

Feudal courts – JH, MM

JH: One of the subjects that legal historians have written a lot about and argued a lot about is that of feudal courts. By feudal court, I take it to be meant a sort of court that derives from lordship. A lord could have a court that doesn't derive from lordship; it could be a right granted to him by the king, or he could have usurped a local jurisdiction of some sort. But a feudal court suggests to me that it derives from his position as lord in relation to his followers, and in particular to the people who hold the fiefs, the feus, from him. And that is the inherent element essential to the court being feudal. Does that fit with your understanding of it?

MM: Yes, absolutely. I think the multiplicity of sources of lordship is important. As you say, that could come from the usurpation of public powers, from control over your household servants, or from followers that you grant lands to. One element that I would add to the understanding of feudal courts is that there are a lot of them. Part of the intrinsic definition of feudal courts is that it theoretically represents its own island of sovereignty and jurisdiction that can be contrasted with other courts.

JH: Yes, certainly in England you will get some sort of ideal type of a feudal court in some sense being sovereign. It is a world where a lord has followers who hold land from him and who have a court where their business is sorted out. In practice, that is almost inevitably going to be more complicated. Lords want to have courts – it's a sign of status, a sign of control – and they will try to control those courts, but the courts will be made up of their followers and perhaps also other people, not just land-holders, but also people of importance in the area. How far they act in a sovereign fashion is hard to tell. How far they perform part of just the general ruling of England after the Norman conquest; that lords are helping the king rule his country and the king will interfere or become involved at their request as much as at their discontented vassals' request. Certainly, there does seem to be a pattern whereby kings formalize and control the activities of lords' courts, possibly as early as the first part of the 12th century with Henry I, but particularly from the reign of Henry II onwards. The continuing jurisdiction of lords' courts, particularly in matters of property, is very much controlled by royal procedures from the 1170s, 1180s onwards. Is that dissimilar to what happens in France?

MM: I think so. One of the big differences between France and England is the different rates of the revival of royal power and the success of royal power. It's in part geographical: France is much bigger and harder to rule. But the royal power in France grows in a much more piecemeal fashion. Does that mean that feudal courts are necessarily in opposition to royal justice? That's a much more difficult question to answer, but it has certainly been seen as the narrative by some historians; a narrative of conflict between lords and kings. The idea of sovereignty that you mentioned, the fact that these courts may be made up by people from all over the place, is one of the ways in which we can dismantle this idea of an ideal typical feudal court where the lord imposes his will. That's a useful way of thinking about France. We see a circulation of people in these different courts, some of whom may have relationships to the crown, some of whom may not. It may be better to think of a legal culture oriented around lordship as opposed to feudal courts as sovereign units.

JH: In the end, would you avoid using the term 'feudal courts' in discussions of the legal history of France?

MM: I would prefer 'seigneurial courts', because it has the resonance with ideas that lordship doesn't have to be defined exclusively in terms of the grant of a fief to a vassal; and I think it reflects the multiplicity of how these jurisdictions develop. Would you agree with that for England, or does 'feudal courts' remain a useful nomenclature?

JH: I remain happy with the nomenclature, because it shows the tightness of the connection between landholding, lordship and jurisdiction. I think to tie the three of those together – which may be a product as much of the Norman conquest (and particularly English conditions) as some abstract feudalism – I think England – probably actually for elsewhere – I remain content with the use of the phrase 'feudal courts'.