Feudalism

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The feudal organisation of state and society is the dominant fact of medieval history on its institutional side quite as much as the city-state is the dominant fact of ancient history from the institutional point of view. Such dominant facts cannot be restricted chronologically to a definite period; they arise gradually and give way slowly to new conditions. But it may be said in a general way that the epoch when feudalism form ed most characteristically the centre of political and social arrangements comprised the eleventh and twelfth centuries. From the thirteenth century onwards feudal law continued to be appealed to and feudal principles were sometimes formulated even more sharply than before, but the modern State was beginning to assert itself in most European countries in an unmistakable manner and its influence began to modify the fundamental conceptions of feudalism. In our survey of feudal society we shall therefore look for illustrations mainly to the period between the years 1000 and 1200, though sometimes we may have to draw on the materials presented by thirteenth century documents.

The essential relations of feudalism are as unfamiliar to us as the conception of the city-state. In one sense it may be defined as an arrangement of society on the basis of contract. Contracts play an important part in the business life of our time, but we do not think of the commonwealth as based on leases; we do not consider a nation primarily as a number of lords and tenants; we do not take the status of every single person to be determined by obligations as to land; we do not assume that the notions of sovereignty and of citizenship depend on the stipulations of an express or implied contract. In the medieval period under consideration, on the other hand, it would be easy to deduce all forms of political organisation and of social intercourse from feudal contract. The status of a person depended in every way on his position on the land, and on the other hand, land-tenure determined political rights and duties. The public organisation of England, for example, was derived from the fact that all the land in the country was held by a certain number of tenants-in-chief, including ecclesiastical incorporations and boroughs, from the king, while all the rest of the population consisted either of under-tenants or of persons settled on the land of some tenant and amenable to jurisdiction through the latter. In other West-European countries the distribution of the people was more intricate and confused because there had been no wholesale conquest capable of reducing conditions to uniformity, but the fundamental facts were the same. Every West-European country was arranged on the basis of feudal land-tenure.

The acts constituting the feudal contract were called homagium and investitures. The tenant had to appear in person before the lord surrounded by his court, to kneel before him and to put his folded bands into the hand of the lord, saying: "I swear to be faithful and attached to you as a man should be to his lord." He added sometimes: "I will do so as long as I am your man and as I hold your land" (Saxon Lehnrecht, ch. 3). To this act of homage corresponded the "investiture" by the lord, who

delivered to his vassal a flag, a staff, a charter or some other symbol of the property conceded. There were many variations according to localities and, of course, the ceremony differed in the case of a person of base status. Yet even a villein received his yard-land or ox-gang from the steward of a lord after swearing an oath of fealty and in the form of an "admittance" by the staff, of which a record was kept in the rolls of the manorial court: hence the copyhold tenure of English law.

Tenure conditioned by service was called the feudum, fief, Lehn, but sometimes these terms were restricted to the better class of such estates, those held by military service, while the lands for which rents and labour-services were rendered were described as censivae, in England socagia. The holdings of villeins or rustics (Bauern, roturiers) were deemed in law to be at the will of the lord, but in practice were protected by the local custom and generally subjected to quasi-legal rules of possession and inheritance. Although feudal tenure was certainly the most common mode of holding land, it was not the only one. In France and Germany there were still many survivals of allodial right, that is of complete ownership, not subject to any conditions of service or payment. In fact, while in northern France there obtained the rule nulle terre sans seigneur, that is, the doctrine that all estates were held by feudal law under lords, in southern France, the territory of written law based on Roman books, the contrary was expressed in the words nul seigneur sans titre: no lordship was recognised unless proof of title were forthcoming. Many documents shew the constant spread of feudal tenure at the expense of the allodial: the process of feudalisation is, e.g., forcibly illustrated by the inquest as to land-tenures made in 1272 and 1273 by order of King Edward I in Aquitaine: it testified to all sorts of variations in the mode of holding land in these parts; claims to allodial rights are often recorded. But the tendency of the inquest is to impose the burden of services as widely as possible. The circumstances in which the process of feudalisation was going on may be illustrated by the following tale of a Flemish chronicle (Lambert d'Ardres, quoted by Luchaire, Manuel, 151). In the beginning of the eleventh century two brothers, Herred and Hacket, possessed considerable allodial estates in Poperinghe, but were persecuted by the Count of Guines and the Count of Boulogne, powerful neighbours, each of whom wanted to obtain feudal suzerainty over these lands. The elder Herred, in order to put an end to these vexations, surrendered his estates to the Bishop of Terouanne and received them back as a hereditary fief (perpetuum et hereditarium recepit in feodum), while the junior brother effected a similar release of his part of the estates to the Count of Boulogne.

The dangers of keeping outside the feudal nexus were self-evident: in a time of fierce struggles for bare existence it was necessary for everyone to look about for support, and the protection of the central authority in the State was, even at its best, not sufficient to provide for the needs of individuals. Even in England, where the Conquest had given rise to a royal power possessed of very real authority, and the "king's peace" was by no means a mere word, the maintenance afforded by powerful lords was an important factor in obtaining security.

In any case the feudal nexus originated by such conditions involved reciprocity. The vassal expected gifts and at least efficient protection, and sometimes the duty of the suzerain in this respect is insisted on in as many words; as the French jurist Beaumanoir has it, "the lord is quite as much bound to be faithful to his man as the latter is bound in regard to the lord"

(Coutumes de Beauvaisis, 58). If the tenant thought that he was not treated properly, feudal theory allowed him to sever the connexion. He might leave the estate (deguerpissement) without any further claim on the part of the lord, but according to French notions he might even do more, namely disavow the subjection to the lord while retaining the estate (desaveu). The Assizes of Jerusalem are careful to state the cases of denial of right, in which a vassal may rightfully renounce his obligations in regard to his immediate lord with the natural consequence that henceforth such duties are transferred to the overlord of the one at fault (Assises de Jerusalem, "gager le fief"). This implied a proof on his part that the lord had not fulfil1ed his part of the agreement. Though as a matter of fact such a desaveu led more often to war than to a judicial process, it was derived from a juridical conception, and expressed the view that the man, vassal or tenant, had definite rights as against his lord. Some of the famous assertions of feudal independence on the part of barons opposed to royal lords are based on this very doctrine of desaveu for breach of agreement. Thus the barons of Aragon swore to their king that they would obey and serve him if he maintained the rights, customs and laws of the kingdom, and if not, not. The peers of the Kings of Jerusalem, according to the Assizes, might in case of infringement of their rights lawfully refuse allegiance and offer resistance. The clause of the Great Charter stipulating that a committee of twenty-five barons should watch King John's actions, and in case of his breaking his solemn pledges should make war on him and call on all his subjects to do the same, proceeds from the same fundamental assumption. This view was readily extended from the notion of a breach of agreement between the lord and his tenants to a conception of infringement of laws in general. In this way the feudal view could be made a starting-point for the development of a constitutional doctrine. We may notice this in the case of Bracton. In his treatise on the laws of England, written at the time of Simon de Montfort's supremacy, the English judge, instead of urging with the Roman jurists and with his predecessor Glanvill that the sovereign's will has the force of law, states that kings are not above the law, although they have no single human superior (f. 5 v.), and that they ought to be restrained by their peers from breaking the law (f. 34).(1*)

The other side of the medal is presented by the duties of vassals in regard to the lord. Close analysis shews that these duties proceed from different sources. There is to begin with a general obligation of fealty, faithful obedience (fidelitas) which is owed by all subjects of the lord without distinction of rank, the rustic subjects (villani) being especially concerned. This obligation evidently had its roots in the relation between sovereign and subject, and in so far represented rather the gradual decay of sovereign power than the purely contractual side of feudalism; but in so much as fealty became a relation between private lords and their subjects, it was related to the feudal nexus and combined in various ways with the kindred notions of homage and investiture. Homage again, which is distinctly contractual, arises essentially from a contract of service. It proceeds directly from the bond created by free agreement between a leader and a follower, the lord (hlaford) and his man. But this contract of service gradually assumed a peculiar form: the personal duties of the servant-retainer are asserted only occasionally, e.g. at a coronation ceremony, when great feudatories are made to present dishes and cups, to lead horses, to superintend the arrangements of the bedroom. As a rule, the

central duty of the vassal comes to he his military service, regulated according to a certain number of days, generally forty, or a scutage payment in redemption of the latter. Knight service of this kind shades off almost imperceptibly into so-called military serjeanties, that is, services of archers, of garrison soldiers, etc. These again are not easily divided from petty serjeanties, in which the menial services are still regarded as characteristic of the bond. In the lists of serjeanties drawn up in the reign of Edward I (published in the volumes of Feudal Aids and in the Testa de Nevill) we find mentions of cooks, falconers, foresters, etc. In German feudal custom the ministeriales correspond to the servientes of England and France, but there is a peculiar trait about their condition, namely, that they are distinctly unfree in origin. Some of the greatest warriors of German medieval history came from such unfree stock -- Marquard of Anweiler, for instance, who received the March of Ancona as a fief from Emperor Frederick II, was a ministerialis, an unfree retainer of the Emperor. As homage creates a relation between man and man, it is not intrinsically bound up with landholding, and a good many of the personal followers and servants of medieval magnates must certainly have lived in the castles of their lords, receiving equipment and arms from them: they saw in the good cheer of the court and in occasional gifts a reward for their personal attendance.(2*) But such personal relations tended naturally to strike root in land. If the retainer was at all useful and efficient he expected to be remunerated by a permanent source of income, and such an outfit could only take the shape of a grant of land. On the other hand, when a small landowner sought protection from a magnate, he had generally to throw his tenement into the balance and reassume it as a fief. Thus homage and investiture, although historically and institutionally distinct, grow, as it were, together, and form the normal foundation of feudal contract.

Besides the political colouring of this contract, it assumes a peculiar aspect from the point of view of land law. It gives rise to a significant distinction of two elements in the notion of ownership (dominium). Roman property (dominium) was characterised during the best period by uncompromising unity. A person having dominium over a thing, including an estate in land, had it alone and excluded everyone else. Medieval lawyers, on the other hand, came to deal with plots of land which had normally two owners, a superior and an inferior, one having the direct ownership (dominium directum, dominium eminens), the other having the useful ownership, the right to exploit the land (dominium utile). In England the splitting of the notion of dominium was avoided by opposing the tenure in domain to the tenure of service (tenere in dominio-in servicio, see, e.g., Notebook of Bracton, case 1436), but the necessity for reckoning with two kinds of right in respect of every holding contributed indirectly to weaken the notion of absolute property in land. Contentions as to land were made to turn principally on seisin, protected possession, while the proof of title, which had played an important part in later Anglo-Saxon times, receded, as it were, into the background. Instead of trying to ascertain who the person was who ought to exercise the absolute right of ownership, English courts came to concern themselves with the practical question which of the two litigants had relatively the better right (ius merum) in regard to an estate or tenement. From the feudal point of view an estate held as a fief could be freely parcelled out to under-tenants who would become the vassals of the man holding directly of the lord, provided the obligations of

that intermediate tenant were not lessened by such a process. Indeed it was not uncommon for tenants to pass on the onerous duties with which the tenement was charged to these under-tenants, who in such a case were called upon to "defend" the land in regard to the superior lord in order that the mesne (medius, middle) lord should be able to enjoy his tenure in peace. Various complications arose from such subinfeudation in connexion with customary requirements, and it was clearly in the interest of the overlords to restrict such parcelling of fees as much as possible. The English Crown cut short the practice by the statute Quia Emptores, which provided that in future the creation of any new fief would involve not subinfeudation but the recognition by the new tenant of immediate dependence on the overlord: thus the grantee of a new fief was placed on the same level as the grantor instead of being subordinated to him.

The incidents arising out of the double claims to land were manifested in a striking manner in cases when the personnel of the contracting parties was changed, more especially when in consequence of the death of the tenant a new representative of the dominium utile had to come in. While in the case of a Thronfall, as the Germans said, that is, of the demise of the lord, homage and fealty had to be merely renewed, a Lehnfall, the demise of the vassal, brought about a temporary resumption of the fief by the direct owner, i.e. by the lord: as a rule he was bound to regrant the fief to the right heir, but such a reinvestiture was accompanied by a relief, a more or less heavy payment.

The struggle of English barons for reasonable reliefs called forth well-known stipulations of the charters of Henry I and of John. In the case of so-called base holding the relief had its analogy in the heriot, the surrender to the lord of the best horse or the best ox, and there can be no doubt that this due, which had grown from the custom of surrendering the outfit provided by the lord to his dependent, was originally used quite as much in military fiefs as in villein or socage tenements. In feudal practice, however, the military heriot was absorbed by the relief, while it kept its ground in regard to base tenure.

The resumption of tenancies connected with ecclesiastical offices led, as is well known, to protracted struggles as to rights of investiture between the Church and State. Even when reinvestiture was made dependent on canonical elections, the fiscal interests of the secular power had to be satisfied by the diversion of ecclesiastical revenues for a year or a similar customary period for the benefit of the Crown or of other secular patrons. There were other occasional rights connected with a breach of the continuity of possession, which would not arise out of vacancies in ecclesiastical institutions; such were wardship and marriage, which accrued to the lords in cases when fiefs descended to minors or to unmarried females. These eventualities gave rise to very lucrative rights, and it is a matter of common knowledge to what extent such opportunities were liable to be misused. The English Charters contained provisions against these abuses, but even in their mitigated form these practices were likely to produce much hardship. Special classes of misdeeds arose in connexion with them: we hear of judicial proceedings taken on account of ravishment (kidnapping) of wards and of ravishment of heiresses in order to get the profits, even when the corresponding right belonged to some one else or was contested. From such exactions ecclesiastical tenements were free, and this alone would have sufficed to make the passage of landed property into the hands of the churches undesirable from

the feudal point of view. No wonder powerful kings tried to restrict the passage of estates into the "dead hand" (manus mortua) of the Church. This was among other things the aim of Edward I's Statute De religiosis.

Although these reassertions of the dominium directum forcibly shewed that the proprietary rights of the lord were by no means a dead letter, the " useful domain" was protected from wanton interruption by clearly established customs. The beneficia, which preceded fiefs in historical evolution, were assumed to be granted for life, but when fiefs developed out of them they nearly always became hereditary. The only exception of any importance is presented by the beneficia militaria of French Navarre.

As political subjection was regarded as a matter of contract, the feudal nexus tended towards a disruption of sovereignty, and often led in practice to the formation of numerous political bodies within the boundaries of historical States. This was especially the case in France, Germany and Italy. An authoritative jurist like Beaumanoir summarised the position in the saying, "chaque baron est souverain dans sa baronie"; and the mottoes chosen by some of the French magnates gave expression to an unmeasured feeling of self-sufficiency. The Rohans of Brittany boasted: "prince ne daigne, roi ne puis, Rohan je suis." The seigneur of Coucy, a barony which gave great trouble to the early Capetian kings, disguised his pride by mock humility: "je ne Suis ni comte, ni marquis, je suis le sire de Coucy." In Germany the dismemberment of sovereignty was finally recognised by express law in Charles IV's Golden Bull of 1356 in favour of the seven Electors, but it had already been acknowledged in regard to princes in general by Frederick II, and had been acted upon more or less all through the eleventh and twelfth centuries in the course of the protracted feuds between Frankish and Swabian Emperors, on the one hand, and their various vassals on the other. When Frederick Barbarossa went down on his knees, according to tradition, when imploring Henry the Lion of Saxony and Bavaria to stand by him against the rebel Italians, it would have been difficult to say that the Emperor was the sovereign and the duke a mere subject.

A most important consequence of this acknowledgment of sovereign rights on the part of vassals of the Crown lay in the fact that the latter could resort to actual war, when asserting claims or defending infringed interests. The endeavours, which were made by the Church, by royal suzerains and by the barons themselves to restrict and suppress private warfare, are in themselves characteristic of what we should call the anarchy of the times. The end of the tenth century witnessed many attempts to put an end to private wars in France. In consequence of terrible epidemics and bad harvests, which were regarded as signs of divine wrath and incitements to repentance, the magnates of central and northern France met, agreed to renounce private war, and confirmed this resolve by solemn oaths. Gerard, Bishop of Cambrai, objected. to this as political; he was much abused by the other members of the congress for holding aloof, and yet, as the chronicler remarks, events proved that he was right, "vix enim paucissimi crimen perjurii evaserunt."

It soon became evident that it was impossible to suppress the pernicious custom entirely. The Truce of God, treuga Dei, made its appearance in completion of the Peace of God.(3*) The time from Thursday night to Monday morning was considered a time of truce on account of the memories of the Lord's sufferings and resurrection. Churches and churchyards were naturally considered

as hallowed and therefore neutral territory. In the South, olive-trees were declared to be exempt from destruction by reason of their vital importance in the economy of the country. The movement for "truce" attained material results under the guidance of the Church in the eleventh and twelfth centuries, and it became even more effective in the thirteenth, when political potentates took it up. Still, even St Louis did not insist on a complete abandonment of the practice of private war by his vassals: he only enforced from all those, who resorted to the last argument of war, submission to certain rules as to its declaration, the beginning of hostilities, their course and so on; the quarantaine le Roi was a code as to usage in private war.

To Germany some order was brought by powerful leagues between princes and knights on the one hand, cities on the other. Such leagues were offensive and defensive alliances, and ultimately had recourse to force of arms in order to maintain their position. But as all extensive armaments are apt to do, they prevented the danger and disorder of petty collisions. It was only towards the end of the Middle Ages that something like a peace of the Empire was recognised and to a certain extent secured by the reforms of Maximilian's age. In England the "franchise" or right of private war was suppressed at a very early time. It did not tally with the social order inaugurated by the Norman Conquest, and the king's peace became one of the mainstays of early Common Law. The only period when the real disruption of sovereignty through private war seemed to prevail was the interregnum when Stephen of Boulogne and the Plantagenets struggled for the Crown. But this lapse into anarchy was short, and from the time when Henry II restored order, private war ceased to be recognised as a legal outcome of disputes. Yet the conditions of military contract remained the foundation of government, and this made it possible for opposition to wrong to take the form of armed resistance. The revolt against John, the barons' war against Henry III, the risings of Mortimer and Bolingbroke, the Wars of the Roses, have as their necessary background a society ruled by groups of knights, who considered themselves not merely as subjects, but as peers of the king.

One of the most important consequences of the disruption of sovereignty lay in the alienation of rights of jurisdiction by the central government. As early as the ninth and tenth centuries we observe everywhere the growth of franchises and immunities which break up the ordinary sub-divisions of countries in respect of the administration of justice. The English shires and hundreds, the continental counties and Grafschaften are riddled with districts in which the place of the ordinary judges of the land is taken by secular or ecclesiastical magnates or their representatives, among whom the secular judges of ecclesiastical corporations, the advocati (avoues, Vogte), are the most conspicuous. The Sac and Soc grants of Anglo-Saxon kings, as well as the various privileges of immunity conferred by Carolingian, Franconian and Saxon monarchs, present different steps in the process of political dismemberment. The central authorities merely strove to retain their hold on the most important varieties of jurisdiction, especially judgments as to great crimes, the Ungerichte, as they were termed in Germany, for which a man may lose his head and his hand (Haupt und Hand), while jurisdiction in minor cases, when a person would only be chastised in skin or hair (in Haut oder Haar), were left to local potentates. From similar considerations early English kings tried as much as possible to retain in their hand the great forfeitures. This led eventually to a classification of feudal

tribunals according to the amount of jurisdiction acquired by them, some claiming high and some low justice (haute or basse justice).(4*) The proceedings of Quo Warranto instituted by Edward I after his victory over the baronial opposition shew a most exuberant growth of prescriptive rights in regard to the use of gallows, pillory, tumbrel, etc. by English noblemen and ecclesiastical magnates. The institution of the advocaria (avouerie, Vogtei), on the contrary, never attained to much importance in England, while it flourished greatly in Germany, France and Flanders. It sprang from the delegation of public power within the territory of an ecclesiastical franchise to a layman, who thereby came to be a kind of policemaster as well as a judge. The ordinary judges, the counts and their subordinates were forbidden to enter the enfranchised district. On the other hand the bishop or abbot at the head of it abstained from the shedding of blood and did not meddle with criminal justice or deal with cases of public coercion: he appointed an advocate who had to arrest criminals, to conduct them before the proper courts, to execute those found guilty, to assist the ecclesiastical lord in cases when force had to be employed for the collection of rents or the taking of distress. These powers ripened in the course of the feudal age to an independent jurisdiction which greatly hampered the freedom of action of the ecclesiastical lord and encroached on his interests. Besides, churches and monasteries often availed themselves of the advocaria in order to obtain protection from a powerful neighbour: the surrender of certain rights and sources of income was the price paid for support in those troubled times. No wonder that in the eleventh and twelfth centuries the advocates often became local tyrants at whose hands their clients had to suffer a great deal. This is how, for instance, the Cartulary of St Mihiel in Flanders describes the conduct of a certain Count Raynald, an advocate of the monastery in question: "Count Raynald was the first to commit robberies in our estates under the customary term of talliatae; he also put our men into prison and forced them to give up their own by means of torture -- he bequeathed this tyranny to his son, the present Raynald. The latter exceeded the malice of his father to such an extent that our men cannot put up any longer with such oppression and leave our estates. They are either unable or do not care to acquit themselves of outstanding rents: he is the only person they are afraid of."(5*)

The conflicts between ecclesiastical potentates and their secular "advocates" often led to regular treaties, the so-called reglements d'avouerie. The Vogt of the Abbey of Prum is forbidden to "clip" (tondere-clip the hair as for convicts) or to flog anyone except those who are guilty of murder, brigandage or battery, nor has he any part in the wer-geld of a man unless he has helped to capture and to judge him. In Echternach the Vogt is excluded from participating in civil trials. In houses appertaining to the garden and the cellar, the laundry and the kitchen of the monks, he is forbidden to hold any pleas or to exact any services, except pro monomachia (trial by battle) et sanguinea percussura (cf. A.S. blodwite) et scabinis constituendis (the appointment of popular assessors of the tribunals).(6*) The long-standing rivalry between ecclesiastical institutions and their advocates was ultimately composed by the intervention of the Crown when the latter grew strong. If we turn to consider the relations between the lord and his vassals, we shall naturally find that they differ greatly from the relations established at the present time between the sovereign and his subjects. In the case of the privileged holders of fiefs, however

small, the tie which united them with their suzerain being one not of general subordination but of limited obligation, the view that the general will has to prevail over the particular and can impose rules of conduct upon it did not hold good. Noble vassals, ecclesiastics possessed of fiefs, and townsmen as members of municipal corporate bodies were as regards their lords bound to abstain from certain acts and to perform certain duties. A systematic treatment of this kind of contractual relation may be found in a letter of Bishop Fulbert of Chartres to the Duke of Aquitaine (eleventh century).(7*) The duties which he enumerates are derived more especially from the oath of fealty, which accompanied the homage ceremony and was distinct from the fealty of the base and non-privileged population to be mentioned later on.

The negative duties of the faithful vassal are indicated by the following terms: incolume, tutum, honestum, utile, facile, possibile. The Benedictine editors of Fulbert's work have explained these expressions to mean that the vassal undertakes not to assail his lord, not to reveal his secret, not to endanger the safety of his castles, not to wrong him in his judicial power, honours and possessions or to put obstacles in his way which would render what he undertakes difficult or impossible. On the positive side the vassal is bound to give his lord advice and aid (consilium, auxilium). From the positive obligations of consilium and auxilium various concrete duties are derived. The principal form of advice (consilium) tendered to the lord by his men consists in their obligation to attend his court. Every lord had a court of his own, but not every court of this kind was competent to judge all cases. A feudal distinction has to be drawn in this respect between cases arising from the feudal nexus and cases of delegated public jurisdiction. These latter comprised chiefly criminal cases classified, as already pointed out, under the heads of high and low justice. The privilege of giving sentence in them and of exercising the fiscal exactions connected with them accrued only to those among the feudal lords who had obtained the corresponding franchises through express grant or by force. They were called seigneurs justiciers in France. The more numerous class of ordinary lords held courts if they had tenants of fiefs, and vassals and villein subjects under them. These feudal courts took cognizance of all processes as to land distributed by the lord to his dependents, but also to a great extent as to pleas concerning the persons of the vassals. The first group of pleas stands out so clearly that there is no special necessity to dwell on its range. It need only be noticed that the proceedings concerning unfree tenures were substantially of the same kind as those affecting free or noble tenancies. A dispute as to the possession of a villenagium followed on the same lines as a trial in which a free tenement was the object in dispute, although the latter was naturally much more complex. From the technical point of view, in the first case the trial took place before the peers of the contending parties, who as suitors of the court were its judges, while in the second case the lord or his steward was the only judge and such assessors as were called up had only advisory powers. But as a matter of fact the verdicts of the court were regarded as the expression of legal custom in the second case, and the reservation that the lord might override the customary rules was due to his exceptional position, and not to the ordinary working of manorial courts. A body of legal tradition and of conceptions of equity grew up in the lower social stratum as well as in the upper. This is especially noticeable in the case of English manorial courts,

in the composition of which free and unfree elements are generally intermixed in such a way that it is difficult to distinguish between verdicts laid down by the free tenants and those contributed by the villeins. The one really important difference lay in the fact that the villeins had to look for justice to the manorial court in all cases, not only tenurial, but also personal, such as cases of battery, defamation, adultery and the like, while free men and specially men of noble birth were either directly amenable to justice by the medium of the royal tribunals or could, if they appeared before a feudal court, insist on a very strict maintenance of their privileges in view of the supervision of royal courts.

In a sense the circle of tenants constituting the peers' court was a most complete expression of the principle of equality as between allied sovereigns. The decision was formulated strictly by the peers of the contending parties, and this led, in regard to criminal accusations, to the famous doctrine of the Great Charter: "nullus liber homo capiatur vel imprisonetur nisi per judicium parium suorum vel per legem terrae" (sect. 39). The decision of a court of peers was final. An appeal was impossible from the feudal point of view, because it would have meant a revision of the judgment by higher authority, and feudal litigants submitted not to higher authority but to a convention in which they had taken part. There were, however, two cases in which a vassal might seek redress from a source of law superior to the court of peers presided over by his suzerain. If justice was denied to him by this tribunal he could ask the overlord, that is, the suzerain of his immediate lord, to see that justice should be done. This was, however, no appeal as to law or facts, but only an attempt to set the machinery of feudal jurisdiction in motion. The second eventuaLity occurred when one of the parties to a suit actually contested the justice of a particular decision or sentence. He could in French feudal law attaint or falsify the verdict by pronouncing the formula, "je vous appelle de faux jugement." This meant that he challenged the fairness and honour of the judges, and the result was single combat between the protesting party and one or several of the judges, not a satisfactory solution of the difficulties from our point of view, nor, probably, from that of many judges concerned. There were devices which rendered such attaint hazardous in some cases: the members of the tribunal could pronounce the decision in corpore, and in this case the option for the dissatisfied party was to fight them all. In any case this mode of appeal was directed towards the revision of the judgment by God rather than by man, and at bottom did not subvert the principle that a man ought to be judged by his peers and by his peers only. It is hardly necessary to add that the falsifying of judgments has been described here in conformity to strict rules of feudal theory. In practice all sorts of compromises took place. In England, for example, the revision of judgments by higher courts was brought about at a very early stage by the intervention of the king's court, though not without opposition from the barons. An instructive case occurred, for example, in the reign of William the Conqueror. In a trial as to land between Bishop Gundulf of Rochester and Picot, the Sheriff of Cambridgeshire, the county pronounced in favour of the latter, but through the intervention of Odo of Bayeux twelve representatives of the shire were called up to confirm the verdict by oath in the king's court, and ultimately, after a declaration by a monk who had been steward of the estate in question, the unlucky doomsmen were driven either to go though the ordeal of redhot iron or to recant. The indirect

way in which the prejudiced intervention of the higher powers took effect in this case is characteristic of the traditional difficulties which stood in the way of downright revision. As on many other occasions, there are threads connecting feudal theory with recent or actual practice, and we may not unreasonably see in the doctrine as to the finality of jury verdicts a modernised offshoot of the older doctrine of the judgment by peers. Of course the differentiation between questions of fact and questions of law has made it possible to concede to juries the highly privileged position which they generally enjoy, but the germ of the corresponding rules is historically connected with the immunity from outside influence which formed one of the most characteristic traits of the feudal judgment by peers.(8*)

Similar phenomena meet our eye when we come to consider the processes of legislation obtaining in the feudal world. It is evident in theory that a baron, being a sovereign, could not be subjected to any will but his own, and that therefore such common arrangements as had to be made in medieval society had to be effected on the same lines as modern international conventions. And indeed we find this idea at the root of the feudal doctrine of legislation; in the custom of Touraine-Anjou it was expressed in the following way: "The baron has all manner of justice in his territory, and the king cannot proclaim his command in the land of the baron without the latter's consent; nor can the baron proclaim his command in the land of his tenant without the consent of the tenant".(9*)

In consequence of this general principle, all feudal legislation ranging outside the immediate demesne of the single baron takes the shape of a stabilimentum (etablissement) or of an assize enacted in the court of a superior lord with the express or implied consent of his vassals. An ordinance of the Viscount of Thouars (A.D. 1099), for example, instituting a certain annual charge to be paid by the tenants, refers at the close to "the authority and will of the barons of my land" (quoted by Luchaire, Manuel des institutions francaises, p. 253). The same notion reappears in ordinances made by much greater potentates, such as the dukes of Normandy, e.g. by William the Conqueror, in 1064 (on public peace), by counts of Flanders (Baldwin of Constantinople, in 1199, on usury), by dukes of Brittany (in l185, On succession to fiefs), even by kings of France and kings of England; Henry II's Assize of the Forest, for instance, begins in the following manner: "This is the assize of the Lord King Henry, the son of Maud, in England, about forest and hunting, by the advice and consent (per consilium et assensum) of the archbishops, bishops and barons, earls (comitum) and noblemen of England at Woodstock" (Stubbs, Select Ch. 157). Theoretically, the individual consent of each member of the gathering to any decision was needed if it were to bind him, but historically, the legislative assemblies were not merely the outcome of feudal meetings, they were also survivals of more ancient popular assemblies, while, as a matter of practice, the authority of the superior lord and the influence of leading magnates asserted themselves in a much greater degree than would have been allowed from a purely individual point of view. It thus depended very much on circumstances whether centripetal or centrifugal tendencies got the upper hand. The majority principle had not been evolved either, at least during the eleventh, twelfth and thirteenth centuries. As the French historian Luchaire has expressed it, voices were rather weighed than counted. But the idea of a convention made itself felt in a very definite manner, and this point must be noticed as very important in view of subsequent development. The early doctrine

of medieval estates is clearly connected with these -- the side both of legislation and taxation. The view that feudal views on the nation is not bound to pay a tax to the imposition of which it has not consented through its representatives (the constitutional rule on which the development of Parliament depended later on) certainly has its roots in the feudal maxim that no baron was bound by ordinances in the "establishment" of which he had not taken a part. It is also not alien to our purpose to notice that the distinction between greater and smaller barons suggested by the far-reaching differences, in regard to the appropriation of public power, afforded a germ for the subsequent rise of aristocratic "Second Chambers." The House of Lords, as a court, is a house of peers, and it is not only in England that the prominence of the magnates secured for them a special personal standing in legislative organisation: a curious parallel, all the more instructive because it is supplied by a microscopic state, is presented by the history of Bearn in the Pyrenees. In that vicomte, an aristocratic council of twelve hereditary jurati, drawn from the most powerful houses of local nobility, appears as the cour majour and acts as a standing committee of the full court (cour pleuiere). It had to settle disputes between the viscounts and their vassals and in general to control the current administration of law.(10*)

A survey of medieval society from the one point of view of contractual relations would, however, be incomplete, one-sided and artificial. In order to be correct it ought to be matched by an examination of the constituent elements combining to form the feudal organisation. Such an examination would have to take each feudal unit singly and to describe the rule of the lord over his subjects as well as the work. of these subjects.

The most characteristic type of such a feudal unit is certainly the English manor, and I should like to turn now to a study of it which will afford a key to the understanding of similar phenomena in other countries of Western Europe. The manor is a necessary outcome of so-called natural husbandry, providing for the requirements of life by work carried out on the spot, without much exchanging and buying. It is the connecting link in the social life of classes, some of which are primarily occupied with the rough work of feeding, clothing and housing society, while others specialise in defending it and providing for its secular and spiritual government. It presents the lowest and most efficient unit of medieval organisation, and local justice, administration and police are all more or less dependent on its arrangements. Let us look at the different elements of which this historical group is composed.

First of all there is the economic element. The manor afforded the most convenient, and even the necessary, arrangements of work and profit in those times. It would be quite wrong to assume that the interests and rights of the many were simply sacrificed to the interests and rights of a few rulers, that the manor was nothing but an estate, cultivated and exploited for the sake of the lord and managed at discretion by his will and the will of his servants. On the contrary, one of the best established facts in the economic life of the manor was its double mechanism, if one may say so. It consisted, as a rule, of a village community with wide though peculiar self-government and of a manorial administration superimposed on it, influencing and modifying the life of the community but not creating it. This double aim and double mechanism of the manor must be noticed at the outset as a very characteristic feature; it places the manor in a sharp contrast both to the plantations of slaves of the

ancient world and to the commercial husbandry of a modern estate struggling for profit as best it may.

Manorial husbandry was all along striving towards two intimately connected aims, providing the villagers with means of existence and providing the lord with profits. Hence a dual machinery to attain these aims, both a village community and the lord's demesne.

The village community lay at the basis of the whole.(11*) It gave rise to a very peculiar system of holding and using land, not to be confused either with the case of the tribal community in which rights are graduated according to the pedigree of a person, or with that of the communalism of the Russian mir or of some Hindu settlements, in which land is allotted and redivided according to the requirements and the economic strength of the settlers. The peculiar bent of the English rural community would perhaps be best indicated by the expression "shareholding arrangement" or "community of shareholders." Each of the households settled in the village had a fixed and constant share, or maybe half a share, or a quarter, or the eighth part of a share assigned to it. It stood in scot and in lot with the village as a hide or two virgates or one virgate or a bovate, according to the size of the share. By the standard of this hereditary share all rights and duties were apportioned. By the side of the shareholders there generally lived in the village smaller tenants (cottagers, crofters) but they were merely an adjunct to the main body of the tenantry and may be left out of reckoning in our general survey.

The system of communal shareholding was very strikingly illustrated by the treatment of waste and pasture in the medieval village. It was not divided among the tenants, and, though later in legal theory it belonged to the lord, it was everywhere considered by custom as a "common" for the use of the villagers. In most cases it had to be stinted to some extent: rules were formulated as to the species and number of beasts to be sent to pasture, as to seasons, and as to precautions against abuses; and these rules can generally be traced to the main principle, that every household has to use the common according to the size of its share, so that, for instance, a virgater had the right to send two cows and eight sheep to the pasture, while the owner of a bovate could only send one cow and four sheep, and so on. The use of wood for building purposes, of hedges for fuel, of turf, and other profits drawn from the common and undivided fund of the village, were regulated. by rules or by-laws of the same kind. In regard to meadows, which were scarce and highly valued, the communalism of the village found a suitable expression in the division of these meadows into a certain number of strips according to the number of households taking part in the community: these strips were then allotted to one after the other of the households in a customary order or by casting lots. The arable did not change hands in the same way. As a rule, the strips of the arable were owned by each household in hereditary succession, each generation entering into the rights of the preceding generation in this respect. But, even in the case of the arable, there were many facts to shew that it was considered dependent on the community, though held to a certain extent in severalty by the households. To begin with, the holding in severalty existed on the land only for one part of the year. The tenant had a particular right to it while it was under crop, that is, when it had been ploughed up and sown, and while the harvest had not yet removed the proceeds of the individual labour and care which the tiller had bestowed upon it. As most fields were

cultivated in medieval England on the three-field or on the two-field system, the households of shareowners obtained private rights over their arable strips while winter corn or spring corn grew on the soil, and these separate rights were marked off by narrow lines of turf between the strips, called balks, while the whole of the sown field was protected from the inroads of cattle by a temporary hedge.

But after harvest had been gathered the hedges fell, and the whole field returned to the condition of waste to be used for pasture as a common: a condition which took up the whole of every third year in a three-field and the whole of every second year in a two-field husbandry, besides a considerable part of the years when the field received seed. Private occupation of the strips emerged in this way from time to time from the open common field, an arrangement which not only kept up the principle that the arable was, after all, the property of the village as a whole, but had direct practical consequences in hampering private industry and the use of private capital in cultivation: it rendered, for instance, manuring a very complicated and rather exceptional process. Nor is this all: the householder did not only cease to cultivate his plot as soon as harvest was over, but he had. even before then, to conform in the plan and methods of cultivation to the customs and arrangements of his neighbours. The arable of his holding was generally composed of a certain number of strips in proportion to the importance of his share, and these strips lay intermixed with the strips of other villagers so that every one came to own patches of land, acres and half-acres in all the "shots and furlongs of the village," as the fields were called, and had to wander about in all directions to look after his own. Such an arrangement would be the height of absurdity in any state of society where individual ownership prevails, and this point by itself would be sufficient to shew that what was meant was not a division of claims according to the simple rules of private ownership, so familiar to us, but a communal cultivation in which the arable was divided between the shareholders with as much proportionate fairness as possible. In keeping with this principle, the plan of cultivation. the reclaiming of land, the sequence of seasons for its use for wheat, barley, oats, peas, the time of its lying fallow, for setting up of hedges and their removal, the rules as to sending cattle on to the stubble, and the like, were worked out and put in practice, not by the industry of every single householder, but by the decision of the village as a whole. We may even discover traces of re-divisions, by which the shares of the householders were partitioned anew according to the standard of proportionate importance, though such instances are very exceptional and mostly connected with cases where some confusion had occurred to break up the proper relations of the holdings. If we look at the open-field system as a whole, we must insist upon the fact that the key to its arrangement lies in the principle of shareholding, every household being admitted to a certain proportion of rights according to its share in the community, and being held to corresponding duties.

The village community has, as a rule, a demesne farm superimposed on it, and the connexion between the two is very close and intimate. To begin with, the lord's demesne farm draws rents in money and in kind from the plots of the tenants, and it serves as a counting-house for the discharge of these rents. By the side of the counting-house stand barns and stores, where the multifarious proceeds of natural husbandry are gathered as they come in from the holdings. In some manors the dues are arranged

to form a complete outfit for the consumption of the lord's household, a farm of one night, of a week, of a fortnight, as the case may be. The manors of the Abbey of Ramsey were bound to render as a fortnight's farm 12 quarters of flour, 2000 loaves of bread, 24 gallons of beer, 48 gallons of malt, 2 sesters of honey, 10 flitches of bacon, 10 rounds of cheese, 10 very best sucking pigs, 14 lambs, 14 geese, 120 chickens, 2000 eggs, 2 tubs of butter, 24 gallons of audit ale. In Lent the bacon and the cheese were struck off and. money paid in their stead.

By the help of these accumulated stores, and of funds drawn from money rents and of small leases, the lord keeps a number of servants, and hires some labourers for the cultivation of the home farm, of the orchard and the arable set apart for it, as well as for looking after the buildings, the implements, etc. But the peculiar feature of the manorial arrangement insists in the fact that the demesne farm does not live independently of the village community adjoined to it, does not merely draw profits from it in the way of rents, but actually gets its labour from this village community and thereby builds up its husbandry.

The most important of these services is the week work performed by the peasantry. Every virgater or holder of a bovate has to send a labourer to do work on the lord's farm for about half the number of days in the week. Three days is indeed the most common standard for service of this kind, though four or even five occur sometimes, as well as two. It must be borne in mind in the case of heavy charges, such as four or five days' week work, that only one labourer from the whole holding is meant, while generally there were several men living on every holding; otherwise the service of five days would be impossible to perform. In the course of these three days, or whatever the number was, many requirements of the demesne had to be met. The principal of these was ploughing the fields belonging to the lord, and for such ploughing the peasant had not only to appear personally as a labourer, but to bring his oxen and plough or rather to join with his oxen and plough in the work imposed on the village: the heavy plough with a team of eight oxen had usually to be made up by several peasants contributing their beasts and implements towards its composition. In the same way the villagers had to go through the work of harrowing with their harrows, and of carrying the harvest in their wains and carts. Carrying duties, in carts and on horseback, were also apportioned according to the time they took as a part of the week work. Then came innumerable varieties of manual work for the erection and keeping up of hedges, the preservation of dykes, canals, and ditches, the threshing and garnering of corn, the tending and shearing of sheep and so forth. All this hand-work was reckoned according to customary standards as day work and week work. But alongside of all these services into which the regular week work of the peasantry was distributed stood some additional duties. The ploughing for the lord, for instance, was not only imposed in the shape of a certain number of days in the week, but also took the shape of a certain number of acres which the village had to plough and to sow for the lord irrespective of the amount of time it took to do so. This was sometimes termed gafolearth. Then again exceedingly burdensome services were required, in the seasons when farming processes are, as it were, at their height, at times of mowing and reaping when every day is of special value and the working power of the farm-hands is strained to the utmost. At that time it was the custom to call up the whole able-bodied population of the manor, with the exception of the housewives, for two, three or more days of mowing and reaping on

the lord's fields. To these boonworks the peasantry was asked or invited by special summons, and their value was so far appreciated that the villagers were usually treated to meals in cases where they were again and again called off from their own fields to the demesne. The liberality of the lord actually went so far in exceptionally hard straits, as to serve some ale to the labourers to keep them in good humour. In this way the demesne farm throve as a kind of huge parasitical growth by drawing on the strength of the tenantry.

Let us now turn to the second constitutive element of the manor, to what we have called its social aspect in distinction to the economic and to the political aspects. From the social point of view the manor is a combination of classes, and the three main classes are to be found On its soil: the villeins, or as they are sometimes called the customary tenants, the freeholders or free tenants, and the officials and servants of the lord.

The villeins are in the majority. They come from people whose position was by no means uniform. Some of them are the offspring of slaves, some of free men who have lapsed into serfdom through crime or inability to provide the means of existence. Some claim to descend from the ceorls of Saxon times, a class of free peasants who were gradually crushed down to rural servitude. Be that as it may, the distinctive features of villeinage are derived from all its original sources and are blended to form a condition which is neither slavery nor self-incurred serfdom nor the subjection of free peasants to their rulers. Three main traits seem especially characteristic of manorial villeinage: the performance of rural services, the inability to claim and defend civil rights against the lord, and the recognition of villeins as free men in all matters concerning the political and criminal law of the realm. Each of these traits deserves some special notice.

The villein is primarily a man obliged to perform rural work for his lord. Every person in the medieval social scheme is bound to perform some kind of work, every one holds by some kind of service or appears as a follower of one who holds by some service. The Church holds some of her lands in return for her obligation to pray and to minister to spiritual needs. The knights and serjeants hold theirs by military service of different kinds. The burgesses and socagers hold in the main by paying rents, by rent service. The villein has to perform agricultural services to his lord. Some such agricultural services may be linked to the tenure of other classes, to the tenure of socagers, burgesses, and even military tenants, but the characteristic week work was primarily imposed on the villeins, and though they sometimes succeeded in getting rid of it by commuting it for money payments, these modifications of their status were considered as secondary and exceptional, and generally some traces of the original obligations of agricultural service were left: even privileged villeins had to serve their lord as reeves or rural stewards, had to send their sheep to the lord's fold, had to appear at the bidding of manorial officers to perform one or the other kind of work in the field. The villein was emphatically a man who held by the fork and the flail.

In the early days of feudalism agricultural service must have decided the fate of many people who had good claims to rank as free. In a rough way the really important distinction was this: on one side stood people who were bound to feed the rest and were therefore bound to the glebe, on the other those who were free to go wherever they pleased, provided they performed their military or ecclesiastical duties, and paid their rents. But when once the main social cleavage had taken place, the lawyers had to face a

vast number of personal claims and disputes, and they gradually worked out a principle which itself became a basis for social distinctions. namely that the villein, the peasant holding by rural work, had no civil claims against his lord. It was convenient to assume that everything a villein possessed was derived from a grant of his lord and liable to be resumed by him, and though this may by no means be true in point of historical fact, it became as good as true because the king's courts declined to examine and decide civil suits of villeins against their lord. Villeins were left unprotected, and this lack of protection gave birth to a series of customary exactions quite apart from the many instances when a lord simply ill-treated the peasants. A villein had to pay a fine on the marriage of his daughter because she was considered the property of the lord, and this fine was materially increased when she married out of the lordship, as the lord lost his bond-woman and her offspring by such a marriage. On the death of a villein his heir could not enter his inheritance without surrendering a valuable horse or ox in recognition of the claims of the lord to the agricultural outfit of the holding.

As a matter of fact the civil disability of villeins did not amount to a general insecurity of their rights of possession. On the contrary, the custom of the manor was elaborately constant and provided for most contingencies of rural life with as much accuracy and nicety of distinction as the law administered in the royal courts. But all these provisions were merely customary rules drawn from facts; they were not binding on the lord, and in one very important respect, the amount and kind of work to be exacted from the peasant, changes and increases occasionally occurred. There was one class of the English peasantry which enjoyed a much better. condition, namely the villeins on the so-called ancient demesne of the Crown. In manors which had belonged to the kings before the Conquest and had been granted to subjects after the Conquest, the lords had no right to oust the villagers from their holdings and to increase their services at pleasure, but were bound to follow the customs which held good at the time of the transfer of the estates from the Crown. In such manors a recourse to the rural courts was admitted and the peasants were treated as free people in regard to their tenements and services; their tenure became a species of lease or contract, though burdened with base services. This valuable privilege only emphasised with greater sharpness the rightless condition of the rest of the peasantry.

This rightlessness was, however, restricted to the relations of the villeins with their Lord. In regard to all third persons and in regard to the requirements of the State they were considered to be free. This is the third marked feature of their condition. Let us remember that the slave of Roman and Saxon times was a thing, an animal at best, that he was supposed to act merely on behalf of his master, that if he committed a theft or slew somebody his master was held responsible for his crime, and that he was not admitted as a warrior to the host and did not pay any taxes to grasping fiscal authorities, though he was estimated at his worth and more than his worth when his master had to pay. All these traits of slavery gradually disappeared when slaves and ceorls were blended in the mould of villeinage. The villein was recognised as having a soul and a will of his own not only in the eyes of the Christian Church but in those of the feudal State. He could enter into agreements, and acquire property in spite of the fact that some authoritative lawyers maintained that he could acquire nothing for himself and that all he had belonged to his

lord. He was set in the stocks or hanged for crimes, and the lord had to be content with the loss of his man, as he had not to pay for his felonies. Villeins were grouped in frithborgs or tithings of frankpledge in order that the peace of the realm and its police might be better enforced. They were not merely taxed by their lords and through their lords, but also had to pay hidage and geld from their own land and fifteenths and twentieths from their own chattels. Altogether the government looked upon them as its direct subjects and did not fail to impose duties on them, though it declined to protect their customary rights against the lord.

The celebrated enactments of Magna Charta as to personal security and rights of property applied primarily to free men and to free tenements, and of such there were a good many in the manor. Indeed a manor was deemed incomplete without them. Besides the knights and squires or serjeants who held of the lord by military service, there were numerous tenants who stood to him in a relation of definite agreement, paying certain fixed rents or performing certain specified services which, however burdensome, did not amount to the general obligation of rural labour incumbent on the villeins. Many were the tenants, who, without appealing to a charter or a specified agreement to prove their contractual relation to the lord, held their tenements from father to son as if there were a specific agreement between them and the lord, performing certain services and paying certain rents; and this class was the most important of all. These were the freeholders properly so termed or, as they were called in many ancient manors, the sokemen. Without going into the question of their origin and history, we must emphatically lay down the principle of their tenure in feudal society: it was tenure by contract and therefore free. Such was its essence, although in many, perhaps in most cases, the formation of the contract was hidden by lapse of time unto which memory does not run, and indeed hardly amounted to more than a legal presumption. The clear distinction, drawn by the Courts between tenants in a relation of contract with their Lord and tenants in a relation of customary subjection, divided sharply the classes of freeholders and villeins and moulded all the details of their personal position. It was not always easy to make out in particular cases to which of the two great subdivisions a person and a holding belonged, and, as a matter of history, the process of pressing the people into the hard and fast lines of this classification was achieved by disregarding previous and more organic arrangements, but undoubtedly this distinction created a mould, which not only worked powerfully to bring some order into feudal society, but set a definite aim before the very class which was depressed by it; to obtain freedom the villeins must aspire to contractual relations with their lords.

We are now concerned with the period when these aspirations were only more or less indefinite ferments of social progress, and the legal distinction still acted as a firm rule. The freeholders sought and obtained protection for their rights in the royal courts and thereby not only acquired a privileged position in regard to holdings, dues and services, but in a sense, obtained an entirely different footing from the villein and were able to step out of the manorial arrangement, to seek their law outside it. This was undoubtedly the case, and the countless records of law suits between lords and tenants tell us of all the possibilities which such a position opened to the freeholders. But it is necessary to realise the other side of the matter, which we may be apt to disregard if we lay too much

stress on the legal standing of freeholders in the King's Courts. In all that touched the life and arrangements of the village community underlying the manor, the freeholders were in scot and in lot with the township and therefore on an equal footing with the villeins. In speaking of the management of open field and waste, of the distribution of arable and meadows, of the practices of enclosure and pasture, etc., we did not make any difference between villeins and freeholders, indeed we have not even mentioned the terms. We have spoken of tenants, of members of the community, of shareholders, and now that we have learnt to fathom the deep legal chasm between the two sections of the tenantry, we still must insist on the fact that both sections were at one in regard to all the rights and duties derived from their agrarian association, appertaining to them as tillers of the soil and as husbands of their homes. Both sections joined to frame the by-laws and to declare the customs which ruled the life of the village and its intricate economic practices. And the freeholders had not only to take part in the management of the community but, of course, to conform to its decisions. They were not free in the sense of being able to use their plots as they liked, to manage their arable and pasture in severalty, to keep up a separate and independent husbandry. If they transgressed against the rules laid down by the community, they were liable to pay fines, to get their cattle impounded, to have their property distrained upon. Of course, the processes of customary law were greatly hampered and even modified by the fact that the freeholders had access to the royal courts, and so could challenge the verdicts of the manorial jurisdiction and the decisions of the township in the royal courts. And undoubtedly the firm footing obtained by freeholders in this respect enabled them on many occasions to thwart the petty jurisdiction of their neighbours, and to set up claims which were not in keeping with a subjection to by-laws made by the manorial community. But this clashing of definitions and attributes, though unavoidable in view of the ambiguous position of freeholders, must not prevent us from recognising the second principle of their condition as well as the first; they were not merely tenants by contract but also members of a village community and subjected to its by-laws.

After what has been said of the position of the tenants, we need not dwell very long on the standing of the lord and of his immediate helpers. The lord was a monarch in the manor, but a monarch fettered by a customary constitution and by contractual rights. He was often strong enough to break through these customs and agreements, to act in an arbitrary way, to indulge in cruelty and violence. But in the great majority of cases feelings and caprice gave way to reasonable considerations. A reasonable lord could not afford to disregard the standards of fairness and justice which were set up by immemorial custom, and a knowledge of the actual conditions of life. A mean line had to be struck between the claims of the rulers and the interests of the subjects, and along this mean line by-laws were framed and customs grew up which protected the tenantry even though it was forsaken by the king's judges. This unwritten constitution was safeguarded not only by the apprehension that its infringement might scatter the rustic population on whose labour the well-being of the lord and his retainers after all depended, but also by the necessity of keeping within bounds the power of the manorial staff of which the lord had to avail himself. This staff comprised the stewards and seneschals who had to act as overseers of the whole, to preside in the manorial courts, to keep accounts, to represent the lord on all occasions; the reeves who,

though chosen by the villagers, acted as a kind of middlemen between them and the lord and had to take the lead in the organisation of all the rural services; the beadles and radknights or radmen who had to serve summonses and to carry orders; the various warders, such as the hayward, who had to superintend hedges, the woodward for pastures and wood, the sower and the thresher; the graves of moors and dykes who had to look after canals, ditches and drainage; the ploughmen and herdsmen, employed for the use of the domanial plough-teams and herds. All these ministri had to be kept in check by a well-advised landlord, and one of the most efficient checks on them was provided by the formation of manorial custom. It was in the interest of the lord himself to strengthen the customary order which prevented grasping stewards and serjeants from ruining the peasantry by extortions and arbitrary rule. This led to the great enrolments of custom as to holdings and services, of which many have come down to us from the twelfth, thirteenth and fourteenth centuries; they were a safeguard for the interests both of the tenants and of the lord.

The complex machinery of the manor as the centre of economic affairs and of social relations demanded by itself a suitable organisation. But besides this the manor was the local centre for purposes of police and justice; it had to enforce the king's commands and the law of the realm in its locality. It would be more correct to say that the manor and the village community or township underlying it were regarded as local centres of justice and police, because in these political matters the double aspect of the manor, the fact of its being composed of an upper and a lower half, came quite as plainly to the fore as in its economic working. Indeed, for purposes of justice, taxation, supervision of vagabonds, catching and watching thieves, keeping in order roads, and the like, the government did not recognise as the direct local unit the manor, but the vill, the village community or town, as the old English term went. The vill had to look after the formation of frankpledge, to keep ward, to watch over prisoners and to conduct them to gaol, to make presentments to justices and to appear at the sheriff's turn. This fact is a momentous piece of historical evidence as to the growth of manorial jurisdiction, but, apart from that, it has to be noticed as a feature of the actual administration of justice and police during the feudal period. It may be said that when the central power appealed directly to the population either for help or for responsibility, it did so through the medium not of the manors, but of the ancient towns or townships merged in them.

But there were many affairs delegated to the care of the manor, in which the central power intervened only indirectly. There was the whole domain of petty jurisdiction over villeins, as subjects of the lord, there were the numberless cases arising from agrarian transgressions and disputes, there were disputes between tenants of the same lord in regard to land held from him, there were the franchises, that is, the powers surrendered by special grants of the government or by immemorial encroachment of the lords in regard to tolls, market rights, the assize of bread and ale and other matters of commercial police, to the trying of thieves, poachers, and the like. In all these respects the manorial lord was called upon to act according to his standing and warranted privileges. But in no case could he act alone and by himself: he acted in bis court and through his court. Originally this court, the halimote, the hall meeting, as we may translate the term, dealt with all sorts of affairs: it tried the cases where villeins were concerned, transacted the conveyancing

business, enforced the jurisdiction of the franchises. Its suitors were freeholders and villeins alike, and if they did not always act jointly, we have at least no means of distinguishing between the different parts they played. Gradually, however, a differentiation took place, and three main types of courts came into being, the Customary Court, the Court Baron and the Court Leet; but we need not here concern ourselves with the technical distinctions involved by this differentiation of courts.

All these details have a simple and reasonable meaning when we consider them from the point of view of an all-round arrangement of each locality for the settlement of all its affairs, administrative, fiscal, jurisdictional, as well as economic and civil. This confusing variety has to be explained by the fact that, notwithstanding all strivings to make the manor complete and self-sufficient in this petty local sphere, it could not cut itself off from the general fabric of the kingdom. Through the channels which connected it with the central authorities came disturbing elements; the privileges of free tenants, the control over the use of franchises, the interference of royal courts and royal officers. All these factors rendered manorial arrangements more complex and less compact than they might otherwise have been; but, of course, these very elements insured its further development towards more perfect forms of organisation and prevented it from degenerating into despotism or into caste.

The manor is peculiarly an English institution, although it may serve to illustrate Western European society in general. Feudalism, natural husbandry, the sway of the military class, the crystallisation of powers and rights in local centres, are phenomena which took place all over Western Europe and which led in France, in Germany, in Italy and Spain to similar though not identical results. It is interesting to watch how in these bygone times and far-off customs some of the historical traits which even now divide England from its neighbours are forming themselves at the very time when the close relationship between the European countries is clearly visible. The disruption of the nation into local organisms is more complete in France and in Germany than in England, which, through the fact of the Norman Conquest and the early rise of Norman royalty and Norman aristocracy, was welded into a national whole at a period when its southern neighbours were nearly oblivious of national union. Even so, the English manor was more systematically arranged and more powerfully united than the French Seigneurie or the German Grundherrschaft. The French baron ruled in an arbitrary manner over his serfs and was almost powerless in regard to his free vassaux, while the German Grundherr had a most confusing complex of social groups to deal with, a complex more akin to the classes of England which existed on the day when King Edward the Confessor was "alive and dead" than to the England of Henry II and Edward I. The social distinction between the military class and the rural labouring class, the natural husbandry, which dispensed to a great extent with commercial intercourse and money dealings, produced in all western countries the subjection of villeins and the super-imposition of a lord's demesne on the holdings of the working-class. But instead of assuming the form of a union between the lord's demesne and a firmly organised village community, the central economy of the lord had to deal in France with loose clusters of separate settlements, while in Germany the communal element combined with the domanial in all sorts of chance ways, which, though very advantageous in some cases, did not develop without difficulty into a firmly

established and generally recognised body of rural custom.

In England things were different. There can be hardly any doubt that through the strong constitution, rooted in custom, of its manor England, in its social development, got quite as much start of its neighbours, as it obtained precedence over them politically through the early growth of parliamentary institutions.

NOTES:

1. "Rex autem habet superiorem, id est Deum, item legem, per quam factus est Rex. Item curiam suam, videlicet comites, barones, quia comites dicuntur quasi socii regis, et qui habet socium, habet magistrum, et ideo si rex fuerit siue freno, i.e., sine lege, debent ei frenum ponere."

2. Red Book of the Exchequer, 283: Hugh de Lacy's report as to his knights" "Ricardus Brito et ipsi qui post ipsum sunt nominati tenent de domino Hugone sine servitio aliquo quod eis statum est. Quidam de eis sunt mecum residentes et invenio eis necessaria. Et quidam sunt in domibus meis in Wallia et invenio eis necessaria."

3. See also Chapter XII, pp. 281-2 and Chapter XVII, p. 457.

4. The medium justice (moyenne justice) was a later development and was not generally accepted.

5. Cartulary of St. Mihiel quoted by Flach, Origines de l'ancienne France, i. p. 442.

6. Quoted by Pergameni, L'avouerie ecclesiastique belge, Ghent 1907, pp. 83, 84.

7. Quoted by Luchaire, Manuel des institutions francaises, p. 185.

8. Bigelow, Placita Anglo-normannica, p. 34.

9. Coutume de Touraine-Anjou, p. 17: Bers si a toutes en sa terre, ne li rois ne puet mettre ban en la tere au baron, sanz son assentement, ne li bers ne puet mettre ban en la terre au vavasor, sanz l'assentement au vavasor; (received in the Etablissement de St Louis, I, p. 26. See P. Viollet, Etablissements de St Louis, II, p. 36).

10. Cadier, Les Etats du Rearn, quoted by Luchaire, Manuel, p. 254.

11. In parts of the country settled on the system of scattered farms, arable and meadows came naturally to be divided among separate households, but even then a great deal of communalism remained in the management of pasture and wood.

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