The English Palatinates and Edward I

JAMES W. ALEXANDER

The origin and original nature of medieval English palatinates has been a hardy theme of medieval English constitutional history at least since the seventeenth century.[1] Earlier work on the topic by this author was essentially negative, dealing with what palatinates were not rather than with what they were; it is now time to offer the thoughts which follow. This article presents no conclusions based on evidence unexamined by other scholars, but looks at familiar material in new ways.

The author has come to agree with the traditional view that an English palatinate was indeed, in its beginning, a semi-regality, "a term of pretension, not of definition."[2] This is not so tidy a concept as some older (and overly legalistic) definitions, yet it rings true *to the period*. Legal sources, especially record evidence, have a narrow focus (say, on the right to judge in life and limb).[3] Yet the legal evidence should not be considered to the exclusion of political, administrative, and (in the cases of Chester and Lancaster) familial evidence. This study is confined to Chester, Durham, and Lancaster, the three counties (Lancaster remained a county, not a duchy, even though ruled by a duke after 1351) which survived into the modern period and of whose palatine status there is no question.

The grand definition of palatinates as liberties or franchises ruled by lords exercising regalities is inapplicable not only to the Norman period, but also to the early Angevin. It would have been an anachronism, analogous to that pointed out by Andrew W. Lewis in his keen analysis of the history of the Capetian royal domain; he concludes, as we shall argue for the English palatinates, that since the word did not exist before the end of the thirteenth century, neither did the reality.[4] A definition which has well-understood conceptual meaning in the fourteenth century must be applied warily—if at all—to earlier centuries, particularly when, in the history both of England and of France, the thirteenth century was a vital period encompassing new and rapidly developing definitions of regality, both theoretical and practical. It is unnecessary to document laboriously

[1] A review of the literature, particularly as it relates to Cheshire, may be found in my "New Evidence on the Palatinate of Chester," *EHR* 85 (1970), 715-29, and in "The Alleged Palatinates of Norman England," *Speculum* 56 (1981), 17-27.

[2] Jean Scammell, "The Origins and Limitations of the Liberty of Durham," *EHR* 81 (1966), 451.

[3] For example, G. T. Lapsley, *The County Palatine of Durham* (New York, 1900), *passim*, and his sources; Scammel, "Durham", p. 450.

[4] "The Capetian Apanages and the Nature of the French Kingdom," *Journal of Medieval History* 2 (1976), 128.

the obvious; Robert Hoyt pointed out that "the thirteenth century in England was pre-eminently an age of legal and political definition; what was latent at the beginning of the twelfth century was clearly defined by the end of the thirteenth," and Michael Clanchy, writing of the evolving legal definition of return of writ, observed that the history of his topic "illuminates the attempts of Henry III and Edward I to impose a new definition of royal sovereignty on liberty-holders."[5] After brief references to leading authorities on the larger definition of palatine lordships, this article will concisely outline the rights of the lords of Chester, Durham, and Lancaster, and then to explain when and how they acquired them. As Jean Scammell has noted, the three palatinates "had no common principle, no identity of origin or particular privilege to create or justify a peculiar status," and that " 'palatinate' had no specific meaning as late as 1377."[6] We demur from the last opinion however—John of Gaunt's request in 1377 for a definition of palatine status for his county of Lancaster owes less to his uncertainty concerning his rights than to the problem, returned to below, of the grant of liberties in general rather than in specific terms. In the late fourteenth century, palatinates had a clearly understood meaning: the exercise of regality by one who was not the king.

In examining regalities, it appears useful to become ensnarled neither in narrow legalities nor in a futile attempt to fit the three franchises into the same Procrustean bed in every detail; either approach leads to ultimate frustration and to forced conclusions which the medievals would find puzzling. The analogy of notoriety is apt—while it could not be proved in detail, everyone knew who a notorious criminal was, and of what his general reputation consisted. The traditional view of palatinates, expressed (for example) by the seventeenth-century legist Sir Matthew Hale,[7] stated that "The jurisdiction of a county palatine included almost all other royal jurisdictions and liberties, and therefore is called *regale* and *regalis potestas*. And indeed a county palatine hath a confluence of all other liberties and regalities under those subordinations before expressed to the supreme royal power." Hale enumerated the rights of palatine lords in some detail, much of it anachronistic to the high medieval period, and included some lordships not palatine. Blackstone, following Coke and (probably) Hale, found that earls palatine held *jura regalia* as fully as the king.[8] Holdsworth described palatinates as "independent principalities of the continental type within which the king's writ did not run—small models, as Bacon said, of the great governments of kingdoms."[9] Bishop

[5]Robert S. Hoyt, *The Royal Demesne in English Constitutional History 1066-1272* (Ithaca, 1950), pp 135-136; M. T. Clanchy, "The Franchise of Return of Writs," *TRHS*, ser. 5, vol. 17 (1967), 59.

[6]Scammell, "Durham," p. 450.

[7]D.E.C. Yale (ed.) *The Prerogatives of the King*, [(Selden Society, 92] (London, 1976), 210-212.

[8]Sir William Blackstone, *Commentaries on the Laws of England*, (9th ed.; London, 1783), p. 113 ff.

[9]William S. Holdsworth, *A History of English Law* (7th ed.; rev. 1956 by A. L. Goodhart *et. al.*), 1.109.

Stubbs continued and popularized the tradition of palatinates as semi-regalities, describing them as "earldoms in which the earls were endowed with the superiority of whole counties," where the "regalia or royal rights of jurisdiction" were exercised by the earls.[10] T.F.T. Plucknett defined palatinates as "exempt, or almost so, from royal jurisdiction," while Sidney Painter found that a palatine baron "enjoyed the dignity of full regal authority."[11] R. C. Somerville, the modern historian of the Duchy of Lancaster, defined palatinate powers as "royal powers in devolution," a county palatine as "one in which the king transferred most of his royal power to the subject who possessed the county."[12] "To [palatinates have] been ascribed total franchise, an exclusive jurisdiction comparable with that of the most privileged continental immunities," Jean Scammell noted, supported by Helen Jewell, who described palatinates as "almost independent of the king," quasi-regalities, their lords "practically kings within [their] territories."[13]

The earliest chancery reference to palatinates as specific regalities comes from an entry in the close roll of 1352; therein the claim is made that the Irish franchises are *regales tieles come de Duresme et Cestre*.[14] The

[10]William Stubbs, *The Constitutional History of England* (3rd ed.; London, 1880), 1.271, 392.

[11]Theodore F. T. Plucknett, *A Concise History of the Common Law* (Boston, 1956), p. 99; Sidney Painter, *Studies in the History of the English Feudal Barony*, (Baltimore, 1943), p. 114.

[12]*History of the Duchy of Lancaster*, 1:*1265-1603* (London, 1953), p. 59; "The Duchy and County Palatine of Lancaster," *Trans. of the Hist. Soc. of Lancashire and Cheshire*, 103 (1952), p. 59.

[13]Scammell, "Durham," p. 450; Helen M. Jewell, *English Local Administration in the Middle Ages* (Newton Abbot and New York, 1972), pp. 69, 70, 62.

[14]Great Britain, Public Record Office, *Calendar of Close Rolls 9 Edward III* (London, 1906 [1972]), p. 461. The best summaries of the thirteenth-century rights of the Irish lordships are A.J. Otway-Ruthven, *A History of Medieval Ireland* (2nd ed.; New York, 1980) pp. 181 ff., and Geoffrey J.P. Hand, *English Law in Ireland 1290-1324* (Cambridge, 1967), pp. 113-118. Add to my Welsh references in "New Evidence," pp. 720-721, the following: Walter E. Rhodes, "Edmund, Earl of Lancaster," *EHR* 10 (1895), 19: Edmund had "extensive lands in the marches of Wales, in which he ruled like a little king," and p. 38: "in his Welsh lands the power which Edmund enjoyed was regal, like that of the lords marchers"; R.R. Davies, "The Law of the March," *Welsh History Review* 5 (1970-71), 1-39; *idem*, *Lordship and Society in the March of Wales, 1282-1400* (Oxford, 1978), esp. pp. 3, 32, 58, 66-90 (the lord of Glamorgan *fuit dominus et quasi rex* [1274], and the Earl of Pembroke in the 1250s claimed *totum regale*, pp. 98, 151). *Ibid.*, p. 217, notes that "lordship was at its most expansive in the March of Wales. Nowhere indeed did the powers of lordship and of kingship approximate more closely than they did here." Davies then writes of "lords royal, royal lordship, royal liberties, regal jurisdiction, prerogatives of the lord's sword." Cf. also pp. 218-29, 250-65, and his "Kings, Lords, and Liberties in the March of Wales, 1066-1172," *TRHS*, ser. 5, vol. 29 (1979), 41-61, esp. p. 41, where Davies notes that marcher lords "claimed and exercised a measure of authority unsurpassed elsewhere within the king's dominions. A marcher lord was to enjoy all royal rights, prerogatives and customs belonging to royal lordships, and all royal courts and other jurisdictions." J. Goronwy Edwards, "The Normans and the Welsh March," *Proceedings of the British Academy*, 42 (1956), 155-177. F.M. Powicke, *King Henry III and the Lord Edward* (Oxford, 1947), p. 433, wrote that the

term obviously meant something to the royal clerks, else they would not have used it; the specific attributes mentioned are that the lordships claim their own chancery and exchequer, as well as cognizance of pleas of the crown.[15]

Cheshire seems not to have been a palatinate under its Norman earls.[16] When, then, did it become one? By 1450, the petitioners who besought the king's grace knew at least what the county's privileges then were; unfortunately, they do not apply to the county before 1300. Equally unfortunately, the petition is an early source for the hoary myth that "the said county is and hath been a County Palatine as well afore the conquest of England as sithen distinct and separate from your Crown of England." It goes on to enumerate the earldom's peculiarities, claiming that they had run not only since the county came into the royal hands, but under the earls of Chester of the Norman line as well: high courts, parliaments, chancery, exchequer, justices to hold both common and crown pleas, the right not to answer to laws made without the county, the privilege of being unrepresented in the national parliament. "Ye and all youre noble progenitors and all Earls whose estate ye have in the said Earldom as Earl of Chester sith the Conquest of England have had within the same *Regalem Potestatam* jura regalia et prerogativa regia [sic]." The document then claims that the earls of Chester since the Conquest had held the

lords marcher ruled "their castellated liberties like petty kings." Sir Matthew Hale, in *Prerogatives of the King*, p. 210, made a telling point concerning the marches: "much of that which shall be spoken concerning counties palatine is applicable to it, there being in most points but a titular difference between them." He also (p. 203) found Pembroke "a county palatine by prescription." References to Pembroke as a palatinate abound in J.R.S. Phillips, *Aymer de Valence, Earl of Pembroke 1307-1324* (Oxford, 1972), pp. 240, 243, 245, 247, 248, 251, 252. The earliest reference appears to be H. Owen (ed.), *Calendar of Public Records Relating to Pembrokeshire* (Cymmrodorian Record Series, 7; London, 1911-18), 1.39; a late source (1290), the document claims that Walter Marshal (*fl.* as earl 1241-1245) "enjoyed absolute rights (*totum regale*) within the precincts of his county of Pembroke." Helen M. Cam, *Liberties and Communities in Medieval England* (London, 1963) p. 209, calls attention to Edward III's grant of 1339 to Lawrence of Hastings "the same prerogative and honour of a *comes palatinus* in Pembroke that Aymer de Valence had enjoyed." A. H. Williams, *An Introduction to the History of Wales*, 2: *The Middle Ages*, pt. 1, 1063-1284 (Cardiff, n. d.), also denominated Pembroke a palatinate (p. 168): its "Earl exercised within its boundaries all the sovereign rights of the king." And Michael Altschul notes ("The Lordship of Glamorgan and Morgannwg, 1217-1317," in T.B. Pugh (ed.) *Glamorgan County History*, 3: *The Middle Ages* [Cardiff, 1971], esp. pp. 67-72, "The Regal Jurisdiction of the Marcher Lord of Glamorgan and Morgannwg,") that the de Clares "enjoyed almost complete administrative and judicial independence of the crown, (p. 67)," further that "in the government of their marcher lordship of Glamorgan, the de Clares enjoyed a position of virtual independence of royal control, regal jurisdiction (p. 72)." Naomi Hurnard, "The Anglo-Norman Franchises," *EHR* 64 (1949), 314, reminds us that "marcher lordships themselves were not, properly speaking, franchises, as their jurisdiction was not based on royal grant."

[15]cf. Hale, *Prerogatives*, 218.

[16]Alexander, "New Evidence," and "Alleged Palatinates," Geoffrey Barraclough, *The Earldom and County Palatine of Chester* (Oxford, 1953).

county as freely by the sword as the monarch held England by the crown.[17] This document was occasioned by the presumed application to Cheshire of a subsidy passed by the English parliament; the community of Cheshire had no ardent passion to meet its obligations. The "Defense" abounds in unctuous protestations of obedience, loyalty, and deference.

But what was the reality in the early thirteenth century? Brian Harris has pointed out the impossibility of precise definition of the Earl of Chester's authority in Cheshire.[18] Yet, he clearly agrees with Geoffrey Barraclough, who wrote that the earl's regalities "must be attributed to Earl Ranulf [III] (1181-1232), and fall in the second rather than the first half of his long tenure of the earldom."[19] The exercise of certain limited regalities does not necessarily imply palatine status as it emerged in the reign of Edward I; indeed, most recent scholarship (much of it owing a large debt to Barraclough), denies the alleged autonomy of Cheshire before the death [in 1237] of her last earl of the Norman line, John the Scot.[20] "The evidence that the county was officially considered to be a palatinate at any time down to 1237 is slight and unsatisfactory. It is clear and demonstrable that the position of Chester as a palatinate only became unambiguous when the county passed into the hands of the crown, and then precisely because it was the special endowment of the monarchy. Thus the emergence of the palatinate was an historically conditioned event, and its 'regal jurisdiction' . . . was something which grew. It is easy to place too great emphasis on the separateness of Cheshire and its autonomy, and upon the factors which distinguished it from the kingdom of England; but we shall do well to remember that Cheshire, although it

[17]Henry Hawes Harrod (ed.), "A Defense of the Liberties of Chester, 1450," *Journal of the Architectural, Archaeological and Historic Society* [of] *Chester and North Wales*, NS 8 (1902), 28-29.

[18]Brian Harris "Ranulf III, Earl of Chester," *Journal of the Chester Archaeological Society*, 58 (1975), p. 110.

[19]Barraclough, *Earldom*, p. 18. For these regalities, see *ibid.*, pp. 18 ff.; Harris, "Ranulf," p. 110 ff.; *idem*, "Administrative History,: *Victoria County History of Cheshire*, 2 (*ex* draft typescript generously provided me by Dr. Harris); Alexander, "New Evidence", *passim*, and sources therein cited. To the material in that article should be added the following note to the accepted view that Chester had its own register of writs, given by Ranulf III (pp. 722-23, 176). Elsa de Haas and G.D.G. Hall (eds.), *Early Registers of Writs* [Selden Society, 87] (London, 1970), pp. xcii-xciii, state that PRO, Palatinate of Chester 38/13, is probably not the register of writs given by Ranulf. "It does seem clear that this is not a Register specially made for use in Chester," although "it was made for a man with Chester interests. It is in no sense an official Register, and only by minor emendation is it in any sense a Chester register." Of course, this does not disprove the traditional attribution of a register of writs to Ranulf; it simply shows that if he did indeed grant a register to his county, this one is not it.

[20]S.B. Chrimes, introductory essay to Holdsworth, *History of English Law*,' 22; Jewell, *English Local Administration in the Middle Ages*, p. 72; cf. R. Stewart-Brown, "The Exchequer of Chester", *EHR* 57 (1942), 289. *Annals of Dieulacres*, p. 26, claims that the king seized Cheshire in 1237 because *regali gaudebat prerogative*, but this is a suspect source, since it was compiled in the fourteenth century.

differed from other counties in some respects, resembled them in many more."[21] The earldom of Chester case, adjudicated when John the Scot died without heirs of the body, was decided without reference to an alleged palatine position.[22] Evidence of Cheshire's judicial anomalies is about all that one can advance to argue for separate status in the reign of Henry III, and even here one must bear in mind Harris's warning that there is little evidence relating to the political and administrative status of Chester and Durham before the late thirteenth century.[23] Stewart-Brown noted that the older comital administration continued substantially unchanged after Cheshire's annexation by the crown, other than its being manned by royal, rather than comital, officials.[24] Lapsley exaggerated Cheshire's uniqueness when compared with that of other English counties.[25] Yet, whatever the administrative and judicial peculiarities of Cheshire, they did not amount to autonomy; Henry III "never scrupled to intervene and exercise his suzerainty in Chester during Edward's lordship."[26] Certain regal powers Chester's earl may have had, but official sources do not denominate the county as palatine until 1293, and then only by implication.[27] The argument of the royal attorney in this case was confined to franchises touching judgement in life and limb because it was only these that were at issue, making a reference to more sweeping regalities supererogatory. And there had come a sea change in the position of lordships *vis-à-vis* the crown:

[21]Barraclough, *Earldom*, p. 28.

[22]John Horace Round, *Peerage and Pedigree* 1 (London, 1910), pp. 132-134; Ronald Stewart-Brown, "The End of the Norman Earldom of Chester," *EHR* 35 (1920), 39 ff. Ralph V. Turner may have erred in thinking that perhaps the apparent difficulty in deciding the descent of the earldom was because Chester was "a palatinate rather than an ordinary lordship": *The King and His Courts* [Ithaca, 1968], p. 176.

[23]"Administrative History."

[24]"Norman Earldom," p. 150.

[25]Gaillard T. Lapsley, *Crown, Community, and Parliament*, (eds. Helen Cam and Geoffrey Barraclough) (Oxford, 1951), p. 100.

[26]J.R. Studd, "The Lord Edward and King Henry III," *BIHR* 50 (1977), 17; *idem*, "The Lord Edward's Lordship of Chester, 1254-72," *Transactions of the Hist. Society of Lancashire and Cheshire*, v. 128 (1978), 1-25. See also Anne E. Curry, "Cheshire and the Royal Demesne, 1399-1422," *ibid.*, pp. 113-138. For parallel developments in the thirteenth-century Welsh Marcher lordships, see R.R. Davies, "Kings, Lords, and Liberties in the March of Wales, 1066-1272," *TRHS*, ser. 5, vol. 29 (1979), esp. 53-61.

[27]Alexander, "New Evidence," esp. pp. 727-29; Record Commission, *Placita de Quo Warranto* (London, 1818), p. 714.

> a great franchise or liberty in England, such as the palatine earldom of Chester, was in theory no longer a feudal immunity in the old sense; rather, it was a delegation of the royal jurisdiction for the administration of justice in a part of the realm, and the earl remained subject ultimately to the king's power and right to do justice and maintain the peace.[28]

That is, the right to exclude elements of royal authority had become the privilege of exercising them—immunities had become franchises. Barraclough pointed out that Cheshire owed its palatine organization to the crown, acting primarily in the light of its own concerns.[29] He linked the regality with the county's role as a concentration point for Edward I's conquest of north Wales. Warren Ault, with some exaggeration, called the county a "kingdom," but Hewitt correctly stated that while Cheshire under the Black Prince did maintain her distinctiveness, this was detrimental to Cheshire's own interests.[30]

Durham's palatine history in the late twelfth and thirteenth centuries has received superlative scholarly attention, the arguments of which it is unnecessary to rehearse here. The reader's attention is drawn to Lapsley's magisterial defense of the liberty's palatine status in the early period, and to the thoughtful rebuttal of his views as they pertain to this period in the work of the Scammells.[31] There is little to add to their treatments of the topic; surely incorrect is Frank Barlow's statement that in the mid-twelfth century "the bishop of Durham possessed every sort of jurisdiction, lay and ecclesiastical."[32] It is traditionally alleged that the Bishop of Durham applied the judicial reforms of Henry II in his own liberty, but Jean Scammell pointed out that this view is a misunderstanding.[33] Geoffrey Scammell observed that Richard Lionheart was the first king to recognize regalian rights by charter: "but this was a far cry from un-

---

[28]Gaines Post, *Studies in Medieval Legal Thought* (Princeton, 1964), p. 280; See also Scammell, "Durham," p. 456.

[29]Barraclough, "Earldom," p. 28.

[30]Warren Ault, *Private Jurisdiction in England* (New Haven, 1923), p. 246; Herbert J. Hewitt, *Cheshire Under the Three Edwards* (Chester, 1967), pp. 3, 11.

[31]Lapsley, *Durham*, throughout; Geoffrey V. Scammell, *Hugh du Puiset, Bishop of Durham* (Cambridge, 1956), C.V., "The Liberty of Durham"; J. Scammell, "Durham," pp. 452-63.

[32]Frank Barlow, *The English Church 1066-1154* (London and New York, 1979), p. 166.

[33]"Durham" p. 468. Cf. Holdsworth, *English Law* 1.110: Hugh du Puiset adopted the legal innovations of Henry II. "In Durham the palatinate jurisdiction became more definite and exclusive by borrowing the new ideas and procedure. It came to be a jurisdiction which differed not merely in degree but also in kind from the jurisdiction possessed by the ordinary holders of franchises.

bridled liberty. Immunity was not autonomy."[34] Scammell also judged, rightly, that "Henry II never hesitated to violate or define the Liberty [of Durham] when occasion demanded, with the result that neither in the field of politics nor of justice did the bishop hold an absolute immunity."[35] Scammell stressed the will and policies of Hugh du Puiset as being a more substantial factor in his autonomy than any alleged palatine status of his bishopric; this is a position taken as well by Barraclough with regard to Chester under Ranulf III. Sir Thomas Duffus Hardy inflated a charter of King John: "by this charter the bishops of Durham claimed, of right, to have *Jura regalia* within [Sadberge] . . . as long as they enjoyed the life rights in the other parts of the Palatinate." But John's charter mentions neither *jura regalia* nor palatine rights.[36] Jean Scammell noted that the charter rather undermined the bishop's claimed authority over his subjects.[37] In 1224, the king further restricted the bishop's juridical freedom. In 1219, Bishop Richard Marsh had granted the prior and convent of Durham, *inter alia*, *onmibus regalibus consuetudinibus*—again, the sort of grant in general terms which would before the century's end come under the onslaught of royal attorneys and theorists of royal rights.[38] K. E. Bailey also was cautious in his opinion concerning the palatinate in the early Angevin period; noting that it was only during the pontificate of Antony Bek that the earlier palatine pretensions reached their fruition.[39]

References to the Bishop of Durham as a magnificent lord are not wanting; Powicke stressed Antony Bek's temporal authority;[40] Sir Thomas Duffus Hardy, as well referring to Bek's pontificate, claimed that "during his rule the Palatinate had acquired . . . its most extensive privileges'" yet, he cautioned, "it may be questioned whether all of them

---

[34]*Hugh du Puiset*, pp. 188, 191; Richard's Sadberge charter is in James Raine (ed.), *Historiae Dunelmensis Scriptores Tres* [Surtees Society, 9] (London 1839), app. xl (1189). The charter grants rights in general rather than in specific terms, a practice which became problematical in the view of the lawyers of Edward I: the grant is *cum omnibus rebus ad ea pertinentibus, et cum placitis ad coronam pertinentibus, sicut nos ipsi in propria manu nostra habebamus, et sicut ipse episcopatus habet et tenet alias terras suas et feoda militum in Episcopatu suo . . . Ibid.*, xlii, a royal grant conveying rights in Northumberland, is couched in general terms as well: *omnibus libertatibus et liberis conseutudinibus et placitis et querelis, et omnibus aliis rebus ad coronam nostram pertinentibus.*

[35]*Puiset*, 191.

[36]*Registrum Palatinum Dunelmense* (Rolls Series; 4 vols., London, 1873-38) 3.x; Record Commission, *Rotuli chartarum* (London, 1837). 1[1].37.

[37]"Durham," p. 460.

[38]William Greenwell (ed.), *Feodarium prioratus Dunelmensis* [Surtees Society, 58] (London 1872,) w.1xxxvii-1xxxviii. Greenwell noted that "it is true indeed that many of the gigantic palatine claims asserted, and to some extent maintained, by later Bishops, had not at the time of Bishop [Marsh] even been heard of; nevertheless the Bishop of Durham was then possessor of privileges which, in ordinary cases of tenure, belonged only to the Crown (pp. vii-viii)."

[39]"Two Thirteenth-Century Assize Rolls for the County of Durham," *Miscellanea* [Surtees Society, 127] (London 1916), p. ix.

[40]F.M. Powicke, *The Thirteenth Century* (Oxford, 1953), p. 494.

were exercised by his successor, William de Kellawe."[41] Constance Fraser noted that "as bishop of Durham, Bek was also the secular ruler of the compact regalian franchise in the north of England."[42] She elsewhere called attention to the "appropriation of royal powers in Durham . . . with tacit royal assent."[43] Lapsley stated that 1300 saw the highest development of Durham's regalian powers.[44] The earliest reference in royal records to the bishopric as a regality falls to 1267, from which year the Patent Roll mentions, "royal rights."[45] Surtees also attributed the culmination of Durham's regalities to Bek.[46]

Probably the most extreme statement of the Bishop of Durham's regal powers comes from the *quo warranto* inquest of 1293: "the Bishop of Durham has a dual status, to wit the status of bishop as regards his spiritualities, and the status of earl palatine as to his temporal holdings . . ."[47] Ault found the bishop at the summit of his legal structure so long as he administered justice without default.[48] All this may well have been so; yet England had one king, not two or more, and even so favored a royal servant as Bishop Bek found himself holding a title which proved gossamer when Edward I chose to intervene in his liberty.[49] Bractonian theory entered legal records with regard to Durham in the Brometoft case (1301): "the core of the royal argument was that since Bishop Bek held regalian privilege he was a king's minister and responsible to the Crown for execution of royal orders *just as the rest of the magnates in the kingdom who hold these kind of liberties.*" The king's attorney laid pointed emphasis on the fact that the bishop's regalian power was not *sui generis* but delegated by the king. *Corona integra est.*[50] This point is ahistorical; Durham claimed her liberties by prescription, since the memory of man

[41]*Registrum Palatinum Dunelmense* 1.lxxviii.

[42]*Records of Antony Bek, Bishop and Patriarch, 1283-1311* [Surtees Society, 162] (London, 1953), p. vii.

[43]"Prerogative and the Bishops of Durham, 1267-1376," *English Historical Review* 74 (1959), p. 472; see also *Records of Antony Bek*, pp. 80-99.

[44]*Durham*, p. 76.

[45]Great Britain, Public Record office, *Calendar of Patent Rolls 1266-72* (London, 1913), p. 63; cf. the rather inflated description of this document in Hardy, *Registratum* 1.lxxxvi.

[46]Robert Surtees, *The History and Antiquities of the County Palatine of Durham*, with a new introduction by Professor E. Birley (East Ardley, 1972) 1.xxxiv.

[47]Fraser, *Records of Antony Bek* Great Britain, pp. 95, 98; Record Commission, *Placita de Quo Warranto* (London, 1818), pp. 604-605; Fraser, "Prerogative," p. 475; Great Britain, Public Record Office, *Calendar of Close Rolls 1288-1296*, p. 332; Hardy, *Registrum* 3.xv; R.K. Richardson, "The Bishopric of Durham Under Antony Bek, 1283-1311," *Archaeologia Aeliana*, ser. c, 9 (1913) p. 119; William Page (ed.), *The Victoria History of the County of Durham*, 2 (1907) 153. Fraser, *Records of Antony Bek*, p. 40, states that the bishops "from time immemorial had all regalian rights and liberties within their franchises of Durham and its members."

[48]W.O. Ault, *Private Jurisdiction in England* (New Haven, 1923), p. 116.

[49]Durham was a "regalian franchise," Constance M. Fraser, "Edward I of England and the Regalian Franchise of Durham," *Speculum* 31 (1956), 336.

[50]Fraser, "Edward I and Durham p. 337; Fraser, *Records of Antony Bek*, pp. 85-86. *Richardson, "Durham Under Antony Bek," c.x.*

runneth not, not by specific royal grant. Edward I and his lawyers attended more to the letter than to the spirit of the law, and the legal learning of Bracton and his followers provided the king with the theoretical weapons to justify his practical policy: Edward was the sort of conservative revolutionary so dear to English history, but he was a revolutionary nonetheless. And as Lenin reminds us, there is no revolution without theory. We shall shortly return to the legal theories underlying Edward's policy; they reveal a concatenation of practical politics and of that sense of justice so important to medieval Englishmen. Government not only had to be rightly justified; it had to be so regarded. When government was viewed as tyranny or as impotent—as under Stephen, John, Henry III, Edward II, Henry IV,—it lost the respect which abundant governance commanded.

The title earl palatine was pleasant, but it held no legal standing; indeed "the dignity and state of earl palatine was unknown in England."[51] And what would Edward I have thought of the proposition that "there are two kings in England, namely the lord king of England wearing a crown as a symbol of his regality, and the lord bishop of Durham wearing a mitre in place of a crown as symbol of his regality in the diocese of Durham?"[52] It is certain that the king did not hesitate to sequester the palatinate whenever it so pleased the royal will, stating in clear Bractonian language the principle that:

> because the bishop, since he holds the said liberty, issuing from and dependent upon the crown, by the king's grant [sic] is so far the king's minister for upholding and carrying out in the king's name and in due manner what belongs to royal authority within the said liberty; so that he ought to do justice to all and each there, and duly submit both to the lord king's mandates, although by the king's grant he receives the profits and issues thence arising. *For the royal authority extends through the whole realm, both within the liberties and without* [emphasis added].

Historians of the pontificate of Antony Bek agree that Durham's palatine status reached its greatest extent during his rule of the liberty of St. Cuthbert; yet, while real and important, this status was strenuously limited by royal power and policy. As Lapsley pointed out, the monarch regularly circumscribed the bishop's exercise of regalities.[53] It is all very

[51]Fraser, "Edward I and Durham," p. 333; Fraser, *Records of Antony Bek*, p. 96.

[52]Frasaer, *Records of Antony Bek*, p. 98. Hardy, *Registrum* 3.61-67; Lapsley, *Durham*, pp. 130 ff.; *Cal. of Close Rolls 1302-1307*, Pp. 100-103; Fraser, *Records of Antony Bek*, pp. 92-3; *Cal. of Patent Rolls 1307-13*, pp. 2, 75; Great Britain, Record Commission, *Feodera* 2[1].5, 47; Hale, *Prerogatives of the King*, pp. 203-8; Helen M. Cam. *The Hundred and the Hundred Rolls* (London, 1930), p. 219; *idem*, *Libertiesa and Communities in Medieval England* p. 184. The quotation following is from Fraser, *Records of Antony Bek*, pp. 92-93.

[53]*Durham*, p. 75.

well that royal records of the fourteenth century contain often such phrases as the "bishopric and royal liberty of Durham," the "royal liberty," the "royal franchise," "Palatine rights."[54] Again, there was only one king in England; neither the Earl of Chester nor the Lord Bishop of Durham ruled as a king, but rather—by the time of Edward I—as a royal surrogate.

Chester and Durham claimed palatine rights by prescription; on their model a royal grant of Edward III erected the palatinate of Lancaster. Here we have the unambiguous act of a king; not a plea to time immemorial, but to a specific royal charter. When Chester was alluded to as a palatinate, the earldom had passed into the hands of the crown; when Durham was so named, it was in the hands of a loyal and faithful former royal servant, Antony Bek; the creation of the palatinate of Lancaster lay again to the royal family, the king's first cousin, whose lineage came to the throne as the Lancastrian kings. In the cases of Chester and Lancaster, family considerations were of obvious importance; royal sons (after the early Angevin period) were trustworthy and were bound by the extended familial ties so important to medieval people, ties which transcended individual concerns, in our day sloppily referred to as "doing one's own thing."

Henry de Grosmont, grandson of Henry III's younger brother Edmund Crouchback and of Blanche of Navarre and Champagne, was created duke of the new palatinate of Lancaster in 1351, the second duke in English history (the first was Edward of Woodstock, the Black Prince, created Duke of Cornwall in 1337).[55] It is worthwhile to condense the terms of the charter, since they constitute the first detailed royal definition of a palatinate. It is possible that while granting large rights to Henry de Grosmont, the king was at the same time limiting the even larger pretensions of palatinates—of course, there is absolutely no evidence to this effect, and the suggestion is offered merely as a possibility. Surely the learned editors of the *Victoria County History of Lancashire* err in claim-

[54]*Cal. of Charter Rolls 1341-1417*, p. 291; *Cal. of Close Rolls 1302-1307*, p. 500; *Cal. of Patent Rolls 1301-1307*, p. 149; Hardy, *Registrum*, 3.xviii, xxxiv.

[55]Robert C. Somerville, "The Duchy and County Palatine of Lancaster," *Transactions of the Historic Society of Lancashire and Cheshire*, 103 (1952), 40, 59; the royal grant may be consulted, *inter alia*, in William Hardy, (ed.) *Charters of the Duchy of Lancaster* (London, 1845), iii, pp. 9-11; William Farrer (ed.), *Lancashire Inquests, Extents, and Feudal Aids*, 3 (1313-1355). ccxliii; *Cal. of Patent Rolls 1350-1354* (1907), p. 60; John Brownbill (ed.), *The Coucher Book of Furness Abbey*, 2[1] (Chetham Society, NS 74) (London 1915), 10, John Parker (ed.), *Plea Rolls of the County Palatine of Lancaster* (Chetham Soc, NS 87) (London, 1928) vii. For Duke Henry, see the definitive biography of him by Kenneth Fowler, *The King's Lieutenant, Henry de Grosmont, First Duke of Lancaster, 1310-1361* (New York, 1969) a splendid book which stands as a rebuke and as a refutation to those who claim that a meaningful biography of a medieval person is not possible. May McKisack, *The Fourteenth Century* (Oxford, 1959), p. 254, represents scholarly opinion on Henry's new status: "the title [of duke] was purely honorary and carried with it no specific rights or privileges: but the grant of the palatinate allowed [Henry] virtually royal powers within the county of Lancaster."

ing that the charter made Lancaster an *imperium in imperio;* it was not even a *regnum in regno.*[56]

Specifically, the royal gift bestowed upon the new duke his own writs, chancellor, chancery, and seal; his own justices to try pleas of the crown as well as all other pleas actionable under the common law; "all other liberties and *jura regalia* pertaining to an Earl Palatine as freely and entirely as the Earl of Chester is well known to have within the same county of Chester." Yet it reserved certain taxes and subsidies retained by the crown, and retained in the king's hands pardon of life and limb (note that such judgment is often taken to be the benchmark of a palatinate; here its pardon is witheld from one), and power to correct errors in the palatinate court. As well, unlike Cheshire and Durham, Lancashire was required to send representatives to parliament, and while the royal taxes were to be collected by the duke's "trusty and sufficient men," they were still royal, not ducal, taxes. The palatine rights were granted to the duke only and not to his heirs; they died with him in 1361. Helen Jewell noted that while in Lancaster palatine administration mirrored its royal analogue, it was less successful in checking lawlessness;[57] the same could be said of Cheshire and Durham.

Of course, there were historical antecedents placing Lancaster in a different status from other earldoms. Jewell found it a regal earldom; under Edmund Crouchback, in the first half of the fourteenth century, important (but not specifically royal) franchises and powers were bestowed upon the earls.[58] But few royal judicial grants followed in the fourteenth century upon those to Henry de Grosmont; the title of duke was bestowed upon John of Gaunt, fourth son of Edward III and husband of Henry's daughter, and upon his heirs, in 1361.[59] In this year and in the following one he was granted substantial legal powers, most enjoyed by the other palatine lords.[60] Most important was the royal instrument of 1377 which defined the more general grant of palatine powers for Duke John in specific terms; this is less an indication that the definition of a palatinate was unclear at that date than a reflection of the statement in a letter patent of 1378 confirming the charter of the previous year. It was there stated that Duke John had petitioned the king (Richard II, in the minority) "to have the general words expressly declared on specific

[56]Cf. William Farrer and John Brownbill, eds; v. 2 (1908), 205. S. Armitage-Smith, *John of Gaunt* (London, 1904).

[57]*English Administration*, p. 74.

[58]A. Cantle (ed). *The Pleas of Quo Warranto for the County of Lancaster* (Chetham Soc., NS 98) (London, 1937), p. 38. Hardy, *Lancaster Charters*, pp. 1-5, 6-8; Robert C. Somerville, *History of the Duchy of Lancaster, 1265-1603* (London, 1953) pp. 40-62; Ault, *Jurisdiction*, p. 269. Sydney Armitage-Smith, *John of Gaunt's Register* (Camden, Ser. 3, 20; 1911), p. xxx.

[59]Hardy, *Lancaster Charters*, vi (pp. 17-18).

[60]Hardy, *ibid.* iv (pp. 12-13). *Cal. Charter Rolls 1341-1417*, pp. 172-3; Matthew Gregson (ed.) *Portfolio of Fragments Relating to the History and Antiquities, Topography and Genealogies of the County Palatine and Duchy of Lancaster* (ed. 3, by John Harland; Manchester, 1869), p. 354.

points."[61] Somerville noted that the accession of Henry VI, son of John of Gaunt and usurper of the throne in 1399, Duke Palatine of Lancaster, assured the continued special status of the duchy.[62]

Surely Jean Scammell sent her arrow straight to the mark when she wrote, in reference to Chester, Durham, and Lancaster, that "differing as they did, these three franchises still offer the extreme English examples of alienated *regalia*, and their inflated reputations falsify many assessments of the effectiveness of monarchy and the possible extent of immunities in medieval England. For the true distinction of Lancaster's liberty, as of Chester's, was its embalming by royal possession, which realized and flattered its every pretension and saved it the many impeachments of private ownership."[63]

As has been noted, Chester and Durham were palatinates by prescription, Lancaster by specific royal grant; the last then, was a franchise, the former two not, since they were not specific royal creations. The problem of franchises reached its most dramatic articulation (although not its first) in the reign of Edward I, when the king's and his ministers' policy of strengthening royal power inevitably called into question the rights of franchise-holders to their claimed powers. K. B. McFarlane has neatly set forth the earl-bashing program of Edward I, and Clanchy has shown its precedents in the reign of his father Henry III, who (he argued) had a very exalted view of the royal office and of its sacerdotal nature.[64] These scholars lead us to the argument which here follows. It is a commonplace that in England, as well as on the continent, the thirteenth century encompassed a growing practical and theoretical definition of royal power, and therewith a growing practical and theoretical limitation of subordinate powers, from the smallest liberty to the greatest franchise.[65] It should be noted here that Lapsley erred in judging the English palatinates as "great fiefs answering in most essentials to the county or duchy of medieval France." The difficulty with this suggestion—although, as shall be argued, continental analogy is likely—

[61]Seriatim, the citations, separated by the period, are as follows. J. Scammell, "Durham", p. 450: "The term 'palatinate' had no specific meaning in England as late as 1377, when John of Gaunt, created earl (*sic;* read Duke) palatine of Lancaster, had almost immediately to seek clarification of his rights." *Cal. of Patent Rolls 1374-77*, p. 433; Hardy, *Lancaster Charters*, ix (pp. 32-34); Gregson, *Fragments*, p. 353; G. H. Tupling, "The Royal and Seignorial Bailiffs of Lancashire in the Thirteenth and Fourteenth Centuries" (Chetham Miscellanies, NS 8 [Chetham Soc., NS 109] (London, 1945), p. 9 *Cal. of Patent Rolls 1377-81*, p. 284; Hardy, *Lancaster Charters*, xiii (pp. 62-64); John Parker (ed.), *Plea Rolls of the County Palatine of Lancaster* [Chetham Soc., NS 87] (London 1928), p. 48.

[62]Somerville, "Duchy" p. 60.

[63]Scammell, "Durham," p. 451.

[64]K.B. McFarlane, "Had Edward I a 'Policy' Towards the Earls?", pp. 248-267 in *The Nobility of Later Medieval England* (Oxford, 1973); M.T. Clanchy, "Did Henry III Have a Policy?", *History* 53 (1968), 203-16.

[65]See, for example, Hoyt, *The Royal Demesne*, pp. 133-136; Clanchy, "The Franchise of Return of Writs" p. 59; N. Denholm-Young, *Seignorial Administration in England* (New York, 1964), p. 2.

is that the French counties and duchies varied remarkably in the strengths of their lords both *vis-à-vis* the crown and with regard to their own tenants, and these variations, like those found in the English franchises, themselves fluctuated considerably over time, and with the personalities of their dukes and counts.[66] But Lapsley was right to suggest a continental parallel; too much of the history both of England and of France in the middle ages has been written without due regard to the fact that the two countries were in intimate cultural and political contact throughout most of the middle ages, an intimacy which did not end with the reign of King John.[67]

Immediate attention must focus upon the *quo warranto* inquests of the mid- to late-thirteenth century. Following that, we will consider royalist legal theory, then possible continental models, and last the reasons for believing that palatinates did not exist before the reign of Edward I. Royal challenges to franchisal rights did not begin with Edward I in his great Statute of Gloucester.[68] Rather, their roots may be found in the reign of Henry III. Powicke noted a royal writ of April 1244 stating that no one was to exercise regal liberties, lacking either specific warrant or prescriptive tenure.[69] Then, the sixth article of the Dictum of Kenilworth (1266) required return to the crown of all rights of the monarchy theretofore alienated: *omnia loca, jura, res, et alia ad coronam regiam pertinentia.*[70] And Hale's principle that "the king doth not grant franchise against himself" was developing across the mid- and late-thirteenth century.[71] "The general theory," wrote Gaines Post, "was that privileges for individuals were useful to all when they were granted to men who . . . used them in the service of the common and public welfare of the state."[72] He also specifically alluded to Chester as "in theory no longer a feudal immunity in the old sense; rather, it was a delegation of the royal jurisdiction for the administration of justice in a part of the realm, and the

[66]*Durham*, p. 1.

[67]See, for example, the insight brought to bear upon the career of Richard I by stressing his Aquitainian, rather than his English, role by John Gillingham, *Richard the Lionheart* (New York, 1978). Another work illuminated by comparative history is the spendid short study by Bryce Lyon, "What Made a Medieval King Constitutional?", pp. 157-175 in T.A. Sandquist and M. R. Powicke (eds.), *Essays in Medieval History Presented to Bertie Wilkinson* (Toronto, 1969).

[68]This statute may be most conveniently consulted in William Stubbs (ed.), *Select Charters and Other Illustrations of English Constitutional History* (ed. 9, by H.W.C. Davis; Oxford, 1957), pp. 449-50, and (in translation) in Harry Rothwell (ed.), *English Historical Documents 1189-1327* (London, 1975), pp. 414-19.

[69]Clanchy, "Henry III," pp. 215, alleges the proceedings to have begun before 1258, Sir Maurice Powicke, *King Henry III and the Lord Edward* (Oxford, 1947), pp. 111-12; cf. pp. 326 ff.

[70]Stubbs, *Select Charters*, p. 408; Rothwell, *English Historical Documents*, p. 382; and see Peter Riesenberg, *Inalienability of Sovereignty in Medieval Political Thought* (Columbia University Studies in the Social Sciences, 591; New York, 1957) p. 164.

[71]Hale, *Prerogatives*, p. 204.

[72]Gaines Post, *Studies in Medieval Legal Thought* (Princeton, 1964), p. 280

earl remained subject ultimately to the king's power and right to do justice and maintain the peace." Helen Cam affirmed that in the Norman and early Angevin periods, many new franchisal powers appeared, and that their holders became increasingly enmeshed in royal governance.[73] Donald Sutherland, surely the master of those who know when *quo warranto* proceedings are discussed, pointed out that

> in 1294 the law of franchises was more fully developed than in 1278. The campaign of 1278-94 was largely responsible for this development. As the Quo Warranto business went on through the 1280s the king's representatives became more 'Bracton-conscious.'[74]

Now palatinates are great franchises, and a major difficulty with approaches to their history in the past has been that the story of the lordships is told largely from a local frame of reference—we see them from the viewpoint of the Earl of Chester, the Bishop of Durham, and of their communities. Let us instead look at the topic from the viewpoint of the king and of his councillors, as they pursued consciously (albeit, as Sutherland has shown, inconsistently) the aggrandizement of royal power. There is a paradox; if Henry III and Edward I were in fact enlarging royal power, why did they alienate it? Or, in fact, did they? Could it not be argued that the power to define involves the power to limit? And, to reiterate, the terms in which palatine regalities are grandly described in the period of and after the reign of Edward I are anachronistic when referred to earlier periods.

Perhaps the concept of inalienability of sovereignty was important in the thinking of these two kings. Roman law was by no means unknown in England as early as the mid-twelfth century, and its influence grew steadily from the reign of King John.[75] But it is in the reign of Henry III that the penetration of continental legal theories becomes clear.[76] Clanchy noted that Hostiensis, Bracton, John of Lexington, and William of Kil-

---

[73]Helen Cam, "The Evolution of the Medieval English Franchise," *Speculum* 32 (1957), 438.

[74]*Quo warranto Proceedings in the Reign of Edward I, 1278-1294* (Oxford, 1963), pp. 179, 182. This superb study makes it unnecessary for me to discuss the *quo warrantos* in depth here.

[75]*Studies*, C. IX; Ralph V. Turner, "Roman Law in England Before the Time of Bracton", *Journal of British Studies* 15 (1975), 25; Ernst Kantorowicz, "Inalienability: A Note on Canonical Practice and the English Coronation Oaths in the Thirteenth Century," *Speculum* 29 (1954), 488-89. Turner, "Roman Law," throughout, is the most convenient introduction to the topic; he shows that the influence of Roman law was as yet not significant among the king's justices. Professor Riesenberg also alluded in his pioneering study to the introduction into England in John's time of a "general theory of inalienability composed of Roman and canonical elements." Riesenberg, *Inalienability*, p. 100.

[76]Clanchy, "Henry III," pp. 208, 215 ("Henry III deliberately looked beyond England both for men and ideas.")

kenny, all men of influence with the king, were learned in the canon law, itself heavily dependent upon that of the Roman codes.[77] Ernst Kantorowicz, considering the coronation oath of Henry III, found strong indications in papal letters of Gregory IX that Henry probably made an oath to maintain the rights and property of the crown.[78] He found that the "first official document stating clearly and succinctly that the royal demesne was inalienable was . . . the Councillors' Oath, containing the clause 'Item, I will consent to the alienation of none of those things which belong to the ancient demesne of the Crown,' falls in . . . the time of Bracton."[79] Hoyt noted the absence in the baronial revolt of 1215 of any reference to inalienability, while noting its presence in those of 1258 and 1311.

> Furthermore, the idea that the royal demesne shall not be alienated, that it belonged to the crown, and that if alienated it must be recovered, was enunciated—perhaps for the first time in so many words—in a nearly contemporary English tract which influenced the greatest legal mind of the next generation. The idea, it is safe to assume, was not wanting; its source and sustenance, however, came from royal policy and administration and not from baronial opposition.[80]

The most influential of the English theorists of inalienability was, of course, the royal lawyer and councillor Bracton.[81] The principal text as it relates here is:

> Only the lord king has the power of judging in matters of life and members, either of taking life or of granting it. [This is] true unless there be one in the realm who has *regalem potestatem* in all matters, saving lordship /*dominio*/ to the lord king as prince, like earls palatine, or if one has this liberty by grant of the lord king.[82]

Sutherland raised a further thought on this matter, alluding to the arguments of the royal attorney Hugh Louther. Influenced by Bracton's

[77]See Riesenberg, *Inalienability*, p.40.

[78]Kantorowicz, "Inalienability," pp. 488-89.

[79]Kantorowicz, *The King's Two Bodies* (Princeton, 1957), p. 166; ff. also stresses the importance of the reforms of Henry II in familiarizing governmental officials and the polity with the concept and practice of inalienability.

[80]Hoyt, *Royal Demesne*, pp. 146-57, 162-63.

[81]Cam, "Franchise," pp. 440-42, is succinct on Bracton's position and on the distinction between feudal and franchisal justice.

[82]Henry Bracton, *De legibus et conseutudinibus Angliae*, v. 2 (ed. George E. Woodbine, rev. Samuel E. Thorne; Cambridge, 1968). 346. Thorne (*Ibid.*, n. 5), points out the same notation in the margin of case 1273, *Bracton's Note Book* (London, 1887). See further, on Bracton's high royalism and on his influence on Henry III's policy, Clanchy, "Henry III," pp. 208-10.

doctrines, he wrote, Louther alleged that liberties were of two sorts—"those which were merely appurtenances of the crown," and those which "do themselves compose a crown entire."[83] Of course, in the mid-thirteenth century all this was pretty much lawyers' theories; by the end of the century, they were well on the way to becoming political and legal reality.[84] Nor, incidentally, were the *quo warrantos* the sole inquest into franchises; less well-known, but important, were those inquiries of 1274-75 which resulted in the Hundred Rolls.[85] So, too, was the royalist refusal to accept arguments for franchises whose instruments granted rights and privileges in general rather than in specific terms.[86] Many of the earlier charters upon whose authority the bishops of Durham claimed regalities were of this general type.

And so the *quo warrantos* continued against franchises from the greatest to the most picayune; as Sutherland observed, "franchises were royal rights in private hands. Every franchiseholder held something which in principle belonged to the king. Because they were royal rights, the king could force their holders to show title."[87] As we have seen, Durham and Chester were palatinates by prescription; the idea of prescriptive tenure also came under the maces of the royal attorneys. Bracton is again the English source for the theoretical arguments against prescription; long usage, possession of a liberty since the limit of legal memory, was inoperative unless the liberty were confirmed by specific royal grants. "Time runs not against the king."[88] The inquests are, of course, hardly the sole illustration of "the aggressive nature of Edward's government," and they exemplify, as Michael Prestwich noted, the new reality that "in official circles the concept of kingship was one where the king ruled, rather than co-operated with, his magnates."[89] Analogous developments were in train across the Channel:

---

[83]*Quo warranto*, pp. 3, 102. Louther, incidentally argued the royal *quo warranto* case against the Abbot of Dieulacres discussed in my "New Evidence."

[84]See also Riesenberg, *Inalienability*, p. 4 (alluding to a legal fiction from *Fleta*), 6; Cam, "Franchise," pp. 440-41.

[85]Published by the Record Commission: *Rotuli hundredorum* (London, 1812); on these matters, the fundamental work remains Helen Cam, *The Hundred and the Hundred Rolls* (London, 1930). Post, *Studies*, c.viii, is excellent on the matter of resumption of royal rights and dignities.

[86]Sutherland, *Quo warranto*, pp. 115-18. (For example, "all liberties and free customs" unless they were enumerated).

[87]Sutherland, *Quo warranto*, pp. 6, 12.

[88]For a discussion of this principle and its ramifications, Kantorowicz, *King's Two Bodies*, pp. 168-70. Its applicability to the *quo warranto* proceedings is lucidly and learnedly set forth by Sutherland, *Quo warranto*, c. iv.

[89]Michael Prestwich, *War, Politics and Finance Under Edward I* (London, 1972), p. 227.

> The king of France, who has *ius imperii* in his realm, cannot diminish the realm any more than a pope can give up a diocese or the emperor a county. No prescription can run against the king *cum limites provinciarum et regnorum . . . prescribi non possint.*[90]

Let us leave—in the main—the areas where theory and law converge to examine briefly more narrowly political evidence issuing from the reign of Edward I. As is apparent, the *quo warrantos* represented a "new doctrine of royal prerogative. The interpretation of previous charters rested ultimately upon the king's will, which was that the charter must make specific mention of the franchises claimed."[91] As Barbara English recently wrote, "all franchises are royal authority delegated: this is the Edwardian position."[92] T.F. Tout implicitly denied the traditional concept concerning palatinates in stating that Edward I rejected the idea that his vassals could administer their holdings as semi-independent entities.[93] As in England under Edward, so in the France of his great contemporary Philip the Fair: "the basic point was stated clearly: no territory in the realm is exempt from the king's jurisdiction; all those who have rights of justice hold them from the king, directly or indirectly."[94]

The doctrine merges clearly into public law in Edward's imperious reign. In 1275 Edward "alleged verbatim the Honorian decretal saying that the king was obliged 'to maintain unimpaired the rights of the realm.'"[95] The Statute of Westminster I (1275) bluntly stated that

> even where the king's writ does not run, the king is sovereign lord over all and will do right to any who complain to him if the lord of the liberty be remiss.[96]

A quarter of a century later, the *Articuli super cartas* contain two telling phrases:

> C. 1: (Speaking of Magna Carta and of the Charter of the Forest, both confirmed by him in that year): granted to *all the community of the realm* [emphasis added], . . . the complaints that shall be made of all those who contravene or offend in any of the stated charters . . . *as well within liberties as without* [emphasis added] [shall answer to royal justice.] C. 20: In each and all the aforesaid

[90]Joseph R. Strayer, *The Reign of Philip the Fair* (Princeton, 1980), p 352.

[91]Clanchy, "Return of Writs," p. 66.

[92]Barbara English, *The Lords Road of Holderness, 1086-1260: A Study in Feudal Society* (Oxford, 1979), p. 121.

[93]*Edward the First* (London, 1906), p. 124.

[94]Strayer, *Philip the Fair*, p. 243.

[95]Kantorowicz, *King's Two Bodies*, pp. 347-58.

[96]Record Commission, *Statutes of the Realm* 1 (1810), p. 31 (c. 17); translation in Rothwell, *English Historical Documents*, pp. 401-02.

> things, the king wills and intends . . . that the right and lordship of his crown be saved for him absolutely.[97]

There is no nonsense here about exemption from royal authority by palatinates, although the word had appeared in record sources seven years previously; nor is there even reference to the delegation of royal power to enforce the Articles by the lords of Chester and Durham.

It is now commonly accepted that the term "palatinate" was first used in official records in 1293.[98] The term came from the continent; it is not indigenous to England. An obvious source is the German *Pfalzgraf*, particularly since there were intellectual and diplomatic contacts between England and the empire dating from the reign of Barbarossa; but the Rhenish palatinate's lord claimed an attribute owned by no English lord, that of judge over the emperor.[99] We find two other sources, one of title, the other of function. It is likely that the title derives from Henry III's younger brother, Edmund Crouchback, Earl of Lancaster, who married Blanche of Castille and Navarre, daughter of the madcap Thibaut IV of Champagne, in 1276. Like Antony Bek, Edmund was "a connoisseur of honours; the title had the atmosphere of power [and] the prestige of rarity."[100] At the time when the title came to England, the denomination of count palatine of Champagne had become purely honorific.[101] The palatine title and its powers had their richest history in the Champagne of the eleventh and early twelfth centuries.[102] The counts of Champagne ceased to style themselves *palatinus* in the early twelfth century, changing the comital style to Count of Blois, and in 1154 Henry the Liberal styled himself Count of Troyes; so it would seem that the title fell into abeyance. But it was revived again by Thibaut IV, who styled himself Count Palatine of Champagne and Brie.[103] What did the title mean when it had

---

[97]*Statutes of the Realm* 1, 136-41; Rothwell, *ibid.*, pp. 496-501. Cf. the 1275 Grant of Custom on Wool (Stubbs, *Select Charters*, pp. 443-44; Rothwell, *English Historical Documents*, p. 410), which similarly was to be imposed within liberties as well as without.

[98]Somerville, *Lancaster*, p. 41; Lapsley, *Durham*, p. 11; Alan Harding, *The Law Courts of Medieval England* (New York, 1973). Alexander, "New Evidence," pp. 721 ff.

[99]Fritz Kern, *Kingship and Law in the Middle Ages*, tr. and introduction by S. B. Chrimes (Oxford, 1956), p. 124; Kern finds this function in England, but his references do not support his point.

[100]On Edmund, see Walter E. Rhodes, "Edmund, Earl of Lancaster," *EHR* 10 (1895), 19-40, 209-37. J. Scammell, "Origin," p. 451, also noted a possible connection here, but did not pursue the matter.

[101]Jean Longnon, "La Champagne," in Ferdinand Lot and Robert Fawtier, *Histoires des Institutions françaises au Moyen Age*, 1; *Institutions scigneuriales* (Paris, 1957), 127.

[102]For the title, see Michel Bur, *La Formation du Comte de Champagne, v. 950-v. 1150* (Publications de l'Université de Nancy, 2; Nancy, 1977), pp. 113, 463, 465, 184, 191 (all eleventh century).

[103]Bur, *Champagne*, pp. 460-61; Bur, "La Champagne feodale," in Maurice Crubellier, *Histoire de la Champagne* (Toulouse, 1975), p. 131.

substance in the early Capetian period? We are on familiar territory here—the counts enjoyed almost complete independence of the crown, exercising the principal regalian rights.[104] Yet the title and its lingering aura of *independence presque complète* persisted.[105] This despite the fact that, as Bur indicated, there was no longer any pretension to sovereignty.[106] The title had become honorific, but if the nobles of our period did not care both for it and for honor, who would have?

So much for the title; there is a further continental analogy in political realities in late thirteenth century France: the apanages. This thought also occurred to a historian examining the reign of St. Louis;[107] William Chester Jordan wrote that the apanage princes "ruled with something approaching palatine force." There are striking resemblances between the apanages of thirteenth-century France and the palatinates as they emerged in contemporaneous England: "the king's rights were in theory the same as in the other great fiefs," appeals from their courts went to court royal, their princes raised taxes and military forces, they mirrored the organization of the royal government, and there was an interchange of personnel between the apanages and the royal administration.[108] Charles T. Wood, whose study of the French apanages is a model of historical method and of comprehension of the workings of medieval statecraft, found in France a reality which would extend to England as well: "as one mounts the feudal ladder one encounters ever widening spheres of sovereignty until one arrives at the king, whose sovereignty extends throughout the kingdom. Royal sovereignty is all-embracing, but it does not deny the less extended sovereignties of those barons, his immediate and rear vassals. Sovereignty, then, could be shared; it had no single true resting place, but was fragmented. It should be noted, however, that the king is considered a person over whom no other sovereignty can be exercised; the king is the highest sovereign in the realm, and it would appear that all other sovereignty flows from his."[109] Wood pointed out with regard to the French apanages, as should be said of the English palatinates, that "the king had control over the apanages; at no time did he have difficulty making his sovereignty apply; royal retention of sovereignty and jurisdiction over the apanages was no idle claim."[110] It may, then, be suggested—there is no way of proving—that the title of lord palatine came to England from France as a result of the marriage of Earl

[104]Longnon, "Champagne," p. 128; pp. 128-34 lists these rights, many of which are inapplicable to late-thirteenth century England, owing to differences both of time and of geography.

[105]*Champagne*, p. 463.

[106]Longnon, "Champagne", p. 128.

[107]*Louis IX and the Challenge of the Crusade* (Princeton, 1979), p. 39; Jordan did not elaborate upon the analogy, since it was not germane to his work.

[108]Elizabeth Hallam, *Capetian France 987-1328* (London and New York, 1980), p. 300.

[109]Charles T. Wood, *The French Apanages and the Capetian Monarchy, 1244-1328* (Cambridge, 1966), pp. 82, 84.

[110]*Ibid.*, pp. 116-17, 131.

Edmund, and that the lordly pretensions of palatine feudatories found their analogies in the regal powers of the apanage princes of those French principalities held by the brothers of Louis IX. Old title, new powers in England. Why did these come about in the reign of Edward I?

Let us now move from historical fact, with an admixture of supposition, to pure hypothesizing, based upon the evidence. It has been indicated above that the likely origin of palatinates lies in the reign of Edward I; the legal theory came together with political reality in this reign. It is improbable that palatinates, largely defined, began as imitations of the royal model; these lordships more probably began in reaction against the centralization of royal authority in Edward I's time. Palatinates, acquiring their name from France and their claims to power and authority from reaction against royal centralization of legal and jurisdictional power, not without significant continental analogy from earlier Champagne and contemporaneous apanages, had no theory until the fourteenth and (especially) fifteenth centuries. As the crown redefined and expanded concepts of sovereignty, the lords of Durham and the community of Cheshire reacted by defending their own pretensions in terms which would have been familiar to Bracton. Across the thirteenth century, there was growing definitional clarity.

But we are still left with the puzzling recognition of palatine liberties by Edward I and III; why did these strong kings permit the semi-regal status of palatinates? While these kings' willingness to grant regalian rights to the counties of Chester, Lancaster, and Durham may be related to the lordships' distance from Westminster (and thus partially to contribute to the solution of the problem of governing the North), the answer is to be found in the two Edwards' view of political realities in their tidy little kingdom: obviously they were unlikely to diminish their own authority. Rather, like the Conqueror in the beginning of feudalism in England, they made grants to *enhance* their own authority. It is difficult to see how recognition of palatine regalities would in fact make the kings' governance more powerful, unless one looks at political realities. As shown above, monarchs never hesitated to treat palatinates like any other part of the realm when necessity demanded; whatever may have been the pretended rights of palatinates, the kings were not inhibited in their own rule by these formalities. Sovereignty was in fact inalienable; even without a theory in the Norman period, that had been true. Are there more telling demonstrations of this fact than the Conqueror's frequent writs to peccant lords ending with the mordant phrase, "See that I hear no more of this as you value your skin," or of Henry I's writ of right? It is possible that Edward I and his grandson recognized palatine privileges because such powers were, in practical effect, of little importance to the crown. Certainly they did not restrict the king meaningfully in his dealings with these lords. Nor were the lords palatine paramount in English history except as individual barons, such as Hugh du Puiset, Antony Bek, Henry de Grosmont, and John of Gaunt, converted personal abilities, wealth, and

holdings into national influence. And surely no palatine earl of Chester ever was important nationally simply because he was Earl of Chester. We may conclude with a hypothesis: the kings of England probably cared not whether certain local rulers styled themselves *palatinus*. Royal power was not thereby challenged or reduced; why should the king care what these magnates called themselves? Perhaps the two Edwards anticipated Louis XI of France in this; the Spider King took no regard of what his magnates styled themselves, since all Frenchmen, regardless of title, were equally his subjects.[111] The aura of majesty could surely withstand such puny local quasi-autonomies as Durham, Chester, Pembroke and Lancaster; so, too, could the reality of royal power. Lords palatine had impressive local authority within their lordships; they had none nationally or against the king. What the two Edwards gave away was status; the reality of power they shared not. Sovereignty neither was, nor could be, alienated. Palatinates may have had regalities, but they did not have even local sovereignty. There was but one king in England.

UNIVERSITY OF GEORGIA

[111]Barthelémy-Amédée du Haut-Jussé, "A Political Concept of Louis XI: Subjection Instead of Vassalage," pp. 196-215 in P.S. Lewis (ed.), *The Recovery of France in the Fifteenth Century* (New York, 1972).