LIBERTIES & COMMUNITIES IN MEDIEVAL ENGLAND

Collected Studies in Local Administration and Topography

BY

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To

MY FIRST AND BEST TEACHERS

MY FATHER AND MOTHER

We begin our public affections in our families. No cold relation is a zealous citizen. We pass on to our neighbourhoods and our habitual provincial connections. These are inns and resting-places. Such divisions of our country as have been formed by habit, and not by a sudden jerk of authority, were so many little images of the great country, in which the heart found something which it could fill.

EDMUND BURKE

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PREFATORY NOTE

The contents of this book have appeared in various contexts in the last eighteen years. They are substantially unaltered from their original form, but in a few instances statements now known to be erroneous have been corrected or supplementary evidence has been added. The place where each article originally appeared is stated as a footnote.

H. M. C.

October 1942

ABBREVIATIONS

Ass. R. Assize Roll. (Public Record Office.)
C.A.S. Cambridge Antiquarian Society.
C.R.C. Calendar of Close Rolls. (H.M. Stationery Office.)
D.B. Domesday Book. (Record Commission 1834.)
F.R.C. Calendar of Fine Rolls. (H.M. Stationery Office.)
O.H.S. Oxford Historical Society’s publications.
Plac. Quo War. Placita Quo Warranto. (Record Commission 1818.)
P.R.C. Calendar of Patent Rolls. (H.M. Stationery Office.)
P.R.O. Public Record Office.
Rot. Cart. Rotuli Cartarum. (Record Commission 1837.)
Rot. Hund. Rotuli Hundredorum. (Record Commission 1812–18.)
Rot. Lit. Claus. Rotuli Literarum Clausarum. (Record Commission 1833–44.)
Rot. Parl. Rotuli Parliamentorum. (1767–77.)
R.S. Rolls Series.
INTRODUCTION

In Defence of the Study of Local History

The sixteen studies in local history here gathered together may seem to the reader a somewhat miscellaneous collection with a distinctly antiquarian tinge. They are, for the writer, bound together by the belief that medieval local government can only be understood through much short range study of particular places and institutions. An inveterate dislike of scrapping the obsolete or obsolescent has left in this country an enticing variety of survivals, affording innumerable clues for the investigator to follow up, and though he cannot expect the reader to share with him all the excitement of the chase, he may at least defend his choice both of subject and of technique as being very closely associated with major historical and even political issues.

The history of local institutions has suffered at times from the unequal knowledge and ill-balanced zeal of the antiquary, but he is awake to one great truth that historians do not always keep in view. He starts from a present-day objective reality, whether building, boundary, name or custom; he holds the live end of an unbroken thread running back into the past that he is exploring. He takes for granted the continuity of history, and it is in that continuity that not only the fascination but the justification of such researches as the following lies. The discovery in the Parks Road at Oxford of a stone inscribed ‘Here endeth Northgate Hundred’ may start a train of inquiries running back past Robert Plot and Anthony Wood to the Pipe Rolls of Henry II and the charters of Etheldreda the Unready.¹ The watercourses of Cambridge lead back to the days when ‘East Angle and Mercian glared at each other across Magdalene Bridge’, and Etheldreda’s sister sent her men up the Granta to find a worthy sarcophagus for the Saint’s relics among the remains of the little ruined chester, the line of whose earthworks can be traced to-day on Mount Pleasant.² The name of Chequers Farm at Stokenchurch records that stage in our national history when government office was hereditary and government salaries were paid in land;³ while that of the Shire

¹ pp. 107–123. ² pp. 1–18. ³ pp. 136–149.
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Manor at Madingley registers alike the relation of the medieval knight of the shire to the constituents who paid his expenses, the interlocking of the franchial and royal administrative systems, and the instinct for compromise and adjustment that produced the unique composition of 1430 between the Bishop of Ely and the gentlemen of Cambridgeshire.¹

English local history abounds in such oddments. We are not alone, as a nation, in the mongrel character of our origins²—

A medley canton’d in a heptarchy,

as Defoe said,

Where with easy search you may distinguish
Your Roman, Saxon, Danish, Norman, English—

but we are surely unique in the obstinate affection with which we cling to our old clothes. ‘The relics are so lasting and so strong’ that we find ourselves, for instance, forced to go back to the seventh century to explain why there are to-day two separate County Councils for Cambridgeshire north and south of the Ouse.

This diversity in continuity must needs be reflected in the character of our institutional research. To take one instance, it has long been a commonplace with students of English urban origins that each borough has its own constitutional history. The recent attempt to apply a great Belgian scholar’s formula to the evolution of ‘the’ English borough ³ has been stoutly resisted by the natives who know only too well how Norwich and Gloucester, York and Leicester, Hastings and Bristol differ from each other, though at the same time they recognize the great value of Mr Stephenson’s application of the continental technique of comparative topography to English problems, for he has shown us how much remains to be done, in spite of all the pious labours of municipal historians in the past. The harvest, again, that is beginning to be reaped from the work of the English Place-Name Society is evidence of the soundness of the piecemeal method in evoking the contribution of philology and topography to history, and the same may be said of the achievements of the Romano-British and Anglo-Saxon archaeologists. But such a procedure is above all necessary for the student of institutions, where some facile generalization on legal, social or administrative matters,

¹ pp. 236–250. ² pp. 64–106. ³ pp. 1 ff.
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passed on from pen to pen, may, without such checking by the facts, destroy both the life and the truth of pictures of the past.

Antiquarianism, then, can be defended on sound scientific grounds, but local history is more than a pursuit of origins. The historian is concerned not with detached threads, but with the seamless web of which Maitland spoke. It is not even simply a question of forms and techniques; it is a question of the men who used them, and of their attitudes and assumptions in using them. Institutionally speaking, the chief English contribution to western civilization has been parliamentary government. The discussions and researches of continental and English scholars in the last decade have thrown into strong relief the unique nature of the English development of a widespread European device.¹ The Cortes of the Spanish kingdoms, the Estates of France, Italy and the Low Countries, the Diets of the Empire all failed to meet the needs of the modern world; only in England did a medieval House of Commons move from strength to strength, adapting the traditions and forms of the fourteenth and fifteenth centuries to the needs of the seventeenth, eighteenth and nineteenth. Stubbs’ contention that our representative institutions owe their durability to the foundations laid in the medieval communities of shires and boroughs is not invalidated by A. F. Pollard’s vindication of Henry VIII as the architect of parliamentary power. It would not have been worth the Tudor dictator’s while to exploit the parliamentary machine for his great revolution had it not been so intimately involved in the structure of English society. The patria—the neighbourhood—the country-side—was the key to the mastery of England, and just as the autocratic Edward I had found it expedient to get into direct touch with the knights of the shires, so Henry VIII and Elizabeth after him found that conciliar government exacted a body of loyal J.P.s to be the eyes and ears and hands of the central executive, all the more effective because on occasion they might, as M.P.s, become the voices of the communities they managed. We may admit with Stubbs that the toughness and the elasticity of our representative institutions may be traced in large measure to the preservation of the shire court by the statesmanship and common-sense of William the Conqueror; and we may attribute the extraordinary proliferation of juries for every kind of legal, fiscal and administrative purpose in part to the governmental genius of the Plantagenets, but Maitland has pointed out that the ground had been

¹ pp. 223–250.
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prepared by the customs and habits of Saxons and Danes before the Frenchmen came,¹ and ‘the jury flourished in the fertile ground of consent’ in England, while on the Continent it developed along inquisitorial lines that matched the bureaucratic character of local administration. ‘Self-government at the King’s command’, as A. B. White has called it, was the foundation of our durable parliamentary institutions, and the House of Commons began as the communitas communitatum.²

We have long been familiar with these notions, but the medieval country-side has made another contribution to our political traditions which is perhaps less fully appreciated.

Feudalism is generally regarded as the antithesis of democracy. It originated in military necessities and was the child of force; it depended on the exploitation of human labour; it consecrated inequality and privilege.³ All this is true, but there are other truths that should be borne in mind. Feudalism rested on a conception of contract, and by medieval canon law an oath taken under compulsion was not binding; free consent, in theory at least, underlay the relationship of lord and vassal. This theory was not totally divorced from fact. G. B. Adams pointed out many years ago, that the right to repudiate the relationship if the contract was broken involved the vassal’s right of resistance and provided a recognized technique for such resistance in the diffidatio, used in 1214 and 1264 by ‘His Majesty’s opposition’, but it did not need a political crisis to bring out the democratic element in feudalism. In the day to day concerns of the fief and the honour and the manor, consultation and discussion between lord and man was the normal and indispensable procedure. F. M. Stenton has built up for us a picture, anticipated to some extent by the imaginative genius of Kipling, of the ‘barons’ barons’ in the feudal courts up and down eleventh-century England tackling the problems of conflicting customs and competing property rights, and hammering out rough principles and practices of law which paved the way for the great reforms of Henry II’s legists. Not only in the shire and hundred courts but in the courts of earls and barons, in honours and liberties, the determination to reconcile order and justice, to find some working compromise between English and Norman customs, to see, in fact, that ‘the king’s government was carried on’, produced a working system in which both authority and responsibility were distributed between lord and man, and not

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concentrated solely in the superior to whom deference and loyalty were owed by the inferior. The returns of 1166 to the royal inquest into knights’ fees contain such expressions as ‘My men tell me that I owe the King the service of fifty knights’; and if the latest theory as to the procedure of 1086 is valid, the Domesday inquest was held in the honour courts of the barons with their Frenchmen, as well as in the hundreds by the reeve and priest and four men of the old communities. In both types of court the rule of law obtained; in both ‘give and take’ was the established technique.

If feudalism demanded the co-operation of lord and vassals it also involved a correlation of privilege and duty which made it a political education for the privileged. The contractual principle could be and was applied to the grant of governmental functions. When the kings parted with fiscal, judicial or administrative functions to a subject, with the grant went an obligation. The holder of a liberty who enjoyed all those rights which the king had had within it, accepted the responsibility for keeping the king’s peace and doing the king’s justice within it. In the early days of the Norman Conquest the lord of a franchise might be free, as he was not later, to delegate his regalian privileges to another, but he could not strip himself of the responsibility attaching to the privileges he held. As the royal machinery of government developed, so his duties grew. The privilege of returning royal writs in the sheriff’s place involved a steadily increasing burden of activity; the franchise-holder, by virtue of his franchise, became a royal official, liable like a royal official to censure, punishment, and in the last resort displacement. The lord of a liberty had to show not merely by what warrant he claimed to hold the liberty, but whether he had exercised it in accordance with the terms of the grant, and for the public welfare, and in the royal interest. Thus, to quote F. M. Powicke, the feudal baron had, by virtue of his dignities and privileges, become ‘part of an administrative machine from which he could not, even if he wished, escape’, whilst conversely the king had no need nor desire to remove him so long as he fulfilled his functions and discharged his duties efficiently.¹ Feudalism was neither the rival nor the enemy of royal government; it was part and parcel of the system. And at the same time it was bequeathing an invaluable tradition to later generations of Englishmen; that no privilege should exist without a corresponding duty, and that high social standing and extensive lands

¹ pp. 173–204.
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entailed upon their holder ‘a great and continual labour’. Disraeli said of feudalism, in 1870: ‘Its main principle, that the tenure of property should be the fulfilment of duty, is the essence of good government’, and it is significant of our commonwealth that this doctrine should be common ground to-day for the parties of the right and the left, who differ not so much on the existence of this responsibility as on the authority which in the twentieth century should have the feudal monarch’s right to declare the tenure forfeit if the duty is not fulfilled.

The history of our constitutional progress is indeed the story of the extension of political responsibility, spreading downwards and outwards from the aristocrats to meet the tradition of local responsibility, growing upwards from the communities of villagers, squires and burgesses, unimpeded by any watertight social barriers; the class ‘liberties’ of Magna Carta, each with its corresponding obligation, expanding towards the human liberties of the Atlantic Charter, with their exacting demands upon the conscience and the pertinacity of those descendants of the men of Runnymede and Philadelphia who have accepted them as their standard of political conduct. It is the writer’s conviction that if we in this country are to be granted the honour of helping to vindicate the principles of democracy in the world of the twentieth century, we shall owe it to the age-long habit, transmitted through Anglo-Saxon, Dane and Norman, of accepting responsibility for the order, liberty and justice of our own neighbourhoods. ‘These are but inns and resting-places’, but we need not lose the lesser when we gain the greater, nor forget our village communities and local liberties in honouring the awe-inspiring obligations of world citizenship.

1 pp. 18–26, 124–135, 163–172.