

## The Dukes of Marlborough and the Principality of Mindelheim

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Sir John Churchill, first duke of Marlborough, was one of the greatest military commanders in history. He held the office of Captain-General 1690-91 and 1702-11. During the War of the Spanish Succession he was commander-in-chief of the armies of Great Britain and the Netherlands. His greatest victories over the French were Ramillies (1706), and Oudenarde (1708).

But it is for the Battle of Blenheim (1704), in which Anglo-Austrian forces, led by Churchill and the Austrian general, Prince Eugene of Savoy, defeated the French and Bavarians under the French marshal Camille de Tallard and the Elector Maximilian II Emanuel of Bavaria, that Churchill is best remembered.

Churchill's achievements were matched by his ambition. He was always ready to accept, and often actively sought, appropriate recognition for his undoubted talents. The dukedom of Marlborough is the only one now in existence to have been conferred on a man who was born the son of a commoner, and with no prospect of inheriting either a title or large estates<sup>1</sup>.

Another unique distinction which Churchill eagerly accepted- though his influential wife, Sarah, was opposed<sup>2</sup>, was the rank and title of a prince of the Holy Roman Empire. This was conferred upon the duke by a grateful Emperor Leopold I, after the victory at Blenheim. The principality of Mindelheim followed in 1705. No British subject before or since ever received such a rank<sup>3</sup>.

The present duke is John George Vanderbilt Henry Spencer-Churchill. His British titles are duke of Marlborough (Eng 1702), marquess of Blandford (Eng 1702), earl of Sunderland (Eng 1643), earl of Marlborough (Eng 1689), baron Spencer (of Eyemouth, Eng 1603), baron Churchill (of Sandridge, Eng 1685).

The great duke's only son, John Churchill, Marquess of Blandford, had died of small-pox at Cambridge in February 1703, only two months after his father had been created duke of Marlborough and marquess of Blandford<sup>4</sup>. These titles had been created with the usual

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<sup>1</sup>The Churchill's were long-established west country family of minor gentry, armigerous, and claiming descent from Roger de Courcill, alleged companion-in-arms to William the Conqueror.

<sup>2</sup>Sir Winston Spencer Churchill, *Marlborough: His Life and Times* (George G Harrap & Co, London, 1936) vol III 47.

<sup>3</sup>Though many have received foreign titles. The Duke of Wellington was prince of Waterloo (1815, Belgium Netherlands); Portuguese duke de Vittoria (1812, i.e. "of the Victory"), marquis de Torres Vedras (1812), and count de Vimeira (1811); and Spanish grandee 1st class (1812), and duque de Cuidad Rodrigo (1812). In contrast, Lord Nelson received only the Sicilian dukedom of Bronte (1799), though doubtless he would have received other honours had he survived the Battle of Trafalgar.

<sup>4</sup>Sir Winston Spencer Churchill, *Marlborough: His Life and Times* (George G Harrap & Co, London, 1947) vol I 631; GEC (ed), *Complete Peerage* (1910-59) sub Marlborough.

remainder to his heir male. To prevent their extinction with the death of the first duke, his English titles, the manor of Woodstock, granted 28th January 1705<sup>5</sup> with of 22,000 acres in Oxfordshire, Blenheim Palace<sup>6</sup>, and a pension of £5,000 a year on the Post Office, were settled on his heirs female by the Duke of Marlborough Annuity Act 1706<sup>7</sup>.

John Churchill was succeeded on his death by his eldest daughter, Henrietta, as duchess of Marlborough in her own right. Her son William Godolphin, marquess of Blandford, died in 1731, and on her death she was succeeded as third duke by Sir Charles Spencer, his son, who was also her nephew as Henrietta's sister Lady Anne Churchill, had married Charles Spencer, third earl of Sunderland. Sir Charles Spencer's younger brother, the Honourable John Spencer, of Althorp, Northamptonshire, was the ancestor of the earls Spencer.

The fifth duke took the surname Spencer-Churchill in 1817, but the dukes are direct descendants of John Churchill, first duke of Marlborough, through his second daughter.

The statute 6 Anne c 6 did not affect the imperial titles, which accordingly became extinct upon the death of the great duke of Marlborough, in 1722. Therefore Henrietta, duchess of Marlborough, the second of the line, though herself a princess of the Holy Roman Empire, was also the last of the line to enjoy imperial honours. She could not pass the title to her son, nor could it pass to Sir Charles Spencer, earl of Sunderland, and third duke of Marlborough.

Neither could they be princes of Mindelheim, though, in part, for different reasons.

Most reference books describe the current duke of Marlborough as a prince of the Holy Roman Empire (1704), and prince of Mindelheim (1705). This, at least in part, is incorrect. How could this confusion arise? To answer that we must look at the circumstances of the creation.

The duke wrote to Sarah 4th June 1704 that Count Johann Wenzel Wratislaw, envoy of Leopold I, had told him that the Emperor wanted to make him a prince of the empire, with a territory and a seat in the imperial Diet<sup>8</sup>.

Count Wratislaw conveyed to the duke a proposal to create him a sovereign prince of the Holy Roman Empire<sup>9</sup>.

The emperor sought the formal approval of the Queen<sup>10</sup>. This was duly given<sup>11</sup>.

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<sup>5</sup>Letters patent 5 May 1705, in fee simple; *Hambro v Marlborough (Duke of)* [1994] Ch 158, 159.

<sup>6</sup>Some £300,000 was spent on palace, the majority from the civil list, and £60,000 by duke himself.

<sup>7</sup>6 Anne c 4 or 7, not 6. In July 1993 action taken by duke to end statutory entail to allow his younger son to inherit the entailed estate, due the perceived unfitness of the eldest, the heir to the dukedom, to manage the estate.

<sup>8</sup>*The Marlborough-Godolphin Correspondence* ed Henry Snyder (Clarendon Press, Oxford, 1975) 318-320; Blenheim MSS. E2; printed Ven WC Coxe, *Memoirs of the Duke of Marlborough* (1820) vol I 252-3.

<sup>9</sup>15 June 1704; Sir Winston Spencer Churchill, *Marlborough: His Life and Times* (George G Harrap & Co, London, 1934) vol II 485-486.

Difficulties were now seen. There were no imperial lands available. Churchill was a new man, only a small country gentleman, from a country at the very edge of Europe. But, though faced with the opposition of the largely German imperial nobility, the emperor felt personally committed to grant Churchill at least an honorific title<sup>12</sup>.

Imperial titles descend in accordance with the conditions of the original grant. Most of these are to all male descendants and daughters. Thus the sons of a duke would be dukes, and each would pass the title to their sons, and so on ad infinitum. But, in the case of a sovereignty, only the eldest son of the eldest son would actually be the ruler (masculine primogeniture), though all male members of the family would share the title.

Although daughters would have the style of princess, they would not pass this to their own sons or daughters.

The title of prince of the Holy Roman Empire was granted to Churchill, all his children, heirs and lawful descendants, male and female. But did this mean male descendants and daughters, or was it to mean the heirs of his daughters also?

Churchill himself may have assumed that it did, when he wrote:

What is offered will in historie for ever remaine an honour to [our] family<sup>13</sup>.

He was either assuming that the title was subject to a special remainder, so that it would pass through a daughter, or that he would have a son to succeed him. Yet the evidence indicates that the former interpretation was not shared by the German princes. In any case, as he was 54 years old, the birth of a son was not altogether out of the question, though Sarah duchess of Marlborough was by then too old to bear a child.

Emperor Leopold informed Churchill on the 28th August 1704 that he had created him a Prince of the Empire, with the rank of Highness, and addressed him as "Most Illustrious Cousin and most dear Prince"<sup>14</sup>. This title was to be for himself and his heirs male and female. But Churchill had wanted an effective principality, not an empty title<sup>15</sup>. Wratislaw

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<sup>10</sup>20 June 1704 rescript to Count Wratislaw; Sir Winston Spencer Churchill, *Marlborough: His Life and Times* (George G Harrap & Co, London, 1934) vol II 486.

<sup>11</sup>Wratislaw to Emperor, 22 August 1704; Sir Winston Spencer Churchill, *Marlborough: His Life and Times* (George G Harrap & Co, London, 1934) vol II 487; Feldzüge, vol VI 866.

<sup>12</sup>Emperor Leopold I to duke, 17 August 1704; printed Ven WC Coxe, *Memoirs of the Duke of Marlborough* vol I 325-326.

<sup>13</sup>Duke to duchess, 4 June 1704; *The Marlborough-Godolphin Correspondence* ed Henry Snyder (Clarendon Press, Oxford, 1975) 319; Blenheim MSS. E2; printed Ven WC Coxe, *Memoirs of the Duke of Marlborough* (1820) vol I 252-3.

<sup>14</sup>Emperor Leopold I to duke, 28 August 1704; Thomas Lediard, *Life of John Duke of Marlborough* (1736) vol I 419.

<sup>15</sup>Duke to Sidney Earl of Godolphin, 11 September 1704; *The Marlborough-Godolphin Correspondence* ed Henry Snyder (Clarendon Press, Oxford, 1975) 370-371; Blenheim MSS. A1-14; printed Ven WC Coxe, *Memoirs of the Duke of Marlborough* (1820) vol I 327. Duke

told the emperor that a principality would be necessary to avoid offending a man on whom the empire still depended<sup>16</sup>.

This was eventually granted, and Churchill was created prince of Mindelheim, Suabia, 18th November 1705, by Leopold's son, Emperor Joseph. Churchill was invested at an imperial Diet at Innsbrück on the 24th May 1706. Thus Churchill was finally to have a seat in the imperial diet.

But what was the nature of this title? The honorary status of prince of the Holy Roman Empire might be granted to certain individuals, and might become effective in time, if the conditions were met. These individuals included:

- (i) Independent sovereigns outside the Empire (such as the Sovereign Military Order of Malta<sup>17</sup>);
- (ii) Sovereigns who were vassals, but outside its territory (i.e. the Prince of Piombino);
- (iii) Members of the Empire, like the Princes Kinsky or Paar, and those who never had a vote or seat, but held a seat as count in one or several of the four comital councils, or who had neither a vote nor a seat in the imperial Diet (as Salm-Reifferscheidt-Raitz<sup>18</sup>); and
- (iv) Foreigners of note, like the Princes Chigi or Orsini<sup>19</sup>, Orloff or Potemkin, Lubomirski or Radziwill<sup>20</sup>.

The effective co-states of the Holy Roman Empire, or Reichsstand, had to meet three requirements: (i) holding of an immediate fief of the Empire; (ii) a vote (*votum virile*) and a seat in the imperial Diet; and (iii) direct participation in the expenses of the empire. Not all states met all three requirements, so one may distinguish between effective and honorary princes of the Holy Roman Empire<sup>21</sup>. Churchill wished for, and received, the former.

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to Sidney Earl of Godolphin, 22 September 1704; Ven WC Coxe, *Memoirs of the Duke of Marlborough* (1820) vol II 23.

<sup>16</sup>Sir Winston Spencer Churchill, *Marlborough: His Life and Times* (George G Harrap & Co, London, 1934) vol II 488-489.

<sup>17</sup>Prince of the Holy Roman Empire (Reichsfürst) 1607, cf in 1620, Austrian prince (HSH) 27 December 1880, cf 1889 and 1905. Most Eminent Highness by Italian royal decree 1927 (long by usage). Papal Cardinal-rank 1630.

<sup>18</sup>Salm-Reifferscheidt-Raitz were made a prince and Altgrave 1790. Family are called Altgrave/Altgravine (HSH).

<sup>19</sup>The princes Orsini und Rosenberg were members of the comital council (personaliter) 1683, made a prince 1724, 1790]. mf HRE 1629, HSH Prince Assistant to the Papal Throne 1735-1958.

<sup>20</sup>Fra Cyril Toumanoff, "Genealogical Imperialism" (1985) vol 6 (no 134) (NS) Coat of Arms 145, 151 n7.

<sup>21</sup>Fra Cyril Toumanoff, "Genealogical Imperialism" (1985) vol 6 (no 134) (NS) Coat of Arms 145, 147. Duke and Prince Jean Engelbert d'Arenberg, "The Lesser Princes of the Holy Roman Empire in the Napoleonic Era" dissertation, Washington, DC, 1950, published as *Les Princes du St-Empire à l'époque napoléonienne* (Louvain, 1951) 15ff, quoted in *Almanach de Gotha* (Almanach de Gotha, London, 1998) 275-286.

The King of Prussia had proposed a grant of the principality of Donauwörth. However, Churchill received Mindelheim, which had been bought by an Elector of Bavaria in the sixteenth century. It was confiscated from Elector Max Emmanuel in 1704 for his treachery, and effectively occupied after the battle of Blenheim.

The principality of Mindelheim was situated south of the Danube. 28 miles south-west of Augsburg, and 48 miles west of München. It covered an area of 15 square miles<sup>22</sup>, and had an income of £1,500. Churchill had to meet the cost of investiture, which was reduced to £4,500 from the usual £12-15,000. He also avoided wartime imperial tax of £6,000. But he was holding of an immediate fief of the Empire, had a vote and a seat in the imperial Diet, and a direct participation in the expenses of the empire. His principality was effective, and not merely honorary.

The king of Prussia, through his representative the prince of Anhalt-Dassau, moved that the title should descend successively to all the heirs of Churchill's body. But the princes were opposed. The lack of a male heir would prevent the Churchill's becoming hereditary princes of the empire, and was essential to their agreement. Thus no special remainder was provided<sup>23</sup>.

Churchill visited Mindelheim in late May 1713, receiving royal honours from his subjects<sup>24</sup>. But the fate of the principality, and of Churchill's effective sovereignty, depended upon the ultimate peace treaty.

Mindelheim was lost 1714 to the Elector of Bavaria under Treaty of Utrecht, without compensation<sup>25</sup>. But the duke retained the rank of prince. He died without male heir 1722, and was succeeded by his daughter in his British titles<sup>26</sup>. The duchess was succeeded by third duke (her grandson) 1733, from whom the present duke is descended.

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<sup>22</sup>Sir Winston Spencer Churchill, *Marlborough: His Life and Times* (George G Harrap & Co, London, 1934) vol II 489.

<sup>23</sup>The proceedings of the grant of the imperial titles are printed in full in *Erhöhung in Reichs-Fürst Stand .. des ... Herzogs zu Marleborough* (1707), including:

(a) the emperor's diploma, and creating Churchill and all his children heirs and lawful descendants, male and female, princes of the Holy Roman Empire, and granting him, as an augmentation of honour to his arms, the imperial eagle, on the breast of which arms should be displayed. A St George's cross in a canton was granted to his father, Sir Winston Churchill, as an honourable augmentation by King Charles II, for impoverishing himself in the King's father's cause in the Civil Wars.

(b) A later diploma, erecting the lordship of Mindelheim in Suabia, which it granted to him, into a principality held immediately of the Emperor.

(c) An account of the consequent proceedings of the Electoral College and of the duke's introduction 22nd November 1706.

<sup>24</sup>Sarah to James Craggs, 7 June 1713; BM Stowe 751, f 61.

<sup>25</sup>Sersanders, Churchill's secret agent to the Elector of Bavaria, was authorised to include it in the peace treaty negotiations; Sir Winston Spencer Churchill, *Marlborough: His Life and Times* (George G Harrap & Co, London, 1936) vol III 47.

<sup>26</sup>By 6 Anne c 6.

It has been suggested that after Treaty of Utrecht in 1713 Mindelheim was exchanged for the county of Mellenburg, Upper Austria, which was then elevated into a principality by Emperor Charles VI<sup>27</sup>. But other sources state simply that Emperor Charles VI wrote apologetic letters to Churchill<sup>28</sup>.

Churchill lost his seat and vote in the imperial Diet, a price he thought worth losing in the cause of peace. His descendants might have become one of the mediatised houses of the empire.

Mediatized houses are those families that occupied sovereign territories within the Holy Roman Empire and its successor states in what is now modern Germany and Austria. But not every intermediate state enjoyed the same status. Some princes were mediatised, though they were never independent, such as those members of the Diet *ad personam* ("personaliter").

Mediatized duchies, principalities and counties of the Empire included princes entitled to a collective vote as members of one of four comital councils. Mediatized ducal, princely and countly families (the "standesherm") were concentrated in Suabia, Franconia, and the Wetterau in north-west Germany.

But these were a creation of the last years of the eighteenth century and the early part of the nineteenth, by which time the German-dominated princes had largely forgotten the upstart Englishman. More importantly, no special provision had been made for his imperial titles to pass to the issue of his daughters. The imperial titles thus expired with the death of his younger daughter, Lady Mary Churchill (duchess of Montagu), in 1751.

Whatever the situation regarding his imperial lands and titles, Churchill's British titles, and his estate at Woodstock, were subject to special statutory provisions, and passed to the heirs of his daughters.

The current duke is tenant in tail in possession of one of nine United Nations Educational Scientific and Cultural Organisation (UNESCO) World Heritage Sites in England, and the only one a stately home still lived in by a descendant of its original owner.

Statutory restrictions on the disposal of Crown lands necessitated the statute 3 & 4 Anne c 6 (1704). Due to the death of the marquess of Blandford, and the increasingly unlikely prospects for a son and heir, a special remainder to the titles was provided by 6 Anne c 3 (1706). In event of failure of his male issue, the titles, and Blenheim Palace, were to pass to Churchill's daughters and their male issue in tail male severally in succession with remainders over<sup>29</sup>.

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<sup>27</sup>Hugh Montgomery-Massingberd, *Blenheim Revisited: The Spencer-Churchills and their Palace* (The Bodley Head, London, 1985) 39.

<sup>28</sup>Sir Winston Spencer Churchill, *Marlborough: His Life and Times* (George G Harrap & Co, London, 1936) vol III 50.

<sup>29</sup>*Hambro v Marlborough (Duke of)* [1994] Ch 158, 159.

An estate tail which has been granted by the Crown in consideration of money or services, the reversion remaining in the Crown, cannot be barred, or ended<sup>30</sup>. In certain cases where estates have been granted for eminent services, or where family arrangements are confirmed by Act of Parliament, holders of the estates who are tenants in tail are forbidden by statute to bar the entail<sup>31</sup>.

An estate tail, or an entailed estate, now takes effect as an entailed interest, though commonly still called an estate<sup>32</sup>. The widest estate which is entailed is limited to a man and the heirs of his body without restriction as to the wife of whom the heirs are to be born or of the sex of the heirs<sup>33</sup>. A similar limitation is to a woman and the heirs of her body<sup>34</sup>. These are an "estate in tail general".

It is also possible to restrict the heirs to heirs male or heirs female, called an "estate in tail male general"<sup>35</sup>, or "estate in tail female general"<sup>36</sup>. In a tail male, the son of a daughter cannot inherit<sup>37</sup>.

An estate may be limited to a specific couple, making it an "estate in tail special"<sup>38</sup>. This may also be limited to heirs male or female<sup>39</sup>.

A limitation to a man and the heirs of his body other than the eldest son is good<sup>40</sup>.

Before 1926 a entailed estate could be created by deed, will or executory instrument<sup>41</sup>. From 1926 to 1996 they could only be created by deed<sup>42</sup>. Since the coming into force on 1st January 1997 of the Trusts of Land and Appointment of Trustees Act 1996 it has not been possible to create any new entailed interests<sup>43</sup>. However, was well as dating from 1705, the Blenheim estate is backed by statutory authority.

An entail meant that an estate could not be alienated. This served the purpose of preserving an estate from possible spendthrifts.

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<sup>30</sup>Feigned Recoveries Act 1542 (34 & 35 Hen VIII c 20) (Eng) s 1. Though repealed in part by the Statute Law (Repeals) Act 1888 (UK), and as to the remainder by the Statute Law (Repeals) Act 1969 (UK) s 1, Sch Pt III, remains effective still (s 4 (4) of the 1969 act).

<sup>31</sup>*Davis v Marlborough (Duke of)* (1818) 1 Swan 74; 36 ER 303; *Osborne v Marlborough (Duke of)* (1866) 14 WR 886; *Re Duke of Marlborough's Blenheim Estates and Settled Lands Act* (1892) 8 TLR 582.

<sup>32</sup>Law of Property Act 1925 (15 & 16 Geo V c 19) (UK) s 130.

<sup>33</sup>Littleton's Tenures s 14.

<sup>34</sup>Littleton's Tenures s 15.

<sup>35</sup>Littleton's Tenures s 21.

<sup>36</sup>Littleton's Tenures s 22.

<sup>37</sup>Littleton's Tenures s 24; Co Litt 25a, 25b.

<sup>38</sup>Littleton's Tenures s 29.

<sup>39</sup>Littleton's Tenures s 25.

<sup>40</sup>*Elliot v Elliot* [1916] 1 IR 30.

<sup>41</sup>*Glenorchy (Lord) v Bosville* (1733) Cas temp Talb 3, 9; 2 Eq Cas Abr 718; 22 ER 604; *Sackville-West v Holmesdale (Viscount)* (1870) LR 4 HL 543.

<sup>42</sup>Law of Property Act 1925 (15 & 16 Geo V c 19) (UK) s 130 (1).

<sup>43</sup>ss 2 (6), 27 (2), Sch 1 para 5 (1).

Ironically, however, in 1993 a new settlement was proposed, with the current duke as one of three trustees. The trust fund would be held in trust to pay income to duke for his life, and subject to protective trusts for the marquess for life. This was approved by the Chancery Division of the High Court, in the face of opposition by the present marquess of Blandford<sup>44</sup>. The marquess, a long-time drug addict, was regarded as unfit to manage the estate.

Blenheim is only the best known of a number of entailed estates. Other settled estates include the Bolton estates<sup>45</sup>, settled in 1535 by Lord Mountjoye<sup>46</sup>, and the Abergavenny estates<sup>47</sup>, settled in 1555<sup>48</sup>, and alienated by the Marquess of Abergavenny's Estate Act 1946<sup>49</sup>.

The Wellington estates were entailed by the Act for an annuity etc. to the Duke of Wellington 1813-14<sup>50</sup>. This was altered by the Wellington Museum Act 1947, and replaced by the Wellington Estates Act 1972<sup>51</sup>.

The (private) Act for an annuity for Lord Nelson 1806<sup>52</sup> established the Trafalgar estates and the Nelson annuity. The annuity was terminated by the Trafalgar Estates Act 1947<sup>53</sup>. The Pendrell annuities, which do not include land, date from the time of King Charles II<sup>54</sup>.

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<sup>44</sup> *Hambro v Marlborough (Duke of)* [1994] Ch 158; [1994] 3 All ER 332.

<sup>45</sup> *Re Bolton Estates, Russell v Meyrick* [1903] 2 Ch 461 (CA); *Re Bolton Estates Act 1863* [1904] 2 Ch 289.

<sup>46</sup> Broke Estate Act 1535 (27 Hen VIII c 16), a private act.

<sup>47</sup> *Abergavenny (Earl of) v Brace* (1872) LR 7 Exch 145. Lieutenant-Colonel John Henry Guy Nevill, KG OBE JP DL, is 5th marquess of Abergavenny (1876), earl of Lewes (UK 1876), earl of Abergavenny (GB 1784), viscount Nevill (GB 1784), baron Abergavenny (Eng 1450).

<sup>48</sup> An Act concerning the restitution of the heirs male of Sir Edward Neville, knight (2 & 3 Ph & M c 23) (Eng), a private act.

<sup>49</sup> s 3. The marquess' seat is now Eridge Park, Tunbridge Wells, East Sussex. In 1873 the earl had 28,000 acres, in 1967 the marquess, 1,000 acres.

<sup>50</sup> 54 Geo III c 161 (UK) s 28. The present duke is the 8th, Brigadier Arthur Valerian Wellesley, KG OBE MVO MC OStJ DL. His British titles are duke of Wellington (UK 1814), marquess of Wellington (UK 1812), marquess of Douro (UK 1814), earl of Mornington (Ireland 1790), earl of Wellington (UK 1812), viscount Wellington (of Talavera and Wellington, Somersetshire, UK 1809), baron Douro (UK 1809).

<sup>51</sup> s 3 (1). The duke's seats are Stratfield Saye House, Reading, Berkshire RE7 2BZ, built 1817, and Apsley House, 149 Piccadilly, London W1V 9FA. In 1991 the duke had 7,000 acres in Britain. Like the Duke of Marlborough, Arthur Wellesley's foreign titles brought him some lands. As Prince of Waterloo (1815 Belgium Netherlands), he was one of the greatest landowners in Belgium. He still holds 1,000 ha 10 km south of Brussels. As duke of Cuidad Rodrigo (1812 Spain) he has 3,000 acres [30,000?] at Molino del Rey, near Granada.

<sup>52</sup> 46 Geo III c 146 (UK). This Act also made every successive earl a Nelson. Trafalgar House, Wiltshire, was built for Sir Peter Vandeput 1733. Presented to Earl Nelson (brother of Vice Admiral Viscount Nelson) in 1806, rebuilt 1814. The present, 9th, earl is Peter John Horatio Nelson. His British titles are earl Nelson (of Trafalgar and of Merton, UK 1805), viscount Merton (UK 1805), baron Nelson (of the Nile and of Hilborough, Norfolk, UK 1801).

<sup>53</sup> 10 & 11 Geo VI c 34 (UK) s 1. Sold by the fifth earl Nelson in 1948, the estate and house separated 1958. Various owners. Bought by the Earl Radnor 1990, with an estate of 3,000

The present duke of Marlborough enjoys his titles, not because of any special remainders in the patents of creation, but because of an Act of Parliament. This Act had no bearing upon the imperial titles conferred upon the first duke, which thus descend in accordance with the original instruments of creation.

The title of prince of the Holy Roman Empire, conferred in 1704 upon all his children heirs and lawful descendants, male and female, expired in 1751. It was not what would be called in English law, an estate in tail general. It is rather a limitation to all male descendants and daughters, or what might be called an estate in tail male general.

Similarly, the title (and principality) of prince of Mindelheim, granted in 1705 to all male descendants and daughters, reverted to the emperor in 1722, as it could not pass to a daughter. More importantly, in the Treaty of Utrecht 1714 the principality passed to Bavaria. The right of the duke of Marlborough to use the style and title was lost.

As recipients of unprecedented imperial honours, it is fitting that the greatest monument to the great duke, Blenheim Palace, should be entailed to the dukes of Marlborough for all time. But it is a pity that the imperial honours were not subject to special remainders, so that the current duke might enjoy them.

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acres. Lord Radnor had lived at Longford Castle, Salisbury, Wiltshire. Bought 1995 by Michael Wade to form an opera house.

<sup>54</sup> *Re Grant of King Charles II, Giffard v Penderel-Brodhurst* (1936) 80 Sol J 92.