
WESTERN EUROPE

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FEUDALISM: CONTEMPORARY DESCRIPTIONS AND THE MAGNA CARTA

Although imperial or royal rule received great attention in post-classical Eastern Europe, feudalism was more characteristic in Western Europe. Western feudalism, evolving in turbulent 8th-century France, offered aristocratic landowners potential security in the absence of law and order. By concession or usurpation, major landowners assumed substantial legal and governmental powers from the central government and proceeded through private arrangements with lesser landowners (their vassals) to create local militias for defensive purposes. Inherently particularistic and initially undisciplined, feudalism enveloped the monarchy itself. Feudalism evolved its own system of law and code of ethics for its members as it spread throughout Europe to assume a dominant role in the political and cultural history of the Middle Ages. Introduced to England in 1066 by William the Conqueror—who substantially curbed the powers of all feudal vassals while retaining considerable central authority—feudalism emphasized mutual obligations within the military elite, often including the king. All members, including the monarchs who headed the feudal system, enjoyed specific rights but were also bound by feudal law to perform fixed obligations.

The first document was written by a well-known French bishop, who offers a general description—obviously somewhat idealized—of what feudalism involved. The second, from a 9th-century feudal contract, describes conditions of separation; these should be compared with the ideal statement and also with the less legalistic values in Japanese feudalism. The third document shows how the contractual emphases in Western feudalism—I'll live up to my obligations if you live up to yours—could lead to innovations in the system of monarchy, innovations that would have durable importance in the Western political tradition. The only available means for feudal vassals to force an obstinate royal overlord to observe the binding feudal law was to resort to arms. Such means were used in 1215 by secular and ecclesiastical vassals under the leadership of Stephen Langton,

Selections I and II from Brian Tierney, *Sources of Medieval History* (New York: Alfred A. Knopf, 1978), Vol. I, pp. 131, 133. Permission granted by the McGraw-Hill Companies. Selection III from *Documents Illustrating the History of Civilization in Medieval England* (1066–1600), edited by R. Trevor Davis (New York: Dutton & Co., 1926) pp. 39–52. Reprinted from *Statutes of the Realm*, 1810, Vol. 1, pp. 5ff.

archbishop of Canterbury, against King John of England. John was forced to place his seal on the Magna Carta, a charter of 60 chapters listing arbitrary royal encroachments on the feudal law as well as violations against traditional rights and liberties. Although the charter exerted little real impact on medieval English law and government because John died nine weeks after signing the document, its rediscovery and use by 17th-century opponents of royal absolutism allowed it to take a fundamental position in the English constitution. Contrary to popular belief, the original charter did not establish the individual right to trial by jury.

The Magna Carta must be interpreted as a feudal document: How does it define rights and government, and who participates in what kind of rights? Feudalism was a political response to the extremely chaotic conditions of the early Middle Ages in Western Europe. The feudal system could be bent toward more centralized rule only with difficulty, and the Magna Carta reveals some of the resulting tensions. Feudalism did, however, generate the beginnings of political principles, based on the concept of mutuality, that would be used in later political systems, as the subsequent revival of the Magna Carta attests (see Volume II for later concepts of limited government). The Western feudal concept must also be compared with that of Japan (see Chapter 33).

FEUDAL DOCUMENTS

I. FULBERT, BISHOP OF CHARTRES, ON FEUDAL OBLIGATIONS [1020]

To William most glorious duke of the Aquitanians, bishop Fulbert the favor of his prayers.

Asked to write something concerning the form of fealty [fidelity], I have noted briefly for you on the authority of the books the things which follow. He who swears fealty to his lord ought always to have these six things in memory; what is harmless, safe, honorable, useful, easy, practicable. Harmless, that is to say that he should not be injurious to his lord in his body; safe, that he should not be injurious to him in his secrets or in the defenses through which he is able to be secure; honorable, that he should not be injurious to him in his justice or in other matters that pertain to his honor; useful, that he should not be injurious to him in his possessions; easy or practicable, that that good which his lord is able to do easily, he make not difficult, nor that which is practicable he make impossible to him.

However, that the faithful vassal should avoid these injuries is proper, but not for this does he deserve his holding: for it is not sufficient to abstain from evil, unless what is good is done also. It remains, therefore, that in the same six things mentioned above he should faithfully counsel and aid his lord, if he wishes to be looked upon as worthy of his benefice and to be safe concerning the fealty which he has sworn.

The lord also ought to act toward his faithful vassal reciprocally in all these things. And if he does not do this he will be justly considered guilty of bad faith, just as the former, if he should be detected in the avoidance of or the doing of or the consenting to them, would be perfidious [disloyal] and perjured.

I would have written to you at greater length, if I had not been occupied with many other things, including the rebuilding of our city and church which was lately

entirely consumed in a great fire; from which loss though we could not for a while be diverted, yet by the hope of the comfort of God and of you we breathe again.

II. LORDS AND VASSALS [816]

If anyone shall wish to leave his lord (*seniorem*) and is able to prove against him one of these crimes, that is, in the first place, if the lord has wished to reduce him unjustly into servitude; in the second place, if he has taken counsel against his life; in the third place, if the lord has committed adultery with the wife of his vassal; in the fourth place, if he has wilfully attacked him with a drawn sword; in the fifth place, if the lord has been able to bring defence to his vassal after he has commended his hands to him, and has not done so; it is allowed to the vassal to leave him. If the lord has perpetrated anything against the vassal in these five points it is allowed the vassal to leave him.

III. THE MAGNA CARTA

John, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, and count of Anjou, to the archbishops, bishops, abbots, earls, barons, justiciars, foresters, sheriffs, stewards, servants, and to all his bailiffs and loyal persons, greeting. Know that, having regard to God and for the salvation of our souls, and those of all our predecessors and heirs, and unto the honour of God and the advancement of Holy Church, and for the reform of our realm, by the counsel of our venerable fathers . . . we have granted:

I. In the first place we have granted to God, and by this our present charter confirmed for us and our heirs for ever that the English Church shall be free, and shall have her rights entire and her liberties inviolate; and we will that it be thus observed; which is apparent from this, that the freedom of elections, which is reckoned most important and very essential to the English Church, we, of pure and unconstrained will, did grant, and did by our charter confirm and did obtain the ratification of the same from our Lord, Pope Innocent III., before the quarrel arose between us and our barons: and this we will observe, and our will is that it be observed in good faith by our heirs for ever. We have also granted to all freemen of our kingdom, for us and our heirs for ever, all the underwritten liberties, to be had and held by them and their heirs, of us and our heirs for ever.

. . .

XII. No scutage [tax] or aid shall be imposed on our kingdom, unless by common counsel of our kingdom, except for ransoming our person, for making our eldest son a knight, and for marrying our eldest daughter once; and for them there shall not be levied more than a reasonable aid. In like manner it shall be done concerning aids from the city of London.

XIII. And the city of London shall have all its ancient liberties and free customs, as well by land as by water; furthermore we decree and grant that all other cities, boroughs, and towns, and ports shall have all their liberties and free customs.

XIV. And for obtaining the common counsel of the kingdom about the assessing of an aid (except in the three cases aforesaid) or of a scutage, we will cause to

be summoned the archbishops, bishops, abbots, earls, and greater barons, individually by our letters; and we will moreover cause to be summoned generally through our sheriffs and bailiffs, all others who hold of us in chief, for a definite date, namely after the expiry of at least forty days, and at a definite place; and in all letters of such summons we will specify the reason of the summons. And when the summons has thus been made, the business shall proceed on the day appointed, according to the counsel of such as are present, although not all who are summoned have come.

...

XXIII. No village or individual shall be compelled to make bridges at river banks, except those who were from old times rightfully compelled to do so.

XXIV. No sheriff, constable, coroners, or others of our bailiffs, shall hold pleas of our crown.

...

XXVIII. No constable or other bailiff of ours shall take corn or other provisions from anyone without immediately tendering money in exchange, unless by permission of the seller he is allowed to postpone payment.

XXIX. No constable shall compel any knight to give money in stead of castle guard, when he is willing to perform it in his own person, or (if he himself cannot do it from any reasonable cause) then by another reliable man; and if we have led him or sent him upon military service, he shall be quit of guard, in proportion to the time during which he has been on service because of us.

XXX. No sheriff or bailiff of ours, or other person, shall take the horses or carts of any freeman for transport duty, against the will of the said freeman.

XXXI. Neither we nor our bailiffs shall take for our castles or for any other work of ours, timber which is not ours, against the will of the owner of that timber.

XXXII. We will not retain beyond one year and one day, the lands of those who have been convicted of felony, and the lands shall thereafter be handed over to the lords of the fiefs.

...

XXXVIII. No bailiff for the future shall, upon his own unsupported complaint, put anyone to his "law" without reputable witnesses brought for this purpose.

XXXIX. No freeman shall be taken or imprisoned or disseised or exiled or in anyway destroyed, nor will we go upon him nor send upon him, except by the lawful judgement of his peers or by the law of the land.

XL. To no one will we sell, to no one will we refuse right or justice.

XLI. All merchants shall have safe and secure exit from England, and entry to England, with right to tarry there and to move about as well by land as by water, for buying and selling by the ancient and right customs, quit from all evil tolls, except, in time of war, such merchants as are of the land at war with us. And if such are found in our land at the beginning of the war, they shall be detained, without injury to their bodies or goods, until information be received by us or by our chief

justiciar how the merchants of our land found in the land at war with us are treated; and if our men are safe there the others shall be safe in our land.

XLII. It shall be lawful in future for anyone to leave our kingdom and to return safe and secure by land and water, except for a short period in time of war on grounds of public policy—reserving always the allegiance due to us—excepting always those imprisoned or outlawed in accordance with the law of the kingdom, and natives of any country at war with us, and merchants, who shall be treated as is above provided.

...

XLV. We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the kingdom and mean to observe it well.

...

LII. If anyone has been dispossessed or removed by us, without the legal judgement of his peers, from his lands, castles, franchises, or from his right, we will immediately restore them to him; and if a dispute arise over this, then let it be decided by the five-and-twenty barons, of whom mention is made below in the clause for securing the peace. Moreover, for all those possessions, from which anyone has, without the lawful judgement of his peers been disseised or removed, by our father, King Henry, or by our brother, King Richard, and which we retain in our hand—or which are possessed by others, to whom we are bound to warrant them—we shall have respite until the usual term of crusaders; excepting those things about which a plea has been raised, or an inquest made by our order, before our taking of the cross; but as soon as we return from our pilgrimage—or if by chance we desist from our pilgrimage—we will immediately grant full justice therein.

...

LV. All fines made by us unjustly and against the law of the land, shall be entirely remitted, or else it shall be done concerning them according to the decision of the five-and-twenty barons of whom mention is made below in (the clause for) securing the peace, or according to the judgement of the majority of the same, along with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and such others as he may wish to bring with him for this purpose; and if he cannot be present the business shall nevertheless proceed without him, provided always that if any one or more of the aforesaid five-and-twenty barons are in a similar suit, they shall be removed as far as shall concern this particular judgement, others being substituted in their places after having been selected by the rest of the five-and-twenty for this purpose only, and after having been sworn.

...

LX. Moreover, all these aforesaid customs and liberties, the observance of which we have granted in our kingdom as far as pertains to us towards our men,

shall be observed by all of our kingdom, as well clergy as laymen, as far as pertains to them towards their men.

LXI. Since, moreover, for God and the amendment of our kingdom and for the better allaying of our quarrel that has arisen between us and our barons, we have granted all these concessions, desirous that they should enjoy them in complete and firm stability for ever, we give and grant to them the underwritten security, namely, that the barons choose five-and-twenty barons of the kingdom, whomsoever they will, who shall be obliged, to observe and hold, and cause to be observed, with all their might, the peace and liberties which we have granted and confirmed to them by this our present Charter, so that if we, or our justiciar, or our bailiffs or any one of our officers, shall in anything be at fault towards anyone, or shall have broken any one of the articles of the peace or of this security, and the offence be notified to four barons of the aforesaid five-and-twenty, the said four barons shall come to us (or to our justiciar, if we are out of the realm) and, laying the transgression before us, petition to have that transgression redressed without delay. And if we shall not have corrected the transgression (or, in event of our being out of the kingdom, if our justiciar shall not have corrected it) within forty days, reckoning from the time it has been notified to us (or to our justiciar, if we should be out of the kingdom), the four barons aforesaid shall refer the matter to the rest of the five-and-twenty barons, and those five-and-twenty barons shall, together with the community of the whole land, distrain and distress us in all possible ways, namely, by seizing our castles, lands, possessions, and in any other way they can, until redress has been obtained as they deem fit, saving our own person and the persons of our queen and children; and when redress has been obtained, they shall resume their former relations toward us. . . .

STUDY QUESTIONS

1. What were the basic characteristics of European feudalism? What did lords and vassals gain from a feudal tie? What were their respective obligations?
2. In what ways is it clear that vassals, although required to be loyal to their lords, were basically in the same social class?
3. In what ways was the Magna Carta a feudal document? How had the king violated feudalism, and what remedies were proposed?
4. Why were the Magna Carta's principles (though not the document itself) important in Western political history? How did feudal ideas about restrictions on a king compare with more modern ideas of limited government?
5. What were the main differences between Japanese and European feudalism? What was the long-term significance of these differences? Would Japanese vassals have approved of an approach such as that suggested in the Magna Carta?
6. What would a Confucian bureaucrat have thought of the feudal system? Would he have preferred the European or the Japanese version?