Studies in the History of the English Feudal Barony

Painter, Sidney

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CHAPTER IV

FRANCHISAL RESOURCES

In the preceding chapter we have discussed the public obligations, both feudal and non-feudal, which burdened the English baronies. Now we must turn to an examination of the barons' resources. I am using resources in the broadest possible sense—as meaning anything that contributed to the satisfaction of their desires. Resources that furnished prestige and power directly are fully as important as those that did so indirectly by increasing baronial wealth. For convenience in discussion I have divided the resources of English barons into five more or less logical classes—franchisal, feudal, manorial, natural, and commercial. Franchisal resources consist of the prestige, power, and money income derived from the performance of essentially public functions by the baron. Feudal resources comprise the services and financial dues owed by the baron's vassals. Manorial resources include all the benefits drawn directly or indirectly from agriculture such as the profits from the cultivation of the manorial demesne and the rents paid by villains and free tenants. The fourth class consists of the income obtained from the exploitation of natural resources like woods, mines, and fisheries. Finally most barons had some resources that were essentially commercial—profits from fairs and markets and rents of burgage tenants.

The term franchise as used in mediaeval England meant any privilege that could in theory be derived from no source except a royal grant. The exemptions from public burdens discussed in the preceding chapter were called franchises and so were authorizations to make parks and warrens and to hold fairs and markets. I am using the word in a more limited sense to include only the privilege of performing public functions. These functions might be executive or military, but they were more commonly simply police and judicial. As the performance of public function involved the enjoyment of its perquisites, franchises were a source of money revenue. The man
who exercises judicial and police authority obtains power over those subject to his jurisdiction. Finally the enjoyment of high prerogatives which were essentially a part of the public authority enhanced one's position in feudal society. In short franchises were highly desirable possessions from the baron's point of view.

Before embarking on the history of English baronial franchises, it seems necessary to glance at the background of the subject. When William of Normandy conquered England, he found a land with a well-developed system of government. There were two distinct types of institution—royal and popular. The king and his officers, the earls and the sheriffs, exercised a certain amount of authority. They were the military leaders of the nation. The sheriffs under the king's direction administered the royal estates and collected the royal revenues. The king, presumably with the advice of his Witan, could legislate. Men convicted of certain major crimes were at his mercy. The earl and the sheriff presided over the popular courts. The profits from these courts were divided among king, earl, and sheriff. But the king neither prosecuted nor tried men charged with the crimes which placed them at his mercy. The earls and sheriffs were moderators rather than judges in the popular courts. Men charged with crime were prosecuted, tried, and convicted or acquitted in accord with customary law and royal legislation as interpreted by the suitors of the court. The accused who refused to appear was outlawed. In short the sphere of government occupied by the king and his officers was extremely limited. By far the chief part of government as far as ordinary men were concerned was carried on by the shire and hundred courts.

Private jurisdiction was not unknown in Anglo-Saxon England. *Sac* and *soc* in all probability implied rights of jurisdiction over minor offences. Privileged landholders had *infangenteof* and *utfangenteof*. While the exact content of these franchises is far from clear even in the thirteenth century to say nothing of the eleventh, in general they gave the right to hang thieves caught with stolen property. These seem to have been real rights of jurisdiction. Other private interests in the administration of justice were probably purely financial. The
king at times granted hundred courts to private individuals. A few great ecclesiastics shared the royal interest in some of the more serious offences. But as the crown's connection with the popular courts was confined largely to collecting the profits, it seems likely that the same was true of its grantees. In short the landholder who possessed a hundred court simply received the proceeds.

The knights who followed Duke William to England represented most of the provinces of northwestern France. They came from Normandy, Brittany, Flanders, Maine, Anjou, and the duchy of France. So diverse were the political conditions and feudal customs in these regions that it is extremely difficult to generalize about the ideas of government brought by the conquerors to England. One can say that with the exception of part of Brittany these regions had all been included in the Frankish state—in other words in the ninth century their political institutions had differed but little from those of Anglo-Saxon England. But the development of feudalism had wrought great changes. To an extent that varied from fief to fief the feudal lords had absorbed the authority of the central government. In Brittany the baron enjoyed full powers of justice in his lands. In Normandy the "justice of the sword" was in general reserved by the duke. But however the power might be divided, the connection between feudal lordship and rights of jurisdiction was firmly established in French custom and practice. The men who received fiefs from the Conqueror expected such privileges.

The influence of French custom on English baronial ideas did not end with the conquest. Many barons held lands in both England and Normandy. English barons and knights followed the Norman kings on their continental campaigns. Henry I granted English baronies to Breton and Angevin newcomers. The crusades introduced the barons of England to their peers from all over Europe. Certainly until the thirteenth century and probably later still the English baronage was French in language and to a great extent in ideas. The English barons must have been fully aware of the privileges enjoyed by their French contemporaries. I suspect that this knowledge had much to do with their avidity for franchises of all sorts. Un-
fortunately I can find only one clear case of this influence. In 1249 Roger Bigod, earl of Norfolk, claimed certain privileges on the ground that the count of Gisnes had them and that he was an earl holding as freely from the English king as the count did from the king of France.

It seems clear that the Conqueror's barons and their successors were unlikely to be content with the limited privileges enjoyed by their Anglo-Saxon predecessors. They would continually strive to increase their power and revenue. If English institutions had remained static, they could only have done this by encroaching on the authority of the popular courts. But the Norman and Angevin kings were determined innovators who steadily increased the scope of royal authority. Their legislation created new police and judicial functions. The barons struggled zealously to obtain for themselves as many as possible of these new powers. Thus while royal legislation to some extent regulated and even decreased baronial authority, it also created new franchises for them to seek.

Let us now turn to the examination of the various franchises in detail. I shall start with the most common and consider them in the approximate order of their importance judged by the prestige involved in their possession. This order is in general the exact reverse of that in which the franchises appear in the thirteenth century hundred and quo warranto inquests. The allied but slightly different subject of hereditary possession of public offices will be treated at the end of the chapter.

The most widely held of all franchises was that known as 

sac and soc. According to Pollock and Maitland the earliest authentic appearance of the term is in a writ issued by King Cnut in favor of the archbishop of Canterbury. It appears regularly in the few surviving charters of the Conqueror and his sons. By the time of Henry I this franchise was apparently enjoyed by all tenants by knight service. The general meaning of sac and soc is clear—it meant the right to hold a court, try cases, and receive the profits. Unfortunately it is not certain what cases the possessor of this franchise could try. Bracton

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3 Leges Henrici, c. 20, 2; c. 27.
states that the lord with *sac* and *soc* had jurisdiction over the inhabitants of his demesne manors in cases of minor affrays in which men were beaten or wounded and in which no charge was made that the peace of the king or sheriff had been broken. He could also hear cases involving the wounding of animals and debts sued for without a royal writ.\(^4\) A brief reference to the subject in Glanville indicates that the same situation existed at the end of the twelfth century.\(^5\) In short in Glanville and Bracton the holder of *sac* and *soc* enjoyed over his own men jurisdiction equivalent to that of the hundred court except that he lacked the right to hang thieves.

There is no clear evidence as to the extent of the jurisdiction given by this franchise under the Norman kings. The *Leges Henrici* state carefully what men the holder had jurisdiction over. In case both accuser and accused were the men of the same lord who had *sac* and *soc*, the plea would be heard in his court. If they were men of different lords who had this franchise, the case would go to the court of the accused’s lord.\(^6\) Presumably if the lord of the accused lacked *sac* and *soc*, the case would go to the hundred court. But the *Leges* are far from specific as to what cases could be heard by these lords with *sac* and *soc*. There is a long list of royal pleas which certainly were not in their jurisdiction. Reference is made to pleas belonging to the sheriff, but they are not specified.\(^7\)

Pollock and Maitland seem to have believed that in the eleventh century *sac* and *soc* was an extensive franchise covering all pleas except those reserved to the crown.\(^8\) They also believed that the pleas of the crown were far fewer under the Conqueror than under Henry I.\(^9\) I am inclined to believe that the latter statement is true, but I have grave doubts about the former. In the eleventh century *soc* was occasionally used in a broad sense to mean simply jurisdiction. In this use it could cover the wide franchises enjoyed by the great ecclesiastical lords. But I am convinced that the ordinary grant of *sac* and

\(^4\) Bracton, *De legibus*, II, 436.
\(^5\) Glanville, *De legibus*, p. 42.
\(^6\) *Leges Henrici*, c. 25; c. 57, 1.
\(^7\) *Leges Henrici*, c. 9, 11; c. 10, 1; c. 20, 2-3.
\(^8\) *History of English law*, I, 563-565.
soc conveyed no such powers. My reason for this belief is as follows. The usual grant in the Norman period gave sac, soc, thol, theam, and infangentheof. Infangentheof was the right to hang a thief caught with the stolen goods after a hot pursuit. It seems incredible to me that if sac and soc conveyed a wide franchise, it should be necessary to add to it to enable a lord to hang a hand-having thief. In short, I believe that sac and soc in the Norman period conveyed much the same jurisdiction that it did in the time of Glanville and Bracton.

The franchise of sac and soc is of no great interest to the historian of the English barony because it was too widely held to be called a baronial privilege. There is in fact some doubt whether it should be called a franchise. Pollock and Maitland consider it a mere attribute of landholding.10 Yet the Leges Henrici make clear that the king could grant land and retain the soc, and it speaks of domini who lack this privilege.11 But such men must have been far below baronial rank and are of no interest to us.

Next above sac and soc in importance comes a group of franchises that were enjoyed by most lords of any importance—the right to enforce the assize of bread and ale, view of frank-pledge, and infangentheof. All barons and honorial barons possessed these privileges in their demesne manors. The first two were also enjoyed by many mesne tenants whom it would be difficult to classify as honorial barons. Mr. Stenton believes that this general level of privilege marked baronial status in the days before there was any clear distinction between royal and honorial barons.12

The assize of bread and ale was apparently created by the legislation of Henry II. In the 1170's we begin to find on the pipe rolls records of amercements for its infraction.13 We hear practically nothing of the right to enforce this assize as a franchise before the great inquests of the thirteenth century where it appears as a privilege long enjoyed. Basing his statement on an inquest of 1234 Bracton calls this a plea belonging

10 Ibid., p. 567.  
11 Leges Henrici, c. 19, 2-3; c. 57, 8.  
to the sheriff and so outside the jurisdiction of the ordinary holder of *sac* and *soc*. The hundred and *quo warranto* inquests show that it was held by all lords of any importance. I suspect that Henry II made no serious attempt to monopolize for the crown the profits from enforcing this assize and allowed it to be exercised freely by men of position.

For the first century after the creation of the assize of bread and ale infractions of it were apparently always punished by amercement. But a statute of Henry III prescribed corporal punishment for flagrant offences. This seems to have been ignored by most franchise holders. As far as I can discover the franchise was at best not very profitable, and the holders were unwilling to give up the money penalties and go to the trouble of erecting the pillories and tumbrils required to administer corporal punishment. But in the *quo warranto* proceedings the king's officers were inclined to insist that lack of this equipment forfeited the franchise. Many lords were obliged to repurchase their privileges by paying a small fine.

The most valuable of all the lesser franchises was that known as "view of frankpledge." The frankpledge system by which ten men were bound together and sworn to produce any of their number sought by the courts had its origin in Anglo-Saxon institutions but took definite form under the Norman kings. The *Leges Henrici* state that a specially full session of the hundred court consisting of all the inhabitants of the hundred both free and unfree should be held twice a year to make sure that everyone was in frankpledge. No specific mention is made of the sheriff, but presumably he presided over such meetings. Certainly by the time of Henry II this official was responsible for supervising the frankpledge system. The legislation of Henry II placed on the sheriff the responsibility for receiving presentments involving major offences, and this business was transacted at these special sessions of the hundred. The sheriff also heard his own pleas on this occasion.

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14 Bracton, *De legibus*, II, 437; Bracton's *note book*, III, 129.
15 Statutes of the realm, I, 199-200.
17 *Leges Henrici*, c. 8, 1-2.
18 *Assize of Clarendon*, c. 8, Stubbs, *Select charters*, pp. 143-146.
19 Morris, *The frankpledge system*, p. 117.
result was the bi-annual "sheriff's tourn" mentioned in the second reissue of *Magna Carta*. But in *Magna Carta* only one of these sessions was described as devoted to supervising the frankpledge system while the other was reserved for presentments and pleas. Hence from 1217 at least the view of frankpledge was simply one of the functions of the sheriff's tourn.

There is no suggestion in the *Leges Henrici* that any lord had the right to supervise the frankpledge system in his lands or to withhold his tenants from the bi-annual special meetings of the hundred court. As we shall see when discussing the franchise called "return of writ," it seems likely that a few great ecclesiastical and perhaps some lay lords could bar the sheriff from entering their lands. Such men must have supervised the frankpledge system themselves. Henry II tried to deprive even these lords of this privilege. The ninth article of the Assize of Clarendon decrees: "And let there be no one inside or outside a castle, not even in the honor of Wallingford, who forbids the sheriff to enter his court or liberty to view frankpledge, . . ." There is no reason to believe that Henry succeeded in this effort to reduce the privileges of these great lords, but the wording of the passage seems to indicate that the men who claimed the right to ban the sheriff were few and highly privileged.

The charter of 1217 provided that the sheriff should in viewing frankpledge respect all liberties existing in the time of Henry II or acquired since. Richard and John had granted this franchise fairly generously—in fact most charters issued by them which conferred special rights included it. The same was true in the reign of Henry III. But as I have pointed out before, such grants were not actually very numerous. In short the laws and the charters would suggest that the right to hold view of frankpledge was a rather rare franchise possessed by a few highly privileged great lords and some special favorites of the crown. But when one examines the hundred and *quo*

20 *Charter of 1217*, c. 42.
21 *Assize of Clarendon*, c. 9.
22 *Charter of 1217*, c. 42.
warranto inquests of the late thirteenth century, it becomes apparent that view of frankpledge was a very common franchise—almost as common as the right to enforce the assize of bread and ale. Moreover, it is interesting to note that there was no uniformity in respect to the conditions under which this privilege was exercised. One baron would have the right to hold the view on his demesne and take the profits. Another could hold the view but was obliged to pay the sheriff either a fixed sum or part or all of the profits. Then some lords could hold the view only in the presence of the sheriff. In these cases the sheriff might get none of the proceeds, part, or all. This wide variety of arrangements, varying from fief to fief in the same shire and hundred, seems to me to point to individual bargains with the sheriffs. Only in the case of Roger de Mowbray mentioned above can I find definite evidence of such a bargain, but the existence of many more seems clear. What is more, the crown at times recognized the variations. Usually in John's charters the grantee was simply given the franchise, but in one case at least it was limited. Fulk D'Oiry was granted the right to hold the view for his tenants in the manor of Gedney. He was to summon the sheriff to supervise the proceedings, but if that official did not come, he could proceed without him. In any case the profits went to the lord. Under these circumstances I doubt that the sheriff came very often.

The profits gained by the sheriff from viewing frankpledge formed a part of his farm and hence were only of indirect interest to the crown. Exposed to the pressure of the barons to permit them to exercise this function, he made the best bargain he could. Undoubtedly there was some pure usurpation especially in time of civil war. The sheriff on his side was not above taking advantage of such an opportunity as the death of a great lord or the carelessness of a baronial bailli to claim his rights in a formerly exempt manor. There is no way of

24 Placita de quo warranto, pp. 3-4, 85, 88-89.
25 Ibid., pp. 424, 429.
26 Ibid., p. 483b; Rot. hund., I, 471, II, 746.
27 Placita de quo warranto, p. 429.
29 Close rolls, 1256-9, p. 316; Calendar of inquisitions miscellaneous, I, 120-121.
determining in what period most of the bargains between lords and sheriffs were made. Mr. Morris is certainly safe in saying the wide extension of this franchise took place during the first century after 1166.\textsuperscript{30} What evidence we have seems to indicate that the major part of the process took place in the middle years of the thirteenth century.

The privilege of holding view of frankpledge usually exempted the holder and the tenants on his demesne from attending the sheriff’s tourn and permitted the lord to exercise the functions performed by the sheriff on these occasions. But here again there was no uniformity. Some lords with view of frankpledge were not exempt from the tourn. Others simply appeared in person or by bailli and claimed their franchise. In short the bargains made with the sheriffs seem to have included the tourn as a whole as well as view of frankpledge.

It seems clear that the chief feature of the franchise of view of frankpledge from the barons’ point of view was the police power it conferred. This is demonstrated by the large numbers of cases where the lord held the view but gave the profits to the sheriff. When the franchise included the exercise of the functions of the sheriff in his tourn, it conferred extremely wide police power, and even when it was limited to the view, the authority given was important. Jurisdiction has always been closely connected with power. The lord who held this franchise had a highly effective means of controlling his tenants.

In discussing the right to enforce the assize of bread and ale and to hold view of frankpledge I have assumed that these privileges were limited to the holder’s demesne. As a rule this was the case. The relations between lord and vassal were purely feudal and had no connection with the non-feudal public burdens and jurisdictions. But the example of the baronies of France and the English palatinates where feudal and public authority were combined was always before the eyes of the English barons. They strove continually to make the fief the unit of local government in place of the shire and hundred.\textsuperscript{31} The wording of the Assize of Clarendon suggests that the whole honor of Wallingford, demesnes and fees, had its own

\textsuperscript{30} The frankpledge system, p. 135.

\textsuperscript{31} For an excellent example see Placita de quo warranto, p. 12.
views in 1166.\textsuperscript{32} The hundred and \textit{quo warranto} rolls show that the Earls Warren enjoyed this privilege and make no suggestion that it was a recent usurpation. As these earls had been very highly privileged from an early date, their possession of this franchise may have gone back to Norman times. King John granted Earl Robert of Leicester exemption from "paying money for view of frankpledge" for his demesnes and fees, and there is no evidence that would justify us in questioning the statement in the charter that this privilege had been enjoyed by Count Robert of Meulan. Whatever the exact intention of John's charter may have been, in the inquests we find the lords of the honor of Leicester holding view of frankpledge in their fees and taking the profits.\textsuperscript{33}

While it seems likely that the baronies mentioned above had the franchise of view of frankpledge for both demesnes and fees as early as the reign of Henry II, there can be little doubt that most of those who enjoyed it at the time of the hundred and \textit{quo warranto} inquests had acquired it comparatively recently. Although parts of the great honor of Richmond seem to have enjoyed it before Henry III's reign, only that king's charter to Peter of Savoy freed all its fees from views held by the sheriffs.\textsuperscript{34} About half of the grants conferring view of frankpledge issued by John and Henry III extended the franchise over both demesnes and fees.\textsuperscript{35} In addition to the actual royal grants there were some usurpations. Apparently when William Marshal and Gilbert de Clare withdrew their fees of the honor of Giffard from suit at the shire and hundred courts, they quietly usurped the privilege of holding view of frankpledge.\textsuperscript{36} Among the many usurpations committed by the earls of Gloucester during the civil wars of Henry III's reign the withdrawal of their tenants from the sheriff's tourn and view

\textsuperscript{32} \textit{Assize of Clarendon}, c. 9.
\textsuperscript{33} \textit{Calendar of charter rolls}, I, 180; \textit{Close rolls}, 1256-9, p. 316; \textit{Calendar of inquisitions post mortem}, II, 248.
\textsuperscript{34} \textit{Close rolls}, 1234-7, p. 79; \textit{ibid.}, 1256-9, p. 62; \textit{Rot. hund.}, I, 51-53.
\textsuperscript{35} \textit{Calendar of charter rolls}, I, 54, 181; \textit{Close rolls}, 1231-4, p. 196; \textit{ibid.}, 1234-7, p. 238; \textit{Facsimiles of early charters from Northamptonshire collections}, no. XVII.
\textsuperscript{36} \textit{Close rolls}, 1247-1251, p. 102; \textit{Rot. hund.}, I, 23b, 29, 31b; \textit{Placita de quwarranto}, p. 86.
of frankpledge was one of the most common.\(^{37}\) While Earl Richard of Cornwall could probably claim with justice that his honor of Wallingford had long enjoyed this franchise, he extended it to other fiefs held by him.\(^{38}\)

The right to hold view of frankpledge in one's fees was a very high franchise. It was granted to a few great barons and some royal favorites. Only the most powerful could usurp it successfully. It was as valuable as it was difficult to obtain. The possession of extensive police power over the tenants of his vassals was of great advantage to a baron. It must have done much to hold the barony together as the purely feudal bonds decayed. Moreover the fees collected from view of frankpledge in the whole of a large barony amounted to a fairly attractive sum. Exact figures are hard to obtain except for individual manors, but at the death of Edmund of Cornwall in 1300 the views of the honor of Wallingford were worth £16 6s a year and those of the honor of St. Valery £6 14s 4d.\(^{39}\) Although these were not great sums, they were large enough to interest a thirteenth-century English baron.

The right to enforce the assize of bread and ale was so widely held that it can have made little difference to the crown whether it was possessed by the baron or his vassals. In general it seems clear that it belonged to the man who held the land in demesne. But there were some exceptions. Edward II specifically gave Peter Gaveston this privilege in the whole honor of Knaresborough—over his own tenants and those of his vassals.\(^{40}\) The inquests indicate that the lords of the rapes of Sussex held this privilege in all their fees except for the demesnes of a few honorial barons.\(^{41}\) But these seem to have been exceptions. The franchise conferred little power and prestige and yielded an insignificant revenue. The barons were inclined to leave it to their vassals.

The franchise called *infangentheof* was less widely distributed than the right to enforce the assize of bread and ale


\(^{38}\) For instance to the honor of St. Valery. *Calendar of inquisitions post mortem*, III, 465.


\(^{40}\) *Calendar of charter rolls*, III, 139-140.

\(^{41}\) *Placita de quo warranto*, p. 751; *Rot. hund.*, II, 201.
and to hold view of frankpledge. With some few exceptions its possession was limited to barons and mesne tenants important enough to be called honorial barons. As defined in the thirteenth century it allowed the holder to hang an inhabitant of his demesne caught on the demesne in possession of freshly stolen property. Since there is no evidence to the contrary, one must assume that its meaning was the same in the Norman period. Mr. Stenton believes that by the thirteenth century the holder of his franchise could not hang a thief without the supervision of a royal official. The case he cites in support of this view does not seem to me conclusive. In 1260 Peter Achard, a minor tenant-in-chief, was presented by a jury for hanging a thief convicted in his court sine aliquo bal­livo domini regis. The presentment added that the thief was hanged on an oak where as far as the jurors could remember no one had been hanged before. The record states that Peter paid a fine of forty shillings, but does not specify the offence. Mr. Stenton states that the irregularity lay in the absence of a royal officer, but I am not so sure. There is clear evidence that the use of improvised gallows was considered irregular in the thirteenth century. Other evidence shows that men were fined for hanging thieves in the absence of a royal officer, but in all the cases I know of the lord involved was of very minor importance. Bracton in his discussion of infangentheof makes no mention of the need for the supervision of a royal officer. In short I suspect that Mr. Stenton has generalized too freely. Local custom may have decreed that certain holders of this franchise were limited to exercising it under supervision, but the paucity of references to this requirement convinces me that it was not a general rule.

As far as I can discover infangentheof was always limited to a lord’s demesne and was never exercised over his fees. Although the thirteenth-century inquests seem to show some exceptions to this statement, they are apparent rather than real. Infangentheof when not exercised by a franchise holder be-

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42 Bracton, De legibus, II, 436.
43 English feudalism, p. 101 and note 1.
44 Rot. hund., I, 235.
45 For an example see Pipe roll 2 John, Pipe roll society, L, 22.
longed to the hundred. When a baron held a hundred, he exercised this right over its entire area both inside and outside his fief. In the case of compact baronies like the rapes of Sussex practically all the land in the hundreds was held by vassals of the lord. Thus the Earl Warren had infangentheof throughout his barony of Lewes, but he exercised it as holder of the hundreds contained in the rape of Lewes.46

Infangentheof supplies the best illustration of the importance of the possession of franchises to baronial pride and prestige. Practically it must have been of very slight value. If any money profits were made from it, they must have been very small. The occasions for exercising it were few and far apart—once or twice in a generation seems to have been a fair average.47 The police power involved cannot have amounted to much. Yet this franchise was continually in dispute. The crown and holders of private hundreds questioned the right of lords who claimed the franchise, and the lords defended themselves with vigor.48 The reason for this concern about a privilege of little actual value seems obvious. In France the gallows was the mark of seignorial authority—of the power over life and member. In England the franchise of infangentheof gave a baron his only opportunity to judge a capital offence. It also entitled, in fact required, him to have gallows. From the time of the Conquest its possession had marked baronial status. In short infangentheof was the highest franchise most barons and important mesne tenants could hope to possess, and it was valued for that reason.

Although unfangentheof was a much rarer franchise than infangentheof, it does not seem to have marked a higher level of privilege. According to Bracton it permitted a lord possessing it to hang a thief from outside his demesne might on the demesne with property stolen there.49 It seems impossible to

46 Placita de quo warranto, p. 751.
48 In addition to above see Rot. hund., I, 235; Placita de quo warranto, pp. 218-219, 531; Bracton's note book, II, 629-631; III, 504-5; Curia regis rolls, IV, 89.
49 De legibus, II, 436.
make any valid generalization about who enjoyed *utfangentheof*. A charter of 1290 states that all the barons of Kent possessed this franchise, but it seems clear that this was not true of England as a whole. The list of known holders of *utfangentheof* includes great lords like the earls of Richmond, lesser barons like the Aincurts, and important mesne tenants such as the Traillys. Apparently all the tenants of the honors of Chester and Huntingdon enjoyed this franchise. It was granted, though not too freely, to minor lords in royal favor. On the whole one can say that it was of little importance. It gave no great prestige beyond that conferred by *infangentheof* and was of equally slight practical value.

One of the most puzzling of English franchises was the one that permitted its holder to enjoy the profits from wrecks. A wreck was anything cast up on the shore from which no living thing survived. In Normandy and Brittany it was an important and lucrative privilege. The counts of Léon in Brittany drew a large revenue from this source. But it does not seem to have been of great importance in England. It is rarely mentioned in contemporary documents. The earl of Arundel and the bishop of Ely quarrelled over a particular wreck. The crown questioned a mesne tenant's right to the franchise. The inquests of the thirteenth century show that this privilege was enjoyed by a number of great lords. The earls of Gloucester, Richmond, Arundel, Norfolk, and Warren had the franchise in extensive areas. Apparently all tenants of the honor of Chester enjoyed it, and there is some evidence that the same was true of those who held of the honor of Lancaster. Unfortunately the descriptions given of the areas over which various lords exercised this franchise make it impossible to determine what proportion of the whole English coast was covered by them.

As the crown seems to have made no great effort to control

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50 *Calendar of charter rolls*, II, 344.
51 *Placita de quo warranto*, pp. 27, 100, 651.
53 *Rot. chart.*, pp. 106b, 128b, 129b.
54 *Curia regis rolls*, VII, 5, 57.
56 *Close rolls*, 1256-9, p. 75; *Rot. hund.*, I, 271.
this franchise and disputes about it were few, it seems safe to assume that it was of no great importance.

We have discussed the widely distributed franchises, the right to enforce the assize of bread and ale, view of frank-pledge, and *infangentheof*, and the less usual but little more exalted *utfangentheof* and wreck. Now we must turn to a distinctly higher level of privilege to examine the franchise that gave its possessor the right to hold pleas of withername. Most franchises were delegations of non-feudal public authority, but this one allowed its holder to perform an essentially feudal function that had been taken over by the crown. If the feudal system was to be effective, a lord had to be able to force his vassals to perform the services due him. When a vassal was delinquent, the lord seized his chattels to the estimated value of the service in question. Then the vassal could seek out the lord or his officer and regain his chattels either by performing the service or furnishing pledges that he would dispute the lord’s claim to the service in the proper court. If the lord seized a vassal’s chattels without due cause or refused to release them on receipt of the service or pledges, the vassal’s recourse was the plea of withername. Obviously whoever could hold these pleas could supervise and control feudal distraint.

From at least as early as the reign of Henry I the kings of England had interfered in the feudal jurisdiction of their vassals. The *Leges Henrici* state that pleas of default of justice and false judgment were royal. In France if a vassal complained that his lord refused him justice, he appealed to the court of the next higher lord. In England such cases went to the shire court or before the king’s justices. Henry II further restricted the feudal courts by insisting that actions for freehold land could only be commenced on the authority of a royal writ—the writ of right. He also introduced the grand assize which withdrew many such cases from the feudal courts. Apparently this same king began the process of making the control of feudal distraint a royal monopoly. During the last twenty years of his reign a number of entries on the pipe rolls show lords paying fines for improper distraint.

57 *Leges Henrici*, c. 10, 1.
58 "Pipe rolls 12, 14, 22, 29, 31, 32 Henry II," *Pipe roll society*, IX, 104; XII, 150; XXII, 37, 214; XXIX, 5; XXXI, 70, 182; XXXII, 46.
gives a writ of replevin—a writ ordering the sheriff to procure the release of chattels held in the course of distraint. In short it seems likely that before the time of Henry II the supervision and control of feudal distraint was the function of the feudal courts. Henry attempted to transfer this jurisdiction to the sheriff.

Henry II made it possible for the victim of unlawful distraint to bring his case before the sheriff by going to the chancery and buying a writ of replevin. He probably also allowed him to complain directly to the sheriff and authorized that officer to act on such a complaint. But there is no evidence that he attempted to make these the only legal procedures in cases of this sort. Presumably if the aggrieved vassal wished, he could take his complaint to a superior lord. The effort to bring all such cases under royal control apparently began in the reign of King John. Pleas dealing with the taking and detaining of chattels as distraint were given a new name—vetitum namii, usually rendered into English as withername—and were made a royal monopoly. In 1244 Henry III ordered the sheriffs to allow no one to hold pleas of withername unless he could produce a charter granting this franchise or prove that he or his ancestors had held such pleas before 1216. In 1252 the sheriffs were again reminded that no one could hold pleas of withername without a royal license. To Bracton withername was a plea of the crown. Because of the need for deciding such cases speedily, the sheriff could hear them, but he did so as a royal justice, and withername was not one of his own pleas.

This ingenious maneuver of giving a new name to an old

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89 De legibus, p. 153.
90 Pollock and Maitland point out that late thirteenth-century lawyers ascribed this development to John's reign. (History of English law, II, 576 note 2) In 1244 Henry III ordered that all lords claiming the right to hold pleas of withername by prescription prove usage before 1216. (Close rolls, 1242-7, p. 242.)
91 The plea of vetitum namii is mentioned in a charter dated in the first year of Richard I, but the document looks suspicious and has probably been added to. Calendar of charter rolls, II, 305-306.
92 Close rolls, 1242-7, p. 242.
93 Ibid., 1251-3, p. 228.
94 De legibus, II, 437.
plea and thus seeking to establish a royal monopoly was not entirely successful. In the reign of Edward I great barons were still calmly ignoring the innovation. The baillis of the Earl Warren in the rape of Lewes heard cases involving chattels unjustly detained in distraint, but they never called them pleas of withernamente. The countess of Aumale, lady of Plympton, followed the same practice in her great fief. If her court could not settle a case, she sent it on to the sheriff. In short if a baron could keep his tenants from taking their complaints to the chancery or to the sheriff, it was difficult to prevent him from maintaining his ancient jurisdiction. In the \textit{quo warranto} proceedings against the earl of Gloucester the king's attorney came pretty close to admitting that little could be done about a powerful baron who continued to handle cases of unlawful distraint as long as he did not venture to hear those instituted by the authority of a royal writ.

I can find no charter that specifically grants to a layman the right to hold pleas of withername, but it seems clear that the royal government considered that the grant of the higher franchise, return of writ, included this privilege. Return of writ banned the sheriff from the lands of the franchise holder and hence automatically prevented him from performing his functions in respect to pleas of withername. A few barons claimed this franchise on the basis of general statements in their charters. The lord of the barony of Ongar maintained that Henry II had given the hundred of Ongar to his ancestor Richard de Lucy with all the rights the king enjoyed in it, and hence he was entitled to hold pleas of withername. The king's attorney replied that no such plea had existed in Henry II's day. The earl of Norfolk claimed this franchise on the basis of a grant by Henry II of a manor with "all liberties." These arguments seem rather weak—withername was clearly not a plea belonging to hundreds or manors. Those whose charters gave them the right to hold all the pleas of the sheriff had a fairly strong case even though Bracton insisted that withername was not really one of these. Apparently the successors of Baldwin

\textsuperscript{65} \textit{Placita de quo warranto}, p. 751.  
\textsuperscript{66} \textit{Ibid.}, p. 177.  
\textsuperscript{67} \textit{Ibid.}, p. 183.  
\textsuperscript{68} \textit{Ibid.}, p. 232.  
\textsuperscript{69} \textit{Rot. hund.}, I, 471.
de Bethune who received a grant of this type from John held pleas of withernamé, and their right was not questioned. Then there were some usurpations. The earl of Gloucester was not content to ignore the royal monopoly and hear his tenants' complaints of unjust distraint without calling it withernamé. He held pleas of withernamé commenced by the king's writ.

On the whole the crown had been successful. An ordinary feudal process had become a plea of the crown. The king through the sheriffs supervised and controlled feudal distraint. The fact that the most privileged group of barons, those holding the franchise of return of writ, and a few others continued to hold pleas of withernamé did not seriously affect the picture. Two factors go far towards explaining the crown's comparatively easy triumph in so important a matter. The great baronies were in decay, and the barons were losing their hold over their vassals. Furthermore the vassals may well have preferred to have the sheriff control distraint. Hence only the most powerful and favored barons could resist the crown's encroachment on their feudal privileges.

Between the franchises so far discussed and the higher ones to which we must now turn there was a fundamental distinction. While the former did not involve the exclusion of all royal officers, the latter did. The conception of "immunity" as developed in the Merovingian and Carolingian states formed the basis for the dispersion of public judicial and police authority throughout the French feudal hierarchy. No French noble of baronial status was obliged to allow anyone else's officers to meddle with such matters in his fief. Thus feudal tradition made the question as to whether or not your lord's agents could enter your land a fundamental one. If you could exclude them, you occupied an obviously privileged position and enjoyed the prestige associated with it.

The question of the extent to which this privilege was enjoyed by English barons in the Norman period is extremely obscure. In the charters of the Conqueror and his sons one

\[70\] Rot. chart., pp. 31-32; Placita de quo warranto, p. 330.

\[71\] Ibid., p. 183.
occasionally finds the so-called *non-intromittat* clause. Unfortunately there is no evidence as to the precise construction placed on this expression by contemporaries. If the words be taken literally, it would seem to exclude the sheriff and his deputies and hence be the equivalent of immunity. I have never found this clause in a grant made to a layman during the Norman period. Until the extant charters of Henry I have been fully collected and published, it is not safe to make positive statements, but at this time one can only say that such grants seem to have been confined to great ecclesiastical barons.

Despite the lack of absolutely conclusive evidence, it seems clear that during the Norman period the king's officers were excluded from a few lay baronies. The Conqueror's writs concerning Cheshire, Shropshire, and Herefordshire did not include a sheriff among the addressees. A mandate of Henry I dealing with the barony of Holderness was addressed to Count Stephen of Aumale, his sewer, and his ministers. These are the only immunists for whom I can find definite contemporary evidence, but the records for the early years of Henry II suggest that there were others. Cornwall did not appear on the pipe rolls until after the death of Earl Reginald de Dunstanville. There can be little question that royal officers were excluded from it under his rule. Although the eleventh chapter of the Assize of Clarendon which forbids anyone to prevent the sheriff from entering his lands to arrest offenders mentions specifically only the honor of Wallingford, its wording clearly implies that there were other baronies that had privileges that might obstruct the enforcement of the assize. Later evidence gives hints as to the identity of some of these fiefs. In 1170 the men of the Isle of Wight were fined £100 for twice failing to appear before the king's justices. As the Isle had once belonged to Roger de Montgomery, earl of Shrewsbury, its inhabitants may well have been relying on an ancient right.

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74 "Pipe roll 16 Henry II," *Pipe roll society*, XV, 126.
Then in the years 1175-9 the custodians of the honors of Berkhamsted, Richmond, Tickhill, and Wallingford accounted for the chattels of felons condemned under the Assize of Northampton. Presumably this meant that had these baronies not been in the king's hands, these chattels would have gone to the barons. Now the right to the chattels of felons and fugitives did not necessarily imply the exclusion of the sheriff, but it usually did. Certainly Henry II was forced to recognize that these were highly privileged baronies. I believe that their rights went back to the Norman period and included immunity from the sheriffs. It is important to notice that we know of the special status of these baronies because they were in the king's hand. Similar privileges in the possession of a baron would leave no record in our sources.

During the reigns of William I and William II immunity from the sheriff must have meant in practice the enjoyment of almost complete judicial and police authority. Perhaps the king insisted on having the profits from the pleas of the crown. At times such pleas may have been heard by special royal justices. But there is no evidence that there was any regular system for handling pleas of the crown by means of itinerant royal justices before the reign of Henry I. When these officials appeared, the question must have arisen as to whether immunity from the sheriffs served to exclude the justices. I suspect that it did. I base this conclusion largely on the case of the Isle of Wight mentioned above and on later evidence as to the privileges of the honor of Berkhamsted.

The comparatively simple system of high franchises based on the ancient conception of immunity which existed in Norman England was changed and complicated by the innovations of Henry II. Consider, for instance, the effect of the introduction of the original writ. The necessity of executing these writs vastly increased the business of the sheriff and made immunity from his visits even more desirable. But in respect to pleas commenced by these new writs the sheriff was merely an errand

75 "Pipe rolls 21, 22, 23, 25 Henry II," *ibid.*, XXII, 6; XXV, 27; XXVI, 81, 87; XXVIII, 56, 100.
76 "Pipe roll 16 Henry II," *ibid.*, XV, 126; *Calendar of charter rolls*, II, 325; *Close rolls*, 1234-7, p. 74.
boy. The writs were issued by the chancery and the pleas heard by the king’s justices. Hence the exclusion of the sheriff no longer sufficed to assure any great degree of independence from the royal government. As a result the more powerful barons sought special privileges. The bishop of Durham, the earls of Chester and Cornwall, and the lords of the Welsh marches were completely successful. The king’s writ did not run in their lands. They were allowed to adopt Henry’s innovations, but they administered them through their own chanceries, justices, and sheriffs. These were the palatinates. It was essentially the invention of the original writ that drew the clear and definite line between them and the lesser franchises. Before this innovation all barons who could exclude the sheriffs were in much the same position—after it many gradations appeared among those who enjoyed this immunity. In fact it seems to me futile to use the term palatinate before the reign of Henry II.

The nature of palatine jurisdiction in England is too well known to require discussion here.17 I simply wish to make a few remarks about the distribution of this exalted franchise in our period and the limitations placed on the independence of the lords who possessed it. The only English palatinates that endured for more than one generation were Durham, Cheshire, the king of Scotland’s liberty of Tyndale, and the lordships in the Welsh marches. Cornwall was clearly a palatinate while it was ruled by Reginald de Dunstanville.18 The thirteenth-century earls, Richard of Cornwall and his son Edmund, enjoyed much less authority. They appointed the sheriff and received the full revenue of the shire.19 But the king’s writ ran in Cornwall, he considered the sheriff to be his officer, and his justices held their eyres. While the earls in practice were given the

17 The best work on this subject is G. T. Lapsley, The county palatine of Durham (New York, 1900).
18 Earl Reginald could pardon outlaws. (Selden society, III, 77-78.) When his illegitimate son, Henry fitz Count, was in control of the county in the early years of Henry III, he assumed the authority of a palatine lord. (Bracton’s note book, III, 422; Patent rolls, 1216-1225, pp. 202-203.) The fact that Cornwall did not appear on the pipe rolls while the earl lived is not conclusive—it was absent when ruled by Richard of Cornwall who did not have palatine authority.
19 Rot. hund., I, 56; Reports on the dignity of a peer, V, 12.
fines and amercements resulting from the eyres, it was done by separate acts of royal grace so that no precedent should be established. Lancaster was a palatinate for a time under its first duke and later under John of Ghent. These two shires joined Dorset, Somerset, Devon, Nottingham, and Derby in the short-lived palatinate created by King Richard I for his brother, John, count of Mortain. Had Richard produced an heir and John remained loyal to his brother, this vast palatinate might have changed the course of English history. Its creation was an indiscretion that was never repeated.

When the palatinates are considered from the point of view of the extent of their independence, they fall into two classes. The palatine counties—Durham, Chester, and Pembroke—were in a far stronger position than the lesser lordships. As vassals of the English crown all the palatine lords were subject to the king and his courts. When the king wished to summon an ordinary marcher lord, he simply ordered the sheriff of the nearest county to do it. To summon a palatine earl was a far more complicated matter—in fact on one occasion an earl of Chester maintained, though unsuccessfully, that it could not be done. If the crown questioned the privileges of a lord, the ordinary marcher baron had only tradition to support his position, but the earls palatine could point to regularly organized shire governments under their control. There is, in fact, some doubt whether the marcher lordships were considered to be in the same legal status as the counties palatine. An earl of Chester in naming his peers mentioned only the bishop of Durham and the earl of Pembroke. I include the marcher lords because they possessed the privileges that marked the palatinates—their own chanceries, justices, and writs.

The palatine franchise conferred great power and prestige on

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80 Close rolls, 1231-4, p. 286; ibid., 1237-1242, p. 58; ibid., 1242-7, p. 156; ibid., 1247-1251, p. 164.
83 Bracton's note book, III, 146-147.
84 Bracton's note book, III, 146-147. Tout has pointed out that Glamorgan was a county palatine. The earldoms under Edward I," Transactions of the royal historical society, new series, VIII (1894), 149.
its possessor. Within his palatinate a baron enjoyed the dignity of full regal authority and he had complete judicial and police power over its inhabitants. All the profits of government were his free from both feudal and non-feudal public burdens. From the purely economic point of view these advantages were balanced to a great extent by the fact that all the permanent palatinates were exposed to attack by either the Scots or the Welsh, and hence their lords were obliged to make heavy expenditures for their defense. But the costly military establishment required to protect these fiefs greatly increased the military power of the palatine lords. The ordinary English baron in time of peace had no permanent armed force beyond a few household knights and serjeants. His feudal vassals were for the most part unused to war. The marcher lord had to keep a standing army of knights and serjeants, and his vassals were continually exercised in warlike pursuits. Moreover, when he was not fighting the Welsh, he could hire them as mercenaries for campaigns in other regions. Until the Hundred Years War scattered experienced soldiers over England as a whole and the livery system allowed barons to keep them in private militia forces, the marcher lords were the dominant military power in England.

Between the palatine lords and those who could merely exclude the sheriff were various levels of privilege. The Umfraville lords of Redesdale in the Scots marches had their own justices. When the king’s justices came into Northumberland, they turned over the articles of the eyre to the lord’s officers. Presumably the same system was used in the case of the honor of Knaresborough after it came into the hands of Earl Richard of Cornwall. Richard had his own justices who heard all royal pleas relating to this barony. The honor of Berkhamsted was a shade lower in the scale. The king’s justices held a special session at Berkhamsted to hear the pleas concerning the barony, and all the profits went to the lord. At the time of the quo warranto proceedings a similar franchise was claimed by the earl of Gloucester in his fief of Tunbridge. There is some

86 Placita de quo warranto, p. 593.
87 Ibid., p. 200.
88 Calendar of charter rolls, II, 325.
89 Placita de quo warranto, p. 348.
evidence that the king's justices held a special session in the lands of the honor of Richmond in Holland. 90

In the case of the honor of Berkhamsted these special privileges were probably derived from the ancient rights of the counts of Mortain who had been its lords. 91 As the liberty of Redesdale seems to have been created by Henry II, its franchise can hardly have antedated his reign. The right to have his own justices at Knaresborough was granted to Richard of Cornwall by his brother, King Henry III. The liberties of Tunbridge seem to have been the result of usurpation. Tunbridge was held by the De Clares from the archbishop of Canterbury. The archbishop had long been one of the most highly privileged of ecclesiastical lords, and in the thirteenth century he enjoyed the right to have the royal justices hold a special session in his lands. 92 The De Clares apparently forced the archbishop to grant them similar privileges—a grant that would have had no validity whatever if made to a less powerful baron than the great earl of Gloucester. The actual grant did not cover the whole fief held of the archbishop but simply a banlieu around Tunbridge, but the earl soon removed that limitation by further usurpations. 93

Below the barons who were entitled to have their own justices or a special session of the king's came a group of lords who could exclude another official established by early Angevin legislation, the coroner. This privilege seems to have existed chiefly in the comparatively lawless districts along the borders of England. It was enjoyed by the lords of Cockermouth and Egremont in Cumberland and claimed by the Corbets and Mortimers in their English estates adjoining their marcher fiefs. 94 In the two latter cases the origin of the franchise was probably an extension over the English border of part of the palatine powers enjoyed in the marcher lordships. The only baron in the interior of England who had this privilege without the

91 They can actually be traced only to the time the honor was held by Queen Isabella of Angouleme. Calendar of charter rolls, II, 325.
93 Placita de quo warranto, p. 348.
94 Ibid., pp. 112-114, 675, 686; Rot. hund., II, 96.
higher ones discussed above was the count of Aumale in Holderness. His bailli served as both coroner and sheriff within
the liberty.95

Perhaps the most obscure of all the high franchises was the right to enjoy the profits from seizing the chattels of felons
and fugitives. This obscurity arises from the fact that the words used to describe the privilege apparently had different
meanings in various regions. In England as a whole the possessor of this franchise was entitled to the chattels of all felons
and fugitives. While it was a rather common ecclesiastical privilege, the only laymen who enjoyed it were the lords who
had their own justices or private assizes of the king's. But along the Scots border every lord of any importance claimed
this right. It was enjoyed by all the barons of the palatinate of Durham. The clue to the solution of this problem seems to
lie in the quo warranto proceedings concerning the barony of Alnwick. Its lord claimed the chattels of all felons condemned
in his court, yet the highest other franchise he held was infangentheof.96 In short I suspect that the lord of Alnwick simply
enjoyed the chattels of hand-having thieves. As such offenders were numerous in Northumberland, it was a valuable right.
But the ordinary English baron who had the franchise of infangentheof must have had the same privilege. It simply
did not amount to much because of the rarity of its exercise.

Now let us turn to the barons whose immunity simply served to exclude the sheriff from their lands. By 1250 this franchise
was known as "return of writ."97 Although the name does not seem to have been used before the reign of Henry III, the
privilege it represented had taken definite form by 1200.98 When a sheriff received a writ concerning the lands covered by
such a franchise, he passed it on to the lord's bailli for execu-

95 Ibid., I, 106.
96 Placita de quo warranto, p. 587.
97 The term "return of writ" appears in a charter of Richard I, but I feel sure it is a later interpolation. (Calendar of charter rolls, II, 305.) It becomes common in 1249-51. (Close rolls, 1247-1251, pp. 209, 400, 518.) In a writ of the same year "return of writ" is used in combination with ne intromittat in a way that convinces me it was a new term. (Close rolls, 1251-3, p. 19.)
98 Curia regis rolls, II, 58, 79, 80.
tion. If that official failed to act, the chancery or the royal justices could issue another writ ordering the sheriff to ignore the franchise. The bailli of the franchise holder also performed the financial functions of the sheriff by collecting debts due the crown and distraining delinquent debtors. Criminals were arrested by him and delivered to the sheriff. In short within the barony the bailli performed all the functions of the sheriff.

Unfortunately before the time of the hundred and quo warranto inquests it is extremely difficult to discover what barons possessed this franchise. In John's reign there is clear evidence that it was enjoyed by the lords of Berkeley and by the earls of Arundel and Warren in at least part of their lands. The count of Aumale in Holderness, the constable of Chester in some of his Yorkshire and Lincolnshire estates, and the earl of Devon in the Isle of Wight certainly held this franchise in the early years of Henry III. The house of Berkeley received its lands and presumably its privileges from Henry II. The baronies of Holderness and the Isle of Wight had probably been immunities in Norman times. I am inclined to believe that the privileges of the earls of Arundel and Warren were equally ancient.

The honors in the king's hand present a special problem. It is clear that in John's reign the sheriff was excluded by the custodians of the honors of Lancaster, Peverel of Nottingham, and Richmond. In the reign of Henry III we have evidence that the same was true for the honor of Wallingford. The question naturally arises as to whether this was an ancient privilege which had been possessed by the lords of these baronies or a new one granted the royal bailiffs. There are good reasons for believing that it was ancient in the cases of Lancaster, Richmond, and Wallingford. The custodians of the honor of Peverel seem to have obtained it from John. It was probably not too difficult for the custodian of an escheated

99 Ibid., II, 58, 79, 80, 151; III, 22, 50; V, 52.
100 Close rolls, 1247-1251, p. 209; Memoranda roll, 1230-1, p. 18.
101 "Pipe roll 5 John," Pipe roll society, LIV, 171; Rot. pat., pp. 53b, 176b; Selden society, LVI, 15, 422.
103 "Pipe roll 5 John," Pipe roll society, LIV, 171.
honor to acquire this privilege. He was a royal official, and it can have made little difference to the crown whether or not he excluded the sheriff.

The hundred and *quo warranto* inquests make few additions to our list of baronies which enjoyed the franchise of return of writs. Perhaps the most puzzling of these is the honor of Leicester. Under Henry I, Stephen, Henry II, Richard, and John the earls of Leicester were highly privileged barons, but I know of no evidence to indicate that they could exclude the sheriffs from their lands. In the hundred rolls it is clear that the entire honor of Leicester enjoyed this privilege. I suspect that it was acquired by Simon de Montfort for his half of the honor, and that after that it was difficult to deny it to the half in possession of the earls of Winchester. Most of the other additions can be easily explained. Henry III's brother, Richard of Cornwall, was given the highly privileged honors of Berkhamsted and Wallingford. He was specifically granted high franchises in Knaresborough. Naturally he was inclined to extend his privileges to his other lands, and no one was likely to oppose him. The same may be said of Henry's second son, Edmund of Lancaster. The Lacy earls of Lincoln seem to have extended to the honor of Bolingbroke privileges already enjoyed in other baronies. Then here again we find the earls of Gloucester at work. They claim that return of writs was an ancient privilege of their honor, but the indications are that they usurped this privilege for most of the lands of the honor of Gloucester during the civil wars. In Suffolk they acquired this franchise for some of their estates by the same means employed to obtain their high privileges in their Tunbridge fief. The abbot of St. Edmunds enjoyed return of writ. The earls persuaded the abbot to grant them the same right in their lands lying within his liberty.

In addition to the barons who could exclude the sheriff from their lands there were a few who enjoyed partial immunity. They received from the sheriff lists of debts due the crown from

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104 *Rot. hund.*, I, 237; II, 7.
107 *Rot. hund.*, II, 172.
tenants of their baronies and collected the money. The lord possessing this franchise could not prevent the sheriff from entering his barony to serve original writs or make arrests, but he could insist that the royal officer be accompanied by a baronial bailli.\textsuperscript{108} This privilege was called "extract of writs." While it was usually a mere adjunct to return of writs, some lords such as the bishop of Bath, the earl of Warwick, and the Moions of Dunster possessed it without the higher franchise.\textsuperscript{109}

From the financial point of view, the franchises of return of writs and extract of writs must have been pure liabilities. They imposed a heavy burden on the baron’s officers and yielded no return. But from the point of view of power and prestige they were of great value. The lord who could ban the king’s officers enjoyed an obvious position of dignity—he had the form if not the substance of independence. Moreover he could delay the execution of the orders of the royal government. If his baillis failed to act, the sheriff could get a writ authorizing him to ignore the franchise, but the process might take a long time. While the lord’s police power in arresting felons was subject to the oversight of the sheriff, in practice the supervision exercised by a royal officer who could not enter the liberty must have been extremely limited.

There is one more point to be mentioned in connection with the judicial and police powers exercised by barons in their fiefs. The hereditary possession of public office often had the effect of giving a lord privileges he might not have possessed otherwise. The Empress Matilda granted Geoffrey de Mandeville the office of royal justice in Essex. No other justice was to act in that shire except a peer of Geoffrey’s who might be sent to sit with him. King Stephen extended this grant to cover London and Middlesex and Hertfordshire.\textsuperscript{110} The effect of this was to make Geoffrey absolute master of his own lands in those shires to say nothing of giving him great power over other tenants-in-chief and their fiefs. Geoffrey’s fall brought an end to his privileges, and the county justices occasionally

\textsuperscript{108} Ibid., I, 288; Bracton’s note book, III, 383.
\textsuperscript{109} Ibid., Rot. Hund., I, 171, II, 125.
\textsuperscript{110} J. H. Round, Geoffrey de Mandeville (London, 1892), pp. 88-93, 140-144.
found under Henry I and Stephen never appeared again. But lesser hereditary offices continued to be of importance.

Along with the office of justice Geoffrey obtained the position of sheriff in the same four shires. 111 His contemporary, Miles of Gloucester, was hereditary sheriff of Gloucestershire. 112 The death of Geoffrey ended his hereditary shrievalties, and King John persuaded the Bohun successors of Miles to give up their claim to hold the office in Gloucestershire. 113 Earl William of Salisbury and his wife Ella during the reigns of John and Henry III made several attempts to establish their right to be hereditary sheriffs of Wiltshire, but they were unsuccessful. 114 The only hereditary shrievalty to survive into the thirteenth century was that of Worcestershire held by the Beauchamps of Elmley. 115 It seems clear that the possession of this office gave its holder powers equivalent to those covered by the franchise of return of writ free from the supervision of a royal sheriff.

Far more important than the hereditary sheriffs because of their vastly greater number were the hereditary possessors of hundreds and wapentakes. There were private hundreds in Anglo-Saxon times, and the Norman kings increased their number. The Angevin monarchs were equally generous. All of them made hereditary grants of royal hundreds and wapentakes. In theory the possession of a hundred should not have increased a baron’s power in his demesne manors as he presumably already possessed equivalent jurisdiction there. It would simply serve to give him infangentheof in the lands of his vassals which lay in his hundred. 116 But some lords of hundreds had exceptional powers. Thus the earl of Gloucester held the hundred of Chadelinton, Oxfordshire. Although view of frankpledge was a function of the sheriff, the earl shared it with that official in only two manors—in most of the hundred he held the view alone. 117 In other cases the lords of hundreds

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111 Ibid.
112 Ibid., p. 11.
113 Rot. chart., p. 53.
116 Placita de quo warranto, p. 751.
117 Rot. hund., II, 736.
could insist that the sheriff could enter only in company with their bailli, and some could bar that official entirely.\(^{118}\)

When the holder of a private hundred was not an important landholder, the office was probably valued chiefly as a source of revenue. But when it was held by a baron with extensive lands in the hundred, it greatly strengthened his position. He gained definite judicial and police power in the lands of his vassals. Where fiefs were compact as in Sussex, much of the baron's authority outside his demesne was derived from his possession of the hundreds.\(^{119}\)

In discussing the various franchises held by English barons I have centered my attention on the prestige and power which their possession conferred. But it is important to remember that franchises were an important source of baronial revenue. Unfortunately it is usually impossible to isolate completely franchisal from other revenue, to say nothing of obtaining figures on the value of individual franchises. As a rule all one can do is to find a figure labelled in the accounts as "pleas and perquisites." Not only is there doubt as to just what this heading covered, but also in all probability it did not always include the same items. I believe that ordinarily it covered all the judicial revenues collected by the officer who rendered the account. Thus it could include the profits from feudal and manorial as well as franchisal jurisdiction. On the other hand when individual demesne manors were leased at a fixed farm, the profits from the manorial and perhaps from the minor franchisal jurisdiction were probably included in the farm. But despite the unsatisfactory nature of the figures obtainable it seems worth while to give an idea of the relation between the sums accounted for under "pleas and perquisites" and the revenue from other sources on a few baronies. This will at least furnish an indication of the importance of franchisal revenue.

Let us first glance at two palatine earldoms. In 1241 the pleas of the justiciar of Cheshire, those of the sheriff, and the chattels of felons and fugitives yielded a total of about £158.

\(^{118}\) Placita de quo warranto, p. 382; Close rolls, 1227-1231, p. 170.

\(^{119}\) Placita de quo warranto, p. 751.
The minor pleas of the hundreds and manors came to about £50 more. The demesne manors of the county palatine yielded in that year £528. In 1214 the manors of the bishop of Durham brought in £1,255 while his pleas yielded about £600. These figures are for the bishop’s whole barony—not for the palatinate alone as in the case of Chester. To turn to less privileged baronies, in 1212 the honor of Berkhamsted yielded £304 from its manors and £109 from pleas. In the same year the lands of the constable of Chester outside Cheshire, chiefly the baronies of Pomfret and Clitheroe, brought in £346 from demesne manors and £158 from pleas. At about the same time the honor of Perche rendered in two years £335 from its demesne and £380 from pleas. In 1241 the Fitz Alan barony of Clun yielded £35 from its pleas as against £150 from all other sources while the same house’s barony of Whitchurch brought in £58 from its Shropshire estates and £29 from its pleas in that county. These were all highly privileged fiefs. Let us compare them with a few baronies enjoying less exalted franchises. In 1211 the fief of the Beauchamps of Elmley yielded £130 from its manors and £36 from pleas. In 1209 the Tony lands in Holland rendered £76 from manors and £10 from pleas. In 1212 the Fossard barony yielded £278 from manors and mills and £56 from pleas. The Pomeroy barony for three quarters of a year brought £72 from manors and £26 from pleas. In 1185 the baronies of Muscamp, Musard, Lovetot of Sheffield, and Fitz Herbert yielded respectively £55, £47, £66, and £121 from manors and £13, £6, £21, and £9 from pleas.

These figures and others that could be cited show conclu-

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120 The great roll of the pipe for the twenty-sixth year of the reign of King Henry the third (ed. H. L. Cannon, New Haven, 1918), pp. 120-122.
121 Pipe roll 16 John, Public Record Office, E 372-60.
122 Pipe roll 14 John, ibid., E 372-58.
123 Ibid.
124 Pipe roll 12 John, ibid., E 372-56.
125 Pipe roll 26 Henry III, pp. 8-9.
127 Pipe roll 11 John, ibid., E 372-55.
128 Pipe roll 14 John, ibid., E 372-58.
129 Pipe roll 10 John, ibid., E 372-54.
sively that the income from pleas formed an important part of the revenue from most baronies. I am inclined to believe that a large part of this income came from pleas held under franchises. I should like to be able to say that the ratio between revenue from pleas and from manors varied in accordance with the franchises held by the barons. The figures seem to indicate vaguely a relationship of this sort, but they do not do so clearly enough to justify a positive statement. The figures show wide variation in the comparative value of pleas from barony to barony. I might add that in an individual barony the revenue from this source could vary greatly from year to year.