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CONTENTS

	<i>page</i>
REVENGE, ASSYRIAN STYLE: <i>by Marc Van De Mieroop</i>	3
WRITTEN ENGLISH: THE MAKING OF THE LANGUAGE 1370–1400: <i>by Jeremy Catto</i>	24
ABSOLUTISM, FEUDALISM AND PROPERTY RIGHTS IN THE FRANCE OF LOUIS XIV: <i>by David Parker</i>	60
GRAVESTONES, BELONGING AND LOCAL ATTACHMENT IN ENGLAND 1700–2000: <i>by K. D. M. Snell</i>	97
THE NEW ROSS WORKHOUSE RIOT OF 1887: NATIONALISM, CLASS AND THE IRISH POOR LAWS: <i>by Virginia Crossman</i>	135
<i>BHAKTI</i> AND THE BRITISH EMPIRE: <i>by Vijay Pinch</i>	159
THE CAUSES OF UKRAINIAN–POLISH ETHNIC CLEANSING 1943: <i>by Timothy Snyder</i>	197
NOTES	235

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ABSOLUTISM, FEUDALISM AND PROPERTY RIGHTS IN THE FRANCE OF LOUIS XIV*

I

INTRODUCTION

Nineteenth-century historians largely thought that France's absolute monarchy was a good thing, associating it with the advent of 'liberty, civic equality and national unity'¹ as the great feudal nobility were gradually being brought to heel. This notion passed with some qualifications into general historical discourse. Until the 1970s the idea that Louis XIV's regime depended on the support of the middle classes or at least on new men was an unchallenged commonplace of textbooks.² Marxist historians somewhat unwisely have also given sustenance to the notion that absolutism was a progressive force by harnessing it to the idea of a transition from feudalism to capitalism.³

Part of the responsibility for this remarkably enduring myth lies, as John Salmon has recently indicated in a thought-provoking article, with those French jurists, writing in the last decades of the *ancien régime*, who had already associated the progress of individual liberty with royal absolutism and even with an emergent bourgeoisie. Others looked back to pre-absolutist

* The author wishes to thank the ESRC and the British Academy for funding the research for this article.

¹ Bernard Guenée, 'L'Histoire de l'État en France de la fin du moyen âge vue par les historiens depuis cent ans', *Revue historique*, ccxxxii (1964), 333.

² Maurice Ashley entitled the second chapter of his *The Golden Century* (London, 1969) 'From Feudalism to Absolutism'. In this he asserted that '[t]he history of the century, was largely the story of how the monarchies strove to reduce the effective political influence of their nobles, suppress their national assemblies, and to establish a workable bureaucratic form of government with the aid of the services of the middle classes'.

³ It should be said that Marxist historiography has always been highly ambivalent about the modern or capitalist orientation of absolute monarchy, an ambivalence encapsulated in Anderson's conclusion that although it was 'irredeemably feudal' it was nonetheless 'profoundly overdetermined by the growth of capitalism': Perry Anderson, *Lineages of the Absolute State* (London, 1974), 39, 41. For an extended review of Marxist approaches to this question, see David Parker, *State and Class in Ancien Régime France: The Road to Modernity* (London, 1996), 12–23.

days for a more constitutional model of government, but with a shared admiration for their Renaissance predecessors whose modifications of feudal law they believed to have opened up the space for an assertion of individual rights.⁴ The most notable of the 'enlightened' jurists, Henrion de Pansey, adopted an explicitly anti-feudal stance. Leaning heavily on the works of Charles du Moulin, generally held to be the greatest legal mind of the sixteenth century, Henrion claimed that the adage 'no land without seigneur' was contrary to natural law, and asserted that all were equal before the law.⁵ Another key notion derived from Du Moulin, which subsequently passed into historical writing, was the theoretical separation of fief and justice. This led logically to the view that rights of jurisdiction were not a feudal prerogative but a privilege bestowed by the king, thus reinforcing the concept of legislative sovereignty, derived partly from Jean Bodin (1579) and partly from Roman Law, which elevated the king above everyone else. The effect, it has even been suggested, was to transform the king's vassals into mere subjects who were all assigned an 'undifferentiated legal status'.⁶ The erosion of the feudal hierarchy has further been detected in the hereditability — and therefore the security — of peasant tenures held in *censive*,⁷ a development reinforced by the growing idea that the possessor of the *domaine utile* (the dependent vassal or tenant) rather than the seigneur who held the *domaine direct* was the real proprietor.⁸ The decay of personal servitudes also assisted the articulation of the idea, variously attributed by the jurists to Roman notions or to Du Moulin, that all French men were free.⁹ Perry Anderson, picking up on the admiration felt by many jurists for Roman Law, asserted that its revival laid the

⁴ J. H. M. Salmon, 'Renaissance Jurists and "Enlightened" Magistrates: Perspectives in Feudalism in Eighteenth-Century France', *French History*, viii (1994).

⁵ *Ibid.*, 396.

⁶ Quentin Skinner, *The Foundations of Modern Political Thought*, 2 vols. (Cambridge, 1978), ii, 264. For an elaboration of these observations and further references, see Parker, *State and Class*, 8. For an analysis of their significance for the development of French public law, see David Parker, 'Sovereignty, Absolutism and the Function of the Law in Seventeenth-Century France', *Past and Present*, no. 122 (Feb. 1989).

⁷ Non-noble but dependent tenures usually considered to be the lowest rung of the feudal hierarchy. For a glossary of technical and French terms, please see Appendix, pp. 93–6.

⁸ See, for example, Howell A. Lloyd, *The State, France and the Sixteenth Century* (London, 1983), 112.

⁹ Roland Mousnier, *Fureurs paysannes: les paysans dans les révoltes du XVII^e siècle* (Paris, 1967), 39.

foundation for a modern concept of absolute property rights which was to transform the conditional nature of property holding characteristic of feudalism.¹⁰ Even more recently Jean Gallet has suggested that the jurists gave their full support to the king in his fight against *la féodalité*.¹¹

Over the last two decades the concept of 'absolutism' has been subject to a sustained revisionist critique. Some historians now feel that the limitations on the exercise of royal authority were so great that they have ceased to use the term at all.¹² Many of those, including myself, who continue to find it useful, fully acknowledge that the power of the monarch depended on the government's ability to manipulate an array of vested interests rather than its capacity to override them.¹³ If the independent military power of the old *grandeurs* was finished, the monarchy was now constrained by a system of administration dominated by the *noblesse de robe* who, through the purchase of office, literally bought a share of royal power. It is highly arguable that absolute power really rested on a compromise with the families and groups who controlled the key institutions of central and provincial France. In return for the latter's political conformity the monarchy sustained their material interests through a system of patronage from which both parties benefited.

It is, however, impossible to describe the ennobled, office-holding and land-holding elites of France in the seventeenth century as either middle class in the loose sense of the term or as a capitalist bourgeoisie in the Marxist sense. Few would now maintain that the absolute state depended to any significant degree on an emergent bourgeoisie, although there is a persistent attachment to the idea that capitalism was growing. Those who have emphasized the growth of capitalism have, of course, been referring to commercial capitalism. But, even if it is accepted, for the sake of argument, that there was a significant growth in overseas trade, the fact remains that French economic and

¹⁰ Anderson, *Lineages of the Absolute State*, 25–8, 424–6.

¹¹ Jean Gallet, *Seigneurs et paysans en France, 1600–1789* (Rennes, 1999), 163, 168.

¹² For example, Roger Mettam, *Power and Faction in Louis XIV's France* (Oxford, 1988); James B. Collins, *Classes, Estates and Order in Early Modern Brittany* (Cambridge, 1994).

¹³ William Beik, *Absolutism and Society in Seventeenth-Century France* (Cambridge, 1985); Joseph Bergin, *Cardinal Richelieu: Power and the Pursuit of Wealth* (London, 1985); Daniel Dessert, *Argent, pouvoir et société au grand siècle* (Paris, 1984); Albert N. Hamscher, *The Parlement of Paris after the Fronde* (Pittsburgh, 1976); Sharon Kettering, *Patrons, Brokers and Clients in Seventeenth-Century France* (Oxford, 1986).

social structures were rooted not in commerce but in agriculture. Merchants who wished to acquire social status, political influence or simply consolidate their assets invested in office and land. Nobody believes that in doing so they effected a transformation of agrarian social relationships or of French agricultural practice. On the contrary, the endurance of the seigneurie as the basic framework of rural social relationships has been reflected in numerous excellent studies.¹⁴ True, it has been suggested by Le Roy Ladurie that in the eighteenth century the exploitation of the seigneurial demesne or reserve was to become a motor of capitalist development.¹⁵ But this conclusion is based on limited examples from eastern France and founders on the objection that most seigneurs had 'long sacrificed the coherence of their demesne land in an effort to stay solvent'.¹⁶

Given the revisionist tide it is remarkable that little attempt has been made to reassess the relationship between legal thought and monarchical absolutism, still less to integrate jurists' perceptions of property relationships with those of social historians. By and large, legal and social historians have ploughed separate furrows. In part, such compartmentalization may be explained by the extremely daunting nature of the raw material used by legal historians: royal edicts, provincial customs, legal commentaries, the jurisprudence and proceedings of law courts, not to mention the endless and largely untapped supply of notarial records available from every locality. The sources are frequently baffling, written by lawyers for lawyers, or, as with records of many legal proceedings, frustratingly incomplete. Up to a point this helps to explain why historians have neglected the voluminous and often repetitive repertoire of work on feudal property produced by the jurists in the last 250 years of the *ancien régime*. Yet this neglect also has something to do with a tendency to extrapolate what was new or progressive in juristic thought at the cost of ignoring its overwhelmingly conservative character. Despite the increasing employment of

¹⁴ Amongst others, Serge Dontenwill, *Une seigneurie sous l'Ancien Régime: l'Étoile en Brionnais du XVI^e au XVIII^e siècles* (Roanne, 1973); Jonathan Dewald, *Pont-St-Pierre, 1398-1789: Lordship, Community and Capitalism in Early Modern France* (Berkeley, 1987); Jean Gallet, *La Seigneurie bretonne, 1450-1680: l'exemple du Vannetais* (Paris, 1983); Jean Jacquot, *La Crise rurale en Île-de-France, 1550-1670* (Paris, 1974).

¹⁵ In Georges Duby and Georges Wallon, *Histoire de la France rurale*, 4 vols. (Paris, 1975-6), ii, 583.

¹⁶ P. M. Jones, *The Peasantry in the French Revolution* (Cambridge, 1988), 53.

feudal experts (*feudistes*) in the mid eighteenth century by landlords anxious to maximize their seigneurial revenues, few historians really seem to have paused to reflect on the reasons why jurists continued to labour over lengthy and repetitive disquisitions on the attributes of feudal property.¹⁷ The obvious inference is that such writings continued to have a practical relevance, and that many jurists were much less critical of the feudal order than Henrion de Pansey. Studies which sustain this inference¹⁸ have been neglected in favour of a tendency to read off property relationships from the allegedly modern elements in juristic thought. Anderson thus produced no empirical evidence to support his view of the transforming impact of Roman Law.

Gallet does offer some illustrations to support the idea of an anti-feudal alliance of monarchy and jurists, but these are very limited: a reference to the restrictions imposed by the great ordonnance on the *eaux et forêts* of 1669 on seigneurs who claimed the *droit de triage* (that is, a third of communal properties and revenues), and another to an unenforced act of 1693 abolishing feudal dues within the royal demesne.¹⁹ Gallet himself concludes that such changes as did occur were minimal; in fact feudal and seigneurial rights remained untouched.²⁰ It was not

¹⁷ Armand Piret, *La Rencontre chez Pothier des conceptions romaine et féodale de la propriété foncière* (Paris, 1937), 65–7, for a list of treatises devoted to feudal law published or republished from 1727 to 1789 quite apart from general works and commentaries on customs. Gallet's contention that the jurists became less interested in feudal law is difficult to understand: Gallet, *Seigneurs et paysans en France*, 170.

¹⁸ These include Piret, *La Rencontre chez Pothier*. Amongst other things this study shows that the great jurist Robert Joseph Pothier (1699–1772), whose works are sometimes said to have prepared the way for the Napoleonic code, was a long way from attributing proprietorship to the possessor of the *domaine utile*. Another important work is Jean Bastier, *La Féodalité au siècle des lumières dans la région de Toulouse, 1730–1790* (Commission d'histoire économique et sociale de la Révolution française, Paris, 1975). As the title suggests, Bastier offers a powerful antidote to common assumptions about the allodial or free-holding traditions of the south.

¹⁹ Gallet, *Seigneurs et paysans en France*, 170–1, 184, 189–90. Gallet may have misread the edict of 1693, which appears to refer only to that part of the royal domain within the towns, suburbs and walled burghs of the realm. The freeing of such property from all seigneurial dues was not only conditional on an unspecified payment but the right of the royal successors to recover them was retained. Moreover the edict excluded all *duchés*, *principautés comtés*, *vicomtés*, *marquisats*, *baronnies*, *vidames* and *châtellenies* dependent on the king. A nominal *droit de mutation* of a *louis d'or* was retained even for the smaller feudal properties, not to mention 5 *sols* for each non-noble property subject to a long-term lease. E. J. de Laurière, *Recueil d'édits et d'ordonnances royaux, augmentées sur l'édition de Maîtres Pierre Néron et Étienne Girard*, 2 vols. (Paris, 1720), ii, 243–4.

²⁰ Gallet, *Seigneurs et paysans en France*, 256.

until July 1793 that the National Assembly, under pressure from an insurgent peasantry, finally and reluctantly got around to abolishing feudal tenures without compensation.²¹ In order to explain why France's increasingly powerful monarchy, with its supposedly anti-seigneurial posture, was not able to do more, Gallet suggests merely that the king and his agents found the idea of interfering with property repugnant, a notion from which few jurists would have dissented. The reader is left with the tantalizing statement that the king only eliminated that which affected his 'power and own interests'.²²

Such observations serve largely to underline the prevailing lack of clarity about the nature of the relationship between power and property. What follows is an initial attempt to develop a view that does not depend on reading the history of either absolutism or property relations backwards in terms of the eventual triumph of modernity and/or of capitalism. By placing the jurists in their social as well as their intellectual context, it is also possible to get a better understanding that, despite significant shifts in legal practice designed to cope with contradictory pressures, the property regime to which both they and the monarchy were committed was still a profoundly feudal one.

II

FEUDAL PROPERTY

It would of course be foolish to claim that feudal relationships did not change and had not changed. Indeed it is arguable that the biggest transformation had already occurred long before 1600 with the development of a market in land. Fiefs — both eminent and dependent — were now marketable and, as jurists stressed, patrimonial. They could be subinfeudated, leased as *censives*, sold or mortgaged. *Censives*, in turn, could be leased commercially, even in perpetuity.²³ However, the ability to dispose of feudal property remained far from unconditional. Anxiety about the integrity of fiefs led to the revision of the Paris

²¹ *Ibid.*

²² *Ibid.*, 189, 191.

²³ Amongst many others, see G. Argour, *Institution du droit français* (n.p., 1692), 144–6; Pierre de l'Hommeau, *Maximes générales du droit français avec les notes et observations de Maître Paul Challine avocat en parlement* (1605; Paris, 1665 edn), bk 2, 76–7.

custom of 1580, so that only two-thirds of a fief could be alienated without seigneurial permission.²⁴ In some provinces the proportion was a third, and Normandy remained wedded to the tradition that fiefs were indivisible.²⁵ *Fiefs de dignité* were everywhere considered indivisible. More importantly, the key requirement of feudal law on the transmission of a fief, by succession or otherwise, was preserved. This was the obligation on the new vassal to perform faith and homage to the seigneur, normally within forty days. Failure to do so entitled the seigneur to take possession and appropriate the revenues. The new vassal also had to provide for the seigneur a *dénombrement* or schedule of the properties that he had acquired and now held. Failure here again entitled the seigneur to take possession of the fief until such time as the *dénombrement* was forthcoming; although, in this instance, according to the custom of Paris which seems to have been largely followed elsewhere, there was no seizure of revenues.²⁶ Holders of *censives* were similarly obliged to produce *reconnaissances* itemizing their holdings and seigneurial obligations.

The inalienability of the *seigneurie directe* brought other benefits, notably the various *droits de mutation* when a fief changed hands. If a fief was transferred by succession or donation the seigneur was entitled to a *rachat* or *relief*, normally a year's revenue, although there were considerable variations in its incidence from region to region and even from fief to fief. By the reign of Louis XIV successions in the direct line were largely exempted, but there did remain a number of customs where a *relief* was still payable on all successions. Others required payment when a woman inherited a fief or where a fief was alienated through the marriage of a daughter, notwithstanding the example set in 1580 when the revised customs of Paris

²⁴ The conservative aspect of this revision of the custom is not always understood. See Henrion de Pansey, *Traité des fiefs de Dumoulin, analysé et conféré avec les autres feudistes* (Paris, 1773), 494, 498.

²⁵ André Saillard, *L'Ancien Droit successoral de la Normandie d'après la coutume de 1583* (Paris, 1913), 31.

²⁶ Charles A. Bourdot de Richebourg, *Nouveau coutumier général*, 4 vols. (Paris, 1724), iii, pt 1, 29. According to Henrion de Pansey in his commentary on Du Moulin, even where a vassal alienated only part of a fief he had to continue to do faith and homage for both the alienated and retained parts, and to include the former in any *dénombrement*. This meant that, at any time when the alienated fief fell 'open', the seigneur could recover both the retained and the alienated parts. Henrion de Pansey, *Traité des fiefs de Dumoulin*, 504-6.

abolished payment for the first two marriages. In Poitou, not only were donations subject to the *rachat* but, if a donation was subject to reversion in the event of the recipient failing to produce any children, a double *rachat* became payable: one for the initial donation and the other on its reversion to the donor.²⁷

When a fief was sold, as opposed to simply changing hands, the seigneur had the option of either reimbursing the new possessor and recovering the property through the exercise of the *retrait féodal* or receiving compensation in the form of the *quints* (that is, a fifth of the sale price). In some customs the *quints* was itself subject to a 20 per cent tax known as the *requint*. The sale of a fief which had been partly dismembered gave the seigneur the possibility of reuniting the whole of the property. In similar fashion the sale of *censives* gave rise to a compensatory payment (*lods et ventes*) which was normally a sixth of the sale price, sometimes a twelfth. What is not so clear is the extent to which a seigneur had the option of invoking a *retrait censuel* in order to recover *censives* which had been sold. Not everyone was as emphatic as the very conservative jurist Jean Bacquet, who believed that they were a feudal form of property which could therefore be recovered by the use of the *retrait féodal*.²⁸ Many customs, including that of Paris, were silent on the matter, although there were undoubtedly those that permitted the practice. Most remarkably it was employed in those parts of the romanized regions of the *droit écrit* (so called written law) which fell within the jurisdictions of the *parlements* of Bordeaux, Toulouse and Paris.²⁹ In fact, in Languedoc, the distinction

²⁷ Argour, *Institution du droit français*, 133; Claude de Ferrière, *Corps et compilation de tous les commentateurs anciens et modernes sur la coutume de Paris*, 2 vols. (Paris, 1714), i, p. lxiii; *L'Esprit de la coutume de normandie avec un recueil d'arrêts notables du même parlement*, 3rd edn (Rouen, 1720), 75; F. Olivier-Martin, *Histoire de la coutume et la prévôté et vicomté de Paris*, 2 vols. (Paris, 1922), i, 292, 332; C. Pocquet de Livonnière, *Commentaire de la coutume d'Anjou* (Paris, 1725), 254; art. cxx1 of the customs of Bourges in Bourdot de Richebourg, *Nouveau coutumier général*, iii, pt 2, 888; M. L. Autexier, *Les Droits féodaux et droits seigneuriaux en Poitou de 1559 à 1789* (Fontenay-le-Comte, 1947), 30; René Filhol, *Le Premier Président De Thou et la réformation des coutumes* (Paris, 1937) suggests that the old custom of the Vexin which required a *rachat* for successions in the main line was abolished in 1550; for a contrary view, see Olivier-Martin, *Histoire de la coutume . . . de Paris*, i, 292 and de Ferrière, *Corps et compilation de tous les commentateurs*, i, p. lxiii.

²⁸ Jean Bacquet, *Les Œuvres de M. J. Bacquet*, ed. Claude de Ferrière (Paris, 1688), 849.

²⁹ M. J. Renauldon, *Traité historique et pratique des droits seigneuriaux* (Paris, 1765), 160–1.

between fiefs and *censives* had long disappeared, encouraging a further assimilation of the *retrait féodal* and the Roman *droit de prélation* (right of pre-emption in the event of sale) which had once been accorded to proprietors making emphyteutic or long-term leases.³⁰ Even in the custom of Toulouse, which explicitly rejected any such practice, leases were drawn up specifically incorporating a *droit de prélation*.³¹ Renaudon, writing in 1765, thought that this practice had gradually become the norm.³²

The right to fealty and homage was not therefore, as some eighteenth-century writers have led historians to believe, a merely honorific one. It was rooted in the idea, overwhelmingly accepted at least until the end of the reign of Louis XIV, that the seigneur, rather than the usufructuary, was the real proprietor of a fief.³³ The material feudal perquisites attached to the seigneurial *directe* were also considerable. Indeed, their potential value had increased with the growth of a market in land.

If the *ancien régime* was a long way from espousing capitalist property relations, there was an evident tension between the feudal legal structures and the monetarization of the land market. At the simplest level the growth of money rents generated considerable confusion about what was, and what was not, a feudal rent. Commercial rents were often superimposed on the *cens*, and even confused with them. Conversely any sort of rent could be infeudated, even, according to Bacquet, the *cens* itself.³⁴ Perpetual or long-term leases were not easily distinguishable from feudal ones particularly if, as with Languedoc's *bail à locataire*, there was deemed to be no transfer of property.

³⁰ J.-A. Soulatges, *Coutumes de la ville, gardiage et viguerie de Toulouse* (Toulouse, 1770), 34–5. See n. 49 below.

³¹ Bastier, *La Féodalité au siècle des lumières*, 219–20. Bastier observes that Pothier distinguished the *retrait* from the *droit de prélation* as the one took place in *re jam vendita* and the other in *re vendenda*. But this is one of those fine legal distinctions of limited practical significance; the southern jurist Soulatges had no qualms about equating the *retrait* and the *droit de prélation*: Soulatges, *Coutumes de la ville . . . de Toulouse*, 34–5.

³² Renaudon, *Traité historique et pratique des droits seigneuriaux*, 220; see also Bernard de La Roche-Flavin, *Des droits seigneuriaux et matières féodales*, contained in *Arrêts notables du parlement de Toulouse (1720) augmentés des observations de M. François Graverol, avocat de la ville de Nîmes* (Toulouse, 1745), 572–81.

³³ A significant exemption was provided by the custom of the Orléanais which defined the usufructuary as the proprietor in 1583. But this was remarkably ignored for many decades. Bourdot de Richebourg, *Nouveau coutumier général*, iii, pt 2, 784.

³⁴ Bacquet, *Les Œuvres de M. J. Bacquet*, ed. de Ferrière, 865.

Pocquet de Livonnière, in his commentary on the custom of Anjou, started from the seemingly simple position that all rents attached to *fonds homagés* were feudal unless stipulated to the contrary.³⁵ The revolutionaries of 1789 were to have some difficulty in sorting all this out.³⁶

Rents also fell into three significantly different categories. There were straightforward leases or *rentes foncières*, redeemable *rentes foncières*, whereby the lessee could redeem the property, and *rentes constituées*, a sort of mortgage. Even the first gave the jurists a legal headache in their attempts to reconcile commercial practice with feudal dispositions. Those who followed Du Moulin thought that if, in addition to the rent, a substantial sum of money exchanged hands then the lease approximated to a sale and should give rise to *quints* or *lods et ventes*. Redeemable rents were more easily and generally assimilated to a sale; but even this gave rise to discussion as to whether the *quints* were due when the lease was drawn up or at the moment when it was redeemed. The former practice was adopted. Some customs further assimilated all perpetual and long-term leases to sales.³⁷ But what was long term? The custom of Normandy said thirty years, that of Brittany nine years.³⁸ Both were commonly used in drawing up individual leases. Further confusion was created when leases were established with low annual payments but heavy entry fines.³⁹ This problem was not confined to the customary regions. The *bail à fief* of Languedoc was remarkably flexible, as can be seen by the way in which the marquise de Lacapelle-Biron infeudated a demesne for an annual *cens* of one *denier*, eight chickens and eight capons, but with an exceedingly substantial entry fine of 5,000 *livres*. Payment of this sum was deferred until her death, when the tenant was to pay interest of 250 *livres* per annum.⁴⁰

Nothing, however, illustrates more clearly the problems posed by greater commercial fluidity than the development of *rentes constituées*. This curious form of property was largely the

³⁵ Pocquet de Livonnière, *Commentaire de la coutume d'Anjou*, 433–43. See 445–8 for the litigation provoked by these problems.

³⁶ Jean-Baptiste Garsonnet, *Histoire des locations perpétuelles et des baux à longue durée* (Paris, 1879), 540–7.

³⁷ Olivier-Martin, *Histoire de la coutume . . . de Paris*, i, 415–16.

³⁸ Piret, *La Rencontre chez Pothier*, 144.

³⁹ *Ibid.*, 118–23.

⁴⁰ Bastier, *La Féodalité au siècle des lumières*, 214.

result of restrictions on usury, which it got round by allowing a property owner to raise a capital sum in return for the payment of a perpetual rent.⁴¹ Technically this involved the purchase of an annuity by the other party. In reality it was a means whereby the provider of the annuity raised some capital by effectively mortgaging his or her property. The purchaser could not demand the return of the capital as then it would become a loan at interest, but could take action to sequester the property if the *rentes* were not paid. On the other hand, the provider or debtor could redeem the rent by returning the capital, a significant legal loophole open to abuse.⁴² From 1557, as a result of a famous judgment by the *parlement* of Paris, such *rentes* were largely treated as immovables: real estate rather than cash. The major consequence of this decision was to deprive seigneurs of their *droits de mutation* when such *rentes* were constituted, on the grounds that no alienation of the property in question had occurred.⁴³ When the Berrichon jurist Thaumassière turned to the issue over a century later he asserted that he had never known a seigneur of Berry who had claimed *lods et ventes* for *rentes constituées*. There were, however, he said, some customs which proceeded from an erroneous assumption that such *rentes* implied that the affected property had indeed been partly alienated — to the degree which corresponded to the nature and value of the rent! He noted that seven customs had been revised to make it clear that, if a holding which was already burdened with such a rent were subsequently sold, then

⁴¹ Paul Ourliac and J. de Malafosse, *Droit romain et ancien droit* (Paris, 1969), 397–8.

⁴² For the clearest explanation, see R.-J. Pothier, *Traité du contrat de constitution de rente* (Paris and Orléans, 1773), 53–5.

⁴³ Charles du Moulin, *Commentaire de la coutume de Paris* (n.p., 1539; 1691 edn), 335; Bernard Automne, *Commentaire sur les coutumes générales de la ville de Bordeaux et pays Bourdelois par feu M. Bernard Automne, avocat en la cour de parlement de Bordeaux avec le recueil des arrêts notables mis en abrégé par M. Antoine Boe avocat au même parlement, revus corrigés et augmentez . . . par M. Pierre Dupin avocat audit parlement avec la révision et les approbations de Maîtres Ledoux et Beaune anciens avocats au même parlement* (Bordeaux, 1737), 496; for a similar revision of the Burgundy custom in 1575, see Begat's *Coustumes générales du pays et duché de Bourgogne, avec les annotations de Monsieur Begat . . . & du Sieur Depringles . . . Reueues, corrigées, & augmentées de plusieurs arrêts, auxquelles on a adjouté les notes de M. Charles du Moulin*, ed. Jacques Auguste de Chevanes (Lyon, 1665), 160; Bacquet, *Les Œuvres de M. J. Bacquet*, ed. de Ferrière, 102, 104, 402; de Ferrière, *Corps et compilation de tous les commentateurs*, i, pp. x, lxxv; Claude Blondeau and Gabriel Gueret, *Journal du palais ou recueil des principales décisions de tous les parlements et cours de France sur les questions les plus importants de droit*, 3rd edn, 2 vols. (Paris, 1723), 217.

the value of the rent would be taken into account in the determination of the dues payable to the seigneur.⁴⁴ There was nothing in jurisprudence, Henrion de Pansey was to conclude,

which has caused more uncertainty and diversity than that dealing with *rentes*. As these immovables are legal fictions this was bound to be so. Every time men leave reality to walk on the quicksands of metaphysics, nearly every step will result in a fall.⁴⁵

The difficulties, however, were not metaphysical but the almost inevitable result of an attempt to reconcile feudal norms with the monetarization of property relationships.

Individual relationships were also affected by this development. Whereas rents had been originally attached to property rather than persons, this was no longer true by the seventeenth century. Both rights to revenues and the obligations to pay them became transferable to third parties.⁴⁶ This is appositely illustrated by the fate which overtook Charlotte, daughter of the Norman seigneur Louis de Gourmont, who in 1623 had acquired a fief in return for a *rente foncière* (in Normandy invariably a seigneurial rent) of 100 *livres*, using the fief and all his other property as collateral. By *partage* the fief went to his other daughter, who failed to pay the rent. A third party to whom the income from the rent had in the meantime been ceded took action against Charlotte's husband for half the arrears. Charlotte lost when the case went on appeal to the *parlement*, whose judges were unanimous in their view that she had an obligation 'solidairement' with her sister.⁴⁷ Such personal misfortunes, which were legion, merely hint at the way in which long and fragile chains of credit developed. These could come crashing down, engulfing even the wealthiest of families and contributing to the fact that debt was by far and away the single most common cause of civil litigation. The judicial sequestration of the *terre* and seigneurie of Hautvert from the Sieur et Madame de Holac and their son and heir generated 281 different claims on the estate between January 1695 and June 1731.⁴⁸

⁴⁴ Gaspard Thaumas de la Thaumassière, *Questions et réponses sur les coutumes de Berry* (n.p., 1691), 101.

⁴⁵ Henrion de Pansey, *Traité des fiefs de Dumoulin*, 195.

⁴⁶ Ourliac and de Malafosse, *Droit romain et ancien droit*, 397–8.

⁴⁷ Bibliothèque municipale de Rouen, MS Y 107, fo. 51.

⁴⁸ Archives nationales, Paris, V5 1294. The creditors included one duke, two marquises, one countess and the governor of the town of Nantes.

The evolution of both feudal perquisites and seigniorial rights into money rents of one sort or another which could themselves be ceded, sold or farmed out was one of the fundamental characteristics of the *ancien régime*. From substantial landowners who might collect thousands of *livres* in *lods*, to provincial clerics leasing out the rights attached to rural chapels, or petty seigneurs recycling the arrears of their dependants in order to keep them paying, the whole system was enmeshed in debt. It had little to do with capitalism and is much better described as a feudal rentier economy.

The Roman law traditions of the Midi, it may be observed, did nothing to resolve the tension between feudal law and commercial practice. On the contrary, as suggested earlier, Roman legal concepts such as the *droit de prélation* adapted to the feudal environment. The most obvious and fundamental illustration of this process is provided by the assimilation of the *bail emphytéotique* to the *bail à cens* or *bail à fief*.⁴⁹ More subtle was the shift in juristic thought away from the customary emphasis on the act of possession to the Roman idea of contract, which has led some historians to assume a modernization of legal practice. However, contractual language could be used, as already noted, to enshrine feudal rights. The fact that Du Moulin and those who followed him through to Pothier in the late eighteenth century described the *retrait féodal* as a straightforward commercial act of acquisition from the unfortunate purchaser does little to alter the fact that the exercise of this right was a peculiarly feudal one.⁵⁰ Some Romanists also made rather quixotic attempts to demonstrate how the fief, which had no place in Roman Law, might nonetheless be traced back to it.⁵¹

⁴⁹ Emphyteutic or perpetual leases had existed in the East before the Roman occupation and were associated with the development of uncultivated land where olives and vines were to be planted. The tenant usually paid a small due in the early years when returns were low and gained the right to transmit his holding to his heirs or even to sell it with permission of the lessor. If such permission was refused the latter was obliged to pay the tenant the price offered and to take back the property.

⁵⁰ Piret, *La Rencontre chez Pothier*, 114.

⁵¹ De Ferrière, for instance, fastened on the Roman distinction between the *plenum* and *non plenum*, the second of which separated the fruits and usufructs from the property itself and was divided into the *direct* and *utile*: Claude de Ferrière, *La Jurisprudence du Digeste de Justinien conférée avec les ordonnances royales, les coutumes de France et les décisions des cours souveraines*, 2 vols. (n.p., 1677), ii, 390–1.

The relationship of the Crown to the matrix of property rights may be described in three quasi-legalistic ways, although these were far from discrete areas in practice. First the king was the sovereign lawmaker with the power to legislate in general or to intervene in particular matters when it was deemed to be in the interests of the state to do so. He was also the source of all powers of justice, which he delegated to those who staffed both royal and seigneurial courts. Secondly the king was the most eminent seigneur in the realm, at the apex of the feudal hierarchy. Thirdly he was the guardian of the royal demesne, which was legally inalienable. We now turn to a consideration of the way in which the Crown used its various powers in the context of shifting legal practice and ideas.

III

ROYAL SOVEREIGNTY AND PROPERTY

The king rarely used his sovereign powers to make significant alterations to the laws governing property rights. The new civil and criminal law codes of Louis XIV's reign dealt overwhelmingly with procedure and were in the realm of public rather than private law. Perhaps the most significant reform which touched on private law before 1700 had been Charles IX's edict of 1567 prohibiting the Roman practice followed in the regions of the *droit écrit*, which allowed mothers to inherit from their children, and insisting that property acquired from the father should return whence it came.⁵² It was the mid eighteenth century before the government attempted further major reform of private law with its *ordonnances* on donations (1731), testaments (1735) and substitutions (1747); but all these developments were in the realm of family law, touching only obliquely on feudal property.

Of course the king was capable of using his power in capricious fashion, even if it impinged on seigneurial interests. He

⁵² *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), xiv, 221–4. The resistance to the edict was immense and it appears to have been little or badly enforced. René Choppin, *Œuvres*, 5 vols. (n.p., 1581), i, 42; Jean Du Fresne, *Journal des principales audiences du parlement depuis l'année 1623 jusqu'en 1722*, 7 vols. (Avignon, 1774), i, 407–8. Article 146 of the Code Michaud of 1629 reiterated that it should be observed 'even by the *parlements* of Toulouse, Bordeaux, Aix, where it is not practised': *Recueil général des anciennes lois*, ed. Isambert *et al.*, ii, 169.

had little compunction about overriding seigneurial protests in order to take land for royal buildings, although compensation was paid in the form of *rentes* on the royal domain.⁵³ It is equally possible to find the occasional example of the state intervening to limit the worse seigneurial abuses. Thus, in April 1681, steps were taken to prevent seigneurs and communities pressurizing tenants to insert clauses in their *dénombrements* waiving the rules that prescribed time limits for the payment of arrears.⁵⁴ Concern for the economic distress of some rural communities also led to a royal edict in April 1667 designed to protect them from the demands of soldiers, tax officials and seigneurs alike. Communities were empowered to recover communal land sold or alienated since 1620; seigneurs claiming the *droit de triage* on the common lands, or who had acquired this right since 1620, were to desist. Others were to show title of possession and, where this was confirmed, they were not to claim common rights in excess of the *triage*.⁵⁵ However, such edicts can readily be matched with those which emanated from a contrary concern about the infringement of seigneurial prerogatives. In 1698, the king singled out the way in which the Norman *baux à fief* or *à rentes* were being used to disguise sales which were subsequently completed by the repurchase of the rent, thus defrauding seigneurs of their *droits de mutation*. In 1666 the *parlement* of Rouen seemed to have more or less accepted this situation by declaring that the *treizième* (the Norman equivalent of *lods*) was not payable as long as the rents were not repurchased within a year and a day. The government now said that this should be extended to no less than thirty years, a truly conservative measure.⁵⁶

The king also used his sovereign authority to protect the property of individual seigneurs. This may be glimpsed by the way in which the prioress of the Abbey of Champchanoux in the *bailliage* of Montcénis, taking advantage of a visit of the king to Dijon in October 1682, obtained letters patent instructing the *parlement* to support her in obtaining new *reconnaissances* from

⁵³ Archives nationales, AD IV/5, 'Edit Du Roi Concernant les Droits prétendus par les seigneurs au sujet des biens acquis par le roi dans leurs justices et censives', Apr. 1667.

⁵⁴ De Laurière, *Recueil d'édits et d'ordonnances royaux*, ii, 169.

⁵⁵ 'Edit portant pouvoir aux habitants des paroisses et communauté du royaume de retour dans les usages, droits et biens communaux par eux vendus': *ibid.*, 87–8.

⁵⁶ *Ibid.*, 27–8.

her dependants for her extensive range of seigneurial rights and dues. Although, she said, her predecessors had enjoyed these rights without challenge, favourable treatment of the dependants was in danger of creating a bad precedent. The king ordered the *parlement* to instruct two notaries to secure the new *reconnaissances*; should the dependants refuse to co-operate they should be arraigned before the appropriate judges.⁵⁷ Claude Fyot, who had the advantage of being a *conseiller du roi*, *conseiller d'honneur au parlement* and abbot of St-Étienne de Dijon, also obtained similar letters. He sought help for his nephew Philibert, seigneur de la Mauchy, who had apparently lost his titles to this seigneurie which was at risk of being dismembered.⁵⁸

More significant perhaps is the way the Crown reacted when faced with problems caused by the monetarization of dues and *rentes* and their separation from real estate. In 1700 it began an investigation into the mounting litigation in the Dauphiné arising from the claim of those who owed *rentes* that, unless there was proof to the contrary, these were not feudal obligations and should be redeemable in perpetuity. The 'proprietors' — note the terminology of the edict — argued to the contrary that their revenues were indeed feudal in origin and had subsequently been converted into cash payments. Moreover their *terriers* or estate papers showed that their *cens* and *rentes* had long been recognized as *emphytéotiques*. The matter was not finally decided until 1708. A series of legal compromises allowed some repurchase of existing *rentes*, unless it could be shown that they had their origin in property leases. Those payable to the king for the demesne were, however, declared non-redeemable, as were smaller *rentes* if they had been contained in *reconnaissances* for the past hundred years — a decision which clearly disadvantaged the smaller tenants at the bottom of the feudal hierarchy. Moreover all *rentes* were to be redeemed within ten years. Henceforth all *cens* and *rentes* were to be treated as *emphytéotiques* and assumed to be attached to a piece of real estate in accordance with the *droit commun*.⁵⁹ The feudal predilections of the royal councillors were clear.

⁵⁷ Archives départementales du Côte-d'Or, Dijon, BII, 115/22, fo. 30.

⁵⁸ *Ibid.*, fo. 91.

⁵⁹ Archives nationales, AD IV/5, 'Édit du Roi concernant les cens et rentes at autres droits seigneuriaux et domaniaux en la province de Dauphiné', 22 Mar. 1708.

IV

JUSTICE AND PROPERTY RIGHTS

The idea that the king was the fount of all justice was reinforced from the sixteenth century by the idea that fief and justice had nothing in common. But the nexus between the possession of land and judicial property rights was never broken. Whilst it was always possible to find fiefs, particularly small ones, without powers of justice this did not alter the fact that justice remained, as the jurists continued to insist, patrimonial: a power dispensed by the king but bought and sold. Moreover the view that the possession of justice was either the most distinguishing feature or the most important attribute of a fief remained widespread. Gabriel Davot in his mid eighteenth-century commentary on Burgundian legal practice concluded that 'he who has the high justice may properly declare himself to be the seigneur of the place to which the justice belongs since a true seigneurie resides in its [powers of] justice'.⁶⁰ Pierre de l'Hommeau, whose study of French law written in 1605 was republished sixty years later, acknowledged that all justice depended on the king and that fief and justice had nothing in common. However, he went on to assert that the phrase 'no land without seigneur' was a reference to the *seigneur justicier*. The latter had an advantage over the feudal lord because 'he can call himself seigneur of the place where he has justice'.⁶¹ Logically enough, the second book of his treatise, which he devoted to seigneurial rights, begins by considering rights of justice.

Attachment to rights of justice was not confined to those who wrote about them. The desire to acquire seigneurial justice was certainly intense. A nice illustration, which can be multiplied many times, is offered by the competition aroused when the royal demesne of Belesta in Languedoc was put up for sale to the highest bidder in 1695. The first bid came from Jean Vidal, an inhabitant who offered 250 *livres* excluding the rights to justice. The consuls of Belesta then offered 600 *livres* for the demesne, together with its rights of high justice and all honorific rights. The seigneur, Pierre Ignace de Niort, began by offering 200

⁶⁰ 'Celui qui a la haute justice peut se proprement dire seigneur du lieu ou elle appartient puisque la véritable seigneurie consiste en la justice': Gabriel Davot and Jean Bannelier, *Traité sur diverses matières de droit françois à l'usage du duché de Bourgogne et des autres pays qui ressortissent au Parlement de Dijon*, 8 vols. (Dijon, 1751-67), ii, 373.

⁶¹ De l'Hommeau, *Maximes générales du droit français*, bk 2, 52-5.

livres for the *haute justice*, then 500 *livres* and finally 650 *livres*. He seems to have employed three different lawyers and the whole matter took over a year.⁶² Elsewhere others spent substantially more on acquiring such rights.

This may seem surprising given the highly variable, sometimes negligible, direct profits of justice, and the fact that the business of most seigneurial courts was little concerned with the arrears of the seigneurial tenants. What is often overlooked — particularly in calculations of seigneurial revenues — is the fact that rights of justice bestowed further advantages. Even those who had only powers of low justice — a relatively rare occurrence — acquired an array of economic rights and levers. These usually included the power to settle disputes over land, to claim as seigneurial property whatever did not belong to anyone else, notably land and unclaimed animals, not forgetting the seigneurial monopolies: mills, markets, fishing, fishponds, winepresses. The *seigneurs justiciers* of Maine, where the customs spelt out their rights in unusual detail, could collect fines from those who failed to produce their titles, levy up to 5 *sols* on goods which were more than eight days in the fief before being transported elsewhere for sale, and constrain subjects to use the fulling mill if they resided within three leagues. Although most customs were far less explicit, those of Maine offer an accurate reflection of seigneurial culture and expectations, even in the allegedly less seigneurial south. As Bastier remarks in his study of feudalism in Languedoc, in the minds of the *feudistes* seigneurial monopolies and tolls were intimately linked to their conception of seigneurial justice.⁶³

Seigneurial rights brought a combination of public and private authority as well as status. Even that most ardent critic of seigneurial pretensions, Charles Loyseau, who determinedly set out to show that seigneurial power was not of the same order as the public authority emanating from the Crown, conceded that 'justice is the form which animates and gives being to the body of the lordship'.⁶⁴ The Crown did little, if anything, to change

⁶² Archives départementales de l'Aude, Carcassonne, 67C 19.

⁶³ Bastier, *La Féodalité au siècle des lumières*, 101–2.

⁶⁴ Charles Loyseau, *Traité des seigneuries* (Paris, 1608), ch. 4, p. 18, cited in the introduction to Loyseau: *A Treaty of Orders and Plain Dignities*, ed. H. A. Lloyd (Cambridge, 1994), p. xx. These few pages of commentary by Lloyd provide a suggestive exposition of Loyseau's attempt to show that the French kingdom was not merely a 'feudal lordship writ large'.

this. Measures to ensure that seigneurs appointed duly qualified officers and brought their procedures into line with those of the royal courts did not amount to an attack on seigneurial prerogatives as such. On the contrary, royal legislation suggests that the Crown shared the culture which sustained these. In 1563, faced with the refusal of tenants to pay arrears and the lack of uniformity in the procedures for dealing with this, a royal edict declared that all *censives*, *rentes foncières* and other dues payable by virtue of a perpetual lease were subject to enforcement by the sequestration of the property on which they were owed. To avoid this a tenant would either have to pay the debt or to provide three years' arrears as a guarantee whilst legal proceedings were under way.⁶⁵ A century later the government cleared up doubts about its intentions in the context of the reforming ordonnance on the civil law. 'We do not wish', it intoned,

to exclude seigneurial judges from jurisdiction over all that which concerns the domains, rights and revenues, both ordinary and casual, for either fiefs or non-noble land or even the leases, subleases and fruits, or what is dependent on them, whether the case is pursued in the name of the seigneur or the *procureur fiscal*.⁶⁶

The devolution of powers of justice offers a sharp reminder that historians should be very wary about erecting a reified image of the state operating in some sort of detached way against the interests of the seigneurial class to whom these powers were devolved. This is well illustrated by the sad story of the community of Is-sur-Tille, thirty kilometres or so north of Dijon.⁶⁷ By the 1640s it had become thoroughly indebted to Fremyot, president in the *parlement* of Dijon and seigneur of four local seigneuries. The debt was liquidated by surrendering a substantial part of its communal rights — weights, measures, fishing rights, rights of justice and police — together with some woods. In 1667 the consuls of Is took legal action against Fremyot on the grounds that he had obtained the woods cheaply, subsequently making an excessive profit. They secured

⁶⁵ De Laurière, *Recueil d'édits et d'ordonnances royaux*, i, 432.

⁶⁶ *Recueil général des anciennes lois*, ed. Isambert *et al.*, xviii, 150.

⁶⁷ The following account is drawn from: Archives départementales du Côte-d'Or, 12F 8, 'Sentence du Sieur Bouchu Maître des requêtes, commissaire départi par S. M. pour l'exécution de ses ordres dans ladite province, 2 avril 1672'; 12F 8, 'Factum Avertissement pour les échevins et habitants de la Ville d'Ys sur tille . . . contre Dame Marguerite de Bretagne épouse de Pierre Baillet'; B10845, 'Reprise de Fief et Dénombrement de la terre et Seigneuie d'Is-sur-Tille, 9 août 1679 et 21 juillet 1688'.

a favourable ruling from the royal council by virtue of the legislation of that year permitting communities to recover what had been alienated since 1630. They were, however, obliged to compensate Fremyot's widow to the tune of nearly 21,000 *livres* — a very substantial amount. Her fief then passed into the administration of her second husband, Baillet, also a president in the *parlement* of Dijon, who took a very confrontational stance. Claiming rights of high, medium and low justice over the inhabitants of Is as *engagiste* or holder of the royal domain, he challenged their powers of administration and justice and asserted his own right to participate in the management of the communal assets. In 1675 he obtained a ruling from the *maître des eaux et forêts* that the inhabitants should pay him a third of the income from the sale of the communal woods. They were also forbidden to fish in the river. He also complained before the royal council about the endeavours of the inhabitants to usurp the rights of high justice and argued that in conformity with royal practice the matter should be referred back to the local judges. The king dispatched the affair to the intendant of Burgundy, Bouchu, to whom Baillet then submitted a long request in 1679 in which he intensified his attack by demanding a third of the revenues from the proceedings of justice. Bouchu confirmed the inhabitants in their rights of petty police, whilst pretty well conceding everything else that Baillet had demanded, such as the right to determine the days on which fairs would be held. The consuls were forbidden to alienate the communal land and were to pay the seigneur *droits de ventes* on sales since 1643. Some questions, including those pertaining to the communal woods, went on appeal to the *parlement* of Grenoble, because of Baillet's own position in that of Dijon. There followed two sentences favourable to the seigneurial interest. The first maintained the claim of Baillet's wife to the sales tax on all goods sold in the markets, leaving the town with only the rent from the stalls. The second condemned the inhabitants to pay Baillet a third of the proceeds from the sale of their woods, and ordered them to proceed to the *partage* and *triage* of the river with him.

Despite the remarkable efforts of the consuls and the excellent historical and legal claims to their communal properties which they published in full, and despite earlier favourable judgments from the *bailliage* court, the royal council and the

maîtres des eaux et forêts, the community lost. Baillet's case, on the other hand, was barely sustained by the legislation of 1667, which had restricted the seigneur's right of *triage* and explicitly ordered that alienations since 1620 should be returned. His argument, which he also published in full, depended on the highly dubious assertion that this legislation was incompatible with the great reforming ordonnance on the *eaux et forêts* of 1669.⁶⁸ Baillet also pointed to a series of judgments of the *parlement* of Dijon passed since the legislation of 1667 showing that the right of *triage* and to a third of the communal revenues belonged to seigneurs simply by virtue of their rights of justice. He further cited a judgment of 30 April 1629 which, he said, clearly established the right of *seigneurs hauts justiciers* in Burgundy to have a third of the communal properties in kind when these were situated within the 'enclave of their justice'. Having unpicked some of the decisions favourable to the inhabitants, he then produced the tautological argument that *seigneurs hauts justiciers* had rights over forests and rivers within their justice which must by definition have belonged to communities, for otherwise the seigneurs could have no claim to them! Even if the community proved that they had possession for a thousand years (as the consuls had argued), it would not alter the rights of seigneurs to the *triage*. Moreover, rights of justice could never be held in *franc-aleu* (that is, allodially) as the community claimed, even if some customs permitted fiefs to be thus held. As seigneur de Tilchâtel, he had a general and unlimited justice over the town and its territory. This in turn underpinned his claim to the sales taxes and market rights.⁶⁹

This episode casts some doubt on Gallet's view about the protection afforded by the legislation of 1669 as far as the *triage* was concerned. More fundamentally it shows how the symbiotic relationship between justice and property was reproduced

⁶⁸ The relevant articles of the ordonnance on the *eaux et forêts* are articles 2–5 in *titre 25*, dealing with the woods, meadows, marshes and other properties belonging to the communities. A seigneur who had made a free concession of such properties to a community was entitled to a third of them, as long as the other two-thirds sufficed for the parish. If a community held its property on payment of rents or dues, or performed services for the commons, or recognized its dependence on the lord, then the seigneur could only have the use of the properties and firewood. It was not possible to have such use and also claim the *tiers*.

⁶⁹ Archives départementales du Côte-d'Or, 12F 8, 'Sommaire réponse de Monsieur le Président Baillet à l'advertissement que les échevins et habitants d'Is-Sur Tille ont communiqué le 21 septembre 1680'.

by virtue of the ability of the seigneurial class to build up its own case law. It was a profoundly feudal jurisprudence which could be utilized to sidestep the effects of less favourable royal legislation. This was, in any event, intermittent and a long way from constituting an assault on seigneurial powers of justice. Indeed, any such thing would have been incompatible with the fact that the power of the monarchy still owed much to feudal assumptions and practices.

V

THE ROYAL DIRECTE UNIVERSELLE

It is in this context that the royal claim to a universal *domaine direct* must be assessed. This was most famously articulated in clause 383 of the celebrated Code Michaud of 1629. All *héritages* that were not dependent on other seigneurs were deemed to be dependent on the king.⁷⁰ The fiscal motivation for this pronouncement was made explicit by the preceding sentence, which said that all property governed either by custom or by the *droit écrit* was subject to *lods*, *ventes*, *quints* and other ordinary rights. This clause was the result of policies that stretched back at least to the reign of Henry IV and the endeavours of Sully to recover the royal domain. The activities of one Étienne Goutte, who contracted with the king in 1616 to investigate and recover lost regalian rights in Languedoc and Guyenne, aroused the wrath of both provincial Estates and *parlements*. He was authorized to require all property owners to produce their titles and papers, and to pay the appropriate dues unless they could show exemption.⁷¹ This was perceived as a direct challenge to the traditions of the regions of the *droit écrit*, which did not recognize the principle of 'no land without seigneur'. The *parlement* of Bordeaux and the Estates of Languedoc repeatedly took their case to the royal council between 1616 and 1625 but, not surprisingly, they lost on each occasion.⁷² In 1627 the Crown offered a minor concession. In May of that year the

⁷⁰ *Recueil général des anciennes lois*, ed. Isambert et al., xvi, 317.

⁷¹ A. Galland, *Du franc-aleu et origine des droits seigneuriaux, avec les lois données au pays d'Albigeois par Simon comte de Montfort, l'an 1212: ensemble les usages et coutumes données par le roi S. Louis à la ville d'Aigues-Mortes, l'an 1246, et les anciennes coutumes de Lorris données par le roi Louis le Gros* (Paris, 1637), 36, 211.

⁷² *Ibid.*, 213–15.

council, notwithstanding the general principle that all land not held of others was *ipso facto* held of the king, agreed that the *franc-aleu* would be admitted in the province of Languedoc so that those holding non-noble land, subject to the *taille*, would not be obliged to prove its allodial status. Those, however, who held lands in *franc-aleu noble* (that is, a holding free of dues but with rights of justice or dependent fiefs or *censives*) could not claim such prescriptive rights. In fact, for the bigger landowners of Languedoc the concession merely made explicit the government's resolve to assert its own feudal rights over them. Unsurprisingly, when the Crown returned to the offensive in 1629 it generated decades of conflict and litigation. Finally, in 1683, in return for a modest payment of 120,000 *livres*, the Estates of Languedoc did secure the revocation for the province of all the earlier edicts in relation to the *droits de mutation*. The Crown assured the Estates that it was not its wish to transgress the customs of Languedoc which were founded on the principle that all holdings were by nature free and assumed to be exempt from all *charges et servitudes*, unless there was clear title or an 'undoubted and recognized custom'.⁷³ In August 1692, whilst confirming a general tax on properties held in *franc-aleu*, Languedoc was exempted from its provisions, as were some customary areas where allodial holdings were well established.⁷⁴

Although the motivation for the Crown's claims was clearly fiscal, stemming as it often did from the parlous state of royal finances, the premise, argument and language employed to justify them were, equally clearly, feudal. The most notable tract produced on its behalf — though by no means the only one — was Galland's, *Du franc-aleu et origine des droits seigneuriaux*, published in 1637. Up to a point this lengthy treatise was simply a piece of legal positivism resting on decisions of the Crown in order to justify its own claims. But Galland was also able to show, by reference to customs and the jurisprudence of the courts, that, in the customary regions, free-holding without a title did not exist. Although several customs did dispense with the *droits de mutation*, they did so without making the holdings

⁷³ *Recueil des édits, déclarations, arrêts du conseil et du parlement de Toulouse concernant l'ordre judiciaire*, 6 vols. (Toulouse, 1782–4), i, 525–6; M. A. Rodier, *Questions sur l'ordonnance de Louis XIV du mois d'avril 1667 relative aux usages des cours de parlement et celui de Toulouse* (Toulouse, 1761), ii, 135.

⁷⁴ Rodier, *Questions sur l'ordonnance de Louis XIV*, ii, 137–8.

allodial. The few that established allodality to the prejudice of the king, he observed, were insignificant and without vigour. Anyway, Galland argued, such customs could only bind individuals and not the king, whose rights were unaffected.⁷⁵ He also engaged in some fairly conventional arguments about the differences between fiefs, *censives* and *franc-aleux*. The only significant distinction between a fief and an allod was that the former paid dues because of its inherent nature whereas the latter did not.⁷⁶ Moreover, an allod may be free of dues but cannot be free of seigneurial justice — an argument that we have already encountered in a different context.⁷⁷ In any event, Galland concluded, feudal dues are not servitudes but marks of honour.⁷⁸

Galland also turned to Languedoc and its history. He did acknowledge that once upon a time property and *héritages*, having been given for the common enjoyment, did not have private seigneurs, and that this liberty had later been usurped.⁷⁹ He also accepted that fiefs were not established by the Romans but by the French from the beginning of their Empire.⁸⁰ As fiefs became patrimonial the seigneurs were indemnified with *droits de mutation*.⁸¹ He pointed out that even the king originally paid these on land held by him of others. But he was on strong ground in arguing that in the Albigeois and the *comté* of Castres, erected in 1356, feudal dues from the Middle Ages onwards were paid on mutations to the king. He was on equally good ground in suggesting that from 1212 the Albigeois, the *vicomté* of Beziers, and Carcassonne were governed by the custom of Paris as far as fiefs were concerned.⁸² This flowed from the infeudation of the territories of the region by Simon de Montfort, who himself did homage to the king in 1268 for the Albigeois, Carcassonnais and Narbonnais. Galland also argued that *lods et ventes* had always been paid to the seigneurs of Montpellier, and rather gleefully pointed to some decisions of

⁷⁵ Galland, *Du franc-aleu et origine des droits seigneuriaux*, 100–8.

⁷⁶ *Ibid.*, 14.

⁷⁷ *Ibid.*, 12.

⁷⁸ *Ibid.*, 53.

⁷⁹ *Ibid.*, 3.

⁸⁰ *Ibid.*, 51.

⁸¹ *Ibid.*, 7.

⁸² *Ibid.*, 142, 163–87; a modern study which confirms Galland's interpretation is Pierre Timbal, *Un conflit d'annexion au moyen âge: l'application de la coutume de Paris au pays d'Albigeois* (Toulouse, 1950).

the *parlement* of Toulouse from the 1530s which had given preference to the *retrait féodal* over the *retrait lignager*.⁸³

The representatives of Languedoc were in some difficulty in responding to the claims of the royal apologists because of their own attachment to feudal ideas and practices. As noted earlier, Roman legal concepts, rather than laying the basis for any clear notion of property rights, had been assimilated into feudal culture. Therefore, despite utterances about all things having once been free, the jurists of Languedoc conducted their resistance to royal claims within feudal parameters. This emerges very clearly from an undated tract from Louis XIV's reign in which the editor set out in two columns the arguments employed by the farmer-general of the royal demesne on the one hand and the syndic of the Languedoc Estates on the other. The tax-farmer began by posing the general question of 'whether Languedoc was in *franc-aleu*'. He then identified three particular issues: whether seigneurs who owed fealty and homage to the king should pay *droits de mutation*; whether these rights were payable for mutations on royal demesne held by the seigneurs; and how the thirty-year prescription for arrears should be applied.⁸⁴ The syndic replied by saying that *lods et ventes* were not intrinsic to the nature of a fief and that, anyway, in Languedoc a *feudatarius* was not the holder of a seignury but of a *fonds rural*, in fact an *emphytéose* who paid the *cens*.⁸⁵ There followed a disquisition about the nature of a fief and the way in which the *lods* lapsed after thirty years of non-payment. The syndic finished on a rhetorical note by saying that it was ridiculous for the farmer to claim that all the great officers of the major courts and financial bureaux of Languedoc were conspiring to defraud the king of his rights.⁸⁶ What of course they were defending — barely veiled by the legal terminology — was their freedom from dues payable to the king which they nonetheless continued to collect from their own dependants. Although this was certainly not a sound basis for any sort of attack on feudal property as such, the institutions of Languedoc were powerful enough to conduct an effective campaign in defence of their privileges.

⁸³ Galland, *Du franc-aleu et origine des droits seigneuriaux*, 230. The *retrait lignager* was available to members of a lineage wishing to recover alienated patrimonial holdings. By the seventeenth century it took precedence over the *retrait féodal*.

⁸⁴ Archives départementales du Tarn, Albi, A 48, pp. 59–60.

⁸⁵ *Ibid.*, 61–2.

⁸⁶ *Ibid.*, 69.

VI

THE ROYAL DEMESNE

As the preceding analysis suggests, the question of the Crown's eminent feudal rights was bound up with its management of the royal domain. Here too the same combination of fiscalism and feudalism was apparent. In theory the demesne — defined in 1566 as that which was incorporated to the Crown or had been administered by receivers and royal officers for ten years — was inalienable, except for the *appanages* given to younger sons of the king.⁸⁷ The Crown even declared that in future there were to be no alienations by infeudation, or through lifetime, long-term or perpetual leases, but only by *fermage*, that is short-term commercial leasing.⁸⁸ Such a policy proved quite unrealistic, and in reality the demesne was constantly alienated, repurchased and resold on a variety of terms. Although it was repeatedly stated that such sales were made 'in perpetuity and incommutably', the phrase was pretty meaningless given the assumption that the demesne was inalienable and the fact that fealty and homage were retained by the king. Periodically the Crown cashed in on its assets by finding new purchasers both to compensate the existing holders and to pay an additional sum to the Crown. This contributed to an inflation in the price of demesne property that was frequently quite stunning. The demesne of St-Sauveur-Landelin in Normandy was alienated in 1622 to the sieur de Liancourt for 212,000 *livres*. In 1645 it was resold to Roger Duplessis who had to buy out Liancourt and find a further 85,000 *livres*.⁸⁹ Significantly enough the vexed seigneurie of Is-sur-Tille reveals a similar picture. Claude Fremyot had originally paid 2,276 *livres* in the sixteenth century but was deprived of the property in 1605. The family recovered it in 1633, paying the royal commissioners 4,000 *livres*, and over 11,000 *livres* to reimburse the previous *engagiste*. In 1641 the Crown resold the seigneurie for a further 6,363 *livres*, 12 *sols* and 9 *deniers*, plus 11,960 *livres* payable in compensation to the Fremyot. Although the family recovered the seigneurie within months, it then cost them no less than 19,045

⁸⁷ *Recueil général des anciennes lois*, ed. Isambert et al., xiv, 185–6.

⁸⁸ *Ibid.*, 188.

⁸⁹ Archives nationales, Q 3 238, 'Domaines aliénés généralité de Caen'.

livres to do so.⁹⁰ It was no wonder that the seigneurs sought to recoup their costs at the expense of the community.

Evidently this process could not go on endlessly, so the Crown resorted to extracting cash payments in return for confirmation of the rights of existing *engagistes*. The sums involved were frequently very substantial. As the result of an edict of 1672 one Norman family paid no less than 10,197 *livres* for confirmation of their rights in 258 acres of royal forest.⁹¹ A further edict of 1702, along the same lines, cost the Comte de Toulouse just over 99,000 *livres* for confirmation of his lucrative right to nominate to the offices of several intermediate and lesser courts in Normandy, and to secure the associated rights and taxes.⁹²

During the years of the Fronde the government seemed to lurch from one expedient to another, first infeudating its rights of mutation, then waiving them in return for a year's revenue, before resorting to an enforced sale of demesne properties which guaranteed the purchasers thirty years of peaceful possession.⁹³ On the accession of Louis XIV action was taken to assess the damage and revalue the *censives*, seigneurial rights and *droits de mutation* in order to resell them to the highest bidders. Those who held parts of the demesne found their titles subject to close scrutiny.⁹⁴ In 1665 the *chambre des comptes* of Paris was given exclusive powers to recover lost feudal dues and to deal with those who claimed exemptions.⁹⁵ Amongst the victims were the members of the *parlement* of Brittany and the provincial *chambre des comptes* who, in January 1667, were ordered to pay *droits de mutation* for land dependent on the king which they had acquired either by purchase or by succession and notwithstanding an exemption granted in 1659.⁹⁶

Yet this should not mislead. Although there is evidence of a new determination to maximize revenues, reduce losses,

⁹⁰ Archives nationales, Q 1 158 29, 18 Sept. 1778.

⁹¹ Archives nationales, Q 3 238, 'Domaines aliénés généralité de Caen'.

⁹² *Ibid.* The courts were the *présidial*, *bailliage* et *vicomté* of Coutances, the *vicomtés* of Gauray, Grandville, Barfleur, Cherbourg, the *vicomtés et bailliaages* of Valogne, St-Sauveur-le-Vicomte and St-Sauveur-Landelin.

⁹³ Archives nationales, AD IV 5, 'Edit Du Roy Donné à Paris au Mois de mars 1645'; de Laurière, *Recueil d'édits et d'ordonnances royaux*, ii, 16–18, 62–4.

⁹⁴ Archives nationales, AD IV 5, various; Renaudon, *Traité historique et pratique des droits seigneuriaux*, 312–13.

⁹⁵ Archives nationales, AD IV 5, Déclaration du roi, 4 Nov. 1665.

⁹⁶ Archives nationales, 13 Jan. 1667; this edict was reprinted in 1752.

systematize procedures and improve the administration of the demesnes, particularly in order to reduce the damage inflicted on royal forests by both seigneurs and peasant communities, there was no fundamental change in the practice of farming out the royal rights to private financiers. In 1666 the consortium headed by François Euldes acquired the rights to demesne revenues throughout a large part of the realm, together with the revenue from all fines payable in all its courts and jurisdictions. The financiers were charged with recovering lost royal dues including the valuable *droits de mutation*. Late in 1669 a new lease was negotiated with another consortium headed by the non-existent Claude Vialet which included the proceeds from two-thirds of all seigneurial rights valued at more than 2,000 *livres* and from the cutting of timber. In return the consortium was expected to spend 50,000 *livres* on major building repairs. It also acquired in short order the rights to the *tiers et danger* (a third and a tenth of the revenues) from the woods in the hands of individuals in Normandy, the taxes payable by royal legal officers in the same province, and those payable by the clerks of the *parlements* of Brittany, Provence, Toulouse, Bordeaux and their inferior jurisdictions.⁹⁷

During the 1690s the king, having squeezed what was possible out of the alienation of tolls, market rights, ferry rights, and so on, extended the range to moats, ramparts, mining rights, weights and measures, and the inspection of linen cloth. At the same time he proceeded to a further sale of estates and seigneuries and the resale of all those previously alienated by an edict of 1672, together with all the dependent *droits de mutation*. The right of nomination to the ordinary courts and the profits from these were to be infeudated and held by the *engagistes* as 'incommutable property'. *Fiefs de dignité* were to be sold to the highest bidders (along with their rights of justice), the king retaining only fealty and homage. Should this package fail to secure the necessary purchasers the king would reserve the principal seat (*chef lieu*) of these fiefs and infeudate the dependent parishes separately. Furthermore those who held non-noble

⁹⁷ Archives départementales du Calvados, Caen, A 102, 11 Nov. 1669; A 103, 16 Sept. 1666. Further information is provided about the affairs of this consortium by Dessert, *Argent, pouvoir et société au grand siècle*, 163. According to Dessert, Vialet's lease did not begin until January 1670. For a list of the consortia involved in the domain, see 448-9.

lands within the area dependent on the king were permitted to turn them into fiefs on condition that they were held in fealty and homage from him and paid the seigneurial dues at subsequent mutations. The king renounced his right to reclaim the alienated demesnes for thirty years.⁹⁸

By the autumn of 1696 the Crown was complaining that, despite favourable terms in the sale of March 1695, there were demesnes for which no offers had been made.⁹⁹ Part of the problem, it believed, was that the existing *engagistes* did not have the necessary titles to ensure their reimbursement. The Crown therefore offered to abandon demesnes to those who presently held them for a money payment in proportion to the benefit enjoyed. Alternatively the *engagistes* could sell their properties back to the king! The proposed alienation and infeudation of rights of justice at parish level caused even greater problems because it involved the dismemberment of seigneuries. Amidst confusion the edict was suspended in 1700. Two years later the Crown tried again, instructing its agents to proceed, subject to some qualifications, with the sale, alienation and infeudation in the form of 'incommutable property' of the justices and seigneuries of the parishes, *prévôtés*, *vicomtés*, *châtellenies* and other ordinary jurisdictions. These were to be detached from their *chef lieu* and to include rights of patronage, hunting and fishing, and other useful and honorific rights belonging to the *seigneur haut justicier*.¹⁰⁰ The following year, rights of justice over hamlets and outlying settlements were also alienated.¹⁰¹ Resistance from judges in the *parlements* to the consequent creation of new legal offices and from the *bureaux des finances* responsible for registering the new contracts led to the temporary suspension of this edict as well. By 1715 the government had a new complaint: those acquiring the justices and seigneuries were including in their contracts the *droits de rachat*, *relief*, *quint et requint* and other dues which belonged to the king. The resulting litigation had produced conflicting judgments. It had not, however, been the intention to alienate the rights

⁹⁸ Archives départementales du Tarn, A: 'Edit du Roy qui ordonne la vente et revente des domaines de Sa Majesté, avril 1695'; 'Edit portant règlement pour l'aliénation des petits domaines du Roy, mars 1695', in *Recueil général des anciennes lois*, ed. Isambert *et al.*, xx, 237.

⁹⁹ De Laurière, *Recueil d'édits et d'ordonnances royaux*, ii, 285.

¹⁰⁰ *Ibid.*, 326–8.

¹⁰¹ *Ibid.*, 333–4.

dependent on the king, as was shown by his retention of the *chef lieu*. The Crown now explicitly reserved the rights of mutation payable on its dependent fiefs. Purchasers were forbidden to appropriate them even in parishes where they had acquired seigneuries.¹⁰²

The Crown thus proposed one expedient after another in an endeavour both to profit from and to cope with the pressures that flowed from a monetarized feudalism. In the process the king became the feudal *rentier* par excellence. The royal instructions to François Euldes in 1666/7 make the point clearly. The farmer-general was to retain in future 'a perfect familiarity with our said demesnes' and the *héritages*, rights and dues, and other things of which they were composed. *Papiers terriers* (estate surveys) were to be drawn up so that an *état général* of all the demesnes, alienated or otherwise, could be made. The treasurers were to begin by making *états particuliers* in each jurisdiction of all seigneuries and other demesne lands including *censives*, together with their rights of justice and dependent rights and dues. What was required in other words was a vast *dénombrement* of the royal demesne founded on many smaller ones.¹⁰³

The project was in some ways grandiose. With the exception of the forests, where the Crown and its agents did acquire an extraordinary set of detailed records based on measurements, descriptions and plans of a new kind, the results must have been patchy. Yet the investigations did become more thorough, the procedures for the redemption and resale of the demesnes became more uniform, and many felt the weight of them. In 1671 the commissioners responsible for drawing up the required *papier terrier* issued a menacing general order to holders of the demesne in the *comté* of Toulouse and in the jurisdiction of the *bureau des finances* of Montpellier requiring them to ensure that their declarations of homage were duly performed and recorded together with the *dénombrements* of their properties.¹⁰⁴ An extremely prescriptive set of instructions followed, explaining how these were to be drawn up. Fiefs were to be itemized separately, followed by a list of rights of justice, rights to institute

¹⁰² *Ibid.*, 497–9.

¹⁰³ *Ibid.*, 90–3.

¹⁰⁴ The following account is drawn from the Archives départementales de l'Aude, 2E 111/1.

officers and seigneurial dues of various sorts, and a description of the seigneurial house, mills and forges. All subfiefs and the feudal dues payable to the king were to be declared with details of how such properties had been acquired — whether by donation, *partage*, purchase or exchange — over the previous thirty years. The *engagistes* were given eight days to present their papers to the appropriate bureau at either Carcassonne or Toulouse.

An even more prescriptive set of requirements was issued in January 1672, so clearly some people had not complied. One victim was a certain Pierre François de Rahou, seigneur of Jouarret and co-seigneur of La Force, who had been harassed, rightly or wrongly, by the agents for the demesne for many years. In 1638 they had unsuccessfully taken legal action against him and he had been upheld in his noble tenure of 80 *setérées*¹⁰⁵ of land in the jurisdiction of Montréal, to the west of Carcassonne. The *procureurs du roi* and the consuls of Montréal were constrained not to bother him, but in 1644 he was in trouble again for allegedly failing to perform the formalities of homage and *dénombrement*. On that occasion he had been instructed to declare this at the church door, to the sound of the trumpet. In 1672, however, he received an order to appear in person within fifteen days and duly prepared his *dénombrement*. It showed that he held a fief and *terre noble* from the king by virtue of the latter's title to the *comté* of Lauragais. He had inherited this property from his father. It consisted of high, middle and low justice, a seigneurial house, gardens, *terres nobles*, *censives* and seigneurial rights. He declared that he was

the sole seigneur of the place, *terre*, *métairie* and *terre noble* of Jouarret in which there are no inhabitants except the *métayers* who cultivate the *terres nobles* and a barn for their lodging, a garden, a meadow and field, in all making sixteen *setérées* of land.

He then went on to itemize other *terres nobles* and twenty small pieces of land of which none was more than a *setérée* in size. At La Force he shared the rights of high, middle and low justice with the king, and modest revenues from his *censitaires* payable in grain, money and hens. He claimed the right to the *lods et ventes* dependent on this fief. He produced a further *dénombrement* in April 1672 for *terres nobles* in the *comté* of Carcassonne in the enclave of the *châtellenie* of Montréal, also dependent on

¹⁰⁵ 1 *setérée* = roughly a third of a hectare or four-fifths of an acre.

the royal demesne and also inherited from his father. The rights of justice here belonged to the king. Rahou then listed in similar detail the composition of this holding and the *cens* payable by his *emphytéotes*.

This was not good enough for the commissioners, who took action against him. He protested vainly that he had publicized his *dénombrement* three times at the church after mass, and had submitted it to the seneschal of the Lauragais, as well as the bureaux at Toulouse and Carcassonne. In 1672 he paid 1,200 *livres* plus tax as a result of the Edict of March requiring a year's revenue from *engagistes*. Two years later he was asked to justify his exemption from the *droit de franc-fief*, payable by commoners who held noble land. In 1693 he was fined 160 *livres* for failing to comply with royal legislation on *franc-fiefs*. The authorities clearly did not fully accept the claim to noble title, except perhaps when it suited them. For, a year later, Rahou was charged 32 *livres* and 14 *sols* in lieu of his obligation to serve in the now defunct feudal levy and, in 1696, a further 60 *livres*. In desperation perhaps, he offered the king 600 *livres* in return for the infeudation of all his possessions and its attendant rights of justice. It is not clear what, if any, response was forthcoming but in December 1714, many years after Rahou's death, the revenues, rents and tithes from the seigneurie at La Force were sequestered by the *bureau des finances* for another alleged failure to perform fealty and homage.

VII

CONCLUSION

The traditional picture of a progressive absolutism bearing down with the help of the jurists on a backward seigneurial class, yet reluctant to interfere with their property rights, is almost a mirror image of Louis XIV's world. The most absolutist feature of royal policy was the claim to a universal *domaine direct*, and this, by definition, was not an anti-feudal posture. On the contrary, it can be seen that the Crown anticipated the work of the eighteenth-century *feudistes* on a grand scale. By virtue of its own example and because of the very material pressure it imposed on its own vassals, who then replicated the same policies vis-à-vis their dependants, the Crown, it may be suggested, played the leading role in what historians used to

describe as the feudal reaction. As has been recognized for some time, if this phenomenon existed it began much earlier than the last half of the eighteenth century.

Like all lesser seigneurs, the Crown was confronted by a world of very messy property rights which had resulted from the growth of a land market, money rents and dues, and the widespread use of land as collateral to raise cash. These developments sat extremely uneasily in the context of feudal restrictions on the free disposal of property which inhibited the emergence of an idea of absolute property rights. Both seigneur and vassal or usufructuary had rights in any given piece of property. On the other hand the monetarization of feudal perquisites, rents and dues reinforced the marked tendency towards a rentier mode of exploitation into which they were readily assimilable. The king was the greatest rentier of them all, exploiting his feudal revenues to the maximum.

Even if we concluded that such developments did distort or modify feudal concepts of property (which itself assumes some pristine or other notion of them), these remained inseparable from the power relationships of absolutist France. The tendency towards the theoretical separation of fief and justice was arrested by a growing insistence on the patrimonial nature of justice and the rights that went with its possession. The monarchy, its vassals and their dependants remained bound together, despite evident tensions, in a recognizably feudal hierarchy. A major reason why jurists continued to expound on feudal law at very great length, down through the eighteenth century, was that it was this law which regulated not only the relationship between seigneurs and peasants but also those between members of the seigneurial classes themselves. Although jurists might attack seigneurial excesses, there was never a hint that the key underpinnings of the feudal hierarchy were under significant threat: fealty and homage; the production of *dénombrements* and *reconnaissances*; and the exercise of devolved and patrimonial justice.

This helps to explain why the fear, which did exist in some quarters, that the monarchy might establish a seigneurial monopoly or despotism failed to generate an alternative conceptual framework.¹⁰⁶ Most strikingly the defenders of the

¹⁰⁶ See Harold A. Ellis, *Boulainvilliers and the French Monarchy: Aristocratic Politics in Early Eighteenth-Century France* (Ithaca, 1988), 36–8, for a perceptive commentary on fears of seigneurial despotism.

allodial traditions of Languedoc did not build on them to construct a coherent notion of absolute property rights. A defence of absolute property rights was logically the best defence against royal claims to the universal *directe*. Yet the lawyers and judges of the Midi barely got any further than a defence of provincial privilege and a demand for exemption from the payment of royal *droits de mutation*. Roman law traditions, which, conceivably, might have been put to a different and more radical purpose, had long since been assimilated to feudal ideas and practice. This was not really surprising given that the southern *parlementaires*, like their counterparts in Burgundy, were also property owners, themselves dependent on a feudal-rentier mode of exploitation. Put crudely, the jurists of both north and south developed a jurisprudence that reflected the economic interests of the feudal-rentier class to which they — and the monarchy — belonged.

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APPENDIX

GLOSSARY OF TECHNICAL AND FRENCH TERMS

bail: lease.

bail emphytéotique: perpetual lease; see n. 49.

bailliage: intermediate royal court and/or its jurisdiction.

bureaux des finances: the bureaux of the treasurers of France established in each *généralité*.

cens: most common annual seigneurial due payable in kind, cash or both by the holders of *censives*.

censitaires: holders of *censives*.

censives: the most common appellation for non-noble but dependent tenures. Usually considered to be the lowest rung of the feudal hierarchy, such tenures were almost universal.

chambre des comptes: 'sovereign' court of accounting with particular responsibility for the royal demesne.

dénombrement or *aveu et dénombrement*: a detailed description of the composition, dues and obligations of a fief to be provided by a new vassal to his lord within forty days.

directe: see *domaine direct*.

domaine direct: right of superiority over a holding, normally bringing both honorific rights and material perquisites from the possessors of the *domaine utile*.

domaine utile: the possession, enjoyment and use of a dependent property and associated rights held on condition of acknowledging the superiority and rights of the person holding the *domaine direct*.

droit commun: literally common law, but a term which eludes simple definition given the fact that there was no such thing in France. For a minority of jurists the essence of French Law was to be found in Roman concepts and notably in the works of Justinian. For others it was a set of principles which could be derived from the ensemble of French customs and for whom the custom of Paris might or might not act as a prime guide. Although Louis XIV established university professors of French Law the ambiguities remained.

droit de prélation: right of pre-emption derived from Roman precepts.

droit de triage: the right claimed by seigneurs where they or their predecessors had given property without obligation to rural communities in order to recover a third of it.

droit de ventes: see *lods et ventes*.

droit écrit (written law): term used to distinguish the Roman Law from customary law, despite the fact that French customs were also written down by the seventeenth century.

droits de mutation: dues payable to the *seigneur direct* on the transfer of a fief by sale or donation and, in some regions, by succession; see pp. 66–7 above.

eaux et forêts: see *maîtres des eaux et forêts*.

emphytéotiques, *emphytéose*: see *bail emphytéotique*.

engagiste: holder of part of the royal demesne.

feudistes: legal experts called in by seigneurs to research and maximize seigneurial revenues.

fiefs: dependent holdings held by virtue of the performance of fealty and homage to the holder of the *domaine direct* and on payment or performance of specified obligations. Once restricted to *fiefs de dignité*, the distinction between fiefs and non-noble tenures had become blurred as had the distinction between feudal and seigneurial dues.

fiefs de dignité: fiefs with an honorific title, notably baronies, *comtés*, marquisates and duchies.

franc-aleu: land held freely — that is, without feudal or seigneurial obligations.

héritage: a synonym for immovable property, but carrying a sense of hereditary rights.

lods et ventes: strictly speaking a payment due to the *seigneur direct* upon the sale of dependent but non-noble land, usually one-sixth of the sale price and analogous to the *quints* paid on the sale of fiefs. But the confusion between fiefs and other dependent property undermined this distinction in practice.

maîtres des eaux et forêts: the most important middle-ranking officers with administrative and judicial authority over matters pertaining to the rivers and forests of the royal demesne.

métairie: farm holdings, usually with buildings and requiring a plough.

métayers: usually sharecroppers, but in some parts of France virtually wage-workers taken on for a year with some share in the harvest.

noblesse de robe: nobles who had acquired their status as the result of holding offices in the higher reaches of the royal administration. This might be either hereditary or personal nobility; the former usually required three generations of service.

parlement: 'sovereign' law court.

partage: division of properties, usually in family successions.

procureur fiscal: the most important officer in seigneurial jurisdictions, although in many smaller ones his functions had been reduced to ensuring the collection of seigneurial dues.

quints: a potentially substantial *droit de mutation* payable on the sale of a fief, usually a fifth of the sale price.

rachat or *relief*: common *droit de mutation*, paid on the transfer of a fief, usually a year's revenue.

reconnaissance: an itemized list of holdings and associated seigneurial obligations provided by a tenant for his seigneur in recognition of them and of his dependence.

rentes constituées: see pp. 69–71 above.

rentes foncières: property rents strictly speaking of a commercial kind but frequently difficult to dissociate from seigneurial dues.

retrait censuel: according to some jurists a right analogous to the *retrait féodal* enabling seigneurs to recover *censives* which had been sold.

retrait féodal: procedure for the recovery of improperly alienated feudal property on payment of compensation to the current holder.

retrait lignager: analogous to the *retrait féodal* but for the recovery of alienated family property.

seigneurs hauts justiciers: seigneurs with rights of high justice.

taille: principal land tax from which nobles throughout most of France were exempt. There were, however, significant areas of the south, including Languedoc, where exemption was determined by the status of the land rather than the landholder. See *terres nobles*.

terres nobles: a term often used very loosely but which strictly speaking refers to land subject to noble inheritance practice. The distinction between noble and non-noble land in Languedoc was important because it determined whether or not the *taille* was payable.

triage: see *droit de triage*.