unanimi supplicacione iugiter exorent.[42]

Religious benefit, good lordship, and the securing of gifts were thus united.

Can we go further, to assert that the granting language of lords' confirmations signifies that the lord was essentially associated in all gifts his tenant might make?[43] Charters, whether to laymen, ecclesiastics, or churches, usually referred to the tenant as giving, and the lord as granting or confirming. This was so even when the lord joined in the gift ceremony: 'ego Robertus comes Leycestrie et Robertus filius meus concessimus ecclesie sancte Marie Becci et super altare ponentes in perpetuum firmauimus donacionem quam Willelmus de Braolio dedit eidem ecclesie.'[44] The main twelfth-century change was the increasing use of confirmare, often with connotations of writing, to supplement concedere in describing the lord's part.[45]

The verb dare, which might suggest that the lord played an essential part in *giving*, only appears occasionally. I have found no instances in the charters of William I or Rufus, but several amongst those of Henry I.[46] In some, the original donors were royal ministers. Thus Henry 'granted and gave' to the Hospital of St. Peter's, York, the land which John the Larderer had given.[47] Sometimes there is no explanation. In 1105x6, Henry 'gave and granted' the manor of Coln to Gloucester Abbey, as Roger of Gloucester had 'given and granted'.[48] When a case concerning the land arose in 1127, the resultant royal charter states that Roger had given the manor and the king had granted the gift at Roger's request. Two chronicle accounts also distinguish between Roger and Henry's roles.[49] That a series of Henry I's and Stephen's charters for Tynemouth used dare suggests either an unusual drafting custom of one

beneficiary or the copying of a formula from one unusual charter.[50] Overall, use of dare is rare in Stephen's reign.[51] Henry II 'gave and by the present charter confirmed' a gift by Geoffrey Ridel, archdeacon of Canterbury, but this instance is exceptional among his charters.[52]

Dare is unusual in private charters too. Two charters of Robert Earl of Gloucester state that he 'gave, granted and confirmed' to Montacute priory specified lands, as previously given by Robert de Haia, who was the Earl's man.[53] There is no clear reason here for the use of dare. Even charters using dare in one passage omit it elsewhere. Between 1138 and 1143, Gilbert, Earl of Hertford 'gave and granted and by his charter confirmed' all his predecessors' and his men's gifts of land and alms to the priory of Stoke but the charter ends 'I have granted and confirmed all these things to the aforesaid monks.'[54]

Of the charters which I have examined, only Robert Earl of Warwick's use dare at all frequently, the word appearing in three of his twelve relevant documents. One concerned a death-bed gift by John, the Earl's valet: here the circumstance of the gift and the occupation of the donor may explain the unusual granting verb.[55] The second confirms a gift by Thorbert son of Aethelwulf, obviously an Englishman, to St. Mary of Combe.[56] The third concerns land which firstly his wife and then Nigel de St. Maria and the rustics of Walton, 'with their assent granted and gave' to the church of Wellesbourne.[57] A wife's gifts were often also attributed to her husband.[58] The mention of the rustics is more striking. Their lands may have been peculiarly closely associated with their lord.[59] Overall, the Warwick examples help to define, rather than contradict, the general pattern.

A clause in Henry I's Coronation Charter concerned with death-bed distribution of chattels makes the evidence of granting language more striking: 'Et si quis baronum uel hominum meorum infirmabitur, sicut ipse *dabit* uel *dare*

disponet pecuniam suam, ita *datam* esse *concedo*."[60] The same distinction in granting language is thus made both for confirmation of gifts of chattels, over which men certainly had freedom of disposal, and of land.

Even if the lord did not 'give' the land as any kind of owner, his association in giving might still be seen as essential if contemporaries viewed his *consent* or *confirmation* as necessary. Some charters simply record the lord's consent,[61] or state that the original grant was made in his court,[62] or the witness list may reveal this as the venue.[63] Sometimes a charter of the lord would have been the sole written record of a vassal's gift.[64] One such group survives from the honour of Bramber during the third quarter of the twelfth century. A charter of William de Braose records that William de Lancinge had given certain lands to the church of St. Peter of Seles, and that at his wish he, William de Braose, had provided his assent, saving his right.[65]

However, for various reasons, the need for the lord's consent is better taken as a norm, the strength of which varied with circumstances, rather than as a requirement. Firstly, the relative power of lord and tenant must have been important. Sometimes great men were tenants of lesser ones, sometimes lords had enfeoffed most of their lands to one tenant, sometimes clear evidence survives of the lord's problems in controlling a strong tenant.[66] Did such powerful vassals really need their lords' consent for alienation? I have found no charters recording consents or confirmations in relationships of this sort. This is surely not simply a result of the evidence. A weak lord would have had great difficulty in preventing a gift by a strong vassal. Nor would the consent of an inferior lord increase the security of a great man's gift. In contrast, lesser men may often have made their gifts in their lords' courts; perhaps they had no courts of their own, or perhaps they desired the publicity of a greater

assembly, together with the consent of their lord. At the same time, the lord could more easily regulate alienations by such lesser men.

Secondly, the lord's concern with alienation varied with the donee. A charter of Earl Roger of Warwick clearly illustrates that alienation to the church particularly worried lords, at least by the mid-twelfth century. Hugh fitzRichard, with his son's assent, gave William Cumin the whole manor of Snitterfield in fee and inheritance, in such a way that William could give the manor to whomsoever he wished by hereditary right, 'whether to a cleric, a layman, *or even, if he wished, to religion*'.[67] Hugh and his heirs were to acquit William or those who held the manor, of all services pertaining to the Earl and his heirs. I discussed above why the donor's heirs felt that they retained greater control over a gift to a layman than to a church. Similar reasons affected the lord's attitude: the loss of services, of jurisdiction, and of possible reversion and other occasional profitable rights of lordship.[68]

Thirdly, the vassal's tenure might affect the lord's control. Ministerial lands were peculiarly closely linked to the relationship of man and lord, and charters confirming officials' gifts are notably common.[69] We have also seen the verb dare was used with unusual frequency in confirmations of ministers' gifts.[70]

The lord's participation may have been especially needed for alienation of acquisitions.[71] We shall see that such alienations were often by substitution, in which the lord played an essential part. Occasionally the charters explain that a man's hold on his acquisitions was weaker in relation to the lord who had given them to him than was his hold on his inheritance; hence the need for the lord's participation.

Fourthly, the lord's consent was particularly desirable when the gift was in special need of protection. The lands might have had a difficult history.[72]

Or the donor might be a woman. Tiffany daughter of Roald the Constable had to obtain the assent of her lord and brother.[73] Henry I granted to St. Peter's, Gloucester, the land which Aline wife of Roger d'Ivry had given it, to Walter de Beauchamp the land given him by Adeliza, wife of Urse d'Abetot.[74]

Similarly, seignorial confirmation was desirable for death-bed gifts, and for gifts by men entering monasteries, on the brink, as it were, of worldly death. Roger Earl of Warwick confirmed Robert de Montfort's gift to Thorney Abbey, made on the day Robert gave himself to the church. Robert later made another gift 'in his illness' and specifically asked that Roger confirm it. In this case, even the Earl's confirmation did not stop Robert's brother from disturbing the gift in Stephen's reign.[75]

Lastly, lords seem to have played an unusually large part in family gifts. For reasons considered below, such gifts were often by substitution, in which lords were necessarily involved. Charters recording family subinfeudations also seem to mention seignorial participation with unusual frequency.[76] Under Henry II, Roger of Benniworth gave the village of Little Sleeping to Matthew his brother, to hold in fee and inheritance by the service of half a knight. William de Roumare witnessed the transaction, and issued his own confirmation.[77]

The lord may have had good reason to desire some family gifts. It may have originated in his suggestion, for example that a weak man give up his land to a stronger but younger brother. Other family gifts might be welcome for different reasons. Robert Earl of Leicester 'granted and by his charter confirmed' Geoffrey Ridel's gift to his brother Ralph Basset of all the land which Geoffrey had held of the Earl.[78] Ralph and his heirs were to hold of Geoffrey and his heirs in fee and inheritance by the same service as Geoffrey held of the Earl. The gift was made in the presence of the Earl and his son and with their consent. The purpose appears to have been to simplify the

Basset holdings by dividing up their lands according to honours, and this may well have benefited the earl. On other occasions family gifts may have been less welcome to the lord since they were often made at reduced service. Record of the lord's consent was therefore desirable in order to prevent later trouble.

Lords were thus concerned to protect their vassals' grants, but also wished to protect their own interests. One fear might be that the gift was to the lord's enemy. The Très Ancien Coutumier mentions mortal enmity with the donee as good grounds for a lord to refuse to consent to his vassal's gift.[79] The provision in Henry I's Coronation Charter that the king would not forbid his men to give their relatives to anyone in marriage, 'excepto si eam uellet iungere inimico meo', encourages one to see this as a widely applicable norm.[80]

The other major concern was services, as just mentioned in relation to family gifts. I shall here concentrate on grants to the church. Lords' charters confirming tenants' gifts often state that they released the donor from the services due from the gift. For example, in 1132, Henry I quitclaimed the monks of Rievaulx of geld and various other dues from nine carucates given by Walter Espec from his demesne, and also specified that Walter should be quit.[81]

The freeing from services need not coincide with the original gift, and clearly could concern not only the donor's immediate lord but all superior lords. Thus a charter of William de Braose from 1150x69 records that Humphrey de 'Changhetona' had granted specified lands to William Bernehus in fee farm for 12d. a year and service to the king. Approaching his death, William Bernehus gave these lands in alms to the monks of Sele, and Humphrey granted this, saving his own right. Afterwards, Humphrey granted the same land to the monks quit of the rent and royal service. William de Braose, in whose presence this grant was made, granted it and confirmed it by his charter.[82]

As in Humphrey's initial concession of the above grant, the lord's confirmation did not always involve quittance of service. We saw that Walter de Claville obtained the Earl of Gloucester's confirmation of his gift to Canonsleigh partly *by promising* that he would fulfil the services.[63]

If the lord did not release the services from a gift made at reduced or no service, the donor was left with fewer resources with which to fulfil his total services. If he defaulted, the lord might distrain him by his lands and in the last resort disinherit him. This involved all lands the vassal held of the lord and hence threatened those given to the church. A strong opinion existed against churches forfeiting lands or being distrained. We have seen that one purpose of seignorial confirmations was to protect grantees against forfeiture by the donor or his heirs.[64] Other charters record lords' promises not to distrain lands given in alms by their vassals. A charter of Henry I, probably from 1132, granted the canons of Llanthony land given by Nigel fitzHerfast, with the consent of Henry de Albini of whose fee it was. The king wished the canons to hold freely of all services to Nigel and his heirs. If Nigel defaulted in serving Henry de Albini for that land, Henry was not to distrain ['iustificabit'] him by the canons' land but by the other land of his fee.[65] If a man made a gift to the church at a minimal rent, the lord might promise not to distrain the church except for that rent.[66]

In the absence of a specific provision concerning services, disputes may often have arisen. An unusual document of Henry II's reign could record the settlement of one such case. William fitzRobert of Barkwith acknowledged that he would do his lord, Thomas fitzWilliam, forinsec service from the other fee which he held of Thomas for all the lands he had given in free alms to Bullington Priory.[67]

Do such statements about services indicate that they formed the main

interest underlying the lord's consent? In the mid-twelfth century, Earl Roger of Warwick granted and quitclaimed from himself and his heirs in perpetual alms the gift of all Cawston, which Ingelram Clement, Ralph his brother, Thurkill of Cawston, and their heirs had *given* to the abbey of Pipewell, with the consent of Henry of Arden and his heirs. Roger himself and his wife and heirs *gave*, granted, and quitclaimed to the abbey all the service from Cawston which Henry de Arden and his heirs owed to him and his heirs.[66] Here the lord is not seen as a co-donor of the land; rather he is seen as donor of the services, his tenant as donor of the land. The lord's association, therefore, appears essential not so much for his tenant to make any gift, but rather for the tenant to make a gift at reduced service without himself having to continue to do full service. Such an association is very different from, and more limited than, that envisaged by Thorne and Milsom.

Substitution.

All the surviving evidence suggests that the lord's participation was essential for substitutions during this period. Such grants were made by the donor surrendering the land to his lord who then granted it to the donee.[89] The homage ceremony publicised the new tenant's title, and made clear who was his lord. Beneficiaries might desire grants in this form since they would generally obtain thereby a more powerful lord and warrantor than by sub-infeudation. Certainly two powerful vassals might force a weak lord to co-operate. However, examples are lacking, and one may wonder whether men would have thought of, or desired, them. They would not provide the donee with the desirable powerful lord and warrantor. I now indicate the two main types of grant made by substitution, and briefly suggest further specific reasons why in these circumstances substitution was chosen rather than subinfeudation.[90]

A large proportion of substitutions concern alienations of lands the alienor had received from the lord to whom the alienee would do homage. The obvious reason is that a tenant's title to his acquisitions was weaker, vis-a-vis the lord who had given them to him, than to his inheritance.[91] Just as inherited lands were perceived as, in a sense, more closely attached to the tenant's family, and hence the heir's participation was especially desirable for their alienation, so too might acquisitions be seen as more closely tied to the lord who had granted them, and hence seignorial participation was especially needed if the tenant wished to alienate them. A charter of Henry I states that Osbert fitzPons had given Longney to the monks of Malvern, in the king's presence. It makes clear the common advantage of substitutions, declaring that the king had taken the church 'into the maintenance and defence of his royal power'. However, it also indicates the desirability of substitution for the

alienation of acquisitions:

> sed ut eam futuris temporibus honorabilius possiderent, in manu mea illam sicut *quam non parentum successione, sed patris mei gratuito dono habuerat*, ab omni sui uel heredum suorum reclamatione solutam et quietam reddidit, et ego eam prefato monasterio et eiusdem loci fratribus manu propria dedi, et in perpetuam elemosinam regia auctoritate confirmaui, ut ipsam de cetero cum omni libertate et quietudine secularis seruicii de me et successoribus meis in capite teneant.[92]

Such grants were not only made when the king was involved. A charter of Roger de Mowbray, from the mid-twelfth century, shows a self-proclaimed sale being made by surrender and admittance.[93] Roger 'granted and gave' to Whitby Abbey all the estate ['tenuram'] which Reginald Puher had held of him and had 'given back and left' into his hand: 'Reginbaldus autem Puer uendidit ecclesie prefate de Wyteby totum ius quod habuit in prefata terra et reliquid [sic] mihi ad opus illorum et ego reddidi eis et saisui per idem lignum per quod et recepi illud.' At least some of these lands were acquisitions.[94]

Family arrangements constitute the other large group of substitutions recorded in charters. We examined above the cases of William de Anesye, Ernald de Powis and Henry son of Fulcher.[95] Not all such grants were of acquisitions. A charter of Henry I concerns Ralph Basset's inheritance. Nicholas Basset 'gave back and quitclaimed' to the king all the lands he held in chief and the king 'gave and granted' them to his brother Richard Basset and his heirs to be held in chief. The 1130 Pipe Roll duly records that Richard owed two hundred marks of silver and six destriers for the land which Nicholas held of the king in chief.[96]

Why did family grants take place by substitution? There may have been some general feeling that homage should not enter into family relationships.[97] Glanvill's discussion of forisfamiliation could imply this: 'Potest siquidem filius in uita patris sui ab eo forisfamiliari si quandam partem terre sue assignet pater filio et saisinam faciat ei in uita sua ad peticionem et ad bonam

uoluntatem ipsius filii, ita quod de tanta parte ei sit satisfactum.'[98] This seems to mean that a gift with seisin and homage could be incompatible with a full familial relationship. However, there is no strong evidence for such a feeling, and lordship often did enter into family relationships.[99]

By Glanvill's time there was a more specific, although connected, reason for the use of substitution in family gifts: 'generaliter uerum est secundum ius regni quod nemo eiusdem tenementi simul potest esse heres et dominus.'[100] Take the following example. An older brother enfeoffed a younger. The older is succeeded by his son. The younger then dies childless. The older brother's son might seem the obvious heir but is barred by the above norm. Had the alienation been by substitution, the older brother's son would not have been lord, and so could be heir. Can this norm explain some of the family substitutions we have seen taking place from the earlier twelfth century? Unfortunately, my research has not allowed any advance on the usual, rather vague, attribution of the emergence of the norm to Henry II's reign.[101]

Conclusion.

Seignorial participation, be it in subinfeudation or substitution, was thus intended both to protect the lord's interests and to strengthen the gift. Overlords also confirmed gifts with the same purposes and motives. In 1106x21, William de Warenne granted to St. Pancras, Lewes, land and pasture which William de Harpingden had given, 'annuente Willelmo de Petreponte de quo eos tenuit, et ut hoc donum concederem postulante.'[102] Grantees sought other high-level confirmations. Churches turned to bishops and the Pope,[103] and occasional records survive of laymen gaining ecclesiastical confirmation of their gifts of alms.[104] Best of all, the king would confirm the gift, bringing both personal power, the aura of royal authority, and the possibility of royal justice. A church might benefit greatly from an order that a gift be treated 'sicut dominica elemosina mea.'[105]

By the early thirteenth century, lack of freedom to alienate was associated with villein tenure. This sharp distinction was the product of legal change during the period *c.*1170-1220.[106] Previous distinctions were less sharp. I have argued that relative power detemined the degree of the lord's control over his tenant's alienations.[107] A feeling may also have existed that men of a certain status, perhaps connected to their tenure, were freer to give their lands than were men of lower status. We saw above that it was lesser men who made their grants in their lords' courts and that the verb dare was used to describe a lord's confirmation of a gift by his rustici.[108]

Other forms of transaction, which show great control invested in the lord, point in the same direction. The most notable is forced attornment, whereby a lord transferred a vassal and his land and services to a new lord. Some examples of families who held extensive lands being transferred to great

magnates occur in the late eleventh century.[109] Early twelfth-century evidence clearly shows that great men felt they should not be treated thus,[110] and by the second half of the century, lords were promising that they would not forcibly attorn even fairly minor men.[111]

Sometimes a lord would give his vassal's land to a new beneficiary, whilst offering the vassal an exchange. The pattern of land-holding was thus changed but not the personal relationship of lord and vassal. How much choice these tenants had concerning the whole transaction is uncertain.[112] A charter of William de Roumare, Earl of Lincoln, from 1142, records an important example. He, his son and heir, and his wife, gave various lands to Rievaulx. Since these were not of his demesne, he gave exchanges to those men who held in fee and inheritance. The striking implication is that the lord did not feel bound to give exchanges to those not holding in fee and inheritance.[113]

By the time Richard fitzNeal was writing in the late 1170s, the land of villeins was already seen as peculiarly belonging to the lord.[114] Hence they may have been seen as less free to dispose of lands, the lord freer to dispose of them. The correlative may be that other tenants increasingly felt lands to be their own and that they should be free to alienate them.[115]

CHAPTER FIVE: LORDS' PARTICIPATION: Notes.

1) See below, p. 234.
2) Pollock and Maitland, i 330. On ambiguity as to whether services rested on man or land, see below, p. 286 and fn. 67 on p. 307.
3) Pollock and Maitland, i 330.
4) Pollock and Maitland, i 343.
5) Holt, 'Notions of Patrimony', 202.
6) See below, pp. 234, 239-40.
7) Holt, 'Notions of Patrimony', 203-4.
8) For this paragraph, see Thorne, 'Estates', 205, 208-9.
9) On the general differences between Thorne and Milsom's approaches, see above, pp. 6-7.
10) Milsom, Legal Framework, pp. 120-1.
11) Milsom, Legal Framework, p. 121.
12) Milsom, Legal Framework, p. 121.
13) However, Milsom's use of the word 'feel', Legal Framework, p. 120, is an unusual instance where he seems to be taking into account the contemporary perception; in fact the feeling he attributes to the twelfth-century man is based on his own juridical deduction, not on that man's expressed feelings; hence his confidence that gifts without the lord's participation were 'unthinkable'.
14) L.H.P., 55 3, see also 75 1-2, 88 14; Downer, pp. 172, 232, 274.
15) Glanvill, ix 1, Hall, p. 104.
16) With respect to lords' participation, the Très Ancien Coutumier often provides suggestive material lacking from Glanvill; see below, p. 227.
17) Cf. Hyams, 'Warranty', 440.
18) Richmond, no. 11.
19) E.g. Stoke, nos. 23, 37.
20) E.g. Book of Seals, no. 84, on which see below, p. 229.
21) The twelfth-century examples in Pollock and Maitland, i 341 fn. 3 all concern alienations by churches without the king's permission. For the thirteenth century, see D.W. Sutherland, The Assize of Novel Disseisin, (Oxford, 1973), pp. 86-96; at p. 88 he states he found only one example between 1215 & *c.*1250 of the king's court upholding the right of a lord to seise back his tenant's gift made to a church at greatly reduced service. (Henceforth Sutherland, Novel Disseisin.)
D. Walker, 'Miles of Gloucester, Earl of Hereford', Trans. Bristol and Glos. Arch. Soc., lxxvii (1959), 81-83, argues that Hereford, no. 72 is a twelfth-century example of a lord refusing to consent to his vassal's grant; the argument that the documents record such a dispute is not wholly convincing.
22) E.g. T. Madox, Formulare Anglicanum, (London, 1702), p. 1 no. ii, on which see below, p. 234, (henceforth Madox, Formulare Anglicanum); BL, ms. Cotton Julius C vii, f. 218. Cf. also e.g. Reg. II, no. 1522.
23) Earldom of Gloucester, no. 44. See also Glanvill, ix 1, Hall, p. 104, cited above p. 225, on men acting to the disinheritance of their lord.
24) Richmond, nos. 173, 174 respectively; see also no. 175.
25) Book of Seals, no. 153.
26) Richmond, no. 389.
27) T.A.C., lxxxix, Tardif, p. 100.
28) Reading Cartulary, no. 578. See also Book of Seals, nos. 84, 105, below pp. 234-5; Orderic, iii 184.
29) Reg. II, no. 1662. The dispute may have continued in Henry's reign, or revived under Stephen, for E.Y.C., ii no. 1017 records Bertrand's grant

and confirmation in 1148x53 to Nostell of the alms his father had given.

30) Richmond, no. 194.

31) Reg. II, no. 811.

32) Facsimiles of Royal and Other Charters in the British Museum; vol. i, William to Richard I, edd. G.F. Warner & H.J. Ellis, (London, 1903), no. 43. (Henceforth British Museum Charter Facsimiles.)

33) Hollister, 'Misfortunes of the Mandevilles', esp. 20, 27.

34) Cartularium Monasterii S. Johannis Baptiste de Colecestria, ed. S.A. Moore, (2 vols., Roxburghe Club, London, 1897), i 176. On Ernulf, above, p. 155 fn. 55.

35) On the effect of warranty on the original warrantor's heirs, see Hyams, 'Warranty', 469-474.

36) PR 31 HI, p. 34.

37) BL Add. Chart. 21493.

38) Book of Seals, no. 84; see also Round, Feudal England, pp. 470-1. On Gervase, see Round, Geoffrey de Mandeville, pp. 304-312.

39) Book of Seals, no. 105.

40) C.M.A., ii 102; Robert was the first witness of Henry I's charter confirming the same gift, C.M.A., ii 103. One wonders how important was his influence at court in obtaining this confirmation.

41) Earldom of Gloucester, no. 51.

42) Stoke, no. 381.

43) See above, pp. 229-230.

44) Select Documents of the English Lands of the Abbey of Bec, ed. M. Chibnall, (Camden Soc., 3rd. Ser., lxxiii, 1951), no. 26. For another charter the language of which clearly distinguishes the rôles of lord and tenant, see E.Y.C., xii no. 15.

45) Confirmare; 1100-1130: e.g. Reg. II, nos. 602, 890, 1041, 1156 etc.; Stenton, First Century, no. 20; Earldom of Gloucester, no. 82.
1130-1160: Reg. III, nos. 85, 101, 104, 132, 138, 139, 182, 183, 185, 193, 229, 237, 238, 241, 242 etc.; Stenton, First Century, nos. 9, 46; Stoke no. 34; Earldom of Gloucester, nos. 13, 51, 68.

46) Reg. II, nos. 706, 714, 784, 1012, 1170, 1249, 1327, 1399.

47) Reg. II, no. 1327.

48) Reg. II, no. 784; See also no. 706.

49) Reg. II, no. 1485; Gloucester Cart., i 69; William of Malmesbury, Gesta Regum, ii 521.

50) Reg. II, no. 1170; Reg. III, nos. 905, 906. See also e.g. Reg. II, no. 1012, a diploma of Henry I giving, granting, and by his charter confirming everything his father gave to St. George of Boscherville. This diploma displays many unusual features in its drafting.

51) Reg. III, nos. 203, 247, 586, 699, 864; see also no. 116a.

52) Cartae Antiquae, 11-20, no. 452. See Reg. III, no. 586 for another instance of dare with reference to a gift by an archdeacon.

53) Earldom of Gloucester, nos. 156, 157.

54) Stoke, no. 23.

55) P.R.O. E. 164/22, ff. 10v.-11.

56) BL ms. Cotton Vitellius, A i, ff. 42v-43. On the position of Englishmen during this period, see Hyams, Kings, Lords and Peasants, pp. 251-3.

57) BL. ms. Add. 47677, ff. 242v.-243.

58) E.g. Reg. III, nos. 845, 846, 847, 850, 851, grants by Stephen and his queen.

59) See below, pp. 242-3.

60) Liebermann, Gesetze, i 522.

61) E.g. Stenton, First Century, no. 41.

62) E.g. Earldom of Gloucester, no. 185, Richmond, no. 134.

63) E.g. Richmond, no. 384.
64) See also Richmond, no. 96, which records a donor asking his lord to confirm his gift because he had no seal of his own.
65) Oxford Charters, no. 11; see also nos. 9, 10.
66) See above, p. 173.
67) Madox, Formulare Anglicanum, p. 1, no. ii.
68) See above, p. 194.
69) E.g. Earldom of Gloucester, no. 77.
70) See above, pp. 231-2.
71) E.g. British Museum Charter Facsimiles, no. 43. See also below, pp. 244-5.
72) See above, p. 228, for the grant of Sawbridgeworth. See also e.g. Stoke, no. 540.
73) Richmond, no. 228, see also above, pp. 205-6.
74) Reg. II, nos. 1006, 1550.
75) Oxford, Bodleian Library, ms. Dodsworth 85, f. 26. For the dispute, see Reg. III, nos. 885-8. See also e.g. Reg. II, no. 1307.
76) E.g. BL ms. Harley 294, f. 249ᵛ-250. See also below, pp. 240-5 on substitutions.
77) Gift, Danelaw Documents, nos. 502, 503; confirmation, no. 504.
78) BL ms. Harley 294, ff. 249v.-250.
79) T.A.C., xci, Tardif, p. 101.
80) Liebermann, Gesetze, i 521.
81) Reg. II, nos. 1740, 1741.
82) Oxford Charters, no. 10.
83) Earldom of Gloucester, no. 44, see above, pp. 226-7.
84) See above, pp. 227-8.
85) Reg. II, no. 1738.
86) Earldom of Gloucester, nos. 126, 134.
87) Danelaw Documents, no. 5.
88) BL ms. Cotton Calig. A xiii, ff. 85v-86.
89) Pollock and Maitland, i 345. Milsom, Legal Framework, pp. 105-7: the exceptional cases discussed by Milsom, pp. 151-3, only emerge at the end of the twelfth century.
90) Other examples of substitutions include Gloucester Cartulary, no. CLXXXIV.
91) See also Holt, 'Politics and Property', 19, who states that the tenant's title in relation to his lord was weaker for his acquisitions than for his inheritance.
92) Reg. II, no. 1489.
93) Mowbray, no. 290. See also Cartularium Abbathiae de Whiteby, (2 vols.; Surtees Soc., lxix, lxxii; 1879, 1881), p. 6, nos. CCLXXXIII, CCLXXXIV, CCLXXXVI.
94) For other instance sof sale through surrender and admittance, see Danelaw Documents, pp. l-li. A late twelfth-century substitution explicitly involving acquisitions is Madox, Formulare Anglicanum, p. 54, no. C.
95) See above, pp. 210, 212. See also Milsom, Legal Framework, pp. 146-152, on substitutions in favour of the tenant's heir.
96) Reg. II, no. 1668; PR 31 HI, p. 82.
97) See Milsom, Legal Framework, p. 151.
98) Glanvill, vii 3, Hall, p. 78.
99) Unfortunately the proportion of family gifts made by substitution cannot be discovered, nor any chronological change in that proportion. The Cartae Baronum shows relatives being enfeoffed, e.g. Red Book, i 256, 286, 297, 302.
100) Glanvill, vii 1, Hall, p. 72; see also xiii 11, Hall, p. 155.
101) E.g. Simpson, History of Land Law, p. 57, who simply mentions the appearance

of the 'rule' in Glanvill. See also Pollock and Maitland, ii 289, Milsom, Legal Framework, pp. 139-140.

102) E.Y.C., viii no. 16.

103) E.g. C.M.A., ii 190-200; Reading Cartulary, nos. 139-153.

104) E.g. E.Y.C., xii no. 76.

105) E.g. Reg. I, no. 237a, Reg. II, no. 1459.

106) Hyams, Kings, Lords and Peasants, caps. 5, 13.

107) See above, pp. 233-4.

108) See above, p. 232.

109) See C.M.A., ii 20-1 for the lands of the Arden family being incorporated into the new Earldom of Warwick in Rufus's reign; Book of Seals, p. 110 for the Domesday tenancy-in-chief of William son of Corbucion being divided in Rufus's reign betwen the new Earldoms of Warwick and Buckingham.

110) Orderic, vi 58. See also PR 31 HI, p. 62.

111) E.Y.C., i nos. 628-9.

112) The vassal, at least if he were a tenant in chief, might have to pay for the exchange: PR 31 HI, p. 72.

113) Northants., Frontispiece. See also Stenton, First Century, no. 42; Hereford, nos. 9, 25.

114) See Hyams, Kings, Lords and Peasants, pp. 244-6.

115) A related change concerning substitution may occur in the thirteenth century. Then lords' control of substitutions by their free men declined, whilst transfer of land by surrender and admittance continued mainly for unfree tenures; Milsom, Legal Framework, pp. 152-3, Hyams, Kings, Lords and Peasants, pp. 39-40.

The Decline of Participation.

Where does all this leave explanations of the decline of consents? Legal explanations have generally rested on the homage and warranty bars: when these were regularly enforced by royal power, they prevented lords and heirs from discontinuing gifts. This development is generally dated to the last quarter of the twelfth century.[1]

Yet even in the charters of lesser men, clauses recording the consent of heirs may well have been declining from *c.*1150x60. Some causes may not be directly connected with legal change - perhaps there were changes in piety, or in the occasions of giving.[2] However, the chronology need not lead to the rejection of the effect of the homage and warranty bars. Hyams has recently observed that warranty, like the consent of lord or heir, performed a dual function: a guarantee against the warrantor or consentor interfering with the gift, and a promise of protection against outsiders. He also shows that there are 'indications that warranty agreements bound the parties' heirs even before the Angevin legal reforms.'[3] Again, he does not mean that there was a mandatory legal rule concerning this, but that the weight of the norm was sufficient to determine cases and to modify men's actions. Royal power might help to enforce warranties, and which accords with my explanation of the relative weakness of the laudatio in England.[4]

This may suffice to explain the decline of heirs' assent, but further factors affected that of lords. There are difficulties because of the dearth of evidence from which to construct a chronology. However, a major element must have been the same pressures as were working towards the heritability of land.[5] Long tenure increased the tenant's feeling that the land was his to do with as he wished. The growing power of some tenants may have restricted seignorial

control. Increasing distinction between tenures may have led men to associate restrictions on alienation with, for example, life-holdings, and have encouraged the feeling that they might dispose as they wished of lands granted them in fee and inheritance.[6]

Another element - partly the product of these changes - may have been the emergence of lords' advance confirmations, usually to a specific church, of all gifts from the lord's vassals, or of all that they might acquire. These begin before 1100. In 1091x5, Rufus issued a charter to Whitby, which closed by stating 'et si quis hiis ecclesiis aliquid boni fecerit uel dederit, concedo et pulchrum mihi erit.'[7] Between 1088 and 1118, William de Warenne II granted to St. Pancras, Lewes, all churches, tithes, and pertaining lands which he, his father and mother, and his men 'had given or would give.'[8] Then between c.1120 and 1135 occurs a sharp increase amongst royal charters.[9]

At least by Henry II's reign, such advance confirmations were also granted to laymen. In 1154x62, Henry granted to Robert Basset all the lands which his lords reasonably gave him or which he could reasonably acquire.[10] At the same time appear the first grants to a man and his assigns: Henry II granted that David, his larderer of York, was to have his herbage of the waste of Corteburn, for himself and his heirs and his assigns, as well as his father had held in Henry I's time.[11] Notably, such mentions of assigns do not specify a beneficiary.[12] Modern scholars generally take assignment to refer to substitution,[13] in which case the lord's participation was needed. It is uncertain that this was necessarily so. Glanvill wrote that 'a son can be 'forisfamiliated' by his father in his father's lifetime if the father assigns a certain part of his land to the son and gives him seisin of it in his lifetime ... .'[14] Here the father clearly made the gift himself, and not by surrendering the land to his lord who then seised the donee. Early grants mentioning

assigns could, therefore, simply be advance confirmations of a man's gifts.

The increased frequency of advance confirmations in the latter part of Henry I's reign coincides with the appearance of statements that the gift should be made juste, or rationabiliter, or legaliter.[15] The choice of vocabulary in advance confirmations is notable. In royal charters, iuste appears in the first twenty years of Henry I's reign, and may be part of a general change in royal charter drafting.[16] Between 1120 and 1135, legaliter and rationabiliter begin to appear.[17] Then rationabiliter becomes common in Henry II's confirmations,[18] and also appears in private charters, at least for the 1140s.[19]

It is unclear far rationabiliter was a technical term. Orderic uses it to signify that a man was compos mentis.[20] Eadmer used it in his Historia Nouorum, written in 1109x1115, when recounting Earl Harold's meeting with Duke William in Normandy before the Conquest. The Duke recounted King Edward's promise to leave him the kingdom of England by hereditary right, and sought Harold's co-operation: 'In quo regno si aliquando fuero tuo fauore confirmatus, spondeo quia omne quod a me tibi rationabiliter concedi petieris obtinebis.'[21] The word certainly had a canonical usage.[22] The earliest instance I have found in a private charter is from 1113x24 and significantly is an archiepiscopal charter concerning a church: Archbishop Thomas of York confirmed to the Bishop of Worcester the church of Wolverhampton: 'et prohibeo quod per me nemo id donum tam rationabiliter confirmatum presumat destruere.'[23] Often the word can have meant little more than iuste, but it did possess the advantages of its respectable pedigree and its resonances of fashionable ratio.

I do not wish to imply that previous advance confirmations would force a lord to accept and protect an 'unjust' gift,[24]. As so often, draftsmen found themselves driven to give express wording to common sense. Moreover, as Holt

has pointed out, a specific confirmation still seems to have been desirable in addition to the general one. Still, the new vocabulary seems significant. The lord seems to be saying that, although he retains a retrospective control, permission for individual gifts is no longer necessary. Such advance confirmations therefore indicate a less regular part for the honorial court and surely do suggest a relaxation of seignorial control over alienation.

The Decline of Participation: Notes.

1) See above, pp. 181-6, 223-5.
2) For the situation in western France, see White, Gifts to Saints, cap. 6 and esp. pp. 191-2.
3) Hyams, 'Warranty', 469.
4) Above, pp. 214-5.
5) See above, pp. 171-4.
6) On distinctions between tenures, see above, pp. 74-109.
7) Reg. I, no. 421.
8) E.Y.C., viii no. 7.
9) Reg. II, nos. 1285, 1327, 1428, 1536, 1742, 1795, 1810, 1827.
10) Oxford, Bodleian Library, ms. Dugdale 12, p. 133.
11) E.Y.C., i 422; for another early mention of assigns, Danelaw Documents, no. 175.
12) See also charters specifying that a man might do as he liked with his land, above, p. 226.
13) Milsom, Legal Framework, p. 107-9.
14) Glanvill, vii 3, Hall, p. 78. He goes on to discuss the different case of the son who does homage to the chief lord for the paternal inheritance during his father's life-time.
15) E.g. Reg. II, no. 1810 iuste; no. 1742 legaliter; no. 1827 rationabiliter.
16) Reg. II, no. 682 dates from 1105 ; see R.C. van Caenagem, The Birth of the English Common Law, (Cambridge, 1973), pp. 38-40 discusses the emergence of the word iuste in writs; even if his analysis of the implications is dubious, his diplomatic point his correct.
17) Orderic, iv 184 seems to use the two words as near synonyms.
18) E.g. Shrewsbury Cartulary, no. 47; Oxford, Bodleian Library, ms. Dugdale 12, p. 133; grants other than advance confirmations also used it, e.g. Danelaw Documents, no. 1; C. Ch. R., iv 183-4.
19) E.g. E.Y.C., ix no. 165. See also Mowbray, no. 155.
20) Orderic, vi 154 on Philip I of France; see also Glanvill, vii 1, Hall, p. 70.
21) Eadmer, Historia Nouorum, p. 7.
22) See e.g. the Prologus to Ivo's Decretum, with its emphasis on ratio; G. Lésage, 'La "Ratio Canonica" d'après Alexandre III', in Proceedings of the 4th. International Congress of Medieval Canon Law, ed. S. Kuttner, (Vatican City, 1976), pp. 95-106. See also R.W. Southern, 'St. Anselm and his English Pupils', Medieval and Renaissance Studies, i (1941), 3-34 on Rodulfus' 'Dispute between Reason and Sin'; P. Stein, Regulae Iuris: From Juristic Rules to Legal Maxims, (Edinburgh, 1966), for comments on ratio in Roman Law.
23) Worcester, no. 264.
24) Cf. Reg. II, no. 1023a, whereby Henry 'granted' whatever his barons 'donant et concedunt uel concilio meo daturi sint.'

CHAPTER SIX: PRELATES AND CHURCH LANDS.

Introduction.

So far I have considered prelates only when they were disposing of their family lands. Their alienations of church lands were subject to the additional rules of canon law and to different obligations. These lands had been given 'to God, the saint, the abbot and his monks', or 'to the church of the saint, the abbot and the monks serving God there.'[1] To all of these associated beneficiaries, and to the donor, who might well have stressed the perpetuity of his gift in order to protect his spiritual benefits, the prelate had obligations.

I now examine the effect of these obligations on alienation and thus on lordship. Whilst church and economic historians have sometimes examined these questions, historians of land law have largely neglected them.[2] Analysis will again illuminate the effect of power and of intellectual change on land-holding.

I concentrate on Benedictine monasteries, including monastic cathedrals, whilst noting similar practices amongst regular canons.[3] At least in these early decades of their existence, the Cistercians resisted the pressures for alienation, cultivating the lands themselves,[4] as the Carthusians continued to do so well beyond this period.

After examining the background of canon law and of political circumstances, I analyse three connected ways of enforcing these obligations: alienation of church lands might be totally prohibited; it might only be permitted with consent from the chapter; or the church's lands might be divided between prelate and chapter, with each fully controlling their own share. I then demonstrate the importance of outside enforcement. Lastly, I discuss the connected issue of royal control of alienation of church demesne.

Prelates, Chapters and Alienability.

In 1150x3, Eugenius III wrote to Bishop Nigel and the prior and chapter of Ely. His letter began: 'sacrorum canonum sanxit auctoritas, ut nullus episcopus uel abbas res ecclesiasticas alienet uel in principum aut aliarum personarum transferat potestatem et, si factum fuerit, irritum habeatur.'[5] The canonical collections of the late eleventh and early twelfth centuries work on the same premise: 'res ecclesie aliquo modo alienare episcopis non licet.'

> Si quis episcopus nulla ecclesiastice rationis necessitate compulsus, in suo clero, aut forte ubi presbyter non est, de rebus ecclesiasticis aliquid uendere, res ipsas ecclesie proprie restaurare cogatur, et in iudicio episcoporum deiiciatur auditus, et tanquam furti aut latrocinii reus suo priuetur honore.

The Collectio Lanfranci, Ivo's Decretum, and Gratian, all include such statements, and they treat the subject fairly consistently.[6] The restriction contrasts with their general emphasis on the prelate's power over the affairs of his church.[7]

The prohibition was qualified, firstly by the exception of necessity. Lanfranc and Gratian's collections included the seventh canon of the Council of Agde, which began by prohibiting alienation, but went on

> si necessitas conpulerit, ut pro ecclesie necessitate aut utilitate uel in usufructu, uel indirecta uenditione aliquid distrahatur, apud duos uel tres conprouinciales aut uicinos episcopos causa, que necesse sit uendendi, primitus conprobetur, ut, habita discussione sacerdotali, eorum subscriptione que facta fuerit uenditio uel transactio roboretur.[8]

Such problems fall under the general question of the effect of necessity on rules which greatly exercised canonists in this period.[9]

Secondly, the canons were most concerned with long-term alienations. Ivo's Decretum stated that 'alienationis autem uerbum continet uenditionem, donationem, permutationem, emphiteuseos perpetuum contractum.'[10] These would probably include grants of knights' fees and of fee farm, but not less permanent grants.[11]

A third qualification might permit alienation with the consent of the

clergy. This is most clearly stated in the short section on alienability in Ivo's Pannormia, the most popular canonical collection in England for at least the first fifty years of the twelfth century:[12]

> Irrita erit episcoporum donatio, uel uenditio, uel commutatio ecclesiastice rei absque collaudatione et subscriptione clericorum.
>
> Quae inconsulte facte sunt, iuxta decreta canonum Hilarii pape, quas illicite decessorum episcopus admiserit, uel ab aliis illicite commisse sint, ab eo qui successor est emendentur.[13]

The first of these statements also appeared in Ivo's Decretum and in Gratian,[14] but in neither collection do mentions of alienation by consent predominate as in the Pannormia.[15]

Canon law collections concentrated on bishops and episcopal obligations. New bishops, in England as elsewhere, may have sworn to prevent future alienations, and to resume past ones. Abbots certainly took such an oath on their benediction. The officiating bishop asked the abbot whether 'res quoque ecclesie hactenus dispersas iniuste uis quantum preualeas congregare easque in usus ecclesie fratrum pauperum etiam et peregrinorum conseruare.' The abbot replied 'uolo'.[16]

How did these provisions work in practice? Records of the post-Conquest councils do not deal directly with alienation by prelates, but mention a connected matter, also prominent in the canons; lay seizure of church possessions, a particular problem in periods of political disturbance.[17] The Legatine Council at Windsor in May 1070 laid down 'that no-one invade church possessions [bona].'[18] Invasions were hard to distinguish from unjust alienation by prelates. Lands seized might be retrieved only by enfeoffing the oppressor.[19] Such enfeoffments would have constituted alienation through fear, which the canons condemned.[20] Other laymen brought subtler pressure in order to obtain lands, whilst during vacancies, keepers of churches were sometimes

profligate with the lands in their charge.[21]

Churches anyway had their military obligations to fulfil. Reliance entirely on household knights rarely lasted long, and lands were therefore alienated.[22] Even after the initial period of enfeoffment, churches continued to grant lands to laymen whose support they desired.[23] We have seen that attempts to limit grants to the donee's life-time met limited success.[24]

Moreover, many ecclesiastical lords, like their lay counterparts, rewarded their families and followers with land. Nepotism was a common charge after any prelate's death. The chronicler Hugh Candidus accused Thorold, abbot of Peterborough from 1069 to 1098, of squandering the abbey's lands amongst his relations and the knights whom he had brought with him, to such an extent that only one-third of the abbey's land remained in demesne.[25] In his carta of 1166, the Archbishop of York complained that nepotism had led his predecessors to enfeoff more knights than the king required.[26]

Thus the prelate's personal view of his powers and obligations could differ from that of the convent, and the resultant tension sometimes produced disputes over alienation. The Abingdon Chronicle provides a gallery of contrasting abbots: Reginald, apparently careless of the convent's will, and intent on providing for his own family; Faritius, in harmony with the convent as he used his influence towards the resumption of alienated lands; Ingulf, incapable of withstanding the pressures brought on by Stephen's reign, and in the face of his problems neglecting the opinion of the monks. In many churches, internal tension and external pressures similarly combined against the maintenance of the demesne.

Inalienability; the chapter's consent; The division of church lands.

Clearly such circumstances were often unfavourable to the strict application of canonical doctrine. Yet pressures for inalienability may well have grown during the twelfth century. Outside authorities, ecclesiastical and secular, stressed inalienability. Henry I's foundation charter for Reading Abbey, for example, satisfied the canons against permanent alienation.[27] Other royal and ecclesiastical documents ordering resumption seem to admit no justification for alienation.[28] Yet in practice land was alienated all the same, to no-ome's surprise. The prohibitions restricted but never threatened to abolish the ecclesiastical lord's power to alienate.

Before 1066, some English and Norman charters mention the chapter's consent to alienation,[29] and throughout the following century the requirement for such participation carried considerable weight.[30] After 1066, mentions of the chapter's consent appear as soon as charters survive.[31] By the twelfth century, the charters of some churches regularly mention participation. Those of St. Mary's York, from the 1120s onwards, generally include a statement such as 'cum communi consilio et assensu capituli nostri.'[32] Other phrases might record participation. A few charters of St. Mary's present the chapter as joint donors with the abbot.[33] At Bury, between 1121 and 1156, the prior regularly appeared as the first witness of abbatial documents, continuing to do so thereafter, but less frequently.[34] Such witnessing surely constituted the record of the chapter's consent. Grants by houses of regular canons also mention the chapter's participation.[35]

Consent was not only obtained for permanent grants. At Bury in 1160, Abbot Hugh and the whole convent 'by their unanimous counsel' granted Ralph Brian their clerk two manors for twelve years, whereafter they were to return

to the church except the harvests and the buildings. The first witness was the prior.[36]

An Abingdon case from early in the century illuminates the effect of this requirement. With the convent's permission, abbot Reginald gave his son, William, the church of Marcham. He also made him some other gifts without consulting the convent.[37] In 1101x3, all these gifts were adjudged to be from the church's demesne; William therefore gave back and quitclaimed them to abbot Faritius. However, he was allowed to keep the church of Marcham for life.[38] Various considerations may have shaped this settlement. Possibly Marcham church was not considered part of the abbey's demesne, or had from the first only been given for life. However, it was the convent's consent for the gift of the church which the chronicler emphasized.[39]

The chapter's participation is mentioned less frequently in grants by bishops than those by abbots.[40] Cathedral churches seem to have relied more heavily on the division of lands between prelate and chapter to ensure that the prelate preserved the possessions required for the sustinence of his church.[41] It removed them from his direct control, reduced his powers of lordship, and entrusted their administration to the prior and chapter.

The division of possessions between prelate and chapter was gradual. Some Anglo-Saxon charters record gifts made for the monks' food, or 'as their very own'.[42] In Domesday, some monastic lands are specified as, for example, 'de dominico uictu monachorum.'[43] However, such statements do not prove a strict division of possessions. William I ordered that Abbot Aethelwig of Evesham have his land in Warwickshire to hold for the use of the monks.[44] In 1086, an abbey or monastic cathedral's lands were generally all administered together. The cellarer would control the supply of food both for monks and abbot. Other

revenues might be set aside for the monks, again from sources administered with the rest of the church's lands. Domesday several times referred to Lanfranc as holding lands ascribed to the monks' supply: 'Sandwich lies in its own Hundred. The Archbishop holds this borough. It is for the clothing of the monks.'[45] In many abbeys, such arrangements probably continued into the early twelfth century. A writ of 1102 restored to God, St. Mary of Abingdon, abbot Faritius and his successors the church's demesnes, and the Abingdon chronicler stated that a certain Rainbald gave back to the ***abbot*** the lands he had from the ***monks'*** supply.[46]

However, major administrative changes were taking place. These probably began at monastic cathedrals before 1100. A Canterbury charter and Eadmer record that Anselm placed the possessions of monks of Christchurch at their own disposal.[47] In other monasteries, the division of lands and their administration generally grew clear in Henry I's reign.[48] Offices such as the sacristy, the chamber and the almonry were further endowed. A separate administration was being created for the house. Meanwhile, abbots started to live more distantly from their monks.

By the mid-twelfth century, priors and chapters of Cathedral monasteries had their own seals and were granting lands.[49] In 1143x5, Prior David and the convent of Worcester granted various lands to William Rupe, and in 1146x89, Prior Ralph, 'by th unanimous favour of the whole chapter of Worcester', gave half a virgate to Richard of Grimsley to possess 'by hereditary right.'[50] Here we have control of the church's lands divided between Bishop and prior, and the latter now subject to the requirement of acting with the consent of the monks.

It is less certain whether other monastic chapters had their own seals in this period. The Abingdon Chronicle records Abbot Ingulf's misuse of the church's seal in Stephen's reign. It is unclear whether the abbey still had only

one seal, which Ingulf was using against the will of the monks, or two seals - one for the abbot and one for the prior and chapter - and that Ingulf was making personal use of the latter.[51] Neither narratives nor seal impressions from other monasteries allow firmer conclusions.[52]

The earlier separation of lands in Cathedral monasteries helps to explain their heavier reliance on such a division, rather than on the convent's consent, in matters of alienation. In both kinds of church, before the division was complete, a vaguer attribution of certain lands to the monks must still have discouraged their alienation, and if they were to be granted, have given the convent's counsel greater weight. The evidence of the Abingdon Chronicle supports such an argument. Whilst it must be remembered that the chronicler was writing when the division was clearer, it is still significant that those cases earlier in the century where the question of consent was most important were also those involving lands of the monks' supply.[53]

Enforcement.

If such methods failed to prevent unjust alienations and disputes arose, how were the prelate's obligations enforced? Religious pressure occasionally sufficed. In the late eleventh century, Abbot Reginald of Abingdon gave a demesne manor at Dumbleton to his nephew.[54] Soon, however, a record of Archbishop Aelfric's original gift of Dumbleton to Abingdon was found in the abbey's archive, and was read to the abbot.[55] According to the chronicler, writing in the 1160s, it forbad that Dumbleton be removed from the monks' use. The abbot unsuccessfully urged his nephew to return the land. Both parties sought royal support, but Rufus apparently accepted their offerings whilst taking no positive action. With the highest source of worldly justice providing

no solution, it required God's intervention to break the deadlock. The nephew fell ill and lost the use of his tongue; he restored the land, recovered, and henceforth lived properly.[56]

A prelate might take more forceful action, whilst relying on his own resources. The Evesham chronicle records that Walter, abbot from 1077, 'noluit homagium a pluribus bonis hominibus quos predecessor suus habuerat suscipere, eo quod terras omnium si posset decreuit auferre.'[57] However, the chronicler saw this not as a heroic defence of the church's rights, but as youthful imprudence, resting on bad advice from relatives, and soon resulting in serious loss of lands. Crucially, the abbot had failed to take notice of his own power relative to that of his potential opponents.

In order to provide sufficient power, outside help was frequently needed. Donors' often promised to 'maintain' their alms. However, whilst lords sometimes protected their own or their recent ancestors' foundations from outside attack, no surviving evidence suggests that they were involved in enforcing the prelate's obligations to his church.[58] Even if occasional interventions are hidden from us, it is unlikely that either laymen or ecclesiastics saw a regular role for lords in such affairs.

The king, however, was the particular protector of the Church. Preambles of royal diplomas occasionally mentioned this duty.[59] The Leges Edwardi state that 'Rex autem qui uicarius summi Regis est, ad hoc consitututus est, ut regnum et populum Domini et super omnia sanctam ecclesiam regat et defendat ab iniuriosis, maleficos autem destruat et euellat.'[60] Such protection could extend against not only outside attack,[61] but also sinful or unwise prelates.

Duke William had helped to enforce the requirement for the convent's consent to alienation in Normandy before 1066.[62] In England in 1077, he ordered his sheriffs to return to his bishoprics and abbeys all the demesne and

demesne lands which

> episcopi mei et abbates eis uel lenitate, uel timore uel cupiditate dederunt, uel habere consenserunt, uel ipsi uiolentia sua inde abstraxerunt, et quod hactenus iniuste possederunt de dominio ecclesiarum mearum, et nisi reddiderint, sicut eos ex parte mea summonebitis, uos ipsos uelint nolint constringite reddere.[63]

Other royal orders deal with similar problems, and the major recorded trials of the reign concern the restoration of church lands.[64]

Evidence exists of Rufus helping abbeys to regain lost lands,[65] but instances from Henry I's reign are much more plentiful. In 1123, he granted that Archbishop William of Canterbury might 'seise into his demesne' all lands pertaining to the archbishopric, whoever held them, as they were in demesne at Anselm's death, unless he chose not to do so.[66] Some other grants of churches to newly elected prelates included similar provisions, whilst further charters ordered that Henry was unwilling that a church lose any of its land, or provided that land granted to a man at farm should return to the church's demesne at the man's death.[67] Other writs permitted alienation, but only with the chapter's consent; in 1121, Henry ordered 'that Herbert abbot of Westminster make to be seised into his hand all the lands which have been given or placed outside the church without the assent and consent of the chapter.'[68] He also on occasion helped to enforce the emerging division of lands between prelate and chapter.[69]

Stephen intervened in some disputes,[70] but was significantly absent from others. Thus it was the Pope, not the king, who provided most help for Bishop Nigel of Ely in his attempts at resumption, until he civil war forced him to begin granting lands again.[71]

Stephen's death left many disputes unresolved, and the new king soon asserted his influence in the same ways as had his grand-father. For example, in 1155x8, he ordered to be reseised into the hand of St. Edmund, his church, and of Henry himself, all demesne lands given or in any way taken from the

abbey since the death of Henry I, 'without the assent of the chapter.'[72]

Such a survey of royal involvement might suggest that the king altruistically and decisively favoured the church in all disputes. This was not so. Monasteries had to pay for royal help. The 1130 Pipe Roll provides a notable echo of the abbot's benediction when it records that the Abbot of Westminster rendered account of one thousand marks of silver 'ut bona Ecclesie sue que iniuste dispersa erant congregaret et congregata custodiret.'[73]

Although most sources concentrate on examples where the king supported the restoration of alienated lands, he sometimes refused to help either side decisively,[74] or supported the alienee. Examples of the latter rarely provide extensive information, but can be found.[75] In 1100x1, Henry I ordered Hugh de Bocland to reseise Abingdon of all the lands given away by Modbert, the keeper during a recent vacancy, including those granted to Herbert the king's chamberlain, and in 1102 ordered that Abbot Faritius have all the demesnes which the church had held when William I gave the abbey to Abbot Reginald.[76] Amongst the lands Modbert had given Herbert was Leckhamstead, despite this recently having been restored to the demesne and protected by a fearsome anathema.[77] When the case was settled, Leckhamstead did not return to the church's demesne; rather it was granted to Herbert in return for his homage, even though he had earlier apparently failed to do due service for the lands to the abbey.[78]

Church authorities sometimes helped enforce the prelate's obligations. Some general ecclesiastical confirmations prohibited the seizure or other unjust diminution of church lands,[79] and diminution could conceivably be taken to refer to prelates as well as outside aggressors. The evidence until the mid-twelfth century is very limited. However, it is notable that before the 1150s, no surviving charters of the Archbishops of Canterbury specifically order the

resumption of unjust alienations. Then in 1155x61 a letter of Archbishop Theobald ordered the abbot of Tavistock to recall all the lands which his predecessor had taken for himself without consulting the convent, or had given to laymen.[80] Theobald was also, for example, involved in a dispute between the bishop and chapter of Worcester which affected the division of property between them.[81]

Most notable is the increased assertion of papal power from the late 1130s, recently examined by M. Cheney.[82] Papal charters had previously condemned unjust diminution of church lands: between 1101 and 1114, Paschal II damned with eternal malediction all who infringed or diminished, sold or distributed the lands of Westminster abbey.[83] However, from the pontificate of Eugenius III, some papal confirmations to bishops included a new formula:

> et quoniam pastores ecclesie in edificationem, non in destructionem sunt secundum apostolum constituti, possessiones eiusdem ecclesie iniuste distractas ad ius et dominium ipsius loci canonice reuocandi liberam tibi concedimus facultatem statuentes, ut nec tibi nec tuis successoribus liceat easdem res uel possessiones ab ecclesia alienare uel alicui in feudum dando ab ecclesie ditione transferre.[84]

The standardised wording in Bulls to different bishops confirms that the Papacy provided at least part of the impetus.

Such papal orders brought some results. Bishop Nigel of Ely resumed Impington and probably also Pampisford, which Bishop Herbert had given to Archdeacon William, his nephew. However, despite continuing papal support, circumstances forced Bishop Nigel to give up his efforts, and in 1166 Pampisford appears amongst the lands of the new enfeoffment, alienated since 1135.[85]

Papal orders, therefore, provided extra strength for prelates but did not ensure success. Not all prelates sought such bulls in their support. Nor did the papacy always insist on complete inalienability. In 1159x63, Alexander III forbad that the Bishop or Prior of Worcester alienate lands without the counsel

and assent of the whole chapter, or the weightier [sanior] part of it,[66] and in 1199, Innocent III issued a similar order concerning the Abbot of Westminster.[67]

Thus canon law prohibited the alienation of church lands, with certain qualifications. In practice, this doctrinal pressure, together with requirements for the chapter's participation and the gradual division of church lands, merely restricted alienation. The differing priorities of prelate and chapter, the internal politics of the honour and pressures from beyond it ensured that alienation did occur despite these restrictions. Resumption was difficult whilst tensions within the house remained, frequently until the coming of a new prelate. Even if they were resolved, outside help was often needed. The prelate who failed to calculate the balance of power correctly in disputes might lose his estates, as did Abbot Walter of Evesham, or even any hope of future outside support, as did Becket.

Royal Assent to Alienation of Church Lands.

The Anglo-Norman kings not only helped to enforce prelates' obligations to their churches, but also claimed that church lands should not be alienated without royal permission. In *c.*1092, William Rufus issued a writ concerning the abbot of Ramsey:

> Precipio et defendo ne abbas de Ramesia, uidelicet Aldwinus, ullo modo tribuat alicui homini aliquam terram de dominio suo sine licentia mea et consilio, quia uolo ut abbas predictus predictas terras honorifice teneat et omnes alias quas sui antecessores de proprio uictu monachorum suorum tenuere sicut abbas adquirere poterit illas.[88]

Other charters record prelates obtaining royal assent for alienation. In 1155x8, Abbess Dameta of Holy Trinity, Caen, made a grant to Simon of Felstead, 'by the counsel and consent of Henry, King of England.' Henry himself granted to Simon and his heirs the tenements 'in fees and farms and all things', as Abbess Dameta's charter witnessed.[89]

In the 1180s, Glanvill wrote that 'nec episcopus nec abbas, quia eorum baronie sunt de elemosina domini regis et antecessorum eius, non possunt de dominicis suis aliquam partem donare ad remanenciam sine assensu et confirmatione domini regis.'[90] This concerns land held in respect of the office of prelate, as opposed to family land which would not have been referred to as royal alms. Glanvill's terms probably reflect the late twelfth-century situation, with a far clearer distinction between the prelate's barony and the other lands of the church, and he does not discuss the alienability of the latter. However, the example from Rufus' reign shows that the provision against prelates alienating church lands without royal permission predates the clearer distinction.

This norm had sufficient weight to be mandatory. Grants made without royal permission were revoked. In 1116, Henry I ordered that no abbot of

Tavistock give anything to anyone, except with his confirmation and the assent of the whole chapter. Then in *c.*1129x30, he ordered that the abbot and monks 'have back and reseise in the demesne of their church all those lands which have been placed outside that demesne without my consent and confirmation, since the death of my father William.'[91]

Why did the king insist that prelates obtain his permission for alienation? It was partly in his role as protector of the church. This had a long tradition. Carolingian capitularies forbad alienation of church lands.[92] This may have given the king an implicit dispensing power to allow alienation, even though they do not explicitly require such permission. The Anglo-Saxon laws contain no similar prohibition, but some pre-Conquest charters mention royal consent for alienation by prelates.[93] Similarly, on the Continent in 1012, an exchange between the abbots of Jumièges and Bourgeuil was made 'per assensum nostrorum principum Guillelmi scilicet Aquitanorum ducis atque Richardi Normannorum marchionis.'[94]

Secondly, kings had particularly close relations to certain churches, notably for example Battle abbey. They also granted confirmations to numerous others. A charter of Henry I to Great Malvern Priory, probably drafted by the beneficiary, specified that all lands which had been given to it were to be held 'sicut dominicam elemosinam meam.'[95] The spread of such confirmations could easily further the idea that church lands generally were royal alms, and therefore under royal protection and control.[96]

Thirdly, the king was seeking to protect not only the church but also the spiritual and material benefits of himself and his family, and his realm. The lands concerned were alms and intended to be perpetual. Alienation endangered the desired spiritual benefits. Rufus's writ to Ramsey shows concern for the support of the monks, who did the praying for souls and the safety of the

realm.[97]

Moreover, even though the lands could be referred to as alms, some might also be burdened with military service. Even writing in the 1180s, Glanvill did not see the terms baronia and elemosina as mutually exclusive.[98] If the alienation was for military service the king might be more willing to allow it. Thus the same writ by which Henry I forbad that the abbots of Tavistock alienate their demesne without his permission, also ordered that no-one should hold anything of the church's demesne, except those whom Abbot Geoffrey had given lands for military service.[99] The king could exercise discretion in enforcing the norm.

The king also wished to prevent loss of revenue from vacancies, which might result from alienations at nominal service. Moreover, by the time of Glanvill, only the lands of the prelate fell into the king's hand during a vacancy, and not those of the convent. Hence any grant by a prelate to the chapter would later deprive the king of revenue from a vacancy.[100]

Thus royal control of ecclesiastical alienation stems partly from interests similar to those of any powerful lord controlling vassals' gifts, partly from a special obligation to the church. This obligation, the wider emphasis on restricting alienation of church lands, added to the balance of power between ecclesiastical donor and king, together gave the norm sufficient weight to be mandatory.

Conclusions.

The prelate's powers of alienation provide parallels and contrasts with the lay lord. The lay lord had obligations to his family, the prelate to his familia, the clergy of his church. However, the canons worked from strict rules of inalienability, tempered by exceptions of necessity, whereas lay custom rested on reasonableness. In practice, this exaggerates the contrast. The variety of statements in the canons permitted flexibility. In particular, whilst the canons might *require* at least the chapter's consent for alienation, the giving of that consent would be determined by norms of reasonableness. Furthermore, other means of enforcing the prelate's obligations, notably the division of lands between prelate and chapter, had little to do with canonical rules. The effect of all such obligations rested on the balance of power in each case.

There is little sign of donors to religion, or their heirs, requiring that a prelate seek their permission to alienate land they had given.[101] The families responsible for giving most of the land before 1066 had been destroyed. Only very occasionally does a post-Conquest charter specify that the alms given were not to be alienated.[102] Hope of further gifts and protection must have ensured that churches did not often flout the wishes of donors and their families, yet such a relationship was less formalised than that between lay lord and lay tenant; no homage was done and very few charters mention the tenurial bond with the donor and his heirs.[103] More stress the freedom with which alms were to be held: 'teneant et possideant in propriam et liberam elemosinam sicut liberius et quietius possint aliqua a uiris religiosis possideri et sicut liberius et quietius ab homine dici uel excogitari uel intelligi' ran a grant of William Earl of Gloucester to Tewkesbury Abbey.[104] Meanwhile, churches sought to protect

new possessions by ensuring that donors promised to maintain and defend them. They desired the benefits of holding from a lord without the concomitant restrictions.[105]

However, the prelate was subject to other lords. There was the saint of the church, and through the saint God. Thus Ranulf bishop of Durham referred to St. Cuthbert as his lord.[106] Gifts were sometimes made *in the hand of* the abbot, but placed on the altar of the saint. They were to provide for the monks who did service to God. If the prelate alienated the land the church might be unable to fulfil such services.

We have further seen that the king asserted his lordship of church lands. In *c.*1078x82, William de Warenne and his wife gave the church of St. Pancras, Lewes, to Cluny, by the counsel and consent of William I. Their charter ended with a clause in the king's name: 'hanc donationem ita concedo ut habeam eandem dominationem in ea quam habeo in ceteris elemosinis quas mei proceres faciunt meo nutu.'[107] Generally, it appears to have been the king, not the original donor or his descendants, who sought to control the alienation of church lands.

These conclusions are clearly of great importance when considering the emergence of Common Law concept of ownership. The 'vertical' connection between the great ecclesiastical donee and the lay donor was weak, the connection to the king important. Also, grants to churches were lasting, again partly because of royal power. We have also seen that churchmen were thinking in abstract terms about land tenure. Thus in the century after the Conquest, at least church land-holding was far from being based on the personal relationship of lordship, rather closer to the 'ownership' which some have seen as emerging only in the following century.

CHAPTER SIX: PRELATES AND CHURCH LANDS: Notes.

1) C.M.A., ii 141; Reading Cartulary, no. 6. See also below, p. 270; see also e.g. Ramsey Chron., p. 253-4 for a reference to the lands of St. Benedict.
2) Pollock and Maitland, i 504-9 provides a brief discussion. Milsom does not consider the ecclesiastical lord.
3) See below, p. 257.
4) Knowles, Monastic Order, pp. 632-4.
5) Liber Eliensis, p. 344, W. Holtzmann, Papsturkunden in England, (3 vol., Berlin and Göttingen, 1930-1952), ii no. 63. (Henceforth Papsturkunden.)
6) For the first quotation, see Cambridge, Trinity ms. B 16 44, pp. 285-6, Hinschius, p. 333; Gratian, Decretum, C. x q. ii c. 1. The second is Ivo, Decretum, pars iii cc. 172, 242; Gratian, Decretum, C. x q. ii c. 8. Ivo's Pannormia has a slightly different emphasis, see below, pp. 259-60.
7) E.g. Gratian, Decretum, C. x q. ii. See also The Monastic Constitutions of Lanfranc, ed. D. Knowles, (Edinburgh, 1951), p. 74.
8) Cambridge, Trinity ms. B 16 44, pp. 285-6, Hinschius, pp. 332-3; Gratian, Decretum, C. x q. ii c. 1.
9) For necessity, see the Prologues to Ivo's Pannormia and Decretum. See also Gratian, Decretum, C. xii q. ii c. xv on alienation for the freeing of captives, On necessity generally, see also Hugh the Chantor: the History of the Church of York 1066-1127, ed. & tr. C. Johnson, (Edinburgh, 1961), pp. 49-50. (Henceforth Hugh the Chantor.) Sawyer, no. 1424 shows an Anglo-Saxon prelate, in 1022, apparently using necessity to justify alienation.
10) Ivo, Decretum, pars iii c. 183.
11) See Cheney, 'Inalienability', 470, 472 on fee farm.
12) Z.N. Brooke, The English Church and the Papacy, from the Conquest to the Reign of John, (Cambridge, 1931), p. 41.
13) Ivo, Pannormia, lib. ii cc. lxxxvi, lxxxvii.
14) Ivo, Decretum, pars iii c. 231; Gratian, Decretum, C. xii q. ii c. lii.
15) The wider implications of Ivo's particular selection of texts for the Pannormia requires further study, preferably in conjunction with analysis of the practical application of Canon Law.
16) The Pontifical of Magdalen College, ed. H.A. Wilson, (Henry Bradshaw Soc., 39; London, 1910), p. 81.
17) For a mention in the Collectio Lanfranci, see e.g. Cambridge, Trinity ms. B 16 44, p. 45, Hinschius, pp. 178-9.
18) Councils and Synods with other Documents relating to the English Church, A.D. 871-1204, vol. i, ed. D. Whitelock, M. Brett, and C.N.L. Brooke, (2 parts, Oxford, 1981), pt. ii, p. 581, c. 11. (Henceforth Councils and Synods, i.)
19) E.g. Du Boulay, Canterbury, p. 54; J.A. Raftis, The Estates of Ramsey Abbey: a Study in Economic Growth and Organization, (Toronto, 1957), c. 2, esp. p. 31 (Henceforth Raftis, Ramsey). See also Reg. II, nos. 546, 626.
20) Gratian, Decretum, C. xii q. ii c. xviii. See also Reg. I, no. 98.
21) E.g. C.M.A., ii 42-3; H.M. Chew, The English Ecclesiastical Tenants-in-Chief and Knight Service, especially in the Thirteenth and Fourteenth Centuries, (Oxford, 1932), p. 118. (Henceforth Chew, Ecclesiastical Tenants-in-Chief.)
22) E.g. C.M.A., ii 3-4; Liber Eliensis, p. 217.
23) E.g. C.M.A., ii 43.
24) See above, pp. 113-118.
25) The Chronicle of Hugh Candidus, ed. W.T. Mellows, (London, 1949), pp. 84-5.
26) Red Book, i 413; see also e.g. C.M.A. ii 35-40; E. King, Peterborough Abbey 1086-1310: a Study in the Land Market, (Cambridge, 1973), p. 13. (Henceforth King, Peterborough. Chew, Ecclesiastical Tenants-in-Chief,

p. 116.

27) Reading Cartularies, no. 1; see also no. 27, above p. 114.

28) E.g. Reg. I, no. 330, Reg. II, no. 650.

29) E.g. Sawyer, nos. 1420, 1423, 1425, 1426 record grants with the community's participation.

30) See below, pp. 261-3, on royal enforcement.

31) E.g. E.Y.C., i no. 42; see also no. 41; Feudal Documents, no. 104, see also no. 106.

32) E.Y.C., i nos. 310-2, ix no. 134; from the mid-twelfth century, e.g. i nos. 264, 414, 540. See also e.g. C.M.A., ii 136-7, 168, 176, 190, 212, 233.

33) E.Y.C., i no. 460, iii no. 1303, ix no. 135.

34) Feudal Documents, nos. 111, 113, 114, 116-121, 123, 124, 128-131, 133, 134, 140-2, 144-6, 152, 153, 155-8, 167.

35) Danelaw Documents, nos. 47, 249, 306; Cartulary of Oseney Abbey, ed. H.E. Salter, (6 vols., Oxf. Hist. Soc., lxxxix, xc, xci, xcvii, xcviii, ci, 1929-36), iv nos. 106, 414b, v no. 538a, vi no. 1087.

36) Feudal Documents, no. 145.

37) C.M.A., ii 40.

38) C.M.A., ii 130-1.

39) For a later case arising from this settlement, see above, pp. 157-8.

40) Examples of cathedral convents consenting to their prelates's grants;
Canterbury: Textus Roffensis, ed. T. Hearne, (Oxford, 1720), p. 154; Round, Ancient Charters, no. 9, in which charters the prior appears as the first witness.
Saltman, Theobald, nos. 33, 89, where the convent appear as joint grantors.
Durham: Offler, Durham Charters, no. 1 where the convent appears as joint grantor, no. 11 where the convent consent, nos. 22, 33, 38, 41 where the prior is the first witness.

41) Historians do not always define what they mean by a division of revenues. They have not distinguished between certain lands being administered with the rest of the abbey's possessions, the revenues then providing for the monks, and a full division whereby the convent itself had independent control of the lands. The latter raises questions such as when the chapter obtained a separate seal and started to make land grants of its own. The causes of the division were various: the increasing separation of the prelate from the life of the house; the need to protect the convent in disputes arising over the church's secular obligations which were seen as resting on the prelate; the desire to limit royal control of the church's lands during vacancies. The standard general account, Knowles, Monastic Order, pp. 404-6, shows its age.

42) E.g. Sawyer, nos. 155, 843, 1259.

43) E.g. Domesday, i ff. 58b, 78b, 143d, (= Berks. 2, 1; Dorset 12, 14; Bucks. 3, 1). See also The Letters of Lanfranc Archbishop of Canterbury, ed. & tr. H. Clover & M. Gibson, (Oxford, 1979), no. 56.

44) Reg. I, no. 104.

45) Domesday, i f. 3a (= Kent 2, 2.) Domesday Book on occasion uses the phrase 'ad uictum' or 'ad uestitum monachorum' to emphasise a claim to disputed lands rather than to indicate a separation of lands between prelate and chapter, e.g. in the case of Sandwich the entry includes the phrase 'the men of this borough testify ... .'

46) C.M.A., ii 86, 130 respectively.

47) Eadmer, Historia Nouorum, p. 219; Les Régistres de Grégoire IX, ed. L. Auvray, (4 vols., Paris, 1896-1955), ii no. 3233.

48) Knowles, Monastic Order, p. 405; King, Peterborough, p. 88; Raftis, Ramsey, pp. 37-8.
49) By the 1150s, the prior and monks of Ely were recalling the time of Bishop Hervey, who died in 1127, when they did not have a copy of their own seal; Miller, Ely, 287-8.
50) Worcester, nos. 439, 440 respectively.
51) C.M.A., ii 208-9.
52) In the second half of the twelfth century appear seals bearing the abbot's personal name, rather than simply his title. This may be a sign of his growing separation from the house, and may have been accompanied by the appearance of seals of the convent: W. de G. Birch, Catalogue of Seals in the Department of Manuscripts in the British Museum, (6 vols., London, 1887-1900), nos. 2802, 3149, 3946, 4010, 4254. See also no. 4280.
53) See esp. C.M.A., ii 35-40, 208-210.
54) C.M.A., ii 35-6.
55) In his De Rebus in Administratione Sua Gestis, Suger recorded how his knowledge of the abbey's charters, acquired by burrowing in the archive during his youth, helped him to resume the abbey's rights; Oeuvres Complètes de Suger, ed. A. Lecoy de la Marche, (Paris, 1867), pp. 160-1.
56) For another instance of illness leading to the restoration of lands, see C.M.A., ii 12-15. For restoration at the death of a tenant, see Feudal Documents, no. 151.
57) Evesham Chron., p. 96.
58) Control over other types of church, for example colleges of secular canons, might be much closer. See e.g. Crouch, Beaumont Twins, pp. 205-7.
59) E.g. Reg. I, no. 237a.
60) Leges Edwardi Confessoris, 17, Liebermann, Gesetze, i 642.
61) The Abingdon Chronicle on Faritius and Henry I, and Suger on his own relationship with Louis VI, can be seen as presenting ideal versions of the churchman with his royal protector.
62) See the case of the Abbey of Mont Saint Michel and the mill at Vannes: Fauroux, no. 148, Calendar of Documents preserved in France, ed. J.H. Round, (London, 1899), nos. 711, 712, Reg. I, no. 92.
63) Reg. I, no. 50; on the date, see English Historical Documents II, 1042-1189, edd. D.C. Douglas & G.W. Greenaway, (2nd. ed., London, 1981), p. 463.
64) See Reg. I, nos. 155, 177. Miller, 'Ely Land Pleas', 438-456. Bates, 'Penenden Heath'.
65) Reg. I, nos. 329-331; see also nos. 388, 418.
66) Reg. II, no. 1417; also e.g. nos. 650, 885, 1101. See also Red Book, i 210; D.M. Stenton, English Justice between the Norman Conquest and the Great Charter, (Philadelphia, 1964), pp. 24-5, 140-7, on a dispute over Yaxley. (Henceforth Stenton, English Justice.)
67) Reg. II, nos. 721, 929.
68) Reg. II, no. 1252; see also e.g. nos. 600, 766.
69) See e.g. Reg. II, no. 1079, Worcester, nos. 260-2 (charters of Henry I and Queen Matilda not included in Reg. II.)
70) The one clear case is a dispute between Abbot Ording of Bury St. Edmunds and his monks; Reg. III, nos. 771, 773.
71) Miller, Ely, pp. 167-172. See also C.M.A., ii 208-210, a dispute between the abbot and monks of Abingdon, with no sign of royal involvement.
72) Feudal Documents, no. 81. See also e.g. Reading Cartulary, nos. 18, 27; Ramsey Chron., p. 298; van Caenegem, Writs, no. 99.
73) PR 31 HI, p. 150; see also ibid., pp. 37-8.
74) See above, pp. 260-1.

75) See Miller, Ely, pp. 66-9, on William I helping the abbot to extract services from those who had invaded Ely lands, but not to bring those lands back into demesne.
76) C.M.A., ii 86.
77) C.M.A., ii 43.
78) C.M.A., ii 134-5.
79) Archbishops of Canterbury - Anselm: The Charters of Norwich Cathedral Priory, ed. B. Dodwell, (2 vols., Pipe Roll Soc., N.S. xl, xlvi, 1974, 1985), i no. 260; Ralph: Round, Ancient Charters, no. 8.
80) Saltman, Theobald, no. 260.
81) Saltman, Theobald, no. 282; see also no. 299 and pp. 545-6.
82) Cheney, 'Inalienability'.
83) Papsturkunden, i no. 9.
84) E.g. Papsturkunden, ii no. 54.
85) Miller, Ely, pp. 168-172.
86) Worcester, no. 77, Papsturkunden, ii no. 109.
87) Letters of Pope Innocent III concerning England and Wales, ed. C.R. & M.G. Cheney, (Oxford, 1967), no. 113.
88) Reg. I, no. 329.
89) Recueil, no. xlv. Also from Henry II's reign: Feudal Documents, nos. 80, 92; Registrum Antiquissimum, no. 104. See Adam of Domerham, ii 307, for Henry of Blois claiming that a gift made without the convent's consent was improper despite the king granting it.
90) Glanvill, vii 1, Hall p. 74. Hyams, 'French Connection', 88, suggests that this is derived from the Constitutions of Clarendon c. 2. However, the Constitutions are concerned with grants of churches from the royal demesne, Glanvill with grants from churches' demesnes.
91) Reg. II, nos. 1131, 1663. The king might also order the regathering of all lands alienated since a specific time, perhaps implicitly showing royal control of ecclesiastical alienation of land: e.g. Reg. II, nos. 607, 1417.
92) E.g. Monumenta Germanica Historia, Capitularies I (1883), no. 28; Councils II (1906), no. 38. See also T.A.C., lvii 8, Tardif, p. 49.
93) See esp. Sawyer, no. 1047, Robertson, Anglo-Saxon Charters, no. xcv. Also Sawyer, nos. 1394, 1406, both leases for three lives.
94) Fauroux, no. 14; see also no. 220, although this may concern a prelate granting his personal lands.
95) Reg. II, no. 1489.
96) See also Reg. I, no. 104.
97) Reg. I, no. 329, cited above, p. 266. See also S.M. Wood, English Monasteries and their Patrons in the Thirteenth Century, (Oxford, 1955), p. 155.
98) See above, p. 103, for references to prelates' feudum. On military service for alms, see Kimball, 'Frank almoign and secular services'; also Douglas, 'Tenure *in elemosina*.'
99) Reg. II, no. 1131, cited above, p. 267.
100) Generally, the division of possessions began to exclude the king from the convent's lands in vacancies during Henry II's reign; Knowles, Monastic Order, pp. 614-5.
101) See above, fn. 58, for colleges of secular canons.
102) E.g. Oxford Charters, no. 52.
103) See above, p. 194 and fn. 72 on p. 218.
104) Earldom of Gloucester, no. 177.
105) See Hyams, 'Warranty', 442.
106) Offler, Durham Charters, nos. 14, 16, 17, 24.
107) Reg. I, no. 192.

PART THREE

CHAPTER SEVEN: THE EXACTION OF SERVICES: DISTRESS.[1]

Introduction

The last chapter discussed services as a primary consideration when permitting or forbidding alienation. I now turn to the actual exaction of dues. Desire for service lay behind the creation of the bond between lord and man. Once homage had been done, performance of service was the most visible manifestation of that bond.[2] Failure to serve might amount to disloyalty, and hence terminate the bond.[3] Certainty concerning services was a sign of holding freely.[4] The lord's capacity to exact his dues and the tenant's to resist unjust demands were therefore essential features of the balance of power in seignorial relationships. Distress was a crucial method of exerting pressure to various ends, including service enforcement, and the one upon which I shall concentrate.

Effective lordship rested on the lord's ability to display and, if necessary, to use his might in order to enforce his will. The noun *districcio* itself could mean forceful pressure,[5] and it was used by victims to suggest that the pressure was unjust.[6] Lords surely distrained not merely to end a temporary refusal of service, but to teach the offender a lesson, and to encourage obedience in the other barons of the honour. These considerations suggest that distress sometimes constituted only semi-tamed violence. The church in Normandy certainly saw it as requiring further taming. Thus a council at Rouen in 1096 decreed strict observance of the truce of God, 'so that no man assault or wound or kill another, nor anyone take distraint or plunder.'[7]

Yet historians have generally represented distress as a closely controlled legal process. In part, they can do so because of the relatively numerous mentions of distress in twelfth-century law-books, the scarcity of evidence

concerning actual practice. Few surviving documents record processes for exacting service. Barely any disputes can be reconstructed. Much outside intervention within the lordship may be hidden because, starting informally or by plaint to the sheriff, it produced no record.[8] When a relevant writ does survive, it is rarely possible to tell from what stage in a dispute it comes.

Lack of evidence also helps to explain historians' disagreements over distress. Many, including Maitland, distinguish distress to force a tenant to perform services from distress to compel appearance in court, the latter being part of mesne process.[9] Most, except the dissenting duet of Richardson and Sayles, hold that in Anglo-Norman England a lord needed his court's judgement before distraining.[10] Distress should be first by chattels and then by fee. Continued refusal to serve could result in the tenant forfeiting the lands which he held of the lord, the ending of the bond between man and lord.

During the twelfth century, it is generally argued, royal involvement in matters concerning services increased.[11] Lords sought royal aid, especially against powerful tenants or ones denying their liability; tenants sought it against unjust distress. Maitland linked this involvement with the requirement for a court judgement, presumably thinking of the royal right to cases of defect of justice and false judgement.[12] Royal participation helped to change the nature of distress. By the second half of the thirteenth century it had become an extra-judicial process, requiring no court judgement and limited to taking the chattels of the defaulter.[13]

Milsom has argued that, contrary to this view, mesne process and distress for services were not separate in the twelfth century: distress was part of the usual procedure to force a tenant to answer at court, in this case concerning failure to serve. The early court rolls show the process pursuing

> its customary motion through summons to the taking of chattels, and from that to the taking of the land. But so long as the lord's own is the only

> relevant legal system, the steps can only be customary: there is nobody to make him answer if he abridges due process, or abandons it and acts on his own will without any judgement.[14]

The last stage was for the man to be disseised. Milsom does not see disseisin and forfeiture as separate entities: forfeiture was simply lasting disseisin.[15]

Royal involvement, according to Milsom, transformed distress. The original purpose of the assize of Novel Disseisin, he argues, was to prevent *unjust* disseisins which might arise through the lord distraining by fee: Henry II was intent not on 'replacing seignorial jurisdiction but providing a sanction against its abuse.'[16] However, by the early thirteenth century the assize had gradually had the unintended effect of ending forfeiture resulting from failure to perform services. Meanwhile, subinfeudation created many lords who had no court through which to 'justice' their tenants concerning services. Such men turned to the king, and Glanvill includes a 'iusticies' writ ordering the sheriff to enforce the services owed to the lord.[17] According to Milsom,

> this must have contributed to the changes which gave him [the lord] the power of distress by chattels, and so disguised as an independent remedy the last vestige of Glanvill's great disciplinary jurisdiction. Routine enforcement became extra-judicial because the judicial load would have been too great for the sheriff and the county machinery to bear.[18]

Apart from such considerations of the administration of justice, legal historians have tended to neglect the practical needs which helped to determine procedures for enforcing services. I shall argue that in some circumstances distress had to obtain swift obedience. Even then, distress had to be reasonable, although one man's view of reasonableness would of course vary according to circumstances and his perspective as either distrainor or distrainee. A judgement may have been needed before distress, but sometimes might consist only of agreement that a man had manifestly failed to serve. Criteria of reasonableness could be flexible. A tenant who continued to default might forfeit his fee, but possibly only after a court hearing. If he did

service, he might still have to answer for his earlier failure. In this sense distress was intended both to exact immediate performance of service and to force the tenant to answer in court.

I deal firstly with cases where the tenant admitted holding of the lord but withheld service or disputed the amount owed, secondly with instances where the distrainee disclaimed tenure from the lord. I concentrate upon military service and rent. Since my primary interest is lordship, I leave aside, for example, distress for debts between men with no seignorial link, which might be dealt with in other courts, by other procedures.[19]

Disputes involving tenants who admit holding of the lord.

The initiation of distress.

In certain circumstances, distress had to be swift to be effective. The king summoned his tenants-in-chief to bring their knights for an expedition, meeting at a fixed place and time.[20] The recipient may have been unprepared. Unlike rent, military service was not rendered at established dates, after which the lord could proceed against his tenant. The recipient would face royal wrath and action if he failed to bring a satisfactory body of knights, and hence had rapidly to exact the service owed to him.[21] Even were the lord summoning the men for his own purposes, swift enforcement might be a matter of victory or defeat, life or death. A lengthy process would be useless.

Such pressures must have helped to determine the notions of distress which the conquering Normans brought to England. How far they saw the same process of distress as appropriate for other dues is unclear: enforcement of non-military service may have been less peremptory. Moreover, summons of the host became rarer in Anglo-Norman England, certainly from Henry I's reign. When military service was demanded, it may often have been as scutage.[22] This possibly made peremptory action less likely. Although lords had sometimes found substitutes for non-attending vassals, it was probably easier to absorb a vassal's recalcitrance when the simply financial demand for scutage could be met from the lord's other revenues, including the scutage raised from knights enfeoffed in excess of royal requirements.[23] Still, some such peremptory procedure must lie behind the development of distress in Anglo-Norman England.

Yet if exaction sometimes was peremptory, it should also, no doubt, have been reasonable. Few lords can have been able regularly to ignore the customs and opinion of their court. The Leges Willelmi specified that no-one was to

take distraint 'temere'.[24] According to Glanvill, lords distraining for aids should act 'iuxta considerationem curie sue et *consuetudinem rationabilem*.'[25] How far custom restricted a lord's actions in practice would depend on his power relative to his vassal, taking into account the ability of both to rally support within the honour and to obtain outside help.[26]

What made distress reasonable? Firstly, was a court judgement required? The evidence is ambiguous. Few specific instances of distress mention judgement. In the early twelfth century, Abbot Faritius of Abingdon distrained Ermenold, a burgess of Oxford, for arrears of rent.[27] The abbot waited a year before acting, but the chronicle records no court judgement. Nor do the occasional charters providing for future distress give any hint that judgement should precede distress, although of course such written agreements might be exceptional.[28]

Possibly, all assumed the need for judgement. A charter of Henry I shows that distress to attend the Abbot of Reading's pleas in his private hundred court required the judgement of the hundred.[29] Whilst Richardson and Sayles correctly pointed out that the Leges Henrici's statement '*Et* nulli sine iudicio uel licentia namiare liceat alium in suo uel alterius' referred specifically to the hundred court, this requirement may give some indication of seignorial court procedure, of which we know so little.[30]

Glanvill, writing of a man's disloyalty to his lord, stated 'et quidem de iure poterit quis hominem suum per iudicium curie sue deducere et distringere ad curiam suam uenire', and likewise the lord might distrain for reasonable aids 'per iudicium curie sue.'[31] Glanvill may have been presenting the situation he wished to see enforced. Legal change may have been affecting the practice of distress by the 1180s. However, one charter of the early 1160s points clearly to judgement before distress. Robert Earl of Leicester notified his men that he

held ten librates of land in Knighton hereditarily from the Bishop of Lincoln. If he or any of his heirs failed to do or observe their homage, 'episcopus Linc' cohercebit eum per illam terram secundum iuditium curie sue, iuxta statutum regni.' 'Statutum regni' may simply mean the custom of the realm, but I think that it probably refers to a royal decree. If so, had Henry instigated a new requirement that distraint be by judgement? A general prohibition of the abuse of distraint seems more probable.[32]

On balance, it is likely that a lord generally would seek at least the assent of his court before distress began.[33] He may have desired the assent of an assembly not only to ensure backing from his barons, but also to publicise the action, sometimes to justify to his neighbours the reasons why a body of armed men would soon be riding purposefully across the county.

In the case of default of military service, the knights who had gathered in response to the summons may have been taken to constitute the lord's court. Absence might render manifest certain knights' failure to perform the required service. In 1088, William Rufus summoned, amongst others, William Bishop of Durham to serve.[34] The bishop failed to do so and was brought to trial, where Hugh de Beaumont put the king's case. In Hugh's hearing, the king had summoned the bishop to ride with him:

> tu uero respondisti ei, te cum septem militibus, quos ibi habebas, libenter iturum, et pro pluribus ad castellum tuum sub festinatione missurum; et postea fugisti de curia sua sine eius licentia, et quosdam de familia sua tecum adduxisti, et ita in necessitate sua sibi defecisti.

Whilst the plea concerns desertion, not simple failure to respond to summons, the two were not very different in effect - both might be regarded as failure to help the lord 'in necessitate sua', as felonies.[35] The king's party would seem to justify the seizure of the bishop's lands by his manifest guilt: Hugh had heard the original summons, non-performance was obvious.[36]

Some circumstances might require a more formal judgement. These might

involve the balance of power between lord and vassal. A single official could take a few of the distrainee's beasts, but sometimes the lord particularly needed the backing of his court since they might be the very men who would have to enforce distress by fee. On the other hand, a lord with a strong household force relied less on the enfeoffed knights of his court.

Other factors might affect the court's role. Not all disputes were so serious as failure to perform knight service. Non-payment of rent, for example, can hardly have been seen as failing one's lord in his necessity. Nor were all disputes so clear cut as manifest failure to serve. For instance, there might be disputes about the amount of service due,[37] the continuing relevance of an earlier remission,[38] or the date at which rent was owed. In such cases, the process of judgement may have been lengthier.

Other Criteria of Reasonable Distress

A second criterion of reasonableness was regard for peace. Improper seizure of goods might constitute theft or robbery. A miracle story concerning Thomas Becket tells of a certain Ailward who was convicted by ordeal of water for theft, after he had distrained his debtor by breaking into his house.[39] I have found no similar example involving seignorial distress. This may result partly from the paucity of evidence, but also from the social standing of those involved. Lords must have been expected to display their might. The criterion may have been that they act without undue violence, particularly violence likely to have wider repurcussions. No instance of a clear standard for excess violence survives, and the limits of legitimate exercise of power must have been unclear. Especially during political disorder distress shaded into extortion.[40]

Were there definite provisions for what might be taken and in what order? The set stages which appear in the court rolls, from summons to distress by

chattels and then by fee, could be the product of regular royal control. Even Glanvill's opinion on lords distraining seems ambiguous: they may do so 'per catalla que in ipsis feodis suis inuenerint uel per ipsa feoda *si opus fuerit.*'[41] Was distress by fee needed because the tenant had not complied after his chattels were taken or because no chattels could be found? Or had the lord and his court from the first judged that only distress by fee would be effective?[42]

There is no hint of *successive* measures when the Abingdon chronicler, having recounted Ermenold's failure to pay rent, stated 'quare abbas sequenti anno, messis tempore, quicquid pecunie desuper terram illam inueniri poterit namari jussit, et terram prohiberi.'[43] Many charters in the century after the Conquest specify distress by fee, or by chattels, or both, without suggesting any fixed order.[44] In 1155 Henry II ordered all men who ought to hold of the church of Reading to do service to the abbot, as it had been done in Henry I's time. Otherwise, the abbot was to 'justice' them by their lands and chattels.[45]

In practice, chattels may often have been taken as a first step, but not because of any strict legal requirement. Removal of some chattels might be simple, and could be performed by one or two of the lord's servants. Seizure of land was likely to meet greater resistance, require greater support. The taking of chattels could act as a ritualised threat. The lord was accusing his tenant of having done wrong, and warning of his power to crush him. However, as a good lord should, he was allowing the tenant the possibility of answering the accusation and of reaching a settlement. At the same time, he ensured that the 'reasonableness' of his distraining was apparent to outsiders.

Did forms of distress vary according to type of service? Royal writs enforcing the personal rather than tenurial obligation of attendance at private hundreds generally specify distress by chattels, never fee.[46] Otherwise, one finds inconsistency.[47] Sometimes distress by chattels was specified for non-

payment of rent, sometimes distress by fee.[48] Henry II ordered the knights of the church of Ely to do due ward service on the Isle of Ely, otherwise the bishop was to justice them by their chattels and the fees they held of him.[49] Yet writs of Henry I and II to those owing ward at the castle of Rockingham specified distraint 'per pecuniam' and 'per catallas' respectively.[50]

Distinctions are even less apparent in non-royal evidence. A charter of 1133x5 may specify distraint by chattels [pecunia] for military service.[51] Walter de Bolbec gave lands in Walton to the abbot of Ramsey and his successors for the service of two knights;

> et si forisfecerit abbas aliquid erga dominum Walterum unde uelit eum implacitare in curia sua, ueniet et faciet ei rectum sicut de laico feodo ... et si non uenerit abbas, constringat eum Walterus de Bolebech uel heres per pecuniam suam sicut de laico feodo.

This charter is particularly useful as it is intent on defining the obligations of one holding lay fee, preventing claims of special privileges derived from ecclesiastical tenure. However, it is not wholly certain that failure to do knight service would be one of the wrongs covered by this clause. Overall, apart from the case of attendance at private hundreds, there was no rigid association of particular forms of distress with particular services.

In order to be reasonable, the distrainor had to treat the distrained goods and lands in a certain way. He should not grant away the lands, nor consume or sell the goods. William Bishop of Durham complained that the king had swiftly granted his lands to other men.[52] Animals, and perhaps other goods, were to be kept in a pound,[53] whence the distrainee should not seize them back. The Leges Henrici mention the offences of pundbreche and excussio - that is anyone 'taking away and re-appropriating his distrained property' - in a section on the hundred, but its phrasing may suggest wider applicability.[54]

The distrainee should offer gage and pledge, in return for which the distrainor must release the possessions. The burgess Ermenold, having been

distrained, sent Walter archdeacon of Oxford and Richard de Standlake to Abbot Faritius and regained his goods on their surety.[55]

Although we have no clear evidence from the century 1066-1166, it seems probable that land taken in distraint should similarly have been replevied. This requirement would, in part, derive from learned ideas, coming from canon and ultimately Roman law, and perhaps asserted more strongly under the influence of Gregorian reform. The canonical collections frequently emphasise that bishops should not be judged whilst despoiled of their goods or ejected from their sees.[56] The Collectio Lanfranci stated that

> Nam nec conuocari ad causam nec deiiudicari potest expoliatus uel expulsus, quia non est priuilegium, quo expoliari possit iam nudatus. Unde et antiquitus decretum est: Omnes possessiones et omnia sibi sublata adque fructus cunctos ante litem contestari preceptor uel primas possessori restituat.[57]

William of St. Calais used the idea in his defence against Rufus: to show his good will, he once offered to answer even while disseised, but at another point he refused to answer 'until it is justly adjudged that I ought to plead despoiled.'[58] The Leges Henrici extend the idea beyond bishops, repeatedly specifying that no-one is to plead disseised:

> nullus a domino suo inplegiatus uel inlegiatus uel injuste dissaisiatus ab eodem implacitetur ante legittimam restitutionem. ... Et nemo dissaisiatus placitet nisi in ipsa dissaisiatonem agatur. Et postquam aliquis dissaisitus legem uel rectum domino suo uadiauerit et plegios, si opus est, addiderit, saisitus esse debet.[59]

The parallels with replevin of goods are sufficiently close to suggest that this represents contemporary practice in lords' courts.

Such a conclusion, if correct, clearly has major implications for the assize of Novel Disseisin, discussion of which would require a separate study. In general, it may reinforce a link which Milsom suggests between the assize and distress.[60] Unjust disseisin might often consist of the lord refusing to return lands taken in distress to the tenant, after the latter had agreed to perform services or answer in court concerning them. This places the assize in a

context which includes elements such as the canonical traditions which underlay the later actio spolii, as others have suggested,[61] but the development of which was more gradual and more complicated than has previously been allowed.

Let us return to distress itself. Possibly, if the tenant at length admitted that he owed the services, but claimed inability to pay, his goods might be sold. The Dialogus's description of royal distress for debt, including arrears of scutage, deals at length with the sale of the distrainee's moveables.[62] The evidence does not reveal whether this was a special royal right. The Dialogus does not say that it was - but there is no reason why it should. I have found no example of lords acting thus - but such sales need not have been recorded.

The final result of failure to perform services might be forfeiture of the lands which the tenant held. Late in Henry I's reign, Battle Abbey lost a holding at Barnhorn for alleged failure of service.[63] In 1166, William de Montfichet reported that he held in his hand 'two-thirds of a knight' for default of service.[64]

Was forfeiture limited to those lands for which the tenant had failed to serve, or did it involve all the lands he held of the lord? Glanvill is unequivocal: a man should answer his lord's complaint that he is withholding service, and battle or the grand assize might result; 'si uero super hoc conuictus fuerit tenens ipse, de iure de toto feodo quod de illo domino suo tenet exheredabitur.'[65] This tallies with the Leges Henrici's statement that 'si quis hominem habeat qui ei nolit esse ad rectum, si quid de eo tenet post legittimam submonitionem saisiri faciat.'[66] Such is the principle. In practice, partial forfeiture may have been common. In part, this reflects ambiguity as to whether services rested on land or personally on tenants.[67] When a charter specified that a man and his heirs were granted a piece of land so long as they

held it lawfully and performed due service for it,[68] failure surely resulted only in the forfeiture of that land. Secondly, partial forfeiture may have arisen through compromise. The balance of such settlements would be determined, for example, by the seriousness of the offence, the relative power of man and lord, and the lord's desire to retain the vassal.

A formal hearing would often precede forfeiture. The 1166 carta of Manasser Arsic emphasised that Robert Arsic had lost Ditton and Kersington 'pro nequitia, et iudicio curie' - the form of Robert's 'nequitia' is not specified.[69] A hearing was desirable for various reasons. To disinherit a man was a serious matter; he should be allowed his day in court. The hearing provided a last chance for an amicable settlement. It would help to convince the other vassals that they were not seeing, nor themselves in future liable to be threatened by, an act based solely on the lord's will, that rather they had a good lord. Hearings might also settle difficult cases, for example as to whether the lands were free maritagium for which no services were owed.[70]

Formal judgement before forfeiture would contrast with the more peremptory judgement before distraint. This suggests that distress by disseisin of land differed from forfeiture in more than duration. Contemporaries surely distinguished between the two in terms of seriousness, dishonour to the tenant, solemnity of procedure, and permanence.

The desire for judgement before forfeiture helps to reconcile the notion that distress aimed at forcing the tenant *to answer in court concerning the services* with the more widely held one that distress was to force *the performance of the services*. As suggested above, the latter would better suit the lord's immediate needs, especially if prompt performance was important. Yet the views are not mutually exclusive. Milsom cites an assize of 1204 which refers to the tenant being distrained not *to answer* in court concerning the

services, but *to do* them there.[71] Lords desired public performance and hence public admission of due service. Moreover, even if the services were eventually performed, the tenant might still have to answer for his disobedience. Distress provided pressure for obedience, and obedience was expressed both by performing services and by answering in court.

Outside Involvement

I have already discussed in other contexts a lord's problems when faced by a powerful vassal or a vassal with a powerful protector.[72] Glanvill speaks of the 'dominus potens non fuerit tenentem suum pro seruiciis suis uel consuetudinibus iusticiare.'[73] Arguments that this refers to courtless lords seem unnecessary. Often it must have been simply a matter of power.[74]

Sometimes a lord was unable to do anything in this situation. In 1166, the Bishop of Salisbury reported rather helplessly that Walter Walerant held the fee of one knight for which he had served the Bishop's predecessors. Now he only did the service of half a knight, having deforced the bishop of the service of the other half since the time of war.[75]

A lord might seek outside help. The obvious source was his own lord. Thus a writ of Robert son of Henry I, concerning his regrant to William Mauduit of lands William's brother had held, is addressed not generally but to William de Eynesford and his wife Hawisia, and orders them to answer and serve William as they had served his brother.[76] Rannulf Earl of Chester gave Bisley to Miles of Gloucester, and in 1129x41, Rannulf addressed a writ to Richard de Veim and his other vavassours of Bisley, ordering them to do service to Miles 'the constable' as willingly as they ever had.[77]

Such support constituted good lordship. If exercised in favour of the church, there was the further motive of spiritual benefit.[78] Additionally, overlords' own services might be threatened if their sub-tenants disobeyed the mesne lord. In 1166, the Abbot of Westminster stated that Walter de Meine owed the service of one knight, 'sed Willelmus de Stantone, qui feodum illud de eo tenet, medietatem deforciat.'[79]

There are also hints that lords sometimes looked to the great men of the area for help. In their confederatio amoris, Robert Earl of Gloucester promised Miles Earl of Hereford help 'ad custodiendum sua castella et sua recta et sua hereditaria et sua tenementa et sua conquisita ... et *suas consuetudines et rectitudines* et suas libertates.'[80]

Most evidence of support for lords exacting services concerns royal involvement, but even so the extent of royal aid is extremely unclear, especially before 1100. Lords may have turned to royal officials for help, but we are unlikely to know of this unless a writ was obtained. Some general orders of William I that churches should have their lands and customs do survive, but nothing more specific.[81] Then Rufus ordered the sheriff and faithful of Suffolk to do full justice to those who detained the rights ['rectitudines ... retinuerit'] of St. Edmund.[82] He and subsequent kings also issued general confirmations of customs.[83] Such charters may have swayed later cases, or have helped to obtain more specific royal orders.

During Henry I's reign appear precursors of the later writ of 'customs and services'. Thus Henry ordered a certain Ruallon to do the service and aid to the Abbot of Ramsey which he justly ought to do from his land; otherwise the abbot was to justice ['justificet'] him by his moveables until he complied.[84] Nothing more is known of this case, but the Abingdon Chronicle allows a more complete view of Henry supporting Abbot Faritius, as will be discussed below.[85]

From Stephen's reign come writs ordering attendance at private hundreds.[86] Also, in 1140 the king ordered Hugh de Scalers and his nephew Stephen to render farm to the monks of Ely as well as they did before the king had taken the Isle of Ely, or to give back to the monks their fee. If they failed to comply, Aubrey de Ver was to constrain ['constringat'] them until they did. Another writ duly follows, ordering Geoffrey de Mandeville to constrain Hugh and Stephen.[87] However, this seems exceptional. If the evidence is any indication, Stephen and his rivals were less involved with enforcing services owed to lords than Henry I had been.

Henry II rapidly became involved in such affairs. From the first half of the reign come a series of royal charters ordering restorations to Malling Abbey. One, addressed to the tenants, orders that they serve Abbess Emmelina their lady for the lands which they held of the abbey as fully as service had been done in the time of Henry I. Otherwise, she was to justice them by their fees.[88] A few similar writs survive,[89] and by the end of the reign Glanvill took as normal the recourse to the royal court of the lord who could not justice his men to serve.[90]

Kings were asked to intervene. Many passages of the cartae of 1166 sound like direct requests for help. Lambert de Scoteni complained that Richard de Haia had done no service for Lambert or the king for his knight's fee, except two marks, since Henry's coronation: he asked the king 'quod mihi placitum uestrum de Ricardo de Haia mandetis, qui mihi seruitium illius feodi detinet, nec potero habere nisi per preceptum uestrum.'[91]

Lords might pay for royal favour. Athough the Pipe Rolls of this period include perhaps surprisingly few relevant entries,[92] it is possible that not all payments for such favour were accounted at the exchequer.[93]

Kings were also protecting their own interests.[94] Certainly a lord had to

fulfil his obligations to the king even if he could not raise the full service from his vassals. He might find substitutes for defaulting knights, or pay full scutage.[95] Yet in practice the king's own service might be endangered if sub-tenants refused to serve their lords. The Earl of Arundel's carta records that when a disagreement arose amongst the knights of the honour about an expedition to Wales, the king chose four of the older, better and more law-worthy knights, 'et fecit eos recognoscere seruitia militum de honore, et super legalitatem et sacramenta eorum inde neminem audire uoluit.'[96] As the honour was not in royal hands in the early part of the reign, Henry was apparently imposing his own authority within the honour, through a recognition.

Guard obligations at royal castles may have caused particular problems. In 1105, Henry I ordered the barons of the abbey of Abingdon to do castle guard at Windsor as they had previously done and as Abbot Faritius had ordered.[97] Similar writs to other ecclesiastics survive.[98] Quite possibly these lords were facing not individual defaulters, but a wider revolt of their vassals. Because of the outside requirement for these services, the lord could not strike a compromise with his men. On the other hand, the lord's position within the honour was eased by the likelihood of royal support, for the king had an interest in his success.

Outside help might be useful not only to the impotent lord but to one needing a swift result. A royal writ may also have made it difficult for the distrainee to claim that the distrainor had acted wrongly. Henry I ordered Robert Mauduit to do service to Abbot Faritius for the land he held as his ancestors had in Abbot Adelelm's time, 'et nisi feceris, tunc precipio ut abbas predictus de terra sua, quam tenes, suam uoluntatem faciat.'[99] The last phrase, providing for distress by fee, is unusual and emphasizes the abbot's power to act freely and swiftly now that he has obtained royal backing.

Those whose services were demanded also sought support. Evidence is scarce for overlords helping their sub-tenants. However, a lord's confirmation of his vassal's gift, stating that the donee should hold freely, might extend to protection from unjust exactions by the donor or his heirs.[100] Also, in a world of competition for services, men might often find other powerful helpers who foresaw profit from providing such aid.[101]

Again the chronology of royal involvement is very vague. Even if fairly minor personages did often receive writs protecting them from unjust vexation, the chances of such documents surviving would be small. If help was often obtained by plaint to the sheriff, no record need have been produced.

All kings issued confirmations ordering that the beneficiary should hold 'libere et quiete'[102] and some, particularly to churches, specified that they were not to be vexed or distrained.[103] More specific evidence is scarce even for Henry I's reign.[104] In 1104 Robert Gernon gave Robert fitzHervey and his lands to the Queen who in turn gave them to Abingdon.[105] Robert seems to have disturbed the gift for in 1106 Henry ordered him to allow Robert fitzHervey and his land and 'pecunia' to be in peace, as on the day he had given them to the queen and she had given them to Abingdon.

Scanty evidence of Stephen providing protection against unjust exactions also survives. One possible instance is a writ, almost certainly issued after the Treaty of Westminster, ordering William Abbot of Holme to reseise Serlo the chamberlain of his land of Beeston, Norfolk, and to permit him to hold in peace.[106] There is also extensive evidence of lords exacting unjust services, against whom Stephen provided no protection. Thus in the late 1140s, William d'Aubigny, Earl of Chichester, admitted that he had been making 'many exactions on the churches and lands of those in the bishopric of Chichester', which his predecessors had never done.[107]

Henry II, the evidence suggests, strove to regulate distress more tightly than had his predecessors. Richard fitzNeal's description of distress for royal debts suggests a decree on the subject in the first decade or so of Henry's reign.[108] The assize of Novel Disseisin was at least in part aimed at unjust distress by lords.[109] I have already mentioned Robert of Leicester's charter conceding that he owed homage and service to the Bishop of Lincoln for Knighton, and allowing that the bishop justice him and his heirs by the judgement of his court, 'iuxta statutum regni'. On the basis of this charter, Stenton argued that 'by itself *statutum* means nothing more than "that which is appointed" ... No legislation can ever have been put forth on so fundamental a matter of feudal organisation.' He apparently regarded legislation as necessarily involving radical change. Yet coronation charters decreed on matters as 'fundamentally feudal' as relief. If one man was likely to know of such a decree and mention it in a charter, it was the Earl of Leicester.[110] That the charter speaks of 'statutum *regni*', not 'statutum *regis*' need not rule out legislation. Such a provision would fit with the other signs of legislation early in the reign.[111]

However, recorded interventions by Henry remain fairly scarce up to 1166. In 1154x8, he ordered Conan Earl of Richmond to allow Roald the Constable to hold in peace and justly the land which was Hervey fitzMorin's as Conan's grandfather had given it to him.[112] No-one was to vex Roald or unjustly place him in plea. Non-compliance would result in enforcement by the king's justice or the sheriff. Possibly Roald was being vexed for unjust services, although other explanations are possible. Henry also enforced the replevying of goods: the 1166 Pipe Roll records that Hugh de Mortimer owed £100 since he had not released to his knight his animals for pledge, as the king had ordered by his writ.[113]

By 1189, crucial protection came from the sheriff, by the action of replevin.[114] Thus Glanvill includes a writ ordering the sheriff 'quod iuste et sine dilatione facias habere G. aueria sua per uadium et plegios, unde queritur quod R. ea cepit et detinet pro consuetudinibus quas ab eo exigit, quas ipse non cognoscit se debere.'[115] A thirteenth-century tradition held that under Henry the plea of replevin was granted to sheriffs, acting as the king's justices.[116] If there was such a transfer of jurisdiction, the Pipe Rolls suggest that it occurred in the last years of the reign, for entries from the 1170s into the early 1180s show eyres dealing with replevying.[117]

Who heard such cases before the 1170s? The transfer of jurisdiction would suggest that in Henry's reign replevin was a crown plea. I argue below that it concerned defect of justice and possibly breach of the peace, two other particular interests of the king.[118] Hence disputes would be heard by royal justices, be they based in shires, itinerant, or sent out specially, and probably also by sheriffs. The thirteenth-century specification that sheriffs did so only as royal justices was more important after Magna Carta c. 24 which forbad sheriffs to hear crown pleas, than it would have been in the early twelfth.[119] Then, conceivably, the shire often heard such cases, especially those not involving breach of the peace, which might attract special royal concern.

The changes under Henry should, no doubt, be related to wider administrative developments. One possibility is that the disappearance of local justiciars and the greater regularity of eyres produced the shift visible in the Pipe Rolls of the 1170s and early 1180s. The eyres of those years may have been so overburdened that full responsibility for replevin was granted to sheriffs, acting in the place of royal justices.

Why did the king and his officials help those owing service, be it through the enforcement of the release of goods or, for example, by orders that the

tenant should not be vexed for unjust services? Richard fitzNeal saw lords as men's 'domestic enemies'.[120] Unjust exactions were an obvious sign of tyranny.[121] To protect the pauperes from this was a major royal duty;[122] thirteenth-century tradition saw the change in the administration of replevin as for the benefit of poor free men, and the resultant hastening of justice as a way of preventing harm to their animals and goods.[123]

Again, the king was responding to men's requests for favour. A tenant could buttress his case in various ways. He might claim that his lord had distrained with undue violence, had demanded services not due or not in arrears, or had carried out the distress unreasonably, perhaps refusing to replevy the possessions taken. Those with royal confirmations stating that they were to hold free of service, or for specified services, might first use these to try to check their oppressors, and if this failed, to obtain royal help.

Worry about distress was closely linked to concern for peace.[124] Some documents associate distress with violence or at least theft. The influence of the peace movement, which sought to restrict distress, was felt in Normandy. In 1080, the Council of Lillebonne decreed that if any cleric, or anyone in a cleric's surety, or any 'habitator atrii' committed robbery, took a distraint, made an assault, or unjustly seized anything, a fine was to be paid to the bishop.[125] The reform movement sought to prevent churches being distrained.[126] Charters to churches associate distress with harming:[127] thus Henry I confirmed various gifts to St. Peter's York: 'et prohibeo ne aliquis ministrorum meorum in domos uel terras eorum inuasionem ... faciat ad nam capiendam et ad contumeliam faciendam.'[128]

Such pressure would have reinforced the king's own desire to keep the peace. Violent distress may have been common under Stephen.[129] Attempts by lords to squeeze increased services from their men produced disputes in the

next reign. Henry II, intent on restoring order, had to end such activities.[130] Presenting juries, in the alleged 'criminal' stage of the assize of novel disseisin, could have been employed to reveal violent abuse of distress.[131] Use of such juries had ceased by the time Glanvill wrote, but he still associated disseisin and violence: 'the defeated party, whether he be the appellor or the appellee is always in the king's mercy on account of disseisin because it is violent.'[132] Bracton too stated that unjust detention of distrained possessions was 'against the king's peace.'[133]

It could well be that royal involvement first became regular in cases involving breach of the king's peace. Admittedly, the common penalties for lords' abuse of distress were not at all those specified by Glanvill for theft and breach of the king's peace, death, loss of limb, and disinheritance of heirs;[134] yet Glanvill himself might not have regarded such penalties as proper for all those who could be seen as breaking the king's peace, regardless of their status. Still, concern for peace does not entirely explain royal interest in unjust distress, certainly not the more complete regulation which developed under Henry II. A second crucial element was the king's claim to hear cases of defect of justice. Both wrongful taking of distress and unjust detention might constitute such an offence.[135]

Violence and defect of justice were anyway intimately connected. On the one hand, royal hearing of cases of defect of justice need not simply have been a favour granted to the weak; it also offered a peaceful strategy to the aggrieved tenant who might otherwise have resorted to violence against his lord.[136] On the other hand, seignorial violence and defect of justice need not have been discrete categories, at least in most men's mind during most of the period. The very survival of the list of royal rights in the Leges Henrici, which includes breach of the peace and defect of justice, has encouraged too

simple a view of discrete crown pleas. In some ways similar acts might again be perceived differently according to the status of the participants.[137] Not unusually forceful but still unjust distress might be perceived as theft if carried out by a minor man, as defect of justice if carried out by a more important lord. Elsewhere, the Leges Henrici link 'defectus iustitie' with 'uiolentia recti ... destitutio.'[138] In practice, denial of justice may often have involved violence or at least its threat, and this is especially true of a procedure such as distress which rested heavily on the exercise of power.

Disputes in which the man disclaims tenure from the lord.

I now turn more briefly to certain disputes in which a man refused service on the grounds that he did not hold the relevant lands from the lord demanding the service. These pleas of non-tenure might originate with an heir refusing homage to his ancestor's lord, or with a newly succeeding lord demanding homage from his predecessor's tenants. Disclaimers might also occur when men were summoned to serve, or to answer for failing to serve.

In a dispute between two lords over their right to a piece of land, a tenant might well disclaim tenure when his service was demanded by the lord whom he was not backing. I leave aside such cases, as spin-offs from wider disputes. Instead, I concentrate on cases more directly tied to the balance of power between lord and man. On occasion, tenants seem to have refused homage and service in order to test their lords' power,[139] sometimes perhaps desiring only a favourable settlement, not an end of the tenurial connection.

A lord might reseise into his own hand land which he had granted in return for service and which man now denied holding of him. As in cases not involving disclaimer, the lord might have good reason to wish to act swiftly. Moreover, disclaimer, by its very nature, was likely to be manifest.

In fact, we possess little evidence of lords acting peremptorily.[140] Perhaps this is because most of the recorded disputes come from church honours, whose lords may have been less able or willing to exert force. Yet the cartae baronum show lay and ecclesiastical lords experiencing similar difficulties. The carta of the honour of Clare states that Stephen de Tours owed one knight from whom the Earl had never received homage, relief, or service.[141] There is no sign that Stephen claimed to hold of another lord.

The evidence reveals court hearings rather than swift disseisin. At the

beginning of the twelfth century, Nigel d'Oilly was a prominent tenant of Abingdon. He held a meadow at Oxford, a hide at Sandford and another at Arncott, lands which his predecessor Robert d'Oilly may have obtained improperly. For a long time after Abbot Faritius's succession in 1100, Nigel did neither homage nor service:

> quapropter abbas contra ipsum diratiocinando egit, ut et ecclesie et sibi pro his, que tenebat, homagium faceret, et hoc tenore eadem in posterum recognosceret, scilicet ut in omni regis geldo ipsa quietet, et abbati sicut suo domino ubique seruiat.

The verb diratiocinare suggests certainly a formal court hearing, perhaps an offer of battle, although the chronicle does not specify the court: it may well have been the abbot's own.[142]

Peremptory action may have been unusual partly because of the purposes of lord and man. Lords sometimes wished to retain tenants who disclaimed their tenure.[143] Those disclaiming need not always have intended to maintain their cases to the last, but hoped for favourable settlements. A gradual process might allow reconciliation.

The power of some vassals must also have deterred or prevented peremptory action. A lord wishing to take back the land may have been unable to eject the man in possession. It is notable that some deeds involving particularly strong vassals make careful provision concerning disclaimer by the vassal. Robert Earl of Leicester's charter concerning Knighton specified distress by judgement of the Bishop of Lincoln's court if the Earl and his heirs failed to *do* and observe their homage.[144]

Even if the tenant was not particularly powerful, forcible action might cause him to seek help from another lord. According to the Leges Henrici, a man who, through arrogance, created an advocate for himself against his lord was to lose what he held of that lord,[145] but on occasion the distraining lord may have suffered permanent loss to his former man's new protector.

Lords faced with sitting tenants disclaiming tenure may often have needed royal help in pressuring the men into doing homage. Occasionally a man might, as a tactical move during a dispute, claim to hold of the king. If so, the lord might well need royal help to regain control of the tenant.

In other instances, a lord might seek royal support because of his opponent's power. Walter Giffard the younger held Lyford from the abbey of Abingdon. Before 1066, the sons of Alfyard had held from the Abbot but were not to go elsewhere without the abbot's permission. Still, they commended themselves to Walter.[146] When Faritius became abbot, Walter strove to avoid service, and appears not to have done homage. Faritius obtained a royal order which led to a hearing in Oxford at the house of Thomas of St. John, where the abbot was currently holding his court. In the presence of Roger of Salisbury, Robert Bishop of Lincoln, and many of the king's barons, Walter became the man of the church and abbot, on the condition that he render the service of one knight from that land in the same way as the church's other knights did service. The hearing thus seems to have been before a court which can be considered either that of the abbot, afforced by powerful friends, or one of mixed composition, partly royal, partly honorial.[147]

In addition, there was a jurisdictional logic forcing lords to seek royal help. Any man disclaiming tenure was also denying any obligation to answer in the lord's court concerning the relevant lands.[148] The lord might still wish to get the man to answer in his court, for he might prefer to keep a desirable vassal, such as Walter Giffard may have been, rather than take the land back in demesne or grant it to another. Sheer force was one way to bring such a man into court, but this might not be a viable option because of the balance of power between lord and disclaimant, and might anyway lead the latter to seek outside help. The jurisdictional logic of disclaimer, as well as the problem of

power, might be better overcome by the lord obtaining a royal writ to force the man into court.

The king would also sometimes have aided those disclaiming. Imposition of seignorial-style exactions on other men's tenants was a feature of the 'tyranny' which barons exerted under Stephen.[149] Moreover, even if the man had not at first specifically claimed to hold of the king, the king may have desired the man's homage and therefore aided him.[150]

Parties in cases involving disclaimer probably also looked to other sources of support, be they royal officials, overlords, or local great men. Overall, the surviving evidence does not suggest that the parties acted very differently in these disputes compared with those not involving disclaimer. The sources may hide many lords reseising lands which vassals had disclaimed holding of them, or many men successfully disclaiming the seignorial bond. If not, two main reasons suggest themselves for the similarity to actions not involving disclaimer. Firstly, similar considerations of power were likely to produce similar resort to outside support, whether or not disclaimer was involved. Secondly, refusal or disclaimer of homage was sometimes a tactic aimed only at a favourable settlement with the lord, not at permanent separation from him.

Conclusions.

The above picture is one of flexibility, defined by various criteria of reasonableness. Custom, the lord's assumptions and interests, together with the pressure of his court, gave weight to the restrictions. The power of the lord in relation to his vassal would help to determine his remaining freedom of action. I have suggested in an earlier chapter that social change was weakening some lords' hold over their vassals,[151] and this would also have had a major impact on the enforcement of services.

Restrictions were also imposed by the involvement of forces from outside the honour, but the extent of such involvement is extremely hard to determine. At first, one-off provisions of favour may have predominated. However, even early in the period, superior authorities were probably involved more regularly in disputes potentially affecting their own dues. Churches may have been more regular recipients of help, perhaps particularly from kings. Royal action may also have been likely in cases involving breach of the king's peace. Even this degree of involvement would limit the exercise of the lord's will.

Moreover, royal involvement could be self-perpetuating. If one party had royal support, the other might also have to turn to the king. Lords might be faced with recalcitrant tenants claiming to be protected by royal privileges. Henry I ordered those who held lands in the hundreds of St. Edmund to come to pleas in those hundreds, 'et non remaneant pro ullo breue quod habent ut non ueniant.'[152] Similarly, the Leges Edwardi Confessoris, dealing with men who possessed the king's peace, stated 'nec propter eam pacem retineant seruicium dominorum suorum, nec rectitudines si quas debent uicinis suis; quia non est dignus habere pacem qui non diligit obseruare pacem.'[153]

Royal support for churches might also lead men to consider such

involvement as fairly normal. If the preponderance of royal writs concerning churches is not simply a product of the survival of records, churchmen's may have impressed themselves upon other lords, who then followed suit. Royal responses to churchmen might form the basis of remedies later used more generally. In such ways, royal involvement might snow-ball.

Did royal involvement before 1166 have any of the more specific effects generally assigned to after that date? A writ of 1168x72 suggests that distress by fee was perhaps already in decline.[154] It ordered the sheriffs of Essex and Middlesex not to demand more than the twenty knights' servide which the Bishop of London used to owe. If any of the knights was unwilling to serve the bishop, the sheriff was to distrain them by their chattels. Some earlier writs concerning knight service had specified distress by fee.[155] However, it cannot be told whether the various writs came from different stages in disputes. Moreover, this is a slightly different type of writ, the earlier ones having concerned *lords* distraining specific tenants.

From the 1120s appear other written clauses concerning distress for failure to serve. Vincent, abbot of Abingdon between 1121 and 1130, made an agreement with Simon the king's Dispenser:

> in hac quoque concessione hoc dispositum communi decreto fuit, ut si forte siue ipse Simon (siue sui post eum heredes) de firma huius manerii reddenda deficerent, ecclesia Abbendoniae idem manerium Tademertun, sine ullo contradicto, in proprio dominio resaisiret.[156]

Charters of St. Mary's York began to include clauses such as 'hoc ei concedimus quamdiu se legaliter erga nos habuerit et prefatum censum bene reddiderit.'[157] Such written specifications might be seen as lords preserving powers of peremptory distress against outside interference. They were, at least, attempts by lords to reinforce their position by use of writing.

Flexibility probably only disappeared with regular royal involvement emerging from the 1160s. By the time of the first court rolls, royal justices gave little consideration to local custom or specific circumstance, but applied generally the rules of distress appropriate for forcing a defendant to answer in the communal courts. These very rules may only have become rigid in the twelfth century. The Anglo-Saxon law suggests precise, unvarying procedure, but provisions in the twelfth-century Leges seem to contradict one another.[158] As always, it is hard to tell, even for the communal courts, how far these sources reflect actual practice, which may have been more flexible.

I have discussed above reasons for the extension of royal control of distress: pleas from the church; the snow-ball effect of subsequent royal involvement; general social change; Henry II's need to restore peace. There is at least one more. Throughout this chapter, the Cartae Baronum have been a major source for lord-tenant relations. Although the king seems to have requested the names of tenants primarily because he was demanding an oath of loyalty ['ligantia'] from them,[159] the Cartae provided Henry, his counsellors and administrators with much additional information on relations within honours. Might this not have influenced their future approach to disputes over services, not directly by using them as reference sources but by removing residual inhibitions on the propriety of royal interference? And would not other inquiries, such as the Inquest of Sheriffs, have had similar effects? Such information-gathering may have been another force behind the more generalised royal involvement of Henry II's reign and after, which contrasts with the probably extensive and influential but still irregular involvement of Henry I.

CHAPTER SEVEN: THE EXACTION OF SERVICES: DISTRESS: Notes.

1) I would like to thank Paul Brand for helpful discussion of certain points in this chapter, and for a sight of an early draft of portions of his own work on replevin. On use of 'distress' rather than distraint, both Maitland and Milsom use distress for the overall process; see Pollock and Maitland and Legal Framework indices. See also e.g. D.M. Walker, The Oxford Companion to Law, (Oxford, 1980), p. 365, who takes distress as the overall remedy, distraint as 'the seizure of goods by way of distress.'
2) See esp. Joüon des Longrais, Conception de la Saisine, p. 262.
3) See esp. Hereford, no. 38 which specifies that tenants are to pay their rent 'sicut amant tenementa sua.' Also L.H.P., 43 7, 88 14, Downer, pp. 152, 274. Cf. the situation in late Anglo-Saxon England, where a man might forfeit his land if he failed to perform the service owed from it to the king. Another man may have been able to gain the land by performing that service; M.K. Lawson, 'The collection of Danegeld and Heregeld in the reigns of Aethelred II and Cnut', E.H.R., 99 (1984), 724-5; Hemming, Cartulary, i 278.
4) See Douglas, 'Tenure *in elemosina*', 100-1; Hyams, Kings, Lords, and Peasants. I do not wish to imply that fixed definitions of free and unfree tenures existed at this time, simply notions of how land should be held freely.
5) E.g. L.H.P., 11 16, Downer, p. 114.
6) E.g. Hugh the Chantor, p. 31.
7) Orderic, v 20.
8) See below, p. 294.
9) Pollock and Maitland, i 593 on distress to force appearance in court in personal actions. M.M. Bigelow, History of Procedure in England, 1066-1204, (Boston and London, 1880), p. 202. The one work devoted solely to distress is F.A. Enever, History of the Law of Distress for Rent and Damage Feasant, (London, 1931), but Enever's arguments, particularly concerning the period before 1200 are not very trustworthy. (Henceforth Enever, Distress.)
10) E.g. Pollock and Maitland, i 353-4, ii 575. H.G. Richardson & G.O. Sayles, Select Cases of Procedure without Writ under Henry III, (Selden Soc., vol. 60), xciii n. 1. (Henceforth, Richardson and Sayles, Procedure without Writ.)
11) E.g. S. Painter, Studies in the History of the English Feudal Barony, (Baltimore, 1943), pp. 106-7.
12) Pollock and Maitland, ii 576.
13) Pollock and Maitland, i 353.
14) Milsom, Legal Framework, p. 11; also generally pp. 8-11.
15) Milsom, Legal Framework, p. 11 fn. 1, on p. 12.
16) Milsom, Legal Framework, p. 14.
17) Glanvill, ix 9, Hall, p. 113.
18) Milsom, Legal Framework, p. 34.
19) For the same reason, I only mention in passing distress for damage feasant, which would generally affect neighbours rather than lord and man.
20) See the writ to Aethelwig of Evesham, Reg. I, no. 63. The authenticity of the writ is questionable, notably because of the use of the word 'ballia', which does not appear again for another century.
21) Holt, 'Knight Service', 104 argues that the king demanded a satisfactory turn out, not exact fulfilment of the quota owed. However, see C.M.A. ii 128, where the Abbot sends a substitute for a knight who failed to answer his summons. This suggests that exact fulfilment may have been required.
22) C.W. Hollister, The Military Organization of Norman England, (Oxford, 1965), pp. 195-204. However, T. Keefe, Feudal Assessments and the Political Community under Henry II and his Sons, (Berkeley, 1983), p. 87, argues that

Henry II was not intent on wholly substitutimg scutage for knight service. (Henceforth Keefe, Feudal Assessments.) The situation in Stephen's reign is obscure, but wider violence may well have encouraged peremptory action.

23) See above, p. 306 fn. 21. Also Red Book, i 218, 293, 297, for lords paying full scutage despite their vassals' default.

24) Leges Willelmi, 44, Liebermann, Gesetze, i 517: the French version, does not include an equivalent of *temere*.

25) Glanvill, ix 8, Hall, p. 112.

26) See below, pp. 288-297; however, no higher authority was available for lay tenants-in-chief, and only the Pope for ecclesiastics.

27) C.M.A. ii 140.

28) E.g. Danelaw Documents, nos. 181, 219; Registrum Antiquissimum, no. 2124; Beauchamp, no. 334; Gloucester Cartulary, no. CXLVII.

29) Reg. II, no. 1865.

30) L.H.P., 51 3, Downer, p. 166. Richardson and Sayles, Procedure without Writ, p. xciii n. 1. Dr. Brand suggests that 'licentia' might mean that lords by their very position were licensed to distrain. I am not convinced that 'licentia' can be so interpreted. However, see also J. Goebel, Felony and Misdemeanour. A Study in the History of English Legal Procedure, (New York, 1937), esp. pp. 211-2, on the relation of the bannum and districtio.

31) Glanvill, ix 1, 8, Hall, pp. 105, 112.

32) Registrum Antiquissimum, no. 313; on this, see also below, p. 293. For the tenurial background, see Crouch, 'Leicester Abbey'.

33) Cf. Glanvill, vi 10, Hall, p. 63, a reference to 'consilium curie' in a matter involving distress by the king.

34) Simeon of Durham, i 171. I follow Southern, St. Anselm and his Biographer, p. 148, and F. Barlow, The English Church, 1066-1154, (London, 1979), p. 281 fn. 46, in taking this text as providing a near contemporary account of the case. For the contrary view, see H.S. Offler, 'The Tractate De Iniusta Vexatione Willelmi Episcopi Primi', E.H.R., lxvi (1951), 32-41.

35) Simeon of Durham, i 181. See also Glanvill, ix 1, Hall, pp. 104-5. Felony and treachery were often associated, sometimes in a phrase such as 'plus fel que Judas'; e.g. Raoul de Cambrai, l. 1381.

36) Distress for damage feasant never required a judgement, presumably because the offence was generally manifest and needed to be stopped speedily in order to prevent further damage. A swift process may also have been permissible when the grant to the tenant made express provision concerning default of service; see examples below, p. 303.

37) E.g. C.M.A., ii 5, 92, 129 for a dispute between Abingdon and Jocelin de Rivers over the service owed from Beedon. Red Book, i 204 records a case where the tenant seems to have argued successfully for a lower quota.

38) This seems to be the situation envisaged in Leges Willelmi, 32, Liebermann, Gesetze, i 515.

39) Materials Thomas Becket i 155-8, ii 173-182.

40) See below, pp. 295-7.

41) Glanvill, ix 8, Hall, p. 112; cf. Les Coutumiers de Normandie ii; La Summa de Legibus Normannie, ed. E.J. Tardif, (Société de L'Histoire de Normandie, Rouen & Paris, 1896), iii 2, Tardif, pp. 7-8.

42) Glanvill, x 3, Hall, p. 117.

43) C.M.A., ii 140.

44) There is also a problem with the translation of 'pecunia', which is generally taken to mean chattels, but can occasionally refer to all possessions, moveable and immoveable.

45) Reading Cartularies, no. 24. See also Miller, Ely, p. 281 for a later writ of

Henry II; Danelaw Documents, no. 219.

46) Reg. II, nos. 1771, 1812, 1865; Reg. III, nos. 490, 753; Registrum Antiquissimum, no. 155. On the personal nature of hundred suit in this period, see Pollock and Maitland, i 530, cf. 557 where it is stated that by Henry II's reign, 'the duty of suit has taken root in the soil.'

47) Both of Henry I's writs which definitely concern knight service specify distress by fee, Reg. II, nos. 553, 697; both were to Abingdon, and issued in the first five years of the reign. Reg. II, no. 1860a, to Ramsey, may be a contrary example.

48) Fee: e.g. Registrum Antiquissimum, no. 2124; chattels: e.g. Reg. II, no. 1387.

49) Miller, Ely, p. 281.

50) Reg. II, no. 563; Beauchamp, no. 175.

51) Ramsey Chron., pp. 274-6.

52) Simeon of Durham, i 173. Also e.g. Battle Chron., pp. 210-2, where the monks similarly appear to have seen the lord's swift regranting of the land as compounding the initial 'unjust' forfeiture.

53) See e.g. Red Book, ii cclxix, one of the returns to the Inquest of Sheriffs.

54) L.H.P., 40 2, 51 8, Downer, pp. 144, 168. PR 13 HII, p. 156: Adam As Gernuns owed 5m. 'pro namis excussis.'

55) C.M.A., ii 140. See also below, p. 294 on replevin. Red Book, ii cclxxviii, a return to the Inquest of Sheriffs, records that the Earl of Clare's officials had not returned a horse even after the scutage owed had been paid.

56) Cambridge, Trinity ms. B 16 44, pp. 36, 47, Hinschius, pp. 133, 184; Ivo, Pannormia, lib. iv cc. xlii-lii; Gratian, Decretum C. ii q. 11.

57) Cambridge, Trinity ms. B 16 44, p. 53, Hinschius, p. 237.

58) Simeon of Durham, i 174, 182 respectively.

59) L.H.P., 53 3-6, Downer, p. 170; see also 5 3, 29 2a, 61 21, Downer, pp. 84, 132, 200. Downer, p. 307, note to 5 3, is misleading over the source of the latter part of the clause; see above, fn. 56, for references to Ivo.

60) Milsom, Legal Framework, pp. 11-13. I do not wish to imply that I see all unjust disseisins as having arisen through distress.

61) Pollock and Maitland, i 135, ii 48; van Caenegem, Writs, pp. 386-390; Sutherland, Novel Disseisin, pp. 20-1.

62) Dialogus, pp. 110-1

63) Battle Chronicle, pp. 118, 210-218; see E. Searle, 'The Abbey of the Conquerors: Defensive Enfeoffment and Economic Development in Anglo-Norman England', Anglo-Norman Studies, ii (Woodbridge, 1980), 154-164, 197-8; J.C. Holt, 'More Battle Forgeries', Reading Medieval Studies, xi (1985), 75-86.

64) Red Book, i 350. See also the two cases recorded by Henry of Blois concerning the lands of Glastonbury; Adam of Domerham, ii 313-5.

65) Glanvill, ix 1, Hall, p. 105.

66) L.H.P., 43 4, Downer, p. 152.

67) Pollock and Maitland, i 236-7. See also e.g. Red Book, i 309-310, the 1166 carta of the knights of Wallingford. The list consists almost entirely of names of knights, followed by the number of knights whom they owe. There are two exceptions, which attribute the knights owed to pieces of land: 'terra Rogerii filii Auredi, iij milites', and 'De Santresdone, j militem.'

68) E.g. E.Y.C, i nos. 264, 312, 539, 607, 627.

69) Red Book, i 303.

70) E.g. Red Book, i 217. The dispute over Barnhorn, involving Battle Abbey, may have turned on genuine doubt as to whether the abbey had been acquitted of the service owed to the donor's overlord; see above, p. 286.

71) Milsom, Legal Framework, p. 14, fn. 1: C. R. R., iii 133. The plaintiffs lost, partly because they distrained by fee without a previous taking of chattels.

72) See above, pp. 172-3, 233-4.
73) Glanvill, ix 1, Hall, p. 105.
74) See also below, pp. 304-7, on cases where a man disclaimed holding from the lord who demanded his services.
75) Red Book, i 237.
76) Earldom of Gloucester, no. 152.
77) Farrer, Honors and Knights' Fees, (3 vols., London, 1923-5), ii 51. Stenton, First Century, no. 1; Stenton, p. 21, takes this as evidence that 'vavassour' need not refer to sub-tenants; I would see this as another instance of the use of the word in that very sense.
78) E.g. Stoke, no. 31.
79) Red Book, i 189.
80) Earldom of Gloucester, no. 95.
81) E.g. Reg. I, nos. 49, 153.
82) Reg. I, no. 394; see also no. 420.
83) E.g. Reg. I, no. 304; Reg. II, nos. 499, 669, 913, 1500; in Stephen's reign confirmations of 'terras et redditus' become quite frequent: e.g. Reg. III, nos. 128, 187, 215; Henry II confirmations of customs and services, e.g. Cartae Antiquae, 1-10, no. 141, Feudal Documents, nos. 79, 93.
84) Reg. II, no. 1860a; see also e.g. no. 789.
85) See below, pp. 298-300.
86) Reg. III, nos. 668, 753; see also no. 490.
87) Reg. III, nos. 264, 265.
88) C. Ch. R., v 60.
89) Probably in 1158, Queen Eleanor, on behalf of her absent husband, similarly ordered the knights and men holding of the abbey of Abingdon to do 'justly and without delay' full service to Abbot Walkelin, as their predecessors had done to his in the time of Henry I; C.M.A., ii 225. See also St. Paul's, no. 45.
90) Glanvill, ix 1, Hall, p. 105.
91) Red Book, i 385-6. See also this chapter's concluding comments, p. 304.
92) One example may be Alexander Bishop of Lincoln's proffer of 70m. of silver for the service of the land of Robert de Condet, PR 31 HI, p. 111. The exact situation is unclear, for Robert had only succeeded around this time; see PR 31 HI, p. 111, also Registrum Antiquissimum, i 289-290.
93) On the financial rôle of the chamber, see above, p. 17.
94) See also Reg. II, no. 576 which concerns payment of geld. Several royal writs survive concerning attendance at private hundreds, none about attendance at honorial courts.
95) See above, p. 279.
96) Red Book, i 200-1.
97) Reg. II, no. 725.
98) E.g. Reg. II, no. 1606; Miller, Ely, p. 281. See also Reg. II, no. 563; Reg. III, no. 6. Feudal Documents, no. 90; Beauchamp, no. 175; Red Book, i 394.
99) Reg. II, no. 697. The reference to the land as 'the abbot's, which you hold' is noteworthy. Unfortunately, too few similar writs survive to allow satisfactory analysis of usage of possessives in such contexts. See also Reg. II, no. 651, another writ ordering that the abbot of Abingdon do his will concerning specified lands.
100) E.g. Richmond, no. 389. See also Book of Seals, no. 177.
101) See also below, p. 305. On competition for services, see e.g. Hyams, 'The Domesday Inquest and Land Adjudication', 132 & fn. 23; E. King. 'The Anarchy of King Stephen's Reign', T.R.H.S., 5th. Ser. 34, (1984), 138.

(Henceforth, King 'Anarchy'.)

102) E.g. Reg. I, no. 412a; Reg. II, nos. 831, 888, 1479, 1494, 1827; Reg. III, nos. 37, 50, 145; Henry II: Registrum Antiquissimum, no. 154.

103) E.g. Reg. I, nos. 409, 484; Reg. II, nos. 1312, 1327; Henry II: E.Y.C., v 178, Gloucester Cartulary, no. DCCCXXI. In Henry's reign, an increasing proportion of charters specifies that no-one is to harm the beneficiary: e.g. E.Y.C., ii no. 1005, C. P. R., 1408-13, p. 300, Gloucester Cartulary, nos. CLV, CCLXXXVIII, Cartae Antiquae, 11-20, no. 477.

104) Reg. I, no. 456, Reg. II, no. 865, a writ of Rufus or Henry I ordering Nicholas de Stafford to have his land for such service as his father had, seems to be an order not to a lord about the treatment of his tenant, but to a sheriff about a tenant-in-chief.

105) Reg. II, nos. 674, 676, 742; cf. C.M.A., ii 97-8.

106) Reg. III, no. 404; see also no. 401.

107) Cited by King, 'Anarchy' 133, 136. I quote King's translation.

108) Dialogus, p. 112.

109) Milsom, Legal Framework, pp. 11-14; cf. Sutherland, Novel Disseisin, p. 30.

110) Registrum Antiquissimum, no. 313. Stenton, First Century, p. 40 fn. 2.

111) On legislation early in Henry II's reign, see Warren, Henry II, p. 336; Sutherland, Novel Disseisin, pp. 7-8; H.G. Richardson and G.O. Sayles, Law and Legislation from Aethelbert to Magna Carta, (Edinburgh, 1966), p. 88; Cheney, 'Decree of Henry II'. Also for legislation on essoins which definitely had effect within honours, Pleas before the King or his Justices, 1198-1202, ed. D.M. Stenton, (4 vols., Selden Soc., vols. 67, 68, 83, 84, 1953-67), i 150-4. For use of statutum to refer to a general change in the law, see Holt, 'Heiress and Alien'.

112) Richmond, no. 178.

113) PR 13 HII, p. 178.

114) The matters dealt with in this and the following paragraphs will be particularly greatly illuminated by Dr. Brand's work on replevin.

115) Glanvill, xii 12, Hall, p. 142.

116) C. R. R., xv no. 1968a.

117) PR 16 HII, pp. 46, 73; PR 17 HII, p. 67; PR 22 HII, pp. 37, 68, 214; PR 26 HII, p. 95; PR 29 HII, pp. 5, 116; PR 31 HII, pp. 70, 151, 182, 185; PR 32 HII, p. 46. See also PR 34 HII, pp. 46, 134.

118) See below, pp. 295-7.

119) On sheriffs as royal justices, see G.D.G. Hall, review of van Caenegem, Writs, E.H.R., lxxvi (1961), 319. However, see also L.H.P., 10. 4, Downer, p. 108, which notes that crown pleas do not belong to the sheriff in his farm except if specifically pre-arranged. This may mean not that the sheriff should not hold such pleas, but rather that he must render for them separately from his farm.

120) Dialogus, pp. 101-2.

121) King, 'Anarchy', 135-9.

122) See Hyams, Kings, Lords and Peasants, pp. 261-2. See also Dialogus, pp. 110-1 on goods by which the king's officials should not distrain for debt, lest the distrainee be permanently impoverished.

123) C. R. R., xv no. 1968a. Bracton, f. 155b, Thorne, ii 439.

124) See above, p. 281, on the use of districcio to mean forceful pressure. In the mid-thirteenth century, a letter of Simon de Montfort concerning Gascony referred to extra-judicial distress as 'the beginning of all wars'; C. Bémont, Simon de Montfort, (tr. E.F. Jacob, Oxford, 1930), p. 77.

125) Orderic, iii 32. Henry II's reissue only mentioned clerics; P. Chaplais, 'Henry II's reissue of the canons of the council of Lillebonne of Whitsun

1080 (?25 February 1162)', Journal of the Society of Archivists, iv (1973), 631. On the Peace Movement in Normandy, see H.E.J. Cowdrey, 'The Peace and the Truce of God in the Eleventh Century', P. & P. 46 (1970), 59-61. See also Reg. II, no. 1908, a writ concerning breach of the truce and peace of the Church in Normandy. Also the Legatine Council of Westminster, December 1138, for similar concerns in England; Councils and Synods, i pt. pt. ii 774-8.

126) Papal decrees against laymen invading church lands may in part have concerned what the lay 'invaders' would have considered distress; see e.g. Gregory VII's decree which became Gratian, Decretum, C. xii, q. ii, c. iv.

127) See e.g. Richmond, nos. 24, 67.

128) Reg. II, no. 1327.

129) King, 'Anarchy', 135-9.

130) It is noteworthy that the legislation following the civil war of Henry III's reign also dealt with distress.

131) On the 'criminal' stage of novel disseisin, see van Caenegem, Royal Writs, 284-5; also Sutherland, Novel Disseisin, pp. 13-4. PR 12 HII, p. 57 shows contemporaries distinguishing presentment and appeal.

132) Glanvill, xiii 38, Hall, p. 170, on which see Sutherland, Novel Disseisin, p. 27.

133) Bracton, f. 158b, Thorne, ii 446.

134) Glanvill, i 2, vii 17, Hall, pp. 3, 91.

135) For 'Bracton' writing of breach of the peace, it was unjust detention which caused replevin to be treated as a plea of the Crown, Bracton, f. 158b, Thorne, ii 446. Such a distinction seems more appropriate to the time of 'Bracton' than of, say, Henry I.

136) See e.g Reg. II, nos. 975, 997, Northants., pp. 12-15, Stenton, English Justice, pp. 138-9, for a case where a tenant seizes the lord's harvested corn and live-stock from a disputed piece of land, about which he believed himself to have been denied justice.

137) See also above, p. 282.

138) L.H.P., 33 1a, Downer, p. 136; see also 59 19, Downer, p. 188. L.H.P., 10 1, which might seem to provide a list of precise and discrete crown pleas, is the work of a learned man working partly from written sources, rather than a reflection of everyday thought.

139) See esp. C.M.A., ii 128-9, 132-4. However, these disputes might also *lead to* the man claiming to hold of another lord; below pp. 304-7. Among other possibilities is the situation where one sub-tenant incurred the king's enmity and the king regranted his land to another; e,g, C.M.A., ii 125-7.

140) Adam of Domerham, ii 313 may record one example of peremptory action.

141) Red Book, i 405.

142) C.M.A., ii 132-3.

143) See below, p. 300, on Abingdon and Walter Giffard.

144) Registrum Antiquissimum, no. 313.

145) L.H.P., 43 3, Downer, p. 152.

146) C.M.A., ii 133-4; Domesday, i f. 59a (= Berks, 7, 24).

147) See also C.M.A., ii 128-30. Cf. Leges Edwardi, 9 2, Liebermann, Gesetze, i 633. I comment on such courts below, p. 313.

148) See Milsom, Legal Framework, pp. 30, 44 fn. 1. The situation would be more complicated if the tenant held from the lord other lands, the services from which were not disputed.

149) King, 'Anarchy', 135-9.

150) A possible instance is Red Book, i 340, concerning lands of the Earl of Ferrers held in 1166 by a certain Meinfeninius. See also the case of

William de Ros, discussed by Keefe, Feudal Assessments, pp. 10-12. Concerning disclaimer more generally, David Crouch has drawn my attention to the important case in 1177 when, in the royal court, William de Cahaignes claimed to hold his barony not of the Earl of Leicester but in chief of the king; 'Benedict of Peterborough', The Chronicle of the Reigns of Henry II and Richard I, ed. W. Stubbs, (2 vols., London, 1867), pp. 133-4. The chronicler commented 'haec autem dicebat, prauo usus consilio, quia regi placere uoluit, qui dominum suum odio habebat.'

151) See above, p. 173.
152) Reg. II, no. 1812.
153) Leges Edwardi Confessoris, 26 1, Liebermann, Gesetze, i 650.
154) St. Paul's, no. 45.
155) E.g. Reg. II, nos. 697, 1738.
156) C.M.A., ii 167-8.
157) E.g. E.Y.C., iii no. 1303 from 1122x*c.* 1137; i no. 627 from *c.* 1137-55, xii no. 11 from *c.*1137x61.
158) Cf. L.H.P., 29 2, 51 3, Downer, pp. 130, 166; Leges Willelmi, 44 1, Liebermann, Gesetze, i 517. Enever, Distress, pp. 79-80, also draws attention to this contradiction.
159) Red Book, i 412.

CHAPTER 8: CONCLUSIONS.

The history of law has too often been written as the history of the administration of justice or the genealogy of legal doctrine. I have also examined the concerns of the land-holder, as lord and tenant. I have analysed the ways in which considerations of power and developments in thought affected methods of controlling land.

The Seignorial Court.

One result has been the gathering of material on lords' courts. Even so, evidence remains sparse. However, the comment of a biographer of Becket on Henry II's decree on defect of justice shows that at least great men early in Henry's reign felt their courts had, and should have, an important rôle, which the king was now restricting: 'the king had made a new constitution, which he thought would be very advantageous to himself, by which the great men of the kingdom were much injured, and about which they groaned and muttered.'[1]

This need not compel us to posit some earlier world of autonomous honours. Little evidence exists of adjudication in honour courts except those of great lords, and that anyway the complaining magnates' recent past, Stephen's reign and the early years of Henry II, may have been the golden age of the English honour court. It is on documents of this unusual period that Stenton and Milsom based their view of the honour as a 'feudal state in miniature.'[2]

Even if such arguments are rejected, the very areas on which the thesis has concentrated are those where the honour court was likely to be most important. Control of some profitable rights other than land may have been more closely in royal hands.[3] Even amongst land cases, those arising from a tenant's failure to serve, his alienation of lands, or his death, may have been particularly suited for settlement within the honour. Yet clashes between

neighbours, tenants of different lords, were surely common, and the evidence of the Abingdon Chronicle, for example, confirms this assumption.[4] For Richard fitzNeal, Domesday Book had been compiled 'ut ... quilibet iure suo contentus alienum non usurpet impune.'[5] Henry I provided that border disputes or invasions of other men's lands should be dealt with in shire courts if between sub-tenants of different lords.[6] The existence of such a court, under royal control, formed an influential part of the legacy of Anglo-Saxon government.

Even in cases between man and lord, the honour court was not always autonomous. The action might be started by royal writ. A man who felt he had been denied right by his lord could turn to the king and obtain either a writ or a hearing in the royal court. Some writs ordering lords to do right to their men were addressed to the sheriff, suggesting at least some rôle for him in these hearings.[7] Courts could be of mixed form, made up partly of men of the honour, but afforced by the sheriff, royal justices, or other great men.[8] The Leges Edwardi provide that if a baron hears a plea about the men of other barons in his court, a royal justice was to be present.[9] The Red Book of Thorney shows royal representatives present in an honour court after a tenant had complained of defect of justice.[10]

Such provisions and actions are signs of royal control of justice. Yet overemphasis on this point perpetuates a too confrontationist view of Anglo-Norman history: kings and barons, if sometimes in opposition, also had many shared interests. The honour court can be seen not as an essential threat to royal power, but rather one means by which the conquerors ruled their conquered acquisition. Kings sometimes willingly helped lords justice recalcitrant tenants. Lords on occasion would have seen the presence of royal officials in their courts not as interference but as a welcome benefit. Similarly, Henry I, for example, surely did not see the Earl of Leicester settling potentially

violent disputes between his tenants, or even perhaps involving others, as a threat to royal power, but rather as the act of a loyal vassal and companion of the king. Rejection of the confrontationist view, of the notions simply of royal 'inteference' in the honour, allows a more sophisticated view of the functioning of power and of lordship.

The Chronology of Change

I have also felt my way towards a chronology, and explanations, for change in seignorial control of land. Information before 1100 is very scarce. I have lent to a view that lords' discretion in the control of their lands was under fewer constraints than later. The balance of power between vassal and lord would therefore have been more important.[11]

If this view is correct, Henry I's reign was one of major change. Seignorial discretion declined in various ways. Long tenure must have been starting to affect the relationship of tenant, lord, and land. Land which had passed from one generation to the next was a hereditas, a notion which also pointed to future succession. Vis-a-vis the lord from whom the hereditas was held, the tenant's powers of alienation were greater than over his acquisitions.

From the late eleventh century, increasingly distinct views of tenure reinforced customary notions of land-holding and the relative powers of lord and man. Greater and more specific use of writing ensured that from the 1120s and 1130s many charters made explicit that land was to be held by a man and his heirs, surely reducing the lord's discretion at the tenant's death.

Meanwhile, men were increasingly having to take the king into account in their dealings concerning land. There are indications that Henry I was involved

even in some fairly minor disputes. It seems likely that churches led the way in this respect, especially those with such close connections to the king as Abingdon under Abbot Faritius. Yet others also looked to the king. They may have been royal servants, or weak lords, incapable of justicing their tenants, or powerful vassals, perhaps themselves tenants-in-chief. Or they may simply have wished to use every available weapon. Once men became accustomed to the effectiveness of royal support, increasing numbers must have sought it. Royal involvement thus obtained a momentum of its own.

By 1135, land-holding was far from the personal politics of the autonomous honour; rather, it in some ways approached the 'ownership' of thirteenth-century Common Law. Certainly flexibility remained, royal regulation of justice was not complete, and the position of lord and tenant varied according to their power. Yet when reading chronicles, one is struck by how little private force affected land-holding in Henry I's England, even in comparison with Normandy as described by Orderic. Succession at least by close heirs was normal, custom being reinforced by charters, notions of tenure, and the possibility of outside, quite probably royal enforcement. The relative infrequency of the laudatio compared with France suggests that land in England was more freely alienable; again a link to royal power seems likely. This closeness to later ownership is especially true of the lands of greater churches. The relationship with the donor, the personal or 'feudal' elements are weak. There is little sign that donors' heirs could discontinue gifts, so churches in theory enjoyed lasting tenure, although in practice such tenure might be disrupted because of their lack of defensive power. Yet in any dispute involving such churches' lands, the king was likely to become involved. Moreover, if a prelate wished to alienate the church's demesne, the king had to consent. Such surely approaches regular royal supervision of land-holding.

The disturbances of Stephen's reign reduced royal influence. Force played a greater part in disputes. Churches turned to Papal help, but this often was not decisive. Yet ideas concerning land-holding could not be swiftly reversed. Thus, for example, Stephen's chancery enforced certain descriptions of land-holding, which can be taken as notions of tenures, on the grants of others. Similarly notions of the correctness of succession did not decline; indeed they were extended to areas such as the holding of certain offices for which previous kings had not promised heritability.

The first decade of Henry II's reign saw the restoration of at least the situation of his grandfather's last decade. Henry's promise to restore the disinherited encouraged men with claims to look to him for resolution of their disputes. Meanwhile, pressures such as long tenure continued to work towards ownership as they had earlier in the century.

The Question of Royal Intention.

I have stressed that royal and baronial interests did not necessarily clash. I have written of royal involvement rather than interference. Yet in view of claims that increased royal control of land-holding after 1166 was not the product of royal intention,[12] it is necessary to re-assert that at least Henry II was seeking to assert his authority in this area. Such certainly was the belief of the barons who complained of Henry's decree on defect of justice.

I am not suggesting that Henry had a fully thought out policy, still less that the eventual results would have been expected. Yet Henry and previous kings held certain ideas incongruous with a purely passive rôle. Enforcement of royal rights, performance of royal duties, led the king to seek to settle land

disputes. In particular, there were the royal concern for peace and the royal right and duty of hearing cases of defect of justice. The world as described by Milsom is a peculiarly peaceful one. Yet dispute records reveal a rather different world, one in which land-disputes could and did threaten the peace, and, as Richard fitzNeal put it, men did usurp the rights of others.

William I and II probably intervened on occasion in the interest of peace, Henry I almost certainly did so. Not only does the growing amount of evidence show him increasingly intervening in land disputes, but occasional chronicle references, such as that to Ralph Basset's hanging of thieves at Hundehogge, show concern with crime.[13] Distinctions between criminal and land law were surely not foremost in the minds of Henry and his advisers; the common factor was the maintenance of peace and justice.

There are, then, signs of routine royal action, but the first firm evidence of this comes with Henry II. Decrees on defect of justice and unjust distress, together with the moves against disseisins, can be associated with an attempt to prevent the recourse to violence which had probably been frequent under Stephen. Again this must surely be associated with the drive against crime from the mid-1160s.

We must now recognise that Henry I's considerable involvement in matters of land-holding fore-shadowed that of Henry II. But the latter moved a stage further. Under Henry I, it was still to an extent the possibility of royal involvement which encouraged conformity with the norms of land-holding; under Henry II actual involvement became more regular, more automatic. There are signs of a progressive bureaucratisation of government which, by its own impetus, would produce regularity of royal enforcement. For example, the few surviving returns of the Inquest of Sheriff suggest a government in contact with growing numbers of individuals. Yet the 'shift of control' had not gone so

far by 1189 that royal control was complete in all aspects of land law. The developments of land law from 1166 are of course striking, but they are in part an acceleration of change, not an unprecedented leap forward.

CHAPTER EIGHT: CONCLUSION: Notes.

1) Materials Thomas Becket, iv 40-1; Cheney, 'Decree of Henry II', also 'Novel Disseisin', 15-16.
2) Stenton, First Century, pp. 47-55, Milsom, Legal Framework, pp. 105, 107, 110, 183.
3) One example may be tolls, a royal right according to L.H.P., 10 1, Downer, p. 108.
4) E.g. C.M.A., i 491-2, ii 118, a dispute between the men of the Abbot of Abingdon and those of the Bishop of Lincoln over a mill.
5) Dialogus, p. 63.
6) Reg. II, no. 892, Liebermann, Gesetze, i 524. A minimal interpretation of this provision on cases concerning pleas 'de diuisione terrarum, uel de preoccupatione' would limit it to minor boundary disputes. However, 'preoccupatio' may well be synonymous with 'usurpatio' or 'inuasio' and hence cover a wider range of disputes. Even if only boundary disputes are meant, they need not have been minor affairs.
7) E.g. Reg. II, nos. 654, 1551; see also nos. 581, 975.
8) See e.g. above, p. 300.
9) Leges Edwardi, 9 2, Liebermann, Gesetze, i 633.
10) Cited above, p. 310, fn. 136; see esp. Stenton, English Justice, pp. 138-9.
11) It is notable that the one major post-Conquest seizure of land from the abbey mentioned in the Abingdon Chronicle from which no case arose is that of Fyfield and Kingston by Henry de Ferrers in the Conqueror's reign, C.M.A., i 484-5, 490-1.
12) On this, see above, p. 6.
13) A.S.C., p. 191, *s.a.* 1124.

Appendix A: Terminology for Types of Grant.

GIFT (or original gift): a new grant to a man or church not based on any previous tenure by the man, his ancestors or the church. In the case of laymen it will involve homage, and hence excludes leases.

I am aware that the modern definition of a gift emphasises that it is given without recompense. Such an idea is rather alien to the eleventh and twelfth centuries - even a gift to a monastery expected prayers in return - and I follow other historians in nonetheless using the word gift.

REGRANT: a lord's grant of a dead tenant's possessions to one claiming them as that tenant's heir, soon after the death, and with only the lord having had the land in hand between the two tenants.

In the case of a layman, it will often involve homage.

RESTORATION: differs from a regrant in taking place longer after the ancestor's death. It could also be used in settlements of disputes, for example, for a church having lost lands restored to it.

In the case of a layman, it will often involve homage.

CONFIRMATION: 1) the confirmation that a landholder should hold lands as they were in the past, or at some fixed moment in the past; e.g.'as in my grandfather King Henry's time.'

2) the confirmation of a predecessor's grant.

3) the confirmation of another man's grant, for example a lord confirming his vassal's gift.

Homage need not be involved.

GRANT: Any of the above transactions, or, for example, the granting of a lease. This breadth of meaning is paralleled by that of the Latin verb concedere.

Appendix B: Scribes and Charter Wording.

To assess the effect of individual scribes on charter wording, I shall examine the charters of King Stephen which survive in the original and whose writers have been identified by T.A.M. Bishop.[1] Scribe xix only wrote two surviving charters in favour of laymen, and both include hereditarie.[2] Three charters with identifiable scribes use the accusative in feudum et hereditatem rather than the ablative. Two were the work of scribe xviii, the third of scribe xiii. These are the only surviving charters in favour of laymen which the scribes produced.[3] However, analysis of longer series suggests variety, not consistency. Thus scribe xx wrote eight surviving charters to laymen; one simply mentions the grantee's heirs, two use the phrase in feudo et hereditate, and three use hereditarie.[4] At most, this last was a personal bias not his consistent practice. Amongst the whole body of originals, no pattern for the use of in feudo et hereditate appears. Conceivably the scribe's influence would vary with his own status and with the circumstances, but overall his effect on wording seems not to have been great.

Appendix B: Notes.

1) Bishop, Scriptores Regis.
2) Reg. III, nos. 273, 437.
3) Reg. III, nos. 312, 579, scribe xviii; no. 166, scribe xiii.
4) Reg. III, no. 176, 'heredes'; nos. 41, 276, 'in feudo et hereditate'; nos. 308, 390, 493, 'hereditarie'.

BIBLIOGRAPHY.

A: manuscript sources.

Cambridge, Trinity College, ms. B 16 44.

Chatsworth Library, Abingdon Cartulary.

London, British Library:
Add. Ch. 21493.
Add. Ch. 21494.
Add. Ch. 47380.
Add. Ch. 47381.
Add. Ch. 47382.
Add. Ch. 47384.
Add. Ch. 48086.
Add. Ch. 48488.
ms. Add. 57677.
ms. Add. 47677.
ms. Cotton Vitellius, A i.
ms. Cotton Calig., A xiii.
ms. Harley, 294.
ms. Harley, 782.
ms. Harley, 1885.
ms. Harley 3650.
ms. Harley 4714.
ms. Harley 4757.
ms. Harley charter 84 H 18.
ms. Harley charter 84 H 19.
ms. Lansdowne 415.
ms. Royal 11 B ix.

- Public Record Office.
PRO DD 664/1.
PRO C 146 / C 6859.
PRO E 164/22.

Oxford, Bodleian Library:
ms. Dodsworth 85.
ms. Dugdale 12.
ms. Dugdale 13.
ms. Dugdale 17.
ms. Film Deposit 912.
ms. Laud misc. 625.
ms. Lyell 15.

- Magdalen College, ms. 273.

- Trinity College, ms. 85.

B: Printed Sources; (i) Primary Sources.

Acts of the Bishops of Chichester, ed. H. Mayr-Harting, (Cant.-York Soc., cxx, 1964).

Adam of Domerham, Adami de Domerham Historia de Rebus Gestis Glastoniensibus, ed. T. Hearne, (2 vols., Oxford, 1727).

Ancient Charters Royal and Private Prior to A.D. 1200, ed. J.H. Round, (Pipe Roll Soc., x, 1888).

Anglo-Saxon Charters, ed. & tr. A.J. Robertson, (2nd. ed., Cambridge, 1956).

Anglo-Saxon Chronicle, ed. D. Whitelock, with D.C. Douglas & S.I. Tucker, (London, 1961).

Annales Monastici, ed. H.R. Luard, (5 vols., London, 1864-9; Rolls Series 36).

Beauchamp Cartulary: Charters 1100-1268, ed. E. Mason, (Pipe Roll Soc., N.S. xliii, 1980).

Book of the Beasts, tr. T.H. White, (London, 1954).

'Bracton, Henry de', De Legibus et Consuetudinibus Regni Anglie, ed. & tr. S.E. Thorne, (4 vols., Cambridge, Mass., 1968-1977).

Bracton's Note Book, ed. F.W. Maitland, (3 vols., London, 1887).

'Cartularium Prioratus S. Johannis Evang. de Brecon', ed. R.W. Banks, Archaeologia Cambriense, 4th. Ser. xiii 275-308, xiv 18-49, 137-168, 221-236, 274-311.

Calendar of Charter Rolls Preserved in the Public Record Office, (6 vols., 1903-1927).

Calendar of Documents Preserced in France illustrative of the History of Great Britain and Ireland, ed. J.H. Round, (London, 1899).

Calendar of Patent Rolls Preserved in the Public Record Office, (in progress, 1891-present).

Canterbury, Gervase of, The Historical Works of Gervase of Canterbury, ed. W. Stubbs, (2 vols., London, 1879-80; Rolls Series 73).

Carmen de Hastingae Proelio of Guy Bishop of Amiens, edd. C. Morton & H. Muntz, (Oxford, 1972).

Cartae Antiquae, Rolls 1-10, ed. L. Landor, (Pipe Roll Soc., N.S. xvii, 1939).

Cartae Antiquae, Rolls 11-20, ed. J.C. Davis, (Pipe Roll Soc., N.S. xxxiii, 1960).

Cartularium Abbathiae de Whiteby, ed. J.C. Atkinson, (2 vols., Surtees Soc., lxix, lxxi, 1879 & 1881).

Cartularium Monasterii de Ramesia, ed. W.H. Hart & P.A. Lyons, (3 vols., London, 1884-93; Rolls Series 79).

Cartularium Monasterii S. Johannis Baptiste de Colecestria, ed. S.A. Moore, (2 vols., Roxburghe Club, London, 1897).

Cartularium Prioratus de Colne, ed. J.L. Fisher, (Essex Archaeol. Soc., Occ. Publications, i, 1946).

Cartulary of Oseney Abbey, ed. H.E. Salter, (6 vols., Oxford Hist. Soc., lxxxix, xc, xci, xcvii, xcviii, ci, 1929-36.)

The Cartulary of Missenden Abbey, ed. J.G. Jenkins, (3 pts., Bucks. Archaeol. Soc., Record Branch, ii, x; part 3 jointly with Historical Mss. Commission, 1962).

The Cartulary of Shrewsbury Abbey, ed. U. Rees, (2 vols., Aberystwyth, 1975).

Cartulary of the Monastery of St. Frideswide at Oxford, ed. S.R. Wigram, (2 vols., Oxford Hist. Soc., xxviii, xxxi, 1895-6).

The Cartulary of the Priory of St. Denis near Southampton, ed. E.O. Blake, (2 vols., Southampton Record Soc., 23 & 24, 1981).

Cartulary of Worcester Cathedral Priory, ed. R.R. Darlington, (Pipe Roll Soc., N.S.

lxxvi, 1968).
Charters and Documents illustrating the History of the Cathedral, City, and Diocese of Salisbury, in the Twelfth and Thirteenth Centuries, selected W.H. Rich Jones, ed. W.D. Macray, (London, 1891; Rolls Series 97).
Charters and Records of Hereford Cathedral, ed. W.W. Capes, (Cantilupe Soc., Hereford, 1908).
The Charters and Scribes of the Earls and Countesses of Gloucester to A.D. 1217, ed. R.B. Patterson, (Oxford, 1973).
'Charters of the Earldom of Hereford, 1095-1201', ed. D. Walker, in Camden Miscellany, xxii, (Camden Soc., 4th. Ser. i, 1964).
Charters of the Honour of Mowbray, 1107-1191, ed. D.E. Greenway, (London, 1972).
Chartres, Ivo of, Opera Omnia, (2 vols., Patrologia Latina, vols. 161, 162).
Chrétien de Troyes, Arthurian Romances, tr. W.W. Comfort, (London, 1975).
The Charters of Norwich Cathedral Priory, ed. B. Dodwell, (2 vols., Pipe Roll Soc., N.S., xl, xlvi, 1974 & 1985).
The Chronicle of Battle Abbey, ed. & tr. E. Searle, (Oxford, 1980).
Chronicles of the Reigns of Stephen, Henry II, and Richard I, ed. R. Howlett, (4 vols., London, 1884-9; Rolls Series 82).
Chronicon Abbatiae de Evesham ad annum 1418, ed. W.D. Macray, (London, 1863; Rolls Series 29).
Chronicon Abbatiae Ramesiensis, ed. W.D. Macray, (London, 1886; Rolls Series 83).
Chronicon Monasterii de Abingdon, ed. J. Stevenson, (2 vols., London, 1858; Rolls Series 2).
Corpus Iuris Canonici, ed. Ae. Friedberg, (2 vols., Leipzig, 1879-81).
The Coucher Book of Furness Abbey, edd. J.C. Atkinson & J. Brownhill, (2 vols. in 6 parts, Chetham Soc. New Ser. ix, xi, xiv, lxxiv, lxxvi, lxxviii).
Coutumiers de Normandie: i Le Très Ancien Coutumier de Normandie, ii La Summa de Legibus Normannie in Curia Laicali, ed. E.-J. Tardif, (Société de l'Histoire de Normandie, Rouen, Paris, 1881 & 1896).
Curia Regis Rolls, (in progress, 1922-present).

Decretales Pseudo-Isidoriani, ed. F.K.P. Hinschius, (Leipzig, 1863).
Diceto, Ralph de, Opera Historica, ed. W. Stubbs, (2 vols., London, 1876; Rolls Series 68).
Documents Illustrative of the Social and Economic History of the Danelaw, ed. F.M. Stenton, (London, 1920).
Domesday Book, ed. J. Morris et al., Phillimore edition, (Chichester, 1975-85), references by folio and by Phillimore entry number.
The Domesday Monachorum of Christ Church Canterbury, ed. D.C. Douglas, (London, 1944).
Dugdale, Sir William, Monasticon Anglicanum, edd. J. Caley, H. Ellis, B. Bandinel, (6 vols. in 8, London, 1817-1830).
Durham, Simeon of, Symeonis Monachi Opera Omnia, ed. T. Arnold, (2 vols, London, 1882-5; Rolls Series 75).
Durham Episcopal Charters, 1071-1152, ed. H.S. Offler, (Surtees Soc., clxxix, 1968).

Eadmer, Historia Nouorum in Anglia, ed. M. Rule, (London, 1884; Rolls Series 81).
- The Life of St. Anselm, Archbishop of Canterbury, ed. & tr. R.W. Southern, (2nd. ed., Oxford, 1972).
Early Charters of the Cathedral Church of St. Paul, London, ed. M. Gibbs, (Camden Soc., 3rd. Ser., lviii, 1939).

Early Yorkshire Charters, vols. i-iii, ed. W. Farrer, (Edinburgh, 1914-16); index to vols. i-iii, edd. C.T. & E.M. Clay; vols. iv-xii, ed. C.T. Clay, (Yorks. Archaeol. Soc. Record Ser. Extra Ser., 1935-65).
Ecclesiastical Documents, ed. J. Hunter, (Camden Soc., 1st. Ser., viii, 1840).
Elmham, Thomas of, Historia Monasterii S. Augustini Cantuariensis, ed. C. Hardwick, (London, 1858; Rolls Series 8).
English Episcopal Acta II: Canterbury, 1162-90 , edd. C.R. Cheney & B.E.A. Jones, (London, 1986).
'Epistolae Fiscannenses: Lettres d'Amitié, de Gouvernement, et d'affaires', ed. J. Laporte, Revue Mabillon, xi (1953), 29-31.
Eynsham Cartulary, ed. H.E. Salter, (2 vols., Oxford Hist. Soc., xlix, li, 1908-9).

Facsimiles of Early Charters from Northamptonshire Collections, ed. F.M. Stenton, (Northants. Record Soc., iv, 1930).
Facsimiles of Early Charters in Oxford Muniment Rooms, ed. H.E. Salter, (Oxford, 1929).
Facsimiles of English Royal Writs to A.D. 1100 presented to Vivian Hunter Galbraith, ed. T.A.M. Bishop & P. Chaplais, (Oxford, 1957).
Facsimiles of Royal and Other Charters in the British Museum; vol. 1, William I-Richard I, ed. G.F. Warner & H.J. Ellis, (London, 1903).
Feodarium Prioratus Dunelmensis, ed. W. Greenwell, (Surtees Soc., lviii, 1872).
Feudal Documents from the Abbey of Bury St. Edmunds, ed. D.C. Douglas, (London, 1932).
The First Register of Norwich Cathedral Priory, ed. & tr. H.W. Saunders, (Norfolk Rec. Soc., xi, 1939).
Foliot, Gilbert, The Letter and Charters of Gilbert Foliot, edd. A. Morey & C.N.L. Brooke, (London, 1967).

Die Gesetze der Angelsachsen, ed. F. Liebermann, (3 vols., Halle, 1903-16).
Gesta Abbatum Monasterii Sancti Albani, ed. H. T. Riley, (3 vols., London, 1867-9; Rolls Series 28d).
Gesta Regis Henrici Secundi Benedicti Abbatis, ed. W. Stubbs, (2 vols., London, 1867; Rolls Series 49).
Gesta Stephani, ed. K.R. Potter, intro. R.H.C. Davis, (Oxford, 1976).
'Glanvill, Ranulf de', Tractatus de Legibus et Consuetudinibus Regni Anglie qui Glanvilla vocatur, ed. G.D.G. Hall, (Edinburgh, 1965).
The Great Chartulary of Glastonbury, ed. A. Watkin, (3 vols., Somerset Rec. Soc., lix, lxiii, lxiv, 1947-56).

Hemming, Hemmingi Chartularium Ecclesie Wigorniensis, ed. T. Hearne, (2 vols., Oxford, 1723).
Historia et Cartularium Monasterii S. Petri Gloucestrie, ed. W.H. Hart, (3 vols., London, 1863-7; Rolls Series 33).
Howden, Roger of, Chronica Rogeri de Houedene, ed. W. Stubbs, (4 vols., London, 1868-71; Rolls Series 51).
Hugh the Chantor, The History of the Church of York, 1066-1127, ed. & tr. C. Johnson, (Edinburgh, 1961).
Huntingdon, Henry of, Historia Anglorum, ed. T. Arnold, (London, 1879; Rolls Series 74).

Inquisitio Comitatus Cantabrigiensis subiicitur Inquisitio Eliensis, ed. N.E.S.A. Hamilton, (London, 1876).

Jumièges, Guillaume de, Gesta Normannorum Ducum, ed. J. Marx, (Paris and Rouen, 1914).

Lancashire Pipe Rolls and Early Lancashire Charters, ed W. Farrer, (Liverpool, 1902).
Leges Henrici Primi, ed. & tr. L.J. Downer, (Oxford, 1972).
The Letters of Lanfranc Archbishop of Canterbury, edd. & tr. H. Clover & M. Gibson, (Oxford, 1979).
Letters of Pope Innocent III concerning England and Wales, edd. C.R. & M.G. Cheney, (Oxford, 1967).
Liber Rubeus de Scaccario, ed. H. Hall, (3 vols., London, 1896; Rolls Series 99).
Liber Eliensis, ed. E.O. Blake, (Camden Soc., 3rd. Ser., xcii).
The Lincoln Domesday and the Lindsey Survey, edd. C.W. Foster & T. Longley, (Lincoln Rec. Soc., 19, 1924).
Luffield Priory Charters, ed. G.R. Elvey, (2 vols, Northants. Record Soc., xxii, xxvi, 1968 & 1975).

Malmesbury, William of, De Gestis Regum Anglorum Libri Quinque, ed. W. Stubbs, (2 vols, London, 1887-9; Rolls Series 90).
- Historia Novella, ed. K.R. Potter, (Edinburgh, 1955).
- Willelmi Malmesbiriensis Monachi de Gestis Pontificum Anglorum Libri Quinque, ed. N.E.S.A. Hamilton, (London, 1870, Rolls Series 52).

Materials for the History of Thomas Becket, ed. J.C. Robertson, (7 vols., London, 1875-1885, Rolls Series 67).
The Monastic Constitutions of Lanfranc, ed. & tr. M. D. Knowles, (Edinburgh, 1961).
'Mordak Charters in possession of Lord Willoughby de Broke with certain additional documents from other sources', Miscellanea Genealogica et Heraldica, 5th. Ser. 6 (1926), pp. 97-103.

Nigel, Richard Fitz, Dialogus de Scaccario, ed. & tr. C. Johnson, revised F.E.L. Carter & D.E. Greenway, (Oxford, 1983).
Notitia Conciliorum Hispanie, atque Noui Orbis, ed. J. Saenz de Aguirre, (Salamanca, 1686).

Offler, H.S., 'A Northumberland Charter of King Henry I', Archaeologia Aeliana, 4th. Ser. xlv (1967), 181-8.
Orderic Vitalis, Historia Ecclesiastica, ed. & tr. M. Chibnall, (6 vols., Oxford, 1969-1980).
... also ed. A le Prévost, (5 vols., Société de l'histoire de France, Paris, 1838-55).

Papsturkunden in England, ed. W. Holzmann, (3 vols., Berlin and Göttingen, 1930-52).
Pipe Rolls, published by Pipe Roll Society.

Placita Anglo-Normannica: Law Cases from William I to Richard I, ed. M.M. Bigelow, (Boston, 1879).
Pleas before the King or his Justices, 1198-1202, ed. D.M. Stenton, (4 vols., Selden Soc., 67, 68, 83, 84, 1952-67).
Poitiers, Guillaume de, Histoire de Guillaume le Conquérant, ed. & tr. R. Foreville, (Paris, 1952).
The Pontifical of Magdalen College, ed. H.E. Wilson, (Henry Bradshaw Soc., 39, London, 1910).

Reading Abbey Cartulary, ed. B. R. Kemp, (2 vols., Camden Soc., 4th Ser., 31, 33, 1986, 1987).
Recueil des Actes des Ducs de Normandie, ed. M. Fauroux, (Mémoires de la Société des Antiquaires de Normandie, xxvi, Caen, 1961).
Recueil des Actes de Henri II, edd. L. Delisle & E. Berger, (4 vols., Paris, 1909-1927).
Regesta Regum Anglo-Normannorum, 1066-1154:
vol. i, 1066-1100, ed. H.W.C. Davis, with the assistance of R.J. Whitwell, (Oxford, 1913).
vol. ii, 1100-1135, edd. C.J. Johnson & H.A. Cronne, (Oxford, 1956).
vol. iii, 1135-1154, edd. H.A. Cronne & R.H.C. Davis, (Oxford, 1968).
vol. iv, Facsimiles of Original Charters and Writs of King Stephen, the Empress Matilda, and Dukes Geoffrey and Henry, edd. H.A. Cronne & R.H.C. Davis, (Oxford, 1969).
Register of Abbey of St. Benet of Holme, 1020-1210, ed. J.R. West, (2 vols., Norfolk Rec. Soc., ii, iii, 1932.)
The Register of S. Osmund, ed. W.H. Rich Jones, (2 vols., London, 1883-4; Rolls Series 78).
Les Régistres de Grégoire IX, ed. L. Auvray, (4 vols., Paris, 1896-1955).
The Registrum Antiquissimum of the Cathedral Church of Lincoln, edd. C.W. Foster & K. Major, (10 vols., Lincoln Record Soc., 1931-73).
Registrum Roffense, ed. J. Thorpe the elder, (London, 1769).
Rotuli Curiae Regis. Rolls and Records of the Court held before the King's Justiciars or Justices, ed. F. Palgrave, (2 vols., Record Commision, 1835).
Royal Commission on Historical Manuscripts, Reports and other publications, (London, 1870-present).
Royal Writs in England from the Conquest to Glanvill, ed. R.C. van Caenegem, (Selden Soc., lxxvii, 1959).
'Rydeware Chartulary', ed. I.H. Jeayes, (William Salt Archaeol. Soc., N.S. xvi, 1895), 257-302.

Salisbury, John of, Historia Pontificalis, ed. & tr. M. Chibnall, (Edinburgh, 1966).
- The Letters of John of Salisbury, edd. W.J. Millor, H.E. Butler, C.N.L. Brooke, (2 vols., Edinburgh & Oxford, 1955-1979).
Select Documents of the Lands of the Abbey of Bec, ed. M. Chibnall, (Camden Soc., 3rd. Ser., lxxiii, 1951).
Sir Christopher Hatton's Book of Seals, edd. L. C. Loyd & D.M. Stenton, (Northants. Record Soc. & Oxford, 1950).
Stoke by Clare Cartulary, BL Cotton Appx. xxi, ed. C. Harper-Bill & R. Mortimer, (3 vols., Suffolk Charters iv-vi, 1982-4).
Stubbs, W. ed, Select Charters and other Illustrations of English Constitutional History from the Earliest Times to the Reign of Edward I, (9th. ed., Oxford,

1913).
Suger, Oeuvres Complètes, ed. A. Lecoy de la Marche, (Paris, 1867).

Textus Roffensis, ed. T. Hearne, (Oxford, 1720).
... Facsimile edition, P. Sawyer, (Early English Manuscripts in Facsimile, vii & xi, 1957 & 1962).
Transcripts of Charters Relating to Gilbertine Houses of Sixle, Ormsby, Catley, Bullington and Alvingham,, ed. & tr. F.M. Stenton, (Lincoln Rec. Soc., xviii, 1922).
Two Chartularies of the Priory of St. Peter at Bath, ed. W. Hunt, (Somerset Rec. Soc., vii, 1893).

The Will of Aethelgifu, ed. & tr. D. Whitelock, (Roxburghe Club, 1968).
Worcester, Florence of, Chronicon ex Chronicis, ed. B. Thorpe, (2 vols., London, 1848-9).
Worcester, John of, Chronicle, ed. J.R.H. Weaver, (Anecdota Oxoniensia, Med. & Mod. Ser., xiii, 1908).

(ii) Secondary Sources.

Adams, G.B., Councils and Courts in Anglo-Norman England, (New Haven, 1926, reprinted New York, 1965).

Alexander, J.W., 'The Alleged Palatinates of Norman England', Speculum, lvi (1981), 17-27.

Armitage Robinson, J., Gilbert Crispin, Abbot of Westminster, (Cambridge, 1911).

Ault, W.O., Private Jurisdiction in England, (Newhaven, 1923).

Bailey, S.J., 'Warranties of Land in the Thirteenth Century', C. Law J., viii (1942-1944), 245-299, ix (1945-7), 82-106.

- 'Warranties of Land in the Reign of Richard I', C. Law J., ix (1945-1947), 192-209.

Barlow, F., Edward the Confessor, (London, 1970).

- The English Church, 1066-1154, (London, 1979).
- William Rufus, (London, 1983).

Barnes, P.M., 'The Anstey Case', in A Medieval Miscellany for Doris Mary Stenton, edd. P.M. Barnes & C.F. Slade, (Pipe Roll Soc., N.S. xxxvi, 1960), 1-24.

Bates, D., 'The Land Pleas of William I's Reign: Penenden Heath Revisited', B.I.H.R., li (1978), 1-19.

- 'The Origins of the Justiciarship', Anglo-Norman Studies, iv (Woodbridge, 1982), 1-12.
- Normandy Before 1066, (London, 1982).

Berman, H.J., Law and Revolution: The Formation of the Western Legal Tradition, (Cambridge, Mass., 1983).

Bigelow, M.M., The History of Procedure in England, 1066-1204, (Boston and London, 1880).

Birch, W. de G., Catalogue of Seals in the Department of Manuscripts in the British Museum, (6 vols., London, 1887-1900).

Bishop, T.A.M., Scriptores Regis: Facsimiles to Identify and Illustrate the Hands of Royal Scribes in Original Charters of Henry I, Stephen, and Henry II, (Oxford, 1961).

Bloch, M., Feudal Society, tr. L.A. Manyon, (2 vols, London, 1961).

Brand, P.A., 'New Light on the Anstey Case', Essex History and Archaeology, 15 (1983), 68-83.

Brett, M., The English Church under Henry I, (Oxford, 1975).

Brooke, C.N.L., 'Gregorian Reform in Action: Clerical Marriage in England, 1050-1200', C. Hist. J., xii (1956), 1-21.

Brooke, Z.N., The English Church and the Papacy, from the Conquest to the Reign of King John, (Cambridge, 1931).

Brooke, Z.N. & C.N.L., 'Henry II, Duke of Normandy and Acquitaine', E.H.R., 61 (1946), 81-9.

Brown, R.A., 'The Status of the Anglo-Norman Knight', in War and Government in the Middle Ages, edd. J. Gillingham & J.C. Holt, (Cambridge, 1984), 18-32.

Campbell, J., 'Observations on English Government from the Tenth to the Twelfth Century', T.R.H.S., 5th. Ser. 25 (1975), 39-54.'

- 'The Significance of the Anglo-Norman State in the Administrative History of Western Europe', Beihefte der Francia, 9, (Munich, 1980), 117-134.
- 'Some Agents and Agencies of the Late Anglo-Saxon State', in Domesday Studies, ed. J.C. Holt, (Woodbridge, 1987), pp. 201-218.

Chaplais, P. 'The Original Charters of Herbert and Gervase Abbots of Westminster (1121-1157)', in A Medieval Miscellany for Doris Mary Stenton, edd. P.M. Barnes & C.F. Slade, (Pipe Roll Soc., N.S. xxxvi, 1960), 89-110.

- 'Henry II's Reissue of the Canons ofthe Council of Lillebonne of Whitsun 1080 (?25 February 1162)', Journal of the Society of Archivists, iv (1973), 627-632.

Cheney, C.R., English Bishops' Chanceries, 1100-1250, (Manchester, 1950).

Cheney, M., 'The Litigation between John Marshall and Archbishop Thomas Becket in 1164: a Pointer to the Origin of Novel Disseisin?', in Law and Social Change in British History, edd. J.A. Guy & H.G. Beale, (London, 1984), 9-26.

- 'Inalienability in mid-Twelfth Century England: Enforcement and Consequences', Proceedings of the Sixth Interational Congress of Medieval Canon Law, edd. S. Kuttner & K. Pennington, (Monumenta Iuris Canonici, Ser. C, Subsidia vol. 7, Vatican City, 1985), 467-478.
- 'A Decree of Henry II on Defect of Justice', in Tradition and Change: Essays in Honour of Marjorie Chibnall, edd. D.E. Greenway, C. Holdsworth, J. Sayers, (Cambridge, 1985), 183-193.

Chew, H.M., The English Ecclesiastical Tenants-in-Chief and Knight Service, especially in the Thirteenth and Fourteenth Centuries, (Oxford, 1932).

Cheyette, F.L., 'Suum Cuique Tribuere', French Historical Studies, 6 (1970), 287-299.

Chibnall, M., 'Ecclesiastical Estates and the Growth of Feudal Estates at the time of the Norman Conquest', Annales de Normandie, viii (1958), 103-118.

- 'Charter and Chronicle', in Church and Government in the Middle Ages, ed. C.N.L. Brooke et al., (Cambridge, 1976), 1-17.
- The World of Orderic Vitalis, (Oxford, 1984).
- Anglo-Norman England, (Oxford, 1986).

Clanchy, M.T., 'The Franchise of Return of Writs', T.R.H.S., 5th. Series 17 (1967), 59-79.

- 'Remembering the Past and the Good Old Law', History, lv (1974), 165-176.
- 'A Medieval Realist: Interpreting the Rules at Barnwell Abbey, Cambridge', in Perspectives in Jurisprudence, ed. E.A.G. Attwooll, (Glasgow, 1977), 176-194.
- From Memory to Written Record, (London, 1979).
- England and its Rulers, 1066-1272, (London, 1983).

Clay, C.T. & Greenway, D.E, edd., Early Yorkshire Families, (Yorks Arch. Soc. Record Ser., cxxxv, 1973).

Colvin, H.M., 'Holme Lacy: an Episcopal Manor and its Tenants in the Eleventh and Twelfth Centuries', in Medieval Studies Presented to Rose Graham, edd. V. Ruffer & A.J. Taylor, (Oxford, 1950), 15-40.

Conway, A.E., 'The Owners of Allington Castle, Maidstone (1086-1279)', Archaeologia Cantiana, xxix (1911), 1-39.

Cowdrey, H.E.J., 'The Peace and the Truce of God in the Eleventh Century', P. & P., 46 (1970), 42-67.

Cronne, H.A., 'The Office of Local Justiciar in England under the Norman Kings', University of Birmingham Historical Journal, vi (1958), 18-38.

- The Reign of Stephen, 1135-54. Anarchy in England, (London, 1970).

Crouch, D.B., 'Geoffrey de Clinton and Roger, Earl of Warwick: New Men and Magnates in the Reign of Henry I', B.I.H.R., lv (1982), 113-124.

- 'Robert Earl of Gloucester and the Daughter of Zelophehad', J. Med. H., 11 (1985), 227-243.
- The Beaumont Twins, (Cambridge, 1986).
- 'The Foundation of Leicester Abbey, and Other Problems', Midland History, xii (1987), 1-13.

Daube, D., Roman Law, Linguistic, Social and Philosophical Aspects, (Edinburgh, 1969).
Davis, R.H.C., 'What Happened in Stephen's Reign', History, xliv (1964), 1-12.
- King Stephen, (London, 1967).
Darby, H.C., Domesday England, (Cambridge, 1977).
DeAragon, R., 'The Growth of Secure Inheritance in Anglo-Norman England', J. Med. H., 8 (1982), 381-391.
Dodwell, B., 'Holdings and Inheritance in Medieval East Anglia', Economic History Review, 2nd. Ser. xx (1967), 53-66.
Douglas, A.W., 'Frankalmoin and Jurisdictional Immunity: Maitland Revisited', Speculum, 53 (1978), 26-48.
- 'Tenure *In Elemosina*: Origins and Establishment in Twelfth Century England', American Journal of Legal History, xxiv (1980), 95-132.
Douglas, D.C., 'A Charter of Enfeoffment under William the Conqueror', E.H.R., xlii (1927), 245-7.
- The Social Structure of Medieval East Anglia, (Oxford, 1927).
- 'Some Early Surveys form the Abbey of Abingdon', E.H.R., xliv (1929), 618-625.
- William the Conqueror: The Norman Impact upon England, (London, 1964).
Du Boulay, F.R.H., The Lordship of Canterbury, (London, 1966).
Duby, G., 'The Evolution of Judicial Institutions', in The Chivalrous Society, tr. C. Postan, (London, 1977), 15-58.
Dworkin, R.M., Law's Empire, (London, 1986).
- ed., The Philosophy of Law, (Oxford, 1977).

Enever, F.A., History of the Law of Distress for Rent and Damage Feasant, (London, 1931).
Eyton, R.W., Court, Household and Itinerary of King Henry II, (Dorchester, 1878).

Faith, R.J., 'Peasant Families and Inheritance Customs in Medieval England', Agricultural History Review, xiv (1966), 77-95.
Farrer, W., 'An Outline Itinerary of King Henry the First', E.H.R., xxiv (1919), 303-382, 505-579 (Reprinted separately, 1920).
- Honors and Knights' Fees, (3 vols., London, 1923).
Fournier, P. & le Bras, G., Histoires des Collections Canoniques en Occident depuis les Fausses Décrétales jusqu'au Décrets de Gratien, (2 vols., Paris, 1931-2).

Galbraith, V.H., 'An Episcopal Land Grant of 1085', E.H.R., xliv (1929), ..
- 'Monastic Foundation Charters of the Eleventh and Twelfth Centuries', C. Hist. J., iv (1932-4), 210-219.
Gold, P. Schine, The Lady and the Virgin: Image, Attitude and Experience in Twelfth-Century France, (Chicago, 1985).
Golding, B., 'Simon of Kyme, the Making of a Rebel', Nottingham Medieval Studies, xxvii (1983), 23-36.

Goebel, J., Felony and Misdemeanour. A Study in the History of English Legal Procedure, (New York, 1937).
Goody, J., The Development of Family and Marriage in Europe, (Cambridge, 1983).
- The Logic of Writing and the Organization of Society, (Cambridge, 1986).
Gransden, A., Historical Writing in England c.550 to c.1307, (London, 1974).
Green, J.A., 'The Sheriffs of William the Conqueror', Anglo-Norman Studies, v (Woodbridge, 1983), 129-145.
- '"Praeclarum et Magnificum Antiquitatis Monumentum": the Earliest Surviving Pipe Roll', B.I.H.R., lv (1982), 1-17.
- The Government of England under Henry I, (Cambridge, 1986).
Guest, A.M. ed., Oxford Essays in Jurisprudence, (Oxford, 1961).
Gurevic, A., 'Représentation et attitudes à l'égard de la Propriété pendant le Haut Moyen Age', Annales E.S.C., xxvii (1972), 523-547.

Harding, A., 'Medieval Brieves of Protection and the Development of the Common Law', Juridical Review, (1966), 115-149.
- The Law Courts of Medieval England, (London, 1973).
Hart, H.A.L., The Concept of Law, (Oxford, 1961).
Harvey, S., 'The Knight and the Knight's Fee in England', P. & P., 49 (1970), 3-43.
Herlihy, D., ed., The History of Feudalism, (London, 1970).
Hill, B.D., English Cistercian Monasteries and their Patrons in the Twelfth Century, (Urbana, 1968).
Haskins, C.H., Norman Institutions, (New York, 1918).
Hollister, C.W., The Military Organization of Norman England, (Oxford, 1965).
- 'The Misfortunes of the Mandevilles', History, 58 (1973), 18-28.
- 'The Anglo-Norman Succession Debate of 1126: Prelude to Stephen's Anarchy', J. Med. H., i (1975), 19-39.
Holt, J.C., 'The Assizes of Henry II: The Texts', in The Study of Medieval Records, ed. D.A. Bullough and R.L. Storey, (Oxford, 1971).
- 'Politics and Property in Early Medieval England', P. & P., 57 (1972), 3-52.
- 'Politics and Property in Early Medieval England: a Rejoinder', P. & P., 65 (1974), 127-135.
- What's in a Name? Family Nomenclature and the Norman Conquest, (Stenton Lecture, 1981; University of Reading, 1982).
- 'The Introduction of Knight Service in England', Anglo-Norman Studies, vi (Woodstock, 1984), 89-106.
- 'Feudal Society and the Family in Early Medieval England:'
'I: The Revolution of 1066', T.R.H.S., 5th. Ser. 32 (1982), 193-212.
'II: Notions of Patrimony', T.R.H.S., 5th. Ser. 33 (1983), 193-220.
'III: Patronage and Politics', T.R.H.S., 5th. Ser. 34 (1984), 1-26.
'IV: The Heiress and the Alien', T.R.H.S., 5th. Ser. 35 (1985), 1-28.
- 'More Battle Forgeries', Reading Medieval Studies, xi (1985), 75-86.
ed., Domesday Studies, (Woodbridge, 1987).
Hurnard, N., 'Magna Carta, Clause 34', in Studies in Medieval History Presented to F.M. Powicke, edd. R.W. Hunt, W.A. Pantin, R.W. Southern, (Oxford, 1948).
Hyams, P.R., Kings, Lords and Peasants in Medieval England, (Oxford, 1980).
- 'Trial by Ordeal: The Key to Proof in the Early Common Law', in On the Laws and Customs of England: Essays in honour of S.E. Thorne, ed. M.S. Arnold et al., (Chapel Hill N.C., 1981), pp. 90-126.
- 'The Common Law and the French Connection', in Anglo-Norman Studies, iv (Woodbridge, 1982), 77-92, 196-202.

- 'Warranty and Good Lordship in Twelfth Century England', Law and History Review, 5 (1987), 437-503.
- '"No Register of Title": the Domesday Inquest and Land Adjudication', Anglo-Norman Studies, ix (Woodbridge, 1987), 127-141.

Jones, M., The Creation of Brittany, (London, 1988).
Joüon des Longrais, F., La Conception Anglaise de la Saisine du xiie au xive Siècle, (Paris, 1924).
- 'La Portée Politiques des Réformes d'Henry II en Matières de Saisine', R.H.D.F.E., 4e. Ser. xv, (1936), 540-571.
Jowitt, Earl, The Dictionary of English Law, (2 vols., London, 1959).

Keefe, T., Feudal Assessments and the Political Community under Henry II and his Sons, (Berkeley, 1983).
Keeton, G.W., The Norman Conquest and the Common Law, (London & N.Y., 1966).
Kimball, E., 'Tenure in Frank Almoign and Secular Services', E.H.R., xliii (1928), 341-353.
- 'The Judicial Aspects of Frank Almoign Tenure', E.H.R., xlviii (1932), 1-11.
King, E., Peterborough Abbey 1086-1310: a Study in the Land Market (Cambridge, 1973).
- 'The Tenurial Crisis of the Early Twelfth Century', P. & P., 65 (1974), 110-7.
- 'Mountsorel and its Region in King Stephen's Reign', Huntington Library Quarterly, xliv (1980), 1-10.
- 'The Anarchy of Stephen's Reign', T.R.H.S., 5th. Ser. 34 (1984), 133-153.
Knowles, M.D., The Monastic Order in England, (2nd.ed., Cambridge, 1962).
- & R.N. Hancock, Medieval Religious Houses: England and Wales, (Revised ed., London, 1971).

Lambrick, G., 'Abingdon Abbey Administration', Journal of Ecclesiastical History, xvii (1966), 159-183.
Latimer, P., 'Grants of "Totus Comitatus" in Twelfth-Century England: Their Origins and Meaning', B.I.H.R., lix (1986), 137-145.
Lennard, R.V., Rural England, 1086-1135: a Study of Social and Agrarian Conditions, (Oxford, 1959).
Le Patourel, J., 'The Reports of the Trial on Penenden Heath', in Studies in Medieval History Presented to Frederick Maurice Powicke, ed. R.W. Hunt, W.A. Pantin, R.W. Southern, (Oxford, 1948), pp. 15-26.
- The Norman Empire, (Oxford, 1976).
Lésage, G., 'La "Ratio Canonica" d'après Alexandre III', in Proceedings of the Fourth International Congress of Medieval Canon Law, ed. S. Kuttner, (Vatican City, 1976), pp. 95-106.
Loengard, J., 'The Assize of Nuisance - Origins of an Action at Common Law', C. Law J., 37 (1978), 144-166.

Maitland, F.W., Domesday Book and Beyond, (Cambridge, 1897; reissued with introduction by E. Miller, 1960).
- The Collected Papers of Frederic William Maitland, ed. H.A.L. Fisher, (3 vols., Cambridge, 1911).
- The Forms of Action at Common Law, (Cambridge, 1936).

Mason, E., 'William Rufus: Myth and Reality', J. Med. H., 3 (1977), 1-20.
Mauss, M., The Gift, tr. I. Cunnison, (London, 1954).
Miller, E., 'The Land Pleas in the Reign of William I', E.H.R., lxii (1947), 438-456.
- The Abbey and Bishopric of Ely, (Cambridge, 1951).
Milsom, S.F.C., Novae Narrationes, (Selden Society vol. lxxx, 1963).
- 'Reason and the Development of the Common Law', L.Q.R., lxxxi (1965), 496-517.
- 'Law and Fact in Legal Development', University of Toronto Law Journal, xvii (1967), 1-19.
- The Legal Framework of English Feudalism, (Cambridge, 1976).
- 'Inheritance by Women in the Twelfth and Early Thirteenth Centuries', in On the Laws and Customs of England: Essays in Honour of S.E.Thorne, ed. M.S. Arnold et al., (Chapel Hill N.C., 1981), pp. 60-89.
- Historical Foundations of the Common Law, (2nd. ed., London, 1981).
- Studies in the History of the Common Law, (London, 1985).
Morey, A., & Brooke, C.N.L., Gilbert Foliot and his Letters, (Cambridge, 1965).
Morris, C., '*Iudicium Dei*: The Social and Political Significance of the Ordeal in the Eleventh Century', Studies in Church History, xii (1975), 95-111.
Morris, W.A., The Medieval English Sheriff to 1300, (Manchester, 1927).
Mortimer, R., 'Land and Service: the Tenants of the Honour of Clare', Anglo-Norman Studies, viii (Woodbridge, 1986), 177-197.
Murray, A., Reason and Society in the Middle Ages, (Oxford, 1978).

Nichols, J., The History and Antiquities of the County of Leicester, (4 vols. in 8, London, 1795-1815).
Nicol, A., ed. 'Changes in the Assize *Utrum* between the Constitutions of Clarendon and Bracton', in Medieval Legal Records edited in Memory of C.A.F. Meekings, edd. R.F. Hunnisett & J.B. Post, (London, 1978), pp. 17-24.

Offler, H.S., 'The Tractate De Iniusta Vexatione Willelmi Episcopi Primi', E.H.R., lxvi (1951), 32-41.

Painter, S., Studies in the History of the English Feudal Barony, (Baltimore, 1943).
- 'The Family and the Feudal System in Twelfth-Century England', Speculum, 35 (1960), 1-16.
Palmer, R.C., 'The Feudal Framework of English Law', Michigan Law Review, 79 (1981), 1130-1164.
- The County Courts of Medieval England 1150-1350, (Princeton, 1982).
- 'The Origins of Property in England', Law and History Review, 3 (1985), 1-50.
Plucknett, T.F.T., A Concise History of the Common Law, (5th. ed., London, 1956).
- Early English Legal Literature, (Cambridge, 1958).
- The Legislation of Edward I, (Oxford, 1962).
Pollock, Sir Frederick, and Maitland, F.W., The History of English Law before the Time of Edward I, (2 vols.; second edition reissued with a new introduction and select bibliography by S.F.C. Milsom, Cambridge, 1968).
Powell, W.R. 'Essex Domesday Topography since 1903: Place Name Identification and Problems', Essex Archaeology and History, 16 (1984-5), 40-47.

Prestwich, J.O., 'The Treason of Geoffrey de Mandeville', E.H.R., ciii (1988), 283-312.

Raban, S., Mortmain Legislation and the English Church, (Cambridge, 1982).
Raftis, J.A., The Estates of Ramsey Abbey, (Toronto, 1957).
Raz, J., Practical Reason and Norms, (London, 1975).
Redstone, L.J., 'The Liberty Of St. Edmund', Proceedings of the Suffolk Institute of Archaeology, xv (1913-5), 200-211.
Reynolds, S.M.G., Kingdoms and Communities in Western Europe, 900-1300, (Oxford, 1984).
Richardson, H.G., and Sayles, G.O., The Governance of Medieval England from the Conquest to Magna Carta, (Edinburgh, 1963).
- Law and Legislation from Aethelbert to Magna Carta, (Edinburgh, 1966).
Roberts, S., Order and Dispute, (Harmondsworth, 1979).
Round, J.H., Geoffrey de Mandeville, (London, 1892).
- Feudal England, (London, 1895).
- Studies in Family and Peerage History, (Westminster, 1901).
- 'The Burton Abbey Surveys', E.H.R., xx (1905), 275-289.
- The King's Serjeants and Officers of State, (London, 1911).

Saltman, A., Theobald, Archbishop of Canterbury, (London, 1956).
Sanders, I.J., English Baronies: a Study of their Origin and Descent, (Oxford, 1960).
Searle, E., Lordship and Community: Battle Abbey and its Banlieu 1066-1538, (Toronto, 1974).
- 'The Abbey of the Conquerors: Defensive Enfeoffment and Economic Development in Anglo-Norman England', Anglo-Norman Studies, ii (Woodbridge, 1980), 154-164, 197-8.
- 'Women and the Legitimation of Succession at the Norman Conquest', Anglo-Norman Studies, iii (Woodbridge, 1981), 159-170, 226-9.
Sheehan, M.M. The Will in Medieval England, (Toronto, 1963).
Simpson, A.W.B., An Introduction to the History of Land Law, (Oxford, 1961).
- The History of Land Law, (Oxford, 1986).
Southern, R.W., Medieval Humanism and Other Studies, (Oxford, 1970).
- St. Anselm and his Biographer, (Cambridge, 1966).
Stenton, D.M., English Justice between the Norman Conquest and the Great Charter 1066-1215, (Philadelphia, 1964).
Stenton, F.M., Latin Charters of the Anglo-Saxon Period, (Oxford, 1955).
- The First Century of English Feudalism 1066-1166, (2nd. ed., Oxford, 1961).
Stubbs, W., The Constitutional History of England, (3 vols., Oxford, 1874-8).
Sutherland, D.W., The Assize of Nouvel Disseisin, (Oxford, 1973).

Thorne, S.E., 'Livery of Seisin', Law Quarterly Review, lii (1936), 345-364.
- 'English Feudalism and Estates in Land', C. Law J., 1959, 193-209.
Turner, R.V., The English Judiciary in the Age of Glanvill and Bracton, c.1176-1239, (Cambridge, 1985).

Van Caenegem, R.C., The Birth of the English Common Law, (Cambridge, 1973).
Voss, L., Heinrich von Blois, Bischof von Winchester, 1129-1171, (Historische Studien no. 210, Berlin, 1932).

Walker, D., 'Miles of Gloucester Earl of Hereford', Trans. Bristol and Glos. Arch. Soc., lxxvii (1959), 66-84.
- 'Ralph son of Pichard', B.I.H.R., 33 (1960), 195-202.
Warren, W.L., Henry II, (London, 1973).
- 'The Myth of Anglo-Norman Administrative Efficiency', T.R.H.S., 5th. Ser. 34 (1984), 113-132.
Waugh, S., 'Tenure to Contract', E.H.R., ci (1986), 811-839.
White, S.D., 'Politics and Property in Early Medieval England: Succession to Fiefs in Early Medieval England', P. & P., 65 (1974), 118-127.
- '"Pactum ... Legem Vincit et Amor Iudicium": The Settlement of Disputes by Compromise in Twelfth-Century Western France', American Journal of Legal History, xxii (1978), 281-308.
- Custom, Kinship and Gifts to Saints: the *Laudatio Parentum* in Western France, 1050-1150, (Chapel Hill, 1988).
Wightman, W.E., The Lacy Family in England and Normandy, 1066-1194, (Oxford, 1961).
Wood, S.M., English Monasteries and their Patrons in the Thirteenth Century, (Oxford, 1955).

Yver, J., 'Le Bref Anglo-Normand', Tijdschrift voor Rechtsgeschiednis, xxix, (1961), 313-330.
- 'Une Boutade de Guillaume le Conquérant: Note sur la Genèse de la Tenure en Aumône', in Etudes d'Histoire du Droit Canonique, dédiées à Gabriel le Bras, (2 vols., Paris, 1965), 781-791.