

S O K E R I G H T

by

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ACKNOWLEDGEMENTS

I would like to thank Professor P.H. Sawyer for all he has done for me, Professor E.G. Stanley for his help with many of the linguistic problems, Dr. G. Martin for letting me use his bibliography on towns, Miss B. Dodwell for her help with some problems in Domesday Book, and Dr. P. Hyams and Dr. S. Harvey for giving me copies of their own Theses. I would also like to thank my father and Miss Margaret Waldron for all their help.

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ABBREVIATIONS

- A.S.C. The Anglo-Saxon Chronicle, trans. and ed. D. Whitelock, with D.C. Douglas and S.I. Tucker, (London, 1961).
- A.S.E. F.M. Stenton, Anglo-Saxon England, (Oxford, 1942).
- Attenborough, Laws., The Laws of the Earliest English Kings, ed. F.L. Attenborough, (Cambridge, 1922).
- B. Cartularium Saxonicum, 3 vols. and index, ed. W. de Gray Birch, (London, 1885-93).
- Bosworth-Toller, An Anglo-Saxon Dictionary based on the manuscript collections of the late J. Bosworth, 2 vols. and suppl. ed. and enlarged by T. Northcote Toller, (Oxford, 1882-1921).
- Bracton, Bracton de Legibus et Consuetudinibus Angliae, ed. S.E. Thorne, 2 vols., (Oxford, 1970).
- C.R.R. Curia Regis Rolls, vols. I-XIV, (H.M.S.O., 1922-61).
- D.B. Domesday Book, Record Commission, vols. I and II, ed. Abraham Farley, (London, 1783).
- D.B.B. F.W. Maitland, Domesday Book and Beyond, (Fontana, 1969).
- Dom. Mon. The Domesday Monachorum of Christ Church, Canterbury, ed. D.C. Douglas, (Royal Historical Society, London, 1944).
- Economic H.R. Economic History Review.
- E.H.D. I, English Historical Documents, Vol. I, c.500-1042, ed. D. Whitelock, (London, 1968).
- E.H.R.? English Historical Review.
- F.D. Feudal Documents from the Abbey of Bury St. Edmund's, ed. D.C. Douglas, (Records of Social and Economic History. British Academy, VIII, 1932).
- Florence, Florenti Wigorniensis monachi chronicon, 2 vols, ed. B. Thorpe, Royal Historical Society, (London, 1848-9).

- ^e
- Gesetz, Gesetz der Angelsachsen, 3 vols., ed. F. Liebermann, (Hallé, 1903-16)
- Glanvill The Treatise on the Laws and Customs of the Realm of England commonly called Glanvill, ed. G.D.G. Hall, (London, 1965).
- Hemming Hemingi Chartularium ecclesiae Wigorniensis, ed. T. Hearne, (Oxford, 1723).
- I.C.C. Inquisitio Comitatus Cantabrigiensis subjicitur Inquisitio Eliensis, ed. N.E.S.A. Hamilton, (London, 1876).
- I.P.M. Inquisitiones Post Mortem, ed. Roberts, C. 1865.
- Inquisition An Eleventh Century Inquisition of St. Augustine's, ed. A. Ballard, (British Academy, London, 1920).
- Jocelin The Chronicle of Jocelin de Brakelond, trans. and ed. H.E. Butler, (London, 1949).
- K. Codex Diplomaticus Aevi Saxonici, 6 vols, J.M. Kemble, (London, 1839-48).
- Kalendar, Kalendar of Abbot Samson of Bury St. Edmund's and Related Documents, ed. R.H.C. Davis, Camden Soc., 3rd ser., LXXXIV, 1954.
- L.H.P. Leges Henrici Primi, trans. and ed. L. J. Downer, (Oxford, 1972).
- L.E. Liber Eliensis, ed. E.O. Blake, Camden Soc., 3rd ser., XCII, 1962.
- N.R.H.D. Nouvelle revue historique de droit français et étranger.
- O.E.D. Oxford English Dictionary, 12 vols. and 2 supplements, (Oxford, 1933, reprinted 1961).
- P. and P. Past and Present.
- P. and M. F. Pollock and F.W. Maitland, The History of English Law before the time of Edward I, 2 vols., Reissued with a new introduction and bibliography by S.F.C. Milson, (Cambridge, 1968).
- Robertson, Charters. Anglo-Saxon Charters. trans. and ed. A.J. Robertson, (2nd ed. Cambridge, 1956).
- Robertson, Laws. The Laws of the Kings of England from Edmund to Henry I, trans. and ed. A.J. Robertson, (Cambridge, 1925).

- S. P.H. Sawyer, Anglo-Saxon Charters: an annotated list and bibliography, Royal Historical Society Guides and Handbooks, no. 8, (London, 1968).
- S.S. Seldon Society.
- T.A.C. Très Ancien Coutumier, Coutumiers de Normandie, 2 vols., ed. E.J. Tardif, (Société de l'histoire de Normandie, 1881 and 1903).
- T.R.H.S. Transactions of the Royal Historical Society.
- V.C.H. Victoria County History.
- Wills. Anglo-Saxon Wills, trans. and ed. D. Whitelock, (Cambridge, 1930).
- Writs. Anglo-Saxon Writs, trans. and ed. F.E. Harmer, (Manchester, 1952).

BIBLIOGRAPHYPRINTED SOURCES

- Arnold, T., ed., Henrici Huntendunensis historia Anglorum, R.S., no.74, 1879.
Symeonis monachis opera omnia, 2 vols., R.S., no.75, 1882-5.
- Attenborough, F.L. ed., The Laws of the Earliest English Kings, (Cambridge, 1922).
- Babington, C. and Lumby, J.R. eds., Polychronicon Ranulphi Higden Monachi Cestrensis, 9 vols., R.S. 1865-86.
- Ballard, A., ed., An Eleventh Century Inquisition of St. Augustine's, (British Academy, London, 1920).
- Bethurum, D., ed., The Homilies of Wulfstan, (Oxford, 1957).
- Birch, W. de Gray, ed., Cartularium Saxonum, 3 vols. and index, (London, 1885-93).
- Blake, E.O., ed., Liber Eliensis, Camden Soc., 3rd ser., XCII, 1962.
- Bridgeman, C.G.O., ed., "The Burton Abbey Twelfth Century Surveys", William Salt Archaeological Soc., 3rd ser., 1916.
- Cawley, A.C., ed., The Canterbury Tales. Everyman no.307, (London, 1958).
- Clark, A., ed., The English Register of Oseney Abbey by Oxford, Early English Text. Soc., Orig. ser., 133, 1907-13.
- Crawford, S.J., ed., Aelfric's Treatise on the Old and New Testament, and his Preface to Genesis, Early English Text Soc., Orig. Ser., 160, 1922.
- Curia Regis Rolls, vols. I-XIV, (H.M.S.O., 1922-61).
- Davis, H.W.C., ed., Regesta Willelmi Conquestoris et Willelmi Rufi, 1066-1100, (Oxford, 1913).
- Davis, R.H.C., ed., Kalendar of Abbot Samson of Bury St. Edmund's and Related Documents, Camden Soc., 3rd ser., LXXXIV, 1954.
- Domesday Book, Record Commission, Vols. I and II, ed. Abraham Farley, (London, 1783).

PRINTED SOURCES

- Douglas, D.C., ed., The Domesday Monachorum of Christ Church, Canterbury, (Royal Historical Society, London, 1944).
Feudal Documents from the Abbey of Bury St. Edmund's, (Oxford, 1932).
- Farrer, W., ed., Early Yorkshire Charters, Yorkshire Archaeological Soc., (Edinburgh, 1914).
- Foster, C.W. and Longley, T., eds., Lincolnshire Domesday and the Lindsey Survey, Lincolnshire Record Soc., Vol.19, 1924.
- Garmonsway, G.N., ed., The Anglo-Saxon Chronicle, (London, 1953)
- Hall, H., ed., Red Book of the Exchequer, 3 vols, R.S. no.99. 1896.
- Hall, G.D.G., ed., The Treatise on the Laws and Customs of the Realm of England commonly called Glanvill, (London, 1965).
- Hamer, R., A choice of Anglo-Saxon Verse, (London, 1970).
- Hamilton, N.E.S.A., ed. Inquisitio Comitatus Cantabrigiensis subjicitur Inquisitio Eliensis, (London, 1876)
- Harmer, F.E., ed., Anglo-Saxon Writs, (Manchester, 1952).
Select Documents of the Ninth and Tenth Centuries, (Cambridge, 1914).
- Hart, W.H., and Ponsonby, A.L., eds., Cartularium monasterii de Rameseia, R.S. no.79, 1884-94.
- Hilton, R.H., ed., The Stoneleigh Leger Book, Dugdale Soc., 1960
- Hodgett, G.A.J., ed., Cartulary of Holy Trinity, Aldgate, London Record Soc., 1971.
Inquisitiones Post Mortem
- Johnson, C., ed., and Cronne, H.A. eds., Dialogus de Scaccario, (London, 1950).
Regesta Henrici Primi, 1100-1135, (Oxford, 1956).
- Kemble, J.M., ed., Codex Diplomaticus Aevi Saxonici, 6 vols., (London, 1839-48).
- Krapp, G.P., and Dobie, E., van Kirk, eds. The Exeter Book, (London, 1936).
- Liebermann, F., ed., Gesetz^e der Angelsachsen, 3 vols., (Hallé, 1903-16).

PRINTED SOURCES

- Pipe Roll,
16 Henry II, Pipe Roll Society, (London, 1892).
- Pipe Roll,
21 Henry II, Pipe Roll Society, (London, 1897).
- Pipe Roll, 10 John, Pipe Roll Society, (London, 1945).
- Plummer, C., ed., Two of the Saxon Chronicles Parallel,
2 vols., (Oxford, 1892 and 1899)
- Pope, J.C., ed., The Homilies of Aelfric, Early English
Text Society, 260, 1968.
- Raine, J., ed., Historians of the Church of York, R.S.
no.71, 1879.
- Rastell, J. Termes de la Ley, (London, 1624)
- Robertson, A.J., ed., Anglo-Saxon Charters, (2nd ed. Cambridge,
1956).
The Laws of the Kings of England from
Edmund to Henry I, (Cambridge, 1925)
- Sawyer, P.H. Anglo-Saxon Charters: An annotated list
and bibliography, Royal Historical Society
Guides and Handbooks, no.8, (London, 1968).
- Stapleton, T., ed., Chronicon Petroburgense, Camden Soc.,
XLVII, 1849.
- Stevenson, W.H., ed., Asser's Life of King Alfred, (Oxford 1904,
2nd imp. 1959).
- Stubbs, W., ed., Chronica Magistri Rogeri de Houedene,
4 vols., R.S. 51, 1868-71.
Select Charters, 9th ed., rev. H.W.C. Davis,
(Oxford, 1913).
- Tardif, E.J., Très Ancien Coutumier, Coutumiers de
Normandie, 2 vols., (Société de l'histoire
de Normandie, 1881 and 1903).
- Thorne, S.E., ed., Bracton de Legibus et Consuetudinibus
Angliae, 2 vols., (Oxford, 1970).
- Thorpe, B., ed., Diplomatarium Anglicum Aevi Saxonici,
(London, 1865).
Florenti Wigorniensis monachi chronicon,
2 vols, Royal Historical Society,
(London, 1848-9).
The Homilies of Aelfric, (London, 1846).

PRINTED SOURCES

- Treharne, R.F., and
Saunders, I., eds., Documents of the Period of Baronial
Reform and Rebellion, 1258-67, (Oxford, 1973).
- Wharton, H., Anglia Sacra, (London, 1~~0~~61).
- Whitelock, D., Anglo-Saxon Wills, (Cambridge, 1930).
English Historical Documents, Vol. I,
c.500-1042, (London, 1968).
- with Douglas, D.C.,
and Tucker, S.I., The Anglo-Saxon Chronicle, (London,
1961).
- Wrenn, C.L., ed., Beowulf and the Finnesburg Fragment.
(London, 1953, reprinted 1969).
- Zupitza, J., ed., Aelfric's Grammatik und Glossar, (Berlin,
Zurich, Dublin, 1966).

SECONDARY AUTHORITIES

- Anderson, O., English Hundred Names, (Lund, 1934).
- Ballard, A., The Domesday Inquest, (London, 1906).
- Barrow, G.W.S., Feudal Britain, (London, 1956).
The Kingdom of the Scots, (London, 1973).
- Caenegem, R.C. van, Royal Writs in England from the Conquest to Glanvill, Seldon Soc., LXXVII, 1959.
- Cam, H.M., Law-Finders and Law-Makers in Medieval England, (London, 1962).
Liberties and Communities in Medieval England, (London, 1963).
- Cameron, K., Place-Names of Derbyshire, English Place Name Society, XXVII-XXIX, (Cambridge, 1959).
- Clemoes, P., and Hughes K., ed., England before the Conquest; Studies in Primary Sources presented to Dorothy Whitelock, (Cambridge, 1971).
- Clemoes, P., ed., The Anglo-Saxons, Essays presented to Bruce Dickins, (London, 1959).
- Darby, H.C., The Domesday Geography of Eastern England, (Cambridge, 1952).
and Campbell, E.M.J., The Domesday Geography of South-East England, (Cambridge, 1962)
and Maxwell, I.S., The Domesday Geography of Northern England, (Cambridge, 1962).
and Terrett, I.B., The Domesday Geography of Midland England, (Cambridge, 1954).
and Welldon-Finn, R., The Domesday Geography of South-West England, (Cambridge, 1967).
- Dolley, R.H.M., Viking Coins of the Danelaw and of Dublin, (London, 1965).
- Douglas, D.C., Social Structure of Medieval East Anglia. Oxford Studies in Social and Legal History, Vol. IX, (Oxford, 1916).
- Duby, G., La société aux XI^e et XII^e siècles dans la région mâconnaise, (Paris, 1953).
- Edwards, J.G., Galbraith, V.H., and Jacob, E.F., Historical Essays in honour of James Tait, (Manchester, 1933).
- Elton, C.I., Origins of the English Nation, (London, 1882)
- Feist, S., Etymologisches Wörterbuch der gotischen Sprache, (Hallé, 1909).

SECONDARY AUTHORITIES

- Filip, J., Celtic Civilization and its heritage, (London, 1960).
- Finberg, H.P.R., The Early Charters of Wessex, (Leicester, 1964).
The Early Charters of the West Midlands, (Leicester, 1961).
- Flower, C.T., Introduction to the Curia Regis Rolls, Selden Soc., Vol. 62, 1944.
- Galbraith, V.H., The Making of Domesday Book, (Oxford, 1961).
- Ganshof, F.L., The Carolingians and the Frankish Monarchy, trans. Janet Sondheimer, (London, 1971).
Les Triunaux de chatellenie en Flandre, (Paris, Champion, 1932).
- Goebel, Jnr., J., Felony and Misdemeanor, Vol. I, (New York, 1937).
- Graff, E.G., Althochdeutscher Sprachschatz, (Hallé, 1842).
- Guilhiermoz, P., Essai sur l'origine de la noblesse en France, (Paris, 1902).
- Hall, J.J., Celts and Gallo-Romans, (London, 1970).
- Hilton, R., A Medieval Society, (London, 1966).
- Hogue, A.R., Origins of the Common Law, (Indiana, 1966).
- Hollister, C.W., Anglo-Saxon Military Institutions, (Oxford, 1962).
The Military Organisation of Norman England, (Oxford, 1965).
- Holt, J.C., Magna Carta, (Cambridge, 1965).
- Hoskins, W.G., Provincial England, (London, 1963).
- Hoyt, R.S., ed., Life and Thought in the Early Middle Ages. (Minneapolis, 1967).
The Royal Demesne in English Constitutional History. 1066-1272, (Ithaca, 1950).
- Hunnisett, R.F., The Medieval Coroner, (Cambridge, 1961).
- Hunt, R.W.,
Pantin, W.A., and
Southern, R.W., ed., Studies in Medieval History presented to F.M. Powicke, (Oxford, 1948).
- Hurnard, N.D., The King's Pardon for Homicide before A.D. 1307, (Oxford, 1969).

SECONDARY AUTHORITIES

- Hyams, P., Legal Aspects of Villeinage between Glanvill and Bracton, unpublished M. Phil. thesis, (Oxford, 1970).
- John, E., Land Tenure in Early England, (Leicester, 1964).
Orbis Britanniae, (Leicester, 1966).
- Ker, N.R., Catalogue of Manuscripts containing Anglo-Saxon, (Oxford, 1957).
- Kluge, F., Nominale Stammbildungslehre der altgermansichen Dialekte, (Hallé, 1926)
- Kurath, H., and Kuhn M., Middle English Dictionary, (Michigan, 1956).
- Lennard, R., Rural England, (Oxford, 1959).
- Little, A.G., and Powicke, F.M., ed., Essays in Medieval History presented to T.F. Tout. (Manchester, 1925).
- Lobel, M.D., The borough of Bury St. Edmund's, (Oxford, 1955).
- Maitland, F.W., Domesday Book and Beyond, (Fontana ed., 1969).
- Mawer, A., and Stenton, F.M., Place-Names of Worcestershire, English Place-Name Society, IV, (Cambridge, 1927).
- Merritt, H.D., Old English Glosses, (London, 1945).
- Miller, E., The Abbey and Bishopric of Ely, (Cambridge, 1951. Reprinted 1969).
- Morris, W.A., The Medieval English Sheriff to 1300, (Manchester, 1927).
- Musset, L., Les Invasions: le second assaut, (Paris, 1965)
Les Peuples Scandinaves, (Paris, 1951).
- Niermeyer, J.F., Mediae Latinitatis Lexicon Minus, (Leiden, 1954-58).
- Page, W., London, its Origin and Early Development, (London, 1923).
- Pollock, F., and Maitland, F.W., The History of English Law before the time of Edward I, Reissued with a new introduction and bibliography by S.F.C. Milsom, (Cambridge, 1968).

SECONDARY AUTHORITIES

- Reaney, P.H., The Place-Names of Cambridgeshire, English Place-Name Society, XLX, (Cambridge, 1943).
- Richardson, H.G.,
and Sayles, G.O., Law and Legislation from Aethelberht to Magna Carta, (Edinburgh, 1966).
- Sawyer, P.H., The Age of the Vikings, (1st ed. London, 1965)
- Simpson, A.W.B., An introduction to the History of the Land Law, (Oxford, 1964).
- Sisam, K., Studies in the History of Old English Literature, (Oxford, 1962).
- Southern, R.W., The Making of the Middle Ages, (London, 1953).
- Stenton, D.M., ed., Justices in Eyre, Gloucestershire, Warwickshire, Staffordshire, 1221-1222, Seldon Soc., Vol. 59. 1940.
Earliest Northamptonshire Assize Rolls, 1202 and 1203, Northamptonshire Record Soc., Vol.5, 1930.
- Stenton, F.M., Anglo-Saxon England, (Oxford, 1942).
The Early History of the Abbey of Abingdon (Reading, 1913).
The First Century of English Feudalism, (Oxford, 1961).
The Latin Charters of the Anglo-Saxon period, (Oxford, 1955).
Norman London, Historical Association Leaflets, no.93, 1934.
Types of Manorial Structure in the Northern Danelaw, (Oxford, 1910).
- Sutherland, D.W., Quo Warranto Proceedings in the reign of Edward I, 1278-1294, (Oxford, 1963).
- Tardif, E.J., Très Ancien Coutumier, Coutumiers de Normandie, 2 vols., (Société de l'histoire de Normandie, 1881 and 1903).
- Thompson, J.D.A., Inventory of British Coin Hoards, A.D. 600-1500, (London, 1965).
- Vinogradoff, P., English Society in the Eleventh Century, (Oxford 1908, reprinted 1968).
The Growth of the Manor, (2nd ed. London, 1911).
Villeinage in England, (Oxford, 1892).

SECONDARY AUTHORITIES

- Wallace-Hadrill, J.M., Early Germanic Kingship in England and on the Continent, (Oxford, 1971).
- Welldon-Finn, R., Domesday Studies. The Eastern Counties, (London, 1967).
The Liber Exoniensis, (London, 1964).
- Whitelock, D., The Audience of Beowulf, (Oxford, 1951).

ARTICLES

- Baring, F., "Domesday and the Burton Cartulary", E.H.R., Vol. 11, 1896.
- Barlow, F., "Domesday Book. A letter to Lanfranc", E.H.R., Vol. 78, 1963.
- Bateson, M., "A London Municipal Collection of the reign of John", E.H.R., Vol. 17, 1902.
- Binchy, D.A., "Celtic and Anglo-Saxon Kingship", O'Donnell Lectures, 1967-8, (Oxford, 1970).
- Cam, H.M., "Felony and Misdemeanor", American H.R., Vol. 43, 1938.
- Carabie, R., La propriété foncière dans le très Ancien Droit Normand XI^e - XIII^e siècles: i, La propriété domaniale. Bibliothèque d'Histoire du Droit Normand, 2nd ser., Études, Vol. 5, (Caen, 1943).
- Chaplais, P., "The Anglo-Saxon Chancery: from the Diploma to the Writ", J. of the Society of Archivists, Vol. III, no.4, Oct. 1966.
- Clark, G.T., "The Customary of the Manor and Soke of Rothley", Archaeologia, Vol.47, 1883.
- Corner, G.R., "The Custom of Borough English as existing in the county of Sussex", Sussex Archaeological Collections, Vol.VI, 1853
- Davis, R.H.C., "What happened in Stephen's reign?" History Vol.44, 1964.
- Demarest, E. "The Hundred Pennies", E.H.R., Vol.33, 1918
 "Inter Ripam et Merham", E.H.R., Vol.38, 1923.
 "The Firma Unius Noctis", E.H.R., Vol.35, 1920.
- Dodwell, B., "East Anglian Commendation", E.H.R., Vol.63, 1948,
 "Holdings and Inheritance in Medieval East Anglia", Economic H.R., 2nd ser., Vol.20, 1967.
- Duby, G., "Recherches sur l'évolution des institutions judiciaires pendant le X^e et le XI^e siècles dans le sud de la Bourgogne", Le Moyen Age, LII, 1946.
- Edward, T.M., Charles - "Kinship, Status and the Origins of the Hide", P and P., no.56, Aug. 1972

ARTICLES

- Estey, F.N., "Scabini and the Local courts", Speculum, Vol.26, 1951.
- Fellows-Jensen, G., "The Scribe of the Lindsey Survey", Namn och Bygd, 1969
- Ganshof, F.L., "Contribution a l'étude des origines de cours féodales en France", N.R.H.D., Vol. 52, 1928.
- Genestal, "La tutelle", Bibliot d'histoire du droit normandie, Caen, 1930.
- Harley, J.B., "Population trends and Agricultural Developments from the Warwickshire Hundred Rolls of 1279", Economic H.R. 2nd ser., Vol. 10, 1958-9.
- Harvey, S., "Domesday Book and its predecessors", E.H.R., Vol. 86, 1971.
"The Knight and Knight's fees in England", P. and P., no. 49, 1970.
- Holt, J.C., "Politics and Property in Early Medieval England", P. and P. no. 57, 1972
- Homans, G.C., "The Frisians in East Anglia", Economic H.R. 2nd ser., Vol.10, 1957.
"Partible Inheritance and Villagers' Holdings", Economic H.R., 1st ser., Vol.8, 1937.
- Hudson, W., "Traces of Primitive Agricultural Organisation as suggested by a survey of the manor of Martham, Norfolk, 1161-1292". T.R.H.S., 4th ser., Vol.1. 1918.
- Hurnard, N.D., "The Anglo-Norman franchises", E.H.R., Vol.64, 1949.
- Hyams, P.R., "The Origins of a peasant land market in England", Economic H.R., 2nd ser., Vol.20, 1970.
- Jolliffe, J.E.A., "Northumbrian Institutions", E.H.R., Vol.41, 1926.
- Jones, G.R.J., "Basic Patterns of Settlement Distribution in Northern England", The Advancement of Science, Vol.18, 1961.
"The Earliest Settlers in Britain", Geographical Magazine, 1970.
"The Multiple Estate as a Model Framework for tracing early stages in the evolution of rural settlement", Les Congrès et Colloques de L'Université de Liège, Vol.58, 1971.

ARTICLES

- King, E. "The Peterborough descriptio militum", E.H.R., Vol.84, 1969.
- Lancaster, L., "Kinship in Anglo-Saxon Society", British Journal of Sociology, Vol.IX, 1958.
- Leyser, K., "The German aristocracy from the ninth to the early twelfth centuries", P. and P., no.41, 1968.
- McIntosh, A., "Wulfstan's Prose", Proceedings of the British Academy, Vol.25, 1949.
- Miller, E., "England in the Twelfth and Thirteenth Centuries: An Economic Contrast", Economic H.R., 2nd ser., Vol.24, 1971
- Musset, L., "A-t-il existé en Normandie au XI^e siècle une aristocratie d'argent?", Annales de Normandie, IX, 1959.
- Naval, H., "Recherches surs les institutions féodales en Normandie: Region de Caen", Libraire de la Société des Antiquaires de Normandie, (Caen, 1951).
- Olszewska, E.S., "Some English and Norse Alliterative Phrases", Saga Book of the Viking Society, XII, 4.
- Painter, S., "The family and the feudal system in twelfth century England". Speculum, Vol.35, 1960.
- Patourel, J. le, "The Norman Succession, 996-1135", E.H.R. Vol. 86, 1971.
- Reid, R., "Barony and Thanage", E.H.R., Vol.35, 1920.
- Round, J.H., "The bishop's soke in Colchester", Trans. of the Essex Archaeological Soc., Vol.14, 1918.
- Sawyer, P.H., "Evesham 'A', a Domesday Text", Worcestershire Historical Soc., Miscellany I, 1960.
 "The place-names of the Domesday Manuscripts", Bulletin of the John Rylands Library, Vol.38, 1956.
 "Baldersby, Borup and Bruges: the rise of Northern Europe", University of Leeds Review, Vol.16, no.1, May 1973.
 "The wealth of England", T.R.H.S., 5th ser., Vol.15, 1965.
- Sisam, K., "The Laws of the Earliest English Kings, F.L. Attenborough", Modern Language Review Vol.18, 1923.

ARTICLES

- Southern, R.W., "The Place of Henry I's reign in English History, Proceedings of the British Academy, Vol.48, 1962.
- Stein, P., "The source of the Romano-canonical part of the Regiam Maiestatem", Scottish Historical Review, Vol XLVIII, 1969, pp.107-23.
- Stenton, F.M., "The Danes in England", Proceedings of the British Academy, Vol.13, 1927, 2nd impress. 1957.
"St. Benet of Holme and the Norman Conquest", E.H.R., Vol.37, 1922.
- Stevenson, C., "Notes on the Composition and Interpretation of Domesday Book", Speculum, Vol.22, 1947.
"Commendation and Related Problems in Domesday Book", E.H.R., Vol.59, 1944.
"The Firma Unius Noctis and the customs of the Hundred", E.H.R., Vol.39, 1924.
- Stevenson, W.H., "Yorkshire Surveys and other eleventh century documents in the York Gospels", E.H.R. Vol.25, 1912.
- Storm, A.V., "Early English Influence on the Danish Church", Saga Book of the Viking Society, VII, 2.
- Thorne, S.E., "English feudalism and estates in land", Cambridge Law Journal, new ser., VI, 1959.
- Welldon-Finn, R., "The Inquisitio Eliensis Re-considered", E.H.R., Vol.75, 1960.
- Whitelock, D., "Wulfstan and the so-called Laws of Edward and Guthrum", E.H.R., Vol.57, 1940.
- Woodbine, G.E., "The Language of the English Law", Speculum, Vol.18, 1943.

ABSTRACT

The subject of this thesis is "sokeright", that is, the meaning of the phrase "sake and soke", and the rights and obligations associated with it. "Sake and soke" is a modernized form of Old English sacu and socn and may be literally defined as a "cause" and a "seeking". These words were used in a variety of contexts in the sources; sacu could be a cause of dispute that involves war or personal animosity, socn could be a seeking of the fyrd, a seeking for information, a seeking of a lord for commendation or protection, a seeking of a church for sanctuary or for ordinary reasons of piety. Both words, however, are especially applicable to legal matters; sacu was the common word for a lawsuit, - a cause of dispute which has been brought before a court, and socn was a seeking, or more grammatically, a "suit of court", either to plead a case as a litigant, or to judge it as a doomsman. The phrase sacu and socn was a mnemonic legal formula, and dates from the oral tradition of the law. Its judicial character led to its inclusion in pre-Conquest writs, which were frequently addressed to courts of law. The phrase is very rarely found in charters, however, and it was evidently out of place there, not merely because it was an English phrase when convention demanded that charters be written in Latin, but also because charters were documents of a more private kind.

Historians have normally defined sake and soke as a "right of jurisdiction", but there has always been some uncertainty as to both the nature of the right, and the type of jurisdiction involved. It is argued here that the formula was a general expression, applicable to all forms of judicial right, and it is necessary to examine the context in which the phrase appears to determine the particular type of jurisdiction intended. It has been said that sake and soke gave only the right to the profits from pleas, not the right to preside over the court in which the pleas were heard, for, it has been suggested, private court-keeping rights did not exist before the Conquest, at that time all jurisdiction was royal and only royal officials were allowed to preside in the lawcourts. It is true that sake and soke gave the right to fines and forfeitures, but the right to preside was also given. When sake and soke occurs in royal documents, the grantee was given immunity from interference by royal agents within the boundary of the estate he received. The argument concerning royal and private jurisdiction before the Conquest is somewhat misconceived; in very early times, kings had a residual right to maintain justice and peace, but the extent to which they could turn this to more positive advantage was uncertain. The English kings, with the help of the Church, developed this residual role in judicial affairs and transformed it into genuine power: under the influence of increasing royal authority, laws were supplemented by new procedures, ancient custom was changed and new laws were made. Royal officials became useful, even necessary, in guiding the suitors of the local courts

through all the new rulings, and as agents of a powerful king their help in enforcing justice was especially valuable. The demand for justice administered by royal officials became so great that new royal courts were established in shire and hundred. On the continent, royal authority disintegrated, but the West Saxon kings were able to maintain their ascendancy, and their successors gradually brought within their power the sole right to an increasing number of specified pleas.

Sake and soke was sometimes abbreviated by the single word "soke", and the phrase and the word could be used interchangeably to denote the right to judicial suits. Domesday Book, however, includes a number of references to soke which it would be difficult to define in the more abstract sense of jurisdiction. We read of the soke of small areas of land and these probably refer to suit of court which has come to be assessed on land; this would make possible either exaction of the service itself, or its commutation as a money render: There is also, however, another range of meaning of soke which was fiscal, but not jurisdictional. In Eastern England, soke had come to be used, almost as a dialect word, to denote those dues and services which constituted the royal farm. Soke applied to royal services, as distinct from those services which arose between landlord and tenant. Connected with this servitial soke is the use of the word soca as an abbreviation for "sokeland", - land which was assessed for dues rendered to the royal farm. This occurs in reference to large areas in which a lordship had royal rights; thus the sokes of Bury St. Edmund's and Ely were the hundreds which belonged to them. These sokes

were important sources of profit and power. The Domesday breves of Bury and Ely often state that the soke "remains" if a tenant sells or leaves the land. This should be seen as binding the land not the man; if the tenant moves elsewhere he will render suit to the lord who has sokeright of his new land, while the incoming tenant, on taking over his land, will assume the obligation to render suit, according to the assessment of the land. Domesday sometimes records that not only must the soke remain if the tenant leaves, but service and commendation must also remain. It is easy to see how this could be true of service; the new tenant would become responsible for the services due from his land. Commendation however, was normally a personal bond, freely contracted between man and lord, and if the commendation "remains" the incoming tenant would find himself automatically commended when he took the land. This seems to be the case, but it was exceptional: it was a right possessed by Ely and Bury St. Edmund's whereby they were given the commendations of their tenants within their hundreds, perhaps in an attempt to enhance royal authority in East Anglia. Finally, soke could be used to denote a multiple estate, a form of territorial organisation in which a number of vills were bound to a common centre by their obligation to render both suit and royal services to that centre.

The royal dues associated with soke can best be seen from below, as it were, from the point of view of the sokemen. "Sokeman" literally means "suitor", but the persons so described also owed services connected with the royal farm. The royal origin of their services distinguished them from other classes

in society whose obligations derived from their relationship with their landlord. This distinction was of sufficient force to make the sokemen's position on the estate more honourable and more secure than that of the villein. Sokemen undertook some of the more responsible duties on the estate, and because their services derived from the royal farm, not from the particular needs of an estate, the services could not be changed. The peculiar nature of their tenure was probably recognised at the local level in the eleventh and twelfth centuries, but it was used by the crown in the thirteenth century as a model for the protection which was extended to certain tenants on ancient demesne.

Domesday Book only records sokemen in Eastern England, but this is misleading. The distinction between the sokemen of the East and other tenants in the West is, in part, terminological: many so-called "sokemen" would have been referred to as liberi homines or even thegns if they had lived in the West, while the liberi homines and thegns of the West could have been called "sokemen" if they had lived in the East. It is likely that all liberi homines could have been described as sokemen, but the reverse is not necessarily true, not all sokemen were liberi homines and the two terms were not completely interchangeable. In the thirteenth century sources, there are references to free and villein sokemen, but the distinction already existed in the eleventh century, when there were independent and dependent sokemen. The former were liberi homines, able to dispose of their land freely and directly responsible to the state for their own tax

burden, but the latter were not able to leave the estate, to which many had been "added" only at the time of the Conquest, and like many villani, they paid taxes through a lord who would bear the responsibility to the state for non-payment.

Domesday's exclusive concentration of sokemen in Eastern England creates a misleading, but not a totally mistaken impression of the condition of England in the eleventh century. The East probably did have more freeholders than the West, and the territorial soke with its lighter form of lordship, was probably more common there. This was the result of the Danish settlement, or rather of the prosperity which the Danes brought to Eastern England. The Danes were already wealthy at the time of the settlement, and their wealth was increased by the estates which they occupied, by their encroachment on church revenues, by their lukewarm attitude to church endowments, by their encouragement of trade and by their more enterprising approach to land development. Moreover, they did not themselves suffer the strain of repulsing an invasion, and the peasantry of the East were oppressed by demands for military service and taxes to a much lesser extent than the West Saxon peasantry, who were constantly harassed by the demands of kings who were trying to conquer the Danelaw.

Soke also gives its name to "socage", a form of land tenure. The services due from land held in socage were indefinite, but a money payment and suit of court came

to be the most common obligations. The rights of the tenant who held land in socage were certain however, and were totally different from those which governed the other tenures. Land held in socage was partible, an infant heir was held in ward by one of his relatives, he came of age at fifteen and paid a relief equal to the annual rent, and the widow of a tenant who had held socage land received in dower one half of the property of her husband. These incidents are traceable to very early terms of landholding when the needs of the family were paramount; the military tenures were developed in later times, with different incidents which were better adapted to military needs. Socage survived from those tenancies which were too well established and continuously occupied to be changed, and when the military needs of medieval society could be met by other means than landed endowments, the raison d'être of the feudal tenures disappeared, leaving socage as the sole form of tenure.

INTRODUCTION

The subject of this thesis is sokeright, that is, the meaning of the phrase sake and soke, and the rights and obligations associated with it. Sake and soke is a modernized form of Old English sacu and socn. These two words have different meanings and were used independently in many different contexts, but they are related etymologically, and when combined, they form the mnemonic legal phrase, sacu and socn. Sake and soke has often been defined as "a right of jurisdiction", but this has never been altogether satisfactory, since it gives no clue to the nature of the jurisdictional right involved. A greater difficulty arises because the phrase is found in documents during a period of three hundred years, and in that time the whole world of the law was changed. In the twelfth century, jurisdiction could be franchisal, feudal or manorial, it could range from the lofty privilege of a palatine to the ordinary jurisdiction which was the right of every man with land and tenants; but as one moves back towards the Anglo-Saxon period such distinctions, or at least the evidence for them, become increasingly blurred. Previous commentators have disputed what pleas were given by a grant of sake and soke: Maitland believed that the nature of the sokeright varied across the centuries, from jurisdiction of a moderate kind, to the high level of judicial immunity which one associates with a palatinate. Other scholars however, have argued that the rights given by soke were always meagre. Another focal point of discussion has been the problem of fine-taking and/or court-keeping. Most scholars agree that a lord with soke-right was empowered to hold a court in which he exercised his rights, but Professor Goebel denies that private courts, immune from royal interference, existed before the Conquest. In his

view, sake and soke was only the right to take the profits of a court in which a royal reeve presided. Other work, meanwhile, has suggested that the emphasis on the judicial problems of soke may be short-sighted. It has been pointed out that soke included the right to non-judicial services and dues, and this wider range of meaning is sometimes overlooked.

Maitland was the first scholar to make a detailed study of the subject, and his work remains the classic exposition to which all later commentators owe their debt; constant reference is always made to his ideas and conclusions, even, or rather, especially, when one's own differ from his. He based his thesis on the general premise that sake and soke meant a "right of jurisdiction" and he believed that this could normally be understood to take its profits.¹ However, he was acutely aware of the problems raised by the many changes which took place in the law and legal procedure during the centuries in which the phrase sake and soke was current, indeed this element of change was crucial to his whole approach. He tried to place sake and soke within the context of the law as it stood at any particular time, and thus, as the legal world changed, so one's interpretation of the "right of jurisdiction" must also change.

1 F.W. Maitland, Domesday Book and Beyond (Fontana edition, 1969), pp.328, 133-4. Hereinafter to be cited as D.B.B.

Maitland believed that, throughout the Anglo-Saxon period, sake and soke was principally important as the right to the profits of jurisdiction. He thought that sokeright could only follow from a royal grant:- he was "fairly certain" that, before the Conquest, "judiciary rights could only be claimed by virtue of royal grants, that they did not arise out of the mere relation between lord and man, lord and tenant, or lord and villein".¹ He thought that kings were already making such grants in early times and he drew attention to a number of eighth and ninth century charters which state that "nothing is to go out to wite", suggesting that these were, in effect, early grants of sake and soke.² He admitted that the English words sacu and socn do not themselves appear in these charters, but this, he said was for reasons of style, not substance.³ Sake and soke in the eighth and ninth centuries, according to Maitland, therefore, was a grant of wites. He went further, however, and wrote that "Being a grant of wites, it will not extend to the 'bootless', the 'unemendable' crimes", and thus the "highest criminal jurisdiction was probably excepted from the grant".⁴ Sake and soke was only a modest justiciary

1. Ibid. pp. 119-120, and also cf. pp. 79 and 131.

2. Ibid. pp. 323 ff.

3. Ibid. p. 316, and see below pp. 125-26.

4. Ibid. p. 333

right, therefore, and so it was likely that "a royal grant of land in the ninth and tenth centuries generally included, and this as a matter of 'common form', a grant of jurisdiction".¹

Maitland then went on to consider how the lord was to enforce his right to the wite. He asked, must the lord "sue for it in the national or communal courts, or has he a court of his own?"² The pre-Conquest evidence for this seemed inconclusive. After citing a number of charters,³ Maitland commented that, "however nearly they may go to telling us that the donee will do justice within his territory, (they) never go quite that length".⁴ Nonetheless, he found it more likely that a lord was empowered to hold a court if he wished to do so. After the Conquest, there existed a franchise amerciamenta hominum, under which a man convicted in a royal court paid his amercement into the exchequer, where the lord would then petition for it, but this, Maitland said, was "comparatively rare".⁵ He thought it more likely that in Anglo-Saxon times, the lord whose possessions were small would have attended a hundred court, which was still under the presidency of a royal reeve. There the lord could claim the fines incurred by his men. The alternative of establishing one's own court was still possible, and Maitland thought that was probably more common, even in the early period.

1 Ibid. p.332

2 Ibid. p.324

3 On which see below pp.170ff

4 Ibid. p.325

5 Ibid. p.327

The establishment of one's own court was not a radical step, which would necessarily result in changes in the law and procedure. Maitland insisted that the lord was authorized to preside over the court, but only to ensure that the proceedings were properly conducted, he was not empowered to alter the proceedings. Nor could the lord change the law, for he was not given the right ius dicendi, since the suitors made the judgements. The essence of sokeright in the eighth century therefore, could only be its profitability; it was, Maitland concluded, "rather a fiscal than a jurisdictional right".¹

Maitland then envisaged a situation whereby, during the course of the ninth century, royal authority was weakened, and lords were able to take advantage of this decline to extend their jurisdictional powers by appropriating the right to try unemendable pleas. He drew this idea from his interpretation of a passage in Cnut's laws:- "These are the dues to which the king is entitled from all men in Wessex, namely (the payments for) violation of his mund, and for attacks on people's houses, for assault and for neglecting military service, unless he desires to show especial honour to anyone (by granting him these dues).

"And in Mercia he is entitled to all the dues described above from all men. And in the Danelaw he has the receipt of fines for fighting, neglect of military service, breach of the

1. Ibid. p. 328

peace and attacks upon people's houses, unless he desires specially to honour anyone (by granting him these dues)".¹ Maitland commented, "Cnut's attempt to save for himself certain pleas of the crown, looks to us like the effort of a strong king to recover what his predecessors have been losing". But he saw it as all in vain, for the policy was abandoned, - "Cnut himself and the Confessor, - the latter with reckless liberality - expressly grant to the churches just those very reserved pleas of the crown".² Thus, Maitland believed, the jurisdictional rights given by sake and soke in the eleventh century, were of the loftiest kind, and "the well endowed immunist of St. Edward's day has jurisdiction as high as that which any palatine earl of after ages enjoyed. No crime, except possibly some direct attack upon the king's person. property or retainers, was too high for him".³ Such an immunist is one who has sake and soke, toll and team, infangenetheof, gridbryce, forstal and hamsocn, and by a grant in such

1 Dis syndon ða gerihta de se cyning ah ofer ealle men on Wessexan paet is mundbryce, 7 hamsocne, forstal 7 fyrdwite, butan hwaene he furdor gemaedrian wylle ... 7 on Myrcean he ah, ealswa her beforan gewriten is, ofer ealle men. 7 on Dena lage he ah fihtwite 7 gemaedrian fyrdwita gridbryce 7 hamsocne, butan he hwaene furdor gemaedrian wylle. II Cnut, cc I2, I4, and I5. The translation is from, The Laws of the Kings of England from Edmund to Henry I (Cambridge, 1925), edited and translated A.J. Robertson, p. 181. Hereinafter cited as Robertson, Laws.

2 D.B.B., p. 333

3 Ibid. p. 333

terms, a king strips himself "of all jurisdiction, except it may be, a certain justice of last resort".

Then Maitland saw a great resurgence of royal power. "It is", he wrote, "the reconstruction of criminal justice in Henry II's time, the new learning of felonies, the introduction of the novel and royal procedure of indictment, that reduces the immunist's power".¹ Because of this, and because of the legal changes wrought by the Conquest which introduced feudal and manorial jurisdiction, sake and soke, in the thirteenth century was "jurisdiction of a kind that every lord has, although he has no such words in his charter, and although he has no charter from the king they give no franchise, they merely point to the feudal or manorial jurisdiction which every one may have if he holds a manor, or which every one may have if he has tenants".² This is a drastic change from an earlier time, when "Norman counts and barons were eager to secure the uncouth phrases which gave to the English immunist his justice", for this justice had been, in Maitland's view, equivalent of Norman "haute, moyenne et basse justice".³

For Maitland, therefore, sake and soke was a general formula for a right of jurisdiction: it denoted the right to receive fines from certain pleas, and should be seen primarily as a financial privilege, but the grantee might also establish a court of his own if he wished. The competence of the court, - the precise pleas which were heard there and from which the fines were derived, varied according to the ebb and

1 Ibid. p. 333

2 F. Pollock and F. W. Maitland, The history of English Law before the time of Edward I, re-issued with a new introduction and bibliography by S.F.C. Milsom, (Cambridge 1968), I p. 579. Hereinafter cited as P. and M.

3 D.B.B. p. 333.

flow of royal authority. At first, all jurisdiction is in the king's hand, but he is willing and able to delegate it to others without the danger of an erosion of public justice, and thus the right to emendable pleas is commonly given in the earlier period. Maitland did not make clear exactly which emendable pleas were involved at this stage, but since he was citing charters which have the clause "nothing is to go out to wite", and since he regarded these charters as, in effect, early grants of sake and soke, it is probable that he envisaged the rights of jurisdiction as including all the emendable pleas. The unemendable pleas are then appropriated by private lords, and for a time the formula sake and soke, toll and team, infangenetheof, grithbryce, forstal and hamsocn, which frequently appears in the writs, denotes the highest of franchises. The king is giving all his, - and to Maitland there are no other, - rights of jurisdiction, under the general phrase "sake and soke". Toll and team, infangenetheof, grithbryce, forstal and hamsocn were not covered by the phrase sake and soke, they are the specific pleas which the king is trying to re-assert as his exclusive right. Ultimately, however, the lords give way under royal pressure: this is bringing more jurisdiction under the aegis of the king, and the jurisdiction of the lords, - their sake and soke, - becomes only the feudal and manorial jurisdiction which is already their's as of right.

Liebermann followed Maitland very closely, indeed his

discussion is little more than a series of footnotes and references to Maitland's account.¹ He agreed that sake and soke was principally the right to fines, but also authorized a lord to hold a court if he wished to do so.² Like Maitland, he tended towards the view that all justice belonged to the king and that distinctions between franchisal and feudal jurisdiction were only gradually worked out in the twelfth century.³ He enlarged Maitland's views on the decline of royal authority by quoting the laws which show the responsibilities of lords for their men, and he showed how this, even in the time of Ine, is connected with the right to fines.⁴ He thought that, as royal power weakened, the lords would take the king's place, and their responsibilities and rights would increase accordingly.⁵ He also agreed with Maitland that private court holding was not necessarily a danger to public jurisdiction, and he pointed out that the hundred courts were often given to private individuals who would nominate the president as well as take the fines, and yet the procedure and the law in the hundred remained unchanged.⁶ In short, his work is chiefly valuable for the great wealth of evidence and

1 F. Liebermann, Die Gesetze der Angelsachsen, (Hallé, 1903-16), Vol. II, s.v. Gerichtsbarkeit. Hereinafter cited as Liebermann, Gesetze. The whole section constantly cites Maitland as an authority, and see especially the comment by Liebermann in section Ic, which seems to be based on Maitland's note in D.B.B. p. 115 n.3

2 Ibid., section Ie

3 Ibid., sections 32-33

4 Ibid., section 5.

5 Ibid., sections 3-10

6 Ibid., section 30

references which it provides.¹

The late Sir Frank Stenton made an extensive study of the whole subject of sokeright, and many of his works will be cited below. His conclusions on the meaning of sake and soke itself are to be found in Anglo-Saxon England. He seems to have doubted the usefulness of the definition "a right of jurisdiction", as being an inaccurate translation of the words sacu and socn, and somewhat too vague to be satisfactory. He tried, in his account, to explain more fully the precise rights which might be involved in a grant of sake and soke. He noted first that "jurisdiction" is "an abstract concept"; it was represented in Old English he suggested "by the alliterative pair of concrete words sacu and socn." But, he went on, "Intrinsically the first of these words denoted a 'cause' or matter in dispute, the second, the act of seeking a lord or a formal assembly. But by the tenth century, these words had come to be used colloquially, without any thought of ultimate derivations.... (for) the right of holding a court". Thus according to Stenton, "the statement that a lord of an estate had sacu and socn - the 'sake and soke' of modern historians, - simply meant that he had the right of holding a court which his tenants were required to attend".² For a more strict translation, however, he insisted that sake and soke would "be best rendered by 'cause' and 'suit'".³

1 Although some of his judgements on certain points of detail are questionable, e.g. the first appearance of sake and soke in a genuine document, see below pp. 114 ff

2 F.M. Stenton, Anglo-Saxon England, 1st. edition. (Oxford 1942), p. 487, hereinafter to be cited as A.S.E.

3 Ibid., p. 490.

Thus Stenton believed that sake and soke gave the right to preside over a court, and that the right to the profits of the court was also given.¹

However, certain of Stenton's other remarks show that he was not altogether satisfied with this position. He commented, "The bare statement that a lord has sake and soke over his property or his men, tells nothing about the range or the character of the jurisdiction which belonged to him". But he seems almost to have despaired of further progress, "These words", he wrote, "should not be regarded as an attempt to define the powers which they expressed. They were obviously taken over by the king's writing office from the speech of common men and they give only the popular impression of the kind of judicial authority which generally belongs to a great lord. But the common men who attended the courts of great lords were well qualified to speak about the kind of business transacted there, and it is probable that the rhythmic phrase which they evolved gives the essential facts about the private justice which they knew".² Stenton did not give any evidence from the Anglo-Saxon period as to what these "essential facts" might have been, nor did he suggest any means of determining them, beyond referring to Domesday Book, which he then dismissed as unhelpful since "the private landowner's rights of jurisdiction lay outside the main purpose of the Survey, and its compilers recorded them or omitted them as they pleased when describing individual

1 He began his discussion on jurisdiction by citing the various charters which declare that "nothing is to go our to wite", and, like Maitland, he saw these as equivalent to grants of sake and soke. Ibid., pp. 485ff.

2 Ibid., p. 490.

estates".¹ As a possible solution he looked to "the practice of later times which suggests that the jurisdiction of an Anglo-Saxon lord covered pleas of land arising among the free peasants on his estate, as well as misdemeanours and breaches of agrarian routine which formed the staple of manorial justice".² This still left the problem of royal pleas, however. Stenton admitted that if a grant of jurisdiction included such pleas, then it might be difficult "to draw a clear line between the lords who dealt with these more serious offences in their own courts, and those who merely receive the forfeitures of their men after they had been tried in the court of a hundred, a shire, or a borough". This he decided, would rarely be a practical problem, for the lords who had the right to hear royal pleas would normally also hold the royal court of hundred, shire or borough, where these pleas were heard; - "On the whole", he wrote, "it seems that most of the private courts which handled these graver matters, were courts of hundreds, or groups of hundreds which had come into the hands of subjects through a royal grant".³ By contrast, a grant merely of sake and soke, toll and team and infangenetheof was a lesser right, - "a privilege which any man of rank and consequence would naturally enjoy".⁴

1 Ibid., p.491

2 Ibid., pp. 490-491

3 Ibid., p.492

4 Ibid., p.495

Thus Stenton understood sake and soke to be a jurisdictional privilege which embraced both the right to preside over a court and the right to take its profits. He was uncertain about the competence of the court, but he seems to have concluded that, taken alone, sake and soke gave to a lord, civil and criminal jurisdiction over his tenants, provided that their offences did not constitute a royal plea.

Dr. Hurnard agreed with Maitland's general conclusion that sake and soke gave the right to the profits from pleas, and she thought that this could, and probably did, lead to the establishment of a private court. "It seems clear", she wrote, "that a grant of sac and soc was, normally at any rate, a grant of actual jurisdiction as well as the profits in certain cases".¹ But she challenged Maitland's view that sake and soke, toll and team, infangenetheof, grithbryce, forstal and hamsocn had ever been the English or Anglo-Norman equivalent of French haute, moyenne et basse justice. She found Maitland's arguments "ambiguous", and she regarded with deep suspicion his idea that the interpretation of sake and soke could change according to the strength of any particular king. As she says, "Maitland does not actually tell us whether the most serious criminal jurisdiction....was covered by Cnut's pleas, or by sac and soc, or divided between them. He is content to attribute such jurisdiction to these franchises en bloc."

1 N. D. Hurnard, "The Anglo-Norman franchises", English Historical Review. Hereinafter to be cited as E.H.R. Vol. 64, 1949. p. 292.

It does not matter to which category it belongs since, either way, the lords will get it."¹ She then went on to try to disprove Maitland's view that sake and soke, toll and team, infangenetheof, grithbryce, forstal and hamsocn ever constituted a high franchise no matter which part of the formula may have given it. She tried to trace the origins of the great Anglo-Norman franchises and she concluded that none of them "need be supposed to have originated in a grant of sac and soc, grithbryce, forstal and hamsocn. Most of them show a marked indifference to this type of grant, having existed long before it began to be made, and not requiring to be amplified or confirmed, by it". Her study of the group of pre-Conquest franchises did not reveal that any common formula had been used in their creation:- these franchises, she observed, "rested on prescription supported by charters, forged or genuine, which attempted to indicate their peculiar nature, but had no technical terms in which to express it".²

Having disposed of the idea that sake and soke and its accompanying pleas ever had the importance which Maitland supposed, Dr. Hurnard cited evidence concerning the profits of jurisdiction. She suggested that sake and soke was a far more common right, by which lords were "granted the wites and wergeld penalties from their men.... The only cases", she commented, "in which the profits are said to go to the lords are emendable ones, and there is nothing to suggest that

1 Ibid., p. 296

2 Ibid., p. 322

sac and soc included anything else".¹ Not content with this, she examined different pleas and forms of jurisdiction, and by a process of elimination she attempted to identify those which were appropriate to sake and soke. In order to explain the reservation of particular pleas by Cnut, she suggested that sake and soke included only "some, but not all, of the emendable clauses, (therefore) it was desirable to specify exactly which of these were reserved. Hence the detailed lists in clause twelve and fifteen,² and those following. Grithbryce, forstal and hamsocn, therefore, are stated to be the king's dues....because they are emendable pleas and so liable to be confused with sac and soc".³ Thus Dr. Hurnard would exclude the pleas named in II Cnut I2 and I5, and she would also exclude "those following", but she did not specify which pleas these are. There are a number of other offences for which, according to II Cnut, the king takes the fines:- perpetrating injustice, fines from untrustworthy men, the offence of denying a condemned man the right to confess, the wergild of a robber, neglect of military service, and harbouring an excommunicate,⁴ but there are others - bearing false witness, assault on a priest, and wergild after an over-hasty marriage, from which a lord may receive some of the profit.⁵ However, Dr. Hurnard did not include these among

1 Ibid., p. 294

2 See above pp 5-b

3 Ibid. p. 294

4 II Cnut, cc. 15a, 33, 44, 63, 65, 66.

5 Ibid. , cc., 37, 42, 73a, 1.

the pleas given by sake and soke, instead she suggested "fighting, drawing blood, wounding and battery, provided of course, that the offence had not been aggravated by grithbryce, forstal or hamsocn which are still reserved". She added to such cases of petty violence "other minor offences", but "petty theft" is the only other offence she specified,¹ and she did not give the evidence on which she based this, - her ultimate conclusions on the meaning of sake and soke.

All these commentators were satisfied that court-keeping was probably included in a grant of sake and soke; they were preoccupied with determining the competence of the court not proving its existence. Professor Goebel, however, doubted if Anglo-Saxon lords had ever had the right to establish and hold private courts of their own. He argued that sake and soke was only a fiscal privilege by which the lord could claim wer and wite from courts which were always presided over by public officials. He based his thesis on the premiss that "court keeping rights are central in the growth of feudalism and in the growth of law, for they mean control of procedure, definition of duty and exaction of penalty and so substantive law".² He compared England with the situation on the continent where, he believed, lords with rights of jurisdiction were allowed to preside over public courts, and in doing so, transformed them to such a degree that they became their own

1 N. D. Hurnard, art. cit., pp. 300-301

2 J. Goebel, Jnr., Felony and Misdemeanor, Vol. I, (New York, 1937), p. 337.

private courts. Professor Goebel found there to be "no such widespread or long-lasting breakdown of public justice in England as there was in France, to force the transition from mallus publicus to feudal court".¹ He thought the evidence in English sources for private court-keeping and jurisdictional immunity was inconclusive, and certainly could not be merely inferred to arise from a grant of the profits from pleas. He commented, "Even if every reference to fiscal privileges be held to imply jurisdictionary rights, the dooms offer no sign of insulation of private jurisdiction against external interference which argues strongly that the supposed court-holder was scarcely in a position to remould court procedure and substantive law as he did in France".²

Professor Goebel denied, therefore, that there were private courts in England which were presided over by local lords to the complete exclusion of royal officials, for he believed that if such courts had existed, the country would have disintegrated into petty judicial lordships. He was, however, prepared to admit that royal hundredal courts were given to private individuals, who could both appoint the presiding officer and take the profits of the court, without there being changes "comparable to the conversion of the Frankish mallus publicus into a feudal court, as in France, nor does it appear", he wrote, "that the

1 Ibid., p. 342, n. 2†

2 Ibid., p. 342.

control and direction of procedure is a matter of private command".¹ He explained the difference as due to external circumstances, - the situation in England was "not at all comparable with the decentralization across the channel, because the circumstances in which the thegns were given rights in England were different." In England, according to Professor Goebel, thegns "were deliberately worked into the main structure of the law, as this was re-constituted in the course of the tenth century as a part of the policy of strong kings".² Professor Geobel further maintained that the grant of hundredal jurisdiction was a rare judicial privilege. Thus, Professor Goebel holds that a grant of sake and soke was merely fiscal; "it is", he has written, "the profits from pleas collected in the hundred for the king by the local officer that a sac and soc grantee is favoured".³

Professor Goebel's views have not been accepted by other historians, however, Dr. Cam, in her review of his book,⁴ criticised his assessment of the continental evidence and the validity of using it as a model for what would have occurred in England if courts had been held by private individuals. She also noted that by admitting that hundredal courts were presided over by private lords, Professor Geobel created something of a flaw in his own argument. Dr. Harmer and Dr. Hurnard both referred to

1 Ibid., p. 342

2 Ibid., p. 359

3 Ibid., p. 371

4 H. M. Cam, in American Historical Review, Vol. 43, 1938, pp. 583-'6.

Professor Goebel's work, but similarly rejected it.¹

The various discussions of sokeright by all these scholars were dominated by problems of jurisdiction:- they considered the very origin of rights of jurisdiction, the judicial prerogatives of the king and the privileges and rights of private lords, jurisdictional immunities and the competence of the courts, the evidence for and against private court holding, and/or the right to the profits of jurisdiction. Certain other commentators, however, have suggested that jurisdiction was only one aspect of soke, and that the term had a wider meaning and was used to denote fiscal and labour dues which were owed to the king as part of the royal farm, but which could be granted by the king to others.

Ballard seems to have been the first scholar to suggest such a wider meaning for soke. Working on the Domesday material, and discussing the various services and dues owed by the sokemen, he thought it "permissible to suggest that 'soke' was the term applied to those services which were rendered by both freemen and sokemen alike to the king or their lords in respect of their lands, hence we understand how the soke of a hundred could be annexed to a manor

1 Stenton did not apparently know of Professor Goebel's book. A reference to it has not been noticed in any of his writings, it is not cited in Anglo-Saxon England which first appeared in 1942, five years after Felony and Misdemeanor, Vol. I, nor is it mentioned in the second edition, although this contains additional footnotes. Nonetheless, Stenton was certainly aware of the problem of private court holding, and it is possible that he had simply dismissed Professor Goebel's case as unproven.

the provisions and services rendered by the sokemen within those hundreds were delivered and performed at the manor to which they were annexed".¹

Vinogradoff also believed that soke had a range of meaning beyond jurisdiction. He began his account of sake and soke with a literal translation of the two words. "The first", he wrote, "points to the deciding of cases (sake); the second to the suit the men subjected to the jurisdiction which had to do with the court. Thus sake and soke is literally cause and suit, a very appropriate conjunction of terms, which lays stress both on the passive and the active side of the relation which was created by the franchise for those who came under its application. They had to submit to decisions and they had to attend a private tribunal competent to give such decisions, and eventually to take part in its jurisdiction as judges or members of inquest juries".² By this more literal approach, Vinogradoff was able to bring out the meaning of soke as suit of court, - the obligation to act as a doomsman when required, - an aspect of the subject which some commentators have neglected. Vinogradoff referred to the problem of court-keeping and/or fine-taking, he thought that both rights were probably given and that "as a rule the grants of sake and soke led to the formation of separate manorial courts, since, in Domesday Book the lagmen of Lincoln and

1 A. Ballard, The Domesday Inquest, (London, 1906), p. 117
 2 P. Vinogradoff, English Society in the Eleventh Century (Oxford, 1968 edition), pp. 115-116.

Stamford are said to have sake and soke, and, according to Vinogradoff, they were "laymen - judges, a common Scandinavian expression for persons exercising the right of declaring the law and administering justice".¹ He then went on to observe that "the juridical side of jurisdiction cannot be conveniently separated from its fiscal side", and, echoing Maitland, commented that "those who get the profits have to do the work".² He suggested, however, that the profits of sokeright did not derive completely from judicial suits and fines. "There is", he wrote, "a source of difficulty in interpretation and of ambiguity in the use of the term. Although the intimate connexion with jurisdiction is sufficiently clear in most cases, in some the term 'soke', is taken to imply all the rights accruing to the king from his subjects. These include claims on their assistance for mustering the host, contributions to royal progresses and farms of right and possibly some rents and services. By granting the soke the king may grant all such rights or a part of them". Vinogradoff noted a phrase in an Ely charter - socna to anre niht feorme which he said "points to contributions in kind to a knight's farm",³ he also cited a particular entry in Domesday concerning Worcester:- Brictric reddebat ad socam episcopi

1 Ibid., pp. 117-118

2 Ibid., p. 119. cf. D.B.B. p. 327

3 Ibid., p. 122, n.1. See below for his mistranslation of niht as "knight" instead of "night", p. 72

quicquid debebat ad servitium regis¹ and suggested tentatively that "The expression 'soke' in this case may be stretched to a somewhat wider extent than usual, or else it may be simply an inexact rendering of the usual surrender of jurisdiction".² He explained the apparent "ambiguity" of stretching the application of the term "soke" beyond the field of jurisdiction by suggesting that "proceeds of jurisdiction stood on a par with agricultural rents and services as a source of income at the disposal of the authorities",³ and that "The jurisdictional privilege of the lord crossed, as it were, other lines of superiority which led to the collection of dues and profits, and it was by no means easy to disentangle the meshes of these concurrent rights to exploitation, especially as they resembled each other very much in concrete particulars and were very often wielded by the same person".⁴

This idea of a wider meaning of soke was taken up by Professor Davis. In the course of preparing an edition of the Kalendar of Abbot Samson of Bury St. Edmund's, he came to the conclusion that 'soke', as used in Domesday Book, meant far more than jurisdiction. The fairest translation of it would be 'customs which the aforesaid land owes to the king'. Thus the grant of hundredal soke carried with it judicial rights, - the profits of justice, the right to preside in the court, and deriving from the responsibility for

1 D.B. I, f. 173
 2 P. Vinogradoff, op. cit., p. 131
 3 Ibid., p. 122
 4 Ibid., p. 126.

holding the court, the right to enforce the attendance of suitors or to receive a payment in lieu of suit, but the right to royal dues and services was also given, and these came to be commuted into regular payments - wardpenny, averpenny, hidage, and foddercorn - which, in the Kalendar are said to be paid "to the hundred".¹

Other more recent historians have been able to use and comment on the work of all these scholars. The late Professor Cam supported Maitland and Stenton against Professor Goebel, that soke gave the right to preside in a court.² She doubted Maitland's views on the weakness of royal authority in the Anglo-Saxon period, however. For her the explicit reference to certain pleas in the laws, writs and charters reflects, not an irresponsible surrender of royal rights, but "the need to define the scope of the rights".³ The "well-endowed immunist" of the eleventh century, who, according to Maitland, enjoyed "jurisdiction as high as that which any palatine earl of after ages",⁴ in Professor Cam's view "is fiction, not fact".⁵ She commented that Dr. Hurnard, in her articles on Anglo-Norman franchises "has made out a good case for the limited scope of these rights",⁶ but she noted that Dr. Hurnard's final conclusions are somewhat uncertain, since she "uses the term 'criminal' without defining its meaning as applied to

1 Kalendar of Abbot Samson of Bury St. Edmund's and Related Documents, ed. R.H.C. Davis, Camden Society, 3rd Ser., LXXXIV, 1954, pp. XL ff. Hereinafter cited as Kalendar.

2 H.M. Cam, Law-Finders and Law-Makers in Medieval England, (London, 1962), p. 26

3 Ibid., p. 22.

4 D.B.B. p. 333

5 H.M. Cam, Op. cit., p. 30

6 i.e. of sake and soke and the accompanying pleas.

eleventh century justice".¹ Professor Cam cited and supported Professor Davis' views on the wider meaning of soke, but she believed that he had over-emphasised it, at the expense of the judicial side. She wrote, "It has long been recognised that the king's rights in the area frequently, if not invariably, included the receipt of various ancient customary dues, deriving, most probably, from the primitive right to feorm or entertainment", but her idea of soke was more purely jurisdictional.

Professor Cam discussed the problem of the meaning of soke with Dr. Harmer,² and the latter's views were also biased in the direction of judicial privileges. Dr. Harmer cited the works of Maitland, Stenton, Professor Goebel and Dr. Hurnard, and while protesting that the controversy over meaning was outside the scope of her work on the Anglo-Saxon writs, she concluded that sake and soke "stands probably for the right to hold a private court to deal with offences committed by persons to whom the grant relates, but at all events for the right to receive the profits of justice arising from the cases in which the persons to whom the grant relates were involved".³ Her translation of

1 Ibid., p. 27

2 F.E. Harmer, Anglo-Saxon Writs, (Manchester, 1952), p. 126 n.4. Hereinafter cited as Writs.

3 Ibid., p. 74.

sacu and socn in the writs themselves is "judicial and financial rights".

Professor Barrow's work on soke stressed the importance of the wider meaning. He has written:- "The term 'soke' is usually translated by "jurisdiction". The modern term is almost certainly too precise and too exclusively connected with the holding of courts of law to convey the fuller and vaguer meaning of the Anglo-Saxon origin". Then, citing Professor Davis, he continued, "It has been suggested that 'soke' in fact represented all that was owed to the king from a given area of land payable by the free men settled upon it. Of course, this would include the obligation of attending the king's court, but it would involve various payments and services in addition, such as guarding the king whenever he stayed in the district, carrying food renders to the royal manor, mowing hay for the royal horses, fodder and so forth. The Old-English kings had often granted away to bishops and thanes the right to receive these essentially royal dues. Hence the sokemen might be directly subject either to the king or to a great territorial lord".¹

Stenton seems to have missed altogether the possibility that soke had a wider meaning. He wrote in 1910 that the large territorial sokes originated in grants of "the king's rights over all the unattached freemen dwelling within a given wapentake",² but he failed to follow up the implications

1 G.W.S.Barrow, Feudal Britain, (London, 1965), p. 24
 2 F.M.Stenton, Types of Manorial Structure in the Northern Danelaw, (Oxford, 1910), p. 45.

of his statement, and to his cost, adopted a very narrow jurisdictional view which caused him certain problems of interpretation.¹ Stenton did not refer to Professor Davis' remarks in his book The Latin Charters of the Anglo-Saxon Period which contains some brief comments on soke and which was published one year after the Kalendar of Abbot Samson,² nor were any changes made in the light of Professor Davis' work, for the second edition of Anglo-Saxon England.

There are, therefore, several problems to be considered in the study of sokeright. We must first define the phrase sake and soke and decide if the standard definition, "a right of jurisdiction" is acceptable, or if it could be improved, - particularly relevant here will be the wider non-jurisdictional range of meaning. There is then the problem of interpretation. We will consider the judicial aspects of soke, and especially the issue of fine-taking and/or court-keeping in the light of evidence from both before and after the Conquest. The non-judicial meaning of soke will also be discussed by examining the services and dues associated with it. Because of this wider range of meaning the study of sokeright leads to consideration of the sokemen, - the tenants who characteristically render these services, and also of socage, - the tenure whose name derives from soke, and whose incidents were based on the conditions of tenure which prevailed in England at the time of the Conquest.

1 E.g. Oswald's memorandum - see A.S.E. pp. 488-'9 and certain passages in Lincolnshire Domesday - also below pp. 78 pp

2 F.M. Stenton, The Latin Charters of the Anglo-Saxon Period (Oxford, 1955), pp. 67-'8.

The evidence for this thesis has been derived from printed sources, for the subject is very wide ranging and all the essential material is available in print. Bosworth-Toller cite a number of references which illustrate some of the more general meanings of sacu and socn in the Anglo-Saxon period. The Oxford English Dictionary contains numerous examples from later sources, and the Oxford Dialect Dictionary includes some regional meanings. Some of the references cited below have been taken from these three authorities, others have been observed in the course of general reading. Sacu, socn and the formula "sake and soke" occur in a judicial sense in laws, writs and some charters. All the known examples from before the Conquest have been discussed here, and many of those from the twelfth and thirteenth centuries have been cited. In themselves they do not solve the problem of the meaning of sake and soke; it has been necessary to use the evidence which they provide in conjunction with a more general survey of judicial authority in early times. Again, all the charters which suggest immunity from royal authority have been discussed.

The evidence for sake as sokeland and service derives largely from a small number of references in pre-Conquest documents. All these have been discussed. A number of examples from Domesday Book have been added, but they are more ambiguous, and could be interpreted as implying or including judicial rights, as well as services.

Domesday also provides a limited amount of evidence for the dues and services of sokemen. More useful, however, for

this aspect of the thesis are the later extents of monasteries which have been cited below. We have argued that there is a difference between sokemen and liberi homines. This depends heavily on the cases in Domesday where liberi homines are said to have been "added to manors". Again, all the examples which have been noticed are referred to here. The maps showing Domesday population density and the distribution of sokemen recorded in Domesday Book have been compiled from Mr. Darby's series of Domesday Geographies. We have argued that the distribution map is certainly misleading and it would be interesting, in this connection, to compile a map of sokemen recorded in the Hundred Rolls.

The legal aspects of the thesis, - the problems of ancient demesne and socage tenure, use evidence from the Leis Willelme, the law books of Glanvill and Bracton and the Curia Regis Rolls. There are numerous cases of socage in the Curia Regis Rolls and they show that both litigants and lawyers were entirely familiar with the incidents of the tenure. It seems, especially from Glanvill, that it was the military tenures which were a source of difficulty.

The words sacu and socn have been spelt in many different ways since the Anglo-Saxon period, but since the time of Maitland the modernized forms "sake" and "soke" have been more commonly used, and they have been adopted here.

PART I

The Meaning of Soke.

CHAPTER 1

The Meanings of Sacu, Socn,

and

"Sake and Soke".¹

The two words "sake" and "soke", Old English sacu and socn, were sometimes used independently in pre-Conquest sources. They may be literally translated as a "cause" and a "seeking", and they could be appropriate to a variety of contexts, not all of them judicial. Here we will consider the etymologies of the two words and some of their non-judicial meanings; we will then also try to show that they could be defined in a more specialized legal manner as a "judicial plea", and as "suit to a court of law"; and finally we will consider how and why they come together to form the familiar phrase "sake and soke".

Old English sacu is an abstract noun related to the verb sacan.² It is derived from Old Teutonic * saka and has cognate forms in other Germanic languages.

Middle Low German and	-	cause, reason, affair, guilt,
Middle Dutch <u>sake</u>		lawsuit.
Dutch, <u>zaak</u>	-	cause, sake, thing, lawsuit.
Old High German, <u>sahha</u>	-	cause, sake, thing.
Old Norse, <u>sok</u>	-	cause, sake, action at law, crime accusation.

1 I am greatly indebted to Professor E.G. Stanley for his help in the linguistic problems of sake and soke.

2 For the origin of O.E. -u ending of abstract nouns see F. Kluge, Nominale Stammbildungslehre der altgermansichen Dialekte, (Hallé, 1926), c. 108. I am indebted to Professor Stanley for this reference.

- Swedish, sak - cause, sake, action at law,
crime, accusation.
- Danish, sag - cause, sake action at law,
crime, accusation.
- Old Frisian, sake, seke - affair, thing, sake.
- Old Saxon, saka - thing, enmity, guilt, lawsuit.¹

It can be immediately seen that there is a distinctly judicial bias in the definition of "sake" in all these languages, and with the possible exceptions of Old High German and Old Frisian, the word can be defined as a lawsuit, - a cause which has been taken to law. However, there is also a more general undercurrent of meaning, whereby "sake" is a cause or dispute of any kind. Two passages from Beowulf can be used to illustrate this latter sense for English sacu. When Hrothgar bids farewell to Beowulf and his companions, he says that the conflict between their two peoples is now at an end:-

Hafast þu gefered þaet þam folcum sceal
Geata leodum and Gar - Denum
sib gemaenum and sacu restan²

Sacu is also the word used to denote the conflict which broke out again between the Geats and the Swedes after Hrethel's death. Peace had continued while he lived, but when he died

1 See Oxford English Dictionary, Vol. IX, s.v. sake. It can be seen from the Introduction to the Supplement that the section concerning "sake" was ready for publication in June, 1909. Works which may have been consulted are Liebermann's Gesetze Vol. II, which appeared in 1906, and Bosworth-Toller which appeared in 1898.

2 "You have brought a mutual peace to our peoples, the Geats and the Danes, conflicts are laid aside". Beowulf with the Finnesburg Fragment, lines 1855-7, ed. C.L. Wren (London, 1953, reprinted 1969).

þa waes synn and sacu.¹

Wulfstan uses sacu in a more particular sense of a legal conflict in his homilies. In De falsis diis he writes His sunu hatte Mars, se macode saca and wracca, he styrede gelome.² This is derived from a homily by Aelfric and is a translation of the passage Martem...qui fuit litigiorum et discordae commissor,³ and it might be translated into modern English as "His son is called Mars the Thunderer, he ever stirs up wrangling and discord." A more general sense is suggested by a passage concerning the end of the world in Secundum Marcum in which Wulfstan writes:- And þeodscypas winnoð and sacað heom betweonas foran to þam timan þe þis sceal geweorþan eac sceal aspringan wide and side, sacu and clacu, hol and hete.⁴

The general sense of conflict was understood in the post-Conquest period. Several glosses of Wulfstan's works survive, and one of these, in the so-called "tremulous hand", was written at Worcester in the late twelfth century.⁵ It glosses sacað and sacu in the passage from Secundum Marcum as contenderunt and contentio, while a Middle English gloss of the fifteenth century⁶ has werreth for sacað and hate for

1 Ibid., line 2427. "there were disputes and conflicts".

2 D. Bethurum, The Homilies of Wulfstan, (Oxford, 1957), p. 104.

3 See J.C. Pope, The Homilies of Aelfric, Orig. Ser., Early English Text Society, 260, 1968, p. 683.

4 "And people strive and war amongst themselves, until this time comes, everywhere there will be conflict and fear, enmity and hate". D. Bethurum, op. cit., p. 140.

5 It is 'E' in Miss Bethurum's edition, see Ibid., pp. 104-

6 Called 'H', Ibid., Loc. cit.

sacu. But the specialized legal meaning seems always to have been more prominent. Aelfric uses sacu, not in the context of a war between different peoples as in *Beowulf*, but to denote a quarrel which might arise between neighbours. He writes of the sacu betwux Abrames hyrdemannum and Lothes,¹ and of the dangers which might arise when there is strife between a king and his people:- Gif se woruldlica cyning wind wid his leoda and þe leoda wideriad wid heora cynehlaford, þonne cymd heora sacu him to aworpennysse.² In one of his homilies he was explicit:- Drihten us gehyrte mid þam ðe he cwaed, "þonne ge gehyrad on middanearde gefeoht and sace ne beo ge afyrhte". Gefeoht belimpd to feondum, and sacu to ceastergewarum. Mid þam wordum he gebicnode þaet we scedon þolian wid utan gewinn fram urum feondum and eac wid innan, fram urum nehgebrum, ladlice ungedwaernysa.³ Thus to Aelfric, gefeoht is the appropriate word for warring peoples, whereas sacu refers to querulous citizens.⁴

1 Aelfric's Genesis, ed. S.J.Crawford, Early English Text Society, Vol. 160, (London, 1922), xiii, 7.

2 "If an earthly king fights against his people, and a people fight against their royal lord, their strife will result in their destruction." Sermon IV Dominica III in Quadrage lines 101-3. Early English Text Society, (Oxford, 1967-'8 pp. 269-70.

3 Our Lord exhorts us when he says, "When you hear of fighting and quarrelling in the world, do not be afraid". Fighting refers to enemies, quarrelling to citizens. With these words he teaches us that we should endure fighting from our enemies, and resist them, from our neighbours we must regretfully endure quarrelsomeness". Homily on the Nativi of the Holy Martyrs, The Homilies of Aelfric, ed. B. Thorp (London, 1846), Vol II p. 538.

4 This also seems to apply to O.H.G., see E.G.Graff, Althochdeutscher Sprachschatz, VI, (1842), cols, 74f. The O.H.G. cognate verb meant "to contend, be contentious" and this did not extend to fighting proper. Old Saxon verse has only one occurrence, Heliand, 3230, where it is possibly "rebuke", or more probably "blame". I am indebted to Professor Stanley for this note.

Sacu appears in the lawcodes as the word for a lawsuit, - a conflict which has been brought to court for trial. The code of Hlothere and Eadric lays down that Gif man oþerne sace tihte 7 he þane mannan mote and medle oþþe an þinge, symble se man þam oðrum byrigean geselle,¹ and if the surety is not provided, a fine must be paid and seo sacy swa open swa hio aer wes.² When the surety has been given, the parties find an arbitrator and Sippan sio sace gesemed sio; an seofan nihtum se man þam oþrum riht gedo.³ Later, in the laws of Aethelred and Cnut, it is laid down that there should be peace among men on holy days and aelc sacu getwaemed.⁴ That the disputes which were to be "laid aside" are specifically lawsuits, is suggested by the accompanying stipulations which forbid the holding of folkmoots and ordeals, and the taking of oaths on holy days.⁵

Sacu occurs in a legal context in certain charters.

An early eleventh century charter describes a case in the

- 1 If one man brings a charge against another, and if he meets the man (whom he accused) at an assembly or meeting, the latter shall always provide the former with a surety.
- 2 The suit shall be considered as open as it was before.
- 3 Hlothere and Eadric, cc. 8-10. See The Laws of the Earliest English Kings, ed. F. L. Attenborough, (Cambridge, 1922) p. 20, and from whom the translations are taken. Hereinaft to be cited as Attenborough, Laws. Attenborough suggested sacu for sacy in c.9 - Ibid., p. 180, but Mr. Sisam pointed out that since sace appears elsewhere in the code:- e.g. cc. 8 and 10 as quoted, and since forms such as folcy for fo are common in the manuscript - The Textus Roffensis, in which the code occurs, it is more likely that -y is a mechanical substitution by a Kentish scribe for -e, - see Mr. Sisam's review of Attenborough's edition in Modern Language Review Vol. 18, 1923, p. 100.
- 4 V Aethelred, 19, repeated in VI Aethelred 25, and also I Cnut 17 2
- 5 For folkmoots - folcgemota, see V Aethelred, 13; VI, 22 I; 44. ICnut, 14 2. For oaths and ordeals, V Aethelred, 18; VI, 25. I Cnut, 17.

shirecourt over the Worcester estate of Inkberrow, which was amicably concluded when the friends of both sides urged that hit betaere waere þæt heora seht togaed dre wūrde þonne hy aenige sace hym betweonan heoldan.¹ A document of Edgar's reign records an adjustment of boundaries made between the monasteries in Winchester, þæt nan ðera mynsteras þær binnan þurh þet rymet wið oðrum sace naefde.² That the quarrels were probably lawsuits is suggested by the whole nature of the occasion, for the adjustment, was made at the order of Edgar, surely to avoid burdening the courts with disputes, since ecclesiastics were ever among the most litigious of a king's subjects.

Socn is the abstract noun of secan. It too has cognate forms in other languages:-

- 1 "It would be better for them to come to an agreement than to keep up any quarrel between them". S. 1460. Quoted in Anglo-Saxon Charters, ed. A. J. Robertson, (Cambridge, 1956), hereinafter cited as Robertson, Charters, no. LXXXIII, p. 162, lines 25-26, from whom the translation is taken.
- 2 "So that none of the monasteries involved should have any quarrel with any other". B. 1163 = S. 1449. Robertson, Charters, no. XLII, p. 102, lines 11-13.

Old Norse,	<u>sókn</u>	- search, enquiry.
Old Icelandic,	<u>sókn</u>	- search, enquiry.
Gothic,	<u>sókns</u>	- search, enquiry.
Old High German	<u>söhni</u>	- search, enquiry. ¹

Socn can be a seeking with hostile intent. In Beowulf, Hrothgar says that he protected the Danes against all dangers, but then Grendel came,

eald gewinna ingenga min;
ic þaere socne singales waeg
mod - ceare micle²

The compound hamsocn means "an attack or inroad on a person's home",³ it appears in the laws in conjunction with mundbryce in II Edmund, 6, while the Leges Henrici Primi stress the element of violence by forcible entry into a building to commit an assault.⁴

There is also a rare compound, fyrdsocne, - army service, - the seeking or joining of the fyrd. This has been noticed in two charters. An authentic charter of Edward the Confessor grants privileges to Horton Abbey, but reserves the three national burdens, describing them as fyrdsocne 7 burhgeweorce 7 bricggeweorce,⁵ and a much earlier grant of Aethelred of

- 1 O.E.D., Vol IX, s.v. soken. The verbs secan and sacan are probably ultimately related, S. Feist, - Etymologisches Wörterbuch der gotischen Sprache, (Hallé, 1909) s.v.v. sakan, sokjan. Professor Stanley has informed me that "an original sac- had a lengthened grade found in the abstract socn and its cognates, and in secan and its cognates, while the normal grade survives in the verb sacan and cognates, as well as sacu and cognates.
- 2 Beowulf, lines 1776-8, "my old, ravaging enemy, from whom I look for endless care and anxiety".
- 3 Robertson, Laws, p. 297.
- 4 Leges Henrici Primi, ed. L.J. Downer, (Oxford, 1972), cc. 8, 10-11c. hereinafter cited as L.H.P.
- 5 K. 1341=S.1032. Also Robertson, Charters, no. CXX.

Mercia also refers to the obligation of fyrdsocne.¹

Socn can be a seeking for information - an enquiry.

It is used in this way in a tenth century gloss of Bede as the English equivalent of inquisitionem in the passage:-

Erat in his acer^fimus veri paschae defensor nomine Ronan... Qui cum Finano confligens, multos quidem correxit, vel ad solertiore veritatis inquisitionem accendit nequaquam tamen Finanum emendar potuit.²

After the Conquest, the compound "foldsoke" had developed. The term derived from an Old English expression "fold-seeking" which occurs sporadically in Little Domesday. There were twelve homines at Hillington in Norfolk, and six owed "fold soke" - erant in soca falde;⁴ there were a number of liberi homines at Carlton and others at Flordon who were commended and owed fold soke to Olfo,⁵ while a liber homo at Aldringham in Suffolk held by commendation et socam falde et alia servitia. Soca falde, an alternative expression for sequentes faldam, was the obligation to drive one's sheep into the lord's fold in orde

1 K. 313

2 "Ronan was the most vigorous defender of the true Easter.. He disputed with Finan, and he corrected many, or at least he persuaded them to make more careful enquiry into the truth, but he entirely failed to move Finan," Bede, Historia Ecclesiastica, III c.25. H.D.Meritt, Old English Glosses, (London, 1945), p. 10

3 See Revised Medieval Latin Word-List, (1965), R.E.Latham, s.v. fald/a. Also Middle English Dictionary, H. Kurath and M. Kuhn, (Michigan, 1965), s.v. fald-sok (en).

4 D.B. II? f. 203b

5 sub Olfo commendatione tantum et soca falde sub Olfo saca falde et commendatione tantum. Ibid., f. 187b

6 Ibid., f. 310b. See R. Welldon-Finn, Domesday Studies, The Eastern Countries, (London, 1967), pp. 148-9.

to supplement his supply of manure.

Socn could also be a "seeking for protection" - a sanctuary. In the laws, Edmund forbids homicides from seeking his household:- ic nelle socne habban (þone ðe mannes blod geote) to minum hirede, aer he haebbe godcunde bote underfangen,¹ and Miss Robertson notes that this seeking is "for refuge parallel to the sanctuary provided by the church".² In II, Edmund, 2, it is laid down that Gif hwa cyrcan gesece oððe mine burh 7 hine man ðaer sece oððe yflige - ða ðe ðaet don syn ðaes ylcon scyldige.³

At first sight, it seems contradictory to deny the right of sanctuary to those who had most need of it, however, it is possible that it is only homicides who are so cut off from the king's protection. They would be under threat of vendetta, and kings were always particularly concerned to maintain peace and order in their immediate households.

Sanctuary was most often associated with churches, and there is a compound word ciricsocn, "church-seeking", which can be understood in two ways, in the ordinary sense of church-going, and in an applied sense, where the seeking brings

1 II Edmund 4. The translation in Robertson, Laws, is "I declare that I forbid anyone (who commits homicide) to have right of access to my household, until he has undertaken to make amends as the church requires." p. 11. Cf. I Edmund, 3., where the stipulation is repeated, but the term socn is not used.

2 Ibid., p. 296

3 "If anyone flees to a church or to my premises, and anyone attacks or injures him there, those who do so shall incur the penalty".

sanctuary and refuge. Wulfstan's homilies illustrate the former usage. In De dedicatione ecclesiae he writes:- And swiðe micel þearf is eac þæt cristene men þaene egesan aefre ne dreogan þæt hy deofolgyld ah war weordian, forþam ne fremed aenig cyricsocn aefre aenigum þera þe þæt ober dryhd butan he geswice 7 þe deoppor gebete,¹ and in his Sermo ad Populum he writes Utan gyman þæt we urne cristendom claenlice gehealdan.....lufian cyricsocne daeges 7 nihtes, oft 7 gelome.² Wulfstan also probably wrote VII Aethelred,³ and this orders a three day fast during which time slaves beon weorces gefreode wið ciricsocne 7 wið ðam þe hi þæt faesten þe lustlicor gefaestan.⁴ In these examples the plain meaning of "going to church" is evidently intended.

Ciricsocne could also be used, however, to denote sanctuary. The verb commonly used for the seeking of sanctuary was secan, and thus it was an obvious development to take the expression using the verb, "to seek sanctuary", and shorten it somewhat by speaking of "church-seeking".

- 1 "And there is a very great need that Christian men everywhere always refrain from fighting for what devils value, because churchgoing never brought any benefit without total renunciation of the devil".
- 2 "It is incumbent upon us that we cling purely to our Christianity, to love churchgoing, frequently and regularly day and night". The Homilies of Wulfstan, ed. D. Bethurum De dedicatione ecclesiae, p. 248 Sermo ad Populum, p. 229.
- 3 English Historical Documents, Vol. 1, c. 500-1042, ed. D. Whitelock, (London, 1968), p. 409. Hereinafter to be cited as E.H.D. I.
- 4 "shall be exempt from work in order to attend church and keep the fast more willingly". VII Aethelred. 5 1

The laws of Ine contain a passage headed Be ciricsocnum, which describes the right of sanctuary as it was in his day:- Gif hwa sie deaðes scyldig 7 he cirican geierne, haebbe his feorh 7 bete, swa him ryht wisige.¹ The heading is one of many other similar titles which are placed directly above particular clauses in the code. Be ciricsocnum occurs in a manuscript, C.C.C. 383,² which dates from the early twelfth century and also in the earliest and best version, C.C.C. 173, which dates from the mid-tenth century and is referred to as "E". Alfred's laws also contain a number of headings for particular sections, but in "E" they appear together in the form of a table of contents, and here it is not Be ciricsocnum but Be ciricene fride. The phrase in Ine's laws for church-seeking is cirican geierne, and the verb secan is not always used in the clauses in Alfred. The chapter headed Be ciricene fride runs:- we settad aeghwelcere cirican, de biscep gehalgode, dis frid: gif hie fahmon geierne odde geaerne, þaet hine seofan nihtum nan mon ut ne teo.³ A sub-section of the chapter does use secan:- ciric frid is granted gif hwelc mon cirican gesece for dara gylta hwylcum, para de aer geyped naere 7 hine daer on Godes naman geandette,⁴ but even here, one manuscript, Canterbury Cathedral Library, no. 8,⁵ has geyrne

- 1 Ine, 5 1. We are here concerned with vocabulary, translations are given below where the law itself is discussed. See pp. 173 pp
- 2 Called "B" by Attenborough, see p. xi of his edition.
- 3 Alfred, c. 5.
- 4 Ibid., c5 4.
- 5 Called "So" by Attenborough.

not gesece. This manuscript is a seventeenth century text, but the transcript was made by Somner and it is likely, therefore, to be accurate. A general clause confirming the rights of sanctuary uses the phrase cirican geierne,¹ but an earlier clause uses secan:— Gif hwa para mynsterhama hwelcne for hwelcere scylde gesece.²

Thus, socn can be a "seeking", a "going" to church, but the overtones of sanctuary are strong in the laws, and it seems that secan was gradually becoming the normal verb in the laws for seeking sanctuary.

Rights of sanctuary are not mentioned in the laws of Edward the Elder, but by the time of Aethelstan, a change can be seen in the language of the law codes. They are in general far more rhythmic and quasi-poetic. Nowhere is this more apparent than in the vocabulary for the law on sanctuary, which makes repeated use of secan. In the Anglo-Saxon fragment of IV Aethelstan, which has survived, we read:—

- 6 1 gif hwilc þeof odde reafere gesohte þone cing oppe
hwylce cyrican 7 þone biscop þæt he haebbe nigon
nihta fyrst.
- 2 7 gif he ealderman odde abbud oppe ðegen sece, haebbe
ðeora nihta fyrst.
- 3 7 gif hine^{hwa} lecge binnan ðæm fyrste, þonne gebete
he þæs mundbyrde ðe he ðer sohte, oppe he hine twelfa
sum ladige, þæt he þa socne nyste.

1 Alfred.c.42,2.

2 Ibid., c.2.

4 7 sece swylce socne swylce he sece, þæt he ne sy his feores wyrðe, butan swa feola nihta swa we her beufan cwaedon.

5 7 se ðe hine ofer þæt feormige sy ðæs ilcan wyrðe þæs ðe se ðeof, butan he hine ladian meage, ðæt he him nan facn ne nane ðrifpe on cyste.¹

Secan is insistently used; moreover, a legal jingle has emerged:- sece swylce socne swylce he sece.²

Similar expressions occur in Edgar's codes:- in III Edgar c.7, 3 a section dealing with theft and treason - gesece se aebaera þeof þæt þæt he gesece, and in IV Edgar. c.9 a section concerned with sale of goods made without adequate safeguards, the perpetrators may be punished and ðæs ne sy nan forgyfnes gesecean þæt hi gesecean. Aelfric glossed socn as "san^ctuary" in his Grammar. He wrote:- ic sece socne, refugi (o), refugitum, (of ðam is refugium socn).³

It is to the repeated use of the verb secan in connexion with church going, that we may attribute the origin of the compound ciricsocna. If one uses the verb, "to seek a church", one may also use a compound noun and speak of "church-seeking"; one changes the verb into the noun and the thing sought is socn, a "seeking", and "church-seeking" becomes ciricsocne. Wulfstan uses the term in the ordinary sense of church-going, for he also uses secan as his verb. In his Sermo in XL he writes:- Ac sece gehwa his cyrican georne mid ðaen an gedance 7 daeghwamlice maes^san, and in De dedicatione ecclesiae he says sodlice swa oft swa men cyrican secad,

1 IV, Aethelstan, 6, 1 - 5

2 Ibid., c6 4

3 Aelpric's Grammatik und Glossar, ed. J. Zupitza, (Berlin, Zurich, Dublin, 1966) p. 179.

gode englas of heofenum lociað georne on hwylce wisan by
man sece.¹ The "tremulous hand" uses refugium for cyricsocne
in the passage already quoted from Sermo ad populum:- Utan
gyman þaet we urne crisdendom claenlice gehealdan...lufian
cyricsocne daeges 7 nihtes, oft gelome,² but this is surely a
mistaken interpretation. Wulfstan's intention was one of
general exhortation, and to seek sanctuary day and night scarcely
conveys his meaning accurately. The Latin version of IV Aethelstan
shows that by the twelfth century socn was understood to mean a
"refuge", rather than general "church-going", for it is there
laid down that thieves will be slain, nullo modo vita dignus
habeatur: non per socnam, non per pecuniam.³

One strand of meaning for socn, therefore, is sanctuary,
and since we are discussing sokeright, this falls, marginally
at least, within the brief of our thesis. Sanctuary was the
one means by which the criminal could escape the rigours
of the law. It was hoped, perhaps, that anyone who fled to
a church was repentant, even reformed. Ine extends the right
of sanctuary to all who were under sentence of death,⁴
this would include those who had fought in the king's house,⁵
convicted thieves,⁶ as well as homicides who became liable

1 The Homilies of Wulfstan, ed. D. Bethurum, pp. 233 and 247.

2 Ibid., p. 229. See above p.38

3 IV Aethelstan, c.6.

4 Ine, c.5.

5 Ibid., c.6.

6 Ibid., c.12

to vendetta. Also protected are slaves who work on Sunday,¹ or who have committed theft,² and Welsh slaves (Witedeowne), who have been accused of homicide,³ - all of whom may be sentenced to a flogging.⁴ The laws of sanctuary are set out in greater detail by Alfred, and there the rights of sanctuary are said to vary according to the type of church at which they are claimed. Every church consecrated by a bishop, every monastery which is entitled to take the royal farm for itself, and every other community which is similarly free from the obligation to render farm, can provide sanctuary.⁵ The latter two provide sanctuary for only three days, but consecrated churches may protect the criminal for seven, although he is not fed during this time - this is presumably the ecclesiastical penance of fasting.⁶ Anyone who violates the sanctuary is liable to fines for breach of the church's frid and the king's right of guardianship,⁷ and, in the case of monasteries and privileged communities, any violence perpetrated on the criminal must also be compensated.⁸

1 Ibid., c.3, 1.

2 Ibid., c. 48.

3 Ibid., c. 54, 2.

4 Ibid., c. 5, 1.

5 Alfred, cc. 5, and 2, Clause 2 reads, monasteries be cyninges feorm to belimpe, odde oderne frione hiered be arwyrdē sie. Attenborough also interprets it as "Free, i.e. exempt from certain payments to the king, or, perhaps more generally, privileged". Attenborough, Laws. p. 194.

6 Alfred, c. 5, 2.

7 cyninges mundbyrde, Ibid., c. 5.

8 Ibid., c. 2, 1.

Rights of sanctuary are also extended to undetected criminals:- "If anyone takes refuge in a church, because of any offence which up to that time had been kept secret, and there confesses his sin in God's name, half the punishment shall be remitted him".¹ Thus criminals are encouraged to confess their crimes, no doubt in the hope that this will alleviate the burden on the community, by reducing both the number of unsolved cases, and the amount of time taken to solve a case. A criminal may confess before he is found out, the danger of convicting an innocent person would also be reduced. In other decrees concerning sanctuary, Alfred is clearly trying to protect both the criminal, and the community at large, from the malignant growth of vendetta. The rights of the opposing kin to revenge are not abrogated, the vendetta might still run its course,² but every opportunity is given for a peaceful settlement. It is envisaged that the criminal might be able to come to terms with his enemy.³ If he surrenders his weapons to his enemies, thus demonstrating that he intends them no harm, the period of respite is extended to thirty days. During this time they will hold the criminal themselves and seek out his kin, surely in order to enter into negotiations with them.⁴

Rights of sanctuary are described in some detail again in Aethelstan's laws. The period of respite of three days which, in Alfred's laws, is said to be provided by monasteries

1 Ibid., c.5,4 .

2 See D. Whitelock, The Audience of Beowulf, (Oxford, 1951), pp. 16ff, for one such vendetta.

3 Alfred, c.2.

4 Ibid., c.5,3.

and "other free communities", is personalized in Aethelstan's code as an ealdorman, an abbot or a thegn.¹ The period of seven days provided by consecrated churches, is extended to nine days, and the grantors are defined as "the king, or any church, or the bishop".² Under Aethelstan's law, however it seems that a thief must die,³ for "let him seek what sanctuary he may" his life will not be spared.⁴ He gains time, but only to save his soul, and indeed anyone who harbours him longer than the permitted time, himself becomes liable to the death penalty.⁵ This may not be unduly ~~w~~reckless on Aethelstan's part, for he had already decreed that the vendetta must not be waged for the executed thief,⁶ and if he could enforce this, he could enforce the rest. Aethelstan's policy was evidently a successful deterrent, for Edmund refers to "the immunity from thefts which we now enjoy".⁷

Edmund apparently, did not change the laws concerning sanctuary.⁸ Edgar similarly endorsed the previous regulations,⁹ although he was prepared to concede that thieves might be personally pardoned by the king.¹⁰ Aethelred, while

- 1 IV Aethelstan, c.6.2, presumably the ealdormen and thegns were lords of the free communities of households.
 2 Ibid., c.6,1.
 3 II Aethelstan, c.1. But see below that this may not happen. pp.177pp
 4 IV Aethelstan, c. 6 4.
 5 Ibid., c.6,5.
 6 II Aethelstan, c.6, 2 and 3.
 7 II Edmind, c.5.
 8 Ibid., cc. 2 and 3.
 9 II Edgar, c.5,3.
 10 III Edgar, c.7, 3.

confirming the generally established principles of sanctuary,¹ set out in more detail the different fines levied, for breaches of sanctuary. This varied according to the status of a particular church, and the nature of the offence committed there.² These regulations were repeated by Cnut.³

The term fridsocn also occurs in the sources. Thus VIII Aethelred c.1, 1, states....And gif aefre aenig man heonan ford Godes ciricgrid swa abrece....þonne sy þaet botleas ... buton þaet gewurde þaet he þanon aetberste 7 swa deope fridsocne gesece þaet se cyninge him þurh þaet feores genne.⁴

Miss Robertson translates fridsocne as "so inviolable a sanctuary",⁵ and this fits both the context and the meaning of the words, for socn is a "seeking" and Old English frid means "peace" or "security", - hence, more literally "so secure a seeking". But the word also appears in Domesday Book, where a different meaning seems likely. In Lincolnshire Domesday we read that the frisoca of Westby belongs in Baydour,⁶ and that Thurlby is frigsoca under Aslac.⁷ Maitland was puzzled by these and other similar references. He commented that, "Whether this stands for "free soken" or, as seems more likely, for "frid soken", soke in matters

- 1 VI Aethelred, c. 4, VII cc. 3 and 4.
- 2 VIII Aethelred cc. 5, and 5 1.
- 3 I Cnut, cc. 2 and 3.
- 4 Repeated in I Cnut, c. 2 and 3.
- 5 Robertson, Laws, p.117.
- 6 D.B. I f. 357 b
- 7 Ibid., f. 346b.

relating to the peace, it seems to mark off one kind of soke from other kinds".¹ The interpretation "soke in matters relating to the peace" is possible in cases where the fridsocne is said to belong to a place. One might envisage a plea for breach of the peace as one of the judicial privileges of that place. It might be that the cases where the land is said to be frigsoca under an individual are a more personalized version of this; or it could be that, whether a person or a place are named, they have the right to give sanctuary to a criminal. However, by the twelfth century, frid had taken on another meaning and could be defined as "free" rather than "peace",² and thus fridsocn could mean "free soke". It is possible that "free soke" is the correct translation and that it refers to a type of tenure, - sokeland which was free, in contrast to the sokeland which was held by certain "villein sokemen". It could also be sokeland which had become free of its obligations to the king and was held by a private individual. The evidence is, however, insufficient to indicate which, if either, of these two possible interpretations is correct.

Another example of a compound noun with socn, is the word hlaforðsocnam. This is a rare expression and indeed it has only been noticed in the Quadripartitus texts of III and IV Aethelstan. III Aethelstan, c. 4, 1 states :- ne dominus libero homini hlaforðsoknam interdicit, si eum recte custodierit. This is repeated in IV Aethelstan, c. 5 :- ne dominus libero homini hlaforðsocnam prohibeat qui ei per omnia rectum fecerit.³

The English texts of these two codes

1 D.B.B. p. 124.

2 Writs, p. 405.

3 "A lord shall not prohibit a free man from seeking for himself a (new) lord, if he has conducted himself rightly". Attenborough, Laws, p. 145.

have not survived, and it is possible that hlaforðsoċn is a compound coined in later times.¹ Whenever the development occurred, the term hlaforðsoċn can be traced to the use of seċan in the laws for "to seek a lord". V Aethelstan, c. 1. lays down that a man who has been unjustly harassed by his lord may go to the folkmoot to clear himself of any suspicion of guilt, and gif he laþleas beo, sece swylcne hlaforð on þa gewitnesse swylcne he wille; forðy þe ic an, ðæt aelc ðara þe laþleas beo, folgie swilcum hlaforðe swylcum he wille.² The verb is similarly used in Alfred c. 37, where it is laid down that the ealdormen must be notified Gif mon wille of boldgetate in oðer boldgetael hlaforð seċan.³ Again, as with ċiricsoċn, the syntax could be altered, and soċn could be used instead of seċan.

The last two meanings of soke with their prefixes ċiric- and hlaforð-, may have a significance vis-à-vis the judicial sense of soċn. The use of clarifying words in this way could be due to one of two things: it could be that soċn was always a term of so wide a meaning that qualifying words were thought necessary, or it could be that the sense of soċn had narrowed in the course of time, and have taken on

- 1 Liebermann, however, maintained that it was an English term taken over into the Latin version. Gesetze, III p. 110
- 2 "If he proves himself free from crime, he may seek, with the witness of those present, any lord he wishes; for I give permission to everyone who is free from crime to serve any lord he may wish". Attenborough, Laws, p. 153.
- 3 "if a man wishes (to go) from one district, to seek service in another". Ibid., p. 81.

a more specialized meaning, so that it could no longer be used so easily in any and every context of a search. The latter is more likely. Maitland commented that the word socn "first makes its way into the vocabulary of the law as describing the act of seeking a sanctuary and the protection that a criminal gains by that act".¹ However, in time, these came to be superseded by a different meaning, the socn of most of the medieval period was suit to a court of law, either to plead a case as a litigant, or to judge a case as a doomsman. There is no direct relationship between socn as a sanctuary and socn as a suit, the latter did not grow from the former; rather they both developed from two common factors: firstly, socn was the general word for a "seeking", and secondly, the verb secan was common used in the case of sanctuary, - to denote the seeking of a church, king or lord, and in the case of suit, - to denote the seeking of a court of law.

Socn in the judicial sense of suit occurs in two famous clauses in the laws. In III Aethelred, c. II, it is laid down:- 7 nan man nage nane socne ofer cynges þegen buton cyng sylf, and II, Cnut, c. 71 3, refers to kynges ðegnes heregeata inne mid Denum de his socne haebbe. Modern editors render socne in both cases as "a right of jurisdiction",² but this is an interpretation, not a translation, and we must go more slowly. Aethelred's law may be literally translated as, "And

1 D.B.B. p. 116, n. 2.

2 Robertson, Laws, pp. 69 and 211; E.H.D. I, pp. 404 and 429.

no one shall have the seeking over a king's thegn but the king himself", and Cnut's as "the heriot of the king's thegn who has his seeking, or his right of seeking, among the Danes". Neither clause, in itself, affords a usefully revealing context to take us further. If we follow one of the main strands of meaning of socn, - the temporary sanctuary which a criminal may gain, we are led to the conclusion that Aethelred was claiming that he alone could give sanctuary to his thegns, while Cnut was referring to a class of men who could take, or give, sanctuary among the Danes. The first is unlikely for it would seem to deny a king's thegn the right to seek sanctuary in a church, and it would scarcely encourage men to become royal thegns if they were required to seek the king personally for sanctuary. The other context for socn, - the seeking of a lord, - is also unlikely. The lord of a king's thegn is the king, which would seem to reduce Aethelred's law to mere tautology.

However we can see again that the noun derives from the use of the verb, for secan appears in the laws in the context of seeking for justice. A man may seek the king personally if he has been denied justice elsewhere; - if a lord frustrates the course of justice by taking sides with a criminal, the aggrieved party may seek the king - mon done cing forsece.¹ Secan is the verb for "to seek a court"; it is used in this way in Edgar's hundredal ordinance, each man must seek his hundred:- sece man hundredes gemot swa

1 II, Aethelstan, c. 3

hit geset waes.¹ Seeking the king and seeking the hundred are found together in II Cnut, cc. 17 and 17, 1:- Ne gesece nan man ðonne cyng, buton he ne mote beon nanes rihtes wurde innan his hundrede, and Sece man his hundred. Sece man hundredes gemot be wite, ealswa hit riht is to secanne.²

We noted above that secan was not used in the earlier laws of Ine to denote the seeking of a church for sanctuary, and that it seems to have been gradually adopted during the course of the late ninth and tenth centuries. The same development may have taken place for secan as "to seek justice". The verb used in the Ine is biddan, not secan:- Gif hwa him ryhtes bidde beforan hwelcum scirmen odde oprum deman³. Biddan is also used in Alfred, in the only clause which refers in general to seeking for justice.⁴ In the laws of Aethelstan and Edgar, both biddan and secan occur. In II Aethelstan, c. 3, both verbs are used in the same clause, biddan with reference in general to seeking justice, secan with reference to an appeal to the king:- se ðe done

1 III Edgar, c.5.

2 "no man shall appeal to the king, unless he fails to obtain justice within his hundred. Everyone shall attend his hundred...under pain of a fine, whenever he is required by law to attend it". Robertson, Laws, p. 183.

3 Ine, c.8 "If anyone demands justice in the presence of any 'shireman' or of another judge...." Attenborough, Laws p. 39

4 Alfred, c.42, concerning a man who knows where his enemy is, he must not use violence - aer ðam he him ryhtes bidde - "before demanding justice of him". Attenborough, Laws, p. 83. Secan is always used in Alfred's laws to denote either seeking a sanctuary or a lord, as we have seen above pp. 39 ff

cyng sece aer he him ryhtes bidde swa oft swa him togebyrie,¹
 and this occurs again in III Edgar, c.2:- ne gesece nan man
pone cyngc for nanre spraece, buton he aet ham... riht
abiddan ne maeg.² Secan is used in VI Aethelstan, c.14 in
 the context again of an appeal to the king:- a thief must die
buton he cyng gesohte 7 he him his feorh forgifan wolde.³

The examples quoted above show that in the time of Edgar,
 and later in the eleventh century, secan had become the
 normal verb for seeking the hundred courts, although biddan
 was not completely ousted. II Cnut, c.19 is concerned with
 distraint of property, - this is forbidden aer man haebbe
(þriwa on hundrede his) rihtes gebeden.⁴ It is possible,
 therefore, that secan had been the standard expression for
 a personal appeal of last resort to the king and that it
 was the connexion with the king which was the criterion of
 whether secan or biddan was used.

The development which we suggested gave rise to the two
 compounds ciricsocn and hlafordsocn, also operated to transform
socn from a general sense of a "search", to a more specific
 meaning of a "suit". If one seeks a court, one has
 brought a "seeking" - a suit, thus socn means "suit of court".

- 1 "he who applies to the king before he pleads as often as is required for justice", Attenborough, Laws, p. 129.
- 2 "no one shall apply to the king about any case unless he... fails to command justice at home". Robertson, Laws, p.25.
- 3 "unless he appeals to the king, and the king is willing to grant him his life". Attenborough, Laws, p.159.
- 4 "until he (i.e. the aggrieved party) has appealed for justice (three times in the hundred court)". Only one manuscript - C.C.C.C.383 - of the four versions omits the bracketed clause. Robertson, Laws, p. 182.

The contexts in which socn appears in Domesday and other sources show that this is far preferable to the standard definition "a right of jurisdiction". It is used in Domesday with reference to specific pleas and we read of "the suit of the six forfeitures" - In Cheiunchala soca de vi forisfactoris.¹ The word appears as a Latinized plural in the descriptions of Worcester and Battle Abbey:- the bishop of Worcester claimed omnes redditiones socharum - all the renders from suits; the manor of Wye belonged to Battle and was worth one hundred pounds by tale, but if the abbot had had sacas et socas - pleas and suits - it would have been valued at twenty pounds more.² An English plural occurs in a writ of 1043 - '44 concerning the privileges of Bury St. Edmund's in which Edward gave paet land aet Mildenhale 7 pa nigen half hundreda socne in to pinghogy licgce in to Sce Eaedmunde. A later writ of 1065 - '66, confirmed the grant of the healf nygode hundreda socne ligce innto pam halgan mynstre.³ There is a certain difficulty here, for although the noun socne is plural, the verb ligce in to which applies to it, is singular; it seems likely, therefore, that the "suits" could be regarded collectively, much as the eight - and - a - half hundreds themselves, although strictly plural, could be seen as a single composite whole, for which a verb in the singular was permissible.⁴

1 D.B. II f. 223

2 Ibid., I, ff. 172b and 11b. In these and the following examples it is possible that socn has a wider range of meaning than merely "suit of court" and that it includes other services belonging to the royal farm.

3 Writs, nos. 9 and 24

4 See Writs, p. 145

There are cases where the "suit of court" is evidently that of a doomsman, rather than a litigant. The word sokeman literally means "suit-man", they are the justiciables of a lord, but so are all men. Suit of court in the capacity of doomsmen, however, was one of the abiding characteristics of sokemen.¹ More indicative still are the occasional references to the soke of a precise area of land. Suit of court was regularly assessed on land in later times, but Domesday suggests that this was already so in the eleventh century. There was a holding of two hides, one virgate, at Bece in Cambridgeshire and de virgata habuit abbas de Ely sacam et socam;² a liber homo at Roding in Essex held one hide, three virgates, and Hec terra, dimidia reddebat socam Ansgaro et altera pars erat libera quam rex dedit G;³ Radulf held three-and-a-half caracates at Misterton in Leicestershire, et unam caracatam terrae quae, reddit socam,⁴ the abbot of Ely had soke over thirty of a forty - five acre holding at Boxted in Suffolk, the soke over the remaining fifteen acres belonged to Norman.⁵

An entry for Risby in Yorkshire reads:- In Risbi habuit Gam.... iiii carucatas terre.... De hac terra iacuit olim soca in Welleton sed Thomas Archiepiscopus habet brevem

1 See below pp. 229 ff

2 D.B. I, f. 195. On the fact that soke could be an abbreviated form of sake and soke, see below, pp. ~~59-60~~. 56 ff.

3 Ibid.^{D.B.} f. 61b.

4 Ibid. f. 231.

5 Ibid., II f. 349

regis Willelmi per quem concessit ipsam socam quietam S.

Johanni de Beureli similiter de iiii carucatis terre in

Walchinton pertinebat soca ad Welleton.¹ Thus there were

two plots of land in Risby and Walkington, both of which were assessed for soke at four carucates, and the soke had been rendered in Welton, a hundredal manor belonging to the bishop of Durham,² but by the king's writ, the lands had been freed from their obligation to render soke to Welton, and had been transferred to St. John of Beverley.

The areas of land from which the soke is said to be due are sometimes small enough, and are certainly precise enough, to suggest that ideas of "jurisdiction", or even the suit of certain pleas, would be inappropriate. We should think rather in terms of assessments for suit of court.³ This tends to be confirmed by the entry for Roding in Essex which has been quoted:⁴ half the land which the liber homo held owed soke to Anskar, the remaining half had been given by the king to G., and was free. It cannot be that land was taken out of the rule of the law, its freedom lay in the quittance from suit of court, for socn is "a seeking" not "a right of jurisdiction".

1 Ibid., I, f. 373b

2 Ibid., f, 304b

3 And probably other services associated with soke also.
See below pp. 79 ff

4 See above p. 54

We have so far considered the meanings of the two words sacu and socn. We have seen that they could be used in a general sense of "a cause" and "a seeking", and in a variety of contexts, but that both had more specialized judicial meanings. However, the words are more familiar when linked together in the phrase "sake and soke", and it is this that we must now consider.

The coupling of sake and soke is reasonable a priori, for to have brought a sacu - a judicial cause, is to have a socn - a suit; and to have a socn - a judicial suit, is to have brought a sacu - a judicial cause. Domesday uses sacu, socn and the phrase "sacu and socn" in a manner which suggests that they were synonymous and therefore, interchangeable. There are successive entries, in saca regis et comitis, in soca regis et comitis;¹ there are liberi homines Wisgari cum saca... liber homo... sub Witgari cum soca.² Ralf the Staller had the soc of one liber homo in Haslingham, and the soke et sac of two liberi homines of Strumpshaw.³ A passage in Lincolnshire Domesday reads Archiepiscopus Thomas debet habere socam super terram Aschil quam habet episcopus Baiocensis in Vlingeham quia sicut testatur totus comitatus antecessor archiepiscopi habuit sacam et socam super eandem terram, et homines episcopi iniuste auferunt eidem archiepiscopo eandem socam.⁴

1 D.B. II, f.409

2 Ibid., f.391b

3 Ibid., f.122

4 Ibid., I, f.375

It seems to have been a matter of indifference to the scribe, therefore, whether he wrote "soke" or "sake and soke". However, there is one case where the Domesday scribe, having written "sake", struck out the "a" and substituted "o", making the word "soke". It is in the entry for Holkham in Norfolk which was held by Tovi: there were eighteen sokemen there T.R.W., and the scribe, having originally written Tovi habet sacam, changed it to habet socam.¹ Maitland noticed this, and in part explained it.² He commented that "not only is soke the commoner, it is also the wider word; we can not substitute sake for it in all contexts. Thus, for example, we say that a man renders soke to his lord or to his lord's manor; also we say that a piece of land is a soke of such and such a manor; no similar use is made of sake". We have tried to show³ that soke could mean suit of court, and that it is more accurate to say that suit, not jurisdiction, was owed, since we may then introduce the possibility of assessment on land. Ballard too, observed that sake and soke were not interchangeable, but he explained it more widely in relation to the royal farm, concluding that "soke was the term applied to those services which were rendered by both free-men and sokemen alike to the king or their lords in respect of their lands".⁴

1 Ibid., II f. 264b

2 D.B.B. p. 114 and n.3

3 See above pp. 49 ff

4 A. Ballard, The Domesday Inquest, p. 117.

We will consider this wider meaning of soke at greater length below,¹ it must suffice here to observe that the evidence substantiates Ballard's conclusion. Thus, although one might interpret sake, sake and soke, and soke, in terms of jurisdiction, it would be a mistake to do so indiscriminately in every case in which the word "soke" is used alone.

The phrase sake and soke is found in Domesday, and it is also frequently found in writs of both the pre- and post-Conquest periods. The use of sake and soke in writs adds further to our knowledge of the character and origin of the phrase; it was evidently one of the many mnemonic formulae by which oral law was remembered and transmitted by the doomsmen of a court. The writs were addressed to the presidents and suitors of courts,² and their phraseology was based on the language of the law as spoken in the courts: the language was English and the style was quasi-poetic. Thus sake and soke was one of the many alliterative and rhythmic jingles which jogged the doomsman through his folk-custom. For the sake of clarity, one example may be set out in poetic form:-

7 aelc þaera þinga
þaes þe þaer inn
mid rihte to gybyrap
on wude 7 on felde

1 See pp. 79ff

2 e.g. Writs, nos. 8, 9, 11, 12, 17, 20, 22. No. 72 is the only Writ addressed to a hundred court. See Dr. Harmer's discussion, pp. 45-54

mid sace 7 mid socne
swa full 7 swa ford[†]
swa hitt me sylfan
on hande stod
on daege 7 aefter¹

The phrase sake and soke does not appear in the pre-Conquest law codes, however, there, as we have seen,² only the single word socn occurs. This, is, in part, because written law codes put less reliance on the memory of man, and there was less need for poetic devices. Such devices are rare in the earliest codes. In Wihtred can be found paet wite and daet weorc, and odde hine man cwelle oppe ofer sae selle,³ and Alfred's code has the familiar ge mid were ge mid wite, ge ceorle ge eorle.⁴ There are many more in the tenth and eleventh century codes, and strings of assonances appear in the laws of Aethelred and Cnut.

V Aethelred, c. 25 reads

7 egeslice manswara 7 deofollice,
daeda on mordweorcan 7 on manslihtan,
on stalan 7 on strudungan,
on gitsungan 7 on gifernessan,
on ofermettan 7 on oferfullan.

and II Cnut, c. 6:-

Mannslagan 7 manswaran

1 Writs No. 55. For other examples see nos. 8,38,65,95,99.
 2 See above p.49
 3 Wihtred, cc. 11 and 26
 4 Alfred, cc. 2 1 and 4 2.

hadbrecaŋ 7 aewbrecaŋ

gebugaŋ 7 gebetaŋ

oððe of cyððan mid synnan gewitaŋ.¹

The non-appearance of sake and soke in the laws, may also be due to the fact that socn could be used as an abbreviated form of the phrase. We can see from the laws that the single word socn also derives from oral tradition; the poetic character of sake and soke is more obvious, but secaŋ and socaŋ were also used as part of rhythmic jingles:-

IV Aethelstan, c. 6 4 - sece swylce socne swylce he sece

III Edgar, c. 7 3 - gesece se aebaera þeof þaet þaet he gesece

IV Edgar, c. 9 - ðaes ne sy nan forgyfnes gesecaŋ þaet
hi gesecaŋ

while the clause in III Aethelred, c. 11 - nan man nage nane socne ofer cynges þegen buton cyng sylf, - sings with alliteration and stress.²

The Danes have often been implicated in the subject of soke. Stenton held that "the use of socn in an abstract sense with the meaning of jurisdiction (was) due to Scandinavian influence", since "it is not until the Scandinavian settlements were well established that the word occurs in the English sources, and it is in the Danelaw that the first territorial sokes are found".³

1 For other examples see Gesetz II, pp. 11-12, and 62, s.v. Alliteration, and Endreim.

2 See above pp. 40 ff

3 F.M. Stenton, "The Danes in England", Proceedings of the British Academy, Vol. XIII, 1927, 2nd impression, 1957, p. 16, n.1

We have already argued that it would be misleading to adopt too abstract a view of the meaning of socn, and although the importance of Scandinavian influence must not be underestimated it would be difficult to prove that the use of the word for "suit" was a foreign import, rather than a spontaneous home development. The formula "sake and soke" has likewise been attributed to the Scandinavians, on the grounds that "both words occur in Scandinavia" and therefore, "it is not unlikely that the alliterative formula may be of Danish origin".¹ There is a strong alliterative tradition in Scandinavian law and literature,² but "sake and soke" is not found in Scandinavian sources, and there seems no reason therefore, to look beyond England itself to account for the phrase.

In this chapter we have tried to show that sacu and socn literally mean "a cause" and "a seeking", and they were used in a variety of contexts: sacu was a cause which was at issue between two parties, it was a matter of conflict, a disagreement, a dispute of any kind, but it was always more especially a dispute at law; socn was a more general word and could be used in the widest sense of a seeking; it could be a seeking for information, "seeking" or joining the fyrð, "seeking" or going to church for ordinary reasons of piety. Socn could also denote the seeking of a church or lord in order to gain sanctuary or protection, and the word

1 O.E.D. s.v. sake.

2 See E.S. Olszewska, "Some English and Norse Alliterative Phrases", Saga Book of the Viking Society, XII, 4, pp. 238-'45.

was sometimes used as the suffix of a compound, - thus ciricsocne is church-seeking for sanctuary, and hlafordsocne is the seeking of a lord, probably in commendation. The judicial sense of socn is also a seeking, or, more grammatically, a "suit". The suit could be of two kinds: it could be the suit of a litigant who had come to plead his case in a court, or it could be the suit of a doomsman who was obliged to attend the court to hear the cases and state the laws relevant to them. The formula, sake and soke, is of English origin, and refers to the rights given to a lord with regard to complaints and suits. Sacu, socn, and the full phrase, sake and soke, could all be used to denote the judicial sense of sokeright, but sacu alone, the word with the more judicial bias, was not applicable to the wider meaning with its connotations of services and dues.

CHAPTER 2

Soke as sokeland and service.

Land over which a lord had sokeright might logically be referred to as "sokeland", and thus soca was used as an abbreviation for socnland. This word can itself be found in a document of c.1030, included in the York Gospels, which describes a large number of estates in Yorkshire belonging to the Archbishopric, and the different types of tenure by which they were held.¹ The document begins Dis is seo socn into Scyreburna mid folcrihte. There follows a long list of estates, which, in Miss Robertson's translation, are:- "two-thirds of Cawood and the whole of Wistow and the whole of Upper Selby and two oxgangs (oxnagang) in Flaxley and half of Barlow and the whole of Brayton except half a ploughland (plogesland), and the whole of Burn and the whole of Burton, except half a ploughland, and the whole of Gateforth and the whole of the two Thorpes and the whole of the two Hirsts and the whole of the two Haddleseys, and five oxgangs in the third Haddlesey and half of Birkin and the whole of Sutton and the whole of Byrom and the whole of Brayton and the whole of Brotherton and the whole of Fairburn, except two-and-a-half ploughlands, and the two ploughlands in Ledsham and one in Newthorpe and the whole of Micklefield and the whole of Hillam and the whole

1 The text is printed and translated in Robertson, Charters no. LXXXIV, pp. 164-169

of Fryston, and the whole of Lumby, and the whole of Steeton, and the whole of Milford and the whole of Fenton, except half a ploughland, and two ploughlands and five oxgangs in Barkston and the whole of Lotherton and the whole of Hehferdehegde and the whole of Huddleston". The text then goes on On Scireburnan toecan þam inlande syndan iiii hida weorclandes 7 on Luteringtune (Lotherton) iii hida, 7 on Barcestune (Barkston) i hid 7 fif oxnagang, 7 of Styfingtune (Steeton) tune þreora oxnagang. There then follow references to agenlande and land on laen from Sherburn. Next the document describes the villis and parts of villis which belong to Otley, a number of ploughlands are given; then it is noted 7 þaerto eacan hyrad þas socnland Into Ottanleage. These "sokelands" are:- "at Otley two ploughlands, and at Baildon two, and at Hawksworth two, and at the other Hawksworth two, at Chevin one, at Menston three, and at Burley six, at Middleton three, at Ilkley six oxgangs, at Denton two ploughlands, at Clifton one, at Biceratune three, at Farnley four, at Ectune one-and-a-half, at Poole three, at Lindley three". The document goes on to describe various other estates: some of these are waste, others are described as preostaland. The document concludes with the passage:- Ðis syndan socnland into Rypum (Ripon): these sokelands are:- "eight hides at Givendale, and seven hides throughout the whole of Monkton, and two hides at Eastwick, two-and-a-half hides at Markington, two-and-a-half hides at How Hill, and at Sutton one-and-a-half hides, at Nearer Stainley five hides, at North Stainley one hide, and at Nunwick one hide, and at Hewick five hides, and at Sleningford two hides".

There are, therefore, two direct references to "sokeland" in the document, the compound is one of many, and it seems likely that the phrase seo socn into Scyreburna with which the document opens is but an abbreviation of socnland.

This interpretation of soke as "sokeland", also seems likely for two further references to soca in two other pre-Conquest documents. After his appointment as Archbishop of York in 972, Oswald drew up a memorandum regarding estates in Northumbria which the Church had lost,¹ and the sokeland of Sherburn is among these. The document begins with an account of the tunas which had been taken away from Otley, and others lost from Ripon, which included one hide from Stainley, and two hides from Poppleton. It continues:- "This has been taken away from Sherburn, half of Ceoredesholm - and half of Cawood and Gisferbesdaell still belong to Sherburn - and half the soke which belongs to Sherburn".² Stenton explained the loss of "half the soke which belongs to Sherburn" in a jurisdictional manner: the "meaning seems to be", he wrote, "that half the villages from which the suitors had once come to the court at Sherburn had fallen back under the jurisdiction of public courts or had been annexed for purposes of jurisdiction to the estates of other lords".³ It would perhaps be more intelligible, however, if land, and assessments were stressed rather than villages; thus Oswald would be complaining that he had lost half the "sokeland" which had previously belonged to Sherburn.

1 B.1278, Robertson, Charters, no.LIV

2 þis is genumen of Scirebunnan.... 7 healfe socne þe gebyrep into Scireburnan

3 A.S.E. pp.488-'9. Miss Robertson has no note on the phrase.

Another relatively early example of soke "belonging to" a place occurs in the will of the Mercian lord, Wulfric Spot. This dates from the beginning of the eleventh century and by it he bequeathed Morton 7 eall seo socna ðaerto hered.¹ Dr. Whitelock notes that "By this, Wulfric means that he bequeaths the profits resulting from the exercise of jurisdiction".² This is possible, but although the clause is too vague to be altogether certain of its meaning, as the general tenor of our thesis is stated, and the evidence is cited, it seems more likely to be either a reference to suit of court, or, as Stenton suggested, another early example of an abbreviation of "sokeland".³

We have considered the judicial meanings of sac and socn; we will now try to show that "sokeland" was held with far more than judicial rights, implicit in the meaning of soke were the labour services and renders which were, or had been, due to the king as part of the royal farm.

The first link between soke and the royal farm is the document of c.1030 in the York Gospels which has already been quoted.⁴ As we saw, the document begins:- Ðis is seo socn into Scyreburna mid folcrihte, there follow two references to socnland and this led us to suggest that the "soke into Sherburn" should be regarded as an abbreviation of "sokeland".

1 D. Whitelock, Anglo-Saxon Wills, Cambridge Studies in Social and Legal History, (1930), p.48.

2 Ibid., p.158.

3 F. M. Stenton, Types of Manorial Structure in the Northern Danelaw, Oxford Studies in Social and Legal History, Vol.II, (Oxford, 1910), pp.21ff.

4 Robertson, Charters, no. LXXXIV, pp.164-'9. see above pp.

Having seen that socn was "a seeking", and having discussed evidence from Domesday Book, we also suggested that "soke" could mean suit of court, yet it seems likely that more than this was intended in the York document. Miss Robertson's interpretation has a decided jurisdictional bias. She translates this sentence as, "This is the soke which belongs to Sherburn in accordance with public law";¹ she comments on seo socn:- "The term is used here in a territorial sense, i.e. with reference to the land over which the lord of the manor of Sherburn exercised jurisdiction without being the actual proprietor. This type of land (also called socnland later in the document) is carefully distinguished from the inland which comprised the central manor and any outlying portions appurtenant to it which were in the actual possession of the lord of the manor (i.e. agenland)"²

It is difficult, however, to believe that this can be altogether true. Whole vills might well be under the jurisdiction of Sherburn, but how is one to understand jurisdiction over two oxgangs at Flaxley, or two ploughlands at Ledsham? These are evidently not areas of land but units of assessment; the sum total of ploughlands at which the sokelands belonging to Otley are assessed is an even forty ploughlands.³

1 Robertson, Charters, p.165

2 Ibid., p.41

3 The sum amount of sokelands belonging to Ripon is thirty-seven-and-a-half hides. Two-and-a-half hides could be missing, for two estates, How Hill and Markington are assessed at two-and-a-half hides and in a decimal system it is a standard unit.

Miss Robertson translated folcrihte as "public law", and for further reference she cited her own, and Attenborough's editions of the Anglo -Saxon laws. The term occurs eleven times in the laws. It is the law which is enforced in the hundred courts;¹ the authority of the witan can be invoked to ensure that the vendetta is waged according to folcrihte;² the sheriff must maintain the folcrihte, as a general principle,³ and in particular in the courts which Edward the Elder decreed should be held every four weeks - the forerunners of the hundred courts.⁴ In three instances folcrihte appears as part of a general statement that all men shall be worthy of folcrihte.⁵ Elsewhere it is used in connection with public authority, - in cases of lordless men,⁶ public selling,⁷ or ordeal.⁸ The overtones of folc, when it is used in other compounds, are similarly public, and they touch the king, for he is the overall guardian of the folc. The president of the folcgemot is the reeve or the ealdorman,⁹ those who withhold the rights in folclande are tried in the presence of the reeve,¹⁰ there is a reference to a folces fyrdscip in Aethelred's laws, - those who damage it, must pay compensation to the king.¹¹

1 I Edgar, c. 7.

2 II Edmund, c. 7.

3 I Edward., Prol.

4 II Edward, c. 8.

5 III Edgar, c. 1, 1; VI Aethelred, c. 8,1; 11, Cnut, c. 1, 1.

6 II Aethelstan, cc. 2 and 8.

7 Ibid., c. 9.

8 Ibid., c. 2.

9 Alfred, cc. 22, 34; 38,1; II Aethelstan, cc. 2 and 12

10 I Edward, c. 2.

11 VI Aethelred, c. 34.

Thus, the folcrihte is the public law which it is the king's special duty to maintain. There is, however, a linguistic problem in the phrase mid folcrihte which is in the York document. Stevenson commented that "it is difficult to find parallel instances of such a use of the preposition. Grammatically, it would be more satisfactory if we could take it in the sense of geriht, 'rights', dues, and regard the phrase as meaning that the socn carries with it all the secular dues of the folk within it".¹ Gerihta could be used in a narrowly jurisdictional, or a wider, more general sense. The royal pleas which Cnut reserved for himself are called geriht,² in some writs other pleas are described as geriht,³ but the geriht which belonged to the royal manor of Lambourn, Berkshire, included one hide free, sake and soke, toll and team, and tenth acre of the king's land, the produce of two acres at harvest, the tenth lamb, the tenth piglet, a wey of cheese at Michaelmas, two sesters of corn and a pig at Martinmas, 15d at Easter as well as obligations to provide pasture and cart wood.⁴

1 W. H. Stevenson, "Yorkshire Surveys and other eleventh century documents in the York Gospels", E.H.R. Vol. XXV, 1912, p. 25

2 II Cnut, 12-15

3 e.g. Writs, nos. 28 and 38

4 Robertson, Charters, no. V, p. 241 cf. also the geriht belonging to Taunton, Ibid., no. IV, pp. 236ff. and 485ff.

If gerihta denotes services, not pleas, and the prefix folc is used in connexion with the public sector of society, which is peculiarly the king's right and responsibility, then folc(ge)rihta means folkright or royal right in its wider sense of the royal farm. Thus, a better translation of seo socn.... mid folcrihte would be "the sokeland which is held with the right to the royal farm". This gives rise to the possibility of an analogy between sokeland and "folkland", for, on the same reasoning, the latter term could be defined as "land assessed for the royal farm", and thus it would, indeed, be synonymous with sokeland.

The problems of the meaning of folkland have been much discussed.¹ The word occurs only four times in the sources:- in the "Wife's Complaint" it has the loose meaning of "country",² but a more technical meaning seems likely in the remaining three sources, the laws of Edward the Elder,³ a will and a charter.⁴ The law of Edward states that the king has appointed penalties for those who withhold another man's rights "either in bookland or in folkland", and lays down that if the dispute concerns folkland the plaintiff must fix a day on which the defendant shall answer him before the king's reeve. This tends to re-inforce the view that folc implies royal responsibility. The will points in the same direction. After bequeathing an estate, apparently of

1 See especially P. Vinogradoff, English Society in the Eleventh Century, (Oxford, 1968 ed.), pp.255-'62, and E. John, "Folkland Reconsidered". Orbis Britanniae, (Leicester, 1966), pp.64-127. The latter discusses the controversy in great detail.

2 "The Wife's Complaint", line 47, A choice of Anglo-Saxon verse, Selected and trans. R. Hamer, (London, 1970).

3 I, Edward, c. 2.

4 B.558 and 496.

bookland, to his wife and daughter, a ninth century Ealdorman named Alfred bequeathed three hides of bookland to Aethelwald the son of his wife. A further provision is made that if the king would grant Aethelwald the folkland in addition to the bookland, he would also hold that, if the king refused, Aethelwald would receive another piece of bookland. Aethelwald is not described as Alfred's son: he could be illegitimate or a step-son, and this could explain the need for the king's permission. Yet it may also be that folkland could not be unilaterally bequeathed, even to a regular heir, since it had not been "booked", i.e. granted by a charter, which gave hereditary right and permanently alienated the royal farm.

In the charter, B.496, a certain Aethelbert granted land at Wassingwell to Wulflaf, in exchange for land at Mersham.¹ Wassingwell was to be free from all service to the king, except the three common burdens. Mersham had in the past been held on those terms, but now, according to a vernacular endorsement, it was made into "folkland for the king himself", with the exception of the marshland, a salthouse and the woods. It cannot be mere possession by the king which converts Mersham into folkland, for within the bounds of the charter there is a reference to "the king's folkland which Wighelm and Wulflaf hold". However, the exceptions made of the marsh, salthouse and wood which were not to become part of the king's folkland, suggest that the solution to the meaning of folkland and its difference from bookland, lies partially

1 Westwell in Kent is identified as the Wassingwell of the charter, - see E.H.D. I, p. 488, n^o.7, Mersham is South-East of it.

in the area of service. Both bookland and folkland were burdened with the royal farm, but when land was "booked" these dues were permanently alienated, folkland may not have been heritable, and the royal dues for which it was assessed could only be enjoyed, therefore, by the immediate grantee.

The dimension of service in soke, and its connexion with the royal farm, are also reflected in an Ely charter in which there occurs the phrase:- seo socn þe to anre nihte feorm gebyred which may be translated "the soke that belongs to a night's farm".¹ The English text purports to be a translation, prepared at the order of Edgar, of a Latin charter in which the king grants privileges and gifts to Ely. The Latin version B.1266 is dated 970, and the earliest extant copy, Stowe Charters, no. 31, is a single sheet containing both Latin and English texts, written in the same hand, and this has been dated to the second half of the eleventh century.² However, the style of the English is strongly reminiscent of the so-called "rythmical prose" of Aelfric, and this would place the text earlier than the copy, but later than 970 - the date which, by inference, we must adopt for the original. Both Professor M^eIntosh, and more recently, Mr. Pope, have argued that Aelfric came upon an original English text which he objected to on stylistic grounds as a clumsy piece of work, and determined to make

1 Robertson, Charters, no. XLVIII. B.1267=S.779. Vinogradoff mis-translated it as "the soke of a knight's farm" - P. Vinogradoff, op.cit., p.122, n.1. There are two mss. Stowe Charters, n.31, and B.M. Add. MS 5819, f.4b - an eighteenth century copy.

2 The hand was dated by Dr. N.R. Ker for Professor M^eIntosh, see A. M^eIntosh, "Wulfstan's Prose", Proceedings of the British Academy, Vol. XXV, 1949, p.122, n.8.

a copy of it. In this copy he "employed his own characteristic style, wishing simply to make the translation as eloquent as possible, and not at all concerned to conceal his authorship of it, for he would have had no thought of pretending that it had been composed in Edgar's time".¹ In order to demonstrate Aelfric's authorship more clearly, Mr. Pope has arranged the charter in a quasi-poetic form, and we may reproduce here the passage which grants to Ely all the soke of the five-and-a-half hundreds:-

and on East-Englan aet Wichlawan eac
ealle þa socna ofer fif hundredum,
and ofer ealle þa land gelice þa socna
þe into þam mynstre nu synd begytene,
odde ða he him gyt becumað þurh Cristes foresceawunge
odde þurh ceap odde þurh gife
habban hi aefre on eallum þa socne
and þone feorðan pening on folclicre steore
into Grantanbricge be minre unnan²

However, as Mr. Pope points out, the anathema which follows directly on from this passage, breaks the rhythm, and it is this anathema that includes the phrase, "the soke of a night's farm". Thus, again in Mr. Pope's arrangement:-

- 1 J. Pope, "Aelfric and the Old English version of the Ely privilege", in England before the Conquest; Studies in Primary Sources presented to Dorothy Whitelock, ed P. Clemoes and K. Hughes, (Cambridge, 1971), p.113.
- 2 J. Pope, art.cit., p. 91.

and gif aenig mann þiss awendan wylle
þonne gange ealle seo socn þe to anre niht fearme gebyred
into þaere stowe.

The first problem is the date of this interpolation. The king is threatening anyone who dares infringe his grant to Ely of the fourth penny from Cambridge. It is possible that the passage was included in reaction to such an infringement. Miss Robertson calls attention to a suit brought by the abbey against Picot, the sheriff of Cambridgeshire, at some time between 1072 and 1075, and this would be approximately the date of the Stowe manuscript, but we may be content perhaps with the period 1042 - 1075, as an approximate date for the interpolation.

The problem of meaning remains. The passage is not included in the corresponding Latin version of the privilegium. This includes the grant of the fourth penny of Cambridge:- adhuc insuper omnem quartum nummum reipublicae in provincia Grantaceaster et fratribus reddendum iure perpetuo censeo, but then continues to a normal anathema - Et sit hoc privilegium liberum quasi munus nostrum Deo devote oblatum...

Whatever the authenticity of the Latin privilegium,¹ the English text, as we have seen; is not derived from it, but from an earlier English text revised by Aelfric, and the passage under discussion was probably interpolated after he died. Miss Robertson commented that "the exact meaning of the socn pertaining to a day's farm is difficult to understand".²

1 See references cited by S.779 and also Mr. Pope's article esp.pp.96-102, where he argues that it may be authentic.

2 Robertson, Charters, p.347

She drew attention, however, to another Latin charter of Edgar concerning an exchange of lands,¹ which, she thought was connected with the English text because it contains the clause:- cui enimvero libens mutuacioni per totam prefatam insulam omnis emendacionem reatus specialiter, communionemque in eodem re extra insulam quantam ad noctis pastum regalem jure pertinere censetur unius adjungere decrevi. After consulting Stenton, she concluded that, according to this Latin passage, "the receipt of all the fines within the Isle is made over to Bishop Aethelwold on behalf of Ely and a share of those outside the Isle, to consist of all the profits of all the pleas arising out of the assessment, collection etc. of the king's food rent". This she connected with seo socne þe to anre niht feorm because it seemed to her that the writer of the Anglo-Saxon "had borrowed the reference to the profits arising from the king's food rent and inserted it here without properly understanding its meaning or application". But B.1265 is a clumsy confection, written by a scribe who was not at all familiar with charter conventions.² Moreover, the reference to the farm occurs as part of a grant of it to Ely, whereas, in the English text, it occurs as part of an anathema, a compensatory payment, to be exacted if the abbey's rights are infringed.

Miss Robertson's approach seems to be unnecessarily devious, and it is difficult to see how the ruling, according to her interpretation, would work in practice, if an offender

1 B.1265 = S.776.

2 See E. John, "Some Alleged charters of King Edgar for Ely," Orbis Britanniae, p.232.

was required to pay "the profits of all the pleas arising out of the assessment, collection etc. of the king's food rent". One cannot speak of the equivalent of such profits, since they must always have been uncertain and subject to circumstance, yet the context suggests a sum which was regular and fixed. Anathemas of this pecuniary type, are common in continental, but rare in English charters,¹ the latter depend on punishment of a less well defined nature, at a more remote date. Here, however, we encounter some suggestion of legal precision and the practical working of the law. In all, it seems that we may interpret the "soke of a night's farm" as a payment exacted in a court as a fine, the payment being equal to the local rate of the royal farm, the farm having perhaps been commuted, and the rate being a matter of public knowledge. It was altogether too mundane to be included in the Latin privilegium, but in the everyday world it was a necessary safeguard, and was therefore interpolated into Aelfric's version.

In these two documents, - the York memorandum and the Ely charter, - the soke is identified with the royal farm. Mr. Davis suggested that soke in Domesday Book could be defined as "dues which the aforesaid land owed to the king", and the York memorandum concerning the "sokeland of Sherburn with folkright", indicates that this wider meaning of the term was not of later Norman origin, but was already current in England in the first half of the eleventh century. It

1 P. Chaplais, "Some Early Anglo-Saxon Diplomas on Single Sheets: Originals or Copies?", Journal of the Society of Archivists, III, 7, April 1968, p.322.

does not seem to be a distortion of the little evidence which is available to compare folkland with sokeland, and distinguish both from bookland. Folkland always occurs in the sources in contrast to bookland: there are two differences - folkland is not held with hereditary right, and it implies dues which originate in those rendered to the king, as distinct from the private and permanent obligations of tenant to landlord. Sokeland is comparable with folkland in the area of service, for both implied dues which were owed to the king and were remembered as being of public, royal origin, even when they have been transferred to private individuals.

The wider dimension of soke, beyond the merely jurisdictional, is also found in Lincolnshire Domesday where there are references to the soke of a mill, a forest, a fishery and a church. These references cannot be explained with absolute certainty: it could be that "soke" in such contexts is an abbreviation for "sokeland," which belonged to the mill, fishery, forest, or church. The soke which was due from the sokeland could be an assessment for suit, or it could be that soke refers simply to a royal render, described as "soke" in order to distinguish it from other tenorial dues. In either case, the "soke" plainly does not derive from the ordinary conditions of landholding, nor is the more abstract sense of jurisdictional right, with overtones of crimes and fines, probably intended.

That the soke was additional to, and did not derive from, the rights of landownership, can be seen from the number of cases in Lincolnshire, where the landholder did not have the soke. One bovate at Goxhill belonged to Hugh, but Alfred had the soke; half-a-bovate at Stallingborough belonged to Archbishop Thomas, Raynor had the soke; and two bovates at Great Cotes belonged to Alfred, but Durand Malet had the soke.¹ This could also be true of Woodland:- at Hamby Ketelber debet habere XX acras silvae in Humbi, et Ivo socam;² of a garden:- Dicunt Normanus Mereuine sune habuisse vii hortos in Grandham de quibus pertinet soca ibidem sed ipsi horti pertinent ad Goverdebi;³ and of a fishery and a toft:- Robertus Dispensator debet habere socam super piscariam et super toftam quam tenet Ketelbern in Cuningesbi.⁴

Stenton described these references to soke as "less intelligible" but he explained them in jurisdictional terms.⁵ He cited the example concerning the twenty acres of woodland which we have quoted, and observed:- "The exact sense of this passage is not obvious", but since Ketelber owned the wood but Ivo had the soke, Stenton reasoned, "Probably it means that Ivo received the amercements from scuffles and blows

1 D.B. I, all f.376b

2 Ibid., f.375

3 Ibid., f.377

4 Ibid., f.375b

5 Lincolnshire Domesday and the Lindsey Survey, Lincolnshire Record Society, Vol.19, 1924, ed. C.W. Foster and T. Longley, Introd. F.M. Stenton, p. xxxviii

arising within those twenty acres. In any case it is certain that soca, in such a context, means something more than the mere receipt of money from the wood or meadow over which it was exercised", since this is an inherent right in landlordship and would be due to Ketelber. Stenton also quoted an example of the soke of a meadow:- T.R.E. detinuit Leuric cilt Warnode de X acris prati in eadem Beltone. De his X acris clamat Colegrim socam.¹ He commented, "here 'soke' is contrasted with warnode, a difficult expression, but one that is explained clearly enough in later records as a rent which, if not paid on the first day, must be paid two-fold on the second, three-fold on the third, and so on, indefinitely. Contrasted, as in this passage, with a form of rent, 'soke' cannot well mean anything else than profits of justice".

There is, however, another possibility, for soke is contrasted with manorial obligations, and this suggests that the soke is non-manorial in origin, public not private in character, while the background evidence suggests that it is fiscal, but not jurisdictional.

We may consider firstly the soke of a mill. In later times, soke, soken and sucken were all dialect words for a payment made to a miller to grind corn, and the expression "suit to the mill" is common in the sources.² Chaucer also refers to the soke of a mill in the Reeve's Tale of his Canterbury Tales.³

1 D.B. I, f.377b, Belton.

2 See Oxford Dialect Dictionary, ed. J. Wright, (Oxford, 1961) Vol. V, s.v. soke

3 The Canterbury Tales, "The Reeve's Tale", lines 3987-8, ed. A.C. Cawley, Everyman no. 307, (London 1958). I am indebted to Prof. G. Barrow for pointing this out to me.

Greet soken hath this millere, out of doute,
 With where and malt of al the land aboute.

Here the "soke" is not an obligation to grind corn, or a simple payment, it is a render in kind from local fields. The "soke of a mill" in Domesday was probably used in the last sense, it is doubtful if it had the meaning of a general suit to the mill. A case is recorded of a dispute which arose between Robert and Colsuin over two mills in Barkston, Lincolnshire, and the wapentake gave evidence that "they lie in Marston, and their soke is in Grantham".¹ Accompanying evidence suggests that the soke is being distinguished as a non-manorial render. Neither Robert nor Colsuin held land in Barkston, but two mills are recorded there in six bovates of land which is called a berewick, and it is said that their soke lies in Grantham.² Part of Marston however, was held by Colsuin as a manor.³ Thus, the two mills stand physically in Barkston, but they belong to two different places in two different ways:- they are part of the manorial revenue of Marston, which is three miles from Barkston, but the renders for grinding the corn also form part of the revenue of the great royal soke of Grantham, which is six miles away, and to which a great deal of sokeland and numerous vills belong.⁴

It seems likely that we should understand the soke of mills, fisheries, woods and tofts in a similar way, as a non-manorial payment which was originally due to the king as part of the royal farm, but had been granted out to an individual.

1 D.B. I, f.377b - Duos molindinos qui sunt in Barcheston clamat Robertus de Stadford, et Colsuin similiter clamat Wapentac dicit quia iacent in Mereston et soca eorum in Grandham.

2 iacent in, Ibid., f.370b

3 Ibid., f.357

4 Ibid., f.337b

It can be shown from charters and the laws that renders of food and produce had long been part of the royal farm. A famous passage in Ine's laws lists the obligations of the gesithcund man who has hidated land:- every ten hides is normally expected to render ten vats of honey, three hundred loaves, twelve "ambers" of British ale,¹ thirty "ambers" of clear ale, two full-grown oxen, or ten wethers, ten geese, twenty hens, ten cheeses, an "amber" of butter, five salmon, twenty pounds weight of fodder, and one hundred eels.² A late eighth century Mercian charter records a grant of land at Westbury-on-Trym to Worcester by Offa, but the grant is made conditional on the continued payment of quantities of ale, oxen, wethers, cheeses, corn and meal.³ The immunity clauses of charters recite the renders from different kinds of property which are remitted to the grantee: the right to pasture and woodland are common, but fisheries, - piscariis venationibus - are sometimes mentioned.⁴ Sometimes the word "tribute" is used: a Kentish charter of the mid-eighth century grants land and swine pastures cum omni tributo quod regibus inde dabatur in potestatem.⁵ Land was granted in a somewhat later Mercian charter, cum omni tributo quod regibus antea debetur et quamdiu in hac vita vixeritis omnia vestrae subjugantur potestati.⁶

1 See Attenborough, Laws, p. 192

2 Ine, c. 70,1

3 Together with six long peru - the meaning of this word is unknown. B.272 = S.146

4 e.g. B.550=S.345. B.610=S.380 B.758=S.463 B.763=S.465

5 B.194=S.33

6 B.254=S.128

As Maitland said, Domesday is "not a treatise on jurisdiction",¹ it is a descriptio,² a term used in later medieval Latin to denote a survey taken with a special view to taxation.³ Soke is constantly referred to in Domesday, and if soke was applicable to payments associated with the royal farm as well as to judicial rights, one would expect constant references to it in Domesday, in connection with properties which yielded revenues to the king or his grantee.

Lincolnshire Domesday also contains references to the "soke" of a church, and here soke seems to be an abbreviation for sokeland. Stenton's discussion again had a decidedly jurisdictional bias. He quoted a case in Withcall hundred:-
In Widcale hundred clamat Raynor totum monasterium et homines de Triding (dicunt) quod antecessoris sui fuit et tercia pars (de) soca et Ilbertus de Laci ii partes soce super ecclesiam et terram que illuc iacet,⁴ and commented "The last words are important, for they show that soke over a church carried the profits of justice over the land with which it was endowed".⁵ The division of the soke into thirds, is strongly reminiscent of the three pennies of jurisdictional profits, but yet other examples suggest that this is only coincidence and that a wider meaning was intended so that

1 D.B.B. p.128

2 S. Harvey, "Domesday Book and its predecessors", E.H.R. Vol.86, 1971, p.766 and refs. therein cited.

3 J. F. Niermeyer, Mediae Latinitatis Lexicon Minus, (Leiden, 1954-58), Vol. I, s.v. descriptio,

4 D.B. I, p.375

5 F. M. Stenton, op.cit. p.xxxviii.

Ilbertus has two-thirds of the revenue from the sokeland belonging the church, but he also holds, as a landlord, other land which belongs to it. Ecclesiastical revenues are sometimes distinguished:- the wapentake of Loveden gave evidence that decima et alie consuetudines de Carlestune iacent in ecclesia eiusdem ville,¹ and the wapentake of Threo said that decima et alie ecclesie consuetudines de terra Thori in Ropeslai hundred pertinent ad ecclesiam Sancti Petri.² In another example the soke is contrasted with inland:- a wapentake court was required to give a ruling on a dispute over church revenues and Dicunt pertinere ad ecclesiam de Grantham decimas et ecclesiasticas consuetudines de Winebruge Wapentac et de Treos Wapentac de omnibus socis et inlandis quas rex habet ibi.³ Here the wapentake has declared that the ecclesiastical dues of all the sokeland and inland which the king has in Winnibrigs and Threo are part of the revenue of the church in Grantham.⁴ There are other examples in which inland is contrasted with soke, suggesting that the latter is an abbreviation of "sokeland" - f.301 Holme, (Yorks) :- ii carucatas ad geldum... hanc terram alii dicunt inland, alii socam in Wachefeld (Wakefield).

1 D.B. I, f.377. Carlton Scroop - a church is recorded there, but a render is not given, Ibid., f.351.

2 Ibid., f.377b

3 Ibid., f.377

4 The editors of The Lincolnshire Domesday and the Lindsey Survey do not translate it in this way, but give "all the sokes and inlandis". However, when socis occurs earlier in a passage which also includes a reference to inland, they do translate it as "soke(land)". - f.338b, p.21

f.301b Ouseburn:- Inland et soca in Chenaresburg. f.317 Notton:-
Notone, vi caracatae terrae ad geldum... De hac terra sunt
iiii carucatae in soca de Tateshalla et ii carucatae inland.
 f.347b Burton, (Lincs):- Burtune habuit Radulfue Stalre xiii
carucatas terrae ad geldum in dominio et v carucatas terrae
ad geldum de soca. Soca is contrasted with inland for it is
 "sokeland", and is assessed for obligations of a non-manorial
 character, and thus it is possible that "soke" was used indiffer-
 ently as both the render due to the king, and the sokeland
 which could be attached to the church.

The soke of a church appears in later sources as an
 abbreviation for sokeland. A writ of Henry I decreed that
 churches were not to lose the parishes which they had had
 before the Conquest because of the socs which lay in the
 manors T.R.E. In a later writ to St. Peter's, York, Henry
 guaranteed its tithes and parish dues of its manors and if
 the socs of those manors had been granted to anyone, the
 mother churches were still to have their rights, and
 especially their right to the churches and chapels which had
 been made in the socs.¹ These examples suggest a situation
 in which a manor has included a certain amount of sokeland
 held by the king, from which the churches had derived part of
 their revenue, but the king had subsequently granted the
 sokeland to a lord, who had appropriated to himself the
 ecclesiastical dues from the churches and chapels on the sokeland.

1 Regesta Henrici Primi, 1100-1135, nos. 1046 and 1072,
 ed. C. Johnson and H. A. Cronne, (Oxford, 1956).
 Hereinafter referred to as Regesta, II

There is some evidence from the City of London to suggest that some churches did owe a payment to the king which was called "soke". A writ of Henry I granted to St. Martin's in London the church of St. Botolph in Aldersgate, with the land which belonged to it, in the king's socage, to hold with full parochial rights, saving the king's right of socage.¹ Here, socage seems to be used in two senses:- as a territorial unit over which the king has sokeright, and as a payment which is owed to the king. The Cartulary of Holy Trinity Church, Aldgate contains references to payments of a few pence de socagio: the prior granted land to John in fee for half-a-pound of pepper or three pence within the ⁿquidene of Easter, for all services, except 2ld for the king's socage which must be paid by John and his heirs on Palm Sunday.² In a charter for a quit rent, the priory agreed that it would pay for the grantor "6d at the king's socage on the vigil of Easter",³ and in other examples socage was paid on Palm Sunday or Martinmas.⁴ Socage is not invariably due, indeed the great majority of charters in the Cartulary do not refer to it,⁵ nor is the king invariably the recipient. A payment de socagio is mentioned in the survey made in 1128 of the lands of St. Paul's, the amounts are small and are

1 Ibid., no.1106. Chart. R.17 Ed. III m.16. Cal. Chart. R. v.16

2 Cartulary of Holy Trinity, Aldgate ed. G.A.J. Hodgett, (London Record Society, 1971), no.571

3 Ibid., no.140

4 Ibid., nos.215,218,1056 paid on Palm Sunday; no.425 at Martinmas

5 Only fourteen have been noticed:- nos.140,215,218, 273 , 425 , 447,489,499,571,783,784,811,1022,1056.

paid at Easter; thus Edric the Clerk pays 1d de socagio to the king, but Ranulf pays 8d to the Gloucester soke, and William pays 7d de socagio to the monks of Holy Saviour,¹ but these could be explained as grants by the king of his socage to private individuals. The origin of this payment is uncertain, church temporalities were taxable by the crown, it is also clear that socage was a payment assessed on tenements. A charter in the Holy Trinity Cartulary records a grant by Peter to the prior of a quit rent for land which Benet Stocfysch had held. This is said to lie between the lands of Robert Panifader and John de St. Dunstant, and to extend from the king's highway to the Thames, and a further block of land is given which lies between the lands of Nicholas Bat and John de St. Dunstan. Benet also made another grant in exactly the same area,² and it is said that the land lies in the parish of St. Dunstan.³ A socage payment is specified in both grants as being due from the priory - "1½d socage to the Crown on Palm Sunday" in the first case, "to the king's socage on Palm Sunday 3½d in the second", but beside the first charter is a marginal note drawing attention to the payment de socagio, which, it is said, in officino camere monachorum Westmonasterii habetur inter cetera, sic hoc socagium colligetur in ramis Palmarum ad ecclesiam Sancti Dunstani est de tenemento Benedicti Stocfish post heres Roberti Gresch(ir)ch, modo Sancta Trinitas id.ob.per tenementum

1 Cited in "London Lands of St. Paul's, 1066-1135," H.W.C. Davis, Essays in Medieval History presented to T. F. Tout ed. A. G. Little and F. M. Powicke, (Manchester, 1925), pp.56-'8

2 The bounds are identical in both charters

3 Cartulary of Holy Trinity, Aldgate, no. 1056

quod fuit Johannis de Sancti Dunstano, thus the socage is assessed on the tenement and is paid at the parish church. Confirmation of this comes from a list of rent payers included in the Cartulary, among whom is Richard Tailhast who held property for a rent of 8d plus "1½d of the soke for certain tenements which he held in the parish of All Hallows".¹ It is possible that this payment of socage was simply a tax on temporalities, described as socagium for no other technical reason except that it was due to the king. A link between this and the soke of churches in Lincolnshire Domesday is difficult to make, but however this may be, the idea of a fiscal render seems more reasonable than Stenton's idea of "rights of jurisdiction", with scuffles and blows perpetrated within the church grounds.

An additional piece of evidence tends to confirm the fiscal but non-jurisdictional nature of soke in relation to a church. In his Chronicle, Jocelin de Brakelond tells how, in gratitude to Abbot Samson of Bury St. Edmund's, incepti in scriptum redigere omnes ecclesias, que sunt in donacione abbatis, tam de nostris maneriis quam de suis, et rationabilia precia earum, sicut possent poni ad firmas, tempore quo bladus mediocriter venditur.² He lists the churches and says that they lie on manors and "socages", and the latter seems to mean "sokelands".³ The vills are named

1 Ibid., no. 783

2 Chronicle of Jocelin de Brakelond (Nelson Classics, 1949) trans. H.E. Butler, pp. 62ff.

3 Hee sunt ecclesie de maneriis et sochagiis abbatis. Ibid., loc.cit.

and the valuations of the churches are given, - Melford worth (valet) forty marks, Chevington ten marks, Saxham twelve marks etc., there are fractions of churches, - half the church of Hopton 60s., three-quarters of the church of Dickleborough 90s., and more (tres partes ecclesie de Dicleburch quelibet pars valet xxx solidos et plus). Thus the "socages" are part of the landed endowment of a church, and the value at which the churches could be farmed out depended on the price of the corn produced from them: again, there is no suggestion of the profits of jurisdiction.

We may see, therefore, that the soke of a church could be interpreted in terms of land, and defined as either an abbreviation for sokeland, or as a payment due from the sokeland. The nature of the latter is difficult to determine; the London examples suggest a form of rent or tax, but those in Domesday suggest an assessment of suit of court which has been commuted and farmed. Jurisdiction over the pleas connected with a church, and with the other forms of property such as mills and fisheries is unlikely, since sacu, meaning "plea" is never used in connection with these things, nor can this be dismissed on the grounds that socn, was an abbreviation for sake and soke and synonymous with sacu, for as have seen,¹ this is not entirely true. Finally, in support of the suggestion that soke was distinctively royal, and as such was contrasted with manorial rights, we may note that references to the soke of fisheries, tofts,

1 See above p. 57

gardens, and churches seem to be peculiar to Lincolnshire Domesday. Miss Demarest and Dr. Stevenson have shown in a celebrated series of articles, that the food renders associated with the royal farm had been widely commuted, and were known under various names in different regions.¹ These Lincolnshire references to soke may be merely a local variant and yet another expression for payments deriving from the royal farm.

Soke was also used in a wider territorial sense to denote a larger area over which a lord had sokeright. An example of this can be seen in the Assize of Clarendon:-
Et nulli sint in civitate vel burgo vel castello vel extra...
cui vetent vicecomites intrare in terram suam vel socam suam,
ad capiendum illos qui rettati fuerint vel publicati quod
sint robatores..,² thus no one can deny entry by the sheriff into his land or his soke to arrest those accused of certain offences. There are references to urban sokes, - the soc of Aldgate in London,³ of Waremanshaker and Castle Baynard, also in London,⁴ and the multiple estate of Rothley was described as a soke in the survey which was made of it in the thirteenth century.⁵

- 1 E. Demarest, "The Hundred Pennies", E.H.R. Vol. 33, 1918, esp. pp. 66-72. "Inter Ripam et Mersham", E.H.R. Vol. 38, 1923, pp. 161-170. "The Firma Unius Noctis", E.H.R. Vol. 35, 1920, pp. 78-89. C. Stevenson, "The Firma Unius Noctis" and "The customs of the hundred". E.H.R. Vol. 39, 1924, pp. 161-174.
- 2 Assize of Clarendon, c. 11, Select Charters, ed. W. Stubbs, 9th ed., revised H.W.C. Davis, (Oxford, 1913), p. 171
- 3 Regesta, Vol. II, no. 906
- 4 Dugdale, VII, 624 and 988. P.Q.W. 472
- 5 e.g. Item si aliquis de soke habens uxorem... see G.T. Clark "The Customary of the Manor and Soke of Rothley", Archaeologia. Vol. 47, p. 123

A Latin translation of a writ from Archbishop Ealdred of York announces that Ealdred habeat sacam et socam et toll et team super suos homines infra meam sacam et socam.¹ The expression infra sacam et socam is strange since infra is the normal word in medieval Latin for "within", but the translation could have been made as late as 1600. Dr. Harmer suggested that "the text in the vernacular which the translator was rendering read: on mine socne", since this phrase appears in the corresponding writ~~e~~ written in English and issued by William I to Ealdred in 1066-'9 confirming him in his rights.²

There are similarities between these references to soke, and others which appear in Domesday Book, but they are not completely identical. Domesday refers to the "soke of Bury St. Edmund's", - there are three liberi homines at Brockley in Suffolk and "they can sell (their land) within the soke of St. Edmund, - poterant vendere in soca Sancti Edmundi.³ Thus they can sell their land to one over whom Bury already has soke, such a buyer is likely to be a tenant within the eight-and-a-half hundreds for Bury has the soke of these hundreds, the Bury soke, therefore, is the group of hundreds over which it had sokeright. The entry for Mulcelsel demonstrates

1 Writs, no.119

2 Ibid., p.414, The Conqueror's writ is listed in Regesta Willelmi Conquestoris et Willelmi Rufi, no.33, ed. H.W.C. Davis, (Oxford, 1913). Hereinafter cited as Regesta, I

3 D.B. II, f.349

a double image of soke as sokeland and as the obligation to render soke. It was held by Bury and "Ailric, a liber homo, also held sixty acres there libere in soca regis, sed abbas revocat socam de dono regis,¹ - literally, Ailric held "freely on the sokeland of the king, but the abbot recovered the sokeland by the king's gift", thus Ailric had owned sokeland of the king but now the abbot could claim the service due from it again.

The great territorial sokes of Domesday are multiple estates whose members were often scattered over a wide area, but bound together by their obligation to render soke, each according to their individual assessment, to a common centre. The central settlement is named first, the appendant vills are described as its soke. The entry for Mickleover in Derbyshire reads: In Ufre habuit rex Edwardus x carucatas terrae ad geldum. Ibi adiacent -iii Bereuiche, Parua Ufre Findre, Potlac... Soca eiusdem manerii, Snellestune, iiii bovatae, Beuerdescote, iii bou., Dellingeberie, iii bou., Hougen, iii bou., Redleslie, xii bou, Sudberie, iiii bou., Hiltune, iiii bou., Sudtun, i carucata.² Thus, belonging to Mickleover are three berewicks - portions of land detached from the manor, but subject to its manorial custom, and a larger area of sokeland scattered in several vills.

Connected with the "soke" as a multiple estate is the use of the Scandinavian cognate word sogn for a parish. Stenton commented that this meaning for sogn "cannot have been

1 Ibid., II, f.360

2 Ibid., I, f.273

borrowed from English where socn was never used in such a connexion", and it must therefore have sprung from "an earlier native (i.e. Scandinavian) use of the sokn in its primitive sense of seeking".¹ It is true that soke is never used in England to denote a parish, the only recorded Old English words for parish are preost-scir and scrift-scir, while "parish" itself derives from Norman-French parosse,² but the Scandinavian sogn, and the English soke had much in common. The soke was a multiple estate, a form of territorial organisation which existed in Britain before the invasions, and which long continued to flourish in Scotland, Wales, and parts of Northern England.³ The multiple estates of all these areas conformed to a pattern of structure, rights and obligations. Mr. Jones has shown that the maenor (plural, maenolau) of lowland Wales consisted of a hall, kitchen, chamber, chapel and latrines which the bondmen were required to maintain, and in addition there was a fortified place for protection. He notes that "The other characteristic feature of the lowland maenor was the siting here of an important church (eglwys) which originally catered for the spiritual needs of all the communities on the multiple estate. Usually such a church was endowed with lands and

1 F.M. Stenton, "The Danes in England". Proceedings of the British Academy, Vol.XIII, 2nd impress. 1957, p.16, n.1.

2 See O.E.D. s.v. parish

3 For the Scottish evidence see G. Barrow, The Kingdom of the Scots, (London, 1973), Chapter 1. For Wales, G.R.J. Jones, "The Multiple Estate as a Model Framework for Tracing Early Stages in the Evolution of Rural Settlement", Les Congrès et Colloques de L'Université de Liège, Vol,58 (Liège, 1971), pp.251ff. For Northern England see J.E.A. Jolliffe, "Northumbrian Institutions", E.H.R. Vol. 41,1926, pp. 1-38. G.R.J. Jones, "Basic Patterns of Settlement Distribution in Northern England", The Advancement of Science, Vol.18, 1961, pp.192-200.

even whole hamlets, which had earlier formed part of the maenor. Nevertheless, the typical site for such a church was in a hamlet near to, but a few miles apart from, the reeve's settlement and the lord's court".¹ The English evidence provides many parallels. In Gebyncdo, the property of a ceorl who prospers and has five hides so that he can become a thegn, is described in the Textus Roffensis as "a bell, a castle gate, a church and a kitchen", property similar to that of a Welsh lord.² The place-names of certain sokes suggests that a central church had originally played a major role in its structure. According to Domesday, the manor of Kirkby Overblow in Yorkshire had three appendages - the berewick of Tideover, and sokeland at Barrowby and Walton.³ "Kirkby" is a Scandinavian word meaning "the village with a church", but it is probably a renamed village for a site which had been occupied long before the Vikings took over the area.⁴ It is situated on an elevated tract of well-drained land, and this suggests primary, not secondary settlement, moreover, the site includes a spring dedicated to St. Helen, and these "St. Helen's wells" are indicative of settlements which had been occupied since

1 G.R.J. Jones, art.cit. p.252

2 Gebyncdo, c.2. It is true that the two other versions in C.C.C.C. mss.201 and 190 omit the church and the kitchen, but it seems likely that the former was implied by the possession of a bell. See E.H.D. I, pp.431-'2, and 432, n.3

3 D.B. I, f.322

4 For what follows see G.R.J. Jones, art.cit., pp.255-'63

late Roman times. However, Kirkby Overblow was probably not the original central settlement for the multiple estate. A chain of sokeland links it to the larger estate of Knaresborough. Thus there was sokeland in Barrowby which belonged to Kirkby, but other sokeland belonged to one of the two manors of Hunsingore,¹ and Hunsingore contained sokeland belonging to Knaresborough.² Mr. Jones concludes that "the relatively small multiple estate of Kirkby was a subdivision of the larger multiple estate of Knaresborough, a subdivision probably alienated to the church by the late seventh century".³ Sheffield provides another example of a link between a soke and a church.⁴ It too was the centre of a multiple estate, and was sometimes known as the soke of Sheffield, but the mother church of the soke was at Ecclesfield, five miles from Sheffield, and the whole was also sometimes known as "the soke of Ecclesfield".

All this accords well with what is known of the early history of the parish. By origin it was not an area of land, but a number of contributions and endowments of land and money by benefactors. These grants determined the allegiance of the grantor to "his" church, and the place where

1 D.B. I, ff.322 and 328b

2 Ibid., f.328b, Mr. Jones also suggests that, in turn, Knaresborough, and thence Kirkby had been part of a still larger multiple estate centred on Aldborough.

3 G.R.J. Jones, art.cit., p.257

4 See G. Barrow, op.cit., pp.19-21

his tenants paid their tithe, it was only later that this hardened into a less arbitrary system whereby a man belonged to a particular parish because he was born on land which tithed there. Lincolnshire Domesday contains several examples where the dues of certain wapentakes, vills and hundreds are appurtenant to a church.¹

Mr. Barrow's study of the multiple estates of Scotland and England has shown how frequently the place name eccles is associated with the shire and he has concluded that this was the result of a policy of adaptation by the early church whereby "many of the earliest churches were deliberately founded shire by shire, and often placed close to the shire centre".²

There is thus a general similarity between the soke and the parish in that both involved renders to a common centre, but also there is a more particular link where the central settlement was regarded either as the church-centre or as the court centre.

A connection can also be traced between the secular estates of Scandinavian and the parishes. Mrs. Fellowes-Jensen observed that the sogn "denoted the inhabitants of an area who sought the same assembly place (church or possibly thing) and came to be used of a district whose inhabitants share a

1 See above p. 83

2 G. Barrow, op.cit., pp. 63-'4

church".¹ However, secular lordship and religion seem to have been inextricably mixed in pagan Scandinavia where there was no professional priesthood, each lord was the priest of his followers and each public, "secular" act had its religious overtones,² moreover, the things - the jurisdictional centres, were rarely held in villages but in religious cult centres. The church in its normal policy of accommodation and compromise, built Christian churches on the sites of heathen temples, and hence an area of lordship and jurisdiction coincided with a parish.³

It is possible, therefore, that the use of the word sogn to denote a parish in Scandinavia could have been a spontaneous development, the result merely of siting the new churches in the old cult/legal centres, but equally, the links in England itself between soke and church-centred estates suggests that this may have been influential.⁴

Soke could, therefore, be interpreted in a territorial sense as an abbreviation of "sokeland", both in the sense of a compact area of land which was assessed for soke, and also in reference to a multiple estate of which the component sokelands were scattered, but were all linked to a common centre by their obligation to render soke.

1 A personal letter.

2 L. Musset, Les peuples scandinaves, (Paris, 1951), pp.36-7

3 Ibid., p.100

4 For an analysis of the influence of English nomenclature on the Danish church see, A.V. Storm, "Early English Influence on the Danish Church", Saga Book of the Viking Society, VII, 2, pp.220-231

A final link between soke and royal service is the word "shipsoke". The term "shipsoke" has been noticed in only three sources; in the great Worcester charter known as Altitonantis,¹ in a clause of the Leges Henrici Primi,² and in the Pipe Rolls of Henry II.³ According to the Altitonantis charter, Edgar granted to Oswald and the church of Worcester the privilege that ne cum regis ministris aut eius centuriatus id est hundredes exactoribus naumachiae expeditionem, quae ex tota Anglia regi invenitur, faciant; sed... ut ipse episcopus cum monachis suis de istis tribus centuriatibus, id est hundre^dis... constituent unam naucupletionem, quod Anglice dicitur scyppylled^d odde scypscne in loco quem ob eius memoriam Oswaldeslaw deinceps appellari placuit, ubi querelarum causae secundum morem patriae et legum iura iure descernantur; habeatque ipse episcopus debita transgressionem... et omnia quaecunque rex in suis hundredis habet. According to the Leges Henrici Primi, the English shire was divided into hundreds and shipsokes - Comitatus in centuria et sipesocnas distinguuntur. Warwickshire seems to be the only county where territorial units are expressly described as "shipsokes". The Pipe Rolls of Henry II refer

1 B.1135=S.731

2 L.H.P., c. 6, 1.

3 Pipe Roll, 1169, 16 Henry II, Pipe Roll Soc., (London, 1892), pp. 90-91. Pipe Roll, 1174, 21 Henry II, Pipe Roll Soc., (London, 1897), p. 94.

to three shipsokes:-

<u>Sipe socha de Cnichtelawa</u>)	
<u>Sipe socha de Chincton</u>)	P.R. 1169, 16 Henry II
<u>Sibbe soka de Humilieford</u>)	P.R. 1174, 21 Henry II

In each of these cases, the shipsoke is a territorial unit, but it is difficult to say what it was composed of. In the Worcester charter it is identified with the triple hundred of Oswaldslaw which was assessed at three hundred hides. The author of the Leges was not explicit, but evidently for him, the shipsoke was a unit smaller than a shire. The Pipe Roll evidence suggests that those in Warwickshire were larger than single hundreds, for there was a re-organisation of the hundreds in Warwickshire in the twelfth century and the original Domesday hundreds were grouped into four larger units: the three "shipsokes" were constituted as follows:-

Knightlow - Brinklow, Marton and Stoneleigh
 Kineton - Tremelaw, Fexhole, Berricestone and Honesberie
 Hemlingford was called Coleshelle in D.B.

Thus, they were not constructed uniformly of three hundreds, nor were the assessments of the groups, according to the Domesday hidation, uniform groups of three hundred hides.¹

The shipsoke has been defined as "the private jurisdiction exercised over a group of three hundreds",² but the emphasis is

1 For the groups see O. Anderson, English Hundred Names, (Lund, 1934), 1, pp.xix and 131-138. For the Domesday assessments see B. Walker, "The hundreds of Warwickshire", Antiquary, Vol. 39, pp. 179ff.

2 Bosworth and Toller, s.v. scyp-fylled.

misplaced: the hundred was an area of jurisdiction, but it also had fiscal character, as a unit for the collection of royal dues. The two flow together, but it is from the latter stream of meaning that the shipsoke is derived.

Let us first, however, consider the problem of jurisdiction. Groups of three hundreds did have distinct role in the law: compurgators for a simple oath in support of an untrustworthy man were selected from within three hundreds,¹ and accused men could clear themselves by an oath supported by compurgators also found within three hundreds.² There are traces of hundreds in groups of three. In Cambridgeshire, the field name Mutlow Hill is found in the parish of Great Wilbraham, which is situated at the nodal point of the boundaries of three hundreds, - Staine, Radfield and Flendish, and it seems likely that the hill had been the meeting place for all three.³ Buckinghamshire was divided into eighteen hundreds, and these were organised into groups of three, certainly after, and perhaps by the time of Domesday.⁴ Some Gloucestershire hundreds were similarly grouped. In 1086 the hundreds of Blachelau and Witestan were appendant to the royal hundred and hundredal manor of Berkeley, three hundreds were annexed to the royal manor of Longborough and three to Winchcombe.⁵ Other Domesday groups were the three hundreds of Malmesbury in Wiltshire,⁶ the three hundreds of Molland in Devon,⁷ and

1 I Aethelred, c.1,3; II Cnut, c.22, 1

2 I Aethelred, c.1,3; II Cnut, c.30, 2

3 P.H. Reaney, The Place-Names of Cambridgeshire, English Place Name Society, Vol. XLX, (Cambridge, 1934), p. Lix

4 H.M. Cam, "Early Groups of Hundreds", Liberties and Communities in Medieval England, (London, 1963), p.92

5 Ibid., p.97. D.B. I, ff.92b - 93.

6 D.B. I f.64b

7 Ibid., f.101

the three hundreds of Cowarne in Herefordshire,¹ and the three hundreds of Yarmouth in Norfolk.² But the triple hundred was not a unique grouping. Burghill in Herefordshire was composed of two hundreds,³ Bury St. Edmund's had authority over eight-and-a-half hundreds, Ely over five-and-a-half, Peterborough over eight. Joint sessions of many different combinations of hundreds are recorded, the Liber Eliensis records meetings of three, six and eight hundreds in the time of Edgar,⁴ Peterborough records meetings of two, three and eight hundreds,⁵ and the Ramsey chronicle includes a document from William Rufus commanding a joint session of three-and-a-half hundreds,⁶ and reports a case in the reign of Henry I where nine hundreds met together for a joint session.⁷

Thus the triple hundred was only one of many different groupings of hundreds. Its association with the shipsoke, and the association of the shipsoke with jurisdiction derives principally from the Altitonantis charter, but as we have seen from the Warwickshire shipsokes, a group of three hundreds may not have been a standard unit. The author of the Leges did not define the shipsoke. It may be that he thought it so commonplace and regular a unit that further explanation was

1 Ibid., f.186

2 Ibid., II f.118

3 Ibid., I, f.186

4 Liber Eliensis, ed. E.O. Blake, Camden Soc., 3rd ser., XCII, 1962, pp. 1, 11, 14, 35, 59.

5 B.1130

6 Cartularium monasterii de Rameseia, R.S. no.79, 1884-94, ed. W.H. Hart and A.L. Ponsonby, p.214

7 Ibid., pp.266-8

unnecessary, or, it may be that the shipsoke was so irregular that a more exact definition in terms of the number of hundreds or hides comprising it, was impossible. However this may be, to define the shipsoke in terms of jurisdiction is certainly misleading. Oswaldslaw was an area of private jurisdiction, it was also a shipsoke, but it would be an error of logic to equate two properties because they both apply to one object. Oswaldslaw was a shipsoke because its three hundreds constituted one ship's complement, not because the abbey's bailiff had return of writs and could deny access to the sheriff. As the charter itself makes clear, Oswaldslaw was more than an area of jurisdiction, it was also endowed with royal revenues,¹ and the meaning and origin of the shipsoke must be sought in this direction.

The English word sipesocna or scypsocne has cognate forms in other languages. In Old Icelandic, the word skip-sokn means a ship's crew. Closer to the English evidence however, if not to the word, are the Scandinavian words, - skipaen in Denmark, skipreid in Norway, and Skiplag in Sweden. These appear in the thirteenth century lawcodes and denote districts which were assessed to provide ships. Since, as we have seen,² soke was used in England in a territorial sense, the English "shipsoke" must be akin to these.

Ships played an essential part in England's defence against the Vikings. According to the Chronicle, in 896,

1 omnia quaecunque rex in suis hundredis habet.

2 See above pp. 63 ff

Alfred ordered that "warships be built to meet the Danish ships". They were an improvement on earlier designs, for they were almost twice as long, (some with sixty oars, others had more) and were swifter, steadier, and had more freeboard than those they replaced.¹ The activities of the fleet are frequently described in the Chronicle,² and Florence of Worcester has a splendid description of Edgar's navy. He records that it consisted of three thousand six hundred ships which were stationed in three squadrons along the West, North and East coasts, and which patrolled the seas in a most orderly fashion.³ Service with the ship-fyrd was a national obligation. In the laws of Aethelred and Cnut, scipfyrdunga appears with fyrdunga, and bridge-and wall-work as one of the common burdens.⁴ Cnut guaranteed that if all landholders performed the services demanded of them both in the scypfyrd and the landfyrd, they would be able to hold their land freely as long as they lived.⁵ The fleet was never more important than during the reign of Aethelred in the face of Viking attacks. According to the Chronicle, he decreed in 1008 "that ships should be built unremittingly all over England",

- 1 The Anglo-Saxon Chronicle, translated and edited by D. Whitelock, with D.C. Douglas and S.I. Tucker, (London, 1961) s.a.897. Hereinafter referred to as A.S.C.
- 2 Ibid., e.g. s.a. 910, 992, 999, 1006, 1008, 1009.
- 3 Florence, I, pp. 143-'4
- 4 V Aethelred, c.27: VI, cc.32,3; 33; 34. II Cnut, c.10
- 5 II Cnut. c.79

that they should be fitted out with all possible diligence and be ready for action by Easter each year.¹ The decree is to be found again in one of his later law codes.²

Thus ship service was part of the trinoda necessitas, and although there may have been some forcible recruitment of trading ships,³ in theory at least, the country's warships were provided for by a system of public service. The annal for 992 refers to ships from East Anglia and London.⁴ In 1003 or 1004, Archbishop Aelfric bequeathed his best ship to his lord, one ship to the people of Kent and another to Wiltshire.⁵ Two other wills have survived which bequeath ships. Bishop Aelfwold of Crediton left a ship to the king in a will which dates from the period 988-1008/12, and in a will of 975-1016, Aelfhelm, minister bequeathed minre scaede for minre sawle into Hramsege healfe þan abbode 7 healue þam hirede.⁶ These gifts were evidently intended to help the recipients to fulfil their ship assessment, but we must be wary of interpreting them too literally. The division of Aelfhelm's ship into two, the grant of one half to the abbot of Ramsey and the other half to the community, suggests a gift of property which is assessed

1 A.S.C. s.a.992

2 V Aethelred, c.27, VI, c.33

3 This is suggested by the annal for 992, when "all the ships that were of any use" were called up

4 A.S.C. s.a.992

5 D. Whitelock, Wills, pp. 52-55, and 163

6 Ibid., p.30-5, and 133.

for ship service, not the gift of an actual ship. This is borne out by a document of c.1000 which contains a list of shipmen (scipmen) supplied by estates in Essex, Middlesex, and Surrey.¹ Thus four were due from St. Osyth, two from Tillingham, one each from Dunmow and Telleshunt, and in all forty-five men were provided from thirty-three estates.

The details of the assessment itself are most uncertain. The standard assessment for military service by land seems to have been one warrior from every five hides.² This may also have applied to the ship-fyrd, for service "by land and sea" is frequently mentioned. In Domesday the borough of Malmesbury owed military service for five hides, thus sending one man on expeditions "by land or sea", Exeter was required to serve in the same way for five hides "by land or sea", and Barnstaple, Lidford and Totnes owed the same service collectively.³

If five hides supported one sea-warrior, then three hundred hides would provide sixty. There is evidence that three hundred hides was the basic unit for the ship levy, and that the typical ship's complement was conceived of as having sixty oars. In a writ of 1001-1012 Bishop Aethelric of Sherborne wrote to Earl Aethelmer to complain paet me ys

1 Robertson, Charters, no. LXXII

2 C.W. Hollister, Anglo-Saxon Military Institutions, (Oxford, 1962), pp.38ff.

3 D.B. I, ff.64b and 100

wana aet þam scyppgesce(ote) þus micelys þe mine foregengan
on ealles folces gewitnyse aet Niw (antune haefdon). A
 number of villis and the hidage due from them is then given,
 and the writ goes on:- þises ys ealles wanan þreo 7 þritig
hida of ðam hund hidun þe oðre bisceopas aer haefdon into
hyra scy(re).¹ Here the total assessment was three hundred
 hides but the burden of service had been commuted into a
 ship-scot and the right to it transferred to the bishopric.
 The arrangement was clearly one of long-standing for
 Aethelric says that his predecessors had had the three
 hundred hides and the two previous bishops take us back to the
 reign of Edward the Martyr.² It was obviously a matter of
 public knowledge since the testimony of the whole people at
 Newton was called on to substantiate it.

Such a unit would provide a ship of sixty oars and ships
 of this kind are mentioned in the sources. This was the
 number cited in the Chronicle with regard to Alfred's ships,
 (although he did build some which were larger), and the ship
 and shipping-tackle which Archbishop Aelfric leaves to the
 king in his will, are associated with the equipment of sixty
 warriors for sixty helmets and sixty coats of mail are also
 bequeathed.

The sources in general give very meagre and often
 unreliable information about the size and structure of English

1 Writs, no.63

2 Wulfsige III, 992-1001x2. Aethelsige I, 978-990x992

fleets, but the Chronicle is not reticent about their failures and the toll they took on the people's resources.¹ Tribute was often paid to the Vikings, but at last there seems to have been no alternative but to recruit part of the enemy fleet itself on a permanent basis. In 1012, forty-five Danish ships joined Aethelred, they promised to defend the country, and mercenaries continued to serve the English until the time of the Confessor. The annal for 1040,² records that Hardacnut paid them at a rate of eight marks per rowlock, and Florence of Worcester adds that twelve marks were paid to each steersman. In 1041, £11,048 was paid for the service of thirty-two ships. From this it is possible to ascertain the number of oars which each ship was estimated to contain. £11,048 is equivalent to 16,578 marks, thus each ship was paid 508 marks. The steersman was paid 12 marks, leaving four hundred and ninety-six to be divided among the rest, - sixty-two men in all. This is not the sixty oared ship of the archetypal shipsake, but it may have some bearing on Aethelred's decree of 1008 "that ships should be built unremittingly all over England", and this was to be done on the basis of three hundred and ten hides. This unit of assessment which has always puzzled historians, they nearly all admit the figure, but it is invariably with some reluctance. The 'C' version of the Chronicle says of prim

1 A.S.C. s.a. 999, 1009, 1001

2 Ibid, 'C' and 'D', s.a. 1040; 'E', s.a. 1039.

hund hidum 7 of tynum aenne scegd, the 'E' version also has of prim hund hidum 7 of X hidum aenne scegd. The 'F' version, Florence of Worcester and Henry of Huntingdon, all of which were dependent on sources of the Chronicle, also give a figure of three hundred and ten hides.¹ There is substantial agreement among the 'C', 'D' and 'E' versions of the Chronicle for the whole series of annals between 983 and 1022, yet 'D' has for 1008 of prim hund scipum 7 X be tynum anne scaegd. Dr. Whitelock concluded that scipum was a simple error in copying from hidum.² Mr. Garmonsway, however assumed that all the versions are corrupt and that something had been omitted. His version of the annal reads: "one large warship from every three hundred hides and a cutter from every ten hides",³ but as Plummer pointed out, the disproportion between these two units of assessment - one of three hundred hides the other of only ten, seems to be unbelievably large.⁴ Three hundred and ten hides is, as Dr. Whitelock says "an unusual unit".⁵ All six chronicles may be ultimately dependent on a single source, and it may be that a peculiar idiom was used and misunderstood by the later scribes.⁶ There is an additional difficulty in the definition of the scegd which every unit was ordered to produce, for the will of

1 Florence, I, p.160 Henrici Huntendunensis historia Anglorum ed. T. Arnold, R.S. no.74, 1879, p.176

2 Anglo-Saxon Chronicle, (London, 1961), ed. D. Whitelock, D. C. Douglas, and S.I. Tucker, p.88, n.6

3 Anglo-Saxon Chronicle, ed. G.N. Garmonsway, (London, 1953) p.138

4 Two Anglo-Saxon Chronicles Parallel, ed. C. Plummer (Oxford, 1899), pp.185-6

5 A.S.C. p.88, n. 6

6 This occurred in the 'E' and 'F' versions of the annal for 1018. 'C' and 'D' record, correctly, that the citizens of London paid ten-and-a-half thousand pounds in tribute, but 'E' and 'F' give eleven thousand pounds because they mistook the meaning of the idiom 'the eleventh half'. Ibid., p.97 n. 12

Bishop Aelfwold (988-1008/12) bequeaths aenne scegd Lxiiii aere. The problem of idiom can be only speculation, but there does not seem to have been an ambiguous phrase in Old English for the figure 310. The actual number of oars in the scegd itself is less important; Aelfwold's ship may have been exceptional and it cannot be harmonized with any known assessment figure. A ship of sixty-four oars based on a three hundred hide unit calls for 4.84 hides per oar, and a three hundred and ten hide unit calls for 4.68 hides per oar, while the standard five hides per oar would require an assessment unit of three hundred and twenty hides for which there is no evidence.

A further complication arises from the list of shipmen which we have already quoted, for the assessment for service was either most inequitable, or it was not based on the hidage of the estates, at least as it is given in Domesday. According to the list, Fulham and Southminster each contributed five men, and in Domesday the bishop of London held Fulham for forty hides and the canons of St. Paul's had five hides there, while the bishop held Southminster for thirty hides.¹ However, four men were contributed by St. Osyth which was assessed at only seven hides in Domesday, while Clacton, assessed at twenty hides, contributed only two men.²

Whatever the basis of the assessment, however, it is with this area of fiscal rights, and obligations of service that

1 Fulham, D.B. I, f.127b; Southminster, Ibid., f.10

2 Ibid., both f.11

the shipsoke is concerned. Oswaldslaw was a shipsoke and Worcester was therefore responsible for the production of a ship and its crew. Domesday records that four freemen of Worcester owed expeditiones et naviga to the bishop,¹ according to Hemming, the bishop had a steersman called Eadric who acted as ductor exercitus eiusdem episcopi ad servitium regis,² and Domesday records that he held a manor assessed at five hides for which he deserviebat cum aliis servitiis ad regem et episcopum pertinentibus.³

It is suggested, therefore, that the origin and primary meaning of the shipsoke should be sought again by reference to the royal farm. It must be admitted, nonetheless, that the context of the term in both the Leges and the Pipe Rolls is administrative and judicial rather than fiscal. To account for this we may note firstly that the word "shipsoke" may be of later coinage. The authenticity of the Altitonantis charter has been much discussed. It probably incorporates original material, but the pre-Conquest native word for a ship and its crew seems to have been scyp-fylled, and the compound shipsoke may, like hlaford-socn, and ciricsocn, be of post-Conquest origin. Yet the substance of the shipsoke as a unit of assessment for the production of a ship did exist

1 Ibid., f.173

2 Hemming, I, p.81

3 D.B. I, f.173b.

before the Conquest, even if the word itself did not. For a short time in the eleventh century, a contemporary might have defined a shipsoke according to its primary meaning, but the passage of time and especially the Conquest itself, brought changes in the means of producing a navy. Thus the original meaning of the shipsoke would fade, as its purpose became obsolete.

Historians have long been familiar with the links between services, dues and jurisdiction. Thus the hundred was an area of jurisdiction with a court, and it was also an administrative improvement for the collection of the royal farm. This association between farm and jurisdiction is pertinently demonstrated in a dispute which arose between Worcester and Evesham, after the Conquest, Lanfranc and the bishop of Coutances, were told to settle the problem of the sake and soke of the disputants as it had been in Edward's time when the geld was last taken for the fleet, and to do justice in the king's place by ensuring that Wulfstan, bishop of Worcester, had the houses which he claimed against the abbot of Evesham and that all his tenants were prepared to do their service both to the bishop and to the king.¹ Thus the right of sake and soke and the obligation of serve with the ship-fyrd are directly linked, probably

1 Hemming, B.M. Cotton, M.S. Claudius A.VIII, f.85, ed. T. Hearne, 1723, 1, 77. Regesta, I, no.184

because the sheriff had been responsible for both, and possibly because the records of both were kept together.

Thus soke had a range of meaning which was non-judicial, for it was used with reference to dues and services which originated in the royal farm. There is no absolute dichotomy, however, between soke as a legal term and this wider, serviential meaning, rather, as the evidence concerning the shipsokes suggests, the king's judicial rights were administered at the same time, and with the same machinery as his right of farm. Connected with this serviential soke is the use of the word soca as an abbreviation for "sokeland" - land which was assessed for dues rendered to the king. This could be a single plot of land, or a multiple estate, where a number of vills, often scattered over a wide area, were bound together by their obligation to render the dues associated with soke, to a common centre.

CHAPTER 3

Sake and Soke in the Sources and as the Right to Profits
in the
Anglo-Saxon Period.

The examination of the words sacu and socn has so far tried to show that sacu can be translated as a judicial dispute and that socn was a suit of court, but socn also had a wider non-judicial meaning whereby it could be used in reference to the royal farm. We also saw that socn in its judicial sense could be an abbreviated form of "sake and soke", but, as yet, we have made no attempt to explain this phrase in detail. The essential questions still remain unanswered: was this judicial soke a fiscal privilege giving only the right to fines, or did it extend further and authorize the grantee to preside over a court and exclude royal officials? did sokeright refer to a particular group of pleas as Maitland, Stenton and Dr. Hurnard, each in their different ways, believed, or was it a more general term, giving the right to suits which had previously belonged to the grantor? We will try to answer these questions in the following three chapters. Firstly, we will set out the references to sake and soke in the Anglo-Saxon sources. It must be admitted at once that, in themselves, they contribute little to the understanding of the phrase, but taken in conjunction with other examples of the term soke in the eleventh century, we will see that sake and soke gave the

right to profits from pleas. Secondly, we will show from post-Conquest evidence that sake and soke was not a precise phrase for any specific pleas, nor even for a particular type of jurisdiction, franchisal, feudal or manorial, it was a general term which could be applied to all these, and it is necessary to examine the context in which sake and soke appears in order to determine the form of jurisdiction intended. Finally, we will return to Anglo-Saxon England, and we will try to show that the sokeright which was granted to private lords by kings was the judicial rights which the kings themselves had had. However, royal judicial authority was very meagre in early times, for the king had only the residual right to maintain justice; this was achieved by the appointment of reeves before whom cases could be heard. Thus when sake and soke was granted by a king, he undertook to leave the grantee free to administer judicial affairs himself and deny access to the royal reeves, but this was a conditional grant and depended on the proper exercise of judicial authority by the lord.

The earliest reference to sake and soke in all the sources is a charter of Eadwig, by which he granted Southwell and a number of other villis in Nottinghamshire to Archbishop Osketel of York.¹ The grant survives in only one copy, in the Liber Albus, which is a fourteenth century cartulary. The formula sake and soke occurs in the Anglo-Saxon bounds,

1 B.1029 and 1343 = S.659

but the scribe who copied the text evidently had some difficulty with the language, for he wrote Ðir sint ðam tuner ðe hirad into Sudyellan mid sacce and mid sacne, Stevenson suggested that a correct transcription would be Ðis sint ða tunes ðe byrad into Sudyellan mid sace and mid socne, - These are the vills that belong to Southwell with sake and soke.¹ The charter is dated A.D.958, but this does not agree with the Indiction, - 14, which would be 956, and the latter date is also to be preferred on external evidence, for Eadwig was no longer king of that part of England in 958,² but there are no other irregularities in the document which might cast doubt on its authenticity.³

Liebermann believed that the formula sake and soke first appears in documents (Urkunden) of the early eleventh century. He referred to, but rejected Eadwig's charter to Osketel, as well as certain other texts, - B.1052 = S.681, B.1018 = S.1225, and B.1013 = S.1219, - as falsch oder falsch datiert, and cited instead three documents from the reign of Cnut, - a writ to Aethelnoth, Archbishop of Canterbury in 1020,⁴ a writ to St. Paul's, London, 1033-'35,⁵ and a charter, dated 1032, to Christ Church Canterbury.⁶ However,

1 Early Yorkshire Charters, Vol. I, ed. W. Farrer, (Edinburgh, 1914), pp.5-10.

2 See A.S.E. p. 361

3 This charter has often been discussed, see e.g. F.M. Stenton, Types of Manorial Structure in the Northern Danelaw, Oxford Studies in Social and Legal History, vol. II, 1910, pp.79-81. Writs, p.75, E.H.D. Vol. I, pp.512-'4

4 Writs, no.28

5 Ibid., no.53

6 K.1327, Robertson, Charters, no. LXXXV. Liebermann, ^{Gesetz,} Vol. II ii. s.v. Gerichtsbarkeit, c.24, p.460.

all the texts which Liebermann rejects are probably authentic, whereas two of those which he accepts may not be. Cnut's alleged charter to Christ Church cannot be genuine in its present form, for there are chronological irregularities in the witness list. The date, 1032, which appears on the document, is only an endorsement in a thirteenth century hand; it is a date which is possible for three of the witnesses - Aelfsige, bishop of Winchester, Aethelric, bishop of Selsey, and Aelfwine, abbot of New Minster, but it does not fit Aelfmaer, or Earl Leofwine. The appearance of the Danish earls, Ulf, Eglaf and Eric, is also suspicious, for their signatures are not found elsewhere after 1024. The grant concerns Folkstone, but it is uncertain if Christ Church held land there before the Conquest. Folkstone was held by Odo at the time of Domesday, but it is said to have been previously held by Godwin and there is no mention of any former connection with Christ Church.¹ The writ to St. Paul's may be spurious. It does not survive in manuscript form, but in a printed version of the seventeenth century, the order of words is sometimes inaccurate, and although this could be due to careless copying or editing, there remains the possibility that the original was itself a concocted text.² There seems no reason to doubt the authenticity of the writ to Aethelnoth,³ but since it is dated 1020, it is much later than the charter to Osketel

1 D.B. I, f.9b. For all this see the references given by Professor Sawyer under S.981

2 See Writs, pp. 239-'40. Dr. Harmer doubted if it could be authentic.

3 See Writs, p.171

which we have suggested is the earliest appearance of sake and soke in a genuine text.

As it is entirely likely that the charter to Osketel is genuine, so there seems no reason to doubt the authenticity of other charters which Liebermann rejected. The first of these, - B.1052 - is a charter of 959, by which Edgar gave to the faithful matrona, Quen, Howden in South Yorkshire, and eight other villas, which, it is said haerað to Heofoddene mid sac and mid socne.¹ It survives in two copies, both of which are Peterborough texts, - London Society of Antiquaries, LX, ff.33-34, which dates from the twelfth century, and Peterborough D.C., I, ff.128-129, which is of the thirteenth century. Only the earlier version includes the bounds, where, as with the charter to Osketel, the reference to sake and soke is made.

B.1013 and B.1018 are records of grants made to Bury St. Edmund's, both refer to sake and soke, and both were regarded as spurious by Liebermann, although they are probably genuine. In B.1013, a certain Ulfketel gives lands at Rickinghall, Rougham, Woolpit, Hinderclay, and Redfaesthorpe all in Suffolk, to Bury mid mete and mid manne and mid Sake and Sokne also ic it aihte. The text survives in three late copies, and all are Bury documents :-

- | | | |
|------------------------------|---|--|
| Camb. U.L. ff. 2, 33, f. 49v | - | a sacrist's register of the latter half of the thirteenth century. |
| B.M. Add. 14847, f. 19v | - | a fourteenth century cartulary. |

1 The text is also printed by Farrer, op.cit. no.4, pp.12-13

B.M. Add. 14850, f.85 - a fifteenth century register, and it is mentioned, but not copied, in certain lists of Bury benefactors:-

C.U.L. Ee 3, 60, f.321

C.U.L. Add. ms. 6006, ff.73b, 74b

C.U.L. Mm. 4, 19f, 167.

The grant is dated 1005 in the margin of one of these lists - C.U.L. Ee 3, 60, f.321, - and there is additional evidence to suggest that this is approximately correct. Bury certainly held land in these vills at the time of Domesday.¹ The alleged grantor, Ulfketel, may well have been the warrior who is described in the Anglo-Saxon Chronicle as leading the East Angles against the Danes and who was killed at Ashingdon in 1016.² Another of the Bury lists - Add. ms. 6006, f.74 - calls him Alderman, dux et inclitus comes, and although the Chronicle itself does not describe him as an ealdorman, he is entitled "ealdorman of the East Angles" by Florence of Worcester.³ This reference to sake and soke also seems unobjectionable, therefore, and although there is no means of verifying the precise date, the grant must have been made before 1016 when Ulfketel died.

B.1018 records a grant of land at Culford, Wordwell, and Ixworth, again in Suffolk, to Bury by Thurketel. The text itself is short and may be quoted in full:- Dis sendan þa land þe þurketel gean Gode 7 sce Mariam 7 sce Eadmunde

1 See D.B. II, Rickinghall - f.361. Rougham - f.362. Woolpit - f.362b. Hinderclay - f.364b. Redfaesthorpe cannot be identified.

2 A.S.C. s.a. 1004 and 1016

3 dux East Anglorum Ulfketel, Florenti Wigorniensis monachi chronicon ex chronicis, ed. B. Thorpe, (English Historical Society, 1848-'9), Vol. I s.a. 1004, p.157

paet is paet land aet Culeforde paet his agen waes swa hit
staent mid mete 7 mid mannum 7 mid sake 7 mid socne 7 eal
paet land aet Wrdewellan, 7 paet land aet Gyxeweorde swa
hit stent mid mete 7 mid mannum.¹ This survives in five
texts, of which the earliest, - B.M. Cott. Aug. ii, 84 -
dates from the eleventh century. Again, Bury held these
estates at the time of Domesday,² and although nothing seems
to be known of Thurketel in independent sources, he is
included in the list of Bury benefactors - C.U.L. Ee, 3,
60, f.322b - where he is described as dreng inclitus and
where the grant is attributed to the reign of Cnut. There
seems to be nothing in the available evidence, therefore,
which might cast doubt on the authenticity of this grant.
Thus Liebermann's critique of the early documents which refer
to sake and soke is, in many respects, erroneous, and a
corrected list of those which are genuine would, in
chronological order, be as follows:-

A.D. 956	B.1029;	Eadwig to Osketel.
A.D. 959	B.1052;	Ed g ard to Quen.
c.A.D. 1005	B.1013;	Ulfketel to Bury.
A.D. 1020	Writ no.28;	Cnut to Aethelnoth.
A.D. 1016-35	B.1018;	Thurketel to Bury.

1 "These are the estates which Thurketel grants to God and St. Mary, and St. Edmund, namely the estate at Culford which was his own, as it stands with its produce and its men and with rights of jurisdiction, and the whole of the estate at Wordwell, and the estate at Ixworth as it stands with its produce and its men". The translation is from Robertson, Charters, no. XCIII, p.179.

2 See D.B. II, Culford - f.364, Wordwell - f.366b, Ixworth - f.367b.

There are a number of other references to sake and soke in records of land grants. It is recorded in Simeon of Durham that a certain Styr, son of Ulf, asked Aethelred for permission to grant Darlington to St. Cuthbert, and he added to this various other estates which he brought with his own money, including two carucates at Cealtune, with sake and soke. Cnut is also said to have given Staindrop and its appurtenances to Durham, with sake and soke. A certain Snaculf, son of Cytel, gave other estates to Durham cum saca et socna.¹ An earlier annal in Simeon tells how Cutheard succeeded to the bishopric and emit de pecunia sancti Cuthberti villam quae vocatur Ceddesfeld et quicquid ad eam pertinet, praeter quod tenebant tres homines, Aculf, Ethelbriht, Frithlaf, Super hoc tamen habuit episcopus sacam et socam.² There is also a fragment which records the grant by Ulfketel, son of Osulf, to Durham, of land at Norton, Co. Durham, mid mete and mid mannum 7 all paet ðer into hyred mid sac 7 mid socne.³ It survives from only one copy in the eleventh century Liber Vitae of Durham,⁴ and it is impossible

1 All in Symeonis Monachi Opera, ed. T. Arnold, R.S. (London, 1885), Vol.1, pp. 212-'3.

2 "with the money of St. Cuthbert, he bought the estate which is called Sedgefield and all that belonged to it, which had been held by three men, Aculf, Ethelbriht, and Frithlaf. Over this the bishop had sake and soke". Ibid., s.a. 901, p.208.

3 B.1256=S.1661

4 B.M. Cott. Domit. vii. f.47^v

to date it with any certainty. An Ulfketel also signs the charter concerning Howden which is A.D.959 (B.1052), and another charter of Edgar of A.D.958 concerning land in Nottinghamshire,¹ is witnessed by an Ulfketel, minister. Ulfketel was a popular Scandinavian name and the whole area was marked with Scandinavian influence, but it is not impossible that Edgar's minister was the donor of Durham. The document is too fragmentary to have suspicious features, but there are no other reasons for doubting its authenticity. A Worcester charter of 1052-'6,² includes an account of a lawsuit, which describes how Toki, a royal minister, gave land to the church to be held by it for as long as he lived (quamdiu vixerit), and after he died Worcester was to continue to hold it with sake and soke; however, his son, Aki, subsequently claimed the land as part of his inheritance, and he had to be bought off with eight marks; the charter then says again that Worcester holds with sake and soke.

These appear to be the only examples of sake and soke in what are, or may have been, pre-Conquest charters. Because they are so few it seems that the formula was out of place in that type of document. It occurs only in the English bounds of B.1029 and B.1052, not in the bodies of the charters themselves. The Worcester charter concerning Toki's estate³ evidently incorporates a description of a lawsuit, somewhat in the manner of Aethelred's great narrative charters,

1 B.1044 = S.679
 2 K.805 = S.1408
 3 K.805

but still not entirely in keeping with the classic charter form. Of the remaining seven references to sake and soke, four are in Latin and part of Simeon's Chronicle, but three, B.1013, B.1018 and B.1256, may possibly be derived from writs rather than charters, for they are short, are in English and the phraseology, mid mete and mid mannum... mid sac and mid socne, which occurs in all of them, is strongly reminiscent of the writ form; nor can we be sure that the phrase was part of the original text.

There are many other spurious charters which include sake and soke, but it seems likely that the formula was added by later scribes who were unfamiliar with, or indifferent to, the charter conventions of earlier times. The following have been noticed:-

B. 872	= K. 420 = S. 538,	A.D. 948,	Eadred to Crowland Abbey.
B. 1178	= K. 520 = S. 741,	A.D. 966,	Edgar to Crowland.
B. 1135	= K. 514 = S. 731,	A.D. 964,	Edgar to Worcester.
	K. 709 = S. 909,	A.D. 1004,	Aethelred to St. Frideswide's Oxford.
	K. 916 = S. 1000,	A.D. 1043,	Edward to Coventry.
	K. 941 = S. 1398,	A.D. 1042-6,	Confirmation of Leofric's grant to Evesham.
	K. 809 = S. 1030,	A.D. 1060,	Edward to Ramsey.
	K. 939 = S. 1226,	c.A.D. 1043,	Coventry foundation charter.
	K. 824 = S. 1043,	A.D. 1066,	Edward to Westminster.

- K.825 = S.1041, A.D.1066 Edward to Westminster.
- K.771 = S.1002, A.D.1044, Edward to St. Peter's
Ghent.
- B.531 and 532 = K.310 = S.357, A.D.871-7, Alfred to Shaftesbury.
- K.785 = S.1055, A.D.1044-7, Edward to St. Benedict
of Holme.
- K.797 = S.1058, A.D.1044-51, Lease of Lyfing
to Osferth.
- K.813 = S.1036, A.D.1062, Edward to Waltham.
- K.808 = S.1029, A.D.1060, Edward to Peterborough.
- K.817 = S.1038, A.D.1065, Edward to Malmesbury.
- B.1258 and 1280=K.575 and 908 = S.787, A.D. 972, Edgar to
Peterborough.
- B.1277 =K.567 = S.783, A.D. 971, Edgar to Glastonbury.

Although sake and soke was very rare in charters, it frequently appears in writs, and was evidently part of their standard form. Of the one hundred and twenty-one writs collected by Dr. Harmer, seventy-eight contain sake and soke; these are:-

nos. 4, 8, 9, 10, 11, 12, 17, 20, 22, 23, 24, 28, 31, 33,
34, 35, 36, 38, 40, 41, 42, 43, 44, 45, 46, 50, 51,
52, 53, 54, 55, 57, 59, 61, 64, 65, 68, 69, 71, 72, 73,
74, 76, 77, 78, 79, 81, 82, 83, 84, 85, 86, 87, 89, 91,
92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103,
104, 105, 106, 109, 110, 114, 115, 116, 118, 119, 121.

Of the total number of writs, only sixty-two were accepted as genuine by Dr. Harmer, and of these, thirty-two refer to

sake and soke. These are:-

nos.	8.	A.D.1043-3,	to Bury.
	9.	A.D.1043-4,	to Bury.
	11.	A.D.1044-65,	to Bury.
	12.	A.D.1044-65,	to Bury.
	17.	A.D.1052,	to Bury.
	20.	A.D.1051-7,	to Bury.
	22.	A.D.1051-7,	to Bury.
	23.	A.D.1065-6,	to Bury.
	24.	A.D.1065-6,	to Bury.
	28.	A.D.1020,	to Christ Church.
	35.	A.D.1053-61,	to Christ Church.
	38.	A.D.1042-50,	to Canterbury.
	43.	A.D.1058-66,	to Chertsey.
	44.	A.D.1042-66,	to Cirencester.
	46.	A.D.1043-53,	to Coventry.
	50.	A.D.1061,	to Hereford.
	51.	A.D.1042-4,	to the London <u>Cnihtengild</u> .
	55.	A.D.1053-7,	to St. Denis, Paris.
	57.	A.D.1040-2,	to Hemingford.
	64.	A.D.1060-61,	to Wells.
	65.	A.D.1061,	to Wells.
	68.	A.D.1061-2,	to Wells.
	69.	A.D.1061-2,	to Wells.
	71.	A.D.1066,	to Wells.
	72.	A.D.1066-75,	to Wells.
	87.	A.D.1057-66,	to Westminster.
	95.	A.D.1057-66,	to Westminster.

- 99. A.D.1042-66, to Westminster.
- 115. A.D.1062, to Worcester.
- 118. A.D.1060-6, to York.
- 119. A.D.1060-5, to York.
- 121. A.D.1041-55, Gospatric's writ.

There are also fifteen other writs, most of them from Westminster, which refer to sake and soke, and which may possibly be genuine, but this is uncertain or doubtful.

These are:-

- 34. A.D.1052-66, to Christ Church.
- 52. A.D.958-1016, to St. Paul's.
- 53. A.D.1033-35, to St. Paul's.
- 54. A.D.1042-66, to St. Paul's.
- 59. A.D.1050-2, to Ramsey.
- 79. A.D.1049, to Westminster.
- 81. A.D.1049-66, to Westminster.
- 82. A.D.1042-66, to Westminster.
- 83. A.D.1042-66, to Westminster.
- 84. A.D.1052-3, to Westminster.
- 86. A.D.1057-66, to Westminster.
- 92. A.D.1057-66, to Westminster.
- 102. A.D.1062-66, to Westminster.
- 103. A.D.1065-66, to Westminster.
- 116. A.D.1062, to Worcester.

Thus, one of the more immediately striking aspects of the evidence for sake and soke, is the very small number of charters which contain the phrase, whereas a substantial proportion of the writs do include it. It might be argued

therefore, that the writs give sake and soke whereas the charters do not. This is not so, however, the difference is, in part, a matter of style, and it is also one of function, but not in what privileges the writs and charters give, but how they are given.

Maitland pointed out that charter conventions in the Anglo-Saxon period demanded Latin, wherever possible, good classical Latin, and for a time in the reign of Aethelstan, highly ornate Graeco-Latin. "The scribes of the ninth or tenth century", Maitland wrote, "would have been shocked by such words as tainus, dreinus, smalemannus, sochemannus." They tried to keep their writing free of the vernacular by using provincia instead of scir, satrapes not aldermanni, and it is "out of the question" that they should be "guilty of such barbarisms as saca and soca."¹ In this way they sacrificed meaning for style, and the use of Latin was particularly unfortunate in that, alone of all the Germanic peoples, England's laws were written in the vernacular.² English was relegated to the bounds of the document, where it was more necessary, and where it would not infringe on the main part of the charter. It is in the bounds, as we have seen, that the sake and soke in the charters is sometimes found.³ The writs, however, were unashamedly written in

1 D.B.B., p. 316

2 See F.M. Stenton, The Latin Charters of the Anglo-Saxon Period, pp. 42-43 and 80-81, for examples where scribes had some difficulty in describing certain law cases clearly in Latin.

3 In two out of three cases for full length charters, the exception being the Worcester document. See above pp. 113-5, and

English and thus they could incorporate English expressions such as sake and soke. But the writ is different from the charter in another way which also helps to explain the appearance of sake and soke in writs but not charters. A charter was drawn up by the grantee to provide him with a permanent, even eternal, record of his endowment: hence it was written in Latin, the universal language of the church. Only a minority could read and understand such documents, however, and this would give rise to difficulties of authenticity and proof.¹ The writ, however, was a letter, written in English, sealed by the king and addressed to the shire or hundred courts, to notify them that a grant had been made. By providing more mundane witnesses and safeguards, the writ was able to replace the charter, and it was also able to define more precisely the privileges given in the endowment.² The writ, therefore, would conform to the legal conventions of the time in style, would define the legal privileges given, and would do this in a manner which could be understood by all, whereas none of these conditions need necessarily have applied to the charter.

- 1 It is surely this which is behind Archbishop Lyfing's remark that he had charters in plenty, if only they were worth anything. Writs, no.26
- 2 For an analysis of the evolution of the writ see P. Chaplais, "The Anglo-Saxon Chancery: from the Diploma to the Writ". Journal of the Society of Archivists, Vol.III, no.4, Oct. 1966, pp.160-176. For Dr. Hamer's view that the writ has a much longer history see Writs, pp.24ff.

It is evident from the writs that sake and soke was part of the conventional language of the law, and that its meaning must have been readily understood by contemporaries. Courts were evidently required to verify grants of sake and soke, but not apparently to define the formula. Thus it is only with the assistance of other evidence that we can determine its meaning. There is evidence in the laws to show that soke gave the right to fines.

We have seen that there are two clauses in the laws in which socn occurs in its judicial sense:- Aethelred's command that "no man shall have soke over a king's thegn except the king himself", and the reference in Cnut's laws to the king's thegn that has his soke among the Danes.¹ We suggested that Aethelred was claiming the right of judicial suit over his men, while Cnut was referring to king's thegns who themselves claim judicial suit from others in the Danelaw.² III Aethelred, was the law code issued for the Northern part of England, parallel to I Aethelred which was issued for Mercia and Wessex.³ A clause in I Aethelred probably corresponds to the clause on soke in the Northern version: this lays down that

1 III Aethelred. c.11; II Cnut, c.71,3

2 See above pp.49 ff

3 See E.H.D. 1, p.402

"the king shall be entitled to all the fines which are incurred by men who hold land by title deed, and no one (of these) shall pay the compensation following upon any charge, unless in the presence of the king's reeve".¹ The men "who have land by title deed" or bookland must often have been thegns.² Thengs are associated with bookland in the Rectitudines Singularum Personarum where the thegn is one who is worthy of his bookright,³ and in II Edgar, c.2 where reference is made to the thegn who has a church on his bookland.⁴ If a direct correspondence between the two clauses could be clearly established, and if certain cases could be cited of thegns who have been tried in the presence of the royal reeve, and paid their forfeitures to the king, then the thesis that sokeright involved profits and the right to preside would be proved. However, we can only infer that the clauses are parallel and merely different in wording, for examples of such court cases have not been found. One of the narrative charters of Aethelred describes how Aelfric "Child", an ealdorman, "was convicted of crimes against me (i.e. Aethelred) and against all my people... and all the landed possessions

1 I Aethelred, c.1,14, beo se cyng aelces dara wita wyrde de da men gewyrcean þe bocland haebben, 7 ne bete nan man for nanre tihtlan, buton hit sy daes cynges gerefan gewitnysse
Miss Robertson believed that the two were probably parallel clauses, see A.J. Robertson, Laws, p.321

2 It is not impossible that all who had bookland came to arrogate to themselves the rank of a thegn, and that the insistence in Nordleoda laga, c.10, that the ceorl must have five hides before he can become a thegn was an attempt to set a minimum requirement.

3 þaet he sy his bocrihtes wyrde, Gesetz, p.444

4 Gif hwa þonne þegna sy þe on his boclande circan haebbe
repeated in I Cnut, c.11.

which he owned were assigned to my control, when all my leading men assembled together to a synodal council at Cirencester... and all with unanimous consent decreed that I ought by right to possess all things possessed by him".¹ However, the conviction of an ealdorman may have given rise to extraordinary measures. The Northumbrian Priest's Law shows a king's thegn paying a fine to the king: if such a thegn practises heathenism he must pay ten half-marks, - five half-marks to the Church, the remaining five to the king; other landowners pay six half-marks, - three to the Church and three to the lord of the estate.² The clause in I Aethelred, however, laid down that all fines were to go to the king, and although exceptions might be made for ecclesiastical offences, there is still the problem of the precise tenure of the landowner who yet pays fines to his landlord.

Cnut's law shows more clearly that sokeright included the right to fines. The evidence derives, not from the clause concerning "the thegn who has his soke among the Danes", but from three additional references to soke which occur in a later redaction of II Cnut. This code was originally issued in 1030, but it is extant in four versions:³ B.M. Harley, 55, called "A"; C.C.C.C.383, called "B"; B.M. Cott. Nero, A.1. called "G"; Lambarde's edition.

1 K.1312, see E.H.D. 1, no.123, p.538

2 Northumbrian Priest's Law, cc.48-'9

3 The letters by which they are known are found in Miss Robertson's edition, Laws, p.ix

The version known as "G" is part of a miscellaneous collection of texts, mainly in English, which Mr. Ker has suggested was intended as a handbook for use by Wulfstan, when he was bishop of Worcester.¹ It is written in several eleventh century hands, and corrections and additions were made to the texts in the margins and between the lines. Three of these additions concern soke. The first is included in a clause on false witness:- manuscript "B" states that "if anyone has given testimony which is manifestly false, and is convicted thereof... he shall pay to the king or to the lord of the manor (landrican) a sum equivalent to his healsfang",² however, in manuscript "G" the fine is said to be paid to the king, or the landlord who has soke - landrican þe his socne ahe. The second example concerns robbery. "B" states that "if anyone is guilty of robbery, he shall make restitution, pay compensation, and forfeit his wergeld to the king", but "G" gives an alternative recipient for the wergeld, - it may be the king or "whoever has his soke", - kinincg oððe wið þone þe his socne age.³ The third deals with the widow who remarries within one year of her husband's death. For this offence she must forfeit her morning gift and property, and according to "B", her second husband "shall forfeit his wergeld

1 i.e. 1003-1016. N.R.Ker, Catalogue of Manuscripts containing Anglo-Saxon, (Oxford, 1957), p.211

2 II Cnut, c.37

3 Ibid., c.63.

to the king or to the lord to whom it has been granted".¹ However, "G", apparently to make it clearer, has the king "or to whoever has the soke" - kyning odde wid done de he hit his socne geunnen haebbe. In these examples, the fines are said to be paid to the king or to "whoever has the right to the suit". The suit is of a number of stated pleas , - false witness, robbery and premature marriage, there is no need therefore, to consider the total privileges of the grantee, or to speculate on what other jurisdictional rights he may have.

Domesday Book shows that soke included the right to the profits of pleas. It is recorded that if anyone at Southwark committed an offence, and was apprehended on the strand or the water street, he paid his fine to the king, but if he was not taken there, and escaped to one who had sake and soke, then the holder of the soke took the fine.² It is clear in general from Domesday that the profits of jurisdiction had been widely farmed. Professor Cam showed that royal hundredal rights were often given with the capital manor and included the profits of jurisdiction.³ Thus we are sometimes told that the soke of a hundred belongs to a particular manor. It is

1 Ibid, c.73a, l.

2 D.B. I, f.32, Si quis forisfaciens ibi (on the strand or the water-street) calumpniatus fuisset, regi emendabat. Si vero non calumpniatus abisset sub eo qui sacam et socam habuisset, ille emendam de reo haberet.

3 H.M. Cam, "Manerium cum Hundredo: the Hundred and the Hundredal manor", Liberties and Communities, pp.64-90

said of Greenhoe hundred in Norfolk that Soca et sacha de Grenehou hundredo pertinet ad Wistune manerium regis quicunque ibi teneat.¹ The entry for the royal manor of Benson in Oxfordshire notes that Soca de iiii hundred et dimidium pertinet ad hoc manerium. Similarly, in the same shire, the soke of two hundreds belongs to Headington, the soke of two-and-a-half hundreds belongs to Kirtlington, of three hundreds to Upton, of two hundreds to Bampton, of three to Shipton, and of two hundreds to Bloxham and Adderbury,² while the soc of two hundreds in Hampshire belongs to King's Sombourn.³

The soke could be farmed and valued at a rate which the authorities assessed that the pleas would be worth. Thus St. Benet had the soke of the one-and-a-half hundreds of Clackclose, and it was worth 70s.⁴ The soke could be divided: Great Yarmouth was a royal manor and had been valued, together with two-thirds of the soke of three hundreds at £18, while the earl's part had been worth £9 by tale. In the time of William, the king's two-thirds were worth £17 16s, and the earl's part £10 blanch.⁵ It is recorded of Well wapentake in Lincolnshire that St. Mary has two-thirds of the forfeitures from the suits in the wapentake and an actual case is cited in which this right

1 D.B. II, f.113b

2 Ibid., I, f.154b

3 Ibid., f.39b

4 Ibid., f.215b, De soca hundreti et dimidii habet Sanctus Benedictus LXX sol.

5 valuit cum duabus partibus soche de tribus hundredis xviii lib. ad numerum. Ibid., f.118

was exercised.¹

Other similar examples occur, but use the word placita. Thus in Wiltshire it is recorded that In hac firma erant placita hundretorum de Cicementone et Sutelesberg quae regi pertinebant.² The half-hundred of Witham in Essex was valued (valet) at £10 T.R.E., and £20 T.R.W., but the sheriff inter suas consuetudines et placita de dimidio hundret recipit xxxiiii lib. et iiii lib. de gersuma,³ the half-hundred of Clavering, also in Essex belonged to Suen and placita reddunt xxv sol. annualiter.⁴ Soca could be synonymous with placita if the former is interpreted as the suit of a plea, but as we have seen above, suit of court was often the meaning of the word.⁵ A further example may be added to those already cited. The entry for Onehouse in Suffolk recorded that in the time of Edward, Bury had had soke and commendation of all there, but later a sheriff had "on account of the soke taken 4s", but unlawfully.⁶

1 Ibid., I f.376. super forisfacturam de Wapentac habet Sancta Maria ii partes soce et comes terciam. Nunc rex. Similiter de heriete. Et si terram suam forisfecissent Sancta Maria ii partes habuisset et comes terciam, Scira testatur quod terra Gonneuuate i manerium i carucate in dominio, fuit forisfacta ii partes Sancte Marie, et tercia pars ad opus comitis. Similiter de omni soca que pertinet ab (sic. ad?) Bortona. Similiter et de terra Stangrim xviii bovatis terre. De omnibus tainis qui terram habent in Welle wapentac, habet Sancta Maria ii partes de forisfactura et comes terciam.

2 Ibid., f.64b

3 II, f, 1b

4 f.46b, cf. under the entry for the manor of Eastwood in Rachford hundred where Suen has 100s. from the pleas of the hundred, f.45b

5 See above pp. 53 pp.

6 Ibid., f.360 - tempore Edwardi fuit soca et soca (sic) et commendatio... sed prepositus Regis habuit propter socam de i istorum iiii solidos.

Vinogradoff explained this as the sheriff infringing the rights of the abbey by fining one of its tenants 4s,¹ but it could also be a commutation of suit of court.

Maitland described the use of the word "soke" in Domesday as "vague, undifferentiated",² We have seen that it could mean the suit of a plea, or suit of court, it could be an abbreviation for sokeland, and could be applied to renders of the royal farm^m but profit is the common element of all these. Judicial obligations could be commuted and indeed, renders from suits seem to have been the most valuable component of the royal farm.³

1 P. Vinogradoff, English Society in the Eleventh Century, p. 222

2 D.B.B. P. p. 128

3 See Dialogus de Scaccario, where it is recorded that "the sum demanded from the sheriff on account of his farm does not arise solely from the rents of lands but largely from pleas", Dialogus de Scaccario, trans. and ed. C. Johnson, Nelson Medieval Classics, (London, 1950), p.64.

CHAPTER 4

Sake and Soke after the Conquest

"Sake and Soke" is found in writs, charters and other documents of the twelfth century and later, and because it was an English legal term when the language of the law was becoming Latin, some examples provide evidence of its meaning, either by including direct explanations and Latin glosses, or by using sake and soke in such a way that its meaning is made clear. These documents show that after the Conquest sake and soke was understood to give the right to preside over a court and to take its profits, and that it was regarded as a general term which could be applied to any form of jurisdiction.

Approximately one hundred and forty-six English, Latin and biligual writs issued by William I, have survived and of these about thirty-six grant or confirm sake and soke.¹ The proportion from the reign of William Rufus is about one-fifth : approximately twenty-five writs out of one hundred and thirty-seven.² The proportion from the reign of Henry I is less than one-twelfth : approximately one hundred and sixteen, out of one thousand, five hundred and three.³

1 See Appendix 1

2 See Appendix 2

3 See Appendix 3

A comparison of different writs to one grantee shows that alternative phrases could be used for sake and soke. Bury St. Edmund's, for example, was frequently confirmed in its right of hundredal soke.¹ The Conqueror's writ has: Notum vobis sit quod volo ut sokna viii hundredorum et dimidii tam pleniter monasterio Sancti Edmundi.²

One of Henry I's writs has: omnes qui tenent infra predicta hundreda requirant hundreda et placita per justiciam abbatis si quid requirer habent;³ another has a ne intromittat clause, and uses the term "soke":- Precipio eciam ut nulla secularis persona aut minister regis in aliquo se intromittat de predicto burgo... Precipio eciam ut sokna cum viii hundredis et dimidio pleniter monasterio sancti Edmundi adiaceat omnibus diebus cum omnibus libertatibus et dignitatibus et forisfactoris ad coronam regis pertinentibus.⁴

According to Stephen's writ:- Precipio vobis ut ita bene veniatis per summonicionem abbatis sancti Edmundi et ministrorum eius ad curiam suam tenendam et ad iudicia et

1 These writs are conveniently brought together in an article by H.W.C. Davis, "The Liberties of Bury St. Edmund's", E.H.R., Vol.24, 1909, pp.418ff

2 Add. Ms. 14847, f.32v

3 Add. Ms. 14847, f.34v

4 Add. Ms. 14847, f.39v

ad iudicia et recta sua perquirenda et facienda sicut melius et plenius faciebatis tempore regis Henrici.¹ Thus the soke of the abbey is its hundredal jurisdiction, by which "all who hold land within the hundreds must seek the hundred and plead there under the jurisdictional aegis of the abbot".

Soke is not exclusively royal and franchisal, however, it could also refer to the jurisdiction enjoyed by every freeholder merely because he had land and tenants. In a charter of 1122, William Peveral enfeoffed Thurstan dapifer and granted him sacha et socha, et tol et theam et infangenethef.² By another charter, Hugh de Gurnai granted twenty solidatae of land, with sake and soke, to Robert de Turri for a rent of money, and a sor sparrowhawk or two shillings per annum.³ It could be that these grants passed on to mesne tenants royal rights of jurisdiction already enjoyed by the overlord, but there is more certain evidence from the Quo Warranto Proceedings which suggests that they were merely grants of feudal privileges, probably using formulae copied from royal grants. Sake and soke was sometimes included among the list of judicial rights which landlords claimed, and its meaning was sometimes queried by the Quo Warranto commissioners. The prior of Lanthony Priory in Gloucestershire recited soc, sac, tol, team and infangentheof among his list of rights and he seems to have claimed the view of frankpledge by them, but

1 Add. Ms. 14847. f.36

2 C.R.R. 88,m.12. Quoted in F.M. Stenton, The First Century of English Feudalism, (Oxford 1961), pp.155-'6 and 274.

3 Ancient Deeds, c.5895, Quoted in F.M. Stenton, Ibid., pp. 108-'9. For other examples see Ibid., Appendix, nos. 24, 25, 26, 28.

Willian Inge argued for the crown that Libera curia non est libertas nec regale - a free court is neither a franchise nor a regality, and that sake and soke habent referri ad cur(am) baronis - referred to a court baron.¹ In the latter part of the Middle Ages, the court baron was a court for free suitors in contrast to the "customary court" for villeins,² but there was probably a different meaning at an earlier period when the word "baron" referred to an ordinary freeholder and the "court baron" was his court, and this older sense may have survived in the North.

"Baron" came to be a title of high honour in medieval England, but private charters of the Anglo-Norman period issued by earls, bishops and lords of lower rank, continually refer to their own tenants as barones. The sense of baron in these cases is not a tenant-in-chief, but to a man who is himself subject to a lord above him. Rannulf Flambard, as bishop of Durham, referred to all his barons and fideles,³ between 1153 and 1160, Reginal de Warenne addressed a writ to all the justices, sheriff, ministers, barons and good men of the honour of Lancaster.⁴ In Northern England, small estates were sometimes called baronies : Hugh, bishop of Durham, held ten such baronies when he died in 1196.⁵

1 P.Q.W. 211-'12

2 P. and M. I, pp592-'3

3 omnibus baronibus et fidelibus suis de Haliarefolc. Original charter, D. and C. Durham, 2, l. Pont. 7. This, and the following examples are quoted in F.M. Stenton, The First Century of English Feudalism, pp.87, n.5. and 88ff.

4 W. Farrer, Lancashire Pipe Rolls and Early Charters, 286, see also example of Domesday tenants quoted by F.M. Stenton op.cit., pp.96-97, and notes 1 and 2.

5 Chancellor's Roll, 8 Richard I, Pipe Roll Soc., N.S. VII 260-'61.

Barony was associated with sake and soke. Miss Reid showed that in the thirteenth century the possession of an estate with sake and soke, toll and team, and infangenetheof constituted tenure per baroniam, a strange serviential form of tenure which included renders in money and kind.¹ The Leges Henrici Primi refers to baronibus socam et sacam habentibus,² and a similar phrase appears in the Leges Edwardi Confessoris.³ In the twelfth century the English word thegn was often translated as baro.⁴ The Leis Willelme includes translations of some of the laws of Cnut, including the clause which refers to "the heriot of a king's thegn who has his soke among the Danes", and there "king's thegn" is translated as barun.⁵ In other cases, "thegn" is translated as "free man". The compiler of the Instituta Cnuti translated "king's thegn" in this passage concerning the thegn with soke as liberalis hominis qui consuetudines suas habet,⁶ and elsewhere he glossed pegen as liberalis homo.⁷ The Leis Willelme refers to the francs hom ki ad e sache e soche.⁸

From all this we may conclude that to these writers sake and soke was the term for the jurisdictional right exercised by any freeholder who had land and tenants. It was

1 R. Reid, "Barony and Thanage", E.H.R., Vol. XXV, 1920, pp.161-199

2 L.H.P. c. 9, 11

3 Leges Edwardi Confessoris, c.21

4 See R. Reid, art.cit., pp. 169-173, and e.g.'s in Writs nos. 4, 5, 12, 18.

5 Leis Willelme, c.20, 1

6 Instituta Cnuti c.71, 3

7 The passage is a translation of gyf pegen haebbe getreowe man, for which he gave Si liberalis homo, id est pegen, habet fidelem hominem. Ibid. c. 22, 2.

8 Leis Willelme, c.2, 3

not a franchise and did not involve royal pleas unless they were additionally granted by the king. This generalised interpretation of soke is also found in Leges Henrici Primi. Maitland described the Leges as "a treatise on soke",¹ and indeed the word, as well as the formula sake and soke, frequently appear in the text. The writer uses them easily and confidently to denote the right to preside over a court of any type - franchisal, feudal and manorial, and to take its profits. The author of the Leges may have been Norman, his native language was probably not English, and although he consulted Anglo-Saxon law codes for his work, he sometimes produced faulty translations, either through simple ignorance of the meaning of a word,² or by a confusion of two different English words.³ He also seems to have been overwhelmed by the sheer volume of the material he used, although the resulting confusion may yet be an accurate reflection of the state of English law as it was in the early twelfth century.⁴ However, this may be, there is no suggestion that he had any doubts as to the accuracy of the meaning he himself gave to soke.

There is a whole section expressly devoted to soke, it is headed De socna and the first chapter states: Participantium

1 D.B.B. p. 110

2 As in L.H.P. c.82, 8

3 Ibid., c.8, 4. See L.J. Downer's edition, pp. 25-7

4 He himself complains that this was so, see Ibid, cc. 6, 3a and 4

quoque causarum partim in socna, id est in questione sua,
rex habet partim concedit aliis.¹ Thus, the word is defined:
the king has certain pleas "within his seeking" or "within
his right of investigation", he has soke, - he has the right to
the suit of certain pleas. The author then gives another
general principle of jurisdiction, using the phrase sake and
soke:- Archiepiscopi, episcopi, comites et alie potestates
in terris proprii potestatis sui sacam et socnam habent,
tol et theam et infangenpeof (in ceteris vero per emptionem
vel cambitionem vel quoquo modo perquisitis, socam et sacam
habent in causis communibus et halimotis pertinentibus) super
suos et in suo et aliquando super alterius homines presertim
si forisfaciendo retenti vel gravati fuerint, et illic
competentem emendationem habeant.² This may be translated:
"Archbishops, bishops, earls and others of high rank have
sake and soke, toll and team and infangenetheof in respect
of the lands which they have in their own right, and in
the case of their other lands acquired by purchase or
exchange or any other way, they have sake and soke over less
serious causes and over those belonging to the hallmoots,
over their own men, and on their own land, and sometimes over
the men of another person, especially if they are seized in the
act of committing the offence, and charged with it, and in the
course of the proceedings they shall obtain lawful compensation".

1 Ibid., c.20, 1.

2 Ibid., c.20, 2.

Here again, sake and soke is not a reference to specific pleas. Lords "have the right to the suit of less serious causes", and the concluding phrase brings out the financial side of the privilege.

Sokeright also entails courtholding, the right to preside in the court where the various causes are heard. The author explains this by using the abbreviation "soke": Omnis autem socna simplex est habentibus aut coniuncta in custodia vero trina principaliter distincta: sub prepositis maneriorum in causis adiacentibus halimotis; sub prelatiis hundretorum et burgorum: sub vicecomitibus.¹ Thus, the right of soke is chiefly exercised by manorial reeves in hallmoots, by those who preside in hundreds and boroughs, and by sheriffs, probably in shire courts. This too shows that soke can be used with reference to any form of jurisdiction. There is a franchisal soke, - the string of pleas which are the king's jurisdiction,² and in addition to these, highways and places of execution totaliter regis sunt in soca sua,³ while Omnium terrarum quas rex in dominio suo habet socnam pariter habet: quarumdam vero terrarum suarum maneria dedit et socnam singularem vel communem; quarumdam terrarum maneria dedit, set socnam sibi retinuit.⁴ This passage seems to present a problem. Professor Van Caenegem writes that "it is said (by this clause in the Leges) that all judicial rights are

1 Ibid., c.20, 1a

2 Ibid., c.10, 1

3 Ibid., c.10, 2

4 Ibid., c.19, 2

based on some royal grant for personal service rendered, and that they are not automatically linked with land".¹ But the author is not concerned with all judicial rights. As he noted, lesser rights of jurisdiction may derive from the holding of land by inheritance, purchase or exchange.² He is only concerned with the king's jurisdiction. The section is headed De iustitia regis,³ and it is only the royal pleas which may or may not be granted when the king gives land. They are not automatically granted, - Nec sequitur socna regis data maneria, set magis est ex personis.⁴

The king claims soke over his barons and great men, although only for serious offences, and there is always the possibility that the king may grant the soke - the right to hold the plea in such cases, - to one of his favourites or to a member of his family. Singulorum denique baronum et senatorum (clericorum laicorum) ubicumque habeant terram sive socna regis sit vel non, in capitalibus questionibus socna regis est, sicut a Edmundi, Cnuti vel Edwardi legibus per successiones posteras hereditaria dignitas successit, nisi vel propinquitate vel aliqua dignitate meritorum regis indulgentia quemcumque respexerit, cuius amanda bonitas promovet potius, et non evertit libertatem.⁵

There is also the non-royal soke which does not depend on the king's grant. A lord has the right to disputes which arise

1 R.C. Van Caenegem, Royal writs in England from the Conquest to Glanville. Seldon Soc. LXXVII, 1959, p.34 n. 1

2 L.H.P., c.20, 2

3 Ibid., c.19

4 Ibid., c.19, 3

5 Ibid., c.20, 3

among his own men:- Si exurgat placitum inter homines alicuius baronum socnam suam habentium, tracetur placitum in curia domini sui.¹ Cases of theft, however, and those involving the death penalty may not fall within his rights, here the lord must faciat secundum quod socna et saca eius erit.² Theft may be punishable by death, and treason against a lord is a capital offence, therefore both are royal pleas and fall within the king's soke unless he has specifically granted them.³

The lord must not arrogate franchisal soke unlawfully, nor must the law be abused by litigants who wrongly plead royal pleas such as grithbryce and hamsocn which are beyond the competence of the lord's court. By such means cases are transferred to another court, - Sepe etiam ex inscitia placitantium cause transeunt in ius aliorum - exaggeratione rerum ut qui nominant promittunt grithbreche vel hamsocnam vel eorum aliquid quod socnam et sacram eorum excedit.⁴

Whenever a plea falls within the lord's sokeright, however, he retains the right to it. A royal reeve cannot assert any claim to it, even if he learns of the offence before the lord. Si prepositus regis in terra socnam habentium forisfactum prior sciat, non tamen habeat nisi socnam illam excedat.⁵

The writer of the Leges, in his general account of sokeright, refers to the soke which is sub prepositis maneriorum

- 1 Ibid., c.25, 1.
- 2 Ibid., c.61, 9a.
- 3 Ibid., c.10, 1.
- 4 Ibid., c.22, 1, cf. c.9, 4a.
- 5 Ibid., c.24, 4.

in causis adiacentibus halimotis.¹ This is the manorial jurisdiction of the ordinary freeholder, called in the Leges, the vavassor.² In his hallmoot disputes concerning the estate will be heard.³

In certain places the author thinks of soke in terms of the profits of jurisdiction. Under the heading De iustitia regis, he writes of those matters Hec sunt que ad iustitiam vel indulgentiam regis et fiscum proprie censeantur cum apendentiis suis (nec sine diffinitis prelocutionibus pertinent vicecomitibus vel prepositis eius in firma sua).⁴

The reference to fisc and farm, as well as justice and judgement shows the king's interest in the financial side of jurisdiction. Its connexion with soke is made most clear in the clause:-
Soca vero placitorum alia proprie pertinet ad fiscum regium et singulariter, alia participatione, alia pertinet vicecomitibus et ministris regiis in firma sua, alia pertinet baronibus socam et sacam habentibus.⁵

Thus, the writer of the Leges Henrici Primi uses soke easily and confidently to denote the right of jurisdiction. For him soke is not the right of any specific type of jurisdiction or group of pleas, the term can be applied to any type or group according to what he is discussing at that time. The right of soke is the right to

1 Ibid., c.20, 1a.

2 Ibid., c.27, 1. See examples of manorial soke in D.B. quoted in D.B.B. pp.121, n. 6, and 122.

3 L.H.P. c.56, 1 and 3.

4 Ibid., c.19, 1.

5 Ibid., c.9, 11. In Mr. Downer's edition the opening phrase has been translated "In the case of the soke of please, some of these profits belong..."- L.J. Downer, op.cit. p.109

preside, - it is exercised by sheriffs and reeves; it is also the right to profits, - the soke belongs to the king's fisc or the sheriff's farm.

The early twelfth century translations of Anglo-Saxon law codes give useful additional evidence. The Instituta Cnuti is the most reliable of these. Maitland commented that it was written by one who "tried to be more than a translator; he borrowed from other Anglo-Saxon documents, some of which have not come down to us, (and he) endeavoured to make his work a practicable law book".¹ The most practical aspect of soke is the right to profits, and it is in reference to this that the writer uses the word:- Si quis aliquid pro aliquid forsfactura accipiat, antequam iuste rectitudinem pepat, reddat quod accepit et secundo persolvat: et regi quadraginta solidos reddat aut illi qui habet socam et socnam suam; et insuper pretium suum domino suo.² Thus, if anyone who has been wronged attempts to force redress before he has pleaded for justice in the proper manner, he is fined, and the king, or lord who has his sake and soke, receives forty shillings. In the section on heriot where the original code of Cnut refers to those men "who have their soke among the Danes", the writer of the Instituta gives consuetudines for socne.³ "Customs" is a wide term which was sometimes used like gerihta, for pleas,⁴ however, in Normandy, it referred more especially to profits from royal pleas.⁵ In the Leges

1 P. and M. I, p.101.

2 Instituta Cnuti, c.3, 1.

3 Ibid., c.71, 3.

4 See e.g. Writs, nos. 30, 34, 36.

5 See Mélanges d'histoire du moyen-âge dédiés à la mémoire de Louis Halphen, (Paris, 1951), pp.400ff.

Edwardi Confessoris soke is defined thus: Soche est quod si aliquis quaerit aliquid in terra sua, etiam furtum, sua est iustitia si inventum sit an non.¹ Maitland translated this as: "that my right of soke is my right to do justice in case anyone seeks (by way of legal proceedings) anything in my land, even though the accusation that he brings be one of theft and even though the stolen goods have not been found on the thief".² Here, it is claimed that soke gives full jurisdictional rights, but the reference to theft provides a clue to the writer's intent. The Leges Edwardi was probably written in the diocese of Coventry at the end of Henry I's reign, and it may be that the right of infangenetheof was being claimed as being implicit in a grant of soke according to Edward's law. An allegedly pre-Conquest writ and charter have survived, both are spurious, and although they include various royal pleas, and a vague guarantee of fullne freedom, infangenetheof is not included among the transferred rights of jurisdiction.³

Sake and soke is related to royal privileges in certain texts. This occurs in two connected charters from Bury St. Edmund's.⁴ The first purports to be a grant from Cnut.⁵

1 Leges Edwardi Confessoris, c.22.

2 D.B.B. p.115, n. 3.

3 Writs, no.45, and K.916=S.1000.

4 See Writs, pp.433-'4

5 K.735=S.980.

There are many copies, but one was made in the late eleventh century as part of a Bury Gospel Book.¹ It confirms to Bury its freedom, grants the abbey the right to collect geld and part of the royal farm for its own enrichment, and grants omnis jura quarumcunque causarum in villis quae monasterio adiacent. An English text then follows in some of the versions and, according to this, Cnut granted ic ann heom ealra heora tun socne of ealla heora lande þe hi nu habbað 7 git begitan sceolon on Godes este. The word tun socne seems to be a translation of omnia jura quarumcunque causarum in villis, and it seems to refer to the abbey's total rights of jurisdiction, franchisal and manorial, which it exercised over its villis. However, there is another vernacular version of a charter, attributed to the Confessor, which includes the clause concerning the Bury tun socne. The wording in the English text, is identical to K.735, and there are so many other similarities of structure and style that Dr. Harmer concluded that the two documents "can hardly have been composed independently".² This second vernacular charter also has a Latin version, but this is very different from the Latin charter K.735, and the clause which seems to correspond to the grant of the tun socne is et omnium villarum suarum jura regalia annuo in omnibus terris quas modo habent. Here the royal pleas are singled out, so that the tun socne

1 Harley MS. 76, see Writs, p.434.

2 K.1346=S.1046. Writs, p.434.

refers primarily, if not exclusively, to franchisal jurisdiction. Neither interpretation can be said to be erroneous however, Bury had the royal soke over its eight-and-a-half hundreds as well as the ordinary manorial rights of a landlord, and the expression soke was applicable to either or both forms of jurisdiction at the will of the writer.

The thirteenth century customary of the soke and manor of Rothley includes a compositiones vocabulorum - a popular list of English words and their Latin equivalents, and it too stresses its royal sokeright. Soke is defined as secta ad homagium in curia vestra secundum consuetudinem regni, and sake as placitum et emendum de transgressionibus homagiorum in curia vestra quod Anglice Fraunceys encheson et dicitur forefichesake idem pour quel encheson et sak dicitur pour forfeit.¹ Here, soke is suit of court "according to the king's custom", but the court of Rothley was ruled by royal custom. It was held at three weekly intervals and more or less often as the bailiff thought necessary, but if the king's writ was issued then it must be held every three weeks, and always within the boundary of the soke.²

Several other post-Conquest documents contain glosses of sake and soke, and the words are defined more widely. An

1 Archaeologia, Vol.47, 1883, p.126.

2 Ibid., p.125.

early thirteenth century manuscript¹ includes English and Latin versions of two expanded Abingdon writs. The first,² grants sace 7 socne, toll 7 team, 7 infangeneþeof, and a number of other pleas; the Latin version is headed Interpretatio in Latinum and the roman numerals i, ii, iii, iiii, v etc., are interlined above sace, socne, toll, team, and the other pleas in the English text and also over the corresponding words in the Latin text. Sace is glossed as litiguum, and socne as exquisitionem: the classic definitions of "cause" and "suit". The second Abingdon writ is an expanded version of the grant of Horner hundred.³ The English version states that nan scyregerefe odde motgerefe þar habban aeni socne odde gemot, buton þes abbudes agen haese 7 unne; the Latin text is again headed Interpretatio in Latinum, and this passage is translated as nullus vicecomes vel prepositus ibi habeant aliquam appropriationem seu placitum sine abbatis proprio iussu et concessu. Here, socne is understood, correctly as we have seen above, as suit, perhaps suit of court, but possibly the suit of pleas. These glosses must carry some authority for Stenton has shown that the manuscript is a transcript of an earlier document written before 1170, or perhaps before 1164, by a monk who was already an inmate of

1 B.M. Cott. Claud. c ix, f.130

2 Writs, see p.132, no.4

3 Writs, no. 5, pp.132-'3

the abbey before 1117.¹ Somewhat different, however, is a passage in the historical account of the abbots of Abingdon, headed De Abbatibus Abendonae in Cott. Vitell. A. xiii, which was written in a thirteenth century hand and may not have had earlier roots.² It states that Edward the Confessor exempted Abingdon from toll, and granted it sake and soke, team and infangenetheof. The passage is entirely in Latin and the Latinized English words are explained thus:-
confirmavit Sake (id est, conflictus), et Socne (id est, fur in dominio suo captus). As we have seen from our opening discussion, to translate sake and soke as a conflict and an attack is not strictly inaccurate, but it is certainly inappropriate.

We can see from the list of royal writs containing sake and soke,³ that there is a gradual decline in the use of the formula. It seems likely that sake and soke came to be regarded as an archaism and that it was superseded by Latin words and phrases. In the thirteenth century, expositiones glossarum gave French and Latin equivalents of Anglo-Saxon pleas and were much used. This may not have been because the meanings of the English words had become obscure, but because it was necessary to provide Latin or

1 F.M. Stenton, The Early History of the Abbey of Abingdon, (Reading, 1913), pp.4ff.

2 Printed in Chronicon Monasterii de Abingdon, ed. J. Stevenson, R.S. ii, p.281. For the date of the hand see F.M. Stenton, op.cit. pp.1ff. For its origin in the thirteenth century see Writs, pp.123-'4.

3 See Appendices 1, 2 and 3.

French terms for pleas which would not be acceptable to a court in their English form.¹ Sake and soke was often included among these lists. Thus, in the Red Book of the Exchequer straightforward translations are given:- sake is translated by jurisdictio, i curt et justice and by forfeit, soke by secta curiae.² Such lists may have been used in the Quo Warranto proceedings.³ Sake and soke was normally accepted without challenge, and since neither the justices nor the claimants defined it, there was perhaps mutual comprehension of the meaning of the phrase.⁴ For Hertfordshire eyre, however, the abbot of Westminster had prepared a glossary of old words and for sokene he gave aver fraunche curt, for soka (sac?) he gave quite de medlee, and the same translations were used in a case in Sussex.⁵ In the Yorkshire eyre, the abbot of Thornton claimed sake and soke, and when challenged as to its meaning replied that it gave him free court - a fraunche curt, a libera curia.⁶

1 See G.E. Woodbine, "The Language of English Law", Speculum, Vol.18, no. 4, Oct. 1943, pp.359ff.

2 Red Book of the Exchequer. ed. H. Hall, Vol. III, R.S. no.99, 1896, pp. 1037-8.

3 For what follows see D.W. Sutherland, Quo Warranto Proceedings in the reign of Edward I, 1278-1294. (Oxford, 1963), Appendix vi, pp.231-233.

4 See e.g. 's v. prior of the Hospital Herts. 1278 P.Q.W. 277
 v. Gilbert Petch Kent 1279 P.Q.W. 342-'3
 v. abbot of Reading Sussex 1279 P.Q.W. 754
 v. John of St. John Sussex 1279 P.Q.W. 755
 v. abbot of Netley Surrey 1279 P.Q.W. 742

5 P.Q.W., 275 and 761.

6 Ibid., 211.

The prior of Drax and Walter of Fauconberg were similarly required to define the liberties which they exercised by sake and soke, but they did not answer.¹ We have seen above the ruling that sake and soke did not constitute a franchise, and the silence of the prior and Walter may have been due to the fact that they did not have the correct translation "a free court", and were wary lest they should make a mistake.

Later sources seem to define "sake", but not "soke". Higden, writing at the end of the fourteenth century translates sake as court, justice, forfeit ou a chesaun.² Hoveden gives saccke interpretatur jurisdictio, id est, curt et justise.³ The Oseney Register of 1560 includes a translation of a charter of Henry I which grants land with sake et soc with the explanation "sacke ys pleys and amendys of misdoynge of your man in your courte for sacke is Englysh, is cheson in frensh.... and sacke also is a forfeite".⁴ John Rastell's Termes de la Ley, which dates from 1641, says, "The privilege called sake is for a man to have the amerciaments of his tenants in his owne court".⁵ As we have explained above,⁶ to have a sake is to have brought the suit, the soke of the cause, and it may be because the two words were so closely

1 Ibid., 211 and 209-'10.

2 Polychronicon Ranulphi Higden Monachi Cestrensis, ed. C. Babington and J.R. Lumby, 9 vols, R.S. 1865-86, II, p.95

3 Chronica Magistri Rogeri de Houedene, ed. W. Stubbs, 4 vols R.S. no. 51, 1868-71, Vol. II p. 246. Quoted in P. and M. I, p. 579

4 The English Register of Oseney Abbey, by Oxford, ed. A. Clark, (London, 1907-13), E.E.T.S., Orig. Ser., 133, p.10

5 J. Rastell, Termes de la Ley, (London, 1624), p. 244.

6 See above p.56

allied that only one of them was explained.

It would seem from this evidence, therefore, that sake and soke, after the Conquest, was an omnibus term, applicable to any form of jurisdiction, franchisal, feudal or manorial. There could, therefore, be no absolute sokeright covering particular pleas, or any particular form of jurisdiction. One must examine the context of the document in order to identify the rights intended.

Amid all this variety, there is one fundamental element common to every exercise of private jurisdiction; that is the right to deny access to the sheriff. In matters of manorial jurisdiction the lord and his bailiff were bound by custom, but unless a nief could claim to be a freeman, there could be no appeal to a royal court, and royal officials could have no authority there. In matters of feudal jurisdiction involving free tenants, and in cases where franchises were held by private lords, however, there was no absolute immunity from royal interference. A writ of right could be brought by an aggrieved freeholder against his lord, and franchisal priveleges were held on condition that they were properly exercised. We may demonstrate this, and tie what is merely a general principle more closely to sokeright, by considering the so-called urban sokes of London.

In the countryside, the territorial soke was a multiple estate whose component villis were often scattered over many square miles, but in a town a soke was a compact area of streets and tenements. The soke of Aldgate in London belonged to Holy Trinity priory, and its bounds are minutely defined in the

priory's Cartulary. It is said to have run "From the gate of Aldgate to the gate of the bailey of the Tower called (C)ungate, and all the lane called Chekenlane by All Hallows Barking to the cemetery, except one house next to the cemetery, and returning by the same road to the church of St. Olave, and then by a little lane that leads to St. Katherine Coleman, next towards St. Gabriel Fenchurch, to a brewhouse which now has the sign of "The Dove". From there it continued as far as the house of Theo(bald), son of Ivo, alderman, in Lymstrete by a little.....to Richard Ca(v)el's house, and then by a lane next to St. Andrew's church, as far as the church of St. Augustine by the city wall and thence to the gate of Aldgate".¹ A soke was an area over which the holder had sake and soke. Henry II granted the tenure and soc of Cripplegate in London to St. Martin le Grand "with sake and soke, toll and team, infangenetheof",² and when he confirmed the canons of Holy Trinity in their possession of the soc of the cnihtengild, the same formula, - "sake and soke, toll and team, and infangenetheof" was used.³

We have already tried to show that sake and soke was the right to suit, and this is confirmed by evidence for the urban sokes. In the Quo Warranto proceedings, the abbot of Gant claimed for his London lands freedom from gelds, scots, customs

1 Cartulary of Holy Trinity, Aldgate, ed. G.A.J. Hodgett, p.2, no.11. For another London soke see that of Robert FitzWalter in P.Q.W. p.472, - the bounds were coterminous with the parish of St. Andrew.

2 Regesta, II, no. 556

3 Ibid., no. 1467

and other financial obligations, his only jurisdictional claim was "sake and soke" and in the subsequent fuller version of his privileges this seems to correspond to freedom from pleas to shire, leet and hundred.¹ When the prior of Holy Trinity came before the justices he claimed the soke of the cnihtengild "with sake and soke, toll and team, and infangenetheof", and this is similarly enlarged as freedom from many financial burdens, and freedom from suit to shire, leet and husting.² The public courts of the towns corresponded to those of the hundred in the countryside, but by the thirteenth century, their right to criminal cases, did not go beyond petty violence and infangenetheof.³ The bishop of London claimed that he had three sokes in the city of London, - Cornhill, Bishopsgate and Holborn, and that his officers held a court for these sokes at Cornhill where hand-having thieves who had been taken within the sokes were tried.⁴ The rights of Robert FitzWalter were somewhat different, however. He held a soke in the city and if anyone from his soke was impleaded in the Guildhall for any offence except assault on the mayor or the sheriff, his "sokeman" (or "sokereeve") could come to claim his court, but the offender seems only to have been sentenced in the court of the soke. This is certainly true of cases of theft: if a thief were apprehended,

1 P.Q.W., pp.462-'3

2 Ibid., p.460

3 P. and M. I, p.644

4 P.Q.W., 456. They were executed at the bishop's gallows at Finsbury and Stepney.

even within the soke, he was tried before the mayor at Guildhall and again was only sentenced in the court of the soke.¹

A lord's criminal jurisdiction within his soke was, therefore, limited. The urban sokes seem to have been more important to their holders as pieces of property. Property rights could be hotly disputed. The prior of Holy Trinity appealed to Henry I and later to Stephen, against encroachments made by two successive custodians of the Tower of London when they made a vineyard in East Smithfield, which the prior claimed as part of his soke. The case was proved and in the release which Geoffrey de Mandeville drew up, as constable of the Tower, the prior was confirmed in his possession of Smithfield "with all the men, and all the things belonging thereto" as well as half-a-hide at Brembelega, a mill by the Tower and land outside the Tower.² In 1206, the bishop of London claimed a soke in Colchester against its current holder, William. William produced a charter from a previous bishop to his grandfather, confirming his possession of certain lands, together with the schools of Colchester. A second charter was produced from another bishop of London to William's father, granting him the soke all that his predecessors had held in fee, and the schools of Colchester, for 5s. per annum. William put himself on a Grand Assize, and the jury found

1 Ibid., 472. Munimenta Gildhallae, Rolls Ser.12, Vol.II, pt.1, pp.149-'50

2 Cartulary of Holy Trinity, Aldgate, nos. 960 and 962

against him, but he may have had a good case for a compromise was agreed. William retained the soke and the schools for an annual payment of 5s., but the bishop was to have the advowson of certain churches, and William was prohibited from alienating any part of the soke without the bishop's permission.¹

Page suggested that the lure of profit was itself responsible for the establishment of sokes in the city of London. He thought that they arose from a royal policy of urban development by which certain men were given rights over land and encouraged to use the land - the soke - for their own profit.² Some of the greatest men in the land held sokes there. We read of the sokes of the honours of Peverel, Huntingdon and Mortain, the soke of Gilbert of Torigni, of the Earl of Gloucester and the Queen's soke, as well as the sokes belonging to churches such as Holy Trinity priory, Waltham Abbey and the bishop of London.³

Soke holders could use their courts for property disputes but there was a great deal of co-operation between them and the husting court.⁴ The relationship between soke and husting is described in a collection of documents made in 1206-'16 by an official working at Guildhall.⁵ He sets out the

1 Abbrev. Plac., p.49, see J.H. Round, "The bishop's soke in Colchester", Transactions of the Essex Archaeological Society, Vol.14, 1918, pp.137-'41

2 W. Page, London, its Origin and Early Development, (London, 1923) p.127. For a different view see F.M. Stenton, Norman London, Historical Association Leaflets, no.93, (1934), p.14, who argues that the grants were made of already developed areas to magnates anxious to gain a stake in the city's commerce and government.

3 W. Page, op.cit. in his chapter "The Sokes"

4 F. M. Stenton, op.cit., pp.11-12

5 See M. Bateson, "A London Municipal collection of the reign of John". E.H.R., 1902, XVII, pp.492-'5

procedure to be followed in cases of debt. Rent was normally paid in Lent, and if it was not paid by Easter Sunday, the lord may himself distrain, or he may take out a writ of gavelet which transfers the case to the sheriff and the husting. The debtor is summoned to the husting and is allowed three essoins, but if he cannot dereign himself he must pay a forfeiture to the lord of twice the rent that is due, as well as 100s, (the Londoner's wer) to the sheriff, or the land is surrendered to the plaintiff for a year and a day during which time the debtor may pay what he owes if he can. The Holy Trinity Cartulary shows many examples of the husting acting for the lord of the soke. In 1388, the prior brought a plea against a certain Walter for default of his rent; Walter was summoned three times and did not come, the prior held the land for a year and a day, Walter still did not come and so the prior recovered the land.¹ In 1339, Henry le Palmer was summoned to the husting to answer Holy Trinity for a debt of £4; Henry acknowledged the debt and duly paid it.² The priory's tenants were exempt from suit to the husting, but the prior clearly did not regard it as a dangerous rival for he made use of it for collusive cases when he wished to establish and publicise the terms of a tenure.³

1 Cartulary of Holy Trinity Aldgate, no. 721

2 Ibid., no. 438.

3 Ibid., see, e.g. no. 391. See also H.W.C. Davis, "London land of St. Pauls, 1066-1135", Essays to Tout, p.50 where he comments that soke holders gladly made use of the husting.

Nonetheless, the lord of a soke was not obliged to use the husting, and the London official describes a situation where he might even prevent recourse to the husting. A debtor may hold of a mesne tenant, the rent has not been paid, but the lord of the soke may refuse to allow the tenant to distrain for it: the mesne tenant may then appeal to the sheriff and the sheriff will summon the debtor to the husting, but if the debtor does not come "the claimant is adjudged the old judgement", that is, "if the accused stays in the king's soke, a distraint of 40s. is taken and release is given on pledge. If he stays in the soke of a church or baron, the sheriff must lie in wait for him on the king's highway and put him in pledge, for that is the old judgement".¹ Thus, the sheriff may not enter a private soke to distrain the debtor of a mesne tenant without the consent of the lord of the soke. However, it seems unlikely that lords would let debtors go unpunished. Indeed from the Cartulary it seems that the problem was not here, but was in the dangers which might arise if the mesne tenant himself did not distrain. Many charters contain a clause expressly giving this right to the prior.² Parties might settle the problem at the time of the grant. When Henry de Hydik gave land and tenements to Richard de Whitawier in 1308, it was agreed that Henry would

1 M. Bateson, art.cit., p.492

2 Cartulary, of Holy Trinity, Aldgate, e.g. nos. 104, 117, 165, 173, 195, 197.

take naam if the occasion arose.¹ Friction might arise between two soke holders when one had tenants who also had property in the soke of the other. This could also be provided for at the time of the grant. Thus in a quit rent between William de Belmonte and Holy Trinity in 1227, the priory agreed to pay 3d. to the soke of the bishop of London "so that the canons shall have power to take naam and distrain, and if necessary to plead gavellet" if the rent fell into arrears.² The lands involved were partly in the parish of St. Mary de Newcherch, with a lane next to Newcherch cemetery going towards Bokelesby to the East, and partly in the parish of St. Mary, Woolnoth, in Cornhill. The bishop of London held the soke of Cornhill, while the other land in the parish of St. Mary Newcherch may also have been part of it, or it may have belonged to his soke of Holborn.³ Thus debtors could be brought to justice: the soke holders were wary of the civic authorities in matters of taxation, but they seem to have worked with the sheriff and the husting, and regarded them as allies, not enemies, in safeguarding their property rights.

In this chapter we have set out and discussed the post-Conquest evidence for sake and soke. Maitland argued that "the very meaning of the terms sake and soke "became disputed"⁴ in the later times. This is a misconception of the evidence.

1 Ibid., no. 732

2 Ibid., no. 1014

3 cf. the map included in Stenton's pamphlet with that found in W. Page, op.cit. p.133, facing, of suggested boundaries of the sokes. The parish church is just South-West of Cornhill but Holborn may have reached northwards to the Cornhill boundary.

4 P. and M. I, p.576

Sake and soke was such a wide term that it was impossible to define it in only one way. The definitions from Abingdon provide the most wayward examples we have noticed, and it is true that there is, in other sources, a certain degree of variety regarding the meaning of sake and soke. From the beginning, however, sake and soke were wide words capable of many meanings. At least after the Conquest, they were applied to any form of jurisdiction. The language of the law from the twelfth century was Latin or French instead of English. All these factors would contribute to a certain difference of opinion as to the exact meaning of the words.

Dr. Hurnard argued that sake and soke never referred to jurisdiction beyond the level of petty violence.¹ In her attempt to refute Maitland's thesis that sake and soke had at one time constituted the highest of franchises, she was especially concerned to show that the great Anglo-Norman franchises did not originate in a grant of sake and soke. They show, she wrote, "a marked indifference to this type of grant, having existed long before it began to be made, and not requiring to be amplified or confirmed by it". She believed that the franchises "rested on prescription supported by charters, forged or genuine, which attempted to indicate their peculiar nature, but had no technical terms in which to express it".² Much of this is true, but it is misleading. Bury's rights did not originate in a grant of sake and soke,

1 N. Hurnard, "The Anglo-Norman Franchises", E.H.R. Vol.64, 1949, pp.300-301

2 Ibid., p.322

because the writ had not been invented when it acquired its rights, and the charter form did not allow the inclusion of sake and soke and other vulgar English phrases for stylistic reasons. However, when Bury's rights were confirmed by writs, before and after the Conquest, sake and soke could be used to describe these rights.

CHAPTER 5

Sake and Soke and Private Jurisdiction

Before the Conquest

We have tried to show that after the Conquest sake and soke could be used in reference to any form of jurisdiction, and that as a jurisdictional privilege it gave the right to preside over a court as well as to take its profits. The interpretations of one age, however, are often an unreliable guide to the practices of another, and Professor Goebel has argued that whatever may be true of the twelfth century and later, the right to hold a private court did not exist before the Conquest. Professor Goebel believes that in the Anglo-Saxon period, sake and soke was a grant only of the profits of jurisdiction. He based his argument on the premise that court-keeping rights "mean control of procedure, definition of duty and exaction of penalty and so substantive law".¹ Thus authority over the procedure of a court, in his view, leads to control of the law administered there, and this, in turn, enables the court holder to declare law, and perhaps even to change it. He claimed that on the continent lords who were given the right to preside over public courts, held under their own authority, without reference to any original

1 J. Goebel, Jnr., Felony and Misdemeanor, Vol. I, (New York, 1937), p.337

royal right. However, he did not see "such widespread or long-lasting breakdown of public justice in England as there was in France to force the transition from mallus publicus to feudal court".¹ He attributed this difference to the fact that the Anglo-Saxon lord was given only the right to the profits of a court in which royal officials continued to preside, and where the lord merely attended to claim the fines and forfeitures. Thus, in Professor Goebel's view, he would be "scarcely in a position to remould court procedure and substantive law as he did in tenth century France".² Professor Goebel's thesis is mistaken on two counts, however: firstly, even where continental lords were given the right to hold public courts, the breakdown in the idea of public justice was not as complete as he believed; secondly, private control does not inevitably lead to a major breakdown in public justice, - this will survive if the original, higher power can maintain its residual authority.

Let us consider first the Continental evidence. In the time of Charlemagne, the counts of the Empire were, in theory, appointed officials, but in practice they were the leading landowners already dominant in the district over which they were given power. In theory, they exercised their authority as delegates of the Emperor, in practice, they increasingly

1 Ibid., p.342, n. 21

2 Ibid., p.342

assumed complete autonomy. Among their powers was the right to preside over the public court of the pagus, but under their influence, the old public customs by which procedure had been regulated were changed. An early symptom of decline lay in the office of the scabinus, a permanent judge who held office for life and replaced the common freeman - the rachiniburgus - for whom suit of court, and more especially the fines for default of suit, were a heavy burden.¹ The scabini were landowners and lords in their own right, and Charlemagne hoped that as men of independent means, they would be less susceptible to pressure by the counts than the poorer freemen. At first they were chosen by the missi, but as the central power disintegrated this duty also fell to the counts. Their own fief-holders were obvious candidates, and were chosen. Thus the suitors became known as the "count's scabini". Gradually, during the ninth century, the term scabini was replaced by fideles, and even though these "faithful" were still men of substance, not humble retainers,² the nuance is important: the concept of the typical freeman's obligation to render suit had given way to the reality of suitors appointed by the president of the court.

Ganshof traced the stages by which the mallus of the Pagus Matisconensis was transformed into the court of the count of the Mâcon.³

1 H.M. Cam, "Suitors and Scabini", Liberties and Communities in Medieval England, (London, 1963), pp. 50-51, and F.N. Estey, "Scabini and the local courts", Speculum, Vol.26 1951, pp. 119-121

2 See G. Duby, "Recherches sur l'évolution des institutions judiciaires pendant le X^e et le XI^e siècles dans le sud de la Bourgogne", Le Moyen Age, LII, 1946, pp. 149-'94

3 F.L. Ganshof, "Contribution à l'étude des origines des cours féodales en France", Nouvelle revue historique de droit français et étranger. Henceforth cited as N.R.H.D., LII 1928, pp.644-'65.

By the twelfth century, the suitors were not summoned because they were freemen of the pagus, but because they were fideles of the count. Public and feudal jurisdiction were intermingled, there was no difference in the constitution of the court according to the particular case being heard, and public jurisdiction, unconcerned with feudal relationships was heard before the lord and his fideles. In France, the Carolingian pagi almost completely disappeared, and the working administrative divisions were private fiefs.¹ M. Duby has shown that this process devolved still further. Ecclesiastical landowners were, at first, given the right of immunity from interference by the counts, on condition that they exercised their powers as royal representatives; but again, as the central power declined, they acted as private individuals. At the end of the tenth century, churches began to free their lands and tenants from external lordship, and especially "de l'avouerie comtale. La raison de ce revivement est celle-là même qui conduisit les grands seigneurs à se détacher du comte, le sentiment que l'autorité comtale ne possédait plus de caractère public: du moment que le comte apparait comme un potentat privé, que tire de sa puissance des profits personnels, il n'a plus qualité pour maintenir dans l'immunité la paix royale et il est légitime de se soustraire à son dominium".² The ecclesiastical courts quickly

1 H.M. Cam, op.cit., p.54

2 G. Duby, La société aux XI^e et XII^e siècles dans la région maçonnaise, (Paris, 1953), pp.166-'7

progressed from trying only ecclesiastical pleas to appropriating others which had once fallen within comital jurisdiction. By the mid-eleventh century, the knights were taking their disputes to the prior, rather than the count, and free tenants were similarly drawn into courts held by monasteries.¹

Thus the original failure of the central royal authority led to an erosion of public justice, but not everything was lost to private lords.² The suitors still found the judgement, which was then promulgated by the president of the court. Some of the Carolingian terminology survived, - at St. Omer, the court was called the mallus in the twelfth century. The three great generalialia placita of the pagus which dated from the reign of Charlemagne were still held, and the boundaries of the judicial districts can, in places, be identified as those of the original pagi or centenae.³ Vinogradoff found traces of ancient customary procedure in the courts of Normandy.⁴

It must be admitted, however, that these were survivals amid a general decline, but there was no comparable decline in England. Professor Goebel comments that private lords in England were "occasionally" put in possession of the public courts of the hundred. Dr. Cam, however, estimated that there

1 Ibid., pp.169-'70

2 For what follows see H.M. Cam, op.cit., pp. 55-'6

3 F.L. Ganshof, Les Tribunaux de châtellenie en Flandre, (Paris, Champion, 1932), pp.82-'3

4 N.R.H.D. I, 1926, pp.195-212

5 J. Goebel, Jnr. op.cit., p.342

were at least one hundred and thirty hundreds in private hands by 1086, and that in 1066 there were private hundreds in twenty shires.¹ Professor Goebel concedes that the lord of the hundred, although given the right to preside, "seems to have worked to metamorphosis of the hundred comparable to the conversion of the Frankish mallus publicus into a feudal court in France, nor does it appear that the control and direction of procedure (became) a matter of private command".² Moreover, he provides the solution to the problem:- in England the lords "were deliberately worked into the main structure of law.... as this was re-constituted in the course of the tenth century, as a part of the policy of strong kings".³ Thus, Professor Goebel's position would seem to be that there were communal courts in private hands in England before the Conquest, and these maintained their public character because the lords remained delegates of royal authority; but there was no "feudalisation" of public justice because lords did not acquire other jurisdictional rights on which to build more extensive powers.

If we may conclude that the erosion of public justice on the continent was a consequence of the decline of royal authority, it follows that feudalisation did not take place in England because royal authority remained strong.

1 H.M. Cam, op.cit., pp.59-60
 2 J. Goebel, Jnr., op.cit., p.342
 3 Ibid., p.359

If and when lords were given genuine court-keeping rights, the English kings were powerful enough to maintain the principle that these rights were exercised by the lords as royal delegates, not private individuals. We shall try to show that private jurisdiction did exist before the Conquest, and that immunity from royal officials was given, but only on condition that the grantee exercised his rights justly. We shall then try to relate these general principles to the problem of the meaning of sake and soke. We shall revert to our more literal definition, "a right of suit", and we shall show that, in the very early period of the law, kings did not have an automatic right to summon litigants and suitors to resolve disputes. This was their residual right but the extent to which they exercised it depended on two factors: firstly on their own power, and secondly on the willingness of disputants to appeal to the king or his officers.

Maitland's belief in the existence of private jurisdiction in Anglo-Saxon England sprang from his interpretation of the immunity clauses of the charters. These are principally concerned with arrangements for the royal farm, but they also include references to judicial privileges. If this evidence is studied in conjunction with the law codes, however, it can be seen that the charters provide very uncertain testimony for the existence of private jurisdiction, if this is to be interpreted as a court-keeping right.

The immunity clauses of charters often refer unambiguously to the royal farm: the king relinquishes his right to all

tributum, vectigal, or census, which will henceforth accrue to the grantee, with the exception of the three common burdens of army-service, bridge- and wall-work, for which the grantee is now responsible. But Maitland drew attention to certain charters of the ninth century which, he noted, "frequently except out of the words of immunity not three burdens but four. In addition to the trinoda necessitas some fourth matter is mentioned. Its nature is never very fully described, but it is hinted at by the terms angild, singulare pretium, pretium pro pretio. In connexion with these charters", he went on, "we must read other which exempt the land from 'penal clauses', or wite-raeden, and other which expressly grant to the donee the 'wites' or certain 'wites' issuing from the land; also we shall have to notice that there are dooms which decree that certain 'wites' are to be paid to the land-lord or land-rica..... Then again, there are the books which either give the lord the furis comprehensio or else exempt his land from the furis comprehensio".¹ He saw all these as signs of private court-holding, but more by implication than as direct evidence. Starting from the principle that "As a general rule, the person in whose name a court is held, be he king or lord, gets the profits of the court. No one in the middle ages does justice for nothing", Maitland inferred that "when the king declares that nothing is to 'go out' of the immunist's lands 'by way of wite', then to our thinking, he declares that, save in exceptional cases, he and his officers

1 D.B.B., pp. 324-325

will not meddle nor make with offences that are committed within that territory... Why should the sheriff hold that court, why should he appoint a bailiff for that hundred, if never thereout could he get one penny for his or the king's use".¹ We will see, however, that Maitland may have pushed his evidence too far, and that charters concerning furis comprehensio and angyld are less likely to imply court-keeping than he perhaps believed. The immunity is directed against interference by a royal reeve who claims a thief, but not in order to try him for his crime, rather to deliver him up to the king for summary execution or ransom, but without trial.²

In a charter of 842, Aethelwulf of Wessex granted land ut regalium tributum et principalium dominacione et vi coacta operacione et poenaliu[m] condicionu[m] furis comprehensio[n]e... supradicta terra secura et in[m]unis... permaneat.³ In a later

1 Ibid., p.327

2 The evidence itself presents a problem in that some of the charters date from the ninth century and are of Mercian provenance, whereas the law in relation to theft is set out in West Saxon codes, and the most detailed of these is the law code of Ine, which dates from the late seventh century. Alfred admits to having made changes in the law when compiling his own code, see - Alfred, Introduction, and one of these concerns theft:- "Formerly the fines to be paid by those who stole gold and horses and bees, and many other fines, were greater than the rest. Now all fines, with the exception of that for stealing men, are alike - 120s." Ibid., c.9,2. It is likely that the law in relation to theft remained substantially the same across the years. Among the "more just laws" which Alfred says he collected and retained was a code of Offa, now lost, but no peculiarly Mercian practices are mentioned in the text, and it also seems likely, therefore, that Mercian law was the same as that of Wessex.

3 B.438=S.292

charter of 846 which Aethelwulf drew up for himself as a preliminary to granting an estate freely, the services to be remitted include regalium et principalium tributum... ~~penalium~~ caesarum, furisque comprehensione.¹ A charter of 858 from Aethelberht, king of Wessex remits omium regalium tributum... et penalium rerum, principali dominatione, furisque comprehensione,² and a charter of 869 from Aethelred, king of the Saxons to Aelfstan, his princeps, grants liberum id est ut omnium regalium debitorum et principalium rerum, caeterarumque caesarum, furisque comprehensione, et ab omnium saecularium servitutum molestia segura et immunis aequaliter sine expeditione et arcis munitione, permaneat.³

By these charters, the estates granted become immune from royal dues, domination by the earldorman,⁴ and "thief-catching". Maitland thought that the last, - furis comprehensio, was but a Latin translation of English infangenetheof, - "When a writ of Cnut of Edward the Confessor", he wrote, "tells us that a lord is to have infangenetheof, we do not doubt that he is to have the right which bore that name in later days, the right to hold a court for, and to hang, thieves who are caught in seizin of the stolen goods, and to the furis comprehensio

1 B.451=S.298

2 B.496=S.328

3 B.525=S.334. Other similar charters are B.459=S.300. A.D.850, Aethelwulf to Ealhere, which has the immunity clause:- Terra hec predicta segura et immunis omnium rerum permaneat regalium... fursque comprehensione; and B.395=S.271 A.D. 823 - libera ab omni regali servitio... cum furis comprehensione intus et foris, maioris minorisque, praeter pontis constructionee et expeditione. But both these are of doubtful authenticity.

4 As translated by Professor Whitelock, E.H.D. I, p.488

of the older books we can hardly give another meaning".¹

Thieves caught in the act could certainly be tried in a court after the Conquest. In the thirteenth century, a woman was caught in the act of theft and imprisoned by Peter Achard and his bailiff, et postea in plena curia ipsius Petri ducta... in eadem curia sine aliquo ballivo domini regis, convicta et suspensa super quadam quercum.² But this woman had been

brought before a court in an age when all slaying, even in the case of a thief caught in the act and trying to escape, had

to be presented at the eyre. Such slaying of the hand-having thief was lawful and did not require a royal pardon to redeem

it / the perpetrator, but the authorities had to be assured that the slain man was guilty and that he was not merely the victim of malice.³ It would be prudent, therefore, for anyone coming

upon a thief, not to take immediate action by killing him, but simply to apprehend him and surrender him to a lord who

could investigate the matter more fully. This led to a process of trial, and royal coroners were often present at such

sessions to enrol the judgement.⁴ The essence of infangentheof

after the Conquest, lay in the lord's right to supervise a

hanging on his gallows. As Dr. Hurnard remarks, the evidence

"most strongly suggests that he (i.e. the lord) had a court in

which testimony as to the manner of the capture would be heard

1 D.B.B., pp.325-326

2 Assize Roll, 40, m. 27d. Quoted in F.M. Stenton, First Century of English Feudalism, p.102, n. 1

3 N.D. Hurnard, The King's Pardon for Homicide before A.D.1307 (Oxford, 1969), pp.89-90

4 R.F. Hunnisett, The Medieval Coroner, (Cambridge, 1961), p.6

before it could be decided whether the prisoner should be allowed to make denial, or should be hanged forthwith".¹

It is more doubtful, however, if the hand-having thief was tried for his guilt, before the Conquest. According to Ine's law "If a thief is taken, he shall die the death, or his life shall be redeemed by the payment of his wergeld".² It seems to be assumed, however, that the thief will often be slain outright. The law takes extensive precautions to safeguard the public peace when this occurs, for there is the danger that the kindred of the dead man will bring the vendetta against his slayer.³ However, the hand-having thief does not inevitably die, for he may ransom his life by his wergeld after being spared by his captor, or he may find sanctuary. In the event of the first, the captor, having presumably made his own decision to spare the thief, does not then take the thief's wergeld, he is required by law to surrender him to the king, and in return he receives ten shillings.⁴ The fate of the thief at this point is still uncertain and seems to depend entirely on the king's decision. It is possible that he may still be killed, for the clause in which the captor is ordered to surrender the thief also contains the assurance that "his (i.e. the thief's) kinsmen shall swear that they will carry on no vendetta against

1 N.D. Hurnard, "The Anglo-Norman Franchises", E.H.R., 1949
Vol. 64, p.292, n. 1

2 Ine, c,12

3 Although the law denies them the right to do this,
Ibid., cc.21 and 35

4 Ibid., c.28

him",¹ which would not be necessary if the thief were still alive. His life may be saved by payment of his wergeld, but this does not seem to have been his only punishment. The ceorl who has often been accused of theft, and is at last caught in the act loses his hand or his foot,² and restitution must also be made together with a fine of sixty shillings.³ The thief is assured of his life if he escapes to sanctuary, but the law in this case is not specific. It refers, in general, to anyone who is liable to the death penalty, and decrees that the criminal "shall pay such compensation as he is directed by legal decision".⁴ It seems likely, therefore, that in cases of theft, the wergeld, restitution and fine would all be paid. A man who could not pay may be inferred from II, Edward, c.6, which lays down that if a proven thief is forsaken by his kindred "and he knows no one who will make legal amends for him, he shall do such servile labour (deowweorces) as may be required".

The law relating to theft is, as we see, set out in some detail in the lawcode of Ine, and there are sufficient similarities in the other codes to suggest that there was little change during the Anglo-Saxon period. The law in Kent seems to have been substantially the same. It is laid down in

1 Ibid., c.28

2 gif he aet sidestan sie gefongen, Ibid., c.18

3 Ibid., c.10

4 bete swa him ryht wisige, Ibid., c.5

Aethelberht's code that "If a freeman (frigman) robs a freeman, he shall pay a three-fold compensation, and the king shall take the fine, or all the man's goods".¹ Wihtred is more detailed:- "If anyone catches a freeman in the act of stealing,² the king shall decide which of the following three courses shall be adopted - whether he shall be put to death, or sold beyond the sea, or held to ransom for his wergild. He who catches and secures him, shall have half his value. If he is put to death seventy shillings shall be paid to him".³ At first sight, Aethelstan seems to have totally rescinded the right of the thief to save his life by securing sanctuary. His second code begins emphatically:- "no thief shall be spared who is seized in the act,⁴ if he is over twelve years old and if the value of the stolen goods is more than eight pence. And if anyone does spare such a thief, he shall either pay for him to the amount of his wergeld - though in that case the thief shall not be any the less liable to punishment - or clear himself by an oath of equivalent value".⁵ VI Aethelstan appears even more stringent. The surviving Anglo-Saxon fragment begins:- "And we declared in the Council at Thundersfield, that if any thief or robber fled to the king, or to any church and to the bishop, he should

1 Aethelberht, c.9

2 Gif man frigne man aet haebrendre handa gefo

3 Wihtred, cc.26 and 26 l geselle heom man LXX scil, "to him" is Attenborough's translation, - Attenborough, Laws p.29, However, Dr. Whitelock translates it as a plural "to them", i.e. his captors, and she also notes that heom "might be a mistake for the singular, him, it could mean "for him" and the situation envisaged might be if the capturer took the law into his own hands, killed the thief, and thus robbed the king of his choice. He would have to compensate for it". - E.H.D. I, p.364, n. 1. Attenborough does not give a note in explanation of his translation.

4 peof pe aet haebrendre honda gefongen sy

5 II Aethelstan, l and l, l

have a respite of nine days. If he flees to an ealdorman, or an abbot or a thegn, he shall have a respite of three days.... But let him seek what sanctuary he may, his life shall be spared only for as many days as we have declared above".¹ But this may be misleading, for two reasons. Firstly, it may apply only to peculiarly recalcitrant thieves. The Latin version of the same chapter includes an introductory passage, apparently lost from the English text, in which the law is said to apply to "a thief who has committed theft since the Council was held at Thundersfield, and is still engaged in thieving.... whosoever it may be, whether taken in the act or not taken in the act, if it is known for a certainty" - that he is guilty.² Secondly, it is even possible that even such thieves might be spared. The king may still spare him, even though Aethelstan himself might not choose to do so, the law still allowed him the right. It is reiterated in Edgar's laws, - "And the proved thief, and he who has been discovered in treason against his lord, whatever refuge he seeks shall never be able to save his life, unless the king grant that it be spared".³ A clause in II Cnut repeats the passage in Edgar, but omits the final phrase:- "And the proved thief and he who has been discovered in treason against his lord, whatever sanctuary he seeks, shall never be able to save his life". This appears final, but a sub-section goes

1 VI Aethelstan, cc.6 1, 2, 4

2 Ibid., c.6. Latin

3 III Edgar, c. 7 3

on:- "And he who steals after this - if the case is one of open theft - shall never save his life, whatever sanctuary he seeks".¹ It is likely, therefore, that the king's residual right to allow ransom was merely omitted from the first clause, and that only persistent offenders were irretrievably condemned.

It is against this background of the law that we must consider the charters relating to furis comprehensio. We must determine if the hand-having thief was tried for his crime in a court, and if it was the right to hold the court which passed to the recipient of such a charter. Professor Goebel, in keeping with his general thesis, denied that court-keeping was involved, and he was supported by Jolliffe. The latter wrote that "In Egbert's reign 'infangthef' is not an indictment at law, but a kind of licensed man-hunt", and since Aethelstan decreed that hand-having thieves must be slain, Jolliffe believed that even in his reign it was still "not a form of trial and so brought no justice to any court".² This may be too extreme a view, and any suggestion of lynch-law is not borne out by the evidence. We have suggested that the blank condemnations which can be found in the laws may be misleading. It is more likely that even the hand-having thief was spared: as in the thirteenth century, the captor might lay himself open to suspicions of malice or simple

1 II Cnut, cc.26 and 26 1

2 J.E.A. Jolliffe, "The Origin of the Hundred in Kent", Historical Essays in Honour of James Tait, ed. J.G. Edwards, V.H. Galbraith, E.F. Jacob, (Manchester, 1933), p.163

misjudgement if he acted too hastily, and in the ninth century the dangers of vendetta by the thief's kindred would be very great.

Having spared the thief, the captor is instructed to surrender him to the king, and it is the king's decision which is crucial; he can decide if the thief should be executed, enslaved or ransomed. A charter from the reign of Aethelred suggests that this was a personal prerogative which did not involve judicial proceedings.¹ It tells of the crimes and forfeitures of a certain Wulfbold. After his father's death, Wulfbold "went to his step-mother's estate and took everything that he could find there, inside and out, small and great. Then the king sent to him and commanded him to give up what he had seized, but he paid no attention, and his wergild was assigned to the king". Wulfbold went on to take over an estate at Bourne, again illegally, and in all, his wergild was assigned to the king four times. Then a great meeting (micel gemote) was held of the king's councillors in London, and Wulfbold's property was confiscated "and himself likewise to be disposed of as the king desired, either to remain alive or to be condemned to death". It is likely that he was condemned, for the charter goes on, "And he had made no amends for all this up to the time of his death. And after he was dead, over and above all this, his widow along with her son went and slew Eadmaer, the king's thegn, Wulfbold's uncle's son, and his fifteen companions on the estate at Bourne".

1 Robertson, Charters, no. LXIII = S.877

Thus the king seems to have acted independently on four occasions with regard to Wulfbold's crimes; only then was a gemot held, but only to add solemnity and weight to Aethelred's word. It re-affirmed his right to condemn the man, and since his widow and son perpetrated a veritable massacre, it seems likely that Wulfbold had at last been executed. At no time is he said to have been tried for his guilt in a court.

A second narrative charter from Aethelred's reign - describes what may often have happened before the thief reached the king.¹ There was a certain Leofric who was the man of one of three brothers, and he stole a bridle which was later discovered on him.² Hostilities broke out between the brothers and those to whom the bridle had belonged, in which two of the brothers were killed. The third, together with Leofric himself, fled for sanctuary to a church. Two royal reeves step in at this point, - not to insist that Leofric should be tried, but to give the brothers Christian burial. These reeves were then reprimanded by Ealdorman Leofsige for breaking the law, - not by failing to bring Leofric to court, but by so burying the brothers. Again, Leofric was a hand-having thief, and there is no suggestion that he would or should be tried for his crime.

There remains the possibility that the hand-having thief was tried by ordeal - which was a judicial process. It is laid down in VI, Aethelstan, c. 14 that "he who has been

1 K.1289. See translation in E.H.D. I, pp.525-'6
 2 quo invento in eiusdem, K.1289

frequently and publicly (oft and openlice) convicted of theft, and who goes to ordeal and is there proved guilty (7 þar ful weorde) shall be slain unless his kinsmen or his lord will ransom him by the payment of his wergeld and the full value of the goods". This use of the ordeal adds to the general impression of an extreme reluctance on the part of the king to kill hand-having thieves. This is in general discouraged in the laws, for the reward for surrendering a thief must have been a great incentive to spare him, moreover the evidence suggests that when the thief had come into the king's power, he could hope, if not expect, to be spared and ransomed. However, the decision seems to have been a prerogative of the king, and taken perhaps with formal advice in a court, but the evidence is too meagre to be certain of this.

Professor Goebel believes that it was the king's right to determine the fate of a hand-having thief that was given with a furis comprehensio charter.¹ This would be an important privilege, but not necessarily a judicial one. It would be wise and reasonable to have the thief sentenced in a court, not least in order to protect the thief himself, for he would require some security, and at least the witness of his neighbours, in case he was subsequently challenged and his life threatened. But, although a lord, with the right to a hand-having thief, might use a court to exercise his right with the maximum regard for justice and peace, if he were not

1 J. Goebel, Jnr., op.cit., p.356

obliged to do so, it is doubtful if a charter with furis comprehensio would empower him to. However, the right to the thief was itself a privilege. It is every man's duty to capture thieves, but, as we have seen, they must then be surrendered to the king; the right to retain them, therefore, would constitute a special privilege. This accords well with the literal meaning of the word infangentheof. It is composed of the adverb in plus fangen, - the past participle of fongen - to take, and thus means "thief captured within",¹ and the lord with the right of infangentheof, therefore, has the right to retain any thief captured within his territory.

It cannot be altogether certain, however, that furis comprehensio is the equivalent of infangentheof; it may possibly be the right to only suspected thieves, or it may be a privilege covering both hand-having and suspected thieves. The latter were obviously tried in a court of law. The case of cattle theft is particularly mentioned:- "When one man charges another with stealing cattle, or harbouring stolen cattle, he shall deny the charge of theft by an oath of sixty hides, if he is allowed to produce an oath".² There is nothing in the laws to suggest that private lords held private courts to try such cases. They are given responsibilities: they may have thieves given into their custody, but then the law is concerned with the penalties incurred if a thief escapes, lords are ultimately responsible for paying compensation and

1 Writs, p.78

2 Ine, c.46

may also be fined.¹ A decree by Aethelstan possibly suggests that thieves are not tried in private court. It is laid down that "he who has been frequently and publicly convicted of theft, and who goes to ordeal and is there proved guilty, shall be slain, unless his kinsmen or his lord will ransom him by the payment of his wergeld and the full value of the goods: and in addition stand surety for him henceforth, that he will desist from every form of crime." If he steals again after this, his kinsmen shall give him back to the reeve to whose jurisdiction the case belongs.² There are too many imponderables here to be certain of the inferences which might be drawn from it. It is likely to refer to a hand-having thief, the lord referred to may not have a charter giving him furis comprehensio, the reeve himself may not be a royal reeve. Also uncertain are the conclusions to be drawn from the charters which not only free the estate from furis comprehensio, but also declare it immune from principal dominacione. Immunity clauses are predominantly concerned with fiscal and labour dues, and it might be argued that the estate is merely being freed from tax collectors, not judicial officers.³

It is possible, therefore, that the lord who is not required to surrender a thief to the king may still be unable to try and sentence him in a court of his own. His

1 Ibid., c.22 and 36

2 VI Aethelstan, c. 14 Italics mine,.... agifan þa magas þonne hine.. þam gerefan þe þar togebyrige.

3 On this, however, see further pp. 65-81, 224-25 197-201

privilege would then be fiscal, not judicial, and his interest would be in the fines and forfeitures which would result from the case. A lord would lose ten shillings in not giving up a thief, but he must have been sufficiently compensated, and probably took more thereby, for a thief could be very valuable. If caught in the act he needed to ransom his life by his wergild; accused and all convicted thieves were also fined, as well as being required to pay compensation to those they had wronged. The lord with the right to thieves probably took the wite and wergild. A decree in Aethelstan's laws is concerned with the persistent thief, who may yet ransom his life if someone is prepared to defend him by paying for him according to the amount of his wergild "either to the king or to him to whom it is legally due".¹ Ine lays down that "If a nobleman comes to terms with the king, or with the king's ealdorman, or with his lord, on behalf of his dependents, free or unfree, he, the nobleman, shall not have any portion of the fines, because he has not previously taken care at home to restrain them from evil doing."² The circumstances here seem to be that the gesidcund mon has been responsible for thieves, but has been unable to cope, and in failing and calling on the king or his own lord (hlaford), he loses the wites to which he had been entitled. It might also happen that the thief's whole property was confiscated if he was executed. Aethelstan's

1 II Aethelstan, c. 1 5. swa þam cyninge swa ðam ðe hit mid ryhte togebyrige.

2 Ine, c.50. Gif gesidcund mon þingad wid cyning... nah he þaer nane witeraedenne

London Ordinance suggests that private lords who held charters were entitled to a portion of the property; this is divided into three, one-third is given to the thief's widow, one-third to his associates, the remaining third is given to the king, unless the thief was "a tenant on land held by title deed, or on land belonging to a bishop" in which case the last third is given to the owner of the land.¹ An additional piece of evidence comes from the Leis Willelme, a post-Conquest compilation, parts of which are nonetheless valuable as information for the law in the latter half of the eleventh century.² It gives a different account of the distribution of property, if the thief dies it is divided between the wife and the landlord (li seinur de la terre), unless he were discovered in a district over which the lord has sake and soke (il est trové dedenz sache et soche), when the wife loses her share and it is given to the lord with the sokeright.³

A fiscal interpretation of the right of furis comprehensio also fits the evidence of other charters which, as Maitland said, "except out of the words of immunity not three burdens but four".⁴ In addition to the common military dues, the angild is also reserved. Angild is the word given in the laws to the restitution which the thief must make for the property

1 VI Aethelstan, c. 1 1 - Gif hit bocland sy oððe bisceopa land þonne ah se landhlaforð þone healfan deal wið þone geferscipe gemaene.

2 See Robertson, Laws, pp.226-'7

3 Leis Willelme, cc.27 and 27, 1. It is uncertain what weight can be placed on this for, in the Anglo-Saxon codes, the wife's share is said to be a third, - Ine, c.57, and VI Aethelstan c. 1 1 as quoted.

4 D.B.B., p.324.

he has stolen,¹ in the charters it is also given in Latin as singulare pretium or pretium pro pretio. In 814 Cenwulf of Mercia granted a charter to Worcester freeing the land from all burdens exceptis his, expeditione et pontis constructione et singulare pretium foras, nihil ad poenam resolvat.² In 855 Burgred of Mercia made a grant, again to Worcester, reserving quattuor causis, pontis et arcis, et expeditione contra hostes, et singulare pretium contra alium, et ad poenam nihil foras resolvat.³ A grant to Berkeley in 883 by Aethelred of Mercia has the immunity clause aeghwelces binges to freon ge wid cyning, ge wid ealdorman, ge wid gerefan aeghwelces peodomes, lytles 7 micles, butan fyrd socne 7 faesten geworce 7 brycg geworce 7 angyld wid odrum 7 noht ut to wite.⁴ Thus, it seems likely that the convicted thief is fined and pays compensation, the lords receive the wite, but the angyld must always be paid to the aggrieved parties. The two penalties may have been paid at the same time and there might be a danger of the lord appropriating both for himself. It would be prudent to include a specific clause

1 See Ine, c.22. Alfred, cc.6; 9, 1 and 2; VI Aethelstan, cc.6, 4; 8, 4.

2 B.351 = S.171

3 B.487 = S.206

4 B.551 = S.218. See also B.368 = S.185. A.D. 789 x 821;
 B.202 = S.58 A.D. 767
 B.203 = S.59 A.D. 770
 B.201 = S.106 A.D. 764 for 767
 B.370 = S.186 A.D. 722

to warn against this.¹

The charters and laws relating to theft provide very uncertain evidence of private court-keeping before the Conquest. Furis comprehensio could have been the right to determine the fate of hand-having thief, but this decision may be made unilaterally without formal court proceedings. It could also be that furis comprehensio was simply the right to the fines and forfeitures of an accused thief who had been tried under the eye of a royal official. It is from other charters that we may take more certain evidence for private court-keeping in England before the Conquest.

1 Professor Goebel believed that these charters also gave only fiscal not judicial privileges. In support of this he cited, among other evidence, two charters, which refer to the "wergild thief". Neither charter is altogether genuine however. The first purports to be a grant by Egbert to Abingdon in 835, and it includes the clause:- Fures quoque quos appellant werregeld deofas si foras rapiantur, pretium eius dimidium illi aecclesiae et dimidium regi detur. Pretium quoque sanguinis perigrinorum, id est werregild dimidiam partem rex teneat, dimidiam ecclesie antedictae reddant. B.1169 = S.734. B.413 = S.278 On its very doubtful authenticity see F.M. Stenton, The Early History of the Abbey of Abingdon, University of Reading Studies in Local History, 1913, p.30. The second charter is also spurious, although it may have some genuine basis. It states nec de furtis aliquam poenam solvere, nec etiam fures illos quos Saxonice dicimus werregild theouas alicui foras reddant. Sed si capiantur in illorum dominio sunt habendi. B.240 = S.121. See H.P.R. Finberg The Early Charters of the West Midlands, (Leicester, 1961) no.43. The "wergild thief" is probably a thief who has been convicted and has assigned his wergild to ransom his life, However, the division of profits between the king and abbey set out in the first charter is unusual, normally, as we have seen, either the king or the lord receive the payments. This is difficult to account for, unless we number it among the other mistakes and suspicious features which show the charter to be spurious.

One charter, however, which we must consider first, tends to support Professor Goebel's thesis that fiscal rights were given to private lords. It dates from the end of the ninth century and concerns the borough of Worcester.¹ According to this grant, Aethelred and Aethelflaed of Mercia granted "the land rent, the fine for fighting, or theft, or dishonest trading, and contribution to the borough-wall, and all the (fines for) offences which admit of compensation are to belong half to the lord of the Church for the sake of God and St. Peter, exactly as it is laid down as regards the market place and the streets. And outside the market place, the bishop is entitled to his land and all his rights."² In this case, where the profits of jurisdiction are divided it is uncertain who would preside over the court, it may, however, have remained under the eye of a royal official.

More certain evidence of private court-keeping is provided by two charters of Cenwulf of Mercia, which stipulate that persistent offenders must be given up to a royal tun for their third offence. Two inferences may be made here: firstly, that such offenders were tried for the first two crimes in the court of their lord, and secondly that the stipulation is itself exceptional, and that criminals who were tenants on land held by charter would not normally be given up at all, but would always be tried in a local court where their lord presided.

1 B.579 = S.223

2 The translation is from E.H.D.I, p.498.

The first charter concerns Aldington in Worcestershire, which was granted by Cenwulf to a certain Wulfflaed.¹ The estate was to be free from all but the three common burdens, and a food rent of oxen and honey which was to be paid at Winchcombe, and there is the additional proviso that si malus homo tribus vicibus in peccatis suis deprehensus fuerit ad regale vicum restituatur. The charter is fragmentary, and the royal vill at which the criminal should be surrendered is not named, but it could have been Winchcombe since the food rent was due there. Winchcombe was an important Mercian centre: a charter of the earlier half of the ninth century refers to certain disputed privileges quae aet pincelcumbe eradati fuerint,² - it must, therefore, have been a place where some archives of the Mercian royal house were kept; it was also the centre of a multiple estate, - a scribe in the early eleventh century made a note of the places that hyrad into Wincescumbe. Aldington was not among those named, but, again since the food rent was paid there, it may once have belonged to Winchcombe only to be detached later.³ There is also a charter of 897 which refers to earlier grants made by Cenwulf in which he forbade his heirs from granting for more than one life those of his hereditary lands which belonged to Winchcombe.⁴ Aldington may have been one estate which was more permanently alienated.

1 B.364 = S.1861

2 B.384 = S.1436

3 The document is B.M. Cott. Tib. A. xiii, ff.22v-27v.
Cited in H.P.R. Finberg, The Early Charters of the West Midlands, (Leicester, 1961), pp.228-235

4 hereditatem Cenuulfi que pertinet ad Wincelcumbe.
B.575 = S.1442

It is impossible to interpret the clause concerning the surrender of persistent criminals with any certainty, but the other evidence suggests that Cenwulf was anxious to preserve the integrity of his estates, and thus placed an exceptional limitation on Wulfflaed's rights. The maintenance of some judicial links, would be an important safeguard.

The same limiting clause appears in another charter from Cenwulf,¹ concerning five Worcestershire estates - Whittington, Spetchley, Tolladine in North Claines, Hallow and Chaddesley Corbett, which were granted to Bishop Deneberht and the church at Worcester. Again the royal farm - pascua regis et principis vel subditorum eorum - is reserved, and the persistent criminal is to be given up to the royal vill for the third offence - si malus homo in aperta scelere tribus vicibus deprehensus sit ad vicum regalem reddatur. The background evidence of this charter is even less clear than that of Cenwulf's other grant. The five estates are located in an area of which Worcester itself would seem to be the natural centre, and they are within the triple hundred of Oswaldslaw, but the early history of Oswaldslaw is most obscure, and the site of the hundred court was not fixed after the Conquest. Courts met at St. John's in Bedwardine, at Druhunt near Worcester, and at Low Hill on the western boundary of the parish of White Ladies Aston - the probable historical site of "Oswaldslaw" itself.² Spetchley, one of the five

1 B.357 = S.180

2 A. Mawer and F.M. Stenton, The Place Names of Worcestershire, English Place Name Society, Vol. IV, (Cambridge, 1927) pp.87-88

estates, may itself have been the site of an ancient meeting place, for it is derived from Old English spaec plus leah - "the open place where speeches at the Hundred meetings were made", and Low Hill is on the borders of Spetchley parish.¹ Of the five estates, only Hallow is mentioned in the Altitonantis charter,² where it is referred to as Hallege cum sibi pertinentibus, but the details are not given. In Domesday, however, Spetchley was appendant to Hallow,³ but of the other estates according to Domesday, Whittington was appendant to Kempsey.⁴ Chaddesley Corbet was held by Eddeve and is not described as belonging to another vill,⁵ while Tolladine does not appear at all. Neither Tolladine nor Chaddesley Corbet figure in the earlier charter evidence, but Whittington, Spetchley, and what may have been part of Hallow, were among the estates leased out in the time of Oswald.⁶ Thus, we cannot identify a central royal vill to which the five estates may all have been appendant, and at which persistent offenders were given up for trial. It is still possible, however, that Cenwulf was again attempting to keep his multiple estates intact by maintaining some judicial and fiscal links between the central vill and the appendant vill. Although this aspect of the problem is far from clear, this charter demonstrates more

1 Ibid., p.165

2 B.1135 = S.731

3 D.B. I, f.173b

4 Ibid., f.172b

5 Ibid., f.173b

6 K.670 = S.1361 - Whittington

B.1204 = S.1315 - Spetchley

B.1237 = S.1319 - Hallow

certainly that the first that the requirement to surrender criminals was an unusual limitation on a grantee's privileges. The charter is extant in three versions, each different in some respect from the others, as it was re-written twice in order to bring it up to date with changes in the estates; but only the first version includes the clauses demanding the surrender of criminals and the continued obligation to render the royal farm. This version appears on f.1^r of Hemming, and dates from the first half of the eleventh century. The first later transcript, made by Hemming, appears on ff.172^v-173^v and it omits the limiting clauses although the details of the estates are reproduced even though some were out of date by this time, and the third version, which dates from the seventeenth century¹ omits the limiting clauses and makes changes in the details of the estates.²

The reason for the judicial restriction in these two charters cannot be certain, but the simplest explanation is that Cenwulf did not want to see his family estates permanently alienated. The reservation of some judicial rights, together with the continued payment of farm, would have been valuable factors in this. The simplest interpretation of the clauses themselves, is that they were exceptions, and that the normal charter granted both the farm, and the right

1 B.M. Cott. Vitell. C ix, f.129^v

2 For a discussion of the charter see H.P.R. Finberg, Early Charters of the West Midlands, (Leicester, 1961), pp.185-186, also see N.R. Ker, "Hemming's Cartulary", Studies in Medieval History presented to F.M. Powicke, ed. R.W. Hunt, W. A. Pantin and R.W. Southern, (Oxford, 1948) pp.49-75

to try even the persistent criminal. Cenwulf had a vigorous approach to kingship,¹ and he may have been encroaching on rights which had hitherto been taken as granted, much as his predecessor Aethelbald had taken revenues from monasteries, and thereby, according to Boniface, had violated their privileges,² but these two charters are untypical of the grants of his reign.³

1 See A.S.E., pp.223ff.

2 William of Malmesbury, De Gestis Regum, ed. Stubbs, I, pp.80-82, and E.H.D. I, letter of Boniface to Aethelbald, p.754.

3 Some twenty-five genuine charters from Cenwulf are extant:-

B.285	=	S.152
B.289	=	S.153
B.295	=	S.154
B.293	=	S.155
B.303	=	S.157
B.317	=	S.160
B.321	=	S.161
B.326	=	S.163
B.328	=	S.164
B.339	=	S.165
B,338	=	S.167
B.335	=	S.168
B.341	=	S.169
B.340	=	S.170
B.351	=	S.171
B.350	=	S.172
B.343	=	S.173
B.349	=	S.174
B.346	=	S.175
B.344	=	S.176
B.348	=	S.177
B.353	=	S.178
B.357	=	S.180
B.359	=	S.182
B.368	=	S.185

Such arguments from silence are always unsatisfactory, but there is one charter, although apparently only one, which does grant exemption from "popular assemblies". It too dates from Cenwulf's time. It appears as an endorsement to an earlier charter recording an exchange of lands in the reign of offa, the endorsement being made by Pilheard, comes of Cenwulf, in 801.¹ The land, assessed at thirty hides, (manentes), lay between Harrow and Wealdstone Brook in Middlesex, and was given by Offa to an abbot Stithberht, but Pilheard took it, and other unnamed estates, for himself, at a cost of 200s., with an annual rent of 30s., and all these estates were to be free ab omnium fiscalium redituum operum onerumque seu etiam popularium conciliorum vindictis nisi tantum praetium pro praetio.² It is an isolated case, and the reference to popular assemblies is tantalizingly vague, but the charter is authentic and contemporary, and should surely be accepted as a plain statement that the grantee was free from attendance at popular courts; implicitly he could take the fines from his criminous men, but there is again the standing obligation to ensure that restitution is always made.

A further charter of 822 from Ceolwulf contains a general immunity clause and grants the right to wite, the angyld, however, is reserved, and it is said to be singulare pretium foras reddat secundum ritum gentes illius.³ Thus restitution

1 B.201 = S.106

2 "free from all fiscal dues, works and burdens, and also from popular assemblies, except however restitution." The three common burdens were also reserved.

3 B.370 = S.186

must be made "according to the people's custom or law", the implication being that the grantee now assumes responsibility for the restitution, but he must maintain the law and not attempt to alter it.

A further piece of evidence which directly suggests private court-keeping comes from the charter by which Bishop Denewulf of Winchester gave four estates to Edward the Elder in exchange for Taunton cum omnibus ad se pertinentibus.¹ The immunity clause grants freedom from the royal farm and the general expressions of freedom from all things, but there is also the stipulation:- episcopi homines tam nobiles quam ignobiles in praefato rure degentes hoc idem jus in omni haberent dignitate quo regis homines perfruuntur regalibus fiscis commorantes et omnia saecularium rerum iudicia ad usus praesulum exercentur eodem modo quo regalium negotiorum discutiuntur iudicia.² Taunton had been a royal estate in the time of Ine,³ and Domesday Book shows it to be an enormous multiple estate where a standing obligation of many of the tenants was to render suit of court three times a year without summons by the bishop.⁴ By his grant, therefore, Edward the Elder⁵ was not merely surrendering his fiscal rights, but also transferring his judicial authority over the tenants on

1 B.612 = S.373

2 "The criminous men of the bishop in that area, both noble and common, have the right to the same justice as the men of the king residing on royal estates, and all judgements of secular causes are to be exercised in the same manner as judgements of royal affairs."

3 A.S.C. s.a. 722

4 D.B. I, f.87b

5 Mr. Finberg has argued that this charter, B.612, gave only the estate of Taunton to Winchester, and that B.611=S.1286 gave the privileges. This does not materially affect our argument however. See H.P.R. Finberg, The Early Charters of Wessex, (Leicester, 1964), pp.221ff.

the estate to the bishop. However, the bishop must ensure that they continue to receive the same good justice which royal tenants enjoyed, and implicitly that they too have received when they lived under the king.

If there is to be genuine private court-keeping, then royal officials must be excluded from the grantee's lands. There is very little direct evidence to suggest that this was so. Professor Goebel denied that royal officials could ever be denied entry.¹ He quoted a number of documents which contain ne intromittat clauses, but argued that they were later interpolations and forgeries. He referred to a writ by which the Confessor granted Horner hundred to Abingdon: this contains the clause:- swa þæt nan scyrgerefe oððe motgerefe þar habban aeni socne oððe gemot buton þes abbudes agen haese 7 unne.² Dr. Harmer found that although parts of the writ are authentic, the exclusionary clause is clumsy linguistically and must be a later addition.³ Professor Goebel cites an Ely charter⁴ as "a first tentative employment of the absque introitu".⁵ It grants rights sine aliqua exceptione saecularis vel aeccelesticae iusticiae so that

1 J. Goebel Jnr., op.cit., pp.354ff

2 Writs, no. 5

3 As far as can be ascertained, neither the Conqueror nor William II issued a grant or confirmation to Abingdon concerning Horner hundred with an exclusionary clause. See Regesta I, William I, no.49. William II, no.289, and it was not until the reign of Henry I, that this occurs - See Chron. Abingd., II, p.164

4 K.907 = S.1051

5 The Frankish term for ne intromittat.

neque episopus neque comes neque alicuius exactionis
minister sine licentia vel advocacione abbatis et fratrum
ullo modo se praesumat intromittere. However, this charter
 may not be authentic.¹ There are other examples of exclusionary
 clauses in documents of doubtful authenticity. A writ to
 Christ Church, Canterbury,² is extant in both Latin and
 English versions, the former includes the clause nolo ut
aliquis hominum se intromittat nisi ipsi 7 ministri eorum
quibus ipsi committere voluerint and the English version runs:-
ic nelle paet aenig mann aenig ping paer to teo. Again,
 although the grant may have a genuine basis, many of its
 linguistic features are post-Conquest and Dr. Harmer assessed
 its authenticity as "more than dubious".³ A further writ
 to Christ Church was allegedly issued in favour of Eadsige,⁴
 an English version is not extant and the Latin includes an
 exclusionary clause identical to that found in no.34. Dr.
 Harmer again thought it spurious, and conjectured that it may
 have been concocted in later times in order to provide
 Christ Church with a writ for each archbishop in the Confessor's
 reign.⁵ Yet another writ to Christ Church in the time of
 Stigand⁶ has the clause ic nelle paet aeni man aeni ping paer

- 1 Mr. Blake, citing Professor Whitelock, has commented that
 it may be an expanded version of a genuine charter - E.O.
 Blake, Liber Eliensis, R.H.S., Camden Soc., 3rd ser.,
 XCII, 1962, pp.417-'8. Dr. Harmer also found it suspicious.
Writs, p.37
- 2 Writs, no.34
- 3 Ibid., p.453
- 4 Ibid., no.31.
- 5 Ibid., p.178
- 6 Ibid., no.33

on teo butan hy 7 heora wicneras þe hi hit betaecan wyllap.

The first three lines of this writ are authentic, but the remainder has been expunged and written over in a late eleventh century hand, and the exclusionary clause is part of this later addition.¹

There are, however, some authentic examples of exclusionary clauses. A writ from Cnut to Archbishop Aethelnoth includes the clause:- ic nelle þæt aenig mann aht þær on teo buton he 7 his wicneras.² It survives in an early eleventh century copy, its authenticity seems beyond doubt, and, moreover, it seems to be connected with a petition from Archbishop Wulfstan that Aethelnoth, whom he had consecrated, should be given the same privileges (rihta) which his predecessors had enjoyed.³ A writ from the Confessor to Winchester concerning Goodbeat has the clause:- 7 non minra wicnera nane socne nabbe uppon þa þe þær on uppon sittad, ne nan mann on nanan þingan butan se hired 7 þa þe hi heom to wicneran settad.⁴ The end of the writ is connected with Hayling and is probably a later addition, but the remainder, including the exclusionary clause, seems to be authentic.⁵

1 Ibid., pp. 173 and 452

2 Ibid., no. 28

3 Ibid., p. 171

4 Ibid., no. 111

5 Ibid., pp. 382-'5

A small number of charters also contain exclusionary clauses. Professor Goebel cited a charter from Aethelred of Mercia,¹ which includes the clause:- ge þid cyning, ge þid ealdorman, ge þid gerefan aeghþelces þeodomes lytles 7 micles butan fyrð socne 7 faesten geþorce 7 brycg geþorce 7 angyldes þid oðrum 7 noht ut to pite. The document is genuine, but Professor Goebel comments that it is "too rare to form any sort of precedent".² There are, however, examples. An authentic charter from Berhtwulf to Bishop Heahberht grants land in libertatem perpetuam liberabo id est notis et ignotis regis et principis seu subditorum eorum magis vel modicis libera permaneat in sempiternam.³ A charter from Burgred to Worcester grants land free ab omnibus servibus et tributalibus rebus magnis vel modicis regis vel principis aut juniorum illorum.⁴ Another grant from Burgred to Worcester also includes an exclusionary clause:- the land is to be held free ad liberam potestatem omni rei sibi adebendum regis vel regina vel principes et omnium juniorum meorum.⁵

Two charters refer to the boundary of an estate, and this suggests an area of immunity. Part of a grant of 767

1 B.551 = S.218

2 J. Goebel, Jnr., op.cit., p.355, n. 60

3 B.436 = S.194

4 B.487 = S.206

5 B.509 = S.210

from Uhtred of the Hwicce reads:- interdicimus ut si aliquis in hac praenominate[m] terram aliquid foras furavit alicui solvere aliquid nisi specialiter pretium pro pretio ad terminum ad poenam nihil foras.¹ Thus, again nothing is to "go out" in wite, that is the wite will not be paid to any external authority or lord, but restitution must be made ad terminum - at the boundary of the estate. At a later date, Berhtwulf of Mercia made an arrangement with Worcester concerning seven estates in Worcestershire and Warwickshire, by which the bishop surrendered them on lease to the king, with reversion to the church,² and the king released them to his minister Egbert.³ The immunity clause is identical in both charters: the land is declared free from all obligations regis et principis vel iuniorum eorum, nisi in confinio rationem reddant contra alium. Again the grantee must render right to others on the boundary of each portion of the estate granted. These clauses bring to mind the ruling in the Leges Henrici Primi where by the lord was bound to hold a court on the boundary of his estate.⁴ It is known that the writer of the Leges derived some of his material from pre-Conquest sources which have not come down to us, however, it must remain doubtful if these clauses were part of standard Anglo-Saxon law.⁵

1 B.202 = S.58

2 B.455,1 = S.1272

3 B.455,2 = S.199

4 L.H.P. c.57,1. See Mr. Downer's edition pp.320 and 363

5 Maitland pointed out the similarity, but thought the chronological gap too wide to allow any firm conclusions
D.B.B. p.325

Two charters cited by Maitland as evidence for private court-keeping are less certain. They are both concerned with Abingdon and allegedly date from the ninth century, but both are of doubtful authenticity. The first,¹ is from Cenwulf and contains the clause Si pro aliquo delicto accusatur homo Dei aecclesiae ille custos scius cum suo iuramento si audeat illum castiget. Sin autem ut recipiat aliam iusticiam huius vicissitudinis conditionem praefatum delictum cum simplo praetio componat. The second, a grant from Egbert, contains the same clause, but the Latinity of the scribe is less accurate:- he wrote alienam rather than aliam in the phrase ut recipiat aliam iusticiam and there is an additional sentence: De illa autem tribulatione que witereden nominatur sit libera nisi tamen singuli² pretium solverit ut talia accipiant.³ This second charter is especially dubious, it was written by one familiar with Norman law, but confused by Anglo-Saxon law,⁴ but even if either charter had had some genuine basis which included the clause concerning the man of God accused of crime, it would not necessarily bear Maitland's interpretation. He envisaged a transfer of jurisdiction from one court to another, after an outsider has brought a claim against one of the abbey's tenants, the custos of the church may take an oath to clear him, but, in Maitland's view, if he dares not do so, he can "plead his court" by first paying the manbot "and by performing this

1 B.366 = S.183. D.B.B. p.344

2 sic. singulare?

3 sic. accipiat? B.413 = S.278

4 F.M. Stenton, Early History of the Abbey of Abingdon, pp.23 and 30.

condition he may obtain a transfer (vicissitudo) of the cause and do what other justice remains to be done, i.e. he may exact the wite".¹ But as Professor Goebel has pointed out,² vicissitudo could mean a substitution, not a transfer, and thus the clause could be concerned with the substitution of a fine for the oath. There is no question but that the man is guilty since the compensation is to be paid, but the oath replaces the fine of 60s., to which he was also liable, - the custos may clear the offender by oath, the condition of this substitution of the oath for the fine being that he amend the offence by restitution.

These appear to be the only charters whose immunity clauses may be said to indicate private jurisdiction before the Conquest. They are few in number, and although the right to wites is sufficiently clear in them and in other charters, as well as in the laws, they provide little certain evidence for private court-keeping. The immunity clauses could be merely concerned with renders of farm and taxation, Cenwulf's charters concerning the surrender of criminals may be an exception to the norm, but the norm may have been a standing obligation to deliver up the criminal after his first offence, not the right to retain and try him, however many offences he may commit. Moreover, even if it could be proved that all these charters were examples of court-keeping rights, they could all be untypical of ordinary grants. However, the Taunton charter and Pilheard's endorsement are less ambiguous, and one is struck by the anxiety discernible in the evidence that good justice be maintained. When land was granted, tenants were

1 D.B.B. pp.344-5

2 J. Goebel, Jnr., op.cit. p.350, n. 51

transferred, but they must still receive the same standards of justice which royal reeves had provided, penalties must be enforced according to custom, immunity is given but compensation must always be paid, and the inference is that a royal reeve will no longer be there to ensure this.

Although the number of charters which provide the evidence is so small, this, in itself, may not be an overriding difficulty, for much could depend on charter conventions and the vague generalisations concerning freedom in immunity clauses could cover the judicial privilege suggested by these, more explicit charters.

The evidence of the writs regarding private jurisdiction is also uncertain since, except for the formula, "sake and soke, toll and team, and infangenetheof", their immunity clauses are also vague. However, we can be more confident that "sake and soke" was used for court-keeping rights by considering the pre-Conquest grants to Bury St. Edmund's. Dr. Hurnard denied that its hundredal rights originated in a grant of sake and soke.¹ Sake and soke was confirmed to the three abbots, Ufi, Leofstan, and Baldwine, who ruled Bury in the reign of Edward. Ufi was already abbot when Edward came to the throne, having been appointed in the reign of Cnut, and in 1042 or 1043 Edward granted to St. Edmund, "Bury and all that belongs to it on lande 7 on sake and on sokne", and confirmed that "the freedom (se freols) shall abide with the

1 See above pp.162-3.

monastery unaltered which Cnut granted to it, and afterwards Harthacnut".¹ The latter is probably a reference to freedom from episcopal interference.² The grant of sake and soke could, however, be the grant of the eight-and-a-half hundreds. A writ of 1043-'4³ grants the royal vill of Mildenhall together with the "sokes" of the eight-and-a-half hundreds which had belonged to Edward's mother and which she probably surrendered with her other property when she was disgraced in 1043.⁴ Bury, or rather the tumulus, the Thinghoe, to the north-west of the town, was the centre of the eight-and-a-half hundreds,⁵ and it may be that the phrase biri and alle pinge be per to bireth which appears in the first writ,⁶ refers to the hundreds.⁷ A writ issued between 1044-'65 granted to Leofstan sake and soke, over the men of the abbot and the community,⁸ the soke of the hundreds is referred to in a separate writ,⁹ while another writ granted to Leofstan sake and soke over any lands which were bequeathed to the monastery.¹⁰ One such bequest was made by Aelfric Modercope, who gave Loddon to the abbey, and a writ was issued confirming

1 Writs, no.8

2 Ibid., p.140, n. 3

3 Ibid., no.9

4 See A.S.C. s.a. 1043

5 M.D. Lobel, The borough of Bury St. Edmund's, (Oxford, 1935) p.7

6 Writs, no.8

7 Various accounts exist of the grant of Mildenhall and the hundreds. According to Hermann the deacon, writing at the end of the eleventh century, they were given to the abbey by Edward in the first year of his reign - Miracula Sancti Edmundi, Mon. Angl. III, 154 no.xxi, cited in Writs p.435. According to a fifteenth century manuscript the donation was made to Abbot Baldwin at the end of Edward's reign, Camb. Univ. Lib. Ms. Ff. 2, 29, fo,65. Cited in H.M. Cam, Liberties and Communities, p.186

8 Writs, no.11

9 Ibid., no.18

10 Ibid., no.12

Bury's right of sake and soke,¹ and two further writs concerning sake and soke over Kirby and Coney Weston may also have been bequests.² Baldwine became abbot just before Edward died, and a writ was issued announcing his appointment and confirming to him Bury, and everything that belonged to it, with sake and soke as fully as Leofstan had held it, while yet another writ refers to the "soke" of the hundreds.³

Thus one cannot say that Bury's privileges were not at least confirmed by the phrase sake and soke. The writs, both before the Conquest and after, describe Bury's hundredal rights in terms of sake and soke, and there is no evidence to suggest that this did not include the right to preside before the Conquest as well as later.

Professor Miller has discussed three examples from Ely in which royal officials held hundred courts which were, certainly at a later date, in the possession of the abbey.⁴ The ealdorman of East Anglia, in Edgar's reign, was Aethelwine and his deputy was Wulfstan of Dalham.⁵ A dispute arose concerning land at Witchford, which had been settled for £11, in the presence of the whole hundred, but later the payer had defaulted, therefore venit Aegelwinus alderman ad Hely et infra cimiterium ad aquilonalem portam monasterii tenuit placitum cum toto hundreto.⁶

1 Ibid., no.22

2 Ibid., nos. 17 and 22

3 Ibid., nos. 23 and 24

4 E. Miller, The Abbey and Bishopric of Ely, (Cambridge, 1951, reprinted 1969), p.30

5 L.E. p. xiii

6 L.E. II, c.12, p.91

At a second dispute concerning land at Stonea, venit Wlstanus de Dalham et cum eo barones quamplurimi illuc, ibique collectis duobus hundretis versus aquilonem ad hostium monasterii placitum habuit,¹ and in yet another case at Stonea, the abbot of Ely claimed he had been disseized of land, Aethelwine summoned the offending parties to a hundredal court, but they were unwilling to go, - Abbas tamen non ideo desistebat sed infra urbem et extra ad placita renovabat et sepe reiterabat hanc eandem causam et querimoniam populo inde faciebat. Tandem veniens Aegelwinus alderman ad Grantebruge, habuit ibi grande placitum civium et hundretanorum coram xxiii iudicibus, and the case was then decided.² Professor Miller suggests that "the early abbots had no immunity at all even in the Isle and may not even have had a court-keeping franchise".³ But it is not certain that Ely had a sake and soke of the hundreds at this time. The privilegium says that Edgar gave to Ely saca vii hundredorum et dimidii,⁴ although parts of the document may be genuine, it cannot be entirely authentic as it stands. The proem, the regnal style and the anathema are unparalleled in Edgar's charters.⁵ It is not clear when Ely was given sake and soke over its hundreds although it held them by the time of Domesday. The first authentic document to guarantee sake and soke is the writ issued by the Conqueror

1 Ibid., II, c.18, pp.93-'4

2 Ibid., II, c.24, p.97-'8

3 E. Miller, op.cit. pp.29-30

4 Latin B.1266 = K.563. English B.1267 = K.563, = S.779

5 See S.779 and references therein cited.

in connection with the plea held at Kentford in which he declared that the abbey should have "sake and soke, toll and team, and infangenetheof, hamsocn, gridbryce, fihtwite and fyrdwite".¹ The writ says that Ely had enjoyed these customs "on the day of King Edward's death", but the only Ely writ from before the Conquest concerns the appointment of Abbot Wulfric.² It dates from the period 1055-1066 and is authentic but it omits any reference to sake and soke. Wulfric is given the land that belongs to Ely binnan burgan 7 butan, but here where the sake and soke formula would normally come, it does not appear, and the writ goes on toll 7 team 7 infangenetheof, fyhtwite 7 fyrdwite, hamsocne 7 grypbryce. It is difficult to explain the anomaly. The appointment of abbots is, in other cases, followed by a grant to him of sake and soke even though his church had enjoyed the right in the times of his predecessors.³ There is an Ely charter of the Confessor,⁴ which is the only other document in the whole of the Ely diplomata, spurious or genuine, which refers to sake and soke. Its authenticity is uncertain, but Dr. Harmer believed that it "can hardly be authentic in its present form".⁵ The extensive list of estates which it includes looks suspiciously like an attempt to summarize a claim to disputed possessions. However this may be, the charter includes a reference to sake and soke alone. It may,

1 L.E. II, c.117. Regesta, I, no.129.

2 Writs, no.47

3 See Writs, nos. 4, 11, 23, 81,

4 K.907 = S.1051

5 Writs, p.222, n. 2

therefore, have been the peculiar practice of Ely to have one document conferring sake and soke, and a separate document for other rights when appointments and confirmations were made. Still, this does not help us in our original dilemma as to when sake and soke was first given, but at least we cannot be certain that Edgar himself granted it, or that Ely held it in the time of Aethelwine. Nor can we be sure of the circumstances in each case. There is the suggestion in the last case that the abbot co-operated with Aethelwine, and thus Ely may have looked upon the action of the royal officials as assistance not interference. In the first case, moreover, the payer had defaulted, and the support of an important ealdorman may have been thought necessary.

The charter evidence for grants of royal jurisdictional rights and freedom from interference from royal officials is, therefore, comparatively meagre. However, although there are so few more explicit references to judicial rights in the charters, we cannot immediately conclude that they gave exceptional privileges which, therefore, required greater definition than the vague reference to "freedom from all things" which is found in other charters. Mr. Brooks has shown that the explicit reservation of the three common burdens is not an invariable feature of early charters, but they may nonetheless be understood: the difference lies not in the rights and obligations of the grantee, but the charter conventions of the different scriptoria, so that even when the services were not expressly reserved, they were probably still demanded.¹

1 N. Brooks, "The development of military obligations in eighth and ninth century England", England before the Conquest: Studies in Primary Sources presented to Dorothy Whitelock ed. P. Clemoes, and K. Hughes, (Cambridge, 1971), pp.73-'4. He notes that the monastic houses may once have been free from service but this does not materially affect our argument that rights and obligations can be implicit in more general phrases.

It seems likely, therefore, that judicial immunity was granted by charters, and since there seems no reason to doubt that the writ merely replaced the charter, both documents probably granted similar privileges. The king granted sake and soke by these documents; it is the king's sokeright which was given and the grantee took upon himself the rights and obligations which had hitherto been exercised by the king through his agents. These rights were, in part, merely fiscal, - hence the importance of the royal farm in sokeright, but they were also jurisdictional. The primary royal right in the area of jurisdiction was the right to appoint an officer who would oversee correct procedure, and this was transferred to a grantee of sake and soke.

The president of a court was probably the descendant of the arbitrator who had acted for disputing parties in the very early period of the law. The king might himself provide for this arbitration, but there was no necessity for him to do so, nor need the contending parties look to the king: if they decided to settle their differences peaceably without resorting to the bloodfeud, they were free to chose their own arbitrator. We can see this in the latter half of the seventh century in Kent. According to the law of Hlothhere and Eadric:- "If one man brings a charge against another, and if he meets the man (whom he accused) at an assembly or meeting, (an medle oppe an pinge), the latter shall always provide the former

with a surety and render him such satisfaction as the judges of Kent shall prescribe for them (Cantwara deman gescrifen). Then "if one man charges another, after the other has provided him with a surety, then three days later they shall attempt to find an arbitrator, (saemend), unless the accuser prefers a longer delay. Within a week after the suit has been decided by arbitration, the accused shall render justice to the other and satisfy him with money, or with an oath, whichever he (the accused) prefers. If however, he is not willing to do this, then he shall pay one hundred shillings, without (giving) an oath, on the day after the arbitration".¹ The role of the arbitrator is not immediately clear from these clauses; the doomsmen make their judgement, it seem likely, therefore, that the arbitrator would enforce it. Comparative legal study of Celtic society tends to confirm that this was so.² Mr. Binchy has shown, from a study of early Irish law, that justice was initially a private affair: disputes gave rise to the blood feud, or, with the agreement of both sides, a brehon was chosen who would judge their case. The decision, however, had to be enforced by the successful party himself. He could call upon the help of his own kin, but he could also ask for assistance from a more powerful person, and this would

1 Hlothhere and Eadric, cc. 8 and 10

2 It seems to be legitimate to use the Celtic evidence in this way, for Dr. Wallace - Hadrill has recently observed that the Celtic element in Germanic culture has been underestimated in the past. J.M. Wallace - Hadrill, Early Germanic Kingship in England and on the Continent, (Oxford, 1971), p.4, notes 11 and 12

normally be the lord to whom the claimant was bound by a tie of clientship (celsine). For thus helping his man, the lord took a "levying share" (cuit tobaig) of one-third of the penalty. Public administration of justice begins, observes Mr. Binchy, "when the state (normally represented by the king) received a certain proportion of the penalty for enforcing an arbitral or judicial decree".¹

In early society law is not made, it is the immemorial custom of the folk which already exists in toto and is transmitted to each succeeding generation.² Germanic kings were the representatives of their people and the guardians of their people's customs: they had the judicial authority to preside over disputes which might arise with members of other tribes, and those in which their own personal followers were involved. We may immediately see here the seeds of English royal authority, for the West Saxon royal house gradually assumed control over other, less powerful kingdoms. We may also recall Aethelred's claim of the soke of royal thegns.³

English kingship, however, reached further into the judicial affairs of the people, and in taking on the guardianship of their custom they improved and changed it. The impetus of this development was provided by the Roman Christian church which stressed the king's obligation to rule with justice, and to promote just dealings among his people.

1 D.A. Binchy, Celtic and Anglo-Saxon Kingship. O'Donnell Lectures, 1967-8, (Oxford, 1970), p.18. Cf. p.23 for parallels in Welsh custom.

2 J.M. Wallace-Hadrill, op.cit. p.40. D.A. Binchy, op.cit. p.16. K. Fischer-Drew, "The barbarian kings as law givers and judges", Life and Thought in the Early Middle Ages, ed. R.S. Hoyt, (Minneapolis, 1967), pp.10-11

3 See above pp.40

Under the influence of the Church, parts of the folk custom were committed to writing and were carried from one court to another. Thus they must have struck their readers and hearers as a form of "kingly literature".¹ We can see from the code of Hlothhere and Eadric that a royal official was already present in a court: procedure demanded that when a man is charged he gave a surety, but if he refused to provide the surety twelve shillings was forfeited to the king, evidently because of the breach of procedure.² The disputing parties may have sought out a royal official to act as their arbitrator, they were free to choose whomsoever they wished, but since the arbitrator enforced the judgement it would be most sensible to look to one with the greatest authority and power, and a royal office is but the arm of the king.

An extra dimension was added to the king's role however, when he became a legislator. His ability to modify procedure can be seen in Aethelberht's law concerning compositions for feud, whereas the whole kin had once been liable to such payments Aethelberht decreed that "If one man slays another, he shall pay the wergild with his own money and property".³ In the preface to his law code, Wihtred declares that "the notables, with the consent of all, drew up these decrees,

1 J.M. Wallace-Hadrill, op.cit. p.37

2 Hlothhere and Eadric, c.9.

3 Aethelberht, c.30, Italics mine. See Dr. Wallace-Hadrill's comment on this, that Aethelberht here "supplements the procedure where it fails", J.M. Wallace-Hadrill, op.cit. pp.43-'3.

and added them to the legal usages of the people of Kent.¹ The prologue to Alfred's laws is an explicit apologia for change: Alfred states that the laws of Wessex, Mercia and Kent were collected and orders were given "for copies to be made of those which our predecessors observed and which I myself approved of. But many of those I did not approve of, I have annulled, by the advice of my councillors, while (in other cases) I have ordered changes to be introduced. For I have not dared to presume to set down in writing many of my own, for I cannot tell what (innovations of mine) will meet with the approval of our successors".² There are the preliminaries of consultation and consent, but this makes plain that Alfred himself is the prime mover of the changes. Moreover, he confesses that he dare not set down many of his own ideas for change, not because this would be to modify the existing customs of his people, but because his successors may not approve: he assumes, therefore, they may wish to introduce changes of their own.

In theory, every man was presumed to know the law, but this cannot have been so in practice. In the poem "The Gifts of Man", one of the persons said to be endowed with special faculties was he who "can in an assembly of wise men determine the custom of the people".³

1 Wihfred Introd. \ddot{a} as domas 7 Cantwara rihtum β eawum aecton.

2 Alfred. Introd. 49,9. Bracketed phrases are those of Attenborough, *Laws*, p.63

3 Sum in maedle $\overline{m\ddot{a}eg}$ modsnotta
folcraedenne ford gehycgan
 β aer witena β ip worn aetsomne

The Exeter Book, ed. G.P. Krapp, and E. van Kirk Dobie, (London 1936), p.138

Alfred's revision of the law cannot have helped in the difficulties which were a feature of the ninth century. Asser gives a long account of the state of the law in his time.¹ The king, he wrote, Studebat quoque in iudiciis etiam propter nobilium et ignobilium suorum utilitatem qui saepissime in contionibus comitum et praepositorum pertinacissime inter se dissentiebant, ita ut pene nullus eorum, quic quid a comitibus et praepositis iudicatum fuisset, verum esse concederet. Some false judgements were made from corruption, but others out of ignorance, (eo quod nihil rectius de hiis rebus scire poterant). It is the ealdorman, reeves and thegns (comites, praepositi, ministri) who are concerned and terrified of the king's displeasure; nor are they instructed to learn the true law by consulting a wise Methusalah in a village, rather they must learn to read the law books (praepositi ac ministri literariae arti studerent).

Thus the oral transmission of immemorial custom was no longer adequate, but had to be supplemented from books of written law. In the prologue to his first code, Edward the Elder commanded all his reeves (gerefum) "That ye pronounce such legal decisions as ye know to be most just and in accordance with the written laws. Ye shall not for any cause fail to interpret the public law, and at the same time it shall

1 Asser's Life of King Alfred, ed. W.H. Stevenson, (Oxford, 1904), sect. 106

be your duty to provide that every case shall have a date fixed for its decision".¹ By the end of the tenth century, if not before, a situation had arisen in which the people had to be instructed in their own law; Edgar ordered copies of his codes to be distributed,² and Mr. Sisam has shown that the laws were probably read by parish priests to the people in churches,³ and thus the judicial independence of the people was lost.

A clause in the laws appears to refer to a royal official as a judge, whereas the suitors of the court are considered to be its judges. As the litigant is required to seek a court, so the accused is bound to answer him, and "If anyone demands justice in the presence of any 'shireman' or of another judge and cannot obtain it, since (the accused) will not give him security, he (the accused) shall pay thirty shillings compensation, and within seven days do him such justice as he is entitled to".⁴ The 'shireman' at this time is not the sheriff but the ealdorman.⁵

In the public court, the reeve or other presiding official was not conceived of as a judge, he enforces the law, but the law itself is stated by a bench of doomsmen. There are two other references to "judges" in the laws. In the first,

1 Eadwerd cyning byt ðam gerefum eallum, þæt ge deman sura rihte domas swa ge rigtoste cunnon, 7 hit on ðære dombec stande. Ne wandiað for nanum þingum folcriht to geregeanne. Other references to written law codes can be found in I Aethelstan, 3; II Aethelstan, 5; II Edgar, 3

2 IV Edgar, 15,1

3 K. Sisam, "The relationship of Aethelred's codes V and VI" Studies in the history of Old English Literature, (Oxford, 1962) p.287

4 Ine, c.8 Translation and bracketed phrases are by Attenborough, Laws p.39 Gif hwa him ryhtes bidde beforan hwelcum scirmen odde oprum deman 7 abiddan ne maege, 7 him wedd sellan nelle gebete xxx scill. 7 binnan vii nihton gedo hine ryhtes wierðne

5 W.A. Morris, The Medieval English Sherrif to 1300, (Manchester, 1927), pp.2-3

from the code of ~~Hlothhere~~^{Hlothhere} and Eadric which we have quoted.¹
 the deman of Kent appear to be the suitors. The other reference
 to judges is concerned with the judge who gives a false
 judgement.² Such a man, unless he can prove that he did not
 know of a more just decision, pays 120s., to the king and
 "loses forever his rank as a thegn, unless he redeems it from
 the king". According to Mr. Richardson and Professor Sayles,
 "The conclusion seems inevitable that in the iudex of Edgar's
 day we must see a royal judge, who is the associate of bishop
 and sheriff in their judicial capacities", and they add that
 "The parallel with the local justice of Norman times seems
 too close to be accidental".³ It seems more likely, however,
 that the reference is to one thegn from among a group of
 suitors, for the writs suggest that the suitors in the shire
 courts were commonly thegns.⁴ Nonetheless, the reference to
 the "shireman or other judge" as a singular in Ine's code,
 suggests that one person made the judgement. The reeve
 certainly pronounced judgement: in his declaration of 1020
 Cnut enjoined "upon all my reeves, under pain of forfeiting
 my friendship and all that they possess and their own lives,
 to govern my people justly everywhere, and to pronounce just
 judgements with the cognisance of the bishops of the diocese,

1 See above pp 216-116

2 se dema þe oðrum woh deme in III Edgar, 3;

3 H.G. Richardson and G.O. Sayles, Law and Legislation from Aethelberht to Magna Carta, (Edinburgh, 1966), p.37

4 See above p.58, n. 2

(7 rihte domas deman), and to inflict such mitigated penalties as the bishop may approve and the man himself may be able to bear." ¹ Aelfric in his Grammar, in an interesting collection of synonyms, equates the ealdorman and president with the judge.² It seems likely, therefore, that the "shireman or other judge" in the Anglo-Saxon period was a true judge in that the suitors took some part of their law from him. Much of the law was based on ancient practice, but kings had begun to legislate and thus a royal official would be necessary, for he could judge according to the new law if the doomsmen had little or no knowledge of it. A striking example of a change in the law occurs in II Aethelred, c.9, where it is stated that "Formerly it was the rule that vouching to warranty for the first three times should take place where the goods were first attached, and afterwards the process should be transferred to the locality indicated (by the evidence of the third person). Then the authorities decided that it would be better for the vouching to warranty always to take place where the property was first attached". Good judgement could not be given unless the correct procedure of arrest and trial was followed, and a royal agent was now necessary to ensure this.

1 Declaration 1020, c.11

2 praeses, dema odde ealdorman, praesidis, Aelfric, Grammar
p.52

By the time of Alfred, royal officials were common. Courts may have already been established in royal vills, - the centres of the later hundreds. According to Alfred's law, an ealdorman sits in a gemote,¹ and he also has a deputy, - the cyninges ealdormonnes gingran, - the ancestor of the future sheriff.² The same official is the praepositus who is said by Asser to preside in the gemote,³ and in Alfred's law accusations of theft are made to them on folces gemote.⁴ In the laws of Edward the Elder, they are the reeves who have a major responsibility for courts, and justice. They must hold a gemot every four weeks,⁵ and see that each plea has its term.⁶ The ealdorman and the reeve were not men of humble rank⁷ and they were backed by a power which taxed,⁸ imprisoned,⁹ and even controlled the movements of its people.¹⁰

Immunity from interference by such men would be a valuable asset, especially if they abused their power. M. Ganshof has remarked on the rapacity of royal agents in Frankia, and the immunity granted to churches insulated them

1 Alfred, c.38

2 Ibid., c.38,2, W.A. Morris, op.cit. p.5

3 Asser's Life of King Alfred, ed. W.H. Stevenson, (Oxford, 1904), sect. 106

4 Alfred, c.22

5 II, Edward, c.8

6 I, Edward, Prol

7 W.A. Morris, op.cit., p.4

8 Ine, c.70,1

9 Alfred, c.1,2

10 Ine, cc.39; 63. Alfred, c. 37, 1 and 2

from exploitation and corruption.¹ The English evidence suggests similarities.² A homily writer in the reign of Edgar described the crimes of the evil gerefan who pervert the course of justice and are judges in name but thieves in deed. A reeve named Aethelric tried to increase the amount paid to Cnut from the lands of Christ Church, Canterbury.³ A charter of Cnut, of uncertain authenticity, tells how the reeves of Devon oppressed the church of St. Mary in Exeter,⁴ and in Hemming we read of the sheriff of Staffordshire who, it is alleged, during the struggle between Cnut and Edmund Ironside, occupied lands belonging to Worcester.⁵

Maitland's view of sake and soke was based on a mistaken view of royal authority. He greatly over-estimated the rights and power of early kings:⁶ there was no great decline followed by a twelfth century royal renaissance, rather there was a gradual increase in the power of kingship. At first, kings

1 F.L. Ganshof, The Carolingians and the Frankish Monarchy, p.94

2 See W.A. Morris, op.cit. pp. 11-16, 36-38

3 Writs, no.29, and pp. 171-'2

4 K.729 = S.954

5 Cartulary, I, p.278. Cnut was well aware of the injustices of his officials. In the proclamation of 1027 he declared:- "I enjoin upon all the sheriffs and reeves throughout my kingdom that... both nobles and commoners, rich and poor, shall have the right of just possession... for I have no need that money should be collected for me by any unjust exactions". Proclamation, 1027, c.12

6 Although he did observe that the prohibition in Ine, c.9 against exacting redress without having recourse to a court "may preserve the tradition of a time when there was no jurisdiction except by consent of the parties", - P. and M. I, p.37

had few effective judicial rights, but the Christian church emphasised their responsibility as peace-keepers and their residual role in the enforcement of justice; in response laws were written down and custom was supplemented, even change, royal reeves became important judicial officials, they may have been more awesome, more learned in the law, than any local individual, and they were backed by an authority which was, ultimately, the most powerful in the land. The king's justice and protection were keenly sought, and regular courts were established in shire and hundred to meet the demand. At the same time, there probably existed a multifarious amount of local custom, which was the staple of manorial justice and remained beyond the scope of royal authority.¹

Thus we have tried to argue that sake and soke should be seen in the Anglo-Saxon period as the right of non-interference

1 The problem of manorial jurisdiction and its origins has been much discussed. Maitland believed that manorial courts came into being in the eleventh century, - D.B.B. p.122, but Celtic and Germanic societies seem always to have been highly aristocratic, - J. Filip, Celtic Civilization and its Heritage, (1960) pp.101-'7. J.J. Hall, Celts and Gallo-Romans, (1970), p. 181. Halimote became the standard word for manorial court - L.H.P. cc.9,4; 20,2; 57,8; 78,2; but although it is an English word it is unrecorded before the Conquest, - see O.E.D. s.v. hallmote, and we cannot infer, therefore, that such courts already existed before the Conquest. The document Gerefa, however, which dates from the generation before the Conquest describes the duties of an official who seems to be a manorial reeve, - see Liebermann, Gesetz, I, pp.453-'5. According to c.7, the reeve must know the lord's landright and the folkright as it was determined in old times by councillors, each man must do what is required of him and all men must be directed mid hlaforde creatfe and mid folcrihte. Thus, the running of the estate is dictated partly by the rights of the lord, partly by custom, a system which prevailed in manors of later times.

by royal officials in matters both of farm and jurisdiction. The traditional definition, "a right of jurisdiction" is misleading for lords probably had judicial rights over their lands and tenants in matters arising from the running of their estates, and these rights would be governed by local custom which was independent of royal control. The formula "sake and soke" sprang from the oral tradition of the law, but it outlived its original usefulness when changes in diplomatic style and language after the Conquest made it an archaism, and changes in the law made it an irrelevance.

PART II

The Sokemen, Their Obligations and Rights.

CHAPTER 6

The Dues and Services of Sokemen

We have argued above that soke constituted the right of those dues and services which had originally been rendered to the king as part of the royal farm: we noted three cases where soke is associated with the royal farm, - the "soke of a night's farm" in the Ely document, the charter which refers to the "soke belonging to Sherburn with folkright" and the various texts which refer to "shipsokes".¹ We also suggested that the expressions the soke of a mill, the soke of a fishery and the soke of a church which are found in Domesday should be understood as references to a royal payment. To these a further example may be added, - the account in Domesday Book of the estates of Worcester abbey. This is prefaced by the statement that the abbey has one hundred which is called Oswaldslaw, in which there are three hundred hides and from which the bishop has a constitutione antiquorum temporum omnes redditiones socharum, et omnes consuetudines in ibi pertinentes ad dominicum victum et regis servitium et suum, ita ut nullus vicecomes ullam ibi habere possit querelam nec in aliquo placito, nec in alia qualibet causa.² The judicial rights of the abbey and the services which had once been rendered to the king could both be included in the expression redditiones socharum.

1 See above pp. 63-77, 97-111

2 D.B. I, f.172b

The accounts of the estates themselves include references to soke and connect it with royal service. At Bushley, Brihtric held one hide for rent and reddet ad socam episcopi debet ad servitium regis; there had been four liberi homines at Bishampton who had rendered omnem socam et sacam, et circset, et sepultura, et expeditione et navigia, et placita ad predictum hundredum, et nunc faciunt similiter qui tenentes; one hide at Knightwick belonged to the abbey, but Robert dispensator held it, and it rendered sacam et socam et omnes regis servitium.¹ All these manors lay within the hundred of Oswaldslaw, and because of his sokeright the bishop can claim royal dues from his tenants.

The royal farm consisted of suit to the king's courts of shire and hundred, hospitality for the king himself or for his servants, renders of food for their support and labour dues by which the king's lands were maintained. The king was responsible for the military defence of his kingdom and this gave rise to national obligations of military service and geld. Here we will try to show that the sokeman rendered these services: they were suitors, they contributed food and labour, or rendered equivalent payments in money, they performed military service, although in an auxiliary capacity, and they were largely responsible for their own payment of geld.

The immunity clauses of charters provide the best evidence for the royal farm,² for they often grant to the recipient

1 Ibid., ff. 173b, 173 and 173b

2 See above p. 81.

dues which had hitherto been rendered to the king. Thus in 814, Cenwulf of Mercia released Worcester from the obligation of feeding twelve men who had, until then, been supported by the church and other minsters under the bishop's control.¹ In 855, Burgred freed Worcester from the duty of feeding and maintaining men who either had dealings with the Welsh, or who were the king's mounted messengers.² A charter of Ceolwulf, also to Worcester, freed the church from the obligation of feeding the king's horses and those who led them.³ Such services were not always remitted however. Berhtwulf freed Bredon minster from many burdens, but not from the duty of feeding messengers who had come from Wessex, Northumbria or abroad.⁴ Building work on royal estates was sometimes remitted. Wiglaf of Mercia gave the Leicestershire vill of Croft and its appendant settlements to Hanbury, and freed the whole estate from the obligation of providing hospitality for the king, his ealdormen and other royal messengers, and from all building at a royal residence.⁵ The charter in which Edward the Elder gave Taunton to Winchester contains a detailed account of the services which were remitted to the bishop: they were fines and forfeitures,

1 B. 350 = S. 172

2 B. 489 = S. 207

3 B. 540 = S. 215

4 B. 454 = S. 197

5 B. 416 = S. 190

burgage rents, and market tolls, freedom from the provision of one night's farm to the king, freedom from the obligation of providing eight hounds and maintaining a dog keeper, from giving hospitality to the king's falconers for nine nights, from the obligation of carting goods to Curry and Williton, and freedom from the obligation of escorting travellers from any other region to the next royal manor.¹

Other evidence for the service due to the king occurs in the Rectitudines Singularum Personarum. This text is a private document, probably of the eleventh century, which sets out the duties of various classes of men. Foremost among them is the thegn who, in order to be worthy of his bookland, renders services to the king by fighting in the fyrd, and building walls and bridges. In addition, however, "in respect of many estates, further service arises on the king's order, - service connected with a deer fence at the king's residence, helping to equip a ship, guarding the coast, military watch, escorting a lord, almsgiving, church dues and many other things".²

Gebyncdo also refers to the thegn who prospered and served the king and rode on his missions. The prosperous thegn may himself be served by another thegn, who had five hides of land on which he too discharged the king's dues (utware), as well as attending his lord in the king's hall.³

1 B.612 = S.373

2 Gesetze, I, p.444

3 Gebyncdo, c.3. See E.H.D., I, p.432, n .5 for radstefn - one who rides on missions.

The Domesday account for Lancashire describes the tenants who held land of the king himself; they are called liberi homines in the hundreds of Blackburn and Leyland, thegns (taini) in the hundreds of Salford and West Derby, and drengs in the hundreds of Newton and Warrington.¹ The arrangement of the estates strongly recalls the royal hundredal organisation of Southern England, in which each of the named manors has a number of unnamed appendant settlements, and each hundred has a hundredal manor. The royal services rendered by the tenants are described in great detail. The hundred of West Derby used to render to King Edward £26 ⁊ 2s., de firma, and the thegns there by custom (consuetudine) had rendered two orae for every carucate of land; by custom they and the villeins used to maintain the king's houses and the things which appertained to them, as well as attending to the fisheries, the enclosures in the wood and the deer hays. Anyone who was negligent in any of these obligations paid a fine of 2s., and then went and laboured until the work was completed. Each thegn also sent his reapers on one day in August to cut the king's crops. The thegn could be fined by the king for theft, forsteal, hamfare, rape, breaking the king's peace and causing bloodshed. If he remained away from the "shiremoot" (siremot) without reasonable excuse he paid a fine of 10s., if he remained away from the hundred, or did not attend a plea when ordered by the reeve to do so, he paid 5s. If the reeve ordered him to go on service (in suum servitium) and he did not, he paid 4s. If he wished to withdraw

1 D.B. I, ff.269b ff

from the king's land he gave 40s., and could go freely, and on inheriting his estates after the death of his father he paid a relief of 40s. Newton in Makerfield was a hundredal manor, and all but two of the liberi homines of the hundred were subject to the same customs as those of the men of West Derby, except that they reaped the king's cornfields for two days instead of one. The hundredal manor of Blackburn used to pay de firma £32 " 2s; twenty-eight liberi homines held land there but many were free from customs. Gamel held two hides in Rochdale, free from all custom except the payment of fines for theft, hamfare, forsteal, breach of the king's peace, neglect of the reeve's summons, and continuing a fray after taking an oath. It is said that several of the lands in Blackburnshire were quit of every due except geld, and some were even free from geld. The hundredal manor of Leyland used to pay de firma to the king £19 " 18s " 2d. The men of Leyland and Salford hundreds used to work in the wood where they made an enclosure (haia), but they did not have to maintain the king's hall, nor did they reap in his fields during August.¹

Farrer described this area Inter ripam et mersham as "a huge manor of royal demesne, where the ownership of the sovereign precluded the rise of any great estates or changes of any considerable moment in the status of its inhabitants",²

1 Ibid., f.270

2 V.C.H., Lancashire, Vol I, (London, 1906), p.275

and certainly the services of the population are those which characterize the royal farm. Domesday also shows that the farm had, in certain places, been commuted to a fixed money payment.¹ Monetary renders had taken the place of the three days farm of corn, malt and honey which had been due from certain royal estates in Cambridgeshire, and the commutation payment was £13 " 8s " 4d.²

This evidence for the royal farm may serve as a model with which to compare the services which characterize the sokemen. By a most literal definition the "sokeman" was a suitor, - he owed soke, - suit of court. The entries in Domesday concerning sokemen often state merely their number and the assessment of their holdings. Sometimes they are said to belong to certain vills: two sokemen belonged (adjacebant) to Weeley, another sokeman had belonged and still belongs (adjacet) to Little Dunmow,³ but the nature of the bond is not explained. In other entries sokemen are said to "render" soke:- a sokeman at Great Chesteford in Essex held one hide and reddebat socam in manerio regis, a sokeman held half-a-hide at Writtle freely and he also rendered soke.⁴ Sometimes the sokeright is seen from the lord's point of view, - he has soke "over"

1 The word feorm - "provision", is very closely related to firma, - "farm", a fixed payment", and it is likely that feorm was derived from late Latin firma and had the primary meaning "a fixed portion of provisions". See O.E.D.s.v. Farm, D.B. I, f.189. See R. Lennard, Rural England, (Oxford, 1959), pp.128-'30. F.M. Stenton, A.S.E. p.476

3 Both in Essex, D.B. II, ff.51 and 69b

4 Ibid., ff. 3b and 5b.

his sokemen,¹ or the sokemen are under him "with" sake and soke.² The entry for Orwell in Cambridgeshire helps to explain the meaning of this sokeright. It is recorded that there had been six sokemen there T.R.E. and Tres istorum sochemannorum accomodavit Picotus Rogero comiti propter placita sua tenenda, sed postea occupaverunt eos homines comitis et retinuerunt cum terris suis sine liberatore, et rex inde servitium non habuit nec habet, sicut ipse vicecomes dicit.³ Thus Picot, the sheriff of Cambridgeshire, had lent three sokemen to Earl Roger "so that he could hold his pleas", but having gained this power of claiming suit of court from the sokemen, he encroached upon them still further and claimed other dues assessed on their lands without warrant, so that the king lost the service.⁴ Suitors were a necessary part of court holding, but they were also a source of profit. We have noted above that soke could be assessed on land, and farmed out with its value assessed.⁵ We cannot, however, point with certainty to examples where the suits of sokemen were valued, since the soca in question could be an abbreviation of sokeland.⁶ Thus, there were fifty sokemen

1 e.g. Suffolk, Bury St. Edmund's, over, super sokemen at Risby and Whepstead. Ibid., f.356b; Chevington and Lackford Ibid., f.357

2 cum. e.g. Suffolk, Bury St. Edmund's at Horringer, Flempton Ibid., ff.356b; 357b-358;

3 Ibid., I, f.193b

4 There is some ambiguity in the phrase propter placita sua tenenda, for the sua could be translated as "their" rather than "his", and thus Roger would be exercising jurisdictional rights over the sokemen. However, this is less likely than the interpretation put forward here, since the entry seems to be primarily concerned with the service which the king had lost, and suit of court was one of the royal services.

5 See above pp. 54-5.

6 See above pp. 63-6.

at Finedon in Northamptonshire who rendered £8 " 0s. " 10d. each year de soca, and a liber homo held five hides at Chingford in Essex, and "he", or possibly "it" rendered 10d de soka,¹ but it is not clear if the sums are commuted suits or renders from sokeland.

The sokeman might be described as a "moot-worthy" man, and indeed the word motwurdi occurs in a writ addressed to Ramsey and apparently with reference to sokemen. The Confessor declares that the abbey is to have seo socne widinnen Bicchamdic ligce in to... 7 ealle þa gerihte þa aeni king mæi ahen, 7 ealle þa men þa beon motwurdi, ferdwurdi, faldwurdi in þæt oder healfe hundred. The same writ also granted the sake and soke of Brancaster and Ringstead, the right of wreck, and the market of Downham.² The writ is not authentic as it stands and the earliest surviving manuscript is part of a charter roll of Edward III,³ but the equation between the moot-worthy man and the sokeman seems to have been made at least in the twelfth century. The Ramsey chronicle records that Edward gave to the abbey Ringstead cum libertate adjacente et omni maris ejectu, and Wimbotsham, and the one-and-a-half hundreds which belonged to Clackclose,⁴ together with the sixty-four sokemen of that hundred, and Downham market.⁵ Abbot Aelfwine is said to have persuaded the king to set down these grants

1 D.B., I, f.220 and II, f.64b

2 Writs, no.61

3 8 Edward III, m.13

4 This is the soke belonging to Bichamdic in the writ - Writs, pp.348ff

5 Chron. Abbat. Rames., pp.159ff

in litteris Anglicis regiae suae imaginis impressione roboratis. This seems to have been the inspiration for the writ, and the sixty-four sokemen of Clackclose seem therefore to be the "moot-worthy" men.

Later sources provide far greater evidence for the obligation of sokemen to render suit of court. The Bury chronicler, Jocelin de Brakelond, records how Abbot Samson, in the twelfth century, re-asserted his hundredal rights which had been farmed out in the days of his predecessors, and "at his order, a general description was made in the hundreds of the leets, suits (sectis), hidages, foddercorn, payments of hens and other customs, revenues and expenses, which, in great part, had always been concealed by the farmers".¹ This description has survived as Abbot Samson's Kalendar. The holdings of the sokemen are listed according to villis, but they are not part of Bury's manorial lordship, "they are an appurtenance of the hundred and the revenues derived from them are hundredal revenues".²

The abbot had hundredal jurisdiction,³ but he needed suitors in order to exercise his right. For convenience, the

1 The Chronicle of Jocelin de Brakelond, ed. H.E. Butler, (London, 1949), pp,29-30. Hereinafter cited as Jocelin

2 Kalendar, p.xxxii.

3 See Ibid., p.xxxi, and Jocelin, pp.50ff

suits which were owed were calculated in sub-divisions of the hundred, called "leets", and the leets were themselves broken down into vills. The Kalendar opens with a list of the vills which constituted the six leets into which Thedwestrey hundred was divided,¹ under the heading nunc de sectis illarum dicendum est. The first leet was made up of the vills of Livermere, Ametone, Timeworthe, and Fornham: Livermere owed three suits;- one from the land of Matthew, one from the land of Umfrid, and one from the land of a group of sokemen.² However, the sokemen are distinguished from the named tenants, for whereas the latter appear to have been personally responsible for their suits, the sokemen serve on a rotational basis. The account for Livermere concludes:- terra Mathei et terra Umfridi debent sequi quodlibet hundred, sokemanni vero secundum turnum suum. Similarly two suits were owed from Ametone and, it is recorded, De terra Alani i, De sokemannis secundum turnum suum. The obligation for suit was tenorial, a holding was assessed in the name of one tenant, but if it came to be sub-divided among heirs, the obligation to render suit was apportioned among them.³ Thus, Hessel was one of the

1 Kalendar, pp.3-4

2 There were two suits due, from each of the other three vills.

3 For a more general discussion of hundredal suit assessed on land, see H.M. Cam, The Hundred and the Hundred Rolls (1930), pp.110, and 172-175.

vills which made up the fourth leet of Thedwestrey hundred, and one suit in Hessel had been due from the thirty acres which Rerus held, but Rerus was dead and his land had been divided among his four sons "who take it in turn to do the suit".

This system of tenurial assessment and partible inheritance was full of possibilities for dispute and evasion. Jocelin tells how one of the brothers of the abbey had a dream, before the election of Samson, that the next abbot would "live in toil". Among his afflictions would be the abbey's knights, the Bury burgesses, the Archbishop of Canterbury and the hundredal suits of the sokemen.¹ The Chronicle itself does not include an account of disputes with sokemen, although the difficulties with the others are fully described. It may be that Jocelin graciously recorded only the Abbot's triumphs, not his failures. Abbot Samson was able to overcome the knights, the burgesses, and the Archbishop, but the Kalendar shows that the suits were still causing difficulty. The hundreds of Thedwestry, Thingoe and Blackbourn are described in a complete and methodical manner, but the hundreds of Cosford and Babergh seem to be "original returns" and were still in rough draft form.² There are three lists for hidage, sheriff's aid, and wardpenny instead of one consolidated list; Babergh hundred has two mutually inconsistent lists of suits and the second list ends with the confession that the information

1 cum sochemannis pro sectis hundredorum. Jocelin, p.120

2 Kalendar, pp.57ff

is still incomplete. Jocelin describes the disastrous effects of partible inheritance on the cellarer's finances.¹ A number of peasants had once journeyed to Southrey to bring eels to the abbey, but they had so often returned empty handed that the cellarer introduced a commutation payment, whereby they paid 1d for every thirty acres of their holdings. Jocelin recorded however, that "nowadays the lands are divided into so many parts that it is scarce known who should pay these dues"; in some years the cellarer received 27d, "but now he barely gets 10½d". There may well have been some deliberate exploitation by the peasants of the practice of sub-dividing land, and this would confuse the abbey's officials and so enable the peasantry to evade their services.

Some of the lands of Stoneleigh Abbey in Warwickshire were ancient demesne of the crown and a Leger Book was compiled in c.1392 which contains information about the history and customs of the Abbey.² According to the Book, William of Tyso, abbot in the reign of King John, bought the soke of the lands at Stoneleigh and Crulefeld from the King and thereby became free from suit to shire and hundred.³ Among the abbey's tenants were a number of sokemen who played a large part in its judicial affairs. The Book explains that

1 Jocelin, pp. 102-'3

2 The Stoneleigh Leger Book, ed. R.H. Hilton, Dugdale Soc., 1960, p.ix

3 Ibid., pp.22-24, also p.xvi.

Curia de Stonleye ad quam sokemanni faciebant sectam solebat ab antiquo teneri super montem iuxta villam de Stonleye vocatum Motstowehul ideo sic dictum quia ibi placitabant.

Set postquam abbates de Stonle habuerunt dictam curiam et libertatem pro aysiamto tenencium et sectatorum fecerunt domum curie in medio ville de Stonle ad quam curiam venient et sectam facient omnes sokemanni manerii de Stonle de tribus septimanis in tres.¹

Thus the abbot transferred the venue of the court to a more convenient site in Stoneleigh itself, but the obligations of the sokemen were not thereby affected.

They render a three-weekly suit, and are the judges of the court,² if the bailiff summons anyone to the court, two sokemen go with him to testify for him, and if any sokeman objects the bailiff can distrain him, sokemen elect reeves from amongst themselves and also one or two constables.³

Several tenants are said to hold in sokemannaria, or sicut alii sokemanni, or de antiquo sanguine sokemannarie and their services include three-weekly suit of court.⁴ Thus the sokemen and those who held tenancies like those of the sokemen, were essential to the court of Stoneleigh Abbey, for as suitors they gave the judgements of the court, but they

1 Ibid., p.102

2 Et ipsi (i.e. the sokemen) dabunt iudicia curie de Stonle...
item sectores curie dabunt iudicia curie et recordabunt placita antequam processus irrotuletur, Ibid., pp.106 and 107, cf. pp.110 and 111

3 Ibid., p.106

4 Ibid., predecessors of John Waburle in Fletchamstead, in sokemannoria; tenants in Stoneleigh de antiqua tenura de rege sicut alii sokemanni; Nicholas Campicun tenet hereditarie de antiquo sanguine sokemannari. pp.173, 117, 184. cf. John Brond and his heirs who held land near Mustowe for rent, three-weekly suit, heriot, relief and boon-work and other unspecified services sicut ceteri sectatores de soca de Stonle, p.142

also did other valuable work in the judicial affairs of the abbey by assisting the bailiff and electing reeves and constables.

We can see therefore that the sokemen rendered suit to private lords, but it was the three-weekly suit which had become the standard obligation of free-holders to public courts. There is indeed one example in which a hundred court is itself called a sockemanemot.¹ There are, however, certain incongruities in the evidence, for the term "sokeman" is not directly used in reference to the suitors of public courts. The shire court of Kent was held at Erith in the middle of the tenth century in the presence of bishops, monks, a priest, a reeve and "all the men of East and West Kent."² The suitors of shire are almost always said to be thegns. A charter from Aethelred's reign ordered the Archbishop of Canterbury and "all the thegns of East and West Kent" to determine a dispute over an estate.³ Writs were normally addressed to shire courts, and only three of the authentic writs do not refer to thegns.⁴

1 R.H. II, p.143, Item dicunt quod Ernoldus de Boys... solebat facere sectam ad Boxford ad Sockemanemot pro terra Ricardi Serle.

2 ealra East Cantwarena 7 West cantwarena, Robertson, Charters, no.XLI

3 Ibid. no. LXIX, begenas aegper ge oft East Cent ge of West Cent

4 The exception are Writs no. 28 - to bishops, earls and reeves
no. 108 - an archbishop and an earl
no. 121 - Gospatric's writ

and since ealla mine begenas of pam sciram also occurs in spurious writs, the phrase may well have been part of the standard writ form. Only one writ is extant which is addressed to a hundred - Queen Edith informs all the hundred of Wedmore that she has given land to Bishop Giso, (al pat hundred at Wedmore). Ibid., no.72. It may be significant that she does not address any "thegns of Wedmore hundred", but the evidence is too slight to allow more than the possibility that the normal hundredal suitor was a man of less than thegnly rank - on the relationship between the sokeman and the thegn, see below pp. 243-5,

The suitors to public courts after the Conquest are most often given their personal names,¹ and they were commonly drawn from the knightly class.² The Leges Henrici Primi lists those who attend the shire court as episcopi, comites, vicedomini, vicarii, centenarii, aldermanni, praefecti, praepositi, barones, vavassores, tungrevi, et ceteri terrarum domini.³ If the writer knew the word "sokemen", he did not use it here or in any other part of the Leges.⁴ Maitland doubted if these terms for the various ranks of men had "any precise meaning" other than that "all persons of distinction, all the great are to come", and the writer does indeed seem to be "using up all the titles that he knows, whether French or English".⁵ Not all these titles need denote men of rank: "baron" was probably a translation of "thegn" and was not yet synonymous with a tenant-in-chief of the king.⁶ The regulations in the Leges concerning the hundred are stated in more general terms, - all free men worthy of their wer and wite are entitled to attend,⁷ and thus only the chattel slave is excluded.

Official documents, therefore, do not seem to use "sokeman" in reference to the suitors of public courts. The term does not appear to have arisen from the desire of private lords merely to distinguish those among their tenants who

1 H.M. Cam, op.cit., pp.110 and 173ff

2 C.T. Flower, Introduction to the Curia Regis Rolls, Selden Society, Vol. 62, pp. 61-91

3 L.H.P. c.7,2.

4 That the term was already current, see below p. 289

5 P. and M. I, p.545 and n. 4

6 See above pp. ~~143-4~~ 138-9.

7 L.H.P., c. 8,2.

owed suits to public courts in their hands, for it seems highly unlikely that any tenant, even the villein, was by law unable to render such suit.¹ Suit to the Ely hundreds was organised on a representative basis and some suitors were drawn from the unfree class. Professor Douglas had printed the "statement of the liability to suit at the Hundred Court of Milford".² First among the vills is Shipdam and the suits are listed as follows:-

Johannes ate Kote et principes sui debent unam sectam

Robertus ate Buk et principes sui unam sectam

Rogerus de Verly unam sectam

Symo Prudbern et principes sui unam sectam

Homagium Friuill unam sectam

Alexander de la Rode unam sectam

Homagium de Caston unam sectam

Professor Douglas compared this document with an extent of the manor and found that there was no mention of any of these names among the free tenants, and that the holding of Robert, the second tenant in the list, appears among the consuetudinarii. Similarly, Ricardus Wlfbetel et participes sui appear among the list of suitors from Derham, and Richard's holding is one of the customary tenants according to the Derham extent, while other suitors were free tenants. Professor Douglas concluded that there was no indication that the specially burdened

1 On the villeins' right to render suit see P. Hyams, Legal Aspects of Villeinage between Glanvill and Bracton, Chap. 10, Unpublished D. Phil Thesis, (Oxford University, 1970)

2 D.C. Douglas, Social Structure of Medieval East Anglia, Oxford Studies in Social and Legal History, Vol. IX, (Oxford, 1916), pp.272-75

suitors to the hundred court should be freeholders. It is true that not all of them were freeholders, but there are signs that they were preferred. The Leges states that villani vero vel cotseti vel ferdungi vel qui sunt huiusmodi viles et inopes persone non sunt inter legum iudices numerandi.¹ Villeins may have been used for lack of freemen, but Ely seems to have softened the anomaly of villein suitors by use of so-called "hundredors",² and two of the hundredarii were named Geoffrey le Sokeman and Henry Sokeman.³

There are, therefore, some unexpected peculiarities in the evidence for the sokeman as a suitor. The term derives from the compound suit-man, - one who owes suit, and it seems to have been used in the records of private lords to denote some of their tenants who owed suit of court on public terms. Yet not all such tenants are sokemen, nor are the ordinary suitors to public courts in private hands described as sokemen. Suit of court did not in itself make a sokeman: the sokeman was a tenant who rendered the services anciently derived from the royal farm, and it was the whole cluster of his rights and obligations which made him distinctive.

The royal farm included carrying services and escort duty, and these are frequently recorded in Domesday Book as being due from the sokemen of Hertfordshire and Cambridgeshire. A sokeman had held, and still holds one hide at Offley in

1 L.H.P., c.29, 1

2 P. Vinogradoff, Villeinage in England, (Oxford, 1892, 2nd ed. 1927 ed.,) pp.441-'52

3 E. Miller, The abbey and bishopric of Ely, pp.116-118

Hertfordshire and he rendered carrying service (avera) and escort duty (inward),¹ and a sokeman holds half a hide at Wilei and he does avera.² Two sokemen had held one hide, one virgate and ten acres at Libury, and they are said to have been "of the king's soke", - de soca regis, they had provided avera or 5½d yearly.³ The last example shows that service could be commuted for a money payment. In theory at least, the service was claimed if the king came to the shire, otherwise a commutation payment was given. A man at Knebworth held one hide and one virgate, did avera when the king came to the shire, if he did not the man paid 5d.⁴ There is some evidence that the service was assessed on land, so that one carrying service was due annually from each hide, with a commutation rate of 4d per hide. A tenant "of the king's soke" at Sutrehele held two hides and used to do two averae or rendered 8d.⁵ It seems that the monetary payment was more common than the service, for fractions of carrying service are recorded. Two brothers held one-and-a-half hides at Throcking and they are said to have performed one-and-a-half averae or paid 6d to the sheriff.⁶ Another sokeman at Sutrehele held three-quarters of a hide and used to do three-quarters of an avera or paid 3d to the sheriff.⁷ Sometimes there is a

1 D.B. I, f.133

2 Ibid. f.133

3 Ibid. f.134

4 Ibid. f.139

5 Ibid. f.141

6 Ibid. f.133b

7 Ibid. f.141

clear connexion between hidage and render, but the service does not completely tally. A sokeman at Lilley is said to have done apparently one whole avera, but he paid only 3½d because his land was assessed for 3½ virgates.¹ Sometimes nothing is said about the service and only the render is recorded. A sokeman held half a hide "of the king's soke" at Much Hadham and paid 2d to the sheriff.² There were three sokemen at Bengoe, two of them held one hide and paid 4d, the third held one-and-a-half virgates and paid 1½d.³ Default of service could result in forfeiture. Ilbert had held Temple Dinsley, but it was taken from him and attached to the royal estate of Hitchin because he had refused to provide carrying service for the sheriff.⁴ The hidage and the money render are evidently of primary interest to the authorities, not the practical service: The service may be little more than a memory, for all these examples come from Hertfordshire where carrying service is very commonly recorded, but only three references to inward have been noticed.⁵

Avera and escort duty are often mentioned in Cambridgeshire, but avera seems to have been commuted for 8d, and escort duty for 4d. Ten sokemen held three hides at Wratting, six used to do averae and the remaining four did escort duty (inguard) if the king came to the shire, and if he did not come they each

1 Ibid., f.140. See also the example of Knebworth quoted above p241.

2 Ibid., f.133b

3 Ibid., f.140b

4 Ibid., f.132b

5 At Walden, Temple Dinsley, and Offley, all ^{ibid.} f.132b.

used to render 8d for avera and 4d for the escort duty.¹
 There is also a reference to warpenny:- the men of Littington used to do escort duty or they paid warpennam to the sheriff.²
 In Cambridgeshire, however, there is no discernible relationship between hidage and service. Two sokemen held one-and-a-half hides at Teversham and they performed one avera and one escort duty (ineuuard), but there were two sokemen at Horseheath who are also said to have done one avera and one escort duty (ineuuard) and they held land assessed at two hides two-and-a-half virgates.³ In some cases the obligation seems to have been personal rather than tenurial, with each sokeman rendering one service whatever the size of his holding. Six sokemen held two-and-a-half hides at Babraham and they are recorded as providing four averae and two watchmen (inwards) and there were two sokemen at West Wickham, one of them provided avera, the other did escort duty.⁴

According to the Rectitudines, the thegn could be required to do carrying service and escort duty for the king. There is some evidence, however, to suggest that the more substantial thegns did not do these more mundane tasks themselves, but were assisted by sokemen who deputized for them in performing the service. Nine men who are referred to by their personal name and also entitled "thegn", have been noticed in Cambridgeshire

1 Ibid., f.190b

2 Ibid., f.190

3 Ibid., ff. 193b and 194

4 Ibid., both f.194

<u>Domesday</u> ; they are:- Aluric at Arrington	- f.193b
Herulf at Trumpington	- f.196
Achi at Harlton	- f.196
Alsi at Ickleton	- f.196
Tochi at Carlton and elsewhere	- ff.196-196b
Ulf at Fen Drayton	- f.197b
Sexi at Long Stanton	- f.197b
Ulwin at Silverly and elsewhere-	f.199b
Edric Spur at Meldreth	- f.200 ¹

Service is said to have been due from the lands of four of these thegns. Ulwin held in nine vills, sokemen are not recorded in these, and service is mentioned only at Horseheath, where it is said that avera and escort duty were owed. Tochi held land in six vills and according to the entry for West Wrattling he provided avera. But it seems unlikely that either Ulwin or Tochi did the service themselves. Tochi held one hide at West Wickham and it is recorded that "there was one sokeman there who provided avera"; he also held three-and-a-half hides at Kennet and "one sokeman had one virgate under him who did avera or paid 8d"; and he held seven hides at Weston Colville and "there were two sokemen on this land, one did avera, the other escort duty". Edric Spur held land at Meldreth and there were sokemen there who did escort-duty. Achi held land at Harton and five sokemen

1 Tochi also held land at Weston Colville, West Wrattling, West Wickham, Trumpington, and probably Kennet where there was a "Tochil", who, like "Tochi", was King Edward's thegn, ff. 196-196b. Ulwin held at Ashley, Saxon Street, Wilbraham, Camps, Horseheath, Hildersham, Babraham, and Abington. f.199b. Ulf Fenisc was a major landowner, even by national standards V.C.H. Huntingdonshire, I, p.352. V.C.H. Nottinghamshire, I pp.248, 279-'81. V.C.H. Derbyshire, I, pp.351-'2

there provided five watchmen. Similarities can be found in Hertfordshire. A thegn had held four hides and half-a-virgate at Newsellsbury and a sokeman there paid 1d to the sheriff. A thegn held eight hides one virgate at Knebsworth and one of his men held there and seems to have performed the avera if the king came to the shire and paid 5d if he did not.¹ Thus it seems that the thegns did not always do services themselves, and sokemen acted for them or paid the render in lieu of services.

There are other references in Domesday in which the sokeman is said to render service to the king. A number of sokemen held land at Dean in Bedfordshire T.R.W., the land had been assigned to the king's service, but had not so been linked T.R.E. The nature of the service is not specified, but it had apparently been rendered to a private lord before the Conquest, only to be taken back for the king's use later.² There are references to service in Buckinghamshire. A sokeman on the royal manor of Aylesbury did service for the sheriff, and similarly a sokeman at Risborough did service for the sheriff, but again details are not given.³

The royal farm included boon agricultural services, for the king was entitled to maintenance from his people. Later documents provide evidence for the sokemen's obligation in this and other spheres. The record of the Ely plea of 1072-5 includes a description of the services rendered to the abbey by "men of the soke".⁴ Those at Suthburna in Suffolk must

1 D.B. I, f.139

2 Ibid., f.218b

3 Ibid., ff.143 and 143b

4 homines de soca. Inquisitio Comitatus Cantabrigiensis. subjicitur Inquisitio Eliensis, ed. N.E.S.A. Hamilton, (London, 1886), pp.192-5. Hereinafter cited as I.C.C.

plough and do harvest work when required by the abbot, they carry provisions to the monastery and make their horses available to the abbot if he should need them, and if they commit an offence the abbot has the emendation. The men (homines) of Kucestuna and the men of the soke in Berha do likewise (supradicte consuetudinis). The men (homines) of Melton must go to the monastery when the reeve orders them to do so, they cannot sell their land without permission and all their fines and forfeitures go to the abbey. Seven men at Ho and other at Berham, Debenham, Karsflet and Blot do the same. A socamannus at Feltwell in Norfolk must plough and thresh when bidden by the abbot, carry provisions to the monastery, lend his horses if they are needed, and pay fines for his offences to the abbot; if any of his own men on his own land commit offences the abbot has their forfeitures; and it is said that other sokemen in other vills do the same.

There were three tenants specifically called sokemen on Burton Abbey's estate of Winshill when the first survey of the Burton lands was made in c.1114-1116.¹ One, named Elwinus, held two bovates for three shillings, and he owed ii perticas ad curiam et ii ad lucum, he must go with the hunt on three days each year, he must lend his plough and one man to the abbot for two days, and for three days in August. Tedricus had three bovates for four shillings, and owed the same service, while Godric had one bovate for 12d, and owed

1 "The Burton Abbey Twelfth Century Surveys", ed. C.G.O. Bridgeman, William Salt Archaeological Society, 1916, pp. 240-'42

i perticam ad curiam et alteram ad lucum, and other services like those required of Elwinus.

Some two hundred and five sokemen are recorded in the Liber Niger of Peterborough, and their services are described in detail.¹ Forty-four sokemen at Pilsgate ploughed three times a year, reaped half an acre of corn, did two boon days (praecatio) in August, and one day's harrowing in Spring, and they, with the villeins paid forty-four shillings a year.² Each of the fifty sokemen at Collingham must, per consuetudinem, work six days on the deer hedge, work three days in August, plough forty-eight acres, harrow and reap, plough four times in Lent, and pay £12 a year. A sokeman at Thorpe does service with his horse.³ Uniquely heavy labour service is demanded of the sokemen at Scotter and Scalthorpe, for they must work one day each week and two days each week in August, but they are not as heavily burdened as the villeins, who do two days week work throughout the year.⁴

The agricultural services of some of the sokemen of Bury St. Edmund's are also described in Abbot Samson's Kalendar. At Ingham one hundred acres was held by three sokemen et eorum participes, they rendered 16s " 11d in hidage, warpenny, sheriff's aid and a quantity of oats.⁵ There were five blocks of fifteen

1 Chronicon Petroburgense, ed. T. Stapleton, Camdon Soc. XLVII, 1849, pp. 158-67

2 Ibid., p. 158

3 facit servicium cum equo, Ibid., p. 159

4 Ibid., p. 164

5 Kalendar, p. 43

acre tenements at Great Livermere and the service laid on the tenants is described:- debent iiii averp(eni) vel unum equum secundum voluntatem domini abbatis. The horse is not provided for military service, nor are the holding knight's fees, for after a number of similar entries the holding of a knight is recorded:- In eadem villa est feudum i militis de feudo Thome de Mendham, and he owed only sheriff's aid.

Nearly all the sokemen, the tenants de socagio, were required to lend a horse once a year to the abbot or to pay 4d in lieu of service and a special exemption is noted of those who did not.¹ It is evident that this was an old customary obligation of more than local application, since the commutation rates of service in the Kalendar are identical to those in Cambridgeshire Domesday. Other sokemen on other estates did carrying service, - a survey of the English lands of the Abbaye aux Dames was made in the early twelfth century, and sokemen at Horstead in Norfolk and Felstead in Essex paid rents and carried "farm" to Winchester.²

Thus the agricultural services which were typical of sokemen consisted of boon-work and carrying services; they were obligations which had been rendered to the king, and thus their services originated in the royal farm, it did not derive as in the case of increasing numbers of peasants, from local manorial custom.

1 Ibid., e.g. p.14

2 Quoted in R. Lennard, op.cit., p.386. Bibl. Nat. MS. Lat 7670, ff.26-29^v

The Peterborough Chronicle includes a Descriptio Militum which was first compiled in 1100-1110 and which states that the sokemen of certain villis were required to serve cum militibus.¹ The nature of the service demanded of the sokemen is not explained beyond this general statement that they serviced "with the knights". The first four entries say ut competens videtur, and quantum sibi jure contingit, but thereafter such phrases do not occur, and it seems that the tenants concerned were expected to know what was due from them. Mr. King has suggested that the sokemen provided equipment or gave financial support.² Analysing the knight's fees at Peterborough, he found that, on average, they were less than two hides and had an average value of just under £2 " 10s, and he concluded that the knights were too poorly endowed to bear the cost of their military service unaided.³ However it seem likely that their income was above the standard of the time. Dr. Harvey has studied the Domesday fees and has found that they had "a mean value of £1 " 17s per holding, or excluding the valuable Kentish fees, of £1 " 13s per holding. Hence the serving knight had an approximate yearly income of between 30s and £2. This sort of sum...might enable him to sustain the equipment of his profession, though

1 Chronicon Petroburgense, pp.168-175

2 E. King, "The Peterborough "descriptio militum", E.H.R., Vol.84, 1969, p.94.

3 Ibid., p.93

it would leave no surplus for status-seeking".¹ We cannot say that the sokemen necessarily provided the surplus which made the Peterborough fees so comparatively valuable, for Dr. Harvey also shows that the twelfth-century knight lived according to his income and was not ~~ent~~^{the} pile of mounted magnificence he later became. Since the servitium debitum of the abbey was met by the knight's fees, the sokemen cannot have been used to make up the required contingent; nor is it likely that the abbot would gratuitously have sent his tenants off to war.

Nonetheless, it seems likely that the sokemen did assist the knights, not from economic necessity, but as an adaptation from earlier custom. The Anglo-Saxon fyrd seems to have been raised and maintained by a support system, in which one man served while others assisted him. It is recorded in Lincolnshire Domesday that, a certain Siward and his three brothers inherited their father's estate, and in the event of an expeditio Siward himself would serve while his brothers supported him, but if Siward could not go, one of the others took his place,

1 S. Harvey, "The Knight and Knight's fees in England", Past and Present, Vol.49, 1970, pp.20-21

and although it is not directly stated, one must assume that Siward and the rest undertook to support him. In the same way Chetel and Turuer held land, Chetel served while Turuer supported him.¹ Replacements seem to have been common, for there were firm regulations regarding them in some parts of the country. If anyone in Berkshire remained behind when the fyrd had been summoned he could promise to send another man in his place, and if the substitute did not go, the lord could be freed from his obligation by payment of 50s, in Worcestershire, however, if a liber homo did not answer the summons "and his lord leads another man to the host in his place, he (i.e. the liber homo) pays 40s to his lord who received the summons".²

A further Lincolnshire entry records that the sokeland at Somerby was held by Aethelgyth, and her land was assessed to help with the provision of military service by land or by sea.³ We have seen above that the sokemen probably undertook some royal services on behalf of thegns, it seems that they also assisted the thegns in military service. The thegn was the élite of the fyrd, his servant could be called a cniht. In the Battle of Maldon, the term cniht is used to describe a young warrior who follows his lord into battle:- a royal thegn has been killed, by his side stood Wulfmaer, his cniht, who avenged his death.⁴

1 D.B. I, f.354

2 Ibid., ff.56b and 172

3 Ibid., f.368. Haec soca talis fuit quod nichil reddebat, sed adiuvabat in exercitu regis in terra et in mari.

4 Him be healfe stod huse unweaxen cniht on gecampe. Battle of Maldon, lines 152-'3

There is some evidence to suggest that a sokeman was also referred to as a cniht. In c.1043-'5, Thurstan bequeathed half-a-hide at Westley Waterless and one hide at Dullingham in Cambridgeshire to Wiking mine knihte.¹ Wiking appears as Wichinz in I.C.C. where it is recorded that he still held one hide at Dullingham in 1066, that he had commended himself to Harold and could not alienate his land without permission.² In the corresponding Domesday entry he seems to be one of the three so-called "sokemen" who could not depart.³ We cannot say that sokeman and cniht are synonymous terms simply because they may both have been applied to one person, equally the intervening twenty years between Thurstan's will and the Conquest could have brought some change in Wiking's position, but in conjunction with the other evidence it may be inferred that the sokeman could be called on for military service, that the cnihte was a fitting title for a military auxiliary, and that the sokeman therefore could be a military auxiliary. The view that they were the servants of the thegn is further strengthened by a laconic reference in Domesday that there were, at Grantham, seventy-seven tofts of the "sokemen of the thegns".⁴

Non-feudal levies were used after the Conquest, indeed according to the Assize of Arms, the whole body of freemen must have a doublet, cap and lance,⁵ and they could be organised

1 Wills, pp.194-'5

2 I.C.C. f.90b

3 D.B. I, f.195b

4 Ibid. f.337b

5 Assize of Arms, c.3. See Stubbs, Charters, pp.257-'8

on a hundredal basis and called upon to defend the realm.¹ Soldiers who were not knights sometimes gave less than satisfactory service, as the celebrated incident of the Canterbury drengs shows.² A dispute arose between Archbishop Baldwin and the monks of Canterbury: Geoffrey the sub-prior wrote a letter in which he stated that, in the reign of the Conqueror, there were no knights in England, only drengs, the king had commanded that the drengs be made into knights, and Lanfranc duly carried out his instruction at Canterbury. Difficulties arose in the time of Rufus, who wrote an angry letter to Anselm, complaining that the knights whom he had sent to the royal army were incompetent and ill-equipped, and it is not unlikely that they were drengs in all but name. Military obligations of pre-feudal origin might still be useful to a king, however. John forced drengs, thegns and cornage tenants in Northern England to make contributions of money in lieu of the military service he could evidently demand of them.³

The military service of the Peterborough sokemen could, therefore, have been real. The Hundred Rolls records the tradition among socage tenants in Oxfordshire that their forefathers had been sokemen who had fought in the king's wars. A certain Henry Ferrant held land in Dorchester hundred for rent, suit of court and boon service, and it is noted that

1 H.M. Cam, The Hundred and Hundred Rolls, pp.188 and 191

2 F.M. Stenton, The First Century of English Feudalism, pp. 146-'9. It is possible that the Canterbury "drengs" may have been thegns, and that there was an error in transcribing theingni or thengi. I am indebted to Professor G. Barrow for this suggestion.

3 J.C. Holt, Magna Carta, (Cambridge, 1965), p.198

antecessores eius solebant esse liberi quasi sokemanni et facere servicium domino Regi in guerra.¹ The same is said of his neighbours and their term of service was forty days, equipped with purpoints, lances and iron caps. Yet it is doubtful if the sokemen of earlier times were more than military auxiliaries or servants of thegns: horses loom large in their services, but they enabled the sokemen to discharge carrying, escort and messenger duties, not to make them mounted knights. It is unlikely that the English fyrd fought on horseback. According to the "C" version the Chronicle, Ralf de Manter led a mounted force into Wales in 1055, but the English contingent fled because they were on horseback.²

Thus the sokemen can be identified as those tenants who rendered services which had originally been due to the king as the royal farm. The nature and origin of their services set them apart from the ordinary villein whose

1 R.H. II, 748

2 A.S.C."C", s.a. 1055. The practice of fighting on foot was not swept aside by the Norman invasion. Mr. Hollister has remarked that "in every important battle of the Anglo-Norman age, the bulk of the feudal cavalry dismounted to fight, - C.W. Hollister, Anglo-Saxon Military Institutions, p.131. At Tinchebrai, the great majority of the army, including the king and his barons, fought on foot, the knights at Bremule also dismounted, and the battle was won by a charge of closely-packed infantry, while at Northallerton in 1138, not a single man seems to have been mounted and the most effective tactic was the Anglo-Saxon shield-wall, - Henry of Huntingdon, pp. 235, 241 and 264.

obligations derived from manorial custom,¹ and as we will see,² they thereby became entitled to tenurial privileges which were denied to those of villein status.

1 For the link between status and service see below pp. ~~379-182~~ 370-373.

2 See pp. ~~339-ff.~~ 330-47

CHAPTER 7

Soke, Service and Commendation in Domesday Book

Soke is combined with service and commendation in many entries in Domesday Book. Bury St. Edmund's had sake and soke, commendation and service over sokemen at Menston and Wkepstead in Suffolk,¹ and claimed the same rights from liberi homines at Brent, Bradfield and Stow.² Sometimes these rights are divided between lords. A liber homo at Rickinghall had been commended to the predecessor of Robert Malet, but Bury had the soke;³ two liberi homines at Westerfield were commended to Ulviet, and six liberi homines at Debenham had been commended to Edric, but all had owed soke to Bury.⁴ Alflet had held land at Massingham in Norfolk, she had been commended to the predecessor of William de Warenne, but had owed soke to Harold.⁵ Commendation is contrasted with service:- Robert Malet claimed nineteen liber homines in Mundsley and Trunch, three by the tie of commendation, the remainder by all services.⁶ Service is also distinguished from soke:- four men owed all service to Barton Blendish, four others only owed soke.⁷ There is an additional complication, however, when the tenants' rights of alienation are recorded. There were twenty-nine liberi homines at Timworth, all could give and sell their land, but the soke, service and commendation "remained" with Bury St.

1 D.B. II, ff.358 and 356b

2 Ibid., ff.359b, 362, 364

3 Ibid., f.328

4 Ibid., f.305

5 Ibid., ff.161-161b

6 de omni consuetudine, Ibid., f.171b

7 Ibid., f.250b

Edmund's. Similarly there were seven liberi homines at Rede who could give and sell, but again soke, service and commendation "remained" with the abbey.¹ As Maitland said, "We have a tangled skein in our hands".² This chapter will try to unravel some of the threads, but it will also try to show that to separate each thread would be to destroy part of the evidence: soke, service and commendation are not mindlessly entangled, they are woven together and make a coherent pattern.

We have discussed soke and service above;³ the meaning of commendation now need to be considered.⁴ Commendatio is the Latin word, used in Domesday, for English mann raedenn. Stenton defined it as "homage, the condition of being another's man".⁵ An Anglo-Saxon oath of loyalty is extant in which the swearer vows to remain true to his lord, loving

1 Ibid., ff.363 and 358

2 D.B.B. p.98

3 See above pp. 69-82

4 Previous commentators have regarded soke and commendation as related problems. Maitland began his discussion of the sokemen by describing commendation, see D.B.B. pp. 95ff; while both Professor Stephenson and Miss Dodwell have explained their respective interpretations of commendation by using soke as an analogy, see C. Stephenson, "Commendation and related problems in Domesday Book", E.H.R. Vol.59, 1944; pp.289ff, and B. Dodwell, "East Anglian Commendation", E.H.R. Vol.63, 1948, pp.289ff

5 F.M. Stenton, "St Benet of Holme and the Norman Conquest", E.H.R. Vol. 37, 1922, p.230. Maitland said that the English equivalent of commendatio was not known - D.B.B. p.116 - but see Bosworth and Toller, s.v. mann raedenn, and the references therein cited. See also J.M. Brown, Bonds of Manrent in Scotland before 1603, unpublished Ph.D. thesis (University of Glasgow, 1974), chapter 2, - "The Meaning of Manrent" traces the development of the word from Anglo-Saxon mann raedenn to "manrent" in fifteenth and sixteenth century Scotland. Pages 34-7 deal with its English use before the fourteenth century.

all that he loves, shunning all that he shuns, and the lord, in turn, promises that he will treat his man according to his deserts.¹ The poem "The Wanderer" contains what may be a description of the commendation ceremony: the outcast was saddened when he thought in his heart of how he had clasped and kissed his lord, and laid his hand and head on his knee.² The relationship seems to have centred on mutual commitment and support between lord and man. Aelfric uses the term mann - raedenn in his account of Theophilus who sold his soul to the devil:- Sum man waes mid drycraefte beþaecht, swa þaet he Criste widsoc; 7 wrat his hand-gewrit þam awyrgedan deofle, 7 him manaraedene befaeste.³ The word was still current in the first half of the twelfth century: - the Chronicle describes how the men of Normandy swore allegiance to Henry's son:- Her waes se cyng Henri to Nativited on Normandig 7 on mang þam þe he þær waes, he dyde þe ealle þa heafod maen on Normandig dydon man raeden 7 hold adas his sunu Willelme.⁴

The obligations of lords and men appear in the laws, but it cannot be certain if they are the result of a commendation bond. Lords are responsible for the conduct of their men,⁵ and they must treat their men justly;⁶ a man must be faithful to his lord,⁷ and deserting one's lord is among the most heinous

1 Swerian, Gesetze, I pp.396-'7. There are two manuscripts, both twelfth century: - Textus Roffensis, f.38^v and Æ.C.Æ.C. 383, p.31. Liebermann dated the original as c.920 - c.1050

2 The Wanderer, lines 41-44. R. Hamer, op.cit., p.176. cf. P. and M. I, p.297, for similarities between this and the homage ceremony.

3 Homilies of Aelfric, ed. B. Thorpe, (London, 1844), p.448

4 A.S.C. s.a. 1115, cf the passage s.a. 1137 which describes the treachery of Stephen's barons.

5 See above p.185

6 I Cnut, c.20,2

7 Ibid., c.20,1

of crimes.¹ A post-Conquest charter of the Bishop of Winchester defines the services of commended men at Ninehides within the lordship of the multiple estate of Taunton.

Daet is acrest of ðam lande set Nigon hidon seo mannredden into Tantan - churchscot, wall-service (burhgerihtu), hearthpenny, hundred-penny, tithes, 8d for every hide, hamsocn, forsteall, gridbryce, hanfangentheof, oath and ordeal, fyrdwite, and suit of court, either in person or by deputy.² A certain Dunna held land at Oak, Tolland, and Upper and Lower Cheddon Fitzpaine; he is described as the bishop's man, -(biscopes mann) and he is said to have owed services like those due from the men of Ninehides. A certain Ealdred had land at Bradford, he too was the biscopes mann of þam lande aet Hele (Bradford) 7 dyde þe ilcan gerihta þae man(sic) dyde of Nigon hidon.

These services are typical of any free tenant; the 8d per hide, however, may spring from the commendation. Stenton held that the bond was "kept alive from year to year by payments in recognition of the lord's superiority".³ He did not cite his evidence, but one can compare the charter with the Domesday account for Taunton.⁴ The individuals named in the charter do not appear in Domesday, although they may be among the eight thegns who held land T.R.E. which could not be separated from the church; the holding at Ninehides is not mentioned, nor is the payment of 8d per hide, although the remaining services

1 II Cnut, c.26

2 B. Thorpe, Diplomatarium Anglicum Aevi Saxonici, (1865), pp.432ff.

3 A.S.E. p.483

4 D.B. I, f.173b

are identical. It must be uncertain, therefore, if the payment was made as a rent from Ninehides or as a render from a commended man. Consuetudines do not flow from commendation. There were nine hundred and forty-three burgesses at Thetford T.R.E. from whom the Confessor had all custom (omnem consuetudinem), thirty-six were unable to commend themselves to other lords without the king's consent, the rest were completely free in this respect, but they would always render all service to the king, with the single exception of heriot.¹ Nor can we say that the right to commendation carried with it the right to heriot. The king had seventy-two manses of sokemen in Stamford and the sokemen could seek what lords they would, but the king had their fines, heriots and latronium. Commendation and service are distinguished:- there was a sokeman at Maldon in Essex from whom Ralph Peverel had a custom of three shillings per annum, but T.R.E. his predecessor had only had the sokeman's commendation.²

The evidence of Domesday suggests that the mutual support of lord and man was most valuable in legal disputes over land. The father of Tori had held land of the Bishop of Salisbury at an unidentified place in Berkshire T.R.E., et potuit ire quo voluit sed pro sua defensione se commisit Hermanno episcopo, et Tori Osmundo episcopo similiter.³ A woman held one hide at Esher in Surrey of Chertsey Abbey set

1 Alii omnes poterant esse homines cuiuslibet set semper tamen consuetudo Regis remanebat preter herigete. Ibid, II f.118b

2 Ibid., f6

3 Ibid., f.58

pro defensione sub abbatia se misit.¹ A certain freeman had held land in Wallington hundred quo vellet abire valens commisit se in defensione Walterii pro defensione sua.² The benefits to a tenant of support from a powerful lord might be reciprocated when the lord called upon his men to support his own claims to land and tenants. It is recorded that a liber homo at Bixley had been commended to Anslec and it is said that "Roger Bigod kept this man"; the hundred, however, claimed that Godric dapifer had held him under the king, but a man of Roger was willing to prove the contrary either by oath or ordeal.³ In another case a liber homo is said to have a holding at Hapton which is worth 32d, the chamberlain of Roger Bigod had held him, but Count Eustace's men claimed that he belonged to Eustace's fee.⁴ In the latter case, the men of Eustace may have been less motivated by the justice of their lord's claim, than by a desire to see one more tenant who would, perhaps, help them with their geld burden. There are other examples which suggest that the support of a man for his lord was less than disinterested. A certain freewoman had held sixteen acres at Bramerton which had passed into the hands of Robert Blund; however, Roger Bigot had apparently seized the land and given it to Aitard his "man by commendation". There is a strong implication that the freewoman had still held the land under Robert Blund, but had been driven out by

1 Ibid., f.32b

2 Ibid., f.36

3 Ibid., II, f.277b

4 Ibid., f.278

Roger and Aitard, for the woman offers to prove by ordeal that Robert had held and the hundred supported her, whereas Aitard asserted the contrary (contradicit).¹ In this case, Aitard had used his right as a commended man supporting his lord's claim, to further his own interest. There are examples of men apparently conspiring with their lords to pervert the course of justice. The encroachments of Baignard in Norfolk are given in separate section at the end of the Norfolk survey. It is explicitly said that he 'invaded' (invasit) a ploughland in Fincham; his men claim, more prudently, that he held it by way of exchange, but they could not produce the feoffor (non habent liberatorem). Sometimes there could be a disagreement among the commended men themselves. A certain Englishman holds three virgates at Manhall in Essex " which had been held by a freeman T.R.E. and T.R.W. he² became Geoffrey de Mandeville's man of his own accord. The men of Geoffrey say that afterwards the king granted it to Geoffrey by way of exchange, but neither the man himself nor the hundred bear witness in Geoffrey's favour".³

Professor Stephenson noted that the word hlaforðsocn occurs in a law code of Aethelstan, apparently in the context of commendation, and this led him to "wonder whether a freeman who sought a lord might not at one time have been called his sokeman".⁴ This is possible, but it cannot be more than surmise. We have already considered "hlaforðsocn".⁵ We saw

1 Ibid., f.277b

2 Presumably the T.R.E. tenant, and in view of what follows he is the same person as the "certain Englishman".

3 Ibid., f.62b

4 C. Stephenson, art.cit. p.307

5 See above pp.47-8

there that it is found in III Aethelstan, the code which only survives in the Quadripartitus version: the clause states that ne dominus libero homini hlafordsoknam interdicat si eum recte custodierit,¹ which seems to apply to a freeman seeking a lord to whom he can commend himself. The word hlaforsocn probably derives from the phrase sece...hlaford. Domesday used homo and femina to denote commended persons,² but the term "sokeman", in the latter part of the eleventh century meant one who rendered suit of court and royal service. The term "sokeman" is unrecorded in documents from before the Conquest, and in Anglo-Saxon law codes, the commended person seems, again, to be simply referred to as mann.³

It is often recorded in Domesday Book that a tenant may give, sell or withdraw from his land, but the soke, service and commendation will "remain". Certain problems arise from statements of this kind. Are the soke, service and commendation inherent in the tenant or in his land? Does the tenant owe a definite amount of service and soke, and his commendation fixed and permanent, all this as a personal obligation which he will bear with him wherever he goes? Could it be however,

1 III Aethelstan, 4,1

2 See e.g. D.B. II, f.299, Middleton - homo and femina; also I f.217, Leveva of Bletsoe is the homo of King Edward

3 See swerian - se man sceal swerie, Gesetz, I, II, Edward, c.7, II, Aethelstan, c.22, 1.

that the amount of service and soke vary because it is assessed on land? If the commendation derived from the land is the tenant automatically commended to his landlord? If the last be true, then will the assessment for service and soke, and the lord to whom the tenant is commended, change if he changes his holding?

We have already cited evidence which suggests that both soke and service were based on a tenorial assessment,¹ a further example may be quoted: there were nine liberi homines on one carucate at Bradfield, they could give or sell the land but soca remaneret sancto² et servitium quicumque terram emeret.³ The incoming tenant, therefore, would take up an obligation to render suit to the abbey according to the assessment of the land. One may refer to his suit "remaining" in that he had been responsible for rendering it, but the terms of his duty would change according to his holding. More difficult to explain however, are references to tenants who can sell their land "with the soke". Swegn and Erfin had held land at Chignal (Cingehala) in Essex, and the Domesday entry suggests that they were possessed of an exceptional degree of freedom: fuerunt liberi ita quod ipsi possent vendere terram cum soca et saca ut hundretus testatur.⁴ Similarly there were six sokemen at Standon in Hertfordshire, each had one hide, and it is recorded that vendere potuerunt praeter socam; unus autem eorum etiam socam suam cum terra vendere poterat.⁵

1 See above pp. 54-5, 241-2.

2 i.e. Bury St. Edmund's

3 D.B., II, f.362.

4 Ibid., f.59

5 Ibid., I, f.142b. It is possible that socam in the second example is an abbreviation of sokeland. The passage would therefore be easily explained: "they are able to sell without the sokeland, one of them, however, can sell the sokeland with his (other) land". However, this cannot apply to the first example, where the tenant can sell "with sake and soke".

It is possible that if a man is able to sell his soke he is selling his suit; i.e. he had, for a consideration, given to the lord the right to claim his suit. We have seen above that Picot had given certain sokemen to Roger "to hold his pleas".¹ Sokemen were clearly valuable as well as necessary. It is recorded that Caston in Norfolk had been worth £10 T.R.E. and when received was worth £12 " 13s. " 4d; Godric had given £13 " 13s " 4d for it, and also twenty shillings de gersumma "as long as he had the soke, but now since he has lost the soke it pays £7 and upon the sokemen whom he lost are £7".² The twenty shillings seems to have been paid for the soke - the suit, of the sokemen. In a further example, Bishop Aethelmaer is said to have bought the soke over the bordars and those who owed suit to the fold at Beighton, from Earl Aelfgar.³ One of four sokemen at Oulton, which was part of the royal manor of Couston, had been sold by the reeve of the vill for 10s., probably to Earl Ralf.⁴ Ralf, therby, acquired the service of the sokeman and this probably included his suit. Those who could sell their own soke, therefore, would have the rare freedom of being allowed to render their suit to any lord in return for a payment. Allied to these entries is another concerning a certain Coleman who held land at Roding Morell in Essex, and he is said to be so free that he could go where he would

1 See above p. 230.

2 Ibid., II, f.126

3 Ibid., II, f.194b

4 Ibid., f.114b

with his sake and soke.¹ Normally a man must render suit according to the area in which he lives. Coleman was apparently free to chose his court, a highly exceptional right, but expressions of surprise are evident in all three Domesday entries.

Maitland observed:- "we may be surprised at being very frequently told that (the soke remains) for we can hardly imagine a man having power to take his land out of one sphere of justice and put it into another". Then referring to the examples of men being able to sell their soke he went on "But that some men, and they were not men of high rank, enjoyed this power seem probable".² But the problem seems to be concerned with buyers not sellers: the seller will take on new obligations when he buys new land, the lordship might therefore have difficulties with the incoming tenant, who must relinquish his previous duty, and render soke according to the assessment of his new land, to the lord who has the soke of his land. It is more easy to understand that service could "remain" if a tenant sold his land, although there might again be difficulties when the incoming tenant, who had previously rendered service elsewhere, must take on the obligations for which his new land was assessed. If soke and service were assessed on land

1 Ibid., f.40b fuit ita liber quod posset ire quo vellet cum soca et sacna.

2 D.B.B. p.131

it is easy to see that they could "remain" to the lord, if his tenant sold or left the land to another person. But commendation is also said to "remain": there were two liberi homines at Fornham All Saints in Suffolk who could sell, but the sake and soke and commendation remained to Bury. A liber homo at Fornham St. Martin could also sell, but again sake and soke and commendation remained to the Saint.¹ This would seem to be at variance with the rights of commendation in England, as they have normally been understood. Stenton, for example, defined commendation as the dependence of a man on a lord in which "the relationship was purely a matter of personal arrangement". He drew attention to the ⁿ numerous liberi homines in East Anglia and the East Midlands who are described in Domesday as commended men, and said that their patrons were "lords whom they themselves had chosen".² But if commendation can "remain", both these characteristics are refuted. Like soke and service, commendation must be inherent in the land, it cannot, in every case, have been a purely personal relationship. Moreover, if the commendation remains, the incoming tenant is denied the right to chose his lord freely; the men who buy the lands at Fornham All Saints and Fornham St. Martin would find themselves automatically commended to Bury St. Edmund's.

Maitland suggested a flexible solution to the problem.³ He referred to the "chosen lord", and this suggests that he believed that a man could freely commend himself. He commented that "the act of commendation will not give the lord, as a

1 D.B. II, ff.357b, 362

2 F.M. Stenton, A.S.E., p.484

3 D.B.B. pp. 100-103

matter of course, any rights in land" and in support of this he cited the case of Serlo of Phenge who had been commended to the predecessor of Ranulf Peverel, but, according to Domesday, set terram suam sibi non dedit.¹ Maitland also observed that "the relation is often put before us as temporary". Yet, at the same time, in the face of other evidence, he was compelled to add that "in one way or another, 'the commendation' is considered as capable of binding the land... In [^]may cases if he sells the land 'the commendation will remain to his lord' - by which is meant, not that the vendor will contrive to be the man of that lord (for the purposes of the Domesday Inquest this would be a matter of indifference), but that the lord's rights over the land are not destroyed. The purchaser comes to the land and finds the commendation inhering in it". Professor Stephenson, however, disagreed with Maitland. He wrote: "To the Frenchman of the eleventh century, so far as we can tell, commendation was always a personal relationship (and)... was regularly for life". His own assessment of the Domesday evidence failed, he said "to support the belief that commendation in Saxon England was a slight and fragile bond, which could be made and unmade by the lord's man at will, but which could somehow become inherent in the land".² Miss Dodwell, examining the evidence and the views of both Maitland and Stephenson, supported the former. "Maitland was right", she wrote, "in his opinion that commendation alone was a very slight bond, and right also in his opinion that commendation could be inherent in land".³ Thus it seems

1 D.B. II, f.71b

2 C. Stephenson, art.cit. pp.290 and 301

3 B. Dodwell, art.cit. p.305

that commendation could be a personal relationship and a soluble one, but it could also involve land. When it involves land it becomes binding on the tenant as long as he holds the land, and thus a man can be deprived of the freedom of choice. This is the position which has been adopted here, but we will try to show how commendation becomes tenurial, and why this denies a man the normal right to commend himself where he wishes.

Let us first consider the free right of commendation and the strength of the commendation bond. Professor Stephenson claimed that the bond was "firm and lasting, rather than slight and temporary", and he disputed that it could be "made and unmade by the lord's men at will".¹ Maitland, in support of his view that commendation could be "the slightest bond between lord and man",² cited references to commendatio tantum.³ However, "commendation only" seems to be less a comment on the strength of the commendation bond itself, than a note that the lord had "only commendation" and not other rights of soke and service. A man had had "only the commendation" of Alflet of Massingham, Harold had the soke. There were four liberi homines at Horsley, Edric had commendation only, the king and earl had the soke.⁴ There is still evidence to suggest that commendation was not totally binding however. Aelfric was probably drawing on the custom of his time when he described how Theophilus commended himself to the devil. His commendation was not a fatal act by which he was irrevocably

1 C. Stephenson, art. cit., pp. 308 and 301

2 D.B.B. p. 96

3 e.g. D.B. II, ff. 153b and 154

4 Ibid., ff. 161-161b; 180

doomed, indeed he had second thoughts, and having "revolved in his mind the torment of hell" he fled to a church and was saved, thus breaking his bond with the devil.¹ The homily is also instructive in its account of the way in which Theophilus commended himself, for, it describes him as drawing up a writ - wrat his hand gewrit. A writ concerning commendation has survived. In this Edward the Confessor declares that Aelfric Moddercope, may, with full permission submit himself to both the abbot of Ely and the abbot of Bury St. Edmund's.² His "submission" seems to be commendation,³ and Aelfric may have commended himself because, in his will, he left land and other property to both Ely and Bury: he bequeathed Bergh Apton to Ely, and his estate at Loddon to Bury.⁴ This seems to be a case where an individual has commended himself in two ways, has also commended his land and has sought the king's consent in order to do so. Why and if royal consent was required is not clear. He does not seem to have sought permission because he had previously been commended to Edward himself, nor does he seem to have been a royal thegn, for the heriot of one mark mentioned in his will is less than that required of a king's thegn according to the law of Cnut;⁵ yet it is more than that of a lesser thegn, and Aelfric may well have been a man of some local importance.⁶

Further evidence that commendation involved a writ giving royal consent occurs in Domesday Book. Edric of Laxfield

1 Aelfric's Homilies, ed. B. Thorpe, p.448

2 fulle unna þat Alfrich Modercope mot bugan to þo tueyen abboten, Writs, no.21

3 Ibid., p.149

4 The writ was dated by Dr. Harmer as 1051-'2 or 1053-'7. Dr. Whitelock dates the will as 1042 or '3 - see Wills, no.28. The estates were duly held by Ely and Bury at the time of Domesday, - D.B. II, f.211b for Loddon. For Bergh Apton see V.C.H. Norfolk, Vol.2, p.138, nø.3.

5 II Cnut, c.71, horses and weapons are also due.

6 See Writs, pp.549-550

had been outlawed by the Confessor, and his land had been confiscated. Later, however, he was pardoned and his property restored. It is recorded that the Confessor "also gave him a writ and seal that whosoever of his freemen under commendation who might chose to return to him could do so by his grant".¹ Thus Edric of Laxfield was given a writ containing the king's permission that he may receive commendations from liberi homines. This is understandable since he had been an outlawed man, and it seems that the men who wished to commend themselves to him also required a writ. A different Edric claimed that he had returned to Edric of Laxfield, but he apparently had to prove it by ordeal since the hundred had "seen no sign" (non vidit) that he had so returned.² A certain Stanwin at Peasenhall had been commended to Edric before his fall, but "afterwards he was Harold's man T.R.E., so the hundred says. But Stanwin says that he was Edric's man by Harold's grant on the day on which King Edward died and offers proof by ordeal".³ In these cases the hundred is appealed to for confirmation regarding who is commended to whom; their surest source of information would be a writ which had been read to them in court.

A final example may be cited in which the king played a part in a commendation between man and lord, Avigi held land at Easton and King William "by his writ commended him to Ralf Tallebosc that he might serve him for his life. On the day

1 D.B. I, f.310b. dedit etiam brevem et sigillum ut quicumque de suis liberis commendatis hominibus ad eum vellent redire suo concessu redirent.

2 Ibid., ff.310b-311

3 Ibid., f.313

on which he died, he stated that he was William de Warenne's man and consequently William is in possession of the land".¹ Avigi had thus received a royal writ by which he was commended to Ralf, but he had, of his own volition, transferred his commendation to William. Professor Stephenson commented that he had "violated a royal precept" by doing so,² but this action does not seem to have been illegal. Even though he had undertaken to serve Ralf all his life, and had received the king's writ, the court, on proof by ordeal, accepted the word of witnesses that, at the very end, he had become a man of William. It did not, however, challenge his right to change his commendation.

Evidence from Cambridgeshire suggests that men were free to commend themselves to whomsoever they would, for there was great diversity even within a single vill. There were twelve men under commendation at Orwell: three had been commended to Edith, three to the Confessor, one to Stigand, one to Robert, son of Wimarc, one to Alfgar, one to Waltheof, one to Esgar the Staller, and one to Harold. There were fourteen men under commendation at nearby Whitwell, seven had been commended to the Confessor, two to Alfgar, two to Edith, two to Robert, son of Wimarc, and one to Stigand.³ This surely reflects freedom of choice. But equally the evidence cited above which shows that royal ratification was sometimes sought and given, suggests that there was some royal control. A right of consent could become a right of veto, and it seems

1 Ibid., f.211b - 7 per suum brevem Radulfo Tallebasc commendavit ut eum servaret quamdiu viveret. Hic die mortuus est, dixit se esse hominem W. de Warenne 7 idcirco W. saisitur est de hac terra.

2 C. Stephenson, art.cit. p.302

3 I.C.C. ff.108-108b

that it was this which denied certain men the freedom to commend themselves. Commendation was normally a personal relationship freely undertaken by lord and man, but the king had used his power to give Bury St. Edmund's and Ely the right to the commendation of their tenants within their hundreds. By this means commendation became linked to landholding. No example has been noticed in Domesday in which commendation is said to "remain" to a lay lord, this could be merely the fault of the evidence - the ecclesiastical breves for example, could have been more detailed - yet it seems more likely to be representative of the real situation.

Firstly we may examine the estates of Bury St. Edmund's. Bury held lands throughout East Anglia and the East Midlands, and the Confessor had granted the sake and soke of the eight-and-a-half Suffolk hundreds of Thingoe, Thedwastre, Lackford, Risbridge, Blackbourn (double-hundred), Baberg (double-hundred), and Cosford (half-hundred). It is on the lands within these hundreds that Domesday repeatedly records, not only that the soke will remain when a tenant sells, but that the commendation will also remain. Of the hundreds of freemen and sokemen who held of the abbey in this region, only two do not seem to have been commended to Bury. There are twenty-one freemen at Cockfield in Baberg hundred and the abbey had the soke and commendation of them all except one, over whom it only had soke;¹ a small holding at Livermere in Thedwastre hundred was held by a man and his wife, the woman was commended to the abbey

1 D.B. II, f.359b.

but the man had been commended to Edric of Laxfield, it is recorded that both could sell, but the sake and soke and commendation of the woman only is said to remain to the abbey. Bury normally had the commendation of tenants who held in other hundreds. It had three estates in Stow hundred, all the free tenants are said to hold "under" (sub) St. Edmund, and the third and final entry - for the holding of one freeman at Onehouse - contains the note that 'sake and soke and commendation' over all these men belonged to St. Edmund T.R.E. by the gift of King Edward, as his writs and seals show which the Abbot has. Afterwards King William allowed the gift".¹ Bury also had three estates in Bosmere hundred, commendation is only mentioned in the entry for Mickfield, but it belongs to the abbey.² Bury had only one holding in Claydon hundred - at Thorpe, - its two freemen were commended to the abbey;³ the tenants of its only holding in Plomesgate hundred were likewise commended to the abbey.⁴ Ufford was the only holding in Wilford hundred and the commendation belonged to Bury.⁵ It had three holdings in Carlford hundred, one of which - Waldringfield - had been held by Quengeva "under" the abbot; commendation is not recorded at Newbourn, but there was a freeman at Hapsley who had been commended to Quengeva.⁶ Of the three holdings in Loes hundred commendation is only mentioned at Hacheston where four freemen had been partly commended to the abbey.⁷ Bury had eight holdings in Bishop's hundred, commendation is

1 Ibid., ff.360-360b

2 Ibid., f.360b

3 Ibid., f.360b

4 Ibid., f.360b

5 Ibid., f.371b

6 Ibid., f.369b

7 Ibid., f.369b

mentioned on only two - at Mendham,¹ and at Horham,² and in both cases it belongs to the abbey, and of the three holdings by Blything hundred commendation is only mentioned at Uggeshall where there were one-and-a-half freemen commended to the abbey.³ Of holdings in Hartismere hundred, Bury had the commendation of all the freemen there except at Stoke Ash where there were fourteen freemen, and the abbey had soke and commendation of all except one.⁴

Bury had the soke over the "eight-and-a-half hundreds into Thingoe", but was not the only landholder in this area, even when an estate was held by a different tenant-in-chief, its soke is often said to belong to Bury. Robert Malet held part of Thelnetham in Blackbourn hundred but St. Edmund had the soke,⁵ he held part of Rickinghall and again St. Edmund had the soke.⁶ But Bury rarely had the commendation of the men in its hundreds who were the tenants of other lords. The freeman of Rickinghall who was Malet's tenant had been commended to Malet's predecessor,⁷ Robert of Mortain held parts of Bradfield, Welnetham, and Stanningfield, all in Thedwastre hundred and all, therefore, owing soke to St. Edmund, but all the freemen in these villis had been commended to the Bishop Aylmer of Thetford.⁸ Sometimes Bury did have the commendation. There were three freemen at Brockley in Thingoe hundred

- 1 Ibid., f. 368
- 2 Ibid., f. 371b
- 3 Ibid., f. 371b
- 4 Ibid., f. 370
- 5 Ibid., f. 327b
- 6 Ibid., f. 328
- 7 Ibid., f. 328
- 8 Ibid., f. 291

whose tenant-in-chief was Roger of Poitou, St. Edmund had soke and commendation over one of these men and he could not sell, but the other two were commended to the king.¹ Osmund, a freeman, held half a carucate in Blackbourn hundred at Barningham, his landlord was Hermer de Ferrers and Bury had commendation and soke T.R.E., but T.R.W. it only seems to have had the soke.²

Bury held c.50 estates in Norfolk but commendation is only mentioned in twelve of the entries, and in all of these except two, Bury herself had the commendation,³ it held in only three villis in Cambridgeshire,⁴ but none of the entries mention commendation. We can see therefore that of those tenants who held land within Bury's eight-and-a-half hundred, all except two were commended to the abbey, and very many of those outside this area were likewise commended. However it seems, from the Norfolk and Cambridgeshire evidence that reference

1 Ibid., f.349b

2 Ibid., f.354

3 Commendation belonging to Bury:-

One freeman at Thorpland (Ibid., f.209)

One freeman at Gasthorpe T.R.E. (Ibid., f.209b)

Ten freemen at Buckenham Ferry (Ibid., f.210)

One freeman at Harleston (Ibid., f.210b)

One freeman at Starston (Ibid., f.210b)

One freewoman at Starston (Ibid., f.210b)

Morningthorpe One freeman, half commended

Nine-and-a-half freemen commended (Ibid., f.212)

Seven freemen at Hlaes (Ibid., f.212)

One freeman at Norton Subcross (Ibid., 212b)

Heckinghall is uncertain. It follows Norton Subcross and the freeman there is said to hold in the same way (similiter), presumably, as the freeman at Norton Subcross (Ibid., f.212b)

The exceptions are Shottesham and Poringland (Ibid., f.210)

where the commended lord was Guert.

4 Ibid., I, f.192

to commendation were omitted probably because the men concerned were commended elsewhere, - the Domesday return from the abbot would not always record commendations which did not belong to him. We have seen also that the great majority of those who held land within the Bury hundreds, but of a different landlord, were also commended elsewhere. It seems therefore that those men who held land within the Bury hundred and who were also tenants of the abbey, were commended to the abbey, and they had no freedom of choice in the matter.

The extant pre-Conquest writs grant sake and soke to Bury, but this privilege did not convey the right of commendation on the same terms as the sokeright. Men could owe soke to Bury when they were tenants of other lords if they lived within the eight-and-a-half hundreds, but only those who were also tenants of the abbey seem to have been obliged to commend themselves to the abbot. Yet soke and commendation were often linked. There was a freeman at Stanton in Blackbourn hundred whose landlord was Robert Malet, but St. Edmund had half the commendation and half the soke.¹ The Latin sometimes shows that soke, commendation and probably service were regarded as a single composite right. The seven freemen at Livermere could sell their land but sac and soc and commendatio remanet sancto² and three freemen at Market Weston had been able to sell but commendatio and soca and saca remanebat S. Edmundo.³

Evidence from the Ely estates repeats the pattern. The abbey had sake and soke of "the five-and-a-half hundreds into

1 Ibid., II, f.327b

2 Ibid., f.366b

3 Ibid., f.353b

Wicklaw" in Suffolk, i.e. Plumesgate, Loes, Wilford, Carlford, Colneis and the half-hundred of Parham, with the addition of Claydon hundred.¹ It held only two estates in Plumesgate hundred - Sudbourne,² and Aldeburgh,³ and commendation is not mentioned in either entry; it had only three estates in Parham half-hundred, - two holdings in Wantisden for which commendation is not mentioned, and a holding at Blaxall where the five free tenants were "in the soke and commendation of the abbot".⁴ Of five holdings in Colneis, commendation is mentioned in four, and it belongs to the abbey, the fifth entry - for Kembrook - is uncertain.⁵ Ely held sixteen estates in Carlford hundred, the commendation is not recorded in three entries, one is uncertain - Algar of Grundisburgh is said to hold "under" (sub) the abbot,⁶ there is one example of sub-commendation,⁷ and two cases where the tenants are only half commended to the abbot,⁸ and four cases where the men are commended elsewhere - two men at Thistleton had been commended to the predecessor of Geoffrey de Mandeville,⁹ two freemen at Rushmere St. Andrew were half-commended to Gurth,¹⁰ and three freemen at Grundisburgh had been half-commended to

1 O.A. Anderson. The English Hundred Names, (Lund, 1934), pp. 83, 88-89 and 91.

2 Ibid., I, f. 384

3 Ibid., f. 388b

4 Ibid., f. 384

5 Ibid., f. 385b

6 Ibid., f. 386

7 Tuddenham Ibid., f. 396b

8 Rushmere St. Andrew - two holdings, Ibid., f. 386b

9 Ibid., f. 386

10 Ibid., f. 386b

Algar T.R.E.¹ In the remaining seven cases the freemen had been commended to the abbot. Ely had thirty-two holdings in Wilford hundred, commendation is not recorded on six of these.² One liber homo at Bromeswell had been commended to Roger Bigot's predecessor,³ and seven freemen at Ufford were commended to Almar and another freeman there was only half-commended to Ely,⁴ and there were nine freemen at Sutton who had been commended to Godwin.⁵ The free tenants of the remaining two holdings were all commended to Ely. It had only seven holdings in Loes, where free tenants are recorded, the commendation of those at Hoo, Brandeston, Dallinghoo, and Woodbridge belonged to Ely, the other three entries do not mention it,⁶ and it had ten holdings in Claydon hundred with a free population, all were fully commended to Ely except a certain Turchil of Pettaugh who had been half-commended to Ely and half to Gurth T.R.E.⁷ Ely held thirty-five estates in eleven other hundreds in Suffolk, but her rights of commendation in these were somewhat meagre. One freeman at Rattlesden in Thedwastre was commended to the abbey but two other freemen in the same vill were not;⁸ three freemen at Livermere in Lackford were commended to it,⁹ in Bosmere hundred, Ely had had the commendation of twenty-five freemen at Darmsden,¹⁰ and a freeman at Horswold¹¹

1 Ibid., f.386

2 Bowdsey, Hoo, Hundestuf, Bredfield, Harpole, and Melton, but in Melton only villeins are recorded.

3 Ibid., f.387b

4 Ibid., f.388

5 Ibid., f.387

6 Ibid., ff.388-388b

7 Ibid., ff.383b-384

8 Ibid., f.381b

9 Ibid., f.382

10 Ibid., f.383

11 Ibid., f.383

T.R.E.¹ but nothing is said of the present position, and there were tenants at Hemingstone, Olden and Ash Bocking who were commended T.R.W.¹ The four freemen at Wetheringsett in Hartismere hundred were commended,² as also were three freemen at Clopton in Risbridge,³ and there were freemen at Wingfield and Soham, both in Bishop's hundred who were commended to the abbey.⁴ Eighteen other entries in the eleven hundreds do not mention commendation at all, but in only one case - at Wingfield in Bishops hundred, - is the commendation ascribed to a different lord, - here one freeman had been commended to Robert Malet's predecessor.⁵

The tenants of lands within the Ely hundreds, but under another tenant-in-chief, were rarely commended to the abbey. It had the soke of Bloxall since it was in Parham half-hundred but it was held by Robert Malet and there were two liberi homines there, one was fully commended to the abbey but the other was "half under sub-commendation",⁶ and half under sub-commendation to the predecessor of Robert Malet. There were two other liberi homines in the same vill, one had been wholly commended to Edric, the other was half under sub-commendation to the abbey and half under sub-commendation to Edric; another liber homo there was also commended in this tangled manner, - he was half under sub-commendation to the abbey, and the entry

1 Ibid., ff.383-383b

2 Ibid., f.384b

3 Ibid., f.384b

4 Ibid., f.385

5 Ibid., f.385

6 unus et dimidius fuit sub-commendatus

tells us that he came to an agreement¹ with the abbot over his partial commendation, but it does not explain the details of the case.² Glemham was in Plumesgate hundred, and the tenant-in-chief was again Robert Malet; Ely had the soke but the freemen there were commended to Malet's predecessor, or to Leuric,³ there were six freemen at Benhall in Plumesgate, again it is recorded that the soke belonged to the abbey but the six men had been commended to Malet's predecessor.⁴

Ely held c.23 estates in Norfolk in eleven different hundreds. It had the soke of Midford one-and-a-half hundreds T.R.E.,⁵ but the commendations of the men in the seven estates it held there are not recorded, indeed it is only mentioned in entries from three hundreds,- Grimshoe, Shropham, and Launditch. Men at Feltwell, Northwold and Mundford in Grimshoe owed soke and commendation or "all custom" to the abbey.⁶ Three freemen at Banham in Shropham hundred were commended to it,⁷ and two sokemen at Hoe in Launditch had similarly been commended.⁸ Twenty-seven sokemen at Marham in Clackclose hundred-and-a-half had owed all custom to Ely T.R.E. and this seems to include commendation, but "after King William came Hugh de Montfort had them all but one".⁹ There were free tenants on c.20 of the abbey's estates in Cambridgeshire, commendation is only evident in Radfield hundred, where the sokemen of West Wratting and Balsham are said to have been "men

1 est conciliatus

2 Ibid., f.307

3 Ibid., f.308b

4 Ibid., f.308b

5 Ibid., f.214

6 Ibid., ff.213-213b

7 Ibid., f.213b

8 Ibid., f.214

9 Ibid., f.212b

of the abbot";¹ Ely held the two hundreds of Wisbech and Witchford but the commendations of its tenants there are not recorded.

Commendation is rarely recorded for the estates of other abbeys, or for the Ely and Bury lands in other shires. Ely also held land in Essex and Huntingdon, and Bury had land in Essex but none of the entries mention commendation. Ramsey had land in Cambridgeshire, Suffolk, Norfolk, Bedfordshire and Huntingdon; Thorney had land in Bedfordshire, Huntingdon, and Cambridgeshire; and Crowland had estates in Cambridgeshire and Huntingdon but commendation is not recorded in any of these. Only St. Benet of Holme records commendation for its lands in Norfolk. It had c.45 estates with liberi homines or sokemen, of these, men at Oby,² Burch St. Margaret,³ Ludham,⁴ Stalham,⁵ Heigham,⁶ and Bastwick⁷ were commended to the abbey, and it is recorded at Caistor that there were fourteen liberi homines under commendation to the abbot but this is then deleted.⁸ The commendations of St. Benet's tenants to other lords is also recorded. Four liberi homines were commended to a sokeman at Winterton,⁹ Walter Malet had the commendation of two sokemen at N. Walsham,¹⁰ and a woman at Tuttington had been commended to Earl Ralph.¹¹ St. Benet^e did not hold land in any other shire, but it seems that commendation was noted in the East

1 Ibid., I, f.190b

2 Ibid., f.216b

3 Ibid., f.217

4 Ibid., f.220

5 Ibid., f.220b

6 Ibid., f.221

7 Ibid., f.217

8 Ibid., f.221

9 Ibid., f.216

10 Ibid., f.219b

11 Ibid., f.218

Anglian circuit and, with all its complications, it was duly copied to produce Little Domesday, but the Exchequer scribe may have jettisoned such information since it was less important to the government than to the individual tenant-in-chief.

The problem of alienation remains: why are certain tenants unable to sell their land freely? How is alienation connected with soke, service and commendation? Maitland believed that "in one way or another, 'the commendation' is considered as capable of binding the land",¹ and later he wrote: "we find many men who cannot sell their land without the consent of a lord. This we may usually regard as a result of some term in the bargain of commendation; but in some cases it may well be the outcome of soke".² Stenton seems to have regarded commendation as the governing principle in alienation. He noted that the comitatus relationship "might assume many different forms. The man might or might not pledge himself to render service to his lord, (or) to wait for his lord's licence before he alienated his land".³

The relationship between commendation and the right to sell is not, however, directly one of cause and effect; both seem to be dependent on, and indeed to have derived from, the terms on which the tenancy was held. The men who held leases of the abbots of Bury and Ely were always restricted in their rights of sale and almost always commended to the church. Miss Dodwell has pointed out that "So frequently was the tenant of such land (i.e. leased land) commended to the head

1 D.B.B., p.103

2 Ibid., pp.134-'5

3 A.S.E. p.484.

of the church concerned that there would appear to be a definite connexion between this dependent tenure and commendation".¹ It is not that a man is commended to an abbot and therefore, because of the commendation itself, he must seek permission: rather he holds his land on a lease from the abbey, because of the lease he becomes the abbot's man, and it is the lease which also prohibits him from freely disposing of his land.

The Domesday accounts of the Ely and Bury estates make only one direct reference to a lease:- a freeman at Pakenham in Suffolk begged the abbot of Bury to lease half-a-carucate of land to him, with the condition that all his land would remain to the abbot after his death, it is also recorded that 'the saint always had commendation and sake and soke over him'.² Other churches had leased their lands and again, apparently on the tenant's own initiative. A certain Aluric gave the large manor of Clare to the church of St. John the Baptist there, his son Wisgar consenting to the grant, and Aluric "put in Ledmar the priest and others with him". These "others" were probably clerks for it is also noted that "the clerks can neither give nor alienate this land away from St. John".³

Thus soke, service and commendation can be said to remain when a tenant sells his land. Soke and service could be

1 B. Dodwell, art.cit., p.293, Italics mine.

2 impetiavit ab abbati prestari sibi. D.B. II, f.361b.

3 Ibid., f.389b

reserved because they were assessed on the holding and as the incoming tenant would take up the obligations to pay the taxes and rents for his new holding, so he would also find an assessment for the suits and consuetudines he must render. Commendation was also "inherent in the land" since the great majority of tenants who held land of the abbots of Bury and Ely and within their respective hundreds, were ipso facto commended to the abbot, who was at the same time their landlord. The alternative formula to "he can give and sell but soke etc remain", is simply "he cannot sell without permission". We have asked if he must obtain permission because, when he sells and moves elsewhere, he will take with him his soke and commendation. In part, this is true. If he moves into another hundred he will owe suit there; he may likewise wish to commend himself elsewhere, but the origin of the restriction on many on the right to sell seems to derive, in part, from a lease. The abbeys were concerned to maintain their rights. They admit that a particular tenant can move without first consulting them, but they insist that the incoming tenant will find himself owing suit and commendation to them. If the new tenant had two holdings and for his original tenement owed soke to Stigand and was commended to him, he must nonetheless render suit to the hundred of his new holding and he must be commended to his new landlord, - hence the elaborate divisions of commendation that we meet with in East Anglia.

Maitland and Miss Dodwell were right when they claimed that commendation alone could be a light and fragile bond between lord and man. Under such circumstances the link was

purely personal: the men concerned had clasped hands and made solemn promises of mutual support. A promise of any kind is binding and one of the parties must infringe some part of the agreement before the other can declare himself free. But the relationship could also be tenurial: a man might take his land to his lord and thus his commended lord was also his landlord. For this reason the commendation of an inferior tenant was sometimes sufficient justification for a Norman lord to assume rights over him.¹ Bury and Ely had an exceptional right: their tenants within their hundreds must become their commended men. It is here that one finds a species of commendation which is permanent and binding. When commendation was a personal bond, it was also a fragile bond, when it was a tenurial bond, it was a permanent bond. It was not, however, invariably personal, or invariably tenurial.

Commendation could, paradoxically, be both hazardous and difficult. We cannot know what dangers came upon men who had been commended to Alfgar or Edric of Laxfield when these lords fell from power. It may have been an excuse for any kind of violence: a golden opportunity for a jealous man to harass his neighbour, the latter might not have been immediately able to re-commend himself, and who could he call as his defensor if he was hauled before a court to answer some malicious claim? There is extant a document of the early

1 Commendation did not always result in a lord claiming land, however, - see F. Welldon-Finn, Domesday Studies: the Eastern Counties, (London, 1967), p.18

twelfth century which records encroachments made by Roger Bigot on the rights of St. Benet of Holme.¹ Roger not only took the commendation of certain tenants, he also appropriated their lands, apparently by force. We have seen, that of all the Eastern abbeys apart from Bury and Ely, only the return of St. Benet of Holme includes detailed information on commendation. This can scarcely be accidental. It seems possible that the rights of St. Benet were already under attack in 1085-1086, and that the abbot furnished what information he could to stand as written evidence of these rights.

This reservation of soke and commendation to the two great monastic houses of East Anglia, may have been part of a deliberate attempt to establish the loyalty of the East Anglians indirectly to the West Saxon royal house. Political integration depends on loyalty,² and where this did not grow naturally, it might still be achieved by more forceful methods of cultivation.

1 F.M. Stenton, "St. Benet of Holme and the Norman Conquest", E.H.R., 1922, pp.225ff.

2 R.W. Southern, The Making of the Middle Ages, (London, 1953), pp.80-81

CHAPTER 8

The Sokemen and Other Social Classes.

Class distinction in early medieval Society had always been a problem for the historian, yet the evidence is sufficient to explain something of the characteristic rights and obligations of the persons referred to in the sources by such class names as thegn and geneat. The word "sokeman" is probably a "title of function",¹ denoting principally "one who renders suit".² The term is not recorded before the Conquest, but the services which were typical of sokemen correspond to those of other classes who can be traced in Anglo-Saxon times. The sokeman's obligations were similar to those of the English geneat, dreng, and radcnihte, and the Norman vavassor, yet they were not totally identical to such men. The sokemen's obligations derived distinctively from a grant of the royal farm and this gave them a special position in the organisation of an estate. Moreover the sokemen themselves were not a single homogeneous class. Some were independent landholders, responsible for their own tax burdens and free to dispose of their lands as they wished;-these men might have been described by Domesday as liberi homines or allodiarii, or even thegns, if they had lived outside Eastern England. Others however, were in the more subordinate position of many villani, in that they were bound to provide service to a local lord in return for his protection.

1 For other functional names for tenants see R. Hilton, A Medieval Society, (London, 1966), p.128

2 See above pp. 229-37.

The term "sokeman" first appears in the sources in a contemporary writ of 1071, by which the Conqueror granted Freckenham in Suffolk to Lanfranc, on eallan landan 7 maede 7 laese 7 peode 7 geneatas 7 socnman.¹ The text also has a Latin version which uses the words rusticis et sochemanis.² The writ, therefore, seems to distinguish the geneats from the sokemen, yet if one looks into the Anglo-Saxon sources for a class of men most like the sokemen, one would surely chose the geneats; their services, as described in the Rectitudines, are very reminiscent of those of the sokemen.³ The geneat paid rent, did carting, hedging, reaping and mowing, and he acted as a guard and messenger for his lord. The Tidenham survey also mentions the geneat, who must "labour on or off the estate, and ride and do carrying service, supply transport and drive herds and many other things".⁴ The population of Freckenham in 1086 is recorded as sixteen villani, eight bordarii, six servi, and, it is said Huic manerio additit comes Rad. iiii liberos homines quos invasit de viii ac. terrae.⁵

1 Regesta, I, no.47.

2 Cott. Dom. A x 9, H. Wharton, Anglia Sacra, (London, 1691) I, p.336

3 Rectitudines, c.2

4 Robertson, Charters, no. cix, pp.206-'7 = B.928. It may not be possible to use the Tidenham survey as independent, and therefore as supporting evidence. Liebermann thought that it may have been drawn up by the author of the Rectitudines, or at least by someone who was familiar with it. Liebermann, Gesetze, III, p.245.

5 D.B. II, f.381

It is possible therefore, that the geneatas/rusticis of the writ are merely general expressions for "peasantry", with no more specific significance than the term peode, which also occurs in the Anglo-Saxon version. Yet we might nonetheless suggest that a real distinction between the geneat and the sokeman was intended. There are similarities in the services, of the sokemen and the geneats, but according to the Rectitudines, "the geneat's right is various according to that which is laid down on the estate",¹ his service, therefore, derives from the custom of the manor, whereas the sokeman owed services which had originated in the royal farm and were thus regulated by public, not local custom. This was to be of great significance later for it gave the sokemen the right to defend themselves with the help of royal writs, against encroachments by their lords.² The term geneat became identified with villanus: the Quadripartitus version of the Rectitudines was made in the early twelfth century, and translates geneatrihtis as villani rectum est.³

1 Geneatriht is mistlic be dam de on lande staent Rectitudines, 2, Liebermann, Gesetze, I, p.445

2 See below pp. 330-47

3 Liebermann, op.cit., p.445. Not all of the original text was translated however, and Maitland commented that the author of the Latin version was "unable to understand many parts of the document that he was translating", - D.B.B. pp.385-'6. Lennard took a more lenient view, and regarded the author's apparent inability to translate certain words, such as scorp and gebur, as a mark of caution, - R.V. Lennard, op.cit. p.365, n .2. Liebermann described the Latin as im ganzen sorgsam und treu gefertigt Liebermann, Gesetze, III, p.310, but the term sokeman remained current, and separate from villanus.

Another group with whom one might identify the sokemen are the "radmen", or radcnihts who are recorded in Domesday in Shropshire, Herefordshire, Worcestershire, Hampshire, Gloucestershire, Cheshire, Oxfordshire, Berkshire, and the land inter ripam et mersam. They do not constitute a high proportion of the Domesday population of any of these counties, but the greatest concentrations are in Gloucestershire, Worcestershire, Herefordshire, and Shropshire.¹

Gloucestershire	-	133	Berkshire	-	1
Herefordshire	-	68	Hampshire	-	5
Shropshire	-	168	Cheshire	-	119
Worcestershire	-	36	Oxfordshire	-	5

inter ripam et mersam - 9

The radcnihts are sometimes described as liberi homines. At Berkeley in Gloucester there were nineteen liberi homines Radchenistres habentes xxxviii carucas cum suis hominibus. It is said of Deerhurst, De terra huius manerii tenebant radchenistres, id est liber homines T.R.E., qui tamen omnes ad opus domini arabant et herciabant et falcabant et metebant.²

The entry for Deerhurst also shows that the services ascribed to the radcnihts are agricultural. This can be seen again at Tewkesbury there were nine radchenistres and it is said Hi rachenistres arabant et herciabant ad curiam domini.³ It is

1 The figures are taken from The Domesday Geography of Midland England, ed. H.C. Darby, and I.B. Terrett (Cambridge, 1954), The Domesday Geography of South-East England, ed. H.C. Darby and E.M.J. Cambell, (Cambridge, 1962), The Domesday Geography of Northern England, ed. H.C. Darby, and I.S. Maxwell, (Cambridge, 1962)

2 D.B. I, f.166

3 Ibid., f.163

not recorded how frequently they must labour, but since they seem to have been liberi homines, it is likely to have been boon work only. This is certainly the case for the eight radcnihts who are recorded on the Bishop of Hereford's estate at Powick in Worcestershire: they worked only one day a year in the demesne fields, although other undefined service was also required.¹ Two radcnihts at Clun in Shropshire paid what may be a cornage of two animals de censu.²

Military service is not ascribed to radcnihts in Domesday Book, and this does not seem to have been part of their tenure. The term radcniht suggests a mounted servant, and as we have seen, it is doubtful if the English fought on horseback, nor should military connotations be given to the word cniht, and Domesday describes men, evidently of the same condition as "radmen".³ Mounted service which was not military was due from many tenants in other parts of the country. There is extant a memorandum from bishop Oswald to Edgar in c.964, concerning the services required of the Worcester lessees.⁴ The tenants who are the subject of the memorandum are described as ministri or fideles in the charters,⁵ but a certain Aethelwold, cniht, was granted an estate at Wolverton, and two manors were granted to Osulf, who

1 servitium quod eis jubebatur faciebant. Ibid., f.173

2 Ibid., f.258

3 e.g. Ledbury - f.182; Harfield - f.180; Blockley - f.173b.

4 B.1136=S.1368. The ms. is B.M. Cotton Tib. A xiii, fos. 135-36^v and dates from the latter half of the eleventh century. See references cited under S.1368

5 Minister - S.1356, 1359, 1360, Fidelis S.1335, 1331, 1330
1325

is also referred to as a cniht.¹ According to the memorandum they are required to fulfil the lex equitandi: they all owe the primary obligations of military service, and bridge- and wall-work, but these services do not appear to be part of the lex equitandi. The memorandum lays down that Ut omnis equitandi lex ab eis impleatur quae ad equites pertinet et ut pleniter persolvant omnia quae ad jus ipsius aecclesiae juste competunt, scilicet... and then are listed the church taxes paid by liberi homines and a general obligation to fulfil the needs of the bishop:- they must lend him their horses or they must ride out themselves, they must build bridges and burn lime for the church, and they must erect the hunting hedge and lend their hunting spears.

Scholars have disputed if the lex equitandi and the obligations of the radcniht included military service. Stenton thought that military service was not involved, it was "the duty of escorting a lord from place to place".² Mr. Hollister, however, believes that there was no specific reference to fighting except for the trinoda necessitas because it was customary and did not require explicit statement.³ Lennard was more cautious and remarked that "the description of certain people as riding men indicates the nature of the services they owed their lord, but does not tell us how they were mainly occupied".⁴

1 Robertson, Charters, no.LV = S.1332; B.1233 = S.1326

2 F.M. Stenton, English Feudalism, pp.124-'5

3 C.W. Hollister, Anglo-Saxon Military Institutions, (Oxford, 1962), p.101

4 R. Lennard, Rural England, p.276, n .1

Vinogradoff's more flexible view is perhaps the most likely. He remarked that the tenure of the Worcester lessees "was primarily meant to support officers, bailiffs and messengers who had to keep up the intercourse between the scattered parts of a great lord's possessions. But it included personal attendance on horseback and through the necessary keeping up of horses and men armed for travelling in that unquiet period it presented the best formation for the discharge of the military duties incumbent on the lord's estate".¹

General riding duties to provide transport, messengers and escorts, do seem to have been the primary motive for the tenure of the radcniht and the Worcester lessees, but it would be convenient to make use of such men who could ride to battle when the need arose.

The term radcniht appears later in the Instituta Cnuti. The author translated parts of the laws of Alfred. Chapter 30 of Alfred's code stipulates that a "band of marauders" must pay a fine if they kill a syxhynde mon, and the writer of the Instituta rendered the passage as:- Si autem talis occiditur qualem supra nominavimus radcniht et quidam Angli vocant sexhendeman. Chapter 39 of Alfred is concerned with fighting in a man's house and the Instituta has:- Si autem hoc fit in domo hominis quem Angli nominant radcniht, alii vero sexhendeman.²

The 600s. man does not appear in the West Saxon laws after the

1 P. Vinogradoff, English Society in the Eleventh Century, p.71

2 Liebermann, Gesetz, I, pp.65 and 73. The only other translation of Alfred is to be found in Quadripartitus, and this gives the plainly literal homo sixhindus.

time of Alfred, and Alfred's code does not itself give any clue as to the identity of the sixhynd mon. However, he does appear in Ine's code and this suggests that the 600s class was of Celtic origin. It describes the "Welshmen" of Mercia as divided into three ranks:- a Wilisc who has only one hide had a wergild of 120s, a man with a wergild of 200s is described as a cyninges horswealh se de him maege ge-aerendian,¹ and a Wealh who had five hides was a syxhynde mon.² The writer of the Instituta does not seem to have translated the laws of Ine, or at least no translation apart from Quadripartitus has survived, but if he knew the text, or had some other knowledge of Celtic traditions in Mercia,³ he may have associated the most prosperous Welshman with the radcniht. The five-hide Welshman is not said to do riding-service like his lower countryman, but it is possible that it was implicit, and that service among the Celts was like that of those English thegns who had prospered and "served the king and rose in his household band on his missions" and was also served himself by another thegn.⁴

The radcnihts did not become extinct after the Conquest, and references to them can be found in later times.⁵ Their tenure seems to have caused problems for the lawyers. Bracton describes the radknight as holding in serjeanty, and

1 "The Welsh horseman who is in the king's service and can ride on his errands".

2 Ine, cc.32; 33; 24, ii.

3 For his general reliability and access to documents which have not come down to us see P. and M. I, p.101.

4 Gebyncdo, c.3. E.H.D. I, p.432

5 See R.H. Hilton, A Medieval Society, pp.129-130

he would not allow that it was a military tenure. In the De legibus,¹ it is stated that the radknight holds "by the service of riding (per servitium equitandi) with his lord or lady", but, since this was not done "for the king's host and the defence of the realm but will remain to the chief lords" it did not owe wardship and marriage, but there must have been enough resemblance to a military tenure to cause some problems of classification to the justices of the time. Bracton recorded a case in his own Note Book in which the abbess of Barking proved wardship and marriage as due from the heir of a man who held his tenementum per servitium equitandi cum ea de manerio in manerium.² One judge at least allowed her claim but Bracton names a colleague who did not agree.

"Dreng" may be an alternative name used in Lancashire and the North-West for tenants of the same status as radmen. The services of the drengs are set out in the Durham Boldon Book, a late twelfth century extent which describes the tenancies of many different classes of men in vills belonging to the bishopric.³ They do boon-work, pay rents and cornage - a tribute for pasture rights. Like radmen they needed horses to acquit their obligations for they were required to help at the bishop's great hunt, to do carting services and carry messages. The dreng of Sheraton, for example, kept a horse and a dog, when he went on the hunt he took a hunting-dog, some rope and two men. He also owed suit of court and went on errands when required.⁴ Drengs are recorded in Domesday

1 Bracton de Legibus et Consuetudinibus Angliae, ed. S.E. Thorne, (1970), Vol. II, pp.113-'4 231, hereinafter referred to as Bracton.

2 Note Book, no.758, cf. C.R.R. xv, nos. 188 and 604

3 See V.C.H. Durham, Vol.I, (London, 1905), pp.286 ff.

4 Ibid. p.337

Lancashire where they are apparently described as liberi homines.¹ They were evidently not villani for their services and the accounts recording them were kept separate from those of other tenants in later times.² Drengage seems to be a ministerial form of tenure, very like that of the radmen, indeed it is likely that "radman" and dreng were simply regional terms for men of identical condition.

The class in English society with whom the sokemen had the closest affinity however, seems to have been the thegns, for both do royal services, and as we have seen, they seem to have acted as auxiliaries to the thegns.³ This perhaps explains a reference in a writ of Cnut in which he addresses certain churchmen and ealle mine þegnas twelfynde 7 twihynde to confirm freedoms granted to Christ Church, Canterbury.⁴

1 D.B. I, f.269b

2 V.C.H., Durham, I, p.286

3 See above pp. 243-5, 249-52.

4 Writs, no.23

There is no evidence as to what the wergild of a sokeman might have been, but since they have so many affinities to the thegn, while apparently not themselves being 1,200s thegns, it may be that they are the 200s "thegns" referred to in the document.

There is a further class of men who resemble the sokemen, that is the Norman vavassor. The term "vavassor" was current in most of Western Europe in the eleventh century as a general word for a vassal. In France, the vavassor was a man of honourable status and, although of lesser rank than the baron, he could be a considerable landowner.¹ In Normandy, however, the word denoted men of a somewhat different kind.² The Bayeux Inquest shows that the holding of the Norman vavassor was less than a knight's fee, and that it was part of a vavassorie - a military unit on which service was levied and apportioned among the vavassors, so that each contributed according to the size of his holding. The miles who held a fief rendered service d'host - military service for forty days with the king; the obligation of the vavassor was different however, he might still be legitimately summoned

1 P. Guilhaumez, Essai sur l'origine de la noblesse en France (Paris, 1902), pp.150-'4, 167-'9.

2 For what follows see C.W. Hollister, The Military Organisation of Norman England, (Oxford, 1965), p.79

to fight, but they were only called up in the event of an arrière ban, a castle guard, or its equivalent in money, seems to have been their more normal military duty.

There was more involved in the Norman vavassors' tenure than military service, however, M. Naval has shown they owed service as escorts and messengers, rendered suit to the court of the seigneurie where they judged offenders and helped with judicial duels, and that they paid money renders which were heavier than those of the villeins on the estate. Their tenure seems to have deep roots, and M. Naval maintains that the great majority of the vavassories date from Carolingian times and are, therefore, an earlier form of tenure than the true feudalism of the ducal period.¹ The term "vavassor" is rare in Domesday and it seems that we must equate it with liber homo, for a number of holdings are recorded in Suffolk under the heading terra vavassorum and the tenants who held these lands are described as liberi homines.²

1 H. Naval, "Recherches sur les institutions féodales en Normandie: Région de Caen", Librairie de la Société des Antiquaires de Normandie. (Caen, 1951), pp.78-91

2 D.B. II, ff.446-'7

A central problem in the study of sokemen has been the distinction which is made in many entries in Domesday Book between sokemen and liberi homines. Maitland put forward several criteria which might account for the difference:- the power to alienate land, jurisdictional obligations vis-a-vis the state or a private lord, purely personal rank measure according to a man's wergild, a mere difference of nomenclature according to area. He rejected them all however, because he could find evidence contradicting each one.¹ He concluded that "We may doubt whether the line between the sokemen and the 'free men' is drawn in accordance with any one principle. Not only is freedom a matter of degree, but freedom is measure along several different scales".² Some historians have tended to evade the problem by doubting the ability of contemporaries, both English and Norman, to define and distinguish the terms which they applied to the peasantry. Stenton wrote of the "deceptively simple" character of the Domesday terminology:- "the vagueness that baffles a modern inquirer", he wrote, "is itself a significant fact, for it reflects a society on which historical forces had been playing for many generations to the blurring of class distinctions and the confusion of personal relationships". Amid all this, the Normans would obviously flounder: - they "had no clear cut scheme of social relationships which could be applied to the peasantry of a conquered country".³ Mr. Welldon-Finn has

1 D.B.B. pp.136-'8

2 Ibid., pp.137-'8

3 F.M. Stenton, A.S.E. pp.469-472. See Maitland's comment that "Simplicity is the outcome of technical subtlety... As we go backwards the familiar outlines become blurred, the ideas become fluid, and instead of the simple we find the indefinite". D.B.B. p.31

said plainly: "It is doubtful if the suppliers of information, the Hundred juries, or the clerks, could have stated what to them differentiated freemen from sokemen. To them the terms must have implied very much the same thing".¹

The table showing the numbers of liberi homines and sokemen recorded in Domesday Book, in each county, does not, at first sight, encourage the view that there can be any real difference between them.²

	<u>liberi homines</u>	<u>Sokemen</u>	
Circuit I {	Sussex	0	0
	Surrey	0	<u>T.R.E.</u> only
	Hampshire	0	0
	Berkshire	0	0
	Kent	2	44

Circuit II i.e. Wiltshire, Dorset, Somerset, Devon and Cornwall, none of the tenants are described as liberi homines or sokemen.

- 1 R. Welldon-Finn, Domesday Studies: the Eastern Counties, p.123.
- 2 The population figures are taken from The Domesday Geography of Midland England, ed. H.C. Darby and I.B. Terret, (Cambridge, 1954); The Domesday Geography of South-East England, ed. H.C. Darby, and E.M.J. Campbell, (Cambridge, 1962); The Domesday Geography of Northern England, ed. H.C. Darby and I.S. Maxwell, (Cambridge 1962); The Domesday Geography of Eastern England ed. H.C. Darby, (Cambridge, 1952); The Domesday Geography of South-West England, ed. H.C. Darby, and R. Welldon-Finn, (Cambridge, 1967). For the circuits see C. Stephenson, "Notes on the Composition and Interpretation of Domesday Book", Speculum, XXII, 1947, pp.1-15

		<u>Liberi Homines</u>	<u>Sokemen</u>
Circuit III	Middlesex	0	<u>T.R.E.</u> only
	Hertfordshire	8	43
	Buckinghamshire	0	20
	Cambridgeshire	0	176
	Bedfordshire	0	90
Circuit IV	Oxfordshire	26	0
	Northamptonshire	3	830
	Leicestershire	6	1942
	Warwickshire	16	0
Circuit V	Gloucestershire	20	0
	Worcestershire	8	0
	Herefordshire	17	0
	Staffordshire	11	0
	Shropshire	23	0
	Cheshire	0	0
Circuit VI	Huntingdonshire	8 <u>homines</u>	52
	Derbyshire	0	124
	Nottinghamshire	0	1704
	Rutland	0	112
	Yorkshire	2	844
	Lincolnshire	27 <u>homines</u>	10,851
Circuit VII	Essex	425	600
	Norfolk	5544	5651
	Suffolk	8144	1003

The table suggests that the distinction between liber homo and socemannus was merely terminological. In circuit I the smaller, independent landowners are referred to by their personal names or called allodiarii; in circuit II thegns predominate; it would seem that socemannus was adopted in circuits III and VI, and in two counties, -Northamptonshire and Leicestershire, in circuit IV; whereas liber homo was preferred in circuit V. Thus one might argue that liber homo and socemannus were interchangeable, and that the Domesday commissioners chose whichever they preferred and used it throughout their own circuit. One might go further, and suggest that the same occurred for the descriptions of the individual shires themselves. Half the population of Lincolnshire are referred to as socemanni, there are nearly two thousand sokemen in Nottinghamshire, nearly two hundred in Cambridgeshire, and in 1066 there had been about nine hundred sokemen in Cambridgeshire, but not one tenant in these shires is described as a liber homo. In the North Midland and Northern shires of Northamptonshire, Leicestershire, Derbyshire, Nottinghamshire and Yorkshire, there are over five thousand sokemen, but only eleven tenants called liberi homines.

The reliability and significance of the terminology used in the survey must depend to a large degree on the knowledge of the men who conducted it. It is uncertain how far English officials themselves contributed to the work. The numerous occasions on which English courts are said to have given evidence on a point of law suggests that

they were extensively employed.¹ The majority of class terms in Domesday Book are unknown however before the Conquest. Villanus and bordarius are Norman-Latin words;² pre-Conquest sources do not refer to socemanni; and conversely, we do not read of ceorls or geneats in Domesday. There are exceptions: thegn is obviously English, and there are drengs and radcnihts in the North and West. It seems, however, that the Normans must have simplified. Villanus was a conveniently neutral term to apply to the lower echelons of English society, and it obscures whatever shades of dependency may have already existed by the end of the eleventh century.

There is other evidence to suggest that the terms liber homo and sokeman were used interchangeably. A comparison of the Feudal Book of Abbot Baldwin of Bury St. Edmund's with the Domesday accounts of the same estates reveals many cases in which the latter refers to liberi homines where the former has

- 1 Mr. Welldon-Finn has suggested that one of the scribes used in the compilation of Exon Domesday came from Bath Abbey - R. Welldon-Finn, The Liber Exoniensis, (London, 1964) p.27. Dr. Fellowes Jensen has studied the Domesday forms of the Lincolnshire place-names and has found that they are less accurate than those of the Lindsey Survey, and she has suggested that the Domesday scribes were unfamiliar with Old English and Old Scandinavian. G. Fellowes Jensen, "The scribe of the Lindsey Survey", Namn och Bygd, 1969. cf. P.H. Sawyer, "The place-names of the Domesday Manuscripts", Bulletin of the John Ryland's Library, Vol.38, p.483. Place-names, however, must have been peculiarly difficult to master.
- 2 O.E.D. s.v. villein, P. and M. I, pp.412-'3 and p.413, n . 4 P. Vinogradoff, The Growth of the Manor, (2nd ed. 1911), p.338

sokemen.¹ According to Domesday there are seventy liberi homines at Great Barton, the Feudal Book has seventy sokemen;² Domesday has ninety liberi homines at Rougham, the Feudal Book has ninety sokemen.³ The Feudal Book was probably compiled just before Domesday,⁴ and it would be impossible to prove that Bury had changed its mind about the condition of its tenants, and given a different description of them for the Domesday enquiry, while leaving other details unchanged.

Nonetheless, a distinction between liberi homines and sokemen is made in numerous entries in Little Domesday. The preamble to the Ely Inquest shows that at least one lordship was instructed to classify its tenantry into five groups, - villani, cothcethli, servi, liberi homines and sochemani, and thus to distinguish liberi homines from sokemen. This we duly find in East Anglia. There were twenty eight sokemen and fourteen liberi homines at Bracton in Norfolk.⁵ There had been one liber homo and one sokeman at Hadleigh in Suffolk T.R.E., and there were three liberi homines and three sokemen there T.R.W.⁶ A liber homo and a sokeman had held at Bendfield in Essex T.R.E.⁷ There were two sokemen and

1 See Feudal Documents from the Abbey of Bury St. Edmund's, ed. D.C. Douglas, (Records of Social and Economic History, British Academy, VIII, 1932), hereinafter referred to as F.D.

2 D.B. II, f.361b; F.D. p.5

3 D.B. II, f.362, F.D. p.6. See also Pakenham, Bradfield, Fornham St. Martin, West Stow, Stow, Uggeshall, D.B. II ff.362, 364, 365, 371b. F.D. pp.5-7, 11

4 See S. Harvey, "Domesday Book and its predecessors", E.H.R. Vol.86, 1971, p.761.

5 D.B. II, f.156b

6 Ibid., f.372b

7 Ibid. ff.65 - 65b

five liberi homines at Hales in Norfolk.¹ Only two other examples have been noticed from the rest of the country. Both occur in Leicestershire: the population of Hallaton is recorded as two servi, nineteen villani, one sokeman, one liber homo and three bordarii.² The lordship of Gumley was divided: four carucates were held by Geoffrey of Robert and in this land there were three sokemen and two servi, while a further nine carucates were held by Robert of Countess Judith, and the population here was six villani, five bordarii, one priest and one liber homo. As these are the only other cases which have been noticed outside Little Domesday in which sokemen are distinguished from liberi homines, one might argue therefore, that a distinction did exist, and it was noted in East Anglia, but not elsewhere. This may have been because it was of local, not national importance: both sokemen and freemen rendered the same services to the state or to their lord although the nature of the bond between themselves and their lord may have been different. Or it may be that the distinction between them was too complicated, or that it was drawn according to local criteria. For all these reasons it could have been ^{irrelevant to} the purposes of a national survey.

Mr. Welldon-Finn has said that "since the freeman was in someone's soke, the clerks might call him a freeman in one passage and a sokeman in another".³ There is some evidence

1 Ibid., ff.212-212b

2 Ibid., f.235b

3 R. Welldon-Finn, Domesday Studies; the Eastern Counties p.126.

to support this. There were sixteen liberi homines at Carlton in Norfolk and nine are described as "Stigand's sokemen", but this is exceptional.¹ We have already argued that more than suit of court was needed to make a sokeman.² Moreover, if the difference between the liber homo and the sokeman derived from the viewpoint of the lord, then one would expect to find all the tenants in his breve described as sokemen if they rendered soke to him, while those who rendered soke elsewhere would be liberi homines. But we do not find this. Such efficient institutions as Bury and Ely had many tenants who were called liberi homines yet owed soke while they resided within their hundreds. There was a liber homo at Hemingstone in Suffolk who was a tenant of the king and he owed soke to the king, but he is still called liber homo not a sokeman.³ There are also so-called "sokemen" who do not render soke to their landlords, and, therefore, from the point of view of the lord, they might be liberi homines. There were sixteen sokemen at Coltishall in Norfolk on a manor belonging to William de Warenne, their soke belongs to the king and earl but they do not appear in William's breve as liberi homines.⁴

1 viii erant sochemani Stigandi - D.B. II, f.121 This is cited by Mr. Welldon-Finn but it is the only example which has been noticed.

2 See above pp. 238-40

3 D.B. II, f.282. See other similar examples at Saham, Norfolk - f.110b; Felthorpe f.114b; Runham, f.116.

4 Ibid., f.158 see also Ringstead, f.173b. Massingham, f.222 But it could be argued that a sokeman is a suitor wherever he happens to render suit, and thus his lord might call him a sokeman even though the suit was not rendered to the lord.

Our survey of the problem has not produced a certain solution, but it has revealed some additional evidence. We will try to show that all liberi homines could be sokemen, but the reverse does not necessarily follow; not all sokemen were liberi homines; in the same way, all university professors are teachers, but not all teachers are university professors. Thus, some sokemen were liberi homines and for them the two names are interchangeable; but other sokemen were not liberi homines, and for them the two names must be distinguished. We will refer to the sokemen who were of the same status as liberi homines as "free" sokemen, the others we will call "dependent sokemen". Some "dependent" sokemen had once been liberi homines themselves, but they had suffered a fall in status at the time of the Conquest when they were "added to manors", that is, they lost the right to sell their land freely, and thereby separating it from the manorial lordship. It must be admitted that some liberi homines could not sell their land and depart, but for many this was a result of a leasehold; equally some sokemen could sell, but some "sokemen" were liberi homines. It may be possible to detect a difference between those sokemen who were liberi homines and others who were not, by the manner in which the Domesday information concerning them is recorded. The "free" sokemen are described with their lands separately assessed, the "dependent" sokemen are linked with villeins and bordars and said to have ploughs, - the assessment of their land, therefore, was included in the total assessment of the manor. Like Maitland, we are beset by exceptions, but this claims only to throw some new light on the problem, by no means to solve it.

A comparison of the descriptions of the Ely estates according to Domesday and those in the Inquisitio Eliensis reveals some significant evidence.¹ Mr. Welldon-Finn has shown that the ultimate source of the information included in the Inquisitio was probably not the same documents from which the Domesday officials derived their material; it may have been based on copies of these documents, but in a revised and re-ordered form. Mr. Welldon-Finn supports Professor Galbraith's belief that the Inquisitio "in the form in which we know it, is a return demanded by Ranulf Flambard in 1093, when Abbot Symeon died and the possessions of the abbey were taken into the king's hands".²

There are two examples in which Domesday describes tenants as liberi homines who have been "added to manors", and the scribe of the Inquisitio seems to have wrestled with his source in an attempt to describe them as "sokemen". Thus the Domesday entry for Winston reads: Et 1 liber homo additus Alsi huic manerio xxx acras pro manerio in soca et commendatione abbatis;³ the Inquisitio referring to the same tenant, as: Et unus liber homo est additus huic manerio de xxx ac. pro manerio 1; sochem 7 commendatione S. Aethe.⁴ The end of the sentence should have been soca et commendatione - "with soke and commendation", but the word sochem is an abbreviation for

1 For a critique of Hamilton's edition see R. Welldon-Finn, op.cit., p.81, and "The Inquisitio Eliensis Re-considered", E.H.R., Vol 75, 1960, pp.385-409

2 V.H. Galbraith, The Making of Domesday Book, (Oxford, 1961) p.141, R. Welldon-Finn, op.cit. p.82

3 in soca et commdtione abbis D.B. II, f.383b.

4 I.C.C. p.159

sochemannus and this suggests that the scribe was trying to change it to sochemannus 7 commendatione - "one sokeman and with commendation", but no sokemen are recorded at Winston in Domesday. The case of Barking is similar: the Domesday account reads: iiii liberi homines de vi acras;..Isti additi sunt huic manerio T.R.E. Wittti et valet ii sol. Rex et comes soca. Unum 7 dimidium ex his habuit harduinus.¹ The Inquisitio version has: Isti additi sunt huic manerio T.R.W. Wittti et valet ii solidi. Rex et comes sochemannum unum habent 7 dimidia, ex his habuit Harduinus quando se forisfecit.² Here again the scribe of the Inquisitio changed soca into socemannus,³ in doing so he made his own account far less intelligible than that of Domesday. The cases are instructive, however, for the scribe was apparently trying to record a change in status of the liber homo; for him, it seems, a liber homo who was "added to a manor", became a "sokeman".

That some sokemen had been freemen who had been "added to manors" tends to be confirmed by the Freckenham writ to which we have already referred.⁴ According to the writ Freckenham's population included peode 7 geneatas 7 socnmen;⁵ its population according to Domesday Book consisted of sixteen villani, eight bordarii, six servi, and it is recorded

1 D.B. II, f.383

2 I.C.C. p.157

3 Sokemen are not recorded in either vill in Domesday

4 See above p. 289

5 Regesta, Vol. I, no.47

Huic manerio additit comes Rad. iiii liberos homines quos
invasit de viii ac. terrae.¹ The interval of fifteen years
between the writ and the Domesday Survey is wide, but in view
of the other evidence, it seems altogether likely that we
may equate the sokemen with the freemen who had been "added
to the manor" of Freckenham. Some liberi homines are said
to belong to manors, - four liberi homines are said to belong
to the manor of Wereham.² However, the evidence of other
cases suggests that this may have been a recent development;
and there is also the implication that their annexation to
the manor was not legal. Essex provides many examples of
this. Five liberi homines had held land in Great Tey, "which
liberi homines did not belong to this manor and the Count
(i.e. Eustace) now has them because his predecessor seized
them".³ Ingelric is said to have added a liber homo to the
manor of Claret T.R.W.⁴ A liber homo had held forty acres
at Stanford but Ingelric took him and added him to the estate.⁵
The entry for Belchamp is again revealing:- five sokemen belong
to the manor of Belchamp, but two of them had been seized
by Ingelric T.R.W. "and previously they were liberi homines."⁶
Equally crucial is the account for Fobbing. It is recorded
that Ingelric had added twenty-two liberi homines to the manor;
three lines later the valuation is given and we are told, the

1 D.B. II, f.381

2 Ibid., f.230b

3 Ibid., f.29b, v liberi homines non erant de isto manerio

4 Ibid., f.28b

5 Ibid., f.30b

6 Ibid., f.28b huic manerio jacent v sochemani qui ii occupavit
Ingelricus T.R.W. qui tunc erant liberi homines

terra sochemanorum is worth £12.¹ This might be cited to support the view that liber homo and "sokeman" were interchangeable terms, but it is surely to be understood as a recognition of a change in status: liberi homines had been added to the manor, and thereby they became sokemen, holding the "land of sokemen".

Little Domesday, therefore, does distinguish liberi homines from sokemen, and this was one of the terms of reference set down in the preamble to the Inquisitio Eliensis. Great Domesday, however, does not make any distinction,² and it is possible that this was not required outside East Anglia. Professor Galbraith has suggested that "Inasmuch as the I.E. contains the findings of the Inquest for the six counties in which the church of Ely held lands and these counties fell within three different circuits, there can be no reasonable doubt that we have here the official instructions both for the scope of the Inquest and the method of its procedure."³ But it is doubtful if it could have national applicability. The preamble does not refer to either boroughs or ploughlands, omissions which are reflected in Little Domesday, for ploughlands are not recorded, whereas they normally appear in counties of Great Domesday. Judging from the material concerning the boroughs, in East Anglia, it seems that no useful instructions were sent regarding their treatment. The

1 Ibid., f.26

2 See above pp. 301-3

3 V.H. Galbraith, The Making of Domesday Book, (Oxford, 1961) pp. 60-61

description of Colchester does not come at the beginning of the entries for Essex but at the end; Norwich, Yarmouth and Thetford come after the royal demesne manors; the description of Ipswich also occurs after the Terra Regis, but it is not a single coherent account and references to it and its half-hundred appear on twelve folios.¹ The Ely preamble may, therefore, have been a document sent specifically to Ely, rather like the letter to Lanfranc concerning his demesne lands.² Thus one might argue that even if there was a real distinction between liberi homines and sokemen it was ignored. This would suggest either that it was of limited importance, or that it was too complicated to be recordable with any accuracy: and the end result would be that the commissioners were free to adopt either term. But a difference is discernible even in the West: it seems likely that the sokemen in Circuit III, - Middlesex, Hertfordshire, Buckinghamshire, Cambridgeshire and Bedfordshire, - might have been called liberi homines. The evidence of Circuits IV and VI, - Oxfordshire, Northamptonshire, Leicestershire and Warwickshire; Huntingdonshire, Derbyshire, Nottinghamshire, Rutland, Yorkshire and Lincolnshire, shows that not all the so-called "sokemen" recorded there could also have been described as liberi homines. The criterion which distinguishes them is that which we have already considered in East Anglia:

1 R. Welldon-Finn, op.cit., pp.54-55

2 F. Barlow, "Domesday Book: a letter to Lanfranc", E.H.R. Vol. 78, 1963, pp.284-'9

the dependent sokemen "belonged", or had been "added to" manors.

Let us first consider the "free sokemen" of Circuit III. They are distinguishable in three ways: firstly, they are cited as pre-Conquest landholders; secondly, they are almost always said to hold hidated, i.e. assessed, land; and thirdly, they are normally free to alienate their land. Thus a typical entry may be quoted from Cambridgeshire :-

"At Fen Drayton five sokemen hold four-and-a-half hides from Count Alan. There is land for two ploughs, which are there, with one villein, and five bordars, and three cottars... The same sokemen held under Edith and they could sell to whom they would."¹

an example from Buckinghamshire reads :-

"Aylesbury, a demesne manor of the king, it is and was assessed at sixteen hides T.R.E..... In this manor there was and is one sokeman holding one virgate of land which he could assign and sell to whoever he wished."²

and an example from Bedfordshire reads :-

"Two sokemen hold one hide and one virgate in Carlton... The same men held this land T.R.E. and they could assign and sell it."³

The majority of entries concerning sokemen take this form in Circuit III. There are, however, exceptions to two of the

1 D.B. I, 195

2 Ibid., f.143

3 Ibid., f.209b

three principles suggested above. Sokemen are cited as T.R.E. landholders in all the shires, but there are and were sokemen in all of them who could not sell their land. Two sokemen had held five hides at Fulham T.R.E., they were men of the bishop of London and they could not sell the land without permission.¹ The bishop of Chester holds Bygrave in Hertfordshire and there are two sokemen there holding three virgates, they had been men of Archbishop Stigand and they could not sell without his leave.² Three sokemen had held four hides and one virgate at Tempsford in Bedfordshire, "one of these could not assign his land without his lord's leave, the other two could do what they wished."³ There had been three sokemen at Iver in Buckinghamshire and of these, one, "a man of Tochi held three virgates and he could not sell without his permission, another, a man of Queen Edith... and the third, a man of Seulf... could assign or sell their land^{to} whom they wished."⁴ In Cambridgeshire, two sokemen had held three hides and three virgates at Quy, of the abbot of Ely, and they could not depart without his leave.⁵ But these cases are relatively rare. The example quoted from Buckinghamshire is the only case noticed where a sokeman was unable to sell his land, although many tenants who are given their personal names also could not do so. Only four sokemen in Hertfordshire could not sell, - one in Titeberst,⁶

1 Ibid., f.127b

2 Ibid., f.135

3 Ibid., f.212

4 Ibid., f.149

5 Ibid., f.190b

6 Ibid., f.135b

two at Pirton,¹ and one of three other sokemen at Titeberst who was a man of St. Albans.² In Bedfordshire only two other cases have been noticed - at Dean six sokemen held four hides T.R.E. and T.R.W. they were men of Borret. They were of the king's soke for three-and-a-half hides which they could put and assign under any lord, without Borret's leave, half-a-hide however they could not assign or sell without his leave;³ and at Stanford four sokemen had held one hide half-a-virgate, three of the sokemen were free: the fourth had one hide which he could neither assign nor sell.⁴ There are far more examples in Cambridgeshire but almost all of them occur on the Ely lands. We suggest therefore that these sokemen who could not sell their land had voluntarily commended themselves to a lord on terms which restricted their right of sale, or they had become leaseholders on church estates. Their position is parallel to that of the freemen and freeholders discussed above and they were called sokemen rather than freemen because ever "the greatest men were in someone's soke or that of the hundred, and no man is outside the king's justice".⁵

In Hertfordshire however we meet another exception to the three principles suggested above. More commonly the sokemen are distinguished as landholders:- at Much Hadham "Osbern holds one hide... On the demesne are one-and-a-half ploughs. One villein has half-a-plough... this land two sokemen held, and

1 Ibid., f.138

2 Ibid., f.139b

3 Ibid., ff.209b-210

4 Ibid., f.212b

5 R. Welldon-Finn, op.cit., p.131

each had half-a-hide."¹ However, another entry links a sokeman with the villeins:- at Aldbury "eight villeins with one sokeman and one Frenchman have four ploughs.. a thegn held T.R.E."² This sokeman had apparently suffered a decline in status, for the only other two cases which link sokemen and villeins suggest that the former had been added to the manor. The entry for Tring opens in the stereotyped manner with the assessment, ploughlands and demesne, and the population is said to consist of "twenty-one villeins with six bordars and sixteen cottars and three sokemen who have nine ploughs amongst them", but later we are told something of the history of the estate. It had been held by Ingelric T.R.E. and two sokemen, men of Osulf, had held two hides and could sell their land, and another, a man of the abbot of Ramsey, had held five hides which he could not sell outside the church of Ramsey. Ingelric however had attached these sokemen to the manor, the case came before the hundred court, for the position of the last sokeman was somewhat doubtful since he could not sell, however the hundred swore that in whatever way he was unfree he certainly did not belong to the manor T.R.E. Unfortunately these three sokemen cannot be the selfsame sokemen who have the nine ploughs recorded at the beginning of the entry, for we are then told that these sokemen had been men of Ingelric himself, that they had held one hide and that they could sell their land.³ Surely, however, the first three sokemen had been illegally added to the manor, and this seems all the more likely since Ingelric had been

1 D.B., I, f.133b

2 Ibid., f.136b

3 Ibid., f.137

their lord.¹ The other case where sokemen and villeins are linked comes from the bishop of Chester's land at Bygrave where there was "a priest and two sokemen with ten villeins and nine bordars who have nine ploughs", Lemar, a man of Stigand had held this manor and the two sokemen who are there had held three virgates and they had not been able to alienate their land without his consent.² Nothing is said of the history of the estate, but it seems likely that the two sokemen who had held the three virgates were the same sokemen who were linked with the lower peasantry T.R.W., their fall in status deriving principally from their inability to alienate their land.

We must yet consider the position of the liber homo, for some liberi homines do not have the right to recede. Maitland remarked that the words "could not recede", "seem to say that the persons of whom they are used are tied to the soil: they cannot leave the land, the manor or the soke. Probably in some of these cases the bond between man and lord is a perpetual bond of homage and fealty and if the man breaks that bond by refusing due obedience or putting himself under another lord, he is guilty of a wrong. But of pursuing him and capturing him and reducing him to servitude there can be no talk. Many of these persons who 'cannot recede' are men of wealth and rank; of high rank that is recognised by law, they are king's thegns, or the thegns of the churches".³ We have tried to show that the

1 Some of his other 'invasions' have been described above p. 311.

2 D.B. I, f.135

3 D.B.B. p.75

commendation bond could be made perpetual: soke and commendation of men were reserved in the hundreds belonging to Ely and Bury. Others who could not give their land freely, probably held under lease. Many of the Worcester leases have survived. The Worcester return in Domesday begins: "If any portion (of the three hundred hides belonging to the church) was leased (prestitum) to any man, for service to be done for it to the bishop, he who held that land on lease could not retain for himself any customary due from it whatsoever except by permission of the bishop; nor could he retain the land beyond the completion of the term agreed on between them, or take himself anywhere with that land".¹ The majority of churches seem to have been leasing their estates in this way, and the difficulties which Worcester, Ely and Bury all had in re-claiming the land on the expiry of the lease were common everywhere. Thus, when the churches drew up their returns for the Domesday enquiry they often incorporated specific references to agreements made with their tenants. In the return of St. Mary's, Pershore, it is noted that Azor had held land in the manor of Pershore, and the account goes on, "the agreement was that after his death and that of his wife, the land was to revert to the church's demesne". Pershore had sold one hide of land at Wadborough to Godric, a royal thegn, for three lives (vita trium heredum) and it is recorded, "the third inheritor, namely Urse, who holds it now, has this land, and after his death it ought to revert to the church of St. Mary".²

1 D.B. I, f.172b

2 Thus "Urse" may be the sheriff. Both Ibid., f.175

There is a more graphic account in the return of William fitz Ansculf which tells how Wulfwine bought Shelley in Worcestershire from the bishop of Chester for three lives and when he was ill and had come to the end of his life, he called to him his son, Bishop Li, (sic) and his wife and many of his friends and said: "Listen, my friends, I desire that my wife hold this land which I bought from the church as long as she lives and after her death, let the church from which I received it, receive it again and let him who takes it from the church be excommunicate". The best men (meliores) of the whole shire were prepared to testify to this.¹ The vast majority of cases where men cannot give and sell their land are to be found in ecclesiastical estates. This is most striking in Cornwall where the only descriptions of pre-Conquest tenure seem to be in the terrae occupatae section. All are concerned with this right to recede and all but one involve manors of St. Petrock's, where it was claimed that Trevornack, Trenhale, Tolcarn, and Lancaffé could not be separated from the church. Glastonbury,² Malmesbury,³ St. Peter Winchester,⁴ Shaftesbury,⁵ Wilton,⁶ Romsey,⁷ St. Albans,⁸ St. Peter, Cerne,⁹ St. Remy, Rheims,¹⁰ and the Bishop of London¹¹ all had tenants who could not recede.

1 Ibid., f.177

2 Glastonbury:- Ibid., f.66b Hannington, Winterbourne, Grittleton, Kington, Langley, Eunestone, Monkton Deverill. tainlande at Little Langford, and terra tainorum at Damerham. All in Wiltshire. Also Pentridge, Dorset, Ibid., f.75b

3 Malmesbury:- Dauntsey, Ibid., f.66b. Little Somerford, Corston, Chetworth, Crudwell, Bremhill, Ibid., f.67. All Wiltshire.

4 St. Peter, Winchester:- Peusey, Ibid., f.67b, Collingbourne Ibid., f.67 Wiltshire

5 Shaftesbury:- Donhead, Dinton, Beechingstoke, Ibid., f.67b

6 Wilton:- Little Langford, and Burcombe, Ibid., f.68
N. Newton, Ibid., f.67b

7 Romsey:- Edington and Steeple Aston, Ibid., f.68

8 St. Albans:- Apsbury, Windrige, Titesberst. Ibid., f.135b
Aldenham f.136

9 St. Peter Cerne:- Cerne Abbas, Ibid., f.77b, Nettlecombe, Ibid., f.78

10 St. Remy:- Bourton, Ibid., f.252b

11 B. of London:- Stepney, Ibid., f.127b

But a man may commend himself and his land to a lord and as part of their agreement he may be obliged to seek his lord's consent before he sells the land. Such tenants would be leaseholders, it is not they themselves who are tied to the land, it is the land which is tied to the church. The great majority of liberi homines could "go" with their land, and could freely put it under the protection of a lord, sell it, or bequeath it to another generation. Those who could not were leaseholders, but they were liberi homines and there is nothing servile in the terms of their leasehold.

The right to recede is not referred to in connection with the villani in Domesday, but it is difficult to determine if they were already tied to the soil in the manner of true villeinage. Anglo-Saxon law had long placed restrictions on the movement of men from lord to lord,¹ and, in the Northumbrian Priests' Law, there is a reference to a faerbena, which might be literally translated as a "journey-petitioner".² He appears as the lowest of three persons who might have to be fined for heathen practices - at the top there is the king's thegn, then, the ordinary landowner - who is not however completely independent for there is a "lord of the estate" to whom half the fine is paid, and finally the faerbena about whom nothing is said except that he pays a fine of twelve orae and we are not told to whom this is paid. The term is unknown except in one other case, the Erfurt Glossary, where it means a "passenger" - "one who requests a passage", and

1 Alfred, c.37; II Edward, c.7

2 Northumbrian Priests' law, c.50. See E.H.D., I, p.437

Professor Whitelock suggests that it denotes "a freeman who is not a landowner... one that has to ask leave to go from his lord", or in the terminology of Domesday Book, one who "could not recede". The distinction is then being drawn between men with land at their own disposal and those who are merely tenants on the land of another".¹ This is not completely satisfactory, for, as we have seen, many of those who could not recede were men of rank holding leases. It harmonizes more closely with the sokemen of East Anglia, most of whom could not leave the land. However this may be, it seems that even at the beginning of the eleventh century (the code probably dates from the years 1020-1023), there was a class of men who could not freely leave the land.

Some sokemen seem less than liberi homines in the manner of their landholding, and this provides a second clue which helps distinguish free sokemen from those of lower condition. The independent member of society is responsible for his own tax burden, and thus the assessment of his land will be separately recorded; but others pay through their lord who acts as an intermediary between them and the state, and in such cases only the assessment of the manorial whole need be recorded, not the individual plots of such dependent peasantry.

The East Anglian commissioners expect that sokemen as well as freemen will hold land for the Ely preamble asks quantum ibi quisque liber homo vel sochomanus habuit vel habet. This

1 E.H.D. I, p.437. n.7. But cf. Liebermann, Gesetz, III p.224 who takes it in the opposite way, - "one who claims the right to go".

information is regularly given. There had been eighteen freemen with one-and-a-half carucates and three sokemen with one-and-a-half carucates at Bures in Suffolk T.R.E.¹ There are seven sokemen with one-and-a-half carucates at Risby,² and twenty-eight freemen with four carucates at Hawstead.³ Normally, however, both classes have much less than this. Consecutive entries taken at random from Suffolk show a holding of twenty acres at Petlaugh belonging to one freeman,⁴ a freeman on three acres at Ashfield, another on two acres at Thorpe, and another on two acres at Sharpstone.⁵ Sokemen's holdings were almost always given in acres. A sokeman at Menston had twenty acres,⁶ a sokeman at Wortham had fourteen acres,⁷ and three sokemen at Bures had only eight acres.⁸ The preamble only asked for the numbers of villeins, bordars and servi, however, and this we also find. Thus a typical entry runs: "Brockley: Tebald and Robert hold of the abbot three freemen with two carucates. Three villeins, six bordars and six servi. Then as now among them four ploughs:" or Menston:- "Garin has of the abbot one sokeman with twenty acres of land, one bordar. Then, as now, half-a-plough",⁹ or Great Tey in Essex - "held by one freeman T.R.E. on three-and-a-half hides. Then six villeins, now two. Then sixteen

1 Ibid., f.392

2 Ibid., f.356b

3 Ibid., f.358

4 Named Turchil who also had eight acres at Westerfield

Ibid., f.383b

5 Ibid., f.384

6 Ibid., f.358

7 Ibid., f.361

8 Ibid., f.360

9 Suffolk, Ibid., f.358

bordars, now thirty-five. Then nine servi, now ten. Then four ploughs on the demesne, now two. Then six ploughs belonging to the men, now four".¹ The carucates and acres attributed to the freemen and sokemen are fiscal assessments not measurements, by contrast the villeins and bordars are said to have ploughs. We find this throughout most of the country. Two examples have been taken at random from Cambridgeshire, - "Two men hold two hides and two acres from Picot at Comberton. There are four ploughlands. There are two in demesne and seven villeins with eleven bordars have two ploughs... Seven sokemen held one hide one virgate of this land... two other sokemen had three virgates". "Saeifrid holds four hides three virgates from Picot at Haslingfield. There are four ploughlands, two ploughs in demesne and four villeins with twenty-two bordars have two ploughs... Six sokemen held this land, one had one hide three virgates... the other five held three hides".² Sometimes the connection between sokemen, hidage and geld is explicit. The king's sokemen at Normancross in Huntingdonshire have three virgates "to the geld",³ "the land of the sokemen" at Broughton also in Huntingdonshire, is defined as "five hides to the geld".⁴ However, some sokemen are linked with villeins, and are said to have, not hides, but ploughs. The entry for Broughton records another set of sokemen - "and there are ten sokemen and twenty villeins having ten ploughs". Broughton is a manor, -

1 Ibid., f.29b

2 Both Ibid. f.201

3 Ibid. f.203b

4 Ibid., f.204

an estate designated by the letter 'M' in the text. Huntingdonshire also has sokelands - estates designated by the letter 'S' in the text. Sokemen and villeins in sokelands are also linked. Graffham is sokeland of Leightonstone and "there are seven sokemen and seventeen villeins having six ploughs now".¹ We may quote examples such as this from every shire in the Danelaw, and we may formulate two principles from the evidence. When sokemen are found alone or isolated from the other peasantry in an entry, they are said to have hides or carucates, when they are linked to the villeins they have ploughs. Winkburn is a manor in Nottinghamshire. It is assessed at twelve bovates and there are three ploughlands. Gilbert has two ploughs in demesne and fifteen sokemen have four bovates, seven villeins and five bordars have seven ploughs.² Aslockton in Lincolnshire is assessed at one bovate, Ulvric holds it and two sokemen and one bordar have half-a-plough,³ Hickling is assessed at three-and-a-half carucates and four sokemen and twenty-three villeins with one bordar have six ploughs.⁴ There is yet another principle. Isolated sokemen are said to have ploughs, but almost always they are on sokelands, - eighteen sokemen on the sokeland of Dunham in Lincolnshire have six ploughs,⁵ Beckland is sokeland and it is assessed at two bovates, but the two sokemen

- 1 Ibid., f.203b
- 2 Ibid., f.291
- 3 Ibid., f.291
- 4 Ibid., f.291
- 5 Ibid., f.338b

there have one plough and six ploughing oxen.¹ The Derbyshire survey opens with the royal manor of Newbold, it has sokelands at Wingerworth with fourteen sokemen who have four ploughs, and ^eRinshaw with four sokemen who have one plough.² But there are exceptions to this. Maplebeck is sokeland in Nottinghamshire, it is assessed at fourteen bovates, and nine sokemen have ten-and-a-half bovates, five bordars have four ploughs.³ Sometimes we seem to find freemen linked to villeins and said to have ploughs. Astley in Worcestershire is assessed at three virgates, fifteen bordars and two freemen are there with seven ploughs,⁴ at Hallaton in Leicestershire nineteen villeins with one sokeman and one freeman with three bordars have six ploughs,⁵ but these are the only cases noticed and they may be mistakes in arrangement by the scribe.

We suggest, that the property of villeins, bordars and some sokemen is given in ploughs because it was assessed collectively as part of the manorial whole. Exchequer Domesday rarely mentions villein land, but in one county, Middlesex, the assessments of their holdings are given, and one is immediately struck by their extreme regularity. Lennard calculated that "for more than nine hundred individual cases, or something like seventy-eight per cent of the total number in the county, the information is free from ambiguity; and of these cases, over forty-seven per cent were virgates and over forty-two per cent half-virgates, while only three holdings were of irregular extent".⁶ There could be no clearer evidence of lordship than an ordered apportionment and control of tenements

1 Ibid., f.339b

2 Ibid., f.292

3 Ibid., f.290b

4 Ibid., f.176

5 Ibid., f.235b

6 Ibid., R. Lennard, op.cit., p.341

by a lord. There are two statements in Domesday suggestive of the villeins' liability to geld and both come from the description of the borough of Huntingdon. A group of one hundred and sixteen burgesses render all custom and the king's geld and sub eis sunt c. bordarii qui adjuvant eos ad persolutionem geldī, and at the end of the entry, at the foot of the folio, an addition was made by another scribe that "In Hurstingstone one hundred demesne ploughlands are quit from the king's geld, (and) villani and sochemanni geldant secundum hidas in brevi scriptas."¹ But no villeins in Hurstingstone hundred are said to have hides, and the only sokemen who have hides are those at Broughton - where there are in addition a group of sokemen linked to villeins and said to have ploughs.² Their hides must have been recorded at some stage in the enquiry only to be omitted later.

1 D.B. I, f.203

2 Ibid., f.204

Responsibility is surely the crucial factor here. It is the lord who must 'defend' the manor against all claims by the state. When his land has been assessed it is his responsibility to apportion the burden among his tenants. The hides and virgates of villeins are no concern of the authorities because, if the geld is not paid, it is the lord who is held responsible; he will lose his land, the state will not drive out the villein.¹ There was a case at Lilbury in Hertfordshire where Peter the Sheriff confiscated the land of a sokeman for allegedly not having paid his geld,² he is a free sokeman, the lord of a manor, but it does not seem that "dependent" sokemen would be in a similar position. Ruskington is the soke of Flaxwell wapentake in Lincolnshire, and it was held by Geoffrey Alselin. There were one hundred and seventy-four sokemen with ploughs on its berewicks and sokelands and only twelve villeins,³ it cannot be that if the geld is not paid the wapentake court will hear the case of each defaulting sokeman, it will merely replace Geoffrey by another tenant. In the eyes of the state the man who is responsible for the geld is the holder of the land: a case is recorded in Hampshire in which Ralf holds half-a-virgate by force although the monks of Winchester adquietant eam de geldo,⁴ which suggests that the one who pays the geld ought to hold the land. The holder "defends" the land and stands between the state and the peasants on whom the burden of taxation ultimately falls, for he will bear the penalty for default.

1 D.B.B. p.380
 2 D.B. I, p.141
 3 Ibid. f.369b
 4 Ibid., f.41

We suggest from all this, therefore, that there were some sokemen who were not of the same rank as the liberi homines. Some were hitherto liberi homines who had been "added to manors": thus their lands were absorbed into the manorial economy and could not be removed without the lord's permission. All this is reminiscent of the "free" sokemen and the "villein" sokemen of the thirteenth century, but there is a final piece of evidence to suggest that this distinction already existed in the eleventh century. By a writ of 1053-66, the Confessor granted Eversley in Hampshire to Westminster and declared ic wille 7 fastlice bebeode þat Payn min medwrihte 7 Wulnod min huskerall 7 Alfric Hort 7 Frebeorn mine fre socne men þe þæt cotlif healdep, þat hi henon forð mid lande 7 mid lese heore alc mid his dele beon on Sce Petres gewearde.¹

Eversley appears as a Westminster estate in Domesday, and it is said to have been held in 1066 by four liberi homines in alodium of Edward.² Dr. Harmer seems to have seen this as an example of the interchangeability of sokeman and liber homo,³ but one should surely say that free sokeman was synonymous with liber homo, with the strong suggestion that there were some sokemen who were not free.

Thus we can discern a difference between free and dependent sokemen, and the former were identical to the liberi homines of Domesday Book. It would be a mistake, however, to equate the latter with the geneats of the Anglo-Saxon period, for although their services were similar in practice, they were different in origin, and this was sufficient to give them privileges denied to tenants whose services derived from local, manorial custom.

1 "I will and firmly enjoin that Payn my 'mead-wright', and Wulfnoth my housecarl, and Alfric Hort and Frebeorn, my free sokemen who hold the estate, that they henceforth with land and with pasture, each of them with his part, be in the power of St. Peter". Writs. no.85

CHAPTER 9

The Villein Sokemen and Ancient Demesne

Villein sokemen had a unique place in thirteenth century law.¹ They could owe merchet and heriot, the two services most typical of the villein, but they enjoyed protection for their tenure which was denied to ordinary holders in villeinage. A villein sokeman who had been disseized of his holding by his lord, could take the "little writ of right close" to recover his land, whereas a villein in a similar predicament could not sue his own lord and had no possibility of redress. The services of the villein sokeman were also protected; and if the lord tried to enforce any change or increase, the villein sokeman could take the writ monstraverunt to prevent him, whereas again the ordinary villein did not have access to a writ of any kind. Neither the monstraverunt nor the "little writ" were enacted in the royal courts, however, they were directed to the bailiff of the manor who was required to do justice to the demandant "according to the custom of the manor", and in the manor court. The villein sokemen were not free holders and did not have access to the "writ of right patent", and the plea of ancient demesne, which is most often the background to cases of villein socage, was included as one of the exceptions of villeinage in Bracton.

1 For what follows see P. Vinogradoff, Villeinage in England, pp.89ff.

These privileges are frequently found on estates which had once been held by the king, but which had passed into private hands in the post-conquest period. Such estates are called the "ancient royal demesne". In 1236 John Kipping and his wife impleaded the abbot of Waverley for forty acres at Wik in Hampshire; the abbot's attorney replied that the land was "socage of the king" and the only writ which was valid there was the writ of right¹ - clearly the little writ of right close since the justices could not hear the case and John and his wife could not proceed. The case was concorded, but if the abbot had remained obdurate, and John's claim had been valid, the land would have been restored. John did not have the rights of a freeman, but he had personam standi in iudicio² against his lord and could be a plaintiff against him. The monstraverunt did not become a writ of course until the end of the thirteenth century,³ but there are cases concerning service in the earlier plea rolls. In 1212 the men of the soke of Lecton in Bedfordshire impleaded the prior of Lecton for deforcing them of their lands and pasture rights and demanding services other than those they had been accustomed to.⁴ Their land had been held of the crown and when it was given to the abbey, the abbey's

1 Attorney of the abbot says quod non debet ei ad hoc breve respondere quia terra illa est de socagio domini regis eo quod Wike est membrum de Aulton ubi nullum breve currit nisi breve de recto... Et Johannes et Ela non possunt hoc dedicere. Ass. Roll, n.775, m.10d. 20, Henry III, 1236. See R.S. Hoyt, The Royal Demesne in English Constitutional History 1066 - 1272, (Ithaca, 1950), p.216

2 Vinogradoff's phrase, Villeinage in England, p.97

3 R.S. Hoyt, op.cit. p.200; P. and M. I, 389 n.l.

4 CRR, VI, 326-'7, 374

bailiffs inquired into what lands were held in demesne and in villeinage and by what services. They found that the tenants owed merchet and labour dues and they could only have pasture rights in return for one mark per annum. It was said that they had already taken out an assize of novel disseizin against the abbot for free pasture rights, but although they had lost the case, they refused to pay the rent. The jury later confirmed that the tenants could not marry their children outside the vill freely, and that they owed labour services, and this had been so in the reigns of Henry, Richard and John, but the jury did not investigate the rights of pasture since this had already been settled by the previous assize. The whole vill was in mercy, the abbot had not increased their services and they must contrive to render whatever they owed him.¹ Some peasants pleaded ancient demesne to thwart increases in service when the land had only been held by the king for a time as an escheat. The tenants of Witley in Surrey said that the land was ancient demesne and had been given to Peter of Savoy only five years earlier. They complained that Peter had increased their rent by £18 7s. 7d., more than they had been accustomed to pay when the land was in the hands of the king.² Peter replied that the men of Witley could have no action against him as sokemen of ancient demesne (tanquam sokemanni de antiquo dominico) because the manor had never been royal demesne, but had been an escheat from the barony of Gaple. Domesday Book

1 cf. C.R.R. XI, 1312

2 Assize Roll, 873, (Surrey, 1258)

was consulted and it was found that Gilbert, son of Richer de l'Aigle had held Witley in 1086 and the tenants were in mercy for a false plaint.

Bracton describes the special conditions which existed among the tenants on royal demesne. "In the demesne of the lord king", he says, "there are divers sorts of men. There were there before the Conquest, at the Conquest and after the Conquest, bondsmen or villeins, who held villeinages by villein and uncertain services, and to this day do villein and uncertain services and whatever they are bid, provided it is lawful and right. There were also there at the Conquest free men, who held their tenements freely by the free services or free customs, who, after they had been ejected by the more powerful and had returned, took their same tenements up again to hold in villeinage, by doing thence servile, but certain specified works. These men are called glebae ascripticii, and none the less free men, for though they do servile works they do them not by reason of their persons but of their tenements. For that reason they will not have the assize of novel disseisin, because the tenement is a villeinage, though privileged, nor the assize of mort d'ancestor, but only the little writ of right according to the custom of the manor. They are called glebae ascripticii because they enjoy the privilege of not being removable from the soil as long as they are able to make the payments they owe, no matter into whose hand the king's demesne may come. There is also another sort of men in the manor of the lord king, who hold of the demesne and by the same villein customs and services as those by which the men aforesaid hold, not in villeinage, but under an agreement made with their lords, so that some of

them have their charters and some have not; according to some those ejected from such tenements will recover their seizin by the assize of novel disseizin. And since they have novel disseizin, their heirs will have mort d'ancestor.¹

Our problem centres on the explanation which is given by Bracton to account for the privileges of the glebae ascripticii. What is their connexion with the Conquest? Is it all, as Professor Hoyt has argued, "a rationalization or theoretical justification of the law as he (Bracton) knew it and stated it, (since) appeals to custom, to the past, especially to well-known and important events are the stock in trade of medieval rationalisation of the present".²

Vinogradoff argued that the position of the villanus steadily deteriorated in the twelfth century, but the peasantry on the royal demesne were more immune from lordly oppression and were thus able to maintain the better conditions which, in his view, were typical of the ordinary peasant in the Anglo-Saxon period. He had no doubt that ancient demesne tenure "grew up and developed several of its peculiarities after the Conquest", the influence of Norman lawyers was exercised in

1 In dominico domini regis plura sunt genera hominum. Sunt enim ibi servi sive nativi, ante conquestum, in conquestum et post. Et tenent villenagia et per villana servitia et incerta, qui usque in hodiernum diem villanas faciunt consuetudines et incertas, et quidquid eis praeceptum fuerit, dum tamen licitum et honestum. Fuerunt etiam in conquesti liberi homines qui libere tenuerunt tenementa sua per libera servitia, vel liberas consuetudines, et cum per potentiores eiecti essent, postmodum reversi receperunt eadem tenementa sua tenenda in villenagio, faciendo inde opera servilia, sed certa et nominata. Qui quidem dicuntur glebae ascripticii, et nihilominus liberi, quia licet faciant opera servilia, tamen non faciunt ea ratione personarum sed ratione tenementorum. Et ideo assisam nouae disseisinae non habebunt, quia tenementum est villenagium, quamuis privilegiatum sed nec assisam mortis antecessoris sed tantum parvum breve de recto secundum consuetudinem manerii. Et ideo dicuntur glebae ascripticii quia tali quodent privilegio quod a gleba amoveri non poterit dominum regis. Bracton II, ed. Thorne pp. 37-'8

2 R.S. Hoyt, op. cit. p. 184 poterunt quamdiu solvere possunt debitas pensiones ad quoscumque pervenerit dominum regis. Bracton, II, pp. 37-8

2. R.S. Hoyt, op. cit. p. 184.

actionable rights, but, he believed, "the effect of Conquest was to narrow to a particular class a protection originally conferred broadly".¹ The destructive effects of the Norman victory were arrested on ancient demesne soil because, Vinogradoff continued, "the king was decidedly considered as the one great safeguard of Saxon tradition and the one defender against Norman encroachments". He thought that the proportion of free owners who had lapsed into territorial dependence must have been much greater on the king's land than elsewhere, firstly because allodial tenants, from the feudal point of view, held of the king; secondly, because the protection which kings provided for their own tenants was not protection against the crown but protection against its officers; and finally because the king's tenants were in an advantageous legal position, for the curse of villeinage was that manorial courts were independent of superior organisation as far as the lower tenants were concerned, whereas courts in royal manors were after all the king's courts, and as such they could hardly be severed from the courts held in the king's name.² Maitland adopted a similar interpretation, and he too saw the ancient demesne as the result of the crown's dual position as king and private landlord.³

Professor Hoyt's work has, however, completely refuted the notion of the king as a kindly and conservative landlord, the guardian of tradition and ancient freedom. Vinogradoff

1 P. Vinogradoff, op.cit., pp.123-'4

2 Ibid., p.125

3 P. and M. I, pp.398ff.

admitted the importance of post-Conquest development in shaping the machinery which gave the special protection to the tenants of ancient demesne, but Professor Hoyt argued that these developments are inconceivable before the reign of Henry II when the greater freedoms of the Anglo-Saxon peasantry had already disappeared.¹ Henry's predecessors had steadily alienated the royal demesne and there is no evidence that they continued to exert any control over, or had any interest in, the lands they granted. After this impoverishment of the crown as a landlord, Henry II tried to exploit his rights as an overlord, - with new forms of justice, with enquiries into purprestures and recurrent inquests into the terms and validity of previous alienations, and this policy continued under John.² Thus the royal demesne became a distinct and identifiable entity. But the "ancient demesne of the crown" as distinct from the demesne lands of the currently ruling king, was the creation of the thirteenth century. It was only during this period that the "sentiment" (as Maitland describes it)³ was planted that the royal demesne could not be alienated at all. This came from the crown, but it was accepted by the baronage who were claiming the right of consent to taxation. The income of the royal demesne was not sufficient to enable the king to live "of his own", but the return from a larger, almost fictitious "ancient demesne" would give him greater financial independence.⁴

1 R.S. Hoyt, op.cit., p.200

2 Ibid., pp.92-101, 136ff

3 P. and M., I, p.518

4 R.S. Hoyt, op.cit., p.155

One most lucrative source of revenue was the right of tallage, and with the acceptance of the idea of non-alienability, it was possible to tallage the peasantry on ancient demesne. It was in the interests of the crown therefore, to safeguard the peasantry from lordly oppression, not out of respect for any ancient heritage of freedom, nor from charity, but because they could be more profitably tallaged by the king if their present lord was prevented from over-exploiting them. One example of royal interest can be found in the reign of Henry III, when it was found that royal sokemen were oppressed and poor, and this was evidently of concern to the king as much as to the sokemen themselves.¹ This became especially important as the pendulum of obligation swung away from money rents and landlords began to re-introduce labour services. Thus Professor Hoyt concludes that the villein sokeman on ancient demesne are not "essentially sokemen who, having become "manorialized" after the Conquest, are transformed into villeins possessing remnants of a better condition surviving from Saxon times on the ancient demesne of a conservative king". He believes that they are essentially villeins, who, having direct access to the financial and judicial system of an innovating and oppressive monarch, are so benefited by that access that their condition improves to the point where they are a special class of villeins, who have so much certainty of tenure and so many privileges that they resemble sokemen".²

1 Item quidam de magnatibus minantur domino regi et plebi plusquam prius et de iniuriis per ipsos factis nulle fiunt emende ut deceret. Item sokemanni et alii tenentes domini regis magis grauantur modo et peius quam alii de regno. Documents of the Period of Baronial Reform and Rebellion, 1258-67, selected R.F. Treharne and edited I. Saunders, (Oxford Medieval Texts, 1973), p.216.

2 R.S. Hoyt, op cit., p. 192.

The little writ of right and the monstraverunt were not created in deference to old freedoms, they were an essential part of the crown's policy towards tenants who, because they were villeins could be tallaged, but equally as villeins, could not take the freeman's assizes and must therefore be given other writs for their protection.

Vinogradoff did not know that the ancient demesne was a thirteenth century invention, although he knew that the writs were a later development and that the motives of the crown were primarily fiscal.¹ Moreover, he tried to give an Anglo-Saxon origin to the villein sokemen and their privileges because as he observed, "by the requirements of procedure" in later times, "ancient demesne socage was connected in principle with the condition of things in Saxon times immediately before the Conquest".² But Bracton's account relates ancient demesne socage to the condition of things immediately after the Conquest: the glebae ascripticii, according to his account, were surely freemen at the time of the Conquest, who were later deprived by stronger men and could only regain their land by agreeing to more onerous conditions of tenure. Vinogradoff did not fully analyse Bracton's statement. He merely discussed whether it was concerned solely with the royal demesne. He tried to relate

1 He wrote 'the king does not want his land and his men to be subjected to any vexatious burdens which would lessen their power of yielding income', P. Vinogradoff, op.cit., pp.93-94.

2 Italics mine. Ibid.p.123. But he seems to have been doubtful as to which position to adopt, for he had earlier written that the ancient demesne tenure was similar to freemen holding in villeinage, and this condition had been strongly affected, if not actually produced by the Conquest, p. 121, It seems clear from the general tenor of his analysis that he meant "though not actually produced". See Maitland's more accurate account of Bracton's point. P. and M. I, p. 399

it to the passage in the Dialogus which describes the general disinheritance of English landholders, but this as a mere aside to his principal concern of explaining the relationship between royal estates and villein sokemen.

Professor Hoyt, as we noted above, would dismiss it all as a rationalisation. It is clear that Bracton was thirteenth century man taking the common law for granted. In describing a situation in the mid-eleventh century when the word villanus was itself new, he could write that men took up their tenements and held them "in villeinage, by doing thence servile but certain and specified works".¹ His principle of "certainty" must in part, as Maitland pointed out,² be a confusion of cause and consequence, for the villein's services were only uncertain because, in the last resort, they were unprotected. Similarly, he describes the glebae ascripticii as men of free status, but servile tenure, and again, as Dr. Hyams has shown,³ this distinction between status and tenure could not have been made before the thirteenth century. Professor Hoyt therefore concludes that, since the ancient demesne, the right of tallage, and the special writs were all twelfth and thirteenth century developments, the class of villein sokeman must also be an invention of the thirteenth century.

This is not so however. We may admit that some of the villein sokemen on royal demesne were holding mutato villenagio,⁴

1 Bracton, p.89

2 P and M. I p.393

3 P. Hyams, Legal aspects of villeinage between the ages of Glanvill and Bracton, pp.257 ff.

4 Bracton, p.209. R.S. Hoyt op.cit. p.193. See R. Hilton, Stoneleigh Register, (Dugdale Soc. Vol.24) pp.xxv ff, but also see his position in A Medieval Society where he seems to doubt if the number of villain sokemen recorded in the unpublished Warwickshire Hundred Rolls can be adequately explained as assarting, which gave rise to new freedoms and rights, p.143

but we must explain why Bracton is nonetheless insistent that there were men there from the beginning, - in dominicis domini regis distinguendum erit inter liberos et villanos sokemannos qui in dominico regis nati sunt et ab antiquo tenuerunt in villenagio et puros villanos et illos adventi sunt et tenuerunt per certa servitia et expressa ex conventionem quamvis ad similitudinem villanorum sokemannorum, et quorum non est similis condicio, quia in persona unius erit liberum tenementum et in persona alterius villenagium.¹ Thus, there may be adventitii, new tenants who settle on ancient demesne, but whatever rights they may gain by agreements with their lord, they are not entitled to the privileges of the villein sokemen who were born on the demesne. This distinction affected at least one case in the thirteenth century. The men of Tavistock brought a writ of monstraverunt against an increase in their services, Tavistock was found to be ancient demesne,² but their claim was disallowed and the jury ruled that they were not villein sokemen but villeins and adventicii.³ The memories of the wise and wizened might not

1 Mr. Thorne's translation of this passage is "in the demesne of the lord king we must distinguish between freemen (and pure villeins and between free) villein sokemen who were born on the royal demesne and have held in villeinage from ancient times and those who are adventitious and hold by certain and specified services like (those) of villein sokemen, though under an agreement, whose condition is similar, though in one there will be a free tenement and in the other a villeinage". p. 90. But the bracketed words are his own additions and they seem to be unwarranted. It should perhaps read "we must distinguish between free sokemen, and villein sokemen who were born on the ancient demesne and have held in villeinage from ancient times". Thus these free sokemen are among those liberi tenentes per servitium militare et in libero socagio. f. 209 the villein sokemen are the glebae ascripticii who hold in villeinage but by reason of their tenements not of their persons" ed. Thorne, p. 37. Bracton, pp. 90 and 37.

2 D.B. 1, f. 94b

3 Placit. Abbrev. 270-1

reach across two hundred years, but the community might know that a particular family had lived in the village for generations. There was doubt at Tavistock, but the court decided that the peasants were newcomers because Domesday records only villeins and servi. But Tavistock is in Devon and as Vinogradoff pointed out, if such a ruling were made the basis for other cases, there could not possibly have been any villein sokemen in Western England.¹ Maitland describes it as "one bad reason for a sound judgement".² It is surely significant, however, that Bracton's colleagues shared his conviction that the villein sokemen were a class which descended from the Conquest. We must admit the possibility of some rationalization in cases of ancient demesne, but every fable has its kernel of truth. It seems that the villein sokemen did exist before the thirteenth century and their peculiar position arose, as Bracton said, from the post-Conquest land settlement. They were allowed the peculiar privileges which Bracton describes, and these privileges were extended to tenants on ancient demesne. Bracton then accounted for the privileges of tenants on ancient demesne by saying that they too had been deprived of their lands, but had returned to hold by a privileged form of villeinage.

Professor Hoyt overstates his case by concluding that "the class of villein sokemen of which Bracton has much to say... was a new class".³ He suggests that the villein sokemen were unknown to Glanvillø. Glanvillø obviously did

1 Vinogradoff, op.cit. p. 219

2 P. and M. I, p.399, n.2

3 R.S. Hoyt, op.cit. 185

not mention "ancient demesne" or the special privileges connected with it; nor did he mention "villein sokemen" by name. Yet he does write of "free sokemen" and the qualifying word "free" would surely be redundant unless he considered it as necessary to distinguish those sokemen from others who were not free.¹ Glanvill mentions "free sokemen" in connection with the partibility of their estates. As Maitland observes, Bracton copied Glanvill's text using "almost the selfsame words".² The law on partibility had not itself changed, but Bracton adds a crucial sentence: - the land is normally partible, he says, Si autem fuerit socagium villanum, nunc consuetudo loci erit observanda,³ and the land may then descend to the eldest or the youngest son. Thus Bracton cites the inheritance of villein sokemen, surely because the development of ancient demesne had stimulated the crown's interest in the tenures of free and villein sokemen. Although Glanvill does not specifically refer to villein socage or villein sokemen, we cannot conclude that they did not exist; as Professor Hoyt admits, such an argument would be "negative, based upon silence rather than assertion".⁴

Further evidence is provided by the Leis Willelme. It lays down that "Those who cultivate the land shall not be harassed except for their legal rent. It is not permitted to estate owners to eject the cultivators (les cultivurs) from their land, as long as they can perform their legal service".⁵

1 Glanvill vii, 3. See above pp. 327.

2 P. and M. II, p. 270, n.1 Italics mine.

3 Bracton, f. 76

4 R.S. Hoyt, op.cit. p. 186

5 Leis Willelme, cc. 29 and 29, 1

This seems to be an early statement of Bracton's account of the ancient demesne privileges of the glebae ascripticii who gaudent privilegio quod a gleba amoveri non poterunt, quamdiu solvere possunt debitas pensiones, but broadened to tenants, wherever they may be, and even if they were not on royal land. Professor Hoyt rejects the apparent connection for three reasons.¹ Firstly, its reference to rent conforms with what is known of the commutation of service in the twelfth century: at that time ordinary villeins could be rent payers, and thus there would be an increasing need to protect surplus labourers against ejection by their lords. This seems indisputable: it is nonetheless interesting to note that when, in Bracton's time, the obligations of villeins were tending toward re-introduction of work for rent, Bracton could still assume that the glebae ascripticii made money renders, and that they were safe as long as they continued to make these payments (pensiones). Secondly, Professor Hoyt comments on the Roman influence which is discernible in the Leis, he concludes that it cannot therefore be an eleventh century text. We will consider this further below, our conclusions may suffice here. The Leis cannot be as early as Liebermann believed, but it may well be a contemporary of Glanvill : chapter twenty-nine belongs to Section II of the Leis, and although parts of this section do show Roman influence, the remaining non-Romanesque clauses are all concerned with partibility, which was the litmus of socage and sokemen after the reign of Henry II.² Professor

1 R.S. Hoyt, op.cit., pp. 201-2

2 See below pp. 409-10.

Hoyt finally objects that "the provision applies to private not royal lands". This is so, but the error of his thesis is his conviction that the special privilege of villein sokemen were created by the invention of ancient demesne, and therefore all villein sokemen are to be found on ancient demesne.¹

The ruling in the Leis is more understandable if it applied to villein sokemen on private estates. Bracton's account may be a rationalization for the glebae ascripticii on ancient demesne, but it seems to have been based on an analogy with a sequence of events that had occurred after the Conquest on non-royal lands.

That there were villein sokemen on estates which were not royal or ancient demesne can be seen from the Kalendar of Abbot Samson. The sokemen described there are not called villein sokemen, but they pay merchet and some pay relief to the hall, and they are distinguished from the freemen who hold in altero socagio, while the "little" sokemen surely hold the equivalent of the parvum socagium of ancient demesne. It is not impossible that one of them is called a glebae ascripticius. Jocelin de Brakelond records that the manor of Thorpe was confirmed by charter to a certain Englishman a glebae ascripticius because he was a good farmer and could not speak French.² Thorpe cannot be identified with certainty:- Professor Butler suggests Thorpe near Pakenham, or Morningthorpe or Thorpe Abbots, or another Thorpe in Norfolk.³ Only Thorpe near Pakenham, is mentioned in the Kalendar, but a group

1 He notes in passing that Vinogradoff pointed out that villein sokemen are found outside ancient demesne, but he merely objects that Bracton does not mention them, p.184

2 Jocelin, p.33

3 Ibid., p.32, n.3

of peasantry there are called sokemanni and their services include merchet,¹ and it is possible that the glebae ascripticius was one of these. The term glebae ascripticius itself does not seem to have the technical significance of "sokeman", however, it seems rather to be a rare variant of villanus. It has only been noticed in three other sources.² The Dialogus uses ascripticius as the general word for an unfree tenant, who was bound by his status to the will of his lord, and in another passage the land held by the ascripticii from one tenement to another and even sell them apart from the land.³ The late thirteenth century Scottish treatise Regiam Majestatem, uses ascripticius in discussing the sale of villein land.⁴ An ecclesiastical canon of 1258 (repeated in 1261) uses the term when prohibiting interference with villein wills.⁵ But Bracton turns the "ascription" of the villein sokemen into a privilege. He says that they are tied to the land, but not like pure villeins whose status prevented them from leaving the land against their lord's will; they are tied to the land like freemen who cannot be ejected from their holding as long as they render their due obligations.

The Kalendar shows us villein sokemen in the age of Glanvill, but there does not seem to be any evidence from the twelfth century apart from the Leis that they enjoyed

1 Kalendar, p.3 and 10

2 I am indebted to Dr. P. Hyams for this information.

3 Dialogus, l, x. xi. pp.53, 56

4 Reg. Maj. 11, 12,3 cited in Ducange, s.v. adscriptitius; For the date see P. Stein, "The source of the Romano-canonical part of Regiam Majestatem", Scottish Historical Review, Vol. XLVIII, 1969, pp. 107-123

5 F.M. Powicke and C.R. Cheney, Councils and Synods, with other documents relating to the English Church, Vol. II, Pt. I, pp. 585 and 681.

the privilege which Bracton describes. The earliest case, which has been noticed in the Curia Regis Rolls concerning the sokemen's service, records that a jury is to investigate the dispute between Agnes de la Roche and her sokemen of Fen Stanton in Huntingdonshire as to their services and customs. Fen Stanton was not royal demesne. It was held by Ulf T~~re~~. R.E. and Gilbert de Gand T.R.W., and only villeins and bordars are recorded there in Domesday,¹ but since the sokemen in the Roll have an assize and a jury they must be free.²

The crown, from mere self-interest, could have created forms of protection for certain of its own tenants, but the same motive cannot have applied to the villein sokemen of other lords. This could be explained as the provision of formal procedures and machinery for pre-existing rights. The core of Bracton's account, - the dispossession of English freeholders and their subsequent return, recalls the evidence concerning freemen who were "added to manors" and who came to be described as sokemen.³ The evidence suggests that there were villein sokemen in the twelfth century, and that they were protected in the thirteenth century. The invention of ancient demesne cannot account entirely for either the villein sokemen or their protection. We may, therefore, paraphrase Professor Hoyt and say that the villein sokemen were essentially freemen who, having become manorialized after the Conquest are transformed into a class possessing remnants of their previous better condition. Bracton used this situation to account for the villein sokemen on ancient demesne, although many, perhaps most

1 D.B. I, f.207

2 C.R.R. IV, 253, 312

3 See above pp. 309-12

owed their privileges to direct access to, or a vestigial connection with, an innovating and aggressive monarchy. This reverses the situation which Vinogradoff had postulated where the privileges of villein sokemen had once been common to the majority of the Anglo-Saxon peasantry, but were steadily narrowed to those on ancient demesne; rather these privileges had been confined to a relatively small group under the peculiar circumstances of the Conquest, but were later widened to protect others on ancient demesne.

CHAPTER 10

The Distribution of Sokemen according to
Domesday Book

One might look with some misgivings at the distribution of sokemen according to Domesday Book. A map drawn from the Domesday statistics,¹ shows an exclusive concentration of sokemen in Eastern England: they are recorded in the geographically contiguous counties of Yorkshire, Derbyshire, Lincolnshire, Nottinghamshire, Leicestershire, Northamptonshire, Rutland, Cambridgeshire, Bedfordshire, Hertfordshire, Huntingdonshire, Buckinghamshire, Norfolk, Suffolk, Essex and Kent, but not in the remaining counties of Western England.² This seems too neat to be above suspicion, and indeed the sokemen should not be taken as the symbol of a great social divide between Eastern freedom and Western "villeinage". We have tried to show above that many of the sokemen would probably have been called liberi homines or even thegns if they have lived in the West.³ Nor can it be certain that the term villanus had a more technical meaning than merely "villager": it is recorded at Crewkerne in Somerset that all liberi homines must render a bloom of iron, but the population consisted of villani, cottars and servi; and similarly at Bickenhall, every liber homo must render a bloom of iron, again there are villani there

1 See map 1

2 Six sokemen are recorded at Winshill which is now part of Staffordshire, but at the time of Domesday it was in Derbyshire - D.B. I, f.273.

3 The thegns in Devon, Cornwall and Somerset, with holdings of less than five hides may have been twihynde thegns.

but liberi homines are not recorded.¹

Thus one can account for the distribution of sokemen in Domesday Book to some extent as a matter of terminology. This accords well with a further piece of evidence, for the distribution corresponds in part to an administrative division in the country. The great majority of sokemen are recorded in the Danelaw: the portion of England where Alfred guaranteed that the Danes would be allowed to settle, free from West Saxon harassment. By the treaty with Guthrum in 886,² a boundary was agreed between them which began in the South, at the source of the Thames up to its confluence with the Lea; - these two rivers form the South and Western boundaries of Essex and large numbers of sokemen are found in the area to the North and East. The boundary then follows the Lea to its source and continues "in a straight line" (donne on gerihte to) to Bedford; thus cutting through Hertfordshire, and again most of the sokemen are to be found East of that line. It then follows the Ouse taking in the extreme North-East part of Buckinghamshire, where, yet again, sokemen are found. It skirts Wymersley wapentake in Southern Northamptonshire and turns North along Watling St., cutting Northamptonshire in two, and forming the Western boundary of Leicestershire. Very small numbers of sokemen are found outside this area, but there is a

1 D.B., I, f.86. 11, f.145. It would be too abrupt to say that the liberi homines were omitted, but see evidence below that this may have been the case, for many medial tenants were not included - pp.363ff. See also Benfleet, Ibid., f.1 where a liber homo is said to have become a villanus.

2 Alfred and Guthrum, c.1. Attenborough, Laws, p.99

stark contrast between Leicestershire, where one-third of the total population are described in Domesday as sokemen, and Warwickshire, the county immediately to the West and surveyed in the same circuit, where no sokemen are recorded.¹ Simeon of Durham later listed the shires of the Danelaw as Yorkshire, Nottinghamshire, Derbyshire, Leicestershire, Lincolnshire, Northamptonshire, Huntingdonshire, Cambridgeshire, Norfolk, Suffolk, Essex, Bedfordshire, Hertfordshire, Middlesex and Buckinghamshire:² sokemen are recorded in all of these, but there are others in Kent, and a small number are said to have held land in Surrey T.R.E., but they had apparently disappeared by 1086.

The term "sokeman" is unknown in Scandinavia, but it could have been coined in Scandinavian England and be one of the many distinctive legal terms which was used there. The influence of the Scandinavians on the English language is well known,³ and a number of Danish legal terms can be found in the law codes. The Scandinavian loan words sectan and grid appear for the first time in II Edmund, cc. 7 and 7,1; lagum is a Scandinavian term and was first used in IV Edgar, cc. 2,1, and in Edgar's laws it always refers to the "constitutions of the Danes".⁴ I Aethelred was issued for Wessex and Mercia with a parallel code, III Aethelred, for the Danelaw, and the latter includes the Scandinavian words landcap, lahcop and

1 but see above, p.39n.4

2 Simeon, II, pp.392-'3. see also H.G. Richardson and G.O. Sayles, Law and Legislation, p.51, for a discussion of the sources concerning the Danelaw.

3 Mediaeval Scandinavia, 2, 1969, pp.177 and 197-'8

4 IV Edgar, cc.2,1; 12; 13,1; For other references see Robertson, Laws, p.401, s.v. lagu

witword,¹ sammaele,² lage and cost³; there is the Scandinavian formula, uncwydd 7 uncrafod,⁴ and brinna xii is the Scandinavian form of thirty-six.⁵

The neatness of the distribution of the sokemen in Domesday bears the stamp of bureaucracy. Dr. Harvey has argued that Domesday was in part based on administrative documents which recorded pre-Domesday assessments and that these were used by the tenants-in-chief to enable them to draw up the breves of their estates.⁶ There is the possibility therefore, that the sokemen recorded in Eastern England, had already appeared in such documents since they rendered services of a distinctively official character. It is even possible that they are not genuine population statistics at all, but assessment figures for suits. We have seen above that in later times suit was assessed on land and performed in rotation if the land came to be divided, a tenant is described as the senior of others, surely because this tenant renders service while others assist him.⁷ It may be, therefore, that the recorded sokemen are the representatives of their holdings and that other co-parceners were omitted.

Dr. Harvey has postulated that "Tenants-in-chief or their agents were supplied with extracts or copies of the county list...

1 III, Aethelred, c.3

2 Ibid., c.13,2

3 Ibid., c.13,3

4 Ibid., c.14

5 Ibid., c.13

6 S. Harvey, "Domesday Book and its predecessors", E.H.R., Vol.86, 1971, pp.753-73

7 see below p. ~~381~~ pp. 233, 250-1 and 381

and they contributed either written details, usually using the list as guide, or verbal information, which meant a return of manorial details as the name of each manor and its assessment was read out from the county schedule".¹ It is possible that the details of the sokemen were part of the official assessment lists, because their services were, in origin, official and royal. Some sokemen in Kent are recorded separately from the main manorial entry and related directly to the hundred. Thus Monk's Horton in Stowting hundred is conventionally described, but then, after what appears to be an interruptory comment, "In the same Lathe", three-and-a-half virgates are recorded as having been held by three sokemen T.R.E.² Similarly, Evegate has a normal manorial entry and is immediately followed by the note that "In the same hundred is one virgate of land in Swetton which one sokeman held of King Edward",³ and the account for Bradbourne, which is included in Bircholt hundred, Wiwart Lathe, is followed by the note that "In Chart hundred, a certain woman holds one virgate of Hugh which one sokeman held of King Edward",⁴ the virgate is not located and one must presume that it was also in Bradbourne, but it seems that the information was derived from some hundredal list rather than a manorial roll of Bradbourne.⁵

1 S. Harvey, art.cit., p.772

2 D.B. I, f.13b

3 Ibid., f.14

4 Ibid., f.13b

5 The hundred court is far more prominent in Eastern than in Western counties, but this is probably the result of the larger number of small landholders, not the method of compilation. See. V.H. Galbraith, * The Making of Domesday Book, (Oxford, 1961), pp.70-76

According to Domesday Book, Eastern and Western England were different, not only in the names given to the population, but also in the size of population, and a map drawn from the numbers of persons recorded in Domesday shows greater densities in the East than in the West.¹ This too could be misleading, however, for it may be that many tenants were omitted from the accounts of the Western shires. Exchequer Domesday normally records only three levels of lordship: firstly, the king who is always there by implication; secondly, the tenant-in-chief in whose breve the land appears; and thirdly one sub-tenant who holds of the tenant-in-chief. Sometimes a four-tier hierarchy is described: The breve of Odo, Bishop of Bayeux, includes a holding at Thames Ditton in Surrey, a certain Wadard holds of him, and it is recorded that "he who holds of Wadard renders him fifty shillings and the service of one knight".² Odo's breve for Bedfordshire included similar tenancies:- at Turvey "Wimund holds of Herbert, and he (i.e. Herbert) holds of the Bishop"; at Carlton, two sokemen hold of Herbert and he of the Bishop; while a sub-sub-tenancy is recorded at Lubbenham in Leicestershire.³

However, comparisons between Domesday and its satellites suggest that inferior tenancies may have been more widespread. The Domesday Monachorum is a survey of the Kentish lands of the archbishop and cathedral priory of Canterbury and those of the bishop of Rochester,⁴ and it includes tenants who do not appear in Domesday: part of Gelingeham is said to be held

1 see map 2

2 D.B. 1, f.32

3 Ibid., ff.2)9b; 230b

4 The Domesday Monachorum of Christ Church, Canterbury, ed. D.C. Douglas, (Royal Historical Society, London 1944), pp. 81-98. Hereinafter referred to as Dom. Mon.

by a "certain Frenchman" in Domesday, the Domesday Monachorum names two tenants, Anscetillus de Ros and Robert Brutinus;¹ three knights are recorded in Domesday as holding part of Maidstone, but again the Domesday Monachorum records two other men;² and Domesday says that the Archbishop held at Broke whereas the Domesday Monachorum names a sub-tenant, Robert.³

More famous, perhaps are the censarii of Burton abbey - the tenants who are recorded as holding ad malam in the Burton surveys of 1114-1118 and 1116-1133,⁴ and which Baring demonstrated were omitted from the Domesday account of the estates.⁵

Domesday does not give a definitive account of the settlements in England in 1086; not only were tenants omitted, but certain villis are also unrecorded. Much of the information recorded in Kent under the name of a single vill probably derived from a number of individual settlements. Adisham belonged to the monks of Canterbury; it was assessed at seventeen sulungs and valued T.R.E. at £40 and T.R.W. at £46 13s 4d., but there were only two-and-a-half ploughs in demesne, while thirty-six ploughs are held by one hundred villeins and fourteen bordars.⁶ The first part of the Domesday Monachorum, however,

1 D.B. I, f.3; Dom.Mon. f.3r.

2 D.B. I, f.3; Dom.Mon. f.3r.

3 D.B. I, f.5. Dom.Mon. f.4r. The Worcestershire text known as "Evesham A" provides similar evidence, see "Evesham 'A'" a Domesday Text, ed. P.H. Sawyer, Worcestershire Historical Society, Miscellany I, 1960.

4 See C.G.O. Bridgeman, "The Burton Abbey Twelfth Century Surveys", William Salt Archaeological Society, 1916, pp.212ff

5 He remarked "It is hardly possible to suppose either that all the censarii were new settlers, or that nearly one-half the tenants were omitted by accident from the returns of ten manors taken in two counties and in several different hundreds". F. Baring, "Domesday and the Burton cartulary", E.H.R. Vol.11, 1896, p.102

6 D.B. I, f.5

which dates from the period 1089-c.1100, records the assessment of seventeen sulungs, but also notes that two of these are in Eythorne, five miles away,¹ we cannot be sure therefore that all the estimated population lived at Adisham. Similarly, Northwood is assessed at three sulungs, one yoke and twelve acres and valued at £14 6s. 6d., there are five ploughs in demesne, and twenty-nine bordars five serfs and seven salt pans yield 25s 4d., but villeins and peasant ploughs are not recorded.² The Domesday Monachorum shows that the valuation (but not the assessment) included lands in Thanet, Macebroc and Ezilamerth.³ Lyminge is described in Domesday as a single manor, assessed at seven sulungs and valued at £40, although the farm is £60. It is said to be held in demesne (in dominio) but demesne ploughs are not recorded. There are sixty ploughlands, and one hundred and fifty villeins and sixteen bordars have fifty-five ploughs. Three men of the archbishop hold parts of this manor and have, twenty villeins and sixteen bordars and one serf, it is from the Domesday Monachorum that we derive the additional information that the holdings of the three men were not in Lyminge itself but in Castweazel, Orgarswick and Eadrundland.⁴

1 Dom.Mon. pp. 3, 89-90

2 D.B. 1, f.3b

3 Dom.Mon. p.84. Macebroc may be lost Mackinbrooke in Herne and Ezilmerth is probably Stourmouth.

4 D.B. 1, f.4. Dom.Mon. p.84.

The Excerpta of St. Augustine's provides similar evidence.¹ Domesday Book records that "in the hundred of Stotinges the abbot held in Langport two sulungs and one yoke", but the corresponding passage in the Excerpta says that "in the same hundred (i.e. Stutinge) St. Augustine holds Elmsted and Monks Horton which were assess T.R.E. at two sulungs one yoke,"² it does not mention Langport. Elmsted is not recorded in Domesday but there is another entry for Monks Horton.³ Clearly the two sulungs and one yoke were physically in Elmsted and Horton, but from the point of view of administration and assessment they 'lay' in Longport. Moreover, demesne is not recorded, but six villeins and four bordars have six ploughs. Domesday Chislet is assessed at twelve sulungs, but this, Excerpta notes, includes six sulungs at Margate, twenty miles away, which is not recorded in Domesday: we cannot be sure that the recorded population was not divided between the two villis.⁴

The Textus Roffensis also contains the names of a great many settlements which are not mentioned in Domesday Book, and although it is a mid-twelfth century text it is not unlikely that some of the places were already in existence sixty years earlier. In all these three documents add some one hundred and fifty place-names to the Domesday evidence, they are distributed throughout the country but the greatest concentrations are in the East, where

1 An Eleventh Century Inquisition of St. Augustine's, ed. A. Ballard, (British Academy, London, 1920). The present manuscript is a thirteenth century copy of "a copy made between 1100 and 1154 (or possibly 1124) of an independent compilation made in or before 1087, from the original returns from which Domesday Book was compiled". p.xii

2 D.B. I, f.12b; Inquisition, p.30

3 D.B. I, f.13b

4 D.B. I, f.12; Inquisition, p.17

the churches in question held a large proportion of the land. But as Miss Campbell has remarked, "The essential feature of the distribution of Domesday place-names is the contrast between the relatively closely-settled North and East and the sparsely settled South... the Weald stands out as an empty area almost devoid of Domesday names", but the supplementary texts add nearly forty sites to the thirty vills recorded in Domesday.¹ Domesday records two hundred and ninety four settlements in Leicestershire, but the early twelfth century Leicestershire survey names twenty-four others which are unlikely to have been founded in the late eleventh century,² the bishop of Lincoln held the multiple estate at Dorchester-on-Thames near Oxford, which included Burcot, Clifton, Chiselhampton, Drayton St. Lennard, Stadhampton and Overy, none of which are recorded in Domesday Book even though they probably existed in 1086.³ Professor Hoskins has shown that most of the farms in Devon are unrecorded in Domesday, and has observed that "the map of Devon in the eleventh century would have looked very like the map today... Practically all the farm names would have been on the earlier map, could it have been drawn".⁴ Professor Sawyer has suggested that the areas of dispersed settlement, with large numbers of small dependent vills and hamlets are more likely to have unrecorded settlements, than nucleated areas of fairly closely grouped populations, for the former would pay their dues through a central estate, and the purpose of Domesday would be satisfied

1 C.M.J. Cambell, "Kent," in The Domesday Geography of South-East England, pp.495, and fig.143-4. For what follows see P.H. Sawyer, "Baldersby, Borup and Bruges: the Rise of Northern Europe", The University of Leeds Review, Vol.16 no.1, May 1973 pp.84-88

2 The Domesday Geography of Midland England, ed. H.C. Darby and I.B. Terrett, pp.316-317

3 D.B. 1, f.155. cf. V.C.H. Oxfordshire, Vol.11, (Oxford, 1962), p.42

4 W.G. Hoskins, Provincial England, (London 1963), p.52

recording the assessments and dues in toto under the name of the central estate.¹ Such an explanation would account for the inclusion of numerous sokemen and small holders, many of whom were responsible for their own payment of geld, and would, therefore, need to be recorded.

Thus, one would have good reason to doubt some of the Domesday evidence concerning the population of England at the end of the eleventh century. An analysis of Derbyshire suggests that two adjacent areas could be identical in character while yet being differently described. About one hundred and twenty four sokemen are recorded in the county and they constitute five per cent of the total recorded population. Twenty nine are recorded on royal estates, fourteen at Wingerworth, one at Temple Normanton, four at Renishaw and Upetun, these estates being part of the sokeland which belongs to Newbold.² There were three sokemen at Walton-upon-Trent and Rosliston,³ and two at Willesley and two at Ticknall which again are sokelands belonging to Repton and Middleton,⁴ and three sokemen at Ingleby and part of the soke is said to belong to Foremark.⁵ The Bishop of Chester had twenty-two sokemen at Long Eaton, which has an "S" signifying "soke" prefacing the entry.⁶ It is also said under the entry for Winshill that William had placed six sokemen there who had belonged to Repton.⁷ Others are found elsewhere but their overall distribution shows that they were concentrated

1 P.H. Sawyer, art.cit., p.85

2 D.B. 1, f.272

3 Ibid., f.272b

4 Ibid., f.272b

5 Ibid., f.272b, Foremark f.278

6 Ibid., f.273

7 Ibid., f.273

in the area East of the Derwent and North of the Trent. The only sokemen found outside this area are the two at Trusley,¹ two at Boulton,² and one at Barrow-upon-Trent.³

This fits in well with what is known of the history of the region. The Danes seem to have occupied the whole shire at first, for two Scandinavian crosses have been found at Hope and Bakewell in the North West, and nine of the eleven Grimston hybrids are located in the South-Western wapentake of Appletree. The area West of the Derwent may have been that part of Mercia which the Chronicle says they shared out in 877,⁴ but Edward the Elder had been able to take and fortify Bakewell and he ordered a borough to be built in the area and manned.⁵ A charter of 926 records that Aethelstan bought sixty manentes of land from the heathen at Hope and Ashford and gave them to Uhtred,⁶ and in 942 Edmund gave land to Wulfsige Maur in the Southern part of the county at Walton-on-Trent, Coton-in-the-Elms, Cauldwell, Drakelow and Linton.⁷ There are few major Scandinavian place-names, but they are most common in the three Eastern wapentakes of Scarsdale - itself a Scandinavian name, Repton and Gresley - called Walecros in Domesday and again a Scandinavian name, and Morleyston and Litchurch. Scandinavian minor-names and field-names are also

1 Ibid., f.274b

2 Ibid., f.277

3 Ibid., f.277b

4 The boundary between East and West Mercia probably ran through Derbyshire, following the Derwent, see K. Cameron, "An Early Mercian boundary in Derbyshire". The Anglo-Saxons, ed. P. Clemoes pp.23-34, and The Place-Names of Derbyshire, English Place-Name Society, xxvii-xxix, (Cambridge, 1959), ed. K. Cameron Vol.1 pp.xxvii-xxix

5 A.S.C. s.a. 920

6 B 658=S.397

7 Also Newbold in Staffordshire, B. 772=S.484

more common in the East.¹ The extent of Scaninavian influence is reflected in the Domesday description of the area, for not only are the great majority of sokemen recorded in the East, but the territorial sokes are also to be found in the part of the county. There are four in all: the central settlement of one is Newbold in Scarsdale wapentake, another is centred on Repton in Repton and Gresley, a third centred on Long Eaton in Morleyston and Litchurch, and the fourth on Mickleover in Appletree. In the West sokeland is not recorded.

Geographical factors are crucial in settlement patterns, and Derbyshire is a county more suited to widely dispersed hamlets rather than nucleated settlements.² The South offers most favourable conditions for settlement. In the Repton and Sudbury area there are gravels lying on impervious marls and along the Trent and Derwent flood-plains, there are shallow wells in the alluvium which ensure a constant water supply, whereas the North and West is limestone with only small patches of impervious rock and millstone grit which is often over two thousand feet, and has highly leached soils on the sandstones with poor drainage. The valley floor of the Derwent was avoided because of the danger of Winter flooding, and the farms and villages are generally sited on the lower slopes along the sides of the river and its tributaries. Although "sokes" are found in the Eastern wapentakes of Derbyshire, the West too has its multiple estates. It is characterized by a number of royal manors which are said to have dependent berewicks. They had been farmed out into two groups - Bakewell, Ashford, and Hope in the North; Parwich, Wirksworth,

1 Place-Names Derbyshire, pp.xxxi ff

2 See Ibid, pp.xiv-xv. R. Lennard, Rural England, pp.238-241

Matlock, Ashbourne and Darley in the South. Renders of money, honey and lead are said to have been due. Again, there are the dictates of the land form to take into account. The area is characterized by large tracts of limestone with only slender strips of cultivatable land along the watercourses, which is not conducive to nucleated settlement, but favours small hamlet organisations, but geographical factors do not explain the Newbold soke in the East, which has both berewicks and sokelands which are sited in and around the comparatively low-lying district of the Rother. Sokemen are not mentioned in the West but the evidence for demesne farming is slight. Bakewell has seven demesne ploughs, nearby Ashford has four, but there is only one demesne plough at Darley, Ashbourne is described as waste, but there was a priest there with his own plough and also two villani and two bordars who had half-a-plough,¹ but elsewhere there is nothing to suggest that demesne farming was carried on either in the central manors or in their berewicks, although in general demesne and peasant ploughs are recorded and distinguished.² A further sign of peasant independence may be the landlordship T.R.E. and T.R.W. Henry de Ferrers possessed over ninety manors in Derbyshire, his possessions in Appletree wapentake in the South were separated from his lands in the North by the royal manors of Ashbourne, Parwich, and Wirksworth, and he and the king dominated the Western part of the shire. Derbyshire was part of the perfidious North which resisted the Conquest, and one of Henry's predecessors was a certain Siward who may be identified with the Siward Barn, who, in 1071, joined Hereward in the

1 D.B. I, f.272b

2 See R. Lennard, op.cit. pp.238-240

East Anglian rising. The other great landholder in the county T.R.W. was William Peverel, whose manors were scattered on the Eastern borders, but with a compact block of land on the edge of Peak forest. This includes Peak Castle which is referred to in Domesday as Terri castelli Willelmi Peurel and which later gave the name Castleton to the nearby vill. It is also said that Peverel has charge (custodit) of Hope, Ashford and Bakewell.¹

Stenton commented of these features of Western Derbyshire that "with their curious payments in kind and groups of dependent hamlets, these manors would seem to represent the most archaic type of agricultural estate to be found in the county".² One indication of the extent to which the archaism of an area had been preserved is the degree of British survival as suggested by place-names. Derbyshire falls into Area 11 of Jackson's schema of Celtic survival, there are no -ingas or -ingaham names, and the only certainly early name is Repton which has an associated cremation cemetery, while other place-names suggest that settlement began in the latter half of the sixth century.³ Celtic place names survive especially in the North-West, - at Cown Edge, Dinting, Eccles (later Chapel-en-le-Frith), Kinder, Mainstone, and Mellor; a little to the East of this group are Crook Hill, (Ho Eccles, in Hope, and Mam Tor, while in the North-East are Baslow Bar, Unberley, Limb Brook, Limb Hill and thirteen others, with Barr Hall the only Celtic name in the South. The English seem to have moved in, in force in the lead-mining area, for Celtic names are found only along its fringes.⁴

1 See V.C.H. Derbyshire, I, pp.300-303

2 Ibid., p.312

3 See K. Cameron, Place-Names Derbyshire, pp.xxiii-xxvii

4 Ibid., pp.xxi-xxii

From all this one might postulate the following settlement pattern: the working economics of the East and West were identical and had been organised into multiple estates long before the ninth century, - there are no bounds for the charter concerning Hope and Ashford, but sixty manentes in so wild a region must have covered territory beyond the limits of two vills. The preponderance of English names for the members of the sokes suggests that these settlements had already been founded before the Danish invasion, but the Scandinavian field-names show that Danes moved into the area, influencing the dialect and thereby the place-nomenclature.

All this tends to soften the supposed dichotomy between Western "villeinage" and Eastern freedom. Certain tenants in Western England would have been described as sokemen if they had lived in the East, the territorial soke was a multiple estate and by no means a Danish innovation unique to the East, and there were differences in terminology between Western and Eastern law.

Despite all this, however, it still seems likely that there were real social differences between East and West, which are exaggerated but not invented by Domesday Book. The East was probably more free than the West, - in population, with more men who were still independent landholders, and in territorial organisation, with more multiple estates with their lighter form of lordship. This freedom derived from the greater prosperity of Eastern England, and this prosperity owed much to the Danes who settled there, - their original wealth at the time of settlement, their lukewarm attitude to church endowments and rights, and their dynamic approach to land development and lordship.

The separateness of the Danes was taken into account by West Saxon kings: Dr. Whitelock has shown that the Northern ealdormen were probably of Danish descent, and that although the men chosen for the archbishopric of York were from South of the Humber, most had connexions with the Southern Danelaw.¹ Stenton believed that the territorial sokes had come into being from a grant of "the king's rights over all unattached freemen dwelling within a given wapentake",² but this may not be altogether correct; it is surely the recognition of already existing multiple estates, and their grant in toto by the king, which preserves their integrity and ensures their survival. Such estates had been common throughout the whole of England,³ they were probably broken down in Wessex by royal grants of lands to individuals which severed the old links between the appendant and the central settlements. However, when Eastern England came within the power of the West Saxon kings, they seem to have adopted the policy of granting their revenues, as they were already administered through a system of multiple estates. The influence of the Danes was thereby crucial in checking the fragmentation of these estates and thus was preserved, even revitalised, the social conditions of an earlier age, when more men were themselves lords of households and the only external lordship which they knew was the obligation to render public service to the king or the king's nominees.⁴

1 D. Whitelock, "The dealings of the king's of England with Northumbria", The Anglo-Saxons, Essays presented to Bruce Dickins, ed. P. Clemoes, (London, 1959), pp.70ff

2 F.M. Stenton, Types of Manorial Structure in the Northern Danelaw, pp.43-'5

3 see G.R.J. Jones, "The Earliest Settlers in Britain", Geographical Magazine, 1970, p.357-359

4 See D.B.B. pp.396-'7. R.V. Lennard, op.cit.,p.395, Kalendar, pp.xLiii-xLvii

The evidence suggests that Eastern England benefited from the very beginnings of the Danish settlement. The evidence of Continental sources shows that twenty years of raiding in Europe had brought them ransoms of six hundred and eighty five pounds in gold, and forty-three thousand and forty two pounds in silver from the Franks,¹ and even though some allowance must be made for exaggeration, it remains true that in dealings with the Vikings, bribery was ever regarded as the better part of valour. They brought their wealth to England: the Chronicle records that, in 896, some Danes went into East Anglia, others to Northumbria, "but those who were feoh-leass got themselves ships and went South across the sea to the Seine",² and the inference is that the poorer Danes could not settle in England and so returned to the Continent for another season of raiding. The Danes who came in the ninth century brought money in the form of Carolingian and Kufic coins,³ in the 880's they were minting their own coin, sometimes using English dies or copying English issues.⁴ The great York coinage of 895-903 is represented by some three thousand pieces in the Cuerdale hoard,⁵ and the reign of Edward the Elder even saw a revival of coin art.⁶

- 1 Estimated by P.H.Sawyer, The Age of the Vikings, (1st. ed. London, 1962), p.97
- 2 A.S.C. s.a. 896. The meaning of feoh is not altogether clear, for it could be "wealth of almost any kind", - Bosworth and Toller s.v. feoh, and thus it could be money, land or property.
- 3 K.F. Morrison, "Numismatics and Carolingian trade, A Critique of the Evidence", Speculum, xxxviii, 1963, pp.409, 427-430. Mr. Morrison believes that these coins were more probably the result of raiding rather than trading.
- 4 R.H.M. Dolley, Viking Coins of the Danelaw and of Dublin, (London, 1965), pp.16-17
- 5 Ibid, p.18
- 6 J.D.A. Thompson, Inventory of British Coin Hoards A.D. 600-1500, (London, 1965), pp.xxii-xxiii)

England was a wealthy country by the eleventh century, and coinage must have been in general use since the assessments in Domesday Book are given in coin. Professor Sawyer has suggested that this was result of the trade, of English wool for German silver,¹ and indeed, so much of Aethelred's treaty of 991 is concerned with the lawful conduct of trade that it must have been of major national importance.² The Danes may have helped to stimulate this trade, the non-portrait coins of Alfred and his successors are reminiscent of the Arabic dirhems and this plainness "suggests that they were coined partly to meet the requirements of trade with Vikings accustomed to Oriental currency brought to Britain from the Baltic and Spain and partly in imitation of Carolingian deniers."³

Lords in Eastern England seem to have accumulated still greater wealth by sequestering church revenues, and by a lukewarm attitude to private endowments to the church. York was a great trading centre yet its archbishopric was poor and had to be supported by revenues taken from Worcester, and the Northern Danelaw remained untouched by the tenth century monastic movement.⁴ Wulfstan raged against the heathenism of his time and this may in part derive from his knowledge of a more wordly spirit in the North, from which the church was suffering.⁵

1 P.H. Sawyer, "The Wealth of England", Transactions of the Royal Historical Society, 5th Ser., Vol.15, 1965. pp.160-'3

2 See D. Whitelock, E.H.D. I, p.401

3 J.D.A. Thompson, op.cit. p.xxii

4 Oswald tried to found a community of monks, for according to the Vita Oswaldi he established monks in the place where Wilfrid's church had been: this could be York itself, or perhaps Ripon but there is no record of monks at either place in pre-Conquest times. Vita Oswaldi, Historians of the Church of York, ed. J. Raine, R.S. 71, London, 1879, Vol.1. p.462

5 D. Bethurum, The Homilies of Wulfstan, pp.70ff.

VIII Aethelred, one of the law codes associated with him,¹ lays down that "all God's dues shall be promptly rendered, as the occasion requires", but "if anyone refuses to do so, he shall be brought to justice by a civil penalty (worldlicre steore) and this shall be divided between Christ and the king, in accordance with former custom".² Thus penances are not sufficient and a fine must be imposed on those who do not pay their dues, and this is divided between the Church and the king. The problem recurs later in the same code and it is said that "secular councillors showed wisdom in appointing civil laws to uphold the privileges of religion, for the governance of the people and in assigning the compensation to Christ and the king, so that thereby many are forced of necessity to submit to justice".³ In the peace of Edward and Guthrum, which is contemporary with, or perhaps a little earlier than V Aethelred,⁴ this is mentioned as having been agreed between Alfred and Guthrum, confirmed by Edward the Elder and frequently re-enacted,⁵ and it probably had special relevance in the North among the newly-converted Danes. However, VIII Aethelred goes on "in the assemblies since (aefter) the days of Edgar, though advisedly they were held in places of note, the laws of Christ have been neglected and the laws of the king disregarded. And then the (dues from) civil penalties which had previously been shared between Christ and the king were separated".⁶

1 See D. Whitelock, E.H.D. I, p.411

2 VIII Aethelred, cc.14 and 15

3 Ibid., c.36

4 D. Whitelock, "Wulfstan and the so-called laws of Edward and Guthrum", E.H.R. LVII, 1940, pp.1-21

5 Edward and Guthrum, Introd and prol.2

6 And þa man getwaemde þæt aer waes gemaene Criste 7 cynincge on worldlicre steore, VIII Aethelred, cc.37 and 38

Evidently the fines were not being paid to the rightful authority, and it seems that this was prevalent in the Danelaw and that it was the church which was being deprived. VI Aethelred, the compilation especially prepared for the North and promulgated by the church,¹ gives fuller evidence. It states that "if monetary compensation is paid as amends for religious offences, in accordance with the penalties fixed by wise secular authorities, it is proper that this should be applied, in accordance with the direction of bishops, to paying for prayers, and to the maintenance of the indigent, and to the repair of churches, and to education, and to clothing and feeding those who serve God, and to the purchase of books and bells and ecclesiastical vestments. It should never be applied to the pomps and vanities of the world, but payments for the needs of religion should take the place of payments to secular authorities, (ac for woroldsteoran to godcun an neodan) whether (these arise from) fines or wergeld or healsfang or lahslit, whether they affect landed or personal property, and whether the amounts involved are large or small."² Thus "secular authorities" were appropriating money which should have been devoted to religious uses and applying it to "the pomps and vanities of the world". VIII Aethelred suggests that tithe was at the centre of it all. It had been agreed that the tithe should be divided into three, one-third being assigned to the repair of churches, one-third being given to the clergy, one-third to the poor, but anyone who neglects to pay his tithe forfeits most of his property and the bulk is

1 I. Sisam, Studies in the History of Old English Literature, pp. 278, 287

2 VI Aethelred, c.51

divided between his lord (landhlaford) and the bishop,¹ therefore, it seems, the portion of the fine which rightly belonged to the bishop was being taken by the lord and put to non-religious uses. Finally, a comparison of VI Aethelred with V Aethelred - the parallel code issued for Mercia and Wessex, reinforces the conclusion that this was a Northern problem for it does not refer to lords taking ecclesiastical dues. The code ends with a summary of current evils:- abuse in the processes of attaching property, giving testimony and bringing false claims against an heir, and "in the north there has prevailed the unjust practice of bringing accusations of homicide against a guiltless man... but this practice has been stopped by our lord. May he succeed in stopping more".² The mordant final comment, and the absence of any reference in this code to misappropriation of church dues, suggests that the lords of the Northern Danelaw were taking the church's judicial revenues, and thereby they must have added to the fluid wealth of the area, whereas these revenues were frozen by the demands of religion in the South.

It is not without parallel for adjacent areas to move in different ways from identical beginnings. M. Musset has observed that slavery was widespread throughout France in the ninth and tenth centuries, but, he writes À partir du XI^e siècle se constate une opposition profonde: le servage solidement enraciné à l'est est évanescent à l'Ouest, sauf dans la vallée de la Loire, et a

1 VIII Aethelred, cc.6 and 8

2 V Aethelred, c.32

pratiquement disparu de la Normandie".¹ Local lords were responsible for the change in Normandy,² and their enterprise was rewarded by the enrichment of Normandy during the eleventh century; M. Musset notes that Normandy, relativement aux autres provinces françaises, a connu une abondance remarquable de moyens de paiement.³

Reclamation of land may have been encouraged by granting that assarts be held for little or no service;⁴ it certainly seems likely that growth could be inhibited by West Saxon law, for the codes of Ine and Alfred stipulate fines for those who fell, or set fire to trees,⁵ and a more timid, conservative approach to estate management may have prevailed in the tenth and eleventh centuries which delayed expansion, much as in the twelfth century the maintenance of old-fashioned ideas prevented growth in many areas for a generation.⁶

We have said that the sokeman owed his status to the fact that he rendered services originally due for the royal farm, as distinct from other men whose obligation derived from manorial custom. This harmonizes well with a more general view of status in early society, which, in turn helps to explain the larger numbers of freer tenantry in Eastern England. Early society was always hierarchical, not egalitarian, and it was probably structured in a three-tiered system of nobility, independent freemen and dependent tenant.⁷ Status probably did not derive

1 L. Musset, Les Invasions: le second assaut, (Paris, 1965), p.240

2 M. Musset observes that "L'intervention du seigneur apparait ici (i.e. in the texts) frequente et decisive". L. Musset, Revue Historique de Droit française et étranger, 1954, p.161

3 L. Musset, "À-t-il existé en Normandie au XI^e siècle une aristocratie d'argent?" Annales de Normandie, lX, 1959, p.286

4 P. Vinogradoff, Villeinage in England, p.333

5 Ine, 43; 43,1. Alfred 12

6 E. Miller, "England in the Twelfth and Thirteenth Centuries: An Economic Contrast?", Economic H.R. Vol. 24, 1971, pp.2-13, cf. J.B. Harley, "Population Trends and Agricultural Developments from the Warwickshire Hundred Rolls of 1279", Economic H.R. Vol. 10, 1958-59, pp.8-18

7 T.M. Charles-Edwards, "Kinship, status and the origins of the hide," Past and Present, No.56, Aug.1972, p.9

from land, however, it seems rather to have depended on service.¹ According to Gepyncdo, the ceorl must have five hides and also a special office in the king's hall to become a thegn,² the thegn must ride on missions for the king and serve him in other ways,³ and a trader who crosses the sea three times, to the general enrichment of the community, as well as his own profit, becomes a thegn.⁴

A man who does not render services would be of lesser status, and many might be in this position if the demands of the king were heavy. Military service, for example, was the duty and right of every freeman in early Germanic society, the associated military obligations of fyrd-service, wall-work and bridge-work are first reserved in English charters from the eighth century.⁵ To some degree they seem to have been exacted from the whole folc. In Wessex, certainly from the time of Ine, a fyrdwite, was imposed on any ceorl or man of higher rank who neglected his duty to serve in the fyrd,⁶ and the law codes of the tenth and eleventh centuries re-iterate the triple obligation of army-service

1 Ibid., p.11

2 Gepyncdo, c.2

3 Ibid., c.3

4 Ibid., c.6

5 W.H. Stevenson argued that military service, the so-called Trinoda Necessitas, had never been remitted and that despite the lack of explicit reference to it in the early charters it was nevertheless expected from ecclesiastical lands, from the beginning. See W.H. Stevenson, "Trinoda Necessitas", E.H.R. XXIX, 1914, pp.689-703; also F.M. Stenton A.S.E. pp.286-'7 and N. Brooks, "Development of military obligations in eighth and ninth century England", England before the Conquest, Studies in Primary Sources presented to D. Whitelock, ed. P. Clemoes and K. Hughes, (Cambridge, 1971), pp.71ff. For a different view see E. John, Land Tenure in Early England, (Leicester, 1964), pp.64ff

6 Ine, c.51

and wall- and bridge-work.¹ However, the burden also appears to have been based on a land assessment. A charter of Cenwulf to the archbishop of Canterbury concerning land in Kent is 814 states that the land (terra) inlaesa et inconcussa permaneant nisi his tribus tantummodo causis id est expeditionem et arcis munitionem contra paganos et pontis instructionem communiter sicut tota gens illa de suis propriis hereditariis consueve faciunt.²

The obligation is compulsory, it rests upon the tota gens, yet it is done by each from his hereditary lands. How many men were required to serve is not specified in pre-Conquest charters,³ but the very fact that the charters assess the estates in hides and reserve military service suggests that, as on the continent, the old peasant family holding was used as the basis for the assessment of primitive taxes and services from at least the second half of the seventh century.⁴

The ceorl, according to Ine's law, may be summoned to the fyrd and pays fyrdwite for default,⁵ and according to the Nordleoda laga he may have a helmet, a coat of mail and a sword.⁶ The words used in the Chronicle to denote the constituents of the army are always vague. They are often merely "men",⁷ or the folk,⁸ and the men who have to be told how to hold their shields at Maldon

1 II, Aethelstan, c.13; V, Aethelred, c.26, VI, Aethelred, c.32; II, Cnut, c.10 and 65

2 B.348=K.201=S.177

3 The exception is a document which forms the dorse of B.201=K.116=S.106 where five men are required to serve in the fyrd from an estate, - which may be thirty hides, but could also be thirty-six. There is always the possibility when a precise number is given that it was specified because it represented an exception from the norm

4 See N. Brooks, "Development of military obligations in eighth and ninth century England" in England before the Conquest, Studies in Primary Sources presented to D.Whitelock, ed.P.Clemoes and K. Hughes, also T.M.Charles-Edwards, "Kinship, Status and the origin of the hide", pp.7, 10 P. and P. No. 56, Aug. 1972, pp 7, 10.

5 Ine, c.51

6 Ibid., c.10

7 A.S.C. s.a. 1026, 1016, 1053

8 Ibid., s.a. 1001.

are called warriors (beorn). The post-Conquest villein may also have been required to serve in the army. In the Assize of Arms, freemen are required to take the oath, and it was laid down that "none shall be accepted for the oath of arms except a freeman";¹ the whole body of freemen must have at least a doublet, cap and lance,² but the only men who are expressly forbidden from possessing arms are the Jews,³ and nothing is said of villeins. Moreover, a royal writ of 1225 accepts that some villeins are sworn to arms and subsequent documents including re-issues and revisions of the Assize, do not mention status at all.⁴ Yet, a newly enfranchised villein was given arms to symbolize his change of status,⁵ and this is surely symbolic of his re-admittance to full rights and responsibilities within the community.

Stenton believed that the sokemen were descendants of the rank-and-file of the Danish armies, at first in a most literal manner he argued that they were of Danish race, whereas the villani in Eastern England were predominantly a "submerged Anglian peasantry" who had survived the Scandinavian onslaught but had "lost their tenurial, if not their personal independence".⁶ Later he did not commit himself so far, but argued in general, the importance of Danish influence.⁷ A study of blood groups might help

1 Assize of Arms, c.12

2 Ibid., c.3

3 Ibid., c.7

4 P. Hyams, Legal Aspects of Villeinage between Glanville and Bracton, unpublished M.Phil. Thesis, Oxford, and P. and M. Pt. 1.1, p.421 n.4

5 L.H.P. c.78 i, Richardson and Syles, Law and Legislation, p.138

6 F.M. Stenton, "The Danes in England", p.19

7 A.S.E. p.509

to resolve the problem of the density of Scandinavian settlement in Eastern England, but whatever it revealed, there can be no doubt that sokeright owes much to Danish influence. The Danes did not revolutionize Eastern England by introducing a Scandinavian social system for Scandinavian warriors, they preserved already existing English conditions, revitalized them, and thereby protected themselves and their English neighbours from the changes which were taking place in the West. The West was becoming "manorial" as the ancient multiple estates were dismantled by piecemeal royal grants; many of the peasantry there were driven into dependence, as the demands of the state, especially for military service in Wessex, may have crippled many, and driven them to seek the protection of lords who would defend them against the penalties which the state could inflict.

PART III

Socage Tenure

CHAPTER 11

A Definition of Socage Tenure

Soke gives its name to the form of tenure known as "socage". Maitland defined socage as "the great residuary tenure", "any tenure", he wrote, "that on the one hand is free and on the other is not spiritual, nor military, nor 'serviential' is called tenure in free socage".¹ This, at first sight, is a curiously negative approach, but it is an altogether sensible one. We hope to show that socage can be traced to Anglo-Saxon principles of land holding, the other tenures developed after the Conquest superseded it, leaving socage with completely different rules and incidents.

Socage tenure cannot be identified by any specific service, although it was principally associated with annual money rents; - Woninton in Staffordshire was held in socage for 10s. per annum,² a bovate at Hol and Thirnesco in Lincolnshire was held in socage for 7s 10d per annum.³ Suit of court was often also required; - Bromleyge was held of the bishop of Chester in socage for 10s. per annum and suit to the bishop's court at Eklessale,⁴ Richard Maloysel held one carucate at Dilyngton (Somerset) for 17s. and suit.⁵ Renders in kind could also be made; - John le Sauvage held Staynesby (Derbyshire) of the king by socage for one sore sparrowhawk a year,⁶ Poleye (Warwickshire) was held in socage

1 P. and M. I, pp.294 and 291. Cf. A.R. Hogue, Origins of the Common Law, (Indiana, 1966), p.100, - "socage tenure in the Middle ages can only be described in terms of what it was not. Socage tenure was not military, it was not spiritual, it was not servient".

2 Inquisitiones Post Mortem, Vol.11 p.9, File 1 (8). Hereinafter cited as I.P.M.

3 Ibid., p.29, File 13 (16)

4 Ibid., p.9, File 1 (8)

5 Ibid., p.70, File 8 (8)

6 Ibid., p.77, File 9 (10)

for a sparrowhawk or 2s.,¹ and John Dispenser held Beumaner (Leicestershire) in socage for a pair of gilt spurs or 6d per annum.² But all these dues could be rendered under tenure by petty serjeanty. Land at Brothirwyk (Northumberland) was held of the king for a sparrowhawk or half-a-mark per annum and this was a serjeanty tenure,³ gilt spurs could be rendered from serjeanties,⁴ and land at King's Pyon (Herefordshire) rendered an annual payment and suit of court and was held in serjeanty.⁵ That socage was more closely identified with an annual rent is suggested by the reference at Davinton and Hokeling (Kent), which were held of the king "in socage by petty serjeanty" for a pair of gilt spurs price 6d.⁶ It should not be thought that because socage was not a military tenure, it was not associated with military service.⁷ A group of tenants held at Archenfield (Herefordshire) and they owed the king fifty men for the Welsh army and money render. The lawyers had difficulty in classifying their tenure, and it was variously described as socage or serjeanty,⁸ which shows, at least, that military service was not regarded as totally out of the question in socage.

It is the incidents of socage which distinguish it from the other tenures. These incidents are defined in the De Legibus of

1 Ibid., p.333, File 41, (5)

2 Ibid., p.71 File 8 (10)

3 Ibid., p.107, File 13 (7)

4 Book of Fees, p.341

5 Ibid., p.335, File 41, (8)

6 Ibid., p.192 File 23 (15)

7 A.W.B. Simpson, Introduction to the History of the Land Law, (Oxford, 1964), pp.12-13

8 Book of Fees, pp.1273 and 100; I.P.M. Vol. 1. no.20; Red Book of the Exchequer, p.497

Glanvill,¹ they concern inheritance, wardship and relief, and are as follows:-

"If a tenant dies and leaves several sons, the inheritance falls entirely to the eldest son if the land was held by knight service, if, however, he was a free sokeman, then if the socage was anciently partible, the inheritance will be divided equally among all the sons, however many there are, but saving the chief messuage to the eldest son, out of respect for his primogeniture, on condition that he compensates the others with property of equivalent value; if it was not anciently partible, then, according to the custom of some places the eldest will take the whole inheritance, but, according to the custom of other places the youngest son is heir".²

The heir of a military fee comes of age at twenty-one but "the son or heir of a sokeman is deemed of full age at fifteen."³ The rules of wardship are also different. The sons of knights are held in ward by their lords, but "the heirs of sokemen, on the death of their ancestors, will be in ward to their nearest blood relatives in the following way: if the inheritance descends on the father's side, wardship is given to the blood relatives descended on the mother's side, but if the wardship descends on the mother's side, then wardship belongs to

1 The Treatise on the Laws and Customs of the Realm of England commonly called Glanvill, ed. G.D.G. Hall, (1965). Although this book was not written by Glanvill himself, the author may have written under Glanvill's direction, and the De Legibus may be said to reflect "the practice of the courts while he was justiciar, that is, in the years between 1180-1189", - H.G. Richardson and G.O. Sayles, Law and Legislation, p.105

2 Glanvill, VII, 3.

3 Ibid., VII, 9

the paternal blood relatives. For, by law (de iure), wardship of a person never goes to anyone who might be expected of being able, or wishing, to claim any right in the inheritance".¹

Although a lord cannot have the wardship of his socage tenants, he may take their relief. Moreover, the law is certain about the amount of relief due from socage lands, whereas there is still some doubt as to other tenures. Baronies and serjeanties must negotiate what terms they can, a "reasonable relief" for a knight's fee was estimated at 100s, but this had to be re-stated and established by Magna Carta; however, there is no hesitation in Glanvill's statement that the relief for socage is one year's value of the socage land.²

Glanvill, therefore, treats socage as a series of exceptions to tenure by knight service. So indeed it was. Deriving from tenure in Anglo-Saxon society, it preserved the old English principles of land holding, whereas the tenures in serjeanty, military service, free alms and villeinage were developed after the Conquest under different conditions and therefore following different rules. Socage maintained its own rules of inheritance and remained immune from the feudal incidents of marriage, wardship and scutage. The essence of the tenure and the clue to its origin were not the services which it rendered, but the rules which it followed: thus a decision that land was socage was not a claim to certain services, but a guarantee that these immunities would pertain, and that the land would be treated in a special way.

1 Ibid., VII, 11.

2 Ibid., IX, 4.

CHAPTER 12

Socage and Inheritance

According to Glanvill, if socage land "was anciently partible, the inheritance will be divided equally among all the sons, however many there are, but saving the chief messuage to the eldest son, out of respect for his primogeniture, on condition that he compensates the others with property of equivalent value; if it was not anciently partible, then according to the custom of some places the eldest will take the whole inheritance, but according to the custom of other places the youngest son is heir".¹

There is abundant evidence in earlier sources to show that, in common with other early societies, inheritance in Anglo-Saxon England was by partition among heirs.² There are some references to inheritance in the law codes themselves. Alfred laid down that "if a man has bookland which his kinsmen have left him, the land is not to go out of the kindred, if there is documentary or other evidence that this was forbidden by the men who first acquired it",³ and a passage in Cnut's law states that the property of a man who dies intestate shall be very strictly divided among his wife, his children, and his near kinsmen, each according to the share that belongs to him.⁴

1 Glanvill, VII, 3

2 For continental evidence see L. Verriest, Institutions Médiévales (1946), pp.14-35 and 133. G. Duby, La société dans la région mâconnaise aux XI^e et XII^e siècles. pp.48 and 51. See also some English evidence T.M. Charles-Edwards, "Kinship, Status and the Origins of the Hide", Past and Present, No. 56, 1972, pp. 5-8

3 Alfred, c.41

4 aelcon be ðære maede ðe him to gebyrige, II Cnut, c.71.1

It is from Domesday Book, however, that we must draw much of our evidence about Anglo-Saxon landholding. Several phrases are used in Domesday to describe pre-Conquest tenure. Tenuit in paragio or tenuit pariter were characteristic of Exon Domesday and these were often glossed in the Exchequer text by tenuit libere. The liber homo holds libere, - the two expressions were common in the West Midlands. The East Midland and Eastern shires usually record the right of the liber homo to recede, while the South East has allodiarii, tenants who hold in alodium.¹

Tenure in paragio is often explained as landholding by several tenants who are "peers" and who hold by joint inheritance. Professor Darlington, for example, has suggested that parage "seems to mean the joint holding of an inheritance by kinsmen who shared the profits of an estate (as a rule equally, but not always), and were jointly responsible for the burdens resting on it".² Mr. Welldon-Finn has objected that there are very many cases where an individual is said to hold pariter and this does not suggest joint tenure.³ This may not be a difficulty: the kinsmen of the current holder may have died, but he may have three sons who will make joint holding a reality again, or it may be that Domesday is merely recording one of the tenants and omitting the rest. The latter is more probable, for there are many cases where a number of thegns are said to hold in paragio as so many manors, and most often the number of manors is equal to the number of thegns.

1 C. Stephenson, "Notes on the Composition and Interpretation of Domesday Book". Speculum, xxii, 1947, pp.1-15

2 V.C.H. Wiltshire, II, p.64

3 R. Welldon-Finn, The Liber Exoniensis, pp.87 ff.

This seems to indicate a system of unitary holding by an individual rather than a family group; there is no need, however, to put forward the principles of individual and joint holding as diametrically opposed systems of tenure. That would be to confuse landholding with inheritance. A man's estate was divided on his death, and no doubt his heirs could hold as individuals, but repeated division would have resulted in a totally impracticable fragmentation of the land, and joint holding would be the obvious solution. Maitland suggested that the individual cited or named tenant was merely a representative figure who was "answerable to king and lord for the services due from the land",¹ and this has recently been endorsed by Professor Holt who has defined parage as a "refinement of partition whereby the younger sons were represented by the eldest who was treated as the sole heir".² There are a small number of cases in Domesday where this is made explicit. Five thegns held two bovates and one is said to be the senior of the others;³ eight thegns held one manor, one of the thegns was the king's man and, he was the senior of the others.⁴ Evidence from elsewhere points strongly in the same direction. In Lancashire, three thegns held Ince Blundell as three manors; three thegns held Ravensmeols as three manors; fifteen drengs held Newton in Makerfield as fifteen manors; thirty-four drengs held Warrington as thirty-four manors;⁵ and twenty-eight liberi homines held Blackburn as twenty-

1 D.B.B. p.182

2 J.C. Holt, "Politics and Property in Early Medieval England", Past and Present, no.57, 1972, p.44

3 D.B. I, f.291

4 Ibid., f.145b

5 Ibid., all f.268b

eight manors.¹ These population figures seem to be assessments rather than statistics, with the individual thegns, drengs, and liberi homines as representative holders who have the major responsibility for the dues levied on the estate.²

The expression in paragio seems to have been uncommon in Normandy at this period. There is, however, a document of 1070-81 from the cartulary of Mont-Saint-Michel which records an agreement between the abbot and William Paginell, whereby William is to do watch and ward, and his nephew is to do likewise si in parage terram suam tenuerit secundum hoc quod tenebit.³ Here the service for which the land is assessed "remains" when the land changes hands, and responsibility for the service will be divided if the land is subsequently divided when it is inherited. The Tres Ancien Coutumier later define tenure in parage as partition among heirs but where the younger hold of the eldest heir "in parage", - they are his peers in that they are equally entitled to the inheritance, and thus they do not do homage and fealty to him, but he bears the major responsibility for the service of the fee, and he, therefore, does homage to the lord.⁴ It is in this sense that Domesday uses in paragio.

The Domesday accounts for Berkshire, Sussex, and Hampshire use the phrase in alodium as well as in paragio. Coleshill in

1 Ibid.; f.270

2 This representative system can be illustrated from the case already cited in Lincolnshire, - four men are said to have divided their father's land, and when the fyrd is called out the first named brother went to serve, and his brothers supported him - probably by contributing to the cost of his equipment, but if he was unable to go, the second brother took his place and the others supported him, and so on. f.375b

3 Quoted in C.H. Haskins, Norman Institutions, (1918), pp.21-22

4 Tres Ancien Coutumier, c.30, Coutumiers de Normandie, 2 vols., E.J. Tardif, (Société de l'histoire de Normandie, 1881 and 1903). Hereinafter cited as T.A.C.

Berkshire was held in alod;¹ Peasemore was held in parage;² Bellhurst in Sussex was held in parage;³ Seningham was held in alod.⁴ There are occasional references to alodiarri who hold in parage.⁵ Round was much tempted to the view that tenure in alod was synonymous with tenure in parage, but he remained uncertain. He noted that there are cases of alodiarri holding in parage, and this seems to imply that other alodiarri did not hold in parage, but in a different way. Yet it is more likely to be mere tautology, and Round's own work on Hampshire Domesday tends to confirm this.⁶ The Exchequer scribe alternated the phrases folio by folio. There are twenty-seven cases of tenants holding in alod on ff.50-50b, not one case of tenure in parage until the hundred of Rodbrige where, on ff.50b-51b there are thirty-three holdings in parage, and none in alod. In the section on the Isle of Wight (ff.52-'4) there are fifteen tenures in parage, followed by twenty-three in alod, then eleven in parage, seven in alod, and finally five in parage, but in the Isle manors entered on ff.39b-40, all are said to be held in alod. On the royal estates in the Isle, tenures in alod are only found on ff.39b-40, whereas tenures in parage are only found on ff.52-52b. Whatever the origin of the terminology, whether in the returns or in the final transcription, it seems to have been a matter of indifference

1 D.B. I. f.59b

2 Ibid., f.60

3 Ibid., f.20

4 Ibid., f.21b

5 See Langley Hants. Ibid., f.50b

6 V.C.H. Hampshire, 1, pp.441ff

to the Exchequer scribe if he wrote one phrase or the other.¹ Tenures in alod appear in precisely the same circumstances as those in parage, individuals and groups are said to hold in alod; it is clearly a regional variation of phrase not a different form of tenure.

Tenure in parage is often glossed by libere in Exchequer Domesday and alodiarri are often recorded as having the right to "go with their land where they would". These phrases, together with "as a freeman", predominate in Domesday. They do not suggest rights of inheritance or partition among heirs, but we do have evidence, nonetheless, that the latter was commonplace. Lincolnshire has many explicit references to partible inheritance one has been noted above, but there are others. The men of Hornecastle Wapentake testified that three brothers had divided their father's demesne land equaliter et pariliter although only two of them had divided the soke(land) (socam patris).² There are some references to the lands of brothers to Count Alan;³ Judith holds two manors which had belonged to Aelmer and his brothers.⁴ Here again we see that one brother is named, and it would surely not be stretching the evidence by calling him the senior, and holding him primarily responsible for the dues of the estate. Sometimes, a post-Conquest tenant seems to have

1 Alodium was used in Normandy in the general sense of hereditary right. R. Carabie, La Propriété Foncière dans le très Ancien Droit Normand XI^e-XIII^e siècles: i, La Propriété Domaniale. Bibliothèque d'Histoire du Droit Normand, 2nd ser., Études Vol.5, Caen 1943, pp.230-'9

2 D.B. I, f.375b

3 Ibid., f.376

4 Ibid., f.377

taken over a joint holding which covered several vills. Ghilo had a small group of estates in Northamptonshire and his antecessors were Fregist, Siward, Leuric and Alvruc. Leuric is said to have held three estates alone, but he also held two estates jointly, and Siward held an estate alone and also held two jointly, this is surely a partition of lands which have been re-constituted into a single holding for the new lord.¹

Joint holdings are recorded throughout the Northern shires. Two folio's taken at random from Staffordshire (ff.249-249b), show thirty-four holdings recorded under the name of one T.R.E. tenant and twenty-nine holdings under two or more names, including the case of Blymhill which was held by five brothers, and an entry for Dilhorne which runs:- "Godwin held it and he was a liber homo and two other men similarly free", this suggests that the name of only one tenant was known, and this may have been because he was the senior. The folios may be set out in detail:-

Norton	two named men held
Aston	two named men held
Cooksland	two named men held
Hilderstone	two named men held
unidentified	two named men held
Colton	two named men held
Milwich	two named men held

1 The estates are on f.227:-

Weedon Pinkeney	-	Fregist and Siward
Morton	-	Leuric
Silverstone	-	Siward
Wappenham	-	Leuric and Siward
Brime	-	Leuric
Astwell	-	Leuric and Alvruc
Syresham	-	Leuric

Tixall	two named men held
Ingestre	two named men held
Tittensor	two named men held
Oxley	two named men held
Humley	two named men held
Amblecot	two named men held
Loynton	two named men held
Stretton	three thegns held
Wilbrihton	three thegns held
Hemstall	three thegns held
Dilhorne	three thegns held
Blore	four thegns held
Syerscote	four thegns held
Wichnor	four thegns held
Great Saredon	four thegns held
Brineton	five thegns held
Ellastone	six thegns held
Sharehill	two <u>liberi homines</u> held
Coppenhall	three <u>liberi homines</u> held
Levedale	three <u>liberi homines</u> held
Morfe	three <u>liberi homines</u> held
Blymhill	five brothers held

There seem to be a suspiciously high number of cases - nearly half the total - where two named men are recorded as the T.R.E. tenants, whereas the numbers of anonymous thegns and liberi homines are more various. It is unlikely that there was a particular trend to two-son families in Staffordshire, it is not impossible that a scribe copied merely the first two names of a larger group of joint T.R.E. tenants and deemed this sufficient to identify the holding. The element of responsible and representative tenure

seems to occur in Nottinghamshire. Again, if two folios (ff.287-287b), are taken at random, twenty-three manors are recorded under one personal name, and six are apparently joint holdings, but in five of the six, the number of manors corresponds to the number of T.R.E. tenants:-

7M.	Rampton	seven thegns
2M.	Sibthorpe	two men
4M.	Stapleford	four men
3M.	Linby	three brothers
3M.	Beeston	three men
3M.	Bilborough	two men

Thus we may say that partible inheritance was the prevailing form of land holding in Anglo-Saxon England. Extreme fragmentation was avoided, in part because the kinship group was small and nucleated, and also because the heirs continued to hold as a group. The interests of the authorities were also preserved by the principle of representation which gave one man primary responsibility for the taxes and other burdens laid on the estate. The numerous examples of unitary holding recorded in Domesday Book may be misleading. Domesday was concerned with the valuation of the estates and their tax assessment; under a system of inheritance by partibility, the number of tenants responsible for payment fluctuated, but the government could ignore this if the tax unit remained unchanged.

Vinogradoff observed that parage "appears as a pre-Conquest tenure, - people are not said to hold in paragio or pariter T.R.W."¹ According to the Dialogus, the Conqueror at first completely

1 P. Vinogradoff, English Society in the eleventh century, p.245

abrogated the English rights of inheritance. The heirs of those who had fallen in battle, and the survivors of the protracted campaigns against the Normans, lost their lands, those who had been summoned to the fyrd but did not go "began to acquire tenancies at the will of their new lords, but only for themselves without hope of succession". Unlawful dispossession of the English became widespread, however, and "the King decided that they should be given an inviolable title to whatever they had acquired from their lords", but FitzNeal insists that this did not constitute the establishment of a right to inherit pre-Conquest property, for this, "they had to purchase the favour of their lords by devoted service".¹ Certain East Anglian tenants in Domesday are said to have "redeemed their lands",² and there were still some so-called alodiarri in Berkshire T.R.W.³ Right of inheritance among the English was restored. The Conqueror guaranteed to the Londoners that "every child be his father's heir after his father's day,"⁴ but this must have been of general application for it is accepted without hesitation in the Leges Henrici Primi.⁵ That inheritance was still partible

1 ...cum tractu temporis devotis obsequiis gratiam dominorum possedissent, sine spe successionis, sibi tantum, pro voluntate tamen dominorum possidere ceperunt. Succedente vero tempore, cum dominis suis odiosi passim a possessionibus pellerentur, nec esset qui ablata restitueret... communicato tandem super hiis consilio decretum est ut quod a dominis suis, exigentibus meritis, interveniente pactione legitima, poterant optinere illis inviolabili iure concederetur. Ceterum autem nomine successionis a temporibus subacte gentis nihil sibi vendicarent. Dialogus, ed. C. Johnson, 1956, p.54

2 D.B. II, f.360b

3 Ibid., f.63b

4 E.H.D. II, p.945

5 L.H.P. c.70; 18, 20, 20a, 20b, 21

can also be seen from statements in the law. It is laid down in the Leis Willelme that "if two men are sharers in an inheritance (parceners de un areithet) and one is charged (of an offence) without the other, and he loses the case through folly", the other tenant is not to lose his portion."¹ This provision delicately balances joint responsibility and individual right, it is assumed that the inheritance remains intact, but it can be broken in two if the need arises. Both the Leis and the Leges Henrici Primi repeat the law of Cnut that when a man dies intestate the inheritance is divided among his family,² and the Leges even re-iterates Alfred's law that those who have bookland may not bequeath it outside the family.³

Inheritance among the Normans in England, however, has been a subject of some controversy among historians. Some have doubted that the fees were given with right of inheritance.⁴ It is undeniable that the Norman aristocracy were accustomed to inheritance in the duchy,⁵ and Professor Holt has recently argued that the tendency towards automatic inheritability was not obstructed

1 Leis. c.38

2 Leis. c.34; L.H.P. c70, 20

3 Maitland suggested that these statements were of Roman and Riparian origin - P. and M. II, p.267. The degrees of kindred stipulated in the Leges may not be English, but the clauses bear enough resemblance to those in Alfred and Cnut to suggest that English law was their basic origin.

4 Professor S.E. Thorne argued that inheritance of fees was only gradually achieved and recognised in law during the course of the twelfth century: - S.E. Thorne, "English feudalism and estates in land", Cambridge Law Journal, new ser., VI, (1959), pp.193-209. Others have seen a more sudden development: - S. Painter, "The Family and the feudal system in twelfth century England", Speculum, xxxv, 1960, pp.1-16 argues c.1150. R.W. Southern, "The place of Henry I's reign in English History", Proc.Brit. Acad., XLVIII, 1962, pp.127-'69, esp. p.145, suggests the reign of Henry I. R.H.C. Davis, "What happened in Stephen's reign?" History, XLIV, 1964, pp.1-12, esp. pp.11-12: - that inheritability of their fees was demanded by the barons as the condition of their recognition of Henry II as king.

5 D.C. Douglas, William the Conqueror, (London, 1964), pp.83-104

by the Conqueror when England was shared out among his followers,¹ but there was no law of inheritance even in the twelfth century, only customs and conventions "which were still malleable and only slowly setting into hard and fast rules".²

Inheritance, as it was practised among the Anglo-Norman aristocracy, shows a strong element of similarity and continuity with English custom. In Normandy itself, there was, in one pays, a theory of absolute primogeniture, but elsewhere there was partition among the sons; however, through the duchy a compromise was struck so that provision was made for younger sons, although they received portions varying according to the seniority.³ There was a tendency among the very highest in rank, to regard unitary holding of the inheritance by a single son as desirable. The Conqueror had originally intended to leave all his dominions to one son, but "under pressure from those gathered about his death bed, and in articulo mortis... he consented to a partition which was, in fact, a compromise".⁴ It was still strongly felt that to cut off younger sons was a violation of their natural right to some part of the patrimony,⁵ and it was expedient, at least to buy off a disappointed son. Thus the Conqueror's son, Henry, was provided for, and Baldwin V of Flanders ensured that his elder son succeeded to his lands, whole and undivided, by giving his younger son a large sum of money and obtaining from him an oath of renunciation.⁶ But the position was uncertain, and the controversy among historians in this area is surely a reflection of the difficulties which existed in the twelfth century, not with the

1 J.C. Holt, art.cit. pp.5-6

2 Ibid., p.9

3 Ibid., p.10

4 J. le Patourel, "The Norman Succession, 996-1135", E.H.R. 1971, p.234

5 Ibid., pp.237-'8

6 Ibid. p.239, esp.n.4 where Professor le Patourel writes, "The gift of money almost certainly implies a recognition that Robert had some claim on the paternal inheritance".

right of inheritance, but with its practice.¹ Some of the Norman aristocracy did divide their lands, using the distinction between propres and acquêts as a guiding principle - fitzOsbern, Harcourt and Montfort-sur-Risle all left their inherited lands to their eldest sons and their acquired lands to the younger, while Henry, earl of Warwick, gave his acquired land to his elder son and his inherited land to the younger. It was politic to preserve the unity of both the kingdom itself, and the military tenancies, and the law, at first, adopted a compromise stance on inheritance. The Leges Henrici Primi states that "the eldest son takes his father's fief", but other acquisitions can be freely disposed of,² and a constitutio, normally attributed to Henry II, forbade partition of the fief, - military tenements were to be impartible so that an inheritance of one fee by hauberk, a barony, and a serjeanty passed entirely to the eldest son, but even so, great emphasis is laid on the duty of their heir to provide for his brothers, and if there were two fiefs, then the inheritance could be divided.³

Thus, partition was allowed in so far as the unity of each fee, barony and serjeanty was preserved, but complete primogeniture was apparently well established among the lawyers by the time of Glanvill, for the De Legibus says simply that the inheritance of a knight and a military fee is by primogeniture,⁴ and there is no mention of multiple fees. But Glanvill seems, nonetheless to be uncomfortable. He complains of the affection which fathers show to their younger sons, - in discussing, at some length, the provision

1 Professor le Patourel has also commented that "it would be very difficult to find a rule of inheritance that applied generally in either country (Normandy or England) in the late eleventh century". Ibid., p.230

2 L.H.P. c.70, 21

3 T.A.C. c.8

4 Glanvill, VII, 3.

which may be made for them during their father's lifetime. A man may leave land he himself inherited to anyone - a daughter, a servant, any stranger and even a bastard, without the consent of his eldest son, but "he can hardly (de facili) give any part of the inheritance to a younger son without the heir's consent, for if this were allowed the disinheritance of the eldest sons would often occur, because of the greater affection which fathers tend to have for younger sons".¹ His explanation sounds like a lawyer's complaint that the rule of primogeniture was being evaded. The prejudice against primogeniture is unexpectedly durable. A French chronicler tells of a debate in Parliament in the time of Henry III on the possible abolition of primogeniture for it was driving younger sons to seek their fortunes abroad and England was being impoverished thereby.² If Glanvill was adamant in his text book, the practising lawyer did not stand totally against partition and even a knight's fee could be divisible. An action was brought in 1307 by Hugh, son of Robert of Great Wodington, against Nicholas la Grandame. The history of the estate was traced and it was shown to be partible even though it was held by knight service, and the court commented that "It may be that they hold by knight service and yet be partible".³

But the law was convinced that partition was not a viable system of inheritance for military holdings, and the victory of unitary inheritance was assured since land, at the higher echelons of society, was held principally by military tenure. One test of this tenure was scutage, and new enfeoffments were normally made by

1 Ibid, vii 1

2 Bemont, Simon de Montfort, p.201, quoted in P. and M. II, p.274 n.1

3 Y.B. 33-35, Edward I, p.515. Il porra atre ge ceaux sunt tenuz par service de chivaler e jatardis departibles.

the feoffor passing on the burden of scutage to his tenants thus making their tenure military.¹ We may illustrate how far the law had moved from Anglo-Saxon principles of land-holding by comparing a Domesday entry, with an Angevin grant. The Lincolnshire disputes describe how Siwate, Alnod, Fenchel and Aschil had divided their father's land T.R.E. and "if there were a call to the king's army and Siwate could go, the other brothers assisted him. After Siwate a second went and Siwate and the rest assisted him, and thus with respect to them all".² In 1208 a jury reported that Galfrid de Mandeville had held the barony of Marshwood, but Henry I had given it to Galfrid's younger son, Radulf, quod fuit melior miles quam Robertus de Mandevill frater suus.³ The principle of unitary succession has ousted partition, the land is not divided between the sons, the more capable man is not required to assist his brother because of Robert's inadequacy, the king denies him the inheritance for he is not competent to do the service for it.

It was therefore the new tenures and the new feoffments which descended by unitary inheritance, but at the lower level, among the peasantry, partible tenure survived, and the law allowed that if land had been divided of old it was socage and would still be subject to partible inheritance. A holding could consist of land held by two forms of tenure - socage and military, in which case the two portions would descend according to their own principles of tenure - partition for the former, unitary descent for the latter. In 1225 two brothers, Aunsellus and John, were disputing the

1 P. and M. II, p.269

2 D.B. 1, f.375b

3 Pipe Roll, 10 John, ed. D.M. Stenton, p.113, n.8

division of their father, Adam's property in Suffolk. Adam had held two portions of land, fifteen acres in Lellesheya and fourteen acres in Illegh, both of which were currently held by John. Aunsellus claimed, however, half the fourteen acres in Illegh as socage which, he said, ought to be divided. This was subsequently found to be true, and Aunsellus received a share. But Aunsellus also claimed half of the fifteen acres at Lellesheya, on the grounds that it too was partible, but John denied this and said that their father had held by military service and had paid scutage and that he was the elder son and had a right to all the estate at Lellesheya. The court found for John and he retained the full fifteen acres.¹ In the following year, Alexander impleaded his brother, William, for one quarter of the land that William held in various vills in Norfolk, claiming that the land was partible and ought to have been divided when their father died. William, however, said that their father's land had been an enfeoffment by Roger de Scales and owed military service and when Alexander conceded that military service had been done, he lost the case.²

According to Glanvill, socage land which was divisible "from of old" would continue to be divided, but new socage tenures would follow the primogeniture rule. We can see how much this would be in the interests of the landlord from a charter in Abbot Samson's Kalendar concerning a holding in Rougham. Rougham was a labyrinth of partible tenures and out of twenty-three holding, five were held

1 C.R.R. xii, no 419 p.80 Trin., 9 Henry III, 1225

2 Ibid., no 1686, p.345. Hil., 10 Henry III, 1226. For other examples of partition of socage see B. Dodwell, "Holdings and Inheritance in Medieval East Anglia", Econ.H.R. 2nd ser., Vol.XX, 1967, pp. 53ff. and G.C. Homans "Partible Inheritance and Villagers' holdings". Economic H.R. 1st ser., Vol.VIII, 1937 pp. 48-56. and his paper "The Frisians in East Anglia", Economic H.R. 2nd ser., Vol.X, 1957, pp.189-206.

by three joint tenants, eight by two joint tenants,¹ however, when the abbot received a new tenant, Roger, son of Martin, he stipulated that the land was to be held integre sine aliqua divisione facienda inter fratres vel sorores vel aliquos alios.²

The distinction thereby made in socage tenure between partible and unitary succession was rife with opportunities for dispute, and there are numerous cases in the plea rolls where tenants take stand on whether or not the land had been divided of old. In a Rutland case of 1200, Gilbert de Bayvill demanded two virgates of land in Gunthorpe against his brother William, as due to him as part of the socage land of their father. William admitted that the land was socage, but denied that it had ever been divided and offered to defend this through his freemen. Gilbert offered two marks for a Grand Assize, but because he himself brought no proof of partition he lost his case.³ A Norfolk case, also of 1200, records that William and Alan claimed shares in a carucate at Tittleshall which was held by their nephew, Robert, but the jurors said that they had never seen the carucate divided, and similar carucates in the same place were not divided, and therefore Robert should continue to hold.⁴

Cases in which partition was proved, could be more complicated. Two brothers, Osbert and Simon, demanded against Ralph thirty ware acres in Naughton, Ash Street and Whatfield, and brought a chirograph to show that the land had been divided. Osbert and Simon had an elder brother Arnold who denied that the land was subject to partition, - this brother had perhaps sold the

1 Kalendar, pp.17-18

2 Ibid, charter n.39

3 Select Civil Pleas, 1, S.S. Vol.3, n.61

4 C.R.R. 1, 137, see also 297

land to Ralph without the consent of the others. At this point the case was postponed, but when it was re-opened Arnold re-appeared and admitted that the land had been divided; Ralph had died meanwhile, however, and the court ruled that if the three brothers joined together as plaintiffs they could purchase a new writ and recover the land which would then be held by them all jointly.¹

The right to divide the land was especially important in Eastern England^g, where there was a vigorous land market among the peasantry.² Partition could lead to severe fragmentation. Hudson found, from the very detailed survey of the manor of Martham in Norfolk made in the thirteenth century, that one hundred and seven former tenancies, in the course of two or three generations, had come to be held by nine hundred and thirty-five persons.³ Socage land and villein land had become very mixed and indeed it was difficult to distinguish the socage tenants themselves from the villeins, for the same persons were sometimes holding both types of land and were duly performing the two classes of obligations attaching to the two grades of service.⁴ This was to the great inconvenience of the lord - who tried to overcome the difficulties by preserving some knowledge of the unit to which each parcel had originally belonged.^g⁵

Economic problems for the landlord must have worked powerfully to reduce the extent of partible tenure, and the state, although it was not in as good a position to abrogate established inheritance

1 Ibid., 11, 170 and 268

2 See P.R. Hyams, "The origins of a peasant land market in England", Econ.H.R. 2nd ser., Vol.23, no.1, 1970, pp.25ff

3 W. Hudson, "Traces of primitive agricultural organisation as suggested by a survey of the manor of Martham, Norfolk, 1101-1292", T.R.H.S. 4th ser., Vol., I, 1918, pp.28-30

4 Ibid.,p.41

5 Ibid.,p.29

customs, assisted the lords greatly by extending the rule of primogeniture to socage tenures which came in being after the time of Henry II.

According to Glanvill, some socage tenures followed the rule of ultimogeniture and the youngest son inherited the land, but both he and Bracton treated it as a regional phenomenon. It has been said to "abound" in Kent, Sussex, Surrey, Somerset, and the London area, but to be rare in the Midlands and non-existent North of the Humber.¹ Corner listed the inheritance customs of c.140 manors in Sussex,² and on the authority of Durant, Cooper and Fullager, he noted that socage land^{at} Plumpton followed the rule of ultimogeniture.³ But in the customs of Wadhurst manor, a distinction is made between "bondland" and socage, if the ancestor had held both and had first held only bondland, acquiring the socage later, his youngest son inherited, but if he held the sokeland first then the eldest son inherited.

Glanvill's treatment of inheritance suggests that the law was trying to bring some regularity into a somewhat loose tradition of inheritance customs. The bias of inheritance had been towards partition of the family holding which would balance the claims of the heirs with the continuing economic viability of the estate. In Germany, this balance could not be achieved when a family received and honour such as the office of count, this could not be shared, and crippling feuds resulted.⁴ The background to Glanvill's

1 F. Pollock, MacMillans Magazine, Vol.xLvi, p.360.

2 G.R. Corner, "The Custom of Borough English as existing in the county of Sussex", Sussex Archaeological Collections, Vol.vi, 1853, pp.164ff. Elton seems to have relied on this article for his discussion, in Origins of the English Nation, (London, 1882), pp.191ff.

3 Ibid., p.185

4 K. Leyser, "The German aristocracy from the ninth to the early twelfth century", Past and Present, 41, 1968, pp.36ff

chapter on inheritance suggests at least family tension, if not actual strife. The bias of post-Conquest landholding when new tenures were created was towards unitary holding by primogeniture, but the older tenancies, surviving almost uninterrupted from the eleventh century, continued to follow the rule of partibility, and it was these older tenancies which were held in socage.

CHAPTER 13

Majority, Wardship, Relief and Dower in Socage.

According to Glanvill, the military tenant comes of age at twenty-one, but the heir of the sokeman reaches his majority at fifteen.¹ There are a number of cases in the plea rolls where it is claimed that one of the parties is under age, but then the tenement is shown to be held in socage and because of this the exception is not allowed. In a Grand Assize of 1220 Bartholomew of Stanham claimed the advowson of Muckfield in Suffolk against Roger of Ho. It was said that Bartholomew was under age, but the chief lord and others testified that the land which he held and to which the church was appurtenant was socage, and he was therefore able to plead.² In a slightly earlier case a number of sisters were disputing the division of land at Bray in Berkshire, the tenant pleaded his age, but the plaintiffs replied that he need not be of full age since the land in dispute was socage. No decision is recorded for the court expressed doubt as to the age of the defendant and postponed the case until this could be ascertained.³ In another case at the same sitting the abbot of Westminster claimed land at Wheathamstead in Hertfordshire against Geoffrey le Chamberleng. Geoffrey pleaded his age but the court ruled that he must answer the charge because the land was socage.⁴ In all these cases the defendants plead that they are not of full age and the courts reply that they need not be so, the age of majority in socage

1 Glanvill, vii, 9

2 C.R.R. viii, 337

3 Ibid., 226

4 Ibid., 229. See also Justices in Eyre, Gloucestershire, Warwickshire, Staffordshire, 1221-1222, S.S. Vol.59, 1940, D.M. Stenton nos. 141 and 1450

is therefore seen by all sides as abnormal. That twenty-one was the norm can be shown by a case of 1219. A widow claimed one-third of a tenement as dower (it must therefore be a military tenure), one party had occasion to claim that her son was under age but the shire judged him to be of full age, scil. twenty-one years.¹

The law governing the age of inheritance is avowedly utilitarian:- the young burgess is also of age at fifteen when he can conduct his business efficiently, the young woman when she can marry and keep her house in order.² Twenty-one was the age at which the military tenant succeeds to his fief, and could be the age at which he became a knight. The bishop of Lincoln complained that Richard Silvan had made himself a knight while he was under age and had taken himself out of the bishop's wardship.³ The Tres Ancien Coutumier defines the age of majority as twenty-one, when the heir should be able to defend his inheritance by his own hand,⁴ there is the suggestion in the Coutumier that this had been the subject of a recent royal ruling for the Latin runs: Etas est statuta ad xxi annos, quoniam est discretionis et potestas, but this may be connected with the fact that the normal age at which heirs were admitted to a fief in Normandy was twenty, whereas it seems to be the fiefs held of the duke himself which descended to heirs of twenty-one years.⁵

The age of majority in Anglo-Saxon times seems to have varied. In the Kentish laws of Hlothere and Eadric it is fixed at

1 judicavit ipsum esse plene etatis, scilicet xxi anni et plus.
Justices in Eyre, Lincolnshire, 1218-1219 and Worcestershire 1221
ed. D.M. Stenton, S.S. Vol.5, no.629

2 P. and M. II, p.438

3 C.R.R. III, 143

4 T.A.C. c.vi

5 R. Genestal, "La Tutelle" Bibl. d'histoire du droit normandie
(Caen, 1930), pp.29 and 35.

ten years:- if a man dies leaving a wife and child, the child 'goes with' the mother, but one of the father's relatives 'takes care' of the property until the child is ten years old.¹ In Ine's law, ten is the age of criminal responsibility. When he is ten, a child can be accountable as an accessory to theft,² although this may be concerned with the possibility that a thief's wife and children can be reduced to slavery, not with any liability to a fine. In Aethelstan's law, anyone over twelve years of age can be held personally responsible for theft - the hand-having thief who is over twelve is not to be spared.³ Twelve also figures prominently in Cnut's law. All those over twelve were required to be in a hundred and tithing and to take an oath that he would not steal or be an accessory to theft,⁴ but there is nothing in these tenth and eleventh century laws concerning the age of inheritance.

According to the Stoneleigh Leger Book, the heirs of the better sokemen inherit at fifteen,⁵ but this is the only example which has been noticed and it suggests that the heirs of some sokemen could not inherit until the age of twenty-one. The evidence for the age of majority is too inadequate to draw any certain conclusions as to why the military tenant came of age at twenty-one, whereas the socage tenant need only be fifteen. The Très Ancien Coutumier suggests that the state had interfered in this field, and one can only suggest that new tenures would be more amenable to new conditions of holding, that the lord's right of wardship would give him the incentive to prolong the minority of

1 paet bearn, medder folgige, 7 him mon an hisfaedingmagum wilsumne berigean gefelle, his feoh to healdenne, op paet he x wintra sie. (Hlothhere and Eadric, c.6)
 2 Ine, c.7,ii.
 3 II Aethelstan c.1
 4 II, Cnut, cc.20 and 2
 5 Stoneleigh Leger Book, ed. R.H. Hilton, p.102

heirs, whereas the older tenures would be more resistant to change, and the kin's right of wardship would reduce the motive to extend the minority period.

While the tenant in socage was a minor he was held in ward by his relatives. This again distinguishes him from men holding by other forms of tenure who are in ward to their lords. According to Glanvill, if a socage inheritance descends from the father's side of the family, the heir is in ward to the mother's kin, if it descends from the mother's side, he is in ward to the father's.¹ This distinction between the two branches of relations is well reflected in the Anglo-Saxon period when the family structure was small and nucleated, not amorphous and clannish.² The law distinguished the paternal and the maternal kindred in matters of wergild.³ It seems that the lands of the husband and wife could be held independently by each partner and were not merged into a single holding. A case in the Domesday clamores for the East Riding of Yorkshire records that Asa held her land in her own right and her husband Bewulf could not dispose of it by gift or sale, nor could it be forfeited if he were convicted of a crime. Moreover Asa left Bewulf, - they separated and she "retired with her land and held it as its owner".⁴ The early plea rolls show that it was still important to determine from which side of the family the land descended. In 1200 William, son of Walter, impleaded his brother-in-law^w Herbert by a mort d'ancestor for land ex parte Richolde, his mother. Herbert produced for warranty,

1 Glanvill, vii, ii

2 T.M. Charles Edwards, art.cit. pp.5-7, cf. also L. Lancaster, "Kinship in Anglo-Saxon", British Journal of Sociology, ix, 1958, pp.230-250, and 359-377

3 Alfred, c.30

4 D.B. I, f.373

Walter, William's father, who said that he had a daughter by Richolde, this daughter married Herbert and the land was given as her marriage portion. William, however, said that his father could not give away the inheritance of his mother.¹

As there is some continuity between the structure of the family and the land law across the centuries, so there is one main thread running between Anglo-Saxon and socage wardship, for at both times it is the kin and not the lord who have the right of ward. But pre-Conquest law differed in two respects from the common law as it related to socage, firstly by making a distinction between wardship of the body of the heir and wardship of his land, and secondly, by giving wardship of the land to the same side of the family from which the land descended. This is most clear in the law of Hlothhere and Eadric;- "if a man dies leaving a wife and child, the child goes with the mother and the father's relatives (faedeningmagum) take care of the property until he is ten years old."² Later West Saxon custom is less clearly defined in Ine;- when the husband dies "the mother is to have the child and rear it and 6s. per annum will be given for its maintenance... and the relatives (maegas) will keep the family home (frumstol) until the child reaches maturity".³ Only three instances of wardship have been noticed in the eleventh century sources, - the will of Wulfric, may be doubtful. Wulfric bequeathed to his ear(m)an dehter land at Elford and Oakley, and Aelfhelm was to be the protector of her and her lands (hire mund 7 paes landes).

1 C.R.R. I, 330. The decision of the court is not recorded.

2 Hlothhere and Eadric, c.6

3 Ine, c.38

Professor Whitelock identifies Aelfhelm as Ealdorman Aelfhelm, Wulfric's brother,¹ but later in the will there is a reference to Aelfhelme minan maege whom she suggests was "probably a different person from the Aelfhelm mentioned above",² but her grounds for this are not given and it is perhaps simply because Aelfhelm is referred to as a kinsman rather than directly as a brother. Wulfric's daughter is "poor and destitute", there is no evidence as to her age or even her name, her mother was probably already dead since a wife is not referred to, and if she was a minor Wulfric's brother, her uncle, would have been an appropriate guardian. Thus it would not seem to be a totally impossible construction that Wulfric's daughter was a child whose lands were being entrusted to her uncle.

The two more certain examples of wardship come from Domesday Book. A case is recorded in the Lincolnshire disputes that the land of Ulviet and his mother Ulflet did not belong to Erneberne, his sister's son (i.e. Ulviet's nephew), and that Erneberne only had it in wardship until Ulviet could hold the land'.³ Four estates are then named, Uffington, Tallington, Casewick, and East Deeping. In the body of the survey Ulviet is shown to have held Casewick, and Tallington T.R.E., the T.R.E. owner of East Deeping is not given, but Erneberne is recorded as holding Uffington.⁴ Here, the mother is still alive, and she has probably brought up her son, but the land was entrusted to another relative, a nephew, who cannot however, be said to belong to one side of the family as

1 Wills, p.153

2 Ibid, p.156

3 terram Ulviet et Ulflet matris eius non fuisse Erneberne sororii sui, nec eum habuisse nisi in custodia, donec Ulviet terram posset tenere. D.B. I, f.376b

4 Ibid, f.358b

distinct from the other. The remaining example comes from Redbridge Hundred in Hampshire where a certain Aluric held half-a-hide T.R.E., he had succeeded his father to the land but not immediately for his uncle Godric had held it in wardship (cum custodiebat) and indeed it was only after Godric's death that Aluric himself succeeded.¹

The Lincolnshire case shows most clearly the danger that was inherent in wardship that the guardian of the land will come to hold it in his own right. Since Elford and Oakley were still held by the Mercian noble house, and since Aluric did not succeed to his land until after his uncle's death, it is possible that the other two examples reflect the same abuse. This problem would be particularly intractable in the system of partible inheritance where, relatives could have a claim to a man's land if he died intestate,² or if his widow married again in undue haste.³ It was also prominent in Glanvill for he says that land is held by members of the opposite side of the family from which the land descends, "for, by law, wardship of a person never goes to anyone who might be expected of being able, or wishing, to claim any right in the inheritance". We may note that he does not say that the mother has the right of wardship; in the plea rolls, however, it is the mother who claims wardship, yet one should not regard Glanvill's statement as a piece of mere circumlocution, for he does not even say that the nearest relative has ward, but it is given to the blood relatives (consanguineos). There may be two explanations for this. Firstly, it is possible that the distinction between wardship of the heir and wardship of his land had survived from

1 Ibid., 5f. 50b

2 II Cnut, c. 71, 1

3 Ibid., c. 73a

Anglo-Saxon times, secondly, and related to this, it is possible that the mother could claim a right in the inheritance. In Cnut's law, the property of a man who dies intestate, "shall be very strictly divided among his wife and children, and near kinsmen, each according to the share that belongs to him".¹ The Leis Willelme modify this and state that the lands of an intestate tenant are divided among his children,² the mother and other relatives are not mentioned, but the Lincolnshire example quoted above, shows mothers could hold with their sons. Glanvill could be citing the law in an evasive manner to cover pockets of surviving custom, although no concrete cases have been found.

Glanvill is certain, however, that socage wardship differs from wardship in the other tenures in that a blood relative, not a lord, claims the right of ward. We find this in the plea rolls where a case could turn on the decision that the inheritance was a military tenure. An assize was held to determine the rights of one H. Darmenters.³ In 1202 he was holding part of Kislingbury in Northamptonshire, as the ward, so he said, of Emma, but Emma's relatives (parentes) claimed that the land was socage, that it did not owe forinsec service and therefore H. should not have the wardship. The assize, however, found for H. and he continued to hold.⁴ But this had not always been the law, for in c.4. of his Coronation Charter, Henry I guaranteed the right of ward to the widow or the nearest relative. The lord's right is first generally recognised in 1176 in c.4 of the Assize of Northampton but the originality and unpopularity of this is reflected in the Très Ancien Coutumier

1 II Cnut, c.71,1

2 Leis, c.34

3 Earliest Northamptonshire Assize Rolls, 1202 and 1203, ed. D.M. Stenton, Northamptonshire Record Society, Vol.5, 1930, p.83
cf. p.117

4 This is one of the few cases where the mother is not said to claim wardship, but she may have been dead, - there is no evidence in the record of the case.

which gives what appears to be an apologia for change by explaining at some length, that wardship must not be given to the mother for she will marry again, and have other children, and she will murder her firstborn so that they will inherit, nor should it go to the relatives who might covet the inheritance, minors should rather be in ward to their good and noble lord, for father and lord have been bound by homage and the son himself has been reared in the lord's household, and thus "lords cannot look with enmity on those they have reared, but they will love them and faithfully guard their woods and tenements and apply the profits of their land to their advancement."¹ This may not be a total rationalization for there is a clause in Alfred's law concerning the traffic of minors:- if anyone entrusts a child who is dependent on him to another, and this other person causes the death of the child, the original guardian must clear himself of criminal intentions.² It is more likely however, that the change was not derived from a spate of outrageous crimes by unnatural mothers, but from the sheer pressure of lordship. Henry I may have solemnly sworn that his tenants would have the wardship of their heirs, and asked that they in turn extend this right to their tenants, but a lord must concern himself with the heirs of his tenants when they have an automatic right of succession. The most powerful lordships in early times seem to have been the churches and it is perhaps this that explains the apparent anomaly of certain tenants in socage who are nonetheless in ward to their lords. This occurred at Winchester, at Hereford where the dean and chapter claimed wardship of the heirs of all their freehold tenants, and in Kent where the archbishop of Canterbury, the prior of Christ Church and the monks of Dover claimed the wardship of their gavelkinders.³

1 T.A.C. cc.10-12

2 Alfred, c.17

3 See P. and M. I, p.321

The same right was also claimed at Bury St. Edmund's. In 1201, William de Ware demanded against the abbot the wardship of a boy, Peter's son; Peter had been a sokeman of the abbot but he had married the daughter, and heir of William de Walton who was a knight of William de Ward, thus he claimed wardship because of the knight's fee which descended to Peter's son from his mother. The court found for William on these grounds, but since the defendant was the abbot of Bury and not a member of the boy's kin,, it seems that if the land had been a socage tenure Bury St. Edmund's would have had the right of ward.¹ Not all the monasteries who had sokemen and socage tenants, however, were so unorthodox, and Burton Abbey, at least, followed the normal practice.²

It seems from this that wardship by the kin was a vestige of Anglo-Saxon practice, wardship by the lord was part of the twelfth century legal revolution which was better adapted to dependent tenure and an unquestionable right of succession. Yet, as with partible succession, the memory of the old ways endured, and what is put before us as a reform by the writer of the Très Ancien Coutumier is seen by others as a retrograde step. According to Higden, in the first quarter of the thirteenthth century the magnates of England granted to King Henry the wardship of their heirs, and of their lands, which was the beginning of many evils in England.³ We may see a continuing bias towards at least the father's rights to the wardship of his children in the principle of courtesy, where a widower had custody as long as he lived even if he married again, thus keeping out the lord.

1 C.R.R. II, 25-26

2 Annals of Burton, p.482

3 Polychron, viii, 202, Chron. de Melsa, 1,443. Cited in P. and M. p.324

Although the socage tenant had not been held in ward by his lord he nonetheless paid a relief on taking up his inheritance and in Glanvill this relief is estimated as one year's rent - de sochagio vero tantum quantum valet census illius sochagii per unum annum.¹ We also find this in the Leis Willelme. It does not make an explicit reference to socage but this is evidently the tenure involved in the clause. Cil qui tenent lur terre a cense, soit lur dreit relief a tant sum la cense est de un an. The date of the Leis is problematical. Liebermann suggested 1090-1135,² and Maitland believed that the writer's account of Anglo-Saxon law "seems too good to be of later date" than the early twelfth century.³ Mr. Richardson and Professor Sayles, however, have rejected this and have argued on grounds of philology and content that the last quarter of twelve would be a more accurate date for the text.⁴ It seems that both sides may be, in part, correct, for the Leis is a compilation of three sections,⁵ two of which may belong to the first half of the century, but the other section may be later, while the compilation itself of the three sections may also be late. Section I (cc. 1-28) is an account of Anglo-Saxon law with certain Norman modifications, and that it originally had an independent existence is suggested by the survival of a French text, the Holkham manuscript, which contains only this section of the Leis. Mr. Richardson and Professor Sayles concede that this may well be early. Section III (c.39 to conclusion) is a translation of Cnut's laws. Section II (cc.29-38) is a miscellaneous collection of rules which show Roman influence. Four of the six clauses in

1 Glanvill, ix,4

2 Gesetz, I, 492-518, III, 284

3 P. and M. l. p.101ff

4 Law and Legislation, pp. 121-125, and 170-175

5 Richardson and Sayles suggest four sections, but since they say that their section II and III were probably written by the same author there seems no reason why one should not adopt a three-fold scheme.

section II are taken from the Digest,¹ and thus it can hardly be earlier than the reign of Henry II. The two remaining clauses are concerned with partible tenure. Chapter 38 states that if one co-parcener forfeits his land after being convicted of some offence, the rights of the remaining co-parceners are not thereby affected and they will continue to hold their portions of the holding. This may have Roman origin. Chapter 34, however, is not Romanesque, it is a simple statement concerning the division of land among children. Modern editions of the Leis put the clause on relief for rented land in section I after the general chapter on reliefs (c.20) which is slightly modified restatement of Cnut's law. This would seem to be its natural place, but as Miss Robertson notes,² it is not its true place, and in the manuscripts it is found in section II after c.38. We can be more sure that this was not a simple error by the scribe overlooking it and adding it later, since it is not found in the Holkham manuscript. Thus the clause on relief for rented land occurs in section II which, because of its Roman traits must be late. However, it is not completely Romanesque and the one and possibly both of its non-Roman clauses are concerned with partible tenure. It seems likely, therefore, that the clause on relief from rented land derives from the author's train of thought, and that he connected rented and partible land. Thus, although the Leis Willelme supports Glanvill, and has the additional value of connecting socage, rent and partible tenure, it cannot be used as evidence for the first half of the twelfth century.

Bracton gives what at first sight seems to be a different account of relief from socage in saying that a double rent is due

1 c.33 cf.Dig.48,19,3; c.35.cf.Dig.48,5,22; c.36.cf,Dig.48,8,3 5;
c.37.cf.Dig.14,2; Last three quoted in P and M. I, p.103 n.1
2 Robertson, Laws, p.262

However, this is somewhat misleading, for he explains that "the tenant and heir shall once pay his rent for one year doubled, not his rent and then a doubled rent, but his rent and then as much again",¹ - the rent is paid and then its equivalent is given so that the total is a double rent, but the sum has two constituents, - rent and relief.

Glanvill is not our earliest evidence that the relief from socage was a year's rent: in toto, the equivalent of a double rent. The first Burton survey names three sokemen at Winshill and their holdings and rents are as follows:-

Elwin - two bovates for 3s and occasional service

Tedric - three bovates for 4s and occasional service

Godric - one bovate for 1s and occasional service

It is also recorded that Cum aliquis horum obierit heredes eorum dabunt xvi s. de heriete.² Sixteen shillings would seem to be an inordinately large amount for the heirs of each sokeman to pay, nor does it seem equitable to demand the same sum from holdings of one, two and three bovates. This is surely a joint holding of six bovates, assessed at a total rent of 8s, which has been apportioned among the current holders. Twice the total rent of 8s is 16s - the amount of the heriot. All three sokemen are still holding the same tenements at the time of the second survey, but Godric's rent had been increased to 20d, there is no record however of the heriot. The Stoneleigh Register notes that the sokemen pay a heriot and a relief, - in obitibus suis dabunt herietum integrum, scilicet unum equum et hernesium et arma si hauerint. Sin autem melius averium

1 Bracton, II pp.146-'7 de feoffements tenentis sui per socagium de natura socagii non competat ei pro relevio nisi redditus duplicatus. Cf. pp.248-'9

2 "The Burton Abbey Twelfth Century Surveys", William Salt Archaeological Society, 1916, p.242

integrum quod habuerint. Et quilibet heres patri succedens debet admitti ad hereditatem suam... solvet domino relevium, scilicet duplicabit redditum suum.¹ Heriot is normally paid by villeins, and reliefs are paid by freemen, but this is not the essential difference between them. There is also a difference of principle. Heriot denotes the relationship which had existed between the dead man and his lord, whereas the relief is a payment made by the heir on taking up his inheritance. It is one of that cluster of rights-wardship, marriage and escheat - which denote the relationship between heir and lord. It is for this reason that Bracton hesitated to describe the socage payment as a relief since "the inheritance is not raised again in the person of the heir of the sokeman by the hand of his chief lord, but by his kinsmen". It is not a relief because there has been no possibility of wardship, by "a certain payment" (quaedam praestatio) is made in recognition of the lordship (in recognitionem domini).² An "addition" to the text develops the point and says that the payment "is not called a relief, but is a kind of relief, like a heriot".³ Bracton himself might well have taken this view since he defines heriot as a gift by a tenant, free or bond, at his death in remembrance of his lord (respicit dominium suum).⁴ The terminology was not always clearly distinguished. The Leges Henrici Primi describe as relevationes the old Anglo-Saxon heriots, and the villanus in the Leis Willelme owes as "relief" his best animal - the classic heriot of the thirteenth century. Some tenants pay both heriot and relief,

1 Stoneleigh Register, ed. R. Hilton, p.102

2 Bracton, p.249

3 Ibid., p.244

4 Ibid., p.250

but unlike relief, heriot is said to be paid by the deceased, as at Stoneleigh, not by the heir. Some sokemen are said to owe relief, and this term is invariably used in the Kalendar of Abbot Samson, but elsewhere the distinction is maintained. A sokeman at the Ely manor of Bramford in 1251 owed a horse and harness or his best beast or 5s 4d pro relevio, but that this is "in lieu" of relief is shown by the remainder of the note - post mortem eius filius et heres eius quietus erit de suo relevio propter predictum herietum.¹

This recognition of lordship is characteristic of heriot in early times when the lord gave weapons to his follower to denote the comitatus relationship and these were returned when the bond was broken by the follower's death. Professor Whitelock has suggested that "by the middle of the tenth century the lord appears to have been expected to respect the will of his follower and prevent its violation in return for his payment of heriot".² This element was certainly important, the thegn gives a heriot that "his will may stand",³ and the lord had the responsibility of safeguarding the property his follower has left by dividing it among the kin if the man has died intestate,⁴ but the heriot is not paid as the price for making a will, it is the lord's share of the property in recognition of the lordship and it figures so prominently in the wills because the thegn fears that the lord will use his power^{to} take more. This danger was so great as to require specific mention in the laws, and if the man dies intestate and has not therefore made a grant to his lord, the lord must only take the heriot.⁵ Although

1 E. Miller, The Abbey and Bishopric of Ely, p.116, n.3

2 Wills, p.100

3 D.B.B. p.352

4 II, Cnut, c.70

5 II, Cnut, c.70

the Normans used "relief" for "heriot", and although this probably does not imply any immediate change in the law of tenure, the true relief is based on a different principle - it is a redemption payment made by the heir on entering his inheritance and thus the early reliefs could not be fixed since each case was different. Thus again we can trace the characteristics of socage to Anglo-Saxon principles of landholding and again the feudal incidents of tenure are Norman intrusions.

The evidence concerning dower is most inadequate of all. Glanvill deals with it in Book vi and he says that a man must endow his wife with certain lands at the time of their marriage, he may designate specific property as dower, - the dos nominata, but if he does not do so the wife is nonetheless understood to have received a portion of his estate, but in either case this portion cannot exceed one-third of the lands which her husband held in demesne on their wedding day; one-third is a dos rationabilis a "reasonable dower", and according to Glanvill, the most that may be claimed. However, although this was true of military tenures it did not extend to socage and the widow of a socage tenant could claim half of the lands her husband had held. This difference is well represented in the plea rolls by cases where the husband had held both socage and military land. In a Somerset case Christianna de Bruges claimed as dower one-third of a knight's fee in Little Bur and Felda, one-third of a knight's fee in the other Bur' and half a carucate de socagio in Widuc.¹ In a Norfolk case, William Curnes and Christina his wife claimed as dower from Christina's previous marriage half of certain lands in Great Bircham, Fring and Stanoe as socage, the defendants, however, claimed that she was not

1 C.R.R. iv 2-3 cf. 144 and vii 153 for other examples

entitled to half since the land was a knight's fee. The sheriff inquired and discovered that Christina's first husband had held part of his land in socage, part by military service, thus she could have half the socage, but only one-third of the military land.¹ This distinction may have been already established in the time of Glanvill, although unmentioned by him, for, as Mr. Hall has pointed out,² Glanvill's treatment of "dos" is somewhat untidy since his main concern was to explain how pleas of dower could be heard in the royal court, he may, therefore, have omitted to note that the law of dower in socage was different from the law in military tenures.

The Leges Henrici Primi devotes a section to laws as they concerned women and c.70,22 notes that if a wife outlives her husband she may have her morning gift, her maritagium, her dower and terciam partem de omni collaboratione sua. This is laconic, and no concrete examples have been found.

The Anglo-Saxon evidence is difficult to interpret. The code "On the betrothal of woman" states that a bridegroom "announces what he grants to his bride" in return for her acceptance of his suit" - this is the morning gift, but he also announces "what he grants her if she should live longer than he", this would seem to be the dower, although the Quadripartitus, which gives a translation of the text does not attempt to gloss it as such. The text continues:- "if it is thus contracted, then it is right that she should be entitled to half the goods - and to all if they have a child together - unless she marries again".³ The morning gift

1 Ibid., iv 275

2 Glanvill, ed. G.D.G. Hall, pp. xxiii-xxiv

3 E.H.D. I, p.431 cc.3 and 4

is presumably entirely hers, it is the dower which may be divided, yet, as the text stands she will take all the land if they have a child, only half if they do not. This is not necessarily an odd arrangement for the child is proof of their marriage, but we are not told who will take the half she must forfeit if the marriage has not been fruitful, it may well have reverted to the husband's kin. Thus the half in this code is half the "dower", nor has the husband apparently endowed his wife with all his worldly goods, since there has been a negotiation between the two kin before the marriage. "Half the property" figures in Alfred's law where it is laid down that if a man marries a nun and they have a child, it shall take no more of the property than its mother.¹ This is a penal sanction to discourage disillusioned nuns, the mother and child each take half, and apparently of the dead man's whole property, but should we infer that the woman is being punished and that she would normally have taken more than half? If this is so we might infer that she could have taken the whole, and that the law is not concerned with the full estate, but only the "dower".

However, we have one tenuous link between pre-Conquest and post-Conquest evidence, in the stipulation concerning a widow's right to remarry. In the code "On betrothal," the woman apparently loses her property whenever she remarries, Cnut's law however may be a fuller account and it lays down that a widow who marries within one year loses her morning gift and all the property which she had from her first husband.² A restriction on re-marriage existed in gavelkind tenure. The wife took half the land in dower as in socage, but there was a total ban on re-marriage, moreover, in

1 naebbe ðæt ðæs ierfes ðon mare ðe seo modor, Alfred, c.8,2.

2 II Cnut, c.73a

socage, this restriction did not exist at all. It is not impossible that Kent preserved the oldest custom of total prohibition, that it had been modified by the time of Cnut and came to be completely remitted. Dower was the most unsettled of the incidents of tenure and many modifications were made during the course of the thirteenth century.¹

We have tried to show that socage was the descendant of Anglo-Saxon principles of land tenure. The land is divided among co-heirs, as children they are held in ward by a member of the family, they come of age earlier than the military tenant, they leave their wives better endowed. In its most developed form, socage is totally opposed to feudalism, but this was not always so. The Conqueror did not abrogate English law and replace it with Norman custom, for he had neither the cause, the will, the strength nor the means to do it, but the Conquest did give greater impetus to the process which was already working in Anglo-Saxon England, to reduce the role of the kin and enhance that of the lord. Socage represents the kin-centred structure, in feudalism the lord is the dominating figure, but both traits already existed in Anglo-Saxon England, and for however many examples of a nascent feudalism we may find before the Conquest, the emergence of socage shows that we cannot postulate an inevitable development. Feudalism was the creation and victory of the twelfth century common law and it seems, from Glanvill, that the problems it created were still being resolved, even as he was working.

1 P. and M. II, pp.420ff.

CONCLUSION

This thesis has tried to define the phrase "sake and soke" and has discussed the rights and obligations associated with it. "Sake and soke" is a modernized form of Old English sac and socn, and may be literally defined as a "cause" and a "seeking". Although they were used separately and in a wide variety of contexts in the sources, they were more especially applicable to legal matters, sac being the common word for a lawsuit - a cause which has been brought before a court, while socn was a seeking or more grammatically, a suit of court, either to plead a case as a litigant, or to judge it as a doomsman. The phrase sac and socn was a mnemonic legal formula, and dates from the oral tradition of the law. Its judicial character led to its inclusion in pre-Conquest writs, which were frequently addressed to courts of law, it also helps to explain why it is very rarely found in charters, for not only would it have been out of place since it was an English phrase when convention demanded that charters be in Latin, but also because charters were documents of a more private kind.

Historians have normally defined sake and soke as a "right of jurisdiction", but there has always been some uncertainty as to the nature of the right, and the type of jurisdiction involved. It has been argued here that the formula was a general expression, applicable to all forms of judicial right, and it is necessary to examine the context in order to determine the particular type of jurisdiction intended. It has been said that sake and soke gave only the right to the profits from pleas, not the right to preside over the court in which the pleas were heard, for, it has been suggested, private court-keeping rights did not exist before the Conquest, all jurisdiction was royal and only royal officials were

allowed to preside in the lawcourt. It is true that sake and soke gave the right to fines and forfeitures, but the right to preside was also given, and when sake and soke occurs in royal documents it allowed the grantee immunity from interference by royal agents within the boundary of the given estate. The argument concerning royal and private jurisdiction before the Conquest is somewhat misconceived; in very early times, kings had a residual right to maintain justice and peace, but the extent to which they could turn this to more positive advantage was uncertain. The English kings, with the help of the Church, extended their hitherto residual role in judicial affairs and transformed it into genuine power; under the influence of increasing royal authority laws were supplemented by new procedures, ancient custom was changed and new laws were made. Royal officials became useful, even necessary, in guiding the suitors of the local courts through all the new rulings, as agents of a powerful king their help in enforcing justice was especially valuable until so great was the demand that new royal courts were established in shire and hundred. On the continent, royal authority disintegrated, but the West Saxon kings were able to maintain their ascendancy, and their successors gradually brought within their power the sole right to an increasing number of specified pleas.

Sake and soke was sometimes abbreviated by the single word "soke", and the phrase and the word could be used interchangeably to denote the right to judicial suits, but Domesday Book includes a number of references to soke which it would be difficult to define in the more abstract sense of jurisdiction. We read of the soke of small areas of land and these probably refer to suit of court which has come to be assessed on land, so as to allow more

easily either exaction of the service itself, or its commutation into a money render. There is also, however, another range of meaning of soke which was fiscal, but not jurisdictional. In Eastern England, soke had come to be used, almost as a dialect word, to denote those dues and services which constituted the royal farm as distinct from those which arose between landlord and tenant. Connected with this servitial soke is the use of the word soca as an abbreviation for "sokeland", - land which was assessed for dues rendered to the royal farm. Soke also occurs in a wider territorial sense to denote the area over which a lordship had royal rights; thus the sokes of Bury St. Edmunds and Ely were the hundreds which belonged to them. Sokes were important sources of profit and power, and in Domesday Book the breves of these two abbeys often state that the soke "remains" if a tenant sells or leaves the land. This should be seen as binding the land not the man; if he moves elsewhere he will render suit to the lord who has the sokeright of his new land, while the incoming tenant on taking his land, will take on the obligation to render suit according to the assessment of the land. Domesday sometimes records that not only must the soke remain if the tenant leaves, but service and commendation must also remain. It is easy to see how this could be true of service, for the new tenant would become responsible for the services due from his land, but commendation was normally a personal bond freely contracted between man and lord, and if the commendation "remains" the incoming tenant would find himself automatically commended when he took the land. This seems to be the case, but it was exceptional; it was a right possessed by Ely and Bury St. Edmunds whereby they were given the commendations of their tenants within their hundreds, perhaps

in an attempt to enhance royal authority in East Anglia. Soke could also be used in a territorial sense to denote a multiple estate, in which a number of vills were bound to a common centre by their obligation to render there both suit and royal services.

The royal dues associated with soke can best be seen from below, as it were, from the point of view of the sokemen. "Sokeman" literally means "suitor", but the persons so described also owed services connected with the royal farm. The royal origin of their services distinguished them from other classes in society whose obligations derived from their relationship with their landlord, and this distinction was of sufficient force to make their position on the estate both honourable and secure. They undertook some of the more responsible duties on the estate, and because their services derived from the royal farm, not from the particular needs of an estate, the services could not be changed. The peculiar nature of their tenure was probably recognised at the local level in the eleventh and twelfth centuries, but it was used by the crown in the thirteenth century as a model for the protection which was extended to some tenants on ancient demesne.

Domesday Book raises many questions concerning the sokemen; it records sokemen only in Eastern England, but this is misleading for the distinction between the sokemen of the East and others in the West is, in part, terminological - many so-called sokemen would have been referred to as liberi homines or even thegns if they had lived in the West, while the liberi homines and thegns of the West could have been called sokemen if they had lived in the East. It is likely that all liberi homines could have been described as sokemen, but the reverse is not necessarily true, not all sokemen

were liberi homines and the two terms were not completely interchangeable. In the thirteenth century sources they are references to free and villein sokemen but the distinction already existed in the eleventh century when there were independent and dependent sokemen. The former were liberi homines, able to dispose of their land freely and directly responsible to the state for their own tax burden, but the latter were not able to leave the estate, to which many had been "added" only at the time of the Conquest, and like many villani, they paid taxes through a lord who would bear the responsibility to the state for non-payment.

The exclusive concentration of sokemen in Eastern England according to Domesday creates a misleading, but not a totally mistaken impression of the condition of England in the eleventh century. The East probably did have more freeholders than the West, and the territorial soke with its lighter form of lordship was probably more common there. This was the result of the Danish settlement, or rather of the prosperity which the Danes brought to Eastern England. They were already wealthy at the time of the settlement, and their wealth was increased by the estates which they occupied, their encroachment on church revenues, their lukewarm attitude to church endowments, their encouragement of trade, and their more enterprising approach to land development. Moreover, they did not themselves suffer the strain of repulsing an invasion, as Wessex did, nor were the peasantry of the East harassed by demands for military service and taxes as were the West Saxon peasantry in meeting the demands of kings who were trying to conquer the Danelaw.

Soke also gives its name to "socage", a form of land tenure.

The services due from land held in socage were indefinite, although a money payment and suit of court came to be the most common obligations, but the rights of the tenant who held land in socage were distinctive and totally different from those which governed the other tenures. Land held in socage was partible, an infant heir was held in ward by one of his relatives, he came of age at fifteen and paid a relief equal to the annual rent, while the widow of a tenant who had had socage land received in dower one half of the property of her husband. These incidents are traceable to very early terms of landholding when the needs of the family were paramount, but the military tenures were developed in later times, with different incidents which were better adapted to military needs. Socage survived from those tenancies which were too well established and continuously occupied to be changed, and when the military needs of medieval society could be met by other means than landed endowments, the raison d'être of the feudal tenures disappeared, leaving socage as the sole form of tenure.

APPENDIX 1

Writs from William I which grant sake and soke.

Numbers refer to Regesta, I.

nos.

8	c.1067	Peterborough
9	c.1067	Wiltshire
12	c.1067	Bury St. Edmund
13	c.1067	St. Augustine's, Canterbury
14	c.1067	Chertsey
22	1068	St. Martin le Grand, London
31	1068	St. John of Beverley, Yorks
33	1066-9	Archbishop of York
36	1070	Bishop of Lincoln
38	1070	Lanfranc and Christ Church
41	1066-70	Bury St. Edmund's
51	1066-71	Chertsey
53	1067-71	Westminster
57	c.1070	St. Mary, Coventry
58	1070-71	Battle Abbey
87	1066-75	Westminster
104	1066-77	Worcester
108	1066-78	Abbotsbury, Dorset
109	1066-78	Abbotsbury, Dorset
111	1072-8	St. Paul's, London
129	1080	Ely
156	1082	Ely
157	1082	Ely
162	1070-82	Westminster

164	1070-82	Westminster
166	1076-82	Westminster
177	1070-82	Ramsey
184	1079-83	Dispute between Worcester and Evesham
224	1066-86	Chertsey
228	1078-86	Prestby and Whitby
230	1079-86	Oswaldslaw
235	1080-86	Westminster
241	1066-87	Bath
244	1066-87	Coventry
272	1080-87	Durham
277	1085-87	Stortford

APPENDIX 2.

Writs from the reign of William Rufus which grant
sake and soke.

Numbers refer to Regesta, I.

nos.

287	c.1087	Abingdon
290	c.1087	Battle
292	c.1087	Bury St. Edmund's
293	c.1087	Bury St. Edmund's
295	c.1087	Ramsey
296	c.1087	Ramsey
311	1089	St. Augustine's, Canterbury
323	1087-91	St. Peter, Ghent
333	1075-92	York
336	1093	Anselm
361	1093-4	Christ Church
366	1095	Tynemouth
375	1094-5	York
385	1091-6	Bishop Herbert of Norwich
386	1094-5	St. Nicholas of Angers
393	1087-97	Bury St. Edmund's
397	1096-7	St. Stephen, Caen.
400	1093-7	Bishop of Rochester
402	1087-97	Westminster
421	1087-99	Prestby and Whitby
436	1085-1100	Gilbert Crispin
438	1085-1100	Durham
439	1087-1100	Chertsey
460	1091-1100	Chichester
484	1099-1100	St. Paul's London.

APPENDIX 3

Writs from the reign of Henry I which grant
sake and soke.

Numbers refer to Regesta, II.

nos.

502	Durham
503	Durham
505	Durham
506	Bishop of London
509	Bishop Herbert of Norwich
525	Matilda
548	Bishop Herbert of Norwich
556	St. Martin le Grand
568	Colchester
572	Bishop of Durham
584	St. Alban's
595	St. Alban's
604	St. Paul's
637	Ramsey
638	St. Peter's Jumièges
644	Bury St. Edmund's
648	Robert Brus
656	Bury. St. Edmund's
730	St. Peter's, Ghent
738	Ramsey
743	Bishop Robert of Lincoln
744	Bishop Robert of Lincoln

761	Bury St. Edmund's
762	Bury St. Edmund's
767	Durham
768	Durham
774	Chertsey
798	Abbess of Barking
802	St. Mary of Ramsey and Queen Matilda
817	St. Augustine's, Canterbury
825	St. Mary, Montebourg
833	St. Andrew's, Northampton
837	Archbishop of York
840	Anselm
876	Wascelina
885	Thomas, Chaplain to the Archbishop of York
894	Battle
899	St. Paul's, London
911	William de Albini
936	Rochester
953	Ramsey and St. Ives of Slepe
954	Ramsey
955	Tynemouth Abbey
995	Whitby
1027	Thorney
1038	Peterborough
1062	Walter de Beauchamp
1063	Burton Abbey
1097	Ralph the monk
1098a	St. Mary's, Bec.

nos.

1105	St. Martin's, London
1109	Durham
1127	Archbishop of Rouen
1134	Robert Achard
1148	St. Peter's, Ghent
1174	Church of Hurley
1222	Robert Fitzrichard
1224	Rohais, wife of Eudo Dapifer
1227	Bury St. Edmund's
1238	Battle
1242	Barking
1243	Bishop of Hereford
1247	Westminster
1248	Westminster
1249	Westminster
1254	Bishop of Lincoln
1261	Holy Trinity, London
1278	Bury St. Edmund's
1279	Eustace FitzJohn
1282	Cluny
1285	St. Oswald of Nostell
1301	St. Mary's, Merton
1317	St. Andrew's, Northampton
1322	Tynemouth
1327	St. Peter's, York
1335	Whitby
1380	St. Swithin, Winchester
1393	St. Mary, Southwark

nos.

1401	Pontefract
1424	Chichester
1425	St. Peter's, Winchester
1428	St. Mary, Kenilworth
1429	Church at Bridlington
1444	Bury St. Edmund's
1449	St. Mary's, Huntingdon
1450	Nostell
1465	Hugh FitzPinchon
1467	Holy Trinity, London
1468	St. George's, Oxford
1502	William, archdeacon of Ely
1509	Winchester
1517	Henry de Albini
1550	Walter de Beauchamp
1556	Robert, son of Walter of Windsor
1574	Durham
1575	St. Stephen's, Caen.
1597	Bury St. Edmund's
1598	Bury St. Edmund's
1599a	Marcigny
1609	Matilda, daughter of Payn Peverel
1618	Cluny
1642	Bury St. Edmund's
1654	St. Mary of Elstow
1664	Thorney
1665	Thorney
1666	Thorney
1692	Holy Trinity, Caen.

nos.

1710	William de Beauchamp
1724	Bishop of Hereford
1726	St. Mary of Oseney
1778	Aubrey de Vere
1804	Battle Abbey
1827	St. Peter's, Dunstable
1841	St. Mary, Lincoln
1954	St. Paul's, Norwich

MAP 1

DISTRIBUTION OF SOKEMEN ACCORDING TO DOMESDAY BOOK

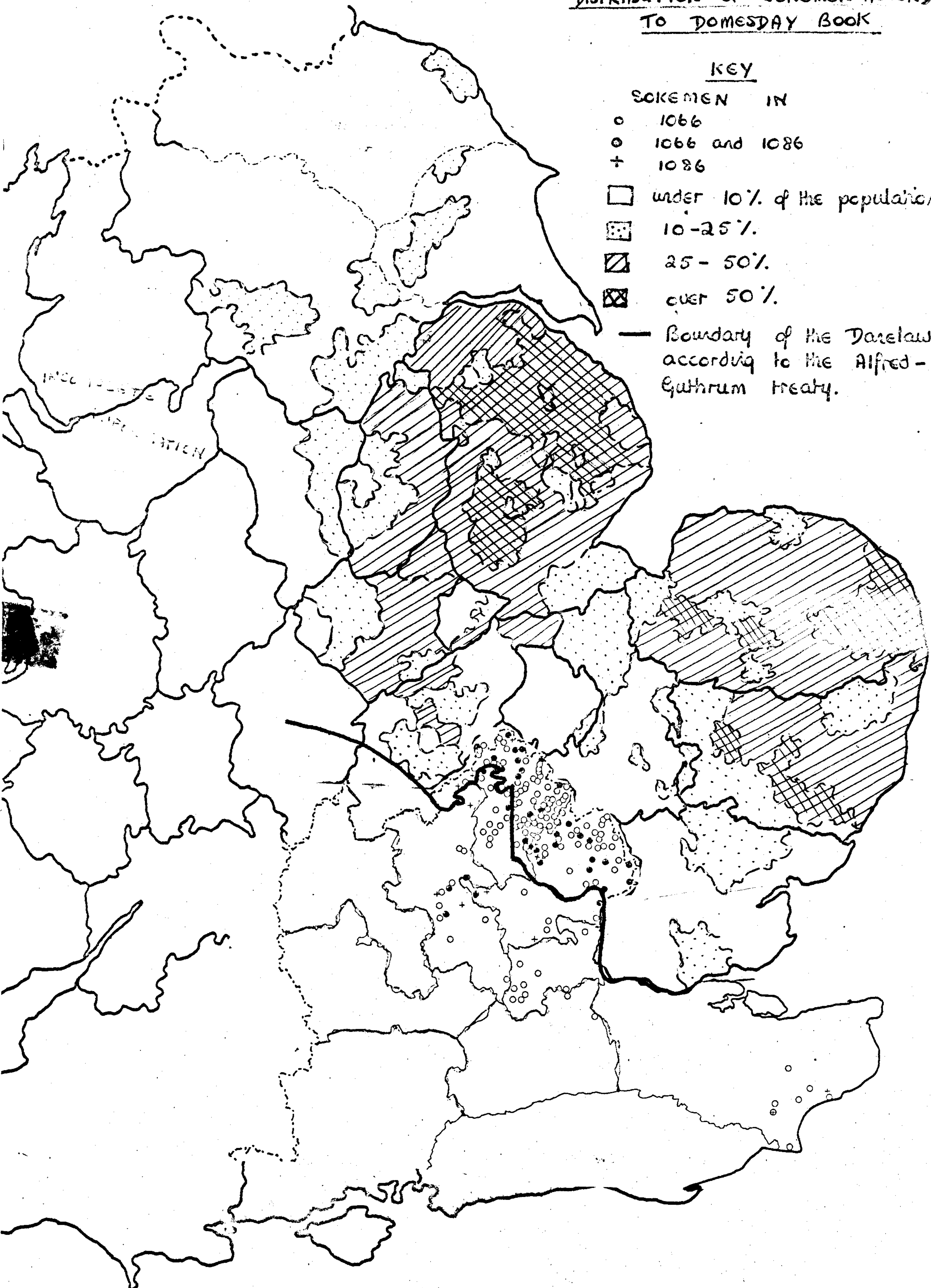
KEY

SOKEMEN IN

- 1066
- ⊙ 1066 and 1086
- + 1086

- under 10% of the population
- ▤ 10-25%
- ▥ 25-50%
- ▩ over 50%

— Boundary of the Danelaw according to the Alfred-Egthrum Treaty.



DOMESDAY POPULATION

0 Miles 50
0 Kms 50

RECORDED POPULATION
PER SQUARE MILE

