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Protection and Immunity in Later Medieval England

The concept of immunity was a familiar one in later medieval England; broadly defined it might be applied to a diverse range of places and people, from the sanctuary provided by certain ecclesiastical foundations, to the protection given to royal messengers on the business of the crown.¹ The association between place and immunity, in particular, has recently attracted much scholarly attention. Barbara Rosenwein has shed light on the charters of immunity granted to particular properties in the early Middle Ages. Similarly, Alan Cooper has demonstrated that by the late eleventh century all major highways were designated as places of immunity for travellers, so long as they did not wander far from the road.² Work on the later Middle Ages has demonstrated that the boundaries of lands designated as “franchises” and “liberties” in the post-Conquest period were still recognized to restrict, although not prohibit, the entry of royal officers. Similarly the privileges of sanctuary long associated with certain religious foundations were protected by secular authorities.³ Such immunities were

- 1 I would like to thank T.B. Lambert and V. Clark for their helpful comments on this paper.
- 2 Barbara Rosenwein, *Negotiating Space: Power, Restraint and Privileges of Immunity in Early Medieval Europe* (Manchester: Manchester University Press, 1999); Susan Wood, *The Proprietary Church in the Medieval West* (Oxford: Oxford University Press, 2006), 251–59; Timothy Reuter, *Medieval Politics and Modern Mentalities*, ed. Janet L. Nelson (Cambridge: Cambridge University Press, 2006), 342–54; Alan Cooper, “The Rise and Fall of the Anglo-Saxon Law of the Highway,” *Haskins Society Journal* 12 (2002): 39–69; Wendy Davies, “‘Protected Space’ in Britain and Ireland in the Middle Ages,” in *Scotland in Dark Age Britain*, ed. Barbara E. Crawford (Aberdeen: Scottish Cultural Press, 1996), 1–19.
- 3 Maitland’s idea that English franchises emerged in the Anglo-Saxon period has been effectively challenged by Patrick Wormald and others. The consensus of opinion now dates them to the post-Conquest period. Patrick Wormald, “Lordship and Justice in the Early English Kingdom: Oswaldslow Revisited,” in *Property and Power in the Early Middle Ages*, ed. Wendy Davies and Paul Fouracre (Cambridge: Cambridge University Press, 1995), 114–36; Rosenwein, *Negotiating Space*, 192–95; Helen Castor, *The King, the Crown and the Duchy of Lancaster: Public*

defined by geographical location; they applied, of course, to the people who dwelt within them, but they were not applicable once the person stepped outside the boundaries of the liberty or sanctuary.⁴ Less attention, however, has been given to the forms of immunity that were not spatially defined, but were instead granted to individuals, in order to protect them wherever they went. These grants were necessarily more transitory than the land-based designations; rarely were they granted for life, and usually only for long enough to carry out a specific task or journey (an exception to this might be the privilege known as “benefit of clergy,” which allowed churchmen immunity from the king’s courts, so long as their case was transferred to an ecclesiastical tribunal).⁵ As far as laymen were concerned, however, personal immunity was usually only granted to those who demonstrated a particular need for it, for a limited period of time.⁶

This study seeks to examine more closely the forms of protection offered in these temporary personal immunities, and the ways in which they expressed royal power. In particular, it focuses on two related concepts of immunity which seem to have been common in England by the later medieval period. The first was the well-established notion of immunity from molestation (known as *grið* in tenth- and eleventh-century sources), a form of protection that would be actively policed by the officers of the crown. It is an idea that appears in late Anglo-Saxon law codes and in letters of safe-conduct from the eleventh century onwards. As Rosenwein notes, these documents expressed *active* royal jurisdiction, rather than the

Authority and Private Power, 1399–1461 (Oxford: Oxford University Press, 2000), *passim*. Cf. T.B. Lambert, “Spiritual Protection and Secular Power: The Evolution of Sanctuary and Legal Privilege in Ripon and Beverley, 900–1300,” below, 00–00.

- 4 With the exception of those who left sanctuary in order to abjure the realm, who theoretically “travelled under the protection of both king and Church and under the watchful eye of bailiffs or constables.” Jessica Freeman, “‘And He Abjured the Realm of England, Never to Return,’” in *Freedom of Movement in the Middle Ages: Proceedings of the 2003 Harlaxton Symposium*, ed. Peregrine Horden (Donnington: Shaun Tyas, 2007), 297.
- 5 The privilege was defined after the conflict between Henry II and Archbishop Becket. Originally clerics claimed the privilege at the onset of a trial and were handed over to a church official. By the mid-fourteenth century, offenders were usually tried first in the king’s courts, and if found guilty, their goods would be seized until sentence had been passed by an ecclesiastical tribunal. John Bellamy, “Benefit of Clergy in the Fifteenth and Sixteenth Centuries,” in *Criminal Law and Society in Late Medieval and Tudor England*, ed. John Bellamy (Gloucester: Alan Sutton, 1984), 115–72; Leona C. Gabel, *Benefit of Clergy in England in the Later Middle Ages* (Northampton, MA: Department of History of Smith College, 1929).
- 6 In addition to the spatial and personal immunities, Lambert has identified certain limited temporal immunities which applied on specific festival days (below, 00–00).

modern understanding of immunity as non-intervention.⁷ In addition to this, another concept of immunity had also been established by the later Middle Ages: the more familiar idea of immunity from arrest. This form of protection emerged in the wake of the judicial initiatives taken by Angevin and Plantagenet rulers in the twelfth and thirteenth centuries. The network of royal courts they established throughout the realm sought to enforce standard judicial procedures, and in so doing made the royal legal system more pervasive than ever before.⁸ In this new environment, immunity from arrest became a tangible and valued concession. Rather than guaranteeing the holder protection *by* royal officers, this form of immunity protected them *from* royal officers and their power to arrest or distrain those accused of wrongdoing. When Edward Coke came to survey the traditions surrounding immunity in the seventeenth century, he drew an important distinction between the two forms outlined above:

Protection is of two sorts, one, to give a man an immunitie or freedome from actions or suits, the second, for the safety of his person, servants and goods, lands and tenements whereof he is lawfully possessed from violence, unlawfull molestation or wrong.⁹

The two ideas were not, of course, always clearly distinguished, but elements of the older notion of immunity from molestation did retain a certain currency in the later Middle Ages. Parliamentary petitions, for example, alluded to these privileges as “liberties and privileges as have been customary and used from of old” and “where of tyme that mannys mynde is not the contrarie.”¹⁰ Vestiges of these immunities still survived in legal

7 See, for example, the laws of Æthelberht which stipulate fines for anyone who attacks the people summoned by the king to attend the witenagemot (Abt 2; this is clause 8 in Oliver, *BEL*). Similarly, Cnut grants *grīð* to all those travelling to and from the *gemot* (II Cn 82). Several scholars have engaged in a debate over whether letters of protection can be traced as far back as the sixth century; Rosenwein, *Negotiating Space*, 3–4, n. 3, gives the historiographical references. For letters of safe-conduct, see Karsten Plöger, *England and the Avignon Popes: The Practice of Diplomacy in Late Medieval Europe* (London: Legenda, 2005), 127.

8 John Hudson, *The Formation of English Common Law: Law and Society in England from the Norman Conquest to Magna Carta* (London: Longman, 1996), *passim*.

9 Edward Coke, *The First Part of the Institutes of the Laws of England, A Commentary on Littleton*, ed. Charles Butler, 19th ed. (London: J. and W.T. Clarke, 1832), II, ii.199 (103a).

10 “Edward IV: Parliament of January 1478, Text and Translation,” in *PROME*, item 35; “Henry VI: Parliament of March 1453, Text and Translation,” in *PROME*, item 25.

memory and, when adapted for new purposes, they lent the legitimizing authority of ancient custom.¹¹ This paper, then, aims to examine the forms of personal immunity granted by the crown in England in the later Middle Ages, and to elucidate the notions of peace and protection that lay behind them.

Personal Immunity from Molestation

a. Early Medieval Precedents

The concept of immunity from molestation featured prominently in the “communal peace-making policies” of the tenth-century West Saxon kings.¹² Alan Cooper argues that these policies were specifically designed to regulate feuding between enemies. Laws from the reigns of Æthelred II and Cnut stipulated that all people were to be immune from the attack of an enemy (without due warning) if they were in a house, or travelling on the highway, or if they held a grant of peace from the king. Breaches of any of these three immunities were deemed to be offences (known as *hamsocn*, *forsteal* and *griðbryce* respectively) for which fines were payable to the crown. Two of these immunities were therefore spatially defined; the individual had to be in a house or on the highway to be protected. The third, however, was a personal form of immunity, which applied to anyone who had been specifically granted protection (*grið*).¹³ Additionally, the laws of Æthelred II and Cnut also referred to protected social groups.¹⁴ The clergy were obviously set apart, but there were other groups, including foreigners and widows, who were also placed under the direct protection of the king.

¹¹ Anthony Musson, “Appealing to the Past: Perceptions of Law in Late-Medieval England,” in *Expectations of the Law in the Middle Ages*, ed. Anthony Musson (Woodbridge: Boydell, 2001), 165–79; Paul Brand, “‘Time Out of Mind’: The Knowledge and Use of the Eleventh- and Twelfth-Century Past in Thirteenth-Century Litigation,” *Anglo-Norman Studies* 16 (1994): 37–54.

¹² Cooper, “Law of the Highway,” 58.

¹³ Cooper, “Law of the Highway,” 54–55; R.V. Colman, “Hamsocn: Its Meaning and Significance in Early English Law,” *American Journal of Legal History* 25 (1981): 95–110.

¹⁴ Stephanie Hollis, “‘The Protection of God and the King’: Wulfstan’s Legislation on Widows,” in *Wulfstan, Archbishop of York: the Proceedings of the Second Alcuin Conference*, ed. Matthew Townend, Studies in the Early Middle Ages 10 (Turnhout: Brepols, 2004), 443–60; T.J. Rivers, “Widows’ Rights in Anglo-Saxon Law,” *American Journal of Legal History* 19 (1975): 208–15; Keechang Kim, *Aliens in Medieval Law: The Origins of Modern Citizenship* (Cambridge: Cambridge University Press, 2001); Norbert Ohler, *The Medieval Traveller*, trans. Caroline Hillier (Woodbridge: Boydell, 1989); Cooper, “Law of the Highway,” 47, 62.

Their immunity from molestation purportedly followed the Old Testament exhortation for a monarch to be protector of the defenceless: "Thou shall neither vex a foreigner, nor oppress him: for ye were foreigners in the land of Egypt. Ye shall not afflict any widow, or fatherless child."¹⁵ Late Anglo-Saxon laws also gave special protection to those travelling to and from meetings of the king and his advisers, and fines were to be levied on anyone who attacked people en route to such a meeting.¹⁶

The question of whether or not these conceptions of immunity survived the arrival of the Common Law and remained, in any meaningful sense, part of the legal culture, is a pertinent one in light of recent revisionist work on the post-Conquest period. Until recently, legal historians continued to acknowledge the clear dividing line drawn by Pollock and Maitland between the old Anglo-Saxon legal order and the new ideas, procedures, and institutions that emerged in the late twelfth century. However, even this notion has been successfully challenged in recent work. Paul Hyams, for example, has demonstrated that ideas of feuding and vengeance survived into the eleventh and twelfth centuries, alongside the emerging Common Law, and Patrick Wormald has finally demolished the last vestiges of Maitland's argument that Henry II and his successors struggled to uproot ancient liberties that had been deeply embedded since well before the Conquest.¹⁷ This scholarship has important implications for our understanding of immunities. Ideas of feuding, in particular, had been intimately connected with immunity since the earliest extant law codes. Hyams notes that, despite Henry I's attempts to impose a "firm peace" throughout his kingdom, "prudent men continued to buy from him and his successors special grants, in writing and so with lasting consequences. These converted violent acts against the grantees and *their* property into breaches of the king's special peace."¹⁸ Evidence from the surviving thirteenth-century plea-rolls further suggests these grants of royal peace were actually becoming *more* frequent as time went on.¹⁹

¹⁵ Exodus 22:21–24.

¹⁶ II Cn 82.

¹⁷ Paul R. Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca: Cornell University Press, 2003); Wormald, "Oswaldslow Revisited," 117.

¹⁸ Hyams, *Rancor and Reconciliation*, 134, 137–86. Hyams draws on the arguments of Garnett and O'Brien: George Garnett, "Coronation and Propaganda: Some Implications of the Norman Claim to the Throne of England in 1066," *Transactions of the Royal Historical Society*, 5th ser., 36 (1986): 91–116; Bruce R. O'Brien, *God's Peace and King's Peace: The Laws of Edward the Confessor* (Philadelphia: University of Pennsylvania Press, 1999).

¹⁹ Hyams, *Rancor and Reconciliation*, 133; Naomi D. Hurnard, "The Anglo-Norman Franchises," *English Historical Review* 64 (1949): 289–327, 433–60.

This being the case, it is easy to see why several historians have portrayed this concept of immunity as a forerunner to the general peace of the Common Law, which, by the thirteenth century, theoretically offered protection from molestation to all the king's subjects rather than just to select individuals. Frederick Pollock expressed such a view in his Oxford lectures of 1884: "Thus by the end of the thirteenth century, a time when so much else of our institutions was newly and strongly fashioned for larger uses, the king's peace had fully grown from an occasional privilege into a common right."²⁰ However, on closer inspection it does not seem that the older immunities were entirely subsumed into the general peace. Despite the emergence of the Common Law, and the introduction of "trespass" as a category of offence to cover crimes such as assault, the older ideas of specific immunities granted directly from the crown did survive into the later Middle Ages.²¹ The survival and adaptation of these ideas were prompted by two factors in particular: the first, as Hyams indicates, was the persistence of cultural norms of vengeance and peace-making, which meant that personal immunities were still valued by recipients; the second was the conscious use and evocation of Anglo-Saxon precedents for contemporary purposes.

By the thirteenth century the emergence of the Common Law and particularly the concept of trespass had brought with it new legal remedies for the disputes and conflicts which arose at a local level. Individuals from a broad cross-section of the population increasingly looked to the royal courts for redress of their grievances. However, as Hyams argues, individ-

²⁰ Frederick Pollock, "The King's Peace," in *Oxford Lectures and Other Discourses* (London; New York: Macmillan, 1890), 88. This interpretation has been endorsed by several other historians. See, for example: Alan Harding, "The Medieval Brieves of Protection and the Development of the Common Law," *Juridical Review*, n.s., 2 (1966): 115-49; David Feldman, "The King's Peace, the Royal Prerogative and Public Order: The Roots and Early Development of Binding Over Powers," *Cambridge Law Journal* 41 (1988), 101-128; Jack K. Weber, "The King's Peace: A Comparative Study," *Journal of Legal History* 10 (1989): 135-160. On the accession of Edward I and again when his grandson came to the throne, letters close ordered sheriffs to proclaim the king's general peace; the king was "the debtor" to his subjects "in the exhibition of justice and in the preservation of the peace" (CCR, 1272-79, 1; CCR, 1327-30, 1).

²¹ See Baker for the development of trespass writs: John Hamilton Baker, *An Introduction to English Legal History*, 2nd ed. (London: Butterworths, 1979), 56-59. Edward Coke noted that two forms of protection ran in parallel: "It is to be understood that there is a generall protection of the King ... and this extends generally to all the Kings loyall Subjects, Denizens and Aliens within the Realme, whose offences have not made them incapable of it. ... And there is a particular protection By Writ" (Coke, *The First Part of the Institutes*, II, ii.199 (103a)).

uals learnt to adapt the new remedies toward their old goals. Direct vengeance, by taking the life of an enemy, might now be out of the question because of the risk of prosecution for homicide, but vendettas could still be pursued through the courts. Equally, the king's courts perpetuated long-standing local views and traditions; the jury system, for example, was staffed by local men with knowledge of neighbourhood reputation. Older methods of brokering concords were adapted but not supplanted: out-of-court peace settlements, arbitration, and reconciliation rituals still retained their place in local dispute-resolution.²² This "underlying continuity of reception" meant that ideas of vengeance and personal immunity retained their significance alongside the innovations of the common law.²³

b. Individual Grants of Peace

The concept of *grið*, as a personal immunity from molestation, continued to survive in the individual letters of peace, which were routinely issued by the crown's bureaucratic offices from the second half of the twelfth century. It seems that people were reluctant to give up these personal grants of peace because of the more immediate protection they offered in the face of direct threat from an enemy. The evidence for these grants of peace is somewhat sparse, but some archival references do survive. Hyams found several references to them in twelfth- and thirteenth-century case-records, and concluded that these individual grants represented a "common-law link with the older world of private-enterprise power-relations."²⁴ It is clear that individuals might petition the crown directly for a grant, if they perceived themselves to be under threat in some way, and a royal protection would be awarded in writing. A writ *de minis* (writ of threats) would

22 Hyams, *Rancor and Reconciliation*, 199–208; Thomas Andrew Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200–1800* (Chicago; London: University of Chicago Press, 1985), *passim*; Bernard William McLane, "Juror Attitudes toward Local Disorder: The Evidence of the 1328 Trailbaston Proceedings," in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200–1800*, ed. James Swanston Cockburn and Thomas Andrew Green (Princeton, NJ: Princeton University Press, 1988), 36–64, at 51–52; Edward Powell, "Jury Trial at Gaol Delivery in the Late Middle Ages: The Midland Circuit, 1400–1429," in *Twelve Good Men*, ed. Cockburn and Green, 78–116, at 112; Edmund King, "Dispute Settlement in Anglo-Norman England," *Anglo-Norman Studies* 14 (1991): 115–30; Edward Powell, "Settlement of Disputes by Arbitration in Fifteenth-Century England," *Law and History Review* 2 (1984): 21–43; Edward Powell, "Arbitration and the Law in England in the Later Middle Ages," *Transactions of the Royal Historical Society*, 5th ser., 13 (1983): 49–67.

23 Hyams, *Rancor and Reconciliation*, 161–62.

24 Hyams, *Rancor and Reconciliation*, 197, nn. 30–33.

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then authorize the local sheriff to award a recipient “firm peace.” The wording of these writs, recorded in thirteenth- and fourteenth-century collections, suggested that this was a well-established practice:

The king to the sheriff, greeting. Because A has complained to us grievously that B is threatening him openly as to his person, we command you to cause the aforesaid A to have our firm peace ... according to the custom of England, by taking security that the said A shall not suffer loss or peril ... from B.²⁵

The use of the phrase “the custom of England” might have been no more than a vague attempt to lend the writ the authority of age, but the earlier medieval precedents do provide a more specific context for the wording of this writ.²⁶

As an alternative to asking the crown directly for such protection, supplicants might instead ask the royal justices to grant letters of peace, in the face of an enemy who had been threatening them. Several such cases can be identified in the eyre rolls: in one example from the 1292 Shropshire eyre, two brothers, Henry and Piers, claimed to have been assaulted by one Thomas Pothelot of Shrewsbury, who had reportedly attacked them on several occasions, once with his knife drawn, intending to kill them. They asked the court “for God’s sake that they may have the peace against Thomas.” Interestingly, in this case the brothers alluded to a special period of peace, lasting as long as the eyre justices resided in their county: Thomas, they said, attempted to beat them “in the peace of your eyre.”²⁷ Entries in the coroners’ rolls also demonstrate that individuals with a par-

25 The earliest recorded writs date from the mid-1260s: Elsa de Haas and George D.G. Hall, ed. and trans., *Early Registers of Writs*, Selden Society 87 (London: Quaritch, 1970), CC. 107–107a. An early fourteenth century example can be found in the same volume: de Haas and Hall, *Early Registers of Writs*, R.253–54.

26 Bracton’s law code, dating from the mid-thirteenth century, also includes a brief mention of this form of protection: “A. appeals B. for the death of C. his brother, that whereas the said A. and C. his brother were in the peace of God and of the king at such a place, doing such a thing (or ‘crossing from such a place to such’) on such a day in such a year and at such an hour, the said B. came with such persons (to be named) and wickedly, feloniously, in premeditated assault and against the king’s peace given to him, dealt the aforesaid C. his brother a mortal wound” (Samuel E. Thorne, ed. and trans., *Bracton on the Laws and Customs of England* [Cambridge, MA: Harvard University Press, 1977], 2: 388).

27 William Craddock Bolland, ed. and trans., *Select Bills in Eyre, A.D. 1292–1333*, Selden Society 30 (London: Quaritch, 1914), 7; H.G. Richardson and G.O. Sayles, *Select Cases of Procedure without Writ under Henry III*, Selden Society 60 (London: Quaritch, 1941), xi.

ticular grievance against an enemy could force them to agree to peace in court, and to find sureties to that effect. In one case from November 1275, Richard Reaper came to court and “sought the king’s peace” of Everard of Beeston and Richard Woodward, because they had made threats to his life, and had beaten and ill-treated him. It was therefore ordered that the two men were to be required “to come to the next county court to wage peace to him.” Everard duly appeared before the court the following month, to wage peace to Richard, and to produce pledges who would stand surety for his future peaceful conduct.²⁸

By the later fourteenth century this process was also being undertaken in the Court of Chancery; individuals were able to present their case against an enemy to the court, who would then demand that the defendant find “sureties for peace.” In one such case from 1388, Robert Dane, citizen and mercer of London, complained that when he journeyed to Kent to survey certain lands and tenements, he found that a certain Thomas Holbein had laid an ambush for him with “twenty archers and many other people,” who intended to kill him. Robert therefore asked the court to order Thomas to appear before them and find surety for the peace.²⁹ The final stage in such a process appears to have been the proclamation of the grant of peace in court (the county court was the usual venue, although another declaration might also be made by the royal justices in eyre, or at a session of *oyer et terminer* or gaol delivery).³⁰ In one case from Edward II’s reign it was noted that final peace had been proclaimed (this time after a royal pardon had been read aloud), and that the marshal was to receive 2 shillings for carrying out the service:

Solemn proclamation is now made that if any there be who will make suit against him for the aforesaid death, let him now come forward. And none there is to bring suit. So firm peace is granted to him. And note that every clerk shall have a pair of gloves, and the chief clerks 2 shillings and the marshalls 2 shillings for proclaiming his peace.³¹

28 Charles Gross, ed. and trans., *Select Cases from the Coroners’ Rolls, A.D. 1265–1413*, Selden Society 9 (London: Quaritch, 1896): 33–34 (for further examples, see 35–38, 104).

29 William Paley Baildon, ed. and trans., *Select Cases in Chancery, A.D. 1364 to 1471*, Selden Society 10 (London: Quaritch, 1896), 8, no. 7 (see also nos. 5, 6, 22, 37, 52, 54, 59, 62, 65, 68, 69, 82, 84, 93, 139, 145).

30 Naomi D. Hurnard, *The King’s Pardon for Homicide before A.D. 1307* (Oxford: Clarendon Press, 1969), 61, n. 4, 62; R.F. Hunnisett, *The Medieval Coroner* (Cambridge: Cambridge University Press, 1961), 78–79.

31 Frederick William Maitland, Leveson William Vernon Harcourt and William Craddock Bolland, ed. and trans., *The Eyre of Kent: 6 and 7 Edward II*,

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Violations of these grants of peace also appear among the court records. In one such case from the mid-thirteenth century, William Bardolf brought a case against William of Kyme for burning down one of his houses, stealing his goods, and assaulting his men. Bardolf claimed that he had already demanded the protection of the king's peace against Kyme, because of the large number of threats the latter had issued against him. Kyme had finally contravened the peace by sending 300 armed men to attack Bardolf's lands, men, and possessions. Bardolf estimated his losses amounted to £1,000.³² In this case, and in the other extant examples, seeking the king's peace against an individual seems to be one stage in a long-running feud. Contravention of this peace ultimately saw the case brought to court, and added to the gravity of the accusations levelled at the defendant. Clearly, the parties involved (or at least one of them) were willing to use the apparatus of the royal courts, but their grievances and their request for peace and protection harked back to a world of private bonds of protection.

c. Simple Protection

Letters of "simple protection" also provided immunity from molestation, but this time the protection applied to the servants and property of the bearer, whilst they themselves were away from home on royal business. Anyone who interfered with their lands, goods or servants in their absence was threatened with prosecution. Inquiries were made into alleged contraventions of these orders:

Order to inquire ... which evildoers and disturbers of our peace with force and arms took and carried away goods and chattels to the value of £10 found at N. belonging to A., when we had taken into our special protection and defence his men, lands and rents, forbidding all and singular from causing them injury, annoyance, damage or loss ... the said A being on our business under our protection ... against our aforesaid protection and against our peace.³³

Several cases concerning breaches of these protections reached the courts. From these records, it is clear that writs of simple protection were

A.D. 1313–1314, Selden Society 24 (London: Quaritch, 1910), 1: 139. See Hurnard, *King's Pardon*, 65.

32 Richardson and Sayles, *Procedure without Writ*, 31–32, no. 22.

33 De Haas and Hall, *Early Registers of Writs*, 269. See also: Elsie Shanks, ed. and trans., *Novae Narrationes*, Selden Society 80 (London: Quaritch, 1963), 15, 122, 237; Oxford, Bodleian Library, MS Additional C. 188, fols. 166r–v.

issued to a wide range of people; “royal service” was conceived in broad terms. Soldiers such as William de Goneville, on the king’s service in Wales in 1282, might complain that their neighbours had entered their lands in their absence, violating a grant of protection (these complaints, it seems, were often lodged with the crown by the soldier’s military commander, on their behalf).³⁴ Similarly, royal clerks enjoyed such protection; in one case from 1384, a writ was sent to the sheriff of Sussex, ordering him to inquire into a theft perpetrated against Thomas de Middelton, king’s clerk and precentor of Chichester. It appeared that while Thomas had been “constantly employed in his [the king’s] service,” thieves had forced entry into his property at Oving in Sussex and stolen his goods, including three horses and the cart harnessed to them.³⁵

Immunity from Arrest

a. Judicial Protections

By the mid-thirteenth century, letters of judicial protection were being issued to guarantee the safety of the recipient’s servants and possessions for a limited period of time in their absence, and to protect them from a court summons or arrest.³⁶ Anyone going abroad in the service of the king, or for certain approved journeys such as pilgrimage, might collect such a letter from the royal writing-office of Chancery before departing.³⁷ The number of letters being issued varied considerably across the period, but certainly never exceeded one hundred in any given year, and figures were often far lower. As the graph below shows, peaks occurred at times of political insecurity or particularly intense diplomatic activity. One such peak at the start of Edward II’s reign (1307–13), for instance, highlights the range of diplomatic activity initiated by the new government. Envoys and diplomats were sent abroad in higher numbers than usual on missions to the French court to arrange Edward’s marriage to Isabella and to discuss the Scottish truce.

34 J. Goronwy Edwards, ed. and trans., *Calendar of Ancient Correspondence Concerning Wales*, History and Law Series 2 (Cardiff: University Press Board, 1935), 107; J.S. Critchley, “The Early History of the Writ of Judicial Protection,” *Bulletin of the Institute of Historical Research* 45 (1972): 196, n. 6.

35 *CIM* 1377–88, vol. 4, 176–77.

36 Critchley explains the difference between simple protection and judicial protection in more detail in “Judicial Protection,” 196–97. See also: Harding, “Medieval Brieves,” 115–49; Pierre Chaplais, *English Medieval Diplomatic Practice*, part 1: *Documents and Interpretation* (London: H.M.S.O., 1982), 308–10.

37 George Peddy Cuttino, *English Diplomatic Administration, 1259–1339*, 2nd ed. (Oxford: Clarendon Press, 1971), 158.

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They were also dispatched to the papal curia to promote the canonization of Thomas Cantilupe, to persuade the pope to rescind the excommunication of Piers Gaveston, and to annul the Ordinances of 1311. Another peak in 1330–34 related to the heightened diplomatic activity at the time of Edward III's assumption of majority rule; while in 1385–89 the insecurity generated by the challenge of the Lords Appellant led to an increase in the number of protections being issued.³⁸

Sometimes the fraudulent use of these protections generated inquiries which ultimately resulted in the grant being revoked. This abuse of letters of protection prompted critical comments about the ease with which supplicants seemed to secure them. Soldiers, in particular, were investigated for claiming protections fraudulently, on the basis that they were going overseas on the king's service, when in fact they remained at home.³⁹ The year books record examples of lawyers arguing against the validity of protections. In one example from Edward II's reign, the lawyer asked for the protection to be disallowed on the grounds that the recipient had not departed for royal service abroad. Possession of the letter alone did not prove that he had actually served, and its terms of protection were only valid if he did so:

There is no reason for adjourning this cause without day by virtue of this protection for the king does not attest by his protection that he is in service; but he gives him leave to go beyond the sea, and there remain in his service for one year. And that is what the protection said. And "the new ordinances" state that the Great Charter is to be kept in all its points; and it says that "to no man will we sell or deny right or justice." But if this cause were awarded to be without day by virtue of this protection, it would be so awarded without reason, and against the Great Charter.⁴⁰

Similarly there are references to "fraudulent transcripts of protection" being enrolled in the plea rolls, having first been written out in chancery

38 Figures used for this graph are based on the Patent Rolls, and should be viewed as approximations; duplications exist in the rolls, and some letters were intended to cover more than one person.

39 *CIM*, 1348–1377, vol. 3, 107, 291, 343, 401; *CIM*, 1392–1399, vol. 6, 78–79; *CIM*, 1399–1422, vol. 7, 254; *CCR* 1313–18, 555; de Haas and Hall, *Early Registers of Writs*, 172.

40 William Craddock Bolland, ed. and trans., *Year Books of Edward II: 5 Edward II, A.D. 1312*, Selden Society 33 (London: Quaritch, 1916): 6–8; A.J. Horwood, ed. and trans., *Year Books of the Reign of King Edward the Third, 20 Edward III*, Rolls Series 31a (London, 1883–1911), 1: 26.

and sealed by the chancellor.⁴¹ In one case it was claimed before the chancellor that a “false” letter of protection was being used as a delaying tactic in court proceedings, to the detriment of the plaintiff. The implication was that the chancellor had the authority to repeal the protection, which had been purchased “by fraud and ill design.”⁴² Judicial protections might also be disallowed if the letter had not been properly drafted, or if the recipient was trying to claim full judicial protection, when in fact their letter only gave them “simple” protection.⁴³ The repeal of letters of protection could also force a court case to be reconvened; in one example from 1356, Thomas Mott, a draper, had been summoned to court on a charge of abducting Joan de Coggeshall.⁴⁴ However, on the day appointed, an associate of Thomas appeared in court and proffered the lord king’s letters of protection, which excused Thomas from attending court for the duration of his service overseas (in the fortification at Calais). By virtue of this letter, the case was postponed. However, the court rolls then record that the king subsequently sent a letter to William de Sharesnull, the chief justice, advising him that Thomas’s letter of protection had been cancelled, because it had been proved before Chancery that Thomas had not in fact embarked for the Continent. The justices duly appointed a day for Thomas to appear before them, and when he defaulted again they awarded damages to Joan’s guardian, Henry Galeys, and ordered that Thomas be arrested. Fraudulent use of these protections was treated by the crown with some seriousness; the ability to guarantee protection was an important manifestation of royal power, and any such abuse might bring this into question.

b. Letters of Safe-Conduct

The English chancery issued letters of safe-conduct to provide for the physical safety of recipients while they travelled within the king’s realm. Letters patent of recommendation and credence might also be issued to Englishmen travelling abroad, to request protection from a foreign monarch.⁴⁵ Recipients of safe-conducts tended to be foreign merchants or envoys coming to

⁴¹ George Osborne Sayles, ed. and trans., *Select Cases in the Court of King’s Bench Under Edward I*, Selden Society 57 (London: Quaritch, 1938), cxxxii, cxxxv.

⁴² Baildon, *Select Cases in Chancery*, 124.

⁴³ M. Dominica Legge and William Holdsworth, ed. and trans., *Year Books of Edward II: 10 Edward II, A.D. 1316–1317*, Selden Society 52 (London: Quaritch, 1934), 15.

⁴⁴ Morris S. Arnold, *Select Cases of Trespass from the King’s Courts*, Selden Society 100 (London: Quaritch, 1985), 1: 94–96.

⁴⁵ Chaplais, *Diplomatic Practice*, 311–19; Cuttino, *Diplomatic Administration*, 157–59; Plöger, *Avignon Popes*, 126–36.

England for a set period of time. In the reigns of Edward I and II they were also issued quite frequently to English subjects, often because they were travelling at the king's request from one part of his realm to another on royal business. However, far fewer safe-conducts were issued for this reason in the later fourteenth century and this seems to have contributed to an overall decline across the century (see graph below). Why this decline in use occurred is uncertain – possibly it was felt that the peace of the common law was sufficient protection for native Englishmen, or perhaps kings like Richard II increasingly relied on a smaller clique of royal servants to carry out the business of the crown.

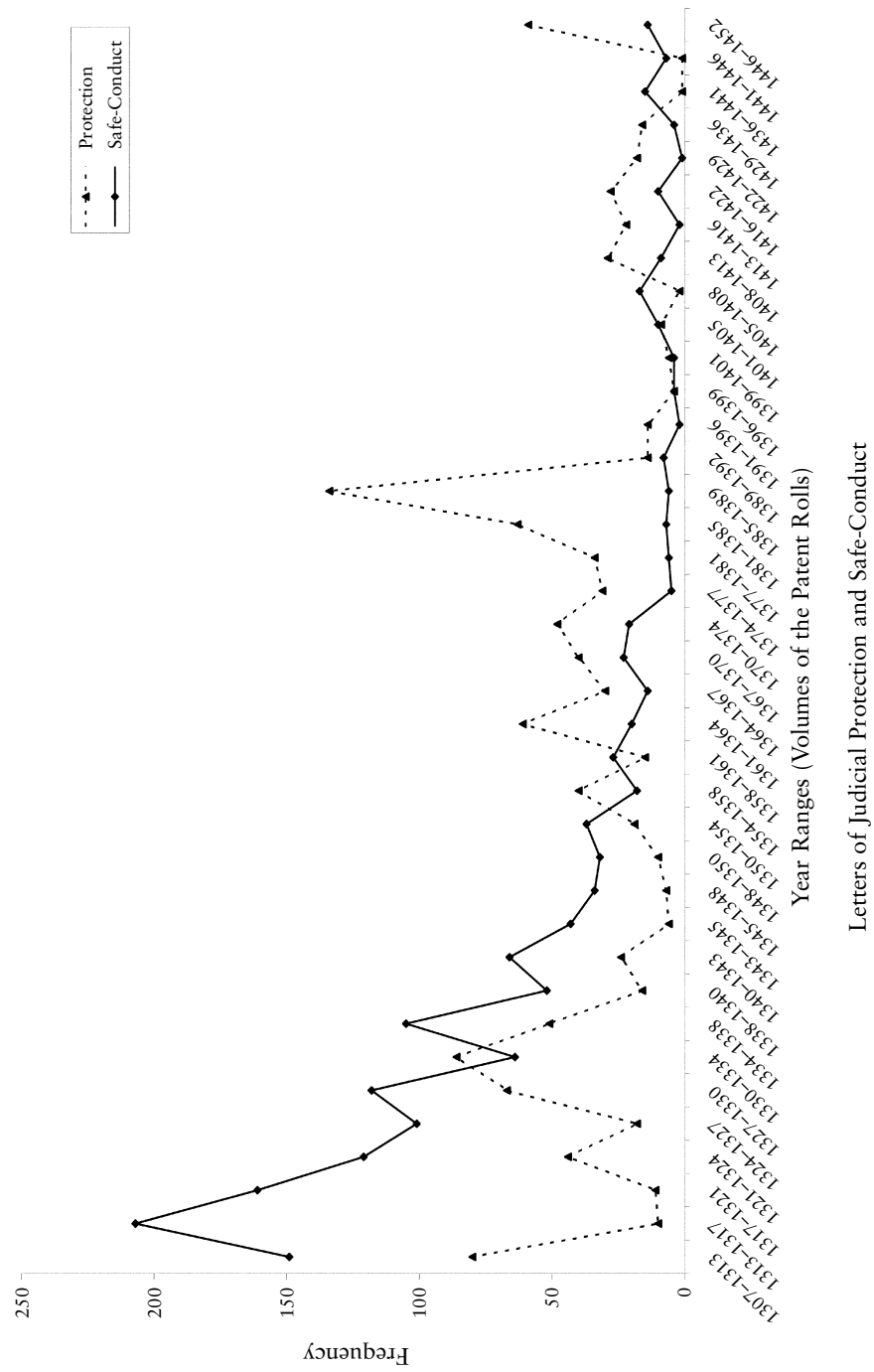
Envoys routinely carried standard letters of safe-conduct, but in a few examples, these letters contained an extra clause stipulating that the bearer had been granted immunity from arrest whilst they were in a foreign realm. Karsten Plöger refers to one case in which Edward III asked Pope Clement VI to issue letters of full immunity to his envoys in Avignon.⁴⁶ These letters were unusual, in that they granted immunity from arrest and from legal action relating to any acts or offences already committed by the envoys (but not for any new cases while in Avignon). As Plöger points out, Edward's request was intended to question the protection offered by the papacy, and, by implication, the power it exercised; one of Edward's previous envoys to the curia had been abducted from his home, and the king was not slow to use this incident as a delaying tactic to hold up the peace process between the English and the French, which had been instigated by the pope.⁴⁷

By the later fourteenth century, cases of infringement of this form of protection were being heard before the court of chancery. In one such case, a merchant from Lucca, in Lombardy, described how he was staying in England under the protection of the king, when he was arrested on false accusations of theft and abduction.⁴⁸ His accuser failed to appear in court on the appointed day, but subsequently continued to sue "divers plaints before the sheriffs of London ... on which plaints the said supplicant hath been arrested and imprisoned and put to fine and ransom for his deliverance; and every time when the said supplicant appeared in court to answer, the said Richard [plaintiff] was non-suited." It seems that the real reason the merchant was being targeted through the courts in this way was that his accuser held him responsible for abducting his wife (the merchant finally claimed at the end of the hearing that she had left of her own accord, and was already divorced). Implicit in this case seems to be the suggestion that the king's letters of protection should allow the merchant full

⁴⁶ Plöger, *Avignon Popes*, 131–33.

⁴⁷ Plöger, *Avignon Popes*, 128–29.

⁴⁸ Baildon, *Select Cases in Chancery*, 20.



Letters of Judicial Protection and Safe-Conduct

immunity from the proceedings repeatedly initiated against him in the law courts.

Survival and Adaptation

a. Parliament

The idea that personal immunity had an ancient provenance gave it a certain currency in the later Middle Ages. Parliamentary representatives, for example, were, at particular times, keen to claim their long-standing privileges of immunity. In one petition submitted to parliament in the 1320s, for example, the supplicant complained that he had been attacked whilst attending parliament in London, despite being “in the king’s protection.” In response, the crown restated that the supplicant “should have protection for prosecuting the king’s and his business for one year.”⁴⁹ In another case from the end of Edward II’s reign, Roger du Brok stated that “although all those who come to parliament should be under the king’s protection, both as regards their lands and possessions and as regards their bodies, one of the Sheriffs of London has sued in time of parliament, by colour of his office, to have half his [du Brok’s] lands and chattels, based on a recognizance made by him in Chancery, under coercion by Hugh le Despenser the son, John de Charleton, and Thomas de Sibethorp.” Despite his invocation of the privilege, however, du Brok’s petition was refused.⁵⁰

In legislation of the early fifteenth century, the Commons referred to the privilege of parliament, suggesting that it should be regarded as a custom of long standing, rather than a new innovation. In 1404 they petitioned for special protection to cover those travelling to and from parliament, citing the recent case of Richard Chedder, a servant of a Member of Parliament, who had been attacked and maimed. Their suggested scale of punishment was particularly severe:

If anyone kills or murders anyone who has come in this way under your protection to parliament, it should be adjudged to be treason, and if anyone seriously injures or disfigures any such person who has come in this way under protection, he should lose his hand. And if anyone

⁴⁹ London, National Archives, SC 8/42/2094.

⁵⁰ London, National Archives, SC 8/97/4815. See also W.N. Bryant, “Commons’ Immunity from Arrest: The Earliest Known Case (1340),” *Bulletin of the Institute of Historical Research* 43 (1970): 214–15. From the beginning of Richard II’s reign, the Commons claimed immunity from arrest for anything said during parliament. This was reaffirmed at the start of each parliamentary session: “Richard II: Parliament of October 1377, Text and Translation,” in *PROME*, item 15.

wounds or assaults any of those people who have come in this way, he should be put in prison for a year and pay a fine and redemption to the king.

However, the crown did not endorse this, stipulating instead that the offender would be liable to double damages if they did not appear for trial.⁵¹ The issue arose again in 1453, when the arrest of the Commons' speaker, Thomas Thorpe, for trespass, provoked a dispute over the applicability of the privilege of immunity; the Commons claimed that their ancient liberties had been disregarded, but their stance was opposed by the Duke of York, who was joined by the Lords in calling upon judges to arbitrate in the matter. The judges concluded that Thorpe should be released, but their advice was subsequently ignored.⁵² In another petition of January 1478, it was claimed that these parliamentary privileges had existed beyond living memory:

where of tyme that mannys mynde is not the contrarie it hath been used that the knyghtes of the shires, citezeins of citees, burgies of burghes, and barons of .v. portes of this your reame, called to any of the parlementes of your noble progenitours or yours ... have had and used pryvylege that eny of theym shuld not be empled in any action personell, nor be attached by their persone or goodes in their comyng to any such parlement, there abidyng, nor fro thens to their propre home resortyng.⁵³

In other petitions dating from the fourteenth century, supplicants complaining of molestation and attack made a point of mentioning their link with parliament, perhaps in an attempt to invoke the privilege. In 1322, Reginald de Frome stated that he was on his way to parliament in York to represent the county of Somerset, when one William de la Beche came to the hall of the king at the church of the Friars Minor and attacked him, "against the dignity of the crown and the king of £1000." Reginald was

51 "Henry IV: Parliament of January 1404, Text and Translation," in *PROME*, item 78; *Statutes of the Realm*, 11 vols. (London: Record Commission, 1810–28), 2: 144. This case was again referred to by the Commons in the parliament of July 1433, and the penalty of double damages was confirmed. *PROME*, "Henry VI: Parliament of July 1433, Text and Translation," item 60; *Statutes of the Realm*, 2: 286; Carl Frederick Wittke, *The History of English Parliamentary Privilege* (Columbus, OH: Ohio State University, 1921), 32–49.

52 "Henry VI: Parliament of March 1453, Text and Translation," in *PROME*, item 25.

53 "Edward IV: Parliament of January 1478, Text and Translation," in *PROME*, item 35.

instructed to sue before the steward and marshal of the king.⁵⁴ In 1378, James de Pykeryng, Member of Parliament for Westmorland, accused Thomas de Roos of ambushing him with 300 armed men just as he had set out on the journey south to parliament, killing two of his men and wounding six.⁵⁵ The premeditated nature of the attack in this instance added to the culpability of the accused. In two other petitions, the proximity to parliament, and in particular the proximity to the king himself was noted: in the first case a petitioner asked for an order to be made that no one in the king's service "should thereafter be ruined, and that due remedy be made for certain wrongs and damages," after assailants had waited in ambush "near the door of the palace of Westminster and there (in the presence of the king), attacked William [the petitioner's brother] and struck him on the head such that he despaired of life."⁵⁶ In the second case, a Member of Parliament serving in Westminster was murdered by two of Richard II's notorious Cheshire archers. The two assassins had lain in wait for him "both on the River Thames and on the high roads from London to Westminster," before finally ambushing him and murdering him on Fleet Street. The petition made clear that they murdered him "in the presence of the king and the whole parliament."⁵⁷ It seems plausible to suggest that these petitions were invoking the status of parliament and the presence of the king in part at least to bring to mind the notions of special protection and immunity that went with them.

b. Legal Memory

This invocation of "ancient immunities" can be viewed in the wider context of scholarship on legal memory and knowledge of past legal custom. Paul Brand has demonstrated that defendants in thirteenth-century land-claims and in Edward I's *quo warranto* proceedings attempted to base their defence on Anglo-Saxon precedent. Some cited particular pre-Conquest charters, but for others the claim was based on oral tradition. However, by the beginning of the fourteenth century, the limit of general "legal memory" was increasingly taken to be the date of Richard I's accession on 3 September 1189; the period prior to this was "time out of mind."⁵⁸ Despite this development, the idea of "ancient" legal precedents still carried an air of authority, even if they were inadmissible in a court,

54 London, National Archives, SC 8/219/10927.

55 London, National Archives, SC 8/67/3308.

56 London, National Archives, SC 8/103/5108.

57 London, National Archives, SC 8/249/12437; Gwilym Dodd, "Getting Away with Murder: Sir John Haukeston and Richard II's Cheshire Archers," *Nottingham Mediaeval Studies* 46 (2002): 102–17.

58 Brand, "Time Out of Mind," 37–54.

and the claim that parliamentary privilege had existed “where of tyme that mannys mynde is not the contrarie” was intended to support, rather than to question its legitimacy. Anthony Musson argues that appeals to the legal past had three main functions: to legitimize the present; to inform or transform it; or to provide a sense of identity.⁵⁹ As far as the concept of immunity was concerned, letters of protection were said to accord with the “custom of England” and claims of ancient parliamentary privilege lent support to proposed legislation, thus transforming the legal present. The privilege of immunity perhaps also augmented the sense of a distinct identity among those who could claim an association with parliament.

Medieval chroniclers, too, were interested in ancient legal precedent and its potential to inform present legislation. Andrew Horn’s legal collections of the early fourteenth century, for example, were attempts to compile law codes from the Anglo-Saxon period up to his own day, providing ancient provenance for contemporary liberties.⁶⁰ Invocation of these ancient law codes, then, provided a shorthand reference to a generalized sense of established principles, liberties, privileges, and immunities. Letters of protection, safe-conducts, and parliamentary immunity all granted the recipient the king’s peace, and with it, a clear sign of the monarch’s ultimate power over the judicial system that operated in his name. In another sense, they also embodied a more general concept of ancient privilege and immunity, which, although perhaps never a reality, was certainly an influential and pervasive idea in the later Middle Ages.

59 Musson, “Appealing to the Past,” 165.

60 Jeremy Catto, “Andrew Horn: Law and History in Fourteenth-Century England,” in *The Writing of History in the Middle Ages: Essays Presented to Richard William Southern*, ed. R.H.C. Davis and J.M. Wallace-Hadrill (Oxford: Oxford University Press, 1981), 383.