

Foundations of Society (Origins of Feudalism)

Paul Vinogradoff

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The whole period of European history extending roughly from A.D. 476 to A.D. 1000 appears at first sight as an epoch of chaotic fermentation in which it is almost impossible to perceive directing principles and settled institutions. The mere influx of hordes of barbarians was bound to break up the frame of Roman civilisation and to reduce it to its rudimentary elements. But what made confusion worse confounded was the fact that the Teutonic, Slavonic, and Turanian invaders had come with social arrangements of their own which did not disappear at the mere contact with the Roman world, leaving, as it were, a clean slate for new beginnings, but survived in a more or less shattered and modified condition.

And yet when the eye becomes somewhat accustomed to the turmoil of the dark ages, one cannot but perceive that certain principles and institutions have had a guiding influence in this checkered Society, that there is a continuous development from Roman or barbaric roots, and that there is no other way to explain the course of events during our period but to trace the working of both these elements of social life.

One of the principles of concentration which seemed at the outset to give fair promise of robust growth was kinship. Nature has taken care to provide the most primitive human beings with ties of relationship which raise them over individual isolation. Man and wife keep together, parents rear up their children, and brothers are naturally allied against strangers. Of course much depends on the kind of union arising between man and wife, on the share of each parent in the bringing up of children, and on the views as to brotherhood and strangers. But before examining the particular direction taken by these notions in the case of the Teutonic tribes with whom we are primarily concerned, let us notice the fact that, whatever shape the idea of kinship may have taken, it was certainly productive of most important consequences in the arrangement of early Germanic Society. When Caesar has to tell us about the occupation of territory by a Germanic tribe he dwells on the fact that the tribal rulers and princes assign land to clans (*gentes*) and kindreds of men who have joined together (*cognationes hominum qui una coierunt*). We need not try to put a very definite meaning on the curious difference indicated by the two terms: it is sufficient for our present purpose to take note of the fact that the idea of kinship lies at the root of both: a Germanic tribe as described by Caesar was composed of clans and clan-like unions. And when Tacitus speaks of the military array of a tribe, he informs us that it was composed of families and kindreds (*familiae et propinquitates*). No wonder we read in the poem of Beowulf that the coward warrior disgraces his whole kindred and that the latter has to share in his punishment.

Like the Roman *gentes*, the Greek *gene*, the Keltic clans and septs, the kindreds of the Teutonic tribes were based on agnatic relationship, that is on relationship through men, the unmarried women remaining in the family of their fathers or brothers while the married women and their offspring joined the families of their husbands. There are not many traces of an earlier

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"matriarchal" constitution of Society, except the fact mentioned by Tacitus, that the Teutons considered the maternal uncle with special respect and, indeed, in taking hostages, attributed more importance to that form of relationship than to the tie between father and son. It is not unlikely that this view goes back to a state of affairs when the mother stood regularly under the protection of her brother and her children were brought up by him and not by their father. The mother's kin maintained a certain subsidiary recognition even in later days: it never ceased to be responsible for the woman which came from it, and always afforded her protection in case of grievous ill-treatment by the husband; a protection which in some cases might extend to children. Nevertheless in the ordinary course of affairs, the father's authority was fully recognised and the families and kindreds of the host must have been chiefly composed of agnatic groups bearing distinctive names from real or supposed ancestors and tracing their descent from him through a succession of males. In Norse custom these agnatic relations formed the so-called bauggildi, that is the group entitled to receive, and to pay, the armrings of gold constituting the fine for homicide. The payment and reception of fines are, of course, the other side of the protection afforded by the kindred to its members. Not the State but the kindred was primarily appealed to in the case of aggression, and the maegths, aets, Geschlechter, farae, or whatever the kindreds were called by different tribes, resorted to private war in order to enforce their claims and to wreak revenge on offenders. It is easy to picture to ourselves the importance of such an institution by the contrast it presents to present social arrangements, but in order to realise fully how complex this system came to be, let us cast a glance at the distribution of fines in one of the Norwegian laws -- in the so-called Frostathingsslov regulating the legal customs of the north-western province of Thronthjem.(1*)

In this Frostathingsslov we read first in case six marks of gold are adjudged, what everyone shall take and give of the rings (baugar). The slayer or the slayer's son shall pay all the rings unless he has 'vissendr' to help him. The question is, who are called so, and here is the answer. "If the father of the slayer is alive, or his sons or brothers, father's brother or brother's son, cousins or sons of cousins, they are all called 'vissendr.' And they are so called because they are sure (viss) of paying the fines which are to be paid... (c. 3). The slayer or the slayer's son shall pay to the son of the slain the principal ring of the six marks of gold, namely five marks of weighted silver. The father of the slayer shall pay as much to the father of the dead; the brother of the slayer shall pay the brother of the dead four marks less two oras; the father's brothers and the sons of the brother (of the slayer) shall pay to the father's brothers and to the sons of the brother of the slain 20 Oras. And the first cousins and their sons... shall pay... 13 oras and an 'ortog.'..."

By the side of the bauggildi, the agnatic group bearing the principal brunt of collisions and claiming the principal compensation payments, appear the nefgildi, the personal supporters of the slain, respectively -- of the offended man. These are connected with him through his female relations. Together with the bauggildi group they would form what was termed a cognatio by the Romans, that is the entire circle of kinsmen. The relative importance attached to the two sides of relationship was generally expressed by a surrender of two-thirds of the wergeld, the slain man's price, to the father's kin and of

one-third to the mother's kin. With mother's kin, however, one would have to reckon also the relations through sisters, aunts, nieces, etc. In fact the nefgildi would correspond to what the continental Germans called the spindle side of relationship, while the bauggildi constituted the spear side. For purposes of organisation the spear side formed a solid group, while the spindle side was divided among several agnatic groups according to the position of the husbands of women supposed to carry the spindles.

The natural advantage of the bauggildi or spear kindred found mother expression in the fact that in the earlier customary law of Teutonic tribes women were not admitted to inherit land. It was reserved to men as fighting members of the kindred, and the coat of mail went with the land inheritance. (*Lex Angliorum et Werinorum*, 6.) Besides the power of protecting and revenging its members the kindred exercised a number of other functions: it acted as a contracting party in settling marriages with members of other kindreds; it exercised the right of wardship in regard to minors; it provided a family tribunal in case of certain grievous offences against unwritten family law, especially in the case of adultery; it supported those of its members who had been economically ruined and were unable to maintain themselves; it had to guarantee to public authorities the good behaviour of its members if they were not otherwise trustworthy.

Altogether the German system of kinship at starting resembled that of Greece and Italy and of the Keltic tribes as a comprehensive arrangement of society on clan-lines. One of the most momentous turning-points in the history of the race consists in the fact that Germanic Commonwealths did not, on the whole, continue to develop in this direction. The natural kindreds were too much broken and mixed up by the migrations, the protracted struggle with the Romans and the confusion of the settlement on conquered soil. There was a loss of that continuity of tradition and comparative isolation which contributed powerfully to shape the tribal arrangements of other Aryan races, more especially of the Kelts of Scotland, Wales and Ireland, and of the Slavs in the Balkan mountains. It is interesting to notice, however, that where the necessary seclusion and continuity of tradition did exist a complicated federation of clans might spring up. The classical case within the region of Germanic settlements is that of the Ditmarschen in Schleswig-Holstein.

"The propinquitates, parentelae, proximi (of the Ditmarschen), German Vrund, or as they are called in charters from the fourteenth century the Slachten, Geschlechter (kindreds), are close associations, the members of which are bound to help each other in private war and revenge, before the courts and in case of economic difficulties. They are very different in size, the largest being that of the Wollermannen who, as Neocorus tells us, were able to send 500 warriors into the field. It happens that the kindreds admit new men after an examination of their worth... Most kindreds originate in voluntary leagues or associations. But the right to membership is inherited by all male descendants. The kindreds (Geschlechter) are subdivided accordingly into narrower groups of kinsmen -- the Klufften and brotherhoods.'^(2*)

Although as a rule the arrangement on lines of relationship declined steadily and rapidly, we witness the existence and operations of kindreds in most Western countries in the earlier centuries of the Middle Ages. The Alemannic Law, for instance, tells us that disputes as to land are carried on by kindreds (*genealogiae*), and a Frankish edict of 571 asserts the right of

direct descendants and brothers to inherit land against traditional claims of neighbours which could only have been based on the conception of a kindred owning the land of the township. (Edictum Chilperici, 3.) The Burgundians were settled in farae, and among the Bavarians five kindreds enjoyed special consideration. In a Bavarian charter of 750 the kindreds of the Agilolfings and of Faganes grant land to a bishop of Freising. In these cases the kindreds are represented by certain leaders and their consortes et participes.(3*) The maegths of the Angles and Saxons, the acts of the Scandinavians appear often in legal custom and historical narratives, and, in the light of such continental parallels, it seems more than probable (though this has been disputed) that a good number of English place-names containing the suffix ing were derived from settlements of kindreds. The Aescingas, Effingas, Getingas, Wocingas, mentioned in Saxon charters in Surrey, as well as numbers of similar names, have left an abiding trace in local nomenclature.

In this way the kindreds did not disappear from the history of Western Europe without leaving many traces, and such traces were most noticeable in the case of noble families keenly interested in tracing their pedigrees and able to keep their cohesion and privileges. But even of the nobility the greater part of them arose through the success of new men and especially through service remunerated by kings and other potentates. As for the rest of the people it became more and more difficult to keep up the neatly framed groups of kinsmen. From being definite organisations the kindreds were diverted into the position of aggregates of persons claiming certain rights and obligations in regard to each other. The complicated wergeld protection ceases to be enforceable. A man's life is still taxed at a certain sum, but this sum will be levied under the authority of the government, and this government will try to prevent feuds and even to legislate against the economic ruin in which innocent persons are involved by the misdeeds of their relations.

The same Frostathingslov, from which I have quoted a paragraph as to the distribution of rings of wergeld, is very much concerned about the disorder and disasters which follow on blood feuds. (Inledning, 8): "It is known to all to what extent a perverse custom has prevailed in this country, namely that in the case of a homicide the relatives of the slain try to pick out from the kindred him who is best (for revenge), although he may have been neither wishing, willing nor present, when they do not want to avenge the homicide on the slayer even if they have the means." And in Eadmund I's legislation we find enactments which free the magas, the kindred, from all responsibility for the misdeeds of the kinsman, unless they want of their own accord to come to his help in the matter of paying off the fine.

As regards the very important department of landed property, the collective right of kinsmen as to land yields to customs of inheritance which still savour of the original view that individuals only use the land while the kindred is the real owner, but the conception is embodied in a series of consecutive individual claims. In Norway, for instance, odal land ought to remain in the kindred, but this means that if some possessor wishes to sell it, he has to offer it to the heirs at law for pre-emption, and that even after a sale to a stranger has been effected the rightful heir may reclaim the land by paying somewhat less than the sum given for it by the outsider.

Let us, however, go back to a time when the social co-operation and defensive alliance of a group of strong men was recognised as a most efficient means of getting on in the world

and of meeting possible aggression. People born and bred in a mental atmosphere instinct with such views were not likely to surrender them easily even if circumstances were against their realisation on the basis of natural kinship. Blood relationship is surrounded by artificial associations assimilated to relationship, and acting as its substitutes -- by adoption, artificial brotherhood, and voluntary associations of different kinds. The practice of adoption did not attain in Teutonic countries the importance it assumed in India, Greece or Rome. One of the causes of its lesser significance lay in the early predominance of Christianity which prevented Germanic heathendom from developing too powerfully the side of ancestorworship. But yet we find practices of adoption constantly mentioned in different Teutonic countries. The adopted father became, of course, a patron and leader and, on the other hand, looked to his adopted son for support and efficient help. The ceremony of setting the new child on the parent's knee was a fitting expression of the tie created by adoption. A certain difficulty in the reading of our evidence as to adoption arises, however, from the fact that a "foster-father," as well as a "foster-mother," was sought, not for the sake of protection and lordship, but for providing the material care needed by children under age. The great people of those days were often loth to devote their time and attention to such humble occupations, and a common device was to quarter a boy with a dependent, a churl of some kind, who would have to act as a proper foster-father in rearing the child in the same way as a nurse would do for infants. A curious example of the contrast between the two forms of artificial fatherhood is presented by the Norse Saga of King Hakon, Aethelstan's foster-son. Young Hakon is sent by his father Harald to the court of the powerful ruler of England, King Aethelstan, who receives him kindly and lets him sit on his knee, adopting him thereby as his son. No sooner has the boy sat down on the knee of the monarch of Britain than he claims Aethelstan as Harald's vassal, because he has taken up the duty of a foster-father in Scandinavian laws adoption in the form of aetleiding, admission to the kindred, appears complicated with emancipation from slavery. The unfree man receiving his freedom drinks "emancipation ale" with the members of his new kindred and afterwards steps into a shoe roughly prepared from the hide of an ox's foreleg. This latter ceremony symbolises the coming in of the new member of the kindred into all the rights and privileges of the kinsmen who have admitted him into their midst. The connexion between both sides of this rite -- adoption and emancipation -- seems to be provided by the frequent recourse to aetleiding in the case of sons born to Scandinavian warriors by their unfree concubines. But the ceremonies are characteristic of any kind of adoption bringing new blood and new claimants into a kindred of old standing.

Another form of union constantly occurring in Teutonic Societies was artificial brotherhood. A common practice for starting it was to exchange weapons; sometime each of the would-be brothers made a cut on his arm or chest and mixed the blood flowing from it with that of his comrade. The newly created tie of brotherhood was usually confirmed by an oath; a historical instance of this variety is presented by the arrangement between Canute and Eadmund Ironside. This kind of artificial relationship lent itself readily to the formation of fresh associations not engrafted on existing kindreds, but carrying the idea of close alliance into the sphere of voluntary unions. We hear of "affratationes" among Lombards, of "hermandades" in Spain, and

the English gilds are a species of the same kind. The Anglo-Saxon laws tell us of gilds of wayfarers, who evidently found it necessary to seek mutual support outside the ordinary family groups. In the later centuries of Anglo-Saxon history gilds appear as religious and economic, as well as military institutions, and they are closely akin to Norse associations of the same name.

Here are some paragraphs from the statutes of the thanes gild in Cambridge organised some time in the eleventh century: "That then is first, that each should give oath on the holy relics to the others, before the world, and all should support those who have the greatest right. If any gild-brother die, let all the gildship bring him to where he desired... and let the gild defray half the expenses of the funeral festival after the dead.... And if any gild-brother stand in need of his fellows' aid it be made known to his neighbour... and if the neighbour neglect it, let him pay one pound.... And if anyone slay a gild-brother, let there be nothing for compensation but eight pounds, but if the slayer scorns to pay the compensation, let the whole gildship avenge their fellow... And if any gild-brother slay a man... and the slain be a twelfe hynde man, let each gild-brother contribute a half-mark for his aid; if the slain be a ceorl two oras; if he be Welsh one ora."

The principles of artificial relationship were easily carried over into the domain of rural husbandry and landed property. A custom with which one has to reckon in all Teutonic countries is the joint household, the large family of grown-up descendants living and working with their father or grandfather. It may also consist of brothers and cousins continuing to manage their affairs in common after the death of the father or grandfather. In the first case the practice implies a reluctance to emancipate grown-up sons and to cut out separate plots for them. In the second case the joint household gives a peculiar cast to Succession. The partners are Ganerben, joint heirs, and each has an ideal share in the common household which falls to his children or accrues to his fellows on his death. The Ganerbschaft proved an important expedient in order to reconcile the equality of personal rights among co-heirs with the unity of an efficient household. But the existence of the "joint inheritance" was not enforced by law: it resulted from agreement and tradition and could be dissolved at any given moment.

The tenacity and wide diffusion of these unions in practice prove the value of such co-operative societies and the strength of the habits of mind generated by relationship. The same causes operated to give a communal cast to economic associations formed by neighbours or instituted by free agreement among strangers. We cannot generally trace the rural unions of the mark, the township, the by, to one or the other definite cause. In some cases they must have grown out of the settlement of natural kindreds; in other instances they were generated by the necessity of combining for the purpose of settling claims of neighbours and arranging the forms of their co-operation; in many cases, again, they were the product of the settlement of colonising associations or military conquerors. But in all these instances the people forming the rural group were accustomed by their traditions of natural or artificial kinship to allow a large share for the requirements of the whole and to combine individual efforts and claims. The contrast between individualism and communalism was not put in an abstract and uncompromising manner. Both principles were combined according to the lie of the land, the density of population, the necessities of defence, the

utility of co-operation. In mountain country the settlements would spread, while on flat land they would profit by concentration. Forest clearings would be occupied by farms of scattered pioneers; the wish to present a close front to enemies might produce nucleated villages. At the same time, even in cases of scattered settlements there would be scope left for mutual support and the exercise of rights of commons as to wood and pasture, while in concentrated villages the communalistic features would extend to the allotment regulation and management of agricultural strips. But all these expedients, though suggested by custom, were not in the nature of hard and fast rules, and in the face of strong inducements they were departed from. A new settler joining a rural community of old standing had to be admitted by all the shareholders of the territory, but if he had succeeded in remaining undisturbed for a year and a day or in producing a special licence to migrate from the King, he could not be ousted any more. A householder who had special opportunities as an employer of slaves, freedmen or free tenants, could easily acquire ground for his exclusive use and start on an individualistic basis.

There is ample evidence to shew that in the earlier centuries the customs and arrangements of kindreds and of associations resembling them were widely prevalent, while private occupation formed an exception. Matters were greatly changed by the conquest of provinces with numberless Roman estates in full working order and with a vast population accustomed to private ownership and individualistic economy. But it took some time even then to displace old-fashioned habits, and in the northern parts of France, in England, in Germany, and in the Scandinavian countries communalistic features in the treatment of arable and pasture asserted themselves all through the Middle Ages as more consonant with extensive tillage and a complex intermixture of the claims of single householders. The point will have to be examined again in another connexion, but it is material to emphasise at once that the rural arrangements of Teutonic nations were deeply coloured by practices generated during an epoch when relations of kindreds and similar associations were powerful.

The possibility for strong and wealthy men to make good their position as individual owners and magnates was partly derived from a germ existing in every Teutonic household, namely from the power of the ruler of such a household over the inmates of it, both free and unfree. Even a ceorl, that is a common free man, was master in his own house and could claim compensation for the breach of his fence or an infraction of the peace of his home. In the case of the King and other great men the fenced court became a burgh, virtually a fortress. Every ruler of a household, whether small or great, had to keep his sons, slaves and clients in order and was answerable for their misdeeds. On the other hand he was their patron, offered them protection, had to stand by them in case of oppression from outsiders and claimed compensation for any wrong inflicted on them. In this way by the side of the family and of the gild or voluntary association of equals another set of powerful ties was recognised by legal custom and political authority -- the relations between a patron and his clients or dependents. The lines of both sets of institutions might coincide, as for instance, when the chieftain of a kindred acted as the head of a great household, or when a gild of warriors joined under the leadership of a famous war-chief. But they might also run across each other and develop independently: there were no means to make everything fit squarely into its place.

The contrast between the permanent arrangements of the tribes and the shifting relations springing from personal subjection and devotion seemed very striking to Roman observers. Tacitus in his tract on the site and usages of Germany describes the institution of the *comitatus*, the following gathered around a chief. While in the tribe the stress is laid on the unconquerable spirit of independence and the lack of discipline of German warriors, in the *comitatus* Tacitus dwells on exactly opposite features. The follower, though of free and perhaps of noble descent, looks up to his chief, fights for his glory, ascribes his own feats of arms to his patron, seems to revel in self-abnegation and dependence. Of course, such authority is acquired and kept up only by brilliant exploits and successful raids, so that if a particular tribe gets slack in these respects, its youths are apt to leave home and to flock abroad around warriors who achieve fame and obtain booty. Thus the *comitatus* appeared chiefly as a school of military prowess and young men entered it as soon as they were deemed fit to receive arms. It was capable of developing into a mighty and permanent political factor. Arminius and Marbod were not merely tribal chiefs but also leaders of military followings, and it is difficult to make out in every instance whether the greater part of a barbaric chieftain's authority was due to his tribal position or to his sway over his followers.

The peculiar features of Germanic social organisation were greatly modified by the conquest of Roman provinces and the formation of extensive states in the interior of Germany and in Scandinavian countries. The loose tribal bonds make way for territorial unions and kingship arises everywhere as a powerful factor of development. As regards territorial arrangements the hundred appears as a characteristic unit in nearly all countries held by Teutonic nations. It seems based on approximate estimates of the number of units of husbandry, of typical free households in a district; each of these households had to contribute equally to the requirements of taxation and of the host, while the heads or representatives of all formed the ordinary popular courts. Such territorial divisions could not, of course, be framed with mathematical regularity and even less could they be kept up in the course of centuries according to definite standards, but the idea of equating territorial units according to the number of households proves deeply rooted and reappears, e.g., in England in the artificial hundreds based on the hundred hides of the Dane law assessment.

By the side of these more or less artificial combinations rose the *Gaue* (*pagi*), or shires, mostly derived from historical origins, as territories settled by tribes or having formed separate commonwealths at some particular time. Such were, for instance, the south-eastern shires of England -- Kent, Sussex, Essex, Norfolk, Suffolk, etc.

Roman writers lay stress on the tendency of Germanic nations towards autonomy of the different provinces and subdivisions of the tribe. Caesar says that in time of peace they had no common rulers but that the princes of regions and districts administered justice and settled disputes among their own people. A section of a tribe, a *gau* as it was styled, could sometimes follow its own policy: Inguiomer's *pagus*, e.g., did not join with the rest of the Cherusci in Arminius' war with the Romans. But continual military operations not only forced the tribes to form larger leagues, but also to submit to more concentrated and active authorities. Kingships arose in this connexion and Tacitus tells us that royal power exercised a great influence in modifying the

internal organisation of the people. It was hostile to the traditional noble houses which might play the part of dangerous rivals, and it surrounded itself with submissive followers whom it helped to promotion and wealth so that freedmen protected by the King often surpassed men of free and even of noble descent. Tacitus' remarks on the social influence of Kingship are fully borne out by the state of affairs after the Conquest.

It is clear that the occupation of extended territory over which Germanic warriors were more or less dispersed contributed powerfully to strengthen the hands of the King. Without any definite change in the constitution, by the sheer force of distance and the diversion caused by private concerns the King became the real representative of the nation in its collective life. There could be no question of gathering the popular assembly for one of those republican meetings described by Tacitus where Kings and princes appeared as speakers, not as chiefs, and had to persuade their audience instead of giving commands. Thus the popular assemblies of the Franks degenerated into gatherings of the military array which took place once a year in the spring, first in March, later on in May. These meetings were not unimportant as they brought together the King and his folk and offered an occasion for some legislation and a good deal of private intercourse with persons who came from distant parts of the Kingdom. But the assembly was not organised for systematic political action or for regular administrative business. So the King remained the real ruler of his people in peace and war, and the persons he had to reckon with were the princes of his house, the officers of his household, magnates of different kinds, and the clergy. The absence of a definite constitution gave rise to a great deal of violence: indeed violence seems to have been the moving power of government. It impressed people's imagination and even wise rulers could not dispense with it. The famous story of the Soissons chalice is characteristic of the whole course of affairs in Gaul under the Merovingian Kings. Clovis tries to save a precious chalice for the Church after the taking of Soissons and puts it by as an extra share of the loot. A common Frankish soldier, however, does not want to submit to any such privilege and cleaves the chalice with a stroke of his battle-axe. "The King is not to have more than his share," he explains, and Clovis dares not curb his unruly follower in the presence of comrades who evidently would have sympathised with the latter. He bides his time and at the next review cleaves the man's head, in remembrance of the chalice of Soissons.

Everything depended on the personal authority of the King and on his exploits. Theodoric the son of Clovis persuades his army to take part in an expedition against Burgundy. When he plans a campaign against the Thuringians he takes care to incite the Wrath of the Franks by describing the misdeeds and offences committed by their enemies. But if the King and the host are not of the same opinion, an unpopular King is exposed to contumelious treatment. Gregory of Tours tells the story of an altercation between Chlotar I and his host. The Frankish warriors wanted to fight the Saxons while the King urged them to desist from this plan and warned them that if they went to war against his will he would not go with them. Thereupon they waxed wroth and threw themselves on the King, tore up his tent, assailed him with exasperating abuse and threatened to kill him if he did not come with them. He went with them against his wish, and they were beaten. The great means for upholding power under these circumstances was to act with relentless cruelty against enemies

or rivals. The annals of Merovingian Gaul are especially notorious in this respect, but they exhibit feelings and moods which are characteristic to some extent of the whole barbaric world of those times. We read in the life of St Didier of Cahors of the wrath of a king who decreed terrible things: some were maimed, others killed, others sent into exile, others again thrown into prison for life.^(4*) Guntram of Burgundy swore that he would destroy the household of a rebel up to the ninth generation in order to put a stop to the pernicious custom of murdering kings. Sometimes this policy, worthy of wild beasts, achieved its aim of spreading terror, and a tyrant like Chilperic might think that he had it in his power to command anything he wished, e.g. to reform the alphabet, to improve the dogma of the Trinity and to impose baptism on all the Jews. But the general result was that when the flush of conquest had passed and the danger of further invasions seemed remote, all the springs and ties which hold and move society gave way. Men ceased to care for the Commonwealth, everyone was intent on his private lust and lucre. These appalling results are ascribed in as many words by Frankish chiefs to this same King Guntram, who swore to exterminate rebels and all their kith and kin. "What shall we do," they said, "when the whole people is affected by vice and everyone finds delectation in iniquity? No one fears the King, no one has any reverence for a duke or a count, and should this state of things displease some of the rulers -- seditions rise at once, disturbances begin."

However great the disorder of these lawless times, certain institutional features stand out as the principal means of government. The *comitatus* described above on the strength of the narrative of Tacitus, did not disappear but rather grew in importance after the Conquest. To begin with it encountered on Roman soil a relation which had most probably sprung from the same Germanic root, but had acquired new strength under Imperial rule. I mean the so-called *bucellarii* which appear definitely in the Roman Empire from 395, but are connected with the older practice of employing Germans and other barbarians as guardsmen of the Emperors and of generals. The *bucellarius* was a soldier who had taken service by private agreement with a military chief. The term is derived from *bucella*, a roll or biscuit of better quality than the ordinary bread provided for the use of soldiers. Thus the very name of these hired warriors implied a privileged treatment. They received their military outfit from their chiefs and on their death this outfit was returned to the commander. Troops of men enlisted on such lines came to play a great part in the wars of the fifth and sixth centuries. Belisarius' best soldiers were private followers of this kind gathered from among warlike barbarian tribes: among others Huns were greatly appreciated as light cavalry. The Visigothic king also kept troops of *bucellarii* as a regular part of their army. In other Germanic kingdoms we find the followers (*comites*) under different names, but always in similar employment. In fact the different terms afford some indication in regard to what was expected from the follows. They were *gasindi*, *gesith* (*Gesinde*) of their chiefs, that is, servants. The same notion of service was expressed by the German *degen*, the Anglo-Saxon *thegen* (minister), while *hiredma* (A.S.), *hirdr* (Norse), *hzidian* (Russian) point to the fact that the follower was a member of the household of his chief. An expression derived from the tie of mutual fidelity is *antrustio* (Frank. from *trust-fidelity*, protection and troop of confederates). The Danish sources use *vederlag* (Society) while the German lay more stress on the fact that the members of the

association are followers (Gefolge, cf. A.S. folgere, folgod).

The relation is generally initiated by two acts: firstly, the submission of the follower to his chief as symbolised by the former stretching out his folded hands which the latter receives in his own; secondly, an oath of fidelity by which the follower promised to support his lord and to be true and faithful to him in every respect. The corresponding duties of the lord were to afford protection to his followers and to keep them well. The *Beowulf* poem presents a vivid description of the life of a following, a *comitatus*, of this kind -- the communion in peace and war, the common feasting in the hall, the moral obligations incurred by the parties to the agreement. It shows also that the *hird* or *gesith* was differentiated into two halves -- the elder councillors and the younger fighters (*duguth* and *gogoth* -- excellence and youth), exactly in the same way as the "friends" of a Russian chief (*drujina*) were distinguished as the seniors and the juniors. The chief provided the outfit for his followers -- horses, swords, coats of mail, shields -- but this outfit went back to him on the death of the follower. This is the origin of the *heregeatu* (*heriot*) of the English followers, so well illustrated by many charters (e.g. *Earle, Land Charters*, 223, *Will of Abp Aelfric*) and by the legislation of Canute. There was no obstacle to the collection of a following by any free warrior; following are distinctly admitted by Franks, Lombards, Scandinavians and Anglo-Saxons to all who can attract them, and this is characteristic of the rudimentary state of public law in those times, inasmuch as the holding of armed retainers who have sworn fidelity to their chief does not agree well with any properly organised government. As a matter of fact, the keeping of a following was mostly restricted by economic considerations to powerful magnates, chieftains and kings. Under ordinary circumstances the outlay was too great for common free men. But, of course, if there appeared a prospect of looting or of starting on adventures there was nothing to prevent famous warriors from collecting a *hird* of their own, and the Viking raids were to a great extent the results of such private enterprise.

When tribes settled down and territorial governments were put into shape, the following became an *instrumentum regni* and the King's following, his *trustes* or *gesith*, assumed an exceptional importance. With the Goths of Theodoric and Athalaric the *Sajones* became a body of officials. The Ostrogothic king employed them not only as a body guard, but as messengers, as revising officers, as commissioners provided with special powers and not only exempt from ordinary jurisdiction but sent to control the regular members of the administration. In the same way the King's *thegns* of later Anglo-Saxon history become a privileged official class, without whom no government can be carried on and who lead in the host, in the *Witenagemot* and in the moots of the shires and hundreds. The *huskarls* of the Danish period were in a similar position. Their service as a fighting body-guard is well exemplified by the battle of Hastings and other events of the eleventh century; but let us also remember that they were used, among other things, to collect the *geld*, as may be seen from the story of the two *huskarls* of Harthacnut who were killed at Worcester. In England as well as in France or Italy the situation was much complicated by the fact that a great number of the followers were settled by their chiefs on separate estates and thus ceased to be ordinary members of the chiefs' households. Still a seat in the King's hall along with an estate of five hides was deemed one of the distinctive privileges of a King's *thegn*.

This point raises the question: What means had a government of those times to carry on its work? In every political organisation there must be some sources of income to defray expenses, or else the population must be made to provide for necessary contingencies by compulsory services of different kinds. Where did the governments of Italy, of France, of England get their money and how were the contributions of the people towards political organisation collected and administered? Nowadays these questions would present no difficulties. We are taught by bitter experience that any effort in the preparation for War, or in judicial organisation, or in improvement of roads and sanitary conditions has to be paid for by an increase of taxes and rates. Therefore it will be rather difficult for us to realise that early medieval governments had no taxes or rates to speak of at their disposal. The complex and oppressive system of Roman taxation could not be kept up: already in the late years of the Empire its overburdened subjects sought refuge with the barbarians in order to escape from tax collectors. After the downfall of Imperial rule, all the efforts of barbarian kings to maintain systematic taxation were in vain. They called forth insurrections, and even more powerful was a passive resistance in which all persons concerned joined more or less. Taxes broke up into customary payments, and were mixed up in an inextricable manner with rents and profits originating in private ownership.

Here are extracts from two Lombard grants illustrating the confusion between public and private payments and rents. King Aistulf gave some land to the monastery of St Lawrence in Bergamo (A.D. 755) and added the following exemptions from tribute and dues: "Donamus in suprascripta ecclia omnes scuvias (excubias -- repairs of roads and bridges) et utilitates quas homines exinde in publico habuerunt ad consuetudinem faciendum excepto quando utilitas fuerit ce(n)sus faciendum ubi consuetudinem habuerint, nam ab aliis scuviis et utilitatibus publicis quieti permaneant."(5*) The peasantry on the estates of the said monastery are thus freed from road-making, bridge-making and other public work, although the right to levy a tax (census) where it is customary is reserved. And here is a fragment from a donation of a certain deacon Gallus: "Ipsa suprascripta casa cum suprascriptis massariis (colonis) ividem resedentem aliut redditum non facias, nec angarias, nec nulla scufias ad ipsa suprascripta Dei Ecelesia, nisi tantum per singulos annos quattuor modia grano, uno animale quale abuerit; pro camissia tremisse uno, una libra cera, uno sistario mel et amplius nulla dationem aut scufia perexsolvant, quia mihi sic actum est."(6*) The donor fixed the amount of dues in favour of the monastery according to the custom followed in his own time and exempts expressly the coloni of the estate he is granting from all payments and services, except some specified customary rents in kind. The occasional dationes and collectae which were still levied did not constitute a regular fiscal system, and it may be said that the principal traces of such a system in the earlier Middle Ages are connected with progresses of the King and of Royal officers, who had to be fed and provided with the necessities of life according to a certain customary scale. This is the origin of the so-called feorms of rights, of which we hear a good deal in Domesday and in Anglo-Saxon sources. Corresponding arrangements of compulsory hospitality are reported from other places and these could easily be turned into a regular system of provender rents to be levied in the domanial courts of the King.

In the laws of King Ine of Wessex we find the following curious account of the provender rents due from 10 hides of land:

10 casks honey, 300 loaves of bread, 12 buckets of Welsh ale, 30 of clear ale, 2 full grown oxen or 10 wethers, 10 geese, 20 chickens, 10 pieces of cheese, one bucketful of butter, 5 salmon, 20 pounds of fodder and 100 eels (Ine, 70, 1).

The Carolingian restoration and especially the desperate struggles against the Norsemen compelled the populations of Western Europe to submit to new forms of direct taxation. Of these the most formidable and the best known is the Danegeld; but a detailed account of it must be given elsewhere. But even the Danegeld and the continental impositions corresponding to it were never meant to cover the entire cost of administration. They were chiefly designed to meet extraordinary expenditure, to pay off pirates, to raise heavy contributions of war, etc. In this way the question as to the ordinary means of meeting the requirements of administration has still to be answered. And the answer is clear. The regular administration of medieval States was kept up from the proceeds of crown domains. This point of view is clearly expressed, for instance, in a letter of Bede to Archbishop Egbert of York in which the famous historian complains of the reckless squandering of the Kings' estates, while their property should be considered as a fund for the outfit of soldiers and officials. The connexion between landholding and public service was underlined almost to a fault by historical writers until a German scholar, Paul Roth, argued that the Merovingian land charters do not shew any special obligation on the part of the donees and are, in fact, one-sided grants in full property without any agreement as to service attached to them and without any reserved right of confirmation or resumption in favour of the donor. From a technical point of view Roth was quite right: a Merovingian grant does not disclose on the face of it the implied connexion between tenure and service. But the mere fact that such grants of property in land became the regular means of recompensing services to the State is in itself of the greatest consequence. Indeed it may be said that such unconditional grants were more dangerous for the sovereign power in the State than actual beneficia with a clearly expressed condition attached to them, because it was impossible to go on remunerating services by grants of estates in full ownership without exhausting the stock in land.

A government proceeding on such lines was sure to be soon confronted by an empty exchequer and no legal means to refill it. But though no juridical condition was formulated, the Frankish or Lombard government never lost sight of the beneficia and their holders. The notion that men who had received such beneficia were expected to be especially eager in their service to the kings was not only a precept of morals, but led to practical consequences. Officials who had called forth the displeasure of their masters would very likely see their beneficia confiscated. In England the confiscation of book-land in case of treason or neglect of military duty was recognised by law. Lombard practice shews another curious expedient for asserting the superior right of the Sovereign in regard to estates granted to followers. They were often given in usufruct without charter so that the donee enjoyed only a matter of fact possession without any legal right and could be ousted at pleasure. As a higher degree of favour this precarious tenure of the estate was exchanged for a regular title to it. Thus the earlier period of medieval life may be characterised by the words -- a regime based on usufruct and of ownership in land. This fund was nearly exhausted in France towards the end of the first dynasty, and in consequence the monarchy itself was weakened in every respect and the

Merovingian rulers had sunk into the state of *rois faineants* -- good-for-nothing kings, while real authority rested with the managers of the privy purse and palace stewards -- the *majores domus*.

The national revival occasioned by the necessity to defend Christian Society against the Arabs on one side, and heathen Germans on the other, took the shape of a concentration of power in the hands of the Carolingian dynasty. And the first thing the new rulers had to do was to replenish the domanial fund and to reorganise the methods of granting estates. In order to acquire the necessary land capital nothing was left but to lay hands on part of the enormous landed property which had been accumulated by the Church. The earlier Carolingian rulers, more especially Charles Martel, simply appropriated ecclesiastical estates to endow their military retainers. Another device was to quarter soldiers on monasteries and even to appoint officers lay abbots of wealthy ecclesiastical foundations. With Pepin the Short and his brother Carloman these irregular methods savouring of downright pillage were abandoned and a kind of compromise between State and Church was arrived at. We are told that in 751 a "division" of estates took place. Some were given back to the Church, while other lands were registered as "precarious loans" (*precaria verbo regis*) conceded to laymen by ecclesiastical institutions at the request of the King and on condition of the payment of a rent of about one-fifth of the income (*nonae et decimae*) to the owners of the land.

This system was based on the distinct recognition of the superior domain of the Church and on a division of the proceeds between two masters, between the holders of the eminent and of the useful domain, as we might be tempted to put it in conformity with later terminology, although from the point of view of eighth century law the estate of the tenant was not a form of ownership, of dominium, at all, but a precarious tenancy. As a matter of custom, however, these tenancies soon grew to be recognised as estates of inheritance conditioned by the performance of certain duties to the King as well as by the payment of rents to the Church. The process described exerted a great deal of influence on the formation of a general doctrine as to *beneficia* in which the conditional character of such donations was emphasised and carried to practical consequences. The Carolingians worked the administrative apparatus of their empire, as formerly, by means of land-grants, but these grants created definitely conditional tenements. Although as a rule the son succeeded the father as to the "benefice" he was made to ask for a confirmation of his father's estate and might be obliged to pay something for this confirmation. In case of a change in the person of the owner, the superior or senior lord, the practice of resuming the ownership of *benefices* and of issuing them again under new pants began also to come in. Thus the technical aspect of the practice of feoffment was gradually evolved. In England the process is not characterised by such clearly marked stages, but on the whole the practice of grants of loan-land and book-land followed in the same direction, the form of "loans" being used for constituting tenements which it was especially desirable to retain in the ownership of the lord, while even as to bookland the special obligations of lay holders in regard to the Crown became more and more definitely recognised. Still the final constitution of the doctrine and of the system of fees was effected in England under the influence of French feudalism, as carried over by the Norman Conquest.

This history of tenements conditioned by service is

intimately connected with the spread of the relation between lord and follower on one side, with the growth of the economic practice of constituting tenancies on the other. As to followers I shall merely call attention to the convenience of remunerating an armed servant by the grant of a tenement instead of keeping him as a member of the household or paying him wages. The other side of the surrounding conditions requires some further notice. Apart from the incitement towards the creation of tenements which came from the wish to recompense officials and soldiers, there were powerful incitements to the formation of tenancies on lands held by the Church. The teaching of the Church as to good works and salvation was eagerly taken up by the laity, who tried to make amends for all shortcomings and sins by showering gifts on ecclesiastical institutions. It is computed that about one-third of the soil of Gaul belonged to the Church in the Carolingian epoch. The monastery of Fulda, the famous foundation of Boniface, gathered 15,000 mansi in a short time from pious donors. A considerable part of this property came from small people, who tried in this way not only to propitiate God, but also to win protectors in the persons of powerful ecclesiastical lords. A most common expedient in order to guarantee the ownership of a plot to a monastery without losing one's own subsistence was to constitute a so-called *precaria oblata*, that is to part the land and to receive it back at the same time as a dependent tenement, usually under the condition of paying some nominal rent, for the sake of a recognition of ownership. On the other hand ecclesiastical corporations stood in need of farmers who would undertake the management of scattered portions of property, and it was a common policy for abbots and clerics to concede such dispersed smaller estates or plots to trustworthy men for more or less substantial rents on the strength of so-called *precariae datae*. The expression *beneficium* was in use for such transactions, but it became gradually specialised to denote the tenements of vassals, or higher military retainers. There was thus a characteristic tendency to organise land-tenures based on a combination between superior lords or seniors and inferior, dependent tenants.

The same result was reached from yet another point of view, namely through the working of the system of political obligations laid on the citizens. As taxation was undeveloped and had to be represented largely by dues from estates, the demands of the government as expressed in personal services of the subject were very great. The machinery of public institutions was based largely on what has been called *trinoda necessitas* -- attendance at the host, repair of bridges and roads, construction of fortresses, and also on the attendance of suitors at the different public courts, more especially at the county and the hundred. Originally it was reckoned in England that one man should serve for one hide: in the Frankish territories the unit of assessment was smaller than the hide, the *mansus* (*Hufe*), roughly corresponding to the English *virgate* in size, although its value must have been more considerable, at least in Gaul, on account of the more intensive husbandry of the Southern countries. Anyhow it was soon found that owners of single *Hufen* were not of much use to the army while the army service was a crushing burden for them, and we see in all the principal countries of Western Europe attempts to graduate the standards of equipment of the members of the host by combining the poorer men into larger units. The principle of graduated general service is well expressed in Lombard legislation. The second and third clauses of Aistulf's laws subdivide the host into three classes according

to equipment. The poorest freemen, characteristically called *arimanni* or *exercitales* -- army-men, are bound to attend the host with shield, bow and grows; the owners of forty *juga* (*jugera* are meant) of land have to appear with spear, shield and horse; the wealthiest whose estates are computed at seven tributary holdings have to attend in a coat of mail, and if they own more landed property have to muster additional soldiers in proper equipment in proportion to their wealth; merchants should have their duties apportioned on a similar scale. A clause of the laws of Liutprand (83) provides that judges and administrative officials should have leave to exempt a certain number of the poorer freemen from personal attendance, on condition that they should help to carry loads for the army with their horses and perform week-work for the officials during their absence in the host.

In one of several capitularies treating of the obligations of men serving in the host Charles the Great lays down the following rules: Let every free man possessed of four settled mansi of his own or held of another as a benefice prepare himself and go to the host on his own account either with his senior or with the count. As to the free man having three mansi of his own, let one be joined to him who is possessed of one mansus and let him help the other in order that he may do service for both. A man having only two mansi of his own should be joined to another possessed of two, and let one of them go to the host with the help of the other. Even if a man should only have one mansus let three others possessed of the same quantity be joined with him and let them give him help so that he should proceed to the host, while the three others should remain at home.

Even in this mitigated form compulsory service in the host and at the courts proved too heavy a burden for the poorer freemen, who, instead of attending to their own affairs, were driven to serve on protracted expeditions. This meant sheer ruin for the smaller households, and the wish to escape from the harassing demands of the military and administrative machinery led many of these smaller people to surrender their dangerous independence and to place themselves under the protection of lay or clerical magnates. This is one of the roots of the commendation in consequence of which the plots of the lower free class shrink apace in favour of the neighbouring great estates. Nor was it the only root. The disruption of the ties of kinship and the insufficiency of ordinary legal protection in those times of violent social struggles and of weak government made it necessary for kinless or broken men to look out for the support of mightier neighbours. And again, all those who had been weakened in the everyday struggle for existence -- widows, orphans, men stricken by disease or economic mishaps -- could not do better than commend themselves to the strong hand of a magnate, although such commendation involved a lessening of private independence and sometimes the loss of land ownership. The various forms of tenant right cropping up in so profuse a manner afforded convenient stages for the gradual descent of the poorer freemen into a condition of clientship, of personal dependence on the "senior."

In this way the most characteristic phenomenon of medieval Society, the great estate or the manor, as they said in England, was being gradually evolved. The most complete instances of such organisations in the ninth century are presented by documents drawn from among the records of Royal and of ecclesiastical administration. Charles the Great's *Capitulare de villis* presents a comprehensive survey of Royal estates which is further illustrated by shorter regulations of the same kind -- the

breviaria rerum fiscalium, the capitulare de disciplina palatii Aquensis, etc. The enormous complex of crown domains is seen to consist of three different elements -- of home-farms worked under the direct control of stewards (casae indominateae, mansioniles), of tenements held by free men and half-free men (mansu ingenuiles, lidiles) and of plots occupied by settled serfs (mansu serviles). For purposes of organisation these different mansu are sometimes concentrated into beneficia, small estates of some 4-10 mansu, entrusted to privileged tenants, vassali, to whom the beneficia have been assigned in remuneration for their services. In other cases a number of mansu are put under a steward of the King or Emperor chosen from among his regular servants (ministeria). The rents in kind and in money are paid to him from the dependent mansu, and various services for tillage, reaping, mowing, threshing, carrying the produce, hedge-making, shearing sheep, and such-like have to be collected and arranged at the central mansu with which, as a rule, a home-farm is connected. The ministeria are combined in groups under villae and these again are congregated around a number of palatia, great manors in which the head stewards reside, keep accounts and store the various products of domanial husbandry for direct consumption and for sale. The Royal master and members of his family move from one of the palatia to the other with their retinue and consume part of their revenue on the spot. Although the turnover of this economy appears to be very considerable, the home-farms with independent cultivation on a large scale are not common, and there are no latifundia in the sense of great plantation estates. The type of combined economy based on the mutual support of a manorial centre and its satellite holding is the prevalent one, and some of the estates are broken up into small and scattered plots. Another interesting feature consists in the fact, that a second line of subdivisions and groups runs alongside the hierarchy of stewardships: the peasantry are grouped into tithing and hundreds and these subdivisions are apparently connected with the older personal and territorial arrangement of the population. Altogether the domanial scheme by no means excludes older popular units and institutions. The communities of the Marks, for instance, continue to exist for the purpose of regulating the waste, and in districts with nucleated villages the customary institutions of the townships also live on under the net of the manorial administration.

The formation of great estates went on also on the lands of the Church and the laity: the machinery of their rural administration was shaped more or less on the pattern of the Royal domains. But generally in this case the system was not so complete and the history of its formation is more easy to trace. The possessions of private owners, both lay and clerical, are generally much scattered, having been collected by chance. Even in the fields of every single estate the plots of the lord and of the tenants would lie intermixed. This rendered the growth of home-farms difficult and favoured the imposition of rents coupled with occasional services. The peculiar dualism of manorial authority and township association is especially noticeable on these estates. The practices of the open-field system with compulsory rotation of crops, collective management of pasture and wood, common supervision as of herds, went on as before, only that the usages and regulations of the marks and of the villages were strengthened and complicated by seigniorial authority and perquisites. The Hufen (mansu) also kept their ground for a long time because, although there was no juridical impediment to their division, the units were kept up as much as possible for economic

reasons, as representing self-supporting farms provided with all the necessities of husbandry in field and wood, in live stock and implements. When divisions took place care was taken that they should follow certain natural fractions of the plough teams and superfluous claimants were either bought out or settled on adjacent cottages. It is impossible to understand medieval society unless we take account of this double aspect of its life.

A description of the medieval manor would be incomplete without a consideration of its bearing in public law. The medieval view of government admitted, and indeed required, that wealth and social influence should be accompanied by political power and public functions. Every householder had some jurisdiction "under his roof-gutter" (unter der Dachtraufe) and within the hedge. Personal authority over domestic servants and slaves took, among other things, the shape of criminal and police jurisdiction (Dienstrecht). Again the senior as the centre of a group of vassals claimed the right to preside over a court composed of these vassals, as his "peers," in order to decide civil suits between them. But the most extensive application of this private view of jurisdiction is to be found in the growth of franchises (Immunitas, Freieung, Freibezirk). One of the roots of this system is the condition of Royal domains. Their inhabitants are naturally exempted from ordinary jurisdiction and from common fiscal exactions. They are free from toll and geld or general taxes; in matters of jurisdiction and administration they look primarily to the Royal stewards and not to the ordinary judges and officials of the counties. When a portion of the Royal domain is granted to a subject, its condition is not changed thereby -- it keeps its privileges and stands out as a district separate from the surrounding territory. In England especially the condition of "ancient demesne" begins to form itself already before the Norman Conquest. By the side of this institutional root we notice another. As in the later Empire, the government is obliged to have recourse to great landlords in order to carry out its functions of police, justice, military and fiscal authority. Great estates become extra-territorial already under Roman rule in the fourth and fifth centuries, and it would be superfluous to point out how much more the governments of the barbarians stood in need of the help of great landowners. As early as the sixth century we find exemptions ab introitu iudicum, that is the privilege of landowners to exclude public judges and their subordinate officials from their estates. Civil and afterwards criminal jurisdiction fell necessarily into their hands as a consequence of the grant of fines and judicial costs. In the beginning the concession of profitable rights or perquisites of justice may have been especially valued, but the duties of jurisdiction could not be separated from the former: it was out of the question to make one set of people perform the work of judicial administration while another set reaped its profits. From such beginning the franchises or immunities develop rapidly into a regular and recognised side of landlordship, and with variations in detail the Anglo-Saxon landrica follows the same track as the continental Immunitatsherr. The different forms of power implied by the franchise are sometimes summed up in quaint, proverbial sentences. A German jingle of this kind speaks of twinc unde ban (coercion and command), glocken klanc unde geschrei (belfry and summoning of the posse of neighbours), herberge unde atzunge (lodging and meals to be provided for the representatives of authority), spruch (power of magistrate sitting on the bench), vrevel (criminal fines), diup (keeping and confiscation of stolen goods), stoc (prison), stein (block). With

this may be compared the Anglo-Saxon enumeration -- sac, soc, toll, theam, infangene theof, utfangene theof.

In one important particular the growth of continental immunity differed materially from the Anglo-Saxon process. It was usually deemed necessary on the Continent to separate the actual exercise of criminal jurisdiction from the right of ecclesiastical estates or districts to claim the franchise. Thus bishoprics and abbeys were bound to appoint special advocati (Vogte) to exercise the judicial functions in their tribunals, and these offices tended, as everything else in those times, to become hereditary and to assume the nature of benefices. The Vogt was a kind of parasitic magnate reared on the proceeds of ecclesiastical immunities.

The general results of the social processes described may be summed up under three heads: (1) a debasement and breaking up of the class of common free men, (2) the rise of a landed aristocracy, (3) the formation of a large and varied mass of half-free people. A characteristic expression of the first of these developments may be noticed in the terms applied to the common people. The quality of the free man is graphically described in a Northern Saga as that of a man who yokes oxen, fits out a plough, constructs a house and builds barns, makes a cart and guides the plough. But the bonde (Bauer) remained an independent person, conscious of strength and able to stand on his rights only in the North -- in Norway and Sweden. In Denmark and England the bonde, though as free in the origin, became not only a "husbandman" but a bondman. The Anglo-Saxon ceorl, from being the typical free householder sank into the position of a churl sitting on land burdened with rent (gafol). The Frankish villanus, which ought to designate a member of the township, came to be regarded as a man of vile, low origin and condition. Even friling and liber occasionally assumed a shade of meaning pointing to the imperfect status of freed men or of persons living under Roman law and not entirely exempt from private authority.

The growth of aristocratic distinctions is reflected during the period under consideration by the figures of the wergelds. The Alemannic law already distinguishes between *primi*, *medii* and *minofledis*; the Lombards speak of *meliorissimi*; the Frankish standard consists in the threefold increase of the wergeld for the antrustiones of the King; although in this case the privilege was deemed a personal one, the position of the antrustiones or *convivae regis* was of indirect importance for their families and its tradition is kept up during Carolingian times by the *Seniores*. The Anglo-Saxon divisions are even more characteristic. In the Kentish laws the scale of ranks is very gradual -- there are subdivisions of *eorls*, *ceorls* and *laets*. In Wessex society was arranged in three degrees -- the men worth two hundred, six hundred and twelve hundred shillings. But the middle class disappears in course of time and the sharp contrast between *twelvehyndemen* and *twyhyndemen* is made the basis for the treaties with the Danes. The wergelds cease to be a trustworthy indication of status in the tenth and Seventh centuries, but the general tendency of the social process is sufficiently expressed in them.

The half-free classes are very varied in their origin and social standing. The number of domestic slaves diminished rapidly, partly in consequence of manumissions, and partly because there was a greater need of farmers than of menial servants. Such of the latter as still remained assumed sometimes a privileged position on account of their duties as military retainers and stewards -- they formed the group of *ministeriales*

from which a part of the continental knightly order traces its origin. The settled serfs (*servi casati*) are assimilated more and more to the *coloni* and the *liti* or *aldiones*. The essence of the position of all these groups is to support the household and the home-farms of their lords by rents and labour services, while at the same time tilling plots of their own. As Tacitus expressed it long ago, the serf of the Germans is like the old *colonus* of Rome; he has his own household and is a tributary of the master in respect of a certain quantity of corn, clothes and live stock. Commended free men and free tenants on a lord's land gravitate, as it were, towards the status of these half-free groups. The mere fact of paying rent and of being a tenant becomes a badge of inferiority. The jurisdictional privileges of the great landowners extend not only over their tenants but also over small neighbours. Altogether, instead of clear distinctions based on birth and personal status we see a variety produced by the tenure of land.

There has been a great deal of controversy as to how far Roman and Germanic influences account for the process described, but it seems impossible to apportion exactly the share of each. It is evident that the disruption of public authority and the aristocratic transformation of Society were prepared on both sides. The general course of development was especially rapid and complete in those parts of Europe where there was most intermixture between Romance and Germanic elements, especially in the Frankish Empire. Yet England and Scandinavian countries, in spite of their peculiar position, somewhat aside of the main stream, follow processes of their own which also lead to feudalisation. This seems to warrant the confusion that the coming of feudalism was rather the result of general tendencies than of particular national causes. After the great effort of conquest and invasion, Western European society relapsed into political life on a small scale, into aristocratically constituted local circles.

NOTES:

1. Though the Norwegian and other Scandinavian laws are late in their present text, they are based on archaic customs, and are commonly used by scholars to ascertain the principles of ancient Germanic law.
2. Sering, *Erbrecht- und agrarverfassung in Schleswig-Holstein*, p. 124.
3. Bitterauf, *Traditionen des Hochstifts Freising*, I. p. 5, quoted by Brunner, *Deutsche Rechtsgeschichte*, XII, p. 117, no. 33.
4. *Vita Desiderii Caturcensis*, c. 5, quoted by Waitz, *Deutsche Verfassungsgeschichte*, II, p. 195.
5. *Monumenta historiae patriae*, XIII, p. 33, 15.
6. Troya, *Codice diplomatico Langobardo*, IV, pp. 331, 620, A.D. 743.

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