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The Salisbury Oath: Its Feudal Implications

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THE SALISBURY OATH - ITS FEUDAL IMPLICATIONS

by

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INTRODUCTION

To attempt to prove that the oath of allegiance given by the "land sittende men" at Salisbury in 1086\(^1\) was the final step in establishing feudalism in England is beyond the scope of this work. Some historians of the older school would willingly agree that William the Conqueror was the founder of English feudalism, but would claim the system to have been in practice before this date.\(^2\) Other historians, especially scholars of the twentieth century, would not only deny that the feudal system was established during the last years of William's reign but that William ever introduced that medieval system of land tenure.\(^3\) According to this school, England of pre-Conquest days was no stranger to the practice of homage, vassalage, and other feudal customs. True, the terminology of the island and the mainland differed, but the English could claim a system founded independently of the Normans.

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1 Anglo-Saxon Chronicle, 1086.
The aim, therefore, of this thesis is to decide what significance the Oath of Salisbury had in relation to English feudalism. To be in a position to form a definite conclusion, we should have some understanding of the Anglo-Saxon political system before the advent of the Normans. If we agree with several reliable sources, which indicate that there was such a thing as Anglo-Saxon feudalism, we are faced with the question of what innovations were added by the invader. Thus a sketch of Norman feudalism on the eve of the Conquest will serve to explain certain customs prevalent in England twenty years later. Further investigation reveals that an altered type of feudalism resulted from the political and legislative acts of William. This new feudalism follows neither the blueprint of Charlemagne nor the customs of Alfred. It is the practice of the Continent, with some of the tendencies of decentralization removed, adapted to the old Anglo-Saxon type of government.

On approaching the Gemot of Salisbury, we find that Anglo-Norman feudalism is firmly established. Did the Oath of Salisbury fix a principle which revolutionized Anglo-Norman feudalism? An examination of the reign of William Rufus should furnish sufficient evidence to answer the question.
CHAPTER I

FEUDALISM - IN THEORY

An accurate account of the transformation of society and government following the disintegration of the Carolingian empire is a task to be placed under the category of the impossible; this, because of the lack of documents. By the eleventh century, however, when documents are sufficiently numerous, we find the evolution of government at a comparatively high point of development. What, then, was the activating force behind this new system? The weakened government offers no solution; the written legislation ignores the growing regime; the people, who were the very heart of the system, did not realize the change taking place. Thus, when historians explain the reason for its development, they suggest that the universal desire for temporal security gradually effected the popular customs. These customs changed bit by bit, not according to a set plan, but rather "by sort of natural growth".¹

Again, should anyone ask for a complete and accurate picture of feudalism during a specified time, his query

would probably go unanswered, for "it is impossible to gather it up into a perfectly exact picture, or indeed, to make any general statement about it which would not be in contradiction to several particular cases". In order to furnish a background for the following chapters, it will be profitable to enumerate and briefly explain the more significant feudal customs and terms. In short, the description of the feudal system will not be a picture of the system as it actually existed at any one time; rather it will be an attempt to describe the feudal regime by selecting its chief tenets and customs which were practiced at one time or other.

A definition of feudalism seems to fall under the same class of the impossible as does the exact description. If an attempt were made to include all its peculiarities, the would-be definition would become an extended composition. Therefore, to fulfill the requisites of a good definition, namely, to be inclusive and brief, it is necessary to abstract from certain concrete exceptions and to say what the system should be in theory.

The feudal system of Europe may be defined as a "political-social organization based on land tenure and military service". Bishop Stubbs has a fuller and clearer

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2 Ibid.
statement which includes the same ideas. He defines feudalism as a:

complete organization of society through the mediums of land tenure, in which from the king down to the lowest landowner all are bound together by obligations of service and defence; the lord to protect his vassal the vassal to do service to his lord; the defence and service being based on and regulated by the nature and extent of land held by one of the other.3

Since an examination of these definitions indicates that land tenure was the very backbone of the whole system, the next logical question seems to be an inquiry into how this landholding custom arose. Historians4 attribute the introduction of this practice to two definite sources: to the "beneficium" and to the "commendatio". The "beneficium" was usually a gift handed over to a vassal on condition he continue to be faithful in the service of the lord. Usually the contract contained a paragraph giving the reasons for parting with the land; next came a description of the property, finally the terms of the contract were added. Frequently a penalty would be proposed in case of

faithlessness on the part of either party. The following contract exemplifies the point:

... if I myself, or any other person... shall wish to violate the firmness and validity of this grant, the order of truth opposing him, may his falsity in no degree succeed; and may he pay to the aforesaid monastery double the amount which his ill-ordered cupidity has been prevented from abstracting; and moreover let him be indebted to the royal authority for ___ solidi of gold; and, nevertheless, let the present charter remain inviolate with all that it contains, with the witnesses placed below.⁵

The second source of land tenure was, as we have noted, the practice of commendation. The word explains itself. An owner of allodial land, who needed the protection of a powerful baron, often times surrendered his land to one of these lords only to receive it back as a fief. The contract of "commendatio" includes the reason for the act, the terms, and the penalties for breach of contract. Because the phrasing of the compact often followed a set form, the real reason for the transaction was not always explicitly mentioned. For instance, it was considered good form when a weaker baron would claim he did not have the means to feed and clothe himself; but the real reason behind the move was the need of military protection. This document illustrates the case:

⁵ Ibid. 208,209.
To my lord .... , I ..... Since as
was wäl known, I had not wherewith
to feed and clothe myself, I came to
you to put myself under your protection
I have now done so, on condition that
you shall supply me with food and
clothing as far as I shall merit
by my services, and that as long as
I live I shall perform such services
for you as are becoming a freeman,
and shall never have any right to
withdraw from your power and pro-
tection, but shall remain under them
all the days of my life. It is agreed
that if either of us shall try to break
this compact he shall pay ... solidi,
and the compact shall still hold.6

In the preceding document one's attention is centered upon
the phrase "I shall perform such services for you as are
becoming a freeman". This phrase or its equivalent is
common to the feudal contract. A vassal definitely did not
sacrifice his freedom in becoming a vassal. True, terms
were to be fulfilled; but should the lord violate his part
of the compact, he was subject to a penalty, and the
vassal had the privilege of a temporary severance of the
feudal bond.7

For the weaker landowner in need of protection, land
tenure through commendation was in order. For the king's

6 O.L. Thatcher & E.H. McNeal, A Source Book of Medieval
7 Ogg, 206.
followers and kinsmen, the gift of benefice was the practice. There was, moreover, another means of procuring land which was quite similar to the "beneficium". The name technically applied to land granted in response to the "litterae precariae" was the "precarium". Old feudal contracts reveal that the poor landholder sometimes gave his land to a greater lord with a request of its return with the lord's protection. The form of the precarial contract follows the general outline of the "beneficium" and "commendatio". In the following letter it will be noted that all the usual points of the feudal compact are present in addition to a note of severity in case of a vassal's infidelity.

To the lord ..., we ... and ... . It is well known that our father lived on your lands and made a precarial letter to you for them, which we now renew and sign, humbly beseeching you to allow us to remain on the same lands. In order that your possession of the lands may not prejudice the right you and your successors in them, we have deposited with you this precarial letter, agreeing that if we ever forget the terms or even refuse to obey you and your agents in anything which you command, or assert that this is not your land, we may be punished according to the severity of the law, as wicked violators of your rights, and
may be driven from the lands without judicial sentence.\textsuperscript{8}

By supposing, now, that the lord has declared his intention to grant a fief to one of his followers, we find that the double ceremony of homage and fealty was necessary to make the action legal. Because homage and fealty invariably followed on upon the other, they are often considered to be but two names for the same act. A definition of each shows the difference: homage was an act by which a vassal became the man of the lord; fealty was the promise in the form of an oath to remain faithful in performing the usual feudal obligations. Though the less important details of these ceremonies varied from place to place, nevertheless, they all followed the same substantial pattern. In the act of homage the future vassal presented himself bare-headed and unarmed to his lord to be; kneeling, he placed his hands between the hands of his lord and declared himself the seigneur's man. The lord then kissed his man and lifted him to his feet. Next came the oath of fealty. Here the vassal placed his hand upon the Bible, or sacred relics, and swore eternal fidelity to his lord. These two acts of the vassal were followed by the impressive ceremony of investiture by the lord. In this act the seigneur gave a

\textsuperscript{8} Thatcher & McNeal, 347, 348.
bit of turf, a stick, or some symbol of the usufruct of the fief. A document on ancient Normandy describes it as a pledge to keep faith in respect to matters that are right and necessary, and to give counsel and aid. He who would do homage ought to place his hands between those of the man to be his lord, and speak these words: "I become your man, to keep faith with you against all others, saving my allegiance to the duke of Normandy".9

To aid us in distinguishing between homage and fealty, we may turn to an old book of English laws.

And when a free tenant shall swear fealty to his lord, let him place his right hand on the books and speak thus: "Hear thou this, my lord, that I will keep my pledge to you for the lands which I claim to hold of you, and I will loyally perform for you the services specified, so help me God and the saints". Then he shall kiss the book; but he shall not kneel when he swears fealty, nor take so humble a posture as is required in homage.10

Once a tenant in chief had been accepted by his lord, the promises of feudal service became immediate obligations. In case, however, this same vassal wished to divide his estate into smaller fiefs to be given to his own vassals, the same ceremony of fealty and homage was performed in

9 Ogg, 217.
10 Ibid. 218.
his presence. Such a process of a vassal enfeoffing a vassal was known as subinfeudation. The subvassal promised feudal services to his immediate lord but was under no personal obligation to the king. In short, if one remembers that the feudal law declared that "my vassal's vassal is not my vassal", one explanation of the decentralizing tendency of the system is at hand.

Before listing the specific duties involved in the feudal compact, it seems advisable to treat another important element in the governmental branch of feudalism known as "immunity". In general, the lands to which the privilege of immunity applied were exempt from the jurisdiction of local royal officers. However, though the grant of immunity made the vassal independent of the counts in financial and judicial administration, nevertheless, these lands were still subject in some respects to royal authority. The royal official, moreover, was forbidden to enter the "immuned" territory even to collect taxes, or fines, or to hold court, or to arrange military service. The reason for such seemingly generous grants may have been the wish of the king to reward or win loyal subjects, or, perhaps, even to curtail the authority of a powerful local administrator. Surely, the crown achieved its purpose in many instances, but at the same the time the practice contributed

to the weakening of the monarchy of feudal times. Upon presenting the bishop with a grant of immunity, the king believed that

we give our royal authority its full splendor, if, with benevolent intentions, we bestow upon churches, or upon any persons, the favors which they merit, and if, with the aid of God, we give written assurance of the continuance of these favors. We wish, then, to make this known that at the request of a prelate, lord of ... and bishop of ..., we have accorded to him, for the sake of our eternal salvation, the following benefits: that in the domains of the bishop's church, both those which it possesses today and those which by God's grace it may later acquire, no public official shall be permitted to enter, either to hold courts or to exact fines on any account; but let these prerogatives be vested in full in the bishop and his successors. ... All the taxes and other revenues which the royal treasury has a right to demand from the people on the lands of the said church, whether they be freemen or slaves, Romans or barbarians, we now bestow on the said church for our future salvation, to be used for the best interest of the church ... ¹²

A brief study of feudal documents reveals that the essence of feudal relationship was the contract involving reciprocal obligations between vassal and lord. In 1020 Fulbert, Bishop of Chartres, clearly listed the general

¹² Ogg, 211, 212.
principles which were to serve as a guide for the performance of these mutual duties. Six things should a loyal vassal observe:

... what is harmless, safe, honorable, useful, easy, and practicable. "harmless", which means that he ought not to injure his lord in body; "safe", that he should not injure him by betraying his confidence or the defenses upon which he depends for his security; "honorable", that he should not injure him in his justice, or in other matters that relate to his honor; "useful", that he should not injure him in property; "easy", that he should not make difficult which his lord can do easily; and "practicable", that he should not make impossible for the lord which is possible.13

Fulbert in the same epistle states that merely to refrain from wrongdoing is not enough; a good vassal will faithfully advise his lord.

Concerning the lord's attitude toward his vassal, the Bishop writes:

The lord also ought to act toward his faithful vassal in the same manner in all things. And if he fails to do this, he will be rightfully regarded as guilty of bad faith, just as the former, if he should be found shirking or willing to shirk, his obligations would be perfidious and perjured.14

13 Ibid. 220, 221.
14 Ibid. 220.
Sometimes an exceptional movement such as the Crusades was important enough to justify an "emergency" aid.

Custom, too, added yet another practice to the long list of reciprocal duties between lord and vassal. On great feast days such as Easter, Pentecost, Christmas the tenant would be found either offering the lord advice at a council of vassals or acting as judge in settling differences between lord and vassal. So important was the convocation of these assemblies that should a lord refuse to summon it on a designated day or should the vassal fail to make an appearance, the oath of fidelity and mutual aid was loosened.

Though feudalism has sometimes been regarded as a system of land tenure, sometimes as a social organization, there has usually been present the common important element of military service. Surely during the more vigorous age of feudalism, few lords could expect peace unless surrounded by many loyal knights. Thus, probably more often than not, the granting of a "beneficium" was motivated by the need of military aid. When the vassal became a lord of his own fief, he would probably agree to a contract somewhat similar to the following:

The baron and the vassals of the king ought to appear in his army when they

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16 Seignobos, 58.
shall be summoned, and ought to serve at their own expense for forty days and forty nights with whatever number of knights they owe. And he possesses the right to exact from them these services when he has need of them more than forty days and forty nights at their own expense, they need not remain unless they desire. But if he shall propose to lead them outside of the kingdom they need not go unless they are willing, for they have already served their forty days and forty nights.17

This same document partially explains why the feudal armies were so inefficient. Certainly no prolonged war could be waged if the vassal and knights insisted on leaving the battlefield on the fortieth night. Implicitly, too, this suggests that the unity of command was something which was admired but never realized. Later when the custom of paying for service in form of scutage became fixed, the king could concentrate on larger battle fronts knowing that his mercenaries' time limit would last as long as he could afford to pay their wages.

The mention of military service indicates that peace and not war was the unusual condition of feudal times. True, law courts existed for the peasants to settle their disputes; but feudal seigneurs were wont to exercise their privilege of warring on an enemy baron. Frequently these

17 Ogg, 223, 224.
private wars were accompanied by floods, droughts, famine, pestilence - all of which took a heavy death toll among the masses. For aid and comfort the unhappy peasant turned to the Church. And true to their expectation the Church sought to spread her ideal of peace and security for the poor and distressed by attempting to quell the warlike turmoil of Western Europe. During latter part of the tenth century, the Church took the first steps toward establishing the Peace of God. By 1050, though the decrees of excommunication against any warlord who threatened the peace of any woman, peasant, merchant, or cleric had little effect, yet some progress had been made. The feudal lord seems to have reasoned that the peasants of his enemy's manor were as valuable as his military array and should, therefore, be eliminated. The Truce of God did not preserve the lower classes because war was not formally forbidden. As early as 1027, however, both the secular and regular councils were advocating the Truce of God. All men were to abstain from warfare and violence during certain specified times. At first, Sunday was the single day of peace; next, no fighting from Wednesday evening to Monday morning; finally the season of Lent and Advent were included. Thus, when

the would-be belligerent baron drew up his schedule for fighting, he found but eighty days were left to bring his enemies into subjection. Although this Truce of God failed to establish complete peace throughout Europe, private wars did decrease.

Another lucrative prerogative of the lord was the right to manage the fief of a minor. This, of course, meant the enjoyment within limits of the minor's income until the ward had reached the legal age of twenty. Practice required the male to be twenty years of age before assuming the duties of his father; the female ward enjoyed the rights of her inheritance on the day of her marriage. Naturally, the guardian arranged matters to the advantage of his lord, especially taking care that the ward did not marry an enemy. In many cases the husband was chosen by the seigneur. If, however, the girl protested and then followed the protestation with an ample supply of money, the lord was willing to admit his mistake.

Many regulations covering the possible contingencies arising from the state of wardship and guardianship are enumerate in the following ancient Norman document.

Heirs should be place in guardianship until they reach the age of

19 Magna Charta, No. 6.
20 Seignobos, 58.
twenty years; and those who hold them as wards should give over to them all the fiefs which came under their control by reason of wardship, provided they have not lost anything by judicial process. ... When heirs pass out the condition of wardship, the lords shall not impose on them any reliefs for their fiefs, for the profits of wardship shall be reckoned in place of relief. ... When a female ward reaches the proper age to marry, she should be married by the advice and consent of her relatives and friends, according as the nobility of her ancestry and value of her fief may require; and upon her marriage the fief which has been held in guardianship should be given over to her. A woman cannot be freed from wardship except by marriage. ... The fiefs of those who are under wardship should be cared for attentively by their lords, who are entitled to receive the produce and profits.21

Among the preceding regulations it was stated that the obligation of paying relief was not binding on the ward. The ordinary heir, however, was expected to pay a certain amount of money to the lord when the fief was officially transferred to him. The reason for this custom is found rooted in the practice of granting the "beneficium". When a son sought the fief of his deceased father, it was considered a special favor of the lord to allow the succession

21 Ogg, 224, 225.
even when the petition was accompanied by a special fee. Later, even when the feudal law of inheritance was firmly fixed, the collection of reliefs still survived. The document below records the reliefs paid between the years 1140 and 1230.

Walter Hait renders an account of five marks of silver for the relief the land of his father. ... Walter Brito render 6 pounds, 13 shillings, 4 pence for the relief of his land. John de Bruce renders an account of 100 pounds for his relief for the barony which was of Peter his father. Walter Fitz-Thomas, of Newington, owes 28s. 4d. for having a fourth part of one knight's which had been seized into the king for default of relief. 22

Should the heir refuse the relief or the vassal fail to perform his duties, the lord could repair the damage of such a "felony" by declaring the land of his subordinate forfeit. To make such a declaration, however, was one thing; to enforce it was quite another. Because of the quarrels resulting from late payments, money fines were substituted in place of the penalty of dispossession.

At this point it should be noted that the power of the feudal lord was not derived merely from the mutual contract of vassal and lord. The second source, though frequently regarded as unimportant, found its origin in the authority

22 Ibid. 225, 226.
of the State. Theoretically, the vassal was subject to his lord and the lord was subject to the king. Therefore, in some nebulous manner, the immediate lord had a second claim to that sovereignty. This claim had at one time or other been secured from the monarch himself and later consolidated by custom. Thus even when the lord acted the role of justiciar in dealing out capital punishment, he was acting in accordance with his rights. His jurisdiction in both criminal and civil law applied to all the villeins and serfs within his own territory. All feudal legislation extending outside the demesne of a single baron took the shape of "stabilimentum" or of an assize enacted in the court of a superior lord with the expressed or implied consent of the vassals. This "circle of tenants constituting the peer's court was a most complete expression of the principle of equality as between allied sovereigns.24

24 Cambridge Medieval History, V, 469.
CHAPTER II

FEUDALISTIC TENDENCIES IN ENGLAND BEFORE 1066

The question whether or not England was acquainted with the system of feudalism before the advent of William I has merited much discussion among leading historians. Maurois remarks that formerly it was taught that William I imposed feudalism upon England, but evidence indicates that this belief was introduced by Sir Henry Spelman "a seventeenth century scholar, who the first to systematize a vague body of custom".¹ The foundations of feudalism, however, were not deliberately selected but were outgrowths resulting from natural exigencies.² One reason for many alterations in the Saxon way of living was the invasion of the Danes. The coming of the Northmen called for a plan of action. Abstracting from the Danegeld, three possible plans of defense seemed feasible: the fyrd, a mass of peasants armed with pitchforks and the like, had proved ineffectual in many skirmishes with the enemy. The mercenaries required a revenue larger that the kingdom

could supply. Finally, the third possibility, a permanent army of professional fighters who were to be recompensed with grants of land, proved practicable.

What, then, prompted the peasant to admit the superiority of this new class? Simply this: the military group was indispensable. In times of strife the husbandman would have not only a well-armed captain but also a defender of his title-held property. Thus the warrior offered his client "protection over powerful neighbors and invaders, a means of redress against any who injured him, peaceful occupation of his holding, and considerate treatment from his lord". The position of the armed captain, however, was not without its compensation, for he "got tenants to fight for him, help to cultivate his land, pay some rent for their own, and be under his jurisdiction and attend his court of justice". Now because of endless strife between the Anglo-Saxons and the Danes and the raids of searovers, the peasant and "ceorl" agreed to recompense their leaders and protectors with these voluntary services. Soon custom expressed this necessity in the phrase "no land without a lord." Therefore, according to Maurois, the origin of

3 Ibid.
4 Ibid.
feudalism in England was not the result of a startling introduction of a new doctrine, but was rather the "disintegration of the right of property together with a dismemberment of the rights of the State". Guizot maintains it was a mixture of property and suzerainty. Using the same idea, Maurois prefers to call it the "joint passing of property and suzerainty" to those who were capable of protecting the first and exercising the second. Of course, as soon as the power of the central government began to express itself, the process was reversed and the feudal system began to decline.

"All Anglo-Saxon states possessed a distinctly marked nobility, deriving its rank, if we regard the whole period of Saxon history from two sources: birth and service of the king." Thanks to a valuable Saxon document we have some idea of the classes of nobility preceding the Conquest.

1. It was whilom, in the laws of England, that the people and law went by ranks, and then were counsellors of the nation of worship worthy, each according to his condition, eorl and ceorl, thegn and theoden.
2. And if a ceorl throve, so that he had five hides of his own land,

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7 Maurois, 43.
8 Adams, 33.
church, kitchen, bell-house, and
burh-gate-seat, and special duty in
the king's hall, then was he thence­
forth of thegn-right worthy.
3. And if a thegn throve, so that he
served the king, and on his summons
rode among his household; if he then
had a thegn who followed him, who
to the king's 'utware' five hides of
land, and in the king's hall served
his lord and thrice with his errand
went to the king, he might thence­
forth with his 'foreoath' his lord
represent at various needs, and his
plaint lawfully conduct, wheresoever
he ought.
4. And he who so prosperous a vice­
gerent had not, swore for himself
according to his right, or it for­
feited.
5. And if a thegn throve so that he
became an eorl, then was he thence­
forth of eorl-right worthy.
6. And if a merchant throve, so that
he fared thrice over the wide sea
by his own means, then was he thence­
forth of thegn-right worthy.9

Equally instructive is the list of wergilds showing the
political importance of each group of nobles.

1. The north perop1e's king gild is
30,000 thrymsas; 15,000 are for the
wergild, and 15,000 for the cynedom.
The wer belongs to the kindred and
cynebot to the people.
2. An archbishop's and aetheling's
wergild is 15,000 thrymsas.
3. A bishop's and ealdorman's,
8,000 thrymsas.

9 Wm.Stubbs, Select Charters of English Constitutional
4. A hold's and the king's reeve, 4,000 thrymsas.
5. A mass thegn's and secular thegn's, 2,000 thrymsas.
6. A ceorl's wergild is 266 thrymsas, that is 200 shillings by Mercian Law.10

In the top bracket of Saxon nobility were the "gesith" and the "thegn". Probably the "gesith" acted as a "comitatus" of the king during the invasion of the island. Later, when peace had been established and when sizeable territories had been distributed among members of this class, they formed the nucleus of the landed nobility. Previous military service was relinquished to a class which rendered a more immediate, personal service to the king, namely, the "thegn". Resulting from this close connection with the monarch as a military officer and man-at-arms, the "thegn" became a natural representative of the government. The people around him were obliged to pay for his support and service and thus became accustomed to look on him as a superior. Various powers were delegated to him in order to make the administration of justice possible. Such an increase in power of this miniature potentate meant the retrogression of his dependants to the stage of socmen or, perhaps, villeins.11

In comparison to the freeman the noble enjoyed a place of distinction. According to law his wergild was six times as much, his oath at court six times as valuable; enrollment in tithing was not required; private jurisdiction throughout his lands was his privilege. Moreover, though the title of nobility was no guarantee for membership in the witenagemot, nevertheless, the king usually drew heavily from this class.

At the intermediate stage between the nobility and the unfree was the normal free man. This class, the "ceorl", or "sokeman", or "villanus", was considered the typical group which served as a norm for the reckoning of the wergild and the value of oaths. In case a freeman could increase his holding from one to five hides, he was eligible to enter the lower brackets of nobility. Both economically and legally the "liber homo" formed an important cog in the functioning of earlier Saxon England. By the time of the Conquest, however, "the class as a whole was losing significance slowly, economically, socially, and politically".12

Forming the first stratum of the social scale were the slave and serf. Slavery, in which a person was no more than a chattel to be bought and sold at market, conformable,

12 Adams, 36.
of course, to the Decree of Ini, was a practice before 1066. The Church alleviated the state of the slave by declaring it an act of virtue to promote the emancipation of the bondman. Economic causes contributed to the manumission of the slave, for the master found a servant to be much more useful when given a cottage and a small plot of land to cultivate. At first the lord held absolute right over these small divisions of land; but with the passing of years, the semi-slave was no longer a possible prospect for the slave market. If there was to be a change of masters, it meant a transfer of land had been negotiated. The slave had become a serf who was so completely "adscriptus glebae" that the lord of the manor could not dismiss him.

In regard to the same disputed point about English feudalism before the Norman Conquest, Lingard holds that the Anglo-Saxons were no strangers to that type of government. Tacitus in his Germania notes one particular custom in which every chief of note practiced. It would seem that each of these chieftains had a group of followers so loyal that they were at his beck and call both during the time of peace and war. Especially in war was the nature of their allegiance noteworthy, for they considered it a

13 Stubbs, Select Charters, Cap. 11, Ini, Wessex, 61.
disgrace to survive the death of their leader. Using this custom as a starting point, Lingard says that "in process of time, and by gradual improvements, grew up a feudal system, with its long train of obligations, of homage, suit, service, purveyance, reliefs, wardships, and scutage." Should the concession be made that the tribal practices of the Germans were feudal customs in their infancy, then it must be admitted that the Anglo-Saxons introduced the system into England. Otherwise why should an invading and dominant race give up age old habits when establishing a government in new lands? Lingard enlarges on this idea when he writes:

That it was introduced into England by the Norman Conqueror, is the opinion of respectable writers; and the assertion may be true, if they speak of it only in its mature and most oppressive form. But all primary germs of feudal services may be descried among the Saxons even in the earlier periods of their government; many of them flourished in full luxuriance long before the extinction of the dynasty.

A fine example of the understanding of the artificial relation between lord and vassal was the action of Cyneheard's men at Merton. In this instance the vassals con-

16 Ibid. 378.
continue fighting against overwhelming forces even though they were offered life and liberty. They preferred to die rather than violate their oath of fealty. This was the more remarkable, for they knew that their leader was a murderer and an outlaw.\(^\text{17}\) Even before the time of Alfred a violation of the oath of fealty was considered atrocious and unforgiveable. In the time of Alfred the sentence for breach of fealty was forfeiture and death.\(^\text{18}\)

Lingard furthers his thesis by describing the land tenure of the Saxons about the time of the arrival of the first Christian missionaries. By that time the land had been parcelled out into folc-lands with each division sufficient to support one family with its labourers, flocks, and herds. A later division contained pieces of land called boc-land and benefice. The word "boc" may be translated as "book", which to the Saxon meant that such sections of land could be transferred by will, sale, or gift. On the other hand, the benefice, which was usually land given by the king as a reward from his own land because of some service rendered, reverted to the original owner. An exception might be made when the king and witan changed the estate from the benefice to that of folc-land.

The next step in that "natural growth" of feudalism occurred during the eighth century. Before 730 the clergy,\(^\text{17}\) \cite{Ibid.} \cite{Stubbs, S. Charters, 62.}
whose duty was to serve God, released from secular and military services. This exemption certainly had its advantages and before long secular thegns were enjoying the same privileges under the pretext of erecting monasteries on their lands. This abuse left the country practically defenseless, for military service was no longer required of them. This, in turn, eliminated the need of the younger military thegns. A short time after 730, however, all exemptions were withdrawn. Even monasteries were expected to render the famous "trinoda necessitas": the reparation of fortresses, the construction of bridges, and the fyrd-farelde, that is, military and naval service. Besides these three common services such obligations as payment in kind both from land and water were to be made. Should the royal retinue appear, entertainment must be furnished; royal officers and messengers were to be lodged and boarded; furnishing labor and material for the repair of the king's villa was on the lists of varied duties. And even though the customs of each district varied, the king was sure to receive the royal quota through the hands of his faithful agent, the ealdorman.

In seeking to determine the regulations of military service of early Saxon history, the Domesday Book affords some of the desired information. Although shire differed
from shire, borough from borough, a general regulation may be found. Berkshire furnished one "miles" for every five hides of land. Now by making the observation that only five hides of land were required for thegnhood, the conclusion seems to identify the "miles regis dominicus" of the Domesday Book and the Saxon "miles". Was it true that once a "miles" always a "miles"? Under ordinary circumstances, if the vassal fulfilled his obligations, he would enjoy the use of his land indefinitely; only the defaulter need have concern about the possibilities of punishment. Should the offender be a vassal, his property might be forfeited to the king; should he be a tenant, the lord was bound to find a substitute, or charge a forty shilling fine. Now supposing a "miles" did retain his status, did that mean he must always serve the designated two month requirement in the army? The answer seems to be in the negative, for the town of Oxford was allowed to send twenty pounds in lieu of its military quota. Colchester also found it more convenient to charge each resident a sixpence to help pay its military obligation. Therefore, anyone claiming the custom of scutage and the Norman system of feudalism in England were introduced at the same time must admit that

19 Ibid. 383.
the Anglo-Saxon was not unfamiliar with the practice.20

Because the king claimed the right to distribute the property of his underlings, the vassal was solicitous in obtaining his lord's confirmation of his last will. Accompanying the approval would be a promise to pay heriot. There is, moreover, another possible explanation for the heriot. Sometimes the mere desire of protection prompted the vassal to put aside a "heriot" for the king. Both explanations may be deduced from the words of Elfhelm.

And now I beseech thee, my beloved lord, that my last testament may stand, and thou do not permit it to be annulled. God is my witness that I was always obedient to thy father, faithful to him, both in mind and might, and ever true and loving to thee.21

The first contention seems probable after reading the will of Archbishop Aelfric. He bequeath "to his lord his best ship, and the sail-yards thereto, and sixty helmets, sixty coats of mail ... if it were his lord's will ...".22 A point in favor of the second explanation, namely that of protection, may be found in the actions of Athelstan, the son of King Ethelred. He not only seeks his father's assurance, but also petitions the witan "for their aid that his will may stand".23

20 Ibid.
21 Ibid. 385.
22 Ibid. 388.
Yet another author treats this problem of Anglo-Saxon feudalism from a different angle. He declares that:

In approaching the consideration of the institutional changes and modifications of polity resulting from the Norman Conquest, the most conspicuous phenomenon to attract attention is undoubtedly the introduction of what it is convenient to term the feudal system. 24

In selecting the military-tenure phase of development, the most prominent feature of historical feudalism is stressed. One view claims that William I parcelled out the property of England into military fiefs. Some of the later writers, especially Stubbs, seem agreed that the doctrine of "gradual development" explains the existence of the system in England. To substantiate his theory, Stubbs points to ecclesiastical practices. In one instance Lanfranc turned his rent-paying tenants, the drengs, into knights. 25 Again, at Kent, Lanfranc enfeoffed ten knights to perform military service for that estate. During the time of William Rufus, a monastery had its knight quota reduced from ten to three. The conclusion, according to Stubbs, is that all the monastic lands had not been divided into knights fees. 26 Later, during the reign of Henry I, the lords who defended their lands were exempt from pecuniary taxation. This, then, leads to the conclusion that military infeudation had made

great progress, for

the very term 'the new feoffment', which was applied to the knight's fees created between the death of Henry I and the year in which the account preserved in the Black Book of the Exchequer was taken, proves that the process was going on for nearly a hundred years, and that the form in which the knight fees appear when called on by Henry II for scutage was most probably the result of a series compositions by which great vassals relieved their land from a general burden by carving out particular estates the holders of which performed the services due the whole; it was a matter of convenience, not of tyrannical pressure. 27

In conclusion Stubbs states that probably no account of the knights' fees were kept until the "auxilium militum" of Henry I or the practice of scutage under Henry II. Therefore, the theory that William the Conqueror directly and immediately introduced knights' service into England cannot be maintained.

When Stubbs is confronted with the question of how to account for the development of the Anglo-Saxon thegn into a Norman noble, he admits the problem a difficult one. 28 Surely the state of affairs which existed at the time of

27 Ibid. 286, 287.
28 Ibid. 283.
the Domesday Survey differed radically from that of Henry I. That short interval between the death of William and the reign of Henry offers no explanation for the change. Thus, the proponents of the thesis seek "some skillful organizing hand working neither with justice nor mercy, hardening and sharpening all lines and points to the perfecting a strong government". And according to Stubbs, that exacting "hand" was Ranulf Flambard, an able but unprincipled clerk taken into the king's confidence. As justiciar Ranulf worked with indefatigable zeal; so much so that he was never restrained by sympathy either for the Norman nobles, or the clergy, or the native population. With such a man at his disposal, the king allowed the thorns hold on lay and ecclesiastical estates to tighten. The same Ranulf made no distinction between the temporal and spiritual fiefs when the financial advancement of the kingdom was at stake.

These indications of ruthlessness during the reign of William Rufus were certain to stir up opposition. This it did and the results may be found in the Charter of Henry I. Here he promises to return to ancient customs. Did that mean that feudalism was to be abolished? No, but rather

29 Ibid.
30 Ibid. 324.
it meant the abolition of the evil customs of his prede-
cessors. The vassals were not protesting against the sys-
tem but rather against the "excessive" demands of the king.
The very terms of the agreement admitted the duties of the
vassal both lay and ecclesiastical, but legislated against
the "evil Customs". Therefore, the theory that William II
and not his father introduced feudalism into England appears
to be contrary to facts. Such a protest against a tyrannical
government, abusing the ancient customs, was quite different
from an attempt to abolish the whole system. The people
called for a reform, not a revolution.

Freeman, acting as a kindly partner, agrees with Stubbs
when he identifies the originator of the abuses of the
feudal system in England with William the Red. Indeed, he
even goes so far as to say that

if then there was at any time when
'the Feudal System' could be said
to be introduced into England, it
was assuedly not in the days of
William the Conqueror, but in the
days of William the Red. It would
be more accurate to say that all
that we are really concerned with,
that is, not an imaginary 'Feudal
System', but a system of feudal
land-tenures, was not introduced
into England at all, but was de-
vised on English ground by the
malignant genius of the minister of
Rufus. Tendencies which had been
at work before the Conquest, and to
which the Conquest gave increased
strength, were by him pushed to their logical results, and worked into a harmonious system of oppression.31

The arguments of both Freeman and Stubbs, either for the introduction of "excessive exactions" or of the very system itself, rest on the assumption that Ranulf was the power behind the movement. Should this point be disproven, then other arguments would be necessary to prove their theories.

What, then, convinces these historians of Ranulf's importance? First of all, they assume that William I did not introduce the system of military tenure. This assumption, they claim, is supported by the silence of the Domesday Book. But such an argument appears to be weak, for the great survey was a record of answers to a prepared set of questions and not a report on contemporary conditions of England.32 Of the several cases in which the word "miles" is expressed or implied, Round thinks the Peverborough one significant. The survey divides the possession of the house into two sections: the "terra hominum ejusdem ecclesiae"; the other, the "terra hominum ejusdem" which corresponds to the formula of the Archbishop of Canterbury - "terra militum ecclesiae".

32 Round, 230.
The Peterborough "hominis" are frequently spoken of as "milites", and even where we only find such formulae as "anschitillus tenet de abbate" we are able to identify the tenant as Anschetil de St. Medard, one of the foreign knights enfeoffed by Abbot Turold. 33

Another point undermining the argument of silence of the Domesday Book is the construction of the Lindsey Survey of 1120. All will probably admit that military tenures existed by the twelfth century. Yet, close examination of the pages of the survey will reveal no mention of "knights". Why not conclude, then, that this particular phase of feudalism did not exist? If the argument is valid in the first instance, why not in the second? Obviously such reasoning in the latter case is incorrect; but to hold that the silence of the Domesday Book is a proof of the non-existent military tenure is to expose oneself to the same error. 34

In explanation of the scattered fiefs of the Normans throughout England, Round conjectures that this system of distribution should not be attributed entirely to the genius of William but rather to the uncompactness of the property of the thegn. Petit-Dutaillis remarks that

the systematization, the symmetrical

33 Ibid. 307.
simplification and legal theory of tenure are due to Norman lawyers; this is not disputed. The difficulty ... is to ascertain in what proportions the feudal and seignorial principles brought from the Continent by Saxon tradition in order to produce, in the world of reality, the new regime.\textsuperscript{35}

Of those who hold the "gradual development" theory of Stubbs and therefore contend that this service was derived from Saxon usages, Round asks what would be left for the baron if the quota of each knight corresponded exactly with the number of hides of his estates. The conclusion is that the baron would have nothing to gain by enfeoffing his vassals. Naturally such a conclusion makes the theory absurd. Norman estates were free from the obligation of knight's fees but not from military obligations.\textsuperscript{36}

An attempt to solve the discrepancy between Stubbs, Round and Maitland, who maintains that some estates were distributed but English thegns were acquainted with the service, is made by Petit-Dutaillis. Here he notes that there was a twofold military tenure: one in which estates were granted by the king for a guarantee of a definite quota of knights; the other in which military tenure formed slowly and gradually and did not come to the fore until a century

\textsuperscript{35} Charles Petit-Dutaillis, Studies and Notes Supplementary to Stubbs Constitutional History to the Charter, University Press, Manchester, 1908, 58.

\textsuperscript{36} Round, \textit{247}. 
when scutage of one or two marks attracted the attention of the Exchequer. Now it is probable that the Normans were ignorant of the Anglo-Saxon institutions; and that if they had not found something analogous to the feudal system, they would have imposed it without having understood the new social and political reforms. What, then, did actually happen? Did a sudden innovation take place? Or did the movement occur during the following century? The answer can be neither an absolute affirmative nor a categorical negative. England was not a stranger to feudal practices, for commendation, military service, heriot, relief, and seigniorial justice were common before 1066. Therefore, the "gradual" theory of development may be held when applied to the above customs. The opposing theory, the actual introduction of feudalism when applied to the distribution of land among the Normans, is also tenable. "What the Norman Conquest brought to England, which England had not at all, was a monarchic despotism based on administrative centralization." 37

Adams, too, distinguishes between the economic and political features of feudalism without reference to their institutional character. Should one admit the existence of feudal practices among the islanders, he must make some kind

37 Petit-Dutaillis, 66.
of a distinction when speaking of it as an institution. Of course, the period of chivalry with its lords and ladies, knights and vassals, courts and castles should not be considered as essential to the system.\textsuperscript{38} It is the political aspect which is important, for when a vassal rendered military service, he became a member of the military, judicial, legislative, and advisory board of his superior. By the end of the ninth century the European baron owed allegiance to the tiers of mesne lords above him, and they, in theory, owed obedience to the king. Economically, too we find an organization developing along side of political feudalism. Yet, it should be remembered that "these two sides of feudalism had not merely a different origin in institutions of later Europe ..., but they remained distinct...".\textsuperscript{39} The fact that the manorial system survived the political organization by two centuries indicates the real distinction between the two.

Was the England of Edward the Confessor acquainted with feudalism? The answer seems to be obvious upon noting that the manorial system and its private jurisdiction was so fully developed before 1066 that the Normans found very little to change. Politically, though, the system, which

\begin{itemize}
\item\textsuperscript{38} Adams, 44.
\item\textsuperscript{39} Ibid.
\end{itemize}
transformed public duties into private obligations, did not prevail. This personal vassalage, depending on the fief, was an innovation. "The fief as the vassal's normal reward with its conditions of special loyalty, and service as the tenure by which it was held, were introduced into England by the Norman Conquest."40

40 Ibid. 46.
CHAPTER III
NORMAN FEUDALISM BEFORE 1066

The obscurity which exists between the reigns of Edward the Confessor and Henry II can scarcely be matched by any other period of English history. The England of 1086 was essentially the rural England of the Confessor. The intermingling and conflicting elements of the Norman and Saxon races leaves the study of Anglo-Saxon problems unsolved. Many of these questions, however, should find an answer when the study of the Norman institutions of pre-Conquest days have been examined. But even the reconstruction of early Norman society leaves many things unexplained.

For lack of sufficient earlier evidence, the study of Norman institutions must begin about half a century before the Conquest of England with the Chronicle of Dudo and the charters of the later years of Richard II.¹

These records, wills, and charters reveal that the barons of first rank and the occupants of higher ecclesiastical positions held lands of the Duke of Normandy in virtue of military service.²

The Normans of the eleventh century were familiar with

¹ Haskins, Norman Institutions, 5.
the duties of military tenants, wardship, aid, and reliefs. Even though a close resemblance may be found between the feudalism of the twelfth century as practiced by England and Normandy, still the two are not identical. Therefore in endeavoring to draw a clear picture of Norman feudalism before William's victorious campaign in 1066, care must be exercised to avoid identifying the continental system with that of the Anglo-Saxon.

Out of Normandy's obscure history a century and a half before the Conquest, we learn that Charles the Simple made a treaty at Claire-sur-Epte. This treaty, according to the chronicler, gave the Northmen all the land between the Epte and the sea and the peninsula of Brittany. In return, Rolf, the leader of the newcomers, became a Christian and accepted the duties of a vassal of the king. When Dudo describes the oath of fealty and homage, he strives to make the ceremony redound to the honor of Rolf.

Rolf was bidden to do homage to the king for his fief. He flatly refused to perform this act, which he deemed beneath his dignity, and at last, being urged by the Franks, he bade one of his men do it for him. The man refused to bend his knee, and standing upright, with true Norse humour, raised the king's foot so high as to tilt him backwards.

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3 Ibid.
4 Guizot, France, 20, 21.
Because Dudo was seeking to please the Norman court, he tended to exaggerate; for instance, the extent of the first fief did not reach the stated proportions till later. Rolf, however, did receive a fief from Charles the Simple. "The extent of this grant was probably determined by the land which the Northmen already occupied, and included Rouen and some territory of either side of the Seine."\(^5\)

These facts prove that France was acquainted with the practices of feudalism as early as 911. Even before this a capitulary of Charles the Bald of 877 indicates that the inheritance of land local powers was recognized by law.

If, after our death, anyone of our lieges, moved by love for God and our person, desire to renounce the world, and if he have a son or other relative capable of serving the public weal, let him be free to transmit to him his benefices and his honors, according to his pleasure.

If a count of this kingdom happen to die, and his son be about our person, we will that our son, together with those of our liege who may chance to be the nearest relatives of the deceased count, as well as with the other bishop of the diocese wherein it is situated, shall provide for its administration until the death of the heretofore son, present at our court, the honors wherewith his father was vested.\(^6\)

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\(^5\) Ibid.
\(^6\) Ibid. 229, 230.
The oath of fealty and homage of Rolf meant a much closer union between the men of the fiords and the French. The more enterprising jarls adopted the continental method of warfare. The old system of footsoldiers and battle-axes was relinquished for the saddle and spear; strongholds built on high circular mounds assured safety for the barons and peasants. From these two elements, namely, the armed cavalry and private castles, came the fully developed feudal society.

Norman feudalism followed the example of its neighbor, France, to become strictly territorial. Vassals and sub-vassals in return for their fiefs owed military service to their immediate lord. In case of invasion, everyone holding a knight's fee was bound to answer the lord's summons. The services of the knights were required for less serious disturbances within the duchy. But in England the thegn served his lord because of personal and national obligation. Such service was expected of the Norman for the maximum of forty days a year. To the Norman's way of Organization, this period should have sufficed to defend the country against raiders and to settle private quarrels.

As the Duke's power increased, private warfare was more

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and more discountenanced; but old Norman customs were far too strong to attempt a complete suppression. Even William I, Normandy's most influential leader, admitted that these quarrels were inevitable, but, nevertheless, tried to lessen the danger by limiting the range of battle, by making it illegal either to burn houses and mills, to hold prisoners for ransom, or to rob a defeated foe, or to plunder. Formal Norman documents mention that service is due a lord in case his enemies have brought war upon him.  

Haskins records such an agreement in which the tenants will render forty days service in castle guard "if William shall have war in respect of the land which the king of the English has given him with his wife".  

To understand the conditions in Normandy in 1066, it is not necessary to examine the careers of Rolf, William Longsword, and Richard the Fearless in detail. Much of the chronicler's writing is based on legend and therefore not trustworthy. Certain points, however, seem to be facts. By the time Rolf's grandson ascended the throne, the Normans were not only Christians but were, in all essentials, Frenchmen. Maitland and Pollock write that they were French in their language, French in

8 Stenton, First Century of English Feudalism, 14.
9 Haskins, Norman Institutions, 21.
their law, proud indeed of their past history, very ready to fight against other Frenchmen if Norman homerule was endangered, but still Frenchmen, who regarded Normandy as a member of the state of congeries of states they owed service, we can hardly say obedience, to the king of Paris.10

The French language, customs, legal ideas were merged with the Frankish Gallic population to form a separate group - yet a group which was French.

Further analysis of the charters of Richard II by Corbett makes known the number of the Duke's household officers. Men acting as constables, chamberlain, chancellor, "hostarius" help perform the domestic duties. At the head of the local administration were the "vicecomites". During the tenth and eleventh centuries the "vicecomites" served as units of French administration, but later developed into feudal principalities.11 Normandy on the contrary, limited the "vicomtes" in extent and consequently in political power. Since succession to these offices was not hereditary, the king by his appointive powers could keep them in his control. The Duke's use of these local officers was not to collect revenue but primarily to care for the judicial needs and military obligations of the district. Moving along on the same plane of importance were the Norman "comtes". The

10 Pollock & Maitland, 66.
11 Cambridge Medieval History, V, 485.
difference between the "comites" and the "vicecomtes" lay in the fact that the latter owned several estates and usually a castle for protection, whereas, the "comtes" had no large possessions and left the local administration to the count. 12

Again evidence is lacking when the size of the Norman baronies is sought. From a fairly detailed description of a certain Gére, we find that his demesne stretched over thirty miles of territory which included six manors. Because Gére's daughter married into the higher brackets of nobility and because he and his successors were able to maintain their status among such formidable neighbors as the Count of Brienne and the lord of Montgomery, one may conclude that his fief was typical of the larger fiefs of that period. Therefore it would seem that

there were no baronies of the first rank, and the number of counties was small; also most of them, by the policy of the dukes Richard I and II had been granted appanges to junior members of the reigning family. 13

Should a baron occupy a position above the ordinary baron, he owed that position to the personal favor of the Duke. On occasion nobles claiming a more ancient origin and purer descent threatened to revolt against the ducal family in order

12 Haskins, Norman Institutions, 42.
to put themselves into what they considered to be their proper aristocratic role. How successful this class was may be seen in an examination of the names of the officials of the duchy. In William's time these officials of court were friends and relations of the Duke. So in case the name of a so-called "blue-blood" be found among the officers, it was probably despite his ancestry.

If, then, the above points are true, the contrast between the extensive English thegn's estate and the Norman barony serves to emphasize the smallness of the Norman duchy. Then, too, knowing that Gére's knight quota was merely five fully equipped men, it is clear that the Norman duke could not rely on "thousands of knights".\textsuperscript{14}

Another point which formed a basis for contrast with Anglo-Saxon England were the classes below the knight. True to feudal practice, The Norman peasant was bound to the soil. In payment for his land he was obliged to labor in the fields of his lord and render special dues and services. Now the amount of services to be rendered depended upon one's status. Legal documents very infrequently mention the chattel who served the master at all times. Frequently, though, the terms "villanus", "conditionarius", and "colonus" are mentioned.

\textsuperscript{14} Cambridge Medieval History, V, 485.
Distinct from those above are the "hospites"; the main
difference between these two lay in the amount of work to
be done: the "villani" labored weekly, the "hospites" worked
only occasionally. This latter class compares favorably with
the English "sokeman". A rung higher in the social scale
were the "vavassores", small freeholders. The origin of the
word and class is not certain, but it was used throughout the
eleventh century as a word meaning "vassal". Although this
class was inferior to a baron in France, the members were
at least knights and were considered superior, by virtue of
their estate, to the landless military group. The Norman
"vavassor", however, was different, for he is described as
a free tenant burdened with military duties determined by the
size of his holding. In the event of invasion, a "vavassor"
owning approximately fifty acres of land was required to
appear before his lord with a hauberk, shield, a sword, and
horse. Often, too, members of this class grouped together
to send a fully equipped knight to represent them. Little
is known of the peace-time services of the "vavassor" other
than his payment of reliefs, rents, and carrying-services.15

By 1086 the "vavassores" of the Domesday Book were men
of very modest estate. In Buckinghamshire thirty-two shill-

15 Stenton, First Century of English Feudalism, 16, 17.
16 Domesday Book, 1, 146b.
ings and six pence was paid to the lord by two of this class. In another case a certain "vavassor" is listed as the woner of two cows. When, however, Maitland remarks that the tenants of the king are not "vavassores", he is speaking of a later development. He writes thus about the time of Henry I: "It is clear, however, that there may be a 'lord' with 'men' who yet has no sake or soke over them". Again he emphasizes the distinction between the earlier and later "vavassor" by remarking that when the franchisal powers are put aside "that a baron or holder of a grand fief has 'high justice', or if that term be too technical, a higher justice, while the "vavassor" has 'low justice', or lower justice."

If, then, the Norman "vavassor" was the owner of less than fifty acres and could serve as a soldier with hauberk, sword, shield, and horse, William would not have been at a loss to see the value of the English fyrd. True, the bonds of service differed in England, yet the duties to be performed and the expected performance were quite similar.

When in 943 William Longsword was murdered by Arnulf of Flanders, the fate of Normandy was held in balance. Louis d'Outremer, probably claiming the guardianship of the young duke Richard, made himself master of Normandy. Had Louis

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17 Maitland, Domesday Book and Beyond, 81.
18 Ibid.
19 Stenton, William the Conqueror, 29.
decided to use Normandy as a friend, he could have broken the power of Jugh Capet; but his English training had engendered such an implacable hatred for the Normans that he forced the young duke to turn against him. The old Carolingian friendship was surrendered when Richard commended himself to the lord of Paris, Hugh the Great. In the very attempt to clinch the support of Normandy, Louis failed and was imprisoned by the Normans. Hugh then accepted the king as a feudal prisoner charging that he had violated "feudal justice". Louis was not set free until he had given up the city of his official residence, Laon. 20

This use of early Normandy as an ally by the duke of France proved to be a salutary event in Norman history. Under the protection of the first Capetian, the duchy was able to develop until by the eleventh century the balance of power was disputed. Exactly what was the nature of the feudal tie which bound the Duke of Normandy to the king of France is not too clear. Probably all the obligations which were implied in the act of homage were included, but these varied according to the parties involved. But as long as the threat of confiscation could be enforced, the oath of fealty and service would certainly be kept. Thus, in case two

parties of equal power tied the feudal bond, the assertion of dependence was about all that could be guaranteed. This, however, did not mean that the Duke of Normandy's promise ended with the ceremony; for, like the nobles of his time, personal honor would prevent the underlord from attacking his superior without a serious provocation. Earlier Normandy depended less on personal loyalty to maintain feudal relations than on power. Stenton writes that

It should not be forgotten that in case of the dukes between Richard I and Robert I the traditional alliance between Normandy and the Capetian dynasty disguised the practical autonomy of the former. So long as the knights of Normandy were at the disposal of the king of France for an attack on Flanders or Blois, the king would not be concerned to argue the question whether they were furnished to him in obedience to his claim of feudal service, or merely in pursuance of the territorial interest of his vassal. 21

Years later, after William had subdued England, the king France demanded service of William as his vassal. Wace records William's reply:

The King of France called on the duke to do service to him for England, as he did for his other fiefs of Normandy; but William answered that he would pay him as much service for England as he had received help towards winning it; that the king had not assisted him in his enterprise, nor helped him in his need; that he would serve him

21 Stenton, Wm. the C., 37, 38.
duly for his original fief, but owed
him nought for any others; that if
the king had helped him and had
taken part in the adventure, as he
had requested, it might have been
said that he held England of him;
but that he had won the land without
him and owed no service for it to any-
one, save God and the apostle at Rome;
and that he should serve none else.

Thus they wrangled together, but they
afterwards came to an accord; and the
king of France remained quiet, making
no more demands on William.22

To help paint the background of the picture of Normandy
before the Conquest, mention of duke Robert should be made.
He was "a contemporary of the great king Canute ... was a
man of great renown in Europe during the eleventh century"
and was probably the source of "much that was destructive
of Normandy of his son's day".23 When the sixteen year old
Robert succeeded his father, he was influenced by deceitful
counsellors and as a result promoted foolish adventures such
as aiding the exiled Aetheling Edward in raiding England.
Fortunately, as he advanced in age, he acquired the family's
normal sense of politics. His first important move, which
placed him in the foreground of French politics, was his
siding with the king of France against the Queen-mother and
the Count of Blois. As a reward French Vexin was ceded to

22 Wace, Roman de Rou, trans. by Edgar Taylor, Wm. Pickering,
London, 1837, 269 270.
him. The second outstanding act was his resolution to cooperate with the reforming element within the Church. Perhaps he reasoned that law abiding barons of the ecclesiastical world would mean peaceful and loyal followers. To prove his sincerity in helping the Church, no less than six great monasteries were erected under his influence.

A third and equally important event in determining the inner status of Normandy was the duke's decision to make a pilgrimage to Jerusalem; but hearing of this resolution the Norman prelates and barons protested that the duchy would become a place of trouble and anarchy. His answer was:

By my faith, I will not leave ye lordless, I have a young bastard who will grow up, please God, and of whose qualities I have great hope. Take him, I pray you, for lord. That he be not born in wedlock matters little to you; he will be none the less able in battle, or at court, or in the palace to render you justice. I make him my heir and I hold him seised, from this present, of the whole duchy of Normandy.24

The council accepted Robert's proposal and approved of four nobles - Gilbert, the Count of Brionne, Osbern, the duke's seneschal, Thorold of Neufmarche, and Alan, the Count of Rennes - as guardians of the seven year old boy. Moreover, the approval of the king of France was sought and obtained

24 Guizot, 260.
before Robert set out on a pilgrimage which was to be his last.

The news of Robert's death at Nicea on July 2, 1035 was a signal for feudal turbulence throughout Normandy. William was readily accepted as duke, for the barons planned to exploit the country throughout the long minority of the boy. A clear indication of the danger and confusion of the times is the story of the violent deaths of three of William's guardians. Who accepted the responsibility of caring for William is disputed. Some maintain that the king of France guided the schooling of the young duke. Others argue that William's uncle, Malger, cared for him, for it was Malger, the archbishop of Rouen, who sought to quell feudal uprisings by introducing the Truee of God. The promotion, too, of Malger's younger brother as Count of Arques seems to indicate that William was this prelate's ward. Not until William had reached the age of twenty did the barons begin to fear his growing power and begin to organize a movement to rid the duchy of the leader of bastard birth. The Duke narrowly escaped capture, fled to Poissy to solicit the aid of the king of France. King Henry heard his plea and personally led his French troops against the Norman rebels at Val-des-Dunes. Before the day was finished the rebellious barons

26 Cambridge Medieval History, 492.
were overwhelmingly defeated.

The Val-des-Dunes victory marked the accession of William to power. From this point to his death, his career was marked with military success. Taking advantage of his newly acquired position, he began to eliminate all those who attempted to thwart him. William, Count of Mortain, William Busac of Eu, William, Count of Arques, felt the iron hand of the Duke. All three were deprived of their fiefs and exiled. Afterwards when Malger excommunicated his former ward for his disregard of the papal ban on the marriage of Matilda, he was deposed by a council summoned by William. This same marriage of Matilda and the consequent alliance with Flanders upset the balance of power in northern France. The Capetian house forgot the traditional friendship with Normandy and sought to aid the exiled Norman barons. Twice the French met with crushing defeats, the first in 1054 at Mortemer, and the second two years later at Varaville.27

Such outstanding successes against so powerful a foe naturally encouraged William to attempt an enlargement of his dominions. To the south William turned his attention and by 1064 "the acquisition of the overlordship over Maine, partly by force and partly by chicanery, brought William little

27 Stenton, W. the C. 112.
strength, though it undoubtedly increased his reputation."28 By 1065 William had fixed military service throughout his domains; moreover the construction of castles without his permission was forbidden. Thanks to the efforts of LanFranc, harmony between Rome and Rouen was restored. But despite this reconciliation the Duke was more active than ever in ecclesiastical matters; so much so that the secular grasp on the Church in Normandy had no rival in Europe. The bishops not only expected William to nominate their successors and invest them with privileges, but they also became accustomed to look for the censoring hand of William at all their Church councils. The Church, however, suffered no undue harm under the guiding hand of William. He was an earnest religious man both in his public and private life. Under his guidance and support the reformed Church of Normandy was to serve as leaven and model for the Church in England.

The picture of eleventh century Normandy shows that on the day of embarkation of Norman troops at Saint-Valery England was not only faced by a band of adventurers under command of a determined and experienced warrior, but she was also being attacked by representatives of the most highly organized state of the Continent. Besides hoping to establish

28 Cambridge Medieval History, 495.
the Norman way of living, the Norman duke also looked to the betterment of living conditions. To protect his kingdom from the danger of chaos possible in medieval society, he would attempt isolation from the Continent. In short, it would seem that William sought to free himself from the turmoil of Normandy to concentrate his talents on the improvement of a single kingdom. He had gained valuable political experience at home; perhaps he could use it to everyone's advantage on foreign shores where the conqueror could safely and gradually alter time-honored but unfavorable national customs.
CHAPTER IV
ANGLO-SAXON FEUDALISM PRECEDING THE OATH OF SALISBURY

The withdrawal of the earls Edwin and Morcar from London left the city unprotected. While Archbishop Stigand took the oath of allegiance, "king" Edgar formally and completely surrendered himself by renouncing his crown to William. Upon the announcement of his election to the throne by the witan, William feigned reluctance, but in a comparatively short time the approach of the Abbey of Westminster was lined with two hundred and sixty Norman nobles hailing their king-elect. There Aldred, Archbishop of York, accepted the coronation of the first of the Norman kings.

Having first, as the archbishop required, sworn before the altar of St. Peter the Apostle in presence of the clergy and people, to protect the holy churches of God and their governors, and to rule the whole nation subject to him with justice and kingly providence, to make and maintain just laws and straitly forbid every sort of rapine, violence, and all unrighteous judgements.1

Four years later the Conqueror was conscientiously following the terms of his oath and his resolution to keep the better

laws of Edward.

Willelmus rex quarto anno regni sui, consilio baronum suorum fecit summoneri per universos consulatus anglos nobiles et sapientes et sua lege eruditos ut eorum et jura et consuetudines ab ipsis audiret. Electi igitur de singulis totius patriae comitatibus viri duodecim jurejurando confirmaverunt primo ut, quoad possent, recto tramite neque ad dexteram neque ad sinistram partem deserta legum suarum consuetudinem et sanctora patefecerent, nil praemittendas, nil addentes, nil praevaricando mutantes. 2

From the Statutes of William comes another proof of his desire and determination that the old Anglo-Saxon laws be promulgated throughout the kingdom.

Hoc quoque praecipio et volo ut omnes habeant et teneant legem Edwardi regis in terris et in omnibus, audauctis iis quae constitui ad utilitatem populi anglorum. 3

William's position in England was, indeed, unique. "De jure" he was the rightful monarch who had promised to guard against disturbing innovations within his realm; "de facto" he held the title of conqueror which implicitly meant "to the conqueror goes the spoils", in fact, that was the opinion of the five or six thousand Norman knights. The Anglo-Saxon knew this to be the case and believed that the

2 Stubbs, Constitutional History, 291.
3 Stubbs, Select Charters, 84.
newly elected king intended to enslave them, for

the king sold out his lands as dear as he might, and then some other man came and bid more than the first had given, and the king granted them to him who offered the larger sum; then came a third and bid yet more, and the king made over the lands to him who offered most of all. 4

This problem of distributing fiefs was not as pressing as the question of how to hold the Anglo-Saxons in subjection. Upon first sight it would take a man of great organizing ability to be able to distribute five thousand knights throughout the land in such a way so as to keep the restless Saxons under the Norman yoke. William proved himself equal to the task. The other factor, which promoted the success of the king's plan, was that after the battle of Hastings opposition was limited more or less to local skirmishes. That one exhibition of fighting of a trained feudal cavalry was enough for the remnant of Harold's army.

Once the danger of organized resistance was eliminated, a system had to be devised to protect the isolated groups of Norman nobles from hostile subjects. William's plan of raising impregnable strongholds in certain parts of the kingdom became a reality. So confident was William in the strength of these fortresses that he constructed them in

4 Anglo-Saxon Chronicle, 1087.
Wales, on the Isle of Man, and even in Scotland. None of his followers, as we have noted before, were allowed to build these fortifications wheresoever they wished. The king foresaw the danger of a repetition of the king's troubles with the powerful robber baron or even the insubordinate duke. For this reason the king garrisoned the newly constructed castles with his own men no matter whether the fortification was the Tower of London or one serving as a buffer in some outlying district.

Much land, indeed, was needed to satisfy the ambitions of the Normans. But even though the Conqueror could claim all rights, he made a pretense of checking all signs of arbitrary confiscation. His first move was to take the land of those powerful English knights who had opposed, what he called, his lawful heritage.

Post regni conquisitionem post justam rebellium subversionem, cum rex ipse regisque proceres loca nova perlustrarent facta est inquisitio diligens qui fuerint qui contra regem in bello dimicantes per fugam se salvaverint. His omnibus et item heredibus eorum qui in bello occubuerunt spes omnis terrarum et fundorum atque redituum quos ante possederant praeclosa est; magnum namque reputabant frui vitae benefacio sub inimicis.

5 Ibid.
6 Stubbs, Constitutional History, 281.
William's second source of land came from the annexation of estates of the participants in local revolts. By the time Hereward of Wake, the last of the important Saxon rebels, was forced to lay down his arms. William was the powerful possessor of 1,422 manors. This great number assured him military and financial superiority. His closest rival in the number of the "vacant" manors owned was his half brother Robert of Mortain, a proud lord of 795; his other half brother Odo, the Bishop of Bayeux, received only 438 English estates!7

Financially, then, the Conqueror, with the ordinary feudal revenues of aid and reliefs coming in from his manors, was well provided for. Besides the fess collect at the marriage of the eldest daughter, knighting of the eldest son, guardianship of minors, the treasure of the Exchequer was increased by the Danegeld, income from town charters, from Jews and from the courts of justice. In one instance we read that Walter de Caucy paid fifteen pounds for the privilege of selecting his own bride. On the feminine side was one Wiverone of Ipswich who paid four pounds and a silver mark for permission to marry a man of her own choice. The sale of liberties and privileges was frequent. In some cases

7 Maurois, 62.
the right to select the county's own sheriff was reduced to a matter of pounds and marks. A place in the city market or even the salting of a fisherman's catch were permissions sought and paid for.\(^8\)

From what has been said it would appear that William as conqueror was supreme. Did he therefore attempt to establish the Norman system of feudalism? According to Round, the key to this problem lies in the determination of the quota of knight service required of each fief. He views the knight service as part of the contract for holding a fief under the crown; while other historians view the service as a process of subinfeudation. Because some assume that William could not have introduced a new principle of land holding, they must seek an explanation of homage in Anglo-Saxon institutions. They stress the contract between the under-tenant and the crown, and practically overlook the position of the tenant in chief. Quite true, William did check the disintegrating influence inherent in the feudal system by demanding a direct oath of allegiance, nevertheless, the agreement of military service between the king and seigneurs still held.\(^9\) So long as the baron discharged his "servitium debitum", the king had no right to interfere. If, then, a baron should offer the

\(^8\) Ibid. 64, 65.
\(^9\) Round, 248.
excuse that his vassal failed to meet his knight's service, the king could reply with an indifferent shrug of his shoulders and explain that that was the baron's affair and not his. In a word, the baron owed service to the king, the subvassals owed service to their immediate lord and to no one else.

In the customary lists of knight quotas the reader will note that the number of knights required is usually five or its multiple. Now to reconcile this fact with the contention that a knight was required for every five hides of land or for every twenty pounds of income is difficult. The question to be answered is - why should estates of the same area or of the same income vary as to knight's service. Immunity might at first appear to be the answer. Here, however, one meets with the problem of how to account for a fief of ordinary size have a "servitium debitum" twice the size of any other average fief. A possible solution seems to be that the assessment of such a service was arbitrary. If, then, the quota of knights of each fief was to be determined by the king, what was to determine the king's mind? Later English customs and Norman usages indicate that the feudal host was the terminant. Wace, in verse, shows that the Normans were

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10 Ibid. 260.
familiar with the ten-knight unit. Freeman supports this when he writes that "to the mass of his followers, a feudal tenure, a military tenure must have seemed the natural and universal way of holding land". Therefore, if the Normans were accustomed to the round number unit of service and since the same type was found in England, the conclusion is that William followed the custom of his homeland in granting fiefs for the usual five, ten, or twenty-unit of service. However, even though we find such prominent historians as Stubbs, Freeman, Gneist, Round, and Lingard at odds on the questions of knight service, nevertheless, they hold in common that the knight's service assured the Conqueror of continued military superiority. This, of course, eliminated the possibility of equal or even superior suzerainty of a tenant in chief.

The duke of Normandy, the Count of Anjou, with their powerful feudal arrays, had taught William a salutary lesson.

The position, then of the Norman barons in England was twofold: first they exercised the duty of an army of occupation; second, as landed proprietors, they had claim to the rights of the new English nobility. Theoretically, of course, the native English had the same rights; but practically they were treated as inferiors by the ever increasing number of.

11 Freeman, 368, 369.
Norman office-holders. It is not at all surprising to find some balking at the suggestion of altering their native language; others reluctantly being taught the Norman type of architecture, and many preferring the old, less organized Anglo-Saxon government to the well-developed system of the invader. Strange to say, though, this very conquest, this revolution, was the first step toward popular English freedom. The central power was established at the very beginning. Local Saxon rights were guaranteed and were to be respected even by the barons. Even the critical Chronicler finds something good about the new order of things.

Among other things the good order that William established is not to be forgotten. It was such that a man was himself aught, might travel over the kingdom with a bosom full of gold unmolested; and no man durst kill another, however great the injury he might have received from him.

Another saving feature in the eyes of the Chronicler was the continuation of the witan which

King William also held in much reverence. He wore his crown three times every year when he was in England: at Easter he wore it at Winchester; at Pentecost at Westminster; and at Christmas at Gloucester. And at these times all the men of England were with him, archbishops, bishops, abbots, thanes, and knights.

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12 Petit-Dutaillis, 58.
13 Maurois, 64.
14 Anglo-Saxon Chronicle, 1087.
The fact that William deigned to call this important group of men together did not mean that the king was to surrender any of his power, for he merely sought their advice, not their consent. Indeed, his contempt and independence of this governing body is manifest in the following statement:

So also was he a very stern and wrathful man, so that no durst do anything against his will, and he kept in prison those earls who acted against his pleasure. He removed bishops from their sees, and abbots from their offices, and he imprisoned thanes, and at length did not spare his brother Odo.15

Odo, it will be recalled was a very powerful bishop in Normandy. His see was that of Bayeux, and he was foremost to serve the king. He had an earldom in England, and when William was in Normandy, he was the first man in this country, and him did William cast into prison.16

To paint a picture of the barons forever at odds with the king and the king continually laying plans to entrap scheming nobles is not in harmony with historical facts. In William's time a sufficient number of barons remained faithful to quell the revolts of their turbulent peers. In reality it was this group which filled the higher administrative offices of the kingdom. As a precautionary measure, though,

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15 Ibid.  
16 Ibid.
the English fyrd was not left unexploited. William saw the possibilities in the national militia as well as in the administrative branch of the county with its sheriff. He needed but to replace the English officials with men of his own choice. This would mean that the collection of taxes, the administration of county justice, and the control of the representatives of the county would be an easy matter. Hence the combination of the sheriff and the fyrd plus the military strength of the barons would insure peace within the country.

By virtue of his election as king, William claimed all the crown lands of his royal predecessors. By right of conquest the land and property of those who opposed him or proved unsympathetic to the cause were his to dispose of as he please. But to say that the distribution of these grants among the Normans was the introduction of feudalism is not entirely true. One should not lose sight of the fact that though the terminology and land tenure were quite similar, nevertheless, there existed two types of feudalism. Frequently, indeed, economic feudalism appeared to be one with the political system. That the first could exist without the second was proven by the Anglo-Saxons.

In the manorial system, the unit of economic feudalism, the serf was permitted to cultivate his small piece of land
in return for rendering such obligations as service in his lord's fields and the payment in kind on a variety of occasions throughout the year. The cultivator was also protected from unjust exactions by the owner. These obligations and privileges, though not written, became customary. In case a serf had a complaint to make, he could present his petition for a hearing in his lord's "customary" court. So closely parallel was this arrangement to that of the Continent that the Normans need only to effect a change in the terminology.\textsuperscript{17}

The other side of feudalism, the political, was not commonly practiced on the isle before 1066. It seems that the condition which promoted its growth on the Continent, namely, the decadence of the central government, was lacking in England. Some conjecture that England, though far behind the political system of Europe, would have eventually founded a similar system.

The relations of a grantee of bookland to those who held under him were doubtless tending for some considerable time before the Conquest to be practically very like those of a feudal superior, but Anglo-Saxon law had not reached the point of expressing the fact in any formal way. The Anglo-Saxon and continental modes of conveyance and classification of tenures must have coalesced sooner or later. But the Conquest suddenly bridged the

gap which at the time was still a marked one.\textsuperscript{18}

Given the manorial system, the founding of political feudalism was comparatively easy. True, the primary purpose of the latter was different. Such a system meant that an individual no longer performed his former duties for the State as a citizen of the commonwealth. Now, under the double system, he served in a military way because of the terms of his private contract with his superior. In place of the national courts, the new order of things established private courts. Two influential ideas, then, were involved.

One was that all holders of land in the kingdom, except the king, were, strictly speaking, tenants rather than owners, which profoundly influenced the history of English law; the other was really private obligations, created by a business contract, which has profoundly influenced the growth of the constitution. Taken together, the introduction of the feudal system was as momentous a change as any which followed the Norman Conquest, as decisive in its influence upon the future as the enrichment of race or language; more decisive in one respect, since without the consequences in government and constitution, which were destined to follow from the feudalization of the English state, in the world which neither race nor language could have done the work in the world which they have already accomplished and are yet destined to

\textsuperscript{18} Pollock & Maitland, 40.
perform in still larger measures. 19

A fuller understanding of Anglo-Norman feudalism demands that the influence of the Church be considered. Bishops and abbots, it will be remembered, were not the least among the lords of the kingdom. In the following letter the bishop, who is in danger of being removed from his see by the king, uses the same language and same technique as might be expected from a lay baron.

To his lord, William, king of the English, William bishop of Durham, greeting and loyal service. Know, my lord, that your men of York and Lincoln detain my men under arrest, and have seized my lands, and would have take me also, if they could; and they say that they have done all these things at your command. I request you, therefore, as my lord, to cause my men and my lands be restored with my chattels to me, as your liege man, whom you have never appealed in any crime, and who never stood on his defence before you. If you will appeal me hereafter of any crime, I am ready to justify myself before you in your court at a convenient term, on receipt of safe conduct. But I earnestly beg you not to treat me so basely and dishonourably, not to disseise me unjustly, upon the advice of my enemies. For it is not every man who may judge bishops, and for my part, saving always my order, I undertake to offer you complete service or the service of my men, I offer the same at your pleasure. 20

The implicit admission of the right of lay investiture was not in accord with the mind of the followers of Cluny. If the theory of feudalism was followed out exactly, an upset in the balance of power between the Church and the king was sure to occur. In kingdoms the monarchs regarded the lands of the Church as military holdings and therefore claimed the right to appoint the holders. The lay ruler must have reasoned that since the Church enjoyed the unique privilege of immortality as regards the fief, he, the lord, should at least be recompensed for the loss of its possibility to escheat. If he were a strong monarch, but not one necessarily an enemy of the Church, he would hold the right of investing the bishops. As was to be expected the reformers of the school of Cluny would allow no power other than Rome the right to choose and invest the occupants of the episcopal sees.

Normandy, too, felt the influence of the reform Pope. It would seem that many of William's actions were governed by his close association with the Church. The Chronicle, too, attributes many of the kings actions to religious motives.

This King William, of whom we are speaking was a very wise and great man, and more honored and more powerful than any of his predecessors. He was mild to those good men who loved God, but severe beyond measure towards those who
withstood his will. He founded a noble monastery on the spot where God permitted him to conquer England, and he established monks in it, and he made it very rich. In his days the great monastery of Canterbury was built, and many other throughout the land; moreover, this land was filled with monks who lived after the rule of St. Benedict; and such was the state of religion in his days that all who would might observe that which was prescribed by their respective orders. 21

Before embarking upon the trip across the channel, William had promised the Pope to carry out the Cluniac reform in England. To indicate his acceptance, the Pope sent his standard to be carried before the invading troops. 22 In return for the privilege of using the Pope's banner, William later sent the captured banner of Harold to Rome. As a yet further move to keep in the good graces of the Pope, William chose Lanfranc, a man of great political and religious possibilities, to aid him in the ecclesiastical reform. Urged on by the newly appointed Gregory VII, Lanfranc had to cope with the problem of enforcing the law of celibacy and the elimination of lay investiture. The first difficulty he solved by permitting the married clergy to remain in that state; the unmarried were to observe the law. The second problem was more difficult. Lanfranc readily admitted the right of Rome to depose bishops, but was not in

21 Anglo-Saxon Chronicle, 1087
22 Ogg, 235.
agreement with the papacy on the election and investment of bishops, abbots, and the like. He, with the king, believed that such functions belonged to the monarch and that the vassalship to Rome must not be admitted. Both the king and his minister reasoned that the friendship of the papacy was something of importance, but not to be retained at the sacrifice of the honor and power demanded by Gregory. These very sentiments William clearly expressed in a "firm and respectful" letter to his holiness.

It would seem that the Conqueror's Church policy in England was somewhat different from his Norman practice. Stubbs believes that because the Norman bishops formed such a small element in the politics of Normandy, that potentially their power of limiting the power of the king was slight. In England, however, the bishops composed a very influential section of the witenagemot and were, moreover, confident of the loyalty and support of their people. Naturally, then, the capitulation of the witan in 1066 meant the verbal submission of the prelates. Four years later, though, William seized the excuse that a number of the ecclesiastics had supported the anti-pope Benedict and that all but two English bishops were unworthy to remain in their diocese.23

23 Stubbs, Constitutional History, 305, 306.
In summing up William's attitude toward Rome, one should beware of using the separation of the lay and ecclesiastical courts as a sign of complete subjection to the will of the Pope. The fact that both king and pope found the act advantageous may explain that particular bit of legislation. Further examination confirms this, for, as we have noted, fealty to the Church was denied. To this is added that William would not suffer that any one in all his dominions should receive the pontiff of the city of Rome as apostolic pope, except at his command, or should on any condition receive his letters, if they had not first been shown to himself.24

A second effort to control the prelates was the simultaneous convocation of the Church council with the assembly of the Great Council wherein the king presided over both assemblies and rule that

Primatem quoque regni sui, archiepiscopum dico Cantuarensem seu Doroberensem, si coacto quicquam statuere aut prohibere nisi quae suae voluntate accomoda et se primo essent ordinata.25

Besides censoring the Church's legislation, the king also prescribed rules for cases to be handled by the ecclesiastical courts.

24 Stubbs, Constitutional History, 309.
25 Stubbs, Select Charters, 82.
Nulli nihil minus episcopum suorum
concessem iri permittebat, ut aliquem
de baronibus suis seu ministris sive
incesto sive adulterio sive aliquo
capitali primine denotatum, publice
nisi ejus praeceto implicitaret, aut
excommunicaret, aut ulla ecclesiastici
reigoris poena constringeret.26

These three simple rules, which were to play an impor-
tant part in the development of English law, exemplified
the unlimited power established by the Conquest. The same
laws, too, help to explain how William could summon a coun-
cil of all the landholding men, both lay and ecclesiastical,
and demand that all swear allegiance to him.

26 Ibid.
CHAPTER V

THE SALISBURY OATH

Not long after knighting his youngest son, the Conqueror appeared at Salisbury to preside at an unusual council of landowning subjects. The Anglo-Saxon Chronicle records that

This year the king bare his crown, and held his court, in Winchester at Easter; and he so arranged that he was by Pentecost at Westminster, and dubbed his son Henry knight there. Afterwards he moved about so that he came by Lammas to Sarum, where he was met by his councillors; and all the landsmen that were of any account over all England became this man’s vassals as they were; and they all bowed themselves before him, and became his men, and swore him oaths of allegiance that they would against all other men be faithful to him.

This passage of the Peterborough chronicler, though expressing the real purpose of the oath, should not be construed too literally when the attendance of all the landholding men is mentioned. That very phrase "ealle land sittende men pe ahtes waeron ofer eall Engleland" places the Salisbury event among the obscurest questions of Anglo-Saxon history. Florence of Worcester interprets the passage

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1 "Sarum" and "Salisbury" are used interchangeably by translators of the Chronicle.
2 A.S.C., 1086
as meaning the attendance of all the lords with all their knights.³ Should the passage be interpreted as meaning the vassals of the tenants in chiefs, the passage would be intelligible. Even though such an assembly was without precedent, it would have been a comparatively easy task to summon it. A fief as large as that of William of Peverely could boast of ten men of "any account".⁴ Using, then, an "a pari" argument, the total number at the council could not have been as large as some say.

Davis, too, writes that

the meeting cannot possibly have included all the landowners; and although it is possible that, after the meeting, the oath was taken by suitors of every shire-court, such proceedings do not in any way denote the introduction of a new theory of sovereignty.⁵

What the exact number of knights was who accepted William as their lord and king at Salisbury is difficult to estimate. Stubbs thinks the assembly to have included about 1,400 tenants in chief and some 8,000 underlords.⁶ When, however, Orderic alleges that William so distributed his lands that he could furnish 60,000 knights with estates, it can be proven that the historian added at least one

³ Stubbs, Select Charters, 81.
⁴ Stenton, First Century of English Feudalism, 112.
⁶ Stubbs, Constitutional History, 512.
digit too many to the total. An appeal to the statistics of the Domesday Book reveals that about 4,318 "milites" were important enough to merit specific mention. On the supposition of a defective return, the number should rest close to 5,000 knights. Then, too, had 60,000 knights gathered at Salisbury, it is probable that the English Chronicle would have recorded the attendance of so large an assembly.

When William proved his power by exacting from each mesne tenant an oath of allegiance to himself, a no common event occurred. Though the oath meant the king's claim to service surpassed the underlord's claim to fealty, the doctrine was not a revolutionary change in feudal law. It is quite probable the intention of William was to provided against the defections of English nobles to a possible invading force of Danes.

But apart from this, any feudal monarch could have maintained in theory that the fact of subinfeudation should not invalidate his sovereign rights; the question was merely as to the possibility of enforcing the latter. The exceptional power enjoyed by William and his successors in this respect was due to the intimate relations established between the king and his

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7 Stubbs, Con. His., 287, 406.
8 Stenton, Wm. the Con., 385.
feudatories by the circumstance of the Conquest; the Oath of Salisbury was a striking incident and little more. 9

In the opinion of Davis, too, the significance of the oath has been overestimated.

The recorded formula is evidently framed with an eye to the contingencies of invasion and occupation. It implies the doctrine that allegiance overrides all other ties of fealty - a doctrine which was nothing new in England or in France. But the doctrine is merely latent in the oath; and there are reasons for doubting whether the doctrine was universally recognized in England before the reign of Henry I. Too much importance has been attached to the meeting of 1086, which was a temporary expedient to meet a temporary danger. 10

Some regard this "striking incident" as the formal introduction of feudalism into England. Stubbs not only denies this but attempts to prove that the Salisbury Oath of allegiance and act of homage was entirely anti-feudal. 11 The fact that the tenants in chiefs, barons, and perhaps knights were obligated to perform and act of homage proves that feudalism in England was already consolidated. Surely, if this act was the inauguration of the system, more than a slight change in the law of tenure would be expected. An immediate alteration in legislation, taxation, and military service

9 Ibid., 365, 366.
10 Davis, 37.
11 Stubbs, Con. His., 289.
would have been in order. As it was, the whole policy of William was to avoid the disruptive tendencies of the system. Decentralization meant less power for the monarch. To help avoid such tendencies William decided to promote the popular usages of the Saxon national government. The laws of Edward, the witenagemot, and the local courts along with the national militia were, in most essentials, retained. Innovations were introduced, according to Stubbs, but

only such gradual essential changes as twenty eventful years of actors and new principles must bring, however, insensibly the people, themselves passing away and being replaced by their children, may be educated to endurance. 12

To maintain that the oath made William the supreme feudal lord of the island does not necessarily mean the oath was feudal. Norman England practiced feudalism. Therefore should all the tenants in chief acknowledge on person as their monarch, he would find the word "feudal" attached to his name. In striving to establish a strong central government, the Conqueror demanded such an oath. This act was more than feudal, for acts of homage had accompanied the distribution of land during the Conquest. A renewal of the same act was not necessary. But since all were required to take the oath of allegiance, the act must have been different. It must have been an oath of a subject to his king; a promise

12 Ibid. 292.
to be a loyal citizen of his fatherland.

It has been frequently stated that in theory feudalism was a strong centralizing power. Each vassal and subvassal were duly subordinated to the head of the government, namely, the king. Practice, however, did not always follow the theory. We know William's experience with continental feudalism was sufficient to merit thought of reorganization. Perhaps due to the ever occurring feudal wars in Normandy between vassal and lord, the theory of feudal subordination was not recognized. The nobles of Normandy had become accustomed to consider military force the backbone of their system. In short, if the king could enforce his law, he was recognized by the subjected vassal as a superior. In this case feudalism was a power tending toward centralization. If, however, the vassals were too powerful to be successfully subdued by the lord, the theory of feudalism was metamorphosed into a decentralizing force. Thus, William's decision to make the practice one with the theory necessitated the removal of the discrepancy between the two. In England he effectively realized his desire by scattering the manors of his barons throughout the country. This eliminated the possibility of rapidly mustering troops to oppose the king. Should a knight attempt such an act, the king could easily forestall it.
For twenty years the Conqueror had carried out the above policy. Why, then, after such a long period did he demand an oath of allegiance? Why was not a similar council summoned before? One reason may be that up to this time, as it is sometimes conjectured, that the king was not yet sure of his strength. If, however, it were merely the rebellious nobles who prevented a similar summons before 1086, William would have been in the position to exact such an oath any time during the four preceding years. The imprisonment of Odo in 1082 marked the last of the Norman rebellions. Perhaps this explanation should be linked with the second, namely, the publication of the Domesday Book. This survey, a masterpiece of detail, furnished the king with a list of the important men of the kingdom. The nobles realized that the king, thanks to the census book, was in a position to check the Salisbury attendance. They knew that to defy the summons of the king would be suicidal, for the military strength of the Conqueror was vastly superior to any feudal combination of forces.

As the vast assembly at Salisbury performed the ceremony of homage, William knew he had accomplished his wish. The feudal supremacy of the crown was solemnly acknowledged by every man of note. Kneeling before the king each
land owner place his clasped hands within the king's hands and pronounced the formal words, "I become your man, from this day forth, of life, or limb, and of earthly worship, and unto you will be true and faithful, and bear you faith for the land I hold of you, so help me God".13

The same author states that subinfeudation was not prohibited, but "William ... made all the sub-tenants of his tenants in capite, take the oath of fealty to him, as lord paramount of all".14

Ramsay states the Salisbury Gemot of a most striking and unprecedented character, but not more imposing to the outward eye than important for its political and constitutional significance. ... The essential point proceeding was this, that the king enacted recognition from all subjects, whether they held land directly of him or not.15

The oath, however, was in accordance with the Statutes of William wherein every freeman was bound to swear fealty to the king.

Statuimus etiam ut omnis liber homo foedere et sacramento affirmet, quod infra et extra Angliam Willelmo regi fideles esse volunt, terram et honorem illius omni fidelitate cum eo servare et ante eum contra inimicos defendere.16

14 Ibid.
16 Stubbs, Select Charters, 83, 83.
Ramsay goes on to say that

with respect to his own followers, on whom he conferred estates, William would certainly have taken their homage when granting their land. It is impossible to conceive his granting land except to be holden feudally or himself.17

Probably William had not taken the homage of a sufficient number of under-landowners to satisfy his purpose. Perhaps since the subvassals were not mentioned in the Laws, there arose a question of application. Another conjecture, as has already been indicated, might be that the Domesday "enquiries then going on had called attention to the numbers of undertenants and allodialists, and the importance of defining their position towards the king without delay."18

Instead of holding that the oath was the introduction of feudalism, Ramsay says it was "the establishment of William's New Feudalism" and set a "seal upon his work in the consolidation of England."19 This act, then, went a great way in counteracting the disintegrating influence of feudalism. Under the new order of things, a lord could no longer oppose the king, for he "might draw on himself the guilt of treason, but his men who followed him were guiltless”.20

17 Ramsay, 131.
18 Ibid.
19 Ibid.
20 Freeman, IV, 695.
To Freeman the Oath of Salisbury "is the most memorable piece of legislation in the whole history of England". 21 Certain lawyers such as Blackstone, Stephen, and Kern looked on the oath as the act which first established feudalism in England. In his Commentaries Blackstone says

that in the latter end of the very year the king was attended by all his nobility at Sarum; where all the principal landholders submitted their land to the yoke of military tenure, became the king's vassals, and did homage and fealty to his person. This may possibly have been the year of formally introducing the feudal tenure by law. ... The only difference between this change of tenures in France and that in England, was that the former was effected gradually by the consent of private persons; the latter was done at once, all over England, by the common consent of the nation. 22

To this Freeman takes an exception and declares that the oath was

the very act by which William's far-seeing wisdom took care that no feudal system should ever grow up in England, ... Instead of William introducing the Feudal System into England, instead of consenting to sink from the national king of the whole nation into the personal lord of a few men in the nation, he stopped forever any tendencies - whether at work before his

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21 Ibid. 692.  
22 Blackstone, II, 519, 520.
coming or tendencies brought in by thecircumstances of his coming - which could lower the King of the English to the level of the feudal Kings of the Mainland.23

Due to this bit of legislation William saved England from plunging into a whirlpool of anarchy. "of any Feudal System, looked on as a form of government, or rather of no-government, William, instead of being the introducer, was the mightest and most successful enemy.24

A less elaborate but more penetrating analysis of the oath has been made by Phillips Russell in his biography of the Conqueror. Again it is agreed that the old feudalism was changed at a stroke. The lord's claim on a vassal was preceded by the king's. But this did not imply that the king wanted to send orders directly to his underlings. Here was a fine arrangement wherein the lord was to be not only an intermediary between the king and his vassal, but also would enable the king to hold his tenant in chief responsible for the obedience of his humbler subjects. Moreover, Russell does not view the act of William as a product of a far-seeing statesman. It seems that necessity of halting the incessant splitting up tendency gave birth to the new plan. The tendency was

23 Freeman, V, 366, 367.
25 Freeman, V, 367.
prone to take power away from the centre and transfer it to the rim; away from the capital and out to the provinces; away from the throne and out to isolated and jealous nobles. He had suffered from this centrifugal force and had seen it destroy Harold in England.25

Mere destruction of the rebels was not enough, for they would soon be replaced by new ones. This lack of system was changed by William for

now that his powers were failing, so that it was symbolized no longer by a ring of surly nobles surrounding a central ruler with a lash in his hand, but by a pyramid with the masses of people forming the base, the nobles, the middle, and himself the apex.26

If one understands the feudal system to be a body of customs with the inherent tendency to break up national unity, then it may be said that the system received a serious setback at Salisbury. Had the same policy been strictly enforced by the successors of William, the law could be called the "actual death blow" to the system. But a distinction should be made between the feudal system and feudal tenure of land. Upon feudal tenure, which implies no weakness on the part of the government, depended its decentralizing counterpart. Before the coming of William, feudal tenure

25 Russell, 289
26 Ibid.
was practiced among the Anglo-Saxons. His arrival merely hastened and completed the institutions already existing. So natural was the connection between feudal and military tenures that the Normans could scarcely understand how one could exist without the other. William, acting the role of instructor, sought to impress on his followers that the royal grant was not a bit of legal fiction. The subjects' land had been, if only for a moment, in the King's hands to be dealt with as the King chose; and the King had chosen to give it back to him, rather than keep it himself or give it away to anybody else. The lawyers' doctrine that all land must be a grant from the crown is thus accidently an historical truth.27

By means of the oath William clinched the title of personal grantor of all English lands.

Was the oath anti-feudal? If by feudal system is meant that tendency to weaken the power of the king, the answer is quite evident - the words of the oath implicitly express the absolutist inclination of William. If by "feudal" is meant the system of land holding, then the oath may be regarded as feudalistic. The oath was really the recognition of the king as the landlord of the whole of England.

27 Freeman, 369.
CONCLUSION

It would seem that William had united both the theory and the practice of feudalism at the assembly of Salisbury, but the length of time between the oath and his death was not sufficient to prove the effect of his policy. A brief survey of the reign of William Rufus should furnish enough evidence to form an opinion on the effect of the famous oath.

On his deathbed William the Conqueror willed that Robert, his eldest son, be given Normandy. William Rufus was given a letter asking Lanfranc to use his influence in placing Rufus on the English throne. As was to be expected, Robert later disputed the right of his brother to kingship and was supported by his uncles, Odo of Bayeux and Robert Mortain. Other discontented barons, who joined the forces of Robert, though not successful enough to accomplish their purpose, were, nevertheless, strong enough to force William to conveniently forget and forgive their irregularity. Seven years later another rebellion broke out, but on this occasion William confiscated the estates of Robert Mowbray of Northumberland; the one hundred and sixteen manors of Robert de Lacy became the property of the king; the earl of Shrewsbury and the Count of Eu were not the least among the victims of
William's revenge.\(^1\)

More significant than the exclusion of troublesome barons was the development of a trustful relationship between William and the English. To secure the crown, he swore he would enforce justice, secure peace and liberty for the Church, and willingly heed the counsel of Lanfranc.\(^2\) His need for advice and aid came immediately after his coronation. Again the king promised the English better laws, immediate abolition of unjust taxes, and the surrender of the new forests.\(^3\) The people believed him and threw themselves into the struggle to bring it to a successful termination. To the disappointment of many, and especially to Lanfranc, William failed to fulfill his promises. In answer to the rebuke of Lanfranc, William asked cynically: "who is there who can fulfill all that he promises?"\(^4\)

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1 Davis, 107.
2 ... verens ne dilatio suae consecrationis inferret ei dispensum cupiti honoris, coepit tam per se, quam per omnes quos poterat, fide sacramentoque Lanfranco promittere, justitiam, aequitatem et misericordiam se per to tum regnum, si rex foret, in omni negotio servaturum; pacem, libertatem, securitatem ecclesiarum contra omnes defensurum necnon praeceptis atque consiliis ejus per omnia et in omnibus obtemperaturum. Eadmer, Hist. Novorum, Stubbs, S. Ch., 92.
3 Videns Normanos pene omnes in una rable conspiratos, Anglos probos et fortes viros, qui adhuc residui erant, invitatoriis scriptis accersiit; quibus super injurriis suis quermoniam faciens, bonasque leges, et tributorum lavamen, liberasque venationes pollicens, fidelitati suae obligavit. William of Malmesbury, Gesta Regum, Stubbs, S.Ch., 92.
4 Stubbs, Con. History, 322.
Even again Rufus, who on this occasion was driven by fear of death, signed an edict freeing all prisoners, cancelling all debts, forgiving all offences, striking out all harsh laws. Unfortunately for the people, the king recovered only to revoke his promises.⁵

To aid the Conqueror's son in tyrannical program was the unprincipled justiciar, Ranulf Flambard, who attempted to tighten as much as possible the hold which feudal law gave to the king on all feudatories temporal and spiritual, taking the fullest advantage of every opportunity, and delay by unscrupulous chicanery the determination of every dispute.⁶

In short, the minister of the king strove for a stricter interpretation of feudal law. In case of a vacancy of an episcopal see, he claimed that the king had as much right to receive that fief back as he had in case of the death of one of his lay vassals. In practice the sees were deliberately kept vacant. Should a bishop be appointed to the episcopal throne, payment for the privilege of using the fief was demanded. Such a policy could mean little other than the practice of lay investiture. The actual relations

⁵ Scription edictum regioque sigillo firmatur, quatenus captivi ... omnia debita ... omnes ofensiones ... indulta remissione perpetuae in oblivioni tradantur. ... Eadmer, quoted by Stubbs, S. Ch., 92.
⁶ Stubbs, Con. History, 324.
existing between the Church and Rufus is described in the Chronicle.

... in his days all right fell to the ground, and every wrong humbled; and all the bishoprics and abbbacies, whose elders held in his days, he either sold in fee, or held in his own hands, and let for a certain sum; because he would be heir of every man, both clergy and laity; so that on the day he fell he had in his own hands the archbishopric of Canterbury, with the bishopric of Winchester, and that of Salisbury, and eleven abbbacies, all let for a sum. 7

If the above selection was a cross section of popular English opinion, it is no wonder that William was considered to be a tyrant. The outrageous laws against the Church, the failure to make good his promises of remedying injustices, the general discontent of both the common people and the barons, would seem to have been sufficient reason for a rebellion. Could the Oath of Salisbury have had such a deterring effect upon the country as to render all obedient to the king despite the injustices? Or was there peace because Rufus was so secure upon the throne that most feared his strength? The latter seems to be the reason, for the oath, that "striking incident", was but a sign of the Conqueror's supremacy. To have been in the position to demand that oath meant he was not only theoretically the apex of the pyramid

7 A.S.C., 1100.
of feudalism, but also that he could support his contention by arms. Both the Conqueror and William Rufus were strong kings. The father chose the Gemot as witness of his feudal lordship; tyrannical Rufus preferred arbitrary legislation as a proof of his independence.
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