English Historical Review

0013-8266/86/18660811/$03.00

The English Historical Review

No. CCCCI – October 1986

*Tenure to Contract: Lordship and Clientage in Thirteenth-Century England**

ENGLISH historians have increasingly stressed the underlying continuity between feudalism and 'bastard feudalism.' Indentured retaining is no longer seen as a corrupted and disruptive form of feudalism, but instead as its 'logical successor.'[1] Yet this emphasis on continuity raises new problems about the evolution of social relations in medieval England. To begin with, the nature of the continuity itself has not been clarified. Indentures certainly differed from homage and fealty, and those differences, as well as similarities, need to be specified. Furthermore, historians have not reached any agreement about the origins of written contracts and the factors that drove lords to use them. It has been variously argued, for instance, that indentures and indentured retinues descended from *fief-rentes*, household knights, lord/bachelor relations, or brotherhood-in-arms.[2] Others have seen *Quia Emptores* (1290) as marking the critical social divide, for by eliminating subinfeudation, it is argued, the statute made it impossible to use land to form new lord-tenant relationships in the manner of feudalism.[3] Finally, nearly all these arguments concentrate narrowly

* A slightly different version of this paper was delivered at the annual meeting of the Pacific Coast Conference on British Studies on 26 March 1983. Research for the paper was made possible by a research and study grant from the National Endowment for the Humanities. I want to thank Professors John Benton and Eleanor Searle for their criticism and assistance in revising this article.

1. Christine Carpenter, 'The Beauchamp Affinity: A Study of Bastard Feudalism at Work', *ante*, xcv. 514.

2. Bryce D. Lyon, 'The Money Fief Under the English Kings', *ante*, lxvi. 161–93; *idem*, 'The Feudal Antecedent of the Indenture System', *Speculum*, xxix (1954), 503–11; *idem*, *From Fief to Indenture* (Cambridge, Mass: 1957); J. M. W. Bean, *The Decline of English Feudalism, 1215–1540* (London, 1968), pp. 306–9; *idem*, '"Bachelor" and Retainer', *Medievalia et Humanistica*, n.s. iii (1972), 117–29; and M. H. Keen, 'Brotherhood in Arms', *History*, xlvii (1962), 1–17; N. B. Lewis, 'The Organisation of Indentured Retinues in Fourteenth-Century England', *TRHS*, 4th ser. xxvii (1945), 77–112, repr. in R. W. Southern (ed.), *Essays in Medieval History* (London, 1968), p. 208; and J. O. Prestwich, 'The Military Household of the Norman Kings', *ante*, xcvi. 1–34.

3. Theodore F. T. Plucknett, *Legislation of Edward I* (Oxford, 1949), pp. 107–8; May McKisack, *The Fourteenth Century, 1307–1399* (Oxford, 1959), p. 262; G. A. Holmes, *The Estates of the Higher Nobility in Fourteenth-Century England* (Cambridge, 1957), p. 83; P. S. Lewis, 'Decayed and Non-Feudalism in Later Medieval France', *BIHR*, xxxvii (1964), 160–1; and, most recently, John A. F. Thompson, *The Transformation of Medieval England, 1370–1529* (London, 1983), pp. 118–19.

on the needs of lords in retaining, specifically on their need for military service, and do not consider the role that retainers played in encouraging lords to take on dependents. Military contracts were widely used after the 1270s, but they appeared in a sophisticated form that suggests a preceding period of legal development. It is still not clear, in other words, when and why English lords began to adopt written contracts on a wide scale and why contracts took the legal form that they did.

Most arguments about the origins of bastard feudalism view the adoption of written contracts as the result of pressures exerted on feudal relations by forces outside those relations; that is, to 'expansionist wars', the rise of a money economy, or to legislation.[1] They fail to consider the alterations within tenurial lordship itself that created a need for new methods of retaining service and that determined the form that retaining took. In order, therefore, to understand why lords turned to written contracts, it is essential first to understand the problems that lords faced at the close of the first century of English feudalism. Two profound structural changes occurred in the second half of the twelfth century, particularly in the critical decades between 1180 and 1220, which seriously weakened tenurial lordship. The first was legal. Feudal lordship had been based on a conditional reciprocity: a lord granted land to a tenant on condition that he loyally perform the required services. As Professor S. F. C. Milsom has demonstrated, the effectiveness of lordship depended on the lord's ability to use his seigneurial court to accept or reject prospective tenants and to discipline them by dispossession when they failed to fulfil the conditions of their land tenure.[2] By the late twelfth century, however, confusion over tenure arising from multiple lordships and subenfeoffment along with resistance to service undermined the effectiveness of the courts and the conditional link between landholding and service. Tenants also hardened their heritable claims to their tenements and thereby hampered the lord's ability to manipulate tenancies and services in his own interest. Henry II's legal reforms aided tenants by protecting their rights under feudal custom. Ultimately, however, they deprived the lord's court of its unsupervised jurisdiction over free lands and strengthened the tenant's proprietary claim to his holding. Jocelin of Brakelond, for example, remarked after Abbot Samson had won the submission of

1. The quotation is from Bean, '"Bachelor" and Retainer', p. 126. Similar arguments can be found in: Albert E. Prince, 'The Army and Navy', in *The English Government at Work*, i. *Central and Prerogative Administration*, ed. William A. Morris (Cambridge, Mass: 1940), pp. 348–55; Michael Jones, 'An Indenture Between Robert, Lord Mohaut, and Sir John de Bracebridge for Life Service in Peace and War, 1310', *Journal of the Society of Archivists*, iv (1972), 340; K. B. McFarlane, 'Bastard Feudalism', *BIHR*, xx (1943–5), 162–3; and Bertie Wilkinson, *Constitutional History of Medieval England, 1216–1399* (London, 1958), iii. 206–10.

2. S. F. C. Milsom, *The Legal Framework of English Feudalism* (Cambridge, 1976), pp. 1–35; and F. M. Stenton, *The First Century of English Feudalism, 1066–1166* (2nd. ed. Oxford, 1961).

the knights of Bury St Edmund's to his claims for service that '... because their acknowledgement of this in the court of St Edmund was not sufficient [*quia non sufficiebat recognicio inde facta in curia Sancti Aedmundi*], the Abbot took them all to London ... that they might make their acknowledgement in the King's court ...'.[1]

This legal change occurred just as inflation shook the economy. Although high prices lasted throughout the thirteenth century, the period between 1180 and 1220 witnessed the most rapid inflation and the greatest difficulties for landlords. Indeed, the heritable entrenchment of free tenants at the same time had significant economic consequences, especially in estate management.[2] Under the traditional system of management, lords turned the routine operation of their manors over to farmers who paid the lord a fixed, annual lease and relied on powerful stewards to supervise the estate as a whole. Many stewards, household officers, and even petty officials held hereditary offices or were rewarded with grants of free land.[3] Hereditary offices, services, and rewards, however, seriously jeopardized the estate and the lord's income after 1180. Not only were lords living on fixed incomes in a period of rising prices, but their power to manipulate free tenants and services had been sharply curtailed. There was no guarantee, for instance, that an hereditary officer, his heir, or his nominee would be capable or honest, but the lord could no longer reject such a tenant. Farmers sometimes claimed hereditary tenure in

1. *The Chronicle of Jocelin of Brakelond*, ed. and trans. Harold E. Butler (Oxford, 1949), p. 66. For the effectiveness of seigneurial courts see, *inter alia*, Ada Elizabeth Levett, *Studies in Manorial History*, ed. Helen M. Cam, M. Coate, and L. S. Sutherland (Oxford, 1938; repr. London, 1962), pp. 126–7; J. A. Raftis, *The Estates of Ramsey Abbey: A Study in Economic Growth and Organization* (Toronto, 1957), pp. 27, 30; and Samuel E. Thorne, 'English Feudalism and Estates in Land', *Cambridge Law Journal*, xxiii (1959), 193–209. For the impact of Henry II's legal reforms, see Milsom, *Legal Framework*; *idem*, *Historical Foundations of the Common Law* (London, 1969), pp. 103–26; and Donald W. Sutherland, *The Assize of Novel Disseisin* (Oxford, 1973), pp. 1–42, 77–86 and 214–15, note b.

2. P. D. A. Harvey, 'The English Inflation of 1180–1220', *Past and Present*, lxi (1973), 3–30, and 'The Pipe Rolls and the Adoption of Demesne Farming in England', *Economic History Review*, 2nd ser. xxvii (1974), 345–59. For twelfth-century management, see R. V. Lennard, *Rural England, 1086–1135* (Oxford, 1959), pp. 105–212; Edward Miller, 'England in the Twelfth and Thirteenth Centuries: An Economic Contrast?', *Economic History Review*, 2nd ser., xxiv (1971), 1–14; and Edward Miller and John Hatcher, *Medieval England: Rural Society and Economic Change, 1086–1348* (London, 1978), pp. 204–13.

3. Miller and Hatcher, pp. 189–90; Austin Lane Poole, *Obligations of Society in the XII and XIII Centuries* (Oxford, 1946), pp. 57–76; Trevor H. Aston, 'The Origins of the Manor in England', *TRHS*, 5th ser., viii (1958), 73; David Knowles, *The Monastic Order in England* (2nd ed. Cambridge, 1966), p. 441; Edward Miller, *The Abbey and Bishopric of Ely* (Cambridge, 1951), p. 250; Edmund King, *Peterborough Abbey* (Cambridge, 1973), pp. 32–4, 68–71, 126–7; Eleanor Searle, *Lordship and Community: Battle Abbey and Its Banlieu, 1066–1538* (Toronto, 1974), pp. 99–105; Barbara Harvey, *Westminster Abbey and Its Estates in the Middle Ages* (Oxford, 1977), pp. 3–11; Wilfred E. Wightman, *The Lacy Family in England and Normandy, 1066–1194* (Oxford, 1966), 103–5; and *Charters of the Earldom of Hereford, 1095–1201*, ed. David Walker (Camden Soc., 4th ser., i 1964), pp. 15, 34, 35, 71, 73–4 (nos. 7, 52, 54, 118, 123). For a good example of the kinds of problems caused by hereditary stewardships see *Jocelin of Brakelond*, p. 27, and the charters for the stewardship in *Chronica Jocelini de Brakelondia de rebus gestis Samsonis Abbatis Monasterii Sancti Edmundi*, ed. John G. Rokewode (Camden Soc., old series, xiii, 1840, pp. 116–20.

spite of their temporary appointment, and their claim was more dangerous at the end of the century because of the protection that the writ of novel disseisin extended to the possession of land.[1] After those reforms, moreover, land held in fee represented an economic loss to the lord, for he could not unilaterally adjust free rents and services to meet the changing economic conditions. Inflation also pushed up the costs of knighthood, so that some knights refused to perform their obligations.[2] Finally, a lord could only recover lands granted out for free service through purchase or the failure of heirs, and he had to bargain with free tenants for any commutation or alteration of their services. At Battle Abbey, the monks resorted to fanciful forgeries to rid themselves of unwanted ministerial tenants, while the Abbot of Peterborough gave the hereditary steward twelve marks at the end of the twelfth century '... not to claim the office during the current abbot's lifetime', and appointed another man instead.[3] Therefore, by the beginning of the thirteenth century, estates were often in the hands of farmers who stood between the lord and his resources; and those estates had been reduced by grants to officials, knights, and other free tenants who could not easily be uprooted and whose services were no longer useful to the lord.

Inflation and legal change thus impelled lords to reconsider their methods of estate management and retaining service. They halted the prodigal disposal of land which had characterized the twelfth century and took up the direct management of their demesnes.[4] In this respect, the legal changes of the late twelfth century worked to the advantage of lords, for they could force free tenants to sell their land and be confident that they would have a secure title to the property.[5] Yet this reversal in management created two new problems for lords. First, direct management emphasized the economic value of land and the need to retain it as demesne or unfree property, rather than granting it out for service. The success of this new system depended entirely

1. Miller and Hatcher, p. 208; Lennard, pp. 111–13, 184; King, p. 33; Harvey, *Westminster*, pp. 77–85; Anthony R. Bridbury, 'The Farming Out of Manors,' *Economic History Review*, 2nd ser., xxxi (1978), 514.

2. Levett, pp. 125–7; I. J. Sanders, *Feudal Military Service in England* (Oxford, 1956), pp. 50–90; Helena M. Chew, *The English Eccesliastical Tenants-in-Chief and Knight Service, especially in the Thirteenth and Fourteenth Centuries* (Oxford, 1932), pp. 37–74; J. E. Morris, *The Welsh Wars of Edward I* (Oxford, 1901; repr. Oxford, 1958), pp. 35–51, 78–81; Sally Harvey, 'The Knight and the Knight's Fee in England', *Past and Present*, xlix (1970), 3–43; and Michael Powicke, *Military Obligation in Medieval England* (Oxford, 1962), pp. 65–71.

3. Searle, pp. 99–105; and King, p. 33.

4. For the economic change see Miller and Hatcher, pp. 198–239, and the references cited there. For an example of the application of these ideals, see Searle, pp. 167–79, 267–323.

5. Professor Searle has recently argued that 'For such a lord as Battle Abbey, it mattered less that some of its tenants would be protected from it, than that it could buy out freeholders, and that its purchases would now be safe from the continuing claims of family and other lords': Eleanor Searle, 'The Abbey of the Conquerors: Defensive Enfeoffment and Economic Development in Anglo-Norman England,' in R. Allen Brown (ed.), *Proceedings of the Battle Conference on Anglo-Norman England*, ii (1979), 162.

on the ability of lords to husband their resources and to avoid the pitfalls of hereditary landholding. On the other hand, the resolution of the economic crisis depended in part on the employment of capable officers. Direct management was more complex than farming and required a larger staff of expert personnel, all of whom had to be rewarded for their services. Lords thus professionalized their management during the thirteenth century. Estates became more departmentalized: territorially as bailiwicks were defined and functionally as officers performed specialized tasks. In place of a single officer with omnicompetent responsibilities, lords employed a variety of officials. An army of professional receivers, treasurers, auditors, and bailiffs thus fell into place beneath the estate steward. A similar transformation occurred in the seigneurial household and court. The feudal importance of the honorial court waned as the royal courts took over the adjudication of lord/tenant relations, and a baronial council began to direct the household and estate. The timing of these changes was uneven. The first signs of direct management appeared on some estates before 1200, and the change in management was well underway by mid-century, though some lords were slower to adopt the innovations and did not apply them to their lands until the end of the century.[1]

The royal administration was similarly transformed during the same period. Local offices multiplied as kings asserted their legal, feudal, and fiscal powers.[2] A royal council, responsible for directing the growing administration, emerged out of the feudal court. Professionalization had been evident for some time in the Exchequer and Chancery, but it became of paramount importance in justice and law during the thirteenth century. In turn, the expansion of the royal courts and system of justice made new demands on lords, who had to retain professional pleaders and attorneys to supervise their interests in the local and central courts, as well as within the administration in general.[3] Because of the proliferation of the 'forms of action' and the

1. N. Denholm-Young, *Seignorial Administration in England* (Oxford, 1937), pp. 25–31, 66–85; Miller and Hatcher, *Medieval England*, 189–97; Levett, pp. 21–40; Marjorie Morgan, *The English Lands of the Abbey of Bec* (Oxford, 1946; repr. Oxford, 1968), pp. 38–73; and John L. Bolton, *The Medieval English Economy, 1150–1500* (London, 1980), pp. 87–97 for the chronology of the change. Sidney Painter placed the transformation of an hereditary administration to a paid, professional system at the close of the twelfth century (*Studies in the History of the English Barony* (Baltimore, 1943), pp. 139–40), while P. D. A. Harvey established that, for at least one group of lay manors, the change had been initiated in the 1180s and was well established by 1200 ('The Adoption of Demesne Farming', 345–59).

2. S. B. Chrimes, *An Introduction to the Administrative History of Mediaeval England* (Oxford, 1966), pp. 33–85.

3. Robert C. Palmer, *The County Courts of Medieval England, 1150–1350* (Princeton, 1982), pp. 113–38; 'The Origins of the Legal Profession in England', *Irish Jurist*, xi (1976), 126–47; 'County Year Book Reports: the Professional Lawyer in the Medieval County Court', *ante*, xci. 776–801; J. R. Maddicott, *Law and Lordship: Royal Justices as Retainers in Thirteenth- and Fourteenth-Century England* (Past and Present Supplement, iv, 1978), 11, 23–5, 39–40; and Searle, *Lordship and Community*, 235–46.

easy access that most freemen had to the royal courts, the importance of litigation in the management of baronial estates increased in the thirteenth century. A family ignorant in the law could soon lose its grip on its lands.

The professionalization of government, law and management that is evident all over Western Europe from the late twelfth to the mid-thirteenth century, forced English lords to retain and reward new servants. They needed lawyers, bailiffs, and accountants to manage their lands. They also needed loyal allies to maintain their leverage against the crown, within the government, and among their peers.[1] Kings likewise had need of clients and allies and were faced with the same economic dilemma that confronted lords in making grants of land. The crown's most pressing need was military service to defend its farflung borders. On the other hand, by the early thirteenth century, the crown had successfully asserted its control over most household and local offices, as well as over castles, and had significantly reduced the hereditary element in the royal administration. Thenceforth, it was clear that royal offices were held only at the will of the king and that incumbents could only expect small, non-heritable rewards for their labour.[2] For the crown and landlords alike, the demands for service increased, rather than diminished, as the thirteenth century advanced.

Yet lords dared not meet this demand with grants of land. The enfeeblement of seigneurial courts, the strengthening of heritability and the rising value of agricultural produce destroyed the usefulness of land and tenure as a means of retaining *new* services. After 1200, prudent lords hesitated to grant land in fee not only because it was so valuable but also because they had little discretion over the future choice and conduct of tenants. Henceforth, they could extract only attenuated service from old serjeanty and knightly tenures, while a new grant of free land for service meant a permanent reduction of their capital assets. As Professor Bean has speculated, lords had realized the disadvantages of granting land to retain service long

1. On the proliferation of offices, see Denholm-Young, *Seignorial Administration*, *passim*; Miller, *Ely*, pp. 196–7, 247–79; F. R. H. DuBoulay, *The Lordship of Canterbury: An Essay on Medieval Society* (London, 1966), pp. 247–76; and Miller and Hatcher, pp. 189–97.

2. The heritability of royal offices is discussed in Geoffrey H. White, 'The Household of the Norman Kings', *TRHS*, 4th ser., xxx (1948), 127–55; J. C. Holt, 'Politics and Property in Early Medieval England', *Past and Present*, lvii (1972), 25–9; and J. H. Round, *The King's Serjeants and Officers of State, with Their Coronation Services* (London, 1911; repr. London, 1970), pp. 6–8, 47–9, 74–8. For military organization in the twelfth century see Marjorie Chibnall, 'Mercenaries and the Familia Regis Under Henry I', *History*, lxii (1977), 15–23; J. O. Prestwich, 'War and Finance in the Anglo-Norman State', *TRHS*, 5th ser., iv (1954), 19–43, and 'The Military Household of Norman Kings'. Professor Holt has concluded that 'John was already evolving a form of service which fell midway between feudal service, even feudal service at the new reduced quotas, on the one hand, and . . . purely mercenary service . . . on the other': J. C. Holt, *The Northerners: A Study in the Reign of King John* (Oxford, 1961; repr. 1965), pp. 150–52, quote at p. 151.

before the drafting of *Quia Emptores* and had largely ceased subinfeudation by then.[1] Though lords acted with greater rationality in the use of their economic resources, there were limits to how far they could carry that rationality. Logically, with more cash at their disposal, they could have further reduced the costs of management by employing administrative personnel through piece work or on wages. It is at this point that pressures from clients made themselves felt. Honourable men expected honourable rewards. Lords might hire unskilled labour with daily wages, but they could retain important clients only with promises of lifetime fees. Furthermore, as lords changed over to the new system of management, the demand for professional servants outstripped the supply, so that officers could demand a high price for their services.[2] These professionals, moreover, must have encouraged the use of cash rewards in place of land, for cash was more appropriate to their activities. Small parcels of land scattered around the countryside were unsuitable for lawyers or administrators who had to be highly mobile, travelling from household to manor, from estate to estate, from court to court. They needed a liquid form of remuneration that did not burden them with additional work or travel. They could then purchase land where they pleased. Finally, a formidable array of individuals clamoured for service and reward. Family, friends and tenants as well as kings and other lords acting on behalf of their friends, all appealed to lords for positions. The pressure is nicely exemplified by the crowd that greeted Abbot Samson after his election at Bury St Edmund's: 'On his return journey, a multitude of new kinsmen went to meet him, desiring to be taken into his service.'[3] Powerful forces thus acted to preserve the ideal of a lifelong, personal association between lord and retainer.

The critical period of change, therefore, occurred between roughly 1200 and 1275, during which lords departed from the practices of tenurial lordship in two ways when retaining new services. First, they substituted a variety of rewards for land to avoid heritability and the consequent depletion of their patrimonies. Second, they drew up written contracts which preserved the ideals of homage and fealty while explicitly stating the conditional relationship between rewards and service. At the same time, lords clung tenaciously to the remnants of their tenurial lordship, determined not to allow any more of their powers to slip from their grasp. Contractual lordship was thus one element of a comprehensive programme that lords undertook to tighten control over their wealth and dependents in the aftermath of

1. Bean, *Decline*, App. I, '*Quia Emptores* and Bastard Feudalism', pp. 306–9.

2. 'Those wanting favour and legal assistance were operating in a seller's market, where the lawyer could often make his own terms for his services': Maddicott, p. 29. See Denholm-Young, p. 45.

3. *Jocelin of Brakelond*, p. 24. Other examples of pressure to hire family or friends can be found in Harvey, 'Knight's Fee', pp. 8–9; and Searle, *Lordship and Community*, p. 99.

legal and economic change at the end of the twelfth century. The programme was so successful that different varieties of lord/client relations flourished alongside one another throughout the Middle Ages.[1] Lords did not use contracts, in other words, to replace tenurial lordship, but rather to supplement it. The adoption of contracts can thus be characterized as an adjustment of lordship to the internal contradictions of tenure as well as to external changes in the economy. It was a conservative process in the sense that lords retained the pattern of social organization that tenurial lordship had created, but by means of a new form. The contract, like homage and fealty, was the meeting point of two aims: the lord's quest for service and the client's quest for protection or promotion. Thus, like feudal lordship, contractual lordship depended on a conditional reciprocity between service and rewards, as well as on the ideal of a lifetime association between lord and client. But it expressed these ideals in precise legal formulae that, it was hoped, would protect both parties. The result was a highly flexible system of retaining that could be readily adapted to changes in the lord's requirements for service and loyalty and the client's need for rewards.

In their quest to find new forms of retaining, lords did not have to invent new practices. Tenure and contract, land and cash payments had existed side by side in feudal society since the Norman Conquest. Certainly, contractual relationships were well-known in the twelfth century and can be seen in marriage agreements, personal bonds, treaties, and political covenants. The burgeoning use of written documents, moreover, provided many models for written contracts.[2] Moral or psychological sentiments about loyalty and the bond between comrades such as lords and bachelors reinforced the formal expression

1. Sutherland, pp. 86–104; F. W. Maitland and F. Pollock, *The History of English Law* (2nd ed., reissued with new introduction, Cambridge, 1969), i. 329–49; Bean, *Decline* pp. 40–103, 180–97; Sandra Raban, 'Mortmain in Medieval England', *Past and Present*, lxii (1974), 3–26; F. M. Stenton, 'The Changing Feudalism of the Middle Ages', *History*, xix (1934–5), 295; M. E. James, 'The First Earl of Cumberland and the Decline of Northern Feudalism', *Northern History*, i (1966), 48–55, and 'The Concept of Order and the Northern Rising 1569', *Past and Present*, lx (1973), 53–7.

2. For the general background to the development of these records, see Michael T. Clanchy, *From Memory to Written Record: England, 1066–1307* (Cambridge, Mass: 1979), pp. 29–87, esp. at pp. 65–7. See also J. H. Round, *Geoffrey de Mandeville* (London, 1892), App. I, '*Affidatio in Manu*,' pp. 384–7; Pollock and Maitland, ii. 184–200; Stenton, *First Century*, 248–57; R. H. C. Davis, 'Treaty Between William Earl of Gloucester and Roger Earl of Hereford', in *A Medieval Miscellany for Doris Mary Stenton*, ed. Patricia M. Barnes and Cecil F. Slade, P[ipe] R[oll] S[ociety], lxxiv (London, 1962), pp. 139–46; and H. G. Richardson and G. O. Sayles, *The Governance of Mediaeval England from the Conquest to Glanvill* (Edinburgh, 1963), pp. 463–5. In his account of the trial of William of St Calais, Simeon of Durham describes pacts concluded at various points in the process as *conventiones*. These pacts do not involve lordship or service, yet they do express a conditional reciprocity and show that sworn, written contractual bonds played a visible role in early medieval society. *Simeon of Durham*, ed. Thomas Arnold, RS, lxxv (London, 1882–5), i. 176, 178.

of social bonding in contracts and tenure.[1] Furthermore, household, stipendiary, or landless knights and squires formed common elements of Anglo-Norman and Angevin society.[2] To minimize the hazards of grants of land, kings and lords had used *fief-rentes* from an early date to form alliances with other princes or powerful barons. Even though *fief-rentes* were frequently heritable and therefore subject to the same liabilities as land, they were nonetheless far easier to suspend than land was to seize. They were part of a general movement all over northern Europe in which lords tried to rationalize their feudal relations.[3] They used written documents to define precisely the content of those relations, and they used cash payments to conserve their resources. Through these devices, lords hoped to restore the discretion over rewards and clients that they were losing over free land and tenants.

English lords gradually expanded the use of contracts over the thirteenth century. Although the surviving baronial archives do not preserve any systematic record of retaining or retainers, nonetheless evidence culled from a wide variety of sources, especially from legal cases involving disputed contracts, clearly demonstrates that contractual retaining was well-established by the mid-thirteenth century. J. R. Maddicott, for example, has persuasively argued that lords retained royal justices with pensions and robes by that time. And Robert C. Palmer has shown that by the late thirteenth century, they frequently retained professional legal personnel with contracts and annuities.[4] The phenomenon was widespread. I have found more than seventy cases involving agreements for annual, lifetime payments based on a written agreement between 1220 and 1300, in addition to the more than thirty-two pensions uncovered by Dr Maddicott and

1. Bean, '"Bachelor" and Retainer', pp. 127–8; and Keen, 'Brotherhood-in-Arms'.

2. Stenton, *First Century*, pp. 136–42; and Harvey, 'Knight's Fee', pp. 22–30. As early as 1125, the Abbey of Peterborough awarded a corrody as part of a knight's fee, and thereafter corrodies remained an important form of reward for friends and benefactors (King, pp. 25, 35). For the use of paid forces in royal armies, *supra*, p. 816, n. 2.

3. Lyon, 'The Feudal Antecedent of the Indenture System', and *From Fief to Indenture*. The role of written bonds and sworn associations in the development of a stable polity in France has received increasing attention from historians. See, for example, Jan Dhondt, 'Les Solidarités Médiévales: Une Société en Transition: La Flandre en 1127–1128', *Annales*, xii (1957), 529–60, esp. 538–40; Jane Martindale, '*Conventionem inter Guillelmum Aquitanorum Comes et Hugonem Chiliarchum*', *ante*, lxxxiv. 531–3; and Thomas N. Bisson, 'The Organized Peace in Southern France and Catalonia, ca. 1140 – ca. 1233', *American Historical Review*, lxxxii (1977), 290–311. The arguments in this article are also heavily indebted to an unpublished paper by Professor John F. Benton, 'Written Records and the Development of Systematic Feudal Relations', prepared for the Conference on 'Language and History in the Middle Ages' (Part II) held at the Centre for Medieval Studies, University of Toronto, 6–7 November, 1981, which he kindly let me use.

4. Maddicott, pp. 4–9; and Palmer, 'Origins', pp. 129–33.

others.[1] Another twenty cases involving agreements for wardships and marriages and fifteen contracts for the custody and promotion of children should be added to this total.[2] There are thus well over a hundred cases involving a clear indication of a contractual relationship between a lord and client before 1300, at least twenty-five of which pertain to the reign of Henry III. And these figures probably underestimate the true extent of contractual retaining in the thirteenth century. By the early fourteenth century, even relatively small estates had been burdened with annuities and pensions.[3]

These contracts had four important characteristics. In the first

1. P[ublic] R[ecord] O[ffice], Justices Itinerant, Just. 1/278 m. 5d; /614B m. 10d; /620 mm. 21, 25d, 30, 30d, 33; Curia Regis Rolls, KB.26/206 m. 29d; Exchequer Plea Rolls, E. 13/1F m. 4d; /10 m. 3; /11 m. 13d; /14 m. 7d; /18 mm. 52, 53d, 60; /20 m. 37(2); /21 mm. 38, 40, 40d; /24 mm. 18d, 46d, 49d, 57; /26 mm. 10, 15, 50, 53, 62d, 67; /27 mm. 23, 41d; Exchequer Writs, E.202/1/1 (2) no. 4; (8) nos. 1, 12; Exchequer Memoranda Rolls, (LTR) E.368/50 mm. 8d, 10d; (KR) E.159/50 mm. 8, 18d; /52 m. 10; /54 mm. 12, 18d, 23; /55 mm. 13d, 14(2), 16, 16d; /57 mm. 13, 16; /58 mm. 2d, 5d, 15d, 16d, 19; /59 mm. 1d, 10; /60 mm. 1d, 11; /61 m. 12; *C[uria] R[egis] R[olls]*, viii. 62, 267, 393; xiv. 109 (no. 544); xv. 34–5 (no. 1365), 502 (no. 1966); *Select Cases of Procedure Without Writ Under Henry III*, ed. H. G. Richardson and G. O. Sayles, S[elden] S[ociety], IX (London, 1941), pp. 110–11 (no. 105). Contracts or the full recitation of their terms can be found in PRO, KB.26/143, m. 17; /165 m. 3; /206 m. 29d; Just.1/278 m. 26d; /614B m. 10d; /620 m. 10d; /739 m. 19; E.159/58 m. 2d; /59 m. 1d; Duchy of Lancaster Ancient Deeds, DL.25/1308, 1349; Exchequer Ancient Deeds, Series A, E.40/391, 761, 772, 3362; Exchequer Ancient Deeds, Series A, E.40/391, 761, 772, 3362; Exchequer Ancient Deeds, Series D, E.210/1034; *Historia et Cartularium Monasterii Sancti Petri Gloucestriae*, ed. William Henry Hart, RS, xxxiii (London, 1863–67), i. 187–8, 213–14 (nos. lxxiii, cxx); *The Beauchamp Cartulary: Charters 1100–1268*, ed. Emma Mason, PRS, n.s., xliii (London, 1980), 61–2, 126 (nos. 101, 217); *The Percy Chartulary*, ed. M. T. Martin, (London: Surtees Society, cxvii, 1911), 375 (no. dccclxxviii); Denholm-Young, *Seignorial Administration*, 167–8; Jones, 'An Indenture for Life Service', pp. 391–2; and Paul A. Brand, 'Oldcotes v. d'Arcy,' in R. F. Hunnisett and J. B. Post, *Medieval Legal Records Edited in Memory of C. A. F. Meekings* (London: HMSO 1978), pp. 64–104.

2. Wardships: PRO, E.210/7463; E.13/8 m. 6d; E.159/3 m. 1; /55 m. 14; *CRR*, viii:334; xii:4–5 (no. 27); xiii:91, 242 (nos. 388, 1111); *C[alendar of the] Ch[arter] R[olls]*, i. 186; *Two Thirteenth-Century Assize Rolls for the County of Durham*, ed. K. E. Bayley (London, Surtees Society, cxxvii, 1916), pp. 69, 127; and *Rolls of the Justices in Eyre Being the Rolls of Pleas and Assizes for Yorkshire, 1218–19*, ed. Doris M. Stenton, SS, lvi (London, 1937), pp. 44–5 (no. 102). Children: PRO, KB.26/137 m. 6d; /149 m. 9; E.159/59 m. 24d; E.210/9578; Just.1/300C m. 3 – 3d; /1182 m. 7; *CRR*, ix. 226; x. 112–14; xii. 108 (no. 528); xiii. 4–5 (no. 24); xv. 242 (no. 1072); *CChR*, 1:61, 186; and *C[alendar of the] P[atent] R[olls], 1247–58*, pp. 592–3, *1272–81*, p. 332.

3. This study relies primarily on legal records of disputed contracts, which probably represented only a fraction of the total number of contractual relationships. The number of annuitants found in baronial archives, in fact, suggests that the use of contracts was far wider. See, for example, *A Roll of the Household Expenses of Richard de Swinefield, Bishop of Hereford, 1289–90*, ed. John Webb, (Camden Soc., old series, lix, lxii, 1853), i. 125–6, 201–2; *Account of the Executors of Richard, Bishop of London, 1303 and of the executors of Thomas, Bishop of Exeter, 1310*, ed. W. H. Hale and H. T. Ellecombe, (Camden Soc., n.s., x, 1874), 26–7, 107; Montague S. Giusseppi, 'The Wardrobe and Household Accounts of Bogo de Clare, AD 1284–1286', *Archaeologia*, lxx (1920), 16–17, 20, 21, 24, 35, 47, 50, 53, 54; *Documents Illustrating the Rule of Walter de Wenlock, Abbot of Westminster, 1283–1307*, ed. Barbara Harvey (Camden Soc., 4th ser, ii, 1965), 6–9, 25–33; *C[alendar of the] C[lose] R[olls], 1313–18*, p. 275; *Foedera*, II. i. 150–51. The present study covers only a portion of the plea rolls of the royal courts in the thirteenth century and, most importantly, excludes the rolls of common pleas under Edward I. Professor Palmer has shown that pleas of annuity between lords and administrators or attorneys frequently appear in the common pleas: R. Palmer, *County Courts*, pp. 42, 52–3, 94–7, 106, 111, 122 and n. 47.

place, they stipulated the client's reward. Rewards included life grants of land, grants of escheats, feudal incidents, rent-charges, annuities, and corrodies, though payments of cash annuities seem to have been the most common type of reward in the thirteenth century.[1] Lords tried to lower the costs of patronage in various ways. For example, they often used feudal incidents, as they had for some time, to reward administrators. Wardships were ideal as patronage because they contained an inherent expiration date – coming of age – after which the lord could decide whether or not to continue the relationship with the client. Marriages of heiresses or grants of escheats did not have this safeguard, but they were advantageous because in using them as patronage, a lord merely redistributed wealth already alienated. The authors of estate treatises in the thirteenth century appreciated the value of feudal incidents and urged lords to have their wardships, marriages, and escheats appraised by trustworthy officials.[2] In his *Rules* for the countess of Lincoln, Robert Grosseteste specifically recommended that she use her feudal incidents to reward loyal servants: '... keep them or give them to one or two or three men according to the number of men who have been in your service, and according to whether they have undergone more or less hardship with you and for you, this, especially, you should always bear in mind.'[3] Feudal incidents thus helped to bridge the gulf between a system of administration based on hereditary tenure and one based on conditional rewards, for they grew out of feudal tenure but enabled lords to put that wealth to new uses.

Lords also promised clients appointments to benefices, paying an annuity in the meantime. Sometime before 1260, Geoffrey de Mandeville, for example, promised William de Myriden 40*s*. a year until he provided him with a suitable benefice.[4] In a slightly more

1. The instruments formulating the terms of clientage could be either a covenant (*hec est conventio*) or a charter, though most legal proceedings state only that the agreement was made by a writing (*per scriptum*), PRO, E.40/391 (conventio), E.210/1034 (charter), Just.1/739 m. 19 (scriptum), KB.26/165 m. 3 (scriptum), and KB.26/165 m. 3 (charter). By the early fourteenth century, lords seem to have relied more heavily on rent-charges than annuities. For example, of the 42 contracts issued by the Earl of Lancaster, and listed by G. A. Holmes, 36 or 87 per cent used rent-charges as rewards, while there was only a single cash annuity. John of Gaunt's indentures show that the trend continued on the Lancastrian estate through the fourteenth century (Holmes, *Estates of the Higher Nobility*, pp. 122, 134–40; and Norman B. Lewis, 'Indentures of Retinue with John of Gaunt, Duke of Lancaster, Enrolled in Chancery, 1367–1399', *Camden Miscellany*, xxii (1964), pp. 87–112).

2. *Walter of Henley and Other Treatises on Estate Management and Accounting*, ed. Dorothea Oschinsky (Oxford, 1971), pp. 107–12, 166–7, 392–5; and *Fleta*, ed. H. G. Richardson and G. O. Sayles, SS, lxxii (London, 1955), ii. 242, 243. For an example of a steward seeking his lord's instructions about wardships see 'Letters of Ralph de Neville, Bishop of Chichester and Chancellor to Henry III', ed. William W. Blaauw, *Sussex Archaeological Collections*, iii (1850), pp. 63–4, 67, 68.

3. *Walter of Henley*, pp. 392–5.

4. PRO, KB.26/165 m. 3; /206 m. 29d; E.368/50 m. 8d; and E.13/18 m. 52. Lords sometimes promised grants of land and paid an annuity until they made the grant, *B[racton's] N[otebook]*, ed. F. W. Maitland (London, 1887), ii. 469–70 (no. 613); and Lyon, *Fief to Indenture*, pp. 63–6.

sophisticated arrangement drawn up several years later around 1284, the prior of Luffield drew up two deeds with Master Alan de Quyxley. The first stipulated that Alan would defend and prosecute causes touching the priory throughout England at the prior's cost, and the second granted Alan an annual fee of five marks until the prior could present him to a suitable benefice.[1] Because parochial appointments shifted the economic burden of patronage onto the Church and parishioners, many lords used them throughout the Middle Ages and on into the sixteenth century to reward various kinds of servants.[2]

As the last agreement illustrates, the deeds specified secondly the service that the client was to perform. The degree of specification varied, and many deeds merely stated that the reward was granted for service. It is often evident, however, from the career of the client or from other information, that the lord required administrative or legal service. Only two deeds found thus far pertain to military service for the period before 1278.[3] It is unlikely that the low figure is a quirk of record-keeping. One of the earliest legal cases involving contracts refers to military service, and there is no reason why lords and clients could not have contested military contracts in precisely the same way they disputed administrative deeds. In fact, down to the reign of Edward I, the need for administrative and legal services was more pressing for English lords than the need for knights. During that time, lords successfully reduced their military obligations to the king and seem to have been able to meet the occasional demands for military service in civil war or national campaigns out of their military fees.[4] As already discussed, however, lords had to expand rapidly their administrative personnel. With the expansion of litigation in the central courts following Henry II's legal reforms and with the continuing need for pleaders in county courts, lords increasingly retained

1. PRO, Just.1/620 m. 10d. Master Alan of Quyxley, or Quixeley (Whixley, Yorks) held land in Yorkshire, (*CCR, 1279–88*, 239).

2. W. A. Pantin, *The English Church in the Fourteenth Century* (Cambridge, 1955; pb. ed., Notre Dame, 1962), p. 32; and Margaret Bowker, *The Secular Clergy in the Diocese of Lincolnshire, 1495–1520* (Cambridge, 1968), pp. 145–6.

3. More than twenty contracts explicitly indicate that the lord was seeking either legal or administrative service. For the military deeds see *CRR*, viii. 393, and Brand, 'Oldcotes v. d'Arcy', p. 104. As Dr Brand explains, this last agreement is unusual and differs from later indentures in that it does not specify any service and involves a grant of land. One Beauchamp charter stipulated 'quod idem Willelmus dedit et concessit eidem Magistro Simoni annuas robas sicut uni ex militibus suis' and promised to assign Simon 100*s.* in rent until William found Simon a suitable benefice or lay fee (*CRR*, xv. 502, no. 1966). Another Beauchamp charter granted robes 'sicut aliis armigeriis suis' and provided the grantee with a life tenure of land, but it is not known whether either of these contracts involved actual military service (*Beauchamp Cartulary*, 61–2, no. 101).

4. Feudal levies remained an important part of military campaigns throughout the thirteenth century, for the lords as well as the king. Professor Holt, for example, has demonstrated the crucial role that feudal ties played among the barons opposing King John (*The Northerners*, pp. 34–60) while Dr Prestwich has shown that Edward I relied on a mixture of feudal and paid forces in his campaigns; Michael Prestwich, *War, Politics and Finance Under Edward I* (London, 1972), pp. 67–91. See also *infra*, p. 834 nn. 2–4.

legal advice, as exemplified in the Luffield contract from *c.* 1285. During the twelfth century, lords had discovered, to their loss, that attorneys expected to be rewarded with land. That changed in the thirteenth century, as lords retained legal assistants with contracts and pensions. Legal experts were among the first to be retained by deeds, were often the largest element of an administrative clientele, and were among the most highly rewarded. They performed invaluable service, not only in the legal defence of the estate, but also in its management.[1]

A third characteristic of many of the contracts was the conditional relationship between the reward and service. In this case, the contract stipulated rewards for future service, as two examples of agreement from around 1250 demonstrate. William de Preston agreed to pay Elias de Latun 40*s.* a year *as long as* Elias remained in William's service as his steward.[2] Gerard de Odingselles agreed to pay Robert de Mapeldurham 100*s.* a year until he provided him with an equivalent amount in wardships or escheats, on condition that Robert remain in Gerard's service.[3] Other lords specified the circumstances in which they would suspend payment of the reward. An indenture between Hugh de Neville and John Filliol in the reign of Edward I directed Hugh to pay John 100*s.* in cash, along with robes and equipment every year as long as John remained in Hugh's 'company'. If John left without proper cause, then payment of his fee would cease forever.[4] In some cases, however, lords simply granted rewards to servants in recognition of their *past* service, so that no conditionality was possible.[5] It is not always easy to determine from a legal case whether or not a grant was for past or future services, but the form of most disputes, in which the plaintiff demands an annual payment that has been withheld, implies a conditional grant.

Finally, these contracts created lifetime relationships and punctiliously limited rewards to the life of the client. The shift away from land to other rewards was significant precisely because it enabled lords

1. For examples of grants of land to retain attorneys in the twelfth century, see Palmer, 'Origins of the Legal Profession', 135; and Searle, *Lordship and Community*, pp. 93, 100–101, 243–6, For the importance of legal training in estate management, see Miller and Hatcher, pp. 190–91; Pollock and Maitland, ii. 211–17; King, p. 133; *Walter of Wenlock*, p. 9; Maddicott, pp. 10–11; and Palmer, *County Courts*, pp. 72, 89–112, 122–3, 136–8. *Seneschaucy* stated that '... the estates steward ought to be knowledgeable and loyal and capable of administering the lands profitably; he ought to know the law of the country so that he can defend actions outside the lord's estate, can give confidence to the bailiffs who are under him, and can instruct them,' *Walter of Henley*, p. 265.

2. PRO, Just. 1/614B m. 10d (1246/7).

3. PRO, KB. 26/143 m. 17 (1250).

4. PRO, DL. 25/1308. It should be noted that Neville raised the money for the pension by leasing a wardship back to a widow.

5. E.g., PRO, E.159/59, m. 1d; *Historia et Cartularium Sancti Petri*, i. 187–8 (no. lxxiii); *Beauchamp Cartulary*, pp. 61–2 (no. 101); *Percy Chartulary*, p. 375 (no. dccclxxviii); and *CPR, 1301–1307*, p. 125 (confirmation of a grant of an escheated tenement by Roger le Bigod to his yeoman, John de Uffeton). The officials of Westminster Abbey used the terms 'fee' or 'pension' to designate rewards for future, rather than past, services (*Walter of Wenlock*, p. 30, n. 7).

to avoid the dangers of inheritance. Lords likewise refused to make office-holding hereditary and tried to eliminate as many hereditary offices as possible by buying out their occupants. They wanted to ensure that offices would be filled only at their discretion with acceptable candidates who performed their duties, or be removed and lose their reward. Lords could not always achieve that ideal, but they hoped at least to restrict their servants to life tenures and to minimize the economic effects of patronage. Indeed, some tried to induce hereditary officers to renounce their proprietary right by offering them a lifetime grant of land or a corrody.[1]

These contracts, therefore, represent the first efforts by lords to refine a system of retaining service that would avoid the liabilities of feudal tenure, while preserving its particular logic of conditional reciprocity. The characteristics of these early deeds – lifetime associations, the conditionality of rewards, written instruments, and rewards other than land – set the pattern for indentures of the fourteenth and fifteenth centuries.[2] Certainly, by the end of the thirteenth century, nearly every large estate shows evidence of a staff of administrative personnel retained by pensions, robes, and long-term relationships and differentiated hierarchically according to their function and status.[3]

Yet, because contracts were so flexible, they were useful not only to wealthy landlords seeking to protect their resources, but also to individuals trying to solve a wide range of problems. For example, smaller landholders may not have wholeheartedly welcomed the withering of tenurial lordship, for it sometimes protected them and their heirs.[4] Tenants did not regard lords' rights of wardship and

1. *Historia et Cartularium Sancti Petri*, 1:323–4 (no. ccc); and *The Cartulary of Worcester Cathedral Priory*, ed. R. R. Darlington, PRS, n.s., xxxviii (London, 1968), 72–5 (nos. 128, 129, 131, 132). The abbot and convent of Worcester also made holders of corrodies or life grants acknowledge the limitation of their tenures in separate charters: *Ibid*, 72, 74–5, 124–5, 150–2, 232, 236. During the period of reform and rebellion, the barons seem to have drawn on their experience by insisting that sheriffs '... should all be annual appointments, so that they should not, through knowing themselves to have perpetual or long-enduring tenure, become arrogant in their offices and the readier to inflict injury, but that instead, they should the more strictly refrain from excesses, since they would know plainly that at the end of the year they would lay down their offices to give an account of their stewardship ...', *Documents of the Baronial Movement of Reform and Rebellion, 1258–1267*, ed. I. J. Sanders and R. F. Treharne (Oxford, 1973), pp. 262–3.

2. For analyses of the forms of indentures, see Lewis, 'Indentures of Retinue', pp. 77–85; McFarlane, 'Bastard Feudalism', pp. 164–8; and W. H. Dunham, *Lord Hastings' Indentured Retainers, 1461–1483, Transactions of the Connecticut Academy of Arts and Sciences*, xxxix (New Haven, 1955), 47–66.

3. King, pp. 126–39; DuBoulay, pp. 268–9; Holmes, pp. 76–7; Denholm-Young, pp. 33, 35–6, 37–8, 41–2, 45, 46, 66–85; Miller, *Ely*, pp. 257, 264–5; Levett, pp. 21–9, 31; and Maddicott, pp. 25–31.

4. For the protective aspects of lordship and clientage see Pollock and Maitland, i.318–29; ii.436–47; and Keen, 'Brotherhood-in-Arms', pp. 12–13. Examples of this protection can be found in PRO, Just.1/1240 m. 12d, in which James Trivet intervened in the mid-thirteenth century to prevent a widow alienating her dower to the disinheritance of her son, a minor in Trivet's custody; and in Just.1/1217 m. 20d, where Hamo Lestrange and other 'friends' (*amici*) safeguarded an arrangement whereby a father granted the custody of his son and lands to another person. Lordship, however, was never completely disinterested, and it seems likely, for instance, that Trivet acted as much to protect his feudal incidents as to shield the heir from his mother.

marriage as *necessarily* harmful, though they were fully aware of the potential liabilities. Nor did they *necessarily* trust their families with unrestricted authority over their lands and heirs. The qualifications built into family wardship in socage tenure, the limitation of the eldest heiress's rights of wardship and marriage over her younger sisters, or the demands in the mid-thirteenth century for legal remedies against guardians in socage reveal a widespread distrust of family wolves hungering after an inheritance. On the other hand, the complexities of tenurial lordship meant that when a family held its lands of several lords it faced the prospect of a division of its estate between them during a minority.[1] An individual alone in this society was highly vulnerable, and an orphan heir, defenceless in the face of lords or relatives, represented a profound social dilemma. For parents, that possibility must have aroused ambivalent feelings towards lordship and family with their competing claims, benefits, and dangers.

Some landholders tried to anticipate and resolve this dilemma by contracting for the custody, marriage, and/or promotion of their children in their own lifetimes. They used contracts to create an artificial lordship. Richard de la Vacche and his wife, for example, constituted William son of Roger the Clerk as custodian for their son and all of his lands and goods. William promised in the contract to dispose of Richard junior's property for his (Richard's) benefit, and to protect, defend, and maintain Richard in all causes until he came of age.[2] In other instances, families sold the marriage or guardianship of their children to a contractual lord in order to overcome financial embarrassment. Such motives may have prompted William de Seneville to grant the custody and marriage of his son to John Mansell, a powerful royal minister. Mansell undertook in the contract to pay 100 marks of William's Jewish debts and then to marry John to Mansell's sister or another near relative. The contract, moreover, anticipates the later provisions of uses and wills for the payment of the father's debts, a feature that feudal wardship lacked. Financially troubled landholders conducted their search for security through the network laid out by social custom, which led them into the arms of engrossing lords, while landlords encouraged the creation of stipendiary relations

1. Pollock and Maitland, i.321; ii.277–8; Henry Bracton, *De Legibus et Consuetudinibus Angliae*, ed. and trans. Samuel E. Thorne (Cambridge, Mass., 1968–80), 2:254–5 (f. 87d–8, heirs of sokemen); DuBoulay, pp. 69–72, 144–5; S. F. C. Milsom, 'Legal Introduction', *Novae Narrationes*, ed. Elsie Shanks, SS, lxxx (London, 1963), cxlviii–clviii; and Plucknett, pp. 112–13.

2. PRO, E.210/9578 (3 Aug. 1298). Other examples can be found in PRO, E.159/59 m. 24d; *CRR*, xiii.14–15 (no. 24) and *BN*, ii. 200 (no. 247); PRO, Just.1/300C m. 3–3d; *CPR, 1272–81*, p. 331; *CChR*, i.61; and *Cartularium Monasterii de Ramesia*, ed. W. H. Hart and P. A. Lyons, RS, lxxix (London, 1884–93), ii.268–9 (no. ccclxxxvii). For the legal basis of such acts, see Doris Mary Stenton, 'Introduction', *The Great Roll of the Pipe for the Sixth Year of the Reign of King John*, PRS, lvi (London, 1940), xx–xxi; Bracton, ii.135 (f. 43b); and *Fleta*, ii.29.

and landless dependents in part because they were a means of acquiring land.[1]

Political conflict likewise threatened the security of landholders. This was especially true during the Barons' Wars when shifting alliances between the king and barons and among the barons themselves strained loyalties. Those strains impelled some of the greater barons to draw up contracts specifying the conditions of political alliance.[2] They also impelled at least one landholder to use contractual lordship to insulate himself from the consequences of civil war. David de Esseby held land in Northamptonshire and Lincolnshire worth more than £110 per year, though he owed at least £100 to Jews. David's landlord in Northamptonshire, Henry de Hastings, ardently supported Simon de Montfort and later led the Disinherited. At the outset of the conflict, Hastings coerced David into joining the Montfortian faction at Lewes by distraining his lands and goods, a common practice during periods of political stress in England.[3] Afterwards, David tried to resolve his conflicting loyalties to king and lord by appealing to the Earl of Gloucester for protection. He paid the earl's steward ten marks of silver, horses, arms, and food to have that protection: *per sic quod esse potuit in protectione comitis*. Even then, David vacillated for fear of being caught between royal and baronial forces and so fled to the refuge of a church before fully committing himself to Gloucester. His actions show how deeply political turmoil and the accompanying dangers of distraint and forfeiture affected small landholders and made the shield of 'good lordship' even more desirable or necessary.

Esseby's exchange of money and goods for lordship, however, reveals the uneasy combination of liberality and acquisitiveness, power and dependency that underlay the ostensible reciprocity of all

1. PRO KB.26/149 m. 9 (1253); Bean, *Decline*, pp. 31–9; and Searle, *Lordship and Community*, pp. 144–6. It should be noted that agreements for grants of corrodies in return for land, which are usually studied in the context of the land market, also conformed to the assumptions of reciprocal benefits and responsibilities since they often contained provisions for service as well as support: Ian Kershaw, *Bolton Priory: The Economy of a Northern Monastery, 1286–1325* (Oxford, 1973), p. 136. For example, Simon de Norwich obtained land by contracting with a small landholder to provide him with support, to arrange a marriage for his daughter, and to retain his son in Simon's service until he could establish himself in trade or another profession (*CRR*, xv.242 (no. 1072); *BN*, iii. 644–5 (no. 1846); and William Dugdale, *Monasticon Anglicanum*, ed. B. Bandinal, J. Caley, and H. Ellis (London, 1817–30), vi. 264). Other examples can be found in PRO, Feet of Fines, CP.25(1)/74/27/610; Ancient Correspondence, SC.1/1/184; and John Gough Nicholas, 'Charters Relating to the Family of Mautravers', *Coll. Top. et Gen.*, viii (1834–43), 352.

2. F. M. Powicke, *King Henry III and Lord Edward* (Oxford, 1947; repr. 1966), pp. 397–8, 406 n. 3, 408; and *CPR, 1258–66*, 261.

3. Lands and debts: *CPR, 1258–66*, pp. 529, 564; *1266–72*, p. 177; *C[lose] R[olls of the Reign of Henry III], 1251–3*, p. 247 (respite of knighthood), *1264–8*, pp. 428, 516–17; and PRO, Chancery Miscellany, C.47/1/1 m. 6 (distraint for knighthood). Hastings and contract: Powicke, *Henry III*, p. 523; and PRO, KB.26/197 m. 11. For similar kinds of pressures on tenants, though at a later date, see Scott L. Waugh, 'The Profits of Violence: the Minor Gentry in the Rebellion of 1321–1322 in Gloucestershire and Herefordshire', *Speculum*, lii (1977), 849.

lord/client relations in medieval England. The opportunistic side of lordship can be seen even more clearly in the ways in which members of the Basset family extended the benefits of lordship to some of their clients. Given the wealth, power, and connections of the family, within both the Church and royal government, it is not surprising that smaller landholders gravitated towards them and applied for service and rewards.[1] In the mid-thirteenth century, William de Wydendon entered into a contract with Philip Basset in which William demised a tenement to Philip for seven years. During that time, Philip was to retain William in his service, or procure him service with some other 'good man,' to provide him with food and clothing befitting one of Philip's squires, and to replace any horse that he lost in Philip's service. William la Justice of Keresie likewise became Philip's man, granting Philip an annual rent in return for the honour.[2] Finally, William de Septem Molis, of an old knightly family, paid even more dearly for Basset lordship. By the middle of the thirteenth century, he experienced financial hardship and left virtually nothing for the support of his widow and daughter when he died. Yet William granted Fulk Basset, the Bishop of London, an entire manor on condition that Fulk pay William six marks of silver annually for William's life and give William his just protection, counsel, and aid.[3]

On the other hand, lords depended on their personnel to make their lordship effective, and some servants with sufficient expertise exploited that dependence to benefit themselves. It was not unusual for officials to be bound contractually to more than one lord. Besides serving the Clares as a steward and adviser, for example, Hervey de Borham also acted as a royal official, had at one time received a £10 annuity from William Marshall, had been a steward for Westminster Abbey, and had worked for the Bishop of Durham, earning along the way a reputation as a subtle pleader. Hervey profited well from his service and used his gains to become a substantial landholder in his own right.[4] Many such examples can be cited from both private and royal administration, and the ease with which servants could attach themselves to several lords clearly undermined the cohesiveness and

1. For the Bassets see *Dict. Nat. Biog.*, iii.378, 384; and Powicke, *Henry III*, pp. 128–9, 335, 337, 362, 384, 397–8, 409, 421, 429, 432, 472, 506, 532, 541, 544.

2. PRO, E.40/391 (Wydendon), and /3362 (Keresie). William son of William Aylwyn made a similar agreement with Philip Basset: Jones, p. 389 and n. 40.

3. L. C. Loyd, *The Origins of Some Anglo-Norman Families*, Harleian Society, ciii (1951), 97–8; Dugdale, *Monasticon*, vi. 59 n. a (nos. 24, 25, 27); *CR, 1242–7*, p. 357; *1259–61*, p. 155; and PRO, E.40/761, 772. The first deed contains the agreement, and in the second, William grants the manor to Fulk. For similar contracts in which the client bestowed lands on the lord in return for protection, see *CRR*, xv.345 (no. 1365); and *Beauchamp Cartulary*, p. 126 (no. 217).

4. Denholm-Young, pp. 28–9; Michael Altschul, *A Baronial Family in Medieval England: The Clares, 1217–1314* (Baltimore, 1965), pp. 105, 118, 119, 126 n. 12, 184, 227–8; Franklin J. Pegues, 'The *Clericus* in the Legal Administration of Thirteenth-Century England', *ante*, lxxi, 555–6; Maddicott, p. 7; *Cal. Inq. Post Mortem*, i.161 (no. 530); PRO, E.13/8 mm. 6d (grant of wardship from Clare), 20d (pension from Marshall); and CP.25(1)174/43/745, /49/895 (purchase of lands).

effectiveness of lordship and clientage.[1] One abbot, having acquired a manor after the landholder defaulted on a debt, entrusted it to a bailiff.[2] The former owner, however, approached the bailiff, offered him livery [*et ob hoc ei dedit unam robam de secta familiae suae*], and persuaded him to act on his behalf. When the abbot returned to the manor, the bailiff refused him entry. Lords could not eliminate the infectious practice of multiple relations, though they tried to minimize its damage by using conditional deeds. In a contract between the Abbot of Lilleshall and Master Richard Bernard, the abbot realistically assumed that Richard might undertake additional service and tried to protect himself if that happened. He granted Richard an annual rent of forty marks until he supplied Richard with an appropriate benefice, in return for which Richard undertook faithfully to promote, defend, and prosecute the abbey's interests. The contract stipulated, however, that if Richard accepted a position with another lord, then the abbey would be free of all its obligations towards Richard.[3] In fact, precisely as the abbot had feared, Richard found a greater patron in Robert Burnell, entered his service, became an archdeacon, and refused to perform the duties for which he had contracted, though he still claimed his reward. A jury decided that he was not entitled to the pension or the benefice since he had broken the condition of the contract, so that the legal device of a conditional grant successfully protected the lord's resources from a grasping servant. In other cases, lords extracted oaths from their administrators to ensure loyal behaviour.[4]

Contractual retaining, however, also raised the problem of enforcing a client's rights to the rewards promised in a contract. The ease with which a lord could break off the relationship – by suspending payment or withholding a benefice or ward – demonstrates its advantage over tenure, but it placed the client at a disadvantage. He needed a supervisory jurisdiction that could protect his interests. And just as tenants relied on the petty assizes to assert their tenurial rights, so clients turned to the royal courts for the protection of their contractual claims.

This pressure by claimants to enforce pensions appears to have led to the evolution of the action of annuity as a species of debt during the first half of the thirteenth century. Glanvill had stated that '... it

1. Denholm-Young, pp. 45, 70; DuBoulay, p. 268; and Palmer, *County Courts*, pp. 106–7, 112. Like Borham, Solomon of Rochester served several lords simultaneously: Maddicott, pp. 29, 31; Reginald A. L. Smith, *Canterbury Cathedral Priory* (Cambridge, 1943; repr. 1969), pp. 71, 73–4; and PRO, E.13/10 m. 3, /18 m. 52.

2. PRO, E.13/8 m. 19.

3. PRO, Just.1/739 m. 19.

4. 'He was to serve the abbot and convent to the exclusion of all other lords and to give them service and counsel and aid when occasion required': King, p. 132; Denholm-Young, p. 71; and *Walter of Henley*, pp. 264–5, 268–9, 288–9, 292–3, 316–17, 390–93, 398–9, 400–1 (emphasis on the loyalty of officers).

is not the custom of the court of the lord king to protect private agreements, nor does it even concern itself with such contracts as can be considered to be like private agreements, [*de talibus contractibus qui quasi priuati conuenciones censeri possunt*].'[1] The context shows that he was thinking primarily of private sales, loans, and gages, and he did not specifically consider contracts for service. Bracton later repeated Glanvill's warning almost verbatim at one point, though at another, he modified it by stating: 'Hence, though it is not usual, the necessity of considering such private agreements is sometimes imposed on the royal courts.'[2] Four cases involving disputed contracts show that in the 1220s clients first used the action of debt as a lever to open the doors of the royal courts to private agreements. In 1220, for example, Henry Bucuinte brought an action of debt against Gilbert de Heyndon to recover the arrears of an annuity of four marks a year out of Gilbert's chamber. Henry claimed that Gilbert had granted the annuity and arms of a knight to him sometime in the reign of King John, but that Gilbert had not fulfilled his part of the agreement. Gilbert admitted that he had taken Henry's homage and had promised him promotion on condition that Henry earned the annuity [*si demeruisset*], but argued that Henry had not deserved it, so that Gilbert did not have to honour the contract.[3] These cases are significant because they show that the practice of retaining service through cash payments and conditional contracts was sufficiently well-established by the 1220s for plaintiffs to bring pressure on the royal courts to hear their complaints. It is also interesting to note that although the action of covenant had been developed by that time, claimants did not use it to recover pensions. They did not ask the courts, in other words, to

1. *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*, ed. G. D. G. Hall (London, 1965), pp. 124, 129–30, 132, quote at 132. The author makes the statement at the end of a long discussion of gages, sales, etc. See also A. W. B. Simpson, *A History of the Common Law of Contract* (Oxford, 1975), p. 4.

2. Bracton, ii.109 (f. 34), 283–9 (ff. 99–101b), quote at 109. Compare this with p. 286: 'With all these matters the king's court does not meddle save occasionally as a matter of grace.' For 'Bracton' and the dating of the treatise see Samuel E. Thorne, 'Translator's Introduction', *De Legibus*, 3:xiii–lii.

3. *CRR*, viii.393: 'Set bene cognoscit quod dedit ei arma et quod cepit homagium suum et quod promisit ei promotionem, si demeruisset; set non demeruit nec ita se habuit erga eum quod bonum ei facere debet; et ideo non debet ei conventionem illam tenere.' For the other cases see *CRR*, viii.62, 267; xi.86, 229, 572 (nos. 461, 1124, 2850); xiv.109 (no. 554); and *Feet of Fines for the County of York, 1218–1231*, ed. John Parker (Yorkshire Archaeological Society, lxii, 1921), 49–50. The writ of debt was well-established by the time of Glanvill, (Raoul C. Van Caenegem, *Royal Writs in England from the Conquest to Glanvill*, SS, lxxvii (London, 1959), 254–6; and Simpson, pp. 54–5). The defendant in one of these cases claimed that although his father had granted a pension out of his chamber, the grant could not be binding on *his* chamber (*CRR*, viii:62). From this point onward, plaintiffs routinely referred to an issuing chamber, while defendants raised the same objection down to the early fourteenth century (*Brevia Placitata*, ed. George J. Turner, SS, lxvi (London, 1951), cxxxi; PRO, KB.26/165 m. 3; E.159/54 mm. 12, 18d; /55 mm. 13d, 16d; Just.1/278 m. 26d; and /620 m. 21; Milsom, 'Legal Introduction', pp. clxx–clxxi). In one case, a plaintiff seems to assert that in a rent issuing from a chamber, the recipient does not need actual payment of the pension to establish his seisin, as he would if the rent issued from a tenement, and the court supported him, (PRO, E.13/18 m. 53d).

determine whether or not an agreement had been breached nor seek to rectify such a breach. Instead, beginning with these pleas of debt, they laid a claim, based on their *seisin* of the annuity, to the reward specified in the contract.[1] At some point the action of annuity was introduced. Bracton refers to a writ [*breve de annuo redditu*] for rents arising from a chamber as a separate action, but he does not recite the writ nor discuss pleading. The earliest cases in the plea rolls found thus far date from the 1240s, though even in 1284, when annuity was widely pleaded, the Statute of Wales did not treat it separately and seemed to lump it in with debt. Thus, while discussing pleading, the statute gives various causes of debts, among them 'the arrears of a rent not growing out of tenements', which would apply to annual rents from chambers. Finally, the early registers of writs list debt and annuity alongside one another.[2]

A comparison of those writs reveals minor but important differences in wording.[3] Both were writs *precipe*. Yet, the writ of debt read '100 marcas *quas ei debet*', for a claim of a debt of 100 marks, whereas a writ of annuity read, '100 marcas que aretro sunt de annuo redditu

1. For covenant, see Pollock and Maitland, ii.216–23; Milsom, *Historical Foundations*, pp. 213–19; and Simpson, pp. 9–46. For seisin see Milsom, 'Legal Introduction', p. clxxii; the examples in *Novae Narrationes*, pp. 106, 138, 277 and *Brevia Placitata*, pp. cxxxi–cxxxiii, 31, 109–12; and *CRR*, viii.393, 'per cartam illam fuit ipse in seisina illius redditus.' Since lords scrupulously limited the terms of contracts to the lifetimes of the clients or themselves, the issue of seisin 'time out of mind' would not usually arise unless the deed had been lost or destroyed, which are precisely the circumstances on which the examples of annuity in the *Brevia Placitata* turn. Cf. Milsom, 'Legal Introduction', p. cclxxii: 'In the earlier yearbooks ... annuities are still to some extent things. The most striking symptom of this is the appearance of cases in which the plaintiff has no specialty and counts just on an immemorial seisin.' The cases to which he refers, however (clxxii n. 8) all deal with ecclesiastical pensions for tithes. In one case, Bereford stated: 'If an annuity charged on land were being claimed for you, and the claimant had naught more than seisin to support his title, that would not be sufficient, much less so here,' (*Year Books of Edward II*, xii.231). All the cases studied here mention a deed, and other cases in the year books of Edward I show that deeds formed a regular part of the pleading: *Year Books, 20–22 and 30–33 Edward I*, Alfred J. Horwood, RS, xxxia (London, 1863–79); *20 and 21 Edward I*, pp. 200–1, 340–1; *21 and 22 Edward I*, pp. 128–31, 174–9, 540–1; *32 and 33 Edward I*, pp. 178–81; and *33 to 35 Edward I*, pp. 144–5, 402–5, 564–7). By this time, the courts held that in debt, a deed could be dispositive (Simpson, 95; and *Fleta*, 2:20).

2. Bracton, iii.59, 117; Pollock and Maitland, ii.133–4; Milsom, 'Legal Introduction', pp. clxix–clxx; *Brevia Placitata*, pp. cxxxi–cxxxiii; and *The Statutes of the Realm*, i.61, 65. In explaining how debt is to be pleaded, and the circumstances it is to cover, the statute declares that it shall be 'for the arrears of a rent not growing out of tenements, or upon other contracts.' The last phrase makes the intention ambiguous. *Early Registers of Writs*, ed. Elsa de Haas and G. D. G. Hall, SS, lxxxvii (London, 1970), pp. 76, 220–21. In *Fleta*, the explanation of the writ of annual rent occurs at the end of a chapter on remedies in debt, *Fleta*, ii.209. For four examples of annuity in the reign of Henry III, see PRO, Just.1/614B m. 10d; KB.26/143 m. 17; /165 m. 3; and *Procedure Without Writ*, pp. 110–11 (no. 105). Annuity was also pleaded in exchequer, though with some modifications (*Select Cases in the Exchequer of Pleas*, ed. Hilary Jenkinson and Beryl E. Formay, SS, xlviii (London, 1932), pp. xli–xlii, xlix–xlx; and PRO, E.13/1F m. 4d).

3. The examples of writs cited here are taken from the *Early Registers of Writs*, pp. 76, 220–21. Fitzherbert noted the differences as well: *The New Natura Brevium* (9th ed., Dublin, 1793), fo. 357. In this passage, Fitzherbert assumes that plaintiffs will turn to annuity or debt to recover *robes*, an important feature of contractual retaining, so that the action of annuity was still important to lords and clients by the early sixteenth century.

100 solidorum *quem debet*,' for a claim of 100 marks in arrears on a pension of 100*s*. The significance of the wording is that the form of annuity, *quem ei debet*, refers not to the arrears but to the annual rent itself. Debt on the other hand, refers only to the cash owed, *quas ei debet*. Fitzherbert pointed out that in annuity, the claimant can demand things other than money, as long as they were part of the annual rent. That was because the general phrase, *quem ei debet*, encompassed everything that had been part of the annuity. Moreover, Fitzherbert stated that the claimant to an annual rent '... shall not have an action of debt for the arrearages, because the annuity continueth.'[1] In other words, the remedy of the action of debt was static, since it pertained only to the sum certain stated in the writ, such as the arrears. Annuity, however, covered the annuity itself, as well as any arrears. A successful plaintiff in annuity thus established a right to receive the pension in the future as well as to recover arrears. Indeed, by the reign of Edward I, judges had established the plaintiff's right to recover the arrears from the day of the purchase of the writ until the judgment, so that he recovered more than he demanded in the writ, which was impossible in debt.[2] The scope of the remedy thus outstripped that of debt. To paraphrase Professor Milsom, contemporaries answered the question 'How can it be brought?' by expanding the premises of debt, through a change in wording, to include the annuity as well as the sum certain.[3] Thus, beginning with early cases based on claims to arrears as simple debts, the courts ended up establishing annuity as the client's writ of right to cash pensions by protecting his seisin.

The pleading of annuity shows how the courts regulated the give and take of lord/client relations. In his count, the plaintiff asserted his seisin of the annuity and had to produce the deed itself, while the defendant relied on the conditional terms of the grant to justify suspending the annuity.[4] The issue often boiled down to the thorny

1. Fitzherbert, f. 280H; and Simpson, pp. 61–9.

2. *Year Books, 21 and 22 Edward I*, 410–11; and *The Year Books of Edward II*, xxi. 85.

3. 'When the demand is, to speak loosely, for regulation in some new area, it can often be reached easily enough from neighbouring premises': S.F.C. Milsom, 'Reason in the Development of the Common Law', *Law Quarterly Review*, lxxxi (1965), 497–517, quote at 498.

4. Two cases may shed some light on the development of pleading in annuity. In 1260, Ralph of Leicester complained that the prioress of Nuneaton had not paid him a pension that had been promised until they provided him with a benefice. Rather than suing with a writ of annuity, he made his claim in an action of trespass, '[Ralph] queritur de priorissa ... quod cum n. concessissent R. annuatim 10 marcas singulis annis ... quousque ei prouiderent in aliquo beneficio ecclesiastico ... prior et priorissa ... subtraxerunt ei ... annuum redditum unde dicti quod deterioratus est et dampnum habet ...,' (*Procedure Without Writ*, pp. 110–11, no. 105). He may have hesitated to use annuity because, as he admitted in the pleading, he never had seisin of the annuity, though he did have a deed. In another case, from 1292, the plaintiff, William de Wymondham, sued Simon of Patishull for an annuity of 4 marks and the arrears and offered a deed [*scriptum*] of Simon's grandfather to support his claim. Simon argued that the deed was not binding on him because William had never been seised of the annuity by the hands of his grandfather. The Court of the Exchequer, however, held that the deed did confer seisin and that a deed could only be met by a deed and not defeated 'vacua voce' (PRO, E.13/18 m. 53d; and Simpson, 22–7, 96, 99–101 for 'deed meeting deed').

problem of the fulfilment of those terms. Robert de Mapeldurham, for instance, sued Gerard de Odingselles for the arrears of his pension. Gerard defended himself by declaring that Robert had failed to adhere to the terms of the contract because he had left Gerard's service without permission and had not adequately performed his duties while he was in service. Robert in turn asserted that he left Gerard because Gerard had insulted him in the county court of Oxford. The wording of the contract was therefore of the utmost importance.[1] For example, one defendant admitted the contract and his obligations under it, but justified his failure to pay the annuity by arguing that the grant had been made 'for service performed and to be performed', and that since the client had refused to perform specific services, he suspended payment. The court, however, supported the plaintiff's contention that the words 'for service performed' were sufficient to make the grant absolute rather than conditional. Phrasing of the conditionality often became an issue in suits involving promises of appointments to benefices, because most contracts promised a 'suitable' benefice, but did not define 'suitable', leaving ample room for interpretation.[2]

The significance of these legal developments for social relations can be seen in two respects. First, they demonstrate the interdependence of legal and social change in England. The action of annuity grew out of and expanded in response to lord/client disputes over conditional contracts and was well-established by the 1280s when military contracts appeared in greater numbers. Of course, claimants were not limited to annuity and, as Dr Brand has demonstrated, claims and counter-claims arising out of a contract could engender a variety of legal, or illegal, actions stretching over years.[3] Yet, pleading in annuity refined the form of the contracts, for the language of social agreements had to conform to the remedies offered by the royal courts if lords were to protect the conditionality of grants and clients to demand their rights as effectively as legally possible. The form of indentures – the instruments of late-medieval retaining – thus did not evolve accidentally but emerged out of the interplay of legal and social requirements.

Second, this interdependence could only occur because of the willingness of both lords and clients to submit their social disputes to the royal courts. This willingness is a measure of the success that Henry II's legal reforms achieved in changing the attitudes of the landed classes. Lords did not try to revive the discipline or the private

1. PRO, KB.26/143 m. 17; Milsom, 'Legal Introduction', p. clxx; and Simpson, p. 107.

2. *Year Books, 33 to 35 Edward I*, pp. 402–5; Milsom, 'Legal Introduction', p. clxxi, and the cases cited there. For other pleas of annuity involving promises of benefices, see PRO, KB.26/165 m. 3; /206 m. 29d; Just.1/620 m. 10d; and E.13/18 m. 53d. For a particularly elaborate effort to spell out the specifications for a benefice see *Historia et Cartularium Sancti Petri*, i.213 (no. cxx).

3. Brand, 'Oldcotes v. d'Arcy'.

jurisdiction of the seigneurial court while creating new social ties. Instead, they conducted their social relations according to the norms of the common law. Whatever the subsequent history of contractual retaining, it is certain that in this first stage of development, both lords and clients often relied on the disinterested tribunal of the royal courts to protect their interests and to resolve disputes arising out of their social arrangements.[1] It is this general acceptance of legal norms that makes conflicts between lords and clients so startling and exceptional. Lords and clients may have turned their disputes over to the royal courts more readily because the remedies they found there were compatible with their feudal outlook, as Professor Milsom has suggested.[2] Contracts and legal remedies did not demand a great conceptual leap, for legal experts expressed the new relationships in the language and ideals of feudal tenure. They spoke, for instance, of the 'seisin' of an annuity, or even of the 'seisin' of services described in the contract.[3] They did not argue about the nature of contractual agreements any more than seigneurial courts considered the nature of tenurial obligation. They disputed specific claims to specific benefits.

Thus, as historians have commented, English social organization did not change dramatically with the development of contractual retaining, though there was a significant change in the legal forms of social relations. The introduction of written contracts, moreover, marked a significant departure from earlier practice in that the impetus behind it was economic rather than military. During the first century of English feudalism, military concerns were uppermost in the minds of the king and his barons as they endowed followers with lands. Furthermore, the king was largely responsible for this feudal organization of society, because his interest in maintaining his 'empire,' whether Anglo-Norman or Angevin, impelled him to make military enfeoffments and to ensure that his followers did likewise.[4] Ecclesiastical lords, for instance, would certainly not have devoted so much of their new resources to military endowments without royal pressure.[5]

1. 'In the early days of the system some of the contracts had a sanctions clause for breach of the engagement; but after the middle of the fourteenth century this clause disappears. What is more, so far, no evidence of any attempt to enforce a contract in the courts has been published': McFarlane, 'Bastard Feudalism,' p. 173. For the sanctions clause see Lewis, 'Indentured Retinues', p. 210–11. Clients demanding rent-charges could choose from a variety of actions, and there is evidence that they did so, down into the fourteenth century, Sutherland, *Assize*, pp. 50–52; Milsom, 'Legal Introduction', p. clxix; Pollock and Maitland, ii.129–30; Bracton, iii.59, 117; *Britton*, ed. Francis M. Nichols (Oxford, 1865), i.269–75; *Year Books of Edward II*, xxiii.86–90; and Nigel Saul, *Knights and Esquires* (Oxford, 1981), pp. 265–6.

2. Milsom, 'Legal Introduction', p. clxxii.

3. For the seisin of the annuity see *supra*, p. 830 n. 1. For the lord's seisin of services see *Brevia Placitata*, p. 109–12.

4. Powicke, *Military Obligation*, pp. 28–37; Charles Warren Hollister, *The Military Organization of Normal England* (Oxford, 1965), pp. 69–71; Stenton, *First Century*, p. 3; David C. Douglas, *William the Conquerer* (London, 1964), pp. 265–84; and John Le Patourel, *The Norman Empire* (Oxford, 1976), pp. 201–6, 286–96, 319–54.

5. Chew, pp. 1–36; Knowles, pp. 607–12; Hollister, pp. 53–4; Raftis, pp. 23–44; and DuBoulay, pp. 52–5.

Although the feudal basis of military organization lasted only a short time, and never in pure form, it profoundly influenced social relations. Whether or not the king always depended on the feudal host in wartime, feudal tenure created the social code by which men offered and received rewards and services. It became the organizing principle of medieval clientage. Lords thus employed this principle to retain other services besides military.[1]

This phase of royal initiative drew to a close at the end of the twelfth century, as difficulties in feudal military service became more pronounced and interest in military enfeoffments waned. The intense period of military action in defence of the Angevin Empire came to an end in 1216. For a time, the demands of war eased because of a combination of baronial reluctance to defend a territory in which they had no clear interest and Henry III's military incompetence.[2] Furthermore, inflation made it difficult for poor knights to support the costs of service. Confronted with recalcitrant tenants, mesne lords successfully reduced the quotas of knights with which their lands had been burdened in the twelfth century. Building on the precedent set by Henry II in the Assize of Arms, Henry III responded to this reduction by basing military obligation on economic criteria as well as tenure and demanding service directly from landholders themselves rather than through their lords.[3] Military enfeoffments, therefore, slowed to a trickle.[4] They declined because they were uneconomic and because baronial society within England was relatively peaceful. Lords had little need for large military forces. Henry de Hastings' efforts to force his reluctant tenant to fight alongside him shows how extraordinary the military demands of the Barons' Wars were in this context.

The Welsh Marches provide an instructive contrast to this declining interest in military service. The threat of Welsh uprisings and private war among the Marchers persisted throughout the thirteenth century,

1. Hollister, pp, 273–9; and Holmes, pp. 83–4.

2. Holt, *The Northerners*, pp. 88–93, 149–52, 174; *idem*, *Magna Carta* (Cambridge, 1965), pp. 64–5, 132–4; and Powicke, *Henry III*, pp. 156–201.

3. Powicke, *Military Obligation*, pp. 63–81; and Prestwich, *War, Politics and Finance*, pp. 75–82. For reductions in quotas, *supra*, p. 814 n. 2.

4. 'Typically, the bulk of the fees established on English honours were created during the Conqueror's reign or during the reign of Rufus, and the tenurial pattern thus established tended to remain virtually frozen for decades, even centuries, to come': Hollister, p. 55. Estate studies bear out his conclusion: DuBoulay, pp. 64–87; Miller, *Ely*, pp. 174–5; King, pp. 13–27; Raftis, p. 83; Harvey, 'Knight's Fee', p. 39; Christopher Dyer, *Lords and Peasants in a Changing Society: The Estates of the Bishopric of Worcester, 680–1540* (Cambridge, 1980), pp. 47–50; and James Tait, 'Knight-Service in Cheshire', *ante*, lvii. 452–5. The Clares seem to have granted land only to benefit family members or close associates in the thirteenth century: Altschul, p. 209. In fact, lords may have used enfeoffments to seal 'horizontal' bonds between men of roughly equivalent rank, as a social act, rather than as a means of acquiring service. See, for example, the grant by William Marshal of ten librates of land to Thomas Basset, in which Basset became Marshal's man and member of his household (*pro homagio et servicio suo et pro eo quod meum sit et de familia mea*), PRO, E.40/8006.

so that Marcher society continued to extol military values. R. R. Davies has explained how exceptional the martial attitudes and behaviour of the Marcher lords were compared with the rest of English society. In addition, opportunities for territorial conquest also remained, so that the Marchers had the land available to reward the military service they needed to carve out Welsh lordships. Because of the persistence of war and the availability of land, the Marchers enfeoffed knights throughout the thirteenth century after lords in England had largely ceased to do so.[1]

Other requirements induced English lords to refine and to extend contractual relations. Above all there was the 'managerial revolution' in the decades after 1180.[2] Contractual retaining grew out of and reflected the new economic aggressiveness that lords displayed towards the use of their resources. It also enabled them to put this attitude into effect by professionalizing estate management. Litigation was inseparable from managerial changes. Lords needed expert legal assistance to protect their property, to control their tenants, and to acquire land, so that attorneys occupied prominent posts on estates. Indeed, they may have represented the most important single influence in the adoption of contractual retaining. It was in their interest to develop a flexible legal instrument for clientage, and the surviving deeds and pleas certainly bear the marks of sophisticated legal knowledge. Royal policy also played a part in the adoption of contracts, though only indirectly. The growing impact of royal government on baronial estates drove lords to suborn royal justices and to retain professional pleaders in an effort to defend their lands and liberties. They likewise relied on their clients to control the county courts and local administration on their behalf. Finally, the more or less constant pressure exerted on lords by family members and smaller landholders seeking protection or promotion also spurred lords to find new ways of retaining followers. Lords and clients thus used contracts for various purposes and in so doing, created the 'sea of varying relationships'[3] that characterized contractual lordship in the fourteenth and fifteenth centuries.

A comparison of English contracts with earlier feudal treaties and continental models strengthens these conclusions. For what stands

1. 'For in the March of Wales the bond between lord and vassal still remained close and meaningful in the late thirteenth century and beyond; the feudalism of the March was archaic but at least it was alive': R. R. Davies, *Lordship and Society in the March of Wales, 1282–1400* (Oxford, 1978), pp. 1–85, 240–2, quote at p. 76. For enfeoffments, see Morris, pp. 49, 178. For similar arguments for an earlier period, see Wightman, pp. 211–13; Tait, pp. 453–4; and Janet Meisel, *Barons of the Welsh Frontier: The Corbet, Pantulf and Fitz Warin Families, 1066–1272* (Lincoln, Neb./London, 1980).

2. The term is from Miller and Hatcher, p. 212. K. B. McFarlane noted that lords used contracts to replace serjeanty tenure, but placed that development behind military service: McFarlane, 'Bastard Feudalism', pp. 166–7.

3. Holmes, p. 79.

out most clearly in such a comparison is the simplicity of the thirteenth-century contracts. It is a contrast of political worlds. The later contracts do not contain the elaborate contingency clauses that are so characteristic of treaties between English lords during Stephen's reign, or of the agreements concluded between French lords during the twelfth and early thirteenth centuries.[1] This simplicity can be attributed to the fact that English lords and dependents tailored their contracts to the judicial requirements of the royal courts. And that reliance on royal justice itself reflects differences in the political environments and retaining needs of lords. The minute specification of obligations and the circumstances under which they would be performed aided at stabilizing feudal relations when disputed lordship, multiple enfeoffments, or civil conflict threatened to produce anarchy. The elaboration was preventive: it sought to forestall dispute.[2] It was also emphatically military, and grew out of need to lessen the threat posed by disputes between armed forces as well as out of a need for adequate military protection. In contrast, English lords did not usually face the threat of civil disorder in the thirteenth century, nor, as explained earlier, did they need more military force. The royal courts provided stability by offering an arena in which disputes over obligations could be resolved. Thus, lords and dependents could draw up simple contracts confident that ambiguities would be handled through litigation rather than outright conflict. The bargaining that was such as essential feature of feudal relations at all times was simply carried on under the watchful eye of royal judges.

English lords and their clients could thus rely on a relatively impartial forum in which to air their grievances, except when political competition destroyed the impartiality of the monarchy and its judicial system. That is what happened in the turmoil of the Barons' Wars, and English lords once again resorted to written treaties to acquire allies and to stabilize their competing interests.[3] These treaties, like their predecessors, formulate alliances of mutual support and assistance, and spell out contingencies, though not in as great detail as earlier agreements. It is notable, moreover, that the contract in which Richard de Clare, Earl of Gloucester, agrees to aid Prince Edward, stipulates that if the parties break the agreement, the dispute will be arbitrated by two lords representing Clare and Edward, not by the

1. See the documents and works cited *supra*, pp. 818 n. 2, 819 n. 3.

2. This is the conclusion of Professor Benton in 'Written Records', esp. at p. 19. For a similar view, see Bisson, 'Organized Peace', pp. 290–311. P. S. Lewis has argued that the kind of contracts developed in England in the thirteenth century, with annuities and life-grants, did not appear in France until the later fourteenth century (Lewis, pp. 157–67).

3. Powicke, *Henry III*, pp. 397–8, 406–7, 408.

royal courts.[1] In that sense, the treaty was not in the mainstream of the development of contractual retaining which occurred within the context of royal justice, but instead was the product of the political confusion and mistrust of civil war.

The economic expansion that began in the twelfth century and continued throughout the thirteenth also facilitated the development of contractual retaining, but did not cause it. The growing monetary economy, pushed along by the change to direct demesne farming, placed more currency at the disposal of lords who used it at times to reward servants. But the mere existence of more currency cannot explain the needs that lords had for service nor why contracts took the particular form that they did. Indeed, Professor Lyon has shown that kings and lords used cash payments in *fief-rentes* before the economy heated up.[2] Furthermore, during the thirteenth century and beyond, when money was so readily available, lords did not rely solely on cash as a reward, but also used life grants of lands, leases, feudal incidents, and appointments to benefices to reward their servants and retainers. The reasons for the development of contractual lordship should not be sought in forces external to feudal society, such as the advent of a money economy or war, that forced lords to invent a new type of lordship. Instead, they should be seen as part of the evolution of feudal society, as lords responded to challenges arising out of the contradictions of feudal lordship and out of economic difficulties.

By the end of the thirteenth century, when Edward I's ambitions in Wales, Scotland, and Gascony placed new military demands on English lords, they did not have to invent a new system of military contracts.[3] They simply adjusted the system of contractual retaining which they had developed for administrative service to military needs. All that was involved was a change in the wording of the phrase concerning service. As Edward and his successors extended the use of paid armies, lords more frequently employed the instruments of contractual lordship to military and political purposes, thereby obscuring their legal and administrative origins.

An early military indenture between Roger Bigod and John de Segrave highlights this change in application and the conditions that persuaded lords to retain military clients. The agreement grew out of

1. 'E si par [aventure] aveneit, – ke ja Deu ne voille! – k'en nul de ces articles avant nomez descorde sursit entre nus e l'avant dit Sire Edward, e cunue chose ne fut de quel part le tort serreit, nus sumes obligés par cest nostre escrit, e voluns e grauntuns, ke nus de cele chose esterrun a l'agard de dous prodeshomes, c'est a saver, Sire Henri le fiz le Rei d'Alemaigne, de par Sire Edward', e Sire Hue le Bigod, de par nus, e lur agard en ceo tendruns parfurniruns': *Report on the Manuscripts of Lord Middleton* (London: Historical Manuscripts Commission, 1911), pp. 67–9, quote at p. 68.

2. Lyon, 'The Money Fief', 163–7. This point was made by J. O. Prestwich in his review of *From Fief to Indenture* in *History*, xliv (1959), 49.

3. Prestwich, *War, Finance and Politics*, pp. 13–91; *id. The Three Edwards* (New York/London, 1980), pp. 1–53; Lewis, 'Indentured Retinues', pp. 203–6; Holmes, pp. 79–80; and McFarlane, 'Bastard Feudalism', pp. 165–6.

the crisis over Edward I's demands for taxes and overseas military service in 1297.[1] The problem, in part, was precisely the one I have been emphasizing: English lords could not find men willing to serve with them in France without grants of land, which they were reluctant to concede since this would diminish their status.[2] Edward confronted the opposition, led by Bigod and the Earl of Hereford, in Parliament in February and then, on 15 May, summoned all £20 landholders to serve with him in Flanders. At about that time, the barons assembled at Montgomery to discuss the issue. Bigod and Segrave sealed their indenture on 9 June as the barons were rounding up support for their opposition.[3]

The indenture specified an exchange of military service and rewards on the pattern of contracts between lords and adminstrators. Segrave promised Bigod a force of knights to serve in England, Wales, and Scotland, the scenes of much of Edward's campaigning over the previous twenty years. The contract also stipulated, however, that Segrave would serve with Bigod overseas in Gascony, France, or Flanders, at Bigod's pay, if Bigod had to go at the king's command, (*par commandement le Rey, ou en autre manere*). This clause shows the impact of Edward's broadening military ambitions, and efforts of barons to meet his demands through paid forces. More striking is the fact that although Bigod had steadfastly refused feudal service in Flanders at the Salisbury parliament, he prudently armed himself for any eventuality. Segrave also promised to attend Bigod in peace. In return for his service, Segrave received the manor of Lodden, Norfolk, and the advowson of the church, along with a promise of food, lodging, and robes for himself and his retainers. Bigod carefully limited the agreement to his own lifetime, though Segrave was supposed to receive Lodden in fee.[4] The contract also stated that Segrave could not enter the service of any other lord without Bigod's permission and declared that if the king distrained Segrave so that he could not remain in Bigod's service, then Segrave would have to restore Lodden. As in earlier administrative contracts, these clauses aim at securing the exclusive loyalty of the client and at maintaining the conditional link between reward and service.

1. The indenture is printed in Denholm-Young, pp. 167–8. Historians have often cited it as an early example of bastard feudalism, but have not elucidated the events surrounding it: e.g. McFarlane, 'Bastard Feudalism', p. 165. For the crisis of 1297, see Prestwich, *War, Politics and Finance*, pp. 77, 84–5, 251; *Documents Illustrating the Crisis of 1297–98 in England*, ed. Michael Prestwich, (Camden Soc. 4th ser., xxiv, 1980), 1–36; Bartholomew Cotton, *Historia Anglicana*, ed. Henry R. Luard, RS, xvi (London, 1859), 327, 351; and Jeffrey H. Denton, 'The Crisis of 1297 from the Evesham Chronicle', *ante*, xciii. 560–79.

2. *Crisis of 1297*, pp. 6, 142.

3. Denton, pp. 565, 576, 579.

4. There is no evidence that Segrave ever obtained Lodden. It was not mentioned in his inquisition post mortem, and Lodden Hundred was among those lands that Edward restored to Bigod after Bigod had surrendered them to the king: *Cal. Inq. Post Mortem*, vi.427–30 (no. 699); *CCR, 1290–1302*, 528, 538; and *Cal. Fine Rolls*, i.452–3.

Subsequent events show the agreement at work. Edward called for a muster on 7 July and had summoned Bigod as Marshal and Bohun as Constable to fulfil their duties at the muster. Both refused and therefore resigned. When Edward summoned Bigod, he claimed to be ill and sent Segrave to meet the king in his place. Later, when Edward tried to meet the earls at Waltham, Bigod again sent Segrave. When the earls appeared at the Exchequer on 22 August to protest the taxation, Segrave accompanied Bigod. He was also with Bigod in 1298 at York when the magnates assembled for Edward's campaign against Scotland.[1] The provisions of the indenture thus arose out of and merged with the circumstances of war and politics prevailing in the later years of Edward's reign.

This shift in the initiative for retaining over the thirteenth century emphasizes the adaptability of contracts. English landowners were able to mobilize quickly in response to the crown's territorial ambitions under Edward I and Edward III because they had fully developed instruments of retaining ready at hand. What began as a device to solve specific problems associated with the introduction of high-farming had evolved into a versatile tool of social organization which could be used in many different circumstances. Furthermore, as they refined contracts, lords simultaneously fought to preserve their tenurial authority, so that contracts added a new dimension to lordship rather than completely altering it. They strengthened lordship by making it more supple. The development of contractual retaining in the thirteenth century thus ensured the survival of the pattern of lord/client relations that had been worked out over the two previous centuries and likewise ensured the continued dominance of the landed elite within those relations and within the social hierarchy and economy as a whole. Far from being the illegitimate offspring of tenurial lordship, contracts explicitly inherited and carried on its traditions through the rest of the middle ages.

University of California, Los Angeles SCOTT L. WAUGH

1. *Crisis of 1297*, pp. 31, 137–8, 157; Cotton, *Historia*, 330, 332; and *The Chronicle of Walter of Guisborough*, ed. Harry Rothwell, (Camden Soc., 3rd sec., lxxxix, 1956), 314.