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### The Origins and Development of Judicial Tenure 'During Good Behavior' to 1485

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# 10 The origins and development of judicial tenure ‘during good behaviour’ to 1485

Ryan Rowberry<sup>1</sup>

## Introduction

Judicial tenure, the terms by which a judge holds office, has been touted as one of the key pillars of judicial independence from oppressive executive power.<sup>2</sup> Judicial tenure ‘during good behaviour’ (*quamdiu se bene gesserit*), as opposed to the more precarious judicial tenure ‘during pleasure’ (*durante bene placito / quamdiu nobis placuerit*), has customarily been viewed as a seventeenth-century legal innovation created to shield English high court judges from arbitrary removal by a meddling, overbearing monarch.<sup>3</sup> Drawing upon this seventeenth-century English tradition, the United States Constitution ratified in 1788 mandated that all United States federal judges would fill their offices ‘during good behaviour’,<sup>4</sup> a phrase that has come to mean that a federal judge holds office for life barring commission of a crime serious enough to warrant impeachment and conviction (typically a felony).<sup>5</sup> Judicial tenure ‘during good behaviour’ for U.S. federal judges remains a unique form of judicial office holding<sup>6</sup> today despite sporadic attempts to change it.<sup>7</sup>

Remarkably, although judicial tenure ‘during good behaviour’ has been a hallmark of the Anglo-American judiciary for hundreds of years, there are no comprehensive studies of its origins and development prior to the seventeenth century. Relying almost exclusively on secondary sources for their conclusions, nearly all modern scholars assume that every English monarch appointed judges to serve ‘during pleasure’ until the repeated clashes between the judiciary and the Stuart kings during the turbulent 1600s forced a compromise:<sup>8</sup> the 1701 Act of Settlement. This Act granted that ‘Judges Commissions be made *Quam diu se bene Gesserint* and their Salaries ascertained and established but upon the address of both Houses of Parliament it may be lawfull to remove them’.<sup>9</sup> Other scholars, like George Aylmer, are acutely aware that judicial tenure ‘during good behaviour’ was part of a complicated, medieval administrative history but chose not to explore the topic as ‘no systematic survey is available of tenure in the Middle Ages’.<sup>10</sup>

To my knowledge, only five scholars have attempted to examine the judicial tenure in England prior to 1600 using original records, four of them, however, in only cursory fashion.<sup>11</sup> The fifth, Sir John Sainty, undertook

the monumental task of compiling and organising a list of all the judges of the superior courts in England from 1272–1990.<sup>12</sup> To populate his list, Sainty relied on previous scholars' lists of judges that were based on original records as well as the patent and close rolls produced by the royal Chancery, plea rolls of the King's Bench (KB 27) and Common Bench (CP 40) and the King's and Lord Treasurer's Remembrancers' memoranda rolls (E 159 and E 368). Using these sources, Sainty chronicled the appointments, tenures, renewals, salaries, terminations and death dates of judges from the King's Bench, Common Bench, Exchequer, the Master of the Rolls, the Vice Chancellors, the Lords Justices of Appeal in Chancery, the Judge of Probate and Divorce Courts, the Judges of the Supreme Court and the Lords of Appeal in Ordinary.<sup>13</sup> Sainty's published list, *The Judges of England 1272–1990*, has become the standard reference list to which one must initially turn to look for broad changes in judicial tenure in pre-Stuart England.

This is not to say, however, that a deep understanding of the origins and development of judicial tenure 'during good behaviour' can be gleaned from Sainty's work. It suffers from some important limitations in this respect. The first of these is that *The Judges of England 1272–1990* is a list of information about English judges; it does not attempt to discuss reasons for changes in judicial tenure over time. Second, Sainty's study starts at the accession of Edward I (1272), ignoring the English judiciary during the long reign of Henry III (1216–72) when the courts of Common Bench, King's Bench and the Exchequer became largely separate judicial courts performing different judicial functions.<sup>14</sup> Third, Sainty's examinations were confined to judges sitting in the superior royal courts of England, neglecting the English judges sitting in the lordship of Ireland as well as those commissioned as forest eyre judges in England. Fourth, Sainty's narrow focus on judges in English superior courts means that he did not consider how the changing tenure of lesser court officers may have impacted the development of tenure 'during good behaviour' for judges. Finally, particularly for the fifteenth century, Sainty appears to have relied on lists of judges compiled by others rather than examining the original sources afresh, which resulted in a few inaccuracies.

Despite these limitations, scholars of the Anglo-American judiciary owe a special debt to Sir John Sainty for his pioneering undertaking. His painstaking, wide-ranging archival research was conducted before the dawn of digitised, and in some cases, searchable, primary sources.<sup>15</sup> And it is a lasting testament to his erudition and diligence that while *The Judges of England 1272–1990* may be added to or refined in the future, it will probably never be superseded as the standard reference listing of English judges.

The aim of this paper is to build on Sainty's work and examine the origins and development of judicial tenure 'during good behaviour' in medieval England. Using the medieval Chancery records, which record judicial appointments from the thirteenth century onward, this article will be the first to trace the rise and development of judicial tenure 'during good behaviour' from its earliest recorded instances.<sup>16</sup> To understand the development

of judicial tenure ‘during good behaviour’ in medieval England, however, we must first briefly review what medieval English contemporaries considered tenure to be and how it became linked to royal offices. Thereafter, we will examine the development of tenure ‘during good behaviour’ for administrative offices broadly and then consider when, why and how it developed into a form of office holding for English judges in the Exchequer, Common Bench and King’s Bench in both Ireland and England.<sup>17</sup>

## Tenure and royal office in medieval England

The word ‘tenure’ is derived from Latin *tenere*, meaning ‘to hold’.<sup>18</sup> Precisely how ‘tenure’ became linked to lands and offices in medieval England is a complex, obscure process that began with the gradual importation of inchoate Norman concepts and practices of feudal ‘tenure’ from 1066 onward.<sup>19</sup> As Professor Hyams ably pointed out, ‘tenure is a long-dead metaphor which treats land as if it were an object that could be held in one’s hand’.<sup>20</sup> In other words, ‘tenure’ transferred to land ‘a set of images . . . which were initially intended to clarify possession and title to movable objects that could literally be held and transferred to another, or just taken “in hand”’.<sup>21</sup> Holding land in medieval England was, in the words of Pollock and Maitland, ‘an abstraction of a very high order’.<sup>22</sup> Medieval landholding arrangements were supple enough to be molded ‘into different individual tenures according to the kind of [land-for-service] bargain made between the (land-)lord and tenant’.<sup>23</sup> Such bargains typically included some form(s) of military, economic or religious service from the tenant for varying periods of time (e.g., in fee, for life, for a set term, during pleasure).<sup>24</sup> Over the course of the twelfth and thirteenth centuries, royal officials, lawyers and educators systematised and classified the services implicated in various land bargains into the Common Law system of tenures (known as estates) – an organisational scheme that continues to haunt first-year American law school students when they are introduced to Common Law property.<sup>25</sup> Indeed it is probably not a coincidence that with the rise of a professional legal class in the reign of Edward I<sup>26</sup> we also find the first usage of the word ‘tenure’ in its modern sense in a legal treatise, *Britton*, sometime around 1290.<sup>27</sup>

This English concept of ‘tenure’ also encompassed grants of feudal office from the crown, as English monarchs treated crown offices as estates of private property. As Maitland poignantly reminds us, ‘jurisdiction is property, office is property, the kingship itself is property’.<sup>28</sup> Thus, appointment to a royal office in medieval England was ‘in effect the same as a grant of land [from the king]: it conferred on the grantee an estate in the office, and (usually more important) in its emoluments’, and in return the grantee agreed to perform the service required of the office.<sup>29</sup> In both lands and feudal office, therefore, the rights of the tenant *or* office holder were determined by the terms of the grant because both were considered property that could be alienated. Sometime in the eleventh and twelfth centuries, many

offices in the king's household, like the steward or constable, were granted to magnates on terms that became hereditary (i.e., in fee), rendering such offices minimally useful to the crown in actually administering the affairs of the realm.<sup>30</sup> Consequently, as the expanding orbit of royal government and justice under Henry II gradually eroded older, seigniorial jurisdictions in the latter half of the twelfth and early thirteenth centuries – a transformation heralded by the creation of remarkable contemporary administrative and legal treatises, *The Dialogue of the Exchequer* and *Glanvill*<sup>31</sup> – newer offices like chancellor or judge emerged in the *curia regis*. These newer offices were typically staffed by *novi homines*: men of humbler rank but of greater administrative and organisational capability than the old nobility.<sup>32</sup> These royal officers in the *curia regis* and a growing corps of royal officials in the counties, cities and boroughs 'performed all the functions of central government of whatever kind, including of course, judicial business'.<sup>33</sup> And the varied tenures of their offices – 'during pleasure'; a term of years; 'for life' – reflected those non-hereditary land tenures typically granted by the king to the middling social classes.

A few illustrations from the early part of the reign of Henry III reveal that the limiting terms governing the overwhelming bulk of medieval landholding were synonymous with the terms describing the duration of various tenures of royal officers in medieval England. The majority of royal grants of land in medieval England were given with tenure 'during pleasure' (*quamdiu ei placuerit / quamdiu regi placuerit*). For example, in March 1217, the regents acting for Henry III, who was in his minority, granted the manor of Axford [Wiltshire] with all its appurtenances to Roger de Clifford to hold *quamdiu ei placuerit*.<sup>34</sup> Moreover, on 25 September 1241, Henry III granted P. de Sabaudia the lands of John de Warenne in Sussex and Surrey 'during pleasure' with a mandate to J. de Gatesden and Robert de Ferles 'to give him seisin of the said honor with the crops of last year'.<sup>35</sup> Likewise, most royal offices in the reign of Henry III were held during the king's pleasure. On 10 April 1217 Richard de Samford was appointed custodian of the forests of Chipham and Melkesham [Somerset and Wiltshire] *quamdiu ei placuerit*.<sup>36</sup> Peter de Rivaux, a trusted Poitevin counselor to Henry III, was appointed by the king to the 'custody of the treasurership of the Exchequer' during pleasure on 19 January 1233.<sup>37</sup> And on 12 May 1236, the king appointed Hugh de Bolebec 'as sheriff of the county of Northumberland' *quamdiu regi placuerit*.<sup>38</sup> These examples are but a few of the hundreds of grants of land and appointments to royal office 'during pleasure' inscribed on the royal Chancery rolls throughout the reign of Henry III.<sup>39</sup>

Of course even in the early thirteenth century not all grants of land or feudal office were held 'during pleasure'; some contained other limiting terms.<sup>40</sup> Royal grants of land or appointments to office for a term of years (effectively short-term leases) also occur frequently during the reign of the Henry III. Land grants for a term of years are particularly abundant. On 9 December 1225 for instance, the king granted that the men of Grimsby [Lincolnshire]

could hold the village of Grimsby ‘in their hand as they previously had done, for *tres annos* from Michaelmas in the ninth year.’<sup>41</sup> Later, on 15 November 1244, Henry III granted to the bishop of Hereford ‘that notwithstanding that the five years [*v annos*] for which the king leased to him the manor of Chiltenham [co. Gloucester] will expire while he [the bishop] is beyond seas by licence of the king, he shall hold that manor until his return to England’.<sup>42</sup> Like land, royal offices during the reign of Henry III were also leased for terms of years. On 8 December 1221, the king commissioned the royal exchange to Andre Bukerel for *tres annos* at a sum of 4000 marks.<sup>43</sup> And on 30 May 1234 Henry III appointed John de Plessitis ‘to the custody of the castle of Devizes with the manor of Rudes [Wiltshire] pertaining to the custody’ along with the ‘custody of the manor of Devizes and the forest of Chippenham for ten years’.<sup>44</sup> Numerous other examples abound.<sup>45</sup>

Grants of lands and royal offices with tenure ‘for life’ (*tota vita sua*) are also found with regularity in records during the reign of Henry III. In 1229, the king granted the manor of Newport (co. Buckingham) to Walter de Kirkham *tota vita sua* for £40 annually.<sup>46</sup> And on 24 September 1242, the king granted that ‘Master Richard, the queen’s tailor’ should hold ‘for life’ the ‘land in Barewe and elsewhere in the county of Northumberland which Master Geoffrey, the queen’s cook, had of the king’s gift for life’.<sup>47</sup> Royal offices were also occasionally granted for life during the reign of Henry III. On 27 April 1233, the patent rolls record the ‘appointment for life, of Brian de Insula to the custody of the county of York; and mandate to all persons of the county to be attending and answering unto him as sheriff’.<sup>48</sup> Three years later, on 28 December 1236, Henry III granted ‘Aaron of York, a Jew, for life, the office of chief rabbi of all the Jews of England’.<sup>49</sup> And on 6 December 1265 the king granted the delightfully-named Ellis de Tingewike the ‘bailiwick of the king’s forest of Whittlewood and park of Hauleg [Northamptonshire]’ to hold ‘for life’.<sup>50</sup>

However, the demise of Hubert de Burgh, the earl of Kent, suggests that there was a developing sense in the early thirteenth century that certain high-level offices were beyond the king’s power to grant for life.<sup>51</sup> On 27 April 1228 Henry III granted Hubert de Burgh the office of Justiciar of England (chief governor) ‘for life’.<sup>52</sup> Four years later, on 11 June 1232, the king reiterated that Hubert de Burgh was to be Justiciar for life, but granted that if de Burgh was ill or away from England on the king’s business, he could appoint a deputy Justiciar.<sup>53</sup> And on 2 July 1232 Henry III ‘made an oath on the gospels and bound himself and his heirs’ to uphold the grants of lands and office made to de Burgh, while Hubert swore an oath that should the king ever wish to ‘invalidate the charters, gifts, grants, and confirmations’ made to him that he would ‘take care to impede that purpose and do all in his power to preserve the said charters inviolate’.<sup>54</sup> Despite these assurances, in winter 1232 Henry III petitioned Pope Gregory IX to annul his oath and revoke his grants of lands and office to Hubert de Burgh. The king claimed his oath had been extracted under duress and that his grants of land

and office 'for life' contravened his coronation oath in which he swore to 'maintain the royal rights, liberties, and dignities'.<sup>55</sup> The king argued that by granting Hubert de Burgh the office of Justiciar for life along with numerous lands, castles and bailiwicks to support him in this position, he had made an alienation of crown property that was prejudicial to the realm and the crown, rendering these alienations illicit.<sup>56</sup> Henry III's argument of illicit alienation may also have been bolstered in that his oath not to revoke his grants of life tenure to Hubert de Burgh explicitly bound his successors when it was customary for tenures to royal offices to expire on the death of the granting monarch. In any event, Pope Gregory absolved Henry III from his oath not to revoke his grants of office and lands to de Burgh, and Hubert later renounced his claims to the office of Justiciar in May 1234.<sup>57</sup> Following de Burgh's downfall, there was never again a Justiciar of England.

Thus far, we have spent a great deal of time analysing particular phrases defining tenure. And while some may argue against attaching too much significance to stock phrases describing tenure copied by Chancery clerks responsible for churning out thousands of written documents per year by the early thirteenth century,<sup>58</sup> the clerks, if they enrolled copies of letters at all,<sup>59</sup> appear to have been quite fastidious in delineating the different tenures applicable to particular royal offices.<sup>60</sup> For example, on 16 June 1232 Peter de Rivaux was appointed to multiple royal offices at the same time but held different offices by different tenures.<sup>61</sup> The patent roll records that the king appointed Peter to the shrievalties of Sussex and Surrey *tota vita sua*, granted him the wardenship of the royal castles at Hastings and Pevensey *tota vita sua*, but made him warden of the castle and houses at Guildford *quamdiu regi placuerit*.<sup>62</sup> Two weeks later the king appointed Peter as custodian of the temporalities of the archbishopric of Canterbury *quamdiu regi placuerit*.<sup>63</sup> Precise distinction between tenures among different royal offices can also be found in the Fine Rolls of Henry III.<sup>64</sup> Chancery clerks' meticulous attention to accurately copying the form of tenure attached to each royal office suggests that different forms of tenure had, in fact, salient differences to medieval contemporaries, a topic to which we will return shortly.

This deep dive into the original records of royal government in early thirteenth-century England suggests several general conclusions about the tenure of medieval royal officials. First, like grants of land in medieval England, the particular form of tenure attached to a royal office in medieval England varied according to the terms in the granting instrument. Second, while the majority of royal officers during the reign of Henry III held their positions 'during pleasure,' already by the early thirteenth century English monarchs were comfortable granting certain royal offices for a term of years or 'for life', meaning that the origins and development of these forms of tenure for royal offices likely lie in the reign of Henry II, or perhaps earlier.<sup>65</sup> Third, as the evidence above attests, lifetime appointments to some significant royal offices, like that of sheriff, were already present in England not long after Magna Carta. Fourth, as the story of Hubert de Burgh illustrates,

the decision of the monarch to grant a high-level royal office was a weighty political decision that likely depended on the importance of the office, the monarch's power at the time, contemporary understandings of the coronation oath and what constituted crown property, and the ongoing relationship between subject and crown.

### Tenure during good behaviour

But what of grants of land or royal office with tenure during 'good behaviour' (*bene gesserit*)? Unlike tenure 'during pleasure', for a term of years, or 'for life', all of which appear with frequency early in the reign of Henry III, tenure during good behaviour is noticeably different. The Charter Rolls contain, to my knowledge, no grants of land or royal office during good behaviour for the entire thirteenth century.<sup>66</sup> While the phrase *bene gesserit* does appear on rare occasions in the patent rolls, close rolls and fine rolls before the 1250s, it is not directly linked to holding lands or royal office.<sup>67</sup> Rather it seems tethered to ancient concepts of providing sureties that a certain person or people – usually prisoners, foreigners or someone run afoul of the king – would act peacefully towards the king and his subjects, a customary practice reflected in the collective, communal safeguards found in the frankpledge system which were well-known.<sup>68</sup>

However, the record evidence shows that in the late 1260s the phrase 'during good behaviour' enters the Chancery lexicon on permanent footing as a result of the Second Barons' War (1264–67). The Second Barons' War was a civil war led by Simon de Montfort against Henry III. Henry III triggered the conflict when he obtained a papal bull in 1261 releasing him from his oath to uphold the Provisions of Oxford (1258), short-lived sweeping governmental reforms spearheaded by de Montfort that subjugated the king to a ruling council of fifteen men and established a triennial parliament.<sup>69</sup> With Simon de Montfort's eventual defeat and death at the battle of Evesham on 4 August 1265, royalist forces led by Prince Edward gained the upper hand, and the war sputtered to an end with the issuance of a sort of peace agreement, now known as the Dictum of Kenilworth, on 31 October 1266.<sup>70</sup>

As the conflict subsided, many rebels prudently sought pardons from Henry III for their treason. Patent rolls from the mid-1260s preserve numerous copies of these pardons. These reveal that rebels were readmitted into the king's peace on a condition: they had to find sureties for their future *bene gesserit*. A typical example of such a pardon is that from 7 August 1266, which reads: 'Power to Philip Marmion to receive into the king's peace Thomas son of Alfred, Richard son of John, Richard Cok, W[illiam] son of Peter, and John son of Sweyn, provided that they find sufficient mainpernors for their good behaviour'.<sup>71</sup> Another pardon from 28 November 1266 reads,

Pardon to Ralph de Sandwic[h], taken in the conflict of Evesham, of the king's indignation and rancour of mind conceived towards him by the



occasion of the disturbance of the realm; on the mainprise of W[illiam] bishop of Bath and Wells, the chancellor, Henry Malemayns, Geoffrey de Percy and William de Faukeham for his good behaviour.<sup>72</sup>

Comparing the few records containing the phrase ‘good behaviour’ prior to the 1260s with the scores of royal pardons from the Second Barons’ War containing the same phrase strongly suggests that the phrase ‘good behaviour’ was permanently grafted into the medieval administrative consciousness in the late 1260s. However, the requirement that rebels find sureties to pledge for their good behaviour reveals that the concept of ‘good behaviour’ in the 1260s remained linked to older notions of reclaiming wrongdoers into the realm through communal safeguards rather than as a condition by which one held royal office.

The precise contours of ‘good’ or ‘bad’ behaviour with respect to office holding at this time are difficult to discern. From contemporary record evidence perhaps the most that can be said is that acting with ‘good behaviour’ was equivalent to honouring one’s oath of fealty.<sup>73</sup> *Bracton*, a remarkable treatise on the operations of the king’s courts written by cadre of clerks and judges during the reign of Henry III, records this solemn oath of fealty. Placing his hand on the Gospels, a man stated: ‘Hear this, lord N., that I will bear your fealty in life and limb, in body, goods, and earthly honor, so help me God and these sacred relics’.<sup>74</sup> To act with *bene gesserit*, therefore, one had to behave faithfully toward the king ‘and his heirs from henceforth,’<sup>75</sup> suggesting that men who acted with *male gesserit* went ‘against their [oaths of] fealty’ and could thereby lose their law and lands.<sup>76</sup> Thus, the broad spiritual and temporal obligations contained within the oath of fealty that English rebels re-swore after the Second Barons’ War probably formed the initial standards for determining whether one acted with good or bad behaviour.

In its original incarnation in the mid-1260s, then, the phrase *bene gesserit* was a condition used to ensure that remitted English rebels would act faithfully toward the crown in the future. But the aging Henry III and Edward I soon applied the phrase *bene gesserit* to grants of many royal offices, gradually creating a new, expressly conditional form of tenure.<sup>77</sup> Perhaps wanting to clarify the type of service the king expected from royal servants, many grants of royal offices using typical forms of tenure in the late 1260s and early 1270s included the phrase ‘good behaviour’ as a modifier. For example on 8 October 1268, just two years after the Dictum of Kenilworth, Henry III granted Geoffrey Norman, his chaplain, the office of celebrating ‘divine service at St. Margaret’s in Westminster’ *tota vita sua* ‘so long as he be of good behaviour’.<sup>78</sup> And on 8 May 1271 Henry III granted that Walter of Durham and John of York should be keepers of the forest of Galtres [co. York] ‘for their lives so long as they be of good behaviour’.<sup>79</sup> Edward I continued where his father left off, granting Roger de Hamenhal the bailiwick of the forest of Harundel ‘during the king’s pleasure and during good behaviour’

on 7 February 1276<sup>80</sup> and committing the shrievalty of the 'county of Typerary, Ireland' to Walter Uncle on 2 October 1282 for ten years 'during good behaviour'.<sup>81</sup> The appearance of grants to royal offices that included the phrase *quamdiu se bene gesserint* immediately following a raft of royal pardons containing the same terminology strongly suggests that the upheaval caused by Second Barons' War was the primary catalyst for creating tenures for royal offices 'during good behaviour'. In doing so the crown (perhaps unknowingly) transformed a popular contemporary phrase that originally offered conditional remission to rebels into an explicit condition on royal offices designed to hold officers to their oaths of faithfulness in their future performance.<sup>82</sup>

While typical forms of tenure for royal offices were modified by the phrase *bene gesserit* at the end of Henry III's reign, it is only during the reign of Edward I that we find tenure *quamdiu se bene gesserint* being used as a distinct, individual form of tenure. The patent rolls record that on 2 October 1274, Edward I granted the custody of the bailiwick of the forest of Melkesham [Wiltshire] to Geoffrey de Middleton 'during good behaviour'.<sup>83</sup> And the close rolls state that Edward I granted Nicholas de Lenn the bailiwick of the forest of the Peak [Derbyshire] 'during good behaviour' on 23 May 1275.<sup>84</sup> The fine rolls also record that on 15 November 1277 Robert de Kestevane was granted the 'office of summoner in the wapentake of Wirksworth' [Derbyshire] 'during good behaviour' for an initial fine of 100 shillings and 20 shillings annually.<sup>85</sup> Similar grants of royal office *quamdiu se bene gesserit* during the reign of Edward I can also be found for keepers of particular forests,<sup>86</sup> custodians of bailiwicks in Ireland,<sup>87</sup> wardens of castles,<sup>88</sup> custodians of county hundreds,<sup>89</sup> a weigher of corn,<sup>90</sup> a shrievalty in Ireland,<sup>91</sup> a custodian of the smaller piece of the seal for recognisances of debt,<sup>92</sup> bedelries of county hundreds,<sup>93</sup> custodians of castle gates,<sup>94</sup> toll-keepers for the weighing of lead and wools,<sup>95</sup> a hospital custodian<sup>96</sup> and butlers to the king.<sup>97</sup>

Edward I was also the first English monarch to extend tenure *quamdiu se bene gesserit* to ministerial offices in some of the king's courts. For example on 6 January 1280 Edward I granted Thomas de London, a clerk, the 'office of chirographer of the king's court in Ireland' with tenure 'during good behaviour'.<sup>98</sup> Thomas de London performed so admirably as court chirographer that he was granted the 'office of receiver in the Exchequer of Dublin' *quamdiu se bene gesserit* more than a decade later, on 30 October 1290.<sup>99</sup> The patent rolls also record that on 8 August 1280, Edward I granted William de Leye the office of marshal before the justices in eyre in Ireland 'during good behaviour'.<sup>100</sup> And on 19 June 1305, John de Seleby was granted the office of 'the usher of Exchequer of Dublin', a position paying 1.5 denarii. per day 'for life and during good behaviour'.<sup>101</sup> The reasons that some ministerial offices in the nascent king's courts in Ireland, not England, were the first to receive tenure *quamdiu se bene gesserit* are obscure.<sup>102</sup> Some of the explanation may lie in the fact that letters of appointment to offices in the king's

courts in Ireland during the reign of Edward I appear to have been the joint responsibility of the Irish and English chanceries.<sup>103</sup> The Irish chancery may have taken the initial step of granting a ministerial court office with tenure ‘during good behaviour’ that was later confirmed using the same language by the English chancery. Or perhaps, Edward I was using tenure ‘during good behaviour’ as an incentive to attract able administrative servants to a distant English colony.<sup>104</sup> This is an area that would reward further study.

It is not until the turbulent reign of Edward II (1307–27) that we find appointments to ministerial court offices with tenure ‘during good behaviour’ in the central royal courts of England. On 28 October 1313 Edward II granted Robert de Foxton the office of chirographer of the Common Bench ‘during good behaviour’, an ‘enlargement’ of Foxton’s prior royal grant to the same office ‘during pleasure’ on 24 March 1312.<sup>105</sup> Likewise, Thomas Botle’s initial royal grant of the office of chief crier in the King’s Bench ‘during pleasure’ on 7 March 1314 was enlarged to a grant of the same office with tenure ‘during good behaviour’ on 9 August 1320.<sup>106</sup> Edward II also confirmed a grant of the ushership of the Exchequer to John Dymmok on 6 December 1317 ‘during good behaviour’.<sup>107</sup> Like his father, Edward III (1327–77) appointed ministerial offices in the royal courts of England and Ireland with tenure ‘during good behaviour’, enlarged the tenures of some faithful court officers from ‘during pleasure’ to ‘during good behaviour’, and, in an important change, enlarged the tenures of some ministerial court officers from tenure ‘during good behaviour’ to either a term of years or tenure ‘for life’.<sup>108</sup>

But what, if anything, did this new form of tenure *quamdiu se bene gesserint* mean to contemporary royal officials in the king’s courts? Original sources suggest several answers. The first is unsurprising: tenure ‘during good behaviour’ provided enhanced security in court office over tenure ‘during pleasure’. The second answer, however, is more problematic. The record evidence illustrates that medieval contemporaries viewed tenure ‘during good behaviour’ as inferior to tenure for a term of years or tenure for life. That is, in the *cursus honorarum* of court office holding tenures, holding an office ‘during good behaviour’ ranked below grants of office for a term of years or ‘for life’. Precisely why this should be the case is confusing, as a grant of a court office for a term of years is of finite duration compared to a grant of a court office ‘during good behaviour’ that could feasibly last a lifetime. Moreover, original sources do not reveal that holding a court office with tenure for a term of years or ‘for life’ offered increased security over tenure ‘during good behaviour’ because some form of bad behaviour appears to have been a pre-requisite for removal from office for a man holding a position under any of these three forms of tenure. It may be that tenure ‘during good behaviour’ was viewed as a lower form of tenure because of its relatively recent development, but the most we can say with certainty is that holding a medieval court office with tenure for a term of years or ‘for life’ was preferable to holding it ‘during good behaviour’.

Royal court officers in fourteenth-century England had a keen awareness that a hierarchy of tenures existed. A royal court official would typically begin his court service with tenure 'during pleasure' or occasionally 'during good behaviour'. Then, through faithful service and/or the influence of powerful connections, the crown might offer him a promotion: enlarging his tenure in the same office to 'during good behaviour', a term of years, or 'for life'.<sup>109</sup> John of Balscote, for example, was appointed to the office of chief engrosser of the Dublin Exchequer 'during pleasure' in the early 1330s, but over the course of the next decade his tenure in same office was enlarged, first to 'during good behaviour' and later to a term of ten years.<sup>110</sup> Similarly, Geoffrey de Say, a draper of London, was granted the office of crier of King's Bench 'during good behaviour' on 28 January 1327; shortly thereafter his grant in the same office was enlarged to tenure 'for life'.<sup>111</sup> Additional examples of enlargements of tenure for ministerial royal court officials abound for the reigns of Edward II and Edward III.<sup>112</sup> But *every* grant of tenure to royal office in medieval England – including those granted 'during good behaviour', for a term of years, or 'for life' – was tempered by the fact that an office holder's tenure automatically terminated at the death of the granting monarch.<sup>113</sup> The new monarch could replace the office holder, or confirm him to the same or different level of tenure.<sup>114</sup>

Original sources confirm that ministerial court officials holding their offices 'during good behaviour' in the reign of Edward III enjoyed more security in office than those that held 'during pleasure'. Court officials with tenure 'during pleasure' could be (and often were) removed regularly,<sup>115</sup> whereas those with tenure 'during good behaviour', like John de Etton (chamberlain of the Exchequer in 1340), could not be removed from office 'without just and reasonable cause whereof the king shall be certified before his removal'.<sup>116</sup> The exact process for providing 'just and reasonable cause' against a ministerial court officer is largely opaque, but records suggest that inquiries were held into the alleged bad conduct that resulted in a certification to the king of the accused's guilt or innocence.<sup>117</sup> Most of the time, however, it appears that tenure 'during good behaviour' primarily protected a ministerial court official by shielding him from the crown absent-mindedly or deliberately granting his office to someone else while he was still in it. For example, Peter de Wakefeld was appointed to be the second ingrosser of the Dublin Exchequer 'during good behaviour' on 15 March 1341.<sup>118</sup> A little over three years later, on 26 March 1344, the king granted the same office to John de Maydenford 'during pleasure' and Peter was removed.<sup>119</sup> Peter, however, petitioned the crown for redress claiming that he was removed without reasonable cause, and he was restored to his post on 6 June 1346.<sup>120</sup> Several other ministerial court officers in England and Ireland during the reign of Edward III thwarted similar attempts on their offices by a forgetful monarch or by powerful patrons pressuring the king to place their man in a royal court position,<sup>121</sup> revealing some of the challenges in staffing medieval Europe's most highly centralised, bureaucratic kingdom.<sup>122</sup>

Removals of ministerial court officials for ‘just and reasonable causes’ did happen, of course, but we rarely know much about the details. Geoffrey de Say, for example, held the office of crier in the King’s Bench first ‘during good behaviour’ and then ‘for life’, but was removed on 25 June 1330 after he was found ‘guilty of divers extortions in his office contrary to his oath’.<sup>123</sup> In another instance, John de Shordich, who held the post of chirographer of the Common Bench ‘during good behaviour’ and later ‘for life’ was removed on 1 October 1341 because he had ‘borne himself ill by adhering to some rebels against the king’.<sup>124</sup> Shordich was pardoned a few years later and resumed his office as chirographer of the Common Bench ‘for life’ on 23 April 1345.<sup>125</sup> Ministerial court officials in the king’s courts in Ireland were also removed. The appointment of Robert de Pyncebek, who held the chancellorship of the Exchequer in Dublin ‘during good behaviour’, was revoked on 7 June 1340 because ‘he has not stayed at all in the said Exchequer or Chancery or any other of the king’s courts whereby he could know how to rule the office or the condition thereof’.<sup>126</sup> Records reveal other removals of ministerial court officials holding office ‘during good behaviour’ or ‘for life’ when Edward III reached his majority, but the reasons for their dismissal are unclear.<sup>127</sup> Perhaps they joined all of the sheriffs, coroners, constables and ‘other such officials’ in 1330 that were removed and interrogated as to what ‘oppressions’ or ‘grievances’ they may have caused during the de facto rule of Mortimer and Isabella.<sup>128</sup> Although we may not know exactly what constituted *bene gesserit*, the record evidence suggests that extortion, treason and failing to report for duty constituted at least three viable causes for removing ministerial court officials with tenure ‘during good behaviour’ or ‘for life’ from office.

Original records thus suggest several conclusions about the origins and development of tenure ‘during good behaviour’ for non-judicial royal officials in the thirteenth and fourteenth centuries. First, drawing on language that was widely used to secure the future faithfulness of one-time rebels at the close of the Second Barons’ War, the phrase ‘during good behaviour’ became a condition associated with holding royal offices in the late 1260s. Second, medieval contemporaries recognised tenure ‘during good behaviour’ to be a distinct, individual form of tenure as early as 1274. Third, from at least 1280 some ministerial offices in the king’s courts in Ireland were being granted ‘during good behaviour’, and from the 1310s some counterparts in the central royal courts of England held their offices by the same tenure. Fourth, early in the reign of Edward III some ministerial offices in the royal courts of England and Ireland were held ‘during good behaviour’, while others began to be held ‘for life’. Fifth, like landholding, tenure for ministerial offices in the medieval royal courts in the fourteenth century could be enlarged to a more desirable form of tenure as a reward for loyal service.<sup>129</sup> Sixth, royal court officials with tenure ‘during good behaviour’ in the early fourteenth century (if not before) experienced increased security in office over those with tenure ‘during pleasure’ because they could only

be removed for just and reasonable causes. Seventh, extortion, treason or simply not assuming the office constituted just and reasonable causes for removing fourteenth-century ministerial court officials with tenure 'during good behaviour' or 'for life' from their positions.

### **Judicial tenure during good behaviour**

Compared to the non-judicial officials of the king's courts, medieval judges from the Common Bench, King's Bench and Exchequer (called barons), possessed a more elevated, solemn office, as they sat in binding judgement on particular cases in particular courts.<sup>130</sup> The authors of *Bracton*, who were likely judges themselves, remind us of the weight and solemnity of delegated judicial office when they state that judges are to

sit in the royal chamber, on the very seat of the king, on the throne of God, so to speak, judging tribes and nations, plaintiffs and defendants, in lordly order, in the place of the king, as though in the place of Jesus Christ, as the king is God's vicar.<sup>131</sup>

We have already seen that ministerial officials in the royal courts were being granted tenure 'during good behaviour' from the reigns of Edward I and his son, Edward II. But it is not until early in the reign of Edward III that we find direct evidence of judges being granted their offices under the same tenure, and only then in the distant (and often scandal-laden) courts of Ireland.<sup>132</sup> To my knowledge the earliest extant grant of tenure 'during good behaviour' for a royal judge was given to Master Thomas Crosse, whose original tenure as Chief Baron of the Exchequer in Ireland was enlarged from 'during pleasure',<sup>133</sup> to tenure 'during good behaviour' on 20 October 1335.<sup>134</sup> Shortly thereafter Hubert de Burgh's tenure of office as Third Baron of the Exchequer in Ireland was enlarged from 'during pleasure' to a term of four years on 13 June 1337.<sup>135</sup> Later that year de Burgh was transferred to the office of Chief Baron of the Irish Exchequer first 'during pleasure' and one month later with tenure 'during good behaviour'.<sup>136</sup> Similar grants of tenure 'during good behaviour' were given in 1340 to Robert Power (Chief Baron of the Exchequer), William Epworth (Second Baron of the Exchequer), Nicholas de Snitterby (Second Baron of the Exchequer) and in 1342 to William of Bromlegh (Second Baron of the Exchequer).<sup>137</sup>

In the latter half of the fourteenth century, tenure 'during good behaviour' was extended to English judges in the King's Bench and Common Bench of Ireland. In 1364, as part of the third massive reorganisation of the king's royal courts in Ireland to take place during the fourteenth century,<sup>138</sup> John Keppok, John de Uppyngham and Thomas Quixhull were granted tenure 'during good behaviour' on 13 February 1364 to their offices of Chief Baron of the Exchequer, Second Baron of the Exchequer and Third Baron of the Exchequer, respectively.<sup>139</sup> On the same day Edward III granted tenure 'during

good behaviour' to Richard Whyte as Chief Justice of the King's Bench in Ireland and to Nicholas Lumbard as Second Justice of the King's Bench in Ireland.<sup>140</sup> Common Bench judges in Ireland had to wait until the reign of Richard II (1377–99) to enjoy this same form of tenure, when John Sotheroun was appointed Chief Justice of the Common Bench in Ireland 'during good behaviour' on 1 October 1384.<sup>141</sup> Precisely why tenure 'during good behaviour' was granted to English judges in Ireland starting in the fourteenth century is unclear, but it likely has to do with thinking that a more secure form of judicial office holding might assuage some the difficulties of attracting and retaining capable English men to judicial posts in a distant, unstable, hardscrabble colony.<sup>142</sup>

Grants of judicial offices in Ireland with tenure 'during good behaviour' continued during the reign of Henry IV (1399–1413). And during his reign we find the first judicial office in England granted with tenure 'during good behaviour'. In 1399, Henry IV again reorganised the judiciary in Ireland, appointing Richard Rede as Chief Baron of the Exchequer in Ireland, Robert Burnell as Second Baron and Hugh de Faryngton as Third Baron, all with tenure 'during good behaviour'.<sup>143</sup> Henry IV also appointed Stephen Bray to be Chief Justice of the King's Bench in Ireland 'during pleasure' in 1399, later enlarging his grant of that office to tenure 'during good behaviour' on 11 January 1406.<sup>144</sup> Roger Westwode becomes the first English judge at the courts in Westminster to be granted office with tenure 'during good behaviour' when Henry IV appointed him to be Second Baron of the English Exchequer 'during good behaviour' on 1 March 1403.<sup>145</sup>

The short reign of Henry V (1413–22) left little trace on forms of judicial appointment, but we do have some evidence of judicial offices in Ireland being granted with tenure 'during good behaviour'.<sup>146</sup> In contrast, during the turbulent reigns of Henry VI (1422–61; 1470–71) and Edward IV (1461–70), records reveal that many judicial offices in Ireland were granted with tenure 'during good behaviour',<sup>147</sup> and some of them, from the 1440s onward, begin to be granted 'for life'.<sup>148</sup>

In the mid-to-late fifteenth century, similar grants of tenure 'during good behaviour' and 'for life' were also given to judges in the English Exchequer,<sup>149</sup> and, for the first time, to judges in the Common Bench at Westminster.<sup>150</sup> On 8 July 1449 Thomas Fulthorp, who had served as a judge in the Common Bench for over a decade 'during pleasure', became the first judge in the English Common Bench to receive a grant of office 'for life'.<sup>151</sup> And Thomas Bryan's tenure as Chief Justice of the Common Bench was enlarged from 'during pleasure' to 'during good behaviour' on 16 February 1472.<sup>152</sup> Later, on 20 September 1485 the newly-crowned Henry VII (1485–1509) downgraded Bryan's appointment as Chief Justice of the Common Bench to 'during pleasure', reminding us that future monarchs were not yet bound by the terms of the grants of earlier kings.<sup>153</sup> But Henry VII later followed his predecessors in granting judges of the Common Bench at Westminster tenure 'during good behaviour'.<sup>154</sup>

Like ministerial officers in the king's courts, judges in the king's courts enjoyed greater security in office with tenure 'during good behaviour' than they did with tenure 'during pleasure'. Evidence shows that judges appointed with 'tenure during good behaviour' in some instances were able to retain their posts despite the monarch appointing a new servant to the same judicial position. For instance, John Karlell was appointed Second Baron of the Exchequer in Ireland 'during good behaviour' on 8 July 1389.<sup>155</sup> Perhaps due to local Irish politics, clandestine patronage pressures, or mere forgetfulness, Richard II appointed Robert Burnell to the same office also with 'tenure during good behaviour' on 24 October 1390.<sup>156</sup> Karlell disputed Burnell's claim to the office, and on 16 March 1391, the king revoked 'the letters patent granting by inadvertence to Robert Burnell, citizen of Dublin, the office of second baron of the exchequer in Ireland, granted previously . . . to John de Karlell . . . on trustworthy testimony of the good behaviour of the said John, who is to hold the office as granted'.<sup>157</sup> Judges with tenure 'for life' also enjoyed similar security in office against mistaken or deliberate royal replacements. John Cornewalshe had been appointed as Chief Baron of the Exchequer 'for life' in early October 1441. Less than a month later, Michael Gryffyn was granted the same position 'for life'. A lively tussle for the office ensued that lasted for over four years, with Cornewalshe finally being restored to office on 20 July 1446 following an English Chancery court decision.<sup>158</sup>

Judges with tenure 'during good behaviour' could also be removed from office for misbehaviour. But what constituted judicial misbehaviour, and therefore grounds for removal? Precise enumeration of all actions that constituted misbehaviour is not possible, but Paul Brand's work on ethical standards for medieval English judges has shown that at least since the reign of Henry III (and probably sooner) judges in the Exchequer, Common Bench and King's Bench at Westminster swore some sort of general oath that enunciated a judge's ethical obligations. By 1275, this oath was bolstered by statutory prohibitions on maintaining (i.e., supporting) pleas, cases or business in the king's courts.<sup>159</sup> And as a result of widespread private complaints involving judicial maintenance, abuse of power and discretion, and falsification of judicial records in which practically the entire senior judiciary of the English Exchequer, Common Bench and King's Bench was convicted, removed and punished from 1289–93,<sup>160</sup> Brand notes that a new form of oath was administered to judges in which the judges promised: (1) 'not to receive anything from anyone without the king's permission', excepting food and drink for the day; and (2) 'not to assent to any wrongdoing (malice) on the part of their colleagues and to attempt to prevent it as far as possible', reporting the misconduct to the king's council and then to the king himself if necessary.<sup>161</sup> Thus, by the late thirteenth century judicial misbehaviour could be found for one or more of the following reasons: maintenance, bribery, an abuse of power and discretion during judicial proceedings, tampering with judicial records, acting as an



accomplice in a judicial colleague's wrongdoing, and failing to prevent or report a judicial colleague's wrongdoing, if known.

Extensive research into fourteenth century medieval chancery records reveals only one case that offers insight into why a judge with 'tenure during good behaviour' might be removed from office for misbehaviour.<sup>162</sup> Before examining this case, however, it is significant to note that Paul Brand has shown that by the reign of Edward III, royal judges in England with tenure 'during pleasure' could typically expect to remain in office barring some form showing of misconduct, while judges holding their offices 'during pleasure' in Ireland were frequently replaced at the will of the king.<sup>163</sup> On 16 May 1342 Edward III revoked the appointment of William de Epworth as Second Baron of the Exchequer in Ireland 'during good behaviour' because he was suspected of fraudulent dealings involving lands and donations granted by the king in Ireland.<sup>164</sup> Epworth was committed to the prison in Dublin castle, and the Justiciar of Ireland was ordered to send him to England to 'answer there all who wish to complain upon him'.<sup>165</sup> After what must have been a lengthy examination of the allegations and evidence against Epworth, 'all sinister suspicions of him' were disproved and he was restored to his office on 2 September 1348 with tenure 'during good behaviour'.<sup>166</sup> This case highlights the facts that allegations of misbehaviour against royal judges, such as fraud, were taken seriously by the crown, and that fraud constituted one reason for removing judges with tenure 'during good behaviour'. Perhaps more importantly, it reveals the strength of holding judicial office 'during good behaviour': after the king determined through legal process that Epworth was innocent, he was restored to his office of Second Baron of the Exchequer in Ireland with tenure 'during good behaviour' even though someone else had already replaced Epworth and had held that post for several years.<sup>167</sup>

In sum, medieval Chancery records reveal several conclusions about the origins and development of judicial tenure 'during good behaviour'. First, judicial tenure 'during good behaviour' was initially extended to barons of the Exchequer in Ireland in 1335, decades after the same form of tenure was granted to non-judicial court officers. Judicial tenure 'during good behaviour', therefore, did not originate *ex nihilo*; rather, it is probably better viewed as an extension of a form of royal office holding that started a generation or two earlier with ministerial officials. Second, over the course of the fourteenth century, judicial tenure 'during good behaviour' was granted to many judges serving in royal courts of Ireland – Exchequer, Common Bench and King's Bench – suggesting that this more secure form of tenure may have acted as an incentive to induce and keep capable English judges in the distant, damp, tempestuous colony. Third, tenure 'during good behaviour' or 'for life' for judges sitting in the Exchequer and at the Common Bench in Westminster did not begin until the fifteenth century. Precisely why these tenures appeared later in England is unclear. But it may have something to do with English judges wanting more security in office like their Irish counterparts, particularly during the turbulent latter half of the century. Fourth,

that grants of judicial tenure ‘during good behaviour’ in the fourteenth and fifteenth centuries were sporadic and not universal probably reflects contemporary thought that tenure ‘during good behaviour’ was not a property right that should (or could) be granted to the entire judiciary, but rather was a royal gift to an individual on account of faithful service and/or relationship with the crown. Fifth, judicial tenure ‘during good behaviour’ provided medieval Common law judges with added stability in office. Finally, the trials, convictions, and removal of numerous thirteenth and fourteenth century judges for various types of misconduct, a specialised judicial oath developed in 1290,<sup>168</sup> and statutory prohibitions on certain types of judicial action from early in the reign of Edward I reveal that contours of judicial misbehaviour were already well-developed by the mid-fourteenth century.

## Conclusion

This article has tilled many furrows in virgin ground; it is time now to sift what has been uncovered. Far from originating in the seventeenth century, medieval records reveal that tenure ‘during good behaviour’ was sometimes granted to judges in medieval Ireland and England. Such grants were themselves the culmination of a centuries-old process that eventually tethered atavistic notions of communally-enforced appropriate behaviour to feudal property principles following the Second Barons’ War in the 1260s. With respect to officials in the king’s highest courts, tenure ‘during good behaviour’ was initially granted to some ministerial court officials in Ireland in the late thirteenth century, and was then extended to some of their English counterparts in the early fourteenth century. Similarly, judicial tenure ‘during good behaviour’ began in the king’s courts in Ireland in the fourteenth century and afterwards was extended to some Exchequer and Common Bench judges at Westminster in the fifteenth century. This movement of judicial tenure ‘during good behaviour’ from the lordship of Ireland to England provides yet another powerful piece of evidence emphasising the important role that the king’s courts in the lordship of Ireland played in the early development of the Common Law.<sup>169</sup>

In addition, tenure ‘during good behaviour’ held real value and meaning to medieval court officials and judges. Medieval judges and court officials with tenure ‘during good behaviour’ enjoyed increased security in office over those with tenure ‘during pleasure’, particularly against arbitrary or deliberate royal replacement. And by the reign of Edward III, a highly developed sense of judicial ethics existed, complete with specialised judicial oaths, statutory prohibitions on particular activities, and the knowledge of past judicial convictions, all of which could guide contemporaries in identifying judicial misconduct.<sup>170</sup>

Rather than creating judicial tenure ‘during good behaviour’, therefore, seventeenth-century legal reformers resurrected, reinterpreted and recast well-worn medieval property-holding principles to legitimise their aims.

How much these reformers knew about the medieval origins and development of judicial tenure ‘during good behaviour’ will remain unclear until detailed studies of judicial tenure in Tudor and early Stuart England are conducted. But it is hard to suppose that the cadre of eminent seventeenth-century English jurists, antiquarians and legal reformers, like John Selden, knew nothing about the history of judicial tenure ‘during good behaviour’ before their own century. Instead, it would not be the least bit surprising to find that Stuart-era legal reformers, like many before them, gazed backward for guidance and inspiration to solve contemporary problems.<sup>171</sup> The true innovation of the seventeenth-century judicial reformers, it seems, lies not in creating judicial tenure ‘during good behaviour’ but rather in extending this form of tenure to *all* judges on appointment to office. Indeed, the judicial ideas and innovations of the seventeenth century, as well as those of today, are always erected upon the foundations of the past. It is we who forget, and it is a hallmark of our honourand’s career that he has helped so many to remember.

## Notes

- 1 I presented drafts of this paper at the 50th International Medieval Conference in Kalamazoo in May 2015 and at the 2016 American Society for Legal History Conference in Toronto. I am grateful for the excellent feedback of scholars in my sessions – their insightful comments and advice were invaluable in preparing this finalised version. I am particularly grateful for the assistance and guidance of Jonathan Rose, Wendy Turner, Sasha Volokh, David Seipp, Jim Whitman, Ian Williams and Paul Brand in preparing this article. Special thanks must be extended to my good friend, Tom McSweeney, for bringing sources to my attention that I had not considered, and for his penetrating, measured criticism of a complete earlier draft. Any infelicities are mine alone.
- 2 See, e.g., Scott Gerber, ‘William Penn and the Origins of Judicial Tenure During Good Behavior’, *The Pennsylvania Magazine of History and Biography* 136 (2012): 233; J.H. Baker, *An Introduction to English Legal History*, 4th ed. (London: Butterworths, 2002), 166–7; Daniel Klerman, ‘Nonpromotion and Judicial Independence’, *Southern California Law Review* 72 (1999): 455; Sir William Holdsworth, *A History of English Law* (London: Methuen, 1924), 6: 234.
- 3 See, e.g., Paul Taylor, ‘Congress’s Power to Regulate the Federal Judiciary: What the First Congress and the First Federal Courts Can Teach Today’s Congress and Courts’, *Pepperdine Law Review* 37 (2010): 896–7; Michael Mazza, ‘A New Look at an Old Debate: Life Tenure and the Article III Judge’, *Gonzaga Law Review* 39 (2004): 135; Sir William Holdsworth, *A History of English Law* (London: Methuen, 1966), 1: 195.
- 4 U.S. Constitution, Article III, Section 1: ‘The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office’.
- 5 U.S. Constitution, Article II, Section 4: ‘The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment

for, and conviction of, treason, bribery, or other high crimes and misdemeanors'. To date, only fifteen U.S. federal judges have been removed from office, the most recent in 2010 on charges of bribery and perjury. All of these federal judges were impeached by the U.S. House of Representatives, and many of them were convicted and removed by the U.S. Senate. Some federal judges, however, resigned from office after being impeached but before being convicted. See 'Impeachments of Federal Judges' [www.fjc.gov/history/home.nsf/page/judges\\_impeachments.html](http://www.fjc.gov/history/home.nsf/page/judges_impeachments.html).

- 6 During 2010–11 I served as a United States Supreme Court Fellow at the Federal Judicial Center (FJC). One of my responsibilities at the FJC was to teach foreign justices about the United States legal system and its personnel. I had the immense privilege to work with justices from 93 different countries, all of whom were astounded that U.S. federal judges held their offices 'during good behaviour' rather than for a term of years. All judges in various state courts within the United States, aside from the Rhode Island Supreme Court, serve for a term of years. Rhode Island Supreme Court justices 'shall hold office during good behavior'. *Rhode Island Constitution*, article X, section 5.
- 7 See *Debates on the Federal Judiciary: A Documentary History* (1787–1875), Federal Judicial Center (2013), 1: 153–65; Steven Calabresi and James Lindgren, 'Term Limits for the Supreme Court: Life Tenure Reconsidered', *Harvard Journal of Law & Public Policy* 29 (2006): 770–877.
- 8 See, e.g., Gerber, 'William Penn', 233–51; Taylor, 'Congress's Power', 895–7; Saikrishna Prakash, 'How to Remove a Federal Judge', *Yale Law Journal* 116 (2006): 92–103; Saikrishna Prakash, 'Removal and Tenure in Office', *Virginia Law Review* 92 (2006): 1820–3; Calabresi and Lindgren, 'Term Limits', 777, n. 32; Mazza, 'A New Look at an Old Debate', 135; Klerman, 'Nonpromotion and Judicial Independence', 455–9; William Ross, 'The Hazards of Proposals to Limit the Tenure of Federal Judges and to Permit Judicial Removal Without Impeachment', *Vanderbilt Law Review* 35 (1990): 1067; Holdsworth, *A History of English Law*, 1: 195; *Ibid.*, 6: 232–40.
- 9 'William III, 1700 & 1701: An Act for the further Limitation of the Crown and better securing the Rights and Liberties of the Subject [Chapter II. Rot. Parl. 12 & 13 Gul. III. p. 1. n. 2.]', in *SR*, 7: 636–8. *British History Online* [www.british-history.ac.uk/statutes-realm/vol7/pp636-638](http://www.british-history.ac.uk/statutes-realm/vol7/pp636-638). (Italics added).
- 10 George E. Aylmer, *The King's Servants: The Civil Service of Charles I, 1625–1642* (London: Routledge, 1961), 107; Maitland, too, was well aware that various forms of tenure were present in medieval England, but it appears he never investigated the specific subject of judicial tenure, as he casually asserts that until the reign of William and Mary judges 'held their office *durante bene placito*'. See *The Constitutional History of England: A Course of Lectures Delivered by F.W. Maitland* (Cambridge: Cambridge University Press, 1919), 312–13.
- 11 (1) In his *Introduction to English Legal History*, Professor Baker devoted only a single, cryptic sentence to the history of judicial tenure 'during good behaviour' before the seventeenth century. Perhaps simply wanting to indicate that other forms of judicial tenure aside from judicial tenure 'during pleasure' existed prior to the seventeenth century, he states: 'Bryan C[hief] J[ustice of the] C[ommon] P[leas] had (perhaps uniquely) received a judicial patent *quamdiu se bene gesserint* in 1472, and the majority of the barons of the Exchequer after 1450 were given tenure in like terms'. Baker, unfortunately, does not give citations for either of these claims. See Baker, *An Introduction to English Legal History*, 167; (2). In his examinations of the Irish judiciary from their beginnings through the reign of Edward III, Paul Brand states that there 'are no examples during this period of appointments made during good behaviour or for life'.

- See Paul Brand, 'The Birth and Early Development of a Colonial Judiciary: The Judges of the Lordship of Ireland, 1210–1377', in *Explorations in Law and History: Irish Legal History Discourses, 1988–1994*, ed. W.N. Osborough (Dublin: Four Courts Press, 1995), 21 n. 86; (3). Just over a century ago Charles McIlwain published a twelve-page essay on the history of English judicial tenure before the 1701 Act of Settlement using unpublished Chancery patent rolls as evidence. While his essay demonstrates that Plantagenet and Tudor monarchs sporadically granted judicial tenure 'during good behaviour' to the barons of the Exchequer prior to the rule of the Stuart kings, the majority of the essay is dedicated to the development of judicial tenure 'during good behaviour' in the seventeenth century, and the entire essay is bereft of citations making it difficult to proof his assertions. See C.H. McIlwain, 'The Tenure of English Judges', *The American Political Science Review* 7 (1913): 217–29; (4). As an incidental byproduct of his pioneering research into the origins and functions of the medieval Exchequer, Thomas Madox, revealed that early fourteenth-century medieval barons of the Exchequer – royal officials appointed to adjudicate on financial matters affecting the crown – held their offices 'during pleasure'. See Thomas Madox, *History and Antiquities of the Exchequer of the Kings of England*, 2nd ed. (New York: Greenwood Press, 1969; reprint of the 1769 edition), 2: 56–62.
- 12 Sir John Sainty, *The Judges of England 1272–1990: A List of Judges of the Superior Courts*, Selden Society Supplementary Series, vol. 10 (London: Selden Society, 1993), ix.
  - 13 *Ibid.*, vii–viii, xvii–xix. It should also be noted that Sainty stated that he owed 'a special debt to Paul Brand who made most valuable comments on the lists for the period 1272–1327', a sentiment which, I surmise, can be echoed by virtually all scholars of the medieval English judiciary. See *ibid.*, ix.
  - 14 C.A.F. Meekings and David Crook, *King's Bench and Common Bench in the Reign of Henry III*, Selden Society Supplementary Series, 17 (London: Selden Society, 2010), 26–9.
  - 15 Digital pictures of original manuscripts and legal records related to medieval and early modern England may be accessed freely at the AALT; British History Online also contains digitised, searchable databases to thousands of pages of printed primary records relevant to Anglo-American legal history. See [www.british-history.ac.uk/](http://www.british-history.ac.uk/). The Fine Rolls, copies of agreements to pay the king a sum of money for a specified concession, for the reign of Henry III (1216–72) have also been digitised and are freely searchable. See [www.finerollshenry3.org.uk/home.html](http://www.finerollshenry3.org.uk/home.html)
  - 16 Published Chancery record evidence for this paper comes from the following: *RCb*; *CChR*; *CFR* <https://familysearch.org/search/catalog/show?availability=Family%20History%20Library>; *RLP*; *CPR* (<http://sdr.lib.uiowa.edu/patentrolls/search.html>); *CCR* ([www.british-history.ac.uk/](http://www.british-history.ac.uk/)); *RLC*; *ROF*; the AALT; all unpublished documents cited are preserved in TNA unless otherwise stated.
  - 17 The reason that judges of the forest are not included in the list of English judges to be examined is that, while I have discovered two instances of forest eyre judges being appointed 'for life' early during the reign of Edward II (1307–27), these men appear to have never acted in a judicial capacity in cases of vert and venison because only one forest eyre was called late in the reign of Edward II. See *CPR, 1307–1313*, 1: 73, 183; Jane Winters, 'The Forest Eyre, 1154–1368', PhD thesis, King's College London, 1999, 22–4.
  - 18 Oxford English Dictionary Online: 'Tenure', [www.oed.com/view/Entry/199286?rkey=fRztfC&result=1#eid](http://www.oed.com/view/Entry/199286?rkey=fRztfC&result=1#eid)
  - 19 'Instead the most sensible conclusion about the development of Norman feudal tenure may be that by 1066 a set of developing but unsystematized feudal

- practices existed in Normandy, which were introduced into England by its Norman conquerors'. See Emily Tabuteau, 'Definitions of Feudal Military Obligations in Eleventh-Century Normandy', in *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne*, eds. Morris S. Arnold et al. (Chapel Hill: University of North Carolina Press, 1981), 19.
- 20 Paul Hyams, 'Notes on the Transformation of the Fief Into the Common Law Tenure in Fee', in *Laws, Lawyers and Texts: Studies in Medieval Legal History in Honour of Paul Brand*, eds. Susanne Jenks, Jonathan Rose and Christopher Whittick (Leiden: Brill, 2012), 22.
  - 21 Ibid. The symbolic and physical roles that 'hands' played in medieval land tenure can readily be seen in the ceremonies of homage and feoffment with livery of seisin. For a brief, excellent examination of the vocabulary of landholding in northern France at this time see, Thomas McSweeney, 'Property Before Property: Romanizing the English Law of Land', *Buffalo Law Review* 60 (2012): 1145.
  - 22 P&M, 1:239.
  - 23 Hyams, 'Notes on the Transformation', 22. In the memorable words of Maitland, 'tenure implies service'. See P&M, 1:243.
  - 24 For an excellent overview of the various forms of service performed by tenants in exchange for land, see J.M. Kaye, *Medieval English Conveyances* (Cambridge: Cambridge University Press, 2009); see also P&M, 1:232–96.
  - 25 Reynolds argues that the widespread institution of feudal relationships in England was largely a product of 'the increasingly bureaucratic government and expert law that began to develop from about the twelfth century'. See Susan Reynolds, *Fiefs and Vassals: The Medieval Evidence Reinterpreted* (Oxford: Oxford University Press, 1994), 479; See also Hyams, 'Notes on the Transformation', 41–8.
  - 26 See Brand, *OELP*, 158–60.
  - 27 See Hyams, 'Notes on the Transformation', 46, note 95; Professor Hyams also points out that for most of the thirteenth century contemporaries did not use the term 'tenure' but rather 'tenementum' when referring to the physical holdings themselves. See *ibid.*, 46.
  - 28 P&M, 1: 230. See also Aylmer, *The King's Servant*, 106.
  - 29 McIlwain, 'The Tenure of English Judges', 218. The emoluments for a judge in the central royal courts – King's Bench, Common Bench, Exchequer – were many. They included, among other things, robes, royal salary, a share in fees levied by the courts for writs (typically 1 denarius per writ issued), wine, deer and a benefice from the royal gift if the judge was clerk, or for lay judges, wardships and escheats. See generally C.A.F. Meekings and David Crook, *King's Bench and Common Bench in the Reign of Henry III*, Selden Society Supplementary Series, vol. 17 (London: Selden Society, 2010), 67–8, 130, 145, 278; Ralph Turner, *The English Judiciary in the Age of Glanville and Bracton c. 1176–1239* (Cambridge: Cambridge University Press, 1985), 51–64; For a general explication of the development of judicial robes see J.H. Baker, 'A History of English Judges' Robes', *Costume* 12 (1978): 27; For specific grants of robes see *CCR*, 1272–9, 1: 484; *CCR*, 1346–1349, 8: 20, 125, 194, 445; *CCR*, 1349–1354, 9: 562; For information about the standard medieval royal salary for King's Bench and Common Bench judges (which the crown often paid in a dilatory fashion) see *CCR*, 1272–1279, 1: 503–4; For the 1 denarius judges portion of judicial writs see *CFR*, 1347–1356, 6: 89; *CFR*, 1356–1368, 7: 26, 55; For wine see *CPR*, 1354–1358, 10: 513; For deer see *CCR*, 1288–1296, 3: 175, 238; For wardships see *CPR*, 1338–1340, 4: 106; *CFR*, 1347–1356, 6: 55; *CPR*, 1354–1358, 10: 513.
  - 30 See McIlwain, 'The Tenure of English Judges', 218–19; for general information about grants of land in fee see Kaye, *Medieval English Conveyances*, 59–133.

- 31 The *Dialogue of the Exchequer* (*Dialogus de Scaccario*) was a medieval administrative treatise on the practice and procedures of the English Exchequer written by Richard Fitz-Nigel, Lord Treasurer to Henry II, sometime in the late 1170s or early 1180s. See Richard Fitz-Nigel, *Dialogus de Scaccario*, ed. and trans. Emilie Amt and S.D. Church (Oxford: Clarendon Press 2007), 1–194; Glanvill, or more appropriately, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill* (*Tractatus De Legibus et Consuetudinibus Regni Anglie qui Glanvilla Vocatur*) is exactly what its name claims: it is a treatise on the laws and customs of the realm of England written sometime between 1187–89 by a man (or men) with vast legal expertise in the king’s court of the Exchequer. The work is commonly called Glanvill after Ranulf de Glanvill, Justiciar to Henry II in the 1180s, but its author(s) is more than likely a royal clerk who attended court during the 1180s and 1190s. See *Glanvill*; John Hudson argues that one of *Glanvill*’s great achievements was the ‘working out the interrelationship and consequences of legal norms’ within a secular legal context in late twelfth-century England. See John Hudson, ‘From the *Leges to Glanvill*: Legal Expertise and Legal Reasoning’, in *English Law Before Magna Carta*, eds. Stefan Jurasinski, Lisi Oliver and Andrew Rabin (Leiden: Brill, 2010), 221–49.
- 32 Turner, *The English Judiciary*, 65–107; McIlwain, ‘The Tenure of English Judges’, 219; For general information about the decline of seigniorial justice in the face of expanding royal justice, see Baker, *An Introduction to English Legal History*, 12–34; Joseph Biancalana, ‘For Want of Justice: Legal Reforms of Henry II’, *Columbia Law Review* 88 (1988): 433–42, 534–6; S.F.C. Milsom, *Historical Foundations of the Common Law*, 2nd ed. (London: Butterworths, 1981), 11–36; J.E.A. Jolliffe, *The Constitutional History of Medieval England* (London: Adam and Charles Black, 1937), 204–17; P&M, 1: 136–73.
- 33 McIlwain, ‘The Tenure of English Judges’, 219.
- 34 CPR, 1216–1225, 1: 42 (*‘Dominus rex concessit, quamdiu ei placuerit, Rogero de Clifford manerium de Axeford cum pertinenciis suis, quod fuit Radulfi de la Bruere, qui est cum inimicis suis, et mandatum est omnibus militibus, libere tenentibus et aliis de manerio illo, quod ei in omnibus sint intendentes et respondetes’*).
- 35 CPR, 1232–1247, 3: 258.
- 36 CPR, 1216–1225, 1: 55 (*‘Dominus rex commisit Ricardo de Samford forestam de Chiphham et de Melkesham, custodiendam quamdiu ei placuerit. Et mandatum est Johanni Marescall quod custodiam illiam ei in pace tenere permittat’*).
- 37 CPR, 1232–1247, 3: 8.
- 38 *Ibid.*, 3: 145.
- 39 For various grants of land ‘during pleasure’ during the reign of Henry III see e.g., CPR, 1216–1225, 1: 39, 82, 59, 65, 128, 279, 327, 374, 493; CPR, 1225–1232, 2: 89, 121, 178, 313, 316; CPR, 1232–1247, 3: 195, 253, 366, 385, 422, 424, 425, 498, 499; CPR, 1247–1258, 4: 25, 43, 45, 86, 145, 184, 244; CPR, 1258–1266, 5: 451, 458, 469, 467; CPR, 1266–1272, 6: 173, 642; RLC, 2: 6, 88; For grants of various royal offices ‘during pleasure’ during the reign of Henry III see e.g., CPR, 1216–1225, 1: 82, 146, 327, 333, 378, 428, 466, 473; CPR, 1225–1232, 2: 66, 92, 178, 180, 226, 270, 313, 314, 316, 322, 431, 434, 486; CPR, 1232–1247, 3: 25, 47, 50, 58, 142, 173, 284, 476; CPR, 1247–1258, 4: 11, 42, 165, 223, 366, 499; CPR, 1258–1266, 5: 27, 65, 143, 163, 195, 420, 501; CPR, 1266–1272, 6: 25, 30, 85, 297, 392, 652.
- 40 One interesting form of limited tenure that deserves further exploration concerns the Land of the Normans (*terra Normannorum*). These are lands in the Channel Islands or the Norman mainland that were confiscated by the English crown from Anglo-Normans who had entered the service of the king of France

following the loss of Normandy in 1204. Both John and his son, Henry III, were careful to grant out those lands again on an interim basis with phrases like ‘to hold until the land of England and Normandy be one or the king restore the said land to the right heirs of his free will or by a peace’. *CChR*, 1226–1257, 1: 324; see also J.A. Everard and J.C. Holt, *Jersey 1204: The Forging of an Island Community* (London: Thames & Hudson, 2004), 127–31. I owe this idea and reference to Professor Tom McSweeney.

- 41 C 60/24 m. 9 (9 December 1225).
- 42 *CPR*, 1232–1247, 3: 445. For other grants of land from the king for a term of years see, e.g., C 60/25 m. 11 (10 January 1227); C 60/28 m. 12 (5 December 1228); C 60/28 m. 9 (23 March 1229); C 60/32 m. 8 (4 January 1233); C 60/35 m. 9 (18 May 1236); C 60/58 m. 17 (4 December 1260); *CPR*, 1216–1225, 1: 144, 195, 368, 508; *CPR*, 1225–1232, 2: 31, 51, 63, 107, 202, 226, 236, 325; *CPR*, 1232–1247, 3: 47, 83, 149, 193, 334, 479; *CPR*, 1247–1258, 4: 73, 93, 268, 322, 454, 477, 504; *CPR*, 1258–1266, 5: 87, 576, 577, 653; *CPR*, 1266–1272, 6: 12, 179, 185, 401, 407.
- 43 *CPR*, 1216–1225, 1: 322; (*Sciatis quod commisimus et concessimus Andree Bukerel cambium nostrum Anglie cum omnibus pertinenciis suis, habendum et tenendum a festo Sancti Hyllarii, anno regni nostril vi, in tres annos sequentes completes, pro iiii mille marcis*’).
- 44 *CPR*, 1232–1247, 3: 51.
- 45 For other appointments to office for a term of years see, e.g., C 60/23 m. 1 (22 October 1225); C 60/35 m.9 (18 May 1236); C 60/54 m. 7 (April 20, 1257); *CPR*, 1225–1232, 2: 31, 51, 202; *CPR*, 1232–1247, 3: 146, 212; *CPR*, 1247–1258, 4: 64, 69, 133, 220, 457, 550; *CPR*, 1258–1266, 5: 5, 71, 87, 148, 208, 233; *CPR*, 1266–1272, 6: 6, 468.
- 46 *CPR*, 1225–1232, 2: 314. (*Rex concessit Waltero de Kirkeham manerium suum de Neuport cum pertinenciis tenendum ad firman tota vita sua, reddendo inde per annum ad Scaccarium regis xl libras blancas*’).
- 47 *CPR*, 1232–1247, 3: 326; For other grants of land ‘for life’ in the reign of Henry III, see e.g., C 60/22 m. 5 (31 October 1224); C 60/29 m. 6 (22 April 1230); C 60/33 m. 8 (12 March 1234); *CChR*, 1226–1257, 1: 49, 54, 277, 280, 331; *CPR*, 1216–1225, 1: 280; *CPR*, 1225–1232, 2: 190, 323, 406, 407, 433; *CPR*, 1232–1247, 3: 46, 87, 144, 147, 474; *CPR*, 1247–1258, 4: 40, 47, 54, 83, 149, 316, 326, 387, 529, 618; *CPR*, 1258–1266, 5: 465, 523, 642; *CPR*, 1266–1272, 6: 15.
- 48 *CPR*, 1232–1247, 3: 15.
- 49 *CChR*, 1226–1257, 1: 225.
- 50 *CPR*, 1258–1266, 5: 525; For other appointments to royal office ‘for life’ in the reign of Henry III see, e.g., C 60/30 m. 5 (18 April 1231); C 60/31 mems. 3–4 (27–28 June 1232); C 60/32 m. 5 (27 April 1233); *CChR*, 1226–1257, 1: 163; *CPR*, 1225–1232, 2: 439, 455, 460, 486, 489, 490, 500; *CPR*, 1232–1247, 3: 41, 42, 88, 100, 139; *CPR*, 1247–1258, 4: 46, 178, 457; *CPR*, 1258–1266, 5: 140, 143, 217, 261, 556, 567, 639; *CPR*, 1266–1272, 6: 5, 18, 503, 676, 680; *RLC*, 2: 175.
- 51 For an excellent brief biography of Hubert’s life see F.J. West, ‘Burgh, Hubert de, Earl of Kent (c.1170–1243)’, *ODNB*; online ed., Jan 2008 [[www.oxforddnb.com/view/article/3991](http://www.oxforddnb.com/view/article/3991)].
- 52 *CChR*, 1226–1257, 1: 74.
- 53 *Ibid.*, 156.
- 54 *Ibid.*, 164–5.
- 55 F.M. Powicke, ‘The Oath of Bromholm’, *EHR* 56 (1941): 535–8.
- 56 *Ibid.*, 537–8.
- 57 *CCR*, 1234–1237, 3: 509; *CPR*, 1232–1247, 3: 48.



- 58 For the dramatic increase in volume of documents produced by the Chancery in the late twelfth and early thirteenth century see David Carpenter, *Magna Carta* (London: Penguin Books, 2015), 160; Michael Clanchy, *From Memory to Written Record: England 1066–1307*, 2nd ed. (Oxford: Basil Blackwell, 1993), 57–62.
- 59 Paul Brand noted that only twice during Henry III's reign did the English Chancery bother to record the appointments of justices to the English Bench; but appointments of justices in eyre were more frequently enrolled. See Brand, 'The Birth and Early Development of a Colonial Judiciary', 15 and note 55.
- 60 Poor clerical work could have very real consequences, a hard fact that an attorney, Thomas de Scotland, learned in 1335. Scotland's name was accidentally listed by the 'carelessness of a clerk in the [Common] Bench' as the attorney for William de Joueby in a case involving land in Yorkshire. When the Common Bench justices asked Scotland if he was de Joueby's attorney and he denied it, he was promptly imprisoned in the Fleet. The king eventually 'pardoned the said Thomas his imprisonment' and allowed him to continue practising as an attorney. *CPR*, 1334–1338, 3: 127.
- 61 For a brief, potted biography of Rivaux see Nicholas Vincent, 'Rivallis, Peter de (d. 1262)', *ODNB*; online ed. [[www.oxforddnb.com/view/article/23688](http://www.oxforddnb.com/view/article/23688)].
- 62 *CPR*, 1225–1232, 2: 486.
- 63 *Ibid.*
- 64 See e.g., C 60/31 m. 1 (21 October 1232); this is a memorandum stating that John of Hulcote is appointed sheriff of Oxfordshire *quamdiu regi placuerit* but exempting from his purview the custody of the manor, houses and appurtenances at Woodstock along with the castle of Oxford and its mill and meadow, all of which were previously granted to Geoffrey de Crowcombe *tota vita sua*.
- 65 Occasional references to landholding *quamdiu domino regi placuerit*, for a term of years, or *tota vita sua* in the reign of King John support the likelihood that these same landholding forms of tenure were extended to royal officials before the thirteenth century. For tenure *quamdiu domino regi placuerit* see, e.g., *ROF*, 119; For landholding for a term of years see, e.g., *ibid.*, 206; For landholding *tota vita sua* see, e.g., *ibid.*, 435.
- 66 *RCh*; *CChR*, Henry III: vol. 1 1226–1257; Henry III: vol. 2 1257–1300.
- 67 There is one case of the phrase 'during good behaviour' potentially being linked to a grant of office, but it is probably a scribal mistake. The patent rolls record that in April 1231 Henry III granted Ela, countess of Salisbury, the county of Wiltshire to hold *quamdiu bene se gesserit*. However, an additional grant a few paragraphs later in the patent rolls states that Ela made a fine with the king for 200 marks to hold the county of Wiltshire and the castle of Salisbury *tota vita sua*. The corresponding entry for this grant also appears on the fine rolls, and there it is also written that Ela would hold the castle of Salisbury and the county of Wiltshire *tota vita sua*. While grants of land and office at this time were often held 'for life', I have not found any other grants of land or office held 'during good behaviour' until the 1270s. Thus, I assume that the initial description of Ela's tenure in the patent rolls is a clerical error. See *CPR*, 1225–1232, 2: 431; C 60/30 m. 5 (18 April 1231).
- 68 See e.g., *RLP*, 54; *CPR*, 1216–1225, 1: 288–289; *CPR*, 1225–1232, 2: 106, 247; *CPR*, 1232–1247, 3: 59; *CPR*, 1247–1258, 4: 12, 532, 553; *CPR*, 1258–1266, 5: 309; For an excellent history of the surety of the peace and how they relate to the writs *De Minis* and *Supplicavit*, see Susanne Jenks, 'Writs *De Minis* and *Supplicavit*: The History of the Surety of the Peace', in *Laws, Lawyers, and Texts: Studies in Medieval Legal History in Honour of Paul Brand* (Leiden: Brill, 2012), 253–77; for the interplay between custom and law in thirteenth-century England see Paul Brand, 'Law and Custom in the English Thirteenth Century

Common Law', in *Custom: The Development and Use of a Legal Concept in the Middle Ages*, eds. Per Andersen and Mia Munster-Swendsen (Copenhagen: DJØF, 2009).

- 69 To place the rise and fall of the Provisions at Oxford within their proper historical context see, J.R. Maddicott, 'Magna Carta and the Local Community 1215–1259', *Past & Present* 102 (1984): 25–65; F.M. Powicke, *King Henry III and the Lord Edward: The Community of the Realm in the Thirteenth Century*, 2 vols. (Oxford: Clarendon Press, 1947), 343–56; for text of the Provisions of Oxford see Stubbs, *Charters*, 378–406; the striking parallels of Henry III's papal pardon releasing him from the Provisions of Oxford and King John's release from Magna Carta in 1215 through papal intervention are obvious.
- 70 The Dictum of Kenilworth was drafted by a royally-appointed committee of four prelates and eight laymen who were 'to suggest changes to the policy of total disinheritance of the Montfortians which would conciliate the rebels and help re-establish domestic peace'. The text of the Dictum of Kenilworth is innovative: it reestablished monarchical supremacy and provided that the lands of the king and his loyal followers taken by the rebels were to be returned, and that rebels would not be banished, killed or disinherited, but could ransom their lands from the king for set amounts depending on the severity of their rebellion. Provisions of the Dictum of Kenilworth were later incorporated into the Statute of Marlborough on 19 November 1267. The Statute of Marlborough is considered by some to be the oldest piece of statute law that has not been fully repealed, as the version of the Magna Carta that remains in force dates from 1297. For the Dictum of Kenilworth see Paul Brand, *Kings, Barons and Justices: The Making and Enforcement of Legislation in Thirteenth-Century England* (Cambridge: Cambridge University Press, 2003), 185–6; SR, 1: 12–18; *Sources of English Constitutional History*, ed. and trans. Carl Stephenson and F.G. Marcham, rev. ed. (London: Harper & Row, 1972), 149–50; for the Statute of Marlborough (1267) see Brand, *Kings, Barons and Justices*, at 184–204, 453–83; SR, 1: 19–25.
- 71 CPR, 1258–1266, 5: 624.
- 72 CPR, 1266–1272, 6: 12; for examples of other pardons to rebels on condition of 'good behaviour' see e.g., CPR, 1258–1266, 5: 311, 515, 560, 572, 587, 592, 603, 604, 606, 613, 615, 621, 632, 638, 647, 666, 669, 670; CPR, 1266–1272, 6: 8, 10, 11, 12, 14, 16, 17, 19, 20, 22, 26, 31, 34, 35, 36, 46, 62, 64, 73, 75, 80, 86, 95, 148, 157, 188, 199, 237, 238, 286, 298, 362, 375, 501, 543, 596.
- 73 Fealty is derived from the Latin *fidelitas*, meaning 'faith' or 'faithful'; for a general discussion of the relationship and differences between homage and fealty see P&M, 1: 296–307.
- 74 *Bracton*, 2: 232.
- 75 CPR, 1258–1266, 5: 647 ('Whereas Edward the king's son has admitted into the king's peace the men of the hundred of Kokesfeld as is contained in his letters patent; the king accepting this at the instance of his said son, has remitted to them his indignation and rancor of mind conceived towards them for any trespasses against him done by them in the time of the late disturbance and admitted them into his grace and peace, so that they be faithful to him and his heirs from henceforth'.) For a similar letter patent see *ibid.*, 547.
- 76 See CPR, 1266–1272, 6: 16 ('Admission to the king's peace of Roger Godbert and William his brother; and pardon to them of all their trespasses and forfeitures in the time of the late disturbance on condition of their good behaviour; and grant to them that the lands which they hold now shall not incur loss thereby provided that they stand to the award of Kenilworth with regard to their lands which the king has given to others. And if they offend against their fealty again, their bodies shall be at the king's will, and their lands shall fall

- (*incurrantur*) to the king and his heirs for ever'). For similar letters patent linking a breach of fealty to bad behaviour see *CPR*, 1258–1266, 5: 445, 455, 588, 609, 615; *CPR*, 1266–1272, 6: 11.
- 77 I use the term 'expressly' here because to some extent it is implied in all previous tenures – in fee, during pleasure, for a term of years, for life – that the tenant would act faithfully to the lord or else forfeit his holding.
- 78 *CPR*, 1266–1272, 6: 261.
- 79 *Ibid.*, 534; for grants of other royal offices under the same terms in the reign of Edward I see *CPR*, 1272–1279, 1: 417, 434; *CPR*, 1281–1292, 2: 381; *CPR*, 1301–1307, 4: 15; *CFR*, 1272–1307, 1: 120, 236, 325; *CCR*, 1302–1307, 5: 273.
- 80 *CCR*, 1272–1279, 1: 268; for grants of other royal offices under the same terms in the reign of Edward I see *CPR*, 1272–1279, 1: 223; *CCR*, 1279–1288, 2: 259; *CFR*, 1272–1307, 1: 271.
- 81 *CFR*, 1272–1307, 1: 169; for grants of other royal offices under the same terms in the reign of Edward I see *CFR*, 1272–1307, 1: 177; *CPR*, 1292–1301, 3: 492.
- 82 We know little about specific oaths of office sworn by non-judicial royal officers at this time. Contemporary evidence suggests that all royal officers had to take an oath that they would execute the office with faithfulness before starting their position. But the exact language of these oaths is elusive. See e.g., *CPR*, 1247–1258, 4: 637; *CPR*, 1292–1301, 3: 105; *CPR*, 1301–1307, 4: 471; *CCR*, 1272–1279, 1: 446; *CCR*, 1279–1288, 2: 121–2; *CFR*, 1307–1319, 2: 51; *CCR*, 1339–1341, 5: 8.
- 83 *CPR*, 1272–1279, 1: 58.
- 84 *CCR*, 1272–1279, 1: 172.
- 85 *CFR*, 1272–1307, 1: 88.
- 86 *CCR*, 1272–1279, 1: 155, 444; *CFR*, 1272–1307, 1: 41, 120; *CPR*, 1281–1292, 2: 31; *CPR*, 1301–1307, 4: 4, 5.
- 87 *CCR*, 1272–1279, 1: 404, 538.
- 88 *CFR*, 1272–1307, 1: 92.
- 89 *CPR*, 1272–1279, 1: 366; *CFR*, 1272–1307, 1: 124.
- 90 *CPR*, 1281–1292, 2: 236; *CFR*, 1272–1307, 1: 227.
- 91 *CPR*, 1272–1279, 1: 128.
- 92 *CPR*, 1301–1307, 4: 332.
- 93 *CFR*, 1272–1307, 1: 148; *CPR*, 1281–1292, 2: 470.
- 94 *CPR*, 1272–1279, 1: 369; *CPR*, 1292–1301, 3: 356.
- 95 *CFR*, 1272–1307, 1: 450; *CPR*, 1301–1307, 4: 330.
- 96 *CPR*, 1281–1292, 2: 386.
- 97 *CPR*, 1292–1301, 3: 408; *CPR*, 1301–1307, 4: 74.
- 98 *CPR*, 1272–1279, 1: 360.
- 99 *CPR*, 1281–1292, 2: 392.
- 100 *CPR*, 1272–1279, 1: 394.
- 101 *CCR*, 1302–1307, 5: 273.
- 102 For the development of the English judiciary in Ireland from their beginnings to the end of the reign of Edward III see Brand, 'The Birth and Early Development of a Colonial Judiciary', 1–48.
- 103 *Ibid.*, 15–16.
- 104 *Ibid.*, 24–5.
- 105 *CPR*, 1307–1313, 1: 448; *CPR*, 1313–1317, 2: 31.
- 106 *CPR*, 1313–1317, 2: 91; *CPR*, 1317–1321, 3: 500.
- 107 *CPR*, 1317–1321, 3: 63.
- 108 (1) For ministerial offices in the Common Bench granted with tenure 'during good behaviour' or 'for life' in the reign of Edward III see, e.g., *CPR*, 1327–1330, 1: 94; *CPR*, 1330–1334, 2: 36, 262, 308, 398; *CPR*, 1340–1343, 5:

- 292, 378, 535, 560; *CPR, 1343–1345*, 6: 458; *CPR, 1348–1350*, 8: 411, 467; *CPR, 1350–1354*, 9: 200, 409; *CPR, 1354–1358*, 10: 3; *CPR, 1361–1364*, 12: 99, 499; *CPR, 1370–1374*, 15: 199; *CPR, 1374–1377*, 16: 372.
- (2) For ministerial offices in the King's Bench granted with tenure 'during good behavior' or 'for life' in the reign of Edward III, see, e.g., *CPR, 1327–1330*, 1: 1, 3, 166, 198, 542; *CPR, 1343–1345*, 6: 263; *CPR, 1354–1358*, 10: 147; *CPR, 1361–1364*, 12: 82, 499; *CPR, 1364–1367*, 13: 223.
- (3) For ministerial offices in the English Exchequer granted with tenure 'during good behaviour' or 'for life' in the reign of Edward III see e.g., *CPR, 1327–1330*, 1: 8, 103, 365; *CPR, 1338–1340*, 4: 448.
- (4) For ministerial offices in the Common Bench of Ireland granted with tenure 'during good behaviour' or 'for life' in the reign of Edward III see e.g., *CPR, 1327–1330*, 1: 188, 550; *CPR, 1330–1334*, 2: 44, 192; *CPR, 1338–1340*, 4: 478; *CPR, 1340–1343*, 5: 429, 460; *CPR, 1343–1345*, 6: 482; *CPR, 1348–1350*, 8: 229.
- (5) For ministerial offices in the King's Bench of Ireland granted with tenure 'during good behaviour' or 'for life' in the reign of Edward III see e.g., *CPR, 1327–1330*, 1: 419, 546, 550; *CPR, 1330–1334*, 2: 564; *CPR, 1334–1338*, 3: 28; *CPR, 1361–1364*, 12: 468.
- (6) For ministerial offices in the Exchequer of Ireland granted with tenure 'during good behavior' or 'for life' in the reign of Edward III see e.g., *CPR, 1327–1330*, 1: 8, 143, 332, 451, 546; *CPR, 1330–1334*, 2: 44, 123, 423; *CPR, 1334–1338*, 3: 57, 175, 309; *CPR, 1338–1340*, 4: 314, 317, 441, 532; *CPR, 1340–1343*, 5: 31, 158, 501; *CPR, 1345–1348*, 7: 467; *CPR, 1348–1350*, 8: 433; *CPR, 1350–1354*, 9: 234; *CPR, 1354–1358*, 10: 467; *CPR, 1361–1364*, 12: 468; *CPR, 1364–1367*, 13: 376, 399; *CPR, 1367–1370*, 14: 119.
- 109 I have found no instances where ministerial royal court officials obtained a grant of office 'for life' that was later extended to tenure 'in fee'.
- 110 *CPR, 1330–1334*, 2: 423; *CPR, 1334–1338*, 3: 412; *CPR, 1338–1340*, 4: 334.
- 111 *CPR, 1327–1330*, 1: 1, 3.
- 112 For enlargements of tenure for ministerial court offices in the royal courts during the reigns of Edward II and Edward III see, e.g.: (1) Robert de Foxton, chirographer of the Common Bench, see *CPR, 1307–1313*, 1: 448; *CPR, 1313–1317*, 2: 31; *CPR, 1327–1330*, 1: 94; 500; (2) Luke de Burgh, attorney for the king in Common Bench – *CPR, 1330–1334*, 2: 27, 262; (3) Thomas de Brembre, chirographer of the Common Bench – *CPR, 1343–1345*, 6: 534; *CPR, 1348–1350*, 8: 467; (4) Hugh de Segrave, crier in Common Bench – *CPR, 1350–1354*, 9: 409; *CPR, 1354–1358*, 10: 3; (5) Thomas Botle, chief crier in the King's Bench – *CPR, 1313–1317*, 2: 91; *CPR, 1317–1321*, 3: 500; (6) William la Marche, crier of the King's Bench – *CPR, 1327–1330*, 1: 538, 542; (7) Nicholas de Tewkesbury, office in Exchequer formerly held by Nicholas de Acton – *CPR, 1327–1330*, 1: 103; (8) John de Leicester, chamberlain of the Exchequer – *CPR, 1327–1330*, 1: 181, 365; (9) William de Gloucester, chirographer and keeper of the writs and rolls Common Bench, Ireland – *CPR, 1334–1338*, 3: 462; *CPR, 1338–1340*, 4: 58; (10) Nicholas de Balygavern, chirographer and keeper of the writs and rolls Common Bench, Ireland – *CPR, 1340–1343*, 5: 7, 34, 478; (11) William de Boseworth, keeper of writs and rolls Kings Bench, Ireland – *CPR, 1327–1330*, 1: 316, 419, 546; (12) Robert Power, chancellor of the Exchequer, Ireland – *CPR, 1334–1338*, 3: 122, 309, 405; (13) Robert de Salkeld, second chamberlain of the Exchequer, Ireland – *CPR, 1334–1338*, 3: 57, 170; *CPR, 1343–1345*, 6: 55; (14) Hugh de Burgh, treasurer of the Exchequer, Ireland – *CFR, 1337–1347*, 2: 137, 164; (15) William de Brawode, chancellor of the Exchequer, Ireland – *CPR, 1327–1330*, 1: 39, 332, 451.

- 113 Grants of tenure to royal office, including ministerial offices in the king's courts, expired on the demise of the crown until Parliament passed the Commissions and Salaries of Judges Act in 1760. See Commissions and Salaries of Judges Act, 1 George III c. 23 (1760).
- 114 For example, see the confirmation of Robert de Foxton, chirographer to the Common Bench in 1327, see *CPR, 1327–1330*, 1: 94.
- 115 For instance on 28 October 1331 Peter de Wetewang, who held the office of chirographer and keeper of the writs and rolls for the Common Bench in Ireland 'during pleasure', was removed in favour of Nicholas Balygavernan, who was granted the same office 'during good behaviour' at the request of the Bardi. See *CPR, 1330–1334*, 2: 76, 77, 192.
- 116 *CPR, 1338–1340*, 4: 314, 317, 448; See also *CPR, 1338–1340*, 4: 314, 317.
- 117 See, e.g., *CPR, 1327–1330*, 1: 538; *CPR, 1338–1340*, 4: 532.
- 118 *CPR, 1340–1343*, 5: 441.
- 119 *CPR, 1343–1345*, 6: 220.
- 120 *CPR, 1345–1348*, 7: 120.
- 121 Brand has shown that the initiative behind the appointment of William le Deveneyns as a justice of the Dublin Bench in October 1312 lay with le Deveneyns himself or with his 'friends in England' rather than with the crown. See Brand, 'The Birth and Early Development of a Colonial Judiciary', 18–19.
- 122 See e.g., (1) Peter de Wakefeld protecting his office of second ingrosser of the Exchequer, Ireland for a second time: *CPR, 1354–1358*, 10: 467; (2) Geoffrey de Say protecting his office of crier in the King's Bench: *CPR, 1327–1330*, 1: 1, 3, 198, 241; (3) Walter de Mauny protecting his office of marshal of the King's Bench: *CPR, 1343–1345*, 6: 263, 264; *CCR, 1349–1354*, 9: 430; (4) William Bette protecting his office of usher of the Exchequer, Ireland: *CPR, 1340–1343*, 5: 501; (5) Nicholas Balygavern protecting his office of chirographer and keeper of the writs and rolls for the Common Bench, Ireland: *CPR, 1334–1338*, 3: 462; *CPR, 1338–1340*, 4: 22, 197, 313, 315, 478; (6) John de Evesham protecting his office of second chamberlain of the Exchequer, Ireland: *CPR, 1348–1350*, 8: 433; *CPR, 1350–1354*, 9: 234; *CPR, 1354–1358*, 10: 261; (7) Robert de Salkeld protecting his office of second chamberlain of the Exchequer, Ireland: *CPR, 1334–1338*, 3: 57, 170.
- 123 *CPR, 1327–1330*, 1: 1, 3, 538.
- 124 *CPR, 1330–1334*, 2: 36, 308, 398; *CPR, 1340–1343*, 5: 292.
- 125 *CPR, 1343–1345*, 6: 458.
- 126 *CPR, 1338–1340*, 4: 317, 532.
- 127 See, e.g., (1) Richard de Foxton, chirographer of the Common Bench during the reign of Edward II held his office first 'during pleasure' and then for life 'during good behaviour'. It appears, however, that de Foxton was removed from his position by skulduggery (or confusion) during the transition from Edward II's reign to that of Edward III, with Roger Mortimer and his steward, Richard de Haukeslowe, playing a role. Foxton continued to fight for his office, but eventually surrendered his patent on 11 June 1332. See *CPR, 1307–1313*, 1: 448; *CPR, 1313–1317*, 2: 31; *CPR, 1327–1330*, 1: 2, 94; *CPR, 1330–1334*, 2: 36, 281, 308; E 175/2/216 mem. 3d. (November 1330); (2) John de la Bataille held the office of chirographer and keeper of the writs and rolls in the Common Bench, Ireland 'during good behaviour', but was removed for some unknown reason 24 August 1330. De la Bataille was later reinstated to his post with the same tenure. See *CPR, 1327–1330*, 1: 188, 550; *CPR, 1330–1334*, 2: 44.
- 128 See 'Edward III: November 1330, C 65/2, mm.7–5', no. 21 in *PROME, British History Online* [www.british-history.ac.uk/no-series/parliament-rolls-medieval/november-1330-c-65](http://www.british-history.ac.uk/no-series/parliament-rolls-medieval/november-1330-c-65).
- 129 On 1 May 1257 Henry III enlarged his mother's tenure to the manor of Fakenham from a grant 'for life' to a grant giving her power to 'bind, pledge, lease,

- or assign the manor to whom she will, for fifteen years after her death'. *CPR, 1247–1258*, 4: 552; On 25 July 1282 Edward I extended a 'grant of life into a grant of fee simple' of some land to his servant, Thomas le Trevr'. See *CPR, 1281–1292*, 2: 31. These are but a few of the numerous examples of land tenure extensions that abound in the medieval Chancery records.
- 130 It is well to remember here that the Exchequer 'had a dual function: to audit the accounts of Crown debtors and to adjudicate upon actions between subjects'. H.G. Richardson and G.O. Sayles, *The Administration of Ireland 1172–1377* (Dublin: I.M.C., 1963), 42.
- 131 *Bracton*, 2: 20.
- 132 For scandals in the Irish Exchequer in the reigns of Edward I, Edward II and Edward III, see Richardson and Sayles, *The Administration of Ireland*, 47–8.
- 133 *CPR, 1334–1338*, 3: 122.
- 134 *Ibid.*, 175.
- 135 *Ibid.*, 462.
- 136 *Ibid.*, 520, 539.
- 137 *CPR, 1338–1340*, 4: 542; *CPR, 1340–1343*, 5: 20, 28, 127, 158, 488, 511.
- 138 Paul Brand has noted the restructuring of the king's Irish courts in 1311 and in 1351. See Brand, 'The Birth and Early Development of a Colonial Judiciary', 39; Likewise, Richardson and Sayles note a reorganisation of the Irish judiciary in 1232 which they claim 'reflects the processes by which the position of the justiciar in England was undermined'. See Richardson and Sayles, *The Administration of Ireland*, 21–4.
- 139 *CPR, 1361–1364*, 12: 468.
- 140 *Ibid.*
- 141 *CPR, 1381–1385*, 2: 463; Richard II also continued to appoint some judges from the Exchequer in Ireland with tenure 'during good behaviour'. See (1) Thomas Bache, Chief Baron of the Exchequer in Ireland: *CPR, 1381–1385*, 2: 168; *CPR, 1389–1392*, 4: 72; (2) John de Karlell, Second Baron of the Exchequer in Ireland: *CPR, 1389–1392*, 4: 390; (3) Robert Burnell, Second Baron of the Exchequer in Ireland: *CPR, 1389–1392*, 4: 313; I have been unable to find any appointments to the King's Bench in Ireland with tenure 'during good behaviour'.
- 142 Brand's work on the judiciary in Ireland shows that numerous judicial appointments to positions in Ireland in the reigns of Edward II and Edward III were ineffective due to a general reluctance to serve in the English colony. See Brand, 'The Birth and Early Development of a Colonial Judiciary', 21–5; Richardson and Sayles also note the reluctance of king's servants to serve in posts in Ireland. See Richardson and Sayles, *The Administration of Ireland*, 17–21.
- 143 *CPR, 1399–1401*, 1: 113.
- 144 *CPR, 1399–1401*, 1: 120; *CPR, 1405–1408*, 3: 106.
- 145 *CPR, 1401–1405*, 2: 202.
- 146 On 26 January 1423 Henry VI confirmed the grant of James Cornewalshe as Chief Baron of the Exchequer in Ireland 'during good behaviour' made by his father, Henry V, on 24 April 1421. See *CPR, 1422–1429*, 1: 75; On 14 June 1423 Henry VI also confirmed the grant of Richard Bernyngham, Second Baron of the Exchequer in Ireland 'during good behaviour' made by Henry V on 26 April 1421. See *CPR, 1422–1429*, 1: 88.
- 147 (1) James Cornewalshe, Chief Baron of the Exchequer, Ireland: *CPR, 1422–1429*, 1: 75; (2) Richard Bernyngham, Second Baron of the Exchequer, Ireland: *CPR, 1422–1429*, 1: 88; (3) Thomas Darby, Second Baron of the Exchequer, Ireland: *CPR, 1436–1441*, 3: 179; (4) William de Tynbegh, Chief Justice of the Common Bench, Ireland: *CPR, 1422–1429*, 1: 99.
- 148 (1) Michael Gryffyn, Chief Baron of Exchequer, Ireland: *CPR, 1441–1446*, 4: 7; *CCR, 1441–1447*, 4: 104, 352–3; C 1/13/288 (1445–1446); (2) William

- Sutton, Third Baron of the Exchequer, Ireland: *CPR, 1441–1446*, 4: 392; (3) John Cornewalshe, Chief Baron of the Exchequer, Ireland: *CPR, 1441–1446*, 4: 352–3, 410, 455; C 1/13/288 (1445–1446); (4) John Blakeney, Chief Justice of Common Bench, Ireland: *CPR, 1436–1441*, 3: 184; (5) Robert Dovedall, Chief Justice of Common Bench, Ireland: *CPR, 1446–1452*, 5: 23; *CPR, 1461–1467*, 1: 21; (6) James Alleyn, Chief Justice of King's Bench, Ireland: *CPR, 1446–1452*, 5: 72; (7) Nicholas Bernewell, Chief Justice of the King's Bench, Ireland: *CPR, 1453–14601*, 6: 350; (8) Barnabas Bernewell, Second Justice of the King's Bench, Ireland: *CPR, 1461–1467*, 1: 11.
- 149 See, e.g., (1) Peter Arden, Chief Baron of the Exchequer: *CPR, 1446–1452*, 5: 180; reconfirmed by Edward IV on 20 June 1461 *CPR, 1461–1467*, 1: 94; (2) John Durem (Holm), Baron of the Exchequer: *CPR, 1446–1452*, 5: 235; See also Sainty, *The Judges of England*, 90, 105.
- 150 I have not discovered any grants of tenure 'during good behaviour' or 'for life' for King's Bench judges in England during the thirteenth through fifteenth centuries. Sainty may well be correct in his estimation that all King's Bench judges until 1632 held their offices 'during pleasure'. Sainty, *The Judges of England*, 20.
- 151 *CPR, 1436–1441*, 3: 238; *CPR, 1446–1452*, 5: 267; Sainty's observations that 'until 1640 tenure [for judges on the Common Bench] was during pleasure' will need to be updated in light of this. See Sainty, *The Judges of England*, 57.
- 152 *CPR, 1467–1477*, 1: 258, 315; *CPR, 1477–1485*, 1: 9.
- 153 *CPR, 1485–1494*, 1: 7.
- 154 (1) John Fisher, Judge in Common Bench: *CPR, 1494–1509*, 2: 253; (2) Thomas Frowyk, Chief Justice of Common Bench: *CPR, 1494–1509*, 2: 299; (3) John Kyngesmyll, Judge in Common Bench: *CPR, 1494–1509*, 2: 354. Again, Sainty's observations on the tenure of Common Bench judges needs to be revised in light of this new information. See Sainty, *The Judges of England*, 43, 57.
- 155 *CPR, 1389–1392*, 4: 83.
- 156 *Ibid.*, 313.
- 157 *Ibid.*, 390; William de Epworth, Second Baron of the Exchequer in Ireland with tenure 'during good behaviour' in the 1340s was also protected in his office by this tenure from the appointment of Nicholas de Snitterby to the same office. See *CPR, 1340–1343*, 5: 20, 28, 127.
- 158 See *CPR, 1441–1446*, 4: 7, 352–3, 410, 455; *CCR, Henry VI, 1441–1447*, 4: 104; C 1/13/288 (1445–1446).
- 159 Paul Brand, 'Ethical Standards for Royal Justices in England, c. 1175–1307', *University of Chicago Law School Roundtable* 8 (2001): 240–6.
- 160 *Ibid.*, 250–65.
- 161 *Ibid.*, 274. Along with this new judicial oath, some new procedures were implemented to try and punish those who falsely accused royal judges of misbehaviour. See *ibid.*, 274–8.
- 162 Stephen Bray's appointment as Chief Justice of the King's Bench 'during good behaviour' on 11 January 1406 was revoked by Henry IV on 28 January 1406, but not for misbehaviour. In this case Henry IV had tried to enlarge Bray's original appointment to that office 'during pleasure' to tenure 'during good behaviour', but the king had forgotten that he had given the power to 'appoint and remove all officers and ministers of the king [in Ireland] not having estate in fee or for life' to his son, Thomas Lancaster, the Justiciar) of Ireland. With Thomas' assent, Bray was later reappointed as Chief Justice of the King's Bench in Ireland 'during pleasure' on 6 February 1407. See *CPR, 1399–1401*, 1: 120; *CPR, 1401–1405*, 2: 456; *CPR, 1405–1408*, 3: 106, 145, 285.
- 163 See Brand, 'Ethical Standards for Royal Justices in England', 246–55; Brand, 'The Birth and Early Development of a Colonial Judiciary', 41–6; Of course, and handful of judges in Ireland with tenure 'during pleasure' did get removed

- due to misconduct. See Brand, 'The Birth and Early Development of a Colonial Judiciary', 38–40.
- 164 CPR, 1340–1343, 5: 127, 432; CCR, 1341–1343, 6: 367.
- 165 CCR, 1341–1343, 6: 367.
- 166 CPR, 1348–1350, 8: 144.
- 167 Ibid.; Medieval English kings also occasionally rehabilitated royal judges and non-judicial court officers who had been convicted of misconduct, allowing them to serve again in judicial or other important positions, suggesting that monarchs were more concerned with efficient administration of the realm than small-scale corruption of capable court officers. See Brand, 'Ethical Standards for Royal Justices in England', 274, 278–9; Richardson and Sayles, *The Administration of Ireland*, 17–18.
- 168 Fortescue informs us that by the first quarter of the fifteenth century a judge's oath included 'among other things that he will do justice without favour, to all men pleading before him, friends and foes alike, that he will not delay to do so even though the king should command him by his letters or by word of mouth to the contrary. He shall swear also that he will not receive from anyone except the king any fee or other pension, or livery, nor take any gift from any pleaders before him, except food and drink of no great price'. Sir John Fortescue, *De Laudibus Legum Anglie*, ed. and trans. S.B. Chrimes (Cambridge: Cambridge University Press, 1942), 127.
- 169 Paul Brand's scholarship has done much to elucidate the important, but often unrecognised, role that Ireland played in the development of the early Common Law: 'The statements of English law sent to Ireland in the 1220s and 1230s may well have played a part in the development of the common law not only in Ireland but also in England. The need to state clearly what the English rule was may, paradoxically, have helped to create a single fixed rule in England: and, as has been seen, at least one of these statements – the 1236 mandate on parcenary – found its way into English collections of statutes as the *Statutum Hibernie de Coheredibus*. That the Irish connection continued to be of some importance for the literature of the early common law – and, therefore, for the Common Law as a whole – is shown by the main manuscript tradition of the early fourteenth century pleading manual, *Novae Narrationes*, which clearly descends from an archetype produced in the lordship of Ireland. Discussion of the literature of the early common law must, it seems, therefore, bear in mind that the Common Law was the legal system not just of England but also of the lordship of Ireland, since the process of transmission of English law to Ireland was a significant factor in the creation of literature of the early common law.' Paul Brand, 'Ireland and the Literature of the Early Common Law', *The Irish Jurist* n.s. 16 (1981): 113, reprinted in Brand, *MCL*, 445–64.
- 170 Enforcing stringent penalties against judicial misconduct, however, was not always to the crown's advantage. See Brand, 'Ethical Standards for Royal Justices in England', 278–9.
- 171 Charlemagne and Henry II looked to Roman law for principles of governance. See Charles J. Reid, Jr., 'A Brief Account of Western Constitutional History: Raoul Van Caenegem's An Historical Introduction to Western Constitutional Law', *Emory Law Journal* 46 (1997): 791–805.