

Cambridge University Press

0521372461 - Kings, Barons and Justices: The Making and Enforcement of Legislation in Thirteenth-Century England

Paul Brand

Frontmatter

[More information](#)

KINGS, BARONS AND JUSTICES

The Making and Enforcement of Legislation in
Thirteenth-Century England

This book is a study of two important and related pieces of thirteenth-century English legislation – the Provisions of Westminster of 1259 and the Statute of Marlborough of 1267 – and is the first on any of the statutes of this period of major legislative change.

The Provisions of Westminster were the first major legislation enacted in England after Magna Carta. They were the product of political upheaval, when Henry III surrendered control of government to a baronial council with an agenda of institutional reform. The Provisions were revised and reissued by the king in 1263, and a further revision in 1267 produced the Statute of Marlborough. Exceptionally good surviving documentation is used to follow the evolution of the individual clauses from initial suggestions for reform, through a series of drafts, to the various versions of the final texts. The book also places each clause in the context of the prior development of the Common Law. A wide range of surviving (and mainly unpublished) sources are then used to trace the enforcement and interpretation of legislation between 1259 and 1307. Three appendices provide a modern text and translation of the legislation.

PAUL BRAND is a Senior Research Fellow at All Souls College, Oxford. His other publications include *Origins of the English Legal Profession* and *The Making of the Common Law*. He is a Fellow of the British Academy.

Cambridge University Press

0521372461 - Kings, Barons and Justices: The Making and Enforcement of Legislation in Thirteenth-Century England

Paul Brand

Frontmatter

[More information](#)

Cambridge Studies in Medieval Life and Thought
Fourth Series

General Editor:

D. E. LUSCOMBE

Research Professor of Medieval History, University of Sheffield

Advisory Editors:

CHRISTINE CARPENTER

Reader in Medieval English History, University of Cambridge, and Fellow of New Hall

ROSAMOND MCKITTERICK

*Professor of Medieval History, University of Cambridge, and Fellow of
Newnham College*

The series *Cambridge Studies in Medieval Life and Thought* was inaugurated by G. G. Coulton in 1921; Professor D. E. Luscombe now acts as General Editor of the Fourth Series, with Dr Christine Carpenter and Professor Rosamond McKitterick as Advisory Editors. The series brings together outstanding work by medieval scholars over a wide range of human endeavour extending from political economy to the history of ideas.

For a list of titles in the series, see end of book.

Cambridge University Press

0521372461 - Kings, Barons and Justices: The Making and Enforcement of Legislation in
Thirteenth-Century England

Paul Brand

Frontmatter

[More information](#)

KINGS, BARONS AND JUSTICES

*The Making and Enforcement of Legislation in
Thirteenth-Century England*

PAUL BRAND

All Souls College, Oxford



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press

0521372461 - Kings, Barons and Justices: The Making and Enforcement of Legislation in Thirteenth-Century England

Paul Brand

Frontmatter

[More information](#)

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS

The Edinburgh Building, Cambridge, CB2 2RU, UK

40 West 20th Street, New York, NY 10011-4211, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

Ruiz de Alarcón 13, 28014 Madrid, Spain

Dock House, The Waterfront, Cape Town 8001, South Africa

<http://www.cambridge.org>

© Cambridge University Press 2003

This book is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without
the written permission of Cambridge University Press.

First published 2003

Printed in the United Kingdom at the University Press, Cambridge

Typeface Bembo 11/12 pt. *System* L^AT_EX 2_ε [TB]

A catalogue record for this book is available from the British Library

ISBN 0 521 37246 1 hardback

Cambridge University Press

0521372461 - Kings, Barons and Justices: The Making and Enforcement of Legislation in
Thirteenth-Century England

Paul Brand

Frontmatter

[More information](#)

In memory of the late Derek Hall

Cambridge University Press
0521372461 - Kings, Barons and Justices: The Making and Enforcement of Legislation in
Thirteenth-Century England
Paul Brand
Frontmatter
[More information](#)

CONTENTS

<i>List of tables</i>	page xii
<i>Preface</i>	xiii
<i>List of abbreviations</i>	xvi

INTRODUCTION	I
--------------	---

*Part I: Politics and the legislative reform of the common law:
from the Provisions of Westminster of 1259 to the Statute
of Marlborough of 1267*

1 THE MAKING OF THE PROVISIONS OF WESTMINSTER: THE PROCESS OF DRAFTING AND THEIR POLITICAL CONTEXT	15
The establishment of the Committee of Twenty-four	16
The work of the Committee of Twenty-four	18
The ‘Petition of the Barons’	20
The continuation of the reform process after the parliament of Oxford	24
2 THE MAKING OF THE PROVISIONS OF WESTMINSTER: THE SOCIAL AND LEGAL CONTEXT AND THE EVOLUTION OF THE INDIVIDUAL CLAUSES: I	42
Reforms in the lord-tenant relationship	42
Suit of court	43
Seignorial rights at succession	54
Seignorial control of mortmain alienations	57
Legal relationships between landowners and the temporary managers of their lands	62
Reforms intended to improve the procedures of the king’s central courts	69

Cambridge University Press
0521372461 - Kings, Barons and Justices: The Making and Enforcement of Legislation in
Thirteenth-Century England
Paul Brand
Frontmatter
[More information](#)

Contents

3	THE MAKING OF THE PROVISIONS OF WESTMINSTER: THE SOCIAL AND LEGAL CONTEXT AND THE EVOLUTION OF THE INDIVIDUAL CLAUSES: II	77
	Reforms intended to redress grievances about the workings of the criminal justice system	77
	Other grievances related to the functioning of royal justice in the counties	90
	Restrictions on the right of distraint	94
	Strengthening royal justice against seignorial encroachments	98
	Bringing the practice of local courts into line with that of royal courts	103
4	THE ENFORCEMENT OF THE PROVISIONS OF WESTMINSTER DURING THE INITIAL STAGE OF THEIR EXISTENCE, 1259–63	106
	The creation of the new remedies authorised by the legislation	109
	Enforcement by means of plaints	120
	The citation, enforcement and observance of the Provisions in other forms of litigation	123
	Observance of the Provisions in judgments relating to crown pleas fines and amercements	128
	Enforcement through presentments	133
	Observance of the Provisions on initial and mesne process	134
	Adjournments	136
5	THE REVISION AND REISSUING OF THE PROVISIONS, 1263–4	140
	The political background to the reissues of 1263	140
	The texts of the 1263 reissues	140
	The dating of these reissues and their publication	143
	Changes made for the 1263 reissue	145
	The texts of the 1264 reissue	161
6	THE REVISED PROVISIONS IN ACTION, 1263–7	165
	The political setting and the surviving evidence	165
	Enforcement of the Provisions: the continuing use of the new remedies invented between 1259 and 1263	167
	Enforcement through pre-existing forms of action	174
	Observance of the Provisions on crown pleas fines and amercements	175
	Observance of the Provisions on initial and mesne process	176
	Adjournments	177
	The creation of new remedies	178
	Citation of the repealed clause on mortmain alienations	183

Contents

7	THE FINAL REVISION AND REISSUE OF THE PROVISIONS OF WESTMINSTER: THE STATUTE OF MARLBOROUGH OF 1267	185
	The political context	185
	The texts of the Statute of Marlborough	186
	A new preamble	187
	The final version of the Provisions of Westminster	188
	The eight new clauses added	192
 <i>Part II: Beyond politics: the enforcement and interpretation of the Statute of Marlborough in the courts, 1267–1307</i>		
8	CONTRA FORMAM FEOFFAMENTI: THE STATUTORY ACTION FOR TENANTS CONTESTING LIABILITY TO SUIT OF COURT AFTER 1267	207
	The wording of the original writ of <i>contra formam feoffamenti</i>	207
	Mesne process in actions of <i>contra formam feoffamenti</i>	213
	Judgment by default in <i>contra formam feoffamenti</i>	215
	Pleaded cases of <i>contra formam feoffamenti</i> , 1267–1307	218
	The form of pleading in these cases	224
	The use of charters of feoffment granting land to be held by a fixed service ‘ <i>pro omni servicio</i> ’	234
	Social and geographical analysis of the pleaded cases	238
	The outcome of the pleaded cases	240
9	OTHER MECHANISMS FOR THE ENFORCEMENT OF CHAPTER 9; OTHER REFORMS AFFECTING THE LORD–TENANT RELATIONSHIP	250
	The lord’s action authorised by chapter 9	251
	The application of the statutory rules about suit in common law actions	252
	The pleading of ‘ <i>pro omni servicio</i> ’ charters in replevin cases	257
	The creation and use of actions relating to liability for the performance of suit on the division of a tenement	263
	Damages awarded against lords in the assize of mort d’ancestor and its congeners	271
	The enforcement and interpretation of chapter 6 of the Statute safeguarding the lord’s rights of wardship	272
	Enforcement of the repealed legislation on mortmain alienations	277
10	REFORMS IN THE CRIMINAL JUSTICE SYSTEM	282
	<i>Murdrum</i> fines	282
	Penalisation of villages for not attending inquests fully	285

Contents

	Amercement of the sureties of clerks pleading benefit of clergy	285
	Exemption from attendance at the sheriff's tourn	286
	Exemption from attendance at view of frankpledge	288
	Enforcement through common law actions	293
	Beaupleder fines	295
II	REFORMS IN THE PROCEDURES OF THE ROYAL COURTS	302
	Adjournments in actions of dower	302
	Adjournments in <i>quare impedit</i> and <i>darrein presentment</i>	304
	The abbreviation of mesne process	306
	Judgment by default	307
	Mesne process in personal actions after the joinder of issue	312
	<i>Monstravit de compoto</i>	312
	Overriding charters of exemption from jury service	333
	Eliminating perceived abuses in the operation of royal courts	334
12	THE EXTENSION OF EXISTING REMEDIES	336
	Writs of entry in the <i>post</i>	336
	New remedies for ecclesiastical tenants	339
	Waste committed by lessees	345
13	ENFORCING THE ACCOUNTABILITY OF SOCAGE GUARDIANS	348
	The creation of an enforcement action in the king's court	348
	Local enforcement	350
	Analysis of recorded cases	352
14	CONTROLLING THE USE OF DISTRAINT	362
	The enforcement of chapters 1–4	362
	The enforcement of chapter 15	369
15	REMEDYING ABUSES IN THE OPERATION OF LOCAL COURTS	378
	The unauthorised release of those imprisoned for <i>redisseisin</i>	379
	Lords hearing pleas of false judgment in their courts	380
	Requiring the warranting of <i>essoins</i> on oath	380
	The retention of <i>distresses</i>	381
	Forcing free tenants to answer for their free tenements without authorisation	382
	Putting free tenants on oath against their will without authorisation	384
16	CONCLUSIONS	388
	The legal and social context of the legislation	388
	The political and administrative context of the legislation	390
	The evolution of the final text of the legislation	392

Cambridge University Press
0521372461 - Kings, Barons and Justices: The Making and Enforcement of Legislation in
Thirteenth-Century England
Paul Brand
Frontmatter
[More information](#)

Contents

Enforcement and use of the legislation	396
The beginnings of large-scale legislation	409

Appendixes

APPENDIX I	TEXT AND TRANSLATION OF THE PROVISIONS OF WESTMINSTER OF 1259	413
APPENDIX II	TEXT AND TRANSLATION OF THE PROVISIONS OF WESTMINSTER AS REISSUED IN 1263 AND 1264	429
APPENDIX III	TEXT AND TRANSLATION OF THE STATUTE OF MARLBOROUGH OF 1267	453
<i>Bibliography</i>		484
<i>Index</i>		496

TABLES

1	The length of adjournments in actions of dower in the Common Bench, 1260–2	<i>page</i> 137
2	The length of adjournments in actions of dower in the Common Bench, 1263–7	177
3	The length of adjournments in actions of dower in selected terms, 1268–90	303
4	The length of adjournments in actions of <i>quare impedit</i> and in assizes of darrein presentment in selected terms, 1267–90	305
5	Writs of entry and writs of right, <i>c.</i> 1250	338
6	Writs of entry and writs of right, <i>c.</i> 1270	338
7	Writs of entry and writs of right, <i>c.</i> 1290	339

Cambridge University Press

0521372461 - Kings, Barons and Justices: The Making and Enforcement of Legislation in Thirteenth-Century England

Paul Brand

Frontmatter

[More information](#)

PREFACE

This book has had a long genesis. In 1967 I started work on an Oxford D.Phil. thesis under the supervision of the late G.D.G. Hall. My original intention was to work on the *Leges Henrici Primi*, but Derek did not think it was a suitable topic for a postgraduate thesis and suggested that there was another topic I might like to work on. It was a problem that had arisen out of his own current work on dating registers of writs for the Selden Society edition of *Early Registers* which had been begun by Elsa de Haas but which he was then completing. This was the extent to which the Provisions of Westminster of 1259 (or the reissues of 1263 and 1264) had ever been enforced in the courts or in other ways between 1259 and the final reissue of the Provisions as the Statute of Marlborough in 1267. This turned out to be a little too narrow a focus for a doctoral thesis. So we agreed to broaden it out to a more general consideration of the genesis and background of the legislation and its enforcement not just between 1259 and 1267 but also between 1267 and the end of the reign of Edward I in 1307. There was much less pressure then to finish doctoral theses within a three-year period and I did in fact not complete and submit the thesis until 1974. The thesis benefited considerably from the delay. In 1970 I had been appointed an Assistant Keeper at the Public Record Office. I profited from the opportunities this offered me to explore much more fully the riches of the Record Office after working hours and especially while working as overnight Duty Officer. The eventual thesis owed much to the more thorough archival research I was able to do between 1970 and 1974. When the thesis was examined in 1974 my two examiners (S.F.C. Milsom and Barbara Harvey) encouraged me to publish material from it, though not the entire thesis as it stood. I am now sure that their judgement was correct. The thesis as it stood was well-researched and thorough but somewhat rebarbative and lacking in a clear overall argument. After 1974 I put the thesis on one side, though I continued to note additional material relevant to the matters discussed in the thesis as I encountered it in the course of other research. In 1988 Professor J.C. Holt encouraged me to transform the original thesis into a publishable book for the present

Cambridge University Press

0521372461 - Kings, Barons and Justices: The Making and Enforcement of Legislation in Thirteenth-Century England

Paul Brand

Frontmatter

[More information](#)*Preface*

series and I agreed to do so. Work on other projects prevented any rapid progress until comparatively recently. Those who have read the original 1974 thesis will see just how much it has been transformed in the interim. This book contains almost all the material contained in the original thesis but also a great deal of other original material produced by subsequent research in the plea rolls and contemporary law reports. It has also been completely reorganised and reconceptualised to provide much clearer answers to three basic questions: why was the legislation of 1259–67 necessary and what effect was it intended to produce? What effect did the legislation have during its initial period of operation between 1259 and 1267? How was the legislation enforced and interpreted by the courts between 1267 and 1307?

In the course of its long gestation this book and its author have accumulated many debts, more than can easily be mentioned here. The greatest is acknowledged in its dedication. Derek Hall taught me directly and by example what it is to be a legal historian. The topic he suggested to me back in 1967 was not one which would have occurred to me on my own but it has turned out to be one of the best possible introductions I could have had to the study of English thirteenth-century legal history. I have also benefited over the years from the friendship and assistance of two other scholars who were being supervised by Derek Hall at the same time as me, Paul Hyams and Alexandra Nicol. I am grateful to S.F.C. Milsom and Barbara Harvey for their helpful comments on the original thesis and to Jim Holt for encouraging me to resume work on the thesis and to transform it into a book. My more recent debt is to All Souls College, Oxford for providing me with an excellent working environment in which to complete work on this book, and to my colleagues there for friendship and intellectual stimulation. I am also grateful to Bill Davies of Cambridge University Press for his patience and forbearance in awaiting the completion of this book.

I owe a twofold debt to the Public Record Office and its staff: both for providing me with the opportunity to finish my original thesis while employed there between 1970 and 1974 and for subsequent assistance while working as a researcher in the public search-rooms. I am also grateful to the staff of various other institutions, especially the British Library (and its Students' Room), the Cambridge University Library and the Bodleian Library in Oxford, for their assistance in my work on various manuscripts in their custody.

Of my London friends I would single out David Carpenter for special mention in encouraging me to continue work on this project and Jim Bolton for friendship and help over the years. Of my American friends I

Cambridge University Press

0521372461 - Kings, Barons and Justices: The Making and Enforcement of Legislation in
Thirteenth-Century England

Paul Brand

Frontmatter

[More information](#)

Preface

would single out Bob Palmer and Joseph Biancalana for their friendship and stimulation over the many years of our friendship.

My parents did not live to see the appearance of this book but were always supportive of my scholarly endeavours during their lifetimes and I remain grateful to them for this. The book also owes more than I can say to the wise criticism and continued support of my wife, Vanessa, and I am happy to take this opportunity to thank her publicly for this.

ABBREVIATIONS

Unless otherwise noted, all references to unpublished manuscripts are to documents in the Public Record Office, London.

BL	British Library
BNB	<i>Bracton's Note Book: A Collection of Cases decided in the King's Courts during the Reign of Henry the Third, annotated by a Lawyer of that Time, seemingly by Henry of Bratton</i> , ed. F.W. Maitland (3 vols., London, 1887)
<i>Bracton</i>	Bracton, <i>De Legibus et Consuetudinibus Angliae</i> , ed. G.E. Woodbine and transl. (with revisions and notes) by Samuel E. Thorne (4 vols., Cambridge, Massachusetts, 1968–77)
Brand, 'Contribution'	P.A. Brand, 'The Contribution of the Period of Baronial Reform (1258–1267) to the Development of the Common Law in England' (Oxford D.Phil. thesis, 1974)
Brand, <i>MCL</i>	Paul Brand, <i>The Making of the Common Law</i> (London, 1992)
Brand, <i>OELP</i>	Paul Brand, <i>The Origins of the English Legal Profession</i> (Oxford, 1992)
<i>Britton</i>	<i>Britton</i> , ed. and transl. F.M. Nichols (2 vols., Oxford, 1865)
CCR	<i>Calendar of the Close Rolls preserved in the Public Record Office: Edward I</i> (5 vols., London, 1900–8)
<i>CIPM</i>	<i>Calendar of Inquisitions Post Mortem and other analogous Documents</i> , vol. 1 (Henry III), vols. II–IV (Edward I) (London, 1904–13)
CLRO	Corporation of London Records Office

List of abbreviations

Coke, <i>Second Institutes</i>	Edward Coke, <i>The Second Part of the Institutes of the Laws of England</i> (2 vols., continuously paginated, London, 1809) [pages cited from older marginal page numbers]
CPR	<i>Calendar of the Patent Rolls preserved in the Public Record Office: Henry III</i> (4 vols., London, 1906–13); <i>Calendar of the Patent Rolls preserved in the Public Record Office: Edward I</i> (4 vols., London, 1893–1901)
CR	<i>Close Rolls of the reign of Henry III</i> (14 vols., London, 1902–38)
CRR	<i>Curia Regis Rolls</i> (18 vols., London, 1923–)
CUL	Cambridge University Library
DBM	<i>Documents of the Baronial Movement of Reform and Rebellion, 1258–1267</i> , selected by R.F. (misprinted as R.E.) Treharne and edited by I.J. Sanders (Oxford, 1973)
Early Registers	<i>Early Registers of Writs</i> , ed. Elsa de Haas and G.D.G. Hall (Selden Society vol. 87, 1970)
EELR	<i>The Earliest English Law Reports</i> , ed. Paul A. Brand (2 vols., Selden Society vols. 111 and 112, 1996)
Fleta	<i>Fleta</i> , volumes II, III and IV [vol. I not published], ed. H.G. Richardson and G.O. Sayles [vol. IV by Sayles alone] (3 vols., Selden Society vols. 72, 89 and 99, 1955, 1972 and 1984)
Glanvill	<i>Tractatus de legibus et consuetudinibus Anglie qui Glanvilla vocatur</i> , ed. G.D.G. Hall (London, 1965)
IT	Inner Temple, London
J.	Justice
LAL	<i>Liber de Antiquis Legibus</i>
LI	Lincoln's Inn, London
Maitland, <i>Collected Papers</i>	<i>The Collected Papers of Frederic William Maitland</i> , ed. H.A.L. Fisher (3 vols., Cambridge, 1911)
Meekings, <i>Crown Pleas</i>	<i>Crown Pleas of the Wiltshire Eyre, 1249</i> , ed. C.A.F. Meekings (Wiltshire

List of abbreviations

	Archaeological and Natural History Society, Records Branch vol. 16, 1960)
NN	<i>Novae Narrationes</i> , ed. Elsie Shanks and S.F.C. Milsom (Selden Society vol. 80, 1963)
P&M	F. Pollock and F.W. Maitland, <i>The History of English Law before the Time of Edward I</i> , 2nd edition (2 vols., Cambridge, 1898)
PKJ	<i>Pleas before the King or his Justices</i> , vols. I and II (1198–1202), vols. III and IV (1198–1212), ed. D.M. Stenton (4 vols., Selden Society vols. 67, 68, 83 and 84, 1953, 1952, 1967 and 1967)
Plucknett, <i>Legislation</i>	T.F.T. Plucknett, <i>Legislation of Edward I</i> , revised edition (Oxford, 1962)
PRO	Public Record Office, Kew, London
Reg. Omn. Brev.	<i>Registrum Omnium Brevium, tam Originalium quam Judicialium . . .</i> (London, 1595)
RH	<i>Rotuli Hundredorum</i> , ed. W. Illingworth and J. Caley (2 vols., London, 1812–18)
SCKB	<i>Select Cases in the Court of King's Bench under Edward I</i> , ed. G.O. Sayles (3 vols., Selden Society vols. 55, 57 and 58, 1936, 1938 and 1939)
SR	<i>Statutes of the Realm</i> , ed. A. Luders and others (11 vols., London, 1810–28)
SSC	<i>Select Charters and other Illustrations of English Constitutional History</i> , ed. W. Stubbs, 9th edition revised by H.W.C. Davis (Oxford, 1913)
VCH	Victoria History of the Counties of England (1900–)
YB	Year Books
YB 20 & 21 EI	<i>Year Books 20 & 21 Edward I: Year Books of the Reign of King Edward the First: Years XX and XXI</i> , ed. A.J. Horwood (Rolls Series, London: 1866)
YB 21 & 22 EI	<i>Year Books 21 & 22 Edward I: Year Books of the Reign of King Edward the First: Years XXI and XXII</i> , ed. A.J. Horwood (Rolls Series, London: 1873)

Cambridge University Press
0521372461 - Kings, Barons and Justices: The Making and Enforcement of Legislation in
Thirteenth-Century England
Paul Brand
Frontmatter
[More information](#)

List of abbreviations

<i>YB 30 & 31 EI</i>	<i>Year Books 30 & 31 Edward I: Year Books of the Reign of King Edward the First</i> , ed. A.J. Horwood (Rolls Series, London: 1863)
<i>YB 32 & 33 EI</i>	<i>Year Books 32 & 33 Edward I: Year Books of the Reign of King Edward the First: Years xxxii–xxxiii</i> , ed. A.J. Horwood (Rolls Series, London: 1864)
<i>YB 33–35 EI</i>	<i>Year Books 33–35 Edward I: Year Books of the Reign of King Edward the First: Michaelmas Term, Year xxxxi and Years xxxxiv and xxxv</i> , ed. A.J. Horwood (Rolls Series, London: 1879)