

is unfortunate as a margin or framing for his text. This circumstance, however, does not entirely vitiate the high quality or the value of the text itself.

William R. Hutchison
Harvard University

Joseph Biancalana, *The Fee Tail and the Common Recovery in Medieval England, 1176–1502*, Cambridge: Cambridge University Press, 2001. Pp. xix + 498. \$100.00 (ISBN 0-521-80646-1).

In this book, Biancalana surveys the development of a key institution of the medieval common law and the legal fiction that was created to undo it. Having spent years studying the relevant primary sources, both published and unpublished, Biancalana has learned that the story of the fee tail and the common recovery is both more complicated and more interesting than we had previously known. The fruit of his labor is a stunning work of scholarship that will set a high standard for future research in the field.

Generally speaking, a fee tail is a grant “to B and the heirs of his body” with a condition that, should B die without an heir of his body, the land would revert to A or remain to C. This type of grant was quite common in medieval England, particularly after the 1285 statute *De Donis Conditionalibus* imposed restrictions on the ability of a grantee in fee tail to alienate the land. Entails could be used for a variety of purposes, but their main purpose was to keep land in the grantee’s family after the death of the original grantee. Beginning in the fifteenth century, however, lawyers devised a mechanism that could be used to bar (i.e., terminate) an entail: the collusive common recovery. Use of the collusive common recovery allowed grantees in fee tail to alienate their land despite the restrictions in the entail.

Biancalana’s book is divided into six chapters, which are intended to be read as “connected essays” (2). Chapter 1 examines the history of fee tails before the statute *De Donis*. Biancalana suggests that the earliest grantors were generally focused on the immediate question of who would succeed to the estate at the grantee’s death and had no interest in creating a perpetuity. A principal goal of grantors was to exclude collateral heirs from the succession, and the new legal reforms of Henry II made it necessary to do this through words of entail. Biancalana then discusses the permissibility of alienating a fee tail before *De Donis*, challenging Maitland’s view that, before the statute, a grantee could alienate a fee tail as soon as he had issue. Finally, Biancalana turns to the institution of maritagium, a grant of land by a woman’s relative to her husband upon her marriage, and shows how maritagium had an impact on the fee tail and vice versa.

Chapter 2 follows the history of the fee tail after *De Donis*. Biancalana shows that the statute did not immediately make entails perpetual, as has sometimes been assumed. While the statute *De Donis* could be read to restrain alienations by any generation of issue, some initially thought that only the donee was so restrained. By 1292, the writ of formedon in the descender was extended to the donee’s heir, but subsequent generations were not restrained until the fourteenth century, and the

statutory restraint on alienation did not become perpetual until the 1420s. Common recoveries begin to appear on the plea rolls in the 1440s. Thus, the process by which the entail became perpetual was a slow one, and it was not long after the restraint extended to all generations that lawyers invented a mechanism to destroy it.

Chapters 3 and 4 discuss the use of entails and the methods, other than the collusive common recovery, that could be used to bar the enforcement of them. In Chapter 3, Biancalana explains how the typical marriage settlement changed over the period 1200–1320 from a grant in *maritagium* from the bride's family to a payment of a marriage portion in money by the bride's father in exchange for a joint settlement of land in fee tail on the couple by the groom or his father. Biancalana then examines the use of final concords to record conveyances and the types of fee tail mentioned in these sources. In Chapter 4, Biancalana discusses other methods of barring entails besides the collusive common recovery and explains the various drawbacks of these methods.

Chapters 5 and 6 consider the collusive common recovery, a clever legal fiction devised by lawyers in the fifteenth century to bar enforcement of entails. The standard recovery involved a lawsuit brought against the tenant-in-tail by his grantee; the tenant vouched a warrantor who defended the action but then defaulted, leading to a default judgment for the grantee against the tenant-in-tail. Biancalana shows how this type of action became increasingly popular in the fifteenth century, and plaintiffs began to vouch the same warrantor in every case, known as the "common vouchee" (285). Lawyers eventually developed the theory that the fee tail was barred because the grantor theoretically received equal lands in exchange from the warrantor. But this "recompense theory" was not the basis for a more complicated form of recovery known as the "double voucher recovery" (300), which could be used not only to bar the entail but to effect simultaneous transfers of land or extinguish multiple claims. Biancalana concludes by arguing that it is difficult to discern societal attitudes toward recoveries outside of particular cases, but there is no evidence of general disapproval.

Parts of Biancalana's argument are difficult to follow, especially his discussion of the doctrine of assets by descent in Chapter 4. But this is understandable given the complexity of the subject and does not detract from the overall importance of the book, which is now essential reading for anyone who wishes to understand the development of the common law of property prior to the sixteenth century. Biancalana's achievement deserves high praise.

Joshua C. Tate
Yale University

Emily Steiner, *Documentary Culture and the Making of Medieval English Literature*, Cambridge: Cambridge University Press, 2003. Pp. xvi + 266. \$60 (ISBN 0-521-82484-2).

A miniature from 1331 illustrated in this book encapsulates what the author means by "documentary culture." A woman holding a sealed writ confronts a roughian brandishing a club. She is the allegorical figure of Reason and he is "Rude Under-