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Barony and Thanage

WHEN the officials of the king's courts said of a man not only that he held a barony (*tenuit baaronim*) but also that he held by barony (*tenuit per baroniam*), what did they mean? Was tenure by barony really a distinct and certain mode of tenure to be classed as such with tenure by knight-service or by serjeanty; or was it merely a variety of tenure by knight-service, from which it was distinguished only by a difference in the amount of the relief to be paid and by 'a few legal consequences of a subordinate kind'?¹ Was barony a dignity conferring on the holder a title of honour and the right to be summoned to the king's council in the twelfth century as in the twentieth? For many a year English lawyers and historians have debated these questions without finding satisfactory answers to any but the last. However the case may be with the lawyers, the historians are now convinced that whatever tenure by barony may have been, it never gave a man the right to be summoned to the king's council, though it imposed on him the duty of attending it if summoned.² Most of them, too, are agreed that tenure by barony never conferred on the tenant a title of honour, though some demur to this, having in mind the Barons of Burford, Greystoke, and Stafford. But they are as far as ever from determining what tenure by barony was.

Yet a difference between tenure by barony and tenure by knight-service there must have been. Quite apart from the fact that there were over a dozen baronies in England that were not held by knight-service at all,³ there is the matter of the relief.

¹ Pollock and Maitland, *History of English Law*, i. 259.

² Constitutions of Clarendon (1164), c. xi: 'Archiepiscopi, episcopi, et universi qui de rege tenent in capite, et habent possessiones suas de domino rege sicut baroniam . . . et sicut barones ceteri, debent interesse iudiciis curiae regis cum baronibus. . .'

³ e.g. the cornage baronies of Cumberland; see below, pp. 183 ff. The existence of such baronies is distinctly implied in Magna Carta, c. 2, which expressly deals only with the reliefs due from fiefs held by knight-service.

Long after the reasonable relief for a knight's fee had been fixed at 100s., the relief for a barony held by knight-service remained variable at the king's pleasure,¹ and when fixed by Magna Carta (c. 2), was fixed at £100 as against 100s. for a knight's fee.² Mr. Round has recently pointed out³ that Magna Carta by thus drawing a distinction between the relief due from a barony and that due from a knight's fee drew a sharp distinction between the baron, the man who held by barony, and the knight, the man who held by simple knight-service. As he has also proved that the distinction between the reliefs was in no way dependent either on the amount of land held or on the amount of knight-service due from it, save that single fee baronies paid but 100s.,⁴ we are constrained to believe that it was the effect rather than the cause of the distinction between tenure by barony and tenure by knight-service.

Then there are the 'legal consequences of a subordinate kind'. In his famous chapter on Dignities, Bracton, after describing the creation of an earl, goes on: 'Sunt et alii, potentes sub rege, qui dicuntur barones', distinguishing them from 'vavasores' and 'milites', to whom he ascribes no power under the king, though calling the former 'viri magnae dignitatis', or more shortly, 'magnatae'.⁵ Then in another chapter, after recounting how a manor, 'si sit caput baroniae', may not be assigned in dower nor partitioned among co-heirs,⁶ he adds, 'Quod dicitur de baronia, non est observandum in vavasoria, vel aliis minoribus feodis quam baronia, quia caput non habent sicut baronia; et quod dicitur de baronia et barone, servari debet in comitatu et comite'.⁷ Clearly, in Bracton's eyes the distinction between *baronia* and *vavasoria*, that is, between tenure by barony and tenure by knight-service,⁸ lay in the possession of a *caput baroniae*, just as that between barons and vavasors

¹ Glanvill, ix. 4; *Dialogus de Scaccario*, ii. 24.

² This was the relief recently established as reasonable for a barony in Normandy Très Ancien Coutumier, c. lxxxv), but the English exchequer for fiscal purposes deemed a barony to contain 13½ knights' fees and exacted 1 mark from a baron against 1 shilling from a knight (Annals of Waverley, p. 296, c. 1222), and when the Charter was confirmed in 1297, this ratio was established between their reliefs, the baron's being reduced to 100 marks, i. e. 13½ times a knight's.

³ "Barons" and "Knights" in the Great Charter': *Magna Carta Commemoration Essays*, p. 71.

⁴ *Ibid.* pp. 64 ff.

⁵ Bracton, *De Legibus et Consuetudinibus Angliae* (Rolls Series), i. 8.

⁶ *Ibid.* ii. 39 (pp. 59, 61). If the lands were divided, the caput went to the eldest daughter or her heirs; but it was pleaded in 1218 that ever since the conquest of England, it had been the king's prerogative right that if any of his barons died leaving daughters as his heirs, and the elder-born daughters had been married in their father's lifetime, the king might give the youngest daughter to one of his knights with the whole of her father's lands, to the exclusion of her elder sisters (*Bracton's Note-book*, pl. 12).

⁷ Bracton, *De Legibus*, ii. 39, § 6.

⁸ Guilhaume, *Essai sur l'origine de la noblesse en France au moyen âge*, p. 64, n. 31.

lay in the possession of power under the king. Yet he does not tell us what power barons had, nor why their fiefs had *capita*, the inheritance of which was determined by special rules. In other words, he does not tell us what tenure by barony was.

There were other differences between tenure by barony and tenure by knight-service, between the baron and the knight. A knight's fee could be divided and subdivided to any extent ; but a barony, although the lands composing it were equally subject to division, was regarded as an indivisible whole,¹ a whole, moreover, that retained its identity even when it had escheated to the Crown or had passed into the hands of the holder of another barony ;² so much so, indeed, that whereas the tenants of other escheated fees became tenants *ut de corona*, the tenants of an escheated barony continued to hold *ut de baronia*.³ As a rule, heirs of full age could take immediate possession of their inheritance without waiting to do homage, but when a baron died the king retained the barony in his own hands until the heir had given security for the relief.⁴ When a tenant by barony was amerced, the amount was not fixed by the sheriff or the justice but before the king in council, and always at a higher rate, so that where other men were amerced at 10s. or 20s., a baron was amerced at 100s. at least, whence the phrase 'americiatur ut baro'.⁵ In consequence, those who could do so were on occasion only too anxious to claim that their tenure was not by barony, even when like Thomas de Furnival they had for many years been summoned to parliament and were indubitably barons in the modern sense.⁶ Conversely, since tenants by barony could not be called to take any oath on any jury, we have men claiming to hold by barony although they had never been summoned to parliament.⁷ These legal consequences of tenure by barony may be as unimportant as Maitland thought them ; but they are not insignificant, and they call for explanation.

It is, therefore, unfortunate that the need for an official definition of tenure by barony did not arise until long after its nature had been so completely forgotten that Littleton did not even mention it in his *Treatise of Tenures*. It was as a matter of fact only when a crop of peerage cases called attention to the tenure at the beginning of the seventeenth century that lawyers and antiquaries set to work to ascertain its nature. Despite the reverence in which they are held by peerage lawyers, Coke's

¹ Madox, *Baronia Anglica*, pp. 45-9.

² *Ibid.* pp. 189 ff.

³ *Ibid.* pp. 169-71, 199. Cf. *Dialogus de Scaccario*, ii. 10 f; Magna Carta, c. 43.

⁴ Glanvill, ix. 6.

⁵ *Baronia Anglica*, pp. 102 ff. ; cf. Magna Carta, c. 21 ; *Year Book*, 3 Edward II (Selden Soc.), p. 79.

⁶ *Lords' Reports on the Dignity of a Peer*, 3rd report, p. 253.

⁷ Ralph Everdon in 1374 (Pike, *Constitutional History of the House of Lords*, p. 95).

perverse distortions of thirteenth-century law need not detain us. Selden's views deserve more respect. In his *Titles of Honour*, he advanced the theory that tenure by barony was but a variety of tenure by knight-service and that all tenants-in-chief by knight-service were barons, though they were distinguished as greater or lesser by the amount of land they held and were called barons or knights accordingly.¹ This theory has practically held the field down to the present day, but it ignores the differences between tenure by barony and tenure by knight-service noted above. To these Madox again drew attention in his *Baronia Anglica*, showing that Selden had set them aside too lightly. Then in his turn he put forward the theory that only 'the King's Homagers holding of him by Barony' were properly called barons.² He was, however, no more able than Selden to account for the differences we have noted or to show what tenure by barony was; and at the end he could only say that 'barony was knight-service embaronied, that is, knight-service enlarged and erected into a barony, or, if you please, made a barony at its first creation'.³

Between these two theories, in one form or another, opinion has wavered from that day to this. Madox's failure to define tenure by barony led Hallam to set aside his arguments for the existence of barony as a tenure distinct from that by knight-service in favour of a theory essentially the same as Selden's.⁴ But the committee appointed by the house of lords in 1819 to report on the dignity of a peer found Madox's arguments incontrovertible, supported as they were by a new piece of evidence, namely, the advice given to Edward I in 1292 by his prelates, earls, and barons that 'the right of succession to the kingdom of Scotland was to be decided as the right of succession to earldoms, baronies, and other impartible tenures (*aliis tenuris impartibilibus*) was to be decided'. The committee's comment on this was that as the lands called earldoms and baronies were certainly partible inheritances, the answer must have applied to something distinct from the land, 'which', they conceived, 'could only have been the dignity of Earl or Baron'.⁵ This comment has been accepted by peerage lawyers as authoritative, agreeing as it does with Coke's famous comments on the Chester case in assuming that there were in the thirteenth century 'inheritances of honor and dignity'—of which barony was one—separable from the tenure of lands.⁶ Constitutional historians, however, preferring facts to authority and observing that the 'dignity' of baron conferred on the holder no ascertainable right even to a title of honour before the reign of Richard II, have agreed not only

¹ Pp. 690 ff., 2nd edition.

² p. 134.

³ *Ibid.* p. 241.

⁴ *Middle Ages*, iii. 11 ff.

⁵ *Lords' Reports*, i. 207.

⁶ Coke's *Commentaries on Littleton* (ed. Hargrave and Butler, 1794), p. 165.

in rejecting the lords' conclusion but also in ignoring their argument. Therefore, when seeking in their turn to ascertain the nature of tenure by barony, some, like Stubbs¹ and Mr. Round,² have followed Hallam in ignoring Madox's arguments, while others, like Maitland and Pike, have taken them into account; but all have ended in effect by supporting Selden's theory.

A few quotations from the *History of English Law* will make the present state of opinion clear. 'As regards the land law it is to all appearance the relief and the relief only that differences the barony from an aggregate of knights' fees or makes it necessary to speak of tenure by barony.' The other incidents of tenure, aid, wardship, marriage, escheat, being the same, the other differences, being of a subordinate kind, 'will not justify us in co-ordinating tenure by barony with the other tenures, such as knight-service and serjeanty'. Especially, 'the statement that a man holds a barony, or a parcel of knights' fees, of the king, tells us nothing as to the relationship between him and his tenants, and does not even tell us that he has any tenants at all'.³ To which may be added this from Pike's *Constitutional History of the House of Lords*: 'The Barons . . . merely as Barons, held no office and the descent of their lands was untrammelled by any of the difficulties incident to the descent of offices.'⁴ The learning of these writers has rightly earned the deepest respect for their opinions on any point of medieval constitutional history, and it is only with diffidence that the boldest would dissent from their views; but in this case their conclusions leave too many questions unanswered to be accepted as final without further inquiry. Why, for instance, if a barony was but a parcel of knights' fees, was it, unlike other parcels of knights' fees, regarded as impartible and indestructible? Why had it a *caput*, which they might not have? Why was the descent of that *caput* determined by special rules? Why did the magnates in 1292 call tenure by barony impartible when lands so held were constantly being partitioned among co-heirs? Why did all tenants by barony pay the same relief whether they held two knights' fees or 200? Why were they amerced before the king in council and not by the king's justices as other tenants-in-chief were, and always at a higher rate? Why were they exempt from service on juries? Above

¹ 'In one aspect any of the king's dependents are barons; in another, the barony signifies a definite number of knights' fees. But as it has been found impossible to reduce the territorial baronies to any fixed area of extension, it is probable that the title or dignity of baron, or king's baron, involves, from its first entrance into English history, nothing more than the idea of royal vassal or tenant-in-chief': *Constitutional History of England*, i. 395-6.

² 'To hold *per baroniam* was, in the first instance, neither more nor less than to hold *ut baro*, as a tenant-in-chief': *Peerage and Pedigree*, i. 359.

³ *Hist. of Engl. Law*, i. 259, 241.

⁴ p. 281

all, why did Bracton classify barons with earls and distinguish them from other magnates as having power under the king, if as barons they held no office and had no jurisdictional power? While these questions remain unanswered we cannot claim to know what tenure by barony was.

To seek in the first instance among English sources for fresh evidence is probably useless. For, as to the eleventh and twelfth centuries the documentary evidence is too fragmentary to be easily interpreted; and as to the thirteenth century, when our records first became copious and continuous, feudalism as an administrative and military system was already in decay. English institutions, however, are but local variations of European ones, and we must look to foreign, and particularly to French, sources for aid in interpreting English ones. As it happens, this method is peculiarly suitable for investigating the problem of tenure by barony. For *baro* and *baronia* are words of French origin unused in England until after the Norman Conquest; and it is, to say the least, unlikely that the Normans, who carried these words to Sicily and to Scotland,¹ using them always with the same meaning, used them with another in England, bound as this country was to Normandy for a hundred and fifty years so much more closely than either of the others ever was. As Mr. Haskins has pointed out,² 'Wholly distinct the two administrations' of England and Normandy 'cannot have been; for so long as kingship was ambulatory and the government centred in the royal household, a considerable number of the king's officers must have been common to the kingdom and the duchy, and even when other departments became stationary, the chancery and the chapel continued to follow the king'. When, therefore, in English documents of the eleventh and twelfth centuries we find *baro* and *baronia* used technically, especially in opposition to *vavasor* and *vavasoria*,³ the presumption is strong that they bear the same meaning as they do in Norman documents of the same period. M. Guilhaume has used this argument to prove that in England as in Normandy *vavasor* and *vavasoria* were technical names for the simple knight and his holding as opposed to the baron and his barony; it is just as valid in respect of *baro* and *baronia*.

What then was the meaning attached to these words in Normandy in the eleventh and twelfth centuries? *Baro* is a Low Latin word of uncertain derivation, first met with in French documents of the eighth century, where it is used instead of *vir*

¹ Guilhaume, p. 158, n. 54; Haskins, *Norman Institutions*, pp. 3, 23-4.

² p. 112.

³ e. g. in Henry I's letter ordering the holding of the courts of the shire and the hundred.

with just the same sense of 'man' as opposed to 'woman', a use that survived in our own law-books down to the seventeenth century in the phrase 'baro et feme'. Soon its meaning was narrowed, first to 'vassal' and then to 'king's vassal', 'tenant-in-chief'; and at last, by the middle of the eleventh century, *baro*, without losing its other meanings, became the technical and juridical name of the possessor of certain rights of public justice which the thirteenth-century lawyers called 'la haute justice'.¹ At this point there emerged a difference between Normandy and the rest of France. In France these rights were attached to the possession of a castellary (*castellaria*), that is, of a castle with the surrounding district whence it drew its supplies of food, labour, and men, which thus became the fundamental unit of political organization from all points of view, judicial, military, administrative, fiscal, and commercial.² In Normandy, however, where the dukes kept firm control over castle-building, there were many fiefs in which the lord had the rights usually attached to a castellary but no castle. In the duchy, therefore, *baro* became a technical name to distinguish the possessor of those rights, whether he had a castle or not, from the *vavasor*, or simple knight, who had no such rights, *baronia* being used in opposition to *vavassoria* to designate both the fief to which those rights were attached and the tenure by which it was held.³

What those rights of public justice were, we know partly from charters, partly from the statements of Norman custom known as the 'Consuetudines et Iusticie',⁴ compiled at the end of the eleventh century, and the 'Très Ancien Coutumier',⁵ compiled about a century later. From these it appears that all barons, in addition to the purely feudal rights of civil justice that every lord exercised in his manor as of right, had as barons rights of justice by virtue of which the duel could be held and the penalty of death or mutilation could be inflicted, though the one was limited to civil causes and the other to the baron's own thieves taken in the act or with the stolen goods on them.⁶ Both were

¹ Guilhiermoz, *op. cit.* pp. 156 ff.; cf. Haskins, *op. cit.* p. 28.

² Guilhiermoz, pp. 143, 158; cf. Powicke, *The Loss of Normandy*, pp. 38-9, 55-6, 265 ff.

³ Guilhiermoz, p. 154.

⁴ Printed by Guilhiermoz, pp. 281 ff.

⁵ Edited by E. J. Tardif in *Coutumiers de Normandie* (Société de l'Histoire de Normandie).

⁶ Const. et Iust. c. 8: 'Nulli licuit . . . de membris suis hominem dampnare sine iudicio, nisi in tali actu vel forisfacto inventus est pro quo membrum perdere debuisset et ibidem perdidisset, et nisi per iudicium curie domini Normannie de hoc quod ad eum pertinet vel iudicio curie baronum de hoc quod ad barones.' Très Ancien Coutumier, c. xli: 'Tuit chevalier e tuit sergent (*vavassores* in the Latin version) ont en leur terres leur justice de bataille en cause citeine (*in civili causa*) e quant li champions sera vaincuz, il avront lx s. e j denier de la recreandise. E la justice de leur larrons

'pleas of the sword', which the dukes claimed as their own, insisting that such of their vassals as possessed them did so by ducal grant, explicit or implicit.¹ There were other pleas of the sword to which that name was afterwards restricted—house-breaking (*hamfare*), arson, rape, robbery, and assault in protected places such as the duke's high road, together with homicide open or secret (*murdrum*), and the justice of the host and of money²—one or more of which might be held by a baron; but they were not of the essence of barony as the other pleas were.

Holding pleas of the sword, the Norman baron was more than a feudal lord, he was a ducal officer, albeit an hereditary one; and his barony was more than a fief, it was an administrative unit. The legal consequences are interesting. Most Norman baronies were fees of the hauberk, that is to say, were held by knight-service, and as such were subject to the rights of wardship, relief, and aids claimed by the duke in all such fees;³ but the relief for a barony, unlike that for a vavasory, remained arbitrary down to the close of the twelfth century,⁴ when it was fixed at £100 as against £15 for a single knight's fee.⁵ In Normandy equal division among males was the rule of succession; but the dukes insisted that the barony, like the great fiefs which had their origin in the hereditary offices of count or viscount, like the duchy itself, was indivisible and must descend entire to the eldest son.⁶ In a vavasory, however large, no one manor had precedence of the others, and the lord had no court with jurisdiction in all his manors; but in every barony, however small, there was one castle or manor, known as the *mansio capitalis*, where the lord had a court in which his pleas of the sword were held for all the men of the barony.⁷ Finally, where the simple

avront il e leur chatiex.' Cf. c. lix: 'Chascuns sires oit plez de son larron e sa segnorie en sa terre, escepte les plez qui apartiennent au duc. . . .'

¹ Powicke, *op. cit.* p. 81.

² Const. et Iust. c. 9; Très Ancien Coutumier, cc. liii, lxx. The list of pleas of the sword in the last should be compared with the list of pleas of the Crown in Cnut's Laws, cc. 12-15, 64.

³ Haakins, *op. cit.* p. 19.

⁴ Très Ancien Coutumier, c. xlvii: 'Quens (*Comes*) relevera sa comté si comme conte, e li baron sa baronie de leur segnors selons la coutume du pais: le fieü de hauberc si comme il doit. Li autre tenement seront relevé par acres, e chascune acre de terre dona xii deniers e del chevel manoir v s.'

⁵ *Ibid.* c. lxxxv: 'Les baronies sont relevees envers le roi par c. livres. Fiez de chevalier est releveez chascuns par xv livres de qui que il soit tenuz, ou del roi en chief ou d'autre.' M. Tardif has shown that the first part of the Coutumier, ending at c. lxxv, is older than the second, which belongs to the beginning of the thirteenth century.

⁶ Powicke, pp. 57-9, 68, 101.

⁷ An assize was made at Domfront in 1155 that all tenants-in-chief in Normandy might if they wished summon all trials by battle to their *mansio capitalis*: *ibid.* p. 86 n. We may compare this with the *Leges Henrici*, c. 55, which allows every lord to summon his man to stand to right in his court, and if the man lives in the remotest manor of the honor, he must still go to the plea.

knight, when in the mercy of the duke, paid 10s., the baron, like the count, the archbishop, the bishop, and the abbot, had to pay £100.¹

The resemblance between the obligations and legal consequences of tenure by barony in Normandy and in England is so close that we cannot but ask ourselves whether the explanation must not have been the same in both cases, namely, that in the one country as in the other, barony was an hereditary office to which were attached rights of public justice. That English barons had courts we know; but did they have them as barons, and was having a court so much the essence of barony that all who had such courts were deemed to hold by barony? If so, what justiciary rights did barons have in England?

To answer these questions it is of the first importance to determine the meaning attached to *baro* in the earliest English documents in which it is found.

Old English law was, of course, never abrogated and French law introduced by a comprehensive enactment after the Conquest. . . . The Norman lord usually got his title and claimed his rights on the strength, not of separate and express grants, but of a general assignment of all the titles and rights that had been possessed by his Saxon predecessors.²

So it is without surprise that we find that it was as the Norman equivalent of the Saxon *thegn* that *baro* was first used in England. For long, indeed, it was doubtful whether the old name would not hold its own against the newcomer. Many of the Conqueror's charters were addressed to 'alle mine thegnes' just as Edward the Confessor's had been, *ministri* or *ballivi* being used as the equivalent in the Latin versions.³ In Domesday Book itself the *barones* were but rarely mentioned, whereas archbishops, bishops, and abbots as well as great Norman lords like Earl Hugh and Ilbert de Lacy are called *taini*.⁴ *Baro* is indeed used in both the French and the Latin versions of the 'Leis Willelme' (1090-1135) instead of the 'thegn' of the Saxon laws incorporated in them; but in the 'Instituta Cnuti' (c. 1103), the earliest of the Latin versions of Cnut's laws, neither *baro* nor *vavasor* occurs, the writer preferring 'liberalis homo, id est Thegen' for the one and 'mediocris homo' for the other. Similarly, the writer of the 'Consiliatio Cnuti' (c. 1110) uses 'procer uel uirro' for *thegn*, not *baro*. Even in the 'Leges

¹ Très Ancien Coutumier, c. lvi: 'Si quens (*comes*) ou barons ou archevesques ou evesques ou abes est chaux en merci, il en paiera c livres, chevaliers paiera al moins xvs. ou neant; vilains ou bas homs vs. ou neant.'

² Vinogradoff, *English Society in the Eleventh Century*, pp. 2-3.

³ Ellis, *Introduction to Domesday*, i. 46 n. Compare the charters in H. W. C. Davis's *Regesta Regum Normannorum* with those in Kemble's *Codex Diplomaticus*, iv. 195 ff.

⁴ Domesday Book, i. 56 b.

Henrici' (c. 1115) not only do we have the phrase 'thaini uel baronis', but 'thainus' is constantly used where we might expect *baro*. Before Henry I's death, however, *baro* seems to have ousted all its rivals; and in the late 'Leges Edwardi Confessoris' (c. 1130-5) we find it consistently used as the equivalent of 'thegn'.¹

'Thegn', however, was a word of wide application. Used first to denote a freeman serving in the household of a lord—the king or another—and then to denote a freeman endowed with land in return for personal service, usually, though not always, armed service, 'thegn' had by the beginning of the eleventh century become a term of wide use, covering men who owned their land so freely that they could go with it to any lord they pleased, and men whose land remained with the lord from whom they held it; men who held by military service, and men who held by such humble service as sending their men to help in reaping the king's corn; men who held vast estates in which they had wide powers or jurisdiction, and men who had but a single ploughland, perhaps held in parage with five or six others.²

It was, nevertheless, inevitable that some distinction should be drawn between men so far apart in rank and power as were the great thane who ruled a whole hundred and the humble thane who rode in the king's army or on his errands, and helped to plough his land and reap his corn. In Cnut's Laws (1027-35) this distinction is clearly drawn in the well-known chapter regulating heriots (c. 71). According to this, the heriot of a king's thane was just half that of an earl and nearly four times that of the 'mean' thane,³ who had to give a horse and his trappings together with his arms, unless he had not so much, in which case he gave his 'healsfang' (i. e. neck-money), of 120*s.* in Wessex, 40*s.* in Mercia and East Anglia; but in the Danelaw the king's thane who had his 'soc' gave only £4, that is, double the heriot of the 'mean' thane, unless he was also known to the king, when he gave half the heriot of a king's thane in Wessex and Mercia. Now, the distinction drawn here between king's thanes and 'mean' thanes cannot be, as some have thought, between thanes who hold of the king and thanes who do not. For Domesday Book shows us many thanes holding of the king whose heriot is but a horse and his trappings, or even the 40*s.* due from the 'mean' thane who had not so much.⁴ These were indeed 'lesser

¹ See these texts in Liebermann, *Die Gesetze der Angelsachsen*, i.

² Maitland, *Domesday Book and Beyond*, pp. 161 ff.

³ Henry VIII frequently used the phrase 'mean man' to denote a man of moderate fortune and station in life; it exactly translates 'medume', 'moderate'.

⁴ e. g. in Berkshire, Lancashire, and Cheshire; Domesday Book, i. 56 b, 269, 270 a. Cf. the *radenhts* of Gloucestershire; *ibid.* i. 163.

thanes',¹ and cannot be considered as anything but small squires.² The king's thane, whose heriot is four horses, two saddled and two unsaddled, two swords, four spears and as many shields, a helmet and a hauberk, and fifty mancuses of gold (£6 5s.), is a very different person. He is a great man with much land, probably with thanes of his own;³ he is 'nigh' to the king; above all, he has his *soc*, the *soc* that the king alone can give.⁴

Throughout the Anglo-Saxon laws in fact we find the 'cynges thegn' associated as a matter of course with the ealdorman, or the earl, and the 'gerefa', both royal officials, as having rights and duties that set him above other freemen. He has a wergild, a 'fihtwite' and a 'bot' for 'burhbreche', lower than an ealdorman's but higher than the gesithcund landowner's and six times a ceorl's. His oath is worth six times as much as a ceorl's; and the fore-oath may be taken on his behalf by his own thane. Moreover, he has the right of trial before the king. 'Over the king's thane none but the king shall have soc;' for he holds of the king 'bocland' to the amount of at least five hides, and the wite of all such the king takes. But as an offset to these privileges, the king's thane who is convicted of murder, witchcraft, or magic, or who neglects to pay Romscof or tithe, must pay 10 half-marks instead of the mere landowner's 6, or the ceorl's 12 ore.⁵ Above all, the king's thane has administrative and judicial rights and duties that make him the peer of the gerefa and sometimes of the ealdorman. The king's thane as such is responsible for the 'burhbot', 'brygwork', and 'fyrdfare' due to the king from the men of his bocland.⁶ Like the ealdorman and the abbot the king's thane can give the thief or robber who comes to him three nights' sanctuary.⁷ Like the gerefa, the king's thane who takes a bribe to pervert justice has to pay the king's 'overhernesne' of 120s. and take shame; if he will not obey the king's command to keep the peace and take pledges of his 'hired' men, he has to pay 60s.;⁸ if he judges unjustly, he has to pay the king 120s., unless he dare swear that he knew no better, and lose his thaneship, unless he afterwards buy it from the king at what

¹ 'Mediocris hominis, quem Angli dicunt laesse thegn': Inst. Cnuti 71, 2, Liebermann, i. 359.

² Vinogradoff, *Engl. Soc.*, p. 66.

³ Rectitudines Singularum Personarum, c. 3.

⁴ II Cnuti Leges, cc. 31, 71. Cf. Domesday Book, i. 249 b: 'Statfordscire—Willelmus F. Ansculfi tenet . . . in Efnefeld iii hidas . . . Alricus tenuit cum soca teini regis.'

⁵ Liebermann, ii, s. v. 'Thegn'.

⁶ Gethynetho, c. 2; Northleoda Laga, c. 9; Rectitudines, c. 1. Cf. Anglo-Saxon Chronicle, A. D. 894: 'Then Ethelred the ealdorman, and Ethelm the ealdorman and Ethelnoth the ealdorman, and the king's thanes who were then at home in fortified places (burhs), gathered forces from every town east of the Parret,' &c.

⁷ IV Athelstan, c. 6.

⁸ V Athelstan, c. 1 (3), (4); VI Athelstan, c. 11.

price he will,¹ that is, he is in the king's mercy. He even has his own pleas for which a 'wed', or security, of 6 ore has to be given by those brought before him as against the 'wed' of 6 half-marks for a king's plea and 12 ore for an earl's or a bishop's.² He is the 'hlaforð' who has his 'hiredmen' in his own 'borh',³ and in 'bocland' takes that share of the 'wed' and the 'lahcop' of an accused man and of the wife of a guilty one which in 'folcland' went to the king,⁴ as well as the 'landrica' who has his 'overhiernesne',⁵ and his 'burhgeat' where he holds a court for all the men in his 'soc',⁶ and his 'setl' in the king's hall.⁷ 'Cynges thegn' thus appears in the Anglo-Saxon laws as the technical and juridical name of a royal official who has in his 'bocland' judicial and administrative rights and duties akin to a sheriff's.

This technical use of 'cynges thegn' makes it peculiarly interesting to compare with the Saxon original of Cnut's law on heriots the several Latin and French versions of it made by the Norman clerks between 1090 and 1150. In the 'Quadripartitus' (i. 71) and the 'Leges Henrici' (c. 14), where the chapter is entitled 'De Relevationibus', 'cynges thegna' is rendered 'taini regis',⁸ and 'medemra thegna', 'mediocris taini'; in the 'Consiliatio Cnuti' (c. 71) these terms are rendered respectively 'uironis regis' and 'minoris uironis'; and in the 'Leis Willelme' (c. 20) 'barun' and 'vavasur'; while in the 'Instituta Cnuti' (ii, c. 71), which gives the heriot of the king's thane in the Danelaw only, 'cynges thegnes . . . the his socne hæbbe' is rendered 'liberalis hominis qui consuetudines suas habet, quem Angli dicunt kinges thegen', and 'medemra thegna' as 'mediocris hominis quem Angli dicunt læsse thegen'. Clearly, to the Normans the 'baro', the 'uiro regis', the 'cynges thegn', and the free man who had his customs, were one and the same, as were the 'vavasor', the 'minor uiro', the 'læsse' or 'medume

¹ II Cnut, c. 15 (1). In the *Leis Willelme*, c. 39 (1), the last clause runs, 'perde sa franchise, si al rei nei pot reacheter a soun plaisir'; and in the *Leges Henrici*, c. 34, it runs, 'et thegenscypes (honore) et omni iudicaria dignitate priuetur', showing clearly that it was not only an office but a judicial office that was forfeited.

² III Athelred, c. 12.

³ II Cnut, c. 31.

⁴ V Athelstan, c. 1; IV Edgar, c. 8; III Aethelred, c. 3; II Cnut, c. 37. Cf. Northumbrian Priests' Law, cc. 48-59.

⁵ *Leges Henrici*, c. 80 (9 b); cf. cc. 41, 42.

⁶ Petit-Dutaillis, *Studies supplementary to Stubbs' Constitutional History*, pp. 40-1. See *Rotuli Hundredorum*, ii. 206, for the Court of Pevensey Castle.

⁷ *Rectitudines*, c. 2.

⁸ It is only in this passage and that quoted in note 4, p. 171, that the Norman scribes use 'tainus regis' strictly in the technical sense. In Domesday, as a rule, the 'taini regis' are simply 'thanes who hold of the king', whether they be king's thanes in the technical sense, like Gamel, son of Osbert, who T.R.E. had sac and soc, toll and team in what was afterwards the barony of Cottingham (Domesday Book, i. 298 b, 328, 331; *Plac. de Quo Warr.* p. 199), or 'mean' thanes, like the Lancashire ones.

thegn', and the 'mean' man. Yet there were notable differences between the Norman 'baro' and the Saxon 'cyniges thegn'. The one held his land by a quota of military service based on a unit of five or ten knights, was liable to wardship and marriage, and paid relief and aids, both at the will of the king; the other held his land by personal service in the 'utware', to which he had also to lead the men due from his land under the 'five-hide rule', and paid heriot and geld, both at fixed rates. These incidents, however, were not peculiar to barony or to thanage, but were shared by the baron with the vavasor and by the king's thane with the 'mean' thane. Therefore, the Norman clerks who identified the king's thane with the baron must have had regard chiefly for the one thing that they had in common with one another but not with the vavasor and the 'mean' thane, namely, their justiciary rights.

What then were the justiciary rights of a king's thane at the time of the Norman Conquest? Were they the same as those of a Norman baron? The laws of the Saxon kings give us no list of them, and their charters, which contain no formula for granting justiciary rights more definite than 'sac and soc, toll and team, and infangthef',¹ do not explicitly connect such a grant with thaneship. In the 'Leis Willelme' (c. 2), however, we read that in the Danelaw 'the free man (francs hom) who has sac and soc, toll and team, and infangthef, if impleaded in the county and put in forfeiture, shall forfeit to the sheriff 40 ores, but other men who have not this franchise, 32 ores'. Can this 'francs hom' who is amerced at a higher rate than other men be any other than the 'liberalis homo qui habet consuetudines suas' of the 'Instituta Cnuti', the 'king's thane who has his soc' of Cnut's law, and the 'antecessor qui habebat socam et sacam et condemnationem' of Domesday Book?²

But it is to the 'Leges Henrici', which, 'if it has a plan at all, is a treatise on the law of jurisdiction, a treatise on "soke"',³ that we chiefly look for some hint that 'sac and soc, toll and team, and infangthef' belonged to every king's thane, and therefore to every baron, as such. Sure enough, we find near the beginning of the Leges (c. 9) this sentence:

As to the soc of pleas, there is that which belongs properly and exclusively to the king's fisc; there is that which it shares with others; there is that which belongs to the sheriffs and royal bailiffs as comprised in their farms; there is that which belongs to the barons who have soc and sac.

¹ e. g. Edward the Confessor's writ confirming the liberties of the see of York: Farrer, *Early Yorkshire Charters*, i, no. 10. Compare no. 22, and other charters of this king in Kemble and Birch.

² Domesday Book, ii. 116 ff.

³ Maitland, *Domesday Book and Beyond*, p. 80.

Further on, when the writer begins to treat of the pleas which the king shares with others, we are told (c. 20) that

archbishops, bishops, earls, and other powers (*potestates*) have sac and soc, toll and team, and infangthef in the lands of their own bailliwick (*in terris proprii potentatus*)—but in others acquired by purchase or exchange or in some other way, they have soc and sac in common causes and such as belong to hallmoots—over their own men and in their own [bailliwick], and sometimes over the men of another, especially if they have been taken in the act or accused without delay, and thence they shall have the proper fine.

But everywhere the soc of the pleas of the Crown is the king's, unless by reason of nearness [*sc.* to the king] or worth they have them by the king's favour. That the 'other powers' were king's thanes and barons is clear both from the chapter quoted above and from later references to 'barons having their soc' (c. 24), to 'thanes or barons' who had an 'overseunesse' (i. e. overhiernesse), or fine for disobedience, just half that of bishops and earls, and one-fourth that of the king (c. 35), and to thanes who share with the king the right to receive 'mundbreche, blodwite, wudehwite, scyldwite, and fihwite' (cc. 37, 38, 80). The statements of the law-books are confirmed by the charter by which the abbot of St. Albans granted, c. 1109, to Earl Gospatric and his son the lands of Archimorell to hold in fee-farm 'cum theines lage, in saca et soca, tol et team, et infangthef';¹ so we conclude with Spelman that king's thanes, and therefore barons, 'antique aestimati sunt, qui in suis dominiciis de litibus cognoscebant et latrociniis, consuetudines habentes quas sac, soc, toll, team, infangthef, outfangthef, ferias, etc. appellant'.²

It is not easy to determine with exactness what rights were actually conveyed by a grant of sac and soc, toll and team, and infangthef. 'Sac' seems to have given to the grantee profits of justice which would otherwise have gone to the king, 'soc' to have given the right to try the cases out of which those profits arose, both rights being as a rule restricted to cases arising on the grantee's own land or between his own men.³ The extent of the jurisdiction thus granted varied very much. Most often it covered only a few civil and petty police cases which did not involve the ordeal, the common causes which belonged to hallmoots and to vavasors.⁴ But the 'sac and soc' of king's thanes and barons seems to have covered general police jurisdiction, including breach of the grantee's peace, bloodshed, and wood-cutting, and even manslaughter,⁵ besides civil cases involving the ordeal.⁶ Such at least is the inference to be drawn, partly from the statement of

¹ *Gesta Abbatum Monasterii Sancti Albani*, ed. Riley, i. 72.

² Spelman, *Glossary* (ed. 1626), p. 79.

³ Liebermann, ii, s. v. 'Sac' and 'Soc'.

⁴ *Ibid.* c. 80.

⁵ *Leges Henrici*, cc. 20, 27.

⁶ *Leges Edw. Conf.*, c. 9 (3).

the 'Leges Henrici', that thanes as such had a right to receive 'wite' for these offences as well as a fine for disobedience to their orders; partly from the statement of the 'Instituta Cnuti' (iii. 58) that bishops, who as we have seen had the same justiciary rights as thanes and barons, had in their own lands the jurisdiction of a hundred-court (hundred-setene), the price of a thief taken within their bounds, iron and water, weights and measures. 'Toll' gave a man the right to buy and sell on his own land and to demand payment from others desiring to do the same there, to which custom seems to have added the right to hold a market; and 'team' empowered him to be warranty to sales, especially of cattle, to try cases arising out of warranty, and to hold property of unknown ownership found on his land, the 'waif' of a later age.¹ 'Infangthef' gave him the right to try and to execute the thief taken on his land either in the act of stealing or with the stolen goods on him, and to take his chattels,² a right to which custom added the right to have a gallows, when hanging had replaced beheading as the usual mode of execution.³

We read in the 'Leges Edwardi Confessoris' (c. 20) that barons—in the 1140-50 version, archbishops, bishops, earls, barons, and all who have sac and soc, toll and team, and infangthef—had their own knights and household servants, stewards, butlers, chamberlains, &c., i. e. the 'hiredmen' of the Anglo-Saxon laws, in their own 'friborh', as these in turn had their own squires and other servants in theirs, and that if any complaint were made against any of them it was to be heard in the court of him who had sac and soc, toll and team, and infangthef. We conclude, therefore, that under the Norman kings as under the Saxon, king's thanes and barons, merely as such, had, in addition to rights of

¹ Liebermann, ii, s.v. 'Toll' and 'Team'. For the latter compare Hlothar and Eadric's Laws, c. 16; Alfred and Guthrum's Frith, c. 5; Edward's Laws, i. 1; Edgar's Law of the Hundredgemot, c. 4; and II Cnut, c. 24.

² Bracton, *De Legibus*, iii (2), c. 55. Cf. the many claims to infangthef in the *Plac. de Quo Warr.*; e. g. the baron of Greystoke claimed (p. 119) 'habere catalla felonum dampnatorum in curia sua et decollatorum in feodo suo que infra feodum suum erunt inventa . . . etiam infangthef et furcas in Graystok ab antiquo'.

³ Stephens, *History of the Criminal Law of England*, i. 58 ff., quotes the passages in the Anglo-Saxon Laws which prove that beheading was the penalty for botless crimes before the Conquest. Even when hanging had generally taken its place, beheading remained the proper mode of executing thieves in the outlying parts of the country and especially in the liberties. Dugdale (*Origines Juridicales*, p. 88) quotes a case in the earldom of Chester in the reign of Edward I, and there are several in the *Northumberland Assize Rolls* (pp. 70, 73, 340). Cox, in 'Sanctuaries and Sanctuary-men' (*Archæol. Journ.* lxxiii. 281, 290), shows that beheading long survived in the liberty of St. Peter of York. Beheading also remained the proper mode of executing offenders against the Laws of the Marches down to the end of the sixteenth century (*Cal. of State Papers, Foreign*, Eliz. vii, no. 917), as it did for barons to a much later date. In 1314 the king's council decided that thenceforth beheaded criminals were to be held to have been hung, so that the king might have their goods (*Rot. Parl.* i. 293-6).

what we may call market justice and the right to have their own men in their own friborh, or frankpledge, a civil and police jurisdiction identical with that of the hundred-court, with power to use the ordeal both of water and of hot iron, together with the right to execute as well the manslayer as the hand-having and back-bearing thief caught on their land and to take his goods ; in short, that in England the king's thane, and the baron after him, had as such just those rights of justice by virtue of which the ordeal could be held and penalty of death or mutilation could be inflicted, which, as we have seen, constituted barony in Normandy. In other words, in England as in Normandy barony was an office to which were attached the rights that constituted 'la haute justice'.

Exception may be taken to these inferences as being drawn from sources of doubtful authority, the Anglo-Norman law-books being the work of unknown persons. But no such objection can be urged against inferences drawn from Glanvill's and Bracton's treatises. These surveys of the Laws and Customs of England are at once wider and narrower in scope than the earlier law-books. They have much more to say of procedure and of law ; but they have much less to say of jurisdiction. When the 'Leges Henrici', for instance, was written, the administration of justice was still a local matter that concerned mainly the seignorial and communal courts, the king's interest in it being almost confined to the profits arising out of it. It was then a matter of prime concern to the officials of the king's court to ascertain just what pleas belonged to the king alone and what he shared with others. By the end of the twelfth century, however, on the pretext that any wrongful use of force, however slight, was a breach of the king's peace over which he alone had jurisdiction, all serious crimes had been converted into pleas of the Crown, and exclusive jurisdiction over 'seisin', the possession as distinct from the ownership of land, had been secured for the king's justices ; the king's right to hear complaints of defect of justice in the local courts and to punish contempt of his precepts had been used to evoke into his court by means of writs of right cases over which it could not otherwise claim jurisdiction ; by the systematic use of the eyre the shire-courts had been converted into royal courts in which the judges were no longer the suitors but the justices of the king's own court ; and the right to hold pleas of the Crown even in the castellaries, which were outside the sheriff's jurisdiction, had been won for the visiting justices, resistance being made impossible by the appointment of the king's justices as sheriffs of the counties visited by them.¹ The barons in 1215 did their

¹ Glanvill and de Vaux, the itinerant justices north of the Trent from 1176, were sheriffs of Yorkshire and Westmorland, and of Cumberland respectively (Madox, *Hist. of the Exch.* i. 123 ff. ; *List of Sheriffs*).

best to arrest the decay of their courts and save their justiciary rights; but the king's triumph had been assured by the offer to those who used his courts of a more rational procedure and a more flexible and equitable justice than they could obtain in the communal and seigniorial courts, hampered as these were by an archaic procedure and a customary law that was ceasing to be adequate to the needs of a new age. The legal writers of the thirteenth century were therefore no longer concerned to define the jurisdiction of the local courts, but only to set forth the procedure by which cases could be brought into the king's courts and to expound the law by which they should be heard and determined there.

In consequence, we find in the later treatises only occasional references to barons' courts. Such as they are, however, they point as clearly as the earlier law-books to a close association of rights of public justice with barony. Glanvill, for instance, tells us (viii. 11) that any baron, having in his court a plea which it was not able to determine, could bring his court into the king's court in order that it might have the advice of the latter, and that the king owed this to his barons of right (*hoc debet Rex de iure baronibus suis*). Are we not justified in inferring from this, not only that barons as such had courts, but also that if barons had a special right to claim the aid of the king's court in determining pleas belonging to their own courts, it was because their courts stood in a special relation to the king's court?

Bracton carries us further. Having written (iii (2). c. 32) that theft is a plea of the Crown determined sometimes in other courts, as in the shire-court and in barons' courts (*in curiis baronum*), and sometimes in the greater court of the king himself, he goes on (c. 35) :

Let us see, therefore, what pleas belong to a court (*ad curiam*), and what to a shire. For there are certain barons and others, who have a liberty, that is to say, soc, sac, toll, team, infangthef, utfangthef. These may judge in their court if any one has been found within their liberty seized for some open theft, as hand-having and back-bearing, and he has been accused by sacborh; because, unless he was in seisin, although some one sue against him as against a thief, it will not belong to a court, a hundred, or a wapentake, to take cognisance of such thefts, nor to make inquisition concerning them by the country, whether one who was not seised was guilty or not, nor that battle shall be waged between any before seisin. . . . Likewise they may take cognisance of affrays and of men beaten or wounded, if felony and the king's peace be not appended. . . . Likewise of horses, oxen, and other animals wounded and maimed. Such a trespass can be amended by the neighbours. . . . Likewise they may take cognisance of debts which are demanded without a writ from the king and also of other things which are released without a writ.

From these passages it is clear first that when Bracton said of a man that he had a court, he meant that he had the justiciary rights known collectively as sac and soc, toll and team, and infangthef, that is to say, that he had the right to hold pleas of theft, provided that the accused had been taken on his land in the act or with the stolen goods on him; of bloodshed, provided it were not also charged as a breach of the king's peace; of cattle-maiming, and of debt, as well as the right to have a prison¹ and to hold a view of frankpledge (iii (2). c. 10); and secondly that all barons had these rights, as did some others—archbishops, bishops, abbots, and earls—whose barony was overshadowed by a higher office (c. 16). For Bracton, therefore, as for the writers of the earlier law-books, barony must have been an office to which were attached the rights of public justice that belonged to a hundred or wapentake court, the rights of sac and soc, toll and team, and infangthef. Well might he describe barons as 'potentes sub rege'!

Britton and Fleta, covering the same ground as Bracton and writing from the same point of view—that of a justice of the king's court—though a generation later, by themselves add nothing to our knowledge of barony and barons' courts; but if we compare their treatises with the 'Court Baron', a court-keeper's guide written about 1268, they throw valuable light on both. As Maitland pointed out in his introduction to the 'Court Baron', the court dealt with was literally the baron's court (*curia baronis*) and not the court baron of the sixteenth-century lawyers. Rather it was what these called a court leet, that is to say, a hundred-court in private hands;² for comparison with Britton (c. 29) and Fleta (ii. 52) shows that the jurisdiction of this *curia baronis*—which included infangthef and bloodshed, both admitted to be pleas of the Crown³—was identical with that of which Britton says (c. 29), 'that which before the sheriff is called the sheriff's tourn is in the court of a free man (*fraunk home*) and in franchises and in hundreds called view of frankpledge'. Hence we conclude that at the end of the thirteenth century, as at the beginning of the twelfth, to have the view of frankpledge, to have infangthef, to have a liberty, and to have a baron's court were one and the same; and therefore that to say of a man that he was a baron or that he held by barony was but to say that he had over the men of his barony the justiciary rights that were the essence of barony in Normandy.

¹ 'Si sit aliquis qui de concessione domini regis talem habeat libertatem sicut sock et sack, tolnetum, team, hinfangthefe et utfangthefe . . . qui tales habent libertates, habebunt prisonam suam de talibus, quia possunt tales in curia sua iudicare': Bracton, iii (2). c. 8.

² Maitland, *The Court Baron* (Selden Soc.); cf. Hearnshaw, *Leet Jurisdiction*.

³ *The Court Baron*, p. 68.

For concrete proof of the inferences as to the nature of barony and its relation to thanage which we have drawn from the legal literature of the twelfth and thirteenth centuries, we turn naturally to that part of the land last brought under Norman influence—to Northumberland and Cumberland, which were only won by the Norman kings a generation later than the rest of the country, when the tide of Norman immigration had spent itself, and to Lothian, where old English laws and institutions lived on hardly touched by Norman influence before the accession of David I in 1124, by which time they had spread everywhere south of the Highland line.

It is indeed in Scotland that we can most easily determine the nature of barony in these islands and its relation to thanage; for there no doubt has ever arisen about either. When David I introduced *baro* into his charters, he did so with full knowledge of the meaning attached to the word by the Anglo-Norman chancery; for he had used it himself in charters issued by him as earl of Northampton.¹ Therefore, when he began to address his charters 'baronibus, vicecomitibus, ministris, et omnibus fidelibus suis totius Loudeniæ',² instead of 'omnibus suis fidelibus Tegnīs et Drengis de Lodenie',³ he must have seen between the thane and the baron the same likeness that the Norman clerks saw when they were at that very time using 'baro' as the equivalent of 'thegn' in their translations of Anglo-Saxon law. Almost certainly, David's purpose in thus renaming his thanes and drengs barons was to impose on them the burdens attached to barony in England, i.e. wardship, marriage, and relief; but so far as relief was concerned he failed, save when knight-service was rendered. So in Scotland thanage lived on to the fifteenth century as a distinct and recognized variety of tenure by barony,⁴ barons falling into one of two classes, according as they held their lands in fee-farm or by knight-service.⁵ The tenant by thanage, the thane, held his lands in fee-farm, paying the king a fixed farm for all rents and dues arising within his thanage save 'cain', the king's share in the produce of the land, which was paid in cattle, corn, or hens, according to the wealth and status of the tenants, and 'waiting', a food-rent

¹ e.g. charter to the monks of Daventry, c. 1114-24; Lawrie, *Early Scottish Charters*, no. li.

² Charter for Dunfermline, c. 1130; *ibid.* no. xci.

³ Charter for Coldingham, c. 1117; *ibid.* no. xxx.

⁴ Skene, in Fordun's *Chronicle of the Scottish Nation*, ii. 449, gives a list of 63 thanages in Scotland in the fifteenth century, of which 3 were south of the Forth, 50 were between Forth and Spey, and 10 were beyond Spey. This is not the place to consider whether the thanes north of the Forth were Celtic 'toisachs' renamed, or were created by Malcolm Canmore and his sons in deliberate imitation of the thanes they found in Lothian, but so far as the present writer's researches go they support the former opinion.

⁵ *Ibid.* i. 186.

reckoned by nights and paid in cows, and rendering 'forinsec' that is, personal service in the army for the defence of the land and in the king's council.¹ The tenant by barony, the baron proper, held his land by knight-service, doing castle-ward at one of the royal castles or going in the army out of Scotland as need required for forty days at his own cost,² paying 'cain', and rendering relief.³

Nevertheless, the two tenures were so much alike that the substitution of knight-service for the payment of a farm sufficed to convert a thanage into a barony.⁴ In either case the tenant's relation to his holding was just that of an hereditary steward who collected the royal dues from it, paying some to the king, and either farming the rest or keeping them in payment for special military service.⁵ Thethane of Kintore had an official position as well defined as that of the earl of Moray, and the conversion of his tenure into free barony affected it not a whit; he still collected the king's 'cain' and at the king's bidding summoned the men of Kintore to go in the army of Scotland.⁶ Aye, and he administered the king's justice in his barony as he had done in his thanage; for it can be established beyond all doubt that in Scotland the baron, whether he held by knight-service or by fee-farm, had as such justice of ordeal and justice of life and limb.

When Malcolm IV confirmed to Walter FitzAlan, high steward of Scotland, the lands he had held of David I, he gave them to him 'to hold with sac and soc, toll and team, and infangthef, quietly and freely as any of my barons most quietly and freely holds of me';⁷ and when he confirmed to the monks of Scone the right to a court granted to them by Alexander I, he did so 'in duello, in ferro, in fossa, et in omnibus aliis libertatibus ad curiam pertinentibus'.⁸ The implication of these two charters

¹ Fordun, ii. 414 ff.; cf. Skene, *Celtic Scotland*, ii. 238.

² Neilson, 'Tenure by Knight-service in Scotland' in the *Juridical Review*, xi. 73 ff. Compare a charter of Alexander II, c. 1221, granting to Bernard of Howden a knight's fee from which ward was due to Roxburgh Castle, the equivalent being to go at the king's precept across the water of Forth to the north or the march towards the south, in either case for forty days at his own cost (*ibid.* p. 174).

³ Fordun, i. 186. Sir John Skene, commenting on a law ascribed to Malcolm II (i. e. IV) in the 'Regiam Maiestatem', says: 'Illic Baro hoo loco accipitur pro vassallo qui tenet wardam et relevium dicimus, cum furca et fossa, infangthef et utfangthef.' Neilson, *op. cit.*, shows that the 'ward' here spoken of was almost certainly not wardship but castle-ward.

⁴ Skene, *Celtic Scotland*, iii. 238.

⁵ Innes thus describes the thanes in his *Scottish Legal Antiquities*, 'Barony', p. 88.

⁶ Robert II, granting the thanage of Kintore to the earl of Moray to be held in free barony, reserved the services of the free tenants and the 'cain' due to him from the thanage (Fordun, ii. 418). It is common knowledge that in the middle ages 'thane' was an official title in Scotland.

⁷ Innes; *Scotland in the Middle Ages*, p. 206.

⁸ *Early Scottish Charters*, no. xlix.

that barons as such had a court, and that to a court belonged properly justice of ordeal and justice of life and limb, is borne out by the evidence of the law-books which the destruction of Scottish records during the war of independence has left as the only authoritative statement of Scottish law at the close of the thirteenth century.¹ There we read that all barons who had gallows and pit of theft had also gallows of manslaughter, but that when either of those pleas had been followed and answered in their court, they might not make concord without the king's leave,² nor might they hold court of life and limb or of judgement of battle or water or hot iron unless the sheriff or his serjeant were there to see justice done.³ The obvious inference is that in Scotland every baron as such had a court in which the duel could be held and the penalty of death or mutilation could be inflicted. Even in the sixteenth century, 'Generaliter in hoc regno', wrote Sir John Skene, 'Barones dicuntur qui tenent terras suas de rege per servitium militare, per albam firmam, feudi firmam, vel aliter, cum furca et fossa'.⁴ Indeed, down to the abolition of the heritable jurisdictions in 1747, the baron was always understood to be 'he who is infeft with power of pit and gallows, fossa et furca, in any lands, though not erected into a barony';⁵ and, in consequence, had the same power as the sheriff to judge all but the four pleas of the Crown—murder, rape, arson, and robbery—so that if a man were slain on his ground by one of his tenants, the sheriff could take no action until and unless the baron unlauded his tenant.⁶ Thus it appears that in Scotland barony, like the thanage out of which it came,

¹ The Scottish law-books have been suspect ever since Lord Hailes showed that the 'Regiam Maiestatem' was but an extract from Glanvill's *Tractatus de Legibus Angliæ*; and it has even been suggested that they were deliberately fabricated by Edward I to assimilate Scottish law to English. If this were really the case, we should have to regard their statements as decisive evidence as to what tenure by barony was in England at the end of the thirteenth century; but the fact that they were treated as authoritative after the English had been driven out makes it much more likely that they were compiled by Scottish lawyers to replace the records lost during the war of independence, and if so, can be regarded as authoritative only for Scottish law at that time. But if the law of the twelfth-century English law-books was identical with that of Scotland in the fourteenth century, the presumption is strong that English institutions in the twelfth century were identical with Scottish ones in the fourteenth century.

² Assisa Regis David; *Acts of the Parliament of Scotland*, i. 13. Cf. *Leges Henrici*, c. 80 (6).

³ Assisa Regis Alex. II, c. 14; *Acts*, i. 374-5. Cf. *Leges Edw. Conf.* c. 9. The jurors who in 1258 returned the names of several thieves lately beheaded in Northumberland baronies always noted that the beheading was in the presence of the king's bailiff (*Northumberland Assize Rolls*, pp. 70, 73).

⁴ *Leges Scotiæ* (1609), p. 1 b.

⁵ i. e. though held, not by free barony, or knight-service, but in fee-farm.

⁶ Sir George Mackenzie, *Laws and Customs of Scotland in Matters Criminal* (1678), pp. 417-18.

was an hereditary office to which were attached the rights of public justice that we have inferred that the thane had in England and know that the baron had in Normandy, these rights being conveyed by a grant of sac and soc, toll and team, and infangthef.

Turning now to Northumberland and Cumberland, we observe that in Northumberland every lay barony¹ but one was held in the thirteenth century by castle-ward to either Newcastle or Bamburgh, suit of court to the county, fine of court and cornage to the exchequer at Newcastle, all these services being 'forinsec'.² About half these baronies were held as single knight's fees,³ paying a relief of £5 only;⁴ and of these some had been held in the twelfth century not by knight-service but by thanage and fee-farm⁵ or by some serjeanty, such as keeping the king's forests,⁶ and others had been ancient demesne till John's day.⁷ The exception was Beanly, held by the earls of Dunbar by cornage, suit to the county, fine of court,⁸ common array and common work to Bamburgh⁹ and as to one part by the serjeanty of being inborh and utborh on the marches between England and Scotland,¹⁰ and as to the rest by thanage,¹¹ paying a St. Cuthbert's farm¹² of 30s., four 'waitings', truncage to Bamburgh, and talliage with the king's demesnes;¹³ and neither relief nor aid was due from it.¹⁴ In Cumberland and Westmorland, on the

¹ The inquest of 1212 (*Testa de Nevill*, ii. 764-75) gives, besides Redesdale and Tynedale, which were regalities, Alnwick, Beanly, Bolbeck, Bolum, Bothal, Bywell, Calverdon (de la Val), Ellingham (Gaugy), Embleton (le Vicomte), Hadston (Heron), Hephal, Langley (Tindale), Mitford, Morpeth, Prudhoe, Walton, Wark, Warkworth, Wooler (Muschamp). To these, the inquest of 1245 (*ibid.* ii. 717-48) adds Bradford, Chevington (Morwick), Dichburn, Dilston, Newburn, and Rothbury, all called *maneria* or *villae* in 1212 and serjeanties in 1236 (*ibid.* ii. 750), although Bradford and Chevington were called baronies in the inquest of 1166, as was Gosford (Surtees) (*Red Book*, p. 438).

² *Red Book*, p. 712; *Plac. de Quo Warr.*, pp. 583 ff.; *Northumberland Assize Rolls*, pp. 355-7; Maitland, *Northumbrian Tenures*, ante, v. 630. There seems no need to question Bracton's definition of 'forinsec' as that service which was due to the king over and above what was due to the lord: *De Legibus*, ii. 16 (7).

³ Bradford, Chevington, Dichburn, Dilston, Gosford, Hadston, Hephal, Langley, Newburn, Rothbury, and Warkworth.

⁴ Round, in *Magna Carta Commem. Essays*, pp. 62 ff.

⁵ e.g. Hephal, held by cornage, fine of court, and a farm of 50s. changed to knight-service for William Bardolf by John (*Testa de Nevill*, ii. 771; Hardy, *Rotuli de Oblatis*, p. 61; *Red Book*, p. 713).

⁶ e.g. Dichburn, changed to knight-service by John (*Testa de Nevill*, ii. 771).

⁷ e.g. Rothbury (*ibid.* ii. 765).

⁸ *Red Book*, p. 713; Bain, *Calendar of Documents relating to Scotland*, ii, no. 632.

⁹ *Newminster Cartulary*, p. 269; charter of Edgar, son of Earl Gospatric, confirming the grant of part of Beanly made by his father to his sister Juliana on her marriage with Ralph de Merlay.

¹⁰ *Testa de Nevill*, ii. 764.

¹¹ *Ibid.* ii. 751.

¹² So called because paid at the feasts of St. Cuthbert on 20 March and 4 September. Sometimes this farm was itself called *tenagium* (*Red Book*, p. 563).

¹³ Bain, i, no. 321; ii, no. 632.

¹⁴ The earl did not pay the aid of 1235 (*Testa de Nevill*, ii. 780-1).

contrary, every barony was held by cornage,¹ a tenure peculiar to those counties, until Henry II and his sons changed the tenure of three of them to knight-service² and that of two others to frankalmoign.³ All the other baronies⁴ continued to be held by rendering, in addition to the cornage paid annually to the exchequer at Carlisle from which their tenure was named, 'end-mot',⁵ suit of court to the county, homage and fealty;⁶ their lords were liable to wardship and marriage,⁷ but not to the feudal aids,⁸ and instead of a relief they paid one year's value of their barony.⁹

Some of these services were common to the whole country and call for little comment. Castle-ward, for instance, was a well-known form of knight-service rooted in the old English burghal service, which gave the tenant the alternative of doing forty days' garrison duty at his lord's castle or going in the army across the border for the same time, in either case at his own cost. 'Suit of court', again, was just the old English obligation that lay on all freeholders to attend shire and hundred court, and was a 'forinsec' service for tenants-in-chief, who did their suit to the county court, but 'terrene' for mesne tenants, who did theirs to their lord's court.¹⁰ 'Fine of court', sometimes called 'fine of the county',¹¹ which accompanied 'suit of court' as a 'forinsec' service due from all who owed suit to county or barony court

¹ *Ibid.* ii. 695-9. Coupland is here said to have been held from its first erection as a barony by the service of one knight; but in 1223 the earl of Albemarle asserted that the king ought not to have the ward of the daughters and coheirresses of Richard de Lucy of Coupland because it was held by cornage (Bain, i, no. 864). So it is probable that the knight's fee for which it was entered in the *Testa* was really for Millom, which was held of the lord of Coupland as a knight's fee.

² Gililand (two knights), Kendal (three knights), and Westmorland, i. e. Appleby (one knight). Afterwards Robert de Vipont, lord of Appleby, received a grant of the shrievalty of the county of Westmorland together with Brougham Castle for the service of three knights, raising his total to four knights.

³ Linstock and Dalston, when acquired by the bishop of Carlisle (*Plac. de Quo Warr.* p. 124; Bain, ii, no. 146).

⁴ Allerdale, Wigton, Greystoke, Liddel, Burgh, Houghton, Melmorby, Levington, Gamelsby, and Glassanby (*ibid.*). For Coupland see note 1, above. Wigton, it should be noted, was not held in chief but of the lord of Allerdale (Bain, i, no. 2129).

⁵ See below, p. 187.

⁶ Bain, i, nos. 2556, 2665; ii, no. 1402.

⁷ c. 1275 the barons of the exchequer reported: 'Of all your tenants-in-chief by cornage in Cumberland and Westmorland, wardship and marriage are due to you' (*Cal. Genesl.* i. 501).

⁸ *Feudal Aids*, i. 244-5.

⁹ In 18 Edward I, Idonea, lady of Westmorland, said that there were in the county of Westmorland two tenures, one by white rent (because paid in silver) and another by cornage; and that the tenants by white rent, after the death of their ancestors, ought to pay double their rent only, and the tenants by cornage should pay the value of their lands for one year (Nicolson and Burn, *History of Westmorland and Cumberland*, i. 17). Cf. Blackstone, *Commentaries*, ii. 74.

¹⁰ The lords of Wooler in Northumberland and of Liddel in Cumberland owed suit to their respective counties (*Northumberland Assize Rolls*, p. 327; Bain, ii, no. 1542), but their tenants owed theirs to their lord's barony court (Bain, i, no. 1967; ii, no. 208). Cf. below, p. 185, note 9.

¹¹ Bain, i, no. 1967.

in Northumberland and Durham¹ but not in Cumberland and Westmorland, is more obscure. Its resemblance to the 'fine of the county' or 'wapentake fine' of Yorkshire² and to the 'sacfee' of Lancashire³ (once part of the earldom of York), which were likewise paid as a forinsec 'rent' or 'farm', is too striking to be quite accidental, and not least in that it was like them paid only by the suitors of the county, wapentake, and barony courts, men who, having tenants of their own, themselves had at least a hallmoot court. Two explanations of the 'custom' were given at the close of the thirteenth century. The first comes from Northumberland, where 'fine of court' was defined in 1278 as a sum of £50 paid by the suitors of the county and barony courts twice in every seven years that the king's bailiff should not come and sit in a baron's court and hear the pleas and as soon as the suitors did anything against the law and custom of the realm, amerce them.⁴ As the king's bailiff, the coroner, was certainly bound to be present when the pleas of the Crown were dealt with in county or barony court in Northumberland⁵ as elsewhere,⁶ this explanation may be set aside at once. The second comes from Yorkshire, where 'fine of the county' or 'wapentake fine' was defined in 1279 as a fine paid in lieu of suit to the county or the wapentake.⁷ Now, in the sense that the fine was paid by the suitors of the county and wapentake courts in lieu of suits due from themselves, this explanation cannot be accepted; for it was paid not only by men bound to attend the local courts just once a year, but also by men whose suit was done for them by their lord or his attorney,⁸ and by men who themselves did

¹ Maitland, *ubi supra*, p. 630; Surtees, *Hist. Durham*, iv. 73.

² *Plac. de Quo Warr.* pp. 188 ff.

³ *Mamecestre*, i. 134; cf. *Comptrol of H. de Lacy* (Chetham Soc.), p. 49.

⁴ Maitland, *ubi supra*, p. 630.

⁵ In 1259 the county of Northumberland recorded that Simon de Montfort as guardian of Gilbert de Umfraville and his lands should hold all pleas in Redesdale as well of the Crown as others and have the issues of the pleas, and that a knight of the county should be assigned by the justices to see that 'iusticia unicuique teneatur' (*Northumberland Assize Rolls*, p. 44). In Annandale, which David I granted to Robert de Brus to hold as Ranulf Meschin held Carlisle (Bain, i. no. 20), the king might choose as coroner one of the lord's homagers in Annandale and issue writs to him direct, who should answer to the king and his justices of Lothian at Dumfries (*ibid.* ii, no. 1588).

⁶ Fleet (1685), i. 18, *de Coronatoribus*; cf. Britton (1640), p. 4. How little this jury's definition of fine of court is to be trusted appears from its demonstrably false definition of cornage as a sum of £50 paid to the king by the suitors of the county and barony courts to be quit of the custom that if a man were impleaded and did not defend the plaint word by word, he should be at once convicted.

⁷ By Baldwin de Wake, lord of Cottingham (*Plac. de Quo Warr.* p. 199).

⁸ Baldwin de Wake held the manor of Ayton of Nicholas Mennell, paying him 3s. per annum of 'fine of county', Mennell holding of Peter de Mauley by the same fine of county, and Peter of the king in chief, and he did suit by his steward to the county of York for himself and all his tenants (*ibid.*).

all the suits due from their land.¹ There is, however, another sense in which the explanation of 'fine of court' as a fine in lieu of suit may be true. From Domesday we learn that those who had soc and sac, toll and team, and the king's custom of two pennies, could not have the earl's third penny save by the latter's own grant.² Perhaps 'fine of court', 'fine of the county', 'wapentake fine', 'sacfee', was just a farm for the third penny due to the earl from the pleas arising in the courts of those who had soc, even the soc of a hallmoot, and therefore naturally included in the farm of the sheriff who did justice in the earl's stead.³ If so, this custom was literally a fine for having a court, and it was a fine in lieu of suit in the sense that it was a fee for the profits of justice that would have gone to the sheriff on the earl's behalf if the suit of the men attending that court had not been withdrawn from county and wapentake court.

'Cornage' has long been the subject of controversy.⁴ According to the Red Book of the Exchequer, cornage, horngeld, or noutgeld was a talliage of 2*d.* a head on horned cattle,⁵ which Henry III wanted to levy throughout England in 1255;⁶ but at the time of its first mention in the Pipe Roll of 1130, it was a fixed 'custom' due from each of the border shires,⁷ which was paid in cattle till the end of the twelfth century, although accounted for at the exchequer in terms of money.⁸ Always a 'forinsec' service due to the king and never included in the sheriff's farm,⁹

¹ e.g. Adam de Everingham held Everingham and Stanbury by doing suit by his steward at all counties, trithings, and wapentakes and paying 11*s.* 2*d.* *de finibus* (*ibid.* p. 194).

² Domesday Book, i. 280 b.

³ It is noteworthy that at the end of the twelfth century the wapentake fines of Yorkshire amounted to about £40, the sum customarily given to earls in lieu of the third penny (*Vict. County Hist., Yorkshire*, ii. 151).

⁴ It has been discussed by Maitland in *Northumbrian Tenures*, ante, v. 628 ff.; by Mr. Round in *The Commune of London*, pp. 282 ff.; by Mr. Lapeley in the *Vict. County Hist., Durham*, i. 273 ff.; and by the Rev. J. Wilson, *ibid. Cumberland*, i. 313 ff. It is the view set forth in the last-named work that has been adopted by the present writer, who wishes to take this opportunity of acknowledging her great debt to Mr. Wilson.

⁵ *Red Book*, p. ccklii.

⁶ *Annals of Burton*, p. 336.

⁷ The amounts accounted for in the Pipe Rolls were substantial: in Cumberland, £85 8*s.* 8*d.*, reduced by remissions to £80 10*s.* 8*d.* in 1158; in Westmorland, £55 19*s.* 3*d.*; in Northumberland, £20; and in Durham, £110 5*s.* 5*d.*

⁸ *Vict. County Hist., Cumberland*, i. 315 ff. The sums paid by the tenants varied very much; e.g. among the Cumberland barons the lord of Burgh owed 8*s.* 6*d.* (Bain, i. no. 2566), the lord of Allerdale £15 13*s.* 4*d.* (*Testa de Nevill*, ii. 697). In the charter by which the abbot of St. Albans granted the lands of Archimorell to Earl Gospatric and his son, c. 1109, it was stipulated that Gospatric should pay £4 a year to the monks of Tynemouth—a priory of St. Albans—and to the abbot 20*s.* or 7 oxen each worth 3*s.* at his own option (*Gesta Abbatum Monasterii S. Albani*, i. 72).

⁹ Gospatric, son of Orm, castellan of Appleby in 1174, made a grant of land to Holmcultum: 'Ita quod faciemus pro monachis omne forense et terrenum servicium, quodcumque ad Dominum Regem pertinet, scilicet de noutgeld et endemot, et siquid aliud pertinet ad eius servicium, et quodcumque servicium pertinet ad Dominum de Allredale, scilicet de sewake et de placitis et de auxilio et de omni aliena (*leg.*

it was paid in Cumberland, Westmorland, and Northumberland¹ by all free landholders from baron to bondager, whether they held by knight-service, by cornage, by thanage, or by 'blanchfarm',² unless it were remitted to them by the king himself. But, although it was only in the border shires that cornage gave its name to a tenure, it was not confined to them. Under the name of oxgeld,³ coumale,⁴ or cougeld,⁵ it was paid throughout Durham⁶ and Lancashire and in the 'high and wild part' of Yorkshire, though only by 'blanchfarm', 'free' or 'foreign' tenants,⁷ and by bondagers,⁸ the poorer tenants paying instead 'customs' *alia*) *terrena exactione et consuetudine*' (*Reg. of Holmcultram*, f. 34, cited in *Vict. County Hist., Cumberland*, i. 321).

¹ The evidence for Cumberland and Westmorland in the twelfth and thirteenth centuries has been given by Mr. Wilson. To it may be added, Bain, i, nos. 1713, 2067, 2665; ii, no. 208; and an inquest of knights' fees in Cumberland, 35 Henry VII, printed by Nicolson and Burn, *op. cit.*, ii. 20 ff., which shows that all mesne tenants by knight-service paid cornage, pature of serjeants, suit of court, and homage, many also paying sea-wake. As to Northumberland, the *Compotus de Cornagiis Northumberlandae* for 1264 (*Red Book*, p. 713) shows that in Northumberland all tenants-in-chief paid cornage unless it had been remitted to them by the king, whether they held by knight-service or by thanage (*Testa de Nevill*, ii. 749-53, 764-75). An inquisition *post mortem* of R. de Muschamp, lord of Wooler, in 1254, shows that all his free tenants rendered suit of court, cornage, scutage, and fine of the county (Bain, i, no. 1967). In 1278 a Northumbrian jury found that when Otwell de l'Isle changed the tenure of two manors held of him by Robert de Fenwick from drengage to a fee-farm of 100s., doing also the forinsec service due from the manors, the said forinsec service was cornage and fine of court (Maitland, *ubi supra*, p. 630). Finally, Humberston, who surveyed the lands of the earls of Northumberland and Westmorland and their associates in the rebellion of 1569, states that the manors pertinent to the barony of Alnwick were for the most part held by knight-service by the payment of castle-ward, rent, and cornage (K. R. Misc. Bks. 37, 38).

² *Cal. of Inq.* iv, no. 424. See *firma alba* of Domesday, i. 39 b.

³ Lancashire: 'Wydenesse.—De oxgalte nichil hoc anno quia nichil nisi tercio anno quod erit in proximo anno' (*Compoti of H. de Lacy*, p. 49). The cornage of Northumberland was likewise paid only once in three years (*Pipe Rolls of Northumberland, passim*).

⁴ Overton, part of the demesne lands of the earls of Lancaster, had in 1297 two free tenants, of whom one, Robert the Reeve, had forty acres of land in provosty and was reeve of fee to execute the services pertaining to provosty, rendering homage and relief, and paying for coumale 2s.; and the other held one bovate for a farm of 8s. 1½d. There were also ten bovates held in bondage, each of which rendered 12s. a year, and for coumale 16d., and nine cotarii who rendered 19s. 6d. yearly (*Lancashire Inquests*, ed. W. Farrer, p. 293; cf. p. 296).

⁵ Yorkshire: there were paid to Bowes Castle in 1279, 6s. 2½d. of cougeld and shirvegeld (*Cal. of Inq.* ii, no. 381).

⁶ 'Cornagium.—Idem tenentes tam liberi (sc. quam) bondi solvunt pro cornagio ad Cuthbertum in Septembri xxxvi s.' : *Bishop Hatfield's Survey* (Surtees Soc.), p. 18. Compare a return of 1384: 'Willelmus de Hilton miles tenet duo partes villae de Magna Usworth et Alicia de Modenby terciam partem dictae villae per servicium forinsecum et reddunt per annum ad 4 terminos 10 s. Idem Willelmus et Alicia . . . reddunt pro cornagio dictae villae per annum ad Festum S. Cuthberti in Septembri xxx a. Idem reddunt pro i vacca de metrich ad festum S. Martini vi s.' (*Vict. County Hist., Durham*, i. 277).

⁷ 'Foreign freeholders' at Skipton-in-Craven (Whitaker, *Craven*, p. 228); 'liberi tenentes forinseci' in Manchester (*Mamecestre*, ii. 289).

⁸ See notes 4, 6, above. In Cumberland, Langwathby paid cornage although its only tenants were bondagers, cottars, and tenants at will (Bain, i, no. 1564). Cf. Palgrave, *Documents illustrating the History of Scotland*, pp. 3 ff.

of oats and hens.¹ The resemblance of cornage, the custom or gafol of animals, to the 'cain' of animals in Scotland is too close to be accidental; and this, together with the fact that wherever it was paid there was paid also 'waiting',² 'waytemete',³ 'sheriff's tooth',⁴ or 'serjeants' food',⁵ justifies us both in identifying 'cornage' with 'cain' and in regarding it as originally a food-rent due to the king from all landholders.⁶

The wide incidence of cornage makes it clear that the payment of this custom cannot have been the real basis of the distinction between cornage tenure and other tenures. This must be sought in the other services rendered or not rendered by cornage tenants. At once we note that while they did not owe either fine of court or a farm, they owed 'endmot', a 'forinsec' service due only from the cornage tenants of Cumberland and Westmorland.⁷ This was a military service which resembled knight-service closely enough for it to be necessary for those who owed it to point out that they did not owe scutage for it.⁸ Now, in 1212 the cornage tenants-in-chief claimed that their service was only to 'go at the king's precept in the army of Scotland, in going in the vanguard, in returning in the rearguard';⁹ and after

¹ Survey of barony of Appleby, 1634, printed by Nicolson and Burn, *op. cit.*, i. 292 ff. The hens were called 'pout', i. e. puture, hens; the oats were a fixed custom of half a skep—worth 6s. 8d.—an acre in Liddel (Bain, ii, no. 208).

² At Beanly (Bain, i, no. 321; ii, no. 632).

³ Bently manor paid to Tickhill 40s. for castle-ward, 6s. 8d. for wapentake fine, and 2s. for 'waytemete and shireff tothe' (*Cal. of Inq.* iii. 359).

⁴ *Ibid.*; cf. Ormerod, *History of Cheshire*, i. 54. 'Waiting', 'waytemete', and 'sheriff's tooth' are clearly just local names for the *firma noctis* normally characteristic of ancient demesne (Round, *Vic. County Hist., Essex*, i. 336). Probably we should identify the metrith cow of Durham (Baldon Book, *passim*) with the 'mete cu' of the Reotitudines (c. 8) and regard this as yet another form of the same custom. 'Metrith' has never been satisfactorily explained; may it not be a Celtic word akin to 'treth', the name given in the Welsh marches to commutations of the king's food-rents (*Survey of the Honor of Denbigh*, pp. lvi, lxiii, lxvii)? When we reflect that the field-system prevalent in Durham, as in all the area in which 'noutgeld' and 'waiting' survived as incidents of free tenure, was the Celtic run-rig (Gray, *English Field Systems*), we realize that the survival of a Celtic name for a food-rent or its commutation was not impossible.

⁵ Also called 'puture of the serjeants', i. e. of the serjeants who kept the forests or aided the sheriff or the lord's bailiff, as the case might be, in doing justice and keeping the peace (*Mamecestre*, i. 482 ff.).

⁶ Probably it was part of the *pastus principis* of Anglo-Saxon charters (Chadwick, *Anglo-Saxon Institutions*, p. 101 n.). It is noteworthy that in 1536 the Pilgrimage of Grace began with a rising of the commons of the high and wild country of Yorkshire, Durham, Cumberland, Westmorland, and Lancashire against 'noutgeld', 'serjeants' food', and 'gressoms' (i. e. the fines due from 'blanchfarm' tenants at every change of lord or tenant): *Letters and Papers of Henry VIII*, xi, no. 1080; xii (1), no. 687.

⁷ Mr. Wilson has elucidated 'endmot' and shown its identity with the military service required of cornage tenants, in *Vic. County Hist., Cumberland*, i. 318 ff.

⁸ 'Iohannes de Reinii debet ii marcas et tenet ii carucas terre in Newinton per sectam comitatus et de Hendemot unde scutagium dari non debet': Pipe Roll, 3 John. Cf. above, p. 185, note 9.

⁹ At the end of the list of tenants-in-chief in Cumberland, the inquest of 1212

1215 their claim was admitted.¹ Then in 1297 the men of Cumberland and Westmorland wrung from Edward I an admission that their service was only to meet the king on his march to Scotland at the Rerecross on Stanemoor and go in his vanguard as far as the march of Solway, and on his return in the rearguard from Solway to the Rerecross.² Thus limited, the service might well be called 'endmot', the march-meeting; but as the service of going to the border against the Scots was not restricted to the march shires but was required of all landholders north of the Trent, even from customary tenants as the condition of their tenant-right down to the seventeenth century,³ 'endmot' must in that case have been neither more nor less than the general service in the fyrd required by English law from every freeman. There is, however, some ground for thinking that 'endmot' was really a special service required only from some landholders. The definition of their service given by the cornage tenants-in-chief reminds us forcibly of the service required of the Hereford men, who, according to Domesday, were bound both to attend shiremoot and hundred when summoned, and to go with the sheriff into Wales at his precept. 'When the army advances against the enemy these by custom form the vanguard and in returning the rearguard.'⁴ Certainly, John de Reigny, who held Newton of the king by cornage, suit of court, and 'endmot', going at the king's precept in the army of Scotland with a hauberk, had to find for the king an armed horseman to go in the army

has these words: 'Omnes supradicti tenentes per cornagium ibunt ad preceptum domini Regis in exercitu Scotie, in eundo in anteguarda et redeundo in retroguarda' (*Testa de Nevill*, ii. 699).

¹ When service was called for against Fulkes de Bréauté in 1224, the sheriff of Cumberland was forbidden to distrain on Richard de Levington, since he did not hold of the king in chief by military service but by cornage (Maitland, *ubi supra*, p. 629).

² Bain, ii, no. 899; iii, no. 716. Similar admissions were made to the men of Northumberland in 1303 (*Cal. of Pat. Rolls*, 1301-7, p. 101), to the men of Durham in 1317 (*Rot. Scot.* i. 169), and to the whole country in 1327 (1 Edward III, st. 2). It does not follow that the claim was a sound one.

³ 'The customary tenants of the earls' of Northumberland and Westmorland 'in all the counties of Cumberland, Westmorland, Northumberland, York, and the bishopric of Durham have in all the ancient grants and copies, to hold to them and their heirs according to the custom of the honor of Cokermouth', that is to say, 'by copy of court roll . . . doing suit to the lord's court, service by himself and all his family to the borders when necessity shall require, and paying his fine at the lord's will after the death, alienation, or exchange of any lord or tenant' (*Humberston's Survey*).

⁴ Domesday Book, i. 179: 'Similiter emendat qui iussus a uicecomite secum ire in Walis non pergit. Nam si uicecomes non uadit nemo eorum ibit. Cum exercitus in hostem pergit, ipsi per consuetudinem faciunt Auantwarde et in reuersione Redrewarde.' Compare with one of the ancient laws of Wales which in the Venedotian Code (c. 7) runs thus: 'The king is not to lead hosts out of the country except once a year, and then not to continue more than six weeks. In his own country he is free to have hosts when he will.' In the Demetian Code (c. 5) the same law runs thus: 'Once a year the king is to have hosts along with him into a border country; always, however, when it may be necessary, a host is to attend him in his own country.'

for forty days at his own cost;¹ and even in the sixteenth century all gentlemen, tenants, and inhabitants of the baronies of Allerdale and Cöupland had to attend on the lord and his lieutenant and at their command ride *into* Scotland to do any exploit.² It is therefore probable that 'endmot' was not just the general service in the fyrd required of all freemen, but was the special service in the king's 'utware' required of all drengs.³

Now, there is good reason for identifying cornage tenure with drengage. (1) It is only on the hypothesis that the cornage tenant rendered instead of a farm the personal service that distinguished the 'dreng' from the 'thegn'⁴ that we can account for the sharp distinction drawn between cornage tenants, from whom as from drengs wardship and marriage were due,⁵ and fee-farm or socage tenants, from whom they were not. (2) We can hardly doubt that the cornage tenants of Westmorland who in 1196-7 joined the knights in paying 20 marks for respite from an aid till the king arrived,⁶ were the drengs who four years later paid 50 marks 'ne transfretent',⁷ and who were certainly the ancestors of the free tenants holding by cornage in 1314.⁸ Clifton, for instance, which was held of Brougham Castle by drengage in 1201, by cornage in 1314, and by cornage, ward, marriage, relief, suit of court, and a custom of oats, 'which custom is called drengage', in 1525-6,⁹ was held by a tenure that differed from

¹ Pipe Roll, 3 John; *Testa de Nevill*, ii. 696, 703.

² *Humberston's Survey*.

³ Maitland, *ubi supra*, p. 626.

⁴ 'Dreng', found only where Norse influence, as distinct from Danish, was strong, seems originally to have been synonymous with 'thegn'; but in time a distinction between them must have arisen similar to that which arose in Scotland between 'thane' and 'baron', for the words are constantly used together in eleventh- and twelfth-century documents. It is not easy to determine wherein the distinction lay; for the extant inquests of service other than knight-service were all taken in the thirteenth century when 'thanage' and 'drengage' were often used interchangeably. The dreng, however, seems to have been distinguished from the thegn as owing some personal service—usually, though not always, in lieu of a farm—which, inasmuch as it made him 'nigher' to his lord, made him less 'free' than the thegn, who owed only general service. Thus, Earl Gospatric, c. 1070, contrasted 'freo & dreng' (*Scott. Hist. Review*, i. 60); and the case of Ribton held by free service paying a farm (*Reg. of St. Bee's*, Surtees Soc., pp. 47, 481) goes far to prove that in Cumberland as in Northumberland 'free service was fee farm'. It is noteworthy that whereas the tenants-in-chief in Westmorland who held by drengage did not pay a farm, those who held by thanage in Lancashire and Northumberland did (*Testa de Nevill*, ii. 812 ff.).

⁵ See note 7, p. 183. Both in Northumberland (*Testa de Nevill*, ii. 758-60; Bain, ii, no. 557) and in Durham (*Registrum Palatinum Dunelmense*, iii. 556) wardship and marriage were due from lands held in drengage.

⁶ *Pipe Rolls of Cumberland and Westmorland*, p. 1.

⁷ Hardy, *Rot. Oblat.*, &c., p. 127. These drengs were tenants-in-chief, but after the shrievalty of Westmorland had been given with the custody of Brongham Castle to Robert de Vipont, castellan of Appleby, they came to be regarded as his men.

⁸ *Cal. of Inq.* v, no. 533; inquisition *post mortem* of Robert Clifford, 8 Edw. II.

⁹ Inquest of 18 Hen. VIII (Nicolson and Burn, i. 418). Of course the 'custom' of oats did not constitute drengage; it was only an incident of that as of other tenures.

that of the barony of Wigton, which was held by cornage, 'forinsec', and pannage,¹ by little more than the relief due from Clifton but not from Wigton.² And this, Littleton tells us, was just the difference between cornage as a mesne tenure and cornage as a tenure-in-chief; for the latter was accounted a grand serjeanty whence no relief but a fine of one year's value was due, but the former was accounted knight-service and was subject to all the feudal burdens.³ (3) We have the direct evidence of the charter by which Henry I, shortly before 1130,⁴ gave to Hildred and Odard of Carlisle the lands of Gamel, son of Bern, and Glassa, son of Brictric, 'for the gafol of animals and such other service as other free men, French and English, are wont to do to the king for their lands'; for in it the king calls the former owners his drengs.⁵ As there is no evidence that the service for Gamelsby and Glassanby, one of the cornage baronies, was ever changed,⁶ we can only conclude that tenure by cornage was just a form of drengage, renamed from its most characteristic service when the other services that once accompanied it had fallen into desuetude. In that case, the barons who paid cornage and went in the king's army of Scotland but paid neither 'fine of court' nor 'blanchfarm', were an important link between the barons who held by thanage, paying a 'farm', cornage, and 'fine of court' but no military service other than common array, and the barons who held by knight-service, paying castle-ward, cornage, and 'fine of court'. If we add to the Cumbrian and Northumbrian barons the Lancashire and Cheshire barons, who held by knight-service, paying castle-ward and 'sacfee',⁷ and the Yorkshire barons, who likewise held by knight-service, paying castle-ward and 'fine of the county', we have, in what may be

¹ Bain, ii, no. 64.

² Wigton was accounted a grand serjeanty because held by cornage (*Bracton's Note-book*, pl. 1270); so, too, was Newton Reigny (*Testa de Nevill*, ii. 703).

³ *Tenures*, s. 156.

⁴ In 1130 Hildred and Odard rendered account of 40s. for the grant of the lands of Gamel, son of Ber (*sic*) (Pipe Roll).

⁵ Confirmed by John in 1210 (Bain, i, no. 470).

⁶ Mr. Wilson (*Vict. County Hist., Cumberland*, i. 316), deeming that drengage was not a free tenure, suggests that by this charter Henry I changed the tenure of Gamelsby and Glassanby from drengage to cornage. But in 1292 Odard's successors claimed infangthef *ab antiquo* by virtue of this very confirmation of Henry's charter (*Plac. de Quo Warr.*, p. 124), although there is in it no mention of infangthef or any soc. So either all free men who held of the king in Cumberland had infangthef, which was not the case—e. g. John de Reigny had not infangthef—or infangthef was already attached to the lands when the grant was made, in which case Gamel and Glassa, the king's drengs, had it. Now, no lands to which infangthef was attached can have been held otherwise than by a free tenure; so the sole ground for assuming that Gamel and Glassa did not hold their lands by the same tenure as Hildred and Odard, who certainly held them by cornage, disappears.

⁷ *Mamecestre*, i. 274.

called the cornage area, barons who held by thanage or fee-farm,¹ barons who held by drengage or serjeanty, and barons who held by knight-service, showing the same variety of service that there was among the Scottish barons and representing all the stages of evolution between the Anglo-Saxon king's thane and the Anglo-Norman baron.

Any lingering doubt that thanage was indeed the main root of barony in England must yield to such proof of continuity as is afforded by such baronies as Greystoke, held by the descendants of Forne, son of Ligulf, with the same rights in the fourteenth century as in the twelfth;² and Cottingham, held by the Wakes in the days of Edward I with the same rights as Gamel, son of Osbert, the king's thane, held them T.R.E. with sac and soc, toll and team.³

The identity of barony in England and in Scotland being established so far as service is concerned, it remains only to ascertain whether that identity extended to the justiciary rights attached to barony. Just as at the beginning of the twelfth century it was thane's law to have sac and soc, toll and team, and infangthef, so at the end of the thirteenth century we find a Northumbrian Grand Jury asserting that all barons had gallows and the assize of bread and beer in their baronies and burghs,⁴ and every tenant in Northumberland, Cumberland, and Westmorland ever said to hold by barony—and no others save a few religious who held by frankalmoign—claiming in 1292 to have in his barony infangthef, gallows, the goods of fugitives and of felons condemned and beheaded within the barony, and the return of all writs save for pleas of the Crown.⁵ As a matter of course, the shire court had no jurisdiction within the baronies;⁶ and 'suit of court', 'forinsec' for the barons, who owed their suit to the

¹ Pollock and Maitland (i. 218) reject the claim of fee-farm to rank as a tenure separate from socage; but c. 37 of Magna Carta distinguishes them, and the existence of such baronies as Beaulieu and Hephall shows that in England down to the thirteenth century, as in Scotland down to the eighteenth century, fee-farm, under the name of thanage, could be as noble a tenure as knight-service. It was only when all the thanage baronies save Beaulieu had become knight-service fiefs, and Beaulieu itself had come to be regarded as held only by the serjeanty of being inborh and utborh (Bain, ii, no. 148), that English lawyers could regard fee-farm as only a variety of socage tenure. The fact that corporate towns having infangthef and paying a farm were really fee-farm baronies seems to have escaped notice, though the cases of London and the Cinque Ports remain to enlighten us.

² *Plac. de Quo Warr.* p. 119; *Testa de Nevill*, ii. 697.

³ Domesday Book, i. 298 b, 328, 331; *Plac. de Quo Warr.* p. 199.

⁴ *Northumberland Assize Rolls*, p. 357.

⁵ *Plac. de Quo Warr.* pp. 112 ff., 588 ff.

⁶ e.g. so late as 1840 the county court of Northumberland had no jurisdiction in the barony of Alnwick (*Returns of Courts of Requests, &c.; Accounts and Papers* (1840), no. xli).

county court, was 'terrene' for their tenants who owed theirs to the courts held at the capita of the several baronies. Neither might the sheriff nor his serjeants enter a barony even to serve a writ or to make an arrest, save for pleas of the Crown, unless the baron first failed to do so at his behest.¹

With these justiciary rights went administrative ones. In the baronies, the cornage, serjeants' food, and customs of oats and hens were all paid to the baron, who paid over the cornage, amounting in each case to just the sum that he himself owed, to the exchequer at Newcastle or Carlisle as the case might be,² but kept the other customs for the use of himself and his own serjeants,³ whereas in the rest of the county all were paid to the sheriff, who kept the serjeants' food for his serjeants but accounted for the other customs separately to the exchequer at Westminster.⁴ Clearly, the baron's relation to his tenants in respect of these customs was simply that of an official collecting the king's dues and remitting to the king through the sheriff such as had not been assigned to him for official purposes. Again, although 'endmot' and common array were 'forinsec' services, the sheriff could not summon the men of a barony to go with him against the king's enemies except through the baron and his bailiff;⁵ yet at the bidding of the lord and his lieutenant every man living within the barony must follow them to the border, no matter whose tenant he might be.⁶ Here too the baron's relation to the men of his barony was that of an official calling on the king's lieges within his bailiwick to follow him on the king's service just as the king's thane used to call out the men of his bocland. In these matters, as in all others that concerned the keeping of the peace and the execution of justice, the duties that in the rest of the shire fell to the sheriff, in the barony fell to the 'foreign bailiff', who collected the castleward and cornage money of the barony, warned the tenants and inhabitants to attend upon the lord or his deputy, took up waifs and strays, served all

¹ In 1526 Sir William Lisle, the descendant of Otwel de Insula, so violently resented the action of the sheriff of Northumberland in entering his manor of Felton, part of his barony of Woodburn, to take a distress, which he swore neither king nor sheriff should do, that he was outlawed and at last executed (*Letters and Papers*, iv, nos. 240-2). See Welford's *History of Newcastle*, ii. 98 ff., for the whole story. Sir William's claim was never traversed.

² e.g. the cornage of the free tenants of Liddel amounted to 56s. 'for which the lord shall answer to the sheriff of Cumberland for the king's use' (Bain, ii, no. 208), this being just the amount of cornage due from the lord himself (*Testa de Nevill*, ii. 697). Similarly, the cornage due from the Middletons and Rodom was paid to the lord of Beanly, who paid it to the exchequer at Newcastle (Bain, iii, no. 77; *Red Book*, p. 713).

³ e.g. at Appleby (Nicolson and Burn, i. 292 ff.).

⁴ *Pipe Rolls of Cumberland and Westmorland*, p. iv.

⁵ 'The Office of Warden of the Marches', *ante*, xxxii. 487.

⁶ *Humberston's Survey*.

processes in the liberty, and performed generally the office of a bailiff of a hundred.¹

In the palatine earldoms of Durham, Lancashire, Cheshire, and Yorkshire it was the same. In all of them were barons who, although they were never summoned to parliament, had all the rights of other barons. Thus in Durham, the lords of Brancepath, Barnard Castle, Gainford, and Cunislive had gallows and infangthef in their baronies;² and we cannot doubt that the other barons, including the baron of Hilton, had the same rights. In Lancashire, the barons who held of Roger of Poitou, the 'barones comitatus', held free courts (*liberae curiae*) for all pleas but those of the earl's sword.³ Their successors too had infangthef, toll and team by the king's grant,⁴ serjeants' food, bode and witness,⁵ and their 'Grith-serjeants' kept the peace, served writs and summonses, and made distresses and attachments, collected the rents of the 'forinsec' tenants, and did all other things pertaining to a liberty;⁶ and all these things belonged to them by reason of their baronies.⁷ In Cheshire, Earl Ralph, going on crusade c. 1218, gave a charter to his barons confirming their liberties; notably, that each of them should have his court free of all pleas and suits moved in the earl's court except the pleas belonging to his sword, and that for these they might defend all their manors in county and hundred by a sene-schal.⁸ In Yorkshire, Conan, earl of Richmond, c. 1156-66, confirmed to Torfin, son of Robert, a fief of two knights (Manfield) 'cum soco et saco, et tol et tem, et infangthef et cum omnibus libertatibus et liberis consuetudinibus sicut aliquis alius ex meis baronibus feudum suum melius et honoratius de me tenet'.⁹ The same rights were claimed by the lords of

¹ e. g. at Alnwick, Allerdale, and Coupland (*ibid.*).

² *Ibid.*; *Plac. de Quo Warr.* p. 604.

³ *Mamecestre*, i. 33.

⁴ This assertion that the barons of Lancashire owed their justiciary rights, not to the earl whose tenants they were, but to the king, is interesting and important; for it suggests that the baron was always a royal official and that the earl could claim his service only by royal grant. This is borne out by Richard I's charter granting the wapentake of Sedbergh to Bishop Puiset of Durham, for in it the services of such tenants as held of the king in chief by barony (*Red Book*, p. 438; *Testa de Nevill*, ii. 783-4) were expressly granted to the bishop (Surtees, *Hist. of Durham*, i. cxxvi).

⁵ *Mamecestre*, ii. 275; cf. p. 286. 'Bode' seems to have been the service of carrying the lord's messages; 'witness' or 'witnessman', the service of going with the lord's serjeants to deliver summonses and to make attachments of men and goods, so as to be able to testify in court that all had been done in order.

⁶ *Ibid.* ii. 275.

⁷ Robert Banaster, confirming a grant of lands to Cockersand Abbey, reserved to himself and his heirs infangthef and utfangthef over all the tenants, 'prout ad me pertinet ratione baroniae meae' (*Cockersand Cartulary* (Chetham Soc.), p. 643).

⁸ Ormerod, *Hist. of Cheshire*, i. 53; compare the charter of Earl Ralph to Eustace Fitzjohn, *temp.* Stephen, as hereditary constable of Chester and chief counsellor over all the barons (*ibid.* i. 52).

⁹ *Facs. of Charters*, *Brit. Mus.* i, no. 30, cited by Tait, *Mediaeval Manchester*, p. 197.

Raskelf, Helmsley, Laughton, and Hunmanby¹—to name but a few of the smaller Yorkshire baronies—as well as by the lords of Tickhill, Hallamshire, Knaresborough, and other great honors.² Neither barony nor honor might the sheriff enter, save for pleas of the Crown, and even this exception did not exist for the honors.

Thus it appears that in England north of the Trent barons, no matter what their tenure, simply as barons had within their baronies the powers, judicial and administrative, of a sheriff, just as they had in Scotland. Can we hesitate any longer to regard barony as an hereditary office to which were attached the rights of public justice included in the formula, sac and soc, toll and team, and infangthef?

If, nevertheless, further proof be demanded that the possession of a court to which these rights belonged was indeed the essence of barony, we have only to turn to the *Placita de Quo Warranto* for Cumberland (pp. 112–13), where we find that in 1292 the honors of Coupland and Allerdale were divided between Isabella, countess of Albemarle, Thomas de Lucy, and Thomas de Multon as coheirs of William FitzDuncan; Isabella, by right of 'ainesse', having Cockermouth Castle and half of Allerdale; Thomas de Lucy, Papcaster with the rest of Allerdale, and Aspatrick with half of Coupland; and Thomas de Multon, Egremont Castle with the rest of Coupland. Thus Isabella and Multon respectively had the capita of the two honors; yet neither could claim infangthef, &c., without the concurrence of Lucy. Moreover, it was stated in the claim that although Isabella alone appointed the constable of Cockermouth Castle, who was also coroner within the liberty, and the bailiff, who returned writs, &c., yet Lucy's seneschal must sit with the constable and they should hold pleas together and share equally the profits of the court, &c., and if the bailiff were convicted before the justices of default in returning writs, &c., both Isabella and Lucy should be amerced, and that when a writ was returnable into the court at Cockermouth, the bailiffs of both Isabella and Lucy should be present and hear the pleas together and share the profit. It was in this very year that the barons of England classed barony with earldom as an impartible tenure; yet the only impartible thing about the barony of Allerdale was the barony court and the pleas belonging to it.³ What other

¹ *Plac. de Quo Warr.* pp. 189, 193, 216.

² *Rot. Hundr.* i. 109; *Plac. de Quo Warr.* pp. 187, 200, 212.

³ Allerdale was a great honor to which belonged more extensive franchises than to most baronies, but it does not stand alone. Chevington, for instance, having passed to coheirs, the three daughters of Hugh de Morwick, these were returned in 1278 as holding the barony 'in partagio' (*Northumberland Assize Rolls*, p. 356), and joined with their husbands in claiming infangthef (*Plac. de Quo Warr.* p. 597). Infangthef could in fact be held by one person or in common, but it could not be divided; see *Plac. de Quo Warr.* pp. 631–2, for the case of the barony of Sutton-on-

conclusion can we come to than that a court in which pleas of infangthef were held, a court baron, in short, was the essence of barony?¹

To go through the southern counties as we have gone through the northern ones is as unnecessary as it would be tedious; for the acknowledged authorities on barony, whatever their differences, have always agreed in regarding Northumberland as affording 'notable evidence on the use of the word "barony" ' for the whole country.² In truth, the only difference between the northern and the southern baronies arose from the fact that the frankpledge system, non-existent in the north,³ was universal in the south, and in consequence the southern barons had the view of frankpledge as well as infangthef. Sometimes, indeed, there were also local differences, as in Kent, where archbishops, bishops, abbots, earls, and barons had utfangthef as well as infangthef in their lands; but they had this of special grace, and from the case of the barons of the Cinque Ports it appears that there as elsewhere infangthef alone was enough to constitute barony.⁴ In general, the southern barons claimed only to have infangthef and the pleas of the sheriff's tourn, as in Shropshire,⁵ or infangthef and the view of frankpledge, as in Cambridgeshire,⁶ or view of frankpledge and gallows, as in Hertfordshire.⁷ Among them was the baron of Burford,⁸ whose title, in common with those of the barons of Greystoke, Kinderton, Hilton, and Stafford, has long puzzled all interested in barony. Can we doubt that these are but surviving instances of a once general use of 'baro' to designate the holder of an office identical with that of a 'thane' and comparable with that of an 'earl' or a 'sheriff'?

Trent in Nottinghamshire in which the court gave this decision. Domesday Book has instances of several thanes holding one manor in common 'cum saca et soca'; e. g. i. 227 b.

¹ Should any student of the *Plac. de Quo Warr.* and the *Rot. Hundr.* protest that if this definition of barony be correct there must have been hundreds of barons in England, we can cite Scotland, a far smaller and less populous country, where, nevertheless, there were in the fourteenth century over 300 baronies, besides thanages (Nelson, *op. cit.* p. 181). ² Round in *Magna Carta Commemoration Essays*, p. 61.

³ Morris, *The Frankpledge System*, p. 48.

⁴ 12 February 1290, the barons of the Cinque Ports, having already 'socca et socca et tol et team et infangthef', received also of special grace a grant that they should have utfangthef in their lands within the said ports, as archbishops, bishops, abbots, earls, and barons had in their manors in Kent' (*Cal. Charter Rolls*, ii, no. 344). This statement is fully borne out by the *Plac. de Quo Warr.* pp. 321 ff.; e. g. in Lord Badlesmere's barony of Chilham (p. 321).

⁵ e. g. Peter Corbet in the barony of Caws (*ibid.* p. 686).

⁶ e. g. the Earl Marshal in the barony of Ducksworth (*ibid.* p. 102; *Testa de Nevill*, ii. 598).

⁷ e. g. William de Say in the barony of Maundeville (*ibid.* p. 288).

⁸ The barons of Burford (*Rot. Hundr.* ii. 74, 103), Greystoke (*Plac. de Quo Warr.* p. 119), and Kinderton (Ormerod, iii. 189) certainly, and the barons of Hilton and Stafford probably, had infangthef. The title as well as the lands, &c., descended to women; for in 15 Edward II Stretton was said to be held of Thomas de Pipe and Margaret his wife, baroness of Stafford (*Cal. of Inq.* vi, no. 330).

Once it is admitted that in England, as in Normandy and Scotland, barony was an office to which were attached the justiciary rights of sac and soc, toll and team, and infangthef, together with gallows, prison, and everything necessary to give effect to them, all the legal consequences of tenure by barony are seen to follow as a matter of course. Barony being an office to which was attached a court holding pleas of the Crown, it was only reasonable that on the death of a baron the king should take his barony into his own hands and keep it until the heir did homage for it and gave security for the relief. It was equally reasonable that the king should exact a higher relief for a barony to which there belonged of right a profitable court than for a mere knight's fee, and even that that relief should be arbitrary, it may be variable with the value of the barony court. Again, whether regarded as an office or as an administrative unit, a barony was from its very nature both impartible and indestructible: the lands belonging to it could indeed be divided among coheirs, as could the profits of the barony court and even the appointment of the officers necessary to it, but not the court itself and therefore not the barony. It was likewise a matter of course that every barony should have a caput, a capital mansion, where the baron lived and held his court, and that this should always pass with the barony to the heir and should never be assigned in dower. Again, if the baron was in truth a royal official responsible for the administration of justice within his barony, it becomes as easy to understand why he should have the right to remove his court into the king's court and claim the assistance of the king's justices, as it is to understand why none but his fellow barons might try him and none but the king amerce him; why he was amerced at a higher rate than other men; why he was exempt from service on a jury; why he alone among the king's tenants was bound to attend the king's council when summoned and act as one of the suitors of his court;¹ and why all these rights and duties belonged to the tenant by barony whether he held in his own right or in his wife's.² In short, all those differences between barony and other tenures, which are inexplicable by any of the current theories as to the nature of barony, can be explained

¹ This is the real significance of c. xi of the Constitutions of Clarendon; every one of the king's subjects must attend his council, if summoned, but only his barons 'debent interesse iudiciis curiae regis'.

² The most significant case is that of Richard de Gosebek, who in 1278 held half the barony of Bolum in his wife's right (*Northumberland Assize Rolls*, p. 356). Neither he nor any of his descendants was ever summoned to parliament, but in a list of fines on the assize roll of that year his name appears, 'quia nondum miles', without a fine against it and with the word 'Baro' against it in the margin (*ibid.* p. 383). On Richard's death in 1281 the king took the barony into his own hands until the widow took oath not to marry without his licence (*Cal. of Inq.* ii, no. 411).

quite easily and naturally if only we recognize that in England as in Normandy barony was an office to which were attached rights of public justice.

To show how the adoption of this definition of barony would assist in solving some of the problems connected with the rise and growth of parliament is outside the scope of this paper. It must suffice to show what light is thrown by it on the vexed question of the distinction drawn in Magna Carta between greater barons who were to be summoned to the king's council personally, and lesser barons who were to be summoned through the sheriff. Turning back to the northern baronies, we notice that far more extensive franchises belonged to some than to others. The lord of Coupland, for instance, besides *infangtheaf* claimed all pleas of the Crown and the return of all writs without exception; his seneschal performed all the duties and had all the powers of a sheriff; his constable acted as coroner;¹ his court was a '*curia militaris*';² the shire-court had no jurisdiction within the liberty,³ which even appeared as a separate area in the rota of the Itinerant Justices in 1176 and 1184;⁴ the sheriff could not enter it for any purpose; all writs had to be addressed to the lord, who made all attachments, even for felony;⁵ and when the men of the liberty were required to go in the king's army a separate mandate had to be sent to the lord.⁶ To all intents and purposes, indeed, Coupland was a shire, and was actually so called in 1189.⁷ Now, Coupland was only one of a group of lordships created by the Conqueror and his sons between 1069 and 1093 to protect the northern march against the Scots and to serve as bases for attack.⁸ Administrative districts, associated each with the custody of a royal castle,⁹ in which the lord had all the power of a sheriff, if not of an earl,¹⁰ they were in fact castellaries, and in the case of Clitheroe, Pontefract,¹¹ and Richmond¹²

¹ *Plac. de Quo Warr.* pp. 112-13.

² Pipe Roll, 31 Hen. II.

³ So late as 1840 the county court of Cumberland had no jurisdiction within the honors of Allerdale and Coupland (*Returns of Courts of Requests, &c.*, p. 18).

⁴ Pipe Roll in *Vict. County Hist., Cumberland*, i. 310.

⁵ *Plac. de Quo Warr.* p. 112.

⁶ e.g. in 1258 (Bain, i, no. 2103). The practice of sending separate commissions of array to the lords of honors continued in the Marches down to 1386 (*ante*, xxxii. 487).

⁷ Bain, i, no. 198.

⁸ The list includes, besides Coupland, Richmond, Clitheroe, Skipton, Pontefract, Tickhill, Conisburgh, Hallamshire, Lancaster, Kendal, Allerdale, Carlisle, and Durham.

⁹ All of them as a matter of fact had as caput a pre-Conquest burh (Whitaker, Craven, and Richmondshire; Hunter, South Yorkshire).

¹⁰ Alice de Romilli was often called Countess of Coupland (Pipe Roll, 31 Hen. II).

¹¹ In a charter granted to the burgesses of Pontefract in 1194, Robert de Lacy freed them from all tolls 'in terris meis pertinentibus ad castellariam Pontefract et ad castellariam Cliderhoe' (Ballard, *English Borough Charters*, p. 193).

¹² Called 'Earl Alan's castellaria' in the charter granting Allerton to the bishop of Durham (Domit. A. VII).

were actually so called. There were other castellaries in England, along the Welsh march,¹ on the south coast,² and in the midlands,³ and none of them differed essentially from Coupland; not one of them could the sheriff enter for any purpose, and even in the nineteenth century the king's writs were addressed to the lord and his bailiff, not to the sheriff of the county in which they were supposed to lie.⁴ Now, in Anjou the royal vassals over whom the counts had won control were distinguished as greater and lesser, the former being those who had castles;⁵ may not the distinction drawn in England in 1215 between greater and lesser barons likewise have been one between barons who had castellaries and barons who had not, that is, between barons with whom the king must communicate directly and barons with whom as with his other tenants he might communicate through the sheriff?

During the fourteenth century the barony courts were rapidly reduced both in number and in importance, partly by strict observance of the doctrines that no one could have a free court, or a court baron, unless he had free tenants who could judge of felony,⁶ and that a franchise not used ceased to exist; partly by the refusal of the judges to allow the barons' courts to determine cases of more than 40s. value, or to deal with offences against a statute law unless the statute itself gave them power to do so;⁷ and partly by the institution of the justice of the peace, who could do all their police work so much more efficiently than they could, hampered as they were by an archaic procedure and an antiquated customary law. Only the courts of the greater baronies and those in the remoter parts of the country survived to be renamed Courts Leet when the lawyers began to distinguish

¹ e. g. Castle Ewias in Hereford (Domesday Book, i. 185; cf. *Rot. Hund.* i. 186).

² The Sussex Rapes, associated as each was with a castle (*Vict. County Hist., Sussex*, i. 351), were really castellaries, and Hastings was so called in Domesday Book, i. 18.

³ e. g. Rockingham, called a *castellaria* by John in 1216 (Powicke, p. 294, n. 4).

⁴ Kirby's Quest (Surtees Soc.), which gives a long list of the Yorkshire liberties for which writs had to be addressed to the lords and their bailiffs, may be compared with two *Nomina Villarum Eboracensium* published in 1768 and 1816 respectively. They fully bear out Sir Thomas Gargrave's statement in 1570 that 'the sheriff hath but small power, the liberties', which he might not enter to seize the goods of the rebels of 1569, being 'so many and so great' (*Cal. of State Papers, Domestic, Add. Eliz.* 1568-79, p. 219).

⁵ Powicke, p. 28.

⁶ When the prior of Bradingstoke claimed to have *infangthef* and *utfangthef* in his barony of Laughton-on-Wales (Yorkshire), he was asked by the justices '*si habeat curiam et libere tenentes sectatores eiusdem curiae per quos poterit iudicare felon*', &c. (*Plac. de Quo Warr.* p. 193); a free tenant who was not a suitor could not save the court (*ibid.*). Similarly the abbot of Peterborough's claim to *infangthef* in his manor of Stanwick (Beds.) was traversed on the ground that he had not 12 free tenants to arraign thieves taken with the goods on them (*ibid.* p. 71). In the end he lost his case because he had to admit that he had not a gallows.

⁷ Hearnshaw, *Leet Jurisdiction*, pp. 119 ff.

courts instead of jurisdictions ; the others sank to the level of hallmoots, retaining only the name of Court Baron as a relic of their former glory.¹ At the same time as the 'court baron' lost in esteem, the 'baron' gained. For 'baron', first losing all tradition of office, became a mere name of dignity reserved for those barons whom the king chose to summon to parliament by special writ, and then, losing all connexion with the tenure of land, became a mere title which the king could bestow by letters patent. Thus tenure by barony, having lost all importance, lost all meaning, and at last passed quite out of mind.

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¹ Apparently the name was afterwards extended by the lawyers to the hallmoots of manors which had free tenants, those of manors which had none being distinguished as customary courts.