

## ABSTRACT

### The Statute of Uses: A Tudor Solution to the Evasion of Feudal Incidents and Its Consequences

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Following the Norman Conquest of England in 1066, William the Conqueror instituted English feudalism. In return for their title to English lands, William's Norman supporters were obligated to provide military service and payment of feudal incidents. Essentially, the incidents were payments made to a feudal lord as relief to legally inherit property, compensation for transfer of property to a minor, and various other occurrences. Initial ambiguity concerning the extent of incidents enabled the Crown and other feudal lords to abuse their position. As monarchical authority fluctuated, English vassals consistently sought to establish limitations on the right to incidents. Vassals also began looking for a legal method of evasion preceding the reign of Edward I, whose predecessor established a bureaucratic office to pursue royal incidents relentlessly. Enfeoffment to use, a method of property conveyance that could be employed to avoid feudal obligations, increased in popularity as a means of flexible property settlement. Largely because of this legitimate end, uses were slowly incorporated into English property law. By the reign of Henry VIII, an enfeoffment to use often resulted in the avoidance of feudal incidents. The Crown, alone unable to benefit from the device's use, was most affected. Initially intent on compromising, King Henry VIII's solution was rejected. The king, desperate to secure favorable legislation, effectively ignored and reversed two centuries of established legal precedent, guaranteeing the enactment of the Statute of Uses (1536). The Statute was instrumental in the early formation of the doctrines of a trust and led immediately to the Pilgrimage of Grace, which resulted in the Statute of Wills (1540) and the right to devise by will.

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THE STATUTE OF USES: A TUDOR SOLUTION TO THE EVASION OF FEUDAL  
INCIDENTS AND ITS CONSEQUENCES

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## CHAPTER ONE

### English Feudalism and Early Enfeoffment to Use

The feudal system introduced into England by William the Conqueror following the Norman Conquest brought unprecedented change to the existing Anglo-Saxon society. During William the Conqueror's reign, the Norman established English feudalism was based on direct service to the lord on behalf of the vassal. This would come initially through military service, but eventually other services such as acting as counsel to the king or heading various political offices would suffice for some tenants-in-chief. The feudal system William initially created concentrated heavily on vassals' military obligation to their lords. In fact, military service composed the core of the earliest relationship between a feudal lord and vassal in England. In addition to military (or eventually civil) service, a feudal lord was due additional feudal rights, called incidents. Feudal incidents, which will be defined and discussed more thoroughly below, included wardship, approval or determination of a female vassal's spouse, relief, and aids. The king and lords unceasingly sought the expansion of these feudal rights, while the vassals continually contrived unique ways in which to better settle their property with minimal loss in revenue. Since the king served as overlord of feudal England, he alone was vassal to none. As such, the rest of landed England were at best a lord and a vassal, creating a tension between limiting the Crown's feudal incursions while expanding their own, culminating in the creation of a legal devise known as enfeoffment to use.

“Land...formed the most desirable kind of acquisition in the Middle Ages since agriculture was by far the most important and most stable source of wealth.”<sup>1</sup> Before William the Conqueror embarked upon the Norman Conquest, the Anglo-Saxons, whose land law policies differed significantly with those of the Normans, ruled England. Though this may be true, their kings had been among the wealthiest on the island. The Anglo-Saxon ruler Edward the Confessor, revered by many of future English royalty, was the single greatest landholder in the realm. Edward may have controlled the largest single possession of wealth, but the Godwines, the most prominent Anglo-Saxon noble family, collectively possessed more land, and therefore more potential wealth, than even the king. In addition to these two powerhouses, there were various earls, a few dozen wealthy thanes, and a large number of minor thanes or other landholders. Lastly, the Church possessed approximately fourteen percent of all English lands. Following the death of the childless Edward, William invaded England. After establishing control, William, pressed by need to compensate his men who has participated in the invasion, established a new, Norman aristocracy.

After William had conquered England, he directly held nearly seventeen percent of the island. Sensing the need to reward his knights and replace the ever-increasingly rebellious Anglo-Saxon aristocracy, William placed control of English territory into the hands of approximately two hundred tenants-in-chief, who held their land directly from the King in fee simple (the highest form of feudal ownership interest). William’s solution was both pragmatic and effective. First, there was an obvious need to weaken the power of the established Anglo-Saxon nobility. Families like the Godwines, who had

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<sup>1</sup> Thomas Hugh, *The Norman Conquest: England After William the Conqueror* (Lanham: Rowman and Littlefield Publishers, 2008), 68.

accumulated their wealth and lands over centuries, were a legitimate threat to William's rule. By concentrating landholding into a narrower spectrum than that of the Anglo-Saxons, William was able to ensure that powerful families would not arise to challenge his throne. Moreover, the lands of each vassal were dispersed across wide geographic areas. Although the nobility was expanded, there was significant variation in the amount of land each noble held. With each of these two hundred constantly vying for a power advantage over one another, William guaranteed his own stability. Second, William used his position to secure an expansive military network. Each of the two hundred tenants-in-chief was tasked with responsibility for providing knights and infantry for the King. Although he would undoubtedly enlist some men of his own, the King, by granting land in return for continued military service, created an effective means for the protection of his realm. In order to spawn this self-serving system, William first utilized four methods to displace the established Anglo-Saxon aristocracy.

The most commonly employed method of displacement was to force a rebellious Anglo-Saxon landholder to recognize a Norman supporter as his heir. Anglo-Saxon nobility who had supported the ousted Harold Godwinson were immediately stripped of their lands. Additionally, following a large rebellion that led to the infamous Harrying of the North, William dispossessed any noble found complicit in an uprising against his regime. By making his followers 'heir' to a dispossessed noble, William placed many of his most loyal men among the English aristocracy. Secondly, William doled out sensitive lands to individual lords of proven loyalty. Chief among these sensitive areas were regions of England which served some purpose militarily, whether that be a position of strategic importance or an area known to produce superior soldiers. Thirdly, William



oversaw the redistribution of major estates, which resulted in the merging of minor estates passed-over by the redistribution program. These conjoined minor estates were then granted to the remainder of William's followers.<sup>2</sup> Although William created a new aristocracy himself, some Normans, who felt overlooked by William's generosity, resorted to simply taking Anglo-Saxon land for themselves. In the end, according to Eric Delderfield:

The Conquest effected social revolution in England. The lands of the Saxon aristocracy were divided up amongst the Normans, who by circa 1087 composed between six and ten thousand of the total population of one million. More important, each landowner had, in return for his land, to take an oath of allegiance to the King, and promised to provide him with mounted, armored knights when required. The introduction of this so-called 'feudal system,' a system of landholding in return for military obligations, provided the whole basis for medieval English society.<sup>3</sup>

With the advent of English feudalism came many social and legal changes. William had instituted a dramatic change in landholding policy fraught with new expectations and responsibilities. Additionally, the system generated by the Normans in England forced new social concepts upon the English people. In bringing a feudal system to England, William established a feudal pyramid; a structure that would come to govern society as a whole. Additionally, by requiring military obligation of his tenants-in-chief, William forged a connection between landholding and military service, the importance of which would decline overtime in favor of fiscal feudalism. Land ensured wealth; therefore it would usually remain in the best interest of the nobility to uphold their

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<sup>2</sup> Thomas Hugh, *The Norman Conquest: England After William the Conqueror*, 70.

<sup>3</sup> Eric Delderfield, *Kings and Queens of England and Great Britain* (London: David & Charles, 1986), 26.

obligations so as not to be dispossessed of such revenue. William, in addition to the mandatory military obligation central to feudalism, also established other revenue-generating methods to supplement his coffers.

Although military obligation remained as the central characteristic of the Norman feudal system in England throughout his reign, William required adherence to the provisions of feudal incidents. In particular, William established his right to wardship, escheat, aids, and a few minor incidents. Through the Assize of Northampton (1176), William retained the right to wardships. The right to wardship was a practice in middle ages whereby a lord, after the death of a vassal who died without an of-age heir, gained guardianship over the heir-minor and collected the revenue of his lands. The retained revenue meant to ensure the services due of a fief. In addition, if the vassal died leaving only a widow or daughter, the lord had the right to arrange for her marriage. Through the principle of escheat, if a vassal died without an heir, his lord recovered the property. Lastly, William protected a lord's right to a portion of a vassal's revenue (termed 'aids') when: (1) the lord married off his eldest daughter, (2) the lord knighted his eldest son, and (3) the lord needed to be ransomed. Although feudal incidents were perceived to be secondary to military obligations during William's reign, these rights would become more important over time as English feudalism arguably matured into a financially dominated system.

Although William granted land tenure to some two hundred nobles, the majority of the English population was not included within the aristocracy. Though granted their lands, the nobility's possession of property was conditional upon loyal service to their lord, the king. This same model was extended to encompass the entirety of the English

population. Instead of owning property, Englishmen held fiefs. Fiefs were not considered property; rather, they were tenures to land. Although assumed to be tenures for life, fiefs were held conditionally. As long as an Englishman provided loyal service to his lord as defined by the nature of his estate, the tenure was upheld. For nearly a century following William's reign, fiefs were non-heritable, but there was a customary presumption that the heir would succeed if he so chose. With such a drastic change in landholding, William further alienated the island's Anglo-Saxons by introducing a Norman method of inheritance.

The Anglo-Saxon method of inheritance was shaped by the inclination to provide for any a landholder saw fit. Anglo-Saxons, therefore, usually dispersed their lands among many relatives.<sup>4</sup> Although this method remained somewhat relevant throughout William's reign, the Conqueror instituted the Norman system of primogeniture.<sup>5</sup> Under this method, the eldest heir gained the whole inheritance, which kept property intact and unified familial wealth. Indeed, by concentrating the holding of the property on a single person, William had less landholders to appease, thereby increasing his control. Though this may have more thoroughly secured William's throne, as families amassed wealth they began searching for legal methods to devise their inheritance as they saw fit. For example, enfeoffment to use, which essentially granted title to another without alienating significant interest (including the property's revenue) from the beneficiary, developed from a twelfth century solution to the limitations of wealth settlement imposed by primogeniture inheritance and allowed for the evasion of feudal incidents.

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<sup>4</sup> Thomas Hugh, *The Norman Conquest: England After William the Conqueror*, 101.

<sup>5</sup> Ibid., 86.

William the Conqueror's invasion caused a foundational reformation of England. The King, who had to reward his brave followers, replaced the native nobility with his Norman companions. In doing so, William established England's feudal system, which provided property to his followers in exchange for their expected military service. Because of the inherent value in land, William guaranteed his successors to the throne that feudal military obligations would endure for some time. Further, William imposed a set of lords' rights over their vassals, the scope of which would fluctuate with changes in power. Finally, William forced the inheritance method of primogeniture upon the English people in an attempt to concentrate power among a few, loyal individuals. William's system, although prone to future alteration, went largely unchallenged until the reign of Henry I.

Henry I (1100-35) was the first English monarch to acknowledge the feudal system's bias towards the lord.<sup>6</sup> Through his Coronation Charter, Henry I implicitly acknowledged William Rufus had contorted the system to his advantage, which also enabled English lords to exploit feudal incidents. The Coronation Charter, which limited specific property rights for subjects of the kingdom, contained two provisions that altered the English feudal system but failed to significantly weaken the advantageous position the lords held over their vassals.

First and foremost, the Charter established that it was the heir's right to acquire the inherited property without paying an excessive relief. Essentially, a relief is an inheritance tax in feudal form. Upon the landholder's death, the heir to a property was to pay the lord for the right of inheritance to his property. Up until and through Henry I's

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<sup>6</sup> Eric Delderfield, *Kings and Queens of England and Great Britain*, 26.

reign, there was no set or maximum figure for a relief payment. Compensation was determined by the lord's discretion, and any appeal by the vassal was usually addressed by the lord's court – a clear advantage. With further examination, one can deduce the Coronation Charter's eventual ineffectiveness (at least from a vassal's perspective) from the ambiguous phrase 'just and lawful' employed to describe the amount of relief to be paid. 'Just and lawful' provides a relatively arbitrary limitation on relief, which, if accompanied by a percentage or with some sort of scale to judge, could have been more effective. Secondly, Henry I recognized the right of widows or orphaned daughters to keep their movable property and dowry, possibly signaling the desire to provide for others than the eldest son.<sup>7</sup> Henry I's proposed improvements to the feudal system, while rendered ineffective due to ambiguous language and a lack of enforcement, intended to better define feudal incidents and end arbitrary application. Though some progress was made to better the position of vassals, the end of Henry I's reign and course of Stephen's Anarchy (1133-34) would reverse many of the developments. By the conclusion of his reign, Henry I resorted to incident exploitation worse than William Rufus, sometimes requiring reliefs so expensive that the sum had to be paid in installments.<sup>8</sup> Stephen, who was more concerned with the preservation of his rule than the maintenance of a feudal system, largely ignored the already defunct provisions of the Coronation Charter in an effort to sustain his position. Because of his erratic rule, especially in regard to property title, the rights and privileges of land tenure and lordship cemented itself as a central

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<sup>7</sup> Gottfried Dietze, *Magna Carta and Property* (Charlottesville: The University Press of Virginia, 1965), 10.

<sup>8</sup> J. M.W. Bean, *The Decline of English Feudalism 1215-1540* (Manchester: Manchester University Press, 1968), 12.

point of debate. In response to a popular surge in interested concern, Henry II (1154-89) was forced to address the growing intricacies of medieval English land law and the relationships it created in the wake of Stephen's Anarchy.

In his quest to address the growing problems of the feudal system, Henry II sought wholesale changes to the complex feudal system. To amend a system in which lords had increasingly exploited their vassals, Henry II set about to create a uniform set of laws to better govern the practice of English feudalism.

The first feudal improvement of Henry II was the establishment of the writ of right to determine possession of property. The writ of right served as a rudimentary property deed and was appealed directly to the Curia Regis or a territorial court.<sup>9</sup> This provision was important because it provided a specific arena for two parties to settle a dispute of title or possession. Further, by allowing a ruling to be appealed to the Curia Regis, the decision could be bound with the full force of law, thereby increasing its legitimacy and chances of adherence. This development was crucial after the Anarchy: both Stephen and his challenger Matilda had controversially conveyed numerous property titles to their supporters, which undoubtedly spawned disputes of title following the conflict's resolution. The writ of right eased the concerns of landholders as it provided them with a formal and definitive way to handle possession disputes. In addition to formalizing a binding process for territorial disputes, Henry II expanded on the efforts of the Coronation Charter and better defined the limitations of feudal incidents.

Henry II, in attempting to solidify the rules and rights that governed the English feudal system, concretely defined the scope of feudal incidents, reliefs, and aids. In

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<sup>9</sup> Kenelm E. Digby, *An Introduction to the History of the Law of Real Property* (Oxford: The Clarendon Press, 1897), 71.

regard to feudal incidents, Henry II focused on the wardship, which had been widely abused by English lords. Henry II mandated that before the heir-minor enters wardship, the lord must receive the heir's homage as consent to his vassalage. With that, the lord became entitled to the profit of the heir's inheritance until the minor came of age. Although this much was already established, Henry went further and included a provision that released heirs subjected to wardship from paying a relief. As for reliefs, Henry II declared "a reasonable relief according to the custom of our kingdom is said to be for a knight's fee one hundred shillings; but for socage land the value of one year's rent..."<sup>10</sup> Henry II may have fixed the price of relief for a majority of the property in England, but he was not keen on forfeiting his right to determine the amount of relief paid to him by the tenants-in-chief. Accordingly, baronial reliefs were to be determined by the king "according to his pleasure and clemency."<sup>11</sup> Unbeknownst to Henry II, the continuation of this privilege for the king alone would lead many of the tenants-in-chief to seek reform, culminating in the Magna Carta following Henry II's reign.

Furthermore, Henry II provided a means of judicial settlement for any vassal whose lord was unwilling to accept the relief or homage of a rightful heir. Henry II, quite like Henry I, was advantageously ambiguous on the scope of feudal incidents, particularly those owed to the king himself. While disallowing excessive feudal incidents that would result in the loss of property, Henry II mandated that reliefs must be employed reasonably and in proportion to the size of the property yet offers no scale with which to

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

judge.<sup>12</sup> Although his clarification on the extent of feudal incidents was limited, Henry II formalized the processes of the property conveyance.

Henry II, in attempting to update the feudal system so as to improve its efficiency, focused on the methods of conveyance. Henry II's system stressed the performance of livery of seisin, or the formal ceremony of granting fee simple property to another. Since it was intended to be the only method of conveyance for property held in fee simple, Henry II strengthened its importance. Livery of seisin, from Henry II's reign on, became the irreversible sign of the conveyance of property. Though it is believed that a tenant in fee simple might freely alienate his land had not been considered by Henry II's reign, the king emphasized livery of seisin as the acceptable method for freehold alienation.<sup>13</sup> In doing so, Henry II nullified controversial deathbed conveyances. Henry II, already having updated feudal property code significantly, pursued further reform to better reconcile disputes over land title.

With the Assize of Mort d'Ancestor and Novel Disseisin, Henry II attempted to simplify the increasing complexity within title disputes. Both Mort d'Ancestor and Novel Disseisin attempted to identify a rightful landholder through a court proceeding with a jury of their peers. By using the counterparts of the conflicting parties, it was thought that the court would more accurately determine the legitimate titleholder. Mort d'Ancestor provided a writ to those who, after the death of a landholder, were barred from their inheritance because a non-rightful owner had entered upon the land. Formerly, there was a complex and long process to which the heir would have to submit in order for the

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<sup>12</sup> Ibid., 85.

<sup>13</sup> Ibid, 100.



possibility of property retention to exist. Because of their complexity and length, the process often left rightful heirs dispossessed.<sup>14</sup> Following the Assize, the heir only had to prove that he was the heir and his ancestor died seised to be awarded title to the property.

Similarly, Novel Disseisin provided those who were forced out of their property with a writ to pursue judicial action. If the petitioner could prove that he was unjustly forced off the property, then he was entitled to retain his property and restitution for the injury. Novel Disseisin ultimately led to the development of due process. Before the provision, a lord could claim services were not rendered or dues were unpaid and strip the holder of his lands. As if this was not bad enough, there was no appeal process beyond the lord's court. By utilizing the king's newly created itinerant court, a wrongfully dispossessed Englishman could seek impartial justice.<sup>15</sup> Henry II, who sought to clarify and broadly limit an abused code of property law, updated the English feudal system to better control his realm and effectively handle disputes that arose from property possession. Over time, perceived royal exploitation and the Crown's weakening position encouraged English magnates to force advantageous reform.

The Magna Carta, one of the most influential documents in history, was "drawn up with the influence of the great Lords in order to restrict the rights of the Crown and protect and enhance the rights of the lords...against their tenants."<sup>16</sup> A majority of the provisions, thirty-eight to be exact, addressed property rights, whereas only twenty-three

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<sup>14</sup> Ibid., 110.

<sup>15</sup> S.F.C. Milsom, *The Legal Framework of English Feudalism: The Maitland lectures Given in 1972* (Holmes Beach: William W. Gaunt and Sons, 1986), 10.

<sup>16</sup> Kenelm E. Digby, *An Introduction to the History of the Law of Real Property*, 121.

enumerated other rights. In their attempt to gain an advantage, the lords who crafted the document expanded on many of the feudal privileges.

Clause Two of the Magna Carta fixed relief prices for earldoms and baronies, which effectively discontinued the king's right to set reliefs, and reiterated the price for an estate held in knight's fee. Moreover, Clause Three further constrained wardships by mandating that the lord could not take more than what was reasonable and destroy or waste the heir's property. Further, if it could be proven that a lord did not follow those provisions, loss of the wardship would result. Clause Four expanded the role of the lord in the marriage of a widow or orphaned daughter. Although initially a means to prevent a female vassal from marrying an enemy or dissenter, this practice transitioned into a profitable endeavor for some lords who sold off the woman's marriage. The practice's legality was affirmed. Although preferential to the lords, the clause also forbade the arrangement of a marriage into a lower social class, a clear positive for vassals.<sup>17</sup> Clause Six authorized the acceptance of scutage, or monetary compensation for failure to uphold due military obligation, which had been utilized by magnates to avoid military service following the reign of Henry II. Because scutage was first conceived to be used sparingly, the amount of compensation had remained unfixed, leading the Crown to increased exploitation.<sup>18</sup> Even so, the nobility's insistence on the allowance of scutage stimulated the decline of traditional feudalism into a fiscal form. Further, feudal aids were only to

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<sup>17</sup> J. M.W. Bean, *The Decline of English Feudalism 1215-1540*, 13.

<sup>18</sup> Kenelm E. Digby, *An Introduction to the History of the Law of Real Property*, 131.

be collected on the three traditional occasions, and any other royal request for feudal aid had to be agreed upon by common counsel.<sup>19</sup>

Although the Magna Carta represented an attempt by the lords to reestablish and expand various privileges over their vassals, its success was fleeting because of staunch royal opposition. Property rights and privileges, forward from the Magna Carta until the reign of Edward I (1272-1307), were in near constant contention. Edward I's extensive legislative reformation, when coupled with the eventual acceptance of a revised Magna Carta, further defined the structure and magnitude of feudal incidents. Since relief and feudal aids were strictly limited, wardships became the most profitable feudal incident, hastening the genesis of alternative methods of inheritance settlement such as the *enfeoffment* to use to circumvent its possible employment. Though Edward I's legislation was crucial in the development of unique ways to settle inheritances for the avoidance of feudal incidents, the formation of the office of the escheator early in the reign of Henry III (1216-73) and the escheators' approach to feudal incidents encouraged vassals to begin seeking novel legal methods in an effort to protect their wealth from perceived exploitation.

The office of the escheator, created in 1232, was responsible for the resolution of the Crown's escheat and wardship cases. It soon became apparent to his subjects that the king was enforcing the collection of all he was due. Allowed their inquisitions from a writ issued from the Chancery, the office of escheator was successful in closing a majority of the contemporary loopholes and devices that allowed vassals to evade the full extent of their feudal obligations. By the end of the 13<sup>th</sup> century, Edward I had effectively

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<sup>19</sup> J. M.W. Bean, *The Decline of English Feudalism 1215-1540*, 13.

begun collecting a majority of his due revenue. The office soon became so notable that its officials were appointed by Parliament. And, by 1341, the Crown proved its tenacity in the pursuit of its feudal incidents by establishing an escheator in each shire.<sup>20</sup> The office of the escheator, while undoubtedly propelling the Crown's feudal incident revenue to heights unseen in some time, demonstrated a ruthless pursuit of profit that convinced many vassals of the necessity to seek evasion of their feudal financial obligations, perceived by many vassals as exploitative.

From the text of the Statute of Marlborough (1267), it can be inferred that two main methods had arisen in an attempt to better settle (whether the motive be evasion of feudal incidents or otherwise) English inheritances. First and most popular was the enfeoffment of an heir prior to the death of the property's tenant, so that the landholder would not die seised, thereby avoiding an heir's hefty relief obligations. Secondly, a form of fraudulent leasing, wherein a large sum was fixed to the end of a leasing term as specified in the terms of a previous agreement, ensured the property would return to the heir without the need of direct conveyance. Although the statute prohibited both of these methods, it serves as a testament to the resiliency of both sides in protecting their perceived rights.

The Statute of Marlborough is among the first English statutes to recognize and prohibit extra-legal methods of property settlement. Though it fails to address the reasons behind the employment of these methods, one can hypothesize multiple motives behind their utilization. Chief among these was the fear of the expansion of and exploitation by the Crown's enforcement of its feudal rights. Landed Englishmen grew weary as they

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<sup>20</sup> Ibid., 17-18.

witnessed just how thoroughly the king's escheators collected the Crown's due. The resolve of the escheators, when coupled with the possibility of exploitation emerging from fluctuations in fair enforcement of the right to incidents, hastened the development of these methods. Secondly and not to be underemphasized, changes in the customary application of primogeniture further concerned vassals. Not only was a landholder's right to bequeath land during his life severely limited, but also the provisions of inheritance were subject to the lord's approval and could be altered if the heir entered wardship. Angering vassals further was the fact that the customary payment of debts by the lord on behalf of an heir-minor under his wardship slowly disappeared, leaving landholders worried about their heir's future financial solvency. Revenue from wardships lined the lord's pockets as debts accrued for the heir-minor. Since the property reverted back to a lord if the heir was unable to sustain himself financially, possible motivation existed. Although tensions were mounting as lords sought to expand and vassals sought to limit feudal incidents, three major Edwardian statutes greatly contributed to the development of property law: The Statutes of Mortmain, Westminster II, and Quia Emptores.

The Statute of Mortmain prevented property from falling into the hands of corporations, the most dangerous of which, at least to the Crown, was the Church. When the Church retained possession of a property, "the services that are due of such fees and which at the beginning were provided for the defense of the realm are wrongfully withdrawn."<sup>21</sup> Although already declared principle in a revision of the Magna Carta, the Statute of Mortmain re-established the prohibition on donating land to the Church in an attempt to avoid feudal dues. Because this initial prohibition from the Great Charter went

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<sup>21</sup> *11 Statutes of the Realm* 555 and 556 (1235-1713) General Chronological Index.

largely unenforced by Henry III, Edward I mandated that no corporation could be granted the right to land without royal permission. Edward I's motivation was clear: he wanted the profits that he was due and was willing to take any measure to protect them. Moving forward with his legislative agenda, Edward I sought to protect inheritances and prevent feudal incidents from being circumvented.

The Statute of Westminster II, which contained the Statute De Donis Conditionalibus, created a new species of estates of inheritance that could not be alienated. Before the Statute, the phrase "A granted to B and the heirs male of his body" would have resulted in the conveyance of property in fee simple dependent upon B having a son. After the enactment of the statute, the same phrasing created a smaller estate, which resulted in the grantor retaining some interest in the land known as an estate in reversion.<sup>22</sup> This became the catalyst for imagining possibilities for and refining legal methods to create more complex interest constructions in land, crucial to the future conceptualization of enfeoffments to use. Though this was an unintended consequence of the Statute of Westminster II, the Statute of Westminster III intended to and succeeded in simplifying feudal relationships by prohibiting subinfeudation.

For centuries there had been a strong correlation between landholding and the obligations of military and/or civil service. Over time, this correlation eroded for some tenants-in-chief. The landholders were reaping the benefits of what once was the king's land without any significant obligations or fees. What once was a reimbursement for the landholders' services had turned into their profit alone. Hoping to retain more feudal

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<sup>22</sup> Kenelm E. Digby, *An Introduction to the History of the Law of Real Property*, 225.

revenue and simplify feudal relationships, Edward I and Parliament enacted the Statute of Westminster III, colloquially known as Quia Emptores.

Most importantly, in addition to forbidding subinfeudation, this bill established the conveyance of land through inter vivos substitution. Rather than transferring lands to transferees in order to avoid feudal obligations attached to the transferor altogether, inter vivos conveyance meant that the transferee became an immediate tenant to the overlord and, therefore, subject to the same feudal obligations as the transferor.<sup>23</sup> In reality, this bill recognized that traditional feudal roles no longer needed to be fulfilled by landholders. By prohibiting future subinfeudations and making under-tenants responsible for the same obligations to the overlord as the original tenant, Edward I acknowledged the extinction of traditional feudal roles. No longer was military service an almost assured necessity for barons or earls, rather it could be avoided through payment. Council was not immune either: monarchs began to prefer those outside of the established aristocracy for major political office as time progressed. The two main duties of landed nobility to the king —military and civil—were arguably no longer required, supporting the theory that his reign marks a transition into fiscal feudalism.

The post-Conquest feudal system of medieval England was subject to change. Feudal property law was in constant contention. Beginning with a lack of limitations, feudal incidents were soon exploited by English monarchs. With fluctuations in monarchical authority came limitations, restrictions, and further encumbrances on feudal incidents. Overtime, relationships within the English feudal system became unclear and

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<sup>23</sup> Carl Stephenson and Fredrick Marcham, ed. and trans., “Henry III and Edward I,” *Sources of English Constitutional History* (New York: Harper & Brothers Publishers, 1937): 174.

complex due to widespread subinfeudation. By enacting Quia Emptores, Edward I recognized the growing irrelevancy of feudal military and civil obligations and arguably forged a system of English fiscal feudalism. With this came an increased focus on the collection and strict enforcement of the Crown's right to feudal incidents. The Crown's unrelenting pursuit of all due incidents and prohibition of common methods of property settlement, when coupled with the prospect of further exploitation, motivated the development of the enfeoffment to use.

The earliest English examples of the use appear in the twelfth century. In the Domesday Book, a king's steward is recorded as holding Ramsey Abbey to the use of his sister.<sup>24</sup> Numerous examples spring up during the twelfth century, but the first royal employment of an enfeoffment to use comes in 1241, when Henry III committed castles to an associate, who would deliver them to the Queen in case of the King's death.<sup>25</sup> In essence, the use circumvented the principle of feudal tenure that disallowed bequeathing tenure at will, and, by the close of the thirteenth century, landholders and lawyers alike were more than aware of the possibilities of and benefits from the employment of a use. By disassociating themselves from legal title and conveying their property to feoffees to uses, the feoffor (the original titleholder and usually the immediate beneficiary, or the cestui que use) instructed the feoffees (those who possess legal title) to convey the property to persons to be named, most likely following the beneficiary's death.<sup>26</sup>

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<sup>24</sup> J. M.W. Bean, *The Decline of English Feudalism 1215-1540*, 106.

<sup>25</sup> *Ibid.*, 109.

<sup>26</sup> R.H. Helmholz, "The Early Enforcement of Uses," *Columbia Law Review* 79 (1979): 1503.



Obviously this method circumvented the restrictions primogeniture inheritance placed on landed Englishmen and could eventually be employed to evade feudal incidents. Eventually, this method of property settlement would become more flexible than any. Though the device's flexibility would develop overtime, the Statute of Westminster I was the first to recognize an enfeoffment to use as a legal remedy for an heir-minor if his land was wrongfully enfeoffed during his wardship.<sup>27</sup> Though the use's popularity grew quickly, the aristocracy (being tenants-in-chief and therefore subject to royal approval for property alienation) was excluded from its employment, leaving only gentlemen and knights to initially enjoy its privileges. This would all quickly change when Edward I, surely unaware of the complications his approach would create, relaxed the enforcement of required royal approval to alienate property for tenants-in-chief. The result, which was left largely unaddressed until the reign of Henry VIII, was an immediate spike in the number of uses employed, jumping from roughly three per year to an average of sixteen per year in a matter of thirty years.<sup>28</sup> Further, the resulting increase in the device's employment by nobles would soon restrict the Crown's full revenue potential from feudal incidents.

By the reign of Edward III (1312-77), enfeoffment to uses had become immensely popular among the nobility. Most frequently used for property settlements post mortem, fourteenth century uses were employed for property maintenance among other things. In its earliest stages, an enfeoffment to use was agreed to verbally, with the feoffee usually being a relative of the feoffor. As the feoffees drifted away from kin, feoffors began

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<sup>27</sup> J. M.W. Bean, *The Decline of English Feudalism 1215-1540*, 112.

<sup>28</sup> Ibid., 114.

utilizing indentures and testaments as binding instructions for the feoffees. It is also during Edward III's reign that Parliament began to notice the increasing employment of uses and legally compensated for their existence. The first provision of Edward III's legislation concerning uses provided that any landholder subject to forfeiture also lost possession of lands held in a use. The second gave creditors the right to prosecute those who colluded with others to hide their property's revenue to avoid due payment and debt collection.<sup>29</sup> While these provisions may highlight enfeoffment to use's negative utilizations, the use could be employed for positive reasons, such as for the benefit of a religious house.

Early uses were commonly employed as means to benefit the Church. For some time, the Church had been a dominant societal force. With the constant fear of damnation looming and significant social pressure, many wealthy individuals made donations to the Church to prove their piety. Yet various religious institutions and orders, such as the Mendicants, could not accept gifted property by the very virtue of their founding principles. In order to avoid this moral dilemma yet still provide for their spiritual mission, enfeoffments to use were employed to divert legal title away from clergy and toward another, independent party. The feoffer would enfeoff his property to another, the feoffee, who would hold the property for the designated beneficiary, known as the cestui que use. In some early employments, the Church became the cestui que use, benefitted from the profit of the property, and yet did not possess legal title but rather an equitable interest. With such a diverse amount of reasons and situations for its employment, enfeoffment to use slowly gained legal recognition of the relationships it generated.

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<sup>29</sup> Ibid., 123-125.

By the close of the fourteenth century, the legal philosophy surrounding uses had taken shape. Although there were multiple legal estates that could be devised in a use, only one was sustainable: the estate in fee. An estate in fee conveyance allowed an estate to move by survivorship from feoffee to feoffee, minimizing the possibility of accidental alienation. Survivorship ensured the preservation of the use, but the estate in fee conveyance grew in popularity because the estate created at common law survived after the death of feoffor, thereby freeing heirs from the possibility of wardship, forced marriage, and many other feudal incidents. As enfeoffment to uses became entrenched in society, many feoffors looked to create legally binding but flexible documents to ensure their protection from dishonest feoffees, culminating in the widespread employment of the last will.

Although recognized within various statutes over multiple reigns, the use had not been fully absorbed into the English legal system, but English courts did eventually protect the device and the relationships it created. Under this protection, the use flourished. Beginning in the late fourteenth century, feoffors began the transition from indentures to last wills as the primary document for feoffee instruction. Enfeoffment to use executed with a last will was advantageous to a feoffor or a cestui que use because the enfeoffment's terms bound the feoffee into abiding by the last will's instructions without detailing those instructions immediately.<sup>30</sup> Essentially, the feoffor mandated a feoffee follow the provisions of his last will, which could be crafted and modified at any time.<sup>31</sup> The real advantage of the last will lies in the feoffor's ability to amend the

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<sup>30</sup> R.H. Helmholz, "The Early Enforcement of Uses," 503.

<sup>31</sup> J. M.W. Bean, *The Decline of English Feudalism 1215-1540*, 152.

document whenever he chooses – making it adaptable to changing circumstances. The last will, although less rigid than the indentures or testaments previously employed, gained unprecedented flexibility once the equitable interest in an enfeoffment to use created was legally recognized by the Chancery.

From its beginning, enfeoffments to use was handled by English common law courts, where “considerable difficulties were met in dealing with uses.”<sup>32</sup> The problem derived from the fact that the English common law courts were unable to distinguish between the titleholder of the property (feoffee), the creator (feoffor), or beneficiary of the use (cestui que use). Therefore, it follows that the common law courts could not recognize the instructions left by the feoffor to the feoffee as valid or binding since the feoffor was no longer legally seised of the property for which he provided instruction. In the earliest stages, this gave a distinct advantage to dishonest feoffees because the feoffor’s interest was left unprotected. As disgruntled feoffors began petitioning the king, the chancellor, because of his broader legal scope and authority, retained jurisdiction over uses.

In 1402, during a session of the House of Commons, a petition was raised to create a remedy for those who enfeoffed to “dishonest persons by way of confidence to perform the wishes of the grantors and feoffors, which dishonest persons fraudulently grant the said rents to other persons...without the assent of their grantors or feoffees.”<sup>33</sup> After unsuccessful attempts to reconcile the device with common law courts, the

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<sup>32</sup> Ibid., 157.

<sup>33</sup> Ibid., 166.

Chancellor established jurisdiction in 1430, and by 1439, the Chancery had recognized the interest of a use's creator and/or beneficiary.

Herein lies a significant point of tension for the fifteenth century in regard to uses: English common law courts recognize the feoffees as owners of the property devoid of any other interest, while the Chancery saw the creator or beneficiary as the party with a controlling interest. This discrepancy would be the point of Henry VIII's attack on enfeoffment to use and disposal of real property by will, but the Chancery's recognition of a feoffor's or cestui que use's interest nearly one hundred years preceding the Statute of Uses led to an unprecedented flexibility in property settlement. Not only was the last will adaptable up until a feoffor's death, but it was also recognized as legally binding. In the Chancery, therefore, a feoffee was legally bound to follow a feoffor's or cestui que use's instructions.

While the feoffee possessed legal title, the property could be conveyed to the benefit of whomever the feoffor saw fit, skirting the limitations of primogeniture. Further, any attempt by the Crown to collect the revenue of a property committed to a use for feudal incidents deferred until performance of the provisions of the last will. Often Englishmen with enfeoffed lands to uses would seemingly prolong a will's performance purposefully so as to avoid the obligations of feudal dues. For instance, it is believed that Lord Dacre's will provided a significant amount of revenue to executors so as to continue the performance of his will (which would end with the depletion of said revenue) until his heir became of age.<sup>34</sup> As the employment of uses and the evasion of feudal incidents

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<sup>34</sup> Ibid., 278.

became increasingly pervasive, the feoffor's intentions behind employing a use were thoroughly scrutinized.

Collusion to defraud a lord of his feudal incidents had been a problem for English lords since the Norman Conquest. Knowledgeable of the fact that their feudal rights could erode, lords quickly realized the need to differentiate uses employed in good faith and those meant to defraud. Enfeoffment to use naturally straddled a fine line. Uses employed in good faith sought to provide for relatives other than the heir, arrange marriages for daughters, or relieve the burden of debt from an heir. Naturally, some uses did not arise out of these motivations alone. Rather, they were employed in an attempt to avoid feudal incidents and retain as much revenue as possible. Although collusion led to the minimization of revenue obtained by lords through feudal incidents, the matter was never adequately addressed because (by the reign of Edward I) any landed vassal, including a tenant-in-chief, was able to enfeoff to uses. The king of England, who was the feudal overlord and vassal to none, was the only landholder to experience the negative effects of enfeoffment to use without its potential benefits. As such, English monarchs following the reign of Edward I began to realize the extent of revenue loss due to collusion through the employment of uses.

Early in its campaign against collusion, the Crown combatted uses through the discovery of technical illegalities. For example, if a feoffor died on his property or the tenants of a property continued to recognize the feoffor as their lord, the Crown declared the enfeoffment to use null and void and operated as if it were a case of pedestrian property inheritance and retained the full extent of its feudal rights. Unfortunately for the Crown, the monarchs during the enfeoffment to use's initial emergence were weak and

required popular support. Stemming from the growing popularity of the use, practical politics advocated leaving the issue untouched to secure the support of the people. During the reign of Edward IV, twelve tenants-in-chief had escaped due wardship, as opposed to none during the reign of Edward III.<sup>35</sup> This explosion in feudal obligation evasion led Edward IV to attempt reform within the Duchy of Lancaster, an unpopular piece of legislation that was almost immediately repealed by Richard III.<sup>36</sup> Although an increasingly urgent and costly problem for the English Crown, enfeoffment to uses would not be effectively dealt with until the Tudor era.

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<sup>35</sup> Ibid., 215.

<sup>36</sup> Ibid., 239.

## CHAPTER TWO

### Enfeoffment to Use and Tudor Solutions

Enfeoffment to use was a common method of devising land in medieval England. Most importantly for medieval English landholders, the use provided an escape from the rigid laws of inheritance and disposal of real property by disassociating legal title from the beneficiary (*cestui que use*) of the property. Traditionally, English landholders were limited in their methods of settling their wealth to primogeniture, feoffment with livery of seisin, or dower. Primogeniture was the custom of inheritance in which the first-born son would inherit the entirety of the family's estate. Enfeoffment with livery of seisin, which was required for transfers of property held in fee simple, entailed a public ceremony in which the feoffer (the seller) and the feoffee (the buyer) would meet on the land being transferred, participate in a symbolic act of transfer with the feoffer giving a physical piece of the land to the feoffee, and lastly make an oral agreement concerning the provisions of the transfer. The dower was a provision of inheritance law which provided support for a wife should she survive her husband. Although these provisions served some of the landholder's needs, the ever-increasing complexity of medieval English society when coupled with fear of exploitation at the hands of their lords encouraged landholders to explore options for a less limited means of wealth settlement.

Edward Coke, widely considered to among the greatest English jurists, once said, "There were two inventors of uses, Fear and Fraud; Fear in times of troubles and civil wars to save their inheritances from being forfeited; and Fraud to defeat due debts, lawful



actions, wards, escheats, mortmains, etc.”<sup>37</sup> Many landholders were weary of their actions, especially within the realm of politics, affecting their title to property, which generated the first inventor, fear. Troubled times for a landholder threatened forfeiture of property. In times of war or rebellion, the property of landed men who had not supported the victor was usually targeted for repossession. Similarly, a landholder was subject to forfeiture if he was convicted of a felony. Although these concerns were important, landholders also sought increased profit from their property, generating the use’s second inventor, fraud. In a feudal system, a landholder was obliged to provide for feudal incidents, or the duties and compensation owed to a feudal overlord. There were two main categories for feudal incidents: homage and dues. Feudal dues included payments for ransoming the lord from captors, the knighting of the lord’s eldest son, the marriage of the lord’s eldest daughter, wardship, relief, and escheat. Each of the dues reduced the landholder’s profit from his property. In an attempt to evade the payment of feudal dues and protect property from forfeiture, landholders began enfeoff to use.

Uses, by avoiding livery of seisin, rendered the cestui que use immune to the claims of any feudal lord. Without possessing legal title to the land, the feoffor could resist attempts made by the Crown or other lords to enforce their feudal rights by postponing their claims through a will. Beyond this benefit, an enfeoffment to use, which bound a feoffee to perform the instructions of the will, was the most flexible way to freely devise property for medieval landholders. Unlike the traditional methods mentioned above, the last will gave the feoffor power to carry out his wishes through the feoffee during the feoffor’s life and after his death. Further, with the Chancery later

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<sup>37</sup> Cited in E.W. Ives, “The Genesis of the Statute of Uses,” *The English Historical Review* 82 (1967): 674.

recognizing the presence of equitable interest and protecting the rights of the cestui que use, uses gained significant popularity. Instead of relying on the word of the feoffee, the feoffor who employed a will could now seek the enforcement of the oath through the court of equity. Due to the increased employment of uses in the late fourteenth, fifteenth, and early sixteenth centuries, royal revenue from feudal incidents suffered. With the Wars of the Roses and further dynastic struggle, enforcement of the royal prerogative in regards to feudal incidents faltered. Once Henry VII secured his throne, he was determined to reform feudal law to his advantage.

Henry VII did not undertake complete common law reform in order to bolster his treasury. He instead confiscated the lands of those who had opposed him or his family during the Wars of the Roses and retained the profit. After establishing his reign and punishing the traitors, Henry retained any property from those who had supported various pretenders to the throne. Thus, Henry VII “held more property than any monarch since the Norman Conquest” only years into his reign.<sup>38</sup>

In addition to holding more land than any medieval king, Henry VII used the feudal financial system to his advantage. Although the feudal system had long been outdated and was in decline, Henry VII was sure to exact all he could through his overlord rights.<sup>39</sup> For example, he demanded aids for the knighting of his eldest son and the marriage of his eldest daughter, a privilege he possessed by right, but one considered excessive among contemporary aristocracy. For additional revenue, Henry VII exploited

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<sup>38</sup> Roger Lockyer, *Tudor and Stuart Britain: 1485-1714* (Harlow: Pearson Education Limited, 2005): 13.

<sup>39</sup> For a discussion of Henry’s exploitation of his feudal prerogatives, see *Ibid.*, 14-15.

further feudal incidents, often challenging established traditions that stretched back to the Magna Carta. Through escheat, if a landholder left no heir, Henry claimed the property as his own. If the only remaining heir was a woman, Henry forced her to pay for the freedom to choose whom she would marry or sold her marriage to the highest bidder. Through wardship, if the heir was a minor, he became a royal ward so Henry could auction off the wardship to those who would exploit the heir's property or keep the profit of the land himself. Henry VII, in an effort to exact all that he could, even appointed special commissioners to investigate his feudal tenants to be sure they were taxed for all that they possessed.

Clearly Henry VII relentlessly pursued his feudal rights, but he also sought to blunt the blow of uses to the royal coffers by reissuing an updated Statute of Marlborough, first enacted by Edward I in 1267. Instead of simply recirculating the statute, Henry VII used its precepts as his foundation: "Where by a statute made at Marlborough it was ordained that, when tenants made feoffments in fraud to make the lords of the fee to lose their wards, the lords should have writ to recover their wards against feoffees."<sup>40</sup> Essentially, Henry's update provided lords with a means to pursue legal action against those who, by employment of a use, attempted to avoid wardships. Providing a means alone was not effective enough, leaving the statute applicable only in situations where a feoffor or beneficiary died without leaving a will. As it has already been established just how important the last will is in most late medieval employments of the use, few landholders failed to create the document before their death. Because of the statute's ineffectiveness, many scholars have wondered the motives behind the royal

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<sup>40</sup> J. M.W. Bean, *The Decline of English Feudalism 1215-1540*, 242.

effort. Although some believe it was an initial attempt by Henry VII to reestablish royal feudal rights, the first Tudor never had enough authority to enact wholesale changes. In fact, at least one scholar believes the statute was meant to frighten the executors of a Percy of Northumberland's will (who had died with three-quarters of his land enfeoffed) into paying the Crown a substantial relief, a move that befits Henry VII and his shrewd financial ministers.<sup>41</sup> Though his piece of legislation was less effective than imagined, Henry VII had three contributions to the development of the Crown's treatment of uses.

Through the reestablishment of prerogative rights, prerogative wardship, and the right to the remainder of a minority, the Tudor regime slowly began the process of recuperating their right to feudal incidents lost specifically to uses. According to the concept of prerogative right, if a tenant-in-chief alienated the totality of his property to feoffees and declared a will, the Crown retained the right to wardship and marriage, by far the most profitable of the incidents. Similarly, if a tenant-in-chief died without a will and his heir a minor, the King retained wardship and the revenue of all the landholder's properties, including those not held from the King, through prerogative wardship. Lastly, although rarely applied by the Crown during the Tudor era, the King established a right to the remainder of an heir's minority once the feoffor's last will was completed. Although these developments laid a nonessential foundation for an all out assault on uses in Henry VIII's reign, these measures brought little to the Crown financially, but the tenacity with which they were pursued concerned the majority of landholders. Unfortunately for Henry VIII's future fiscal plans, Henry VII was ruthless in his prosecution of feudal finance. Although Henry VII's fiscal policy had increased the crown's land revenue by forty-five

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<sup>41</sup> Ibid., 246.

percent, uses gained immense popularity with the persistence of Henry VII's feudal extractions and the uncertainty of the times.

From his father, Henry VIII inherited a stable realm with the royal coffers holding a healthy surplus. His heavy spending coupled with periods of financial mismanagement created the need for additional funds. Henry VIII was focused on transforming the island kingdom of England into a continental power, hoping to rival France and the Holy Roman Empire. For example, Henry campaigned many times against France in an Anglo-Spanish alliance, which culminated in the ornate and expensive festivity at the Field of Cloth of Gold in 1520. Although his most expensive endeavors may seem to stem from his proclivity to war, the upkeep of his royal court and household vastly outweighed military expenditure. For instance, Henry hung over 2,000 tapestries (by comparison, James V of Scotland had only 200) and bought rare weapons whatever their cost.<sup>42</sup> Although the Crown's revenue remained constant (around £100,000 per year), that revenue was eroded by inflation and rising prices due to near-constant war.<sup>43</sup> By the mid-1520s, the surplus created by Henry VII was completely depleted and Henry VIII began his search for extra revenue.

As early as 1529 during his feud with the Papacy, Henry VIII looked towards the evasion of feudal incidents due to pervasive employment of the use to solve his fiscal needs. Unlike his father, Henry did not have vast amounts of land to confiscate, until he orchestrated the dissolution of the monasteries in 1538. His father's establishment of the

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<sup>42</sup> Thurley, Simon. *The Royal Palaces of Tudor England: Architecture and Court Life 1460-1547* (New Haven: Yale University Press, 1993), 222-224.

<sup>43</sup> Weir, Allison. *Henry VIII: The King and His Court* (New York: Ballantine Books, 2008), 64.

Tudor lineage and legitimacy after the Wars of the Roses left no substantial impediment to succession or rival claimants to the throne. Furthermore, with his increasing desire to be considered important in European matters combined with a looming divorce, Henry VIII needed money. Henry could have utilized the help of Parliament and the people, but “loans and benevolences meant a complete loss of personal popularity,” which was already being eroded by his theologically complex, drawn-out divorce and multiple foreign wars.<sup>44</sup> Additionally, his subjects had already been subjected to multiple taxes. Henry’s mind, surely influenced by his father’s financial efforts, turned towards the only remaining source of revenue: feudal land law.

Within the canon of English land law Henry saw the “most highly developed and the most irrational part of common law” and was therefore unhesitant to suggest wholesale changes.<sup>45</sup> In 1529, in hopes that a simplified land policy within the English common law system would increase Henry’s royal coffers, two bills were drafted and sent before Parliament. The proposed 1529 plan of action failed because of a lack of support in the House of Commons, which refused to even consider compromise. Following their lead, King Henry VIII pursued his agenda to the fullest extent of the law with little space for compromise. By 1535, following the conclusion of the successful Lord Dacre trial in which the Crown’s controversial legal maneuvering proved effective in feudal incident retention, King Henry VIII had trapped Parliament into a powerless

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<sup>44</sup> William Holdsworth, “The Political Causes Which Shaped the Statute of Uses,” *Harvard Law Review* 26 (1912), 108.

<sup>45</sup> Ibid.

position.<sup>46</sup> The royally endorsed Statute of Uses (1536) was enacted only through deceit and the intentional departure from established precedent. Only by the authoritarian cessation of enfeoffment to use's effectiveness through the corrosion of its position in relation to common law and the Chancery did the Crown secure enough support to enact the Statute of Uses.

The opening lines of the 1529 bill describes the “grate trobull, vexacion, and unquiteness amonges the kynges suggetts...for tytyll of londes, tenaments, and other heriditamentes...as well as by intayle as by uses...”<sup>47</sup> Although the issue was significant for Henry, the proposed bill contained one flaw: a focus on and explicit benefits for the nobles to the disadvantage of landholders and lawyers of the House of Commons. Thus, the 1529 bill seeking to reform land law was not passed.

The proposed bill contained eight provisions in total, three of which were essential to its effectiveness. The first provision, which lists the general complaints the King had with uses, is relatively short especially when compared to the later 1536 Statute of Uses. From this first section, one can easily see where the emphasis lies: with the King and his nobility. With further study, the legislation would have drastically simplified English property law. The 1529 bill mandated that all land was to be held in fee simple, invalidated unregistered uses, constructed a complex system of records meant to keep deeds up to date, and would have extended other privileges to the nobility.

After the opening preamble, the bill provided solutions to the king's problem. First and foremost, in the bill's second section, “all intayles made of londes tenaments

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<sup>46</sup> The National Archives, Chancery, Common Law Pleadings, C. 43/2/32. Accessed through University of Houston's Anglo-American Legal Tradition website.

<sup>47</sup> Letters and Papers of Henry VIII, Vol. 56, fos. 36-39. No. 6043 (6).

and all other hereditaments be utterly frustrate disanulled and adnichelate for ever...from this day forward...”<sup>48</sup> As the text suggests, the bill proposed that entails, or a property restriction which limits the inheritance to the owner’s lineal descendants, should be completely abolished and no longer permitted in most cases. Fee tail, or simply entail, prevented one’s property from being sold, devised, or otherwise alienated from the holder’s family. Thus, the land would pass automatically as a function of law to its heirs upon the holder’s death. By abolishing entails, the 1529 bills stipulated that all land would be held in fee simple or as freehold. For men outside the aristocracy, this was significant because it removed limitations on the conveyance of certain property and was a positive move away from traditional rigidity.

The proposed bill would not completely abolish entails. Instead, they would continue to be permitted for nobility “within the degree of baron.” Further, the 1529 bill asserted that no man could buy a “noble mans inheritans within the degree aforesaid, except the sayd noble man have fysrt obtayned the kyngs licens...”<sup>49</sup> This stipulation would have angered those in the Commons because land held in fee tail was seen as “perpetual interests in land...” thereby allowing one family alone to possess it.<sup>50</sup> Additionally, it is obvious that Henry VIII realized that the relaxation of alienation laws for tenants-in-chief beginning during Edward I’s reign encouraged the nobility to enfeoff to uses and was attempting to reassert some royal control over their conveyances.

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<sup>48</sup> Letters and Papers of Henry VIII, Vol. 56, fos. 36-39. No. 6043 (6).

<sup>49</sup> Ibid.

<sup>50</sup> Desmond Brown, “Historical Perspective on the Statute of Uses,” *Manitoba Law Journal* 9 (1978-1979), 424.



Although a minor victory for King Henry, members of the House of Commons must have seen the right to entail for what it was: a royal concession to the nobles for their support.

The most important purpose of the entail was to keep the line of succession for a family's estate intact. Since the original holder of the land wanted his family to prosper throughout successive generations, landholders had established the fee tail, barring any heir from transferring land out of the family. This stipulation neutralized many possible threats to the family's possession of the land. Mortgaging entailed land was risky and uncertain for the mortgage lender because the obligation to recompense the lender was placed solely on the land's owner at the time the mortgage was made. This meant that if an entailed mortgagor died while contracted in a mortgage, his heir had no obligation to pay. Further, the heir's interest was prior in right to that of the lender, making it nearly impossible to enforce the payment of debts owed to a mortgage lender. Secondly, the longest term an entailed holder could convey would be a life estate because the grantee's interest would end as soon as the grantor's life did. Allowing entails for the nobility helped secure their support for the measures, but it likely ensured that the bills would not pass in the Commons by continuing to allow perpetual trusts for the nobility alone. In addition to mandating that most property be held in fee simple, the 1529 bill would have invalidated any unregistered uses, which King Henry believed would have immediately simplified the English feudal structure to his advantage.

Section three of the 1529 bills reads, "no use nor uses hereafter to be made to any person or persons upon or for eny possessions within thys realm be vayleable or of eny effect in the law..."<sup>51</sup> Had the 1529 bill been enacted, uses would have been completely

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<sup>51</sup> Letters and Papers of Henry VIII, Vol. 56, fos. 36-39. No. 6043 (6).

nullified unless registered. Without the simplest and most popular method of conveyance employed to settle property, landholders would fill the coffers of Henry's treasury with formerly circumvented feudal incidents. Although drastically altering a significant amount of feudal relationships, King Henry's 1529 proposed reform to uses included only one provision (a mere few lines) that specifically mentions the use. The bulk of the legislation concerns a proposed bureaucracy, so as to guarantee the eradication of the illegal deployment of the device.

To ensure that "no use nor uses hereafter are to be made to any person or persons," Henry VIII would need to create some heavy-handed bureaucracy. Not only would each deed be recorded by a minister at the shire level, but newly agreed deeds would be read at the local church during a time when most of the parish was present at the service, most likely a holy day. Additionally, the deed was to be registered in the shire where the property lay. This bureaucratic process served to protect the king's interest. By openly proclaiming and registering the deeds, those who held the land were known publically, which would minimize the likelihood of landholders employing a use. These requirements would also decrease the risk of forgery. As the person in possession of the deed was publically known and registered, it would have been nearly impossible to forge the needed documentation to claim title to the land. Though the proposed bill hoped to drastically simplify the property code, the royal house needed to secure the support of Parliament. Yet the House of Commons, full of landholders and lawyers trying to manipulate the complex land law system for their own gain, would hardly be supportive of such a measure that ran counter to a well-established and profitable practice. To ensure the Lords' approval, Henry made some concessions to the nobility alone, such as giving

the aristocracy the right to entails while disallowing any beneficial form of a trust for the remainder of society. The nobility, in return for their prospective benefits, would be expected to bear the brunt of the revenue collection and make some concessions of their own.

Since the king had afforded the nobles a privilege to entail in his proposed settlement of uses, the aristocracy was ready to compromise on some of their own entitlements. The House of Lords, in a letter and supplemental bill to Parliament, detailed their various concessions as a whole. First and foremost, “the king shall have the wardship of the whole heritage of heirs under age...”<sup>52</sup> This provision would have enabled King Henry to utilize a tactic regularly employed by his father: profit through prerogative wardship. Although this royal right had been traditionally recognized, Henry VIII was meticulous in defining the extent of this right in various situations.

Since the agreement applied only to under-aged heirs who held their land in chief by knight’s service and would be unable to provide the military service required of such a tenure, Henry would have ensured an adequate amount of revenue to finance his army without completely alienating the higher aristocracy who opposed wardships. By seizing the profit of their land and requiring a payment of relief for their title, Henry would undoubtedly bolster his financial resources. Similarly, the king and nobility agreed that Henry would retain possession of any land that passed to a deceased ward or tenant for life. Lastly, the nobility vowed not to utilize the entail or a use as a means to exclude the Crown from due revenue. Henry VIII had, by agreeing to the document’s provisions,

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<sup>52</sup> J.S. Brewer, ed., “November 1529,” *Letters and Papers, Foreign and Domestic, Henry VII Volume 4: 1524 -1530* (London: Institute of Historical Research, 1875): 2688—2704.

ensured the protection of profitable wardships as well as provided a clear and articulate method for inheritance and legal remedies for those wronged. The nobility had established a defined procedure, which, if followed, would ensure the judicious transfer of property to an heir, limiting incident exploitation and the feasibility of any erroneous transfers or seizures while providing legal remedies to resolve any infringement.

The proposed settlement of 1529, forged by the King and his nobles, satisfied both of these parties' interests, but "it was quite another matter to induce the House of Commons to ratify it."<sup>53</sup> Two groups had substantial influence in the Commons: the large landholders and the lawyers. Neither of these groups would support such an action because it would have been detrimental to their interests. The Tudor chronicler Edward Hall best summarized the proposed piece of legislation from a royal perspective:

"wherefore he [King Henry VIII], like an indifferent prince, not willing to take all, nor lose all, caused a bill to be drawn up by his learned counsel, in the which was devised that every man might make his will of half his land, so that he left his other half to the heir by descent. When this bill came first among the Commons, lord! how the ignorant persons were grieved, and how shamefully they spake of the bill and of the King's learned counsel..."<sup>54</sup>

Hall continues to describe a King seemingly quick to compromise in return for only a portion of what he believed was truly his due. Instead of operating with a willingness to compromise, many members of the House of Commons assumed that the proposed bill was yet another sign of imminent exploitation of the Crown's rights to feudal incidents. While Henry VIII offers a seemingly fair and reserved solution in an attempt to protect his feudal rights and preserve some benefits enjoyed by an employment of a use,

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<sup>53</sup> William Holdsworth, "The Political Causes Which Shaped the Statute of Uses," 112.

<sup>54</sup> Edward Hall, *Chronicle* (New York: AMS Press Inc., 1909), 203-204.

landholders and lawyers, who had been devising property to uses largely uninterrupted for two centuries, were unwilling to compromise.

Large landholders in the Commons abhorred the bill because it deprived them of both secure and unrestricted property settlements through uses. The use, which was particularly beneficial for families with large landholdings, provided property maintenance, could address spiritual concerns, and better settled their wealth according to their needs. Many families who possessed a sizable amount of land employed uses to provide for its upkeep and operation. These families would enfeoff the land to another dependent on the condition that the land would be used to the benefit of the owner or a third party. For these families, uses ensured that their land would be worked for a profit without the necessity of direct supervision. On the other hand, some well-endowed families looked to use their land for a higher purpose: giving to the Church. Most late medieval Europeans were devoted to their faith. One of the most celebrated ways to prove that devotion or atone for sins was to make gifts, large or small, to the Church. Some landholders employed the use to this end. Because a handful of religious orders or institutions could not legally own land, the landowner would convey land to another for the benefit of the Church. The Church or religious order would then receive the land's profit for their mission, and the landowner believed he improved his standing before the eyes of God. Although Henry VIII and many other kings opposed uses because of their capacity to avoid feudal dues, one must not forget that the device could be employed legitimately by a property-holder for a number of reasons.

With the use's explosion in popularity, contracts and dispute resolution created a lucrative enterprise for English lawyers. Barristers, another Common's demographic with

significant influence, believed that the proposed legislation of 1529 deprived them of profitable and established business in uses. Before the late fourteenth century, English law did not protect uses, as there was no writ by which a common-law court could enforce their decision concerning a use. By the end of the fourteenth century, the Chancery began to issue decrees for judgment when a use was employed. Whereas common-law courts saw the person to whom the land was conveyed as the owner, the Chancery was enabled to view this person as a nominal owner and traced possession back to the feoffor. Uses made before the Chancery's recognition of equitable interest relied on trust between the two parties within the agreement, but, after the English court was given the authority to enforce the interests beyond the common-court's understanding, uses relied most heavily on lawyers. Many potential feoffors saw lawyers as the most effective feoffee, both because they knew the language of the law and were consistent in upholding their oaths. Additionally, feoffors had to prepare last wills, indentures, and other documents necessary to enfeoff to uses; all of which were prepared by lawyers. These two groups, by establishing and influencing opposition to the measure, ended the chance of a swift remedy.

Even if the opposition from these two groups had been mitigated, the bill hardly would have passed the House of Commons. For the Commons, the negatives outweigh the positives. Outside the nobility, the only positive that arose from Henry's proposed legislation was an increased profit from wardships, by which very few in the House of Commons would profit. As for the negatives, vassals would be limited in their power to devise, ensuring "such additional profits as they could expect would not be enough to

compensate them adequately for the reduction in their power devise.”<sup>55</sup> Whereas one could enfeoff to use the totality of his land, King Henry’s proposed solution mandated that only a half of one’s total land could be devised at will. Obviously, from the perspective of the Commons, the disadvantages outweighed the benefits which led to the Henrician bill’s failure.

But E.W. Ives, a well-known English legal scholar, doubts the plausibility of official royal legislation addressing uses arising in 1529. He instead asserts that the 1529 bills were just a quickly thrown-together settlement “in hasty preparation for the 1529 parliament.”<sup>56</sup> Ives also contends that too much emphasis has been placed on the proviso of concessions agreed to by the Lords. But, in Ives’ own interpretation of the statute’s enforcement, nobles would have paid the majority of feudal incidents, while the gentry and knights “would have been able to continue to evade feudal dues.”<sup>57</sup>

Ives, failing to include a consideration for Henry’s intentions, does not account for the fact that the 1529 royal solution may have been the compromise Henry desired. Since the documentary existence of the 1529 bills and concessions on behalf of the Lords cannot be disproven, Henry possibly thought that by imposing a heavier burden of feudal incidents on the nobility while condoning the gentry’s and knight’s employment of methods of limited evasion, he would restore a majority of his needed feudal revenue and maintain his popularity in a trying time. By allowing the nobility to entail, Henry VIII placated the aristocracy’s concern with property retention and ensured their support of the

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<sup>55</sup> J. M.W. Bean, *The Decline of English Feudalism 1215-1540*, 270.

<sup>56</sup> E.W. Ives, “The Genesis of the Statute of Uses,” 679.

<sup>57</sup> *Ibid.*, 680.

measure. The king and aristocracy additionally agreed to a clearer legal process of inheritance with available remedies and reestablished the scope of wardship. The 1529 proposed settlement forged between King and aristocracy was, by a majority of contemporary accounts, a genuine attempt by King Henry VIII to collect a reasonable portion of his feudal incidents and retain the most legitimate benefits of uses. King Henry, by proposing that half of a property must be passed through primogeniture, would have ensured the collection of feudal incidents. Although allowing for the devising of half one's property, King Henry granted less flexibility than landholders were accustomed to enjoying. Traditionally, the power the devise land tenure was extremely limited. Enfeoffment to use, which flourished after Edward I, allowed a landholder to distribute the benefits of his land as he saw fit. It is in this sense that enfeoffment to use provided a more flexible means of inheritance than traditional processes. The power to enfeoff to use and devise at will the totality of one's applicable property had remained unchanged for nearly two centuries. With this established precedent, members of the House of Commons were unwilling to accept such a significant limitation.

After the failure of his first attempt at reform, Henry ordered his Chancellor, Thomas Cromwell, to prepare another legislative draft, which contained, by all accounts, the same propositions as in the 1529 proposal.<sup>58</sup>

Chapuys, the Holy Roman Emperor's ambassador in the English Realm, wrote to Charles V on 14 February 1532 that "The King has lately been trying to pass a Bill in Parliament for the third of all feudal property to fall to the crown after the decease of its

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<sup>58</sup> David Smith, "The Statute of Uses: A Look at Its Historical Evolution and Demise," *Western Reserve Law Review* 18 (1966-1967): 49. And, E.W. Ives, "The Genesis of the Statute of Uses," *The English Historical Review* 82 (1967): 682.



owner, but has hitherto met with a good deal of opposition, so much so that several members of the said Parliament have made use in public of very strong language indeed against the King, his Privy Council, and Government.”<sup>59</sup> Although this does not definitively prove that Henry sent the 1529 bill back to Parliament, Chapuys realized the discontent the bill aroused in Parliament, which may have been similar in strength to the 1529 opposition. Henry, worried about the possible failure to legislate for his feudal incidents, again found the center of the opposition in the Commons.

Henry’s discontent is evidenced by the speech he gave to a Commons delegation on 18 March 1532: “I have sente to you a byll concernynge wardes and primer seisin...if you wyll not take some reasonable ende now when it is offered, I wyll serche out the extremitie of the lawe, and then wyll I not offre you so much agayne.”<sup>60</sup> Henry’s speech seems to suggest that the king deliberately made the proposed 1529 and 1532 bills less severe than the fullest extent of the law, both for the punishment of non-payment of feudal incidents and in the amount the king claimed from certain incidents. This theory is bolstered by the chronicler Edward Hall who attested to the King calling “the judges and best learned men of his Realm, and they disputed the matter in the Chancery, and agreed that land could not be willed by the order of the common law...”<sup>61</sup> This, the destruction

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<sup>59</sup> Pascual de Gayangos, ed., “February, 1532 1-20,” *Calendar of State Papers, Spain, Volume 4 Part 2: 1531-1533* (London: Institute of Historical Research, 1882): 379-388.

<sup>60</sup> E.W. Ives, “The Genesis of the Statute of Uses,” 683. From Edward Hall, *Chronicle* (1809): 785.

<sup>61</sup> Edward Hall, *Chronicle* (New York: AMS Press Inc., 1909), 203-204.

of the device's legal grounds, was Henry VIII's pursuit of feudal incidents to the fullest extent of the law.

In effect, the King's decision forbade the creation of wills at common law, thereby ending the process, based in precedent, of a case involving a use 'traversing' to the Chancery from a court of common law. Essentially, after an escheator's inquisition of a deceased tenant-in-chief's various settlements, jurors entered a decision on the property. If the jury found for the Crown, any interested party (i.e. a feoffee who claimed legal title to the property) was allowed to 'traverse' from the common law inquisition to the Chancery, where the entirety of the settlement would be evaluated. With King Henry's encouragement, the inquisitions at common law began ruling that the wills of deceased tenants-in-chief were made in collusion to defraud the Crown, so the king could possess the conveyed lands. After a sham of an appeal, the Chancellor would uphold the ruling for collusion to defraud the Crown. Not only did this tactic run counter to a lengthy precedent, but also the Chancellor did not base his ruling on the facts presented, relying on extra-legal considerations for his decision.<sup>62</sup> While King Henry VIII was only immediately content with weakening the advantages of enfeoffment to use outside of the legislative arena, he acknowledged that a lasting solution would come only through Parliamentary cooperation and approval.

Though one typically secures cooperation and approval through an attempt to compromise or otherwise build a relationship with the opposing party, King Henry was in an advantageous position after disallowing wills at common law. This being so, having himself been refused substantive negotiations on a 1529 compromise, King Henry VIII

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<sup>62</sup> J. M.W. Bean, *The Decline of English Feudalism 1215-1540*, 272-273.

saw no reason for quarter. Additionally, the theory that Henry only sought the full extent of the law after the House of Commons refused to compromise may account for what Ives describes as his chief concern with the validity of previous scholars' arguments: that Henry enacted a "more advantageous" 1535 plan.<sup>63</sup> Up until 1532, Henry did not intend to curtail the commons' employment of techniques of limited evasion; rather, as it seems, Henry elected to exact more revenue from the nobility, while allowing the commons to evade feudal dues to a significant degree. Henry hoped to establish a balance between the benefits enjoyed through the employment of a use and the feudal incidents he required financially. The inherent burden this created for the aristocracy would have been theoretically solved by the concessions Henry gave to the nobility, and within the concessions the nobility vowed to cease in attempting to evade feudal incidents. Henry, for whatever reason, seemingly hoped for a balanced 1529 compromise. Although a majority of the evidence supports the theory that the Crown would weakly enforce punishment of the evasion of feudal incidents for the commons, the House of Commons struck down the proposed bills twice. Of course, it is entirely possible that the members of the House of Commons knew of Henry's intent of weak enforcement. If this were the case, the members of the House of Commons overwhelmingly preferred the capacity to more flexibly devise their property to the evasion of feudal incidents. But, based the reactions of both King and Commons as well as the relentlessness with which Henry VIII subsequently pursued the fullest extent of the law, it is hard to believe the members of the House of Commons knew of or trusted in the intent of Henry's enforcement.

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<sup>63</sup> E.W. Ives, "The Genesis of the Statute of Uses," 676.

After the multiple failures of his attempts to pass reform crucial to the collection of feudal incidents, Henry and his advisors authored a list of grievances against uses.<sup>64</sup> The text insists “much on the disadvantages of uses from the point of view of the cestui que use,” which marked a transition away from a nobility-centered focus on uses.<sup>65</sup> For instance, the first section advances the argument that excessive employment of the use casts doubt so “thatt no man can be sure if any land [had been] lawfully purchesyed...”<sup>66</sup> Section three describes that no action can be taken legally against a cestui que use after only a year if a secret feoffment was arranged. By drawing attention to the enfeoffment to use’s drawbacks, Henry VIII further improved the position of the Crown to secure favorable legislation. By the early years of the 1530s, King Henry and his advisors, by disallowing wills at common law, had engineered an effective short-term solution to the evasion of feudal incidents through enfeoffment to use. Although effective, the solution was nothing compared to enacted Parliamentary statute. After threatening the House of Commons, showing his resolve by beginning to do what he threatened, and raising awareness of enfeoffment to use’s drawbacks, King Henry VIII was able to somewhat weaken Parliamentary opposition, but more was needed.

Henry VIII’s opportunity to quash the opposition came in 1533 by way of a case involving Lord Dacre. Lord Dacre, a tenant-in-chief, devised his land through a use, which, if executed, would have deprived the Crown of the wardship of his heir and a future relief. Following the Chancery’s decision to disallow cases involving uses to

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<sup>64</sup> Letters and Paper of Henry VIII, vol. 101, f. 282. No. 246 (3).

<sup>65</sup> William Holdsworth, “The Political Causes Which Shaped the Statute of Uses,” 115.

<sup>66</sup> Letters and Paper of Henry VIII, vol. 101, f. 282. No. 246 (3).

traverse from a common law court, this became “the test case which would enable it [the Crown] to win its victory over uses.”<sup>67</sup> The case, which questioned the validity of the use as a method to avoid feudal incidents, was important and directly connected to Henry’s future legislative agenda. The initial finding of the Court ruled that the use was made in collusion to commit fraud because its aim was to avoid feudal incidents, but this ran counter to precedent. As recently as the reign of Henry VII, the Crown’s right to seize the revenue of property enfeoffed in a use was deferred until the performance of the will was completed. Essentially, there was no reason to rule for collusion because the Crown’s rights to revenue of the property would arise after the performance of the will. The ruling points to the fact that “any devise of land by a tenant-in-chief who died leaving an heir under age was ipso facto fraudulent because it must employ the revenues which were the Crown’s by virtue of its prerogative.”<sup>68</sup> Instead of challenging the feoffment, the courts found collusion within the last will of Lord Dacre. By referring to the 1532 ruling that feudal tenure could not be devised at common law and focusing on the contents of Lord Dacre’s will, the court decided in favor of the Crown. It was obvious that the Crown had devised a new tactic to combat uses. As if conspiracy were not already apparent from Henry VIII’s calculated plot beginning in 1532, the Crown promised the judges ‘good thanks’ from the King himself if they ruled in his favor.<sup>69</sup>

The Lord Dacre case did more for Henry’s reform campaign than any previously used tactics. As mentioned before, the proposed bills of 1529 and 1532 would have

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<sup>67</sup> J. M.W. Bean, *The Decline of English Feudalism 1215-1540* 276.

<sup>68</sup> Ibid., 280.

<sup>69</sup> Ibid., 283.

allowed collection of feudal incidents on only a half or third of one's land, dependent on the extent of one's holdings. An implication of the 1535 Lord Dacre decision meant that feudal incidents would be collected for the totality of one's property. Further, uses were declared invalid, thereby casting doubt upon many of the titles devised by this method. Serjeant Mountague, the lawyer for the Dacre family, argued "it would be great mischief to change the law now, for many inheritances in the realm today depend on uses, so that there would be much confusion if uses were treated as void."<sup>70</sup>

The Lord Dacre ruling, while serving as the test case for the Crown's new tactics and as an example of the quickly eroding royal tolerance of incident evasion, was far from the statutory end that Henry desired. The short-term solution, which had to be brought about in court for every occasion, only protected the Crown's right to wardship and was dependent on local juries who could have been sympathetic to their peers. It was for these reasons that Henry VIII approached a beleaguered and worrisome Parliament eager to carve out a compromise.

The so-called compromise, embodied in the three bills that make up the Statute of Uses, came from the appeasement of both the House of Commons' lawyers and the King. The lawyers' objections, such as testaments made by dying men, perjuries committed during legal proceedings stemming from uses, and the insecure titles of purchasers, were all addressed through the Statute. Furthermore, the king's interests, most importantly the

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<sup>70</sup> J.H. Baker, "Real Property: Feudalism and Uses," *An Introduction to English Legal History* (Oxford: Oxford University Press, 2004): 255. See footnote 37.

reaffirmation of owed feudal incidents such as the right to wardship, escheat, and forfeiture, were also provided for.<sup>71</sup>

Although some argue that Henry VIII attempted only to scare his subjects to promote swift action, the evidence points to a deeper purpose. Henry, in attempting to balance the collection of his feudal dues with maintaining his popularity in a strenuous time, proposed property code reform that could have benefitted both the Lords and the rest of landed Englishmen, albeit in opposite ways. After the House of Commons had rejected his proposal twice, Henry VIII decided to pursue the fullest extent of his royal prerogative to receive his due. Regardless of the agreement's principal catalyst, the Statute of Uses was enacted in 1536.

The Statute of Uses' preamble was nothing more than royal propaganda meant to rally support for the measure, citing "invencions and practices bene usid" to defraud the king.<sup>72</sup> The objective was clear: re-impose the obligation of feudal incidents by taking "the legal estate from the legal title holder and vesting it in the equitable titleholder."<sup>73</sup> Now, any land held to the use of a person or institution was legally held by that same person or institution. It is important to note that the Statute of Uses did not do away with uses entirely, rather it provided for existing and future uses, and is therefore considered a precursor to the modern trust. Despite the fact that the trust was not abolished, the statute

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<sup>71</sup> William Holdsworth, "The Political Causes Which Shaped the Statute of Uses," 121.

<sup>72</sup> T.E. Tomlins and W.E. Taunton, eds., "27 Henry VIII Chapter 10: An Acte Concnynge Uses & Wylles," *The Statutes of the Realm* III (London: Dawsons of Pall Mall, 1965): 539.

<sup>73</sup> David Smith, "The Statute of Uses: A Look at Its Historical Evolution and Demise," 53.

disallowed the use's employment as means to evade feudal obligations, and landholders who were previously the beneficiary of a use now assumed all of the burdens of legal feudal tenure.<sup>74</sup>

In addition to vesting legal title in the former cestui que use, the Statute of Uses created four new types of interests: the springing use, the shifting use, the bargain and sale, and the lease and release. These methods were created because the use, in addition to other legitimate purposes, helped simplify complicated property transfers. If a landholder wanted to limit the duration of land tenure, he now employed a shifting use. Previously, the landholder, X, would transfer legal title of his property to Y to the use of A for ten years following X's death then to B. After the passage of the Statute, Y would now hold legal and equitable title, so X would grant a life estate to himself, then to A for ten years, and finally enfeoff B so the property was held in fee simple. Instead of X retaining an equitable interest in the property, springing uses are so named because after the original grantor is cut out from his title (after the termination of his life estate) new uses 'spring' from it: one for A and another for B. While springing uses enabled landholders to further limit the durations of land tenure, shifting uses allowed landholders to enforce stipulations placed upon a grantee. Before the Statute, landholders relied on the use to enforce stipulations placed upon the feoffee. For example, X transferred title to Y to the use of A and his heirs, but to B and his heirs if A dies without an heir. Through the Court of Chancery, this stipulation could be enforced before the Statute. After the Statute, landholders employed the shifting use: legal estate would belong to A and his heirs unless the stipulation was not met, then the property would be transferred to B. The

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<sup>74</sup> Ibid., 56.



shifting use was so named because the title has the ability to ‘shift’ from one grantee to another, effectively ending any interest in the property that previous grantee had.<sup>75</sup> Unlike and shifting and springing use which sought to limit the granted estate of a grantee, bargain and sale and lease and release worked to make the conveyance of property easier.

Bargain and sale, although employed to convey land before the Statute of Uses, gained significant popularity after the Statute passed. Instead of granting or enfeoffing the property to the grantee, the bargain and sale method created a use, which, under the provisions of the Statute, automatically transferred the property to the beneficiary, who would then compensate the grantor for his property. Bargain and sale gained popularity because of its convenience: instead of performing the formal livery of seisin on the grounds of the property, a bargain and sale contract could be agreed to and executed anywhere. However, their popularity would be short-lived because the 1536 Statute of Enrollments, which required that the deed of all such conveyances be both written and registered. It is from this situation that the lease and release arises.

Leases were not required to be enrolled or written, which immediately increased their employment following the required enrollment of bargain and sale methods. Though a grant could not convey a current interest in property, a special type of grant, the release, could convey a future interest in the property to a person who already had an interest in the property. Two contracts were necessary. First, a lease had to be constructed, most likely through the bargain and sale method, to establish the grantee’s current interest in the property. Secondly, the grantor would then utilize a release to grant a reversion of the grantor’s interest to the grantee. This method could effectively transfer title of the

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<sup>75</sup> Wendell Carnahan. “An Introduction to the Statute of Uses,” *Kentucky Law Journal* 172 (1936): 176.

property to the grantee if so allowed. Although bargain and sale was the simpler of the two methods, it required the deed to be enrolled. Therefore, especially for those who wished to convey their lands discreetly, the lease and release became the most popular method of conveyance following 1536.

King Henry VIII's Statute of Uses, while continuing to provide for the employment of a modified use, limited the ways in which property could be conveyed, inheritances could be divided, and attempted to end the evasion of feudal obligations through enfeoffment to use. The legislation was pushed through a thoroughly defeated Parliament. Surely, the overtly authoritarian process used to secure such a bill must have surprised Parliamentary members. Just years prior to the 1536 settlement, Parliament was offered a compromise they considered to be ridiculously far-fetched. That same compromise, which few took seriously at the time, seemed generous following the outcome of the Lord Dacre case. Parliament, willing to accept nearly any fair royal settlement, begrudgingly approved the Statute of Uses. As if to validate Parliament's attitude toward the bill, the leaders of Pilgrimage of Grace listed the Statute of Uses among its grievances and demanded it be repealed.

## CHAPTER THREE

### The Pilgrimage of Grace and The Statute of Wills (1540)

The Pilgrimage of Grace is a collective term used to describe the whole of a string of rebellions beginning in 1536 with the Lincolnshire Rebellion and culminating in the 1537 Bigod's Revolt. The Yorkshire Rebellion, by far the Pilgrimage's most influential uprising, happened between the two other disturbances and was potentially the most threatening agitation throughout Henry VIII's reign. These episodes are interesting because they included a wide range of English society, mobilizing nobles and peasants alike. The primary aim of this series of revolts was a return to communion with the Roman Catholic Church and a termination of the dissolution of the monasteries, participating members of the gentry demanded that the Statute of Uses be repealed. In relation to this thesis, the gentry's leadership and their potential future participation in popular uprisings such as the Pilgrimage of Grace were among the Henry VIII's motivations in negating of the favorable Statute of Uses with the enactment of the Statute of Wills (1540). The Statute of Wills affirmed the legal right of tenants-in-chief to devise by will two-thirds of their property. The remaining third would be subject to the enforcement of feudal obligations. Though the enactment of the Statute of Wills would be a distant consequence, the Pilgrimage of Grace began as a campaign against the Tudor suppression of the Roman Catholic Church.

As previously noted, the Lincolnshire Rebellion (2 – 18 October 1536) began the Pilgrimage of Grace. The rebellion was originally motivated by England's schism with the Roman Catholic Church and the dissolution of English monasteries. The population of northern England was especially conservative, and, due to the harsher climate and lack of major cities, reliant on the monasteries' services. Although dependency on the monasteries decreased over time, the institutions solidified their importance by providing Englishmen technological improvements and necessary services among other things. While the rectification of England's schism with the Catholic Church seems to be the Lincolnshire Rebellion's ultimate goal, rebel leadership immediately focused their efforts on ending the suppression of religious houses. Although the uprising was unsuccessful in accomplishing both their initial goals and those outlined in their broadened platform, the people's effort and mistreatment encouraged popular action that would become the Yorkshire Rebellion, the most influential demonstration of the Pilgrimage of Grace.<sup>76</sup>

Originating from the St. James Church in Louth, England, the rebellion began with a theological focus. As the rebellion's ranks diversified, the list of grievances expanded to represent a variety of interests, including the concerns of the gentry. Soon, the rebellion's leaders demanded the end of a subsidy's collection, the repeal of the Ten Articles, an end to peace-time taxes, and the repeal of the Statute of Uses. The last of the rebellion's demands appealed most to the gentry. In fact, some evidence suggests that a few locally prominent gentry, who were devout conservative Catholics, orchestrated the rebellion in an attempt to encourage foreign invasion and enhance their proprietary rights, especially in regard to conveyances. Their participation and encouragement was

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<sup>76</sup> Geoffrey Moorhouse, *The Pilgrimage of Grace* (London: Weidenfeld & Nicolson, 2002) 54.

instrumental in securing nominal support from local nobility. Though a majority of the ‘supportive’ nobles assented only under threat of death, the Lincolnshire Rebellion was unique in that a majority of English social classes were represented. As their ranks swelled with men of all classes, the rebels threatened the vitality of Henry VIII’s drastic reforms.

The peak strength of the Lincolnshire Rebellion numbered an estimated 40,000 men by the fifth of October. Their immense strength persuaded rebel leadership to march on Lincoln, resulting in the rebel’s occupation of Lincoln Cathedral. Even before the rebels displayed their aggression, Henry VIII was cognizant of their strength and broad appeal. In hopes of suppressing their dissent, the king issued a moratorium of their assembly and protest on the fourth of October. Additionally, Henry authorized the use of force by the Duke of Suffolk in order to end the demonstration. When the Duke arrived in Lincoln with his army on the fourteenth of October, only a fraction of the rebels had ignored the moratorium and continued their occupation. After the reduced rebel force was defeated, the leadership of the rebellion was captured and hanged as traitors. Henry’s ruthless pursuit of dissenters inspired further action, resulting in the infamous Yorkshire Rebellion.

The Yorkshire Rebellion, undoubtedly the most well-known of the Pilgrimage’s components, was nearly identical in composition to the Lincolnshire Rebellion. Beginning on the thirteenth of October 1536, the Yorkshire Rebellion began with a diverse list of demands. Building from those composed by the previous rebellion’s leadership, the rebel demands included a religious, economic, and political component. The ultimate goals of reunification with the Roman Church and cessation of the

dissolution of the monasteries were undoubtedly most important, but the uprising's economic and political objectives were immensely appealing. In terms of political aims, the Pilgrimage's leaders recommended the ouster of Chancellor Thomas Cromwell and his associates (considered by the Pilgrims to be heretics) and sought to gently remind the monarch of his position in society and the sanctity of marriage. The overall economic aims of the rebels were greatly influenced by the gentry. Specifically, the northern gentry took issue with the limitations the Statute of Uses placed on a long-established method of property conveyance, therefore advocating its repeal.<sup>77</sup> From this broadly popular platform of religious, economic, and political reform, the Pilgrimage of Grace took its definitive shape. As a sizable amount of support mobilized, the Pilgrimage required a leader able to organize and motivate a massive force of dissimilar people while continuing to develop, clarify, and negotiate the rebellion's demands. Further, due to the uprising's vast differences in social class, the Pilgrimage's leader had to appeal to both the nobility and the commons. In sharp contrast with the Lincolnshire Rebellion, the leadership provided by Robert Aske ensured the Pilgrimage of Grace's lasting influence on Henry VIII's reign.

Robert Aske, a London-based barrister born to an old Yorkshire family, rose as the rebellion's leader. As a lawyer, he was well aware of the action's legal ramifications and historical precedent. The rebellion's gravity and size led Aske to better organize his men and hold them accountable. Under his supervision, the rebellion's responsibilities were divided among a council of leaders; the commons was organized into groups to minimize the uprising's chaos and reduce mobilization time. Additionally, to emphasize

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<sup>77</sup> Madeleine and Ruth Dodds, *The Pilgrimage of Grace 1536-1537 and the Exeter Conspiracy 1538* (Cambridge: Cambridge University Press, 1971), 79.

the movement's focus and decency, each of the participants was required to uphold the Oath of the Honorable Man. The oath, which mandated acceptable behavior and demeanor, had the unintended consequence of bolstering gentry and noble support.<sup>78</sup> Aske's leadership, critical to the rebellion's organization and composition, was stronger and more efficient than that of any other Pilgrimage of Grace uprising. For this reason, the Yorkshire Rebellion, unlike the Lincolnshire episode, was able to mitigate royal pressure to disband and forced negotiations.

The first action of the rebellion, the occupation of York, was accomplished with only nine thousand men. Meeting little resistance, the rebels quickly took control and reestablished Catholicism and its religious houses. As word began to spread of the rebellion's success, the rebel ranks swelled with men from Durham, Northumberland, and Lancashire. Aware of the ease with which Henry VIII had been able to dislodge the few remaining dissenters at Lincoln Cathedral, Aske employed a rebel contingent to take the Crown's castle at Pontefract. Although a garrison was present, they did not engage the rebels because their leader was sympathetic to the uprising and the castle was considered of little practical use. The castle was occupied by the twenty-first of October, and the entirety of the rebellion's force transferred there. By now, Aske commanded a somewhat organized force of 35,000 men. With his castle lost to the rebels, Henry VIII began to address the movement in a manner similar to his response to the Lincolnshire Rebellion.

Immediately, King Henry VIII ordered the Duke of Norfolk and Shrewsbury to confront the rebellion's force. Although Henry knew the rebels were well organized and motivated, he questioned the two magnates loyalty. In addition to a shortage of troops,

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<sup>78</sup> Claire Cross, "Participants in the Pilgrimage of Grace," *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2012).

Norfolk did not have sufficient revenue to maintain his army. These conditions and Henry's impatience for the conflict's resolution led Norfolk to pursue negotiations. Aske, too, wanted to minimize the possibility of conflict, as he was aware of the glaring advantages trained military forces had over common Englishmen. On the twenty-seventh of October, Aske met with Norfolk and Shrewsbury on Doncaster Bridge. Sympathetic to the demands of the dissenters, Norfolk offered an escort for two gentlemen of the rebellion who would voice their concerns in London to members of Parliament and even the king. Aske and the rebel leadership were quick to accept the proposal, but Aske, tasked with the maintenance of the rebel force, remained in Yorkshire.

The English government continually delayed the two men that went to London, who were more like figureheads than actual leaders. Henry VIII believed that a delay in negotiations would result in the Pilgrims' frustration with leadership and disorganization, thereby reducing the energy of the movement. Henry VIII, thwarted by Aske's continued efforts in Yorkshire, finally suggested that the rebels produce a written list of demands. As the representatives journeyed back to Yorkshire to begin their work, the king ordered Norfolk to handle the rebellion by any means necessary.

At the royal castle in Pontefract, rebel leadership, with the advice of supportive members of the gentry and nobility, penned the 24 Articles or the demands of the Pilgrimage of Grace. Presented to the Duke of Norfolk at Doncaster on the sixth of December, the 24 Articles included recognition of the right to devise by will and requested an emphasis on common law to end the arbitrariness of the King's judiciary. Both of these provisions were undoubtedly tied to the alterations in property law forged during Henry VIII's reign. Although the ruling was issued through common law, the



prohibition on bequeathing feudal property decided in 1532 and affirmed by the verdict of the Lord Dacre case was arrived at through completely arbitrary methods. Without such an advantageous position resulting from this arbitrary ruling, Henry would have never been able to secure such favorable legislation as the Statute of Uses. Additionally, the rebels' demand for the right to devise property by will would have negated the controversial statute, the course of action that the Pilgrims (especially the gentry) preferred. Though the Duke of Norfolk was not authorized to address the demands, he made three assurances to the rebels if they immediately disbanded. Norfolk, on behalf of Henry VIII, promised the rebels that the king would receive their demands, Parliament would discuss the provisions at York, and the Pilgrim's participants would be pardoned. Norfolk's previously established credibility with the rebels convinced Aske to disband the Pilgrims, playing right into Henry's hand.

Although there was some opposition to Aske's decision, a majority of the Pilgrims believed in Henry's good will, and that he would follow the provisions negotiated between the Pilgrims and Norfolk. After the disbandment, an uneasy tension fell over the north. Agitators, in an attempt to rally further resistance, disseminated the rumor that pardons would not be issued for the entirety of the participants.<sup>79</sup> Pilgrim-opposed royal reforms continued and even expanded. Promised a Parliament in York, the Pilgrims were displeased with the pace that Henry was taking in addressing their concerns. The palpable tension resulted in Bigod's Rebellion, the final uprising of the Pilgrimage of Grace.

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<sup>79</sup>M.L. Bush, "The Tudor Polity and the Pilgrimage of Grace," *Historical Research* 86 (2006): 67.

Beginning in February of 1537, Bigod's Rebellion was a response to the failure of the Henrician government to address Pilgrims' concerns. Beginning in Cumberland and Westmorland, rebels attempted and failed to seize Kingston-Upon-Hull and Scarborough. Although itself a complete failure, the Rebellion was significant because of who was punished. Despite the active participants utter obliteration by Norfolk's forces, Henry VIII believed this did not go far enough to ensure the permanent peace of the north.<sup>80</sup> Robert Aske and other previous Pilgrim leadership, the majority of which tried to prevent and eventually denounced Bigod's Rebellion, were arrested by Norfolk following his altercation with rebel forces even though those arrested were not among the rebels. In fact, following the agreeable settlement with Norfolk and meeting the king personally, Aske had been considered one of Henry VIII's staunchest supporters in the region. He was well aware that another rebellion jeopardized the limited progress already made, so his participation or even toleration of uprising ran counter to his objectives. After being tried and convicted of treason in May of 1537, Aske was executed in York the following month. In the end, the Crown used the unattached and non-threatening rebellion to eliminate any trace of dissent in an attempt to bypass and discourage further evaluation of controversial Henrician reform. Although successful in eliminating major leaders of the movement, Henry understood the demonstration's demands were broadly appealing and would resurface if concessions were not made.

The Pilgrimage of Grace was arguably the most threatening rebellion of Henry VIII's reign. Twice commanding the direct support of over 35,000 men in northern England alone, the Pilgrimage's broad appeal (engendered by the diversification of social

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<sup>80</sup> S.T. Bindoff ed., "Sir Francis Bigod," *The History of Parliament: The House of Commons 1509-1558* (Somerset: Haynes Publishing, 2006).

class found within the movement) would have undoubtedly increased the force's size as the rebels marched toward London. Henrician reforms drastically departed from established English tradition. Henry radically transformed religion and property law, two of the most influential components of England's feudal society, leaving Englishmen to assume no aspect of society was beyond reform.<sup>81</sup> Additionally, the threat of foreign support or invasion was imminent following England's schism with the Roman Church. The leaders of the Holy Roman Empire and France had already met on a number of occasions to discuss the possibility of invasion, inspiring Henry's fear that a domestic uprising would set their plans in motion. Further, Pilgrims of the gentry and nobility were respected abroad and thought to be in communication with foreign regimes. Henry VIII, although having already eliminated any possibility of immediate revolt, moved to eradicate the gentry's concerns to ensure the movement's total defeat.

The gentry's support of the Pilgrimage of Grace gravely concerned Henry. The gentry's participation in the Pilgrimage of Grace immediately enhanced the rebellions' effectiveness. Medieval rebellions were typically confined to two categories of participants: the aristocracy and the commons. That is not to say the gentry had never participated in rebellions, but their role was usually minimal, infrequently leading peasants or commoners but rarely propagating their collective interests. In the case of the Pilgrimage of Grace, the gentry almost immediately established control of the movement. Although officially led by the vicar of Louth (a monk) and Captain Cobbler (a shoemaker), the earliest of the Pilgrimage's efforts was rumored to have been

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<sup>81</sup> M.L. Bush, "The Tudor Polity and the Pilgrimage of Grace," 65.

significantly influenced by two local members of the gentry, motivated by grievance with the Statute of Uses, who had hoped their actions would stimulate a foreign invasion.

The gentry's ties to the Pilgrimage of Grace became explicit after Robert Aske established his leadership in the Yorkshire Rebellion. Aske, the son of a gentry family, even though captured by rebels in the Lincolnshire uprising, became sympathetic to the commons following the king's reaction to their demands. Granted that the entirety of the motives behind their participation and which of those was most important is difficult to discern, the gentry's participation in the Pilgrimage was very possibly forced. Although scholarship is divided on the issue, as Aske himself was unclear, the evidence seems to establish that Aske's participation was genuine. He not only quickly assumed control but also focused the rebellion's purpose on its theological pursuits. While the Lincolnshire Rebellion's demands did include the repeal of the Statute of Uses, Aske cemented this provision as an important facet of the Pilgrimage's intended consequences.<sup>82</sup> Although some scholars do not believe in Aske's genuine support of a repeal of the Statute, his intent is made clearer by his reference to aristocratic supporters of the Pilgrims as the baronage (i.e. one who is subject to feudal incidents).<sup>83</sup> Nobles and gentry alike must have been worried as their once protected estates were now open to fiscal feudalism's forays.

Aske's critical support quickly elicited further gentry backing, most notably that of Sirs Thomas and Ingram Percy. Collective gentry support, better prepared to approach and persuade social elites, encouraged some members of the higher aristocracy to at least

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<sup>82</sup> Ibid., 67.

<sup>83</sup> M.L. Bush, "'Enhancements and Importunate Charges': An Analysis of the Tax Complaints of October 1536," *Albion Quarterly* 22 (1990): 417.

consider the Pilgrimage's platform, although many fled or assented under duress. Gentry support would not only lend credence to the Pilgrimage's efforts but also better order the movement to increase their chance of success. More educated and socially aware than their commons allies, the gentry's leadership better organized and utilized the Pilgrims. For example, Aske ordered the Pilgrims to lay siege to the castle at Pontefract. In doing so, Aske secured a fortified position for the rebels and some local nobility sheltered there. Lincolnshire leadership, on the other hand, advocated the occupation of Lincoln Cathedral, a structurally significant building but of less usefulness than a royal castle. The emergence of the gentry as able leadership of a rebellion initiated by the commons worried Henry VIII, whose sweeping changes would undoubtedly meet some resistance. This anxiety led the monarch to address the gentry's primary concern: The Statute of Uses.

As a means to quell the gentry's agitation that motivated their threatening leadership of the Pilgrimage of Grace and future possible uprisings, King Henry VIII enacted the Statute of Wills (1540). Effectively negating the Statute of Uses' provisions, the Statute of Wills affirmed the right of a tenant-in-chief to devise by will a maximum of two-thirds of their property. The remaining third, subject to the obligations of feudal tenure, would alone remain as a potential source of revenue for the Crown. The legislation's terms were equivalent to those rumored to be Henry's offer in the failed 1529 attempt at compromise. Given his extensive efforts to secure royal incidents over the entirety of a subject's property, Henry's legal retreat would be puzzling if not for other developments. The primary objective of Henrician reform concerning enfeoffment to use was to bolster royal coffers. Henry's pursuit of feudal incidents was more financial

that protective in nature. While the use placed limitations on the enforcement of feudal incidents, Henry was less concerned in protecting a feudal right than increasing his revenue. By 1538, the Crown's schism with the Roman Catholic Church had resulted in the dissolution of a majority of England's monasteries. The Crown retained title to these lands and their present movable goods, generating a sizable amount of potential revenue. As a consequence of the dissolution of the monasteries, King Henry VIII was "the richest King England had ever known, and had good reason to be satisfied with the results of the Dissolution."<sup>84</sup> The revenue resulting from obligations of feudal tenure, consequentially, was irrelevant. King Henry VIII, without sacrificing necessary funds, was then able to concede revenue from feudal incidents to the gentry in hopes that his approval of devising by will would, among other things, engender their future loyalty.

In conclusion, the Statute of Uses (1536) was enacted to minimize the effect an enfeoffment to use had upon the Crown's feudal revenue. Forced upon a defeated Parliament following a calculated royal campaign on devise's legal grounds, the Statute of Uses was preceded by an attempt at compromise aimed to avoid an authoritarian royal intervention. This conflict remains as one example of the frequent confrontations between lord and vassal over the right to feudal incidents and flexible inheritance settlement in medieval England. Unlike the subject of many preceding confrontations, enfeoffment to use was a legal devise well-entrenched in over two centuries of precedent. Parliament, unwilling to weaken their method and incapable of foretelling the Crown's strategy, rejected Henry VIII's attempts at compromise. Following the complete dismantling of the devise's legal grounds and unyielding prosecution of royal rights in the Lord Dacre case,

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<sup>84</sup> Roger Lockyer, *Tudor and Stuart Britain: 1485-1714*, 82.

Parliament assented to reform. The positive effects the Statute of Uses had on royal revenue would be short lived. The Pilgrimage of Grace, a popular uprising that was led threateningly by the gentry, opposed the Statute and demanded action. King Henry VIII, concerned with losing gentry support amidst a period of significant reform, hoped to appease the influential group by negating the Statute of Uses through the Statute of Wills (1540).

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