THE NOBLE FEUD IN THE LATER MIDDLE AGES

I

THE NOBLE FEUD AS PROBLEM AND OPPORTUNITY

The medieval European nobility spent much of their time fighting each other, in what modern historians call private wars, *guerres privées*, *Privatkriege*. But these are non-medieval terms that anachronistically presuppose the public–private dichotomy of the modern state, with the implication that the king's public wars were legitimate, the noble's private wars were not. The nobles themselves knew no such invidious distinction, and referred to their wars generically as 'enmities' (*inimicitie*), 'feuds' (German *Fehden*, Latin *faidae*) or simply wars (*guerres*),[1] in any case never doubting a legitimacy grounded in the basic right of every noble to use force to pursue his rights.[2] Some contemporaries distinguished these noble wars from the *bella* of princes or kings, but usage here was not constant. Nor for that matter did they have separate terms for feuds fought over disputed rights and for the bloodfeuds that historians call vendettas, even though the two were quite different: vendettas were fought by men of diverse classes and ended only with the extermination of one party or with a monetary composition, while the feud over rights was in

[1] Robert Bartlett, *'Mortal Enmities': The Legal Aspect of Hostility in the Middle Ages* (Aberystwyth, 1998), shows the frequency and legitimacy of both bloodfeuds and wars over rights under this title; for 'feud' rather than 'private war' or 'vendetta', see Stephen D. White, 'Feuding and Peace-Making in the Touraine around the Year 1100', *Traditio*, xlii (1986), 196. Still fundamental is Otto Brunner's *Land und Herrschaft: Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter*, 4th, revised, edn (Vienna and Wiesbaden, 1959): the first chapter is a treatise on the right to feud and its constitutional import. The English translation (of the 4th edition), by Howard Kaminsky and James Van Horn Melton, is entitled *'Land' and Lordship: Structures of Governance in Medieval Austria* (Philadelphia, 1992).

[2] 'Any . . . gentleman . . . had the right to defy his enemies and levy war upon them, given lawful cause': M. H. Keen, *The Laws of War in the Late Middle Ages* (London, 1965), 73. That the right 'was ceasing to operate' by the mid fourteenth century is doubtful. Keen cites Henry of Gorinchem's testimony (*c.*1400) that 'the possession of high and low justice was regarded by many as carrying with it the right to levy public war' (78); cf. Beaumanoir at n. 33 below.

principle limited to the holders of lordship, limited to certain kinds of hostile action only and limited in duration — it ended whenever the attacking party got or failed to get what he had claimed.[3] It is this latter kind of war that the present study deals with, under the manufactured title of 'the noble feud'.

The matter of terminology has its own importance. Historians who write of 'private wars' tend to deprecate them as feudal anarchy and condemn their cruelty to non-combatants and disruption of peaceful pursuits; they take noble warfare as simply the violation of peace rather than as part of a system of peace different from that of a central state. Such judgements are natural in the retrospect from modern times, when the peace that a well-defined state guarantees to all its citizens is the essential condition of civil society, which is why history has been constructed in modern times as the Big Story of progress to this end — 'the medieval origins of the modern state' — in what has been called the 'developmental paradigm'.[4] In England this has traditionally been the view back from 1688, the triumph of liberty under law in a limited monarchy. In France the central theme has been the formation of the French nation and its state under the leadership of the kings — or in today's formula, the 'origin and beginnings of the modern State' (*genèse et débuts de l'État moderne*).[5] Forms of thought and action like the noble feud that would not survive the rise of the early modern state have no place in the paradigm except as negative factors.

The case in Germany is different, in part because of its different political destinies but also because of the work of Otto Brunner, whose *Land und Herrschaft*, published in 1939, proved to be an epochal reconceptualization of the medieval German constitution.[6] In place of the German version of the developmental paradigm — a search for the medieval roots of the Bismarckian nation

[3] For these differences between the vendetta (*totveintschaft* or *dotvede*) and the feud over rights (*vêde*), see Christoph Terharn, *Die Herforder Fehden im späten Mittelalter* (Berlin, 1994), 20–4; cf. Brunner, *Land und Herrschaft*, 37–8 and *passim*. French and English scholars generally deprecate both without distinction as private war.

[4] Traian Stoianovich, *French Historical Method: The 'Annales' Paradigm* (Ithaca, 1976), 29 ff.; Joseph R. Strayer, *On the Medieval Origins of the Modern State* (Princeton, 1970).

[5] Gérard Giordanengo, 'Le Pouvoir législatif du roi de France (XI^e–XIII^e siècles): travaux récents et hypothèses de recherche', *Bibliothèque de l'École des Chartes*, cxlvii (1989), 284.

[6] See Kaminsky and Van Horn Melton, 'Introduction' to *'Land' and Lordship*, pp. xiii–lxi.

state[7] — Brunner developed a model structured in terms of the territorial community of nobles (the *Land*), and the lordship of its members and of their prince. The idea of a medieval 'state' imagined as an imperfect approach to the modern state, with all that implies in the way of 'public' power, was put aside in favour of the idea of a 'constitution',[8] a duality of community and lordship as a system of securing 'peace' — not the simple non-violence secured by the modern state but peace in the sense of everyone's secure enjoyment of his rights. This kind of peace meant not the absence of war but its legitimate use by a holder of lordship against those who violated his rights or those of his subjects. Hence the centrality of the feud in Brunner's study of the medieval constitution, which indeed begins with a treatise on *Fehderecht*, the right of feud intrinsic to lordship, as well as the rules of the warfare that implemented it. 'The feud was as integral to medieval political life as war is to the modern state and international law; it was indeed an essential element of the medieval constitutional structure'. For 'internal political conflicts and conflicts over rights, whether between the ruler and the local powers or between those powers themselves, were always carried on in the Middle Ages in the form of the feud, insofar as there was a resort to armed force'. Just as one cannot imagine the modern state tolerating a right to feud, so one cannot imagine the medieval state without it.[9]

[7] So par excellence Georg von Below, *Der deutsche Staat des Mittelalters: Ein Grundriss der deutschen Verfassungsgeschichte*, 2nd edn (Leipzig, 1925). See Walter Schlesinger, *Die Entstehung der Landesherrschaft* (Dresden, 1941; repr. Darmstadt, 1964), 1 ff., on Below's notion of a medieval Reich not fundamentally different in structure from a 'modern' state, then 'disintegrating' in the later Middle Ages into innumerable territories destined to become the actual states.

[8] Here, and throughout, 'constitution' is used in the sense of the German *Verfassung*, referring to the whole sociopolitical order, not just the institutions of governance: see Giovanni Tabacco, 'La dissoluzione medievale dello stato nella recente storiografia', *Studi medievali*, i (1960), 426; František Graus, 'Verfassungsgeschichte des Mittelalters', *Historische Zeitschrift*, ccxliii (1986), 543–5. Cf. Christine Carpenter, 'Political and Constitutional History: Before and After McFarlane', in R. H. Britnell and A. J. Pollard (eds.), *The McFarlane Legacy: Studies in Late Medieval Politics and Society* (Stroud, 1995), for current English senses of the term (see section IV below).

[9] Brunner, *Land und Herrschaft*, 106, 108 (*'Land' and Lordship*, 90, 92). Brunner's doctrine of *Fehderecht* has been contested, but Terharn, *Die Herforder Fehden im späten Mittelalter*, 12–16, reviews the scholarship and finds a preponderance favouring Brunner; cf. Hans Patze, 'Grundherrschaft und Fehde', in Hans Patze (ed.), *Die Grundherrschaft im späten Mittelalter*, 2 vols. (Sigmaringen, 1983), i, for an argument to the contrary.

The medieval constitution, in this view, was composed of modules of lordship, all with essentially the same structure, a mutuality of protection and safeguard on the one side, aid and counsel on the other. The governance of a king or territorial prince, like that of lesser lordships, had the primary function of preserving its subjects' property rights;[10] should it exceed these bounds, its armigerous noble subjects had not only the right but also the power to keep it in line. The medieval constitution of lordship, then, was manifest in feuds of noble subjects with each other and, in extreme cases, feuds of the subjects against the prince. At the same time the later medieval constitution came to include territorial institutions of jurisdiction and administration that pointed to the modern development of the state — not by liquidating the right of feud but in engagement with it. So Alexander Patschovsky has proposed that 'the Empire found its modern form of state constitution through the mediation of the feud, both in the usage of the feud and in its limitation, but always in a constitutive degree'.[11] He emphasizes the judicial aspect of the noble feud: it was not only an essential faculty of lordship but also a legal recourse alternative to action in the territorial law court; the formation of a comprehensive territorial judicial system in the early modern period meant bringing the two areas of justice (*Recht*) into mutual accommodation.

Patschovsky limits this extrapolation to Germany, deferring to the traditional view that England and France were different because of 'the process of political consolidation and the corresponding monopolization of power by the crown'. There the noble feud could not play a constitutionally creative role; there the dualism of the German *Ständestaat* did not apply.[12] One wonders. The French nobles, as we shall see, claimed and enjoyed a legal

[10] Wilhelm Berges, *Die Fürstenspiegel des hohen und späten Mittelalters* (MGH, Schriften 2, orig. 1938; repr. Stuttgart, 1952), 12 ff., 84.

[11] Alexander Patschovsky, 'Fehde im Recht: Eine Problemskizze', in Christine Roll (ed.), *Recht und Reich im Zeitalter der Reformation* (Frankfurt am Main, 1996), 173–4. The thesis is suggestive rather than crystalline; for a very clear explanation of how the dialectic worked in Franconia, see Hillay Zmora, *State and Nobility in Early Modern Germany: The Knightly Feud in Franconia, 1440–1567* (Cambridge, 1997).

[12] Bernard Guenée, 'L'Histoire de l'État en France à la fin du moyen âge vue par les historiens français depuis cent ans', *Revue historique*, ccxxxii (1964), 353, rejects for France 'the dualism dear to historians across the Rhine' — 'France was truly a monarchy'; similarly, but for different reasons, F. M. Powicke, *The Thirteenth Century*, 2nd edn (Oxford, 1962), 67, holds that the 'continental' conception of a dualist polity of bureaucracy and Estates has 'no meaning in English history'; see also his *King Henry III and the Lord Edward* (Oxford, 1947), 342.

right to feud throughout the Middle Ages; are we to imagine that this widespread and powerful modality of justice was simply liquidated by the triumph of royal government? Here as in Germany some process of integration seems, on the face of it, more probable. Something similar can be said for England, even though the right to feud of its gentry and nobility was not explicitly recognized; for, as we shall see, they feuded nonetheless, vigorously and usually with impunity.[13] Did the eventual triumph of the crown come from the annihilation of aristocratic rights or from an engagement with them? It is a fundamental question, initially requiring the exploration of hypotheses that would feature noble feuding as something more substantial than anarchy, turbulence, might-makes-right. Such is the experiment attempted here.

II

THE RULES OF THE GAME

The noble right to wage war lay in customary law, Du Cange's 'droit de guerre par coutume',[14] and it can be read in the collections of customary law that began to appear in the twelfth and thirteenth centuries — the 'secular jurisprudence of enmity'. Underlying the variety of regional customs, however, was the sociological fact that 'enmity was an institution, at least in the sense that lordship or vassalage were; that is, it was a generally recognized relationship hedged by ritual, expectation and sanction'.[15]

One naturally wonders where this right to war came from, a question that goes beyond the sociological and functionalist constructions of the present essay but nevertheless bears on them. The answers have been various. Otto Brunner, in line with the German ethnic racism of the 1930s, supposed an autogenic Germanic lordship and right of feud deriving from tribal-Germanic patriarchy (*Hausherrschaft*) and expressing an idea of 'right' (*Recht*) immanent in the Germanic mentality. Few today

[13] Richard W. Kaeuper, *Chivalry and Violence in Medieval Europe* (Oxford, 1999), 110, notes the practical equivalence of the French and English cases.

[14] Charles Du Cange, *Glossarium mediae et infimae latinitatis* (1678; repr. of 1688 edn, 1954), x, 100–8 (appendix, 'Des guerres privées et du droit de guerre par coutume').

[15] Bartlett, *'Mortal Enmities'*, 1–3.

profess such views. Some historians support a 'Romanist' explanation of magnate powers in terms of a devolution of Roman-imperial authority.[16] Others would set the origin of autonomous lordship later, if not in Carolingian times,[17] then in a *mutation féodale* or 'feudal revolution' in the decades around AD 1000, when Carolingian public order was replaced by the authority of new castellans, whose use of force against each other and their own peasants was based not on any right but on simple power.[18] But lordship has also been associated with still later developments — on the one hand 'feudalism', on the other hand the territorial customary law (*Landrecht*) that appears in the eleventh and twelfth centuries.[19]

The main interest of these theories here lies in their common irrelevance to the later medieval fact that lordship rights, whatever their origin, clearly appeared as property rights, reified to the point that 'whether derivative or not, they were treated and viewed by the local powers "as if" they were "legitimate" private rights'.[20] In other words, 'might' in continued practice became 'right'. And in this sense Brunner's 'as if' suggests how to bring England, France and Germany into a common frame, by moving away from the differences in official legalities and institutions and down to the common features of practice.

But this also implies a relativizing of noble *Fehderecht* as the guarantee of the legitimacy of a noble's feud. It was in any case

[16] So, for example, Alexander Callander Murray, in his 'From Roman to Frankish Gaul: "Centenarii" and "Centenae" in the Administration of the Merovingian Kingdom', *Traditio*, xliv (1988), and his 'Immunity, Nobility, and the *Edict of Paris*', *Speculum*, lxix (1994), both countering the Germanic thesis.

[17] Patschovsky, 'Fehde im Recht', 160 (n. 46): from Carolingian times onwards, the nobles figured as autonomic sharers of public power. Robert Boutruche, *Seigneurie et féodalité* (Paris, 1970), ii, 125–6, proposes a similarly matter-of-fact explanation of the coercive and juridical faculties of the original 'political seigneury' (*seigneurie politique*) of the same period, as due to 'the wealth or social eminence of the strong' — 'they were the payment by subjects for the protection exercised over them'.

[18] Jean-Pierre Poly and Éric Bournazel, *La Mutation féodale, X^e–XII^e siècles* (Paris, 1980), 101–3; Thomas N. Bisson, 'The ''Feudal Revolution'' ', *Past and Present*, no. 142 (Feb. 1994); Thomas N. Bisson, 'Medieval Lordship', *Speculum*, lxx (1995).

[19] Heinrich Mitteis, 'Land und Herrschaft: Bemerkungen zu dem gleichnamigen Buch Otto Brunners', *Historische Zeitschrift*, clxiii (1941), 262, held that 'the knightly feud was a novelty of the feudal age', not to be explained in terms of 'the principles of Germanic feud-right'. Brunner's reply was: 'The right to feud pertained to territorial law (*Landrecht*) and had nothing to do with feudal law' (*Land und Herrschaft*, 110; *'Land' and Lordship*, 93); so, too, Poly and Bournazel, *La Mutation féodale*, 184 ff.

[20] Brunner, *Land und Herrschaft*, 131 (*'Land' and Lordship*, 112). For the shift from rights inhering in the noble's person (*ius sanguinis*) to rights inhering in his lands (*ius soli*), see Heinrich Mitteis, 'Formen der Adelsherrschaft im Mittelalter' (1951), repr.

(cont. on p. 61)

a merely formal legitimacy that had nothing to do with whether a lord's claim of violated rights was true or sincere, but only with the fact that he was exercising the noble right to wage war, whose rules for military action can be thought of as defining the 'ritual' of a trial by battle, an appeal to the judgement of God (*iudicium dei*).[21] As Duke Jean IV of Brittany wrote at the end of his challenge (*diffidatio*) to King Charles V in 1373: 'And may he who proves to be the stronger get what he wanted'.[22] But it was the *iudicium dei* that was crucial; the rules for obtaining it were but instrumental. And if one thinks long enough about this purpose of a feud in relation to the rules supposed to govern it, one glimpses the subversive possibility that the latter would not have been necessary to achieve the former. For the intrinsic legitimacy of a feud as an appeal to divine justice lay not with any particular ritual performance but with the presumption under the ritual, that the holders of lordship did possess the faculty of waging war as one of their property rights.

What the rules do delineate is an ideal type, variously observed and inflected from region to region — the type constructed by Charles Du Cange in his above-cited study of 'Private Wars and the Right of War by Customary Law', according to the customs set forth by Philippe de Beaumanoir in his treatise of 1283 on the law of Beauvaisis,[23] as well as other such records of regional customs. Otto Brunner's treatment of the customary law of the feud in Germany, in the first chapters of *Land und Herrschaft*, also draws on German sources but does not differ much from Du Cange's model. I summarize the essentials, focusing on France.

The right to feud was restricted to nobles[24] and involved both

(n. 20 cont.)
in his *Die Rechtsidee in der Geschichte* (Weimar, 1957), 657 ff.; cf. Otto von Gierke, *Das deutsche Genossenschaftsrecht* (Berlin, 1873), ii, 124. The bearer of objectively valid rights was the landed property (*Grundstück*); it was a matter of indifference who held it.

[21] Brunner, *Land und Herrschaft*, 32 (*'Land' and Lordship*, 28); Keen, *Laws of War*, 224 ff.; Patschovsky, 'Fehde im Recht', 178: 'the feud as a formal legal procedure of conflict resolution must have had its basis . . . in God. In an archaic society the feud — like war, duel, and peaceable legal procedures — can only have been God's judgement. A different ultimate justification is inconceivable'.

[22] In B.-A. Pocquet du Haut-Jussé, 'La Dernière Phase de la vie de Du Guesclin', *Bibliothèque de l'École des Chartes*, cxxv (1967), 151–2: 'Et qui fortior supervenerit ferat quod habere exoptavit'.

[23] Philippe de Beaumanoir, *Coutumes de Beauvaisis*, ed. A. Salmon, 2 vols. (Paris, 1900), ii, ch. 59, no. 1673.

[24] So in Beaumanoir; in fact all holders of lordship might feud, including town corporations and church chapters (which are not considered here).

feuders' kin to the fourth degree, also all who chose to take a side, those bound by treaties of alliance, and those required to give aid as subjects of the lord. Exempt from involvement were clergy, monks, women, minors, bastards (as kin), invalids in hospitals, and those who at the time were on crusade or on other distant pilgrimage or who had been sent abroad by the king or for the 'public welfare'. And even those ordinarily involved in a feud on the defending side could opt out by obtaining an 'asseurement' — summoning the enemy before the relevant lord, swearing that they had never consented to the alleged violation of rights that had given rise to the war, and declaring that they would not aid the defending feuder. When they had done this the lord was obliged to 'assure' them — to guarantee that they would remain at peace, unless the other side accused them directly.[25]

A feud had to begin with a formal challenge (*diffidatio*, *défi*, *Absage*) declaring that the initiator's rights had been violated by the other party. Such challenges had to be openly proclaimed, ideally as a letter read out to the one attacked.[26] The challenger was not to begin hostilities until forty days after the challenge in order to give all affected enough time to mobilize — he, on the other hand, might be attacked immediately. In canon-law or Roman-Law contexts the ensuing warfare was called 'limited war' (*guerre couverte*) in contrast to the 'open' or 'public war' (*guerre ouverte*) of a king or a prince.[27] Customary law used different terms but imposed more or less the same limits as 'guerre couverte' on how the feud was to be fought, namely by actions of distraint, damaging the property of the opponent to the point that he was willing to make peace, but not killing or doing other violence to persons, nor destroying trees and vines, nor damaging the opponent's house. But the limits were often disregarded.[28]

[25] *Les Établissements de Saint Louis*, ed. Paul Viollet, 2 vols. (Paris, 1881), i, 181 ff.

[26] For examples, see the *diffidatio* of Duke Jean IV of Brittany to King Charles V in 1373, in Pocquet du Haut-Jussé, 'La Dernière Phase', 151–2; Léopold Delisle, 'Deux lettres de Bertrand du Guesclin et de Jean le Bon, comte d'Angoulême, 1368 et 1444', *Bibliothèque de l'École des Chartes*, xlv (1884), 302; Sidney Painter, *The Scourge of the Clergy: Peter of Dreux, Duke of Brittany* (Baltimore, 1937), 131; Jean Glénisson, 'Notes d'histoire militaire: quelques lettres de défi du XIV^{e} siècle', *Bibliothèque de l'École des Chartes*, cvii (1947–8); Siméon Luce, *Jeanne d'Arc à Domremy* (Paris, 1886), texts, 294–300.

[27] Keen, *Laws of War*, 57 ff.; M. H. Keen, 'Treason Trials under the Law of Arms', *Trans. Roy. Hist. Soc.*, 5th ser., xii (1962), 96.

[28] For the restrictions, see Keen, *Laws of War*, 79 ff.; Michel Toulet, 'L'Incrimination de port d'armes au bas moyen-âge', *Mémoires de la Société pour*

(cont. on p. 63)

Such a legally defined and limited mode of warfare included its own provision for ending war and making peace, which could at any time be agreed between the chiefs and would then be binding on all (except those explicitly rejecting it). The sign of peace was an act of friendly association — eating and drinking with the other party — and one consequence of peace was the return of the letters of challenge. The key point here is that when the war was over it was over. Nothing done within the framework of the feud was actionable afterwards,[29] and the form of reconciliation (*Urfehde* in German) provided for renunciation of all claims arising from the war. The reconciled enemies were once again 'friends'.

But while this construction of the feud's legitimacy in terms of *Fehderecht* represents it as the nobles understood it, namely as a means of maintaining their rights and protecting their subjects, it does not satisfy a modern scholarly interest. For the noble feud was *also* a violation of the peace enjoyed by non-nobles, self-aggrandizement at the expense of neighbours, and the repetitive enactment of domination of subject peasants,[30] none of which would have been recognized in such terms by the feuders themselves. At the same time the feud needs to be imagined in retrospect as a component of the constitutional structures of the political order. Finally, although the recognition of the noble feud conducted according to the rules of *Fehderecht* as a legitimate recourse in customary law opens large constitutional vistas, it leaves out of consideration all the cases of noble warfare — perhaps most of them — in which any or all of the rules appear to have been disregarded or ignored. And yet it is not clear that such differences were of substantive importance; one inclines

(n. 28 cont.)
l'Histoire du Droit et des Institutions des anciens pays bourguignons, comtois et romands, xlv (1988). But cf. the case of Bouchart de Vendôme below. Brunner, *Land und Herrschaft*, 256, writes that a feuder might not attack the opponent's house, household and person, but Terharn, *Die Herforder Fehden im späten Mittelalter*, 63 ff., refers to a number of modern scholars who do not find these limits in the evidence.

[29] Terharn, *Die Herforder Fehden im späten Mittelalter*, 18.

[30] The rules of the feud allowed the feuders to damage each other's properties but not their families or houses; they fought by ravaging each other's peasants' crops, livestock and equipment. Gadi Algazi, 'The Social Use of Private War: Some Late Medieval Views Reviewed', *Tel Aviver Jahrbuch für deutsche Geschichte*, xxii (1993), observes that such a feud was a war of both noble parties against the peasantry with the ulterior effect of keeping it subjugated; see also Gadi Algazi, *Herrengewalt und Gewalt der Herren im späten Mittelalter: Herrschaft, Gegenseitigkeit und Sprachgebrauch* (Frankfurt am Main and New York, 1996).

rather to think in terms of generic identity and look for common denominators.

This is not to deny Brunner's great achievement, the decoding of the apparently wilful violence of the feud as a legal recourse in defence of rights, but rather to transpose it into a different register. The rules of the feud were indeed a way to make a war over property rights into an appeal to the *iudicium dei* — moving from the profane to the sacred, so to speak — but the same effect could have been obtained by *any* set of rules for military action. One can, for example, imagine the totality of medieval noble feuding as a continual congeries of competitive games, say basketball, that the nobles wanted to play and others had to watch, perhaps take part in, and in any case put up with. Each player had the right to try to get the ball away from an opposing player; the only issues of right and wrong were those set out in the rules governing play. And while the rules of a ball game are intrinsically arbitrary, they are at once functional and 'sacred' — absolute, in the sense that no one would dream of asking why, say, a basket scores two points and not three. Thus imagined in terms of a game and its rules, the noble feud and *Fehderecht* come obviously under Johan Huizinga's evocation of 'homo ludens': 'play . . . creates order, *is* order'; hence 'we might, in a purely formal sense, call all society a game, if we bear in mind that this game is the living principle of all civilization'. And: 'All play has its rules. They determine what "holds" in the temporary world circumscribed by play. The rules of a game are absolutely binding and allow no doubt'.[31]

This move from the historical specificity of *Fehderecht* to its sociological conceptualization permits the surmise that the 'constitutionality' of the feud as an alternative judicial recourse, demonstrated by Brunner for Austria and Bavaria, may well hold for noble warfare in other countries, like France and England, where the commonly received idea of the constitution negativizes the noble feud as extra-judicial violence. For the model of a game is itself the model of a normative constitution, regulating behaviour by rules, and in so far as the feud was carried on as a kind of game its violence was 'legitimate' in its own terms. That it was

[31] Johan Huizinga, *Homo Ludens: A Study of the Play-Element in Culture*, trans. anon. (1950; repr. Boston, 1955), 173, 100, 11; and also, civilization itself 'arises *in* and *as* play, and never leaves it' (*ibid.*, 10). 'Absolutely binding' means the rules are unquestionable, not that they are never violated.

also societally legitimate would follow from the inherent right of lordship to wage war and from the fact that that right was indeed exercised. Which is to say that *any* war waged by medieval holders of lordship — that is, any production of the scenario of a game appealing to the judgement of God — must be viewed as constitutionally legitimate in so far as it was not effectively prohibited, which it rarely was. With this common denominator we can move from Brunnerian lordship and feud in Germany to the apparently different situations of France and England, and ask how far this line of thought can take us towards reconfiguring the paradigms traditional in the historiography of both countries.

III

THE NOBLE FEUD IN THE FRENCH *ÉTAT*

When Richard I of England would not make a truce with Philip II of France in 1194, he said it was because he could not require his French vassals to follow suit: he 'refused to violate the customs and laws of Poitou and his other lands, in which by ancient custom the magnates settled their own disputes with each other by the sword'.[32] These ancient 'customs and laws' would long continue in force; as Philippe de Beaumanoir stated in 1283: 'Noble men may wage war according to our custom'.[33] Similar statements can be found in other such repertories, notably the *Établissements de Saint Louis*[34] and the *Justice et Plet* of the Orléanais. The kings of France too, as well as territorial princes like Richard I in Poitou, usually recognized the nobles' ordinary right to feud with each other, even indeed with the crown,[35] although they sought to discourage feuding in favour of recourse to royal justice and to prohibit feuding while the king's own wars

[32] *Chronica Rogeri de Hoveden*, ed. W. Stubbs, 4 vols. (Rolls ser., London, 1868–71; repr. 1964), iii, 255: 'rex Angliae violare nolebat consuetudines et leges Pictaviae, vel aliarum terrarum suarum, in quibus consuetum erat ab antiquo, ut magnates causas proprias invicem gladiis allegarent'. The passage is quoted (with the omission of 'gladiis') by Du Cange, *Glossarium*, x, 106 ('Des guerres privées'); cf. Hartmut Hoffmann, *Gottesfriede und Treuga Dei* (Schriften der Monumenta Germaniae Historica, xx, Stuttgart, 1964), 164.

[33] 'Tout soit il ainsi que gentil homme puissent guerroier selonc nostre coustume': Beaumanoir, *Coutumes de Beauvaisis*, ed. Salmon, ii, ch. 59, no. 1673.

[34] *Les Établissements de Saint Louis*, ed. Viollet, i, 180 ff.

[35] Ferdinand Lot, *Fidèles ou vassaux?* (Paris, 1904), 4 ff.; *Les Établissements de Saint Louis*, ed. Viollet, i, 182; Walther Kienast, *Untertaneneid und Treuvorbehalt in Frankreich und England* (Weimar, 1952), 134.

were going on.[36] King Philip IV, to be sure, at one point flatly prohibited all noble feuds, declaring that the 'custom' invoked by his feuding subjects was 'rather to be called a corruption',[37] and professional lawyers, imagining the 'sovereignty' of the royal office in terms of the Roman Law they studied, thought the same;[38] but such restrictions and prohibitions were generally flouted and violators were almost always ignored or pardoned, not least because the 'sovereignty' known to French customary law was not an exclusive political authority (in the modern sense), but simple overlordship.[39] In any event feuds continued in France throughout the later Middle Ages.[40]

The remarkable thing is not the ubiquity and legitimacy of the noble feud but the failure of French historians to come to grips with it. To this day the only monographic discussion of the feud in France remains Du Cange's treatise of 1678. Since then only Raymond Cazelles has studied the subject in any depth.[41] Philippe Contamine's plaint of a generation ago — 'we know rather little about the regional extent of private wars or about how common they were'[42] — is as true today as it was then. The reason is that

[36] This was the normal royal position, on which see Raymond Cazelles, 'La Réglementation royale de la guerre privée de Saint Louis à Charles V et la précarité des ordonnances', *Revue historique de droit français et étranger*, 4th ser., xxxviii (1960).

[37] Du Cange, *Glossarium*, x, 106–8 ('Des guerres privées'), an ordonnance of 31 December 1311 directed to the royal *baillis* and justiciars in Vermandois, Amiens and Senlis (*dicenda est potius corruptela*).

[38] So, for example, in a case of 19 January 1391 before the Parlement of Paris one party's lawyer claimed that a war between Charles of Artois and the count of Alençon 'was illicit because war is not allowed to any subject of a lord': Archives nationales, Paris (hereafter AN), X 1A 1475, fo. 179^{r}. And in a case of 23 November 1396 (X 1A 4784, fo. 179^{r}) the procurator of the king said 'that no one who has a sovereign may wage war, but those who do not have a sovereign may'.

[39] As in Philippe de Beaumanoir's 'each baron is sovereign in his barony, while the king is sovereign over all': *Coutumes de Beauvaisis*, ed. Salmon, ii, no. 1043; also Jean Jouvenel's reference, a century and a half later, in pleas before the Parlement of Poitiers, 11 August 1422, to a 'sovereign lord' as any lord in relation to those holding from him: 'by the custom of Anjou it is allowed to sovereign lords to take up lands and other properties held of them in default of a man to hold them' (AN, X 1A 9197, fo. 124^{r}). I put 'sovereignty' in quotation marks throughout this essay to indicate that I mean its medieval sense.

[40] Cazelles, 'La Réglementation royale'; Yvonne Bongert, 'Rétribution et réparation dans l'ancien droit français', *Mémoires de la Société pour l'Histoire du Droit et des Institutions des anciens pays bourguignons, comtois et romands*, xlv (1988), 61; Philippe Contamine, *Guerre, état et société à la fin du moyen âge* (Paris, 1972), 541, and, for late fifteenth-century examples, see 318.

[41] See n. 36 above.

[42] Philippe Contamine, 'L'Histoire militaire et l'histoire de la guerre dans la France médiévale', *Actes du 100^{e} Congrès National des Sociétés Savantes 1975, Philologie et Histoire jusqu'à 1610*, 2 vols. (Paris, 1977–8), i, 92.

historians who identify the interest of the nation with the rise of the state are not moved to focus on mentalities and practices whose prima facie import was to interfere with that rise, as well as to destroy the civil peace whose enforcement would be the main business of the post-medieval state. Even today, when the Big Story as such has fallen out of fashion and historians variously deconstruct it or just do social history, they still tacitly presuppose the nation-state paradigm as the framework of modern relevance for what would otherwise not obviously have any. From their point of view the noble feud can only appear as disruption, anarchy, and might-makes-right, a view taken as confirmed by medieval testimony in the same sense by non-nobles who suffered from the warfare — burghers, clerics, intellectuals.

The inability of French statist historians to deal with the feud in the context of the *medieval* constitution explains in turn why they have not been able to make anything much of the profound and widespread upheaval represented by the movement of 1314–15, when a number of territorial communities, chiefly of nobles but also of bourgeois and clergy, rose in reaction to Philip IV's expansion of royal jurisdiction and power at the expense of local customary rights. Among these rights were several faculties of noble lordship including the right to feud, which was destined to figure in the charters granted by Philip's successors who had to recognize the validity of regional customs. So, for example, the charters of 1315 to the nobles and others of Burgundy and the *bailliages* of Amiens and Vermandois granted the ancient right of war, subject to inquiry as to the custom at the time of St Louis (which would have sanctioned feuds).[43] It was, in the noble view, a right to wage war 'to preserve their rights in their lands and other properties'.[44] But only two French historians have dealt at length with these important actions: both have taken for granted the developmental paradigm in whose statist terms the revolts can be regarded as unimportant, even as failures, while the kings'

[43] Cazelles, 'La Réglementation royale', 541; cf. Du Cange, *Glossarium*, 106–8 ('Des guerres privées'), for the declaration in 1314 of the nobles of the duchy of Burgundy, the dioceses of Langres and Autun, and the county of Forez, that they had the right 'to take up arms whenever they wished'.

[44] Louis X's ordonnance for the Burgundians and others, 17 May 1315: *Ordonnances des rois de la troisième race*, ed. D. F. Secousse *et al.*, 21 vols. (Paris, 1723–1849), i, 569, §1 ('ad conservationem status terrarum ac bonorum suorum').

apparent ability to turn the challenge away seems to be central.[45] No historian has tried to imagine the medieval French constitution in the light of the revolts as a duality whose theme would be not the movement to a future absolutism but the continuing dialectic between prince and community.[46]

But if the nobility could continue to enjoy their customary right to feud in the century or so after 1314–15, it must have been at least partly because the revolts of those years had been successful. The charters granted at that time have their counterparts in others granted later and Philip IV's successors did not dismiss the nobles' 'custom' as a corruption.[47] So in 1319 the nobility of Auvergne got the 'charte aux Auvergnats' from Philip V; while in the Dauphiné, similar rights were recognized in the *Statut delphinal* of 1349 granted by the Dauphin Humbert II, and the rights were still there a century later.[48] And when Philip VI wanted the allegiance of the Gascon nobles in 1339, he had to confirm their right to wage war:

[45] Charles Dufayard, 'La Réaction féodale sous les fils de Philippe le Bel', *Revue historique*, liv–lv (1894–5); André Artonne, *Le Mouvement de 1314 et les chartes provinciales de 1315* (Paris, 1912). Elizabeth A. R. Brown's 'Charters and Leagues in Early Fourteenth-Century France: The Movement of 1314 and 1315' (Harvard Univ. Ph.D. thesis, 1961), remains unpublished (though see n. 46 below).

[46] But Elizabeth Brown points in this direction with her observation that although the French leagues neither sought nor secured basic controls on the monarchy, nevertheless 'the results they achieved — reaffirmations of general principles and numerous regional charters and guarantees — were precisely what they sought': Elizabeth Brown, 'Reform and Resistance to Royal Authority in Fourteenth-Century France: The Leagues of 1314–1315', *Parliaments, Estates and Representation*, i (1981), 111. And Jacques Le Goff, 'Le Moyen Âge', in Jacques Le Goff (ed.), *Histoire de la France*, ii, *L'État et les pouvoirs* (Paris, 1989), 129–30, notes that, while historians have 'liquidated' the movement of 1314–15 as 'an anachronistic reaction that failed to achieve its goal', the protesters did in fact 'reinstate the political dialogue with society that the monarchy would have to continue for two centuries more'. But neither he nor anyone else has gone further with this idea, nor has anyone spelled out the relevance of the movement of 1314–15 to the wider context of the decomposition of the realm in the Hundred Years War: see the reference to Le Patourel's work below.

[47] While King John II after Brétigny (5 October 1361) prohibited feuds even in time of peace, he had to contradict himself in an ordonnance issued on 5 December 1363 in a meeting of the Three Estates at Amiens; the nobles' right to feud was then recognized by Charles V, in *Ordonnances des rois de France*, ed. Secousse *et al.*, v, 21, §10. See Cazelles, 'La Réglementation royale', 542–4.

[48] Pierre Charbonnier, *Une autre France: la seigneurie rurale en basse Auvergne du XIV^e^ au XVI^e^ siècle*, 2 vols. (Clermont-Ferrand, 1980), i, 422; Gérard Giordanengo, *Le Droit féodal dans les pays de droit écrit: l'exemple de la Provence et du Dauphiné, XII^e^ – début XIV^e^ siècle* (Bibliothèque des Écoles Françaises d'Athènes et de Rome, cclxvi, Rome, 1988), 221; see 141 for another case, and cf. Du Cange, *Glossarium*, 106–8 ('Des guerres privées').

> We grant the . . . barons and nobles of the duchy that they may declare, prosecute, and wage wars among themselves when they deem it expedient to do so. But the due form of challenge must precede, to be given by the one wishing war and accepted by the one challenged, before any damage be done to bodies or goods by such war . . . For it is known that such has been their custom of old.[49]

Indeed, as Malcolm Vale has observed, in Gascony the 'private possession of public authority . . . often gave the impression of an unlimited use of the *droit de guerre* and *port d'armes*'.[50] Count Géraud of Pardiac spelled it out before the Parlement of Paris in 1392: 'it is allowed to the nobles of the land to wage war with each other, without asking the king's permission'.[51]

These reiterations of the 'customary right to wage war' are matched by evidence of the actual feuding it sanctioned (with the feuding seigneurs' subjects fighting in their bands as a matter of course).[52] Thus, from 1314 onwards, Jourdain de l'Isle, seigneur of Casaubon, was repeatedly accused by public authorities of terrorism, brigandage, rebellion, homicide, abduction, rape and rapine. His defence was that all these acts occurred 'during a war' and 'that was how it was done in his country'.[53] A model case of a vicious feud fought with impunity was that of Bouchart de Vendôme, lord of Foullet, who, in spite of royal ordinances prohibiting feuds during the king's wars, challenged the lord of Loigny *c.*1360 and attacked him 'in the form of open war'. Loigny complained to the king, whose government repeatedly tried to impose a halt, in vain: the feud went on with much plundering

[49] The text is in *Recueil général des anciennes lois françaises, depuis l'an 420 jusqu'à la révolution de 1789*, ed. F. A. Isambert *et al.*, 29 vols. (Paris, [1822]–33), iv, 380–2 [= *Ordonnances des rois de France*, ed. Secousse *et al.*, ii, 61]. For context and dating, see Cazelles, 'La Réglementation royale'.

[50] Malcolm Vale, *The Angevin Legacy and the Hundred Years War, 1250–1340* (Oxford, 1990), 112; but Gascony was not alone.

[51] M. G. A. Vale, 'Seigneurial Fortification and Private War in Later Medieval Gascony', in Michael Jones (ed.), *Gentry and Lesser Nobility* (Gloucester, 1986), 138: 'il loist aux nobles du pays faire guerre les ungs contre les autres, *rege inconsulto*'.

[52] For a case in point, see Pierre Charbonnier, 'La Crise de la seigneurie à la fin du moyen âge vue de "l'autre France" ', in *Seigneurs et seigneuries au moyen âge: Actes du 117e Congrès National des Sociétés Savantes* (Paris, 1993), 101.

[53] M. Langlois and Y. Lanhers (eds.), *Confessions et jugements de criminels au Parlement de Paris (1319–1350)* (Paris, 1971), 37–9: 'il disoit que c'estoit en guerre', and 'c'estoit pour soustenir li et ses genz de sa guerre et que ainssi le fait l'en en son païs'; he was hanged — not because of his warfare but because he had violated a royal safeguard. I have not seen Joseph Kicklighter, 'The Nobility of English Gascony: The Case of Jourdain de l'Isle', *Jl Medieval Hist.*, xiii (1987), which is cited in Kaeuper, *Chivalry and Violence*, 106.

and destruction. But when both parties wanted to stop and asked the king's pardon, he granted it in 1361 'without penalty',[54] in a text whose account of the feud reveals not only its horrors but also the nobles' conviction of their right to practise them, and the king's inability, despite a royal 'sovereignty' acknowledged by all, to impose his peace against the peace determined by the feud. A similar scenario appears from the pardon (*rémission*) granted in Avignon, on 13 February 1352, by Guillaume Roger de Beaufort, viscount of Turenne, to many Limousin knights, for the crime of bearing arms in his territory against one of his vassals, whose house they broke into, taking prisoners and committing enormities.[55] And the case was no different in ducal Burgundy, where Marie-Thérèse Caron tells us that 'violence was part of everyday life . . . not acts of individual delinquency but displays of power, which usually remained unpunished and which look very much like private war'.[56]

These are only a few illustrations of the reality and practice of the French 'right of war by custom'. How endemic this noble warfare was can be guessed from the 'endless' number of royal pardons that survive — nearly fifty-four thousand of them for the period 1302–1568 in the Royal Archive (*Trésor des Chartes*) alone.[57] Even Normandy, where we are usually told the noble feud was effectively prohibited, seems not to have been exempt: Philippe de Mézières, writing in 1388/9 about the forms of feuding sanctioned by the customary law of Picardy, compared the latter to that of 'France' *and Normandy*, where he supposed that

[54] The French text of the royal pardon summarizing the facts is in Siméon Luce, *Histoire de la Jacquerie*, 2nd edn (Paris, 1895), 309–12.

[55] Pierre Flandin-Blety, 'Lettres de rémission des vicomtes de Turenne aux XIVème et XVème siècles', *Mémoires de la Société pour l'Histoire du Droit et des Institutions des anciens pays bourguignons, comtois et romands*, xlv (1988), 143.

[56] Marie-Thérèse Caron, *La Noblesse dans le duché de Bourgogne, 1315–1477* (Lille, 1987), 261–6.

[57] Keen, *Laws of War*, 80, 92 ff., 107, 227 ff.; Michael Jones, '"Bons Bretons et bons Françoys": The Language and Meaning of Treason in Later Medieval France', *Trans. Roy. Hist. Soc.*, 5th ser., xxxii (1982), 91–2, citing M. François, 'Notes sur les lettres de rémission transcrites dans les registres du Trésor des Chartes', *Bibliothèque de l'École des Chartes*, ciii (1942), for the fifty-four thousand pardons. See also Robin Harris, *Valois Guyenne* (Woodbridge, 1994), esp. ch. 7, 205–7; Bongert, 'Rétribution et réparation', 61, citing AN, X 1A 9, fos. 492^{v}–494 (1342) and X 1A 22, fos. 86^{v}–87 (1369); *Registre des Parlements de Beaune et de Saint-Laurent-lès-Chalon*, ed. P. Petot (Paris, 1927), no. 209, 81–5 (1370); no. 456 *bis*, 218–22 (1376); Flandin-Blety, 'Lettres de rémission', 138.

legal feuding was also rife.[58] But this interesting reference seems to have fallen into the oubliette reserved by statist historians for whatever does not fit into the 'origin and beginnings of the modern State'.

The consequences of this a priori, already noticed for the movement of 1314–15, are even more evident with regard to 'the Hundred Years War', itself a construction of nation-state history forced onto the past,[59] whose artificial nature condemns its historians to repeat a standard sequence of large-scale political and military actions with no inner principle of articulation beyond the asserted development of patriotism or nationalism or the state. Bernard Guenée's 'The Hundred Years War was indeed from the first a national war'[60] is hardly a testable proposition, and, once one looks at the facts apart from the Big Story, the 'national' themes seem dubious, contradicted among other things by the consistently self-interested behaviour of the political class which attached its loyalties to its properties.[61] Hence a study of the war as reflected in the registers of the Parlement of Poitiers has led R. G. Little to propose that 'attitudes to the course of the "*grande*

[58] For the usual view, see, for example, Brunner (*Land und Herrschaft*, 34; *'Land' and Lordship*, 29); Cazelles, 'La Réglementation royale', 542–4; but Philippe de Mézières, *Le Songe du vieil pèlerin*, ed. G. W. Coopland, 2 vols. (Cambridge, 1969), ii, 416 ff. contrasts the Picard custom — if one noble waged war with another even remote relatives were automatically at war as well — with the custom of France and Normandy, where only the relatives actually supporting a party were involved in the war.

[59] 'The Hundred Years War' as a name unifying the series of conflicts between French and English forces from 1337 to 1453 seems first to have appeared in 1823 in France; it was then used as a book title in 1852, and as a phrase after that; in 1869 Edward Freeman proposed to adopt it in English. See Philippe Contamine, *La Guerre de Cent Ans* (Paris, 1968), 5; Kenneth Fowler, *The Age of Plantagenet and Valois: The Struggle for Supremacy, 1328–1498* (London, 1967), 13–15; cf. K. B. McFarlane, *The Nobility of Later Medieval England* (Oxford, 1973), 5.

[60] Bernard Guenée, 'État et nation en France au moyen âge', *Revue historique*, ccxxxvii (1967), 27.

[61] Paul Guérin observes that 'One can make the curious observation that in a general way the choice of side [i.e. between the Black Prince and Charles V after 1369] was determined by the situation of the property. Those whose principal domain was in Poitou fought in the English ranks, while those whose most important fief was in French country supported the cause of Charles V': *Recueil des documents concernant le Poitou, contenus dans les registres de la chancellerie de France*, ed. Paul Guérin *et al.*, 14 vols. (Poitiers, 1881–1958), iv, p. xi (= Archives historiques du Poitou, xix, 1888). See Jones, ' "Bons Bretons et bons Françoys" ', 107, for a similar point regarding the Breton nobles' choice of allegiance in the fifteenth-century warfare between Brittany and France: 'it should occasion no surprise that material considerations — present position, pension, location of estates and hopes of future advancement — seem to have finally determined the decisions'.

guerre" could be conditioned by considerations infinitely more pragmatic and personal than patriotic ones'. Indeed, 'the prospect of profit from the war in France encouraged certain families to maximise the potential for gain by deliberately maintaining their representatives on both sides of the conflict', and 'for many the question as to who were the rightful rulers of France was . . . less pressing than the . . . maintenance of individual power and privilege' — an attitude that persisted even after 1429, when 'concern for the "*grande guerre*" assumes a position of remoteness, while the escalation of seigneurial conflict in Poitou occupies page after page of the *Parlement*'s registers'.[62]

But such 'seigneurial conflict', which cannot be accommodated, let alone valorized, in the 'national' model of the Hundred Years War, constituted probably the great bulk of the military action that actually occurred during the time. Prohibited in principle during the king's war, it was waged nonetheless, not only outside it but within it and as part of it. For 'private wars did not cease as a result of the more general declarations of hostilities', but indeed '[o]ld scores could be and frequently were paid off by men sheltering beneath the Anglo-French conflict to justify their warlike behaviour towards their neighbours and ancient enemies'.[63] The national model cannot come to grips with this constant feuding because if it did, its 'Hundred Years War' would disintegrate into a kaleidoscopic congeries of what today appear as private actions not obviously related to the rise of the French state and English–French international relations, and hence uninteresting to a Story devoted to these.[64]

To thematize *these* realities of the time, without the anachronistic pre-emptions of 'the Hundred Years War', requires that the developmental paradigm creating that War be dissolved into a historical sociology aiming to describe (or construct) the later medieval aristocratic 'culture' as a whole. It could, for example,

[62] R. G. Little, *The Parlement of Poitiers: War, Government and Politics in France, 1418–1436* (London, 1984), 144, 173, 176; see also 116 ff., 170–7, 190 ff.

[63] Vale, 'Seigneurial Fortification and Private War', 140–1.

[64] So, for example, a decree of the Parlement of Paris — in *La Guerre de Cent Ans vue à travers les registres du Parlement (1337–1369)*, ed. Pierre-Clément Timbal (Paris, 1961), 270–2 — tells of an array of feuds being fought *c.*1360 by one Thomas Pineau, in part to settle a dispute arising from his defence of a royal castle against the English but in part for reasons unknown that may or may not have had to do with the big war. The editor finds it interesting only for certain points about royal indemnification of warriors for losses in battle; nothing is said about the feuds, nor are feuds given a rubric in the collection.

valorize noble feuds under such cognitive constructs as local power, regional elites and their mentalities, the functions and effects of 'enmities', local interests in relation to the royal wars, the limits of royal justice, and, of course, lordship. Such a new model would redeem a huge mass of evidence about such matters from statist oblivion, and would open the way to cognitive gains even at the macropolitical level. One of the most important would perhaps lie in the long-overdue pursuit of Geoffrey Templeman's proposal to read even the royal interests in the Hundred Years War as conflicting claims to property rights,[65] pursued in a royal feud, with the specifically royal components taken as the special case of princely lordship staking claims to a higher degree of 'sovereignty' (in the medieval sense). It would in this view be 'anachronistic' to introduce 'nationalistic overtones' into such a conflict between the crown and its vassals.[66]

This is not to deny instances of French hatred of the English and loyalty to the Valois dynasty, but rather to say that they appear as indicators of nationalism, patriotism and royalism *only* when a Big-Story historian orders them into a modern-state entelechy. Otherwise the mass of evidence unrelated to the image of inchoate union under the crown could be valorized in a deconstruction of the 'Hundred Years War' into conflicts over property rights disposed into complex patterns of regional divergence and opposition,[67] manifest not in the great battles but in the constant play of political interests against the background of endemic noble

[65] Geoffrey Templeman, 'Edward III and the Beginnings of the Hundred Years War', *Trans. Roy. Hist. Soc.*, 5th ser., ii (1952): 'it was a quarrel about . . . jurisdictional and tenurial relationships' turning not on 'feudal' rights but on 'elaborate property rights regulated by feudal conventions' — for 'at this time kingship was first and foremost a matter of exercising . . . rights . . . similar in character to those enjoyed by a host of other lords . . . but different from them in that the king's rights were usually more extensive and more secure' (78–80). Although monarchy and ordinary lordship differed in other respects as well, the thesis still affords a much better entry to the 'Hundred Years War' than does the cult of monarchy and the nation state that has won out among historians in the decades since Templeman wrote.

[66] Little, *Parlement of Poitiers*, 116.

[67] One can combine Templeman's thesis (above) with Le Patourel's construction of the 'Hundred Years War' as a civil war among French regional princes, in his 'Edward III and the Kingdom of France', *History*, xliii (1958), and 'The King and the Princes in Fourteenth-Century France', in J. R. Hale, J. R. L. Highfield and Beryl Smalley (eds.), *Europe in the Late Middle Ages* (London, 1965). Le Patourel notes the continuities between the 1340s and the movements of 1314–15. So, too, Raymond Cazelles, *La Société politique et la crise de la royauté sous Philippe de Valois* (Paris, 1958), 143 ff., 171, describes the regional balance under Philip VI and the 'community of the western lands' that favoured Edward III.

feuding. The historical import of such a reconfiguration would then have to be thought out from scratch, with no free ride on the Juggernaut of *l'État*.

IV

THE WARS OF THE NOBLES AND GENTRY[68] IN ENGLAND

Most historians of England would agree with Maurice Keen that 'private war was always technically illegal outside the Marches'.[69] But the legalities are not so simple, and Keen continues: 'The events of the reigns of John and Stephen, however, show that this position was not fully accepted for many years after the Conquest; and significantly, levying war, even against the King, was seldom construed as High Treason before the reign of Edward I'. Indeed the twelfth-century legal commentary ascribed to Ranulf Glanvill took the feud's legality for granted, noting that feudal aids were not licit for a lord's feud (*werra*) unless his men consented;[70] and it can be supposed that if the barons of Magna Carta, as J. C. Holt has observed, still 'had the capacity to levy war against the king and had already done so through the formal process of defiance and renunciation of fealty',[71] it was because their individual right to feud with each other was still alive. Feuds among the upper nobility show this,[72] as does the noble resistance to the *Quo warranto* proceedings under Henry III and

[68] Both terms have a contested reference in English historiography; I use them loosely for the whole aristocracy that in France is called 'noblesse'. For similar indistinction, see Chris Given-Wilson, *The English Nobility in the Late Middle Ages: The Fourteenth-Century Political Community* (London, 1987), p. ix; Michael Hicks, *Bastard Feudalism* (London, 1995), 158 ff.

[69] Keen, *Laws of War*, 73 (n. 1); cf. Kienast, *Untertaneneid und Treuvorbehalt*, 277 (n. 1): 'There is agreement in the literature that in fact feuds among the barons in England were almost entirely suppressed by the strong monarchy'.

[70] *Tractatus de legibus et consuetudinibus regni Angliae*, ed. G. Woodbine (New Haven, 1932), IX. 8. John Hudson, 'Brunner and the Study of Twelfth-Century English Lordship', in 'The Higher Nobility in Britain and Europe, *c.*1000–1700' (unpublished precirculated conference papers, Univ. of St Andrews, Centre for Advanced Historical Studies, 1993), 4 ff., holds that, despite this text, 'the legitimacy of armed conflict between lords in twelfth-century England is problematic', but he does not explain why.

[71] J. C. Holt, *Magna Carta* (Cambridge, 1965), 239–40.

[72] So, for example, F. M. Powicke, *King Henry III and the Lord Edward* (Oxford, 1947), 678: 'Throughout the year 1290 the earl [of Gloucester] disregarded a royal proclamation against private war', and so did the earl of Hereford; and the Battle of Lewes (1264), preceded by formal diffidations from both sides (p. 464), was evidently imagined by king and barons in terms of *Fehderecht*.

Edward I.[73] The legal question here, however, concerns rather the status of that noble right in the following centuries, when royal legislation decreed that feuding was a felony or a trespass.[74]

The fact is that despite this legislation, and despite England's peculiarly strong integration under the monarchy, the gentry fought feuds nevertheless — the ' "land wars" or "gentlemen's wars" . . . endemic from the fourteenth to the seventeenth centuries'.[75] Some of the wars were raids of plunder by affinities and gangs, but most were fought to protect alleged rights in disputes over property and inheritance.[76] In any case the royal government was usually unable to stop them or punish the participants: 'Not one investigator has been able to indicate even a few years of effective policing in the period 1290–1485'.[77] But felonious actions that regularly go unpunished are effectively decriminalized, and we may ask whether the gentlemen's wars and raids were not, despite their formal illegality, analogous in some signi-

[73] These challenged aristocratic 'franchises' — lordship rights of justice, which included the right to coerce, hence implicitly the right to feud. The royal position was that 'Franchises were royal rights in private hands', and Donald W. Sutherland agrees: see his *Quo warranto Proceedings in the Reign of Edward I* (Oxford, 1963), 12. But Helen Maud Cam, 'The Evolution of the Medieval English Franchise', *Speculum*, xxxii (1957), 439 ff., shows that this doctrine could not stand up to the test of fact: royal judges in 1279 'admitted immemorial tenure as good warrant' for the possession of rights of justice.

[74] Edward III's Statute of Treasons, 13 Jan. 1352, in *Statutes of the Realm*, i (London, 1810), 319–20, provided that 'if any man of this realm should ride armed, openly or secretly, with men of arms, against any other', to kill him or rob him or hold him for ransom, it is not to be judged treason but 'felony or trespass, according to the laws of the land as in use since times of old'; cf. J. G. Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge, 1970), 87.

[75] Hicks, *Bastard Feudalism*, 178. On the large number of feuds, see, for example, Joel Rosenthal, 'Feuds and Private Peace-Making: A Fifteenth-Century Example', *Nottingham Medieval Studies*, xiv (1970). He cites: Robin Jeffs, 'The Poynings–Percy Dispute', *Bull. Inst. Hist. Research*, xxxiv (1961); J. R. Lander, 'Marriage and Politics in the 15th Century: The Nevilles and the Wydvilles', *Bull. Inst. Hist. Research*, xxxvi (1963); R. L. Storey, *The End of the House of Lancaster* (London, 1966), 57 ff., 105–32, 84 ff., 150 ff., 168 ff., etc. Cf. Richard W. Kaeuper, *War, Justice, and Public Order: England and France in the Later Middle Ages* (Oxford, 1988), 260–7, on 'Private War in England'.

[76] J. G. Bellamy, *Bastard Feudalism and the Law* (London, 1989), ch. 2 ('The Land Wars'), referring (35–6) to the work of Nigel Saul, who 'argued that feuds among the gentry became more common in the fourteenth century because of the increasing complexity of land settlements'. See Nigel Saul, *Knights and Esquires: The Gloucestershire Gentry in the Fourteenth Century* (Oxford, 1981), ch. 5, esp. 196; also Hicks, *Bastard Feudalism*, 177 ff.

[77] J. G. Bellamy, *Crime and Public Order in England in the Later Middle Ages* (London, 1973), 3–4; see also Edward Powell, 'Arbitration and the Law in England in the Late Middle Ages', *Trans. Roy. Hist. Soc.*, 5th ser., xxxiii (1983), esp. 49.

ficant sense to the French and German feuds, which also had to do with property rights, were generally recognized as legal, and, as argued above, had a constitutional import. And even the legal differences were blurred, inasmuch as lawyers of the common law were reluctant to override the feudal tradition of *diffidatio* by classifying private war as *lèse-majesté*, as it was in Roman Law and the 'law of arms' based on it.[78] Medieval rights were rarely annihilated and if, as we are told, Edward III still 'condoned' the nobles' 'right of defiance' in principle,[79] it may be that what he denied in his Statute of Treasons was not the right but the exercise of that right in England, a distinction not as pointless as it may at first seem. The question for the historian is whether to understand the eventual English triumph of civil society, law and order under the crown simply as the suppression of overmighty subjects by a crown that was at last more powerful, or rather as a dialectical composition of the two powers, royal sovereignty and aristocratic lordship.

English historians have in fact begun to think along such non-statist lines. Where an earlier generation saw disputes between medieval landholders 'as violent confrontations profoundly destructive of public order', modern students 'portray the violence . . . as generally more apparent than real', with landholders using force not to hurt but to bring about a mediated settlement. There is also a corollary 'denial that coercive royal justice could control the level of conflict through the deterrence of punishment', and a corresponding emphasis on restoration of peace by mutual reconciliation. The crown, dependent on the local justices of the peace for routine law enforcement, was simply forced 'to tolerate a certain degree of crime among the governing classes'. These judgements reflect a new interpretative framework, centred on the viewpoint of local aristocratic communities rather than on that of central government. What it comes down to is that 'the crown's failure to punish violence among the landed classes' created a situation in which the widespread feuding that went on

[78] Keen, 'Treason Trials under the Law of Arms', 96; Bellamy, *Crime and Public Order*, 3–4. Cf. C. H. Knowles, 'The Resettlement of England after the Barons' War, 1264–67', *Trans. Roy. Hist. Soc.*, 5th ser., xxxii (1982), 26–9: although the crown confiscated the lands of the rebel barons, it had to abandon this policy because of the many feuds fought by the dispossessed shire aristocracy in order to restore their fortunes.

[79] Keen, *Laws of War*, 232.

cannot be grasped by the dichotomy of legal versus illegal.[80] Rather, 'violence and the law acted as complementary equals to achieve these great tasks', namely 'to protect and establish divine, social, and political order'.[81]

Exactly how the complementarity worked is no easier to imagine than it at first seems. To take an especially interesting case, that of the Folville gang, its historian, E. L. G. Stones, first draws the picture of a gang of robbers, extortioners and murderers, who were repeatedly prosecuted but usually went free. Then he describes the traits that seem *not* to go with this image: 'the element of organization'; 'the [relatively high] social class of [the] criminals' ('country gentry' and clerics); the 'failure of the law' because public opinion favoured the gang against royal justice. And the criminal activity was preceded by letters in quasi-royal style, at least one of which was stylized as a formal defiance, parodying a royal letter. Stones writes that the Folvilles' case was not unique, and that legal records show a recurring picture of bands of felons disturbing the peace, robbing, plundering, holding men for ransom. But these were not just common criminals; the principals included gentry and clergy. Reflecting on the fact that 'after sixteen years of recorded crime, the Folvilles were still untouched by the criminal law', Stones suggests 'that many people took a fairly light-hearted view of the Folvilles' crimes', indeed regarded them 'as acts of a rival system of justice', and 'were far from friendly to the powers who sought to arrest them'.[82]

His interpretation of fourteenth-century gentry criminality has been given here at length as an example of a different approach to English history — not the view backwards from 1688 but a reconfiguration of political history in terms of a historical sociology. J. G. Bellamy's study of the Coterel gang, inspired by Stones's work, is another example, showing how these plunderers, kidnappers and murderers nevertheless appear in a matrix of affinities and patronage coextensive with the local gentry. So one leader, Robert Bernard, had been a clerk of chancery, an Oxford

[80] S. J. Payling, 'Murder, Motive and Punishment in Fifteenth-Century England: Two Gentry Case-Studies', *Eng. Hist. Rev.*, cxiii (1998) — quotations from pp. 1–2; the 'modern students' cited are Maddern, Powell, Moreton and Clanchy.

[81] Philippa C. Maddern, *Violence and Social Order: East Anglia, 1422–1442* (Oxford, 1992), ch. 7 (quotation from p. 227).

[82] E. L. G. Stones, 'The Folvilles of Ashby-Folville, Leicestershire, and their Associates in Crime, 1326–1347', *Trans. Roy. Hist. Soc.*, 5th ser., vii (1957) — quotations from pp. 128, 131–2, 133, 135.

master, a parson, the registrar of Lichfield cathedral, and the vicar of Bakewell. 'From August 1328', Bellamy writes, 'he was to be a close collaborator of James Coterel, yet he continued to have the support of the cathedral chapter even after his own crimes and those of the gang came to be known'. Indeed the Coterels were allegedly maintained by the Lichfield chapter against the church of Bakewell, and after 1333 Bernard returned to teaching and kept his church livings until his death in June 1341. Bellamy notes that 'the evidence points to a fair number of similar interlocking bands in the northern half of England at this time'.[83]

The focus on gentry warfare proceeds from the shift of interest by a number of English historians, from the structures and ideology of royal government to 'the motives and machinations of the provincial elites'.[84] Analogous to the Brunnerian shift from the historical construction of a medieval German 'state' to the study of lordship, it opens the way to transforming the noble feud in England from an illegal, criminal disruption of royal law and order into the manifestation of an alternative legality, with its own logic of pacification. Thus the older problematics turning on king versus overmighty subject can be pushed aside,[85] in favour of the recognition that 'the medieval concept of public order was in some ways very different from our own', as was the medieval sense of violence. 'Increasingly . . . historians are examining the status of violence as a form of litigation by other means. This tends to break down the distinctions between orderly law and disorderly violence'.[86] Furthermore, 'when it did break out, violence was as much a means of seeking justice as a refusal to accept it, often a last, not a first, resort; its aim was to achieve a settlement acceptable to all parties in dispute, for this was the only way in which a lasting peace could be guaranteed'.[87]

[83] J. G. Bellamy, 'The Coterel Gang: An Anatomy of a Band of Fourteenth-Century Criminals', *Eng. Hist. Rev.*, lxxix (1964) — quotations from pp. 619, 717.

[84] Maddern, *Violence and Social Order*, 6–7 and nn. 28–9 (citing works by Storey, Carpenter, Herbert, Cherry, Saul, Morgan, Wright and Bennett).

[85] So, for example, G. L. Harriss, 'The Dimensions of Politics', in Britnell and Pollard (eds.), *McFarlane Legacy*, 2: 'we reject the growth of representation and constitutionalism as the key themes of fifteenth-century development'.

[86] Maddern, *Violence and Social Order*, 16–17, 14.

[87] Simon Walker, *The Lancastrian Affinity, 1361–1399* (Oxford, 1990), 5. Cf. Philippa Maddern's cheerful observation that 'Violence . . . is in the eye of the beholder', in her *Violence and Social Order*, 9, and the works she cites in that context.

Philippa Maddern describes two 'complementary' systems of authority, that of the royal courts and that of the gentry, an 'order of people authorized — indeed compelled — to use both right violence and the law in the defence of social order'.[88] In such a situation, as Patschovsky wrote about Germany, 'any explanation of an "official legality" would . . . be a historiographical fiction'.[89] And what this approach throws into relief is precisely the central importance of the aristocratic feud over property rights in the public order of the land. One can construe this poetically by taking the violence of the feud as the paradigm of the violence that kept the societal order in shape, or one can think more concretely of a multiplicity of lordship instances each possessing the means of 'violence', with the triumph of liberty under law, law and order under the crown, emerging not from the crushing of disorderly subjects but rather from the composition of all armigerencies into a co-ordinated system.[90]

V

THE CONSTITUTIONAL IMPORT OF THE NOBLE FEUD

One can imagine a constitutional dimension to the later medieval noble feud only when one does *not* posit a later medieval 'state', in the sense of Max Weber's nineteenth-century 'modern' state, as a 'community that successfully claims for itself the monopoly of legitimate physical force within a definite area', in which 'all other associations or individuals are recognized as having a right to use physical force only in so far as the state allows it'.[91] In such a state warfare between members of the community is criminal, not constitutionally productive. But medievalists are

[88] Maddern, *Violence and Social Order*, ch. 7 (quotations from pp. 229, 231).

[89] Patschovsky, 'Fehde im Recht', 174.

[90] This might be the missing medium in Robert Bartlett's suggestion that the modern (Weberian) state's monopoly of violence can be understood not as the negation of private violence but as 'private violence writ large'; the licit war that had been associated with individual enmity is now monopolized by the state: Bartlett, '*Mortal Enmities*', 15. Cf. V. G. Kiernan's remark that 'the new monarchy, like the feudalism out of which it grew, bore an essentially warlike character that it was never to lose': V. G. Kiernan, 'State and Nation in Western Europe', *Past and Present*, no. 31 (July 1965), 31.

[91] Max Weber, *Wirtschaft und Gesellschaft: Grundriss der verstehenden Soziologie*, 5th edn (Tübingen, 1976), pt 2, ch. 9, 'Soziologie der Herrschaft', §8, 'Die rationale Staatsanstalt'. Although this work was published (posthumously) in 1921, most of it was written between 1910 and 1914.

still apt to speak generically of a medieval state to indicate any kind of political organization — as in Bernard Guenée's 'it seems reasonable to allow that there is a state whenever there is, on a given territory, a population obeying a government'.[92] The trouble is that this ostensibly neutral usage tends constantly to equivocation, evoking the specifically modern state that everyone is used to. And when the intention is not neutral the problem of anachronism becomes critical.

French historians in particular have in the last decades made their medieval *État* (always capitalized) a point of national honour — 'the political history of France is first of all the origin and rise of two entities, the State and the nation'; 'the originality of France in the sphere of political history consists in the priority of the State to the nation'; 'French identity has been constituted on three chief bases, the sense of the State, national sentiment, and patriotic faith'.[93] Historians who embrace this sort of scholarly patriotism neither can nor want to avoid its tendency to preempt the historical discourse, taking as given what needs to be argued and excluding what does not fit in. Hence the noble feud, which we have seen to be both legitimate and widespread in later medieval France, appears in French scholarship, if at all, as the merely episodic violence it would be in the modern state.

To imagine the *constitutional* import of the noble feud in France, therefore, we have to begin by dissolving the symbolic artifice of a French medieval '*État*' into the congeries of powers and jurisdictions that in fact constituted governance on the ground. The key point here, passed over by statist historians, is that in medieval France (or indeed medieval anywhere) only a fraction of administrative, judicial and coercive authority over the people lay with a central government, what the historians call the *État*. For the overwhelming majority of people this authority was exercised by individuals or corporations holding lordship over them or otherwise possessing low, middle or high justice — par excellence in the 'seigneurie politique'.[94] And if one seigneur felt or pretended to feel that another had encroached on his seigneury and its members, he had the right to declare a feud

[92] Guenée, 'État et nation en France au moyen âge', 18.

[93] Le Goff, 'Le Moyen Âge', 9 ff.

[94] So, for example, Charbonnier, 'La Crise de la seigneurie', 100: 'Justice, to judge from the very small number of cases brought to Parlement concerning a seigneur and his subjects, remains essentially seigneurial, even in criminal matters'.

against him — as demonstrated in section III above. France's development as a monarchy did not liquidate these autonomous centres of power — lordships — below the level of monarchical governance. Quite the contrary, as we have seen, and one can hardly imagine a more interesting problem of French constitutional history than the representation of just how the vast sector of seigneurial lordship, governance and *Fehderecht* interacted with the monarchical institutions of central government to compose the constitutional whole. But just to pose the problem requires imagining the French constitution in terms other than those of a fetishized '*État*'.

The corresponding strain in German historiography was represented especially in Georg von Below's already noted search for the elements of the modern state in the medieval Empire — whether in the imperial office itself or in the principalities. Few today would join him; more would agree with Otto von Gierke in the nineteenth century, and Otto Brunner in the twentieth, in *not* taking the medieval state as an early stage of the modern one,[95] and German historians continue to stress the importance of feuds, which they find by looking for them.[96] That English historians too have been turning away from state-centred constructions of their later medieval 'constitutional' history is due to other reasons, chiefly perhaps the 'McFarlane legacy'; at any rate there are now a number of them ready to rethink political and constitutional history to include not only royal government but the local political and military activity of the nobility and gentry.[97]

[95] So, for example, Gerd Althoff, 'Staatsdiener oder Häupter des Staates: Fürstenverantwortung zwischen Reichsinteressen und Eigennutz', in his *Spielregeln der Politik im Mittelalter* (Darmstadt, 1997), 126–7, remarks on 'how inappropriate the concepts and ideas of the modern state are for medieval conditions, when there was no monopoly of power, no statutes, no claim to primacy for official bodies, no disjunction of public and private, practically no administration and bureaucracy, nor many other things that we have in mind when we think in terms of "state" or "public" '.

[96] So, recently, Heinrich Dormeier, *Verwaltung und Rechnungswesen im spätmittelalterlichen Fürstentum Braunschweig-Lüneburg* (Hanover, 1994), 435, has noted the 'almost uninterrupted' anxiety in the land caused by petty feuds not recorded in narrative sources but attested in territorial and town accounts: 'we thereby learn of military conflicts that would otherwise have remained unknown'.

[97] Colin Richmond, 'After McFarlane', *History*, lxviii (1983); Edward Powell, 'After "After McFarlane": The Poverty of Patronage and the Case for Constitutional History', in D. J. Clayton, R. G. Davies and P. McNiven (eds.), *Trade, Devotion and Governance: Papers in Later Medieval History* (Stroud, 1994); Carpenter, 'Political

(cont. on p. 82)

In this perspective the noble feud, whatever it is to be called in English contexts, might well enjoy the benefits of thematization.

All this is not to say that the value set on civil peace under a strong central government is a mere modern prejudice, or that the nobility's feuding was not problematical at the time. Since 1945 a number of German historians, reacting against the totalitarianism of the German 1930s that had encouraged Brunner's anti-liberal conceptualizations, have treated the nobles' feuds as simple plundering, 'morally condemned in the general consciousness of *Recht*'.[98] The last phrase refers to the abundantly attested views of the non-nobles — clergy, peasants, burghers — who suffered from feuds and wanted them outlawed — like the bourgeois Jean Gerson who supposed they *were* outlawed, when he declared that 'he who wages war without the prince's permission is guilty of treason'.[99] But one guesses that pretty much all French nobles would have agreed with Count Géraud of Pardiac's directly contrary statement, cited above, that 'it is allowed to the nobles of the land to wage war with each other, without asking the king's permission'.[100] It is obviously not a question to be resolved by counting votes. The fact is that the mutually opposed value systems were already there in the later Middle Ages, with the dominant noble mentality increasingly rivalled by a town-burgher ideology of peace that criminalized forms of behaviour whose legitimacy had previously gone unchallenged. Indeed towns hired troops to suppress noble warfare, a coercive action

(n. 97 cont.)

and Constitutional History'. Carpenter recognizes the vivifying effect of McFarlane's legacy but criticizes its shift of interest away from political structures and ideas, towards the study of 'lordship, operating in a governmental vacuum' (192). Cf. A. J. Gross, 'K. B. McFarlane and the Determinists: The Fallibilities of the English Kings, *c.*1399–*c.*1520', in Britnell and Pollard (eds.), *McFarlane Legacy*.

[98] Werner Rösener, 'Zur Problematik des spätmittelalterlichen Raubrittertums', in Helmut Maurer and Hans Patze (eds.), *Festschrift für Berent Schwineköper zu seinem siebzigsten Geburtstag* (Sigmaringen, 1982), 470–1, 488; Hans Thieme, 'Der Historiker und die Geschichte von Verfassung und Recht', *Historische Zeitschrift*, ccix (1969), 29–30; cf. Klaus Schreiner, 'Führertum, Rasse, Reich: Wissenschaft von der Geschichte nach der nationalsozialistischen Machtergreifung', in Peter Lundgren (ed.), *Wissenschaft im Dritten Reich* (Frankfurt, 1985), 210.

[99] Jean Gerson, *Œuvres complètes*, ed. Palémon Glorieux, 6 vols. (Paris, 1960–73), v, 424 (an address to the University of Paris in 1419); Nicholas Oresme also refers to 'the law that forbids anyone from challenging another', in *Maistre Nicole Oresme: le Livre de Politiques d'Aristote*, ed. Albert Douglas Menut (Trans. Amer. Philosophical Soc., new ser., lx, pt 6, Philadelphia, 1970), 226. It is not clear what he and Gerson referred to: we have seen Philip IV and John II attempting such prohibitions but their successors did not.

[100] See n. 51 above.

against the feuding nobility that 'anticipated the modern state's monopoly of *Gewalt*'.[101]

That monopoly was built on the suppression of the noble feud by central governments in the sixteenth century (roughly speaking), with the historiographical effects that have been criticized in the foregoing pages. The medieval prevalence of the feud, however, had effects that would shape Europe's development long after. For one thing the juridical and societal dimensions of the noble feud together had the effect of consolidating a sociopolitical order based on the preservation of individual property rights, by producing into reality the autonomous power of a lordship neither derived from nor dependent on the might or legitimacy of a central state. This power would lead to the 'Estates' moment in the dualism of the polity, and eventually to the European constitution of liberty under law. At the same time the pervasiveness of feuding as fact and potentiality formed a certain kind of human material apt for violence, aggression and the domination of subject peasants, to which may be added the spirit of adventure that went with the permanent possibility of individual trial by battle. Hence on the one hand a civilization based on patriarchy, aristocratic hegemony and peasant subordination; on the other hand a culture of individuality, aggression and adventure. These suggestions are themselves rather adventurous, but something like them is required if the full 'constitutional' import of the feud to European history is to be properly represented.

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[101] Ulrich Andermann, *Ritterliche Gewalt und bürgerliche Selbstbehauptung* (Frankfurt am Main, 1991), 322. On pp. 121–2 and 317 ff., Andermann develops the contrast between noble and burgher views, and criticizes a Brunnerian readiness to see all noble violence in terms of *Fehderecht*.