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COMMUNITIES AND THE 'SECOND SERFDOM' IN EARLY MODERN BOHEMIA*

I

INTRODUCTION

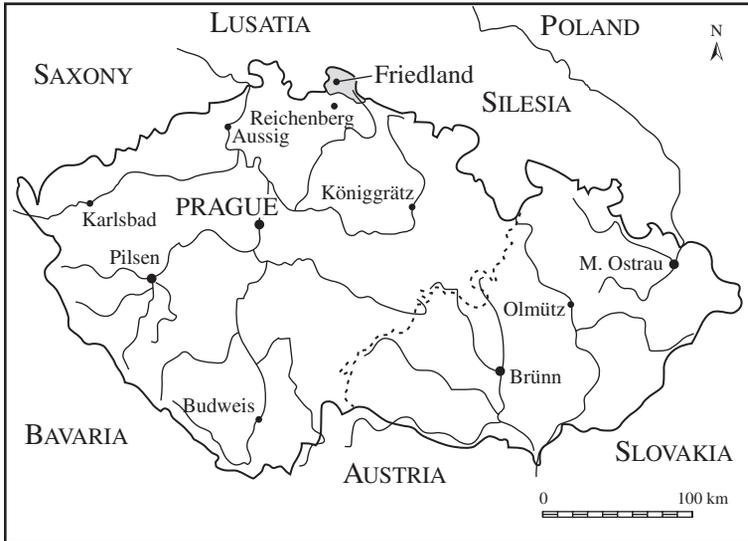
What role did the village community play under the 'second serfdom'? The 'second serfdom' is the name given to the huge growth in landlord powers in early modern central and eastern Europe, and the village commune is central to understanding every aspect of it.¹ The relative capacity of commune and

*I would like to thank André Carus, Tracy Dennison and Jeremy Edwards for detailed comments on earlier versions of this essay. I am very grateful to Eduard Maur for our many interesting conversations about Bohemian village headmen, and to Lenka Matušíková for introducing me to archival sources providing evidence on Czech rural communes. Special thanks are owed to Helena Smíšková for her exceptionally knowledgeable and generous assistance to me with respect to the Friedland estate archives in Debín, and to Robert Luft and the members of the Collegium Carolinum for their friendly hospitality in Munich. Finally, I thank my long-time fellow researchers, Markus Cerman, Josef Grulich, Alena Pazdřerová, Dana Štefanová, Alice Velková and Hermann Zeitlhofer for our many enjoyable conversations over the years on the social structures of early modern Bohemia. I would also like to acknowledge the support of a British Academy Research Readership during the writing of this essay.

For ease of understanding by English-speaking readers, throughout this essay place names are given in the German version used by Friedland serfs at the time; but it should be recognized that nowadays these communities are known by their Czech names.

¹In this essay the term 'second serfdom' is used as a convenient shorthand to refer to the massive growth in landlord powers over the rural population during the early modern period, abstracting from wearisome and unresolved terminological debates about the relationship of this process to true 'serfdom'. Likewise, for reasons of clarity, this essay translates *Untertan*, the contemporary German term for someone subject to 'hereditary servility' (as were early modern Bohemians and many other east-Elbian inhabitants, for example Prussians), as 'serf' rather than the anachronistic and confusing 'subject'. The civil status of rural Bohemians was usually described in contemporary sources as *Erbuntertänigkeit* (hereditary servility) rather than *Leibeigenschaft* (serfdom). However, rural Bohemians did swear 'Leibeigenschaft' to their manorial lords, for example on the estate of Friedland in Státní Oblastní Archiv Litomerice, Pobobka Debín, Fond Rodinný archiv Clam-Gallasu, Historická sbírka [State Regional Archive of Litoměřice, Debín Branch, Archive of the

(cont. on p. 70)



MAP 1: BOHEMIA IN THE EARLY MODERN PERIOD

manor to regulate land transfers, labour, credit, food production, proto-industry and consumption was a key determinant of growth and stagnation in serf economies. Landlords' power to monitor, control, tax and conscript on the local level, and communes' ability to organize resistance, were important for the early modern fiscal and military revolutions, the constraints on high politics, and the growth of the state. Communal and manorial monitoring of religious observance was central to

(n. 1 cont.)

Clam-Gallas Family, Historical Collection], Debin (hereafter SOAD HS), Karton 81, Dekretbücher (books of manorial decrees in response to serf petitions) 1652–62, fo. 60^v, 6 Sept. 1659; SOAD HS, Kart. 81, Dekretb. 1656–63, p. 106, 30 Sept. 1660; SOAD HS, Kart. 81, Dekretb. 1656–63, p. 143, 7 Jan. 1662. On the frequent lack of any clear distinction between *Erbuntertänigkeit* and *Leibeigenschaft* in practice, see Pavel Himl, *Die 'armen Leüte' und die Macht: die Untertanen der süd-böhmischen Herrschaft Český Krumlov / Krumau im Spannungsfeld zwischen Gemeinde, Obrigkeit und Kirche (1680–1781)* (Stuttgart, 2003), esp. 3, 15, 21, 26, 52–6, 60, 66–7; Edgar Melton, 'Gutsherrschaft in East Elbian Germany and Livonia, 1500–1800: A Critique of the Model', *Central European Hist.*, xxi (1988), esp. 332–3; Thomas Rudert, 'Gutsherrschaft und ländliche Gemeinde: Beobachtungen zum Zusammenhang von gemeindlicher Autonomie und Agrarverfassung in der Oberlausitz im 18. Jahrhundert', in Jan Peters (ed.), *Gutsherrschaft als soziales Modell: vergleichende Betrachtungen zu Funktionsweise frühneuzeitlicher Agrargesellschaften* (Munich, 1995), esp. 202.



MAP 2: THE ESTATE OF FRIEDLAND IN THE EARLY MODERN PERIOD

confessionalization. Whether communes or manors were able and willing to regulate sexuality, family life, leisure or magical belief was crucial for 'social disciplining'. How communes and manors treated different social groups is the key to understanding social stratification, gender and deviance. Manorial and communal regulation of marriage, migration, settlement and inheritance had the potential to affect demography and family structure. Pre-industrial European communes are also believed to exemplify the closely knit and multi-stranded 'social networks' which, according to some modern social scientists, created a 'social capital' of shared norms, information transmission and collective action that benefited society at large and hold lessons for modern less-developed countries. In short, understanding community institutions is central to our interpretation

of the economy, politics, religion, culture, social structure and demography of early modern societies, and to any lessons these might have for developing economies more generally.

Yet for many parts of pre-industrial Europe — including Bohemia, the subject of this essay — such issues cannot be satisfactorily addressed because we know so little about how village communes actually functioned and how they interacted with the other institutions affecting people's lives, particularly the manor. This is not to say that the question has been neglected on the theoretical front: the debate is lively and is far from resolved. Theoretical approaches to manorial–communal relations under serfdom, although many-stranded, fall into three main categories: 'manorial dominance', 'communal autonomy' and communal–manorial 'dualism'.

Those who subscribe to the 'manorial dominance' view argue that, under serfdom, manors were strong and communes were weak. As landlord powers expanded during the second serfdom, communes are assumed to have lost ground to manorial institutions. Communes only recovered some powers when manorial institutions broke down under state pressure, whether in Bohemia in the 1780s or in Russia in the 1860s. Interestingly, this view of manorial dominance over the village commune spans the ideological divide, and is embraced by both Marxist² and western liberal historians.³ It is widely accepted in the historiography of the Bohemian lands, both by Czech historians writing between 1945 and 1989,⁴ and by others writing previously and subsequently.⁵ It has also made its way into

² Robert Brenner, 'Agrarian Class Structure and Economic Development in Pre-Industrial Europe', in T. H. Aston and C. H. E. Philpin (eds.), *The Brenner Debate: Agrarian Class Structure and Economic Development in Pre-Industrial Europe* (Cambridge, 1985), 23, 40–6; Hartmut Harnisch, 'Die Landgemeinde im ostelbischen Gebiet (mit Schwerpunkt Brandenburg)', in Peter Blickle (ed.), *Landgemeinde und Stadtgemeinde in Mitteleuropa: ein struktureller Vergleich* (Munich, 1991), esp. 313, 325.

³ For example Mack Walker, *German Home Towns: Community, State, and General Estate, 1648–1871* (Ithaca, 1971), esp. 1–3, 326, 356, 392, 396, 419, 422–5; Peter Blickle, *Deutsche Untertanen: ein Widerspruch* (Munich, 1981), 46–7.

⁴ Josef Válka, *Hospodářská politika feudálního velkostatku* [Economic Policies of Large Feudal Estates] (Prague, 1962); Josef Petrán, *Poddaný lid v Čechách na prahu třicetileté války* [Serfs in the Czech lands on the threshold of the Thirty Years War] (Prague, 1964).

⁵ Václav Cerný, *Hospodářské instrukce: přehled zemědělských dějin v době patrimoniálního velkostatku v 15.–19. století* [Economic Ordinances: A Survey of Agrarian History during the Period of Large Manorial Estates from the Fifteenth to the Nineteenth Century] (Prague, 1930); Wilhelm Weizsäcker, 'Die Entstehung der

modern development economics, with a recent World Bank report ascribing development failure both in post-medieval eastern Europe and in present-day developing economies to lower levels of 'collective action and social capital' resulting from the stifling of community institutions by landlords.⁶ Intuitively, this view seems to make sense: strong overlords would naturally wish to stamp out all competing rural institutions.⁷

But over the past decade or so, as historians have begun to look at serf societies 'from below', they have found that rural communes were far from supine and overlords far from all-powerful. This has given rise to the 'communal autonomy' view, according to which serfdom was characterized by strong communes and an ineffectual and distant manor. The traditional interpretation, it was claimed, had vastly exaggerated overlords' capacity to intervene inside serf communes. Lordly exactions increased, admittedly, but were exogenous factors like the weather, without any endogenous role in local life. The commune remained largely autonomous, its relationship to the overlord was distant, and the pressure of manorial demands was far less important to villagers than communal affairs. Manor and commune largely occupied separate spheres. A number of recent contributions to this literature come close to arguing that serfdom did not actually matter, some going so far as to claim that there was little or no difference in practice between eastern 'serfs' and western 'free' peasants. According to this view, villagers in both serf and non-serf societies pursued their own independent strategies within a realm of communal autonomy

(n. 5 cont.)

Landgemeinde in Böhmen', in Hans Patze (ed.), *Die Anfänge der Landgemeinde und ihr Wesen*, 2 vols. (Constance, 1964), ii, esp. 381–4. For a thoughtful recent survey, see Himl, *Die 'armen Leüte'*, esp. 17–34.

⁶ Klaus Deininger, *Land Policies for Growth and Poverty Reduction* (Oxford, 2003), 19. For other examples of arguments linking the 'social capital' of strong communes with beneficial economic and social developments in both historical and modern developing economies, see James S. Coleman, 'Social Capital in the Creation of Human Capital', *Amer. J. Sociology*, xciv (1989), S101–S103; Robert D. Putnam, with Robert Leonardi and Raffaella Y. Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton, 1993), 121–48, 162–85.

⁷ On its acceptance for other east-Elbian societies, see Richard C. Hoffmann, *Land, Liberties, and Lordship in a Late Medieval Countryside: Agrarian Structures and Change in the Duchy of Wrocław* (Philadelphia, 1989), esp. 358–69; Karlheinz Blaschke, 'Dorfgemeinde und Stadtgemeinde in Sachsen zwischen 1300 und 1800', in Blickle (ed.), *Landgemeinde und Stadtgemeinde in Mitteleuropa*, esp. 142–3.

and peasant culture that was unaffected by the manorial powers of their overlords.⁸

But a few historians have found both the 'manorial dominance' and the 'communal autonomy' view unsatisfactory. Close empirical analysis of the complexities of manorial–communal relationships in particular societies, they argue, shows that serfdom could not work without both strong manorial institutions *and* strong communal institutions. To extort a large share of rural output for the landlord, the manor had to intervene in local life and negotiate with communal representatives to a much greater extent than the 'communal autonomy' theory is willing to acknowledge. On the other hand, the manor could only gain information and control over local life through local agents, which gave it incentives to permit — indeed to encourage — strong communal institutions.⁹ This school of thought is less well organized or self-aware than the other two, but for convenience we may dub it the 'dualism' view, since it shares some

⁸ For examples of this view in the context of medieval Germany, see the essays in Patze (ed.), *Die Anfänge der Landgemeinde und ihr Wesen*. For medieval England, see the essays in Edwin B. DeWindt (ed.), *The Salt of Common Life: Individuality and Choice in the Medieval Town, Countryside, and Church. Essays Presented to J. Ambrose Raftis* (Kalamazoo, 1995). For early modern east-Elbian Germany, see Heide Wunder, *Die bäuerliche Gemeinde in Deutschland* (Göttingen, 1986), esp. 19, 37–41; Lieselott Enders, *Die Uckermark: Geschichte einer kurmärkischen Landschaft vom 12. bis zum 18. Jahrhundert* (Weimar, 1992), esp. 259–61, 498–500; Lieselott Enders, 'Die Landgemeinde in Brandenburg: Grundzüge ihrer Funktion und Wirkungsweise vom 13. bis zum 18. Jahrhundert', *Blätter für deutsche Landesgeschichte*, cxxix (1993), esp. 206–8, 211, 223–7, 236, 243, 256; Thomas Rudert and Hartmut Zückert (eds.), *Gemeindeleben: Dörfer und kleine Städte im östlichen Deutschland (16.–18. Jahrhundert)* (Cologne, Weimar and Vienna, 2001). This view is particularly widespread among American studies of Russian and Baltic serf communes: for example Daniel Field, *The End of Serfdom: Nobility and Bureaucracy in Russia, 1855–1861* (Cambridge, Mass., 1976), esp. 22; Steven Hoch, *Serfdom and Social Control in Russia: Petrovskoe, a Village in Tambov* (Chicago, 1986); Steven Hoch, 'The Serf Economy and the Social Order in Russia', in M. L. Bush (ed.), *Serfdom and Slavery: Studies in Legal Bondage* (London and New York, 1996); Edgar Melton, 'Serfdom and the Peasant Economy in Russia, 1780–1860' (Columbia Univ. Ph.D. thesis, 1984); Andrejs Plakans and Charles Wetherell, 'Family and Economy in an Early Nineteenth-Century Baltic Serf Estate', in Richard L. Rudolph (ed.), *The European Peasant Family and Society: Historical Studies* (Liverpool, 1995). For a critical survey of this view in the medieval context, see Paul Freedman, 'North-American Historiography of the Peasant Land Market', paper delivered to the Colloque International Consacré à l'Étude du Marché de la Terre au Moyen Âge, Treilles, 21–26 June 1999 <<http://lamop.univ-paris1.fr/W3/Treilles/freedman.html>>.

⁹ For recent outstanding representatives of this view, see Tom Scott, 'Introduction', in Tom Scott (ed.), *The Peasantries of Europe from the Fourteenth to the Eighteenth*

features with the theory according to which the serf commune in Russia and eastern Germany was a 'dualistic' institution serving the interests of both serfs and overlords.¹⁰ Some versions of the 'dualism' approach collapse into the 'manorial dominance' view, portraying the commune as progressively degenerating into a mere tool of the manor, with harmful effects on serf well-being; this view is critically scrutinized later in this essay.¹¹ Overall, however, I shall argue that a critical 'dualism' — incorporating due scepticism both about teleological stories of communal decline and about the welfare benefits of communal 'social capital' — is more adequate to the empirical findings than either 'manorial dominance' or 'communal autonomy', and takes better account of the incentives of both overlords and serfs.

To evaluate these various theoretical approaches, it is important to confront them with empirical findings on how communes and manors interacted. For this, literary works such as travelogues,

(n. 9 cont.)

Centuries (London and New York, 1998), esp. 8; Himl, *Die 'armen Leüte'*, esp. 8–9, 150–1, 182–4; William W. Hagen, *Ordinary Prussians: Brandenburg Junkers and Villagers, 1500–1840* (Cambridge, 2002), esp. 423–5. A 'dualistic' view (albeit with strong emphases on communal autonomy) is also adopted by some (although not all) the essays in Peters (ed.), *Gutsherrschaft als soziales Modell*; Jan Peters (ed.), *Konflikt und Kontrolle in Gutsherrschaftsgesellschaften: über Resistenz- und Herrschaftsverhalten in ländlichen Sozialgebilden der Frühen Neuzeit* (Göttingen, 1995); and in Jan Peters (ed.), *Gutsherrschaftsgesellschaften im europäischen Vergleich* (Berlin, 1997): see esp. Rudert, 'Gutsherrschaft und ländliche Gemeinde', 213.

¹⁰ For one of the German originators of the concept of communal 'dualism', see Franz Steinbach, 'Geschichtliche Grundlagen der kommunalen Selbstverwaltung in Deutschland', repr. in Franz Petri and Georg Droege (eds.), *Collectanea Franz Steinbach: Aufsätze und Abhandlungen zur Verfassungs-, Sozial- und Wirtschaftsgeschichte, geschichtlichen Landeskunde und Kulturraumforschung* (Bonn, 1967), esp. 524–8. On the Russian side, see V. A. Aleksandrov, *Sel'skaia obshchina v Rossii (XVII-nachalo XIX v.)* [The Village Commune in Russia from the 17th to the Beginning of the 19th Century] (Moscow, 1976); and the summary in David Moon, *The Russian Peasantry, 1600–1930: The World the Peasants Made* (London and New York, 1999), 230–1.

¹¹ Thomas Winkelbauer, '“Und sollen sich die Parteien gütlich miteinander vertragen”: zur Behandlung von Streitigkeiten und von “Injurien” vor den Patrimonialgerichten in Ober- und Niederösterreich in der frühen Neuzeit', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung*, cxxii (1992); Helmuth Feigl, *Die niederösterreichische Grundherrschaft vom ausgehenden Mittelalter bis zu den theresianisch-josephinischen Reformen* (Vienna, 1964); Harnisch, 'Die Landgemeinde im ostelbischen Gebiet', 243–5; Rudert, 'Gutsherrschaft und ländliche Gemeinde', 198, 218; Dana Štefanová, 'Herrschaft und Untertanen: ein Beitrag zur Existenz der rechtlichen Dorfautonomie in der Herrschaft Frýdlant (Friedland) in Nordböhmen (1650–1700)', in Peters (ed.), *Gutsherrschaftsgesellschaften*, esp. 210.

cameralist tracts, or 'house-father' treatises are far from adequate, since they portrayed manors and communes in ways that suited their rhetorical aims.¹² Nor is legislation a much more reliable guide, since even manorial ordinances (let alone state law-codes) focused on how the lawmakers *wanted* communes and manors to interact, not how they actually did.¹³ The best way to find out how serf communes worked is to use documents generated as close as possible to the daily interactions between manors, communes and individual serfs. This essay therefore adopts the approach of the microstudy, bringing together a rich database of sources for a particular region, analysing them both qualitatively and quantitatively, and placing them in a wider comparative context.¹⁴

The region in question is the large Bohemian estate of Friedland. Bohemia (now part of the Czech Republic) was one of those many European societies that underwent the second serfdom, in the sense of a massive growth in landlord power over the rural population during the early modern period.¹⁵ From the

¹² The cameralist literature was a body of bureaucratic and administrative writings which largely involved the interpretation of imperial and territorial law in a way designed to assist princes in increasing the efficiency of their government and the extent of their tax base. The 'house-father' literature was a similar genre consisting of normative dicta and practical recommendations designed to assist landlords and estate managers in enhancing the efficiency with which they managed their estates and extracted revenues from them. For a discussion of the inadequacies of normative sources for evaluating the actual situation of the peasants who were being governed and taxed, see Himl, *Die 'armen Leüte'*, esp. 17, 24; Hermann Rebel, 'Peasantries under the Austrian Empire, 1300–1800', in Scott (ed.), *Peasantries of Europe*, 219–20.

¹³ For a 'manorial dominance' view of Bohemian communal–manorial relations derived from such ordinances, see Cerný, *Hospodářské instrukce*.

¹⁴ On the advantages of the microstudy for examining social interactions in rural societies, see Hans Medick, *Weben und Überleben in Laichingen, 1650–1900* (Göttingen, 1996), 13–38; Sheilagh Ogilvie, *A Bitter Living: Women, Markets, and Social Capital in Early Modern Germany* (Oxford, 2003), 4–7, 22–36, 320–1; A. W. Carus and Sheilagh Ogilvie, 'Turning Qualitative into Quantitative Evidence: A Well-Used Method Made Explicit', *Cambridge Working Papers in Economics*, no. 0512 (Feb. 2005). Its advantages in studying societies under the second serfdom are vividly illustrated by the essays in Peters (ed.), *Gutsherrschaft als soziales Modell*; Peters (ed.), *Konflikt und Kontrolle*; Peters (ed.), *Gutsherrschaftsgesellschaften*.

¹⁵ On the timing of the second serfdom in Bohemia, see Eduard Maur, 'Vrchnosti a poddaní za tricetileté války' [Seigneurial Authority and Serf in the Thirty Years War], *Folia historica bohemica*, viii (1985), 241–7; on the estate of Friedland, see Markus Cerman, 'Gutsherrschaft vor dem "Weißen Berg": zur Verschärfung der Erbuntertänigkeit in Nordböhmen 1380 bis 1620', in Peters (ed.), *Gutsherrschaftsgesellschaften*, esp. 91–105, 109–11.

mid to late sixteenth century onwards, Bohemian landlords in general — and Friedland overlords in particular — expanded demesne operations, increased money rents and labour dues, extended them to previously exempt social groups, levied new dues on non-agricultural activities such as proto-industry and forestry, set up market monopolies, and expanded their legal rights to intervene in the economic and demographic decisions of their rural subjects.¹⁶ In Bohemia, the latter did not have the right to appeal to any jurisdiction beyond manorial courts where the judges were employees of their overlords, and the crown did not directly intervene between overlords and subjects until Emanicipation in 1781.¹⁷

Friedland was part of a larger estate-complex, governed during this period first (from 1558 to 1621) by three generations of the noble family von Redern until the latter lost their estates by taking the Protestant side in the Bohemian Revolt; then by the legendary military entrepreneur Albrecht von Wallenstein as part of his huge Duchy of Friedland until his murder in 1634; and finally by the Imperial general Matthias von Gallas and his successors (from 1635 into the nineteenth century).¹⁸ The estate consisted of between thirty-five and forty villages (including those initially held by fief-knights subject to the counts of Friedland) and two small towns whose inhabitants were also unfree. In 1651, the Friedland

¹⁶ Miroslav Hroch and Josef Petrán, *Das 17. Jahrhundert: Krise der Feudalgesellschaft?* (Hamburg, 1981); Arnošt Klíma, *Economy, Industry and Society in Bohemia in the 17th–19th Centuries* (Prague, 1991); Maur, 'Vrchnosti a poddani'; Cerman, 'Gutsherrschaft vor dem "Weißen Berg"'.
¹⁷ Eduard Maur, 'Staat und (lokale) Gutsherrschaft in Böhmen, 1650–1750', and Sheilagh Ogilvie, 'Staat und Untertan in der lokalen Gesellschaft am Beispiel der Herrschaft Frýdlant (Böhmen)', both in Markus Cerman and Robert Luft (eds.), *Untertanen, Herrschaft und Staat in Böhmen und im 'Alten Reich'* (Munich, 2005). On the similar situation in Upper Lusatia, see Rudert, 'Gutsherrschaft und ländliche Gemeinde', 199. This contrasts with the 'Verrechtlichung' (juridification) of disputes between overlords and subjects discussed for Prussia in Hagen, *Ordinary Prussians*, esp. 423–5; for east-Elbian Germany in Melton, 'Gutsherrschaft in East Elbian Germany and Livonia', 333–4; and for Germany more widely in Sheilagh Ogilvie, 'Germany and the Crisis of the Seventeenth Century', *Hist. J.*, xxxv (1992), esp. 425–6, 438–9.

¹⁸ Karl Klindert, 'Christoph II. von Redern: der Letzte aus dem Hause Friedland', *Mitteilungen des Vereines für Heimatkunde des Jeschken-Isergaues*, iii (1909); Anton Ressel, 'Beiträge zur Geschichte der gräflichen Familien Gallas und Clam-Gallas', *Mitteilungen des Vereines für Heimatkunde des Jeschken-Isergaues*, xxi (1927); xxiii (1929).

villages contained about 5,600 serfs. All were German- rather than Czech-speaking.¹⁹

Each village — which in the seventeenth century consisted of from ten to a hundred households — had its own community court (*Gericht*), chaired by the village headman (*Scholz*) and manned by half a dozen village officers, variously termed elders (*Ältesten*), ‘sworn-men’ (*Geschworenen*) or justices (*Schöppen*).²⁰ Although the village court met weekly (generally on Sunday afternoons), its sole written record was a register of land transfers.²¹ However, at the next jurisdictional level, the manorial court (*Amt*) did keep records, in the form of official minutes (*Amtsprotokolle*), of which twenty-two volumes survive for the periods 1583–1692 and 1781–7, giving details of 3,873 separate cases.²² As Table 1 shows, 40 per cent of manorial court cases involved the communal administration, whether through the headman, the village elders, the village court or ‘the commune as a whole’. The overlord also kept ‘decree-books’ (*Dekretbücher*) containing digests of serf petitions and manorial responses to them, at a rate of over a hundred a year. In a sample of 3,644 of these petition-decrees for the thirty years between 1652 and 1682

¹⁹ Some secondary literature, mainly German nationalist historiography of the period leading up to the Nazi invasion of Czechoslovakia, argues that the German-speaking population of the Bohemian lands (which would include the estate of Friedland) was more progressive and westernized than the surrounding ‘Slavs’, and that one manifestation of this was its possession of stronger communal institutions. However, such hypotheses are based on normative sources, at best, and have yet to be tested by detailed microstudies carried out on a rigorous comparative basis. The co-operative Czech–Austrian–British research project, ‘Social Structures in Bohemia’, out of which the present essay arises, is based on a sample of seven estates, some Czech- and some German-speaking. No systematic differences in demographic patterns, social structure, economic behaviour or communal autonomy have so far emerged between Czech-speaking and German-speaking areas. For initial results of this project, see Markus Cerman and Hermann Zeithofer (eds.), *Soziale Strukturen in Böhmen: ein regionaler Vergleich von Wirtschaft und Gesellschaft in Gutsherrschaften, 16.–19. Jahrhundert* (Vienna and Munich, 2002); Cerman and Luft (eds.), *Untertanen, Herrschaft und Staat*.

²⁰ On numbers of *Schöppen*, see, for instance, SOAD HS, Kart. 78, *Amtsprotokolle* (manorial court minutes) 1616–19, fo. 118^r, 4 Aug. 1618.

²¹ On the use of these land transfer registers (*Schöppenbücher*) to study village autonomy, see Štefanová, ‘Herrschaft und Untertanen’; Dana Štefanová, ‘Zur Stellung der Untertanen in einer gutsherrschaftlichen Gesellschaft in der Frühen Neuzeit: die Herrschaft Frydlant, 1558–1750’, in Cerman and Zeithofer (eds.), *Soziale Strukturen in Böhmen*; Himl, *Die ‘armen Leüte’*, 169–70.

²² The twenty-two surviving volumes cover a total of eighty-four years, in the following periods: 1583–1619, 1627, 1629–31, 1645, 1649–64, 1674–92 and 1781–7.

TABLE 1
COMMUNITY REPRESENTATION IN MANORIAL COURT CASES:
ESTATE OF FRIEDLAND 1583-1787*

	No. of cases		Percentage of cases involving:				
	Total	Annual average	Headman	Community elders	Community court	Whole commune	Any community representation
1583-1587	259	52	13	4	12	2	22
1588-1592	213	43	10	3	12	4	21
1593-1597	96	19	23	15	25	3	36
1598-1602	81	16	10	14	23	4	27
1603-1607	494	99	32	16	34	6	51
1608-1612	492	98	23	12	20	5	34
1613-1617	278	56	31	14	27	12	44
1618-1619	211	106	37	19	39	9	51
1627, 1629-31	364	91	28	10	29	7	43
1645	196	196	18	6	32	23	41
1649-1654	278	46	33	17	33	10	45
1655-1659	255	51	32	15	32	9	39
1660-1664	111	22	36	23	35	14	52
1674-1679	163	27	29	14	8	9	38
1680-1684	118	24	23	11	4	16	34
1685-1692	183	23	32	21	37	14	48
1781-1787	81	12	35	12	22	10	56
Pre-war (1583-1617)	1,913	55	23	11	23	6	36
Wartime (1618-45)	771	110	28	11	33	11	45
Early post-war (1649-64)	644	40	33	17	33	10	44
Late post-war (1674-92)	464	24	29	16	19	13	41
Post-emancipation (1781-7)	81	12	35	12	22	10	56
Grand Total	3,873	46	27	13	26	8	40

* Sources: Státní Oblastní Archiv Litomerice, Pobobka Debín, Fond Rodinný archiv Clam-Gallasu, Historická sbírka (hereafter SOAD HS), Kartony 61, 77-80, 709, Amtsprotokolle Friedland, 1583-1787.

(analysed below in Table 2), about 21 per cent also involved the communal administration, and about 6 per cent of all petitioners were in fact entire village communes.²³ Further information about serf communes can be derived from qualitative sources such as pledge-books, minutes of annual serf assemblies, correspondence, and reports from communal and manorial officials, while quantitative sources include a religious census of 1651, tax cadastres of 1654, 1677 and 1722, and manorial rent-rolls of 1381 and 1591. Together, these documents provide a rich

²³ SOAD HS, Kart. 81, Dekretbücher Friedland, 1652-1738.

picture of how communal and manorial institutions interacted and influenced the lives of individuals under the second serfdom.

II

THE THEORY OF MANORIAL DOMINANCE IN EARLY MODERN BOHEMIA

What light do Bohemian findings shed on the ‘manorial dominance’ theory, according to which the growing powers of noble landlords under the second serfdom progressively removed all important functions from serf communes? The central communal institution was the village court or council, chaired by the headman and manned by the group of village elders or ‘swornmen’ mentioned above. A good way to assess the strength of the commune is therefore to examine the records, coercive powers, sphere of jurisdiction, and independence of the village court and its officers.²⁴

One justification for the widely held view that communal institutions were stifled by manorial ones during the second serfdom is the absence, in most east-Elbian societies, of the village court minutes that survive for many parts of western Europe.²⁵ In Bohemia, the only surviving documents generated by village courts are the *Schöppenbücher* (literally, ‘village justices’ books’) which register land transfers with almost no details of other court activities, and which in any case were restricted to northern and

²⁴ For early but excellent summaries of older work on Bohemian communes, see Kamil Krofta, *Dějiny selského stavu* [History of Rural Landholdings] (Prague, 1919), esp. 137–43; František Vacek, ‘Práva veské obce v 15. století’ [Rights of Village Communities in the Fifteenth Century], *Agrární archiv*, iii (1916); František Vacek, ‘Selský stav v Čechách v letech 1419–1620’ [Rural Holdings in the Czech Lands in the Period 1419–1620], *Časopis pro dějiny venkova*, xiv (1927); xv (1928); xvi (1929). For somewhat more recent surveys, see esp. Josef Hanzal, ‘Vesnická obec a samospráva v 16. a na pobátku 17. století’ [Village Communities and Autonomy in the Sixteenth and Early Seventeenth Century], *Právněhistorické studie*, x (1964); Alois Míka, *Poddaný lid v Čechách v první polovině 16. století* [Serfs in the Czech Lands in the First Half of the Sixteenth Century] (Prague, 1960), esp. 139–40; Jirí Jirásek, ‘Poddaní na panství olomouckého biskupství v druhé polovině 16. století’ [Serfs on the Estate of the Bishopric of Olomouc in the Second Half of the Sixteenth Century], *Rozpravy Československé Akademie Věd*, 15th ser., lxvii, 10 (1957). For an excellent microlevel investigation, see Himl, *Die ‘armben Leüte’*, esp. 150–81, 192–8.

²⁵ See also the findings for a south Bohemian estate in Himl, *Die ‘armben Leüte’*, esp. 163–6, 169–70. On the survival of such village court minutes in Württemberg, see David Sabean, *Property, Production and Family in Neckarhausen, 1700–1870* (Cambridge, 1990), 72; Sheilagh Ogilvie, *State Corporatism and Proto-Industry: The Württemberg Black Forest, 1580–1797* (Cambridge, 1997), 57–9.

TABLE 2
MIGRATION, LAND TRANSACTION AND MARRIAGE PERMITS:
ESTATE OF FRIEDLAND*

	Migration or emancipation permits requested in serf petitions		Land transaction permits requested in serf petitions		Marriage permits requested from the manorial court	
	no.	%	no.	%	no.	%
Granted	27	25	25	26	37	33
Granted conditionally	46	43	36	38	43	39
Granted partly	0	0	1	1	0	0
Decision deferred	11	10	9	9	5	5
Refused	22	21	25	26	20	18
Unknown	0	0	0	0	6	5
Total	106	99	96	100	111	100

* Sources: For migration, emancipation and land transaction permits: SOAD HS, Kart. 81–2, Dekretbücher Friedland, 1652–82, petitions recorded for the period 9 November 1652 – 18 November 1682 (n = 3,644). For marriage permits: SOAD HS, Kart. 61, 77–80, 709, Amtsprotokolle Friedland, 1583–1692, all surviving manorial court cases for the pre-Emancipation period (n = 3,792).

Note: Percentage columns may not add up precisely to 100 per cent because of rounding.

north-eastern parts of the country.²⁶ The *Jahrdingsprotokolle* (minutes of annual serf assemblies) are sometimes described as records of village court sittings, but were actually written up by the manorial officials, who also summoned and chaired the proceedings.²⁷

²⁶ Štefanová, 'Herrschaft und Untertanen'; Štefanová, 'Zur Stellung der Untertanen in einer gutsherrschaftlichen Gesellschaft', esp. 221–2; Libuše Horáková, 'Vesnické konšelské knihy libereckého a frýdlantského panství' [Village *Schöppenbücher* on the Estates of Liberec and Frýdlant], *Archivní casopis*, xix (1969); Libuše Horáková, 'Poddanské pomery v dobe veľkého povstání poddaného lidu v roce 1680' [The Conditions of the Serfs during the Period of the Great Serf Uprising of 1680], in *Sborník příspěvků k době poddanského povstání roku 1680 v severních Čechách* [Collection of Contributions on the Epoch of the 1680 Serf Uprising in Northern Bohemia] (Prague, 1980); Libuše Horáková, 'Vesnické konšelské knihy na Clam-gallasovských panstvích: příspěvek k dějinám poddanské správy' [*Schöppenbücher* on the Clam-Gallas Estates: A Contribution to the History of Serf Administration], *Sborník Severočeského muzea, Historia*, vii (1984).

²⁷ These *Jahrdingsregister* can be found in SOAD HS, Kart. 315. The *Jahrdinge* were not, as is sometimes claimed, communal court sittings: the latter took place in the absence of manorial officials in the village court itself with no surviving written record apart from the *Schöppenbücher*. The former, by contrast, were assemblies of household heads, often for as many as three villages at a time, presided over by one or two justices from each community but chaired by the manorial administrator. These assemblies were summoned, dominated and minuted by manorial officials, and cannot therefore be regarded as expressions of communal self-administration.

But the fact that Bohemian village courts left no other *surviving* records does not mean that they did not *keep* them.

Careful analysis of manorial court minutes brings to light eight distinct forms of documentation which were written up by Bohemian communal courts and referred to by serfs, communes and manorial officers, but which have simply not survived to the present day. For one thing, there were declarations of village custom (*Weistümer* or *Rugen*), widely held to be lacking under the second serfdom,²⁸ but demonstrated to exist in Friedland villages, for instance by the complaint of two village headmen in 1610 that the schoolmaster was charging much more than 'in previous times' to write up the *Rugen*.²⁹ For another, there were community account-books, whose absence is also widely adduced as a sign of communal weakness under the second serfdom,³⁰ but whose maintenance was regarded as a normal part of the responsibilities of headman and communal elders in Friedland villages.³¹ Thus in 1649 the villagers of Bernsdorf demanded that their headman and elders present their registers to prove that they had not been collecting excessive taxes and dues,³² and on one Sunday in March 1681 this headman's successor got into conflict with his villagers 'when he sought to put the community accounts in order'.³³ Third, Friedland village courts wrote up purchase-slips (*Kaufzetteln*) for individual land transfers and debts, which were used by villagers, communal

²⁸ Günther Franz, *Geschichte des deutschen Bauernstandes vom frühen Mittelalter bis zum 19. Jahrhundert* (Stuttgart, 1970), 50, 53, 58, 62; Brenner, 'Agrarian Class Structure and Economic Development', 41–2. But see the discussion of such documents in areas of medieval German settlement in Bohemia in Hanzal, 'Vesnická obec a samospráva'; Ludwig Schlesinger, 'Deutschböhmisches Dorfweistümer', *Mitteilungen des Vereins für die Geschichte der Deutschen in Böhmen*, xv (1876–7).

²⁹ SOAD HS, Kart. 77, Amtsprot. 1609–11, fos. 37^v–39^v, 23 Mar. 1610: 'Vor dießen Zeiten'.

³⁰ Harnisch, 'Die Landgemeinde im ostelbischen Gebiet', 319; Hartmut Harnisch, 'Gemeindeeigentum und Gemeindefinzen im Spätefeudalismus: Problemstellungen und Untersuchungen zur Stellung der Landgemeinde', *Jahrbuch für Regionalgeschichte*, viii (1981), 127, 139, 148.

³¹ SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 129^r, 15 Nov. 1618; SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 131^r, 27 Nov. 1618; SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 182^v, 28 Sept. 1654; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 18^v, 11 Sept. 1685; SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 26^r, 8 Nov. 1687.

³² SOAD HS, Kart. 79, Amtsprot. 1649–55, fos. 19^v–20^r, 7 Dec. 1649.

³³ SOAD HS, Kart. 61, Amtsprot. 1674–81, fo. 42^r, 15 Mar. 1681: 'alß selbige die Gemein Rechnung am Vergangenen sonstage, habe Zur richtigkeit bringen wollen'.

officers and the manor in cases of conflict.³⁴ Fourth, village courts maintained lists of the village's members and their obligations to render dues, labour services and taxes, which the Friedland manor frequently demanded to inspect, and some of which survive in manorial archives.³⁵ Fifth, village courts kept written records of witnesses' testimony, on which the manor relied in cases of illegitimate pregnancy,³⁶ disputes over manorial burdens,³⁷ physical violence,³⁸ disposal of community property,³⁹ and medical inspections of assault victims.⁴⁰ Sixth, Friedland village courts wrote up testimonials of good reputation for community members.⁴¹ Seventh, village courts transcribed and archived manorial commands.⁴² Finally, village courts recorded declarations of loyalty for rebellious villagers vis-à-vis the lords of Friedland.⁴³

These communal documents do not survive. They only come to light when one combs a large mass of manorial records in search of references to serf communes. Yet it is clear that such documents were systematically generated by normal administrative mechanisms within the commune. This is shown by allusions to administrative arrangements such as the *Schöppeladen* (literally, 'village justices' store' — a sort of village archive),⁴⁴ and to squabbles between village headmen over the services of

³⁴ SOAD HS, Kart. 315, Schriftstück 4, Jahrdings Artickeln 1620, fo. 15^{r-v}, article 62; SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 3^v, 27 Feb. 1604; SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 12^v, 3 Nov. 1609; SOAD HS, Kart. 78, Amtsprot. 1630, second part of volume (for 1631), p. 27, 6 June 1631; SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 19^r, 15 Dec. 1649; SOAD HS, Kart. 79, Amtsprot. 1655–6, fos. 22^v–23^r, 14 Mar. 1656.

³⁵ SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 50^v, 7 Oct. 1606; SOAD HS, Kart. 79, Amtsprot. 1655–6, fos. 22^v–23^r, 14 Mar. 1656; SOAD HS, Kart. 478, 'Vor Zeichniß der Gemeine Bullen dorff', 26 Sept. 1677; SOAD HS, Kart. 478, 'Verzeichnuß der Gemeine Bertzdorff', 28 Sept. 1677.

³⁶ SOAD HS, Kart. 79, Amtsprot. 1649–55, fos. 3^v–4^v, 30 Oct. 1649.

³⁷ SOAD HS, Kart. 79, Amtsprot. 1656–60, p. 120, 28 May 1659.

³⁸ SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 10, 12 Apr. 1661; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 111, 8 May 1664.

³⁹ SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 92, 12 June 1663.

⁴⁰ SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 23^v, 14 Sept. 1687.

⁴¹ SOAD HS, Kart. 78, Amtsprot. 1630–1, p. 1, 14 Jan. 1630; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 22^r, 27 Nov. 1685.

⁴² SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 50^v, 16 Jan. 1687.

⁴³ SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 43^v, 24 Nov. 1688.

⁴⁴ SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 3^v, 27 Feb. 1604; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 33^r, 5 June 1686; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 50^v, 16 Jan. 1687; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 52^r, 16 Jan. 1687.

shared village clerks.⁴⁵ In short, the *non-survival* of communal documentation in many east-Elbian societies does not mean that it never existed. It was not the weakness or inactivity of serf communes but their relationship with the manorial administration, their subsequent history and their economic circumstances, which prevented their archives from surviving into the modern era.

A second widely held view is that communal courts lost power under the second serfdom, as the overlord established a monopoly of coercion for his own manorial courts.⁴⁶ But careful collation of references to communal courts in manorial documents refutes this assumption. A Friedland village court was endowed with a broad range of powers to compel obedience to its decisions. It had the power to order people to name pledges to pay debts,⁴⁷ report to the manorial court,⁴⁸ report back to the village court itself,⁴⁹ and refrain from pursuing the conflict which had brought them before the village court in the first place.⁵⁰ The village court as a whole, and the headman and elders as its officers, had the power to incarcerate offenders in the stocks or village jail, or confine them in chains in the village tavern.⁵¹ Occasionally the manor reproved a village court for incarcerating someone

⁴⁵ SOAD HS, Kart. 77, Amtsprot. 1609–11, fos. 37^v–39^v, 23 Mar. 1610; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 92, 12 June 1663; SOAD HS, Kart. 77, Bürgerschaftsbuch 1593–1610, fo. 95^v, 29 May 1607; SOAD HS, Kart. 78, Amtsprot. 1616–19, fos. 168^v, 170^v–171^t, 10 May 1619.

⁴⁶ See the findings reported in Rudert, 'Gutsherrschaft und ländliche Gemeinde', esp. 207–9.

⁴⁷ SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 3^v, 22 Aug. 1609; SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 28^v, 12 Mar. 1605.

⁴⁸ SOAD HS, Kart. 77, Bürgerschaftsbuch 1593–1610, fo. 84^v, 6 June 1606; SOAD HS, Kart. 78, Amtsprot. 1649–55, fos. 61^v–63^v, 31 Jan. 1650.

⁴⁹ SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 180^{r-v}, 8 July 1619; SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 186^t, 15 June 1619; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 45^t, 17 Dec. 1686.

⁵⁰ SOAD HS, Kart. 77, Bürgerschaftsbuch 1593–1610, fo. 54^v, 24 July 1604; SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 45^v, 20 Apr. 1610; SOAD HS, Kart. 77, Amtsprot. 1611–16, fo. 3^t, 9 June 1611; SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 157^v, 7 Mar. 1619; SOAD HS, Kart. 78, Amtsprot. 1630–1, second part of volume (for 1631), p. 10, 7 Mar. 1631.

⁵¹ SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 1^t, 21 Feb. 1604; SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 16^t, 10 Nov. 1609; SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 56^t, 28 May 1610; SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 93^v, 12 May 1618; SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 179^v, 8 July 1619; SOAD HS, Kart. 78, Amtsprot. 1627, fo. 44^t, 16 Oct. 1627; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 32, 4 July 1661; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 78, 23 Sept. 1662; SOAD HS, Kart. 77, Bürgerschaftsbuch 1593–1610,

with particular cruelty or without informing the manor, as in 1686 when a Berttelsdorf man was accused of theft in Ebersdorf, beaten by his accuser, and then 'thrown into the stocks by the Ebersdorf village court, and left lying there for 5 days' without medical care until he confessed.⁵² But it was much more common for the manor to support the village court in its decision to incarcerate,⁵³ to instruct village courts to lock up offenders,⁵⁴ and to punish serfs who resisted or escaped from village incarceration,⁵⁵ sometimes explicitly ordering a recalcitrant villager 'in future to show himself true and obedient to his gracious manorial overlord, the manorial court, and also the village court, at all times'.⁵⁶ It is thus inappropriate to envisage communal and manorial courts as competing for a monopoly of coercion. In the vast majority of cases, the manor supported the powers of the village court and enjoyed the latter's support in return.

A third justification for portraying communes as powerless under the second serfdom is that they are supposed to have lacked financial independence. But Friedland communities bought, sold and leased land for communal ends. Thus in 1615 the village elders of Bernsdorf reported to the manorial court that the commune had agreed to purchase a peasant holding to turn into a vicarage farm so that they could have their own

(*n. 51 cont.*)

fos. 12^v-13^r, 18 Sept. 1594; SOAD HS, Kart. 77, Amtsprot. 1609-11, fo. 71^v, 24 July 1610; SOAD HS, Kart. 77, Amtsprot. 1609-11, fo. 93^v, 8 Apr. 1611; SOAD HS, Kart. 709, Amtsprot. 1685-7, fo. 39^v, 31 Aug. 1686; SOAD HS, Kart. 77, Bürgerschaftsbuch 1593-1610, fo. 54^r, 3 Apr. 1604; SOAD HS, Kart. 77, Amtsprot. 1609-11, fo. 94^v, 2 May 1611; SOAD HS, Kart. 79, Amtsprot. 1649-55, fos. 88^v-89^r, 28 May 1650; SOAD HS, Kart. 79, Amtsprot. 1649-55, fo. 179^v, 14 Mar. 1654; SOAD HS, Kart. 709, Amtsprot. 1687-92, fo. 10^r, 23 May 1687.

⁵² SOAD HS, Kart. 709, Amtsprot. 1685-7, fo. 45^v, 3 Dec. 1686: 'Von dem Ebersdorffer gerichten in stock geworffen, Vndt bies aufn 5:ten tag darinnen liegen lassen'.

⁵³ SOAD HS, Kart. 79, Amtsprot. 1655-6, fo. 7^r, 21 Dec. 1655.

⁵⁴ SOAD HS, Kart. 78, Amtsprot. 1616-19, fo. 93^v, 12 May 1618; SOAD HS, Kart. 78, Amtsprot. 1616-19, fo. 157^v, 7 Mar. 1619; SOAD HS, Kart. 78, Amtsprot. 1630-1, second part of volume (for 1631), p. 10, 7 Mar. 1631.

⁵⁵ SOAD HS, Kart. 77, Amtsprot. 1583-92, fo. 21^v, 16 Jan. 1586; SOAD HS, Kart. 77, Amtsprot. 1604-6, fo. 13^v, 3 July 1604; SOAD HS, Kart. 77, Bürgerschaftsbuch 1593-1610, fo. 96^v, 14 Oct. 1607; SOAD HS, Kart. 77, Bürgerschaftsbuch 1593-1610, fo. 103^v, 7 Nov. 1609; SOAD HS, Kart. 77, Bürgerschaftsbuch 1593-1610, fo. 105^r, 8 Feb. 1610; SOAD HS, Kart. 79, Amtsprot. 1650-1, fo. 42^v, 28 May 1651; SOAD HS, Kart. 709, Amtsprot. 1687-92, fo. 27^v, 17 Nov. 1687.

⁵⁶ SOAD HS, Kart. 709, Amtsprot. 1687-92, fo. 27^v, 17 Nov. 1687: 'Hienführo treu Vndt gehorsamb seiner gned.: Obrigkeit, dem Amt, als auch den Gerichten iederzeit sich bezeugen woll'.

pastor.⁵⁷ In 1661 the community of Arnsdorf leased pastures from the manor for 28 *Gulden* annually.⁵⁸ In 1668 'the community in Berttelsdorf had 10 plots of land appertaining to it, and the revenues collected from them were used for the school, and the remainder was allocated to the accounts of community elders'.⁵⁹ In 1675 the village officers of Göhe sold a parcel on the commons 'in the name of the whole community' to turn into a new serf holding.⁶⁰ Two villages — Bernsdorf in 1629 and Raspenau in 1631 — bought grain collectively, although this may have been an exceptional response to wartime shortages.⁶¹ Communities collectively financed the establishment of local infrastructure, as in 1657 when Olbersdorf was permitted to build a sawmill,⁶² in 1658 when Wittig was allowed to build a smithy⁶³ or in 1662 when Dittersbach was forbidden to build a grain mill.⁶⁴ In 1685, villagers from Priedlanz complained that the headman 'had not yet paid 3 *Gulden* for sheep he had purchased from the community'.⁶⁵ In 1674, conflict arose between the Rückersdorf village officers and seven poorer villagers who 'took it upon themselves . . . to make unusual dispositions with the communal moneys'.⁶⁶ The communal court functioned as an official depository for disputed cash,⁶⁷ bad coinage proffered in payment of debts,⁶⁸

⁵⁷ SOAD HS, Kart. 77, Amtsprot. 1611–16, fo. 112^r, 2 June 1615.

⁵⁸ SOAD HS, Kart. 81, Dekretb. 1652–62, fo. 79^v, 24 Apr. 1661.

⁵⁹ SOAD HS, Kart. 81, Dekretb. 1668–9, p. 10, 28 July 1668: '10 Plänel . . . der Gemeinde Zu Berzdorff Zu stendig gewessen, Vnnd daß Jenige, waß daruon ein genohmmen, Zur Schulen Verwendet, Vnnd daß übrige den Gemein Eltisten berechnet worden'.

⁶⁰ Štefanová, 'Zur Stellung der Untertanen in einer gutsherrschaftlichen Gesellschaft', 222–3; Štefanová, 'Herrschaft und Untertanen', 205–6.

⁶¹ SOAD HS, Kart. 78, Amtsprot. 1630–1, 22 Apr. 1631, second part of volume (for 1631), p. 24 (purchase occurred 1629, payment still outstanding 1631); SOAD HS, Kart. 78, Amtsprot. 1630–1, 30 Aug. 1631, second part of volume (for 1631), p. 48 (purchase occurred sometime prior to 1631).

⁶² SOAD HS, Kart. 81, Dekretb. 1652–7, fo. 44^r, 12 Sept. 1657.

⁶³ SOAD HS, Kart. 81, Dekretb. 1656–63, p. 47, 25 June 1658.

⁶⁴ SOAD HS, Kart. 81, Dekretb. 1656–63, p. 163, 1 Feb. 1662.

⁶⁵ SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 16^r, 4 Aug. 1685: 'vor erKauffte Schaafe von der Gemeinde 3 f. nicht bezahlet hette'.

⁶⁶ SOAD HS, Kart. 81, Amtsprot. 1674–81, fo. 2^r, 17 Sept. 1674: 'haben sie sich hochsträfflicher weisen Vnterstanden . . . Vnngewöhnliche dispositiones mit der Gemeine geldern Zue machen'.

⁶⁷ SOAD HS, Kart. 78, Amtsprot. 1629, fo. 4^r, 4 Apr. 1629; SOAD HS, Kart. 78, Amtsprot. 1627, fo. 1^v, 4 Feb. 1627; SOAD HS, Kart. 78, Amtsprot. 1629, Zettel 8^v–9^r, assumed 25 May 1629 – 1 June 1629.

⁶⁸ SOAD HS, Kart. 78, Amtsprot. 1629, fo. 4^r, 4 Apr. 1629; SOAD HS, Kart. 78, Amtsprot. 1627, fo. 1^v, 4 Feb. 1627.

confiscated alcohol,⁶⁹ stolen grain⁷⁰ and stolen horses.⁷¹ Finally, the village court levied fines, although generally in beer rather than cash,⁷² and collected 'court expenses'⁷³ and 'consumption costs' from litigants.⁷⁴ Bohemian communes therefore did exercise a range of financial powers.⁷⁵

A fourth widely held view is that under the second serfdom communal courts enjoyed a diminished jurisdiction over a very limited range of activities, mainly family spats and neighbourly conflicts; they could not hear cases that were more important or involved outsiders.⁷⁶ But the Friedland documents cast doubt on this view. Certainly, village courts did hear familial and interpersonal conflicts within the village, including disputes over land sales,⁷⁷ inheritance,⁷⁸ cash legacies,⁷⁹ retirement contracts,⁸⁰ building permits,⁸¹ boundary disputes,⁸² defamation,⁸³ physical assaults⁸⁴

⁶⁹ SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 75^r, 2 Apr. 1650.

⁷⁰ SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 84^r, 29 Nov. 1610.

⁷¹ SOAD HS, Kart. 78, Amtsprot. 1627, fo. 38^v, 4 Sept. 1627.

⁷² SOAD HS, Kart. 77, Bürgerschaftsbuch 1593–1610, fo. 54^v, 24 July 1604; SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 96^r, 4 June 1650; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 81, 31 Jan. 1663; SOAD HS, Kart. 80, Amtsprot. 1661–4, pp. 16–17, 26 May 1661; SOAD HS, Kart. 80, Amtsprot. 1661–4, pp. 63–4, 19 Aug. 1662.

⁷³ SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 13^r, 3 July 1604; SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 11^r, 23 May 1687; SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 6^r, 4 Mar. 1687.

⁷⁴ SOAD HS, Kart. 77, Bürgerschaftsbuch 1593–1610, fo. 71^r, 2 Aug. 1605; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 64, 19 Aug. 1662; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 34^r, 5 June 1686.

⁷⁵ On the financial powers of village communes on the southern Bohemian estate of Český Krumlov / Krumau, see Himl, *Die 'armen Leüte'*, esp. 163–6, 169–70; for analogous findings for Upper Lusatia under the second serfdom, see Rudert, 'Gutsherrschaft und ländliche Gemeinde', 200–1, 205–6.

⁷⁶ Blaschke, 'Dorfgemeinde und Stadtgemeinde in Sachsen', 121–2, 131–2; Enders, 'Die Landgemeinde in Brandenburg', 200; Wilhelm Weizsäcker, 'Das deutsche Recht der bäuerlichen Kolonisten Böhmens und Mährens im XIII. und XIV. Jahrhunderte', *Mitteilungen des Vereins für die Geschichte der Deutschen in Böhmen*, li (1913), 532.

⁷⁷ SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 3^r, 27 Feb. 1604; SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 45^v, 16 Apr. 1610; SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 28^r, 24 Nov. 1687.

⁷⁸ SOAD HS, Kart. 79, Amtsprot. 1650–1, fo. 27^r, 4 Apr. 1651.

⁷⁹ SOAD HS, Kart. 79, Amtsprot. 1650–1, fo. 29^{r-v}, 13 Apr. 1651.

⁸⁰ SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 2^r, 27 Feb. 1604; SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 96^r, 4 June 1650.

⁸¹ SOAD HS, Kart. 78, Amtsprot. 1645, fo. 39^v, 17 June 1645.

⁸² SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 34^r, 4 June 1605; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 13^r, 25 May 1685.

⁸³ SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 37^r, 12 July 1605.

⁸⁴ SOAD HS, Kart. 77, Amtsprot. 1611–16, fos. 1^v–2^r, 21 May 1611.

and theft.⁸⁵ But the business of Friedland village courts extended much more widely. First, debts were initially registered in the village court and only came before the manorial court when communal court decisions were repeatedly violated.⁸⁶ Second, village courts were the first place for reporting accusations of serious physical assault,⁸⁷ including manslaughter, as in 1685 when a Schönwald villager accused his brother-in-law of beating his sister to death.⁸⁸ Third, although theft is widely regarded as a serious crime which only higher courts could decide, in practice village courts did hear theft accusations, as demonstrated above by the jailing of a thief by the Ebersdorf village court.⁸⁹ Fourth, village courts were the first place for resolution of sexual offences, not just fornication and illegitimate pregnancy,⁹⁰ but adultery⁹¹ and infanticide.⁹² Before the whole question was politicized during the Thirty Years War, Friedland village courts also dealt with religious offences, as in 1611 when the headman and elders of Einsiedel imprisoned one of their villagers because he ‘cursed very much, called names and blasphemed God horribly’.⁹³ Furthermore, Friedland communal courts heard cases involving not only inhabitants of their own village, but also members of other villages on the estate,⁹⁴ inhabitants of

⁸⁵ SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 10^v, 8 May 1685.

⁸⁶ SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 3^v, 22 Aug. 1609; SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 92^v, 12 Mar. 1611; SOAD HS, Kart. 77, Amtsprot. 1583–92, fo. 36^v, 9 Apr. 1587; SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 40^f, 21 Oct. 1605.

⁸⁷ SOAD HS, Kart. 78, Amtsprot. 1645, fo. 39^f, 17 June 1645; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 111, 8 May 1664; SOAD HS, Kart. 77, Bürgerschaftsbuch 1593–1610, fo. 65^v, 21 Apr. 1605; SOAD HS, Kart. 79, Amtsprot. 1650–1, fo. 2^v, 18 Oct. 1650; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 98, 19 June 1663.

⁸⁸ SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 6^v, 30 Apr. 1685.

⁸⁹ For the Ebersdorf case, see n. 52 above. For additional examples of village courts hearing theft accusations, see SOAD HS, Kart. 77, Bürgerschaftsbuch 1593–1610, fo. 72^v, 13 Sept. 1605; SOAD HS, Kart. 77, Amtsprot. 1611–16, fo. 6^f, 4 July 1611; SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 55^v, 28 Oct. 1617; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 81, 31 Jan. 1663.

⁹⁰ SOAD HS, Kart. 78, Amtsprot. 1629, fo. 1^v, 15 Mar. 1629; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 39^v, 31 Aug. 1686.

⁹¹ SOAD HS, Kart. 78, Amtsprot. 1629, fo. 27^f, 7 Feb. 1630; SOAD HS, Kart. 77, Amtsprot. 1611–16, fo. 3^f, 9 June 1611.

⁹² SOAD HS, Kart. 79, Amtsprot. 1656–60, p. 14, 23 Nov. 1656.

⁹³ SOAD HS, Kart. 77, Amtsprot. 1609–11, fos. 94^v–95^f, 2 May 1611: ‘sehr geflucht Vnnd gescholten Vnnd gotte greülich. gelestert’.

⁹⁴ SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 13^f, 3 July 1604; SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 9^v, 24 Apr. 1604; SOAD HS, Kart. 78, Amtsprot. 1627, fo. 11^v, 12 Mar. 1627.

towns,⁹⁵ minor manorial officials such as the *Vogt* (demesne-farm manager),⁹⁶ and even people from outside the estate altogether.⁹⁷ Far from seeking to diminish the jurisdiction of communal courts, the manor relied on them for a great deal of ordinary contract enforcement and conflict resolution, and punished those who, like two Rückersdorf villagers in 1611, 'ignored the village court and wanted to take matters into their own hands'.⁹⁸

A final assumption about communal institutions under the second serfdom is that village headmen and elders were appointed by the manor and hence unable to act independently.⁹⁹ In principle, Bohemian overlords could indeed put pressure on recalcitrant headmen. In regions of 'appointed' headmen they could simply dismiss them outright, and in regions of 'hereditary' headmen such as Friedland they could eject them from their hereditary headman's holdings.¹⁰⁰ Village elders, too, could be dismissed if the manor took exception to their conduct.

⁹⁵ SOAD HS, Kart. 77, Amtsprot. 1583–92, fo. 18^r, 7 Jan. 1586.

⁹⁶ SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 30^r, 6 Apr. 1686.

⁹⁷ SOAD HS, Kart. 77, Bürgerschaftsbuch 1593–1610, fo. 84^v, 6 June 1606; SOAD HS, Kart. 78, Amtsprot. 1627, fos. 40^r–41^v; SOAD HS, Kart. 78, Amtsprot. 1630–1, p. 32, 21 Sept. 1630; SOAD HS, Kart. 78, Amtsprot. 1645, fo. 18^r, 27 May 1645; SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 11^r, 17 Nov. 1649; SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 20^{r-v}, 4 Dec. 1649; SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 7^{r-v}, 10 Mar. 1687. A subject of another overlord did not have to appear in Friedland village courts unless voluntarily (for example, because he planned future repeat transactions within the estate of Friedland) or under orders from his own overlord (for example, under reciprocal agreement with the lords of Friedland).

⁹⁸ SOAD HS, Kart. 77, Amtsprot. 1611–16, fo. 6^r, 4 July 1611: 'die gerichte . . . hindan gesezt, Vnnd ihnen also selbsten Verhelffen wollen'.

⁹⁹ Blaschke, 'Dorfgemeinde und Stadtgemeinde in Sachsen', 132–3; Blickele, *Deutsche Untertanen*, 45–6; Hagen, *Ordinary Prussians*, 454–66; Hoffmann, *Land, Liberties, and Lordship*, 360–1; Rudert, 'Gutsherrschaft und ländliche Gemeinde', 203.

¹⁰⁰ See Weizsäcker, 'Das deutsche Recht der bäuerlichen Kolonisten Böhmens und Mährens', 508, 531; Horáková, 'Poddanské pomery', 47; for detailed local studies of Bohemian village headmen, see esp. Jaroslav Novotný, 'Rychteri — fojti — šoltysové' [*Richter, Vögte, Schultheißen*; i.e. Village Headmen], in František Matejek (ed.), *Feudální velkostatek a poddaný na Moravě s přihlédnutím k přílehlému území Slezska a Polska* [Large Manorial Estates and Serfs in Moravia with Some Consideration of Adjacent Silesian and Polish Territories] (Prague, 1959); Jiri Zálaha, 'Dedibní rychtáři ve Fefrech' [Hereditary Headmen in Fefra], *Jihočeský sborník historický*, xxvi (1957); Jan Lintner, 'Rychtářská instrukce a rychty v polovine XVII. stol. na panství chýnovském' [Headman's Ordinances and Village Courts in the First Half of the Seventeenth Century on the Estate of Chýnov], *Jihočeský sborník historický*, xvi (1947).

But there are two reasons why village officers cannot be viewed as tools of the manor. First, they were themselves members of the commune and appeared frequently in the manorial court representing the commune's interests against the manor. Second, manorial officials were extremely reluctant to dismiss village office-holders and did so very seldom. In the appointment of village elders, the Friedland manorial court intervened on only two occasions in the surviving estate records, both under the short-lived Wallenstein administration which is acknowledged to have been exceptionally harsh.¹⁰¹ Headmen were even less likely to be dismissed. Thus the headman of Mildenau caused perpetual trouble throughout the second decade of the seventeenth century and was ultimately demonstrated to have exploited his office for his own economic interests and to be unable to control his villagers; nevertheless in 1616 the manorial court concluded that 'the headman has once and for all been entrusted with the village court by the overlord'.¹⁰² When a majority of Friedland village headmen acted as ringleaders in the 1680 serf uprising, the manor did not dismiss them but instead compelled them to buy back their confiscated headmen's holdings and resume their offices.¹⁰³ In 1686, when the headman of Ringenhain sought to resign, the manor objected that he was 'not entitled' to give up being a headman and ordered him to take on a new headman's holding within the next fourteen days or be punished.¹⁰⁴

The reasons Bohemian overlords — whether in Czech or German areas — were so reluctant to dismiss village officers were stated very explicitly by the manorial administrator of the Czech-speaking estate of Podebrady in 1656. A year earlier, the headman and elders of the village of Radovesnice had been called to the deathbed of an old woman to witness her last bequests, but instead conspired to steal her money, divided it up among themselves, failed to deliver what was owed to the manor, and were only ultimately reported by a member of

¹⁰¹ SOAD HS, Kart. 78, Amtsprot. 1627, fo. 2^r, 4 Feb. 1627; SOAD HS, Kart. 78, Amtsprot. 1630, second part of volume (for 1631), p. 6, 19 Feb. 1631.

¹⁰² SOAD HS, Kart. 78, Amtsprot. 1616–19, fos. 5^r–6^v, 10 Aug. 1616: 'den Schultheißen einmahl von den herr S. gn. die gerichte vortrauet'.

¹⁰³ Horáková, 'Poddanské pomery', 52. For the reinstatement of the Schönwald headman, see SOAD HS, Kart. 61, Amtsprot. 1681–5, fo. 2^r, 2 Oct. 1681.

¹⁰⁴ SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 27^r–v, 26 Mar. 1686: 'ihme nicht zustehen sollen'.

another community. Yet the Podebrady administrator advised against their dismissal, on the grounds that

If this headman and these elders were released from their offices, they have little regard for such offices; they would be glad to be free of these tasks and duties in these times, because of the effort they have to expend in collecting various state taxes, organizing various other work ordained by the manor, and pressing the disobedient people to render these; it is also very difficult and disagreeable for them to travel the long two miles in to the castle. And concerning other men, I have even worse opinions . . .¹⁰⁵

Although, therefore, the manor had the power to appoint and dismiss headmen and elders, these offices were so essential for manorial interests and so difficult to fill that the manor had strong incentives to retain existing officers, even in the teeth of serious professional misconduct.

Estate-level evidence from Bohemia does not therefore support the view that overlords stifled communal institutions under the second serfdom. Bohemian communes maintained numerous documentary records, possessed strong coercive powers, enjoyed jurisdiction over a wide array of civil and criminal cases, took independent financial decisions, and were manned by officers enjoying considerable security of tenure and independence of action. This does not provide support for the theory that manorial institutions became stronger by deliberately crowding communal institutions out of power within rural society.

III

THE THEORY OF COMMUNAL AUTONOMY IN THE LIGHT OF BOHEMIAN EVIDENCE

Even though Bohemian manors greatly extended their power over their subjects during the second serfdom, we have seen that they did not do so by eradicating communal self-administration. But did this amount to fully-fledged 'communal autonomy', in

¹⁰⁵ Státní Ústřední Archiv [Central State Archive], Prague, NM 26, Podebrady, P. 26/10, No. 35, 6 May 1656 (report of administrator of estate of Podebrady to Imperial Chamber): 'A kdyby i tento rychtár z povinnosti a ti konšelé propuštěni byli, taková lidé málo sobe toho pokládají, i rádi bez tech prací a povinností v tyto basy budou. Nebo i jejich práce pro kontribuce rozlibné a všeliké práce vrchnosti vykonávání a ty neposlušné lidi k tomu privozování, na velké dve míle na zámek k JMC [Jeho Milosti Císarské] přicházení, jim těžké a odporné jsou; i o druhých ještě méněji smejšlím, však všechno při milostivém Vašich Excel.[enci] Milostí narizení i milostivé pameti o toho chudého bloveka, kterýž to pronesl, odevzdaje, což takkoliv při mne narizené bude, poslušné vykonati nepominu'.

the sense that there were important spheres of local life in which manors did not intervene?¹⁰⁶

The Friedland records make clear that serfs engaged in many individual transactions in which the manor did not interfere. Here, as in most other serf societies, many acts of marriage, land transfer, conflict resolution, and even internal migration occurred with little or no sign of manorial intervention. Such findings have led some to argue that, because overlords did not intervene in *all* economic or demographic decisions, they must have lacked the power or interest to intervene in *any*, and that these spheres of activity were thus realms of communal autonomy.¹⁰⁷

But this ignores the incentives of both overlord and serfs. There are two reasons why, in a situation in which manorial intervention was possible and effective, we should not expect to observe it actually being exercised very frequently: cost and deterrence. Regulation was expensive in terms of time and personnel, and overlords were interested only in interventions that yielded benefits for themselves. This reduced the frequency of intervention. Furthermore, awareness of manorial disapproval and the desire to avoid attracting it deterred many serfs from even trying to take certain actions. The very existence of manorial power to intervene in serfs' economic and demographic decisions meant that it did not actually have to be exercised very frequently.¹⁰⁸

¹⁰⁶ For a recent work arguing forcefully that Bohemian communities enjoyed extensive communal autonomy which the overlords were continually attempting to reduce, see, for example, Jaroslav Cechura, *Selské rebelie roku 1680: sociální konflikty v barokních Čechách a jejich každodenní souvislosti* [Rural Rebels of 1680: Social Conflicts in the Baroque Czech Lands and their Everyday Relationships] (Prague, 2001).

¹⁰⁷ John Bushnell, 'Did Serf Owners Control Serf Marriage? Orlov Serfs and their Neighbors, 1773–1861', *Slavic Rev.*, lii (1993); Jacek Kochanowicz, 'The Polish Peasant Family as an Economic Unit', in Richard Wall, Jean Robin and Peter Laslett (eds.), *Family Forms in Historic Europe* (Cambridge, 1982), 163–4; Štefanová, 'Herrschaft und Untertanen', 205–9; Andrejs Plakans and Charles Wetherell, 'The Kinship Domain in an East European Peasant Community: Pinkenhof, 1833–1850', *Amer. Hist. Rev.*, xciii (1988); Markus Cerman, 'Serfdom and Family', paper presented to conference on 'Households and Families in Past Times: New Frontiers, New Approaches' (Palma de Mallorca, 8–11 Sept. 1999), 4–16; Melton, 'Gutsherrschaft in East Elbian Germany and Livonia', esp. 315–16, 320–2, 333, 340–1; Enders, 'Die Landgemeinde in Brandenburg', 197; Hoffmann, *Land, Liberties, and Lordship*, 358–62.

¹⁰⁸ Such incentives have been discussed in analyses of the *politische Ehekonsens* (political consent to marriage) in nineteenth-century Germany. The number of marriages *refused permits* was lower than the number *prevented* by the legislation, since people who knew they would be refused a permit did not even apply. On this,

If communal autonomy had indeed been significant, one would expect important arenas of serf decision-making to have been off-limits to manorial intervention. Migration, marriage, land transfers and conflict resolution are four of the most important life-decisions for individuals, central to the operation of the entire serf economy, and frequently adduced as realms of communal autonomy. But each of these spheres of action illustrates the limits on the autonomy of both commune and manor.

a) Migration

Traditionally, serfdom is portrayed as involving strong manorial controls on serfs' mobility. But proponents of 'communal autonomy' contest this view, adducing evidence that serfs sometimes migrated without apparent manorial hindrance. From this they conclude that manorial mobility regulations were paper tigers, and that migration was a decision driven by exogenous influences (such as economic opportunities) and by informal pressures within the commune.¹⁰⁹

The Friedland records show that serfs did indeed desire to migrate outside the estate in order to work, trade, marry, learn crafts, visit kin, practise their religion, and for many other reasons. But their decisions about whether to do so were not taken within a realm of communal autonomy: they were systematically constrained by the manor. Migration required a permit from one's overlord showing 'that one was released in goodwill'.¹¹⁰ Such a permit was not easy to obtain. As Table 2 shows, in the thirty years between 1652 and 1682, a total of 106 Friedland serfs petitioned for migration or emancipation permits, and only 25 per cent had them granted unconditionally; another 43 per cent were granted permits conditionally, 10 per cent had the decision deferred (that is, the serfs were not permitted to migrate) until some future occasion, and 21 per cent were refused outright. Moreover, it must be realized that only serfs with some special reason to expect success incurred the costs of petitioning;

(n. 108 cont.)

see, for example, Klaus-Jürgen Matz, *Pauperismus und Bevölkerung: die gesetzlichen Ehebeschränkungen in den süddeutschen Staaten während des 19. Jahrhunderts* (Stuttgart, 1980), 233.

¹⁰⁹ See, for instance, Melton, 'Gutsherrschaft in East Elbian Germany and Livonia', esp. 315-16, 320-2, 333; Cerman, 'Serfdom and Family', 1, 3-12.

¹¹⁰ SOAD HS, Kart. 315, Schriftstück 11, Jahrdings Artickeln 1636, fo. 4^v, article 27: 'dz er guttlich erlaßen worden'.

most did not even apply, knowing they had no chance of being granted a permit.

Lacking a migration permit, not only was the serf legally obliged to stay on the estate, but also, if he left illegally, other overlords were unwilling to tolerate his presence, as in 1610 when the non-Friedland serf Erhardt Huy was forced to admit that 'I have not been able to obtain an emancipation certificate from my overlord' and therefore had to make a formal promise to leave the estate of Friedland immediately.¹¹¹ Illegal emigration was sufficiently costly that many applicants were willing to pay the substantial fee charged for a permit, as in 1681 when the unmarried Hans Ulrich from Friedlanz 'paid 8 *Reichstaler* to the gracious manorial authority for his emancipation letter to Count Nostitz in Reibersdorf' (a village near Bautzen in Saxony).¹¹²

Even temporary migration required a permit, as in 1604 when Jacob Lorentz in Weigsdorf 'complained at the manorial court that he could not find anywhere to dwell within the estate, and so it was granted by the manorial court that he might go to dwell for a year on a neighbouring estate', although only on condition that he continued to pay weaver's dues to Friedland and reported back in person at any time upon demand.¹¹³ Similarly, the Neustadt bathman was permitted to rent a bathhouse on another estate in 1683 provided that he reported back after a year.¹¹⁴ A journeyman was not allowed to travel unless he presented personal and financial guarantees to the overlord 'that after he has carried out his tramping period he will betake himself back to his gracious overlord as a loyal serf [*Untertan*]'.¹¹⁵ Between 1737 and 1785, a total of 209 serf journeymen rendered such pledges in the Friedland manorial court.¹¹⁶

¹¹¹ SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 24^v, 13 Jan. 1610: 'von meiner herrschafft Keinen Loßbrieff erlangen kan'.

¹¹² SOAD HS, Kart. 61, Amtsprot. 1681–5, fo. 3^r, 31 Oct. 1681: 'Vmb seinen Loßbrief an h.: Graffen Nostitz, nacher Reiberßdorff, der Gn: Obriegkeit, erlegt. 8. Rthl.'

¹¹³ SOAD HS, Kart. 57, Bürgerschaftsbuch 1593–1610, fo. 54^r, 24 July 1604: 'demnach sich dieser beym Ampt beklagt, dz er Vnter der herrschafft nirgendt Zu hauß einKommen Können, ist ihme Vom Ampt Vergunster worden, das er sich auff ein Jahr lang Vnter benachbarter herrschafft zu hause begeben möge'.

¹¹⁴ SOAD HS, Kart. 61, Amtsprot. 1681–5, fo. 18^v, 30 Sept. 1683.

¹¹⁵ SOAD HS, Kart. 710, Bürgenbuch 1703–24, fo. 9^v, 16 Mar. 1713: 'das Er sich nach Verrichter wanderZeith wieder umben als Ein treuer Vnterthann zu seiner gned.: herrschafft Einfünden wiell'.

¹¹⁶ SOAD HS, Kart. 710, Bürgenbuch 1737–85.

Those who migrated without permission were penalized. Thus in 1591 two brothers from Bernsdorf were jailed and only released on pledges 'that henceforth they shall dwell on the estate and seek their livelihood in no other locality save within the estate, on pain of a fine of 20 *Schock*'.¹¹⁷ In 1606 Paul Nase from Lusdorf was whipped, jailed, and ordered into forced service because 'he never reported to the manorial court at the annual orphans-reporting, and during this time served various lords according to his own inclination'.¹¹⁸ In 1677, Georg Sterz from Einsiedel, who had migrated to Silesia without permission, applied for his emancipation letter from Friedland but was refused and thrown in jail until he named two pledges at 50 *Reichstaler* each to guarantee that he would 'betake himself back to Einsiedel like an obedient serf [*Untertan*], diligently take on his children as a loyal father is obliged to do, and earn his livelihood like others'.¹¹⁹ Even *threatening* to emigrate attracted penalties, as in 1687 when a houseless lodger from Rückersdorf who was labouring on the demesne 'reflected to himself that he was cutting in this pasture for the last time and would do so no more', whereupon he was shut up in the stocks and required to name pledges 'that he would not escape from the gracious manorial authority'.¹²⁰ The manor also jailed and fined anyone who assisted illegal emigrants, whether by issuing them with inheritance shares,¹²¹ making them gifts,¹²² providing them with information,¹²³ giving them overnight shelter,¹²⁴ or turning a blind eye like the Hermsdorf lodger Heinrich Hausmann who was jailed in 1714 because he 'lodged with the absconded

¹¹⁷ SOAD HS, Kart. 77, Amtsprot. 1583–92, fo. 87^r, 2 Nov. 1591: 'das sie sich forthin In der herschaft auffhalten, vnd Ihre nahrung an Keinem Andern ort, Alß Vnder der herrschafft suchen sollen, bei d. Peen 20 sß'.

¹¹⁸ SOAD HS, Kart. 57, Bürgerschaftsbuch 1593–1610, fo. 82^r, 21 Apr. 1606: 'er bey Jährliches Waisen gestellung sich ins Ampt Niemals gestellet, vnd Vnter deß seines gefallens In einem Jahr vnterschiedlichen herrn gedienet'.

¹¹⁹ SOAD, HS, Kart. 82, Dekretb. 1677–8, p. 9, 13 May 1677: 'sich, alß Ein gehorsamber Vnd.than nacher Einsiedel, hienwieder Einfinden, sich seiner Kinder, alß Ein Trewer Vatter Zu thun schuldig, fleißig annehmen, Vnnd, wie andere, sich Nehren Thue'.

¹²⁰ SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 14^r, 6 July 1687: 'sich beduncken lassen, Er wolte Zum letzten mahl, Vndt nicht mehr auf dieser Wiesen gehawen Haben'; 'damit Er sich nicht d. Gnädig. Obrigkeit entbrech. wolte'.

¹²¹ SOAD HS, Kart. 77, Amtsprot. 1583–92, fo. 56^r, 27 Jan. 1589.

¹²² SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 4^r, 22 Aug. 1609.

¹²³ SOAD HS, Kart. 77, Amtsprot. 1583–92, fo. 92^r, 21 Jan. 1592.

¹²⁴ SOAD HS, Kart. 77, Amtsprot. 1583–92, fo. 97^r, 15 June 1592.

Wagner and nevertheless did not report anything'.¹²⁵ Overlords helped one another to capture and punish each other's illegal migrants, as in 1595 when the Friedland manor jailed Paul Bösemöller and ordered him to 'betake himself immediately back under his hereditary lord [*Junker*] . . . become a settled man, and behave with all just and dutiful obedience as befits a serf [*Untertan*]',¹²⁶

Movement *within* the estate from one village to another was in principle unconstrained, but in practice the Friedland manor forbade internal migration when it threatened manorial interests. Thus in 1645 Matthes Köhler from Mildenau 'left his cottager holding lying vacant and disappeared to Raspenau' (the next village), but was ordered by the manorial court to 'take up his cottage again and remain in Mildenau'.¹²⁷ Likewise, in 1667 Jacob Pracks was refused permission to move to Priedlanz to get married, even though he promised 'to fill his smallholding in Tschernhausen with a tenant'.¹²⁸ A serf could even be ordered to stay on a particular farm, as in 1656 when the manorial court ordered firmly that Hans Haft from Rückersdorf 'cannot be permitted to leave his commons-cottage and move into that of another absconded person in exchange'.¹²⁹ The manor sometimes *compelled* serfs to migrate, as in 1585 when a corrupt demesne farm manager was ordered to 'depart immediately and henceforth completely avoid the estate',¹³⁰ or in 1597 when a pregnant maidservant was 'banished from the country'.¹³¹

¹²⁵ SOAD HS, Kart. 710, Bürgenbuch 1703–24, fo. 10^v, 3 May 1714: 'so bey dem entloffenen wagner zu haufe ist, Vnd gleichwohlen daruon nichts gemeldet'.

¹²⁶ SOAD HS, Kart. 57, Bürgschaftsbuch 1593–1610, fo. 15^v, 13 Aug. 1595: 'daß er sich Alsbalden wiederumb vnter seinen Erb Junckern . . . begeben seßig Machen Vnd sich Alles billichs Vnd schuldiges gehorsambs, Wie einem Vnter thanen gebühret Vorhalten'.

¹²⁷ SOAD HS, Kart. 78, Amtspr. 1645, fo. 26^r, 31 May 1645: 'hat sein heusel ligen lass. vnd ist nacher Raspenaw gewichen'; 'Soll sein heusel wieder beziehen Vndt bei Mildenaw verbleib'.

¹²⁸ SOAD HS, Kart. 81, Dekretb. 1667–8, p. 14, 12 May 1667: 'Entgegen seinen Garten Zu Tschirnhaufe mit einem Pachtmanne besetzen wolle'.

¹²⁹ SOAD HS, Kart. 79, Amtspr. 1655–6, fo. 42^v, 6 Sept. 1656: 'Kan nicht Verwilligt werden sein Awen heßel zu verlaßen, vndt dargegen in eineß andern Außgewichenen einzueziehen'.

¹³⁰ SOAD HS, Kart. 77, Amtspr. 1583–92, fo. 16^v, 20 Nov. 1585: 'als baldt der herrschafft auf Friedlandt grundt vnd Pod. . . gänzlich meid. vnd Raumen solle'.

¹³¹ SOAD HS, Kart. 57, Bürgschaftsbuch 1593–1610, fo. 26^v, 15 May 1597: 'des landes Vorweiset werden'.

The commune did not provide a sphere of autonomy in which individuals took migration decisions without manorial intervention. Rather, manorial ordinances forbade communities to tolerate outsiders without emancipation certificates and imposed penalties on communal officials for remaining silent about them.¹³² Village officials were explicitly ordered to capture illegal out-migrants and conduct them before the manorial court.¹³³ In practice, communes voluntarily reported any unexplained absence of their own members, as in 1609 when the Raspenau community elders reported to the manorial court that 'last Tuesday Fabian Augsten got lost, and went away, and it has still not been possible to find him again, despite the fact that he has been sought for very diligently'.¹³⁴ This was understandable, since a community from whom a serf successfully absconded risked collective penalties, as in 1676 when Christoph Buchelt illegally moved away from Arnsdorf and the manor ordered that

the headman, sworn-men, and community-people there shall get the said Christoph Buchelt back again and deliver him without fail to this place on pain of a fine of 30 *Schock*; otherwise they shall deliver without fail the said 30 *Schock* in cash into our rent receipts, because it is impossible that everything related to his running away had gone completely unnoticed and that there was therefore no knowledge of it in the community.¹³⁵

Finally, communes deliberately allied with the manor in ejecting undesirables, as in 1610 when, after the Neundorf headman complained about Hans Kommen, the manor ordered that 'no one shall house or give shelter to him, because he is a dissolute stubborn fellow, who practises all sorts of uppishness with cursing, swearing and stealing, and the whole village

¹³² SOAD HS, Kart. 315, Schriftstück 11, Jahrdings Artickeln 1636, fo. 4^v, article 27.

¹³³ SOAD HS, Kart. 79, Amtsprot. 1656–60, p. 70, 4 Dec. 1657.

¹³⁴ SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 3^r, 21 Aug. 1609: 'am nehren dienstag Fabian Augsten Zu Raspenaw sich h. verlohren, Vnd hinweg Kommen, Vnd bis dato ihne nicht wid.umb find. mögen, Vnangesehen ehr mit alle Vleis gesucht word. wehre'.

¹³⁵ SOAD HS, Kart. 81, Dekretb. 1676–7, p. 54, 19 Oct. 1676: 'der Scholtze, Geschworne, Vndt Gemeines-Leüthe daselbst, bey 30 sßo straff, besagten Christoph buchelt, hienwiederumben Verschaffen, Vnnd Vnnfehlbahr Zur stell bringen: Wiedrigen fahls sie erwehnte 30 sßo geldes, Vnnnachleßig in Vnßere Renthen abführen sollen, Weiln Vnmöglichen ist, daß man in der Gemeinde, Von seinem weg Lauffen nicht solte waß Vermercket, Vnnd alßo wissenschafft gehabt haben'.

would prefer to be rid and freed of him'.¹³⁶ There may have been important types of decision taken autonomously within communes without manorial intervention, but migration was not one of them.¹³⁷

b) *Marriage*

Serfdom is traditionally portrayed as involving manorial control over marital behaviour. But proponents of 'communal autonomy' cast doubt on this picture, pointing out that overlords did not interfere in a large number of serf marriages. Instead, they claim, marriage — like migration — was a sphere of autonomous decision-making within serf communes, subject only to the cultural norms of the particular serf society and perhaps to exogenous economic influences, but not to manorial regulation.¹³⁸

The earliest surviving records for the estate of Friedland suggest otherwise. By 1593 at the latest, anyone seeking to marry someone from outside the estate was expected to apply for permission, as shown by the imprisonment of a villager from Cunnersdorf because he 'married outside the estate without the knowledge of the Lord His Grace and the manorial court'.¹³⁹ By 1607, this also applied to marriages *inside* the estate, as when a couple from the estate village of Priedlanz were betrothed 'with the permission of the manorial court' and agreed to pay whatever fee the Countess demanded for issuing 'gracious permission for the marriage'.¹⁴⁰

Marriage permits were generally only mentioned in the manorial court records when the marriage presented some exceptional characteristic which made it difficult to decide whether

¹³⁶ SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 37^v, 22 Mar. 1610: 'Weil ehr ein leichtfertiger muhtwilliger geselle, der sich allerhandt Vppigkeit mit fluchen schweren [inserted: vnd stelen] gebrauchen, Vnnd das ganze dorf seiner lieber h. lohß, Vnnd entledigt sein Wolten, Ist beuehl gescheh.n, das ihn Keinen weder hausen, noch beherbergen solle'.

¹³⁷ For similar findings for the south Bohemian estate of Český Krumlov / Krumau, see the excellent recent study by Himl, *Die 'armen Leüte'*, esp. 67–72, 74–9.

¹³⁸ For the argument that there existed very extensive demographic autonomy in serf societies, see, for instance, Bushnell, 'Did Serf Owners Control Serf Marriage?'; Kochanowicz, 'Polish Peasant Family as an Economic Unit', esp. 163–4; Plakans and Wetherell, 'Kinship Domain in an East European Peasant Community'.

¹³⁹ SOAD HS, Kart. 57, Bürgerschaftsbuch 1593–1610, fo. 2^f, 2 Apr. 1593: 'sich auch ohne des herrn S. G. vnd des Ampts vorwissen, ausser der Herrschafft vorhelicht'.

¹⁴⁰ SOAD HS, Kart. 309, Amtsprot. 1607–8, fo. 9^f, 9 Oct. 1607: 'mitt Zulassung des ambtes . . . in ehe gelübnis sich eingelassen'; 'gnedige Zulassung der heurat'.

to grant — or refuse — the permit.¹⁴¹ As Table 2 shows, in the 111 manorial court cases involving marriage permits, only 33 per cent of applications were granted outright; another 39 per cent were granted conditionally, 5 per cent were deferred and 18 per cent were refused (or the couple absconded and married without permission). Among grounds for refusal, deferral or the imposition of conditions, a major concern was subjection of one marriage partner or the other to a different overlord, since this created incentives for the serf to abscond and uncertainty about the status of offspring. A male serf's marriage to a woman subject to another lord was usually only permitted on condition that the couple settle on the estate.¹⁴² A female serf's marriage to an outside male usually required the payment of a substantial fee,¹⁴³ the promise of future reciprocity by the overlord to whom she was being released,¹⁴⁴ or the surrender of property, debts or inheritance entitlements on the estate.¹⁴⁵ Alternatively, the man had to become a Friedland serf and the couple had to settle on the estate,¹⁴⁶ or, if they were permitted to dwell for a time outside it, all children born during that period were to be Friedland serfs.¹⁴⁷ Orphanhood of one or both partners was also a manorial concern, partly because overlords levied special fees when orphans married,¹⁴⁸ and partly because orphans were required to carry out forced service on the demesne farm.¹⁴⁹

¹⁴¹ On the legal obligation to apply to the manorial court for a permit and pay a fee before marrying, see SOAD HS, Kart. 315, Schriftstück 11, Jahrdings Artickeln 1636, fo. 7^r, article 38: 'noch sonst eintzige Person, es sey Vnter Pauren, gärttern, oder wer es sey, vor Ehelichen soll, Er habe es den bej dem Ampte gesucht, vndt wehre ihme alda vergünstiget, auch an den ordentlichen Prister ein treuungs Zettel ertheilet worden, Nach welchem Consens sol ein jedter der herrschafft ein Ganß, oder 20 Kr. Zugeben schuldig sein'.

¹⁴² See, for example, SOAD HS, Kart. 57, Bürgschaftsbuch 1593–1610, fo. 84^v, 10 June 1606; SOAD HS, Kart. 81, Dekretb. 1665–7, p. 14, 18 Sept. 1665.

¹⁴³ SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 156^r, 6 Aug. 1652.

¹⁴⁴ See, for example, SOAD HS, Kart. 79, Amtsprot. 1649–55, p. 10, 13 Nov. 1649.

¹⁴⁵ SOAD HS, Kart. 78, Amtsprot. 1630–1, p. 25, 7 Aug. 1630.

¹⁴⁶ See, for example, SOAD HS, Kart. 61, Amtsprot. 1681–5, fo. 29^v, 24 Dec. 1684; SOAD HS, Kart. 81, Dekretb. 1665–7, p. 74, 27 Dec. 1666.

¹⁴⁷ SOAD HS, Kart. 81, Dekretb. 1669–72, p. 13, 21 Jan. 1670.

¹⁴⁸ See, for example, SOAD HS, Kart. 78, Amtsprot. 1615–16, fo. 23^f, 19 Jan. 1616; SOAD HS, Kart. 78, Amtsprot. 1615–16, fo. 24^f, 22 Jan. 1616.

¹⁴⁹ For concerns about orphans' marriage permits in the context of their failure to register for forced service, see, for example, SOAD HS, Kart. 309, Amtsprot. 1607–8, p. 1346, 5 Feb. 1608; SOAD HS, Kart. 78, Amtsprot. 1615–16, fo. 24^v, 28 Jan. 1616.

Permission for a widow's remarriage was conditional on her finding a 'capable holder' for her farm, as in 1629 when a Weigsdorf widow was permitted to remarry only when the village headman reassured the manor that 'she has filled her smallholding with a holder and paid her debts, so that there is no hindrance at all'.¹⁵⁰ Economic viability was another manorial concern, as in 1618 when the fief-knight Nicol von Schwantz refused to consent in the marriage of one of his orphaned female serfs 'because he sees clearly that his orphan would be poorly provided for'.¹⁵¹

Religion emerged as a manorial concern after 1621 as Bohemian overlords were made responsible for the Catholicization of their serfs. Some marriages were permitted only if one or both partners converted to Catholicism, as in 1661–2 when a Priedlanz lodger was twice refused a marriage permit unless he 'adjusts to the one and only blessed-making Catholic religion and promises to remain with it'.¹⁵² Other mixed marriages were permitted but made conditional on the Lutheran partner not trying to convert the Catholic one, the Catholic spouse being buried in a Catholic church, and the children being reared Catholic.¹⁵³ Sometimes the manor ingeniously combined economic with confessional interests, as in 1684 when the lord of Friedland granted permission for a mixed marriage but 'explicitly imposed the following reservation, namely that if today or tomorrow these two married people should beget any children with one another, His High Grace the Count shall have power to make use of the said children to his service and in that way direct them with respect to religion'.¹⁵⁴ Marital consanguinity also

¹⁵⁰ SOAD HS, Kart. 78, Amtspr. 1629, fo. 9^v, 12 June 1629: 'dz sie Ihren garten mit einem Wirte gesetzt Ihre schuldig. geZahlet, dz gar Kin Hinder nis'.

¹⁵¹ SOAD HS, Kart. 78, Amtspr. 1616–19, fo. 80^v, 5 Feb. 1618: 'weil ehr augenscheinlichen siehet, das seine weyse Vbell vorsorget'.

¹⁵² SOAD HS, Kart. 81, Dekretb. 1652–62, fo. 82^r, 12 Sept. 1661; SOAD HS, Kart. 81, Dekretb. 1656–63, p. 146, 16 Jan. 1662: 'Zuer allein Seeligmachenden Catholischen religion sich bequemben Vndt darbei zueuerharren Versprechen wirdt'.

¹⁵³ See, for example, SOAD HS, Kart. 61, Amtspr. 1674–81, fo. 2^v, 26 Oct. 1674; SOAD HS, Kart. 61, Amtspr. 1674–81, fo. 45^v, 15 June 1681; SOAD HS, Kart. 81, Dekretb. 1676, p. 62, 26 Feb. 1676.

¹⁵⁴ SOAD HS, Kart. 61, Amtspr. 1681–5, fo. 26^r, 3 Oct. 1684: 'ihme dießes Außdrucklich Vorbehalten, daß Wann heütte oder morgen sie beyde Eheleüth mit einander Einige Kiender Zeügen möchten, daß Ihre hoch Gräffl.: Gnad.: Macht haben, dießelben Zu Ihren diensten Zu gebrauchen Vnndt sich so dann wegen der Reliegion Zu Richten'.

emerged as a manorial concern because it was defined more narrowly under Catholicism than under Lutheranism.¹⁵⁵

Failure to obtain a manorial marriage permit could prove costly or even catastrophic. Denial of a manorial marriage permit led to betrothals being dissolved,¹⁵⁶ illegitimate pregnancies not being legitimized¹⁵⁷ and serfs eloping, as in 1678 when a peasant's daughter from Bernsdorf was refused permission to marry a young man from Naumburg, who thereupon 'abducted her by night, and got himself married to her in Silesia'.¹⁵⁸ Those who went ahead and married without manorial consent were punished with fines,¹⁵⁹ jailing,¹⁶⁰ and even forcible separation, as in 1657 when a man from Schönwald who had illegally married on another estate ten years earlier was ordered to return to the estate of Friedland, leaving his wife and children behind.¹⁶¹ In one tragic case, a couple who had legally married and begotten children as Lutherans but whose consanguinity violated the Catholic rules were forcibly separated in 1686 by the Friedland manorial court, which imprisoned the husband for six months, ejected the couple from their farm, and ultimately sent the man away to a different estate 'to earn a living for himself through labouring'.¹⁶² Although such cases may have been rare, it is hard to believe that they did not deter most serfs from even attempting to undertake marriages likely to attract manorial opposition.

Overlords could also order serfs to marry, as in 1590 when the manorial court commanded the Bernsdorf headman 'to sell

¹⁵⁵ For marriage permits involving issues of marital consanguinity, see, for example, SOAD HS, Kart. 78, Amtsprot. 1627, fo. 3^v, 5 Feb. 1627; SOAD HS, Kart. 78, Amtsprot. 1645, fo. 2^r, 6 May 1645; SOAD HS, Kart. 78, Amtsprot. 1645, fo. 2^r, 6 May 1645; SOAD HS, Kart. 79, Amtsprot. 1655–6, fo. 10^v, 11 Jan. 1656; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 104, 9 Apr. 1664.

¹⁵⁶ SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 24^r, 13 Jan. 1610.

¹⁵⁷ SOAD HS, Kart. 61, Amtsprot. 1674–81, fo. 49^r, 25 June 1681.

¹⁵⁸ SOAD HS, Kart. 61, Amtsprot. 1674–81, fo. 29^v, 18 Mar. 1678: 'Entführt, Vnnd sich in Schlesiën mit Ihr Copuliren Laßen'.

¹⁵⁹ See, for example, SOAD HS, Kart. 57, Bürgerschaftsbuch 1593–1610, fo. 2^r, 2 Apr. 1593; SOAD HS, Kart. 57, Bürgerschaftsbuch 1593–1610, fo. 37^v, 23 Mar. 1599; SOAD HS, Kart. 78, Amtsprot. 1629, fo. 2^v, 20 Mar. 1629.

¹⁶⁰ See, for example, SOAD HS, Kart. 57, Bürgerschaftsbuch 1593–1610, fo. 2^r, 2 Apr. 1593; SOAD HS, Kart. 57, Bürgerschaftsbuch 1593–1610, fo. 37^v, 23 Mar. 1599; SOAD HS, Kart. 78, Amtsprot. 1629, fo. 2^v, 20 Mar. 1629.

¹⁶¹ SOAD HS, Kart. 79, Amtsprot. 1656–60, p. 38, 19 May 1657.

¹⁶² SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 28^r, 29 Mar. 1686: 'sich daselbst mit arbeith Zu ernehren'.

his farm within four weeks or court a woman',¹⁶³ or in 1677 when Gottfried Neuman's son, who 'has no lust yet to marry', was nonetheless ordered to 'start cultivating a farm next year without further resistance'.¹⁶⁴ The implication of this is that he was required to marry, since running a farm without a wife was regarded as infeasible.¹⁶⁵ More often, women were the targets of such forced marriage orders, as in 1605 when a Weigsdorf widow was 'granted as a favour in the manorial court, that she may retain her farm . . . for her eldest daughter, until the latter is betrothed, either until Whitsun or at longest until Martinmas this year'.¹⁶⁶ As I have demonstrated elsewhere, this was because overlords regarded female farmers as poor fiscal risks and put considerable pressure on them to remarry or sell up, with the result that Bohemian female headship was extremely low by European standards and declined significantly as the second serfdom progressed.¹⁶⁷

The village commune, far from constituting a sphere of autonomy within which serfs took marriage decisions without manorial intervention, instead actively helped the manor regulate marriage. Village pastors represented one line of control, as in 1619 when the Lusdorf pastor reported 'that Christoff Richter there had recently applied to him to release him in the manorial court, for he was of a mind to marry Dorothea, Old Christoff Schefer's daughter'.¹⁶⁸ Village headmen represented an even more important mechanism, as in 1616 when the Lusdorf

¹⁶³ SOAD HS, Kart. 77, Amtspr. 1583–92, fo. 68^v, 28 May 1590: 'sein Guett in vier wochen verkauffen, oder ain frau freyen'.

¹⁶⁴ SOAD HS, Kart. 82, Dekretb. 1677–8, p. 17, 13 July 1677: 'noch Kein Lust Zu heürathen'; 'daß Gutt ohne weitere wiederung an fangen, aufs Künftige Jahr zu bawen'.

¹⁶⁵ For a discussion of the pressures exerted in seventeenth-century Bohemia by manorial and communal institutions to ensure that farmers married or remarried, and for a detailed analysis of the low percentages of unmarried and widowed household heads to which this gave rise, see Sheilagh Ogilvie and Jeremy Edwards, 'Women and the "Second Serfdom": Evidence from Early Modern Bohemia', *Jl Econ. Hist.*, lx (2000).

¹⁶⁶ SOAD HS, Kart. 77, Amtspr. 1604–6, fo. 29^v, 24 Mar. 1605: 'ist im Ampt Vorganstet worden, ihr Gutt . . . ihren Eltesten tochter zu gutt zu behalten, biß dieselbe Vorfreyet werden, entweder biß auff Pffingsten, oder auff lengst biß zu Martinj diß Jahres'.

¹⁶⁷ Ogilvie and Edwards, 'Women and the "Second Serfdom" '.

¹⁶⁸ SOAD HS, Kart. 78, Amtspr. 1616–19, fo. 178^v, 11 May 1619: 'das ihne Christoff Richter daselbsten verwichener Zeit angesprochen, ihnen im Amt lohßzumachen, dan ehr die dorotheam des alten Christoff Schefers Tochter Zuheyraten gesonnen'.

headman reported one of his villagers to the manor for having 'married without the prior knowledge and permission of the manorial court',¹⁶⁹ in 1627 when the Olbersdorf headman asked the manor to advise whether a particular marriage 'could be allowed',¹⁷⁰ or in 1629 when a man from Weigsdorf told his headman that he wanted to marry and 'asked if he might walk in here to the manorial court and report for this [i.e. for permission to marry]'.¹⁷¹ Applying to the manorial court for marriage permits for their villagers and preventing clandestine marriages was explicitly listed as one of the responsibilities of village headmen.¹⁷² Communal officials also played a major role in reporting widows to the manor to compel them to remarry, since they too regarded female farmers as fiscal risks.¹⁷³ In the light of such cases, it is difficult to maintain that there was a sphere of communal autonomy in which serfs could take marriage decisions without risk of manorial intervention.¹⁷⁴

c) Land sales and inheritance

Land sales and inheritance are another set of decisions portrayed by proponents of the 'manorial dominance' view as having been subject to the whim of the manor.¹⁷⁵ Those who subscribe to the 'communal autonomy' view, by contrast, claim that although overlords had the legal right to intervene they seldom or never did so in practice, so that land transfers were a realm of autonomy subject only to informal pressures within the community.¹⁷⁶ In the Bohemian context, the main empirical support for the 'communal autonomy' view is the existence (albeit only in some regions) of communal land transfer registers

¹⁶⁹ SOAD HS, Kart. 78, Amtsprot. 1615–16, fo. 24^v, 28 Jan. 1616: 'hinter des Ambtes Vorwißen Vnd Zulaßen geheiratet'.

¹⁷⁰ SOAD HS, Kart. 78, Amtsprot. 1627, fo. 3^v, 5 Feb. 1627: 'ob man . . . solches nach lassen Soll'.

¹⁷¹ SOAD HS, Kart. 78, Amtsprot. 1629, fo. 2^v, 20 Mar. 1629: 'v. gefragt, ob Er herein ins Ampt gehen dorfte vnd sich hierumben angeben'.

¹⁷² See, for example, SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 77^v, 12 Apr. 1650; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 70, 19 Sept. 1662.

¹⁷³ See, for example, SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 10^v, 8 May 1685.

¹⁷⁴ For analogous findings for a south Bohemian estate, see Himl, *Die 'armben Leüte'*, esp. 72–4.

¹⁷⁵ See, for example, Hoffmann, *Land, Liberties, and Lordship*, 358–9, 362.

¹⁷⁶ See, for instance, Melton, 'Gutsherrschaft in East Elbian Germany and Livonia', 340–1; Cerman, 'Serfdom and Family', 12–16; Štefanová, 'Herrschaft und Untertanen', 205–8.

(*Schöppenbücher*). The facts that land transfers were usually registered in communal *Schöppenbücher* before being written into manorial *Grundbücher* and that few *Schöppenbuch* entries recorded any manorial intervention apart from the introductory formula ‘with the consent and agreement of the manor [*Obrigkeit*]’, are held to demonstrate that land transfers occurred in a realm of communal autonomy.¹⁷⁷ But this argument is weak. One would not expect to observe frequent evidence of manorial intervention in those land transfers that were formally recorded, since recording a transfer in the communal *Schöppenbuch* was explicitly prohibited until after the manorial court had given its consent.¹⁷⁸ Thus problematic transfers were stopped at an earlier stage or even deterred altogether (as with migration and marriage) by the awareness, on the part of both individuals and communal officers, that the overlord opposed certain types of transfer.

Deeper investigation of a wider range of documentary sources shows three things. First, the Friedland manor explicitly claimed the legal right to intervene in serf landholding, stating in its ordinances that ‘no serf shall own or have in usufruct any piece of land unless he has previously obtained favour and consent from the manorial court’.¹⁷⁹ Second, the Friedland manor was not unwilling to exercise its right to eject any subject from his or her holding whenever the holder threatened manorial interests, even (although less frequently) in periods of population losses rendering viable holders scarce. As I have demonstrated elsewhere, the manor systematically used this right to eject female holders, and this helps to account for the extraordinarily low female household headship rates observed in early modern rural Bohemia.¹⁸⁰ Third, Friedland serfs did have to seek manorial permission before buying or selling land, and such

¹⁷⁷ Štefanová, ‘Zur Stellung der Untertanen in einer gutsherrschaftlichen Gesellschaft’, 221; Štefanová, ‘Herrschaft und Untertanen’, 201, 203–5, 209.

¹⁷⁸ SOAD HS, Kart. 315, Schriftstück 11, Jahrdings Artickeln 1636, fo. 8^r, article 42: ‘nachmahlß im Amte Vorbracht, vndt Auf Consens desselben ins Schöppenbuch eingeschrieben werden . . . auch niemandt seine Äcker oder Wiesen vorsezen, verpfenden, oder Vmb die helffte ohne Consens der obrigkeit oder des Ambtes [inserted: be] seen laßen soll’.

¹⁷⁹ For an explicit statement of the manor’s legal entitlement to intervene, see SOAD HS, Kart. 315, Schriftstück 11, Jahrdings Artickeln 1636, fo. 8^r, article 42: ‘Es soll Kein Vnterthanner eintzigen Erbgrundt besitzen, noch im brauch haben, Es sey den daß er Zuor außm Amte die Vorgunstigungk Vndt Consens erlanget’.

¹⁸⁰ Ogilvie and Edwards, ‘Women and the “Second Serfdom”’, esp. 982–9.

permission was denied in a non-trivial number of cases. Thus Table 2 shows that in the thirty years between 1652 and 1682, a total of 96 serfs petitioned the lords of Friedland for permission to buy or sell land: 26 per cent were granted permission outright, 38 per cent were granted it conditionally, 9 per cent had the decision deferred, and 26 per cent were refused.

One reason for manorial intervention in land transactions was any involvement with another overlord, which threatened manorial interests by diverting Friedland serfs' economic energies and fiscal capacities or even alienating estate land. Thus in 1591 two Dittersbach serfs were jailed because 'without prior knowledge of the manorial court or of the Lord His Grace they entered into a purchase upon their own whim' in a village outside the estate.¹⁸¹ In 1627 the commune of Hermsdorf was refused permission to sell a cottager holding it owned on the commonlands of neighbouring Marckersdorf, because that village was subject to the Margrave of Lusatia.¹⁸²

Ensuring payment of manorial burdens was another concern. Thus in 1617 a Raspenau peasant complained that 'he had sold his farm a short time ago, had also had good purchasers for it, but he was given in answer by Her Grace that he should not sell the farm free [of manorial burdens], but instead should fill it with a holder who would be able to perform the [labour] services'.¹⁸³ Likewise, in 1657 a Dittersbach cottager was only permitted to buy a 'kitchen plot' on a peasant holding on condition that he bind himself to pay manorial dues on it perpetually.¹⁸⁴

Ensuring continuity of cultivation also attracted manorial intervention. Thus in 1616 after the sale of a farm in Raspenau, 'because the purchase was arranged in such a way that the instalments would be paid quite slowly and the creditors would have to wait quite a long time, Her Grace wished to intervene in the sale herself, and get another purchaser, who would pay the cash sooner, and with whom Her Grace would be better

¹⁸¹ SOAD HS, Kart. 77, Amtsprot. 1583-92, fo. 74^v, 24 Feb. 1591: 'sich Muttwilliger weise Alß sie ohn verwiessen des Ampts so wol des Herrn S. G. . . . geKaufft'.

¹⁸² SOAD HS, Kart. 78, Amtsprot. 1627, fo. 15^{r-v}, 15 Mar. 1627.

¹⁸³ SOAD HS, Kart. 78, Amtsprot. 1616-19, fo. 36^v, 1 May 1617: 'ehr sein gut Vor wenig Zeit hette Vorkeuffen, hette auch gutte Kaufleut darumb gehabt Ihme wehre aber Zur andtwordt worden, Von Ihr. Gn: das ehr das gutt frej nicht Vor Kauffen solte, Sondern mit einem württe besezen, der die dienste leisten möchte'.

¹⁸⁴ SOAD HS, Kart. 81, Dekretb. 1652-7, fo. 40^v, 24 May 1657: 'Küchen Plänel'.

satisfied'.¹⁸⁵ In 1669, Hans Weiner in Lusdorf was refused permission to sell a peasant holding he had been trying to get rid of for some time, 'unless the farm was filled with a capable holder'.¹⁸⁶ In 1671, Caspar Weidert was refused permission to sell his farm in Arnsdorf and buy another in Engelsdorf, on the grounds that 'it is known that the petitioner is a very bad householder'.¹⁸⁷

Maintaining impartibility of serf holdings (so as to ensure their fiscal viability) was another reason for intervention, as in 1675 when Michel Neuman in Göhe was denied permission 'to sell a small piece of land in front of his farm perhaps 1 *Strich* in size, along with the taxes attached to it', despite promising to make the sale conditional on the land later reverting to the farm.¹⁸⁸ Even mortgages were permitted only if impartibility was absolutely guaranteed, as in 1676 when two Weigsdorf men were only permitted to mortgage pastures from their holdings on condition that 'when the borrowed money is repaid, the said pasture shall also immediately revert to the farm'.¹⁸⁹

But the manor also intervened without clear cause. In 1607, why did one party to the sale of a cottager holding in Liebwerda find it necessary to present the village court with a forged ratification command from the manorial court, which duly annulled the purchase because 'seller and buyer dealt counter to the lord's ordinance'?¹⁹⁰ In 1650, when Hans Keller pleaded to transfer his holding in Haindorf to his widowed mother and siblings on

¹⁸⁵ SOAD HS, Kart. 77, Amtsprot. 1611–16, fo. 154^r, 15 Apr. 1616: 'weil aber die angelder zimlich langsam gesezet, Vnd die gleubiger ziemlang zurückt gesezet wurden, wolttten Ihr. Gn. in den Kauff selbst Tretten, Vnd ein andere Kauffman schaffen, so die bahren gelder eher ablegen sollte, Vnd mit welchen Ihr. Gn. beßer Zufrieden'.

¹⁸⁶ SOAD HS, Kart. 81, Dekretb. 1669–72, p. 4, 2 Dec. 1669: 'Kan nicht anders gewillfahret werden, Eß seye dann, daß dz Gutt mit Einem tauglichen würthe besetzt werde'.

¹⁸⁷ SOAD HS, Kart. 81, Dekretb. 1669–72, p. 53, 17 Feb. 1671: 'In deme ohne daß Bekandt, daß der Supplicant, einen gar schlechten würth, abgeben'.

¹⁸⁸ SOAD HS, Kart. 81, Dekretb. 1674–6, p. 32, 13 Mar. 1675: 'Vor seinem Gutte Ein stückel grund etwan Zu Einem str. getraidt . . . mit den darauff Komenden Stewern Verkauffen'.

¹⁸⁹ SOAD HS, Kart. 61, Amtsprot. 1674–81, fo. 13^v, 28 May 1676: 'daß wann daß Erborgte geldt wieder bezahlet ist, er wehntes stückel wiesen auch also gleich wieder an daß Gutt fallen sol'. See also SOAD HS, Kart. 61, Amtsprot. 1674–81, fo. 10^f, 17 Feb. 1676.

¹⁹⁰ SOAD HS, Kart. 309, Amtsprot. 1607–8, p. 1337, 15 Dec. 1607: 'weil . . . verkauffer vnd keuffer wieder des herrn ordnung gehandelt'.

the grounds that 'he could see that the purchase was too high for him, and the way things were he could not in any way pay the instalments', why did the manor refuse?¹⁹¹ In 1656, when a widow in Weißbach petitioned the manorial court to let her 'sell and transfer her livelihood to her youngest son, since she had more faith and love towards him than to the eldest son who has at times mistreated her and abused her very wickedly', why did the manor hesitate for a long time and finally refer the decision to Prague?¹⁹² In 1676, why did two brothers in Mildenaus have to be ordered 'that within 14 days one of the two of them shall accept their deceased father's holding or else come by a holder who is capable and is acceptable to the manorial court'?¹⁹³

The commune, far from representing a sphere of autonomy within which serfs transferred landholdings freely without manorial intervention, instead collaborated in the ratification process, which rendered registration of a land transfer in the manorial *Grundbuch* almost irrelevant.¹⁹⁴ When the Friedland manor purchased the new village of Bertelsdorf in 1662, it issued the headman with a list of his responsibilities, one of them being 'when purchases are proceeding, to report them to the manorial court, and then await the ratification'.¹⁹⁵ For existing villages, this process is observable much earlier, as in 1604 when a Rückersdorf peasant sold his farm 'in the village court in the presence of the village headman', and the purchaser and his pledges were ordered 'to present themselves [in the manorial

¹⁹¹ SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 96^r, 4 June 1650: 'Weilln er aber sehen thette, dz ihm der Kauff zu hoch, er auch folcher gstat die Kauffgeld. Kheines weg es geben Khendte'.

¹⁹² SOAD HS, Kart. 79, Amtsprot. 1655–6, fo. 19^r, 16 Feb. 1656: 'ihre nahrung ihrem Jüngsten Sohn zu verkaufen vnd zu vberlaßen, dan sie sich Zu selbigem mehrerer trew vnd liebe als Zu dem Eltisten sohn, welcher Sie zu Zeiten sehr vbel gehalten vnd tractiret, versehen thette'.

¹⁹³ SOAD HS, Kart. 61, Amtsprot. 1674–81, fo. 9^r, 4 Feb. 1676: 'Innerhalb 14. tagen, einer von ihnen beeden ihres Verstorbenen Vatters Nahrung anzunehmben, oder aber Einen dem Ampte annehmblichen Vnnd tauglichen würrh Zu verschaffen'.

¹⁹⁴ For this reason, gaps in the manorial *Grundbücher* cannot be interpreted as indications of communal autonomy in land transfers: cf. Štefanová, 'Herrschaft und Untertanen', 209. On the legal obligations of the commune to assist in the ratification process, see SOAD HS, Kart. 315, Schriftstück 11, Jahrdings Artickeln 1636, fo. 8^r, article 42.

¹⁹⁵ SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 70, 19 Sept. 1662: 'Wann Käuffe vorgiengen, solche im Ampt anZeigen, vndt die ratification daher erwarten'.

court] tomorrow',¹⁹⁶ in 1605 when 'the overlord had concerns about ratification of a purchase [in Rückersdorf], but ultimately ratified it',¹⁹⁷ or in 1607 when the Mildenau village clerk wrote down a particular purchase 'upon the command of the village elders in the village court, also it was read aloud to the headman, and in addition this had already been previously decided by the manorial court'.¹⁹⁸ As such cases demonstrate, by the first decade of the seventeenth century at the latest, communes were providing not autonomy for serfs but rather co-operation for overlords in regulating land transfers.¹⁹⁹

d) *Conflict resolution*

Conflict resolution and contract enforcement are central to economic and social life, so the institutions that carry them out are crucial. Those who accept the 'manorial dominance' view believe that the second serfdom saw the manor progressively taking over this role from village communes.²⁰⁰ Those who favour the 'communal autonomy' view, by contrast, claim that the manor was so distant and ineffective that most important conflicts were solved within the commune.²⁰¹ Neither view is consistent with the findings for Friedland. We have seen how the community court functioned as the first legal instance for resolution of most conflicts and enforcement of most contracts. But in many cases villagers appealed beyond it to the manor against neighbours, community officers or even the commune as a whole. That is, not only did the manor *intervene* in local transactions, but villagers actively *invited* it to do so.

Village headmen routinely appealed to the manor to back up their authority inside the commune, as in 1616 when the

¹⁹⁶ SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 2^v, 27 Feb. 1604: 'in Gerichten in bejsein des Scholze'; 'sollen sich morgen . . . gestellen'.

¹⁹⁷ SOAD HS, Kart. 57, Bürgerschaftsbuch 1593–1610, fo. 64^v, 24 Mar. 1605: 'mit Ratificirung desselben, die herrschafft bedencken getragen, Entlichen Aber solchen Ratificiret'.

¹⁹⁸ SOAD HS, Kart. 57, Bürgerschaftsbuch 1593–1610, fo. 95^v, 29 May 1607: 'solches Auf der Eltisten befehl In gericht gethan, Auch dem Scholtzen abgelesen Vnd Vber diß alles Schon zueuor furm Ampt VorAbschiedtet werden'.

¹⁹⁹ For similar findings for a south Bohemian estate, see Himl, *Die 'armen Leüte'*, esp. 52–63.

²⁰⁰ See, for example, Hoffmann, *Land, Liberties, and Lordship*, 359.

²⁰¹ See, for example, Enders, 'Die Landgemeinde in Brandenburg', 197; Štefanová, 'Herrschaft und Untertanen', 207–9; Hoffmann, *Land, Liberties, and Lordship*, 358–62 (on the pre-sixteenth-century situation).

Mildenau headman reported to the manorial court that 'when he is supposed to carry out the feudal lord's command, and summon the people in, they will not come, they send small children, so that he cannot carry out the command properly; he asks for rightful investigation'.²⁰² Other communal office-holders also routinely informed the manor about communal conflicts and appealed for intervention, as in 1627 when the Lieberweda elders complained to the manorial court that 'there is much wicked disobedience in the community; even when [the elders] walk around the village several times, [the villagers] do not pay the manorial dues, and in addition torment them with scornful words'.²⁰³

Ordinary villagers also reported their neighbours and asked the manor to intervene. In 1627, for instance, Baltzer Reinhaldt from Weißbach reported his neighbour Tomas Krausse to the manorial court for 'buying yarn without the knowledge of the manor and trading in it even though he had not let himself be registered as buying yarn, [thereby] cheating the linen-weavers and the manor', and Krausse in turn retorted that Reinhaldt had been 'cheating the manor and the whole community' by failing to pay proper seignorial dues on his holding.²⁰⁴ The sheer ubiquity of manorial rents and dues turned serfs themselves into their neighbours' closest monitors, who could be trusted to mobilize manorial regulations to protect their own position, as in 1645 when several Rückersdorf serfs who had paid their baking-dues reported that 'the other bakers, who do not have themselves registered in the manorial court, conduct their baking freely, and do not render any dues'.²⁰⁵

²⁰² SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 3^r, 5 Aug. 1616: 'wan ehr des hern S. gn. geboht verrichten solle, Vnnd den leuten eingebieten Theten, wolten sie sich nicht gestellen, Schickten Kleine Kinder, das ehr also die geboht gebühren-dermaßen nicht verrichten Könnte, bittet Vmb recht meßiges einsehen'.

²⁰³ SOAD HS, Kart. 78, Amtsprot. 1627, fo. 3^r, 5 Feb. 1627: 'weill in die gemeine gar schlechten gehorsam leist wann sie gleich viell mahl Vmbs dorff gehen doch der herschafften Interesse nicht ablegen sie noch wohl darzu mit hönisch. wortten tractiren'.

²⁰⁴ SOAD HS, Kart. 78, Amtsprot. 1627, fo. 27^{r-v}, 31 May 1627: 'Er Kauffe hind. des Ampts wiessen garn Vnd handelte mitte da Er doch sich nicht Zum garn Kauffen hette schreiben lassen betrüge die leine wehber vnd die herschafft'; 'Er betrüge die herschafft vnd gantz gemein'.

²⁰⁵ SOAD HS, Kart. 78, Amtsprot. 1645, fo. 21^v, 29 May 1645: 'wid. die andern Beckhen so sich im ambt nit schreiben lassen das sie ihr beckhen frey treib. vnd der obrigkeit Kein zins abführen'.

The second serfdom itself thus created incentives for members of the commune to invite manorial intervention. Village headmen and elders enjoyed special manorial rewards for collecting feudal and state exactions from their neighbours: this gave them an incentive to report recalcitrant villagers to the manor. Ordinary villagers were themselves so burdened by such exactions — on land, rural crafts, proto-industry and nearly every other economic activity — that, as I have shown elsewhere, they had an incentive to report their neighbours to the manor for seeking an unfair advantage by evading such burdens.²⁰⁶ At the heart of the second serfdom lay compelling incentives for individuals to violate communal autonomy.

IV

COMMUNAL–MANORIAL ‘DUALISM’

Both the ‘manorial dominance’ and the ‘communal autonomy’ view are thus inconsistent with the evidence for Bohemia, and the same weaknesses may also invalidate them for other serf societies. What of the third theoretical approach, that of communal–manorial ‘dualism’? The simplest form of this theory, that the second serfdom required both a strong manor and a strong commune, is certainly consistent with the evidence for Bohemia. But some widely held versions of the dualism theory go further, advancing two claims that demand deeper investigation: first, that over time communal institutions, though still *strong*, increasingly became tools of the manor with fewer *autonomous* functions; and second, that declining communal autonomy reduced serf well-being.²⁰⁷ What light does Bohemian evidence shed on these arguments?

Counter to the assumption of all three theories, the second serfdom saw a *growth* of communal autonomy in some arenas where the manor sought to free itself of the costly obligation to provide contract enforcement and conflict resolution. Even in the

²⁰⁶ For more detailed analysis of this mechanism, see Sheilagh Ogilvie, ‘The Economic World of the Bohemian Serf: Economic Concepts, Preferences and Constraints on the Estate of Friedland, 1583–1692’, *Econ. Hist. Rev.*, liv (2001), esp. 450–1.

²⁰⁷ Rudert, ‘Gutsherrschaft und ländliche Gemeinde’, 211; Winkelbauer, ‘“Und sollen sich die Parteien gütlich miteinander vertragen”’, 135; Feigl, *Die niederösterreichische Grundherrschaft*; Štefanová, ‘Herrschaft und Untertanen’, 210.

early seventeenth century, the Friedland manorial court sometimes objected to being 'pestered' with minor conflicts that it thought communal courts should have solved, as in 1615 when it jailed both parties to a neighbourly dispute over tree-cutting on the grounds that 'this was already brought to agreement in the village court in Liebwerda, and it is a great shame that the manorial court is pestered with such trivial matters'.²⁰⁸ But in this period the manorial court still severely admonished a litigant who failed to report a conflict to the lord von Redern in 1617, with the excuse that 'he had not wanted to pester him'.²⁰⁹

Under the Gallas overlords, by contrast, the manorial court began to refer many more complaints back to the communes or refuse to hear them altogether.²¹⁰ Cases referred back to the communes now included quite important complaints. In 1657, for instance, a serious accusation of defamation and corruption was brought by a villager against the Friedlanz headman, but was dismissed on the grounds that 'there was nothing substantial in it, and hence it was not worthwhile pestering the count's manorial court with it'.²¹¹ In 1686 several cases of multiple assault from Schönwald and Rückersdorf were rejected by the manorial court and ordered to be 'taken up out there before the village courts'.²¹² That same year, a case of defamation and assault between the village headman and a baker in Friedlanz was dismissed to 'the Weigsdorf village court, where they had been pledged'.²¹³

The manor gave explicit utterance to the principle underlying this process in 1676 when it ordered that

with wrong dealings and conflicts which are of no importance, the village headman and sworn-men shall bring about a settlement out there

²⁰⁸ SOAD HS, Kart. 77, Amtsprot. 1611–16, fo. 118^r, 14 July 1615: 'Weil dießes in den gerichtten Zu liewerda Vorgliechen, Vnd es eine große schande das man das Amt mit solchen Nichtigen [inserted: sach.] molestiren thuet'.

²⁰⁹ SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 47^r, 19 Aug. 1617: 'hette ehr Ihr. Gn: nicht molestiren wollen'.

²¹⁰ This was despite the fact that the Gallas Jahrdings articles of 1636 explicitly required village office-holders to report village conflicts to the manorial court: see SOAD HS, Kart. 315, Schriftstück 11, Jahrdings Artickeln 1636, fo. 6^v, article 35.

²¹¹ SOAD HS, Kart. 79, Amtsprot. 1656–60, p. 56, 21 Aug. 1657: 'daß darinnen nichts erhebliches zu finden, Vndt also nicht werth geweßen, daß Gräffl.: Ambe darnit zu molestiren'.

²¹² SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 37^r, 25 June 1686: 'daraußen bej Gerichtten'.

²¹³ SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 45^r, 17 Dec. 1686: 'Weiln aber sie beede sich in den Gerichtten Waygsdorff verbürget, seindt selbe zum vergleich in ermelte gerichtten verwiesen worden'.

[in the village], and the parties shall be satisfied with what is right and just, so that such a large number of folk do not sometimes have to wait upon a few unimportant persons, and so that in the mean time other things can be carried out in the manorial court.²¹⁴

In matters ‘of no importance’ (to the manor, although evidently not to the individuals concerned) the manor begrudged the costs of arbitration and sought to shift them onto village courts. The second serfdom, in so far as it involved an increasingly narrow concern solely with ‘other things’ — presumably the manor’s own economic interests — at the expense of general justice, increased rather than decreased the range of ‘wrong dealings and conflicts’ which had to be solved ‘out there’ within the sphere of communal autonomy.

Quantitative analysis of manorial court business reflects this process, as Table 1 shows. The volume of cases heard by the manorial court rose up to and during the Thirty Years War, but fell precipitously thereafter. The decline in manorial court cases continued even as population recovered in the 1660s and 1670s — precisely the period during which the Friedland manor began explicitly to discourage serfs from pestering it with matters ‘of no importance’. The proportion of cases involving not just individual serfs but some community representation was also significantly higher after about 1618, suggesting that the communal administration increasingly functioned as the gatekeeper to manorial justice for individual villagers.

What of the implicit assumption — again shared by all three theories of communal–manorial relations and recently applied by ‘social capital’ theorists to modern developing economies — that greater communal autonomy meant that rural people were better off?²¹⁵ Deeper empirical exploration casts doubt on any

²¹⁴ SOAD HS, Kart. 61, Amtsprot. 1674–81, fo. 11^v, 19 Mar. 1676: ‘Vnnrichtige händeln Vnd strittigkeiten so Von Keiner wichtigkeit: sollen Scholze Vnd Geschworne daraußen Vergleichen, Vnnd sich die Partten waß Recht vndt billich, daran begnügen laßen, damit zu Zeitten nicht so Viel Volck auf etliche [inserted: Vnwichtige] Perßonen wartten, Vnnd man Vnter deßen [inserted: im Ambte] andere sachen Verrichten Kan’. See Himl, *Die ‘armen Leüte’*, 157, 183, for a strikingly similar case of 1765 from the south Bohemian estate of Český Krumlov / Krumau, in which a manorial bureaucrat told a peasant who sought to sue his *Richter* (the local equivalent of the north Bohemian *Schultheiß* or headman) in the manorial court that he should instead ‘bring his complaint in front of his local court [*Gericht*] at home, and seek agreement locally’ because ‘with the numerous other important matters that are in any case arising, I am already tired of being pestered, and will have absolutely no further patience with this’.

²¹⁵ See, for example, Deininger, *Land Policies for Growth and Poverty Reduction*, 19.

easy equation of communal autonomy with individual well-being.²¹⁶ Rural communes, the evidence suggests, were not egalitarian and harmonious spheres within which each serf had an equal chance of securing a fair hearing from well-meaning neighbours. Rather, they were highly stratified and riven by conflict — a finding for this east-Elbian society which is consistent with recent research on communities in Europe west of the Elbe.²¹⁷ Every member of a Bohemian village was legally defined as a *Bauer* (full peasant holder), *Gärtner* (smallholder), *Häusler* (cottager), or *Hausgenosse* (landless lodger), which reflected the size of his landholding, the manorial burdens he owed and his standing vis-à-vis both commune and manor. Headmen were recruited exclusively, and other communal officers disproportionately, from the top stratum in the village — usually the well-off peasants. This oligarchy ran the commune in its own interests, and its members and their relatives undoubtedly benefited from communal autonomy.²¹⁸ But the manor's declining willingness to intervene inside communities harmed poorer villagers — members of the lower social strata, women and outsiders — not so much because the manor had ever especially fa-

²¹⁶ For critical reflections on the assumption that the 'social capital' of pre-industrial communities was uniformly beneficial for rural people, see Ogilvie, *Bitter Living*, esp. 332–4, 340–4; Sheilagh Ogilvie, 'How Does Social Capital Affect Women? Guilds and Communities in Early Modern Germany', *Amer. Hist. Rev.*, cix (2004).

²¹⁷ For microhistorical analyses of the conflict, coercion, discrimination and inequality prevalent in rural communities in early modern western Germany, see, for instance, Ogilvie, *State Corporatism and Proto-Industry*; Ogilvie, *Bitter Living*; Thomas Robisheaux, *Rural Society and the Search for Order in Early Modern Germany* (Cambridge, 1989); Sabeian, *Property, Production and Family in Neckarhausen*; Govind Sreenivasan, *The Peasants of Ottobeuren, 1487–1726: A Rural Society in Early Modern Europe* (Cambridge, 2004).

²¹⁸ On the social origins of Bohemian village headmen, see Míka, *Poddaný lid v Čechách*, 139–40; Jirásek, 'Poddani na panství olomouckého biskupství'. On the importance of differentiating between the community on the one hand and the communal office-holders on the other, see Himl, *Die 'armen Leute'*, esp. 151–2, 167. On social stratification on the estate of Friedland, see Markus Cerman, 'Proto-industrialisierung und Grundherrschaft: Ländliche Sozialstruktur, Feudalismus und Proto-industrielles Heimgewerbe in Nordböhmen vom 14. bis zum 18. Jahrhundert (1381–1790)' (Univ. of Vienna Ph.D. thesis, 1996), esp. 203–58; Sheilagh Ogilvie and Markus Cerman, 'The Bohemian Census of 1651 and the Position of Inmates', *Histoire sociale / Social History*, xxviii (1995); Štefanová, 'Herrschaft und Untertanen', 201–3. On the implications of social stratification for east-Elbian communes, see Melton, 'Gutsherrschaft in East Elbian Germany and Livonia', 345–7; Blaschke, 'Dorfgemeinde und Stadtgemeinde in Sachsen', 134–6, 141; Rudert, 'Gutsherrschaft und ländliche Gemeinde', 197, 200–3, 212.

vowed them but because they now had no alternative to the rough justice of the communal oligarchy.

Thus communal officers complained vociferously when villagers appealed to the manor. In 1616, for instance, two Mildenaу elders objected to a villager bringing a case to the manor, declaring that 'it was an outrage that these people would not let themselves be instructed — other people had to comply with the village court'.²¹⁹ In 1649, the headman and elders of Lusdorf objected to the tendency of a particular villager always to appeal to the manor 'whenever he committed an offence and they pointed it out to him'.²²⁰ In 1650, a Mildenaу cottager was slandered and beaten up by a village officer who admitted that he 'had given him a few blows, but it was not necessary that on this account he inform and run to the count's manorial court, because this matter could well have been agreed out there in the village court'.²²¹ For weaker villagers, the manorial court, however biased its judgements towards the overlord's interests, provided a welcome alternative to village courts whose judgements favoured the village oligarchs and their cronies.

It is therefore unsurprising that weaker villagers often appealed to the manorial court against communal injustice. The lower social strata repeatedly complained against the communal oligarchy. In 1607, for instance, the Weigsdorf smallholders collectively objected to the allocation of manorial demesne services by 'the headman and elders'.²²² In 1610, the houseless lodger Jörge Schrötter complained that the Bullendorf headman had threatened that 'he would bring it about with Her Grace the Countess that he should be hunted out of the country'.²²³ Outsiders

²¹⁹ SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 10^v, 1 Oct. 1616: 'das es schande sey, das sie sich nicht weisen laßen wolttten, andere leute mießen sich nach dem gerichtten halten'.

²²⁰ SOAD HS, Kart. 79, Amtsprot. 1649–55, fos. 2^v–3^r, 29 Oct. 1649: 'wen er waß vexirt hette, vnd sie es Ihme hatt verwiesen'.

²²¹ SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 95^v, 31 May 1650: 'ein Wenig schläge geben, es wehre aber nicht Vonnöthen gewehsen, dz er derthalben, dz Gräf.: Ambt behölliget, Vndt vberloffen, Weilln dise händel woll in den gerichtten daraus hette Vertragen Khönnen Werden'.

²²² SOAD HS, Kart. 77, Bürgerschaftsbuch 1593–1610, fo. 93^v, 17 Mar. 1607: 'Scholtz vnd Eltisten'.

²²³ SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 49^r, 11 May 1610: 'ehr wolte souiel zuweg bring, bej der Gräfin Ihr. Gn: das ehr außm lande gejagt werd. solte'. For Schrötter's probable social status as a houseless lodger, see SOAD HS, Kart. 12a, Urbar (rent-roll), 1591–2.

to the village and those who were not relatives of the oligarchy also complained that communal autonomy was used against them, as in 1618 when Michell Petzelt complained that the Lusdorf village court decided a boundary dispute against him because 'he was foreign [*fremd*], and the village headman and elders were each other's kin'.²²⁴ Women, too, suffered ill-treatment by the communal oligarchy. Thus in 1605 Jacob Wildner's wife in Mildenau complained that the village headman had helped a male relative deprive her of her paternal inheritance.²²⁵ In 1645 Hans Hübner's widow complained that the village council had decided that she 'could not manage her farm' and was selling it out from under her for a peppercorn price.²²⁶ In 1685 Jacob Schmied's widow Anna managed to retain her smallholding against attack by the Hermsdorf village council only by appealing to the manorial court (and then only conditionally).²²⁷ Even owners of full peasant holdings sometimes complained that the village officers pursued their own interests, as in 1611 when one Mildenau peasant reported 'that the headman was a usurer; that he also had for a long time been trying to get his farm; and that anyone who was not present in the tavern on Sundays was summoned and thrown in jail'.²²⁸

As these examples illustrate, communal autonomy should not be equated uncritically with well-being for everyone who lived in such communes. To the extent that the second serfdom created less incentive for manorial authorities to intervene inside village communes, this may have increased the well-being of the village oligarchy, who monopolized communal offices and had formidable private capacities for coercion. But it deprived the weak — the lower social strata, outsiders, non-relatives of village officers, and women — of one of their few flimsy bulwarks against the coercion and exploitation that lurked behind the façade of 'communal autonomy'.

²²⁴ SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 122^v, 8 Oct. 1618: 'ehr wehre Frembde, Schultes Vnd Schoppen wehre Freünde'.

²²⁵ SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 29^v, 12 Mar. 1605.

²²⁶ SOAD HS, Kart. 78, Amtsprot. 1645, fo. 58^r, 1 July 1645: 'daß die hinderlassene Wittib solchen guet nit vorstehen . . . könnte'.

²²⁷ SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 10^v, 8 May 1685.

²²⁸ SOAD HS, Kart. 77, Amtsprot. 1611–16, fo. 7^r, 15 July 1611: 'der Schultheß wehr ein wucherer Item hette lange nach seinen gutte gestand., Item wehr des Sontagß nicht im Krezschmar vorhand. wehr, nachdemselben würde geschickt, Vnd eingesteckt'.

V

CONCLUSION

What are the wider implications of these findings on communes and the second serfdom in Bohemia? A first general implication is methodological. To understand the social effects of particular institutions, this essay suggests, we must go beyond literary or legislative sources, which show how (some) educated contemporaries thought manorial–communal relations ought to function but not necessarily how they did work for actual participants. Instead, as the present study indicates, we must turn to apparently banal, microlevel documents about ordinary people’s activities — earning a living, moving house, getting married, transferring land, enforcing agreements and resolving conflicts. Most of these documentary sources are qualitative, but some can be transformed into quantitative ‘metasources’ — as with the database of 3,873 manorial court cases used in Table 1 or the sample of 3,644 petition-decrees used in Table 2 — and analysed more systematically. Through a combination of qualitative and quantitative analyses, we can use such sources to find out about actions people took and attitudes they expressed in passing, unselfconsciously, as they sought to solve the problems of their everyday lives within the constraints imposed by both manor and commune.²²⁹

Applying this microhistorical approach to the Bohemian situation casts doubt on ‘manorial dominance’ theories which assume that the second serfdom succeeded because manors were all-powerful and communes supine. On the contrary, Bohemian communes under the second serfdom had considerable power. Indeed, their co-operation was essential for the manor to increase its exactions. In certain important respects — such as conflict resolution and contract enforcement — decision-making power actually shifted away from the manor and towards the commune as the second serfdom progressed. Thus microlevel evidence provides little support for the view that the second serfdom succeeded because powerful manorial institutions

²²⁹ For methodological reflections on the advantages of microhistorical approaches and community-based ‘metasources’ in studying social interactions in pre-industrial rural societies, see Medick, *Weben und Überleben in Laichingen*, 13–38; Ogilvie, *Bitter Living*, 4–7, 22–36, 320–1; Carus and Ogilvie, ‘Turning Qualitative into Quantitative Evidence’.

crowded communal institutions out of power within rural society.

This has implications for how we think about wider historical issues. In particular, it casts doubt on that strand of argument within the Brenner debate which ascribes the divergent development of post-medieval eastern and western Europe to the weakness of peasant communes in the East.²³⁰ It suggests, rather, that the growing power of overlords in eastern Europe was partly dependent on their successful co-option of communal powers and the oligarchies that dominated them. What did differ between eastern and western Europe, as the Bohemian evidence confirms, was the relationship of both manor and commune to the ruler. Whereas in western Europe, rulers increasingly diversified their political investments among rival social groups, in the East they concentrated them on the great landlords, who could therefore rely on state coercion to support them against both peasants and townsmen. This political reality created a strong incentive for communal oligarchs to collaborate with, rather than resist, manorial pressure.²³¹

The lack of empirical support for a 'manorial dominance' view does not mean, as is so often claimed by proponents of the 'communal autonomy' view, that serfdom did not actually matter.²³² As this essay has shown, communes did not provide

²³⁰ For instance, by Brenner, 'Agrarian Class Structure and Economic Development', 38–46. For criticisms of this view from a 'communal autonomy' perspective, see Heide Wunder, 'Peasant Organization and Class Conflict in Eastern and Western Germany', in Aston and Philpin (eds.), *Brenner Debate*, 91–100.

²³¹ On these political realities, see Maur, 'Staat und (lokale) Gutsherrschaft in Böhmen'; on the effects on peasant incentives, see Ogilvie, 'Staat und Untertan in der lokalen Gesellschaft'.

²³² For examples of this view, see Bushnell, 'Did Serf Owners Control Serf Marriage?'; Cerman, 'Serfdom and Family', 1, 4–16; Enders, 'Die Landgemeinde in Brandenburg', 197; Hagen, *Ordinary Prussians*; Hoch, *Serfdom and Social Control in Russia*; Hoch, 'Serf Economy and the Social Order in Russia'; Hoffmann, *Land, Liberties, and Lordship*, 358–62; Kochanowicz, 'Polish Peasant Family as an Economic Unit', 163–4; Melton, 'Serfdom and the Peasant Economy in Russia'; Melton, 'Gutsherrschaft in East Elbian Germany and Livonia', esp. 315–16, 320–2, 333, 340–1; Plakans and Wetherell, 'Family and Economy in an Early Nineteenth-Century Baltic Serf Estate'; Plakans and Wetherell, 'Kinship Domain in an East European Peasant Community'; Štefanová, 'Herrschaft und Untertanen', 201, 203–9; Štefanová, 'Zur Stellung der Untertanen in einer gutsherrschaftlichen Gesellschaft', 221; Heide Wunder, 'Agriculture and Agrarian Society', in Sheilagh Ogilvie (ed.), *Germany: A New Social and Economic History*, ii, 1630–1800 (London, 1996), esp. 71–8.

a sphere of autonomy in which their members could act independently of manorial regulations. Rather, manors intervened systematically and strategically in most central aspects of serfs' decision-making, and both communal officers and ordinary villagers appealed to manorial institutions when communal institutions failed to deliver desired outcomes. Overlords may have exercised their rights of intervention rarely, but their entitlement to do so still affected people's decisions. Even violations of manorial regulations simply created black-market 'informal sectors' in which the fact that transactions were illegitimate rendered them risky, costly, open to exploitation and incapable of contributing to long-term development.²³³ Evidence from Bohemia suggests that serfdom did matter, but in ways that can only be teased out by close, local-level investigation into how it affected the everyday options of serf women and men.

A 'dualism' view, according to which serfdom required both a strong manor *and* a strong commune, is borne out by these findings in Bohemia. But this essay questions two further assumptions usually accepted by theories of dualism, manorial dominance and communal autonomy alike. For one thing, serfdom does not seem to have meant that communal institutions — whether strong or weak — increasingly became mere tools of the manor. During the second serfdom the Friedland manor actually intervened *decreasingly* in the commune, because its own growing coercive power diminished its incentive to incur the costs of arbitrating conflicts irrelevant to manorial interests. As overlords became more secure in their ability to extort rents, labour services, taxes and conscripts from the rural economy with the assistance of communal office-holders, they perceived less advantage in purchasing legitimacy from individual serfs by providing justice or redressing wrongs.

²³³ On the detrimental effects on economic development and social welfare of the black-market 'informal sectors' created by coercive formal-sector regulations, see, for early modern Bohemia, Ogilvie, 'Economic World of the Bohemian Serf'; Ogilvie, 'Staat und Untertan in der lokalen Gesellschaft'; for modern developing economies, Kaushik Basu, *Analytical Development Economics: The Less Developed Economy Revisited* (Cambridge, Mass., 1997), 172–3; M. P. Todaro, *Economic Development in the Third World* (Harlow, 1989), 270–1; Debraj Ray, *Economic Development* (Princeton, 1998), 261, 346–8, 395–6; Diana Farrell, 'The Hidden Dangers of the Informal Economy', *McKinsey Quart.*, no. 3 (2004): see <http://www.mckinseyquarterly.com/article_page.aspx?ar=1448&L2=19>.

Finally, this essay casts doubt on the widely held view that the 'social capital' of shared norms, information transmission and collective action characteristic of pre-industrial communities was unambiguously beneficial for human well-being or long-term social improvement.²³⁴ Rural communes were highly stratified and riven by conflict. Village office-holders were recruited from the well-off landed families, ran the commune in their own interests and preferred the manor not to intervene in village affairs. The manor's gradual devolution of costly contract enforcement and conflict resolution out to the communes benefited the village oligarchy but harmed weaker villagers such as the lower social strata, outsiders and women. Such marginal individuals were never especially *favoured* by either manor or commune, but — as findings from early modern western Europe illustrate — benefited from tensions between the two which offered an alternative authority to which they might appeal. Serfdom was bad for villagers in many ways, but one of them was that it reduced outside intervention in communal affairs, exposing the weak and vulnerable not only to coercion by the manor, but also to the deployment of communal 'social capital' against them by their own more powerful neighbours within the community.

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²³⁴ For historical literature exemplifying this assumption, see Enders, *Die Uckermark*, 259–61, 498–500; Enders, 'Landgemeinde in Brandenburg', 206–8, 211, 223–7, 236, 243, 256; Hoch, *Serfdom and Social Control in Russia*; Hoch, 'Serf Economy and the Social Order in Russia', 311–22; Štefanová, 'Herrschaft und Untertanen', 205–9; Štefanová, 'Zur Stellung der Untertanen in einer gutherrschaftlichen Gesellschaft'; Wunder, *Die bäuerliche Gemeinde in Deutschland*, 19, 37–41. For examples of how this assumption has influenced modern social scientists and policy makers, see Deininger, *Land Policies for Growth and Poverty Reduction*, 19; Coleman, 'Social Capital in the Creation of Human Capital', S101–S103; Putnam, with Leonardi and Nanetti, *Making Democracy Work*, 121–48, 162–85.

