This book is a study of two important and related pieces of thirteenth-century English legislation – the Provisions of Westminster of 1259 and the Statute of Marlborough of 1267 – and is the first on any of the statutes of this period of major legislative change.

The Provisions of Westminster were the first major legislation enacted in England after Magna Carta. They were the product of political upheaval, when Henry III surrendered control of government to a baronial council with an agenda of institutional reform. The Provisions were revised and reissued by the king in 1263, and a further revision in 1267 produced the Statute of Marlborough. Exceptionally good surviving documentation is used to follow the evolution of the individual clauses from initial suggestions for reform, through a series of drafts, to the various versions of the final texts. The book also places each clause in the context of the prior development of the Common Law. A wide range of surviving (and mainly unpublished) sources are then used to trace the enforcement and interpretation of legislation between 1259 and 1307. Three appendices provide a modern text and translation of the legislation.

**Paul Brand is** a Senior Research Fellow at All Souls College, Oxford. His other publications include *Origins of the English Legal Profession* and *The Making of the Common Law*. He is a Fellow of the British Academy.
The series Cambridge Studies in Medieval Life and Thought was inaugurated by G. G. Coulton in 1921; Professor D. E. Luscombe now acts as General Editor of the Fourth Series, with Dr Christine Carpenter and Professor Rosamond McKitterick as Advisory Editors. The series brings together outstanding work by medieval scholars over a wide range of human endeavour extending from political economy to the history of ideas.

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KINGS, BARONS AND JUSTICES

The Making and Enforcement of Legislation in Thirteenth-Century England

PAUL BRAND

All Souls College, Oxford
In memory of the late Derek Hall
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This book has had a long genesis. In 1967 I started work on an Oxford D.Phil. thesis under the supervision of the late G.D.G. Hall. My original intention was to work on the *Leges Henrici Primi*, but Derek did not think it was a suitable topic for a postgraduate thesis and suggested that there was another topic I might like to work on. It was a problem that had arisen out of his own current work on dating registers of writs for the Selden Society edition of *Early Registers* which had been begun by Elsa de Haas but which he was then completing. This was the extent to which the Provisions of Westminster of 1259 (or the reissues of 1263 and 1264) had ever been enforced in the courts or in other ways between 1259 and the final reissue of the Provisions as the Statute of Marlborough in 1267. This turned out to be a little too narrow a focus for a doctoral thesis. So we agreed to broaden it out to a more general consideration of the genesis and background of the legislation and its enforcement not just between 1259 and 1267 but also between 1267 and the end of the reign of Edward I in 1307. There was much less pressure then to finish doctoral theses within a three-year period and I did in fact not complete and submit the thesis until 1974. The thesis benefited considerably from the delay. In 1970 I had been appointed an Assistant Keeper at the Public Record Office. I profited from the opportunities this offered me to explore much more fully the riches of the Record Office after working hours and especially while working as overnight Duty Officer. The eventual thesis owed much to the more thorough archival research I was able to do between 1970 and 1974. When the thesis was examined in 1974 my two examiners (S.F.C. Milsom and Barbara Harvey) encouraged me to publish material from it, though not the entire thesis as it stood. I am now sure that their judgement was correct. The thesis as it stood was well-researched and thorough but somewhat rebarbative and lacking in a clear overall argument. After 1974 I put the thesis on one side, though I continued to note additional material relevant to the matters discussed in the thesis as I encountered it in the course of other research. In 1988 Professor J.C. Holt encouraged me to transform the original thesis into a publishable book for the present
series and I agreed to do so. Work on other projects prevented any rapid progress until comparatively recently. Those who have read the original 1974 thesis will see just how much it has been transformed in the interim. This book contains almost all the material contained in the original thesis but also a great deal of other original material produced by subsequent research in the plea rolls and contemporary law reports. It has also been completely reorganised and reconceptualised to provide much clearer answers to three basic questions: why was the legislation of 1259–67 necessary and what effect was it intended to produce? What effect did the legislation have during its initial period of operation between 1259 and 1267? How was the legislation enforced and interpreted by the courts between 1267 and 1307?

In the course of its long gestation this book and its author have accumulated many debts, more than can easily be mentioned here. The greatest is acknowledged in its dedication. Derek Hall taught me directly and by example what it is to be a legal historian. The topic he suggested to me back in 1967 was not one which would have occurred to me on my own but it has turned out to be one of the best possible introductions I could have had to the study of English thirteenth-century legal history. I have also benefited over the years from the friendship and assistance of two other scholars who were being supervised by Derek Hall at the same time as me, Paul Hyams and Alexandra Nicol. I am grateful to S.F.C. Milsom and Barbara Harvey for their helpful comments on the original thesis and to Jim Holt for encouraging me to resume work on the thesis and to transform it into a book. My more recent debt is to All Souls College, Oxford for providing me with an excellent working environment in which to complete work on this book, and to my colleagues there for friendship and intellectual stimulation. I am also grateful to Bill Davies of Cambridge University Press for his patience and forbearance in awaiting the completion of this book.

I owe a twofold debt to the Public Record Office and its staff: both for providing me with the opportunity to finish my original thesis while employed there between 1970 and 1974 and for subsequent assistance while working as a researcher in the public search-rooms. I am also grateful to the staff of various other institutions, especially the British Library (and its Students’ Room), the Cambridge University Library and the Bodleian Library in Oxford, for their assistance in my work on various manuscripts in their custody.

Of my London friends I would single out David Carpenter for special mention in encouraging me to continue work on this project and Jim Bolton for friendship and help over the years. Of my American friends I
Preface

would single out Bob Palmer and Joseph Biancalana for their friendship and stimulation over the many years of our friendship.

My parents did not live to see the appearance of this book but were always supportive of my scholarly endeavours during their lifetimes and I remain grateful to them for this. The book also owes more than I can say to the wise criticism and continued support of my wife, Vanessa, and I am happy to take this opportunity to thank her publicly for this.
### ABBREVIATIONS

Unless otherwise noted, all references to unpublished manuscripts are to documents in the Public Record Office, London.

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<tr>
<td>BL</td>
<td>British Library</td>
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<tr>
<td>BNB</td>
<td>Bracton’s Note Book: A Collection of Cases decided in the King’s Courts during the Reign of Henry the Third, annotated by a Lawyer of that Time, seemingly by Henry of Bratton, ed. F.W. Maitland (3 vols., London, 1887)</td>
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<td>CCR</td>
<td>Calendar of the Close Rolls preserved in the Public Record Office: Edward I (5 vols., London, 1900–8)</td>
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<tr>
<td>CLRO</td>
<td>Corporation of London Records Office</td>
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**CR**  Close Rolls of the reign of Henry III (14 vols., London, 1902–18)

**CRR**  Curia Regis Rolls (18 vols., London, 1923– )

**CUL**  Cambridge University Library


**Early Registers**  Early Registers of Writs, ed. Elsa de Haas and G.D.G. Hall (Selden Society vol. 87, 1970)


**Glanvill**  Tractatus de legibus et consuetudinibus Anglie qui Glanvilla vocatur, ed. G.D.G. Hall (London, 1965)

**IT**  Inner Temple, London

**J. Justice**

**LAL**  Liber de Antiquis Legibus

**LI**  Lincoln’s Inn, London


**Meekings, Crown Pleas**  Crown Pleas of the Wiltshire Eyre, 1249, ed. C.A.F. Meekings (Wiltshire xvii
List of abbreviations

Archaeological and Natural History Society, Records Branch vol. 16, 1960

NN Novae Narrationes, ed. Elsie Shanks and S.F.C. Milsom (Selden Society vol. 80, 1961)


PRO Public Record Office, Kew, London


SCKB Select Cases in the Court of King’s Bench under Edward I, ed. G.O. Sayles (3 vols., Selden Society vols. 55, 57 and 58, 1936, 1938 and 1939)


SSC Select Charters and other Illustrations of English Constitutional History, ed. W. Stubbs, 9th edition revised by H.W.C. Davis (Oxford, 1913)

VCH Victoria History of the Counties of England (1900–)

YB Year Books


List of abbreviations

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