4
Power and Property

The unusual nature of English feudalism

The crucial period for the Enlightenment theories concerning the divergence of England from much of continental Europe was between the tenth and fifteenth centuries. This is the classic period when European feudalism gradually turned into something else. Thus if we are to understand Maitland’s solution to the question of how modern English society emerged, we have to follow him into a fairly technical discussion of the nature and peculiarity of English feudalism and how it differed from that of its continental neighbours. Although this is complex, it is at the heart of his analysis. He shows the peculiar nature of the arrangement which emerged on this island, both centralized and decentralized, and he explains how this happened. By taking part of the feudal tie to its logical extreme, England benefited from great cohesion; by devolving power to the locality the country enjoyed flexibility and a certain amount of proto-democracy. Thus Maitland explains in detail what Tocqueville, Maine and others had only guessed and sketched out.

Maitland first lamented the difficulty of defining feudalism: ‘the impossible task that has been set before the word feudalism is that of making a single idea represent a very large piece of the world’s history, represent the France, Italy, Germany, England, of every century from the eighth or ninth to the fourteenth or fifteenth.’ The result is confusion. Maitland attempted to clarify the situation. The central feature of feudalism was the strange mixture of ownership, the relationship between the economic and political. The fee or beneficium was
a gift of land made by the king out of his own estate, the grantee coming under a special obligation to be faithful... To express the rights thus created, a set of technical terms was developed: - the beneficiary or feudatory holds the land of his lord, the grantor – A tenet terram de B. The full ownership (dominium) of the land is as it were broken up between A and B; or again, for the feudatory may grant out part of the land to be held of him, it may be broken up between A, B, and C, C holding of B and B of A, and so on, ad infinitum. 2

Maitland believed that ‘the most remarkable characteristic of feudalism’ was the fact that ‘several different persons, in somewhat different senses, may be said to have and to hold the same piece of land’. 3 But there are other equally characteristic and essential features. In some mysterious way power and property have been merged. Feudalism is not just a landholding system, but also a system of government. While many have seen ‘the introduction of military tenures’ as the ‘establishment of the feudal system’, in fact, when ‘compared with seignorial justice, military tenure is a superficial matter, one out of many effects rather than a deep seated cause’. 4 He describes as ‘that most essential element of feudalism, jurisdiction in private hands, the lord’s court’. 5 The merging of power and property, of public and private, is well shown elsewhere in Maitland’s work. 6

It is worth quoting one of his definitions in full. Feudalism is

A state of society in which the main bond is the relation between lord and man, a relation implying on the lord’s part protection and defence; on the man’s part protection, service and reverence, the service including service in arms. This personal relation is inseparably involved in a proprietary relation, the tenure of land – the man holds lands of the lord, the man’s service is a burden on the land, the lord has important rights in the land, and (we may say) the full ownership of the land is split up between man and lord. The lord has jurisdiction over his men, holds courts for them, to which they owe suit. Jurisdiction is regarded as property, as a private right which the lord has over his land. The national organization is a system of these relationships: at the head there stands the king as lord of all, below him are his immediate vassals, or tenants in chief, who again are lords of tenants, who again may be lords of tenants,