1981

The evolution of the statute of uses and its effects on English Law

Timothy L. Martin

Follow this and additional works at: https://scholarship.richmond.edu/honors-theses

Part of the History Commons, and the Law Commons

Recommended Citation

https://scholarship.richmond.edu/honors-theses/1064

This Thesis is brought to you for free and open access by the Student Research at UR Scholarship Repository. It has been accepted for inclusion in Honors Theses by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.
A THESIS
Presented by Timothy L. Martin
To Dr. John Rilling
Professor of British History
For Completion of the Honors History Program
May 1, 1981
The Norman Conquest (1066) signified a new epoch in the evolution of the law of succession of real property in England. The introduction of the Norman brand of feudalism necessitated a revision in the primitive Anglo-Saxon mode of succession.\(^1\)

The feudal system was necessarily dependent upon a stable chain of land ownership, and thus, the principle of primogeniture emerged as the dominant form of land conveyance.\(^2\) By the end of the twelfth century it was held that, "God alone, and not man, can make an heir."\(^3\) Land purchased during one's lifetime could be freely transferred, but wills and deathbed grants of property were forbidden. W. S. Holdsworth states that, "To recognize the interest of anyone not actually seised or entitled to a definite estate in land would be to encourage the evasion of obligations upon the due performance of which a feudal society was based.

The separation of the lay and ecclesiastical courts complicated the law of succession as they drew a distinction between real and personal property. Laws pertaining to land were molded by royal courts of common law and equity, whereas laws relevant to succession of chattels were based on Roman and canonical law as interpreted by the
ecclesiastical courts. While testation of real property was prohibited by common law, the church encouraged the devise of personal property, and taught that dying without a will was similar to dying unconfessed. Thus, the medieval concept of the testament was developed through the church and was exclusive of real property.

Despite the common law prohibition of transferring lands in any way other than by livery of seisin, and despite the insistence of transferring land at death through primogeniture, a method of conveying land from one man to another for the "use" of the first man or a third party developed shortly after the Conquest. The use was a method whereby the feoffor (landowner) vested the legal title of his land in one or more feoffees with the understanding that the land would be administered for the occupation and benefit of the feoffor or his appointee, the cestui que use. By the sixteenth century there were many means of creating a use including feoffment to uses; implication of a use in common law conveyances such as fine, recovery, lease, release, and grant; oral or written agreement through bargain and sale; and through a resulting use. The use was highly flexible because it was not directly affected by the common law doctrine of livery of seisin, and the use was highly desirable as, "uses could create equitable possessory estates, and equitable remainders, for years, for life, in fee tail and in fee simple corresponding to legal estates
and remainders."⁹ As we shall see, the use enabled one to escape the burdens of feudal incidents, to devise land, and to create future interests. The courts of common law recognized only the legal interest of the feoffee to uses and did not require him to fulfill the terms of the use, but the Court of Chancery recognized the equitable interest of the cestui que use and compelled the feoffee to grant the beneficiary of the use access to the land and rents of the legal estate, to convey the legal estate according to the instructions of the cestui que use, and to defend the legal estate against the claims of third parties.¹⁰ Therefore, "Conveyances in uses were like privileged places or liberties; for as there the law doth not run, so upon such conveyances the law could not take hold."¹¹ The use bridged the gap between real and personal property as it provided the landowner a means of distributing his land which was as complete as that of any other type of property.

The use was employed in a variety of circumstances in the Middle Ages. Before departure upon foreign exploits, many Crusaders would convey their lands to friends upon various conditions cast in the form of a use.¹² In order to comply with poverty vows, Franciscan friars would transfer legal property titles to a feoffee while retaining the benefits of and the right to use the land. This practice was consecrated by the papacy in the 1279 Bull Exilt qui seminat.
Uses were created in the event of bad guardianship. A statute passed in 1275 declared that when a guardian proved to be fraudulent, wardship would be transferred to another "to hold for the use of" the infant. Uses enabled landowners to escape many incidences of tenure, such as wardships, marriages, and fines, for these obligations arose only upon the transference of the legal estate, and if there were multiple feoffees, the legal estate would not expire at the death of the feoffee. Some utilized the use to avoid payment of debts or to circumvent statutes of mortmain. Statutes enacted in 1377, 1379, 1448, and 1504 somewhat restricted fraudulent practices through uses but were unable to eliminate them. In 1392 making gifts to corporations through uses which violated restrictions of statutes of mortmain were prohibited. Finally, uses were incorporated as a means of devising property. A testator was able to convey his estate to others and designate in his will what persons, purposes, and times that the estate would be put to use. Thus, through the will and the use one could create interests realized in futuro. Though the use served many functions, the ability to avoid feudal dues, to convey property by devise, and to create future interests were the most important.

From the preceding paragraph we can infer that the use not only provided a highly elastic form of land conveyance, but that the use permitted several channels through which
fraud could be perpetrated. The common law courts of the fifteenth century were unable to act against the use because laws regulating the use were insufficient to deal with the situation which arose from the use. The common law courts held that wills of reality were illegal and refused to recognize the position of the cestui que use. M. M. Bigelow states that the common law judges "would not in any way, by direct mandate or through damages for breach of trust, compell the feoffee to carry out the terms of the devise."  

In the absence of judgment by the common law courts, the Court of Chancery increasingly arbitrated disputes arising from uses. Though the Chancery was involved in cases involving uses as early as 1350, it was not until the first half of the fifteenth century that the chancellor's jurisdiction became firmly established over the feoffee who failed to comply to the terms of the use, and that the rules defining the nature of relief were regularly systemized. The chancellor, operating on the premise that men should honor their word and should not be allowed to profit from a breach of faith, recognized the cestui que use as having a rightful claim to the benefits of the land in question. The Chancery enforced the right of the cestui que use's equitable ownership through fines and imprisonment. W. S. Holdsworth sums up the advantages of the Chancery's jurisdiction of cases involving uses by stating that,
Whether we look at the ethical principles upon which the chancellor interfered, or at the procedure of the court of chancery, or at its freedom from fixed forms of action, we can see that the chancellor and his court were as strikingly fitted as the common law and the common law courts were unfitted, to assume jurisdiction over the use.20

The Crown recognized the negative effects of the use before the reign of Henry VIII, and there were some efforts, through statute, to alleviate them. In 1485 the cestui que use was given the power to initiate a writ of formedon against anyone who was receiving his profits from the land. This statute is exemplary of the general trend to vest the rights of legal ownership in the cestui que use.21 In 1483 a statute gave the cestui que use the right to dispose of a legal estate. This statute was defective because it did not remove the power of the feoffee to dispose of the legal estate, and thus, considerable confusion arose from the possibility of two people disposing of the same estate. Nevertheless, the statute is important because it foreshadows the Statute of Uses, and it points to many problems arising from the use. Other statutes pertaining to uses were passed in 1487, 1489, and 1504, but they did not enable the Crown to collect rights of wardship and marriage or escheat and forfeiture on a large scale basis, and were therefore inconsequential.22

By the reign of Henry VIII the use was an established and protected mechanism which afforded the landowner a channel through which he could evade feudal incidents. Bigelow
states that:

Feoffment to use had cut the nerve of tenure; the feudal lord had lost his revenues; he could not enforce his right to forfeitures, escheats, wardships, marriages and the like, - not against the feoffor because he had parted with the title to the lands in question; not against the feoffee to uses, for he virtually had nothing in the lands; not against the cestui que use, for no feudal tie bound him to the injured lord.\(^\text{23}\)

Uses also robbed the Crown of revenue, and as Henry VIII was desperately in need of finances, and as Parliament was becoming unsympathetic to his requests after having been pressured to resolve Henry's matrimonial problems and to instigate undesired policies of church reform, it was decided that the most lucrative channel of revenue would be through the enforcement of feudal dues, a valid source of income already at disposal. Therefore, Henry and his court lawyers concentrated upon devising a means to collect the dues which were avoided by the use for, as Theodore Plunkett states, "whoever gains by the arraignment (uses) the Crown is sure to loose."\(^\text{24}\) As we shall see, between 1529 and 1535 Henry VIII and his lawyers made various attempts to initiate legislation of a statute which would eliminate the loophole that the use provided through the separation of the legal and equitable titles of property ownership. The Statute of Uses (1535) was not only the culmination of these efforts; it is the basis of our modern definition of property.
THE EVOLUTION OF THE STATUTE OF USES AND ITS EFFECTS ON ENGLISH LAW

Although the subject of uses was debated in virtually every session of the Reformation Parliament: although the Crown and the peers of England entered into a treaty concerning the right to convey land through uses: although statesmen such as Sir Thomas More and Thomas Cromwell were involved with the political aspects of procuring limitations over uses: and although attempts to secure jurisdiction over uses set common law judges against judges of Chancery, there is little material surviving for the modern historian to trace the evolution of the Statute of Uses. Unfortunately, the Commons' Journals do not extend to the period in which the statute was conceived, the extant fragments of the Lords' Journals make no mention of the statute, and the roll of Parliament affords no significant information pertaining to the passage of the Statute of Uses. Thus, legal historians must depend upon proposed draft bills of statutes seeking to regulate uses, records of cases related to uses tried in the courts of common law, a few letters and papers which have survived, and occasional accounts of contemporary observers in attempting to reconstruct the events which led to the passage of the Statute of Uses.

Many historians have dealt with the causes and effects of the Statute of Uses, yet few have offered comprehensive
interpretations. Sir Francis Bacon and Edward Coke were among the first lawyers to give readings upon the statute. Others such as J. A. Froude, A. F. Pollard, and F. W. Maitland have endeavored exegesis of the statute with varying results. The most widely accepted and the most comprehensive treatment of the Statute of Uses was presented by W. S. Holdsworth in his multivolumed work, _A History of English Law_. Holdsworth's basic thesis that the statute was the product of efforts of a strong willed king who bargained first with the nobility, and later with the common lawyers in order to secure passage of the statute remained above criticism until the later part of the 1960's. Since then historians such as E. W. Ives, J. M. W. Bean, and Stanford E. Lehmberg have challenged Holdsworth's view. Citing evidence that Holdsworth was unaware of, these later historians posit that the Crown first appealed to the landowning class to compromise upon the issue of uses, and after the Crown's ventures proved unsuccessful, the Crown sought to resolve the issue through judicial action. The Crown was able to pit the common law judges against Chancery to obtain a decision in Lord Dacre's case (1534-35) which nullified certain uses and precipitated instability among owners of real property. Due to the precarious state of property ownership, the Commons was thus forced to pass the Statute of Uses.

The purpose of the first part of this paper is to interpret the events leading to the passage of the Statute
of Uses while offering a synthesis, and, in some places, an expansion of ideas proposed by divergent schools of thought in order to offer an accurate account of the evolution of the statute. A second section of this paper will assess the short and long term effects of the Statute of Uses. Criteria for judgment of the significance of the statute will include both the degree to which Henry VIII accomplished his purposes for pursuing land reform and the unanticipated consequences which the Statute of Uses stimulated.

Between 1529 and 1536 the Crown initiated a large scale attack against the separation of the equitable and the legal titles of property through uses because this division of titles promoted secret conveyances and robbed the king of feudal incidents. During the years 1529 to 1539 the Crown sought to alleviate the abuses caused by conveying land through uses by statutory reform. According to Holdsworth, the first of these attempts was a 1529 draft bill which "would have at once revolutionized and simplified the law." The draft bill proposed that: For all persons who were not peers there was to be only one type of estate in land, a fee simple. No uses were valid unless they were enrolled by an officer of the Court of Common Pleas. The deed was to be read and recorded in the parish church where the land was located. The lands of the peers were subject to feudal dues on both equitable and legal
estates. No one could buy these lands without the king's license, and once sold through ordinary conveyance, the purchaser was to hold in fee simple. The lands of nobility within the rank of baron could be entailed, devised, and settled.28

The 1529 draft bill is of questionable value and origin. Holdsworth feels that the bill was part of an agreement between the king and nobility, whereas Ives asserts that the draft bill, "looks less like an attempt of the government to simplify and reform the land law than a well intentioned but inexperienced proposal emanating from a private individual with a grievance about concealed titles."29 While allowing for the fact that the format of the draft bill was similar to other government bills of the period, Ives states that the bill proposed a complex and impracticable scheme of registration of conveyances, that it did not include legislation relating to primer seisin, and it was solely an attempt to alleviate abuses arising from secret conveyances contrived by entails, uses and for- gery.30 The proposal which gives the bill its unusual character, a proviso permitting noblemen exclusive right of entail, from which Holdsworth claims that the Crown compromised with nobility, is not part of the main body of the bill. In any event, the bill did not pass the Commons, and there were no attempts to alter or reintroduce it. If spon- sored by the government, the 1529 draft bill was probably
not an integral component of the government's plan to remedy the evils of uses, and the bill was not part of a compromise between king and nobility. At most, the draft bill was a predecessor of the Statute of Enrollments which was enacted in 1536. 

A separate document, initiated in 1529, is of more importance to the evolution of the Statute of Uses. This document is an agreement between Henry VIII, Lord Chancellor Thomas More, and thirty peers. In twenty-three detailed articles, this document establishes the king's right to receive a fraction of feudal incidents in return for allowing the landowning class the flexibility inherent in the use. The compromise stipulated that land not settled by use was to be subjugated to feudal incidents, but where land had been devised by use, the king was to have rights to only one-third of the incidents of tenure. The Crown was to have the wardship of all infant heirs of tenants-in-chief, regardless of whether the land was held in use or was a legal estate. Heirs who were of full age were required to pay the king one-half a year's profits upon suing out livery of their lands. The agreement between the Crown and the peers represents a compromise whereby the king surrendered one-half or two-thirds of his legal entitlement in return for the assurance that the remainder would be duly paid.

The agreement contained concessions to all landowners, but the nobility stood to benefit most. Article 19 of the
agreement states that:

the Kings highness is pleased that it shall be enacted that every of the said noble men, and all other his subjects and their heirs and successors of whom any lands or tenements be or shall be holden by knights service, shall have full benefit and profit of the wardship of the third part of the whole of the same lands as tenements holden to the King's subjects as the case shall require as said by the Articles as devised for the Kings highness, his heirs and successors of lands and tenements of him not holden in chief.34

Thus, the compromise granted both the king and the peerage the right to collect feudal dues. As this concession was made at the expense of all other landowners of the realm, it promised to be the source of opposition in the Commons.

Although there is controversy over when the agreement was first introduced in the Commons, most scholars believe that it was initiated in the third session of the Reformation Parliament which began on January 15, 1532.35 It is important to note that the draft bill submitted by Cromwell contained several alterations of the agreement between the Crown and nobility. Article 19 of the compromise was totally deleted from the text of the draft bill. Furthermore, instead of asking for one-third of the feudal incidents, Cromwell probably submitted a bill calling for one-half. There is no surviving draft of this proposed legislation, but Edward Hall reports that "everyman might make his will of the halfe of his lande, so that he left the other halfe to the heyre by discent,"36 and adds that he had been "credibly informed" that the Crown would accept
a third or a quarter. It therefore appears that the Crown usurped the agreed right of the lessor lords to demand feudal dues in order to increase the chances of the draft bill passing Commons, and that the Crown requested one-half share of incidents with the intention of "compromising" with the Commons for one-third, the fraction the Crown initially desired.

According to Chapuys, the draft bill was the source of "strange words against King and Council" when it was read in the Commons. Most members of the Commons held land subject to tenure, and the bill before them would nullify much of the benefits of the use. Therefore, the Commons remained adamant in opposition to the draft bill, and as a result, precipitated a direct encounter with Henry VIII. Coming to present the Supplication against the Ordinaries, members of Commons were greeted with an ultimatum warning against opposition to the bill on feudal incidents. Henry reportedly declared:

I have sent to you a byll concernynge wards and primer season, in the which thynges I am greatly wronged: Wherefore I have offered you reason as I thynke, yea, and so thynketh all the Lordes, for they have set their handes to the book: Therefore I assure you, if you wyll not take some reasonable ende now when it is offered, I wyll search out the extremitie of the lawe, and then wyll I not offre you so much agayne.

Parliament was prorogued ten days after Henry VIII expressed his displeasure at the reluctance of the Commons to pass the draft bill.
The draft bill was reintroduced in the fourth session of Parliament where it fared substantially better, receiving two readings. Nevertheless, progress was much slower than the Crown desired, and as a result, Henry temporarily abandoned attempts to regulate uses through Parliamentary legislation. The Crown now pursued control of uses by seeking to obtain jurisdiction over them in the courts of law.

The Crown's decision to seek jurisdiction over uses was probably initiated after Cromwell received information about a settlement made by Thomas Fiennes Lord Dacre of the South which promised to deprive the Crown of all feudal incidents. This information was obtained by Henry Polsted, a servant of Lord Dacre who was partially responsible for composing Lord Dacre's will. Thus, when Lord Dacre died, the Crown was well prepared to challenge his settlement.

On September 9, 1533 Thomas Fiennes, Lord Dacre, died leaving his estate, which included holdings in thirteen counties to his eighteen year old grandson, Thomas. As the majority of Lord Dacre's lands were held by feoffees to use, and as the settlement of Lord Dacre's estate completely robbed the king of feudal dues, the royal escheators declared the settlement collusive in their inquisition post mortem. As a result, the Crown sued for lost revenues in the Exchequer Chamber during the Trinity term of 1534. Royal lawyers asserted that Dacre's settlement was void not
only because his will was a deliberate attempt to defraud the king of wardship, but also because of the general principle that land could not be devised by common law. On January 9, 1534 jurors of the Exchequer Chamber reached the decision that the will of Lord Dacre was made with intent to defraud the king of incidents and declared it void. At this time the feoffees of Lord Dacre appealed the Exchequer's decision in Chancery through a method known as a "traverse." The Chancery heard the case during the Easter term of 1535. The suit was the source of much contention, and initially the judges were evenly divided despite pressure from Cromwell and Lord Chancellor Audley to conform to the Crown's wishes. At this time, "the Kyng called the Iudges and the best learned men of his Realme and thei disputed this matter in the Chauncery, and agreed that lande could not be willed by common law." After deliberating the Dacre case once more, the judges complied with Henry's wishes and upheld the verdict of the Exchequer Chamber. Thus, all evidence supports the fact that Chancery's verdict in Dacre's case was obtained through incessant pressure from the Crown, applied often by Henry VIII himself. The decision by Chancery to repudiate the Dacre settlement is monumental because it contradicted the precedents of the courts of common law and royal administrative policy since the late fourteenth century, and because the Chancellor, in asserting that a use was a collusive attempt to deprive the
Crown of feudal revenues, abandoned precedents established over the last century and a half in order to promote a rule based purely upon extra-legal considerations. 43

The decision in the Dacre case threatened to undermine the basis of English property settlements. Neither the king nor his subjects were content with the outcome of the case because both parties were susceptible to losses and legal entanglements as the laws regarding property were now quite unstable. The Crown was not fully satisfied with the outcome of the Dacre case because the ruling was insufficient to secure mandatory payment of feudal incidents. Administrative delays and possible reversal of the decision in the Dacre case were foreseen as royal officials would have to prove through individual post mortem investigations that collusion was intended by those who were accused of avoiding wardship. Furthermore, the Dacre case provided for the collection of wardship and marriage, but rights accruing when the heir reached legal age such as primer seisin, livery, and relief were not ensured by the ruling. 44 As a result of the Dacre decision those who held land belonging to the Crown forfeited the right to will their land if they had an heir under age, and they had no course of action against who chose to will land held in use. Thus, from the standpoint of the Crown and from the standpoint of the landowners, passage of a statute detailing the rights and obligations of uses was imperative.
Although both the Crown and the landowners were adversely affected by the decision in Lord Dacre's case, the landowners' situation was much more desperate than that of the Crown. Consequently, when Henry VIII opened the last session of the Reformation Parliament on February 4, 1536, he was confident that the battle against uses was won. Therefore, Henry proposed measures substantially more severe than his original plan of compromise with the nobility. These proposals constitute two draft bills which contained provisions which would resolve the problem created by the division of the equitable and the legal title of property while retaining the use as a means to transfer land. The extent of Henry's control over the passage of this legislation is evidenced by the fact these draft bills differed in wording, but not in meaning, from the Statute of Uses that the Parliament enacted.

The Statute of Uses is an exemplary model of sixteenth century legal draftsmanship. The quality of the draftsmanship of the Statute of Uses led Sir Francis Bacon to proclaim that:

This Statute . . . is the most perfectly and exactly conceived and penned of any law in the book, induced with the most declaring and persuading preamble, consisting and standing with the most foreseeing and circumspect savings and provisos, and lastly, the best pondered in all the words and clauses of any statute that I find.

The preamble to the Statute of Uses contains a list of grievances and inconveniences caused by uses. Holdsworth
states that, "Like the preambles of other statutes of this period, it is far from being a sober statement of historical fact. Rather it is an official statement of the numerous good reasons which had induced the government to pass such a wise statute . . ." Many of grievances cited in the preamble originated from two memoranda, 'Inconvenience for sufferance of uses' and 'Damna usum', which were composed for Cromwell and Audley. Central to the statute's preamble is the grievance that:

The lords have lost their wards, marriages, reliefs, heriots, aids pur faire filz chivalier and pur fil marier . . . The king's highness hath lost the profits and advantages of the lands of persons attainted, and of the lands craftyly put in feoffments to uses of aliens born, and also the profits of waste for a year and a day of felons attainted, and the lords their escheats thereof.

The effect of the preamble was to present a convincing, well detailed argument against uses which asserts that uses adversely affected virtually every class of Englishmen. Uses deprived the lords of wardship and feudal incidents, women of dowers, the king of collecting forfeitures, and the public because of the secrecy of the conveyance and its ability to avoid registration in a court of record.

The main body of the Statute of Uses then endeavors to remedy these evils. While neither invalidating previous uses nor eliminating future conveyances to uses, the statute severely undermined the benefits of the use. Fundamentally, the statute executed the use by converting the equitable title of the cestui que use into a legal estate by
transferring the seisin and the legal title from the feoffee to the cestui que use. 

This governing idea of the Statute of Uses reads:

Where any person or persons stand or be siesed . . . to the use, confidence, or trust of any other person or persons or to any body politic . . . that in every such case all and every such use in fee simple, fee tail, for term of life or for years . . . or in remainder or reverter shall stand and be seised . . . in lawful seisin estate and possession of the same . . . lands . . . to all intents of and such like estates as they had or shall have in the use.

The next two clauses of the statute declare that in cases where multiple persons are jointly seised to the use of one of them, or where persons are seised to herediments to the use that other persons would enjoy the rents of the herediments; the legal estates will be vested in the cestui que use to the extent of his interest. Clauses 4-7 stipulate that a wife who held lands settled jointly by her and her husband or who was the beneficiary of a use held jointly with her husband must choose between collecting from the joint settlement or suing for dower. Clause 9 states that all devises made before May 1, 1536 were to remain valid. Clause 10 establishes May 1, 1536 as the date from whence the king may collect primer seisin, livery, ouster le main, fines for alienation, reliefs, or heriots from the uses of land converted into legal estates by the statute. From the same date the lords were to be entitled to fines reliefs and heriots from estates executed by the statute. Clause 11 ensures the cestui que use all rights of legal action
against feoffees which he possessed before the act.\textsuperscript{54}

Before the Statute of Uses if Martin enfeoffed Tim to hold the University of Richmond to the use of John, then Tim would hold the legal title of the University and John would possess the equitable title which would afford John the occupation and benefits of the estate, but not the liabilities such as tenure which were associated with the legal title. Furthermore, John, the \textit{cestui que} use, would have the privilege of disposing of the University of Richmond by will. After the Statute of Uses was passed, the statute would execute the use, and therefore, Tim would become merely a conduit in a transaction in which John would be granted the legal and the equitable titles of the University. Thus, John, as full owner of the legal estate, would be assessed for all feudal incidents and would be subject to forfeiture for treason. In addition, poor John would lose his right of disposing of the University of Richmond by will.\textsuperscript{55}

The Statute of Uses was supplemented by the Statute of Enrollments (1536) in order to prevent secret oral transactions of land through bargain and sale. The Statute of Enrollments required that every bargain and sale of a freehold or inheritance estate be made in writing, put under seal, and enrolled within six months of the date of the deed in either a Court of Record or in the county where the lands are located.\textsuperscript{56}
The Statute of Enrollments is a weak version of a draft proposed at the same time as the Statute of Uses. The proposed draft was a much more comprehensive and thoroughgoing scheme of land registration than the Statute of Enrollments, and it promised to establish an efficient system of enrollment which gave enrolled documents the same force and effect as evidence acknowledged before a Court of Record. Holdsworth remarks that, "The causes which render a scheme of registration so difficult today are largely the result of the failure to pass the bill proposed in 1536." The more comprehensive scheme of registration was not as ardently pursued by the Crown as the Statute of Uses because its financial interests were not as acutely involved.

Thus, the Crown's battle to acquire the feudal incidents which were deprived it through uses lasted the length of the Reformation Parliament. Between 1529 and 1533 the Crown attempted to obtain jurisdiction of uses through Parliamentary legislation. When Parliament proved unsympathetic to the Crown's desires, Henry VIII abandoned efforts to legislate a statute regulating uses, and instead turned to the judiciary for support. Henry both threatened and bribed the Chancery in order to gain sanction of his ideas regarding uses. Then through Lord Dacre's case he successfully managed to establish a ruling which negated the terms of the Dacre will. The Dacre decision overturned prior Chancery rulings supporting the cestui que use, and destroyed
the basis of most property settlements in England by declaring that a use which deprived the king of his feudal incidents was illegal. The irresolute condition of land settlements frightened landowners and made passage of a statute defining property ownership and obligations imperative. As a result, the Crown was able to surpass the terms of its 1529 compromise with the nobility and demand all feudal dues payable rather than one third. The Statute of Uses not only stipulated that incidents of tenure be thus paid to the Crown, but prohibited the right to devise real property by will. The immediate effects of this legislation were the transference of the jurisdiction of uses to the courts of common law, impetus of landowners to join in the agitation against the Crown which led to the Pilgrimage of Grace, and the genesis of new forms of land conveyance based upon deed rather than livery.

Most legal historians attempt to establish that the Statute of Uses was passed due to the efforts of either the common lawyers or the common law judges to obtain jurisdiction over cases involving uses. It does not seem plausible that the common lawyers would have desired such a change as they often appeared before the Chancery, and since many of them were landowners, the common lawyers stood to lose more through the payment of tenure than they would have gained through representing cases involving uses. As many of the benefits of conveyance through use were to be alleviated by
the Statute of Uses, the lawyers would have anticipated a decline in cases after the statute was passed. Furthermore, the common lawyers in the Commons in 1536 amounted to only one-fifth of the total body, and it is unlikely that this relatively small percentage of lawyers could have significantly altered the Commons' general opposition to legislation dealing with uses. A more plausible explanation is forwarded by E. W. Ives who asserts that the government played upon the jealousy of the common law judges for the considerable amount of litigation relating to land which the Chancery received as a result of their protection of the cestui que use. Only the sergeants-at-law and the common law judges benefitted from the transfer of uses to the common law courts, as one gained a theoretical monopoly of civil litigation and the other profited from an increase in fees which the business transferred from the Chancery brought. Thus, it is most likely that the common law judges took advantage of royal backing to secure jurisdiction over uses. It is important to note that the Lord Chancellors during the debate and passage of the statute, Thomas More and Thomas Audley, were common lawyers rather than ecclesiastics. Their support of royal wishes regarding uses may be the result of their connections with the courts of common law.

The landowners constitute the group most severely affected by the Statute of Uses as, "the advantages secured
by the king were diametrically opposed to their inter-
est." Though the landowners retained the use and entail, uses could no longer be incorporated as a means of devise, and bargain and sale of freeholds and fees were required to be publicly enrolled. The loss of the devise and secret land conveyances is one of the primary factors which precipitated the participation of the landed gentry in the Pilgrimage of Grace. Holdsworth states that:

The repeal of the Statute of Uses figures in the demands of the rebels, and it appears from the depositions of Aske and others that it was the abolition of the power of devise which was one of the chief causes which induced the landed gentry--the natural leaders of the counties--to side with the rebels.

The extent to which the landed gentry participated in the Pilgrimage of Grace signifies the general discontent landowners experienced through the loss of their traditional privileges of conveyance through uses. Henry VIII could not afford to alienate this powerful component of English society because the landed gentry were integral to the administration of justice and to the enforcement of policy on the local levels of government, and they were politically powerful in the House of Commons. Therefore, after having suppressed the Pilgrimage of Grace, and having obtained revenue from the dissolution of Monasteries (1536, 1539), Henry conciliated the gentry through gifts or sale of land and through the Statute of Wills (1540).

The Statute of Wills, passed in the April-July 1540 session of Parliament, negated much of the royal gains
accrued through the Statute of Uses. The preamble to the Statute of Wills details the inconveniences placed upon subjects who were not able to:

use or exercise themselves according to their estates, degrees, faculties, and qualities, as to bear themselves in such wise as they may conveniently keep and maintain their hospitalities and families, nor the good education and bringing up of their lawful generations . . . they were not able of their proper goods . . . to discharge their debts, and after their degrees set forth and advance their children and posterities.63

To alleviate these problems, the statute conferred:

full and free liberty, power and authority to give, dispose, will and devise, as well by his last will and testament in writing or otherwise by any act or acts lawfully executed in his life, all his . . . herediments at his free will and pleasure to those who held land by socage tenure.64

Two-thirds of land held by knight service could be similarly devised. Other clauses afforded tenants who were lesser lords similar rights. The right of the king to a third of wardship, and of the other lords to wardship of a third of the lands was retained. Dower was to be deducted from the two-thirds which was devisable. Wills were to be constructed in written form. They were not required to be signed by the testator, written in his hand, or witnessed. The will was revocable and inoperative until the death of the testator, but it was not applicable to property which the testator acquired after the execution of the will.65

In all circumstances the king retained his rights to primer seizin, reliefs, fines for alienation, and other feudal dues. The Court of Wards, established through separate
legislation in the same parliamentary session, was endowed with administrative and judicial powers for the express purpose of managing feudal revenues and enforcing the rights of wardship and marriage, especially as affected by the Statutes of Uses and Wills.

The effect of the Statute of Wills was to enact a system of land reform which closely mirrored the compromise made between the Crown and the peers between 1529 and 1531. The major difference between these two reforms is that whereas the compromise assumed the continuous existence of uses, the Statute of Wills is a concession by the king granting his subjects the right to devise lands. A further concession, the right to devise socage lands, was also allowed by the statute. Thus, the land reforms which were unacceptable to the Commons in 1532, and which were unacceptable to the Crown in 1536, now became the law in 1540. The Statute of Uses is significant because it marks the first time in modern English history that the devise of a legal freehold interest in land could be created by will to begin in the future.

Besides contributing to the landowners' involvement in the Pilgrimage of Grace and hastening passage of the Statute of Wills, the Statute of Uses introduced new forms of conveyancing into the common law. These new types of conveyancing gave the common law greater flexibility and served to undermine obsolete forms of transfer such as
primer seisin. Furthermore, these conveyances permitted interests to be created in futuro. Among the more important modes of transfer created by the Statute of Uses are conveyance to oneself, bargain and sale, lease and release, covenant to stand seised, and springing and shifting interests. It is through the creation of these forms of interests in land that the Statute of Uses achieved its greatest impact upon English law and that the Statute of Uses is of considerable interest to the modern legal historian.

Before the Statute of Uses a man could not convey an interest to himself or his wife at common law. After the Statute this process was found to be valuable in changing trustees or settling property on marriage.

A person seised in fee simple is able to convey the property to trustees to the use of himself and his heirs till marriage, and from after the marriage to the use of himself for life, with remainder to the use of his eldest and other sons successively in tail, with remainder to his right heirs.69 This method of conveyance is still utilized in the formulation of modern wills.

The bargain and sale was perhaps the most important form of conveyance in the period immediately preceding the enactment of the Statute of Uses. By the beginning of the sixteenth century, it was commonly recognized that if Tim bargained and sold his lands to John, but no common law land conveyance was made, then Tim would be seised to the use of John. In the eyes of the common law, the bargain
and sale did not pass seisin, but equity, following laws relating to bargains and sales of chattels, established the doctrine that a bargain and sale of land passed the use.\textsuperscript{70} If Tim bargained and sold land to John after the Statute of Uses, the use created would vest both the legal and the equitable titles of land in John. Thus, John would be responsible for feudal dues, but now land could be transferred at common law without the burdensome practices of livery of seisin, entry, and attornment.\textsuperscript{71} The fact that one could transfer land by a bargain and sale, which could be oral and perhaps secret, necessitated the passage of the Statute of Enrollments.\textsuperscript{72} Nevertheless, parties could gather in a lawyer's office, draft a bargain and sale "deed," transfer money, and the purchaser would have possession of the land as the Statute of Uses would automatically execute the use.\textsuperscript{73} William Walsh recognized the revolutionary effect of the bargain and sale and remarked that, "The Statute, therefore, may fairly be regarded as the means, historically, by which conveyance by deed as distinguished from conveyance by livery of seisin was introduced into law."\textsuperscript{74}

An ingenious method was developed from the bargain and sale whereby the conveyancers could effectively avoid both livery of seisin and enrollment. This method, lease and release, was initiated by the vendor making a bargain and sale for a year to the purchaser. The bargain and sale
would subsequently raise a use in the purchaser which would be executed by the Statute of Uses. The purchaser thus received the legal title to the estate, but if a deed of reversion was made to the purchaser, the transfer would effectively escape enrollment as the estate created was not one of freehold. Furthermore, the estate would be validated without the process of livery of seisin. This loophole in the Statute of Uses gained popularity in the later part of the sixteenth century. After the 1620 decision in Lutwich v. Mitton that a legal title could be gained without entry, the lease and release became the most popular form of land conveyance, and it remained so until 1845. Usually a bargain and sale for nominal consideration was negotiated, then a release, dated one day later, was included in the same document.

The covenant to stand seised is another method of transferring title which was altered by the Statute of Uses. The history of the covenant to stand seised dates from the medieval period and has been the source of much legal controversy. The fundamental question of the covenant's validity lies in whether a use can arise in a transaction not based upon "valuable" considerations such as money or the equivalent, but upon "good" considerations such as marriage or blood relationship. Before the sixteenth century, equity would not interfere on behalf of the cestui que use unless a valuable consideration was involved.75 Throughout
the sixteenth century, the courts vascillated in their interpretation of the covenant to stand seised. Finally, in the case of Callard v. Callard (1597), the Exchequer Chamber reversed the Kings Bench and declared that a contract to make a use based upon natural love and affection must be declared under seal.76 Thus, if John covenanted to stand seised of land to the use of Joanne, his wife, a use was created in Joanne, and was duly executed by the Statute of Uses. Joanne would become the legal owner of the estate without completing the processes of livery of seisin, enrollment, or of payment of valuable consideration.77

Before the Statute of Uses, a common law freehold could not be created to commence in futuro except by reverter or remainder upon the termination of an estate and the passing at the same time out of a grantor.78 However, after the Statute of Uses, springing and shifting interests could create future legal estates upon the happening of an event or in derogation of a previous estate. A springing interest is an interest which can be created to begin at the occurrence of an event such as a marriage, birth, or specified date. Thus, if Tim granted Ryland Hall to the use of Frances and her heirs for the use of John and his heirs from September 1, then there would be a resulting use in Tim since no valuable consideration was passed, and Tim would possess the legal estate as executed by the Statute of Uses until September 1. After September 1, the legal
estate would "spring" automatically to John. A shifting interest is an interest in an estate which passes from one person to another at a future time as on the occurrence of a particular event. For example, a legal estate might be conveyed through use by limiting the fee to John and his heirs to the use of Tim and his heirs, with a proviso that when Martin gets married, the land shall be to the use of Martin and his heirs. In this case the use will "shift" from Tim to Martin upon the event of Martin's marriage and would terminate Tim's prior possession of the estate. Both springing and shifting interests may be raised by wills where they are designated as executionary interests. As the springing and shifting interests took possession by divesting a prior interest, they form a distinct facet of the common law relating to future interests.79

The Statute of Uses further contributed to the flexibility of the disposition of property under common law by establishing the power of appointment. The power of appointment is not itself a future interest, but it is a devise which provides for the distribution of property in futuro.80 The power of appointment could be conferred by John making a bargain and sale to the use of Tim and his heirs until and in default of Frances' exercise of a power of appointment, and an exercise of such power to such persons as Frances might appoint by will or deed.81 The Statute of Uses would vest a fee simple in Tim subject to
Frances' exercise of power. When Frances exercises the power of appointment, the fee will automatically shift from Tim to whosoever Frances designates as appointee(s). Thus, the power of appointment authorizes the person or persons exercising such power to create a use which takes effect in derogation of a prior use, in favor of such person, and for such estate, as designated by the subsequent act of the donee of the power. 82

Thus, the Statute of Uses created new interests in land which were not as strictly defined as previous common law conveyances. It has been seen that these new interests imbued the law with flexibility and promoted more efficient means of property transfer. Nevertheless, the statute also brought a serious problem into the law—that of holding land in perpetuity. Contingent remainders could be destroyed at common law, but executory interests created by the Statute of Uses could not, and thus, they could be created to vest at some indefinite (and remote) period in the future. 83 The prospect of rendering land inalienable was quickly attacked in the courts, but early efforts to overrule perpetuities created by executory interests proved unsuccessful. Finally, in the Duke of Norfolk's Case (1681), the Rule Against Perpetuities was established. This rule has subsequently been the subject of much controversy and legal debate. Simply stated, the rule negates any "contingent" interest created in a transfer which is not certain to vest within the life
of the person living at the time the interest is created, plus twenty-one years. Until the Rule Against Perpetuities, an estate could be created which was in essence nondestructible, and hence, the title to the estate was vague.

Before an assessment of the Statute of Uses can be completed, it is imperative to consider the types of conveyances through uses which were regulated by the statute and their effects upon English law. The three types of conveyances not covered by the statute are active uses, uses declared in chattel interests, and uses upon a use. Active uses were not placed under the jurisdiction of the Statute of Uses because the feoffee did not merely serve as a conduit in this transfer; rather, he performed active duties. For an active use to arise, the feoffee must be entrusted with a responsibility such as conveying land, collecting rents, or protecting the property. The allowance for the active use to operate outside of the Statute of Uses enabled land to be conveniently transferred for administrative purposes. Uses declared in chattel interests were not covered by the statute because the statute requires that seisin be passed from the feoffer to the feoffee to the cestui que use, and a person cannot be seised of a chattel. Therefore, the legal title to the chattel will vest in the person to whom it is transferred regardless of an expression of intent to create a use. The most
important type of transfer not covered by the statute is the use upon a use. A use upon a use could be raised by John enfeoffing Tim in fee simple, to the use of Martin in fee simple, to the use of Frances in fee simple. Immediately after the Statute of Uses the courts would declare that the legal title belonged to Martin and that the use in Frances was void. This doctrine was firmly established in Tyrrel's Case (1557) where the Court of Wards, with the sanction of the judges of the Court of Common Pleas, ruled that the second use was null.\(^{87}\) The Chancery did not interfere with the ruling on the use upon a use for about one hundred years; but by the middle of the Seventeenth century, Chancery began to consistently enforce the equitable interest of the second cestui que use when precedent for the support of the equitable interests of the second cestui que use was established in Sambach v. Dalston (1637).\(^{88}\) Thus, we have a situation similar to that before the enactment of the Statute of Uses as the equitable and legal titles of ownership once again may be separated through the use upon a use. The Chancery's enforcement of the use upon a use signals the beginning of a new era in the evolution of the law of property as the use upon a use is the foundation of the modern trust. The trust is created in much the same way as a use; the only difference is that the feoffee of uses is now termed the trustee, and the cestui que use is now called the beneficiary.\(^{89}\)
In final analysis, the Statute of Uses did not fully attain the intended purpose of the Crown. Henry VIII was not able to perpetuate total collection of feudal incidents, and as a result, had to revert to a more moderate fraction of one-third of the incidents. In order to enforce the collection of tenure, Henry had to establish the Court of Wards whose administrative cost further depleted his margin of profit from feudal revenue. Due to the administrative functions of the Court of Wards, and to the provision that monastic lands he sold as tenants-in-chief, the net income from feudal incidents rose from 4,434 in 1542 to an average of only 7,700 per annum in the first three years of reign of Edward VI. Henry VIII did accomplish the union of equitable and legal titles of ownership through the Statute of Uses during his reign, but less than a century later, the use upon a use effectively separated these titles in a manner similar to conveyances to uses before the statute. The Statute of Enrollments neither insured the simplification of the law of property, nor eliminated secret conveyances as methods such as the lease-release were soon instituted as a means to avoid the rather weak statute. Furthermore, Henry's elimination of all rights to devise property by will contributed to the landowners' support of the Pilgrimage of Grace. The extreme reaction to the Statute of Uses instigated the conception and passage of the Statute of Wills. Thus, Henry's attempts to secure
legislation over uses were only partially successful, and his efforts yielded no substantial increase in royal revenue.

Although the Statute of Uses did not realize its desired end, it is still of extreme significance to English law. The Statute of Uses is exemplary of the unplanned growth of legislation as the statute served to create, expand and interpret many areas of law including Property, Contracts, Future Interests, Wills and Trusts. While establishing the modern day conception of real property, the statute introduced a much needed elasticity into the common law by legitimatizing new ways to transfer land such as the conveyance to oneself, bargain and sale, covenant to stand seised, and the lease-release. These new methods of conveyances could be transacted in a lawyer's office and did not require physical entry upon the land. Therefore, they have been termed "the catalysts which called forth the modern deed." Although the Statute of Enrollments did not comprehensively eliminate the ability to perpetrate fraud or secret conveyances, it did provide a mechanism through which these deeds could be registered and made legally binding. The Statute of Uses also introduced into the common law the ability to create interests in futuro. These conveyances, termed springing and shifting interests, enabled estates to be created at a future date, upon the occurrence of a future event, or to transfer estates from
one holder to another at a future time. Initially, they allowed land to be held in perpetuity, but this defect was corrected in 1681 when the Rule Against Perpetuities was conceived in the Duke of Norfolk's Case. The Statute of Wills is significant because it marks the first time in modern English history that real property could be devised by common law. The Statute of Wills provided for the creation of springing and shifting executionary interests analogous to springing and shifting interests. The doctrine of powers of appointment and revocation stemmed from and strengthened the effects of this statute. Finally, a defect in the Statute of Uses, its failure to regulate a use upon a use, became the foundation of the modern law of trusts. The slow evolution of the use upon a use until the rights of the second *cestui que* use became protected by Chancery in the middle of the seventeenth century forms an exciting study in the growth of legislation itself. In short, the Statute of Uses signifies the beginning of a new epoch of property law. The medieval conceptions of prerogative ownership and wardship were destroyed, and the modern conception of private property was created as a result of the Statute of Uses. The Statute of Uses led to the abolition of the tenure system in England, and to the institution of land conveyances which provided for fluid and efficient buying, selling, and disposing of real estate. Thus, the Statute of Uses has been considered by many as, "perhaps
the most important addition that the legislature has ever made to our private law." Although Henry VIII may have wished that he had never spent the later half of his reign striving to achieve control over uses through legislation and then trying to minimize the undesirable effects of the Statute of Uses through further legislation, the modern landowner has much to be grateful to Henry for because the advent of the Statute of Uses is the cornerstone of the modern interpretation of property rights and privileges.
FOOTNOTES


2. Other similar forms such as junior right existed but their use was not widespread.


5. Atkinson, p. 15. At this time liberty of testation was allowed on one-third of one's chattels if one supported a wife and a child. If a man supported only a wife or a child, then he could transfer one-half of his personal property through testament. It was possible for a man with no dependents to will all of his personal property.

6. Holdsworth, p. 422. A feoffor would normally enfeoff several persons as it minimized the risk of fraud. Furthermore, if the feoffee died, the estate to which he was enfeoffed would be liable to dower and feudal incidents.


8. Before the Statute of Uses it was held that upon feoffment a use resulted in the absence of any consideration or declaration of a use. After the statute a use would result from feoffment, fine, or recovery, and the use would be executed by the statute. The modern resulting trust is not executed by the Statute of Uses.


Burby, p. 8. "Successive joint tenancies could be created to prevent inheritance of the legal ownership."


Tiffany, p. 392.

Moynihan, p. 175.

Holdsworth, p. 419.

Plunknett, p. 579.

Holdsworth, p. 449.


Plunknett, p. 583.


W. S. Holdsworth maintains that the 1529 draft bill proposing that for all persons other than peers, estates were to be held in fee simple and enrolled by an officer of the Court; and the separate agreement between the Crown and the nobility, which Holdsworth dates as being signed in 1529, were parts of an ill-fated compromise between the Crown and nobility enacted by the Crown to secure control over uses. This attempt was futile because it alienated the two largest groups in the House of Commons, the untitled gentry and the common lawyers. After another unsuccessful attempt to pass his proposals in 1532, Henry VIII endeavored to enlist the support of the common lawyers. Henry supposedly gained the support of common lawyers by first frightening them by sympathetically listening to an attack against the chicanery of the common lawyers and against the expense, delay, and injustice of the common law courts. The lawyers, fearful of radical reforms which might be enacted against their profession and also jealous of the profitable jurisdiction over property which the Chancery enjoyed, gradually began to side with the king. With the support of the lawyers, Holdsworth claims that the Statute of Uses was passed and, "if this be so, the action of the common lawyers has had large effect upon the form which the Statute of Uses and the Statute of Enrollments finally assumed, and, consequently, upon the whole of the future history of the law of real property."
27 Holdsworth, p. 450.
28 Holdsworth, pp. 450-51 and Plunknett, p. 583.
29 Ives, p. 678.
30 Ives, pp. 676-679.
32 J. M. W. Bean, The Decline of English Feudalism 1215-1540 (New York: Manchester University Press, 1968), p. 265ff. Mr. Bean asserts that Holdsworth's dating of the agreement between the king and the nobility is faulty. Holdsworth states that both the draft bill and the compromise were submitted to Parliament in 1529, and then were resubmitted in 1532. Mr. Bean shows that the compromise could not have been introduced by 1529, and he posits that the compromise was gradually signed between 1529 and 1531.
34 Bean, p. 264.
35 Bean, p. 267.
37 Holdsworth, p. 453.
38 Ives, p. 683.
39 Ives, p. 689.
40 Ives, p. 688.
41 Ives, p. 685.
42 Bean, p. 283.
43 Bean, p. 275.
44 Bean, p. 284.
45 Holdsworth, p. 453. A third draft bill dealing with uses was submitted to Parliament in 1536. This bill would have eliminated many of the fraudulent practices which could be perpetrated through uses, but at the same time, it would have subjected the use to many of the rules of common law, thus eliminating the beneficial elements of conveyancing.
inherent in the use. The draft bill would have also elimi-
nated many of the advantages which the Crown stood to gain
due to control of uses as it allowed for the retention of
the power of devise and it limited the effect of recovery.
The compromising nature of this bill leads William Holdsworth
to believe that it was conceived as a desperate attempt by
the landowners to maintain some of their rights under the
former system of uses, and that the bill was probably never
seriously considered by the Crown.

46 Ives, p. 691.
47 Holdsworth, p. 467.
48 Holdsworth, p. 460.
50 Holdsworth, p. 460.
51 Moynihan, p. 176.
52 John E. Cribbet, Principles of the Law of Property
53 Bean, pp. 286-87 and Holdsworth, p. 462.
54 Bean, pp. 286-87 and Holdsworth, p. 462.
55 Some conveyances such as a use upon a use, an active
use, and possession of real and personal chattels in use
were not subject to the Statute of Uses.
56 Holdsworth, p. 462 and Tiffany, pp. 399-400.
57 Holdsworth, p. 459.
58 Bean, p. 272.
59 Ives, pp. 686-87.
60 Holdsworth, p. 461.
61 Bean, p. 294.
63 Stanford E. Lehmbreg, The Later Parliaments of Henry
VIII 1536-1547 (Cambridge: Cambridge University Press,
64 Holdsworth, p. 465.
65 Atkinson, p. 18.
66 Bean, p. 194.
69 Holdsworth, p. 475.
70 Holdsworth, p. 424.
71 Holdsworth, p. 425.
72 Tiffany, pp. 399-400.
73 Cribbet, p. 75.
75 Holdsworth, p. 425.
76 Holdsworth, p. 425.
77 Holdsworth, p. 426.
83 Cribbet, p. 116.
84 Cribbet, p. 117.
87 Holdsworth, p. 467.
88 Moynihan, p. 205.
89 Moynihan, p. 205.
91 Cribbet, p. 113.
92 Holdsworth, p. 409.
BIBLIOGRAPHY


An essential source for the history of the differentiation of real and personal property in England and the genesis of the will from the Anglo-Saxon era to modern times.


Bacon's reading on the Statute of Uses is of immense historical interest. Bacon provides one of the earliest recorded explications of the statute.


Bean's chapter 6, entitled "The Royal Prerogative 1529-1540: from Victory to Compromise," is perhaps the most detailed history of the period which is utilized in this paper. The stronger points of this chapter include Bean's correction of the dating of the compromise between the Crown and nobility, his refutation of Holdsworth's thesis of the Statute of Uses being a product of an agreement between the Crown and the common lawyers, his explication of the Dacre case, and his interpretations of the Statute of Uses and the Statute of Wills.


Contains an informative section on the development of the use upon a use into the modern trust.


Bigelow's work is valuable in studying the common law court's refusal to recognize the cestui que use and the consequent protection of the cestui que use by the Chancery.


A brief explication of the situation prior to the Statute of Uses, the methods of creating a use, the
enforcement of the use, and the Statute of Uses and its importance in modern law.

Cribbet, John E. Principles of the Law of Property. 

Cribbet feels that the Statute of Uses was not successful in its primary aim of securing a source of royal revenue, but that the unforeseen consequences of the statute, especially the creation of new estates in land, the origin of new modes of conveyancing, and the rise of the modern trust, are perfect examples of the unplanned growth of English law.

Holdsworth, W. S. A History of English Law, vol. IV. 
Boston: Little and Brown, 1934.

Mr. Holdsworth offers by far the most detailed and widely used interpretation of the Statute of Uses. Although Holdsworth's account of the formative period of the statute (1529-1536) has been recently revised, and his conclusion of the long term ramifications of the statute is too general, Holdsworth presents the most comprehensive analysis of the effects of the Statute of Uses on English law. His book is necessary to any complete study of the Statute of Uses.


Mr. Ives' article presents the first challenge to the Holdsworth thesis in over four decades. Using materials unknown to Holdsworth, Ives contends that the Statute of Uses was a result of the decision in the Dacre case, royal persuasion of the Chancery to rule against uses, and cooperation of the common law judges and sergeants at law. Ives feels that the overbearing terms of the Statute of Uses were imposed due to Henry's shortsightedness, and of the compromise between the Crown and the nobility, Ives deals with the social and political effects of the statute, but he does not deal with the statute's legal ramifications. He concludes that the Statute of Uses "was an extremist act, carried by force majeure in a moment of opportunism but rapidly abandoned in the face of determined opposition" (p. 697). Mr. Ives' most informative revision of Holdsworth's thesis has been accepted by historians such as J. M. W. Bean and Stanford E. Lehmburg.

Lehmberg's work offers a most concise synthesis of Ives' and Holdsworth's research on the Statute of Uses.


This book contains a summary of the events leading to the passage of the Statute of Wills. Lehmberg points out that the Statute of Wills increased the jurisdiction of the common law courts by depriving ecclesiastical courts of probate jurisdiction over devises of land.


Equity is composed of a series of lectures delivered by Mr. Maitland. This work includes his classic interpretation that the Statute of Uses "was forced upon an extremely unwilling Parliament by an extremely strong willed King" (34). Equity is beneficial in studying the legal background of the modern trust as affected, or more appropriately, not affected by the Statute of Uses.


Moynihan briefly relates the historical background of the controversy over uses, and he provides an elaborate analysis of the legal effects of the Statute of Uses and the Statute of Wills.


Mr. Plunknett supports the Holdsworth thesis most vehemently where Holdsworth has been proven wrong by more modern historians. Although Plunknett's interpretation is outdated, his work provides a good history of the Statute of Uses.


Mr. Simes offers a well written account of the executory interests introduced into the common law by the Statute of Uses and the Statute of Wills. Simes
also traces the effects of conveyances not covered by the Statute of Uses and discerns their importance in forming modern law.


Simes and Smith present a well outlined summary of the inadequacy of property law prior to the advent of the Statute of Uses. This summary is followed by a brief exegis of the statute and an enumeration of its effects. The authors also comment upon the Statute of Wills and discuss the nature of family settlements through the seventeenth and eighteenth centuries.


The Law of Real Property is a concise and detailed interpretation of the new forms of land conveyance initiated by the Statute of Uses and Statute of Wills. Although difficult to read, this book provides an inclusive outline of both what the Statute of Uses accomplished and what it failed to accomplish.


Walsh's main objective is to trace the origin of the modern property deed to the Statute of Uses. His explication of conveyances of property before and after the Statute of Uses is lucid and informative.


Williams combines sound scholarship and sharp historical insight in his interpretation of Tudor administrative strategy. The author provides factual but brief information on the Statute of Uses and the Statute of Wills.