

THE SIGNIFICANCE OF FEUDAL LAW IN THIRTEENTH-CENTURY
LAW CODES

Adam Wayne Sijansky, B.A.

Thesis Prepared for the Degree of
MASTER OF ARTS

UNIVERSITY OF NORTH TEXAS

May 2011

APPROVED:

Laura I. Stern, Major Professor
Marilyn Morris, Committee Member
Nancy L. Stockdale, Committee Member
Richard McCaslin, Chair of the Department
of History
James D. Meernik, Acting Dean of the
Toulouse Graduate School

Sijansky, Adam Wayne. The significance of feudal law in thirteenth-century law codes. Master of Arts (History), May 2011, 83 pp., bibliography, 21 titles.

Although developments in feudal law in the thirteenth century influenced the legal environment of Europe for centuries, much of past and current historical research of feudalism examines the social system anthropologically but neglects an in-depth analysis of feudal law codes. My research combines the social-anthropological approach with relevant customary codes to demonstrate the importance of feudal law to a thirteenth-century society plagued by war, economic and social instability, and competing powers of the monarchy, judiciary, and religion. The assessment of feudal law within each legal code highlights its prominence as an accepted category of jurisprudence. This thesis provides a new perspective on the influence of feudalism in the thirteenth century, demonstrating the significance of feudal law as a mode of maintaining peace and prolonging land tenure.

Copyright 2011

by

Adam Wayne Sijansky

TABLE OF CONTENTS

Chapter

I. INTRODUCTION.....	1
II. THE DEVELOPMENT OF FEUDAL LAW.....	23
III. LAND LAW: THE STABILIZING FACTOR.....	35
The Legal Status of Women and Minors	
<i>Sachsenspiegel</i>	
<i>Liber Augustalis</i>	
<i>The Coutumes de Beauvaisis</i>	
Feudal Obligations	
<i>Sachsenspiegel</i>	
<i>Liber Augustalis</i>	
<i>The Coutumes de Beauvaisis</i>	
Possession and Inheritance	
<i>Sachsenspiegel</i>	
<i>Liber Augustalis</i>	
<i>The Coutumes de Beauvaisis</i>	
IV. KINGSHIP AND ROYAL AUTHORITY IN FEUDAL LAW.....	63
V. FEUDAL JUSTICE AND THE IMPLEMENTATION OF FEUDAL LAW.....	69
VI. CONCLUSION.....	79
BIBLIOGRAPHY.....	82

CHAPTER I

INTRODUCTION

Feudalism is often described as a complex system that arose out of a simple need for protection. What began as a basic agreement between one who could provide protection from marauding invaders and one who could provide labor and service in exchange for that protection exponentially expanded into a superstructure that required written laws, judges, and enforcement. Historians such as Carl Stephenson, Marc Bloch, F.L. Ganshof, and David Herlihy approach feudalism by studying the way people lived their lives and evaluated feudalism through a mass of primary and secondary sources of chronicles, court records, and the publications of other historians. Studying the fundamental relationships that governed society is by no means fruitless; the bibliography of feudalism laid the foundation for future research of feudal law. One significant element missing from feudal discourse is feudal law. Sources and tracts on feudal law are almost limitless but are unknown or underused. Thus, feudal law remains an obscure and ignored component of feudalism and legal history. In this thesis, I demonstrate the significance of feudal law to European populations and how it functions as a source of maintenance of peace and stability of land tenure. Feudal law so drastically affected society that it became a part of established law, written in law books alongside royal law. The thirteenth century experienced a proliferation of feudal law codes as society transitioned from the traditional rule of

customary law to a more authoritative royal law. Kings could not deny the power of feudal law and brought it under control by writing it down and taking away its alterable nature.

However, long before written feudal law, customary law governed the Germanic tribes. Customary law did not follow a written code. Laws reflected the fundamental beliefs and ethical standards of that particular medieval society. Concepts such as impartiality and equality before the law did not exist. Instead, each person had an established role in the community and to the family, defined and valued by custom and tradition. With no formal body of enforcement, the family executed the punishment according to tribal custom. Subsequently, the penal system did not punish criminals simply as a disciplinary measure, for the point was not to teach a lesson or enforce penance; the purpose was to compensate the family for their loss and to reset the status quo. This unorganized and largely retaliatory method of law evolved as the Germanic tribes became sedentary, established kingdoms, interacted with the Romans, Christians and one another, and adopted the previously absent practice of writing.

With the collapse of the Roman Empire and the far-reaching dispersion of Germanic tribes, the homogenization of the history of these different cultures produced a dynamically new European society with its own identity. Though tradition played a large part, the collision of diversity necessitated novelty in dealing with the new challenges. Made up of revised practices perfected over centuries, ancient cultures developed independently but ultimately fused into a

unique civilization unlike anything before in history. From the fusion came a completely original and innovative way of life known as feudalism.

Feudalism sought to give structure to this new society and make all levels work in tandem. It also functioned in such a way that those levels could operate apart from one another. Power came from the top-down, but loyalty extended from the bottom-up. If the very top of the power structure was removed, all the levels beneath would still function because of their loyalty to the power-figure directly above it. Feudalism relied on loyalty to create order and stability. So while the primary function of feudalism was order and stability, what were the components?

In his book, *Mediaeval Feudalism*, Carl Stephenson proposes a list of what he calls “principles of feudal tenure” that lay the foundations for feudalism.¹ He believes there is a need for a better understanding of feudalism, and he defines feudalism based on the specific practices of the Carolingians. Stephenson’s list includes six categories: homage and fealty, knight service, feudal aids, entertainment, suit to [the] court and the resulting profits of justice, and feudal incidents.² To Stephenson, these constituted the fundamental elements of feudalism.

Many historians, like Stephenson, regard the Carolingians as the progenitors of feudalism. Charlemagne employed vassalage and worked to

¹ Carl Stephenson, *Mediaeval Feudalism* (Ithaca: Cornell University Press, 1942), 15.

² *Ibid.*, 35.

create a kingdom unified out of loyalty rather than the ideology that a king is authoritative by nature.³ While there is no doubt the Carolingians played an important role in the development of feudalism, evidence shows the process began long before, and the Carolingians were only part of the early stages of development. In *The History of Feudalism*, David Herlihy gave an example of a canonical practice that became part of the feudal system. Feudal investiture of land in a vassal resembled what the church called *beneficium* or *precarium*. This practice involved the alienation of the use of property, though the church retained ownership.⁴ Herlihy understood the *beneficium* to be the “direct ancestor of the fief” because, like the fief, it was “conditional and nonhereditary.”⁵ The Carolingians adopted the practice and granted the *precarium* to members of the cavalry.⁶ Additionally, the Carolingians employed other ancient practices and modified them to fit the new, developing society. The concept of *comitatus*, as described by the Roman historian Tacitus, illustrated the strength among the men of a war band in Germanic society. The bond between the men made it dishonorable for the younger warriors to outlive the veterans in battle. Tacitus expressed the strength of the bond, writing, “It is a lifelong infamy and shame if any of the followers survives his chief.”⁷

³ Ibid., 10-11.

⁴ David Herlihy, *The History of Feudalism* (Humanities Press, 1979), 75.

⁵ Ibid., 103.

⁶ Ibid., 75. Also, refer to page 105 in *The History of Feudalism* for a document in which Charles the Bald authorizes the *precarium* grant.

⁷ Ibid., 69.

A freeman submitting himself to another freeman is also found in Roman, Merovingian, and Slavic cultures. In the feudal system, voluntary submission expressed itself in the relationship between a lord and vassal.⁸ Charlemagne, at times, granted tracts of land to soldiers. For some, he granted the use of the land for a short time; to others, for life; and to a few, the right of succession of offspring.⁹

F.L. Ganshof looks before the Carolingians to find the origin of feudalism and identifies the Merovingians as the source. He believes the need for feudalism arose as a result of partitioning inheritance among all sons, as opposed to primogeniture.¹⁰ The problems created by constant division led to increasingly frequent family feuds, which were generally bloody.¹¹ Ganshof admitted that several practices adopted by the Merovingians had origins predating the dynasty, and he specifically mentioned the relationship between a lord and vassal. One freeman placing himself under another freeman's authority took place as early as the seventh century, indicated in the *Lex Ribuaria*. Voluntary submission was termed *ingenui in obsequio*.¹² Even as early as the

⁸ Ibid., 70.

⁹ Sir Thomas Craig, *The Jus Feudale*, trans. James Avon Clyde, vol. 1, 2 vols. (Edinburgh: William Hodge and Company, 1934), 61.

¹⁰ Primogeniture meant that the eldest son received full inheritance of his father's property. Inheritance trended this way because of the chaos and complexity created by partible inheritance, where parcels of land were continually divided for distribution to multiple sons.

¹¹ F.L. Ganshof, *Feudalism*, trans. Philip Grierson, 2nd ed. (New York: Harper and Row Publishers, 1964), 4.

¹² Ibid. Translates to *free men in dependence*.

fifth century, men had private war bands consisting of freemen who willingly submitted themselves to the leader.¹³ The personal bond of feudalism existed in the ties that bound Germanic society.

The best way to understand the development of feudalism is to view it in stages. The development of feudalism in stages does not mean feudalism existed during the Roman period or that it can be found in Germanic codes. However, few of the practices implemented during the early stages of feudalism were completely original. The best interpretation of this approach is found in Sir Thomas Craig's *Jus Feudale*.¹⁴

Published in 1603, the *Jus Feudale* demonstrates the importance of feudalism and feudal law throughout Europe by means of comparison. Although Scottish, Craig's seminal work on feudal law did not exclusively concern Scottish law, but included an analysis of England and France as well as a large portion devoted to the developmental history of feudal law. Craig introduced an area of law within the general sphere of feudalism, gave a brief history, then illustrated the application of the law Scottish, English, and French legal systems.

Unfortunately, not many sources are available on Craig's work. Though referenced passingly in a few sources, no significant publication assessed the contribution of the *Jus Feudale*. According to MacMillan, the problem was two-fold. He wrote, "The neglect which Craig's great treatise on feudal law has

¹³ Ibid.

¹⁴ Craig, *Jus Feudale*, vol. 1, 58.

suffered in modern times among legal scholars is probably due in some measure to the fact that it is written in Latin, but still more to the impression that it is concerned only with Scots law.”¹⁵ When first published, the synopsis of feudal law met with both criticism and praise. Craig’s own countrymen and fellow lawyers harshly criticized Craig and complained he did not fully exposit Scottish law. Other critics objected, saying Craig was overtly political in his analysis and wanted to show the similarities of Scottish and English feudal law to act as a catalyst for the union of the two nations.

Conversely, the *Jus Feudale* grew popular outside of Scotland and a second edition was published in 1716 in Leipzig, Germany. By 1776, Francis Sullivan required his law students at the University of Dublin to read the *Jus Feudale* “for the purpose of acquiring a general idea of the feudal law.”¹⁶ In his review of the *Jus Feudale*, MacMillan praised Craig’s work, expressing that it “was regarded on the continent as of sufficient importance and authority to form the subject of courses in lectures in the Universities of Leyden and Utrecht.”¹⁷

Craig is significant because many of the pieces that constituted feudalism in the thirteenth century were just as vital to the feudalism in the seventeenth century. Feudalism and feudal law evolved throughout the centuries, but Craig’s analysis confirmed the relevance of feudalism and feudal law that existed almost

¹⁵ MacMillan, review of *The Jus Feudale*, by Sir Thomas Craig, *The University of Toronto Law Journal* 1, no. 2 (1936): 389. The author of the review identified himself only as MacMillan.

¹⁶ Francis Stoughton Sullivan, *Lectures on the Constitution and Laws of England*, 2nd ed. (London: Edward and Charles Dilly in the Poultry, 1776), 17.

¹⁷ MacMillan, Review of *Jus Feudale*, 389.

four hundred years earlier. Craig expounded a deep analysis, often evoking the names of ancient rulers and kingdoms to give credence to his evaluations. Craig also looked to France to legitimize his claims, often comparing Scottish feudal law with French. He believed the French practiced a more pure form of feudalism because they were descendants of Charlemagne.

The significance of the *Jus Feudale* is that Craig found some of the earliest feudal practices in the ancient Germanic tribes. Craig did not find feudalism in ancient Germanic society, but he identified customs that were precursors to feudalism in his first stage of development called “the parenthood.” In “the parenthood,” Craig found the earliest resemblance in the relationship between a master and his slave. German slavery differed from Roman slavery because German slavery resulted from unpaid debt. A man who could not pay his debt was temporarily bonded to his creditor. Bonding was more akin to servitude than slavery because freedom could be regained once the debt was paid. Once the invasion of the Roman Empire took place, servitude became acceptable and grew into a practice similar to tenant-service. The leaders of the invasion divided the conquered land amongst themselves, then appropriated smaller portions to their best soldiers. Those who did not wish to work the land themselves allowed small settlements on their property. The land owners worked out an agreement by which the settlers were given small parcels of land for their own livelihood in exchange for work on the owner’s land or some form of annual rent.¹⁸

¹⁸ Craig, *Jus Feudale*, vol. 1, 53-54.

Craig called the next stage “the infancy” and characterized it by a formalized exchange of services. “The infancy” developed between the fall of the Roman Empire and the year 650CE.¹⁹ The overriding theme of “the infancy” was mutual protection. To move society toward a secure state, lords of the land offered renewable, year-long grants. Over time, year-long grants were exchanged for life-tenure, which granted the land to a servant for his entire life, and it provided a more consistent and dependable lifestyle for both the lord and his servant.²⁰

If feudalism developed in stages in response to certain circumstances, then it should be seen in places outside of Europe that experienced similar situations. As part of his comparative model, Craig described a similar practice of tenure-grants among the Turkish people called *timarri*. After conquering territory, the emperor divided up the land among his soldiers. In exchange for the right to cultivate the land, the soldiers promised military service to the emperor, along with one-tenth of the fruits of the land. If a man died, his property returned to the emperor to be handed to another man.²¹

“The childhood” of feudalism, Craig’s next stage of development, lasted from the year 650 to 800 and included the extension of land tenure to the son of the person who first received the grant. The man’s sons divided the land among

¹⁹ Ibid., 56. All dates are Common Era unless otherwise noted.

²⁰ Ibid., 55.

²¹ Ibid., 56.

themselves unless the lord specified a name or the kingdom practiced primogeniture. The basis for any land grant was the will of the lord, who could extend the grant to the grantee and his lineage as far as he wanted. Sometimes, the lord intentionally granted land to a man and his sons, excluding further generations, ensuring the land would revert back to the lord's possession.²²

As feudalism matured, it entered into the period of "the adolescence," which Craig dated between the years 800 and 1040. During "the adolescence," feudalism took on a new, original aspect. Now, the land grant extended beyond immediate family. According to Craig, the Holy Roman Emperor Conrad II initiated the period of "the adolescence." Conrad II gathered a large army and prepared to move toward Rome.²³ Members of his military possessed land held from the emperor, but they requested, for the sake of familial stability, their grandsons and brothers be included in the inheritance of the land grant. Conrad II agreed for two reasons. First, as Craig noted, acquiescing secured the men's loyalty and fervor for fighting. Second, it guaranteed stability within Conrad's own territory. If a warrior died, Conrad II allowed the sons or grandsons of the deceased the inheritance and use of property. If the man had no sons, the land passed to his brother for the sake of maintenance of his extended family, as long

²² Ibid., 57.

²³ Craig was not absolutely certain the emperor was Conrad II, but he laid out a convincing argument for this claim. Craig assumed from his source, *The Books of the Feus*, Conrad II was correct because of his incursion into Italy. Conrad I, III, or IV never made such a trip. Refer to *Jus Feudale*, pp. 58-59.

as the grant was not a novel feu granted to the deceased brother.²⁴ “The adolescent” period of feudalism experienced an important time of growth and improvement. During this period, land-holders, called vassals, took control of land grants by exercising extensive powers that mimicked ownership. Craig commented, “Vassals, whether holding of the crown or of subjects, began to use and enjoy the lands entrusted to them by their superiors as if they were their own. Though not truly owners of them, they acted as if they were.”²⁵

Craig entitled the final stage of development “the manhood,” and during this period several changes created a distinctly feudal milieu. One change occurred with the birth of the Capetian monarchy, who granted “perpetual right of succession” which carried new titles. These titles were formerly given to the king’s administrators and under his supervision. With the new grants to the sons of vassals, the king lost large portions of his own land. The position of vassal was reorganized into two new types of vassalage. Vassal referred to a man who held from a subject of the king, while the new vassi referred to a man who held directly from the king. Additionally, the rules regarding succession changed to include not only sons and brothers but cousins and other relatives. Before “the manhood,” laws limited inheritance to the first degree of separation, then the

²⁴ Ibid., 58-59. A novel feu was a new grant of land. Land had to first be granted to the parents before it passed to the son or to the son’s brother in the event of death of first-choice son. If a man was granted a novel feu then died, the grant did not pass to his brother, but it was not first held by their common parents. For a more specific description of the novel feu, refer to *Jus Feudale, Book 2, Title 1, p. 339.*

²⁵ Ibid., 60.

fourth, then seventh, and eventually to anyone who traced their lineage to the original grantee.

If feudalism was created in stages of development it should be visible and implementable on a global scale. To prove this, Craig highlighted regions to which scholars of his day attributed the birth of feudalism. In the first region, Italy, the Lombards created many institutions that became essential elements of feudalism. The Lombards claimed the lord-vassal relationship was rooted in the Roman custom of patron and client, a practice which granted land for cultivation. The French claimed the relationship was their idea, a product of their tribal ancestry when a tribal chief had a band of warriors who followed him. The Spanish claimed the relationship was their idea, also a product of tribal ancestry. Germans and Greeks both argued feudal origins were found in the land grants with specific obligations that were given to soldiers. Craig validated the argument that feudalism had no founder, citing reasons such as the lack of vassalage or fealty and the absence of specialized language regarding superiors and tenants to set the relationship apart from anything else during the time.²⁶

The multitude of differences is expected in the feudalisms of different regions. Studying the law in across regions highlights the differences. This variance is inevitable when dealing with such large, diverse populations. However, to understand the significance of feudal law, I apply Craig's comparative model to the thirteenth century. By consulting the most advanced

²⁶ Ibid., 65-69.

records of thirteenth-century feudal law throughout Western Europe, the examples I present emphasize the commonalities of feudal law and establish the place of feudal law within the records. The parameters of the study include samples from the most developed thirteenth-century law codes that represent the Western European continent.²⁷

The first source, the *Sachsenspiegel* (1235) is a customary law code that provides insight into Germany as the region's first legal work in German vernacular.²⁸ Though not written as a codification of law, the extent to which it was disseminated throughout Germany indicates its importance. Referenced in a series of court decisions, the *Sachsenspiegel* carried royal and legal authority.²⁹ The tract was widely used due to a number of factors. First, the *Sachsenspiegel* broke tradition with earlier Latin law codes of the Germanic tribes because the *Sachsenspiegel* was written in German vernacular. The closest legal relatives of the *Sachsenspiegel* were the laws of the Franks, Burgundians, and Lombards. Written in Latin some three hundred years prior, the Germanic laws that predate the *Sachsenspiegel* evidenced a dependence on Roman law and Christianity. Elements of Roman law were also evident in the *Sachsenspiegel*, but much of the *Sachsenspiegel* was innovative and lacked a traceable origin. Maria Dobozy believes there was not much continuity between the latest of the Latin texts, the

²⁷ The only exception is England because of the exhaustive attention it has received. Feudalism on the European continent has been understudied.

²⁸ *The Saxon Mirror: a Sachsenspiegel of the Fourteenth Century*, trans. Maria Dobozy (Philadelphia: University of Pennsylvania Press, 1999), 1-2.

²⁹ *Ibid.*, 29.

Saxon Laws of 945, and the *Sachsenspiegel* of 1235, indicating a good deal of novelty in the latter.³⁰

Second, the *Sachsenspiegel* provided “a comprehensive framework”³¹ for Germanic law, especially as a feudal exegetical, which was probably the most widely utilized portion.³² Third, the manuscript was important because of its many accomplishments, such as defining “class order and hierarchy...clan obligations, marriage, and the possession and transfer of real property.”³³

In Sicily, the *Liber Augustalis*, written in 1231, represents the culmination of a series of law codes passed down by the Norman kings.³⁴ Propagated by Frederick II, the law code was an attempt to consolidate his power in a land that had not a single ruler or rule of law since the sixth century.³⁵ An understanding of Frederick II’s rise to power underscores the effectiveness of the *Liber Augustalis*.

Frederick II ruled over the Kingdom of Sicily, which was established by his grandfather, Roger II, a Norman conqueror. Roger II ruled a kingdom containing a myriad of different people. In the introduction to his translation of the *Liber Augustalis*, James M. Powell writes the land was filled with “Greeks, Lombards,

³⁰ Ibid., 16.

³¹ Ibid., 9.

³² Ibid., 6-7. This idea is explored at great length throughout the thesis.

³³ Ibid., 6.

³⁴ *The Liber Augustalis or Constitutions of Melfi Promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231*, trans. James M. Powell (Syracuse: Syracuse University Press, 1971).

³⁵ James M. Powell, Introduction to *The Liber Augustalis or Constitutions of Melfi Promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231* (Syracuse: Syracuse University Press, 1971), xiv.

Arabs, and now Normans,” and they all “lived by their own laws, customs, and institutions.”³⁶ In addition to the blended society, the events leading up to Frederick II’s takeover of Sicily brought about the creation of the *Liber Augustalis*. At the death of Roger II, Frederick’s father and mother (the daughter of Roger II), Henry VI of Hohenstaufen and Constance, had to fight for control of Sicily from Roger’s illegitimate grandson, Tancred of Lecce. Despite Tancred’s illegitimacy, he was strongly supported by the aristocracy. The sudden deaths of Henry VI and his wife left Sicily in disarray. With no one to govern, society broke down and many, including the aristocracy and clergy, abandoned their positions and obligations.³⁷

The young Frederick II was thrust into this turmoil, but he chose not to immediately solidify his authority. He differed from his Norman ancestor, William the Conqueror, who used the first years of his reign to secure power and establish sovereignty. With almost no enforceable authority, Frederick II faced strong opposition from the feudal lords. Frederick II was crowned emperor of the Holy Roman Empire in 1220. He returned to Sicily after an eight year absence and enacted the Assizes of Capua. The law code reasserted royal authority, and Frederick II demonstrated his power in the defeat of noble uprisings, Muslim revolts, and invasion of the papal army of Pope Innocent III.³⁸ After these

³⁶ Ibid.

³⁷ Ibid., xiv-xv.

³⁸ Ibid., xvii.

accomplishments, Frederick II called for the implementation of a new law code. The *Liber Augustalis* was compiled by the judge Master Petrus della Vigna, who was charged by Frederick II to find common laws for the whole kingdom and convert them into royal law.³⁹ Thus, the *Liber Augustalis* was a compilation of law codes drawn from custom, Canon law, and Roman law.

The *Coutumes de Beauvaisis* of Philippe de Beaumanoir (1283) exemplifies some of the earliest explanations of feudal customs in France.⁴⁰ Written for the county of Clermont in the early 1280s, the document was a thorough examination of the law and the responsibilities of feudal officials.⁴¹ The author, Philippe de Beaumanoir, was a *bailli*⁴² and sought to gather and record all the customs of the region in a single source of consultation for legal decisions.⁴³ He disliked how custom changed and how legal decisions were dependent upon the memory and interpretation of the jurors. By writing down the customary laws, Beaumanoir hoped to stop constant revisions and amendments.⁴⁴ Because this was a monumental attempt, F.R.P. Akehurst speculated whether Beaumanoir

³⁹ Ibid., xx.

⁴⁰ *The Coutumes de Beauvaisis of Philippe de Beaumanoir*, trans. F.R.P. Akehurst (Philadelphia: University of Pennsylvania Press, 1992).

⁴¹ F.R.P. Akehurst, Introduction to *The Coutumes de Beauvaisis of Philippe de Beaumanoir* (Philadelphia: University of Pennsylvania Press, 1992), xiii.

⁴² Akehurst described the *bailli* as a legal advisor, legislator, judge, and manager of his lord's estate.

⁴³ Introduction to *Coutumes de Beauvaisis*, xvii

⁴⁴ Ibid., xxv.

was trying to create a codification of the caliber of Justinian's *Corpus juris civilis*.⁴⁵

Beaumanoir's aspirations are difficult to analyze beyond what he wrote. Evidence of other similar law codes written before Beaumanoir may cause doubt that he had expectations of making a grandiose document that would be as authoritative and timeless as the *Corpus juris civilis*. Before Beaumanoir began his effort, several Latin texts that were collections and explanations of customary law already existed. *Les très ancien coutumier de Normandie* (ca. 1248) was the French version of an even earlier Latin text. A compilation of codes that contained Touraine (1246) and Orleans (1258), combined with the *Etablissemments de Saint Louis* (1273) circulated as well.⁴⁶

Unlike the *Sachsenspiegel* and the *Liber Augustalis*, the *Coutumes de Beauvaisis* made no reference to other codes. The *Sachsenspiegel* was the most similar (in technique, not content), as it was the first of its kind in the German region. Beaumanoir made no attempt to research the history of the customs. He, instead, listed, explained the meaning, and gave advice to jurists who might consult the *Coutumes de Beauvaisis*. He sought to change the way judgments were made and gave proper interpretations of the law, whether substantive, procedural, or feudal.

⁴⁵ Ibid.

⁴⁶ Ibid., xvii

Complementing these sources is Craig's seminal work on feudal law, *Jus Feudale*, which demonstrates the relevance and significance of the feudalistic principles and feudal law set forth in the thirteenth century law codes. The *Jus Feudale* was the epitome of a deeply-developed Scottish feudal society, legally advanced yet retaining the core elements first established almost four hundred years earlier. Completed in 1603, the *Jus Feudale* not only traced the development of feudalism in stages from "infancy" to "adulthood" but contained Craig's evaluation on the implementation and effectiveness of the feudalism on the European continent. His analysis of seventeenth-century feudal law is invaluable when assessing the place and importance of feudal law in the three thirteenth-century law books.

The key to defining feudalism is to identify what gave society order and stability and find what necessitated the amalgamation of the many segments of legal history. The definition of feudalism must be connected with the most basic element, the very thing that people before and after this period desired: land.

Feudal societies throughout Europe were not identical. Each culture had its own customs, adapted to the perilous environment of the middle ages to ensure the security of the community. Feudalism was as an organic system that permeated medieval life, structuring society into quasi-autonomous communal settlements with each resident participating in an exchange of service for goods (tangible or conceptual) and being mutually invested in the general well-being of

each member, while acknowledging that land is the pervasive conduit for societal order and stability. Consequently, a system of law governed these relationships.

Legal codes are the representation of hundreds or thousands of years of experience, illustrating how deeply tradition is embedded in society. Within the pages of the *Sachsenspiegel*, *Liber Augustalis*, and *Coutumes de Beauvaisis*, a substantial amount of Roman, German, and Canon law is evident, though not always distinct or easily identifiable. Yet, woven within this fusion was an innovative form of law based on custom and tradition. Since feudalism was highly dependent upon relationships and land, feudal law was necessary. Because of the limitation of legal discourse and the fluidity of customary codes, feudal law was not strictly defined. Craig believed feudal law in the early stages was “loose and ill-defined usage without any framework.”⁴⁷ Because it was based on custom, it was inconsistent. Even when first written, (by the Carolingians according to Craig) its implementation was difficult because no single body of law effectively covered the diversity of tribes. The Holy Roman Emperor Frederick I Barbarossa (r. 1155-1190) attempted to rectify the problem with a formalized law not influenced by territorial law and turned to Justinian’s *Corpus Juris Civilis* for the solution.⁴⁸ However, Roman law did not carry the authority it once held. Frederick I tried to overcome the uniqueness and territorial nature of customary law, but no law displaced feudal law because it was customary law. The only way

⁴⁷ Craig, *Jus Feudale*, vol. 1, 52.

⁴⁸ *Ibid.*, 53.

to restrict custom was to make it manageable, to tame feudal and customary law by writing them down and taking away any adaptable qualities. Formal written feudal law was accomplished in the twelfth-century text *Libri Feudorum*, the *Books of the Feus*, of which Craig wrote, “the authors of written feudal law were merely the transcribers of customary law.”⁴⁹ In the definition of feudalism, land was the most crucial component of feudal society because it brought stability to home, work, and social life.⁵⁰ Likewise, the contents of the *Books of the Feus* were “wholly concerned with the topic of feudal estate, which consists of land and things attached to land and all other subjects which are classed by law as immoveables.”⁵¹ The *Books of the Feus* became the authority on feudal law and caused feudal law to gain acceptance as a part of the established body of studied law, along with civil (Roman) and Canon law. From the study of feudal law, a new class of lawyers emerged known as feudists.⁵² Feudal law became an integral part of European legal structure, resulting in the law codes of the thirteenth century. In the seventeenth century feudal law was still debated, modified, and amended but remained authoritative. Despite the number or degree of influences, feudalism and feudal law held a prominent position in the *Sachsenspiegel*, *Liber Augustalis*, and the *Coutumes de Beauvaisis*.

⁴⁹ Ibid., 76.

⁵⁰ See the definition of feudalism and discussion of land on p. 19. Also, ch. 3 demonstrates the stabilizing character of land law, which is feudal law.

⁵¹ Ibid., 79.

⁵² O.F. Robinson, T.D. Fergus, and William M. Gordon, *An Introduction to European Legal History*, 2 ed. (Professional Books, 1985), 64.

In this thesis, I illustrate the effectiveness of feudal law and argue its indispensability in the thirteenth century because feudal law established social stability out of peril and maintained peace throughout a kingdom in an era fraught with violence. Feudal law provided security for families by regulating the interface of people and land, first in customary law, then written. Feudal law protected the bloodline, restricted the limits of heritability and protected women and minors from criminals, swindlers, and the poor administration of guardians. Feudal law governed the relationship between a lord and vassal, instructed both parties on their responsibilities and dues, and guaranteed obligations in a legally binding contract. As the power of the king increased, feudal law remained steadfast and unchanged. Kings and vassals used its power as a means to control the populace and maintain peace by collecting customary laws and incorporating them into written legal codes. Within royal courts and hundred courts, feudal law remained an essential division of the legal system in thirteenth-century Europe.

Much of past and current historical research of feudalism focuses on feudal practices in specific cultures. Books like Bloch's *Feudal Society* and George C. Homans's *English Villagers of the Thirteenth Century* study feudalism anthropologically but do not provide an in-depth analysis of feudal law codes. The works of Stephenson and Ganshof provide a synopsis of feudal history and function as an invaluable resource for starting research but again fall short of thoroughly investigating the significance of feudal law. Modern historians contribute to the study of feudal law by translating and explicating customary

codes, such as Dobozy's *The Saxon Mirror: A Sachsenspiegel of the Fourteenth Century* and Akehurst's *Coutumes de Beauvaisis of Philippe de Beaumanoir*. In my thesis, the research combines the social-anthropological approach with the legal translations to demonstrate the importance of feudal law to a thirteenth-century society plagued by war, economic and social instability, and competing powers of the monarchy, jurisprudence, and religion.

CHAPTER II

THE DEVELOPMENT OF FEUDAL LAW

The development of feudal law is significant because it is shaped by several cultures and embodies the essence of customary law. In its early stages, feudal law was mostly a collection of Roman, customary, and royal laws. Over time, it developed an identity of its own, taking on aspects of other laws and reassembling them in order to meet new needs. At the heart of feudal law was society, and society was precarious and unstable; it was in a time of transition and recovery. For centuries the Germanic tribes who roamed the European continent were governed by an unwritten set of laws, laws that were timeless, based on tradition and vengeance. Without the concept of the state, law was the manifestation of needs at the bottom of society. There was no need for a complicated legal system because life was focused on survival. Communities faced a constant threat of war, and a law code that needed to be consulted was arduous.¹ Customary law governed early tribes throughout Europe, and these customary codes knew no bounds. The laws of a Lombard traveled with him wherever he roamed, and it was the same case for the Franks, Burgundians, and other Germanic tribes. This was most evident in the early Germanic law codes.

¹ O.F. Robinson, T.D. Fergus, and William M. Gordon. *An Introduction to European Legal History*, 2 ed. (Professional Books, 1985), 45.

Analyzing the law codes accomplishes two objectives. First, finding common legal origins helps to illuminate the development of feudal law. Because each law code represents centuries of cultural fusion, the texts give clues about the evolution of their respective customary laws, indicating novelty or dissemination of ideas. Second, analysis serves to establish the significance of feudal law within the major codes of the thirteenth century. Many people sought refuge from nomadic invasions by submitting to a landlord in exchange for protection. However, families also desired to keep the land on which their families had lived for centuries, causing many to submit themselves as free and servile tenants to a landlord.²

Long before feudalism existed as a form of governance, the German tribes practiced similar concepts. Likewise, the Romans had practices that later became integral pieces of feudalism. By studying the early Germanic law codes, such as *The Lombard Laws* and *The Burgundian Code*, the influences of customary law become evident, as do the influences of the Romans. The amalgamation of elements from Germanic and Roman customs, as well as Christianity, created feudal law. Because of the adaptable nature of customary law, there was no notion of rights. In Germanic custom, law was a very open-ended concept.³ Morality in Germanic customary law is unlike the modern

² George C. Homans, *English Villagers of the Thirteenth Century* (New York: W.W. Norton and Company, 1968), 3.

³ *The Lombard Laws*, trans. Katherine Fisher Drew, *Sources of Medieval History*, ed. Edward Peters (Philadelphia: University of Pennsylvania Press, 1973; reprint, 1996), 3.

concept of morality. It was considered moral for a victim to exact revenge on the one who wronged the victim or his family. Not only was vengeance a moral act but the victim's responsibility allotted to him by custom.⁴ By the thirteenth century, feudal law was an established field of jurisprudence, but it retained the customary features of the ancient tribes. For example, the vengeful quality of customary law was reflected in the punishments and fines inflicted by the state. Maintenance of land within a family and peace in society were hallmarks of feudal law.

The greatest influence on Germanic society due to the interaction with the Romans was the change from customary law to statutory law. Customary law came from people, was adaptable, and developed over long periods of time. Katherine Fisher Drew defined it as "a body of moral practices established by the immemorial customs of a people and having a binding moral force rather than the arbitrarily enforced power of statutory law."⁵ Conversely, statutory law was created by legislation, confirmed and enforced by a political authority. Also evident in the law codes was the influence of Christianity, which had a dramatic effect on the Germans.⁶ Perhaps Clovis's conversion to Christianity was based on the advantages of the relationship he gained with a weakened but still powerful Roman Empire.

⁴ Ibid., 11.

⁵ *The Burgundian Code: Book of Constitutions or Law of Gundobad*, trans. Katherine Fisher Drew, *Sources of Medieval History*, ed. Edward Peters (Philadelphia: University of Pennsylvania Press, 1976; reprint, 1996), 3.

⁶ Marc Bloch, *Feudal Society*, trans. L.A. Manyon, vol. 1, 2 vols. (Chicago: The University of Chicago Press, 1961), 110.

Another influence on the Germans was Roman law. When the Burgundians first began their incursions into Roman territory in the third century, they were considered enemies. By 413, emperor Honorius gave the Burgundians land, making them *foederati*, or allies. After a brief conflict and defeat by the Huns, the Burgundians again established a Roman-recognized kingdom in 443. At first, the Germans were ruled by their customary laws, which were individualistic, and the Romans were ruled by Roman (statutory) law, which was obligatory for all Romans in that region. This caused stress in the German kingdoms. Therefore, Germanic rulers ordered the recording of customary law, thus denying the ability to change and adapt. Roman law infiltrated Germanic customary law due to customary law's fluid nature. A new statutory Germanic law code resulted, vaguely rooted in Germanic tradition.⁷

The extent to which the Romans influenced feudal law has never been fully understood. Various examples of Roman practices carried over to the feudal age but with adaptation. One of the best examples was the fief, rooted in the *beneficium*.⁸ This custom was unique in that it distinguished between ownership and the right of use. It was first widely utilized by the Carolingian rulers who ordered the church to grant the *beneficium* to soldiers to support the new cavalry.⁹

⁷ *Burgundian Code*, 1-2.

⁸ See description above, p. 4.

⁹ Herlihy, *History*, 75.

The Carolingians irrefutably contributed to the development of feudalism, acting as a conduit for the transition from the Roman to the feudal age. However, as Carl Stephenson writes, Carolingian feudalism “utterly failed” because it tried to create a political system before establishing laws to govern the system.¹⁰ Based on tradition, customary law alone was not able to evolve with the developing feudal society. The Carolingian kings attempted to impose philosophical concepts such as loyalty, but had no enforceable principles, theoretical or otherwise. Despite the success of the Germanic tribes in infiltrating and conquering the western Roman Empire, the tribes borrowed tremendously from a highly advanced civilization but remained themselves uncivilized.

Prior to the late eighth century, the constant threat of war had created an uneasy environment, and the essential traits of stability had broken down. There was no centralization of government because government was unreliable and unable to deal with borderless frontiers. Without secure borders, merchants and traders were exposed to violence and lacked the protection of trade routes which drastically paralyzed commerce. The final effect was the debilitation of civilization. People focused on survival, and, as O.F. Robinson asserts, “pursuit of inessentials did not enhance life but threatened survival.”¹¹ As the threat of

¹⁰ Stephenson, *Mediaeval*, 11.

¹¹ Robinson, *European Legal History*, 45.

invasion waned, violence did not, so early pre-feudal traits remained and eventually became part of the customary law to protect against marauders.¹²

Beginning in the late eighth century, a new form of land governance appeared. The Merovingians granted parcels of land known as immunities to prominent loyal subjects called vassals. The land was immune from royal official interference and taxes.¹³ Created to meet the demands of stabilizing and governing a large kingdom, vassalage allowed a man the right of use of land in exchange for service. As servants of the king, vassals supported him militarily and received land as compensation for their time, expenses, and loyalty.¹⁴ Initially a set of customs, feudal law blended with established customs and became indistinguishable.¹⁵ The continuing decentralization demanded the creation of a pyramidal hierarchy of lords and vassals who held the land in tenure, a system destined for complexity.

As kings sought stability for their realm, it became evident that land was the most effective unifying factor, and through tenure, society could be stabilized and safety maintained.¹⁶ Tenure was a unique relationship in that both parties had responsibilities to one another. Though he held the highest and most noble

¹² Ibid.

¹³ Ibid., 54.

¹⁴ Stephenson, *Mediaeval*, 9.

¹⁵ Robinson, *European Legal History*, 46.

¹⁶ This might be seen as an attempt to re-centralize royal authority. Re-centralization was quick in England because the king already had considerable control over custom courts. It was a different story on the continent, a topic explored in ch. 4 of this thesis.

position, the king was as responsible for upholding his part of the agreement as the vassal was his. The king, or lord at any level, provided protection from violence, monetary assurances, and the maintenance of life by the granting of land, office, or residence. The vassal reciprocated his loyalty and swore to provide aid in the form of knight service, money, or hospitality, as well as counsel when called upon to attend feasts, or later, court.¹⁷ Land tenure became the most important feature of vassalage, and vassals gained privileges never before seen. According to Robinson, the lord's "rights to recover a fief because of some abuse by his tenant became a matter for trial in the lord's court by the *vassal's* peers."¹⁸ In 1037, Conrad II enacted a law requiring a vassal to be found guilty in court in order to be removed from his property.¹⁹ Likewise, Frederick I Barbarossa forbade the alienation of a fief without the lord's permission.²⁰ Feudalism was forming, and feudal law gave it structure. It was not a simultaneous development across Europe, but a system was taking shape.

Starting in the eleventh century, many rulers began to seek out legal advice from experts known as jurists. Roman law was taught alongside canon law in the universities, with the epicenter at the University of Bologna. By the twelfth century, Roman law was becoming increasingly popular and influential. Rulers were commissioning jurists to copy down and codify the laws throughout

¹⁷ Ibid., 48-49.

¹⁸ Ibid., 53. Emphasis added.

¹⁹ Ibid.

²⁰ Herlihy, *History*, 237.

Europe, with Justinian's *Corpus juris civilis* as the inspiration and aspirant.²¹ The eleventh and twelfth centuries were times of prolific writing of legal codes. Monarchs like Frederick I Barbarossa saw the revival of Roman law as the chance to establish authority that linked the universal power of the Roman Caesar with the territorial power of the feudal lord.²² Standing in the way of the merger was feudal law, which was mostly unwritten and guaranteed the decentralization of government. Thus, during the twelfth century, two important developments came to fruition: feudal law was reduced to writing and the king asserted royal authority.²³

The writing of law drastically changed the legal atmosphere, and compilations of laws were written beginning in the twelfth century. From Henry II in England to Philip Augustus in France, a systematic movement to wean away from unwritten customary law swept Europe.²⁴ The greatest example of this movement was the creation of the *Books of the Feus*, a collection of the feudal laws and customs of various territories compiled in one, authoritative law. According to Craig, the *Books of the Feus* meant the end of customary feudal law.²⁵ While this might be an exaggeration, the text no doubt contributed to the

²¹ Bloch, *Feudal Society*, 117.

²² Herlihy, *History*, 237.

²³ Robinson, *European Legal History*, 61.

²⁴ Bloch, *Feudal Society*, 119. This does not mean that customary law ever ceased to exist, only that there was an attempt made by monarchs to establish a written law that superseded customary law. Customary law was still an important part of society even by the fourteenth century, as evidenced by the works of Bartolus de Sassoferrato.

²⁵ Craig, *Jus Feudale*, vol. 1, 54.

establishment of feudal law as a standardized and recognized field. The project was first started by Obertus de Orto, a judge of the imperial court at Milan. The *Books of the Feus* was a compilation of various feudal law codes, though Robinson believes the text was based mainly on Italian feudalism.²⁶ With the publication of the *Books of the Feus*, a new interest in feudal law spread and feudists added their own commentaries and revisions to the text. Pillius, a professor at Modena, wrote a commentary, and James de Ardizzane reorganized the text and commentary in his *Summa*. Eventually, Justinian's *Novels* was added, producing the multi-authored masterpiece that constituted all the knowledge of feudal law.²⁷ Just as astonishing as its inception was its acceptance. After all, the text was created without any royal or imperial sanction. What led to its widespread reception, Craig believed, was the acceptance by prominent jurists and universities, who studied the text and gave it credibility.²⁸ This spawned the creation of other works, such as *Glanville* in England, the *Coutumes de Beauvaisis* in France, and the *Sachsenspiegel* in Germany. These unofficial compilations of customary, statutory, and feudal law enjoyed broad acceptance throughout their respective territories.²⁹ Furthermore, Craig wrote the inclusion of imperial constitutions made the text more plausible and easier to

²⁶ Robinson, *European Legal History*, 64.

²⁷ *Ibid.*, 65-66.

²⁸ Craig, *Jus Feudale*, vol. 1, 78.

²⁹ Robinson, *European Legal History*, 66-67.

accept without formal imperial approval.³⁰ The *Books of the Feus* remained a significant and authoritative piece of feudal law and Craig based his *Jus Feudale* on the text. Essentially, Craig reworked the *Books of the Feus* and included more history and his own commentary on legal practices throughout Europe, especially in Scotland and England.

The other critical development of the twelfth century was divine approval of the king and the power of the king in relation to feudalism. The issue was authority. Was the king the head over all lords or was he legally bound to be the greatest among equals? If the king ruled over all land, was he also the ruler of church land?³¹ As feudal bonds grew, the authority of the king weakened, and many kings stressed the importance of loyalty of all subjects to the monarchy over loyalty to one's lord.³² Land tenure created a pyramidal hierarchy. The king was on top, but his supremacy was challenged by subinfeudation, the practice of the king's vassals investing vassals of their own. Subinfeudation created problems with loyalty and fealty, weakening the strong feudal bond.³³ To strengthen his position and to reassert royal authority, the king turned to the church to legitimize his title and to give his position a divine aspect that commanded subjugation and obedience.³⁴ The king attempted to supplant feudal

³⁰ Craig, *Jus Feudale*, vol. 1, 79.

³¹ The Carolingians utilized the church's practice of granting the *beneficium*; see p. 4 above.

³² Robinson, *European Legal History*, 49.

³³ *Ibid.*, 51.

³⁴ *Ibid.*, 48. See ch. 4.

law by enacting ancient law codes that centralized and increased royal authority, such as the *Corpus Juris Civilis*, but lords were not willing to relinquish judicial powers.³⁵

One way to propagate the influence of royal authority was in the feudal courts, but the courts relied on feudal law and were under the jurisdiction of feudal lords. Feudal law was land law and included issues of succession, inheritance, and possession. Vassalage brought jurisdiction, and the lord was responsible for the areas of “defense, policing, justice, taxation, and general administration.”³⁶ Though this responsibility was great, it was also lucrative for the lord. The administration of justice was a source of revenue for lords, and became an issue between the highest lord (the king) and the lesser lords throughout the pyramid. In order to assert and maintain authority, the king divided the law into high and low justice.³⁷ The king’s court, the high court, traveled throughout the country, meeting three times per year in specific locations to hear the most important cases and relied upon the established law codes that contained civil and feudal law. The lower courts administered low justice and met as needed. Authority was granted to the counts, magnates, and lesser lords, who then authorized others known as *scabini*, or law-finders, to carry out proceedings

³⁵ Ibid., 63. German kings were elected by German princes, but not all German kings were anointed as Holy Roman Emperor by the pope.

³⁶ Ibid., 47.

³⁷ See ch. 5 for a more thorough examination.

in between meetings of the king's court.³⁸ In addition to monopolizing justice, lords found other ways to undermine loyalty to the crown. The lords offered peasants free tenure, which was voluntary and required a monetary payment for some sort of investiture. A peasant could also acquire servile tenure and make a payment in labor, working the lord's land.³⁹ The lord controlled many necessities of life, such as the mill and wine press, and arbitrarily implemented taxes, such as the merchet tax for a daughter who married outside of the manor, or the tallage, a discretionary and infrequent tax.⁴⁰ Lords were within their legal limits because what they did was part of the feudal contract.

Stephenson contended feudal law was whatever the vassals decided it should be when they met in court.⁴¹ Because there was no precedent, there was nothing on which to base the new laws other than the need for social stability and the security for posterity. As Marc Bloch writes, "Jurisprudence, in short, was the expression of needs rather than of knowledge. Because its efforts to imitate the past were inevitably based only on an inaccurate picture of it, the first feudal age changed very quickly and very profoundly while believing itself to be unchanging."⁴²

³⁸ Ibid., 56-57.

³⁹ Ibid., 59.

⁴⁰ Ibid., 60.

⁴¹ Stephenson, *Mediaeval*, 31.

⁴² Bloch, *Feudal Society*, 114.

CHAPTER III

LAND LAW: THE STABILIZING FACTOR

Agriculture was the sustaining element of villagers in the thirteenth century. Land tenure provided stability and livelihood.¹ Villagers farmed on two types of land: champion and woodland. The champion was wide-open land with minimal division. Inhabitants lived in compact villages. Woodland was land divided by mounds of dirt on which trees grew, separating the land into distinguishable parcels. Woodland inhabitants lived in small, dispersed settlements.² Most villagers did not farm large areas of land. Rather, villagers' land was divided into strips located in various fields.³ As population grew and land became scarce, villagers cleared forests to make more land available for cultivation. According to Homans, equality existed in the division of resources among tenants and inequality in the division of land.⁴ Villagers relied on land tenure as their livelihood; farms produced little more food than required for survival. Tradition and custom permeated the small communities that existed on the land for centuries. Freeholders and villeins believed land should be inheritable only in the family. Homans described the villagers' sentiment, writing

¹ Homans, George C. *English Villagers of the Thirteenth Century* (New York: W.W. Norton and Company, 1968), 39.

² *Ibid.*, 21

³ *Ibid.*, 71.

⁴ *Ibid.*, 83.

“Especially strong was the feeling that a holding of land ought to remain in the blood of those who held it of old.”⁵ The reliance on agriculture meant communities needed consistency of land tenure and rules to govern the use of land.

The primary goal of feudal law was the maintenance of land ownership within the family because it ensured each family retained a source of livelihood, providing stability of society. In *The History of Feudalism*, David Herlihy described personal relationships as the strongest bond in pre-feudal societies, and this transposed in feudal law to the legal agreement between a lord and vassal. He continued, writing groups who were war-driven relied heavily on the bond of tutor and student, and he called this bond the “most characteristic feature” of pre-feudal communities.⁶

Because groups permanently inhabited large parcels of land, the land became the characterizing feature of feudalism. Social status, wealth, and legal status were determined by the possession of land. Land law became a complex legal structure tied to many aspects of life. In the three law codes studied, each dealt extensively with alienation, freehold and fiefhold, and inheritability. The legal status of women and minors was not only connected to the husband or father, but to land possession. Property laws extended into issues on wardship and

⁵ Ibid., 3.

⁶ Herlihy, *History*, 69.

feudal obligations. One theme united the law: the sustainability of the land and its tenants meant the stability of society.

The Legal Status of Women and Children

The legal status of women and minors is a significant part of feudal law because it grants provision to women, minors, and caretakers when the head male of the household dies. The theme of maintenance of peace and stability of land tenure is evident throughout the laws on women and minors, especially concerning the heritability of property. Throughout the chapter, I describe laws in detail to illustrate the complexity of feudal law and to demonstrate the extent of the qualities of preservation within the laws.

Laws on land possession are within statutes pertaining to the legal status of women and minors. A woman's status was directly linked to that of her husband, but each of the law codes demonstrated land laws gave women both independent rights to inherit as well as rights to the land in usufruct if her husband died. Because society was perilous, and in order to maintain life and lineage, a woman had to be granted a certain amount of rights to the land, especially if her husband were to die in battle for the cause of his lord. She also needed the means to care for her children until they were of age. The laws reflect the attitude life must go on even without a husband or father.

Sachsenspiegel

Women during the thirteenth century were not equal in status to men. Because of the nature of the living conditions and the constant threat of death at

any time, the *Sachsenspiegel* set down laws that enabled a woman to maintain the family property and her usufruct. Customarily, the wife was under the authority of her husband. In the event of his death, the German laws provided enough autonomy to permit the widow to maintain any property until the rightful heir reached maturity. Regardless of circumstance, a woman was required to have a male guardian.

Without authority in a court of law, a woman needed a male representative who could act as her legal counsel, make negotiations, and otherwise protect her property. The guardian had to be male and at least twenty-one years old, the age of majority.⁷ If a woman did not have a guardian for whatever reason, one was appointed to her by the court. If she was unmarried and refused the court's guardian, she had to obtain a guardian from her father's side of the family who was of the same social status. If she was married, her husband was considered her guardian despite his social standing because a woman became socially equal to her husband at marriage. An exception existed if the husband gave his wife allodial property for her to own freely.⁸ When this occurred, the court, not the husband, acted as her guardian for any legal disputes that involved the property.⁹

⁷ *Sachsenspiegel*, 81.

⁸ Allodial property was land that was given to the woman by her husband and held by her, free of stipulations or obligations to any superior. When given to a woman by her husband, this land was for her use and could not be taken from her or her heirs unless she were to forfeit it willingly. This was such a binding agreement that not even a separation of marriage could nullify it. Because this land was held solely by the woman, the husband could not act as her guardian over it, and thus the court became the de jure guardian. See *Sachsenspiegel*, pp. 75-76.

⁹ *Ibid.*

Dobozý defined the guardian as a “tutor” and “protector,” and noted this person was responsible for the administration of the female’s personal property.¹⁰ One of the legal actions a female could perform was to swear the oath herself after negotiations were made. The guardian swore his protection of her and her property. If she lied, the guardian was not held liable.¹¹

The fundamental purpose of the guardian was not the protection of the woman but the protection of her property; thus, the guardian had ultimate authority over a woman and her property. A woman had to have the permission of her guardian to sell or alienate her land. If she was married and her husband was her guardian, she had to have his permission both as her guardian and as her husband since he was the co-possessor of the land.¹²

As another means of maintenance and stability, women were given specific rights against guardians who were irresponsible and harmful to the woman’s person or property. She could bring suit against her guardian, but she was not allowed to represent herself. In order to press charges, the court became her legal guardian and the offender was summoned. A trial would follow and the decision of the elected judge was binding. If the defendant did not show in court after being summoned three times, the woman was awarded all power and authority over her possessions and land.¹³

¹⁰ Ibid., 188.

¹¹ Ibid., 81-82.

¹² Ibid., 81.

¹³ Ibid.

It was possible for a widow to take possession of land that was held as a fief. In order to maintain and honor the agreement, she was allowed to remain the fief-holder, but she could not perform military service. Instead, she paid dues to the lord, and the agreement had to be formalized by her guardian.¹⁴ When she died, her guardian could only take over the fief if she properly invested him with the property. Additional laws regarding married women who held the fief jointly with their husbands protected women from being defrauded. These laws forbade the husband to subinfeudate without his wife's consent, and if he was stripped of his rights to the land, she still retained them, with any future reversions becoming her sole property.¹⁵

Another form of protection for a woman and her property were inheritability laws which were in place to guarantee the preservation of property and ensure its continuation within the family. When a husband died and a woman did not hold joint ownership of the land, she immediately removed all her property. This included her house because buildings were owned independently of the land, and she was considered the legal owner of the dwelling with her husband. Conversely, if she became a widow and was joint-owner of the property, she retained the rights to the land, even if she had children who were heirs. If the husband specifically left the land to an heir, the widow retained a weak claim to the land; her son's wife held a stronger claim than she did. If the widow's son

¹⁴ Ibid., 156.

¹⁵ Ibid., 162.

died, the land was legally held by the son's wife as long as the son's wife produced either written evidence or witnesses who could attest to the validity of her claim to the land.¹⁶

In the *Sachsenspiegel*, the laws of inheritability applied to the guardianship of minors. This is a significant feature of feudal law because it is a means of protection and preservation of property for posterity. Before the age of twenty-one, males were required to have a guardian. If a man married before twenty-one, he did not become the guardian of his wife until he reached the age of majority, nor was he allowed to fight his own battles in a trial by combat.¹⁷

Once the age of majority was reached, the man gained full legal rights but also the responsibilities of guardianship. If married with children, and a man's wife died, he was left as the guardian of the children and in charge of his wife's possessions for the children, ensuring the possessions did not lose value. The children received their portion of the mother's inheritance once the children reached the age of majority.¹⁸

If a man died and left behind a wife and children, the eldest son became the guardian for the widowed mother and siblings and oversaw the property and possessions. After his siblings reached maturity, the eldest son continued to act

¹⁶ Ibid., 75.

¹⁷ Ibid., 81.

¹⁸ Ibid., 72.

as guardian as-needed and remained guardian over his widowed mother until she remarried.¹⁹

Feudal law contained statutes that regulated guardianship in the event of suicide or illegitimate birth. If a man killed himself, his property transferred to his heirs. The law forbade the man's guardian from profiting from the suicide. The guardian was relieved of his duties and received no compensation.²⁰

Furthermore, if a child was born out of wedlock, the child could not have a guardian for legal disputes or trial by combat. Because of illegitimacy, the law tried to guarantee the illegitimate child had no claim against rightful heirs.²¹

Liber Augustalis

As in Germany, laws in the Norman kingdom of Sicily protected women and children from the irresponsible actions of their male guardians (called procurators in the *Liber Augustalis*). When a case was brought to court, a woman had the option to use a procurator.²² She could select her husband or another to represent her.²³ This was a very distinct difference from the earlier Lombard Laws

¹⁹ Ibid., 76-77.

²⁰ Ibid., 103.

²¹ Ibid., 81.

²² Contrast with the *Sachsenspiegel*; see pp.16-17.

²³ *Liber Augustalis*, 66-67.

which made the male head-of-household the legal representative of all who lived within his home and did not allow those members the right to choose.²⁴

The protection of women was an important element in the feudal law presented in the *Liber Augustalis* because women and their heirs were directly linked to the inheritance of property, the sustainability of the family, and the preservation of society. To ensure legitimacy of heirs, a marriage had to be public and official or it was not recognized and the woman had no claim to her dower. The court required a woman obtain a license to marry. A man needed to be certain the woman had a license before he married her.²⁵ In Book II of the *Liber Augustalis*, the forty-fourth law allowed a woman full restoration if someone took advantage of her.²⁶ Likewise, if she was the wife of an exiled man, the law stated she was not to be punished for the illegal activity of her husband and received the rights to any property or business as long as she did not provide aid to the exiled person.²⁷

²⁴ *Lombard Laws*, 29. Chapter Two of this thesis discusses the influence of Lombard Law. Special attention should be given to the authority of the head-of-household over anyone, including married sons, who lived in the house.

²⁵ *Liber Augustalis*, 117. In addition to the assurance of legitimate marriages, Book III also contained a short string of laws pertaining to abuse, prostitution, and the offspring of prostitutes. These topics are a bit beyond the scope of feudal law because they are more criminal in nature. However, a case may be made for children of prostitutes because the *Liber Augustalis* singled them out and declared that they not be held responsible for their parents' licentious behavior. The problem is that there is no mention of how they were treated, since feudal law declared illegitimate children incapable of inheritance. For more on this see *Liber Augustalis*, pp. 145-148.

²⁶ *Ibid.*, 100.

²⁷ *Ibid.*, 72.

Also mentioned in Book II was a law allowing a woman to keep her “dower in land” if her husband died.²⁸ The *Liber Augustalis* allowed a knight to give his wife a dower in land if he possessed at least two fiefs. If he only possessed one, the dower had to be money. In order to keep a dower in land, the widow had to promise fealty to the lord and his heirs and promise not to withdraw the dower from the barony. The widow was required to fulfill all the obligations of a fief-holder.

Similar to Germany, minors were under the wardship of a male, usually the father. Wardships were granted to a minor if the child became an orphan or if the father was exiled and he held feudal property.²⁹ Wardship of an orphaned minor belonged to the king, especially if a high-ranking vassal was involved. The warden was responsible for the livelihood of the minor, as well as the management of the property the minor held or inherited. If the court acted as warden because the father was exiled, any income from the property went to the court to repay the man’s debt.³⁰ Wardship ended when the child reached puberty, and the court collected fees to repay the crown and other incurred costs. Remaining money or property belonged to the child.³¹

To avoid corruption, a warden kept detailed records of expenses and turned the records in to the court at the end of the wardship. A warden who

²⁸ Ibid., 114.

²⁹ Ibid., 71.

³⁰ Ibid., 72.

³¹ Ibid., 121.

cheated a minor or made an unauthorized transfer of property was required to repay in restitution the money the warden made or lost on behalf of the minor in addition to a separate fine to the crown.³²

The Coutumes de Beauvaisis

The purpose of feudal law in the *Coutumes de Beauvaisis* was to conserve the family, property, and society. A key feature of stability in the law code was primogeniture. Many Germanic tribes practiced partible inheritance, eventually replaced by primogeniture. Partible inheritance was discontinued because it caused each inheritance to diminish. By the fourth or fifth generation, what began as a significant amount of property was divided so many times the plots were negligible and provided a meager existence. Therefore, the practice was abolished and the majority of the rights were given to the firstborn son.

Another means of maintenance in feudal law were dower laws. Though complicated, dower laws were a necessary part of feudal law because the laws provided support for a woman at the bottom of society. A woman was entitled to half of the “inherited real property” of her husband when he died.³³ If a man had a previous wife, the previous wife received one quarter of the man’s property, and the current wife received the other quarter, constituting half the estate. With each subsequent wife, the estate was further divided by a quarter.

³² Ibid., 122.

³³ *Coutumes de Beauvaisis*, 155.

A man could sell his wife's dower if she died; the children were not entitled to it as inheritance. If the husband chose to leave the dower to the children, the eldest son received the dower as part of his inheritance. If the husband wanted to sell the dower while his wife was alive, he did so by warrant. A warrant allowed the sale to occur, but actual possession of the land was postponed. In order to maintain life and support the family, the wife retained the dower until her death. The property transferred to the buyer at the death of the wife.³⁴

If a man inherited land laterally before he married, the land could be given to the woman as dower. If a man inherited the land laterally after marriage, his wife was not entitled to the land as dower.³⁵ By opting not to take a her share of the property, the woman did not assume her husband's inherited debt. The man's debt was passed to his heirs, each heir paying in proportion to their inheritance.³⁶

Custodianship was another complicated but necessary area of feudal law. A custodian safeguarded a minor's inheritance, including the fief. Males younger than fifteen years were considered minors; for females, the age was twelve.³⁷ The closest male relative on the side of the family from which the fief descended became a minor's custodian. If the relative chose to become custodian, he paid the inheritance tax, feudal dues, and homage to the lord. To discourage family

³⁴ Ibid., 156.

³⁵ Ibid., 158. Lateral inheritance is discussed later, but essentially it was property that was not passed down (descent) because of lack of or death of offspring. Lateral inheritance was thus passed to brothers, sisters, etc.

³⁶ Ibid., 157.

³⁷ Ibid., 184.

members from taking advantage of orphaned minors, fees were paid out of the custodian's personal finances and were not reimbursed. Custodianships were handed over "free and clear,"³⁸ meaning the custodian was responsible for all costs and the minor received the land as if directly inherited.

Custodians maintained the property and buildings and kept them from losing value, a feature of feudal law meant to sustain family resources. When a custodian could not be found, the lord repossessed the fief and collected the profits because a minor could not do homage. During repossession, lords were not responsible for paying the minor's debt. Once the child reached maturity and performed homage, the lord repaid the profits and the minor resumed paying the family debt. The minor's vassals postponed feudal dues until the minor reached maturity.³⁹

In addition to custodianship, guardianship aided the maintenance of land tenure for minor heirs and was an essential part of thirteenth-century feudal law. While a custodian oversaw a minor who inherited a fief, a guardian was responsible for a minor's villeinage. Unlike custodianship, guardianship was not limited to maternal or paternal lineage. Guardianship was more favorable than custodianship because the guardian was not obliged to care for the minor. If the guardian agreed to take care of the minor, profits from the land paid for

³⁸ Ibid., 183.

³⁹ Ibid., 184.

expenses.⁴⁰ It was possible to be both custodian and guardian. Expiration of custodianship did not automatically terminate the guardianship. For example, a father could end custodianship, but by default became the guardian because the role fell to the closest male relative.⁴¹ The law contained specifics on who was forbidden from being a custodian or guardian because the person was unable to administer personal property. The list included blind or deaf persons, criminals, and lepers.⁴² The care of women and children was an important feature of feudal law in the thirteenth century because it safeguarded lineage, protected heirs from malfeasance, and provided the security needed to maintain land tenure.

Feudal Obligations

In its early stages, feudalism lacked a structured tax system. Instead, each vassal was under a set of obligations, including monetary payment. The feudal obligations provided a financial support by which the kingdom operated. Money was collected through infeudation, an essential part of the maintenance of society at every level. Because there was no taxation, obligations provided stability.

Feudal obligations were a continuance of land law, directly linked to inheritability, freehold, fiefhold, alienation, legal status, and disseisin. The objective was the security and stability of land tenure. The system was not only a

⁴⁰ Ibid., 181.

⁴¹ Ibid., 191.

⁴² Ibid.

source of income, but a legal contract and guarantee of loyalty. Obligations stabilized society by capitalizing on the loyalty of old, powerful kinship bonds and assuring allegiance in a legal agreement.

Sachsenspiegel

Land possession provided feudal communities with stability through land tenure and protection from loss of livelihood. Land held freely was the most beneficial type of possession. Known as allodial property, an allod was free of feudal dues or required services and was inheritable.⁴³ The possessor of an allod held full ownership of the property.⁴⁴ Allods were common forms of dower. A woman held the dower land (allod) for life in free ownership even if she divorced.⁴⁵ A fief passed exclusively through the father's side to the heir. The heir was re-invested with the property and swore his own allegiance and fealty. Conversely, an allod was inheritable through either the mother or father.⁴⁶

To be invested by a lord, the owner of an allod sold his land to the lord. The law recommended the lord wait a full year and one day to ensure the transfer was complete and secure. Otherwise, the original owner retained a claim to the property.⁴⁷

⁴³ *Sachsenspiegel*, 106. Heritability was valued over vassalage because it constituted a stronger claim to possession than fiefhold.

⁴⁴ *Ibid.*, 68.

⁴⁵ A woman also held a fief in reversion from her husband, and fiefs were subject to seizure or transfer, and tenure of a fief lasted only as long as the holder was alive. See *Sachsenspiegel*, 135.

⁴⁶ *Ibid.*, 135.

⁴⁷ *Ibid.*, 79.

The feudal laws regulating the relationship of the lord and vassal in thirteenth century Germany were included in Book IV of the *Sachsenspiegel*. Many of the laws concerned investiture and the procedures for handling problems that arose from the practice. The law made clear that no one beyond the seventh order of knights was to be invested.⁴⁸ The concept of seven orders originated from the custom that only men who carried military shields could be invested. In order to have a military shield, a man had to be able to provide arms. Shields became the way to classify rank, or order, of knights, and indicated their right to be enfeoffed.⁴⁹ Book IV described the rules of investiture, including the agreement between lord and vassal. The lord invested the vassal with a fief; in return the vassal promised loyalty and homage. A vassal also pledged six weeks of military service and service in feudal court.⁵⁰

Despite the laws against it, men beyond the seventh order of knights were frequently invested. The *Liber Augustalis* addressed this issue with a series of laws honoring the agreement of investiture but inflicting punitive damages. For instance, a man beyond the seventh order retained his fief but could not pass the fief to his heir. There were injunctions forbidding an improperly invested man from participating in court. Though the man could testify to his lord, the testimony was inadmissible, and the man was prohibited from testifying in court. Consequently,

⁴⁸ Ibid., 144.

⁴⁹ Ibid., 192.

⁵⁰ Ibid., 144. Service in court was a crucial part of feudal dues because it promoted the lord's jurisdiction and prominence over royal authority.

if the man was involved in a suit, he automatically lost if the other litigant was of one of the seven orders of knights.⁵¹

Investiture laws allowed a lord to invest two people at a time, one with possession and the other with the right of reversion should the first person die without an heir. The right of reversion could be broken by the first person invested if he had a son. Furthermore, the right of reversion could be broken if the original lord died. The lord's successor was not required to honor the grant of reversion.⁵²

Feudal law in the *Sachsenspiegel* reflected the significance of land and lineage. Allodial property provided lifelong sustenance for women, a characteristic essential to societal stability. Investiture laws guaranteed the integrity of lineage and ensured legitimate succession. The local impact of the *Sachsenspiegel* perpetuated its spread throughout Germany, and feudal law became an integral piece of the legal system.

Liber Augustalis

Within the customs of Sicily, the fiefhold was property held of a lord without full ownership. Fiefs were subject to feudal dues, tenure, reversions, and laws of reduced service. The Sicilian law forbade contracts not requiring service for fiefs because, it argued, without service there would be no fief. A fief could transfer, regardless of size, to a freehold if the property was in the family for at

⁵¹ Ibid.

⁵² Ibid.

least thirty years with no interruption. Once the transfer took place, the fief lasted a lifetime and ended only if there were no heirs to inherit the fief.⁵³

The laws regarding fealty and pledges of vassals were part of the feudal milieu. Vassals pledged fealty to their lord, a promise that not only included the vassal's body, but his family, possessions, and reputation. Information harmful to the lord was reported immediately by the vassal, and the vassal conducted himself in a way befitting the character of the lord.⁵⁴ A vassal could not enter the service of the church without permission to break his oath to his lord due to the strong bond of the feudal agreement.⁵⁵

A vassal who broke his pledge of loyalty was immediately disseised. He suffered the same fate if he had knowledge of or committed a crime against the lord, his family, or his property. Similarly, a lord who had illicit sexual relations with his vassal's wife or daughter nullified the agreement. The lord lost his rights to homage if he physically abused his vassal or failed to defend him.⁵⁶ Feudal law created a unique environment of mutual respect. While a lord was socially superior to a vassal, the law protected the vassal from injustice.

The Coutumes de Beauvaisis

Freehold was a practice reserved for the upper nobility, or gentlemen, as Beaumanoir referred to them. Commoners were not allowed to hold fiefs, but

⁵³ *Liber Augustalis*, 126.

⁵⁴ *Ibid.*, 115.

⁵⁵ *Ibid.*, 105.

⁵⁶ *Ibid.*, 115-116.

Beaumanoir described loopholes a commoner could exploit to circumvent the rule. The first way a commoner could hold a fief was if the fief was held by his family before the law of prohibition was passed. If the fief was sold, it had to be sold to someone of the noble class.⁵⁷ A commoner could also hold if a fief passed to him laterally or if he held the fief as a custodian or guardian of a minor.⁵⁸

Through special permission of the king, commoners were permitted to hold a fief, and others held it through a lord.⁵⁹ Another way a commoner could hold a fief was if he married an upper class woman who already held a fief. However, their children could not be members of the knightly class because noble heredity passed through the patrilineal line. Once a commoner's wife died and the fief transferred to him, he was required by law to alienate or sell the fief within a year and a day or it was seized by the lord. In some instances of grace, lords allowed commoners to retain the fief until death, secured by an oath of fidelity.⁶⁰ Granting land to commoners was a way to assure the longevity of feudal tenure.

The feudal obligations in France during the thirteenth century were highly regulated and followed a strict set of laws. Beaumanoir illustrated the stringency of the law by laying out an exact way to offer one's feudal dues to his lord.

⁵⁷ *Coutumes de Beauvaisis*, 536.

⁵⁸ *Ibid.*, 539.

⁵⁹ *Ibid.*, 536 and 538.

⁶⁰ *Ibid.*, 537-538.

Beaumanoir went so far as to record precisely what was to be said, any possible responses, and how to handle a lord who did not accept the dues.⁶¹

Generally, the laws regulated when dues were to be made, the manner by which they were made, and specifically what was to be offered to the lord. In some special cases, the lord could grant a reduced-service fief, which included its own special set of rules and rights, namely the ability of the lord's lord to seize the fief. Reduced-service fiefs were not common nor recommended in feudal practices because they required the permission of the lord's lord. If a lord granted a vassal a reduced-service fief without first getting permission from his overlord, then the lord's lord had the right to seize the land. However, if the lord's lord granted the permission without his lord's permission, then the lord's lord had the right to seize. This became a convoluted mess because each vassal was to make some sort of reparation to his own lord for causing such trouble.⁶²

Feudal dues were a vital part of thirteenth-century feudalism. The dues and obligations supplied financial and military support for the maintenance and peace of the community. Longevity of land tenure was contingent on fulfillment of feudal dues.

Possession and Inheritance

Possession and inheritance were integral parts of feudal law in the thirteenth century because they prevented the collapse of land tenure. To

⁶¹ Ibid., 288.

⁶² Ibid., 289-290.

preserve familial property and livelihood, possession and inheritance laws strictly outlined the qualifications of heritability.

Sachsenspiegel

The general rule of possession according to the *Sachsenspiegel* was that the property had to be held undisputedly for one year plus one day. The law did not necessarily guarantee lifelong possession, but it gave the possessor a great advantage over anyone who brought a suit. If a man possessed property and someone brought a suit against him, both men were to provide warrantors if they each claimed to hold of different lords.⁶³

If a person was sued for possession, his possession was suspended because it was not considered secure as he was said to be holding “property by force.”⁶⁴ This even applied to someone who held the property for the required year and one day. In a case that pertained to free ownership, possession was not restored until ownership was proven by the witness of six *Schöffen*.⁶⁵

Similar to the laws regarding reduced-service fiefs in the *Coutumes de Beauvaisis*, the *Sachsenspiegel*'s laws on subinfeudation discouraged the practice. If a property was subinfeudated several times, possession still belonged to the person who collected the rent. Thus, any action, such as dispossession, disavowal, or novel disseisin, had life-altering repercussions on those who were

⁶³ *Liber Augustalis*, 106.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.* Dobozy described the *Schöffen* similar to a juror or lay judge. The *Schöffen* came from the fifth order of knights. See *Sachsenspiegel*, pp. 196-197.

subinfeudated. A few laws helped protect those who held in subinfeudation, such as requiring the lord to go to court and work out a settlement. If the lord refused to settle, the man was allowed to approach the overlord, who could renew the right of possession.⁶⁶

Liber Augustalis

The *Liber Augustalis* did not explicitly lay out laws regarding possession. Rather, possession was defined by what it was not. The law described special circumstances, property suits, and rights of inheritance. Through the interpretation of these conditions, the possession laws became evident.

Possession was dependent upon a number of factors, including inheritance and fiefhold. Aside from the manner by which a person came to possess property, possession was not ownership. Powell made a definitive statement regarding the laws on possession in his footnote commentary on this topic. He indicates the purpose of the law was to ensure possession and ownership were not equated. Instead, the law was a preventative means to guarantee the two ideas remained clearly separate.⁶⁷ Possession meant a person had the rights of use to what they held. This took on several variations, such as rent and tenure. Powell noted that the possessor usually had a stronger case in court than the owner.⁶⁸

⁶⁶ *Sachsenspiegel*, 148.

⁶⁷ *Liber Augustalis*, 28. See Powell's footnote on I, xxvi.

⁶⁸ *Ibid.*

Possession of property could be lost for a number of reasons, and likewise be regained. For instance, a person who was sued for possession and acted obstinately was required to pay one-third the value of the moveable property and lost the case. If the suit dealt with real estate and the case was unclear, possession automatically went to the plaintiff.⁶⁹

Violent dispossession was punishable by a fine of one-half the value of the property. The fine applied to both the person who committed the crime and his heir. If moveable property was dispossessed, the penalty was increased to four times the value of the property. Recovery of lost possessions could be made as long as the property was taken violently.⁷⁰

Inheritance laws provided rights of possession to females in Sicily. The laws were written because females were passed over for inheritance in favor of male relatives distantly related to the deceased. Emperor Frederick II stated gender was not a distinguishing factor for inheritability and both sons and daughters had the right to inherit their parents' property. Laws remained partial to males but gave females a stronger claim to inheritance than a distantly related male. If a man's only heir was female, she was entitled to the inheritance as long as she was not a minor.

⁶⁹ Ibid., 61.

⁷⁰ Ibid., 27-28.

The Coutumes de Beauvaisis

The majority of the writings regarding possession in the *Coutumes de Beauvaisis* described ways to handle situations regarding possession disputes. Many similarities exist between the *Sachsenspiegel* and the *Coutumes de Beauvaisis* in respect to the laws of possession and inheritance. Like the *Sachsenspiegel*, the rights of possession were granted after one year and a day of holding property undisputed. Also similar were the processes of novel disseisin (dispossession) and nuisance.

Novel disseisin was repossession of property a person held undisputedly for a year and a day. In a suit of novel disseisin, the defendant was considered a nuisance, meaning he retained the land but could not use it until the case was settled.⁷¹ The plaintiff took the disseiser to court and challenge him to either restore the property or disprove the claim to possession. The winner of the case took possession of the land, and the loser could appeal within a year and a day, otherwise never again for that possession.⁷²

There were several rules regulating the inheritance of a fief. The rules applied to a person who inherited property, whether male or female, or through descent or lateral inheritance. A person who inherited property had to appear in the lord's court within forty days to do homage. The lord did not send a summons

⁷¹ *Coutumes de Beauvaisis*, 340.

⁷² *Ibid.*, 341-342.

and could seize the land if the vassal did not show within the forty days.⁷³ If a vassal did not do homage but continued to gain an income from the land, the lord seized the land and did not appoint a vassal for the same length of time the vassal did not do homage. While holding the land, the lord gained the profits to repay his losses.⁷⁴

When a vassal inherited a fief or other property (such as a dwelling), the property had to be maintained to keep it from losing value. If the property's value diminished, the possessor had to give back the possession or repay what was lost. The right of possession or the payment went into the hotchpot, a general pool of legitimate successors who could legally take possession of the property. The law forbade parents to disproportionately give inheritance to one child in effort to protect the other members of the family from becoming landless, homeless, or impoverished.⁷⁵

In France, property could be inherited two ways-laterally or by descent. Beaumanoir defined lateral inheritance as realty passed "because of a descendent's lack of children," and descent as realty that "passes from father to children or grandfather to the children of his children."⁷⁶ Descent was the standard for inheritability, and the law favored descent over lateral inheritance.

⁷³ Ibid., 169.

⁷⁴ Ibid., 170.

⁷⁵ Ibid., 169.

⁷⁶ Ibid., 165.

The only way possessions passed laterally before descent was if specifically dictated in a will.⁷⁷

In addition to the two ways to inherit property, there were two types of inheritance, and each had its own set of rules. The first type was the inheritance of a villeinage. When a villeinage was inherited, it was split equally between male heirs and not subject to the rights of the firstborn. Villeinages required a payment to the lord, setting it apart from the second type of inheritance, the fief.⁷⁸

The inheritance of a fief could be complicated. A fief passed in descent was subject to the rights of the firstborn. The oldest male inherited first and most, receiving two-thirds of each fief in addition to the main house. The remaining third was split between the rest of the male and female heirs, who were required to do homage to their older brother. A fief passed in descent was not subject to an inheritance tax. Sisters were allowed to inherit part of the one third remains of the fief passed in descent, but received no part of a fief passed laterally. Lateral fiefs were subject to an inheritance tax.⁷⁹

Beaumanoir provided a case study on inheritance. A property suit involving the descendants of a knight centered around the issue of female lateral inheritance. The knight had a son with his first wife. After the death of his first wife, he remarried and had a son and a daughter with his second wife. When his

⁷⁷ Ibid., 167.

⁷⁸ Ibid., 166.

⁷⁹ Ibid.

second wife died, her son inherited her property. The son of the second wife died and the daughter claimed possession of the property. However, the son of the knight's first wife also claimed the right to the property. The daughter of the second wife sued the son of the first wife, claiming the son did not have firstborn rights since he was not the blood relative of the deceased second wife. Despite the daughter's evidence, the court found in the eldest son's favor, citing that women could not laterally inherit property.⁸⁰

The last issue of inheritance discussed in the *Coutumes* dealt with ascension of property. The law stated property could not pass in ascent, meaning if the father died, the property did not escheat to his parents. Rather, the property had to pass down the line of lineage to the next descendent, no matter the degree of separation, or the property had to pass laterally. The only exception was if a child inherited property then died; in this case his property passed to his parents, not laterally to his brothers or sisters.⁸¹

The thirteenth century saw the creation of the *Sachsenspiegel*, *Liber Augustalis*, and *Coutumes de Beauvaisis*, three legal compositions written to secure stability in society through land tenure. Feudal law was no longer customary but part of established law, an attribute contributing to the law's complexity. By regulating inheritance, possession, freehold, fiefhold, entitlements of women and minors, and alienation, regions instituted procedures to combat

⁸⁰ Ibid., 159-160.

⁸¹ Ibid., 173.

hazardous circumstances. Society's perils threatened to disrupt life, but feudal law created a steady, functioning environment.

CHAPTER IV

KINGSHIP AND ROYAL AUTHORITY IN FEUDAL LAW

The thirteenth-century legal sources evidenced a common trend of increasing royal authority throughout Western Europe. The increase in royal authority is a significant part of feudal law because kings attempted to subvert customary law with royal authority based on Roman law. Due to its personal nature, customary law lacked the attributes to govern entire kingdoms with a diverse populace. The dominance of customary law among villagers necessitated improvements to legal codes to combat the unsteady nature of life between the fall of the Roman Empire and the era initiated by feudal kingdoms. Law remained mostly vengeful, especially at first, but adopted a new preventative aspect. Monarchs needed a new way of creating and enforcing the law, and they found the answer in the use of canon and Roman law. As a powerful tool, monarchs harnessed the ancient authority of customary laws, emphasizing the most beneficial and convertible to royal law. Over time, the power of the king increased, an inevitability if Europe's new rulers were to support and sustain large kingdoms.¹

By the thirteenth century, not a kingdom in Europe remained untouched by Germanic influences, and though the Romans were gone, the influence of the

¹ Maria Dobozy, Introduction to *The Saxon Mirror: a Sachsenspiegel of the Fourteenth Century* (Philadelphia: University of Pennsylvania Press, 1999), 16.

Romans left more than a veneer. Across Europe, a new approach to leadership spread rooted in the ancient German custom of tribal chieftain. The chief's peers considered him the first among equals and elected him to lead the tribe. Within this custom, tribes did not practice hereditary right, known to the Germans as "kin-right," but they recognized certain families produced noble leaders.² Once the German tribes spread throughout Europe and converted to Christianity, leadership aligned with the influence of the church.

Conversion was an important event in the history of both the Germans and Roman Catholic Christianity. One of the most famous Germanic converts was Clovis, leader of the Franks, who experienced a miracle on the battlefield and dedicated himself to the Christian God, as recounted by Gregory of Tours.³ Although he made a virtuous commitment, Clovis undoubtedly stood to gain much with a conversion, such as the support and partnership of one of the most influential cultural forces the world had ever seen. Alignment with the church brought legitimacy to his reign. Any position of authority not recognized by the church rendered the holder powerless. Official consent was essential, because it not only legitimized the position but meant the holder was appointed by God a power greater than the will of the people.⁴ Conversion also provided a good excuse to attack enemies who were not officially recognized by the church. The

² Fritz Kern, *Kingship and Law in the Middle Ages*, trans. S.B. Chrimes, Studies in Mediaeval History, ed. Geoffrey Barraclough (New York: William Salloch Books, 1939), 12.

³ Saint Gregory, Bishop of Tours, *The History of the Franks*, trans. O.M. Dalton, vol. 1, 2 vols. (Oxford: Clarendon Press, 1927).

⁴ Kern, *Kingship and Law*, 27.

power of the people to appoint the king soon yielded to the power of the church. Kingship transformed from guardian of the community to *regale ministerium*, a reflection of the strong ecclesiastical influence which also extended into new regulations on the office of king, such as a minimum requirement of age and proof of legitimate birth.⁵ Leaders were not chosen based on eligibility, valor, or skill but chosen by God to carry out his will on earth. As Fritz Kern asserts, the king owed his power to God because of the fortuitous nature of his birth. The birth was God's indication and proof to the people that the king received God's approval. While there was no fundamental difference of roles between the ancient tribal leader and the monarch, the contrast lay in the divine nature the people now associated with the king. The church's teachings placed God as the single head of all and told the people they needed an earthly figure to represent the will of God and harmonize the heavens and earth.⁶

The divinely-approved monarchy evolved from the combination of custom and Christianity and became unrecognizable in Europe. Neither Germanic custom nor Christian law contained anything like divine approval; the people gave the power to rule. A divinely-approved king was no longer a guardian, but God's vicar, invested with the swords of secular law and spiritual authority.⁷ Though he was approved by God and received divine unction from the church,

⁵ Ibid., 30.

⁶ Ibid., 11-12.

⁷ *Sachsenspiegel*, 68.

the king heavily relied on the loyalty of his people, especially for the implementation of law. The king used his new authority to change custom into law, but he could never fully escape the power of his contemporaries when it came to feudal law. The vassals of the king had the power to define and amend feudal law, but their power was not absolute. If vassals had ultimate control of feudal law, the power of the lord would have been arbitrary. The lord's power was vested in the loyalty of the vassals as their landlord, and the vassals' success was directly linked to the lord's success. Thus, it was in the best interest of the vassals to maintain the feudal contract. Consequently, the king maintained power over his vassals because their success was based on his; therefore, most decisions were made with the king's best interest in mind. Christianity spawned the need for a God-like, almost transcendental figure who could create order and maintain it. As Kern concludes, "monotheism and monarchy supported one another."⁸

Maintenance of peace and land tenure became the determining factor in a king's ability to govern, and in order to govern effectively, the king needed power. However, the people did not easily relinquish power and saw the purpose of the king as preserver of tradition. With the introduction of Christianity and its own distinct legal system new legislation redefined ethics to create laws based on the combination of royal power and Christian principle.⁹ Christianity recognized the

⁸ Kern, *Kingship and Law*, 8-10, 12-13.

⁹ *Ibid.*, 28.

need to better society through the governance of the law of God. Christians contended the law of God was an “active” law, changing and adapting because it would never be complete until the perfection of humanity. The purpose of the state and king was to bring about the realization of the law. Thus, the church stressed the importance of electing Christians as kings and emperors who would act as the impetus to move from customary law to established law.¹⁰

Maintenance of society needed to extend beyond the person of the king to the office of king in order to facilitate change and protect against the regression of royal power. Thus, the heritability of kingship was the “most important contribution of Germanic traditions,”¹¹ according to Kern, because it was unchallengeable by the people. If the authority to rule came from God’s approval, the people could not question the king’s authority because permission to rule did not come from the people.¹² Marriage was an essential part of the maintenance of royal power. Many texts, such as the *Sachsenspiegel*, presented the view royal blood was not to mix with commoners. In order to discourage the practice, women who married beneath their social status were subjugated to the status of the husband, and children born of the marriage could not inherit the nobility of the mother.¹³ The idea of same-status marriage became so ingrained in the law that some sons were excluded from inheriting the right of kingship. For instance, if

¹⁰ Ibid., 70-71.

¹¹ Ibid., 21.

¹² Ibid., 11.

¹³ *Sachsenspiegel*, 81.

two sons were born of the same father but the first son was born while his father was a duke and the second son was born while his father was king, the second son held a stronger claim to the throne.¹⁴

The church and the state worked together to create order, both temporal and spiritual, and were guided by the ideology that “God is sovereign, and the Law, which binds both the monarch and the community, is equally sovereign, so long as it does not run counter to God.”¹⁵ Preservation of land tenure was key to stability, therefore both authorities used one another to justify their claim to sovereignty. The church showed its power through the consecration of the monarch, indicating a split between the power to rule and the will of the people. It made clear that the church was the anointer of power.¹⁶ Through consecration, the monarch trusted that power was being bestowed upon him, not held over him. This meant, as God’s temporal vicar, the king was responsible for administering justice and maintaining order. The entire purpose of the state was the implementation of Biblical ethics written as binding law.

¹⁴ Kern, *Kingship and Law*, 18.

¹⁵ *Ibid.*, 10.

¹⁶ *Ibid.*, 52.

CHAPTER V

FEUDAL JUSTICE AND THE IMPLEMENTATION OF FEUDAL LAW

The feudal lord was responsible for the administration of feudal law, a power highly coveted. Being a judge had few requirements, but the most essential was the ability to govern a group of people dependent upon him. Beyond that, a judge only needed a basic understanding of the written law code and knowledge of the customary codes. Judges were not required to have specialized legal training, and many relied on memory to recall both written and customary laws. Written law was specific and difficult to memorize, impeding the consistency of justice. Few copies of the law existed to which the judge could refer. Many judges memorized a number of sayings for the sake of procedure, and they ruled according to custom or what they could recollect of the written law. Decisions handed down by these lay-judges were often settlements or fines, a reflection of the old Germanic custom of compensation. Sometimes, judges did not require evidence, relying on the testimony of witnesses, more comparable to character witnesses than actual witnesses of the crime. The court heard the witnesses' statement but did no further examination of the witness.¹ Over time, however, lords began to expand their powers, and the system trended toward a penal system based on punishment rather than recompense. Judges exerted

¹ Marc Bloch, *Feudal Society*, trans. L.A. Manyon, vol. 2, 2 vols. (Chicago: The University of Chicago Press, 1961), 360.

power over life and death, an issue troubling to lords in the upper echelons of the feudal hierarchy, especially the king. The ability to pass judgement and take a person's life was the ultimate display of power, and to leave it in the hands of a person who holds his own court with his own rules, not only undermined those above him but showed the king's judicial impotence and subverted the loyalty and stability the king tried to create.² Judges were increasingly limited in their implementation of justice, impeded by the offended party taking revenge.³ To inhibit further loss of royal authority, the ability to authorize the death sentence or to sentence a person to slavery was taken from the judge, an act that led to the creation of two types of justice-high and low. High justice was reserved for lords with the highest rank and pertained to cases that dealt with life and death; low justice dealt mainly with petty crimes.⁴ The division of justice became the norm for the judicial system, with a few exceptions. One of these exceptions was found in France, where, despite the division of high and low, justice remained territorial.⁵ For example, in Norman France, even after the separation of power, lower courts retained the ability to administer the death sentence. It was expected that the high court had jurisdiction over the lower courts, but in

² Ibid., 365.

³ Ibid., 360.

⁴ Ibid., 364-365.

⁵ Robinson, *European Legal History*, 55.

Beauvaisis, the lower courts also possessed many of the same judicial rights as the high-justice courts.⁶

In addition to the division of justice, a new court system developed throughout Europe, known as the hundred courts. Hundred courts were set up to better organize the administration of the law and to continue the maintenance of peace and stability. As a judge, the lord made a circuit throughout the hundred courts in his jurisdiction. The hundred courts of Europe exhibited notable differences. In France, responsibility for knowing the law and dispensing judgments fell to the count. He officiated the hearings and implemented the sentences, but decisions were handed down by a group of freemen from the community. When in session, the court selected a small number of freemen, who were peers of the accused, to act as jurors.⁷ A trial by peers was not withheld from any free person; nor was it a new concept, for it was guaranteed by customary law, even to serfs.⁸ The hundred court travelled throughout the region and only met three times a year in each area. The court selected the most important and demanding cases. For less significant cases, a royal official, called the hundred-man, or *scabini*, was sent as a proxy with authority granted to him by the lord to enforce the law and carry out judgements imposed by the court.⁹ Initially in Germany, feudal law, known as the law of the fief, was distinct from civil

⁶ Bloch, *Feudal Society vol. 2*, 365-366.

⁷ Robinson, *European Legal History*, 56.

⁸ Bloch, *Feudal Society vol. 2*, 366.

⁹ *Ibid.*, 363.

law, or the law of the land, and feudal courts were separate as well. Later, the two blended together, as judicial positions were no longer a guarantee of vassalage.¹⁰ High courts continued to hear pivotal cases, while the low courts came to dominate land disputes, the central theme of feudal law.

As judicial authority trickled down, even to the lowest manorial lord, efforts to recapture it were underway. Much of the efforts to dispense royal law and dominate the lower courts were unsuccessful. Even the lower courts faced competition from what Marc Bloch calls the “old communal courts of public law.”¹¹ He also attributes the foundation for the House of Commons in England, and the Estates on the continent, to the old public courts.¹²

The most effective way to combat the disintegration of judicial power was to strengthen the power of the king, accomplished by aligning his position with the will of God.¹³ Next, the king needed to solidify control by removing the threat of customary law and the unofficial courts. For this reason, rulers such as Frederick II in southern Italy meticulously went through the various laws of the territory they ruled. They turned the customary laws that most benefitted the king into statutory law and adopted Roman law as well. Thus, the thirteenth century was a time of prolific creation of law books, written to curtail the authority and

¹⁰ Robinson, *European Legal History*, 58. Also, refer to *The Saxon Mirror* and Maria Dobozy’s explanation of the requirements of the *Schöffen*.

¹¹ Bloch, *Feudal Society vol. 2*, 371.

¹² *Ibid.*

¹³ See Chapter 4 in this thesis for the important development of divine-appointment kingship.

unreliability of courts and judges and to administer justice consistently. This scenario was employed in the *Coutumes de Beauvaisis*, the *Sachsenspiegel*, and the *Liber Augustalis*. Each of these three codes supported a power structure based on royal authority and extended the monarch's control over civil, criminal, and feudal law.

Throughout France, hundred courts vanished as seigniorial courts gained power. The French indicated superiority of a vassal through the conferring of a castellany. Possessing a castle meant the inhabitant administered high justice.¹⁴ In Flanders, counts used the castle to their advantage. Rather than grant the use of the castle or castellany to a vassal as a fief, the count required the vassal to live a certain number of days in the castle and to manage the property as part of the vassal's feudal dues. The counts required the builders of castles to first become a liege vassal, even if the fort was built on an allod.¹⁵ No indication can be found in records that show the counts of Beauvaisis to be as powerful as the counts of Flanders, but the counts of Beauvaisis had the authority to administer high justice. The diminishing influence of hundred courts correlated with the rise in royal authority. However, royal authority did not yet displace feudal law and the power of the seigniorial courts. Vassals continued to implement feudal law because feudal law provided a means of land stability.

¹⁴ Ibid., 372.

¹⁵ Dirk Heirbaut, "Flanders: A Pioneer of State-oriented Feudalism? Feudalism as an Instrument of Comital Power in Flanders during the High Middle Ages (1000-1300)," in *Expectations of the Law in the Middle Ages*, ed. Anthony Musson (Woodbridge: The Boydell Press, 2001), 26.

Because of his employment as a court official, Beaumanoir's life was well documented. He was a *bailli*, a position similar to a judge but also had the capacity to act as a lawyer. He changed posts several times and served kings such as Philippe III le Hardi and Philippe IV le Bel. Beaumanoir's purpose in recording the customary laws of his region was to stop the law from changing.¹⁶ As Akehurst indicates, Beaumanoir's work did not attempt to compare custom to Roman law, though there is no doubt of its influence. Akehurst writes, "[T]he borrowing is done with great discretion, so that Roman laws are not identified as such, but so artfully patched into the customs..."¹⁷

In the first chapter of the *Coutumes de Beauvaisis*, Beaumanoir described the duties of the judge and expounded on ten virtues a person must have to be a judge. Beaumanoir began with Christian virtues such as wisdom, love of God, and generosity. Knowledge appeared on the list as the eighth virtue and was the most descriptive. In addition to knowledge of good and evil, Beaumanoir listed the responsibilities of a *bailli*, whose duties included managing his own household, knowing how to detain a criminal, and giving sound advice to his lord.¹⁸ Judges needed to exemplify these characteristics because their judgments determined social stability.

¹⁶ *Coutumes de Beauvaisis*, xxv.

¹⁷ *Ibid.*, xix.

¹⁸ *Ibid.*, 18-19.

Frederick II faced a different problem in his Sicilian kingdom. The purpose of the *Liber Augustalis* was not to record the customary laws but to supersede existing law and act as the authority for the judicial system. Because of his difficult rise to power, Frederick II first sought to be crowned Holy Roman Emperor, a move that solidified his sovereignty. He was crowned emperor in 1220 and immediately began an assertion of authority by renewing the Assizes of Capua, the law code introduced by his grandfather, Roger II.¹⁹ The Assizes of Capua was the first universal law code in the Italian peninsula since Justinian. The code accepted the customs of the people and allowed for different laws in different cities. When Frederick II came to power, he reinstated the Assizes to show himself as an alternative to disorder. The law code lacked a true universal nature, so Frederick II turned to the courts and extended the principle of *lex regia*. The ability of the monarch to create and enforce law was an essential move to establish royal authority and create and maintain peace.²⁰ He adopted a great deal of Roman law and even founded the University of Naples in 1224, hiring Roman law professors from the University of Bologna.²¹ After facing various threats to his power, Frederick II ordered the making of the *Liber Augustalis*, a document which brought together common law, Roman law, and feudal law. The purpose was to end the arbitrary justice administered by

¹⁹ *Liber Augustalis*, xvi.

²⁰ *Ibid.*, xxv.

²¹ *Ibid.*, xxvii.

incompetent judges and to create an enforceable body of law, alterable only by royal decree. Frederick II's new law code supplanted the inconsistent customary laws administered by vassals. Powell describes thirteenth-century Sicily as a battlefield for legal power between the Frederick II and his vassals. Frederick II wanted the people to recognize him as the intermediary between themselves and God. But Frederick II faced strong opposition from his vassals who used "privilege, status, and immunity" to "place limitations on the operation of royal law and justice, even to the point of asserting a virtual independence of the crown."²²

In Germany, the *Sachsenspiegel* was written by Eike von Ripgow at the instruction of Count Hoyer of Falkenstein, who believed customary law had grown too complex and important to be left to memory. The need for written law was great, as judges relied on their memory of the law, which resulted in subjective interpretations and defective justice. Eike and Hoyer believed in the creation of a body of law representing the culmination of customary law throughout the territory.²³ As colonization brought together the tribes of Germany, it necessitated the creation of a legal code that blended all customary law, yet retained features of each tribe. However, due to the Christianization of the Germans, ancestors were not the authority or source of the law. God was the source and gave judicial authority to the king. The king now possessed the highest authority and the responsibility to implement a law beneficial to all his

²² Ibid., xxii.

²³ Dobozy, Introduction to *Sachsenspiegel*, 2-3.

subjects, a feat accomplishable only with a written, structured law. Recording customary and feudal law aided the consistency of justice. Oral custom was no longer acceptable because it was unreliable.²⁴

The *Sachsenspiegel* was unique compared to the other sources because it provided evidence of specific legal structure and the function and jurisdiction of courts at various levels. In the introduction to the *Sachsenspiegel*, Dobozy identified a judicial system of many courts, each with their own specific jurisdiction and function. The royal court, which was the highest court, selectively heard the most important cases, including appeals. Beneath the royal court was the count's court, which heard cases involving death sentences and cases involving property.²⁵ The defining factor between the count's court and those beneath was blood. If the punishment included the bloodshed (including trial by combat), the case was in the jurisdiction of the count's court, which met three times each year. When in session, the court required the presence of the count, who acted as judge, a *Schultheiss*, who made certain justice was administered properly, the *Schöffen*, who were legal experts in the application of the law and passed judgement, and a bailiff, who made sure the judgement was carried out.²⁶ The lower courts presided over cases of petty crimes and land disputes not

²⁴ Ibid., 17.

²⁵ Ibid.

²⁶ Ibid., 18. For a much more thorough description of each, refer to the glossary in *The Saxon Mirror*.

involving ownership or suits against nobles. Here, freemen acted as jurors, hearing cases and passing judgements.²⁷

Slowly throughout Europe, the old customary systems were curtailed. Complete eradication was impossible, evidenced by the shifting of power and control over the courts, but the court system was the prime arena for the assertion of royal authority and re-centralization of power. In 1215, the Fourth Lateran Council forbade the clergy from taking part in or overseeing a trial by ordeal.²⁸ In the *Liber Augustalis*, Frederick II ended the trial by combat and declared that cases instead be tried by a court who heard witnesses and examined evidence.²⁹ The feudal courts legitimized feudal law and ended its customary characteristics.

²⁷ Ibid., 18-19

²⁸ Robinson, *European Legal History*, 62.

²⁹ *Liber Augustalis*, 90-92.

CHAPTER VI

CONCLUSION

The law books of the thirteenth century exemplified the growth and importance of feudalism and feudal law. Despite four hundred years of history, feudalism continued to dominate the personal and legal relationships throughout the centuries because it was the single most unifying power. It undermined royal and ecclesiastical authority and provided a foundation for a stable society. It brought together Roman, German, and customary laws to create a dynamic and novel legal code authoritatively accepted without ever receiving royal endorsement. It spread throughout Europe, shaping the political environment. A truly organic force, feudalism became what it needed to be; in England, a unifying force, on the continent a divisive one. The impact of feudal law was undeniable, and it endured well into the seventeenth century.

From the eighth century on, land tenure stabilized European society and acted as the conduit for order. Relationships formed between land owners and tenants, governed by customary law, the precursor to feudal law. It covered hereditary rights for women and children, an important factor for the maintenance of life in the frontier-like environment. The law also dictated circumstances for alienation, possession, homage, fealty, tenure, and areas of feudal obligations. Land was the most essential element in feudal society, which elevated feudal law to the center of medieval jurisprudence.

With the maintenance of society as the essential objective, kings grasped control of feudal law hoping to advance royal authority. With the publication and wide acceptance of the *Books of the Feus* in the twelfth century, feudal law became tangible for the first time and exposed to manipulation. Both the church and the monarchy sought to bring it under their sovereignty and stressed the divine nature of kingship, much to the dismay of both parties.¹ Monarchies needed to shift loyalty from the feudal lord to the sovereign, and for this they turned to the court systems.

At first, the judicial system was fragmented, due to competition for jurisdiction, authority of kings and lords, and the hundred courts. Lords implemented customary law, an issue troubling to kings because it challenged royal authority. With the bifurcation of justice, kings asserted royal authority over the most crucial aspects of law but not the entirety of it. While the twelfth century saw feudal law reduced to writing, the thirteenth century experienced the benefits of an established feudal law. Feudal holdings were valued more for their monetary gains than their military significance because of the jurisdiction associated with vassalage. Judges received money for their judgments, and knights grew increasingly expensive and obsolete.²

The law codes of the thirteenth century substantially affected the populace and the legal environment of Europe. Maintenance of peace and preservation of

¹ Refer to the Investiture Controversy of the eleventh and twelfth centuries.

² Robinson, O.F., T.D. Fergus, and William M. Gordon. *An Introduction to European Legal History*. 2 ed. (Professional Books, 1985), 61.

land tenure guided the development feudal law as the most fundamental principles. The law created stability throughout society because the codes, which originated from customary law, ensured the continuance of immemorial custom through composition. Drawing on custom, philosophy, and jurisprudence, the *Sachsenspiegel*, the *Liber Augustalis*, and the *Coutumes de Beauvaisis* exhibited the indispensability of feudal law in the thirteenth century. Incorporated into the customary codes and imperial constitutions because it dominated life as much as Roman and canon law, feudal law left a permanent and indisputable imprint on legal history.

BIBLIOGRAPHY

- Akehurst, F.R.P. Introduction to *The Coutumes de Beauvaisis of Philippe de Beaumanoir*. Philadelphia: University of Pennsylvania Press, 1992.
- Bloch, Marc. *Feudal Society*. Translated by L.A. Manyon. Vol. 2. 2 vols. Chicago: The University of Chicago Press, 1961.
- Bloch, Marc. *Feudal Society*. Translated by L.A. Manyon. Vol. 1. 2 vols. Chicago: The University of Chicago Press, 1961.
- Burgundian Code: Book of Constitutions or Law of Gundobad, The*. Translated by Katherine Fisher Drew. Sources of Medieval History, ed. Edward Peters. Philadelphia: University of Pennsylvania Press, 1976. Reprint, 1996.
- Craig, Sir Thomas. *The Jus Feudale*. Translated by James Avon Clyde. Vol. 1. 2 vols. Edinburgh: William Hodge and Company, 1934.
- Coutumes de Beauvaisis of Philippe de Beaumanoir, The*. Translated by F.R.P. Akehurst. Philadelphia: University of Pennsylvania Press, 1992.
- Dobozy, Maria. Introduction to *The Saxon Mirror: a Sachsenspiegel of the Fourteenth Century*. Philadelphia: University of Pennsylvania Press, 1999.
- Ganshof, F.L. *Feudalism*. Translated by Philip Grierson. 2nd ed. New York: Harper and Row Publishers, 1964.
- Gregory, Saint, Bishop of Tours. *The History of the Franks*. Translated by O.M. Dalton. Vol. 1. 2 vols. Oxford: Clarendon Press, 1927.
- Heirbaut, Dirk. "Flanders: A Pioneer of State-oriented Feudalism? Feudalism as an Instrument of Comital Power in Flanders during the High Middle Ages (1000-1300)." In *Expectations of the Law in the Middle Ages*, ed. Anthony Musson, 23-34. Woodbridge: The Boydell Press, 2001.
- Herlihy, David. *The History of Feudalism*: Humanities Press, 1979.
- Homans, George C. *English Villagers of the Thirteenth Century*. New York: W.W. Norton and Company, 1968.

Kern, Fritz. *Kingship and Law in the Middle Ages*. Translated by S.B. Chrimes. Studies in Mediaeval History, ed. Geoffrey Barraclough. New York: William Salloch Books, 1939.

Liber Augustalis or Constitutions of Melfi Promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231, The. Translated by James M. Powell. Syracuse: Syracuse University Press, 1971.

Lombard Laws, The. Translated by Katherine Fisher Drew. Sources of Medieval History, ed. Edward Peters. Philadelphia: University of Pennsylvania Press, 1973. Reprint, 1996.

MacMillan. Review of *The Jus Feudale*, by Sir Thomas Craig. *The University of Toronto Law Journal* 1, no. 2 (1936): 389-390.

Powell, James M. Introduction to *The Liber Augustalis or Constitutions of Melfi Promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231*. Syracuse: Syracuse University Press, 1971.

Robinson, O.F., T.D. Fergus, and William M. Gordon. *An Introduction to European Legal History*. 2 ed.: Professional Books, 1985.

Saxon Mirror: a Sachsenspiegel of the Fourteenth Century, The. Translated by Maria Dobozy. Philadelphia: University of Pennsylvania Press, 1999.

Stephenson, Carl. *Mediaeval Feudalism*. Ithaca: Cornell University Press, 1942.

Sullivan, Francis Stoughton. *Lectures on the Constitution and Laws of England*. 2nd ed. London: Edward and Charles Dilly in the Poultry, 1776.