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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 Matušková for introducing me to archival sources providing evidence on Czech rural communes. Special thanks are owed to Helena Smišková for her exceptionally knowledgeable and generous assistance to me with respect to the Friedland estate archives in Debin, 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 Pazdérová, 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.

1 In 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 Debin, Fond Rodinný archiv Clam-Gallasu, Historická sbírka [State Regional Archive of Litoměřice, Debin Branch, Archive of the

*cont. on p. 70*
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

(map 1 cont.)
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 Marxist and western liberal historians. It is widely accepted in the historiography of the Bohemian lands, both by Czech historians writing between 1945 and 1989, and by others writing previously and subsequently. It has also made its way into


5 Václav Cerný, Hospodářské instrukce: přehled zemědělských dějin v době patrimonijního 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 (cont. on p. 73)
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


and peasant culture that was unaffected by the manorial powers of their overlords.\textsuperscript{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.\textsuperscript{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


\textsuperscript{9}For recent outstanding representatives of this view, see Tom Scott, ‘Introduction’, in Tom Scott (ed.), \textit{The Peasantries of Europe from the Fourteenth to the Eighteenth Century} (cont. on p. 75)
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.\textsuperscript{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.\textsuperscript{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,
cameralist tracts, or ‘house-father’ treatises are far from ade-
quate, 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 docu-
ments 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, ana-
lysing them both qualitatively and quantitatively, and placing
them in a wider comparative context. 14

The region in question is the large Bohemian estate of Fried-
land. 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 writ-
ings 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 inadequa-
cies of normative sources for evaluating the actual situation of the peasants who were
being governed and taxed, see Himl, Die ‘armben Leüte’, esp. 17, 24; Hermann
Rebel, ‘Peasantries under the Austrian Empire, 1300–1800’, in Scott (ed.), Peas-

13 For a ‘manorial dominance’ view of Bohemian communal–manorial relations
derived from such ordinances, see Černý, 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,
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
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, ‘Vrch-
nosti a poddani za trictileté války’ [Seigneurial Authority and Serf in the Thirty
Years War], Folia historica bohemia, viii (1985), 241–7; on the estate of Friedland,
see Markus Cerman, ‘Gutsherrschaft vor dem “Weißen Berg”: zur Verschärfung der
Erbuntermäßigkeit in Nordböhmern 1380 bis 1620’, in Peters (ed.), Gutsherrschafts-
gesellschaften, 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.\textsuperscript{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 Emancipation in 1781.\textsuperscript{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).\textsuperscript{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


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 cooperative 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 Zeitlhofer (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\(^{v}\), 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 gutsherrschaflichen Gesellschaft in der Frühen Neuzeit: die Herrschaft Frydlant, 1558–1750’, in Cerman and Zeitlhofer (eds.), Soziale Strukturen in Böhmen; Himl, Die ‘armben 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.
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TABLE 1
COMMUNITY REPRESENTATION IN MANORIAL COURT CASES:
ESTATE OF FRIEDLAND 1583–1787*

<table>
<thead>
<tr>
<th>No. of cases</th>
<th>Percentage of cases involving:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
</tr>
<tr>
<td>1583–1587</td>
<td>259</td>
</tr>
<tr>
<td>1588–1592</td>
<td>213</td>
</tr>
<tr>
<td>1593–1597</td>
<td>96</td>
</tr>
<tr>
<td>1598–1602</td>
<td>81</td>
</tr>
<tr>
<td>1603–1607</td>
<td>494</td>
</tr>
<tr>
<td>1608–1612</td>
<td>492</td>
</tr>
<tr>
<td>1613–1617</td>
<td>278</td>
</tr>
<tr>
<td>1618–1619</td>
<td>211</td>
</tr>
<tr>
<td>1627, 1629–31</td>
<td>364</td>
</tr>
<tr>
<td>1645</td>
<td>196</td>
</tr>
<tr>
<td>1649–1654</td>
<td>278</td>
</tr>
<tr>
<td>1655–1659</td>
<td>255</td>
</tr>
<tr>
<td>1660–1664</td>
<td>111</td>
</tr>
<tr>
<td>1674–1679</td>
<td>163</td>
</tr>
<tr>
<td>1680–1684</td>
<td>118</td>
</tr>
<tr>
<td>1685–1692</td>
<td>183</td>
</tr>
<tr>
<td>1781–1787</td>
<td>81</td>
</tr>
<tr>
<td>Pre-war (1583–1617)</td>
<td>1,913</td>
</tr>
<tr>
<td>Wartime (1618–45)</td>
<td>771</td>
</tr>
<tr>
<td>Early post-war (1649–64)</td>
<td>644</td>
</tr>
<tr>
<td>Late post-war (1674–92)</td>
<td>464</td>
</tr>
<tr>
<td>Post-emancipation (1781–7)</td>
<td>81</td>
</tr>
<tr>
<td>Grand Total</td>
<td>3,873</td>
</tr>
</tbody>
</table>

* Sources: Státní Oblastní Archiv Litomerice, Pobobka Debin, 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 ‘sworn-men’ 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


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.
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.

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.

TABLE 2

<table>
<thead>
<tr>
<th>Migration or emancipation permits requested in serf petitions</th>
<th>Land transaction permits requested in serf petitions</th>
<th>Marriage permits requested from the manorial court</th>
</tr>
</thead>
<tbody>
<tr>
<td>no.</td>
<td>%</td>
<td>no.</td>
</tr>
<tr>
<td>-------------------</td>
<td>-----</td>
<td>-----</td>
</tr>
<tr>
<td>Granted</td>
<td>27</td>
<td>25</td>
</tr>
<tr>
<td>Granted conditionally</td>
<td>46</td>
<td>43</td>
</tr>
<tr>
<td>Granted partly</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Decision deferred</td>
<td>11</td>
<td>10</td>
</tr>
<tr>
<td>Refused</td>
<td>22</td>
<td>21</td>
</tr>
<tr>
<td>Unknown</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>106</td>
<td>99</td>
</tr>
</tbody>
</table>

* 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. 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.
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, 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. For another, there were community account-books, whose absence is also widely adduced as a sign of communal weakness under the second serfdom, but whose maintenance was regarded as a normal part of the responsibilities of headman and communal elders in Friedland villages. 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, 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’. Third, Friedland village courts wrote up purchase-slips (Kaufzettel) for individual land transfers and debts, which were used by villagers, communal


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


33 SOAD HS, Kart. 61, Amtsprot. 1674–81, fo. 42v, 15 Mar. 1681: ‘alß selbige die Gemein Rechnung am Vergangenenen sontage, 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 Schöppenladen (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. 15v, article 62; SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 3r, 27 Feb. 1604; SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 12v, 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. 19v, 15 Dec. 1649; SOAD HS, Kart. 79, Amtsprot. 1655–6, fos. 22v–23r, 14 Mar. 1656.


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. 23v, 14 Sept. 1687.

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

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

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

44 SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 3r, 27 Feb. 1604; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 33v, 5 June 1686; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 50v, 16 Jan. 1687; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 52v, 16 Jan. 1687.
shared village clerks.\textsuperscript{45} In short, the \textit{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 com-
un-nes 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 mono-
poly of coercion for his own manorial courts.\textsuperscript{46} But careful col-
alation 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,\textsuperscript{47}
report to the manorial court,\textsuperscript{48} report back to the village court itself,\textsuperscript{49} and refrain from pursuing the conflict which had brought
them before the village court in the first place.\textsuperscript{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.\textsuperscript{51} Occasionally
the manor reproved a village court for incarcerating someone

\begin{footnotes}
\footnote{SOAD HS, Kart. 77, Amtsprot. 1609–11, fos. 37\textsuperscript{v}–39\textsuperscript{r}, 23 Mar. 1610; SOAD
HS, Kart. 80, Amtsprot. 1661–4, p. 92, 12 June 1663; SOAD HS, Kart. 77, Bürg-
schaftsbuch 1593–1610, fo. 95\textsuperscript{v}, 29 May 1607; SOAD HS, Kart. 78, Amtsprot.
1616–19, fos. 168\textsuperscript{r}, 170\textsuperscript{v}–171\textsuperscript{r}, 10 May 1619.}
\footnote{See the findings reported in Rudert, \textquote{Gutsherrschaft und ländliche Gemeinde}',
esp. 207–9.}
\footnote{SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 3\textsuperscript{r}, 22 Aug. 1609; SOAD HS,
Kart. 77, Amtsprot. 1604–6, fo. 28\textsuperscript{r}, 12 Mar. 1605.}
\footnote{SOAD HS, Kart. 77, Bürgschaftsbuch 1593–1610, fo. 84\textsuperscript{r}, 6 June 1606;
SOAD HS, Kart. 78, Amtsprot. 1649–55, fos. 61\textsuperscript{v}–63\textsuperscript{v}, 31 Jan. 1650.}
\footnote{SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 180\textsuperscript{v}, 8 July 1619; SOAD HS,
Kart. 78, Amtsprot. 1616–19, fo. 186\textsuperscript{r}, 15 June 1619; SOAD HS, Kart. 709,
Amtsprot. 1685–7, fo. 45\textsuperscript{r}, 17 Dec. 1686.}
\footnote{SOAD HS, Kart. 77, Bürgschaftsbuch 1593–1610, fo. 54\textsuperscript{r}, 24 July 1604;
SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 45\textsuperscript{r}, 20 Apr. 1610; SOAD HS,
Kart. 77, Amtsprot. 1611–16, fo. 3\textsuperscript{r}, 9 June 1611; SOAD HS, Kart. 78, Amtsprot.
1616–19, fo. 157\textsuperscript{r}, 7 Mar. 1619; SOAD HS, Kart. 78, Amtsprot. 1630–1, second
part of volume (for 1631), p. 10, 7 Mar. 1631.}
\footnote{SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 1\textsuperscript{r}, 21 Feb. 1604; SOAD HS,
Kart. 77, Amtsprot. 1609–11, fo. 16\textsuperscript{r}, 10 Nov. 1609; SOAD HS, Kart. 77, Amts-
prot. 1609–11, fo. 56\textsuperscript{r}, 28 May 1610; SOAD HS, Kart. 78, Amtsprot. 1616–19,
fo. 93\textsuperscript{r}, 12 May 1618; SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 179\textsuperscript{v}, 8 July
1619; SOAD HS, Kart. 78, Amtsprot. 1627, fo. 44\textsuperscript{r}, 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, Bürgschaftsbuch 1593–1610.}
\end{footnotes}
with particular cruelty or without informing the manor, as in 1686 when a Bertteldorf 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. But it was much more common for the manor to support the village court in its decision to incarcerate, to instruct village courts to lock up offenders, and to punish serfs who resisted or escaped from village incarceration, 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’. 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

\[(n. 51 \text{ cont.})\]

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


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

54 SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 93v, 12 May 1618; SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 157v, 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. 21v, 16 Jan. 1586; SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 13v, 3 July 1604; SOAD HS, Kart. 77, Bürgschaftsbuch 1593–1610, fo. 96v, 14 Oct. 1607; SOAD HS, Kart. 77, Bürgschaftsbuch 1593–1610, fo. 103v, 7 Nov. 1609; SOAD HS, Kart. 77, Bürgschaftsbuch 1593–1610, fo. 105v, 8 Feb. 1610; SOAD HS, Kart. 79, Amtsprot. 1650–1, fo. 42v, 28 May 1651; SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 27v, 17 Nov. 1687.

56 SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 27v, 17 Nov. 1687: ‘Hienführo treu Vndt gehorsamb seiner gned.: Obrigkeit, dem Ambt, als auch den Gerichten iederzeit sich bezeugen woll’.
pastor. In 1661 the community of Arnsdorf leased pastures from the manor for 28 Gulden annually. 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’. 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. Two villages — Bernsdorf in 1629 and Raspenau in 1631 — bought grain collectively, although this may have been an exceptional response to wartime shortages. Communities collectively financed the establishment of local infrastructure, as in 1657 when Olbersdorf was permitted to build a sawmill, in 1658 when Wittig was allowed to build a smithy or in 1662 when Dittersbach was forbidden to build a grain mill. In 1685, villagers from Priedlanz complained that the headman ‘had not yet paid 3 Gulden for sheep he had purchased from the community’. 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’. The communal court functioned as an official depository for disputed cash, bad coinage proffered in payment of debts.

57 SOAD HS, Kart. 77, Amtsprot. 1611–16, fo. 112r, 2 June 1615.
58 SOAD HS, Kart. 81, Dekretb. 1652–62, fo. 79r, 24 Apr. 1661.
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. 44r, 12 Sept. 1657.
64 SOAD HS, Kart. 81, Dekretb. 1656–63, p. 163, 1 Feb. 1662.
65 SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 16r, 4 Aug. 1685: ‘vor erKauffte Schaafen von der Gemeinde 3 f. nicht bezahlet hatte’.
66 SOAD HS, Kart. 61, Amtsprot. 1674–81, fo. 2r, 17 Sept. 1674: ‘haben sie sich hochsträfflicher weiß zu Unterstanden . . . Vnngewöhnliche dispositiones mit der Gemeine geldern Zue machen’.
67 SOAD HS, Kart. 78, Amtsprot. 1629, fo. 4r, 4 Apr. 1629; SOAD HS, Kart. 78, Amtsprot. 1627, fo. 1r, 4 Feb. 1627; SOAD HS, Kart. 78, Amtsprot. 1629, Zettel 8r–9r, assumed 25 May 1629 – 1 June 1629.
68 SOAD HS, Kart. 78, Amtsprot. 1629, fo. 4r, 4 Apr. 1629; SOAD HS, Kart. 78, Amtsprot. 1627, fo. 1r, 4 Feb. 1627.
confiscated alcohol,\textsuperscript{69} stolen grain\textsuperscript{70} and stolen horses.\textsuperscript{71} Finally, the village court levied fines, although generally in beer rather than cash,\textsuperscript{72} and collected ‘court expenses’\textsuperscript{73} and ‘consumption costs’ from litigants.\textsuperscript{74} Bohemian communes therefore did exercise a range of financial powers.\textsuperscript{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.\textsuperscript{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,\textsuperscript{77} inheritance,\textsuperscript{78} cash legacies,\textsuperscript{79} retirement contracts,\textsuperscript{80} building permits,\textsuperscript{81} boundary disputes,\textsuperscript{82} defamation,\textsuperscript{83} physical assaults\textsuperscript{84}

\textsuperscript{69} SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 75r, 2 Apr. 1650.
\textsuperscript{70} SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 84r, 29 Nov. 1610.
\textsuperscript{71} SOAD HS, Kart. 78, Amtsprot. 1627, fo. 38r, 4 Sept. 1627.
\textsuperscript{72} SOAD HS, Kart. 77, Bürgschaftsbuch 1593–1610, fo. 54r, 24 July 1604; SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 96v, 4 June 1650; SOAD HS, Kart. 80, Amtsprot. 1661–4, pp. 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.
\textsuperscript{73} SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 13r, 3 July 1604; SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 11v, 23 May 1687; SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 6r, 4 Mar. 1687.
\textsuperscript{74} SOAD HS, Kart. 77, Bürgschaftsbuch 1593–1610, fo. 71v, 2 Aug. 1605; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 64, 19 Aug. 1662; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 34r, 5 June 1686.
\textsuperscript{75} On the financial powers of village communes on the southern Bohemian estate of Český Krumlov / Krumau, see Himl, \textit{Die ‘armben Leüte’}, esp. 163–6, 169–70; for analogous findings for Upper Lusatia under the second serfdom, see Rudert, ‘Gutherrschaft und ländliche Gemeinde’, 200–1, 205–6.
\textsuperscript{77} SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 3r, 27 Feb. 1604; SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 45r, 16 Apr. 1610; SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 28r, 24 Nov. 1687.
\textsuperscript{78} SOAD HS, Kart. 79, Amtsprot. 1650–1, fo. 27r, 4 Apr. 1651.
\textsuperscript{79} SOAD HS, Kart. 79, Amtsprot. 1650–1, fo. 29r–v, 13 Apr. 1651.
\textsuperscript{80} SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 29r, 27 Feb. 1604; SOAD HS, Kart. 79, Amtsprot. 1650–55, fo. 96v, 4 June 1650.
\textsuperscript{81} SOAD HS, Kart. 78, Amtsprot. 1645, fo. 39r, 17 June 1645.
\textsuperscript{82} SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 34r, 4 June 1650; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 13r, 25 May 1685.
\textsuperscript{83} SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 37r, 12 July 1605.
\textsuperscript{84} SOAD HS, Kart. 77, Amtsprot. 1611–16, fos. 1v–2r, 21 May 1611.
and theft. 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. Second, village courts were the first place for reporting accusations of serious physical assault, including manslaughter, as in 1685 when a Schönwald villager accused his brother-in-law of beating his sister to death. 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. Fourth, village courts were the first place for resolution of sexual offences, not just fornication and illegitimate pregnancy, but adultery and infanticide. 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'. Furthermore, Friedland communal courts heard cases involving not only inhabitants of their own village, but also members of other villages on the estate, inhabitants of

85 SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 10r, 8 May 1685.
86 SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 3r, 22 Aug. 1609; SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 92v, 12 Mar. 1611; SOAD HS, Kart. 77, Amtsprot. 1583–92, fo. 36v, 9 Apr. 1587; SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 40v, 21 Oct. 1605.
87 SOAD HS, Kart. 78, Amtsprot. 1645, fo. 39r, 17 June 1645; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 111, 8 May 1664; SOAD HS, Kart. 77, Bürgschaftsbuch 1593–1610, fo. 65v, 21 Apr. 1605; SOAD HS, Kart. 79, Amtsprot. 1650–1, fo. 2r, 18 Oct. 1650; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 98, 19 June 1663.
88 SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 6r, 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, Bürgschaftsbuch 1593–1610, fo. 72r, 13 Sept. 1605; SOAD HS, Kart. 77, Amtsprot. 1611–16, fo. 6r, 4 July 1611; SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 55r, 28 Oct. 1617; SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 81, 31 Jan. 1663.
90 SOAD HS, Kart. 78, Amtsprot. 1629, fo. 1r, 15 Mar. 1629; SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 39r, 31 Aug. 1686.
91 SOAD HS, Kart. 78, Amtsprot. 1629, fo. 27r, 7 Feb. 1630; SOAD HS, Kart. 77, Amtsprot. 1611–16, fo. 3r, 9 June 1611.
93 SOAD HS, Kart. 77, Amtsprot. 1609–11, fos. 94r–95r, 2 May 1611: 'sehr gefluch Vnd gescholten Vnnd gotte greülich. geleest'.
94 SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 13r, 3 July 1604; SOAD HS, Kart. 77, Amtsprot. 1604–6, fo. 9r, 24 Apr. 1604; SOAD HS, Kart. 78, Amtsprot. 1627, fo. 11r, 12 Mar. 1627.
tions, minor manorial officials such as the Vogt (demesne-farm manager), and even people from outside the estate altogether. 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’.

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. 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. Village elders, too, could be dismissed if the manor took exception to their conduct.

95 SOAD HS, Kart. 77, Amtsprot. 1583–92, fo. 18r, 7 Jan. 1586.
96 SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 30r, 6 Apr. 1686.
97 SOAD HS, Kart. 77, Bürgschaftsbuch 1593–1610, fo. 84r, 6 June 1606; SOAD HS, Kart. 78, Amtsprot. 1627, fos. 40r–41v; SOAD HS, Kart. 78, Amtsprot. 1630–1, p. 32, 21 Sept. 1630; SOAD HS, Kart. 78, Amtsprot. 1645, fo. 18r, 27 May 1645; SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 11r, 17 Nov. 1649; SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 20r–v, 4 Dec. 1649; SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 7r–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. 6r, 4 July 1611: ‘die gerichte . . . hindan gesetzt, Vnd ihnen also selbstn Verhelffen wollen’.
100 See Weiszäcker, ‘Das deutsche Recht der bäuerlichen Kolonisten Böhmens und Mährens’, 508, 531; Horáková, ‘Poddanske pomery’, 47; for detailed local studies of Bohemian village headmen, see esp. Jaroslav Novotný, ‘Rychteri — foji — šoltysové’ [Richter, Vögte, Schultheißen; i.e. Village Headmen], in František Matejek (ed.), Feudální velkostatek a poddaný na Moravě s příležitostmi k příležitostmi území Slezska a Polska [Large Manorial Estates and Serfs in Moravia with Some Consideration of Adjacent Silesian and Polish Territories] (Prague, 1959); Jiří Záloha, ‘Đedníní rychtáři ve Fefrech’ [Hereditary Headmen in Fefra], Jihočeský sborník historický, xxvi (1957); Jan Lintner, ‘Rychtářská instrukce a rychty v polovině 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.\footnote{SOAD HS, Kart. 78, Amtsprot. 1627, fo. 2\textsuperscript{r}, 4 Feb. 1627; SOAD HS, Kart. 78, Amtsprot. 1630, second part of volume (for 1631), p. 6, 19 Feb. 1631.} Headmen were even less likely to be dismissed. Thus the headman of Mildenhau 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’.\footnote{SOAD HS, Kart. 78, Amtsprot. 1616–19, fos. 5\textsuperscript{r}–6\textsuperscript{v}, 10 Aug. 1616: ‘den Schultheßen einmahl von den herr S. gn. die gerichte vortrauet’.} 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.\footnote{Horáková, ‘Poddanské poměry’, 52. For the reinstatement of the Schönwald headman, see SOAD HS, Kart. 61, Amtsprot. 1681–5, fo. 2\textsuperscript{r}, 2 Oct. 1681.} 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.\footnote{SOAD HS, Kart. 709, Amtsprot. 1685–7, fo. 27\textsuperscript{v}, 26 Mar. 1686: ‘ihme nicht zustehen sollen’.}

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
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 . . .

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 Ústredni 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 rychtář z povinnosti a ti konšelé propuštěni byli, takoví lidé málo sobe toho pokládají, i rádi bez tech prací a povinností v tyto basy budou. Nebo i jejich práce pro kontribuce rozlíbné a všeliké práce vrchnosti vykonávání a ty neposlušné lidi k tomu privozování, na velké dvo mile na zámeck k JMC [Jeho Miloši Císařské] pricházení, jim težké a odporné jsou; i o druhých ješe ménější, však všechno pri milostivém Vašich Excel.[encí] Miloši narízení i milostivé pameti o toho chudého bloveka, kterýž to pronesl, odevzdaje, což takkoliv pri mne narízeno bude, poslušne vykonati nepominu’.
the sense that there were important spheres of local life in which manors did not intervene.\footnote{96}

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.\footnote{97}

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.\footnote{98}

\footnote{96}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 Cecura, 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).


\footnote{98}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;

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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”, article 27: ‘dz er guttlich erlaßen worden’.

(n. 108 cont.)
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.\textsuperscript{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 Priedlanz ‘paid 8 Reichstaler to the gracious manorial authority for his emancipation letter to Count Nostitz in Reibersdorf’ (a village near Bautzen in Saxony).\textsuperscript{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.\textsuperscript{113} Similarly, the Neustadt bathman was permitted to rent a bathhouse on another estate in 1683 provided that he reported back after a year.\textsuperscript{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 [\textit{Untertan}]’.\textsuperscript{115}

Between 1737 and 1785, a total of 209 serf journeymen rendered such pledges in the Friedland manorial court.\textsuperscript{116}

\textsuperscript{111} SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 24\textsuperscript{v}, 13 Jan. 1610: ‘von meiner herrschaft Keinen Loßbrief erlangen kan’.
\textsuperscript{112} SOAD HS, Kart. 61, Amtsprot. 1681–5, fo. 3\textsuperscript{r}, 31 Oct. 1681: ‘Vmb seinen Loßbrief an h.: Graffen Nostiz, nacher Reiberßdorff, der Gn: Obriegkeit, erlegt. 8. Rthl.’
\textsuperscript{113} SOAD HS, Kart. 57, Bürgschaftsbuch 1593–1610, fo. 54\textsuperscript{v}, 24 July 1604: ‘demnach sich dieser beyem Ampt beklagt, dz er Vnter der herrschaft nirgendt Zu hauß einKommen Könne, ist ihmme Vom Ampt Vergunstet worden, das er sich auff ein Jahr lang Vnter benachbarter herrschaft zu hause begeben möge’.
\textsuperscript{114} SOAD HS, Kart. 61, Amtsprot. 1681–5, fo. 18\textsuperscript{v}, 30 Sept. 1683.
\textsuperscript{115} SOAD HS, Kart. 710, Bürgenbuch 1703–24, fo. 9\textsuperscript{v}, 16 Mar. 1713: ‘das Er sich nach Verrichter wanderZeith wieder umben als Ein treuer Vnterthann zu seiner gned.: herrschaft Einfünden wiell’.
\textsuperscript{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’.\footnote{SOAD HS, Kart. 77, Amtsprot. 1583–92, fo. 87r, 2 Nov. 1591: ‘das sie sich forthin In der herschaft auffhalten, vnd Ihre nachrung an Keinem Andern ort, Alß Vnder der herrschaft suchen sollen, bei d. Peen 20 sß’.} 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’\footnote{SOAD HS, Kart. 57, Bürgschaftsbuch 1593–1610, fo. 82v, 21 Apr. 1606: ‘er bey Jährliches Waisen gestellung sich ins Ampt Niemals gestellet, vnd Vnter deß seines gefallens In einem Jahr unterschiedlichen herrn gediengt’.}. 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’\footnote{SOAD, HS, Kart. 82, Dekretb. 1677–8, p. 9, 13 May 1677: ‘sich, alß Ein gehorsamber Vnd.thanacher Einsiedel, hiernieder Einfinden, sich seiner Kinder, alß Ein Trewer Vatter Zu thun schuldig, fleißig annehmen, Vnnd, wie andere, sich Nehren Thue’.}. 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’\footnote{SOAD HS, Kart. 709, Amtsprot. 1687–92, fo. 14r, 6 July 1687: ‘sich beduncken lassen, Er wolte Zum letzten mahl, Vndt nicht mehr auf dieser Wiesen gehawan Haben’; ‘damit Er sich nicht d. Gnidig. Obrigkeit entbrech. wolte’.}. The manor also jailed and fined anyone who assisted illegal emigrants, whether by issuing them with inheritance shares,\footnote{SOAD HS, Kart. 77, Amtsprot. 1583–92, fo. 56r, 27 Jan. 1589.} making them gifts,\footnote{SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 4r, 22 Aug. 1609.} providing them with information,\footnote{SOAD HS, Kart. 77, Amtsprot. 1583–92, fo. 92v, 21 Jan. 1592.} giving them overnight shelter,\footnote{SOAD HS, Kart. 77, Amtsprot. 1583–92, fo. 97r, 15 June 1592.} or turning a blind eye like the Hermsdorf lodger Heinrich Hausmann who was jailed in 1714 because he ‘lodged with the absconded
Wagner and nevertheless did not report anything'. 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]’.

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 cottage 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’.

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’. 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 Rükersdorf ‘cannot be permitted to leave his commons-cottage and move into that of another absconded person in exchange’. 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’, or in 1597 when a pregnant maidservant was ‘banished from the country’.

125 SOAD HS, Kart. 710, Bürgenbuch 1703–24, fo. 10", 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", 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 Vorhaltten’.
127 SOAD HS, Kart. 78, Amtsprot. 1645, fo. 26", 31 May 1645: ‘hat sein heusel ligen lass. vnd ist nacher Raspenaw gewichen’; ‘Soll sein heusel wieder beziehen Vndt bei Mildenaw verbleib.’
130 SOAD HS, Kart. 77, Amtsprot. 1583–92, fo. 16", 20 Nov. 1585: ‘als baldt der herrschaft auf Friedlandt grundt vnd Pod. . . . gänztlich meid. vnd Raumen solle’.
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. Village officials were explicitly ordered to capture illegal out-migrants and conduct them before the manorial court. 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’. 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.

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"”, 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", 21 Aug. 1609: ‘am nehrn dienstag Fabian Augsten Zu Raspenaw sich h. verlohren, Vnd hinweg Kommen, Vnd bis dato ihne nicht wid.umb fnd. mögen, Vnangesehen ehr mit alle Vleis gesucht word. wehre’.
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


137 For similar findings for the south Bohemian estate of Ceský Krumlov / Krumau, see the excellent recent study by Himl, Die ‘armben 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?’; Kocjanowicz, ‘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, Bürgschaftsbuch 1593–1610, fo. 2r, 2 Apr. 1593: ‘sich auch ohne des herrn S. G. vnd des Ambts vorwiessen, ausser der Herrschaft vor-elehlicht’.

140 SOAD HS, Kart. 309, Amtsprot. 1607–8, fo. 9r, 9 Oct. 1607: ‘mitt Zulassung des ambtes . . . in ehe gelübns sich eingelassen’; ‘gnedige Zulassung der heurat’.
to grant — or refuse — the permit. 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. A female serf’s marriage to an outside male usually required the payment of a substantial fee, the promise of future reciprocity by the overlord to whom she was being released, or the surrender of property, debts or inheritance entitlements on the estate. Alternatively, the man had to become a Friedland serf and the couple had to settle on the estate, or, if they were permitted to dwell for a time outside it, all children born during that period were to be Friedland serfs. Orphanhood of one or both partners was also a manorial concern, partly because overlords levied special fees when orphans married, and partly because orphans were required to carry out forced service on the demesne farm.

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. 7r, article 38: ‘noch sonst eintzige Person, es sey Vnter Pauren, gärttnern, oder wer es sey, vor Ehelichen soll, Er habe es den bej dem Ampte gesuchet, 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. 84v, 10 June 1606; SOAD HS, Kart. 81, Dekretb. 1665–7, p. 14, 18 Sept. 1665.

143 SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 156v, 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. 29v, 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. 23v, 19 Jan. 1616; SOAD HS, Kart. 78, Amtsprot. 1615–16, fo. 24v, 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. 24v, 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’. 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’.  

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’. 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. 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’.

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150 SOAD HS, Kart. 78, Amtsprot. 1629, fo. 9v, 12 June 1629: ‘dz sie Ihren garten mit einem Wirte gesetzt Ihre schuldig. geZahlet, dz gar Kin Hinder nis’.
151 SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 80v, 5 Feb. 1618: ‘weil ehr augenscheinlichen siehet, das seine weyse Vbell vorsorget’.
153 See, for example, SOAD HS, Kart. 61, Amtsprot. 1674–81, fo. 2v, 26 Oct. 1674; SOAD HS, Kart. 61, Amtsprot. 1674–81, fo. 45v, 15 June 1681; SOAD HS, Kart. 81, Dekretb. 1676, p. 62, 26 Feb. 1676.
emerged as a manorial concern because it was defined more narrowly under Catholicism than under Lutheranism.\(^\text{155}\)

Failure to obtain a manorial marriage permit could prove costly or even catastrophic. Denial of a manorial marriage permit led to betrothals being dissolved,\(^\text{156}\) illegitimate pregnancies not being legitimized\(^\text{157}\) 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’.\(^\text{158}\) Those who went ahead and married without manorial consent were punished with fines,\(^\text{159}\) jailing,\(^\text{160}\) 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.\(^\text{161}\) 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’.\(^\text{162}\) 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

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\(^{155}\) For marriage permits involving issues of marital consanguinity, see, for example, SOAD HS, Kart. 78, Amtsprot. 1627, fo. 3\(^r\), 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\(^r\), 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\(^r\), 18 Mar. 1678: ‘Entführt, Vnd sich in Schleßien mit Ihr Copuliren Laßen’.

\(^{159}\) See, for example, SOAD HS, Kart. 57, Bürgschaftsbuch 1593–1610, fo. 2\(^r\), 2 Apr. 1593; SOAD HS, Kart. 57, Bürgschaftsbuch 1593–1610, fo. 37\(^r\), 23 Mar. 1599; SOAD HS, Kart. 78, Amtsprot. 1629, fo. 2\(^r\), 20 Mar. 1629.

\(^{160}\) See, for example, SOAD HS, Kart. 57, Bürgschaftsbuch 1593–1610, fo. 2\(^r\), 2 Apr. 1593; SOAD HS, Kart. 57, Bürgschaftsbuch 1593–1610, fo. 37\(^r\), 23 Mar. 1599; SOAD HS, Kart. 78, Amtsprot. 1629, fo. 2\(^r\), 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

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, auß 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, Amtsprot. 1604–6, fo. 29’, 24 Mar. 1605: ‘ist im Ampt Vorgunstet worden, ihr Gutt . . . ihren Eltesten tochter zu gutt zu behaltten, biß dieselbe Vorfreyet werden, entweder biß auff Pfingsten, oder auffs lengst biß zu Martinj diß Jahres’.
167 Ogilvie and Edwards, ‘Women and the “Second Serfdom”’.
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


\(^ {170}\) 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. gefraget, ob Er herein ins Ampt gehen dorfte und 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, \textit{Die ‘armben Leüte’}, esp. 72–4.

\(^ {175}\) See, for example, Hoffmann, \textit{Land, Liberties, and Lordship}, 358–9, 362.

\(^ {176}\) See, for instance, Melton, ‘\textit{Gutsherrschaft in East Elbian Germany and Livonia}’, 340–1; Cerman, ‘\textit{Serfdom and Family}’, 12–16; Štefanová, ‘\textit{Herrschaft und Untertanen}’, 205–8.
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 [Obrig-keit]’, are held to demonstrate that land transfers occurred in a realm of communal autonomy. 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. 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’. 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. Third, Friedland serfs did have to seek manorial permission before buying or selling land, and such

178 SOAD HS, Kart. 315, Schriftstück 11, Jahrdings Artickeln 1636, fo. 8r, article 42: ‘nachmahlß im Ambte 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. 8r, article 42: ‘Es soll Kein Vnterthaner eintzigen Erbgrundt besitzen, noch im brauch haben, Es sey den daß er Zuoor außm Ambte die Vorgunstigungk Vndt Consens erlanget’.
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. 74v, 24 Feb. 1591: ‘sich Muttwilliger weise Alß sie ohn verwiessen des Ambts so wol des Herrn S. G. . . . geKaufft’.
182 SOAD HS, Kart. 78, Amtsprot. 1627, fo. 15r–v, 15 Mar. 1627.
183 SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 36v, 1 May 1617: ‘ehr sein gut Vor wenig Zeit hette Vorkeuffen, hette auch gute Kaufleut darumb gehabt Ihme wehre aber Zur andtwort 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. 40v, 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. 154r, 15 Apr. 1616: ‘weil aber die angelder zimblich langsamb gesezet, Vnd die gleubiger ziemblang zurückt gesezet wurden, wolten Ihr. Gn. in den Kauff selbst Tretten, Vnd ein andere Kauffman schaffen, so die bahren gelder eher ablegen soltte, 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’.


\(^{189}\) SOAD HS, Kart. 61, Amtsprot. 1674–81, fo. 13r, 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. 10r, 17 Feb. 1676.

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?\textsuperscript{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\textsuperscript{192} In 1676, why did two brothers in Mildenau 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’?\textsuperscript{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.\textsuperscript{194} When the Friedland manor purchased the new village of Berttelsdorf 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’.\textsuperscript{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}

\textsuperscript{191} SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 96r, 4 June 1650: ‘Weillner aber sehen thatte, dz ihm der Kauff zu hoch, er auch folscher gestalt die Kauffgeld. Kheines weges geben Khendte’.
\textsuperscript{192} SOAD HS, Kart. 79, Amtsprot. 1655–6, fo. 19r, 16 Feb. 1656: ‘ihre nahrung ihrem Jungsten 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’.
\textsuperscript{193} SOAD HS, Kart. 61, Amtsprot. 1674–81, fo. 9r, 4 Feb. 1676: ‘Innerhalb 14. tagen, einer von ihnen beeden ihres Verstorbenen Vatters Nahrung anzunehmben, oder aber Einen dem Ampte annehmblichen Vnnd tauglichen wurth Zu verschaffen’.
\textsuperscript{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\textsuperscript{r}, article 42.
\textsuperscript{195} SOAD HS, Kart. 80, Amtsprot. 1661–4, p. 70, 19 Sept. 1662: ‘Wann Käuffe vorgiengen, solche im Ambt anZeigen, vndt die ratification daher erwartten’.
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. 2v, 27 Feb. 1604: ‘in Gerichten in bejsein des Scholze’; ‘sollen sich morgen . . . gestellen’.
197 SOAD HS, Kart. 57, Bürgschaftsbuch 1593–1610, fo. 64v, 24 Mar. 1605: ‘mit Ratificirung desselben, die herrschafft bedencken getragen, Entlichen Aber solchen Ratificiret’.
198 SOAD HS, Kart. 57, Bürgschaftsbuch 1593–1610, fo. 95v, 29 May 1607: ‘solches Auf der Eltisten befehl In gericht gethan, Auch dem Scholtzen abgelesen Vnd Vber diß alles Schon zuueur furm Ampt VorAbschiedtet werden’.
199 For similar findings for a south Bohemian estate, see Himl, Die ‘armben Leüte’, esp. 52–63.
200 See, for example, Hoffmann, Land, Liberties, and Lordship, 359.
Mildena 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’. Other communal office-holders also routinely informed the manor about communal conflicts and appealed for intervention, as in 1627 when the Liebwerda 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’.

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 seigneurial dues on his holding. 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’.

202 SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 3', 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 gebührndermaßen nicht verrichten Kündte, bittet Vmb recht meßiges einsehen’.

203 SOAD HS, Kart. 78, Amtsprot. 1627, fo. 3', 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 hönnisch. wortten tractiren’.

204 SOAD HS, Kart. 78, Amtsprot. 1627, fo. 27r–v, 31 May 1627: ‘Er Kauffe hind. des Ambts wiessen garn Vnd handelte mitte da Er doch sich nicht Zum garn Kauffen hette schreiben lassen betrüge dieleine wehber vnd die herschaft’; ‘Er betrüge die herschaft vnd gantz gemein’.

205 SOAD HS, Kart. 78, Amtsprot. 1645, fo. 21v, 29 May 1645: ‘wid. die andern Beckhen so sich im ambt mit 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. 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. 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


\[\text{207 Rudert, ‘Gutsherrschaft und ländliche Gemeinde’, 211; Winkelbauer, ‘‘Und sollen sich die Parteien gütlich miteinander vertragen’’, 135; Feigl, Die niederösterreichische Grundherrschaft; Štefanová, ‘Herrschaft und Untertanen’, 210.}\]
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’. 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’.

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. 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 Priedlanz 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’. 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’. That same year, a case of defamation and assault between the village headman and a baker in Priedlanz was dismissed to ‘the Weigsdorf village court, where they had been pledged’.

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


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 Artikeln 1636, fo. 6r, article 35.


[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 pester ing 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. 11v, 19 Mar. 1676: ‘Vnnrichtige händeln Vnd strittigkeiten so Von Keiner wichtigkeit: sollen Scholze Vnd Geschworne daraussen Verglichen, Vnnd sich die Partten waß Recht vndt bilich, daran begnügen laßen, damit zu Zeitten nicht so Viel Volck auf etliche [inserted: Vnwichtige] Perßonen warnten, Vnnd man Vnter deßen [inserted: im Ambte] andere sachen Verrichten Kan’. See Himl, Die ‘armben Leüte’, 157, 183, for a strikingly similar case of 1675 from the south Bohemian estate of Ceský 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.  

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. 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. 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-
voured 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 Mildenau 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’. 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’. In 1650, a Mildenau 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’. 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’. 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’. Outsiders

219 SOAD HS, Kart. 78, Amtsprot. 1616–19, fo. 10v, 1 Oct. 1616: ‘das es schande sey, das sie sich nicht weisen laßen wolten, andere leute miesen sich nach dem gerichten halten’.
221 SOAD HS, Kart. 79, Amtsprot. 1649–55, fo. 95v, 31 May 1650: ‘ein Wenig schläge geben, es wehre aber nicht Vonnöthen gewesen, dz er derthalben, dz Gräf.: Ambt behöhligt, Vndt vberloffen, Weilln dice händel woll in den gerichten daraus hette Vertragen Khönnten Werden’.
223 SOAD HS, Kart. 77, Amtsprot. 1609–11, fo. 49v, 11 May 1610: ‘ehr wolte souiel zuweg bring. bei 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 Lusdorff village court decided a boundary dispute against him because ‘he was foreign [fremd], and the village headman and elders were each other’s kin’.

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. 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. 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).

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’.

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. 122v, 8 Oct. 1618: ‘ehr wehre Frembde, Schultes Vnd Schoppen wehre Freünde’.

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

226 SOAD HS, Kart. 78, Amtsprot. 1645, fo. 58r, 1 July 1645: ‘daß die hinderlasse Witten solchen guet nit vorstehen . . . könte’.

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

228 SOAD HS, Kart. 77, Amtsprot. 1611–16, fo. 7r, 15 July 1611: ‘der Schultheß wehr ein wucherer Item hatte lange nach seinen guet stand., Item wehr des Sontagß nicht im Kreiszschmar 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

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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{232} As this essay has shown, communes did not provide


\textsuperscript{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’.

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.

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.\textsuperscript{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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