

The Origins of Feudalism

1. The Development of Retainers in the Merovingian Period

By F. L. Ganshof, 1961

The origins of medieval feudalism must be looked for in the Frankish kingdom of the Merovingians, and more particularly in the heart of the kingdom between the Loire and the Rhine.

Under the Merovingians, Gaul, was rarely united or at peace, and it frequently lapsed into a state of almost complete anarchy. The main cause of this, and a cause which was renewed every few years, lay in the family feuds occasioned by the custom which required that on the death of a king his inheritance should be divided between his sons. Later, after the repeated partitions had given birth to the kingdoms of Austasia, Neustria and Burgundy, there was added to this the bitter rivalries between the regional aristocracies. The quarrels between the sons and grandsons of Clovis in the sixth century resembled nothing so much as the fighting of wild beasts, and in the succeeding period the conflicts between the kings and the magnates increased steadily in ferocity and violence as the seventh century drew to its close. Even apart from the political struggle for power, the state was quite unable to maintain the public peace or secure the safety of its inhabitants. Its structure was too primitive, the officials in its service too few in number and too unreliable for it to carry out successfully this elementary function of government.

Such a society formed an ideal medium for the growth of bodies of retainers, and particularly of bodies of armed retainers. Those who felt the need of protection would look for it to their more powerful neighbors, and such protection would involve in return the acceptance of some form of service. The magnates on their side, whether from the desire to play a conspicuous part in political affairs or from the hope of profiting by the political discord and of establishing or increasing their own power and wealth, needed the services of men who were personally attached to them and whom they could use in private warfare. In extreme cases, free men might be prepared to become slaves of powerful protectors, or the latter might create their own soldiery by arming their slaves. Neither of these proceedings, however, could be regarded as typical. A more general custom was that by which a free man placed himself under the protection and at the service of another free man, while maintaining his own free status. Contemporaries called such persons *ingenui in obsequio*, free men in dependence.

The phenomenon itself was not new; the novelty lay in its wider diffusion. Like other parts of the *Orbis Romanus*, Gaul under the later Empire was accustomed to the existence of private bands of soldiers, called *buccellarii*, who formed the bodyguards of prominent men. The practice survived the barbarian invasions, at least south of the Loire, as we learn from the laws of the Visigothic king Euric towards the end of the fifth century. The Franks on their side had the institution known as the *comitatus*, the *Gefolgschaft* of German historians, which is already describes in a celebrated passage of Tacitus at the

end of the first century. The *comitatus* consisted of a group of free warriors who had taken service of their own free will under a chieftain, and fought with him and on his behalf as a band of close comrades. The bodies of armed retainers whom we meet during the Merovingian period had thus a double origin, and it is not possible to say whether they owed more to their Roman or Germanic predecessors

The *ingenui in obsequio*, of the sixth and seventh centuries included persons of very varied status. Amongst the free men who placed themselves under the personal protection and at the personal service of the king were the *antrustiones*, the members of the *trustis*. The *trustis* – the word is a Frankish one, with a Latin ending – appears to have corresponded to the *comitatus*, so that the *antrustiones*, may be regarded as armed companions of the king. The *antrustio* enjoyed a triple wergild; that is to say, if he was killed, the murderer had to pay the victim's family a sum three times as large as that normally due for the death of any other free man. It was his direct relationship with the king that assured to the *antrustio* this special mark of protection. He was a picked fighting man, and whatever might have been his origin, he was treated as if he belonged to one of the highest social ranks in the population.

Only the king and queen had *antrustiones*. But by the side of this superior category of retainer there were many other free men in *obsequio regis*, in direct dependence on the king, or in dependence on other powerful or important personages whom contemporary texts term *optimates* or *proceres*. They generally seem to be given the name of *gasindi* – once more the Latinized form of a German word – at any rate when they are armed retainers. The word was used to cover all men of this type, whatever might be their social position, and since this was frequently a humble one we find applied to them words like *puer* (probably) and *vassus* (certainly) which were properly used of slaves.

It was the word *vassus* that was to have a great future. Its origin was the Celtic *gwas*, meaning a young boy or servant, and it was *Latinized* very early as *vassus*. The form *vassallus* seems to have been formed from the adjective *gwassawl*, meaning one who serves. During the whole Merovingian period, *vassus* meant a slave, and this meaning, attested already by the Salic Law at the beginning of the sixth century, had not entirely disappeared in the eighth century. But towards the beginning of this century the term was also applied to free men who were dependent on a lord. The earliest known texts are passages in the *Lex Aamannorum* and in the *Lex Baiuuariorum*. The use is no doubt older and dates from before the year 700.

2. Commendation

The protective relationship set up by one free man over another was called in Latin *patrocinium*; in Latinized German it was *mundium* or *mundeburdis*, whence *maimbour* in medieval French. In either case the word carried with it the implication of superior authority as well as protection. The legal act by which one free man placed himself in the *patrocinium* or *mundeburdis* of another was known as *commendatio*, commendation. The substantive itself is not used in any of our existing sources before the Carolingian period, but the verb *se commendare*, in the sense of placing oneself under the authority of

another, is frequently found. The phrase bore this meaning even in classical times, and it appears in Gaul in the fifth century in the laws of the Visigothic king Euric, and in the sixth century in the *Historia Francorum* of Gregory of Tours.

A Merovingian formula in a collection known from its place of origin, Tours, as the *Formulae Turonenses* gives us some useful information on the subject of commendation. The one which concerns us, no. 43 in the collection, dates from the second quarter of the eighth century, but in both form and content it looks back to an earlier epoch. It is so important that it is worth reproducing and translating in its entirety.

“He who commends himself to the power of another man.

To the magnificent Lord, Inasmuch as it is known to all and sundry that I lack the wherewithal to feed and clothe myself, I have asked of your pity, and your goodwill has granted to me, permission to deliver and commend myself into your *mundoburdus*. This I have therefore done, in such fashion that, you have undertaken to aid and sustain me in food and clothing, while I have undertaken to serve you and deserve well of you so far as lies in my power. And for as long as I shall live, I am bound to serve you and respect you as a free man ought, and during my lifetime I shall not have the right to withdraw myself from your authority and *mundoburdus*; I must on the contrary be for the remainder of my days under your power and protection. And in virtue of this action, if one of tries to alter the terms of the agreement, he will have to pay *solidi* (a fine) to the other, but the agreement itself shall remain in force. Whence it has seemed good to us that the two parties concerned should draw up and confirm two documents of the same tenor, and this they have done. “

Before commenting on this document, it is important to observe that it is not a charter intended to serve as evidence of the fact that one person has commended himself to another; still less is it a charter whose drafting, confirmation and handing over form in themselves the act of commendation. The dispositive clause, the essential part of the act, that by which its author expresses his will, only creates an accessory obligation, i.e. a penal clause providing a sanction for the obligations inherent in the act of commendation itself. The latter is known to us only from the terms of the exposition, the narrative portion of the act, which is intended simply to explain and justify the dispositive clause.

The legal effects of the act of commendation, as they are described in the *narratio*, are a series of obligations binding on both parties. The person who commends himself assumes the obligation of serving and respecting his superior, whom he calls his *dominus*, his lord, but with the reservation that his service and respect shall be limited to what is compatible with the maintenance of his status as a free man. The lord on his part assumes the obligation of aiding and supporting, in the matter of food and clothing, the man who commends himself to him. In other words, he agrees to assure him the maintenance and protection which are implied in the words *mundoburdus* and *defensio*. The execution by the lord of his obligations is made conditional on the vassal carrying out his share of the agreement.

Commendation then, at least in the shape in which it is presented in the Tours formula, is in the fullest sense a mutual contract. The document itself declares that the contract ceases to operate on the death of the vassal, and it must be presumed that the death of the lord would have the same effect. Commendation was in its essence a contract concluded by each partner in consideration of some quality possessed by the other; it may be described as being concluded *intuitu personae*.

The Tours formula does not inform us of the mode by which the contract was concluded, but in the much older formulary of Marculf, which was probably composed in the Paris region towards the middle of the seventh century, there is a model of an act by which a king admits a certain person to the number of his own *antrustiones*. The document describes a formal oath of fealty taken 'in the king's hand' presumably in the literal sense of the expression: the *antrustio* would actually place his hand in the king's while repeating the words of the oath. But the *antrustiones* were the king's protégés in a very special sense, and it would not be safe to conclude from this that every free man commending himself to another free man would do so by a similar gesture of the hand and by taking an oath of fealty. It is quite possible that he would, and from what we know of the later history of fealty it may even be regarded as probable, but in the absence of direct evidence it is best to admit our ignorance. We can at least be certain that the contract must have been a verbal one and must have been accompanied by certain ritual acts, for this would be in keeping with the general custom of the time.

It should finally be noted that the contract of commendation is of a quite general character which could be adapted to many different circumstances. The nature of the services required from the vassal in the Tours formula is not laid down in precise terms; they might be domestic, economic, military or all three. Free men at all social levels might commend themselves to a lord. The narratio of the Tours formula introduces us to a poor man who lacks the means to feed and clothe himself, and this is evidently the most frequent type, the *id quod plerumque fit*. But it is not the only one.

If the form of service due from the *gasindus* or *vassus*, the person commending himself, might vary greatly, the lord on his side had the choice of various possibilities in providing for the maintenance of the person who had placed himself under his protection. The most common form was certainly direct maintenance by the lord, either in his own household or by means of allowances. The Tours formula with which we have had to do seems to have had in mind some kind of maintenance of this character. But it might also be done by a grant of land.

3. Benefice

In a society in which agriculture was the chief source of economic activity and the most important source of wealth, it might often be convenient to bestow on the vassal sufficient land to assure his proper maintenance. This land might be given in full ownership but there is no text for the Merovingian period which proves indisputably that it was ever in fact done this way. For there was another alternative. The lord might make a grant of land to his vassal as a tenement.

A tenement (Fr. *Tenure*, Germ. *Leihe*) was a piece of land, great or small, the use and enjoyment of which for a prolonged period were granted by the owner to another person, the tenant, in such a fashion that the tenant exercised over the land immediate and direct control, what we would call nowadays a real right. The tenant has thus acquired what in Roman law was called an *ius in re aliena*, a right over a thing belonging to another. The existence of tenements was very widespread in the Frankish kingdom, as it had already been in the Roman Empire during the last centuries of its history. Such tenements were those fractions of great estates which were cultivated not by the owners themselves, but by coloni or laeti or slaves for their own profit, in return for the payment of certain fixed rents and the performance of certain labour dues. These tenements were nearly always held for life, and were in practice normally hereditary.

This type of tenement, which was the commonest, may be described as onerous, since the rent and labour dues owed by the tenant were directly related to the value of the land he held and weighed heavily upon him. But by the side of these were other types of tenement, the particular feature of which was that from the point of view of the tenant they were held by him on very favourable terms. They carried with them no labour dues, and their rent was an extremely moderate one. Sometimes there might even be no rent at all, the owner having for some particular reason granted a tenement to another person while demanding no payment in return.

The favourable terms on which these tenements were held explains the word *beneficium*, 'benefice' or 'benefit', by which they were described in contemporary texts. We hear of them frequently in the formularies and charters of the Merovingian period.

For example, we find one in the case of the grantor of a tenement declaring that the grantee will exploit it *per nostro benefitio*, which in the context can only mean 'as a benefit from us'. Or again, the grantee who is the author of the charter declares that the grantor has conferred a 'benefit' on him in transferring to him the land in question. Sometimes the expression is clearer still. The author of a charter declares to a grantor: 'you have permitted us to exploit to our benefit a small estate belonging to your church'. Or still more explicitly 'you have permitted us to hold this estate to our benefit in order to cultivate it with the right of usufruct'.

The *beneficium* or benefice may thus be defined as a tenement held on easy terms or even gratuitously, and which the tenant owes to the generosity of the grantor.

The benefices of the Merovingian period about which we are best informed are those whose grant was the object of a contract known as a *precaria*. This was an institution of vulgar Roman law which had come into existence in the late imperial times and had applied to it the name (*precarium*) of an institution of classical Roman law which had fallen into desuetude. In this period it conferred on the beneficiary of the grant the right of usufruct over the land in question. The contract was created by a request on the part of the would-be beneficiary, and an indication on the part of the owner that the request was acceded to. Two charters would be drawn up to serve as title-deeds, and would be held

respectively by the owner making the grant and the tenant receiving it. The name *precaria* was applied both to the contract itself and the charters in which it was embodied, and more particularly to the one emanating from the tenant; the word *prestaria* was sometimes used to describe the charter emanating from the grantor.

The *precaria* gave rise to a form of tenement, generally of some size, and normally granted for life, held in return for the payment of a low rent and sometimes for no rent at all. Precarial grants were made principally by the Church, though sometimes also by the king or great lay landowners; they frequently involved entire estates or even groups of estates. There were many possible reasons for their creation. They might be intended to stimulate the cultivation of land which was still waste or which was only in the process of being brought under the plough; they might be intended to induce the tenant to give another estate to the grantor, which would then be granted back on precarial, so that the precarist thus surrendered one estate and got back two; they might be intended to win the goodwill of some important personage; they might be intended to recognize an existing usurpation while preserving the rights of ownership for the future; and so on.

The tenement created by a precarial contract forms a particularly important type of the larger group of beneficial tenements. We do not know exactly how other forms of beneficial grants were made, but we would probably not be far wrong in assuming a legal act in which a form of words was accompanied by some form of symbolic gesture, such as was customary in the legal procedure of the time.

What we would like to know is whether, during the Merovingian period, beneficial tenements were ever in fact granted by lords to those who commended themselves to them, in order to assure them the maintenance that was their due. There seems to be little doubt that it must sometimes have been done, at least in the seventh century, though we have no direct evidence of the fact. When Eberhard, son of Duke Adalbert of Alsace, declares in a charter of 735/37 to the Abbey of Murbach that he has made a grant of a certain estate as a benefice, and when in this same charter, at the end of a list of his property, he groups together all of those estates which he has granted in benefice to his vassals, he is evidently alluding to a well-known practice, and even probably to an old-established one. But the examples of this practice provided in our texts are not numerous enough to justify us in regarding it as a very widespread one, at any rate before the middle of the eighth century.