1. *Problems and perspectives*

This book is a study in the evolution of English local society between c.1180 and c.1280. The dates are not particularly conventional ones, but the use of them to demarcate a period of study has an obvious validity. It is a period which opens in the aftermath of the Angevin legal reforms, the 'great leap forward' as it has been called,[1] and ends with the intended Domesday-like survey known as the Hundred Rolls (1279/80) which affords, for some areas, a unique glimpse into the structure of thirteenth-century society.[2]

It was a century of intense activity and of immense development. It witnessed the first great inflation in English history (c.1180–c.1220) and the momentous changes this wrought; it saw sustained legal and institutional growth which produced an effective interlocking of the central government with the localities; and it saw two major rebellions against the Crown, the one giving rise to Magna Carta (1215) and the other to a remarkable period of legislative and administrative reform (1258/9). Not only was there continued (if in some respects somewhat slower) economic growth but there was also a growth of political consciousness. It can hardly be doubted, moreover, that the major social and political changes which occurred at that time were closely interconnected. For one famous historian of the thirteenth century, the role played by the knights during the period of baronial reform and rebellion (1258–67) marked a

[1] D. M. Stenton, *English Justice between the Norman Conquest and the Great Charter 1066–1215* (London, 1965), ch. 2.

[2] The surviving returns for Warwickshire are as yet unpublished; see below p. 21. The survey, which in all probability was never fully carried through, is generally regarded as belonging to 1279. It went on, however, into the following year, the inquest for the town of Coventry for example being completed on 31 January 1280.

critical phase in the formation of a new social class.[3] By the end of this period the country was experiencing a further era of political and legislative action, this time on royal initiative, out of which arguably a new polity emerged.[4] This new polity, however, was clearly predicated upon the social, economic and political developments of the intervening period.

It is, however, the direction taken by local society which will occupy the centre of the stage here. My intention is to explore in detail, across a deliberately restricted area, the profound changes which occurred in society during this time, and the consequent social tensions which were experienced. At the same time I will seek to locate essential continuities. Looked at from a later perspective, however, this study is an inquiry into the origins of the English gentry, or perhaps more accurately into its pre-history. It was during precisely this period that the ground plan for the gentry was being laid out, or rather hammered out in the midst of conflict and uncertainty, when its values were taking shape and when its collective territorial identity was beginning to be formed. A further reason for concentration on this formative period is that it is an era which is prone to distortion, when institutions such as the county court are in danger of being wrenched out of context, and where the need to take a cautious, evolutionary approach is particularly acute.

I wish to devote this introductory chapter, however, to several conceptual and methodological issues. The first is to establish the unit of study proper to such an investigation. This is a vitally important matter, for the choice that is made here will do much to determine the direction the study takes and hence much of its outcome. It is equally important at the outset to clarify some of the problems surrounding the study of the knightly class.

The unit of study, on the face of it, seems straightforward enough. The natural unit for the study of the 'gentry' is the county. Herein lies the problem, for in reality this is dictated neither by the sources nor by the organization of contemporary society, as is sometimes supposed, but rather by later history and by historiography.

In a famous review article Edward Miller once wrote:

> What is significant about those [Angevin legal] reforms, however, is that the administrative context chosen for their execution was

[3] R. F. Treharne, 'The Knights in the Period of Reform and Rebellion, 1258–67', *BIHR*, 21 (1946), pp. 1–12.
[4] See below ch. 9.

> the county and that, within the county, they called for regular participation in the king's local government on the part of the 'knights and lawful men' of the shire. If the ties of the latter with the feudal honour were slackening, those which bound them to others of similar status in their own neighbourhood, in their *patria*, were growing stronger. If this shift in allegiance reflects the emancipation of the feudal tenant, it was also one which had very distant consequences.[5]

Now taken singly these statements are clearly unchallengeable. Taken together, however, they present dangers. For one of those 'distant consequences' has been to cause historians to over-stress the county as a factor of social cohesion during the first hundred years of the Angevin reforms and, in turn, to condition our approach to the subject under scrutiny. No one these days would deny the significance of Henry II's possessory assizes, pre-eminently *novel disseisin*, which offered summary justice, nor the significance of the writ of right patent and the 'writ of summons' (*precipe*) which drew litigation into the royal court, nor, indeed, the host of new remedies which subsequently expanded the business of the common law courts.[6] Neither do we need to stress the role of the king's travelling justices in facilitating access to the royal courts, nor the numerous duties which thirteenth-century knights and others were called upon to perform: as coroner, for example, as justice of assize and gaol delivery, and on various commissions, in addition to their participation in juries and recognitions.[7] All of this, of course, brought men into direct relationship with the Crown.

Knights were drawn into direct relationship with the Crown in other ways too. From time to time during the reigns of both John and Henry III, as J. C. Holt has recently stressed, assemblies of knights were summoned 'for purposes which would now be described as administrative and political'. Aside from 1254, which was for taxation, 'the rest, as far as is known, were concerned with receiving information, or sensing the political condition of the country, or ensuring that the government's intentions were con-

[5] E. Miller, 'The Background of Magna Carta', *Past and Present*, 23 (Nov. 1962), pp. 81–2.
[6] R. C. Van Caenegem, *The Birth of the English Common Law* (Cambridge, 1973), p. 54.
[7] For a recent introduction to these matters, with full citation, see W. L. Warren, *The Governance of Norman and Angevin England* (London, 1987).

veyed to the localities, to the centres where government policies were customarily proclaimed, the county courts'.[8]

Governments also came into contact with local communities at the instigation of the latter, acting in acquisition or defence of local privileges or to limit the action of government agents, the methods being those of local proffer and royal grant.[9] 'Angevin government', it is argued, had made local communities 'politically acquisitive and precociously self-conscious', resulting in 'the growth of political society in the shires'.[10]

One cannot help feeling, however, that this is over-stated. Occasional defence of shared liberties or expression of general interest, in matters such as disafforestation or the depredations of royal officials, does not necessarily indicate a high or constant level of consciousness of community, much less of actual solidarity. Whatever the future may have held in these directions it is important to remain within the context of the age.

When we look more closely at the operation of the county courts at this time, a rather different picture emerges.[11] For one thing, they were poorly attended. Many of the tenurial obligations to attend would seem to have applied to the biannual great courts only, and with withdrawal of suit a constant factor there is every reason to believe that the number of suitors present in court was declining throughout the thirteenth century. Thus '"the great counties" or "general counties" were not very large assemblies', let alone 'the thinly attended meetings that are holden month by month'.[12] The level of attendance, of knights in particular, caused serious problems both for litigants and for sheriffs, as is revealed by a number of significant cases.[13] Most knights seem to have avoided the detailed business of the court except when called upon to act when their

[8] J. C. Holt, 'The Prehistory of Parliament', in R. G. Davies and J. H. Denton (eds.), *The English Parliament in the Middle Ages* (Manchester, 1981), p. 19.
[9] J. R. Maddicott, 'Magna Carta and the Local Community', *Past and Present*, 102 (Feb. 1984), p. 37; J. C. Holt, *Magna Carta* (Cambridge, 1965), pp. 52–4.
[10] Maddicott, 'Magna Carta', pp. 28, 48, 65.
[11] What follows is a précis of my arguments in 'Knighthood and the Early Thirteenth-Century County Court', in P. R. Coss and S. D. Lloyd (eds.), *Thirteenth-Century England II* (Woodbridge, 1989), esp. pp. 45, 54–7.
[12] F. Pollock and F. W. Maitland, *The History of English Law Before the Time of Edward I*, 2nd edn (Cambridge, 1968), i, pp. 542–3, 548.
[13] Including the Levalaunce case of 1225 and the Gloucestershire false judgement case of 1212. See Coss, 'Knighthood and the Early Thirteenth-Century County Court', pp. 49, 54–5.

status was specifically required – and not invariably even then. Furthermore, there are many indications that the justice offered by the county courts could be partial. A variety of corrective and preventative processes had to be built into the developing legal system to make it workable.[14]

One should be very wary of assuming that the county court left to its own devices necessarily administered equitable justice, or that it was socially neutral. It is worth recalling here the conclusion reached by C. T. Flower: 'It would seem that notwithstanding its venerable traditions and wide scope the county was at this period often inefficient, uncertain of judgement and at the mercy of obstructive suitors.'[15]

If this picture of the county court is broadly correct, then it follows that the sense of community at county level cannot have been anything like as strong as historians have sometimes supposed. The danger, however, is twofold. If we have tended to develop an anachronistic sense of the county as *the* principle of cohesion in the thirteenth century, may we not also in consequence have seriously underestimated alternative *loci* of social power? The most obvious of these is the honour, which has tended to be prematurely written off.

Whatever the intentions of the framers of the Angevin legal reforms, and whatever their ultimate consequences, it is clear that they cannot have eroded seignorial jurisdiction overnight. Milsom has argued cogently and persuasively for the continuation of disciplinary jurisdiction for some time and for the slow development of abstract property rights: 'the reality of that [seignorial] control must have vanished slowly like the Cheshire cat'.[16] One thinks, too, of the rearguard action which the lords waged over the writ *Precipe* which resulted in clause 34 of Magna Carta, itself sufficient witness to the persistent strength of baronial jurisdiction: 'the writ called *Precipe* shall not, in future, be issued to anyone in respect of any tenement whereby a free man may lose his court'.[17] As Sir Frank Stenton

[14] For some examples see Coss, 'Knighthood and the Early Thirteenth-Century County Court', pp. 55–7.

[15] C. T. Flower, *An Introduction to the Curia Regis Rolls 1199–1230*, Selden Society, 62 (London, 1943), p. 78.

[16] S. F. C. Milsom, *The Legal Framework of English Feudalism* (Cambridge, 1976), p. 56 and *passim*.

[17] Milsom writes:

> What mattered to a lord was that a claim to be his tenant should at least be put

wrote: 'The barons who demanded in 1215 that the writ *Precipe* should not be issued in a manner through which any free man should lose his court were maintaining what had been a fundamental principle of feudal society. The organization which knit this society together must have been in great part the work of feudal courts.'[18] If the honour had ever been the vibrant and efficient social force that modern studies have argued it to be, then common sense tells us that neither its power nor its cohesion can have yielded so quickly.[19]

Undoubtedly, we should envisage honorial jurisdiction waning slowly and unevenly during the late twelfth and early thirteenth centuries. The generations from c.1180 to c.1230 were thus transitional. The honour court, moreover, persisted; indeed, it could remain lucrative well into the thirteenth century and even beyond, although admittedly much of the income seems to have come increasingly from defaults and avoidance of suit.[20] To be sure, as we move into the thirteenth century the volume of business relating to tenure and title must have rapidly declined, but there were other matters, principally military service, scutage and the incidents of feudal tenure. Indeed it has been urged that 'the failure to enforce

> to him. If it was so put, whether by writ or otherwise, and if for any reason he was not going to deal with it, there could be no objection to a demandant compelled anyway to go to the king's court going straight there with a *precipe* instead of by way of the county and a *pone*. The mischief is that demandants choose to go directly to the king's court. That this had become thinkable shows how lords were losing control. Their protest was surely a refusal to concede that, not just an attempt to hold on to the profits of administering a universal justice. (*ibid.*, p. 71).

See also Michael Clanchy, 'Magna Carta, Clause Thirty-Four', *EHR*, 79 (1964), pp. 544–8.

[18] Sir Frank Stenton, *The First Century of English Feudalism 1066–1166*, 2nd edn. (Oxford, 1961), p. 45.

[19] For recent studies of twelfth- and early thirteenth-century honours see: David Crouch, *The Beaumont Twins: The Roots and Branches of Power in the Twelfth Century* (Cambridge, 1986); Barbara English, *The Lords of Holderness 1086–1260: A Study in Feudal Society* (Oxford, 1979); Richard Mortimer, 'Land and Service: The Tenants of the Honour of Clare', in R. Allen Brown (ed.), *Anglo-Norman Studies*, viii, pp. 177–97 and work cited there; K. J. Stringer, *Earl David of Huntingdon: A Study in Anglo-Scottish History* (Edinburgh, 1985). Two important earlier works are: M. Altschul, *A Baronial Family in Medieval England: The Clares, 1217–1314* (Baltimore, 1965) and W. E. Wightman, *The Lacy Family in England and Normandy, 1066–1194* (Oxford, 1966).

[20] For the profitability of some thirteenth-century honour courts see N. Denholm-Young, *Seignorial Administration in England* (London, 1937), p. 97, and for the Clare courts at the beginning of the fourteenth century see M. Altschul, *A Baronial Family*, pp. 219–22.

personal [military] service is without doubt the beginning of the decline of the honour court'.[21]

When attempting to assess the social role of the honour court in the later twelfth and thirteenth centuries several of its well-researched features should be borne in mind. The central court of an honour exercising baronial jurisdiction only – the *curia militum* – seems in practice to have been a comparative rarity. 'Most of the lords maintained no separate court for their barons ... Instead they selected any convenient court, it might be a manor court, or a private hundred court, and required their barons to do their suit there.'[22] Notwithstanding the continued integrity of notable honours, like Wallingford, the suitors were often subject to regrouping for administrative convenience as baronial fiefs were accumulated.[23] 'Throughout England the greater barons had built up a system of administration which cut across the feudal lines of division, and was based purely on grounds of convenience.'[24] The term 'honour' was itself used in more than one sense. Although it came to be used in preference to denote the entire fief of a great lord, there were other meanings.[25] In some cases it was employed to describe local components of a great fief, rather than the fief itself. Such was the case, for example, on the Mowbray estates in the twelfth century. Several of its component 'honours' are specifically named, whilst courts appear for other localities dealing with purely local cases. Although no court is expressly mentioned, their Warwickshire charters appear from the witness lists to have been drawn up on their estates in the county, most probably at Brinklow. 'It seems that the Mowbray estates were conceived as a series of honours, each with its own court, held at the appropriate demesne centre.'[26]

[21] W. O. Ault, *Private Jurisdiction in England* (Yale, 1923), p. 333.

[22] *Ibid.*, p. 323. It has become commonplace to distinguish between three kinds of private jurisdiction – the baronial, the franchisal and the domanial or manorial, the first of these being that which a lord has over his vassals (*ibid.*, p. 1). It is also agreed that the distinctions are to a large degree theoretical. 'The distinction, dear to modern writers, between a feudal court, deriving its competence from Anglo-Norman theories of the relation between military tenants and their lords, and a franchisal court exercising delegated public rights, hardly existed in thirteenth-century practice' (Denholm-Young, *Seignorial Administration*, p. 95).

[23] *Ibid.*, p. 93; Altschul, *A Baronial Family*, pp. 222–24.

[24] Denholm-Young, *Seignorial Administration*, pp. 98–9.

[25] See, for example, Stenton, *English Feudalism*, pp. 57–9.

[26] *Charters of the Honour of Mowbray 1107–1191*, ed. D. E. Greenway, British Academy Records of Social and Economic History, n.s., i (London, 1972), p. lvi. This may be what is indicated in *Leges Henrici Primi* c.55, 1b: *Si dominus ejus*

It is perhaps when it is used in this sense that the military tenants and freeholders who constitute the suitors to the court might with most justice be considered a community, an expression of this being, of course, the attestation of local charters.[27] This being the case, it would seem highly likely that such courts continued to provide one focus of solidarity in local society even when they were in decline during the first half of the thirteenth century.

At the same time too much stress should not be laid on the honorial court, and not just because of the phenomenon of regrouping nor even because of the inroads of royal justice. Even in the hey-day of baronial justice in the true sense, it is doubtful whether many feudal communities can have been entirely self-contained. In the *Leges Henrici Primi* a man intending to hold a court is advised to summon his peers and neighbours (*pares et vicinos suos*) to afforce the court so that judgement may not be subsequently challenged.[28] Even Stenton, with his enthusiasm for the idea that the military tenants of an honour constituted a distinct community, has to concede that when the *Leges* tells us that each man should be judged (in the county court) by his peers of the same district (*provincia*) this 'certainly does not mean that he should only be judged by fellow tenants upon the same honour'.[29] Notions of neighbourhood and district must have co-existed with the feudal, and it is here if anywhere that we should seek the primeval principle of social organization.

It comes as no surprise, therefore, to find that the neighbourhood or locality as the *visnetum* should figure prominently in the Angevin writs and in common law procedure. Let us consider its appearance in Glanvill's treatise on the laws and customs of England which belongs to the years 1187–9. Where a defendant has opted for the

diversos feodos teneat, non cogitur per legem homo unius honoris in alium ire placitum, nisi de alterius causa sit ad quem dominus suus submonuerit eum (*Leges Henrici Primi*, ed. L. J. Downer (Oxford, 1972), pp. 172–3).

[27] For the attestation of charters by honour courts during the thirteenth century see Denholm-Young, *Seignorial Administration*, p. 98 and examples cited there; for a recent discussion of the witnessing of charters, including a review of the problem of whether witnesses need have been present at a transaction, see K. J. Stringer, 'The Charters of David, Earl of Huntingdon and Lord of Garioch: A Study in Anglo-Scottish Diplomatic' in K. J. Stringer (ed.), *Essays on the Nobility of Medieval Scotland* (Edinburgh, 1985), pp. 92–4 and references given there.

[28] *Leges Henrici Primi*, ed. Downer, c.33,1. See also clauses 33,3a; 43,9.

[29] Stenton, *English Feudalism*, p. 61: *Unusquisque per pares suos judicandus est et ejusdem provincie* (*Leges Henrici Primi*, c.31,7).

grand assize, for instance, four knights are to be summoned to elect the twelve who will determine the issue from the *visnetum* of the township in which the disputed property lies. Where the older process of trial by battle is preferred the neighbourhood may also have a role to play. When a champion has died after the wager has been made but before the battle can take place, it is necessary for this to be attested by the *visnetum*. Again, where the plaintiff objects to the grand assize on grounds of consanguinity between himself and the defendant and their kin cannot agree, the issue is then to be put to the locality. Finally, Glanvill brings the twin principles of social organization – lordship and locality – into co-operation when he instructs that a lord may take the land into his own hands pending resolution when he doubts whether the person offering him homage is the true heir, that is, when he is known neither to the lord nor to the *visnetum* as heir.[30]

One great strength of a term like *visnetum* from the point of view of the common law was precisely that it lacked fixed boundaries. A *visnetum* was not an administrative unit but an idea, and hence fluid. An assize of novel disseisin and a grand assize might well be concerned with land in the same settlement. Yet the twelve free and law-worthy men who functioned as the jurors in the one might be drawn from a narrower *visnetum* than their knightly counterparts in the other.

Visnetum was not, however, the only such term in usage. Another was *patria*. This was another fluid term, and one which had travelled a long way from its classical meaning of fatherland. Its most prevalent use in the thirteenth century was in the common law courts when a litigant invoking the jury was said to be putting himself on the country (*inde ponit se super patriam*). It was thus close in meaning to *visnetum*. Indeed, Maitland cites an early case where a litigant on one matter put himself on the lawful *visnetum* (*ponit se super legale visnetum*), and on another upon the testimony of the *patria* (*simili modo ponit se inde super juratam patrie*).[31] It is best translated here as countryside, but in the sense of community rather than district. It was much used in the Hundred Rolls of 1279 when offenders were said to have enclosed pasture or to have blocked a road to the nuisance of the *patria*.[32]

[30] *Glanvill*, ed. Hall, pp. 24, 27, 30, 110.
[31] Pollock and Maitland, *English Law*, ii, p. 624.
[32] See below pp. 154–5.

Perhaps the most famous instance of its use was in the Somerset county court in 1204, when Richard Revel wished to impress upon the sheriff the social position and local standing of himself, his father and brothers. They were, he said, *naturales homines et gentiles* of the *patria*. In the altercation which followed he stressed that they were native born and of the *provincia* and then reaffirmed that they belonged to the *patria*, whilst the sheriff was an outsider. The sheriff replied that he was indeed from another *provincia* but was perhaps as 'native and gentle' in his *patria* as Richard in his (*adeo naturalis et gentilis in patria sua fortasse sicut et ipse in patria sua*).[33] *Provincia* and *patria* are clearly meant to be distinct in meaning, though neither is easy to pin down. *Provincia* would seem to stand for district, perhaps even county. *Patria*, on the other hand, seems to imply membership of local society, especially as used by the sheriff. For C. T. Flower, Richard Revel's initial statement meant that they were 'Somerset men and county gentlemen', and this has tended to be followed.[34] It would be quite wrong, however, to invest this with some technical meaning like county community. As Maitland wrote, 'the thoughts of this age about the nature of communities are vague thoughts'.[35] The case, moreover, is not entirely without parallel. V. H. Galbraith once drew attention to a late example of a trial by battle, in which the champion of the abbey of Bury St Edmunds lost his life. A chronicle account tells us that the monks opted for trial by battle rather than the grand assize because they suspected the countryside as being inclined towards and related to their enemies (*patriam habentes suspectam utpote adversariis nostris familiarem et affinem*).[36] The two Suffolk manors which were in contention were not too far distant, and the monks clearly feared a jury drawn from a local elite hostile to them and strongly interconnected by marriage. For *patria*, then, read neighbourhood.

Medieval people, it has been stressed recently, thought much in terms of community.[37] Once we leave the level of the individual village or manor, town or religious institution, however, then the contours of communities are often indiscrete. It seems probable that

[33] *CRR*, iii, p. 129. [34] Flower, *Introduction to the Curia Regis Rolls*, p. 72.
[35] Pollock and Maitland, *English Law*, ii, p. 624.
[36] V. H. Galbraith, 'The Death of a Champion (1287)', in R. W. Hunt, W. A. Pantin and R. W. Southern (eds.), *Studies in Medieval History presented to F. M. Powicke* (Oxford, 1948), pp. 283–95.
[37] Susan Reynolds, *Kingdoms and Communities in Western Europe 900–1300* (Oxford, 1984).