NOTE

The Shetar's Effect on English Law—A Law of the Jews Becomes the Law of the Land

The rational study of law is still to a large extent the study of history.
Holmes, *The Path of the Law*.[1]

I. INTRODUCTION

English law, like the English language, is an amalgam of diverse cultural influences. The legal system may fairly be seen as a composite of discrete elements from disparate sources. After the conquest of 1066, the Normans imposed on the English an efficiently organized social system that crowded out many Anglo-Saxon traditions.[2] The Jews, whom the Normans brought to England,[3] in their turn contributed to the changing English society. The Jews brought a refined system of commercial law: their own form of commerce and a system of rules to facilitate and govern it. These rules made their way into the developing structure of English law.

Several elements of historical Jewish legal practice have been integrated into the English legal system.[4] Notable among these is the written credit agreement—shetar, or starr, as it appears in English documents. The basis of the shetar, or "Jewish Gage," was a lien on all property (including realty)[5] that has been traced as a source of the modern mortgage.[6] Under Jewish law, the shetar

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1. 10 HARV. L. REV. 457, 469 (1897).
2. 1 G.M. TREVELYAN, HISTORY OF ENGLAND 142-48 (1953).
3. 1 F. POLLOCK & F.W. MAITLAND, THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I 468 (reissued 2d ed. 1968). There is some dispute whether the Jews arrived by William the Conqueror's invitation or merely with his permission. 4 S. BARON, A SOCIAL AND RELIGIOUS HISTORY OF THE JEWS 77 (1957).
4. *See generally* J. RABINOWITZ, JEWISH LAW 250-72 (1956) (discussing Jewish Gage, Odaita, Starr of Acquittance, and Representation by Attorney).
5. *See infra* text accompanying notes 34-36 (describing shetar and accompanying lien).
6. Rabinowitz, *The Common Law Mortgage and the Conditional Bond*, 92 U. PA. L. REV. 179-94 (1943). The author traces the two-instrument (debt and release) mortgage to its origin as a device to avoid asmakhta, a Jewish principle invalidating penalty clauses. Under that doctrine, Jewish money lenders were forbidden to exact a penalty conditioned on the future failure of the debtor's obligation. *Id.* at 184-85. If a conveyance involved asmakhta, it was void. *Id.* at 182. Invalidation as asmakhta could be avoided if all obligations were incurred at the time of the original transaction. *Id.* at 184, 185-86. Land was seizable as security only if the creditor went into possession at the time of the loan: "Meakhshav"—"from now". *Id.* at 185. For this reason, the debt instrument included an immediate conveyance of the land that was to serve as security against default. A second instrument, the acquittal, would release the security and reconvey the land to its original owner if the debt were paid on or before its due date. *Id.* at 185. The entire written obligation (shetar) remained in the hands of a third party for the duration of the debt. *Id.* at 192. The document proved that the debt existed and clarified the rights and duties of the parties in case of default. *See also* 2 C. HERZOG, THE MAIN INSTITUTIONS OF JEWISH LAW 71-92 (2d ed. 1967) (chapter on asmakhta).

Rabinowitz finds in these and other early Jewish devices for avoiding asmakhta both the structural and substantive roots of the English mortgage and the later developed equitable right of redemption. J. RABINOWITZ, *supra* note 4, at 250-72. *See also* F. LINCOLN, THE STARRA 47-50 (1939) (outlining the same derivation); *see generally* F. LINCOLN, THE LEGAL BACKGROUND TO THE STARRA (1932) (same). Compare the historical period of equitable right of redemption with the same term of protected re-

permitted a creditor to proceed against all the goods and land of the defaulting debtor.[7] Both "movable and immovable" property were subject to distraint.[8]

In contrast, the obligation of knight service under Anglo-Norman law barred a land transfer that would have imposed a new tenant (and therefore a different knight owing service) upon the lord.[9] The dominance of personal feudal loyalties equally forbade the attachment of land in satisfaction of a debt; only the debtor's chattels could be seized.[10] These rules kept feudal obligations intact, assuring that the lord would continue to be served by his own knights. When incorporated into English practice, the notion from Jewish law that debts could be recovered against a loan secured by "all property, movable and immovable" was a weapon of socio-economic change that tore the fabric of feudal society and established the power of liquid wealth in place of land holding.[11]

The Crusades of the twelfth century opened an era of change in feudal England. To obtain funds from Jews, nobles offered their land as collateral.[12] Although the Jews, as aliens, could not hold land in fee simple,[13] they could take security interests of substantial money value.[14] That Jews were permitted to hold security interests in land they did not occupy expanded interests in land beyond the traditional tenancies.[15] The separation of possessory interest from interest in fee contributed to the decline of the rigid feudal land tenure structure.[16]

At the same time, the strength of the feudal system's inherent resistance to this widespread innovation abated. By 1250, scutage[17] had completely replaced feudal services: tenant obligations had been reduced to money pay-

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demption in *Leviticus* 25:29: "And if a man sell a dwelling house in a walled city; then he may redeem it within a whole year after it is sold; for a full year shall he have the right of redemption." *Id.*

7. J. RABINOWITZ, *supra* note 4, at 253. *See infra* text accompanying notes 33-47 (describing shetar in Jewish law).

8. *See infra* text accompanying note 35 (extent of lien imposed by shetar).

9. T.F. BERGIN & P.G. HASKELL, PREFACE TO ESTATES IN LAND AND FUTURE INTERESTS 8 (1966). Land tenure was central to social organization within the feudal system:

> The feudal system originated in the relations of a military chieftain and his followers, or king and nobles, or lord and vassals, and especially their relations as determined by the bond established by a grant of *land* from the former to the latter. From this it grew into a complete and intricate complex of rules for the tenure and transmission of real estate, and of correlated duties and services . . . .

BLACK'S LAW DICTIONARY 560 (rev. 5th ed. 1979) (emphasis in original).

10. 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 596.

11. *See* H.G. RICHARDSON, THE ENGLISH JEWRY UNDER ANGEVIN KINGS 94 (1960) (Jews' liquidation of land obligations broke down rigidity of structure of feudal land tenure and facilitated transfer of land to new capitalist class).

12. E. JENKS, EDWARD PLANTAGENET, THE ENGLISH JUSTINIAN 40-41 (1923).

13. *See* F. LINCOLN, THE STARRA 114-15 (1939) (Jews could possess lands, but not hold by fee); SELECT PLEAS, STARRS, AND OTHER RECORDS FROM THE ROLLS OF THE EXCHEQUER OF THE JEWS ix-x (J.M. Rigg ed. & trans. 1902) [hereinafter J.M. RIGG] (Jews religiously barred from swearing Christian oath of fealty, and therefore disabled from holding feudal estate).

14. E. JENKS, *supra* note 12, at 40-41.

15. *Cf.* 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 469 (alien to English law for creditor not in possession of land to have rights in it).

16. E. JENKS, *supra* note 12, at 41.

17. Scutage, in medieval feudal law, was a payment by the tenant in lieu of military service. D. WALKER, THE OXFORD COMPANION TO LAW 1121 (1980). *See infra* note 18.

ments.[18] And as the identity of the principals in the landlord-tenant relationship became less critical, a change in the feudal rules restricting alienability of interests in land became possible.

One catalyst for this change may have been the litigation surrounding debt obligations to Jews secured by debtors' property. The Jews in Norman England had a specified legal status. They alone could lend money at interest.[19] They were owned by the King, and their property was his property.[20] The King suffered their presence only so long as they served his interests[21]—primarily as a source of liquid capital.[22]

Because moneylending by Christians was infrequent, English law had not established its own forms of security.[23] The Jews operated within the framework of their own legal practice,[24] which was based on Talmudic law developed over centuries of study. But the peculiar status of the Jews as the Crown's de facto investment bankers encouraged the King to direct his courts to enforce the credit agreements made by Jews under their alien practice. This nourished the growth of Jewish law in a way that blurred the absolutes of feudal land tenure.[25] Previously inalienable rights in land gave way to economic necessities, and the English ultimately adopted the Jewish practices.[26]

This note examines a moment of contact between two peoples, when necessity, proximity, and social upheaval prompted a cultural exchange between the Jewish merchants and moneylenders and those they served. The note describes the effect on English law brought about by the King's Jews as they

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18. In feudal land holding, the tenant's possessory right in land was limited to usufruct, as granted by the King, who retained absolute dominion over the land. The denotation of the tenant's interest as *fee* (or *fief*, *feud*, or *feodum*) reflected the tenant's obligation to render service to the sovereign in return for the privilege of using the land. 2 W. BLACKSTONE, COMMENTARIES *104-05.

During the first century of the Norman Conquest land was held by military tenure, in which the tenants owed a specified number of days per year in knight service. 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 252. Either the tenants or their servants owed personal service in the King's army. Later, the King came to require a standing army to pursue extended campaigns on the Continent. *Id.* In place of short-term combat service, the King accepted "scutage" (literal derivation: "shieldage"), whereby his tenants-in-chief sent money in lieu of themselves or their knights. *Id.* at 266. The scutage fees enabled the King to employ professional troops and permitted the gentlemen to remain at home. *Id. See generally id.* at 252-82 (section on knight's service). By the reign of Edward I in 1272, both personal service and scutage failed to provide adequate military resources; additional taxes were instituted in their stead. E. JENKS, *supra* note 12, at 102.

19. 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 468.

20. *Id.* at 468, 471.

21. *See* Mandatum Regis Justiciariis Ad Custodiam Judeorum Assignatis de Quibusdam Statutis per Judeos in Anglia Firmiter Observandis. Anno Regni Regis Henrici Tricesimo Septimo (Mandate of the King to the Justices Assigned to the Custody of the Jews Touching Certain Statutes Relating to the Jews in England Which are to Be Rigorously Observed. The Thirty-Seventh Year of King Henry) [A.D. 1253] (Mandate of Henry III ordaining "[t]hat no Jew remain in England unless he do the King service, and that from the hour of birth every Jew, whether male or female, serve Us in some way"), *printed in* J.M. RIGG, *supra* note 13, at xlviii-xlix.

22. 1 G.M. TREVELYAN, *supra* note 2, at 250-51.

23. J. RABINOWITZ, *supra* note 4, at 262.

24. *See* J.M. RIGG, *supra* note 13, at xix (Jews made loan arrangements according to traditional law of the shetar).

25. *See* 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 123-24 (Jewish creditors' rights in land enforced by King; same rights not available originally to Christian creditors).

26. *See* 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 475 (Second Statutes of Westminster of 1285 gave Christian creditor the remedy of *elegit*, similar to the choice of remedies afforded Jewish creditors). *See also infra* text accompanying notes 168-78 (Statute of Merchants adopted enrollment procedures and eventual award of land to unpaid creditor).

executed and registered debt instruments, assigned and enforced the underlying obligations, and generally survived by moneylending, the only profitable occupation open to them.[27] It first reviews the Jewish credit agreement and its function in Anglo-Norman feudal society. It then suggests a rational explanation for a development in medieval English law heretofore perceived only as an anomaly: that the early writs of debt, which were for recovery of money, used terminology more appropriate to an action for recovery of land. This confusion now appears to be merely the linguistic expression of an innovation in the law due to the development of an action to recover alternative relief: repayment of money lent or award of collateralized land.

Finally, the note focuses on the incorporation of Jewish law into English practice through a series of thirteenth century cases involving the same Jewish litigant. Jewish debt procedure had by then become part of everyday business in England. Even as the Jews began to be excluded from moneylending, their procedures were adopted into the general English law governing debt registration and collection. In 1275, the statute "De Judeismo"[28] forbade the Jews' usurious practices.[29] In 1285, the Statute of Merchants[30] formalized creditor remedies that paralleled the provisions of the Jewish shetar.[31] In 1290, the Jews were expelled,[32] but their credit practices remained.

II. JEWISH CREDIT AGREEMENTS IN FEUDAL ENGLAND

A. THE SHETAR IN JEWISH LAW

The law of the shetar, developed and elaborated by 500 A.D. in the Babylonian Talmud, antedates the Norman Conquest by six centuries.[33] Historically, the "shetar hov" (or generally just "shetar") was an instrument that established formal obligation, either in contract or in debt.[34] At the moment that a debtor acknowledged his indebtedness through a shetar, a general lien was established, encumbering *all* the debtor's property as security for ultimate repayment.[35] In case of default, the creditor could proceed not only against movable

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27. 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 471 (English Jews could profitably engage only in moneylending). Although the Talmud prohibited charging interest on loans, even to Gentiles, authorities including Rabbenu Tam (a 12th-century Talmud scholar whose opinions are still cited with respect) permitted Jews to lend Gentiles money at interest "because no other avenues of trade or commerce [were] open to Jews, and the lending of money [was] the only means of livelihood left to them." D.M. SHOHET, THE JEWISH COURT IN THE MIDDLE AGES 89-90 (1931).

28. 1 STATUTES OF THE REALM 221 (London 1810 & photo. reprint 1963). This statute, which is undated, is generally thought to date from 1275. *See* 10 S. BARON, *supra* note 3, at 111 (attributing statute to 1275); J.M. RIGG, *supra* note 13, at xxxviii (attributing statute to 1274-75). STATUTES OF THE REALM attributes the statute to either 4 Edw. (1275-76) or 18 Edw. (1289-90). 1 STATUTES OF THE REALM 221 n.[1].

29. *See* Les Estatutz de la Jeuerie (The Statutes of Jewry) ¶ 1 STATUTES OF THE REALM 221, 221 (providing that henceforth no Jew lend at usury upon land, rent, or other thing; that interest accruing after previous Feast of St. Edward not be collectible; that debts to Jews secured by chattels be paid by Easter or be forfeited; and that the King will no longer enforce the Jews' usurious contracts, but will punish the lender).

30. Statute of Merchants, 1285, 13 Edw., Stat. 3.

31. *See infra* text accompanying notes 168-78.

32. 10 S. BARON, *supra* note 3, at 113.

33. G. HOROWITZ, THE SPIRIT OF JEWISH LAW 16 (1953).

34. Fuss, *Shetar*, in PRINCIPLES OF JEWISH LAW 186 (M. Elon ed. 1975).

35. *Id.* The shetar imposed a lien on all the real [illegible]

and immovable property held by the debtor, but also against encumbered land that the debtor had transferred to a third party.[36] The debt attached to the land, and the creditor's lien had priority over subsequent alienations.[37]

Because of the severe obligations imposed by the shetar, the contents of the instrument followed a standard form designed to ensure authenticity and precision. Each shetar recited standard clauses of obligation, the creditor's right to customary modes of execution, and a final phrase stating that the document was not merely a form but a statement of an express contract.[38] Inserted into the form language were the names of the parties, the sum and the currency of the debt, and the date of the obligation, thereby indicating the creation of the lien.[39] To prevent fraud, the document was signed by two witnesses who knew the parties.[40]

A nation of wanderers, in adapting to a variety of cultures, determined that the language in which the shetar was written should be irrelevant to its legal validity.[41] Thus, in dealings with a surrounding Gentile populace, Jews were content that loan agreements be formalized in Latin or in the Norman French of early England.[42] Generally, the Jewish parties and witnesses would attest in

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instrument's formation, regardless of whether the lien was expressly written into the shetar. Jewish law originally did not attach debt obligation to chattels. During the amoraic period, Jewish law extended the lien to the movable property of the debtor if specifically noted in the shetar. But the rabbinic courts would not enforce a lien against movable property that had been sold by the debtor to a third party. *Id.*

36. *Id.* at 186. During the post-Talmudic period, it became customary to insert in the shetar a provision imposing a lien on the debtor's after-acquired property. J. RABINOWITZ, *supra* note 4, at 254.

37. Elon, *Lien*, in PRINCIPLES OF JEWISH LAW 288 (M. Elon ed. 1975).

38. Fuss, *supra* note 34, at 184-85; G. HOROWITZ, *supra* note 33, at 509-11.

39. G. HOROWITZ, *supra* note 33, at 511.

40. *Id.* at 511. In contrast to the documentary procedure of the written shetar, credit agreements also could be made orally under Jewish law. Milveh be-al peh—literally "loan by mouth" was distinguished from milveh bi shetar—"loan by writing." Shiloh, *Loans*, in PRINCIPLES OF JEWISH LAW 262 (M. Elon ed. 1975). The oral creditor, however, had no right to levy on the debtor's alienated and encumbered property to obtain satisfaction of the debt. *Id.*

41. 1 C. HERZOG, THE MAIN INSTITUTIONS OF JEWISH LAW 152 (2d ed. 1965).

From the time of the Jewish exile in Babylonia, 586 B.C., the Jews had lived as outsiders in foreign lands. In order to live within their own law, they developed a doctrine to minimize conflicts between Jewish law and the law of the surrounding community. G. HOROWITZ, *supra* note 33, at 79. In dealings with the Christian populace, the Jewish community followed the principle that "the law of the Kingdom is the Law" (dina de-malkhuta dina). They accepted and obeyed any law that did not conflict with Jewish laws governing specific religious obligations. *Dina De-Malkhuta Dina*, in 6 ENCYCLOPEDIA JUDAICA 51, 54 (1972). Respect for the rule of the Gentile sovereign raised the problem of determining the applicable law:

> The decrees of the king are law to us; but the national law is not our law. Among all nations there are certain fundamental rights and privileges which belong to the sovereign. Within this scope, the commands of the king are law. But this does not hold true of the judgments rendered in their courts. For the laws which the courts apply are not the essence of royalty. They are based on the precedents to be found in their writings. You cannot dispute this distinction, for otherwise you would annul, God forbid, the laws of the Jews.

G. HOROWITZ, *supra*, at 79-80 (quoting Rashba, Rabbi Solomon ibn Adret of Barcelona (1235-1310)).

Jewish courts would enforce external civil laws and formalities, *id.* at 80, but did not permit such civil law to sanction behavior otherwise forbidden to Jews. *Id.* Thus, a transaction enforceable in Gentile courts might still be invalidated (as applied to Jews) by a Jewish tribunal. *Id.* at 80-81.

42. J.M. RIGG, *supra* note 13, at xix. *See* HEBREW DEEDS OF ENGLISH JEWS (M.D. Davis ed. & trans. 1888) [hereinafter M.D. DAVIS] (reproducing the Hebrew portion of shetars in Hebrew and Latin); STARRS AND JEWISH CHARTERS PRESERVED IN THE BRITISH MUSEUM (I. Abrahams, H.P. Stokes & H. Loewe eds. & trans. 1930-32) [hereinafter STARRS AND CHARTERS] (reproducing Hebrew and Latin portions of shetars).

Hebrew and the Christians in French or Latin.[43] Although neither party may have understood the other's language, the document had the full force of law in both communities.[44]

The crucial limitation on debt collection under Jewish law was that a creditor had a lien against the debtor's land, but not against the debtor's person.[45] Personal freedom was not to be diminished by a debt obligation, and a creditor could not enslave one who was unable to repay him.[46] The origin of this practice was the Biblical protection of the dignity of debtors, as embodied in the injunction not to enter the debtor's home to receive a pledge, but rather to wait outside for the debtor to bring it out.[47] This was the structure of the law of obligation that the Jews brought with them to England.

B. NORMANS IN ENGLAND—A CENTRALIZING MONARCHY

Unique among its feudal neighbors, the Norman Duchy was governed as a centralized unit, with no baron strong enough to challenge the Duke's authority.[48] Although the Norman Duke owed fealty to the King of France, that King lacked effective power over his vassals, who independently governed their own territories.[49] In Normandy, however, feudalism was strictly territorial: a pyramid of land tenure embodied a system of military obligations ascending from knight through baron to Duke, from whom all land and authority derived.[50] On the continent, and later in England, William the Conqueror set out to maintain and strengthen this Norman system of centralized governance.[51] With the Conquest, the Normans introduced to England a well-organized central authority.[52]

The early governance of conquered England concentrated power in the King. As William the Conqueror imposed the rigorous order of the feudal

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43. *See, e.g.*, J.M. RIGG, *supra* note 13, at xix (Hebrew creditor signed in Hebrew); *id.* at 46 (record of Exchequer documenting shetar written in Hebrew with Latin duplicate). In England the terms of the acquittance took the Jewish form of the release: "from the beginning of the world" to the present. J. RABINOWITZ, *supra* note 4, at 265-69.

44. Both Jewish and English courts recognized the force of a shetar offered as evidence of a debt. J.M. RIGG, *supra* note 13, at xix-xx. Rigg describes the elaborate recording and witnessing procedures, including both Jewish and Gentile participants, designed to avoid fraudulent documents. *Id.* The King's courts enforced a duly enrolled shetar. *See infra* text accompanying notes 132-48 (discussing mechanism by which Exchequer enforced debt obligations). The courts within the Jewish community routinely enforced shetars.

45. Elon, *Imprisonment for Debt*, in PRINCIPLES OF JEWISH LAW 634 (M. Elon ed. 1975).

46. *Id.* at 634. *See also* M. ELON, RESTRAINTS OF THE PERSON AS A MEANS IN THE COLLECTION OF DEBTS IN JEWISH LAW (1961) (precis of doctoral dissertation) (Jewish tradition had no personal imprisonment for debt, reasoning that if a debtor's home could not be entered, even less could the debtor be taken; in the 13th century, Jewish scholars began to debate and approve imprisonment for evasive debtors, but only in carefully prescribed conditions).

Unlike Jewish law, English law specifically envisioned such imprisonment. *See* Statute of Merchants, 1285, 13 Edw., Stat. 3 (establishing imprisonment of the body of a defaulting debtor); Statute of Acton Burnell, 1283, 11 Edw. (if debtor's goods insufficient to satisfy debt, debtor imprisoned pending repayment, but creditor responsible for assuring bread and water sufficient to sustain life of imprisoned debtor, who must further reimburse creditor upon release).

47. *Deuteronomy* 24:10-11 (to preserve debtor's dignity in his own home).

48. 1 G.M. TREVELYAN, *supra* note 2, at 144.

49. *Id.* at 144-45.

50. *Id.* at 143.

51. W. STUBBS, THE CONSTITUTIONAL HISTORY OF ENGLAND 74-75 (abr. ed. 1979).

52. G.M. TREVELYAN, *supra* note 2, at 142.

system, he avoided the system's tendency toward decentralization and disintegration that had sapped the power of the French kings.[53] He limited the power of his tenants-in-chief by granting each of them landholdings scattered over the realm, instead of large, contiguous tracts.[54] He governed the counties through sheriffs who depended on him for their power.[55] He maintained a national militia, thereby shunning total reliance on the loyalty of his tenants-in-chief.[56] And he had all significant landholders swear an oath of primary allegiance to him.[57] This concentration of power in the monarch grew during the successive reigns of a series of strong kings who increasingly assumed more power—military, legislative, and judicial—over the nation.[58]

C. THE JEWS UNDER THE NORMAN KINGS

Outsiders in feudal society, both Anglo-Norman and continental, the Jews were not part of the network of land-based obligations. They could not own land. On the Continent, they were owned as chattels by the local lords, who protected the Jews' possessions on the understanding that what a Jew owned, he held for the ultimate use of his lord.[59] The Jews in Norman England, however, were within the exclusive domain of the King's personal control, living at his sufferance and according to his wishes.[60]

The first settlement of Jews in England came in the wake of William the Conqueror.[61] William determined that he should be the sole owner of Jews in England. Others could own Jews only with the King's permission as expressed by royal grant.[62] The *Leges Edwardi Confessoris*, a twelfth-century compilation and translation into Latin of laws attributed to Edward the Confessor,[63]

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53. W. STUBBS, *supra* note 51, at 85-91.
54. *Id.* at 90-91.
55. *Id.* at 88.
56. *Id.* at 86.
57. *Id.* at 84.
58. *Id.* at 117-18. The dates of the Norman and Angevin Kings from the Conquest to the expulsion of the Jews in 1290 are:

William I	1066-1087
William II	1087-1100
Henry I	1100-1135
Stephen	1135-1154
Henry II	1154-1189
Richard I	1189-1199
John	1199-1216
Henry III	1216-1272
Edward I	1272-1307

D. WALKER, *supra* note 17, at 1317.

59. F. LINCOLN, *supra* note 13, at 8-9. As "Administrator of the Realm," the continental King had interstitial power in the areas where no vassal could substantiate a rival claim; upon this theory, the King had asserted special authority over widows and orphans, aliens, Jews, lunatics, etc. E. JENKS, *supra* note 12, at 90-91.
60. F. LINCOLN, *supra* note 13, at 10.
61. H.G. RICHARDSON, *supra* note 11, at 1.
62. F. LINCOLN, *supra* note 13, at 10.
63. 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 103. Pollock and Maitland believe that the laws of Edward the Confessor are of dubious authority as descriptions of historical fact, perhaps reflecting some unknown 12th-century author's hopeful imagination.

contains a statute that, if not that ancient, adequately describes the Norman period:

> Be it known that all Jews wheresoever they may be in this realm are of right under the tutelage and protection of the King, nor is it lawful for any of them to subject himself to any person of wealth without the King's licence. Jews and all their chattels are the King's property and if anyone withhold their money from them let the King recover it as his own.[64]

As chattels of the King, the Jews retained their own property at his pleasure. In the thirteenth century, Henry de Bracton wrote:

> [a] Jew cannot have anything of his own, because whatever he acquires, he acquires not for himself but for the king, because they do not live for themselves but for others, and so they acquire for others and not for themselves.[65]

They lived where the King permitted, and when they died, their property vested in the King.[66] Because the ecclesiastical courts could proceed only against Christians,[67] the Jews operated free of the Church's usury prohibitions. The civil authorities openly permitted the Jews to lend money at interest and enforced their credit contracts, both for principal and interest.[68] As the Jews prospered the King did too, extracting from them the fruits of their monopoly on usury.[69]

Because it was worthwhile to protect Jewish subjects for their potential money value, successive sovereigns clarified the status of Jews. Charters of Henry I and Henry II[70] granted individual Jews rights to reside in England, to buy and sell goods, and to possess all lands, fiefs, purchases, and pledges com-

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64. F. LINCOLN, *supra* note 13, at 10; 4 S. BARON, *supra* note 3, at 79; 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 468; J.M. RIGG, *supra* note 13, at x. Hovedon, the medieval legal historian, associated the statute with the Justiciar Ranulf de Glanvill. *Id.* at x.

65. 6 H. DE BRACTON, DE LEGIBUS AT CONSUETUDINIBUS ANGLIAE 51 (T. Twiss ed. & trans. 1883).

66. F. LINCOLN, *supra* note 13, at 10-11. Although in theory all property of the deceased Jew reverted to the King, in practice the Crown took only a one-third to one-half share in estate taxes. From Aaron of York, the richest Jew of the time, Henry III exacted anticipatory estate taxes for 19 years before the principal's death. By then, the estate was bankrupt and the heirs destitute. 10 S. BARON, *supra* note 3, at 100-01.

67. H.G. RICHARDSON, *supra* note 11, at 142.

68. 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 469 n.1. Only Jews were permitted to "take usury" from a Christian. *See id.* at 473 (Jews had money-lending monopoly). Two contemporary sources, GLANVILL'S TREATISE and the DIALOGUS DE SCACCARIO, describe the penalty exacted from Christians who engaged in "open usury . . . like the Jews": the usurer's chattels were forfeit. TRACTATABUS DE LEGIBUS ET CONSUETUDINIBUS REGNI ANGLIE QUI GLANVILLA VOCATUR (The treatise on the laws and customs of the Realm of England commonly called Glanvill) Book VII, ch. 16, at 89 (G.D.G. Hall ed. & trans. 1965) [hereinafter GLANVILL]; DIALOGUS DE SCACCARIO (The Course of the Exchequer) 100 (C. Johnson trans. 1950). Moreover, if the creditor had executed a mortgage, an instrument that secured the debt by possession of the debtor's land, and later failed to credit the principal of the debt with the income from the land, he violated the condemnation of the Council of Tours. DIALOGUS DE SCACCARIO, *supra*, at 100 n.1. After the creditor's death the debtor might get his land back from the King, but he would then owe the Crown the amount of the principal. In practice, the King forgave part of this amount, presumably reducing it by the sum of the debtor's usurious overpayments. *Id.* at 100.

69. G.M. TREVELYAN, *supra* note 2, at 250-251.

70. These charters are known only by reference in other sources. J. JACOBS, JEWS OF ANGEVIN ENGLAND 137-38 (1893).