

*Social Ideals and Social Structure: Rural Gloucestershire, 1450-1500**

by R.B. GOHEEN**

Rural society in late medieval Gloucestershire was, to borrow a now famous phrase, "present at its own making". As peasants and lords moulded their society about themselves in the village and shire, what "objective" factors influenced their actions and what groups exerted leadership? The present article examines one aspect of this broad question, the role of social ideals, and of the men who advocated them, in shaping the social structure of one small, provincial society between 1450 and 1500. The article demonstrates that Gloucestershire countrymen enjoyed a significant degree of freedom to choose the principles of social organisation that formed the basis of their social polity, and commanded sufficient political skill to administer their society with legal rules that translated the general principles of their choice into practical regulations governing daily life. The inquiry will argue that, in making and enforcing their choices, these countrymen expressed ideological preferences that cannot be explained primarily as a reflection of their economic class or social status. On the strength of these findings the article concludes that social ideals played an independent role, alongside economic factors, in determining the social structure of agrarian Gloucestershire in the late middle ages.

The grounds for this inquiry have been well prepared. The creativity of village life in developing and sustaining forms of association and rules of administration, the flexibility and durability of manorial organisation, the political and economic inventiveness of the landed classes,¹ in general the

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¹ Important recent works on medieval village society include: G. C. HOMANS, *English Villagers in the Thirteenth Century* (Cambridge, Mass., 1941); W. G. HOSKINS, *The Midland Peasantry* (London, 1957); J. A. RAFTIS, *Tenure and Mobility* (Toronto, 1964); H. E. HALLAM, *Settlement and Society* (Cambridge, 1965); R. H. HILTON, *The English Peasantry in the Later Middle Ages* (Oxford, 1975); Edward BRITTON, *The Community of the Vill* (Toronto, 1977). Some other titles that are more centrally concerned with the manor and the landed estates include: J. A. RAFTIS, *The Estates of Ramsey Abbey* (Toronto, 1957); F. R. H. DUBOULAY, *The Lordship of Canterbury* (London, 1966); R. H. HILTON, *A Midland Society* (London, 1966); these last two titles both have much on peasant society as well. J. M. W. BEAN, *The Decline of English Feudalism, 1215-1540* (Manchester, 1968); K. B. MCFARLANE, *The Nobility of Later Medieval England* (Oxford, 1973); Eleanor SEARLE, *Lordship and Community* (Toronto, 1974); again with much on peasant — and town — society; P. D. A. HARVEY, ed., *Manorial Records of Cuxham, Oxfordshire* (London, 1976).

power of cultural attitudes² and economic advantage to shape medieval society, have been discussed with learning, authority and imagination. Indeed, the direction of this inquiry has been determined by a particular debate within this literature: the argument that their property gave to the landed 'nobility' effective social control within medieval society³ has been countered by a school of thought that describes peasant society as the essentially autonomous creation of peasant cultural norms.⁴ Behind this antinomy lies a common methodological assumption: both schools approach the problem of the location of authority by tending to regard social groups as isolated and self-contained social entities, thereby preparing the way for their exclusive, and mutually opposing, conclusions. The case for conferring either a practical or a theoretical monopoly of authority on any one group need not, however, be accepted as either given or proved. Vinogradoff and Hilton have argued against it and Kosminsky has vindicated their arguments in a classic study.⁵ The case against the mo-

² Marc BLOCH, *Feudal Society* (Chicago, 1962), especially Book I; Margaret SPUFFORD, *Contrasting Communities* (Cambridge, 1974); G. DUBY, *The Chivalrous Society* (London, 1977), especially "The transformation of the aristocracy"; as well as HOMANS, *op. cit.*; RAFTIS, *Tenure ...*; HALLAM, *op. cit.*; to cite but a few among many.

³ Representative here are R. H. TAWNEY, *The Agrarian Problem in the Sixteenth Century* (London, 1912); M. DOBB, *Studies in the Development of Capitalism* (London, 1963); R. B. SMITH, *Land and Politics in the England of Henry VIII* (Oxford, 1970); M. JAMES, *Family, Lineage, and Civil Society* (Oxford, 1974); R. H. HILTON, ed., *The Transition from Feudalism to Capitalism* (London, 1976), "Introduction".

⁴ HOMANS, *op. cit.*, and RAFTIS, *Tenure ...*, are the outstanding exponents of this view. A. B. DEWINDT, *Land and People in Holywell-cum-Needingworth* (Toronto, 1972), and BRITTON, *op. cit.*, follow Raftis in this.

⁵ P. VINOGRADOFF, *Villainage in England* (Oxford, 1892), *passim*, but especially "Introduction" and "Conclusions". R. H. HILTON, *The English Peasantry in the Later Middle Age*, p. 9. Hilton summarizes his theoretical position in a review of DUBY's *Guerriers et Paysans*, arguing that in the development of medieval society there are "two active elements", lords and peasants, and that the "conflict between them ... was the 'motor'" of social development: "Warriors and Peasants", *New Left Review*, 83 (1974): pp. 92-3. Hilton comes closest to realizing these theoretical precepts in his study of peasant revolt, *Bond Men Made Free* (London, 1973), where class conflict provides the dynamic for the developments and also the framework for a comparative analysis of the roles of the two groups in those developments. But in his two Midland studies — *A Midland Society* and *The English Peasantry ...* — the comparative dimension is less adequately handled. *A Midland Society* analyses the peasantry and gentry separately, first granting the villagers a wide authority over village life (*ibid.*, chapter 6), and then placing "social controls" firmly in the hands of "the landed classes" (*ibid.*, p. 267 and chapter 8). The study fails to provide a means by which to relate the authority of each group to the other. *The English Peasantry ...* describes peasant society with little reference to lordship, concentrating instead on village powers of selfregulation (*ibid.*, chapter 4 and *passim*). E. A. KOSMINSKY, *Studies in the Agrarian History of England in the Thirteenth Century* (Oxford, 1956), has developed a genuinely comparative analysis of the two groups in his treatment of patterns of landholding in his chosen century, thereby gaining results that could have been attained in no other way. By looking at the evolution of patterns of landholding as a whole, including both peasant and seigneurial lands, he has discovered the growth out of a combination of both of a new type of landholding and a new social class, "the gentry". Other recent studies that have been successful in relating the activities of the peasantry and gentry include W. O. AULT, "Open-Field Husbandry and the Village Community," *Transactions of the*

nopolist interpretation has recently been made from a theoretical viewpoint as well, in Dahrendorf's sociological model of the distribution of authority, which includes as a working premise the rule that authority is plurally located, the function of several groups ("aggregates") within a given society, so that "total societies can present the picture of a plurality of competing dominant ... aggregates."⁶

The present article will treat the right to choose social ideals and the responsibility for their administration across society as a matter of competition between the peasantry and gentry, the two major social groups in rural Gloucestershire between 1450 and 1500. Since the principal communities within this society were the villages⁷ and the shire, and the principal administrative institutions the hallmote and leet courts of the village and the quarter sessions of the shire, they provided the formal structure within which the competition between the major social groups was pursued.

I

Attendance at the hallmotes, leets and quarter sessions was a prerequisite to the exercise of authority within them. It could be either voluntary or enforced — the former probably indicated the independent standing of the participant in the community, the latter, his subservience to someone else.

Villagers attended the courts of hallmote and leet regularly between 1450 and 1500. The carefully kept lists of absentees reveal no patterns of

American Philosophical Society, new series, 55, part 7 (Philadelphia, 1955); DUBOULAY, *op. cit.*; SEARLE, *op. cit.*

⁶ R. DAHRENDORF, *Class and Class Conflict in Industrial Society* (Stanford, 1974), pp. 171-2 and *passim*. Duby's comment in *Problèmes de Stratification Sociale: Actes du Colloque International* (1966), ed. R. MOUSNIER (Paris, 1968), p. 29, that group differentiation — social stratification — results from social ideals that are mutually inconsistent adds a necessary complication to Dahrendorf's hypothesis; and, incidentally, forecasts one of the results of this inquiry. Horace Miner had earlier debated the viability of analysing social groups in isolation in "The Folk-Urban Continuum", *American Sociological Review*, 17, 1952. The scale of the present article fails to comprehend the 'total society' that Dahrendorf's proposition embraces. A county has been chosen because of the belief that it still formed a coherent, if small-scale, society with sufficient local authority, despite royal centralisation, to justify the treatment given to it here. For an ambitious series of analyses of rural evolution, based on different approaches from those obtaining here but making a similar judgement as to the coherence and independence of local societies, cf. the articles on "Pouvoir et Patrimoine au Village," in *Etudes rurales*, 63-5 (1976-1977), especially the introductory remarks of Chiva and Pingaud, 63-4, p. 7.

⁷ The communities for which hallmote and/or leet records have been used in this study are: Alkington, Avening, Badminton, Barrington, Berkeley, Beverstone, Bisley, Bledington, Breadstone, Bourton on the Hill, Cam, Chedworth, Cheltenham, Condicote, Cowley, Dymock, Eyford, Ham, Hamswell, Hill, Hinton, Horsley, Hurst, Incomb, Kempley, Kilcote, Larkstoke, Minchinhampton, Minsterworth, Mangersbury, Naunton, North Stoke, Nympsfield, Oddington, Preston, Rissington, Sherborne, Slaughter, Slimbridge, Stinchcombe, Stoke, Tetbury, Upper Slaughter, Upper Swell, Upton, Westcote, Windrush, Woodcroft, Woodmancote, Wyck. Chronologically, these records span the whole period; geographically, they concentrate on villages in Vale and Wolds; socially, they include villages subject to ecclesiastical and secular, common and royal lordship.

widespread or habitual absence. At the same time, attendance at medieval courts generally — whether at the high court of parliament or the local leet — raises a presumption of coercion. Formal sanctions punishing absence formed, indeed, part of the coercive machinery available to the local courts, but by 1450 these sanctions were no more than tiny monetary penalties, too insignificant to have predisposed men to attend court against their will. There is thus little doubt that villagers attended the court of their villages voluntarily.⁸ On this issue the villagers voted with their feet, and voted freely. The manorial lord too attended these courts — vicariously, in the person of his steward who presided there and whose presence was required for the courts to be held in their accustomed manner. These courts played an important part in supervising the tenurial relations between lord and tenants, giving the lord a clearly defined economic interest in their continuance. Nevertheless, had his sole, or even primary, concern been with the courts' role in defending his economic interests the lord could have organised both simpler and cheaper courts than those to which he persisted in sending his steward.⁹ His willingness to fund the existing courts testifies to his commitment to the courts' broader social functions. Patterns of attendance demonstrate a common willingness among both peasants and lords to support the political functions of the village courts.

Attendance at the quarter sessions of the peace commission, in contrast to attendance at the village courts, was small and selective. Neither the peasantry nor the gentry attended regularly, in strength, or even on command. Again, as in the village courts, both groups were evidently masters of their own responses.

Most peasants treated the peace commission with a combination of opportunism and contempt, embroiling their enemies in the toils of its processes but themselves neglecting to appear before it, even in pursuit of their own complaints. Yet some peasants did cooperate with the commission: a very small group, who alone could afford the time and money that such service entailed, provided most of the jurors (95%, if the jurors'

⁸ A random sampling of the courts will illustrate these contentions. At a Barrington view in October, 1496, there were no absences (BL Add. Ch. 26826); at a Bisley hallmote in 1445 three men defaulted in their attendance and were amerced at sums of 2d, 2d, 1d, while two men and one woman paid the lord sums of 4d, 4d, 12d for relaxation of their suits for the year. At another Bisley hallmote in 1456 three men (none of them among those listed in 1445) were amerced at 1d apiece for unlicensed absence from court, while three men (including two of those who had done so in 1445) and one woman paid sums ranging from 12d to 3d for relaxation of their duty to attend court (PRO SC2/175/10). At a Chedworth view in 1506 there were no amerceable absences, none had fined in advance for the right to be absent, there was one *essoin* (PRO DL30/77/984). On the other hand, in the large view and hallmote at Minsterworth in 1446 ten suitors were amerced for absence, all at 2d, and three men were amerced for failure to attend while cases were pending against them, the sums of the ameracements being 2d and 4d (PRO DL30/77/985). At a Stinchcombe hallmote in 1488 two men were *essoined* and the absence of two others pardoned because they had not received a legitimate summons. None fined or were amerced for absence (PRO SC2/175/19).

⁹ For the costs of providing stewards, clerks and the attendant paraphernalia of the village courts see footnote 46 below.

panels accurately designate juror status) for the quarter sessions.¹⁰ They furnished the peace commission with its only regular source of peasant support before 1500.

The gentry also responded selectively to the duty of attending the peace commission's courts. In the course of any one year the number of gentlemen who sat as justices of the peace at the quarter sessions seldom rose above six, and scarcely half of those put in even three days annually on the commission's bench — this on a commission where the number of gentlemen formally appointed as justices of the peace never fell below twenty and was generally much higher.¹¹ Among the gentlemen who attended regularly to the justices' work the largest group were men of law, while only one or two of the most energetic 'lay' justices approached their record for service.¹² This small band of active justices, lawyers and

¹⁰ Only a few records survive to witness either peasant attendance or absence. Those for 1439 record over 100 fines for absence (PRO E137/215/12 m.3-3d). A session at Cirencester in 1465 fined over 50 people for absence (PRO E137/13/1 m.9d). The narrowness of the peasant group that served the commission of the peace is illustrated by the frequency with which the same men served the needs of the county: between 1454 and 1459 Thomas Haresfield performed jury duty twice on sheriffs' inquisitions and once on an inquiry of the justices of the peace; between 1485 and 1488 John Hoddiss and John Kemys twice served as jurors at the quarter sessions; Thomas Kyng sat on a justices' inquest in 1454 and on a coroner's inquest in 1455; and John Naunton served on justices' inquests in 1456 and 1457. The personnel of juries changed little with change of dynasty: William Paunton, John Frampton, Robert Twysyll, John Hall, and Thomas Hale sat uninterruptedly as one dynasty gave way to another. This information is found in the following, listed in order of cataloguing: PRO: KB9/266 m.77; KB9/268 m.54; KB9/277 mm.27,29; KB9/278 m.57; KB9/280 m.24; KB9/281 m.44; KB9/283 m.33; KB9/286 m.19; KB9/287 m.7; KB9/297 m.41; KB9/362 m.36; KB9/371 m.4; KB9/375 mm.3, 3d,9; KB9/377 m.30; KB9/384 m.28; KB9/951 m.9; E137/13/2 m. 1d; E/199/14/14 mm.10, 12; C244/139 no. 69.

Though the expense of recurring jury service could be borne by few of the peasantry, those who failed to appear at the peace sessions to pursue their civil suits or to answer to charges of trespass were not prevented by expense from doing so — the loss or other discommodity that absence might entail could cost more dearly than attendance. Nor could the absent justices of the peace have been motivated by financial considerations — their attendance was well paid. The contrast between the presence in the village courts and absence from the sessions of the peace of the peasantry and gentry cannot be explained on the grounds that they were prevented by the expense of distance from attending the one while enabled by the economies of proximity to attend the other.

¹¹ For the lists of those appointed to the commission see *Calendars of Patent Rolls*. No one who is not listed there sat for Gloucestershire during this period, although John Beaufitz was active during 1485-6 in the Warwickshire commission (PRO KB27/900 *rex rot.* 1d) despite his absence from the printed lists of appointees. For the lists of those who sat and the number of days each put in at the quarter sessions several incomplete series provide information. The estreats listed in footnote 54 furnish some names and numbers. The Pipe Rolls, of which 23 have been examined for this period (PRO: E372/319 to E372/341), list the number of days the non-noble justices sat and their names. While the Pipe Rolls' series is complete, the entries on the Rolls are not. The "Accounts various: King's remembrancer" series in the Exchequer provides similar information where it has survived (PRO E101/559/35 mm.1, 2, 3, 4, 5, 6). The rough percentage given in the text has been calculated from the disparate, discontinuous, but perhaps not unrepresentative, evidence surviving in these materials.

¹² The lawyers were principally William Nottingham and John Twyncho under the Yorkists, William Grevil early in the reign of Henry VII, and Thomas Whittington under both dynasties. Footnote 11 provides the documentary sources for this information. The conclusions drawn from this material disagree substantially with those of R. L. STOREY, *The Reign of Henry VII* (London, 1968), p. 133. Not only were "professional lawyers"

'laymen' alike, formed a distinctive group among the gentry, linked to one another by activity, affinity and a habit of internal recruitment: the same men who sat on the peace commission received appointments to subsidy, muster and gaol delivery commissions;¹³ their families intermarried extensively;¹⁴ and they passed on their traditions of service from one generation to the next. Even the appearance of new families on the commission failed to broaden the narrowly drawn ties of family tradition that determined the pattern of active service in the commission. Indeed, the peace commission, with its bench dominated by men of law whose interests were focused neither in the county nor on agrarian pursuits, had almost the air of a 'foreign' court setting up quarterly in the county. It found adherents only in select and unrepresentative minorities, whether of gentry or of peasantry.

The patterns of attendance at the village courts and on the peace commission delimit the men who shared in the exercise of local social authority in rural Gloucestershire.

II

The nature and scope of the authority of these courts defined the qualities and limits of the local authority of the men who attended them. The courts of village and shire stood for distinctively different principles of social organisation, each set of courts in effect giving institutional expression to a particular ideal of community. As a result, support for either but not both represented support for one ideal of community organisation against another.

prominent in the peace commission's work, but the peers were not the virtually complete strangers to the commission's work that it is there suggested they were. Evidence for the peers' participation in the commission's work is scattered. For the first years of Henry VII's reign see PRO: KB27/906 *rex rot.* 3; KB27/926 *rex rot.* 1; E137/11/3 mm.6, 8d for the earl of Oxford's work in the Essex commission in the first five years of Henry VII's reign. PRO KB27/910 *rex rot.* 1d illustrates the earl of Shrewsbury at work in the Shropshire commission in 2 Henry VII, while PRO KB27/900 *rex rot.* 3d and PRO KB27/901 *rex rot.* 13 show lord Bergavenny and the earl of Oxford at work in the Kent commission in 1 Henry VII. This list is not exhaustive; but no example of peers active in the Gloucestershire commission in the first few years of the reign has been found.

¹³ For these latter appointments, but not for information on the work, if any, that the appointees did under them, see especially the *Calendars of Fine Rolls* and *Calendars of Patent Rolls*; less frequently the *Calendars of Close Rolls*. Where we have the names of justices of the peace taking indictments or sureties of the peace out of sessions they are the same justices who were active in sessions. Available evidence therefore indicates that absence from the bench at quarter sessions reflected general lack of participation in commission work.

¹⁴ Baynams married Bridges, Wykeses and Tameses married Langleys, Mills and Walsshes married Poyntzes. The relevant genealogical information is contained in the following: on the Baynams in John MACLEAN, "Dean Magna and Abenhall," *Transactions of the Bristol and Gloucestershire Archaeological Society for 1881-2*, (Bristol, n. d.), 6, pp. 184-5; on the Bridges in E. BRYDGES, *Collins's Peerage of England* (London, 1812), 6, pp. 711ff.; on the Wykeses, Tameses and Langleys in *Visitation of Gloucestershire, 1623*, MACLEAN, ed., Harleian Society (London, 1885), 21, pp. 93, 260; on the Mills in J.M. HALL, "Harescombe", *Transactions of the Bristol and Gloucestershire Archaeological Society* (Bristol, 1886), 10, p. 128; on the Walsshes, and the Poyntz in S. RUDDER, *A New History of Gloucestershire* (Cirencester, 1779), pp. 214, 677.

Access to the principles of social organisation by which the courts of hallmote and leet defined the social values and normative standards of the village lies through the village court speech of medieval countrymen. Despite their reputation for silence on issues of principle, to put no finer a point on it, these humble suitors have left in the pithy remarks by which they justified their court decisions a record of their basic ideals of social organisation and principles of social discipline.

Their premier organisational ideal, to which they referred time and again, was *neighbourhood*.¹⁵ It stood in their vocabulary for the rights and responsibilities inherent in a communal polity and they relied on it exclusively to describe the nature of village organisation from the time of the earliest court records in the thirteenth century until well into the fourteenth.¹⁶ Then the situation changed and villagers began to talk about *tenancy* as well as *neighbourhood*. *Tenancy*, the fundamental organisational principle of seigneurial authority, long established in the field of economic relationships, now, for the first time, began to challenge the traditional communal principle for a role in shaping village social organisation generally. Villagers accommodated the newcomer — they had little choice — without, however, relinquishing their older ideals. Instead, they gradually grafted new meanings on to *tenancy*, until, by the fourteenth century, they had added to its original denotation of seigneurial prerogatives connotations of communal rights and responsibilities. Henceforth, *tenancy* would stand for the two contradictory impulses within the village polity: seigneurial superordination and communal self-regulation.

Villagers approached government pragmatically, not theoretically — they talked of firebote or common pasture where we talk of “communal principles;”¹⁷ they understood the nature of a lordly tax, but knew nothing of “seigneurial principles”. The proper approach to an assessment of the impact of these principles undoubtedly lies through an examination of village practice, of the rules villagers used to regulate their everyday social and economic activities. The importance of these two competitive principles of social organisation was determined, after 1450 as before, by their roles in the village’s daily affairs.

¹⁵ A number of authors have noted the importance of *neighbourhood* in the life and public law of the community. Marc BLOCH, *French Rural History* (London, 1966), p. 167, comments on its roots in ancient folk community. R. C. VAN CAENEGEM, *Royal Writs in England from the Conquest to Glanvill*, Selden Society, 77 (London, 1959), pp. 55, 69, 77, 80, discusses the adoption of this fundamental popular concept into royal law in the eleventh and twelfth centuries. Its career in royal law seems to have been one of upward mobility, between its mention in the *Quadripartitus* and its role in Glanvill: L. J. DOWNER, ed., *Leges Henrici Primi* (Oxford, 1972), p. 339; G. D. G. HALL, ed., *Glanvill, Tractatus*, (London, 1965), section 2, 2, p. 22. The term has also been widely noticed by social historians: HOMANS, *op. cit.*, p. 82, notes its importance in rural society in the thirteenth century; SEARLE, *op. cit.*, p. 409 n. 8, gives an example of its use at Battle in 1465; M. E. JAMES, “The Concept of Order and the Northern Rising,” *Past and Present*, 60 (August, 1973), p. 73, examples its survival in conservative thought in sixteenth century England; Keith THOMAS, *Religion and the Decline of Magic* (London, 1971), p. 528, comments on its significance, along with so much else, into the seventeenth century.

¹⁶ For Gloucestershire villagers’ use of *neighbourhood* through the late thirteenth and early fourteenth centuries see PRO: SC2/175/41 mm.6, 7d, 11, 13; SC2/175/62 m.1; SC2/175/79 m.2, 2d; SC2/175/80 m.3.

Communal principles continued to set the standards governing the use of the village's physical and capital resources. Villagers relentlessly insisted on regulating woodlands, pastures, leys and wastes, as well as hedges, ditches, roadways and arable¹⁷ according to communal usages. As long as they subordinated the exploitation of their basic economic resources to communal regulations they assured that the village structure would retain a communal orientation. Sometimes, too, villagers asserted the primacy of the communal outlook in questions of the public peace, punishing the owner of a fierce dog, a nightwalker, or even tipplers¹⁸ in the name of communal values.

The villagers were the chief, though they were not the only, keepers of the communal conscience. Lords, too, invoked communal terms: a steward in Horsley threatened a man with forfeiture of his tenement if he continued to abuse his *neighbours*, while another in Stinchcombe invoked *neighbourhood* to sanction an order to the homage to build a pound.¹⁹ These examples are, however, exceptional. Manorial lords generally treated *neighbourhood*, and with it communality, as peripheral to their main interests; they seldom appealed to it and based none of their chief prerogatives on it.

Seigneurialism retained a prominent role, alongside communalism, in the polity of the Gloucestershire villages after 1450. Its claims were expressed in the seigneurial usage of *tenancy*. In the lord's hands *tenancy* stood for the whole structure of obligations based on dependent landholding: claims to tax and supervise the transmission of village land from holder to holder, to levy dues like pannage (on swine), to collect annual rents from dependent tenures, and to exact tenant suit at the village courts,²⁰ the latter a singular claim, inasmuch as it was the only active seigneurial claim after 1450 which was essentially political rather than economic.²¹

The original principle of village organisation retained its primacy between 1450 and 1500 at the price of conceding to seigneurial authority an ambiguous but important role in its affairs.²² This compromise is

¹⁷ BL Add. Ch. 26828; PRO: SC2/175/19 m. 4d; SC2/175/53 m.2; SC2/175/54 mm.2, 3; SC2/175/55 m.2; SC2/175/66 m.13; SC2/175/67 m.3; SC2/175/68 mm.1, 12; DL30/77/982; DL30/77/985 m.2.

¹⁸ PRO: SC2/175/68 mm.10, 12; DL30/77/982.

¹⁹ PRO: SC2/175/68 m.12 (Horsley); SC2/175/19 m.4d (Stinchcombe).

²⁰ Examples of lords collecting revenues occur throughout the rolls. It would be pointless to list them separately. The claim to tenants' suit of court was sometimes explicitly itemised among the services by which a tenant held, as it was when John White took over a tenement at Kilcote in 1458 (PRO SC2/175/54 m.2). Often it was simply included in the general phrase "according to the custom of the manor", as it was at Upton in the same year when John Collins received a tenement there (*loc. cit.*).

²¹ See footnote 46 for the small amounts that lords stood to make out of the "profits of justice" from their courts.

²² The balance within the compromise can be seen reflected in the practice of the steward never to challenge the villagers' rulings on the economic interests or social groups affected by particular actions, and the concomitant practice of the steward and villagers, in the infrequent cases where doubt was acknowledged as to the legal standing of certain

clearly illustrated in the way a court at Mangersbury, late in the century, dealt with the infringement of a vital communal right, a trespass on the villagers' commons. The court instructed the *tenants* to choose between proceeding against the trespassers with an amercement or at common law, thereby demonstrating that, while it was prepared to uphold a fundamental communal right, it would designate the injured parties *tenants*, a term originally seigneurial and still only equivocally communal, and offer them the option of seeking remedy at common law, a procedure unknown to the traditional communal polity. The decision of the villagers on this occasion is not specified, but in the next half yearly court they chose both remedies, proceeding not only by amercement but also at common law.²³ Flexibility — unprincipled inconsistency — characterises this defence of communalism. So, perhaps, does greed.

The shifts and devices of a communalism no longer fully master in its own house are again apparent in the way villagers made the by-laws regulating communal agrarian rights. The scope of these rights, and hence of the by-laws, was wide enough to touch the economic interests of both the villagers and the lord, at least to the extent that his lands lay scattered alongside theirs and each used the wastes, woods and commons of the community. Although the by-laws regulated all village agriculturalists, whether peasant or lord, in the interests of communal rights, they did so not under the traditional communal authority of the villagers as *neighbours* but under their ambiguous authority as *tenants*.²⁴ When villagers bound the lord to their communal practices they took care simultaneously to define themselves as men bound to his seigneurial regime.

Neighbourhood and *tenancy* designated the basic and contrary principles of association out of which village pragmatism and seigneurial flexibility shaped village organisation in rural Gloucestershire between 1450 and 1500. The making of this "coincidence of opposites" (Nicholas of Cusa's term, used by Cassirer to describe the *leitmotif* of fifteenth century culture as a whole) reveals the strengths and interests of both the peasants and the lords: the peasants sustained the authority of their somewhat diluted principles of communality to enforce patterns of obligation without which communality as a principle of organisation would die; the lords defended seigneurial principles of association where those principles most directly touched their economic rights. But both groups cooperated to maintain the integrity of a community that combined principles of *neighbourhood* and *tenancy*.

If the village was the micro-unit of peasant and gentry society, the shire was its macro-unit. Where village organisation was moulded by communal and seigneurial principles, the shire — in its chief institution,

occurrences, to refer the matter to a special inquiry — sometimes of villagers alone, sometimes of 'divers' unspecified, sometimes of the lord's council (PRO: SC2/175/88 m.2; SC2/175/19 m.2; SC2/175/68 m.13 respectively).

²³ PRO SC2/175/77 mm.3, 5. Whether the steward or the suitors put the procedural choices to the court is lost in the passive voice of the court rolls.

²⁴ BL Add. Ch. 26826; PRO: SC2/175/28 m.3; SC2/175/66 m.13; SC2/175/68 m.1; SC2/175/77 m.3; DL30/77/982.

the commission of the peace — was organised around regality, a wholly different principle of association. Every aspect of the commission's activities attests to its dependence on this regal theory: the justices of the peace derived their authority from a royal commission; those whom the king placed under the authority of the justices were "our people"; those whose wrongs the king made cognisable in these courts were the king's lieges; counsel were the king's counsel; above all, the community over which these justices were appointed to preside was the community of the king's peace.²⁵

Through the commission of the peace, royal authority completed the transformation of the ancient, 'folk', community of the shire into a regal community, against which no other principles of association could compete. *Neighbourhood* was almost forgotten²⁶ in the courts of this regal community: jurors not only spurned the word but neglected the principle, seldom recalling the community of *neighbours*, whose role it was to raise the hue and cry after a man had been killed, whose duties included watchfulness over nocturnal wanderers and inquisitiveness about their cash, and whose rights the Statute of Labourers had purportedly protected. At the level of the shire the ancient community based on *neighbourhood* had given way to the newly triumphant regal definition of community embodied in the commission of the peace.

III

The village and shire communities, formed and distinguished by distinct principles of social organisation, were governed by legal concepts that translated these principles into the rules of everyday life.

Within the village community the premier legal concept was *ius*, its destiny closely linked to that of the communal polity. *Ius* was an ancient.

²⁵ Two collections of records have been used to reconstruct the nature of the commission of the peace. A scattered and miscellaneous group of records in the PRO relating to activities of the Gloucestershire commission between 1450 and 1500 provide the core materials indispensable to the discussion. But because this body of materials is very small another collection of records has been used to check and confirm the suggestive impressions that Gloucestershire records alone are too scanty to confirm. The larger collection of records is found in B. PUTNAM, *Proceedings before the Justices of the Peace in the Fourteenth and Fifteenth Centuries* (London, 1938). We are all Professor Putnam's pupils in the use of the PRO collections to discover information on the early peace commissions. For the texts of the commissions of 1327 and 1438 see PUTNAM, *op. cit.*, pp. 1-4. An example of peace commission jurors talking of the "people of the lord king" in 1482 occurs in PRO KB9/362 m.36.

²⁶ The main source for information of this type for Gloucestershire comes from the undetermined indictments taken before the justices of the peace and sent into KB. I have examined the KB term files for 24 of the 50 years between 1450 and 1500 — for 1450-1461, from Hilary 1464 to Trinity 1465, from Trinity to Michaelmas 1471, from Easter 1482 to Easter 1493 — and discovered only 30 such indictments for Gloucestershire. These indictments contain no references at all to the principle of *neighbourhood*, but are full of references to regal community. Putnam's *Proceedings* ... bears out the insignificance of the concept of *neighbourhood* to the work of the commission, but does afford a few examples (in approximately 8 out of over 1300 indictments) of its use, one occurring in Hampshire in 1474-5 (*ibid.*, p. 239).

concept once used by royal as well as village courts to legitimize their judgements,²⁷ but when royal justice forsook the inarticulate postulates of folk community it abandoned *ius* as well, leaving only the village still loyal to the older communal ideal and its legal handmaid, *ius*.

Peasant suitors applied *ius* as their general legal standard for judging all activities that were defined by communal memory, whether they fell formally under communal, manorial, or royal rules and jurisdictions. Thus villagers appealed to *ius* in deciding questions involving milling tolls, stints, rents, enclosures, the location of boundary marks and river courses, the felling of trees, the raising of the hue and cry, the age of a ward, and the fouling of a common way.²⁸ Moreover, lords too called on *ius* from time to time to sanction their rights when those rights relied on communal memory for their definition and validity. The career of *ius* in the village courts of the late fifteenth century testifies again to the ascendancy of communal precepts among the villagers and to its continuing pertinence to lordly policies in the village communities. It reflects the tilt of the village social polity toward communalism and the success with which it had resisted absorption into lordship.

Custom complemented *ius* in the village courts, like it arbitrating matters both communal and seigneurial: what lands belonged to a common; who had rights in woodland, pinfold or enclosure; and what courts a tenant could plead in.²⁹ But *custom* had another role to perform, as the legal basis on which the village courts defined the nature of peasant tenure.³⁰ The result was the concept of *customary tenure*, which reconciled the divergent claims of the peasants to communal rights in land and the lords to seigneurial property therein.³¹

The village legal arsenal contained other all-purpose ordnance as well. Such were *ancient* and *common*: while *ancient* could protect land against enclosure and merestones against removal, could settle a dispute over the

²⁷ For the development of the importance of *ius* in royal law see J. C. HOLT, *Magna Carta* (Cambridge, 1976), p. 100. For the fact that it eventually became an "obsolete cliché" in this body of law see VAN CAENEGEM, *op. cit.*, p. 188.

²⁸ A listing of the specific occurrences of *ius* would reproduce practically the entire range of court roll references on which this study is based. It is noteworthy, however, that, while few vills eschewed the concept altogether, some employed it more actively than others. Stoke and Horsley suitors were particularly prone to call in the aid of this principle of authority (PRO: SC2/175/53 ff. for Stoke courts; SC2/175/66 ff. for Horsley courts).

²⁹ PRO: SC2/175/68 m.8d; SC2/175/18; SC2/175/77 m.3; SC2/175/67 m.11; SC2/175/67 m.7; SC2/175/55 m.5; SC2/175/68 m.6; SC2/175/56 m.6.

³⁰ The malleability of *custom*, and its ability to accommodate change and contradiction, is captured in Goebel's remark that "the right to *consuetudo* actually conceals a conveyance of legislative power": J. GOEBEL, *Felony and Misdemeanour* (New York, 1937), p. 218. Villagers as well as lords shared in this right, although Goebel is writing only in terms of the latter. The example of tenants who "refuse the customs" that C. Dyer cites could almost be seen in this light: "A Redistribution of Incomes in Fifteenth-Century England," *Past and Present*, 39 (April, 1968): p. 24.

³¹ The lord appealed to *custom* in granting tenures where consistent efforts were made to hold on to the customary services that were attached to the tenure. One authority has suggested that, in his attitude toward other customs, "it is much more probable that the lord 'allowed' what he found himself unable to prevent": H. S. BENNETT, *Life on the English Manor* (Cambridge, 1948), p. 100.

level of a rent or a penalty, fix a stint or forbid impleading in certain courts,³² *common assent* of the homage could sanction by-laws, *common utility* define the quality of a benefit expected and *common suit* the nature of a burden imposed; phrases like *common pasture*, *common way*, or simply *common*, summed up a well understood and generally accepted claim to communal interest.³³

Reflected in this array of legal concepts was a village consensus, forged over half a millennium, on the how the village should be governed, on how rights and responsibilities should be distributed and defended. The consensus knit together peasants and lords into an agrarian society organized around a modified form of communalism; it reflected primarily the tenacity with which villagers clung to their communalism and, secondarily, the compromise imposed by the competing claims of seigneurialism.

In contrast to the legal concepts of the village, those that guided the peace commission derived from the principle of regality alone. The ideal of the king's peace, as defined by common law supplemented by statute, provided the peace commission with both the standard and the sanction against which it judged the cases that came before it. The commission knew of only one way to handle trespass and felony, whether riotous assembly, breaking and entering, rape or murder — it considered them violations of the king's peace.³⁴ The exceptions underscore the rule: very rarely did indictments taken before the justices declare that men had been harassed *iniuste* — whether by imprisonment, ordeal of water, or disseisin;³⁵ just as rarely did presentments speak of the countryside (*patria*) or the people (*populus*) as having been wronged, or appeal to concepts of communality like *ancient*, *customary*, or *common*.³⁶ In only one significant respect did the peace commission fail to register the growing impress of the learning of the royal lawyers who sat at the sessions:³⁷ the peasant jurors continued to describe the crimes of which they accused their fellow countrymen in detailed language that reproduced the perceptions of the

³² PRO: SC2/175/10; SC2/175/53 m.5; SC2/175/77 m.3; SC2/175/67 m.8; SC2/175/19 m.3d; SC2/175/67 m.3.

³³ PRO: SC2/175/89 m.2; SC2/175/88 m.1; SC2/175/19 m.1; DL30/77/982; DL30/77/985 m.1; SC2/175/72. *Common* was also used to define offences as being sufficiently petty to be cognisable before the tiny courts where they were presented, as in *common hunters* and *common nuisance* (PRO: DL30/77/982; SC2/175/53 m.2). This was an ancient English usage which retained its vitality in the village community: DOWNER, *op. cit.*, pp. 428-9. It is important to note that the continued vitality of communality in the village community did not mean that the community was in any sense economically homogeneous.

³⁴ PRO: KB9/269 m.52; KB9/271 m.53; KB9/277 m.27; KB9/280 m.24; KB9/283 m.33 etc.

³⁵ PRO KB9/267 m.126 for one indictment in Gloucestershire using this concept. There are about two dozen indictments (out of over 1300) using this term in PUTNAM, *Proceedings* ..., including seven from Hampshire in 1474-5 (*ibid.*, pp. 238-66).

³⁶ Indeed, the only examples of these usages come from the collection edited by Putnam, with eight of *patria*, nine of *populus*, from the total number of over 1300 indictments. Devon provides five, Norfolk three of the examples of the latter usage in 1351-3 and 1378 respectively.

³⁷ A law manual reflecting, and inculcating, this viewpoint, was MAROWE, "De Pace Terre et Ecclesie", in B. Putnam, ed., *Early Treatises on the Practice of the Justices of the Peace* (Oxford, 1924). This edition gives some rules on presenting on p. 384.

countryside and, as a consequence, defied the analytical categories that royal criminal law had developed for the definition of crime.³⁸

Responsibility for bringing the commission's legal usages into line with the crown's theories of social organization lay with those who were most active in the commission's courts, the Westminster-oriented, lawyer-justices who carried the major burden of the work of the quarter sessions. These lawyers acted by choice and from conviction. The extent to which the peasant-jurors deliberately chose the form in which they cast their accounts of criminal activities is more difficult to ascertain. Perhaps the unlettered countrymen could recount local crimes in no other language; but there is also the possibility that they deliberately refused to conform to the criminal learning of the royal law on the grounds that any charge that brought a man into peril should speak to his understanding by using his language. In either case, whether necessity or choice explains the terms in which the peasant-jurors framed their speech, their language reflected the gulf that separated even the cooperative peasant minority from the legal theory with which the crown and the active justices were attempting to create and regulate a novel rural community.

IV

The decisive factor in determining the influence each of the theories of community would exercise over rural society was the amount and type of business brought before the courts of village and shire. Before 1500 the village courts, and their attendant ideology, won handily in the competition to rule local life.

Village courts were maids of all work and masters of some. It has already been shown how villagers used their presentments to supervise the daily economic activity of their community, both the exploitation of its natural resources and the maintenance of its capital investment.³⁹ The village courts also shouldered responsibility for most of the routine police

³⁸ See T. P. T. PLUCKNETT's "Commentary" in PUTNAM, *Proceedings* ..., pp. cxxxiv ff.

³⁹ Presentments in both these areas of activity occur throughout the rolls. A few 'typical' examples follow, notwithstanding that since no two villages were stamped out of the same mould the typical always contains elements of originality. A series of presentments for cutting wood runs through the Horsley courts; the action is alternately stated to have violated the custom of the manor, or to have been taken without the lord's licence, and to have damaged the customaries (or tenants), the lord, or both customaries and lord (PRO SC2/175/67 mm.7,9); for similar presentments at Minchinhampton, see PRO SC2/175/88 mm. 1,2. At Stinchcombe the homage denied the bailiff's claim that a villager gathered wood without right, asserting that he was exercising the right of firebote (PRO SC2/175/19 m.2). For a variety of quarrying presentments at Horsley, Bisley, and Stinchcombe see PRO: SC2/175/88 m.12d; SC2/175/10; SC2/175/19 mm. 1,2,4d respectively. At Horsley presenters accused a villager of altering the course of a brook, damaging the interests of lord and tenants (PRO SC2/175/67 m.11); at Avening a villager was presented for entering the commons contrary to the rights of the lord (PRO SC2/175/88 m.2); at Hamswell men were presented for occupying leys, thereby damaging the interests of neighbours (PRO SC2/198/38 m.4). At Stoke a villager and the lord were both presented for neglecting to repair a road (PRO SC2/175/55 mm.3,4). The list could be continued almost indefinitely.

work in rural society. Regularly in the leets and exceptionally in the hallmotes, villagers reviewed all routine threats to the village peace:⁴⁰ petty trespass in its manifold aspects, affray, vagrancy, breaking and entering, theft, the false raising of hue and cry, and occasionally assault. Only serious crime, felonies, escaped their grasp. Furthermore, the local courts exercised the right not only to hear, but also to determine, the cases arising from this broad range of activities.

Although responsibility for the scope and efficiency of the courts' jurisdiction in village affairs was shared between peasants and lord, the villagers played the more active and constructive role; indeed, they virtually dominated administration in the community. The procedures of the courts provided an assertive peasantry with the machinery through which to work. As homagers in the hallmote and as elected tithingmen and jurors in the leet, villagers were the courts' chief source of information and, with the steward, their focus of decision-making.⁴¹ The ability of tithingmen or homagers to provide the village courts with the information they required rested on the community's *neighbourhood* structure, in which geographic scale made possible, and human habits made probable, an intimate knowledge of one another's characters and affairs. The tithingmen's ability to make police presentments took these relationships for granted, especially so since their duties included assigning the blame as well as presenting the misdoers. Routinely they blamed the man who had committed the physical act, but occasionally they accused the victim

⁴⁰ The single occasion when a hallmote is noted as dealing with a trespass was at North Stoke where the court received an appeal of trespass in 1489; the dispute was referred to arbitration (PRO SC2/175/89 m.8). Presentments of peace-breakers occurred regularly at all the leets.

⁴¹ The question of who made the judgements in the village courts is a vexed one in the literature of English history. Maitland argued sweepingly on one occasion that "the suitors made the judgments" in all such courts: F. W. MAITLAND, *Domesday Book and Beyond* (London, 1969), p. 328; while Goebel and Ault have argued for a more significant role for the steward in judgment finding: J. GOEBEL, *op. cit.*, pp. 273, 337, 339; W. O. AULT, *Private Jurisdiction in England* (New Haven, 1923), p. 173. Turner argued that the suitors were the judges in the seigneurial courts in all cases between party and party, that in the hundred court the freeholders of the hundred were the judges but that in the customary court held by a lord of a manor the steward was the judge: G. J. TURNER, *Brevia Placitata*, Selden Society, 66 (London, 1951), pp. xlv, lix, lx. Not only is opinion divided, it is sometimes divided against itself. Maitland on another occasion stated baldly that "the lord's steward is judge" in the leet: F. W. MAITLAND, *Select Pleas in Manorial and other Seigneurial Court*, Selden Society, 2 (London, 1889), p. xxvii; and on yet another occasion, more subtly, that "though we get no information as to whether all or any of the suitors were theoretically the judges or 'judgment finders' of the courts, we see that practically the steward has very large powers in matters of law; he can overrule an alleged custom as unreasonable": F. W. MAITLAND, W. P. BAILDON, *The Court Baron*, Selden Society, 4 (London, 1891), p. 111. Perhaps the most important recent contribution to this confused discussion has been the challenging of the premiss on which it is based, namely that judgement constituted a single, definite stage of the judicial process. Van Caenegem argues, contrary to this assumption, that in pre-Conquest courts the idea of "really decisive judgements" was an alien concept. Although he argues that this system disappeared as a feature of English royal justice shortly after the Conquest, his contrast between a system based on "agreements contrived in local palavers" and one based on "decisive judgments" has some use for the student of communal courts of a later age; it is difficult to discover a decisive stage of judgement in the village courts of fifteenth century Gloucestershire: VAN CAENEGEM, *op. cit.*, pp. 41-50.

of the violence for having provoked it.⁴² Such cases, rare though they are, emphasize the social assumptions on which community administration rested.

As elected affeerors villagers were responsible for assessing the ameracements which were one of the commonest forms of penalty that the village courts imposed. Fortified by a tradition of petty ameracements that found expression in Magna Carta, the village affeerors were able to limit peasant ameracements to small sums,⁴³ with few peasants suffering repetitive ameracement.⁴⁴ Indeed, on only one occasion was a large ameracement

⁴² From Stoke in 1457 comes an example of a tithingman blaming the victim of an affray for having occasioned it (PRO SC2/175/54 m.1). A similar case in Hill in 1444 saw the tithingman declare the attacker culpable for having drawn blood and the attackee at fault for having provoked the incident (PRO DL 30/77/982). The village courts, so often dismissed by legal historians for their primitive handling of trespass when compared to the royal courts — see T. F. T. PLUCKNETT, *A Concise History of the Common Law* (London, 1956), pp. 4567 — may well, in this respect, have been in advance of the royal courts. In the latter, liability in tort had not yet decisively abandoned “the question ‘Whose act was it?’” in favour of the question “‘Whose fault was it?’”: G. WILLIAMS, *Liability for Animals* (Cambridge, 1939), p. 1. Williams cites a case from the royal courts in 1466 where this development has not yet taken place. Upton tithingmen on two occasions presented men for felonious peace-breaking. Such presentments were highly exceptional and could not be concluded at the leet (PRO: SC2/175/53 m.7; SC2/175/54 m.4). It was frequently an arbitrary choice between presenting a fault as a felony or a trespass: PLUCKNETT, *op. cit. supra*, p. 458 and the further references cited there. Juries affirmed tithingmen’s presentments, as in 1449 at the Hawkesbury view and in 1503 at Cowley (PRO: SC2/175/53 m.2; SC2/175/28 m.2); they could also add further delicts to the tithingmen’s presentments, as they did at a 1450 Hawkesbury view (PRO SC2/175/53 m.3).

⁴³ For examples of small ameracements at Minsterworth, Horsley, and Chedworth, ranging from 2d to 3d, see PRO: DL30/77/985 m.2; SC2/175/67 m.4; DL30/77/984 respectively. These assessments compare favourably with the 4d daily wage of an agricultural labourer during this period: J. THIRSK, ed., *The Agrarian History of England and Wales*, IV (Cambridge, 1967), p. 864. There are no examples in the Gloucestershire court rolls to match those that Homans found (HOMANS, *op. cit.*, pp. 319-20) of stewards setting aside the affeerors’ ameracements or doing the affeering themselves. From a Cowley court of 1506 comes a glimpse of an affeeror’s conflict of interest: the affeeror had been presented for assaulting a woman, for which he assessed 2d against himself; but the same woman had been presented for causing an affray, for which he contented himself with assessing her at 1d (PRO SC2/175/28 m.3).

⁴⁴ For several exceptions to this rule see PRO: SC2/175/66 mm.7-12; SC2/175/53 mm.1-3; SC2/175/54 m.1; SC2/175/10. The general rule of infrequent ameracement can be stated with confidence only for the limited number of villages for which long record runs exist, notably for Horsley and the villages of the Hawkesbury view — Stoke, Kilcote, Upton, Badminton and Woodcroft. DuBoulay’s study of Kent offers a different assessment of the effect of ameracements on village attitudes: “To the men and women of the communities, the courts must have appeared most prominently as places where the penalties were prepared or executed, in the loss of money, liberty or life itself”. To the villagers the courts represented “a sense of chronic minor subjection”. The author offers a summary of the 1292 estreat roll for Bexley as evidence for this interpretation, but that roll can be read rather differently. That the court punished the unauthorized making of a right of way, failure to produce pledges, the drawing of blood, unlawful removal of a building, failure to prosecute actions, “various defaults and trespasses”, the illegal cutting of woods, hedges and other men’s corn and breaches of the assize of ale, could be seen as reflecting the court’s, and the villager’s, determination to defend the fabric of the communal life. That the form of the punishment was payment to the lord (we are not actually told whether or not the monies all went to the lord) does, of course, reflect the court’s subjection to a seigniorial principle: DU BOULAY, *op. cit.*, pp. 305, 306, 309.

imposed in any of the courts that figure in this study, and the party amerced then was a gentleman. The peasant affeerors who could discriminate against an erring gentleman could also, within their practice of petty ameracements, discriminate amongst the villagers, varying the amounts affeered for similar delicts for reasons about which the rolls are generally silent.⁴⁵ The villagers' ability to control ameracements — both their size and their imposition — meant that they were able to prevent the lord from using ameracements arbitrarily to raise seigneurial revenues. Seigneurial 'profits of justice' in these years were seldom substantial and sometimes failed even to defray the costs of holding the courts.⁴⁶ Under peasant control, therefore, ameracements produced neither lordly profit nor peasant penury, but served rather to remind villagers of the rules on whose observance the viability of the village community depended.

The lord shared more actively in determining the punishment for those delicts — dilapidation of tenements, misuse of community resources, failure to fulfil community obligations — where the courts enjoyed discretion over the form it took. Sometimes the steward clearly determined the court's choice; more often, it would appear, his decision reflected the suitors' attitudes to the case. Thus, after the "whole tithing" of Kilcott had testified that, although a tenant had not completed repairs ordered earlier, he had nevertheless begun them, the steward "of his grace" suspended the penalty due for the tenant's noncompliance. Similarly, after a jury at Cowley declared not only that men had allowed their beasts to break down hedges but that the same men had previously been warned to prevent such depredations, the court ordered that in future such behaviour should result in expulsion from the manor. The apparent ability of the villagers to gain by influence what was not theirs by right of command is summed up in the wording of a by-law at Avening: "with

⁴⁵ The gentleman's amercement, of 20s, took place in a Stinchcombe court in 1462 (PRO SC2/175/19 m.1). The court's ability to treat a case as exemplary is further illustrated at Stoke in 1459 when the court there fined a woman for entering a house and close and stealing 12 hens worth 12d the extraordinary sum of 6s 8d "to the example of all others" (PRO SC2/175/54 m.6). Examples of discrimination applied to tiny ameracements also abound: at Cowley the standard 2d amercement for failure to attend court was moderated in one case to 1d (PRO SC2/175/28 m.2); at Berkeley ameracements of millers varied from 8d to 2s, although the presentments were identical (PRO DL30/77/982); at Great Rissington similar presentments for breaking the assize of ale produced ameracements ranging from 2d to 12d (PRO SC2/176/8 m.2d); at Hurst a tithing was amerced 2s for overlooking a single infraction, while the same affeerors amerced the tithing of Alkington only 2s 6d for neglecting to present three infractions (PRO DL30/77/982).

⁴⁶ 'Profits of justice' for a Breadstone hallmote in 1488 were 6d (PRO SC2/175/19 m.5); for a Minsterworth hallmote in 1444, 10d (PRO DL30/77/985 m.2); for a Bisley hallmote in 1444, 3s 8d (PRO SC2/175/10). The Chedworth view of 1505 produced a total revenue (including tenurial payments) of 3s and cost 5s to hold (PRO DL30/77/984), while a Stinchcombe hallmote in 1488 produced no revenue but cost 9s 10d to hold (PRO SC2/175/19 m.5). Costs of maintaining distinct jurisdictions influenced some fifteenth century towns to abandon claims to at least some separate courts: R.B. PUGH, *Imprisonment in Medieval England* (Cambridge, 1968), pp. 289-93. For an example of a profitable set of courts, where the calculations include unspecified amounts from strictly tenurial payments, see C. DYER, *op. cit.*, p. 25. Lords sometimes waived the right to hear cases concerning, for example, brewers and bakers, on condition they collected whatever penalties the quarter sessions imposed on them: B. PUTNAM, *The Enforcement of the Statute of Labourers* (New York, 1909), p. 165.

the assent of the steward at the especial request of the whole homage for the common benefit of the whole manor".⁴⁷ Decisions like these emphasize the large areas of harmony between the interest of lord and tenants. Other punishments, however, expressed the conflict between them, as, for instance, when a lord at Horsely ordered the forfeiture of tenements because of dilapidations, or another at Minchinhampton ordered that the persons, goods and chattels of his *nativi* be seized into his hands.⁴⁸ The Minchinhampton order was clearly a formality, repeated in court after court, a symbolic act, that was also a reminder of the role of brute force in the competition for rural authority.

Responsibility for two classes of presentments — dilapidations of tenements⁴⁹ and delicts of service personnel (mostly brewers and millers)⁵⁰ — must be considered separately, because of the special problems it raises. These presentments were both numerous and unproductive, occasioning neither amendment nor revenue,⁵¹ which might suggest that they reflected the ossification of a once efficient court process. The village assessors, however, considered each presentment individually, burdening delinquents not with a standard penalty that could indicate they regarded the presentments as a formality but with carefully discriminatory penalties⁵² of a kind to suggest that both those imposing them and those subject to them took them seriously. Even if this be granted, whose interests were served by these court procedures, since the faults remained unamended? It appears likely that the interests of both villagers and lords lay behind these pre-

⁴⁷ At Avening it was clearly the steward who ordered that an amercement be substituted for the penalty the court had earlier imposed (PRO SC2/175/88 m.2); for the Kilcott tithing, see PRO SC2/175/54 m.2; for the Cowley incident, PRO SC2/175/28 m. 4; for the Avening by-law, PRO SC2/175/88 m. 1.

⁴⁸ For the Horsley forfeiture for dilapidation, see PRO SC2/175/66 m.9; for the case involving the Minchinhampton *nativi* see PRO SC2/175/88 m.1d. Another example of the rare punishment of forfeiture comes from a Horsley hallmote of 1501, where it was imposed as the penalty for impleading another in the county against custom and without licence, but the clerk has noted above the penalty that the lord pardoned it (PRO SC2/175/68 m.10). Expulsion from the manor was decreed by a Horsley court (by whom is not clear) against a servant who had behaved badly (PRO SC2/175/68 m.13).

⁴⁹ The routine of these presentments is most apparent where there are long runs of court records for a single community, the case for Horsley and the villis of the Hawkesbury view. Presentments of dilapidation for Horsley run through PRO SC2/175/66-68; for Hawkesbury through PRO SC2/175/53-56.

⁵⁰ Presentments of brewers occur in the Berkeley view (PRO DL30/77/982), and at the leets at Cowley (PRO SC2/175/28), at Tetbury (PRO SC2/176/16 mm.1,2,3), and a Salmonsbury (PRO SC2/176/8 mm. 1,2, where the brewers presented were from Bledington). Millers were presented at the Berkeley view (PRO DL30/77/982), at the Hawkesbury courts (PRO SC2/175/53 mm.1,2,3), at Salmonsbury (PRO SC2/176/8 m.1,2) and at Barrington (BL Add. Ch. 26826).

⁵¹ The same people were presented time and again for the same faults — references are the same as those in footnotes 49 and 50.

⁵² Examples of this discrimination abound. Among millers presented at Barrington William Wilcocks was amerced 3d in October, 1496, and 7d in May, 1497, John Packet 3d in both courts; at Slimbridge Walter Hill was amerced 8d and 6d for milling offences at the two courts of 1444 (BL Add. Ch. 26826; PRO DL30/77/982). Some discussion of amercements as responses to wrong-doing occurs *inter alia* in A. N. MAY, "A Index of Thirteenth-Century Peasant Impoverishment? Manor Court Fines," *Economic History Review*, XXVI (1973), and J. B. POST, "Manorial Amercement and Peasant Poverty," *ibid.*, XXVIII (1975).

sentments. Perhaps the villagers valued this presenting for the same reasons that they esteemed the practice of levying amercements — both afforded symbolic affirmation of social ideals that had long traditions of association with communal life. The lords' interest in this presenting may have likewise stemmed from a wish that property obligations should not be forgotten even when they were avoided.

The peace commission was much less active administratively than the village courts and it played a correspondingly reduced role in articulating the structure of rural authority. Although very little evidence concerning its activities has survived — no rolls of the quarter sessions and only scattered evidence in other central government records — there is reason to treat the evidence that does remain as representative of the commission's activities generally. Gloucestershire justices of the peace took relatively few indictments for felonies⁵³ and determined only a few cases of trespass. Indeed, thwarted by the widespread disregard of their summonses to appear, the quarter sessions settled only a fraction of the indictments for trespass that they received.⁵⁴ In contrast to this *fainéant* quality of the quarter sessions is the success of the justices in taking sureties of the peace out of sessions, binding men to refrain from designated acts on pain of forfeiture of specified sums of money. The justices appear to have been continually involved in this field of activity,⁵⁵ the time and attention that they gave it creating at least a presumption of effectiveness. Perhaps among the men prominent and potentially violent enough to make the taking of their personal sureties worthwhile, the justices were a telling force in administering and disciplining rural society.

The overall impression of the late fifteenth century commission of the peace in Gloucestershire is, however, of an administrative authority whose effectiveness was largely confined to certain specialised dealings with the men of rural society who shared with the justices of the peace a common social status. On the rest of rural society the commission appears to have impinged very lightly indeed.

⁵³ See footnote 26 for the MSS sources. Since the JPs did not determine their own indictments for felonies the number of undetermined indictments on the KB rolls is a reflection of how many indictments they took. The gaol delivery rolls are missing for this period; more evidence of the JPs' indictments might appear on them.

⁵⁴ The evidence for this statement derives from the estreats of fines submitted to the Exchequer after the sessions of the peace commission. The lists of estreats for 16 sessions between 1439 and 1502 have survived for Gloucestershire and they show that the sessions concluded between 0 and 8 cases of trespass in any one session, the total number of cases in trespass that they concluded in all 16 sessions being 40 (PRO: E137/215/12 mm.1-10d; E137/13/1 mm.6-9d; E137/132/4/9 m.1d; E137/13/2 m.1). The failure of the Gloucestershire courts to command attendance, of which their inability to conclude more than a small number of cases of trespass is a reflection, contrasts strikingly with the situation of the Bedfordshire peace commission between 1355 and 1364: Elisabeth KIMBALL, *Sessions of the Peace for Bedfordshire, 1355-1359, 1363-1364* (London, 1969).

⁵⁵ The evidence for the Gloucestershire justices' work in this field that I have been able to discover consists of a few survivals in PRO series C244, "by far the most complicated series among the Chancery files", as the official PRO guide describes it. The series has suffered greater deprivations than has even E137. Thus the fewness of the examples of Gloucestershire justices taking sureties (PRO: C244/7 no.212; C244/141 m.2) reflects the magnitude of record loss rather than the inactivity of at least the key justices.

V

Village and shire records for Gloucestershire in the latter half of the fifteenth century have provided a rare opportunity to observe a relatively self-governing society engaged in an extended act of choice between different principles of social organization and legal ideals, and the occasion to investigate both the grounds on which men chose and the lines along which they divided in pursuit of their choices. This splendidly documented moment in time approximates to what Lévi-Strauss has called a "privileged instance," one in which a society is "set in motion" in such a way as to reveal clearly its functional interrelationships — its social structure.⁵⁶

Current historical literature is dominated by two competing models of functional interaction, with their attendant definitions of the underlying determinants of social behaviour. The one insists that men's social role is conditioned by their place in the prevailing system of production, their class position; the other, that in pre-industrial society it was conditioned by their place in a status hierarchy formed by degrees of honour and authority, in a society of "orders". The Gloucestershire countrymen whose actions we have examined here were conditioned in neither of these ways: they did not divide along class lines according to their relationships to the means of production, peasantry on one side and gentry on the other, but rather along lines which joined the majority of the peasantry with the majority of the gentry in voluntarily supporting the village courts and rejecting the peace commission, at the same time as a minority of both groups cooperated to support the peace commission. Neither, however, can the peasantry's decision to support the village courts be explained as the result of their predisposition to follow their 'natural' superiors, the manorial lords: the peasantry demonstrated too much initiative — both in developing the principles around which the village courts and village society were organized and in resisting seigniorial challenges to these principles — to be considered mere followers where the gentry led. The patterns of social initiative and responsibility in late medieval rural Gloucestershire cannot be explained by either the theory of orders or that of classes.

Instead, Gloucestershire countrymen, peasant and gentle, appear to have chosen their social principles on the basis of their ideological preferences, dominated by considerations of neither class nor status. In this sense it is possible to maintain that social ideals played an independent role, alongside and not subordinated to other factors, in shaping the social structure of late medieval rural Gloucestershire.

⁵⁶ Claude LÉVI-STRAUSS, *The Scope of Anthropology* (London, 1971), pp. 11-12. It should be added that the sense in which social structure is here used reflects Radcliffe-Brown's use of the term, from which Lévi-Strauss dissents.