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# *Institutional Change and Property Rights before the Industrial Revolution: The Case of the English Court of Wards and Liveries, 1540–1660*

SEAN BOTTOMLEY

Secure property rights are usually considered to be essential for sustained economic development. In England, it is debated whether property rights have been secure since the medieval period or if they were only established after the Glorious Revolution. In this context, the paper examines the Court of Wards, which from 1540 to 1646 administered the Crown's right to take custody of children and their lands when these were held by feudal-military tenures. The paper shows that wardship was a common occurrence, its exactions arbitrary but often heavy, and that it reduced the value of lands held by these tenures.

The Court of Wards was a long-standing and familiar institution of early modern England, operating in full force from 1540 to 1642 and then during the Civil War until 1646, when it was abolished by a victorious Parliament. This abolition was confirmed as part of the Restoration Settlement of 1660. Wardship originated from the feudal system of land-holding introduced after the Norman Conquest in 1066 (Baker 2019, p. 242). In brief, only the king could hold land absolutely. Those who held land from him (tenants-in-chief) did so in return for performing specified services, usually military in nature (hence the common freehold tenure, “knight-service”). Tenants-in-chief maintained tenants of their own, who also proffered services in return. Matters were complicated by the pervasive custom of primogeniture. What to do when a heritor was unable to render these services for reason that they were still a child?

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The response was that the feudal lord could take temporary proprietorship of the freehold lands that had descended to the heritor on the death of their ancestor. This was to ensure that the income therefrom would continue to provide for military upkeep. Moreover, they could also take custody of the child—this was to ensure that they would be properly trained as a knight and thus capable of bearing arms upon reaching the age of majority—and to decide their marriage partner. This was to ensure they would not marry a familial enemy of their feudal lord. These are the three related rights denoted by “wardship,” and some indication of its contemporary importance can be inferred from Magna Carta (1215), the foundational document of English constitutional law, where the third, fourth, fifth, and sixth clauses are all concerned with wardship. Toward the bottom of feudalism’s pyramidal structure were those who held their land only in return for money payments, a tenure termed socage, and who were not liable to the exactions of wardship. As one treatise writer explained: “as knight-service lands requireth the service of the tenant in warfare and battle abroad, so socage tenure commandeth his attendance at the plough,” continuing “in this manner did Dukes and other noblemen among their menials and fellows dispatch great part and quantity of their lands, viz to their gentlemen of great quality by knight-service, to others of mean condition by socage.”<sup>1</sup>

As armies started to be raised by cash rather than by the bonds of personal service, wardship fell largely into abeyance until it was vigorously re-imposed by Henry VII (*r.* 1485–1509). Later in 1540, a formal Court of Wards was established (termed the Court of Wards and Liveries from 1542). The Court’s functions were twofold. Firstly, it was responsible for collecting the revenues accruing to the Crown from wardships. These had two main sources. Almost invariably, the Crown would sell the custody of the ward to a third party, usually a courtier or some royal favorite (detailed in Table 2). The Crown also had the right to collect revenues from that part of the ancestor’s estate that had descended directly to the ward. The proportion of the estate that would descend in this manner varied according to circumstances, although by the Statute of Wills (1540) it usually had to be at least one-third in value. Therefore, if the heir was underage and entering wardship, at least a third of the estate by value would descend directly to them and so (temporarily) enter the hands of the Crown. Usually, the rights to the land were included with the sale of the ward proper, although these could be separate transactions. Only those lucky enough to hold their estate entirely in socage could escape

<sup>1</sup> British Library (BL), London, Hargrave MSS 325, f. 1.

wardship. The Court's second function was to handle the large range of legal business that wardship entailed, and it came to occupy a central part of the legal and fiscal apparatus of Tudor and Stuart government.

The Court has not been the subject of a systematic history since the 1950s.<sup>2</sup> Neither has there ever been an economic history of wardship. This paper aims to fill this gap and incorporate a history of wardship into analyses of English institutional development during the sixteenth and seventeenth centuries. It makes two central points. Firstly, the Crown's re-imposition of wardship served to undermine property rights. While wardship usually posed little threat to the security of land title for most families,<sup>3</sup> this is not synonymous with property rights. Rather, they denote a more expansive "ability to enjoy a piece of property," not merely to hold it (Barzel 1997, p. 4). This includes the capacity to draw an income from that property, to alter and/or transfer it to other parties (including heirs), and to maintain it from intrusion. All these capacities were undermined by wardship. Moreover, secure property rights are contingent upon impartial legal processes. The Crown is shown to have distorted the land law and legal institutions in order to increase its income from wardships. It is in this context that William Blackstone's assessment of the Tenures Abolition Act (1660), which abolished wardship and the feudal-military tenures that underpinned it, as the "great[est] acquisition to the civil property of this kingdom than even Magna Carta" (1766, vol. II, p. 77), can be understood.

There is also a large related literature examining property rights in land and how their institutional arrangement affects long-run economic growth. It has been demonstrated in a wide variety of contexts that weak property rights and/or high transaction costs in transferring land stymie land improvements and advances in agricultural productivity (Libecap and Lueck 2011; Finley, Franck, and Johnson 2021). From a theoretical perspective, it is likely that wardship and the associated complexities of

<sup>2</sup> Bell (1953) provides an invaluable technical overview of the Court for the whole period of its operation. Hurstfield (1958) offers a more social history of wardship, largely covering the period of Lord Burghley's tenure as Master of the Court from 1561 to 1598. Certain facets of the Court have since been examined in greater detail, especially its treatment of Catholics (Jervis 2013), a study of wardship in Somerset (Hawkins 1965), and how wardship influenced developments in land law (Jones 1998, 2004).

<sup>3</sup> A partial exception to this general statement relates to unwed female wards. When women married, their property passed into the hands of their husbands, and at a time when the economic interests of kin and family took precedence, the disposition of brides was akin to a commercial transaction (Stone 1977, pp. 4–7, 85–91). When, however, the heiress had entered wardship and been sold to a third party, her family lost any formal influence in this transaction. Unless they were able to re-acquire her through purchase prior to her marriage, she and her estate would have passed away permanently from the control of her family. An example would be the case of Dorothy Dethicke.

freehold tenure(s) had similar effects, and the paper details one of wardship's discrete economic consequences: that it suppressed the value of lands held in tenures where wardship was incurred (knight-service) relative to those where it was not (socage). The paper also provides some anecdotal evidence to indicate that wardship raised the transaction costs involved with transferring and improving lands.

The paper's second central point is that wardship is illustrative of wider systemic failings of the early modern English state. In particular, the Crown appropriated only a small proportion of potential revenues from wardship, due in large part to the embezzlement of its officers. Ultimately, while disdained for its methods of raising what little revenue it had, the English state proved incapable of funding security, viz., the rebellion and invasion from Scotland known as the Bishop's Wars (1639–40) and the consequent outbreak of the English Civil War. The Tenures Abolition Act compensated the Crown for the loss of wardship and feudal-military tenures with the excise tax. According to O'Brien (2011), it was the excise and the professional administration that was instituted to raise it that would underpin the development of Britain's exceptional fiscal state during the eighteenth century and that funded its rise to global hegemony with access to foreign goods, production inputs, and markets that this entailed. The Tenures Abolition Act can therefore be regarded as the most significant piece of fiscal legislation to have been passed in the history of Parliament.

The rest of this paper is divided into five parts. The first part summarizes the debate concerning the relationship between England's precocious institutional development and its industrial revolution, with specific reference to wardship. The second part discusses the re-imposition of wardship by Henry VII and Henry VIII (r.1509–45), the latter introducing large-scale changes in English land law to increase his revenues from wardship. It also examines how frequently wardship occurred. The third part examines the finances of the Court, that is, how much money it contributed to Crown coffers, and the burden it imposed on families. The fourth part provides evidence from Crown land sales to demonstrate that tenures of land that incurred wardship (knight-service), sold at a 10 percent discount relative to those tenures that did not (socage). The fifth part concludes.

#### WARDSHIP, PROPERTY RIGHTS, AND STATE CAPACITY: A LITERATURE REVIEW

A prominent strand of the literature has emphasized how, courtesy of its precocious constitutional/institutional arrangement, England benefited from uniquely secure property rights and reliable contracting. Enabled to

engage in ever more sophisticated business ventures and confident that the proceeds of private endeavors would accrue to them rather than a predatory state or stronger neighbors, individuals were incentivized to engage in ever more productive activities and investments.

Within this historiography, North and Weingast's (1989) paper remains highly influential. In brief, they argued that prior to the Glorious Revolution in 1688, the monarchy was not constrained by any substantive judicial or executive controls. It was, however, burdened by revenue demands, prompting the Crown to engage in a "systematic search for and expropriation of quasi-rents in the economy" (p. 811), involving schemes such as awarding monopolies of production and trade, wardship, and outright seizure of property (pp. 811–12). Although the civil war led to some important changes (especially the abolition of Star Chamber and "land tenure modifications," p. 814), in essence, little changed, and the king was still able to act arbitrarily. Instead, it was the Glorious Revolution that was of primary importance, guaranteeing the role of Parliament in executive government and re-affirming its exclusive authority to raise taxes (p. 816). Their view that the Glorious Revolution was handmaiden to the Industrial Revolution has been widely adopted in general economic texts (see Olson 1993; Acemoglu and Robinson 2012).

However, most scholars are unpersuaded by North and Weingast's account, and most of its various components have since been challenged.<sup>4</sup> Concerning their claim that property rights had been insecure prior to 1688, the seminal critique is Clark (1996). Clark builds from the premise that if land rights were insecure and liable to expropriation by the Crown, then the price of land would be suppressed vis-à-vis the annual income that could be realized from it: the implied rate of return would be elevated.<sup>5</sup> When the threat of expropriation receded due to constitutional change (i.e., the Glorious Revolution), land prices should have increased and the implied rate of return declined. However, Clark purports to show using a dataset of land sales to charities that the implied rate of return to land was stable throughout the upheavals of the seventeenth century and up to 1749. This indicates that land rights must have been reliably secure

<sup>4</sup> In addition to Clark's counter-argument concerning property rights, a partial list of criticisms would also include the observation that interest rate movements after 1688 do not support the argument that the security of property rights had improved (Sussman and Yafeh 2006); that the link North and Weingast posited between the Glorious Revolution and the Industrial Revolution was a tenuous one (McCloskey 2016); and that the Glorious Revolution may have been a significant event but not necessarily for the reasons suggested by North and Weingast (Bogart 2011; Pincus and Robinson 2014).

<sup>5</sup> And Clark (p. 566) demonstrates that such insecurity could have a demonstrable effect on land prices as when Parliament disposed of the royal estates in 1650.

throughout the period, and it is now commonly accepted that “secure property rights go back a long way in English history” (O’Brien 2011, p. 437), possibly as far back as the 1170s and 1180s, when a series of legal reforms stimulated the development of a land market (Campbell 2009, p. 79). Consequently, any further improvements in the security of property rights achieved in the aftermath of the Civil War or the Glorious Revolution must have been minor.

There are three reasons to suppose that Clark’s dataset is not an accurate reflection of the land market as a whole. Firstly, the political costs involved with expropriating land designated for charitable uses were usually prohibitively high when compared with other, more convenient targets.<sup>6</sup> For example, in the 1530s, the Crown dissolved the monasteries and seized their assets, comprising up to 30 percent of the entire landed wealth of England (Buck 1990, p. 210). A similar point could be made concerning the confiscation of Catholic land in Ireland (the “Plantations”). Secondly, in contrast to Clark, an earlier exercise by Christopher Clay (1974) using private land sales over the period 1650 to 1814 does report an increase in land prices compared with income. Thirdly, charities held land in perpetuity. As such, they would never have to pay any of the exactions attendant to land held by military tenures and/or lands held of the Crown when they descended to a succeeding generation. For instance, Livery (also collected by the Court of Wards) was a payment that had to be made before a heritor of any age could take possession of freehold lands that had descended to them, applying to all lands held of the Crown (Ley 1659, p. 19). Charities would not be subject to these exactions, and so their rate of return from these lands would have been greater than would have been the case for other landholders.

Beyond the security of property rights, wardship also offers insights into the stagnating fiscal capacity of the English state between 1509 and 1642. While in theory tax collection should have become easier as the economy monetized and became more urban, real per capita tax revenues barely increased over this long period (Karaman and Pamuk 2013, p. 606). Wardship illustrates why this stagnation occurred. Commensurate with the burden it imposed on heirs and their families, wardship might have been an immensely productive source of revenue—but due to maladministration and embezzlement, most of the proceeds were siphoned away

<sup>6</sup> Illustrative of the political costs of expropriating charities is the case of Sir John Townsend. Under the cover of a patent purchased from the Crown (paying £8,000 for the privilege), Townsend extorted fines from hospitals for “concealing” land they allegedly held of the King. In one instance, James I (*r.* 1603–25) even granted a hospital in Sandwich with its lands to Townsend. Townsend, though, was “vilified” in Parliament, and the patent was suppressed at the end of James’s reign (Thirsk 1992, p. 341).

by the Crown's own officers and by those third parties who were able to purchase wardships. This was symptomatic of other fiscal instruments such as the industrial monopolies (Scott 1910–12, pp. 222–23) and the customs (O'Brien and Hunt 1999, pp. 69–70).

#### LAND LAW AND THE INCIDENCE OF WARDSHIP

Given the benefits that might potentially accrue to the Crown when those holding land by knight-service died, it naturally sought to disseminate this tenure as widely as possible. In particular, when it started selling the lands seized in the dissolution of the monasteries, the lands were sold with knight-service tenure attached. A 1536 Act legislated that when these lands were sold, “there shall be always reserved to the Kings Highness, his heirs and successors a tenure by knight-service” (27 Hen. 8, c.27, § viii). The 1539 Act passed for the sale of the larger monasteries (31 Hen. 8, c. 13, § iii) and the 1545 Act for the sale of the college and chantry lands (37 Hen. 8, c. 4, § vii) retained similar provisions. Whenever these lands were sold, the knight-service tenure remained, and over the course of the following hundred years “as the abbeys had land commonly scattered ... so the leprosy of [knight-service] tenure come thereby as generally to be scattered through the kingdom ... very few can assure themselves to be free from this calamity” (Spelman 1632, printed 1698, pp. 230–31).

The Crown also effected significant changes to the country's land laws, which are worth detailing for the disruption they caused and the Crown's approach to legal process. Wardship and the other feudal incidents were invoked when land descended through the generations, that is, when the land was inherited through the death of an ancestor. Before 1535, it had been relatively easy to ensure that land would not descend in this manner—and with it wardship—by leaving an estate to a trust (a “use”), which was directed to operate for the benefit of the heir. In this way, the heir would continue to enjoy the profits of the land, but by not taking direct possession, they would never be liable to wardship. The use was also widely adopted because it enabled landholders to devise their land freely (something that the common law theoretically precluded), and by the beginning of the sixteenth century, virtually every estate in the country was at least partly held in a use (Hicks 2012, p. 18).

Initially, uses had only been litigable in the equity courts (specifically the Court of Chancery), but they became an integral and generally accepted part of land law, such that they came to be recognized and protected at common law as well (Baker 2003, pp. 659–60). Their ubiquity, though, did not dissuade Henry VIII from seeking to terminate, or at



least curtail uses in order to improve his income from the feudal revenues. Initially, he approached Parliament with a proposal to agree to legislative sanction for the legality of uses covering up to two-thirds of an estate by value, but that at least one-third of the estate had to descend directly to the heir in the traditional manner. This, of course, would expose the heir to feudal incidents and especially wardship. The Commons, believing that the common law secured uses anyway, declined. Rebuffed, Henry warned them darkly: "I have sent to you a bill concerning wards and primer seisin, in which things I am greatly wronged ... I assure you, if you will not take some reasonable end now when it is offered, I will search out the extremity of the law" (quoted in Ellis 1809, pp. 784–85).

Henry was as good as his word. The next prominent landowner to die with an underage heir was the eighth Baron Dacre, Thomas Fiennes, and most of the land was held in uses to the benefit of his heir, the ninth Baron Dacre. As was usual, an *Inquisitions Post Mortem* (*IPM*) was held after the death of Fiennes, the *IPM* being an inquiry into what lands the deceased had held, by whom they were held, the day they died, and who and how old the heir(s) were. It can be inferred from these questions that the *IPM* was designedly intended to enable the king to claim whatever was due to him as feudal lord. *IPMs* were usually held in front of a jury of 12 local landholders, and attended by at least two of the Crown's officers: the escheator (a county officer responsible for protecting the Crown's rights as feudal lord) and the feodary (the Court of Ward's county officer). To judge from a personal memo prepared by Henry's chief minister, Thomas Cromwell, the Crown had determined prior to Fiennes' *IPM* that the jury would find the will to be collusive and void (Ives 1967, p. 690). The executors of Dacre's will subsequently challenged the *IPM*'s findings, and the case came before the Court of Exchequer Chamber, the highest possible common law authority. The decisive question for the Court was whether the beneficiary of a use could make a will of those lands and so arrange for their disposal for the succeeding generation. As pointed out by counsel for the Dacre family, such had been "the common opinion of the whole realm ... for many years." Consequently, "it would be a great mischief to change the law now, for so many inheritances in the realm today depend on uses that there would be great confusion if this were done" (Baker 2003, p. 670). This, though, was precisely the end that Henry and Cromwell had in sight. The surviving record of the ensuing judicial conference indicates that the judges were initially split five to five (one of whom was Cromwell acting in his capacity as Master of the Rolls). The deadlock was broken by Lord Chancellor Audley (whose own judicial preferment had been helped by his early opposition to uses)

“mistakenly” counting Justice Port, who “spoke so low,” with the King. A majority of six to four was reported to Henry VIII, who then attended in person to offer his “good thanks” to the remaining judges and ensure that their decision was unanimous.

J. H. Baker (1977, p. 140) suggests that “there can be no doubting the conclusion that ... orthodox legal opinion was altered in direct response to pressure” and the shock of *Dacre* was immense and unexpected. Only a few months earlier, the senior common law courts had been hearing cases relating to wills devising uses without any objection to their validity. Now, though, because *Dacre* constituted a declaration of the existing law, it was inherently retroactive. Every will made in the past devising a use was inoperative, and it would be assumed that the land had descended via the strictures of common law. Any landowner with title to land that was traced through such a will (i.e., all of them) now faced eviction of that land by the heir at law of the testator: *Dacre* constituted perhaps “the most disconcerting piece of judicial legislation in English legal history” (Baker 2003, p. 671). Wielding the threat of chaos and perennial litigation, Henry VIII now returned to Parliament to secure the legislation he had originally sought. After an initial abortive attempt represented by the Statute of Uses (1536; lawyers were sent to the Tower of London for finding loopholes; Baker 1977, p. 351), the Statute of Wills was passed in 1540, embodying Henry’s original proposals. The statute authorized landowners to devise lands “at his free will and pleasure.” For lands held in socage, this power extended to the entirety of the estate, although for those who held any portion by knight-service, then only two-thirds of the estate could be devised by will. This guaranteed that a third of the estate descended to the heir, and with it the feudal incidents. The Crown’s interests were further protected by the provision that the feudal incidents would be assessed not on the lands held at death, but on all lands of which they had at any point been in possession. Thus, even if the ancestor sold all their lands held by knight-service to leave only socage lands, the heir would still enter wardship if they were underage.

In summary, the Crown had forcibly effected large-scale and unsettling changes to the land law in order to improve its feudal revenues. Once established in 1540, the Court of Wards also enabled a more quotidian subversion of legal practice in order to achieve the same end. The correspondence for another *IPM*, held after the death of a Henry Kitchin in Westmoreland in 1638, survives in the Bodleian Library in Oxford.<sup>7</sup> In the first set of instructions, the Court issued to the county’s feodary and escheator they were advised that if they expected the jury would find against the

<sup>7</sup> Bodleian Library, Oxford, Rawlinson B 437, ff.45-50.

King (that the estate was entirely held in socage), then they should make sure to adjourn them over to another day. This ruse failed, and the jury insisted on finding against the King when recalled. Consequently, two of the more obstinate members of the jury were ordered to London to explain their decision to the Court directly—a return trip that would have taken at least 30 days, traveling 10 hours a day (derived from Alvarez-Palau, et al. 2017, p. 18). Here they were reprimanded, and the Court of Wards decreed that the land of Henry Kitchin was held of the King, and the jury was ordered to re-sit and return a verdict consistent with that directed by the Court of Wards. Unfortunately, matters degenerated into farce at the next hearing. One of the Crown’s witnesses, who was supposed to support the king’s tenure, changed his mind and refused to give evidence. The jury again found that the land was not held of the Crown by knight-service. The Court again ordered two jurors to attend them in London. The escheator and feodary were also told “that the said jurors at their next meeting shall find the said lands late of the said Henry Kitchin being in Strickland and now in question to be holden of his majesty as of the barony of Kendall by knight-service, without hearing of any evidence at all to the contrary”<sup>8</sup> and this strong-arming did the trick at the third time of asking.<sup>9</sup> To judge from contemporary comment, this was by no means unusual: one anonymous polemicist prior to the outbreak of the Civil War complained of “the worke-manship of Feoders and Escheators in the intraling of the subject ... and in drawing in of all the lands (as in short time it may be expected) held in socage, within the Tenure of military service” (Anon 1641, p. 16). In his work on early modern trust law, Neil Jones has also commented upon “the manipulation of evidence in the revenue’s favour which is so apparent in the seventeenth-century Court of Wards” (2004, p. 241).

As a consequence of these legal and tenurial changes, the number of wards entering the Court’s custody increased precipitously. This can be established using the Court’s own “Kallender of Wards,” which records

<sup>8</sup> Ibid, f.40.

<sup>9</sup> Of course, the question remains whether Henry Kitchin did actually hold land of the Crown by knight-service. The evidence, which is merely suggestive, is that he did not. Kitchin’s *IPM* is transcribed in Farrer and Curwen (1923, volume 1, pp. 108–09). Aside from lands held in the borough of Kirby Kendall (and so held by burgage tenure), Kitchin also held two parcels of land in the rural parish of Strickland Ketel: one comprising five acres at a place called “Sparrowmyer,” and another nearby comprising four acres. The *IPM* recorded that these two enclosures were “held of the King as of his said manor of Kendall, called Marques Fee ... in common socage,” and it seems that these were the disputed lands. Although neither parcel of land is specifically recorded in prior *IPMs*, there are two earlier references to Sparrowmyer, one from 1611 (Ibid, p. 271) and one from 1629 (p. 293). In both instances, the land was also held of the Crown of the manor of “Kendall called le Marques Fee in free socage.” Of course, more than one tenure may have existed at Sparrowmyer, but this only makes it more likely that the Crown was indeed trying to coerce the jury into finding a verdict against the evidence.

the name of every ward that entered the Crown's jurisdiction by regnal year from 5 Hen VIII (1513–14) to 19 Chas I (1643–44; although the Court of Wards had been established in 1540, there had been a pre-existing administration for wardship and the records for the Calendar had been started then).<sup>10</sup> Usefully, the calendar indicates where there were multiple wardships resulting from the same descent, listing the wards together (occurring when there was no male heir and there were multiple co-inheriting female heirs who were underage). As will become clear, the time series is for descents resulting in wardship rather than the wards themselves because the former can be compared with contemporary estimates of the number of landholding families, in turn enabling an estimate of the proportion of descents affected by wardship (and in any event, as the large majority of estates were inherited by males, the difference between the two is minor).

There are two potential complications with using this Calendar. Firstly, the Court of Wards also took custody of landholders who were mentally disabled. This was a distinct legal category from wardships arising due to the minority of the heir, being derived not from the tenure by which the land was held but rather virtue of the Crown's status as *pater patriae* and an associated duty to protect the property and person of those unable to care for themselves (Neugebauer 1976, p. 23). Those who held the entirety of their property in socage were still liable to this jurisdiction. Luckily, the calendar identifies these cases (of which there were around five to seven a year), noting if the ward was either a "lunatic" (where recovery was thought to be possible) or an "idiot" (where the disability was thought to be permanent). Where there is no note, it can be inferred that the wardship was due to the minority of the heir, and it is only descents to these wards that are counted.

Secondly, while the Calendar generally matches other indices produced by the Court,<sup>11</sup> there is a discrepancy during the early part of the reign of Henry VIII. For the period 1513–26, a "calendar of bargains" (sales of wards) enumerates 219 descents, whereas the "calendar of wards" only counts 98. It is impossible to explain why this discrepancy appears, although the annual count in the calendar of bargains has been used in the time series

<sup>10</sup> The Court's surviving records at the National Archives are enormous: thousands of volumes and bundles of documents survive. Many of these bundles are unsorted, and with the vast range of other materials relating to wardship at other archives, it would be the work of a lifetime to read through everything. The easiest point of entry remains Bell (1953). Bell also prepared an unpublished "Guide to, and Analytical List of, Court of Wards Miscellanea," available at the National Archives.

<sup>11</sup> For instance, during the reign of Edward VI, the Calendar of Wards records 328 estates entering wardship, whereas a "Calendar of Surveys" records 332 and an "Index of Surveys" 319. IND1/10217/1, ff.52-60. For Mary, the Calendar of Wards records 233 estates, an "Index to Surveys" 226. IND1/10217/1, ff.73-5.

for these first 14 years.<sup>12</sup> This is because it is consistent with evidence from the latter part of Henry VII's reign (specifically 1499 to 1503), which indicates that there were around 20 descents resulting in wardship of the heritor(s) each year and there is not a compelling reason to suppose why the annual number of such descents would have more than halved over the space of ten years as would be implied by the Calendar of Wards.<sup>13</sup>

Figure 1 points to a steady rise in descents resulting in wardship. Conceivably, the increase seen over the period might be attributable to demographic changes—although there was a pronounced increase in the age at death of elites between the sixteenth and seventeenth centuries (Cummins 2017, pp. 410–11).<sup>14</sup> Moreover, the age at which the elite were having their first surviving child was probably declining at this point. Certainly, overall infant mortality rates in England were gradually declining at this point (Smith and Oeppen 2007, p. 56). In brief, the likelihood of a member of the elite dying with a surviving heir who had reached their majority was increasing. That despite this, the proportion of descents resulting in wardship increased so precipitously is testament to the efficacy of the legal changes effected by the Crown.

The corollary of this is that an ever-increasing proportion of the country's landed classes were entering wardship upon the death of an ancestor. Assuming a standard 30-year generation, we can estimate this proportion as follows:

$$P = E/N, \tag{1}$$

where E is the number of descents entailing wardship over a 30-year period, and N the total number of families in the peerage and the gentry.<sup>15</sup> So, if we take the generation that came of age between 1513–14

<sup>12</sup> After Hen VIII 19 (1527–28), although there is still a considerable amount of annual variation between the two calendars, there is a rough match in numbers overall. For the remainder of Henry VIII's reign, there were 679 descents calendared in bargains, compared with 652 in wards. Speculatively, the annual variation could be attributable to a ward entering the purview of the Court in one regnal year but the transaction occurring in the following regnal year.

<sup>13</sup> E101/415/3. "Account book of John Heron, treasurer of the chamber. 15 to 18 Hen VII" ff. 263-6. Another complication arises because the wardships are recorded in regnal years, requiring some re-jigging to produce fairly consistent 12-month periods. In particular, 1546–47 (38 Henry VIII) only includes 9 months' worth of wards; 1552–53 and 1553–54, 15 months of wards each (by dividing Edward VI 7 between them); 1557–58 and 1558–59, 14 months of wards each (by dividing Mary 6 between them); and 1603–04, only 5 months (hence explaining the dip seen for that year).

<sup>14</sup> Cummins refers to Europe on this point, but most of his data for this period is from England and Wales.

<sup>15</sup> The discussion is limited to the peerage and gentry, and it might be suggested that some allowance ought to be made for the scions of yeomen and small-holders entering wardship as well. However, this is unlikely to be a complicating factor. When *IPMs* were returned to London, if the clerks responsible for entering the *IPM* did not think the estate was sufficient to yield their fees, it was simply thrown away. Senate House, London, MS 195, f.26.

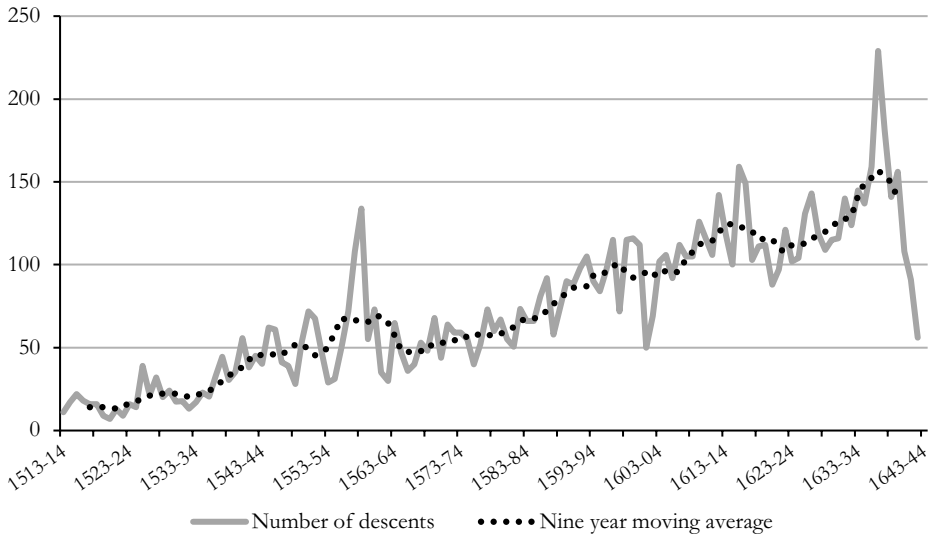


FIGURE 1

## NUMBER OF DESCENTS RESULTING IN WARDSHIP(S), 1513–14 TO 1643–44

*Note:* In theory, not every wardship from this period will be included in this graph. If they wished, the monarch could choose to bypass the apparatus of the Court and dispose of wardships personally—although, if it is possible to judge from the absence of evidence, this cannot have happened frequently (Hurstfield 1958, p. 90).

*Sources:* The National Archives (TNA), London, IND 1/10217/1; WARD 9/197. Replication data available at Bottomley (2022).

to 1542–43, 663 descents resulted in wardship of the heritor(s). For the same period, A. R. Buck (1990, p. 204) estimates that there were around 6,060 families in the peerage and gentry. Assuming that there was an average of one descent in each family, this means that prior to *Dacre* and the Statute of Wills, only one in nine descents would have been affected by wardship ( $663/6060 = 0.109$ ). Later, in the Court's final 30 years of peacetime operation (1611–12 to 1640–41), there were 4,076 such descents. At this point, there were up to 16,500 families in the landed classes; this is the figure produced by Thomas Wilson in 1600 (using records prepared for the calling of the county militia) and Gregory King in 1688.<sup>16</sup> This suggests that by this point, a quarter of all successions among landholders resulted in wardship ( $4076/16500 = 0.247$ ).

This roughly accords with J. T. Cliffe's detailed work on the Yorkshire gentry (1969, pp. 129–35). Between 1558 and 1642, at least 27 percent of gentry families in Yorkshire (260 of a total of 963) experienced

<sup>16</sup> Or rather 16,600 in King's original tables. Peter Lindert and Jeffrey Williamson (1982, p. 388) suggest that this figure ought to be revised upward to 19,600, which would be easier to reconcile with Wilson's figure (1936, p. 23).

wardship, some of them multiple times. When, in 1612, Christopher Wandesford inherited his estate just before his 20th birthday, he was the 5th successive head of the family to have inherited as a minor. Wandesford purchased his own wardship for £900 (plus an annual rental payment and whatever additional fees and bribes the Court's officers demanded of him). For comparison, the estate yielded a "clear" annual income of £300, and as a consequence of these successive wardships, the estate had been reduced to a quarter of the size it had originally been when Christopher's great-great-grandfather had first entered wardship in 1518.<sup>17</sup> Thrift and a good marriage saved the family fortune, but others were not so lucky. Cliffe (p. 134) established that at least 40 of these 260 families entered significant financial difficulties (ranging from serious indebtedness to the complete loss of the estate) as a direct cause of wardship.

#### WARDSHIP: MALFEASANCE AND MALADMINISTRATION

Wardship was an increasingly common occurrence for landholding families, and this was at least partly achieved through the distortion of the institutions and content of the land law, especially with Henry VIII's intervention on uses. The picture emerging is not one consistent with conventional notions of secure property rights, an issue that will be revisited here. This section also shows that crown revenues from the Court of Wards represented only a small proportion of what might potentially have been raised. Instead, the major financial beneficiaries of wardship were the Court's own officers and the third parties to whom wardships were sold. The latter in particular benefited from "wasting" wards' estates, or asset-stripping in modern parlance.

Figure 2 plots the time series for the Court's revenues between 1547 and 1641 (the period when source material survives). Until 1612, the Court's net annual revenue was relatively stable at around £10 to £15,000 p.a. However, as this was a period of inflation, this represents a significant decline in real terms. 10s. 10d. in 1550 (when net income from the Court was £13,316) was equivalent to £1 in 1610 (when income was £11,565).<sup>18</sup> Moreover, this was a decline that had occurred even as the number of estates entering the Court's jurisdiction had more than doubled (45 p.a. during the 1540s, compared with 97 p.a. during the 1600s). In real terms, revenue per estate entering wardship was about a quarter in 1610 of what

<sup>17</sup> The Wandesford family history is available at Page (1914, p. 372).

<sup>18</sup> Derived from <https://www.measuringworth.com/> accessed 14 January 2019.

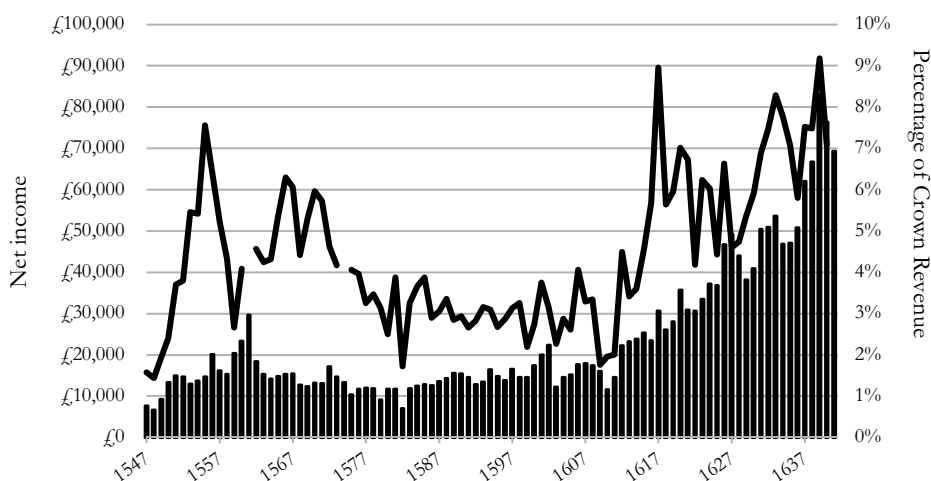


FIGURE 2  
CROWN REVENUE FROM THE COURT OF WARDS AND LIVERIES,  
1547–1641

*Notes:* The Court's net income for each year is represented by the patterned bars. This net income as a percentage of overall Crown revenues (with missing values for 1561 and 1574) is represented by the solid line.

*Sources:* Net revenue for the Court of Wards from The National Archives, London, WARD 9/365 to 431. Crown revenues from O'Brien and Hunt, <http://www.esfdb.org/table.aspx?resourceid=12030>, accessed 8 May 2019. See also O'Brien and Hunt (1999). Replication data available at Bottomley (2022).

it had been in 1550. Beginning in 1612, the Court's revenues increased precipitously, and they contributed a growing proportion of Crown revenues. The reasons for this increase will be discussed toward the end of this section, but briefly, the Court started to charge higher prices when selling wardships.

The period of stagnation in Court revenues coincides with the Mastership of two men: William Cecil, 1st Baron Burghley, Master of the Court from 1561 to 1598, and then his son Robert Cecil, 1st Earl of Salisbury, Master from 1599 to 1612. Both men also acted as *de facto* chief ministers to the Crown, and it appears that they favored wardship more as a means of securing loyalty to their government through the distribution of patronage, not to mention personal enrichment, than as a means of raising revenue for the Crown (Hurstfield 1958). The Court's officers were also siphoning away a lot of the Crown's potential income, a point neatly revealed in a note surviving in the State Papers and reproduced here in Figure 3 with permission of the National Archives. Written in the handwriting of Lord Burghley's chief private secretary, it covers 11 payments over a two-and-a-half-year period when Burghley was



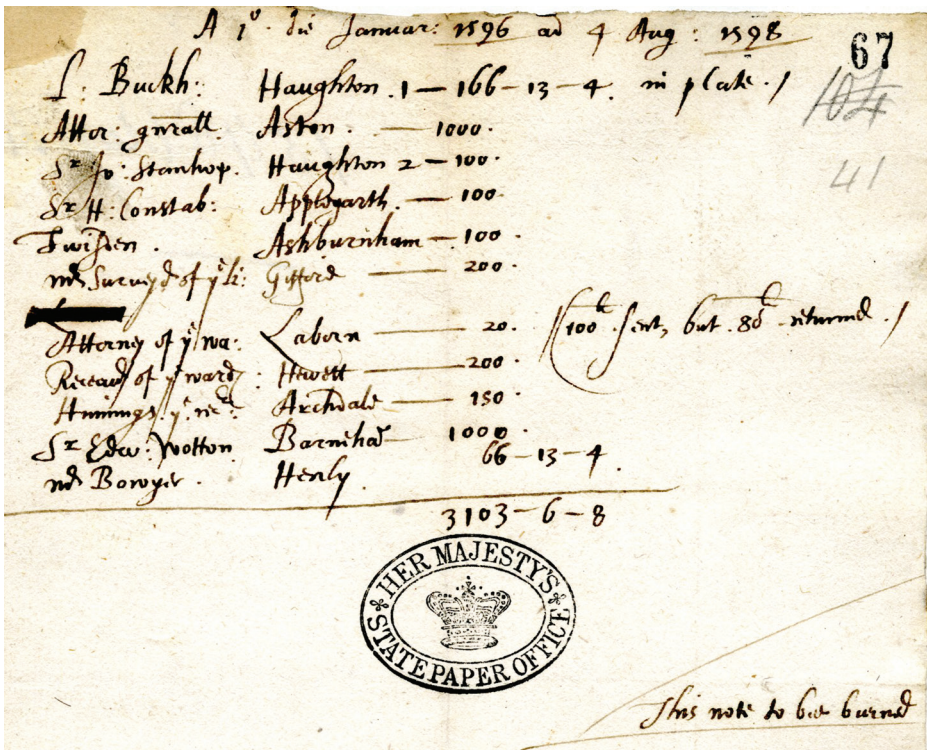


FIGURE 3  
BRIBES PAID TO LORD BURGHELEY TO SECURE WARDSHIP, 1596-98

Source: The National Archives, London, SP 12/268, f. 67.

serving as Master of the Court. In the first column, we have those who were purchasing wardships from the Crown (constituting the right to collect income from the lands that had descended to the ward, the wards' custody, and their marriage rights), and among them are some of the great and the good of Elizabethan government. The Attorney-General (Sir Edward Coke), for example, is the second name to appear. There is also Lord Buckhurst (Chancellor of Oxford University; first named); Sir John Stanhope (Master of the King's Post; third named), and Sir Edward Wootton (diplomat; tenth named). In the second column, we have the wards themselves, and in the third column, we have what was paid for the ward. The problem is that these were not the official payments. We can see here that the payments add up to over £3,100. But the sale prices recorded in the Court's own records amount to only £906 (Hurstfield 1949, p. 108). It is reasonable to conjecture that these were monies paid to Burghley. Named in the document are three officials of the Court of Wards (the Surveyor of Liveries, the Attorney of the Court, and the

Receiver of the Court). It is doubtful they would have been paying these amounts over to anyone but the Master of the Court. Also, the period covered by the note ends on 4th August 1598, the date of Burghley's death, and at the bottom we have a neglected aide-de-memoire: "this note to be burned."

It ought to be emphasized that these represent enormous sums at a time when nominal GDP per capita was £5. Burghley's total personal income from the Court is difficult to estimate, but it may have been equal to the Crown's own revenues. In his "State of England," written in 1601, Thomas Wilson (1936, p. 28) thought that Burghley "gayned twice as much to him and his besides that which the Queen had" and that his son, the Earl of Salisbury, "cometh not behind his father but rather makes much more to the Queen and himself." Surprisingly, Salisbury does not seem to have objected to this being advertised. He was employing him as a "foreign intelligencer" and later in 1603, Wilson was employed as his private secretary (Kelsey 2004). In suggesting that Burghley and Salisbury made twice as much as Elizabeth did (*r.* 1558–1603), Wilson may have been exaggerating, but not egregiously. Salisbury, like his father, certainly took bribes that were multiples of the official price paid to the Crown. To give but one example, John Gobert paid £370 to the Court for the wardship of John Jennings but £1,400 to Salisbury (Stone 1961, p. 100).

It was not only the Master of the Court who was responsible for the peculation of funds that would otherwise have gone to the Crown. For instance, successive Receiver-Generals, the Court's chief financial officer, accumulated large, unpayable debts. One might mention the case of John Beaumont, the Court's Receiver-General from 1545–50. During his tenure, he compiled arrears due to the Crown worth around £9,000. This was openly acknowledged and did not prevent Beaumont from being subsequently appointed as Master of the Rolls—one of the perquisites of working for the Crown in a financial capacity was the right to use monies paid in for private use until the funds were officially called upon. However, Beaumont had also been receiving monies from wards' guardians, telling them that the debt with the Court had been canceled only to keep the money for himself and omitting to record the cancellation of the debt in the Court's records. This was not a sophisticated ruse, but Beaumont was still able to embezzle £11,823, and he was only uncovered once his successor tried to call in the "outstanding" debts. It is uncertain how much money the Crown was able to retrieve, but Beaumont was ruined. He forfeited his lands, was outlawed for his outstanding debts, and was forced to surrender at Fleet Prison (Hawkyard 1982). Beaumont's

example, though, did not dissuade his successors from also “dipping into the till.” For example, the Receiver-General from 1584–94, George Goring, admitted to owing the Crown £4,000—although after his death in 1594 the debt was tallied at £19,142 9s. 7d.<sup>19</sup> Goring’s replacement, Sir William Fleetwood (Receiver-General, 1595–1609), also admitted to debts totaling £13,780 by 1608, although he had surreptitiously withdrawn another £14,164 from the Court.<sup>20</sup> Some of this money (£2,083) was subsequently traced as having been spent “in charges of keeping his house, payments of rent and expenses disbursed.” Another £645 had been “lent by him to diverse persons.” The remainder, though, could only be recorded as being “upon his tickets [of] money delivered as well to himself as to others.”

The bribes paid to Burghley were almost surely made in the expectation that they could be recouped from the ward and their estate. One easy way to do so was to sell the ward on again, although as these secondary sales did not enter the purview of the Court they can be difficult to trace. The record of one such sale in 1634 survives for Robert Eyre from Derbyshire. His wardship had been obtained by a London lawyer called John Dormer for £66 13s. 4d. (100 marks), excluding the official fees payable (around £20 to £25) and any bribes he might have had to pay.<sup>21</sup> However, even before this sale was finalized, Dormer had already sold Eyre back to his family for £400, as well as all the expenses he had incurred obtaining the wardship, including the 100 mark purchase price.<sup>22</sup> Another example, also from Derbyshire, indicates these profits could be even greater. In 1595, Dorothy Dethicke and her estate were sold to Charles Bussy for £53 6s. 8d., the same as the annual value of her lands reported in the *IPM*.<sup>23</sup> Dorothy was then sold to John Harpur for £866 13s. 4d. As was frequently the case, the lands belonging to Dorothy had been significantly undervalued in the *IPM*, and Harpur’s own accounts for the wardship indicate that the land yielded a clear £220 p.a.<sup>24</sup> With additional expenses

<sup>19</sup> Quotation and figure of £4,000 from Hasler (1982). Final tally for debts from East Sussex, DAN/1126, f.161.

<sup>20</sup> For acknowledged arrears see “Receiver Generals Accounts 4-7 Jas I”, Ward 9/405, TNA. For the cash withdrawals, see “Memorandum of money taken out of the revenue of the Court of Wards and Liveries, and employed by Sir Wm. Fleetwood,” State Papers Domestic, James I, SP14/47, f.97, TNA.

<sup>21</sup> For the official purchase price, see TNA, WARD 9/163. On the official fees payable, see TNA, E215/1616.

<sup>22</sup> Derbyshire Record Office (DRO), Matlock. D7676/BagC/779/39.

<sup>23</sup> TNA, WARD 9/348.

<sup>24</sup> Receipts were around £250 p.a. (£273 2s 6d for 1595; 1596, £233 2s 6d; 1597, £258 15s 2d; 1598, £250 11s 1d.) and expenses were around £30 p.a. (£35 16s. 10d. for 1597; £26 16s. 5d., 1598) DRO. D2375/F/A/2/7.

(such as an annual £10 13s. 4d. rent payable to the Queen), Harpur only lost £152 9s. 2d. over the course of Dorothy's wardship.<sup>25</sup> He probably suffered this loss gladly, as by buying Dorothy, he was able to marry her to his youngest son, thereby securing a valuable estate for him without reducing his eldest son's patrimony.

Frequently, the guardian had no interest in the long-term care of the estate—indeed, there was every incentive to asset-strip it. This might involve the felling of woods to be sold as timber, the over-cropping of lands so that they would be exhausted when passed on to the ward when they came of age, or the simple negligence of maintenance and investment; to judge from contemporary comment, it appears that most guardians acted as one would expect given the choices and incentives they faced.<sup>26</sup> In the 1560s, for example, Sir Thomas Smith warned that “So he, who had a father, which kept a good house, and had all things in order to maintaine it, shall come to his owne, after he is out of wardshippe, woods decayed, houses fallen downe, stocke wasted and gone, land let fourth and plowed to the bare” (Smith 1982, p. 129). More disinterested observers made similar comments. In 1551, the Venetian ambassador Daniel Barbaro reported home “that the wards, on coming of age, find their houses in decay, their woods felled, and their estates despoiled, precisely as if they had been ravaged by an enemy” (Brown 1873, p. 356). Some 80 years later, his successor Vincenzo Gussoni reported in an almost identical fashion that “the ancient institution which gives the king the absolute guardianship of wards ... brings desolation and ruin instead of support to those unfortunate enough to be under age at the death of their father” (Hinds 1921, p. 370).

Direct evidence for waste perpetrated by wards' guardians is more difficult to adduce, however. For instance, while one might imagine that wards and their families frequently prosecuted guardians for perpetrating waste, this was actually very unusual. This is likely for three reasons. First, the punishment for waste does not appear to be proportionate to the damage that could result. For example, in one case in 1600, a ward successfully prosecuted his step-father for chopping down wood worth £2,500. The stepfather (Sir Stephen Thorncroft, a wealthy landowner) was ordered to pay his stepson damages of £13 (!), and a fine to the Court

<sup>25</sup> DRO. D2375/F/A/2/7.

<sup>26</sup> In theory, the feodary had the right to inspect ward's lands annually and report any abuse to the Court. However, there is not a single instance of a resultant injunction from such a report (at least, for the period 1633–1639, TNA, WARD 9/301), or indeed of any such report being returned to the Court. More likely, considering the feodaries' reputation for gross corruption, a guardian could bribe the problem away.

of Wards of £3 (Knafla 2016, p. xxx). Secondly, legal action in the Court of Wards was alleged to be costly, slow, and arbitrary (Bell 1953, p. 133). One example of a bill surviving in the archives of a lawyer who practiced extensively in the Court amounted to £905, excluding interest charges accrued for non-payment: the damages paid by Sir Stephen would not have covered his step-son's legal costs, let alone the actual damages he had inflicted.<sup>27</sup> Thirdly, custody of the lands, when they had not been retained by the Crown, usually passed to the rich and powerful. In addition to the financial costs, it is doubtful whether many young men or women, would also want to incur the political cost of prosecuting them in Court (Hurstfield 1958, p. 121).

Evidence of a sort emerges from the Court's Entry book of injunctions. These injunctions performed a wide range of functions but were in effect legally binding orders of the Court. They might be orders to tenants to pay rent due to a ward's guardian, or orders for custody of a ward to be surrendered. An example of the latter is dated 13th February 1636 addressed to "Elizabeth Daggett, mother of the above named ward ... will[ing] and command[ing] you ... to deliver the body of Michael Daggett our ward unto Michael Shipping."<sup>28</sup> They might also be orders to prevent waste on a ward's estate—although they almost invariably relate to waste perpetrated by third parties, seldom by the ward's guardians. If we focus on the first six months of 1636, the Court issued 97 injunctions directly related to its jurisdiction in wards (there is some ambiguity as by this stage the Court had an increasingly wide-ranging jurisdiction relating to land law). Fourteen of these related to the prevention of waste. Most are related to the "cutting down and carrying away of any woods," although they could be more varied than this. One injunction issued on 29 January 1636, ordered Lady Elizabeth Gorges to pull down a brick wall she had erected over a highway "which lyeth over before the gate of the Mansion House of George Duke of Buck, our ward in Chessey called Chessey House." None of the 14 appear to have been issued against a ward's guardian.

Absent so far in assessing the costs and burdens wardship imposed, is a reckoning of the human and emotional toll it inflicted. Certainly, the anguish of having children forcibly removed from grieving families is often referenced by contemporaries and it was deployed for dramatic purposes. Shakespeare's *All's Well That Ends Well* (written in 1604–05)

<sup>27</sup> Hampshire Record Office, Winchester, 44M69/L61/110.

<sup>28</sup> TNA, WARD 9/301, 13 February 1636 [unpaginated manuscript].

opens with Bertram, the new Count of Rousillon, entering the French King's wardship:

Countess of Rousillon:	In delivering my son from me, I bury a second husband
Bertram:	And in going, madam, weep o'er my father's death anew; but I must attend his majesty's command, to whom I am now in ward, evermore in subjection

and wardship also appears in Ben Jonson's *The Staple of News* (written in 1625) and Thomas Middleton's *A Yorkshire Tragedy* (1608) and *Women Beware Women* (c.1621)). The education of the ward was also neglected; from the perspective of the guardian, it was a needless expense unless they planned to marry them into their own family, although even this thought Sir Thomas Smith was insufficient motivation.<sup>29</sup> Sir Nicholas Bacon, Attorney of the Court from 1547 to 1559, thought that as the number of wards increased, so also "the worse and more dangerous it is" that their education was being neglected.<sup>30</sup> He proposed establishing a school specifically for wards, but considering that this would have meant guardians losing oversight of their assets, this was always a non-starter.

It is in this respect that the greatest amelioration in the administration of wardship was achieved: under the early Stuarts, increasing proportions of wards were sold back to those most inclined to take care of them, their immediate families and/or kinsmen. Table 1, derived mainly from Bell (1953, p. 116), shows this proportion for seven sub-periods ranging from the beginning of Edward VI's reign to the eve of the Civil War.

This was a conscious policy choice on the part of the Crown, and the impetus for change was two-fold. First, James I and his ministers appear to have calculated that this was a preferable means of securing loyalty to the regime than using wardships as a source of patronage. In September 1603, at the very beginning of his reign, deciding "to afford his well deserving subjects some extraordinary favour," James alighted on a scheme to allow tenants-in-chief to pay the Crown for the right to dispose of the wardship of their heirs during their own lifetimes, "conceiving well

<sup>29</sup> Noting that guardians "have no natural care of the infant, but of their owne gaine, and especially the buyer will not suffer his warde to take any great paines, either in studie, or any other hardnesse, least he should be sicke and die, before he hath married his daughter, sister or cousin, for whose sake he bought him" (Smith 1982, p. 129).

<sup>30</sup> BL, Add MS 32379, f.27.

TABLE 1  
WARDSHIPS SOLD TO FAMILIES AND KIN, 1547–1641

Period	Wardships Included	Number Sold to Families and Kin	Original Source
1547–53	232 <sup>1</sup>	46 (20%)	CPR Edward VI
1553–58	258 <sup>1</sup>	83 (32%)	CPR Mary
1558–63	365 <sup>1</sup>	88 (24%)	CPR Elizabeth I
1587–90	225	73 (32%)	Wards 9/150B
1611–14	368	168 (46%)	Wards 9/150B
1628–30	222	128 (58%)	Wards 9/163
1640–41 <sup>2</sup>	106	74 (70%)	SP 16/470

<sup>1</sup> Most, but not all, grants of wardship were confirmed by letters patent—none of Lord Burghley’s wards were recorded in the patent rolls, for example, Woolcott (2003, p. 43). From 1547–63, the wards index (Ward 9/197) records 970 grants of wardship (excluding lunatics and idiots), whereas the patent roll records 855.

<sup>2</sup> October 1640 to May 1641.

Sources: Bell (1953, p. 116); TNA, SP 16/470.

in his own great judgement what a comfort it would be.”<sup>31</sup> The scheme was discontinued, but subsequent instructions to his Master of the Court instructed them to prefer wards’ families over other suitors (Anon 1610).

There was, however, a second intention behind this change. The Crown was determined to retain more of the proceeds from sales of wardships for itself and it can be presumed that families would be more willing to pay the higher prices. The 1603 document continues that those tenants “which [were] only partial to their own desires” by offering inadequate payments for the wardship of their heirs were to be refused. This probably explains why the scheme proved abortive, tenants-in-chief were unwilling to offer payments the Crown deemed sufficient. Instead, the Court charged increasing prices for the purchase of wards when they did arise, partially explaining the increase in revenues shown in Figure 2. For instance, in the county of Somerset, the average sales price of wards increased from 3.2 times the annual income from their lands (as recorded in the *IPM*) from 1603–11, to 11.7 over 1635–41 (Hawkins 1965, p. xxii).

#### WARDSHIP AND THE LAND MARKET

We have seen how the familial costs of wardship, variable and capricious as they were, could be inordinately heavy. In a best-case scenario, the family would be able to purchase the wardship back at a non-punitive

<sup>31</sup> Surrey History Centre, Woking, 6729/10/113. Letter from Sir Robert Cecil to Sir George More, Sir Thomas Vincent, Sir Oliver St John, John Denham, and the escheator and feodaries of Surrey.

cost. In a worse-case scenario, the ward would be sold to an unscrupulous third party who neglected the ward's well-being and wasted the estate. For an unlucky few, the result was ruin (Cliffe 1969). As a consequence, it is unsurprising to learn that land purchasers preferred to hold land by socage tenure that was free of these dangers. The Perceval family, much engaged in land speculation, frequently referenced this in their correspondence. In 1636, for instance, Philip Perceval wrote to his cousin, Edmond Perceval, that he had "contracted a bargain with Mr. Jesop for the manor of Burton ... the prices are high, twenty years purchase [but] ... he assures me that the tenure is in socage." Later in 1639, James Perceval warned Philip: "I do not think it would be safe to deal for Mr Winter's land in Weston, as it is holden of the honor of Salisbury, and hath done his fealty, which of necessity must produce wardship, which I perceive you like not" (Lomas 1905, pp. 85, 112).

The Crown also found that where it wanted to induce new settlements, such as in Ireland (Treadwell 1960, pp. 8–9) and North America (McPherson 1998, p. 48), the land had to be granted in socage. Such also was the case with large-scale land development, as with marsh drainage in East Anglia. The largest project undertaken prior to the 1660s was the draining of the Bedford Level, comprising 95,000 acres. When work had initially been mooted, it was agreed in the "Lynn Law" of 1631 that the land would be held in "free and common socage, and not otherwise" (Wells 2014, p. 107). Charles I assented to this law (receiving 12,000 acres as his share) and four subsequent decrees, enabling much of the work to be carried out. In 1636, though, Charles I appears to have had a change of heart, referring a new decree from the local commission of sewers (the body responsible for drainage and flood protection) to the Attorney-General and the Attorney-General of the Court of Wards. They noted in their report that the proposed arrangement would "be prejudicial to your Majesty in point of tenure," and Charles refused to assent to the new decree.<sup>32</sup> The dispute rumbled on (detailed in Ash 2017, pp. 179–216), but on the purported grounds that the drainage had not been properly carried out (contrary to prior decisions on the question), the adventurers were stripped of their titles and the work was only completed during the Commonwealth. This illustrates how the complexities of tenure, allied with an uncertain and arbitrary regulatory framework, stymied land improvements. It has been demonstrated that constitutional changes in 1660 and 1688, establishing Parliament as the pre-eminent regulatory arbiter, led to a dramatic increase in land improvements, in

<sup>32</sup> SP16/323, ff.129-30.



turn contributing to economic development (Bogart and Richardson 2011).

More detailed evidence concerning a general aversion to holding land in military tenures emerges from the sales of Crown lands. As already noted, at the end of the 1530s, the Crown dissolved the monasteries and seized their assets, comprising up to 30 percent of the nation's landed wealth (Buck 1990, p. 210). Initially, the land was re-sold with knight-service tenure attached, although the Crown struggled to attract good prices for smaller, less valuable, parcels of land: for those who already held large estates, they were rarely worth the time and effort to acquire, while small holders were more likely to hold the entirety of their estate by socage. Unless the land could be acquired cheaply, there was little incentive for them to purchase lands held by knight-service and expose their heirs to the risk of wardship. Consequently, from 1548, the Crown started to sell parcels of land that yielded £4 or less per annum with socage tenure, and this limit was later increased to £10 in 1558 and £20 in 1599 (Outhwaite 1967, p. 238). In theory, all that the Crown was conceding was that, underneath these limits, the land tenure was negotiable with the prospective vendee. However, a detailed analysis of Crown land sales during the reign of Mary I (*r.*1553–58) indicates that once these limits were agreed, the Crown's agents were rarely able to sell land under these values by any other tenure but socage. Of 315 sales of land yielding less than £4 p.a., only 4 were sold with knight-service; during the reign of Elizabeth I, by which time the limit had increased to £10 and then £20, virtually all land sales were in socage.<sup>33</sup>

This data was compiled using the detailed particulars of sales of Crown land, prepared by auditors at the Court of Augmentations to 1554 and then by auditors of the land revenue, held under the E318 classmark at the National Archives.<sup>34</sup> The particulars describe the location of the property, the current income (comprising almost entirely of the rents paid by tenants working the land, sometimes supplemented with incidentals such as timber sales and/or manor fines), the freehold tenure, the total price paid for the land, and the years' purchase price. This latter figure equates to the number of years of income from the land required to recoup the original purchase price. For instance, if a parcel of land yielded its owner £10 per annum, and was sold for £250, the sale was transacted at 25 years' purchase. In conjunction with the tenurial information, it offers a

<sup>33</sup> In one of these four sales, "Tenure in socage" had originally been written, presumably out of habit, but had later been crossed out and canceled. TNA, E318/40/2122, m.14. It is also noteworthy that these three parcels of land sold at an average of 22.2 years purchase, whereas the average for rural socage lands valued below £4 p.a. was 26.1.

<sup>34</sup> The land sales for Mary I are detailed in TNA E318/40/2118 to 318/42/2262. For a sample transcribed into English, see Youngs (1955).

clear view of the price differential between lands in socage and lands in military tenure.

The reign of Queen Mary was chosen for this exercise for four reasons:

1. Under Henry VIII, virtually all land sales were made with knight-service tenure. Conversely, under Elizabeth and her successors, virtually all sales were made with socage. The only period when a significant proportion of land sales were contracted in socage and knights tenure was during the reigns of Edward VI (*r.* 1547–53) and Mary.
2. On a related point, many of the land sales from Henry VIII and Edward VI are so worn as to be illegible or do not provide the bare minimum of information needed to be usable here (i.e., tenure, years' purchase, annual value).
3. Drawing on evidence from subsequent sales of Crown lands in Devon from 1536–58, Youings (1955, pp. xiv–xv, xxiv) demonstrates that the annual valuations used by auditors in selling Crown lands were accurate and that while some purchasers were able to make quick profits reselling lands, in other instances, the same purchaser barely broke even. Conversely, under Elizabeth and her successors, inflation allied with outdated surveys meant that Crown land was being sold with increasingly inaccurate valuations of their annual income (Outhwaite 1964, p. 335).
4. Finally, in order to secure the loyalty of the political nation to the young king and his regency governments, many of the land sales under Edward VI were contracted at beneficial rates for the vendee. Under Mary, although vendees were still drawn overwhelmingly from the political classes, they were usually charged the “full market price” (Wyndham 1979, p. 67). This is corroborated by Youings' work on subsequent resales. If the market price had not been charged, there would have been more instances of inordinate profits.

Thus, the “sweet spot” where there were large numbers of land sales in both socage and military tenures *and* where Crown land sales are representative of the overall land market is during the reign of Mary. During her reign, there were 616 sales of Crown land that provide this information, which comprises virtually every single sale during her reign (details are illegible in about a dozen cases): 474 of these sales were sold with socage tenure, 141 were by knight-service, and 1 by frankalmoign (a tenure involving religious service and usually reserved for religious institutions). However, because knight-service was still reserved on the

largest sales, it accounted for the majority of land sold by annual value. During the reign of Mary, land with an annual value of at least £5,136 14s. was sold, of which £3,287 6s. was sold with knight-service. In total, sales of Crown land under Mary realized at least £129,109, equivalent to 10.3 percent of total state revenues.<sup>35</sup>

As one would expect, land sold with knight-service fetched lower prices than land sold by socage. Of the 141 sales by knight-service, the average year's purchase price was 23.9. Of the 474 sales by socage, the average year's purchase price was 25.5. However, this comparison fails to consider an important systemic difference between the types of land that were sold by the two tenures. Customarily, urban land was held by burgage, which is essentially the same as socage (indeed, a common phrasing in the particulars of sale was to refer to the tenure as either "socage or burgage"), and such had been the case since at least the thirteenth century (Holt 2000, p. 95). The corollary of this was that urban land was rarely held by military tenures. Of the 43 sales of urban land, only one parcel was sold with knight's service.<sup>36</sup> However, due to the higher costs of maintaining the property and buildings, urban land was consistently assessed at a lower rate of years' purchase than rural land.<sup>37</sup> Consequently, the most apposite comparison is limited to Crown sales of *rural* land. In this case, 432 sales of rural land by socage were sold at an average year's purchase price of 26.0 (the average sales price for knight-service remains unchanged at 23.9). This indicates that the price premium for buying rural lands in socage tenure was approximately 10 percent—significant in an agrarian economy where land would have been the pre-eminent asset class and store of value.

Table 2 provides some additional detail on this point. In particular, at the lowest ratings (19 years purchase and below), although there's a rough parity between the number of individual sales of land with knight-service and socage, when we look at the annual value of lands sold with these low ratings, we can see that far more land was sold with knight-service tenure than with socage. Conversely, at the other end of the table, 30 years

<sup>35</sup> Estimated with data from O'Brien and Hunt, <http://www.esfdb.org/table.aspx?resourceid=12030>, accessed 8 May 2019, Crown revenues under Mary I were estimated to be £1,257,000, calculated by combining the figures for 1554 to 1558, with one-quarter of the figure for 1553 to reflect the length of Mary's reign during that fiscal year (which at this time ran began with Michaelmas on the 29th September).

<sup>36</sup> This was the manor of Kingsbridge, in Devon. Indeed, the sale is doubly unusual as the particulars state that "the rent and escheated rent be all *borough* rent" (own italics), which ought to have entailed burgage tenure. The particulars are transcribed in Youings (1955, p. 123). The original is at E318/40/2122, m.12.

<sup>37</sup> An illustration from the Mary I land sales is provided by two sales of land to Lord Pembroke in 1557. One was a capital messuage at 16 years' purchase price, which "lyeth within the Town of Southampton." The second was for premises, which "lyeth next to the town of Southampton" at 26 years' purchase price. E318/42/2255, m.1-2.

TABLE 2  
SALES OF RURAL CROWN LAND UNDER MARY I, 1553–1558

Years' Purchase <sup>i</sup>	Number of Sales by Tenure			Annual Value of Sales by Tenure <sup>ii</sup>				
	Knight's Service	Socage	Ratio	Knight's Service		Socage		Ratio
≤19	17	12	1.42	£517	6s.	£70	14s.	7.32
20–21	17	35	0.49	£671	0s.	£172	14s.	4.56
22–23	13	29	0.45	£235	0s.	£150	9s.	1.57
24–25	42	130	0.32	£744	11s.	£402	19s.	1.85
26–27	19	73	0.26	£495	6s.	£320	18s.	1.54
28–29	16	61	0.26	£376	5s.	£340	1s.	1.10
30≥	16	92	0.17	£231	1s.	£257	9s.	0.90
Total	140	432	0.33	£3,270	9s.	£1,715	4s.	1.98

*Notes:*

<sup>i</sup> Years' purchase was a contemporary measure of sale price, equivalent to the number of years' income from the land required to recoup the original purchase price.

<sup>ii</sup> Annual value of sales by tenure denotes the total annual income from lands sold by that specified tenure and sold in the specified range of years' purchase price. For example, there were 16 instances where land was sold with knight's service tenure and where the sales price was equivalent to 28 or 29 years' purchase. The total annual income from these 16 parcels was £376 5s.

The mean sales price for parcels of rural land sold during knight's service tenure was 29.35, and for socage it was 26.00. Given that knight's tenure and socage have a similar spread in prices (their respective variances are 23.1 and 16.5), we can apply a two-sample t-test assuming equal variance. The result of this test,  $t(570) = 4.96$  at  $p < .001$ , confirms that land sold with knight's service tenure was sold at a statistically significant lower price than land sold with socage. A two-sample t-test, assuming unequal variance produces an almost identical result:  $t(207) = 4.55$ ,  $p < .001$ .

*Source:* The National Archives, London, E 318/40/2118 to E 318/42/2262. Replication data available at Bottomley (2022).

purchase and above is the only rating category where most of the land by value was disposed of in socage. For the avoidance of doubt, as explained in the notes to Table 2, a two-sample t-test, assuming equal variance, produces the following result:  $t(570) = 4.96$ ,  $p < .001$ , confirming there was a statistically significant difference in price between the two tenures.

Prices do not appear to have incorporated other, more speculative, ways in which income from the land might have improved. For instance, there was no premium on lands nearest to London, which, courtesy of population growth, was a rapidly growing market for agricultural produce. Indeed, rural lands held in socage that were located in Middlesex and the adjoining counties from which London "principally" drew its food supplies (Fisher 1935, p. 50) actually sold at a lower year's purchase price (24.9) than those lands that were not (26.2).

However, neither does tenure wholly account for the (considerable) variation seen in the years' purchase price different parcels of rural land were sold for. The other key determinant of the price charged was the length and terms of the current leases and the prospect that they might

be improved when they expired (Youings 1971, p. 123). Although the particulars seldom detail the extant leases, those that do confirm Youings' insight. To take one example, in 1558 two parcels of land worth a combined £10 15s 2d per annum were sold at 18 years purchase in socage tenure—at first appearance, a very good deal for the vendee. However, the particulars also noted that the land was currently leased rent-free to Lady Hales for the term of her life.<sup>38</sup> The vendee could only levy rents on the land once Lady Hales had died and found a new lessee, explaining the modest purchase price. It also ought to be emphasized that there is no reason to suppose that lands sold by knights' tenure would have had longer leases on them relative to those sold with socage, and that this was the reason why they were cheaper.<sup>39</sup> As the Crown held land absolutely, tenure simply did not apply to lands it held and so could not have affected how they were managed. It only makes sense to speak of tenure pertaining to these lands after they have been sold.

As illustrated by the discussion concerning the Perceval family at the beginning of this section, there is no reason to suppose that the preference for lands held in socage over knight's service was exclusive to instances when the Crown was the vendor and this preference was sometimes incorporated into conveyances where there was doubt concerning the tenure. In 1635, for example, George Flower purchased the manor of Kingrove in Gloucestershire from Edward Stratton at 20 years purchase price, or £2,300.<sup>40</sup> The conveyance contained a clause that, if the land was subsequently found to have been held in knight-service rather than socage, Stratton would:

“repay ... so much money, as in common course of purchase the said lands should be of less value, than lands held of his majesty in free socage in chief, the same to be adjudged by two men indifferently to be elected betwixt the said ward's late father and the defendant. But if either of them died before such determination, then the same to be adjudged by the Mayor of Bath for the time being” (quoted in Jones 1998, p. 11)

Flower died soon after, and at a resultant *IPM*, it was found that part of the manor was actually held of the Crown in knight-service. The grandfather

<sup>38</sup> E318/42/2235, m.5.

<sup>39</sup> Conceivably, the Crown might have managed properties differently according to size, preferring longer leases on larger properties, reducing their value when they came to be sold. However, Wyndham (1976), in the most detailed treatment of Crown leases during this period, observes that leases varied little by size of property (p. 126).

<sup>40</sup> The report is not wholly clear on this point. The manor had been valued at £101 10s. p.a. and Flower purchased it a 20-year purchase price “beside £300 for the improved value”—that is, on account that the land was held in socage. From here, the total purchase price was rounded down to £2,300. The Mayor of Bath, however, in his decision to order the repayment of £287, simply took the figure of £2300 as representative of 20 years value. TNA, WARD 9/101, f.421r.

was able to obtain the wardship, and in light of the *IPM*, invoked the clause of the conveyance whereby the Mayor of Bath would determine compensation. The Mayor ordered Stratton to repay the equivalent of two and a half years of the purchase price, or £287, “in regard he the said mayor did conceive that in common course of purchase, land held [in knight-service], were of so much less value than land held in socage in chief.” The defendant appealed to the Court of Wards, where he was ordered to return £250 of the purchase price, roughly equivalent to the 10 percent premium the Crown was able to charge when it sold lands by socage tenure.<sup>41</sup>

### CONCLUSION

Wardship was a costly means of raising revenue, and for those families unable to reclaim custody of their children, it was grossly invasive. What might have potentially been a prodigious source of revenue for the Crown was almost entirely lost through malfeasance and maladministration. Not even the efforts of the Stuarts substantially altered this picture; wards were still sold at a fraction of “market” value (see the example of Robert Eyre). The one improvement in the administration of wards was that an increasing proportion of children and their estates were being returned to the care of their families.

Wardship also constituted a systemic and large-scale threat to property rights prior to the English Civil War. This statement relates not so much to property *title* as it does to the right to enjoy income from that land, to transfer it freely, and to protect it from intrusion. This had tangible economic consequences, and the paper has detailed how wardship reduced land values and asset stocks. It has also touched upon how the feudal tenures stymied investments in land (the draining of the Fens) and complicated land sales (in the case of *Flower*). Indeed, the complexities of tenure were notoriously frustrating when conveyancing land (Alsop 1983), and given the demonstrable importance of transaction costs for land usage and productivity (Libecap and Lueck 2011), this merits further investigation. That wardship was only one way in which the Tudor and Stuart states sought to intervene in the economy—space obviously precludes a discussion of the industrial and commercial monopolies that were awarded or the “compositions” that were extorted from land-holders to secure their property title—resurrects North and Weingast’s contention that the Crown’s actions constituted a generalized threat to property and economic development, one that might have smothered nascent industrialization in the cradle.

<sup>41</sup> *Ibid.*, ff.421-22.

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