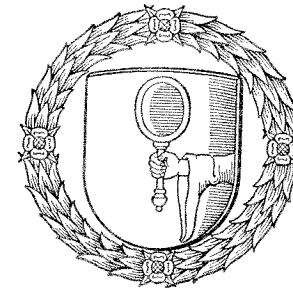


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## CAROLINGIAN OATHS OF FIDELITY

By CHARLES E. ODEGAARD

AMONG the devices to which Charlemagne and his successors of the ninth century resorted in an effort to maintain or to reinforce their power one finds the religious sanction of oaths of fidelity. The interpretation of the content of these oaths has long been a subject of controversy and a thick forest of tangled argumentation now guards the approach to the meaning of these pledges. Is it possible to find a track through this maze?

The Merovingian practice by which the kings required an oath of fidelity from all their subjects had been abandoned in the course of the seventh century.<sup>1</sup> At the time of his elevation to the kingship Pepin received oaths from his magnates but no effort was made to secure oaths from all his subjects. It was not until Charlemagne was disturbed by the revolt of Hardrad in 786 that the practice of securing oaths from the mass of subjects was revived.<sup>2</sup> Since the conspirators against the king had said apparently in mitigation of their offense that they had not sworn fidelity to the king,<sup>3</sup> the king now orders that an oath of fidelity shall be sworn by all the people, including even serfs who hold benefices or offices or who have been honored by their lords with vassalage and who possess arms.<sup>4</sup> A formula of oath which may very well be the one used on this occasion<sup>5</sup> has survived in a capitulary of 789. It runs as follows: 'Sic promitto ego ille partibus domini mei Caroli regis et filiorum eius, quia fidelis sum et ero diebus vitae meae sine fraude et malo ingenio.'<sup>6</sup> We may translate it as 'I promise that I am and shall be faithful to my

lord, Charles the king, and his sons all the days of my life without deception and without deceit.'

Some years later, in 802, Charlemagne now emperor, called again for an oath of fidelity from all his subjects.<sup>1</sup> Appended to the special instructions for the *missi* sent to Paris, Rouen, and Orleans are two formulae for the oath<sup>2</sup> both of which agree in essentials. In both the subject promises to be faithful to lord Charles, the emperor, with regard to his realm and his rights, just as a man rightly should be to his lord. It is this last clause, *sicut per drictum debet esse homo domino suo* or *sicut homo per drictum debet esse domino suo*, which has inspired much comment. Waitz translated *homo* as 'vassal' so that the clause reads 'just as a vassal should be to his lord.' Thus the subject's fidelity to the emperor is now the same as that of a vassal to his seigneur.<sup>3</sup> Flach suggests a reason for this change.<sup>4</sup> The earlier oath of fidelity sworn by the subjects was only a vague and general one. Charlemagne, jealous of the fidelity which vassals owe their seigneurs, seeks to secure the same fidelity for himself. Guilhiermoz, Dahn, Brissaud, Glasson, Declareuil, and Pfister and Ganshof likewise regard the oath of 802 as an extension to all the subjects of the vassal's oath of fidelity to his seigneur.<sup>5</sup>

In one of his early works Lot pushed this assimilation of the subjects into vassalage back from 802 to 789, when the subjects swore the oath given above. At that time, according to Lot, Charlemagne modified the ancient Merovingian sub-

<sup>1</sup> *Capitularia* 1 (Boretius), 92, c. 2: 'De fidelitate promittenda domno imperatori. Precepitque, ut omni homo in toto regno suo, sive ecclesiasticus sive laicus, unusquisque secundum votum et propositum suum, qui antea fidelitate sibi regis nomine promisissent, nunc ipsum promissum nominis cesaris faciat; et hii qui adhuc ipsum promissum non perfecerunt omnes usque ad duodecimo aetatis annum similiter facerent.'

<sup>2</sup> *Capitularia*, 1 (Boretius), 101-102: 'Sacramentale qualiter repromitto ego, quod ab isto die inantea fidelis sum domno Karolo piissimo imperatori, filio Pippini regis et Berthanae reginae, pura mente absque fraude et malo ingenio de mea parte ad suam partem et ad honorem regni sui, sicut per drictum debet esse homo domino suo. Si me adiuvet Deus et ista sanctorum patrocinia quae in hoc loco sunt, quia diebus vitae meae per meam voluntatem, in quantum mihi Deus intellectum dederit, sic attendam et consentiam.

'Item aliud. Sacramentale qualiter repromitto ego: domno Karolo piissimo imperatori, filio Pippini regis et Berthanae, fidelis sum, sicut homo per drictum debet esse domino suo, ad suum regnum et ad suum rectum. Et illud sacramentum quod iuratum habeo custodiam et custodire volo, in quantum ego scio et intelligo ab isto die inantea, si me adiuvet Deus, qui coelum et terram creavit, et ista sanctorum patrocinia.' Mitteis, *op. cit.*, p. 54, n. 137, suggests that we have here a first draft and then a final draft which is better, more concise and clearer. He fancies, furthermore, that he can detect in the first oath perhaps a greater trace of the *Vasalleneid*: this seems to me to be a case of straining one's eyesight. <sup>3</sup> Waitz, *op. cit.*, III, 297-298.

<sup>4</sup> J. Flach, *Les Origines de l'ancienne France*, 1 (Paris, 1886), 121, n. 1: 'Le premier [oath of fidelity] ne consacrait encore que d'une manière vague et générale la fidélité due au roi. . . Tout autre est le serment de 802. Charlemagne semble jaloux de la fidélité que les recommandés, les *vassi*, gardent à leur seigneur. Il veut se l'assurer identique.'

<sup>5</sup> A. Guilhiermoz, *Essai sur l'origine de la noblesse en France au moyen âge* (Paris, 1902), p. 129. Dahn, *op. cit.*, VIII<sup>6</sup>, 26, 28. Jean Brissaud, *A History of French Public Law* (translated by J. W. Garner, Boston, 1915), pp. 69-70. E. Glasson, *Histoire du droit et des institutions de la France*, IV (Paris, 1891), 291. J. Declareuil, *Histoire générale du droit français des origines à 1789* (Paris, 1925), p. 116. Pfister and Ganshof in Lot, Pfister, and Ganshof, *Les Destinées de l'empire en occident de 395 à 888* (Paris, 1928-[1934]), p. 459.

<sup>1</sup> P. Roth, *Geschichte des Beneficialwesens* (Erlangen, 1850), pp. 109 ff. G. Waitz, *Deutsche Verfassungsgeschichte*, II<sup>1</sup> (3rd ed., Berlin, 1882), 205 ff., III (2nd ed., Berlin, 1883), 290. Fustel de Coulanges, *La Monarchie franque* (Paris, 1888), pp. 55 ff. F. Dahn, *Die Könige der Germanen*, VII<sup>3</sup> (Leipzig, 1895), 392 ff. H. Brunner, *Deutsche Rechtsgeschichte*, II (2nd ed., by von Schwerin, Munich and Leipzig, 1928), 74, 75. C. Pfister in E. Lavissee, *Histoire de France depuis les origines jusqu'à la révolution*, II<sup>1</sup> (Paris, 1903), 171. A. Esmein, *Cours élémentaire d'histoire du droit français* (15th ed., by R. Génestal, Paris, 1925), p. 62. E. Chénon, *Histoire générale du droit français public et privé*, I (Paris 1926), 175-176. P. Petot, 'L'Hommage servile,' *Rév. hist. de droit fr. et étr.*, IV<sup>o</sup> série, VI (1927), 89. A. Dumas, 'Le Serment de fidélité et la conception du pouvoir du 1<sup>er</sup> au 19<sup>e</sup> siècle,' *Rév. hist. de droit fr. et étr.*, IV<sup>o</sup> série, X (1931), 43 ff. F. Lot, 'Le Serment de fidélité à l'époque franque,' *Rév. belge de philol. et d'hist.*, XII (1933), 571. H. Mitteis, *Lehnrecht und Staatsgewalt* (Weimar, 1933), pp. 50, 51.

<sup>2</sup> Waitz, *op. cit.*, III, 291 ff. Fustel de Coulanges, *Les Transformations de la royauté pendant l'époque carolingienne*, pp. 239, 245 ff. Dahn, *op. cit.*, VIII<sup>6</sup>, 21 ff. Chénon, *op. cit.*, I, 176. Brunner, *op. cit.*, II<sup>2</sup> 75 ff. A. Kleinclausz in E. Lavissee, *Histoire de France*, II<sup>1</sup>, 319, 320. Dumas, *op. cit.*, X (1931), 290. Lot, *op. cit.*, XII (1933), 571. Mitteis, *op. cit.*, pp. 50 ff.

<sup>3</sup> *Capitularia*, 1 (Boretius), 66, *Capitulare Missorum* (792 or 786): 'Quam ob rem istam sacramenta sunt necessaria, per ordine ex antiqua consuetudine explicare faciant, et quia modo isti infideles homines magnum conturbium in regnum domni Karoli regi voluerint terminare et in eius vita consiliati sunt et inquisiti dixerunt, quod fidelitatem ei non iurasset.' Various dates have been advanced for this: 786, 792, and more recently 789 or shortly thereafter; cf. Brunner, *op. cit.*, II<sup>2</sup>, 76, n. 15.

<sup>4</sup> *Capitularia*, 1 (Boretius), 66-67, c. 2-4. Cf. Waitz, *op. cit.*, III, 292-295; Dahn, *op. cit.*, VIII<sup>6</sup>, 23-24; Brunner, II<sup>2</sup>, 77; Fustel de Coulanges, *Les Transformations . . .*, pp. 246-247. Petot, *op. cit.*, VI (1927), 105; Dumas, *op. cit.*, X (1931), 290, 297, n. 1.

<sup>5</sup> Brunner, *op. cit.*, II<sup>2</sup>, 76, n. 15.

<sup>6</sup> *Capitularia*, 1 (Boretius), 63, c. 18.

jects' oath of fidelity, the *leudesamium*, the text of which has not survived, by adopting the formula of the oath which his vassals swore to him.<sup>1</sup>

Dumas, in an article published in 1920, accepted the statement of Lot that it is impossible to distinguish between the Carolingian *leudesamium* or subjects' oath and the oath of the vassals, for they are one and the same.<sup>2</sup> He returned to the problem again in 1931 in a very interesting article in which he endeavored to set the Frankish oaths of fidelity in a framework of political theory. Dumas demonstrates that there had grown up in the late Roman empire a conception of absolute political power resting in the person of the ruler who thus has a mastery (*dominatio*) over his people who must serve (*servire*) him as their master (*dominus*).<sup>3</sup> This concept of power, 'le patronat' (as Dumas calls it), prevailed in the Merovingian period and colored completely men's ideas as to the relationship between the ruler and the ruled. The oath of fidelity sworn by the subjects to the king, the *leudesamium*, embodied the strongest possible obligation. Accordingly there could be no stronger oath sworn by those who serve the king in person, that is, by his vassals.<sup>4</sup> Hence Charlemagne made no innovations in 789 or in 802. These oaths are no stronger than the ancient *leudesamium*, nor for that matter are the oaths sworn by vassals.<sup>5</sup> The account given in the second edition of Brunner is in conformity with these ideas of Dumas.<sup>6</sup>

All these hypotheses agree in supposing ultimately an identity of content between the oath of fidelity sworn by the subject and that sworn by the vassal. They vary in their interpretation of the time at which this identity was established; some select the year 802; another the year 789; still others believe in the very ancient origin of this identity.

This identity of the two oaths was rejected by Petot.<sup>7</sup> Neither the oath of 789 nor that of 802 give any evidence of assimilation with vassalage. The *sicut per dicitum debet esse homo domino suo* clause should be translated 'as a man (that is, a subject) ought rightly be towards his sovereign.' He refuses to translate *homo* as 'vassal' or *dominus* as 'seigneur.' He calls attention to the formula of the other oath sworn by all the subjects which survives, that of 854: 'Ego ille Karolo, Hludowici et Iudit filio, ab ista die inante fidelis ero secundum meum savirum, sicut Francus homo per rectum esse debet suo regi. Sic me Deus adiuvet et istae reliquiae.'<sup>8</sup> This may be translated: 'I shall be as faithful as I know how to be from

<sup>1</sup> F. Lot, *Fidèles ou vassaux?* (Paris, 1904), p. 242.

<sup>2</sup> A Dumas, 'Encore la question: "Fidèles ou vassaux?"', *Nouv. rév. hist. de droit fr. et étr.*, XLIV (1920), 186, 206.

<sup>3</sup> A. Dumas, 'Le Serment de fidélité et la conception du pouvoir du I<sup>er</sup> au IX<sup>e</sup> siècle,' *Rév. hist. de droit fr. et étr.*, IV<sup>e</sup> série, X (1931), 30, 39.

<sup>4</sup> *Ibid.*, X (1931), 45-49.

<sup>5</sup> *Ibid.*, X (1931), 295-297. In response to the 'surprise' attack by Lot discussed below, Dumas returned with a spirited defense of his thesis in 'Le Serment de fidélité à l'époque franque, Réponse à M. Ferdinand Lot,' *Rév. belge de philol. et d'hist.*, XIV (1935), 405-426.

<sup>6</sup> Brunner, *op. cit.*, II<sup>2</sup>, 80, 81.

<sup>7</sup> P. Petot, 'L'Homage servile,' *Rév. hist. de droit fr. et étr.*, IV<sup>e</sup> série, VI (1927), 89-98.

<sup>8</sup> *Capitularia*, II, (Krause), 278, c. 13: 'De fidelitate regi promittenda, id est, omnes per regnum illius Franci fidelitatem illi promittant. Et qui dicunt se illam promississe, aut certis testibus hoc adprobent, aut iurent si illam ante iurasse, aut illam ipsam fidelitatem promittant.

'Sacramentum autem fidelitatis tale est': etc. as above.

this day forth to Charles, son of Louis and Judith, just as a Frankish man should be towards his king. May God and these relics help me.' The all-important clause here reads *sicut Francus homo per rectum esse debet suo regi*. The epithet *dominus* has given way to *rex*: there is no thought of vassalage here. If Charlemagne had in mind a reform in 802, it proved ephemeral. Petot doubts that there was any such reform. We have rather three formulas for the oath of a subject; none of them are vassal's oaths. This assertion does not of course deny the fact that vassals did often follow up their commendation with an oath of fidelity. Of this vassals' oath of fidelity we have no actual formula, says Petot.

To the amazement of Dumas, who fancied that he was only developing and applying the ideas of Lot embodied in *Fidèles ou vassaux?*,<sup>1</sup> the latter strenuously rejected Dumas' theories. Admitting that he had erred in his earlier study,<sup>2</sup> Lot now follows Petot's theory of a duality of oaths and asserts categorically: 'La distinction du serment de fidélité du vassal et du serment d' "allégeance" du sujet à l'époque franque est devenue, on peut le dire, un axiome pour les historiens du droit.'<sup>3</sup> The review of the literature on this subject given above makes room for still more amazement; surely the duality of oaths is something less than an axiom.

Let us grant then that there is no unanimity of opinion with regard to the interpretation of Carolingian oaths of fidelity. There is, furthermore, no clearly indicated *maior et sanior pars*. Where does right reason lie on this moot point? If the duality of oaths can hardly be said to be at present 'axiomatic' (a strong word for historical science), I believe that it should be; that belief is founded upon more arguments than either Petot or Lot have presented in its defense.

The chief arguments in favor of the identity of the two oaths are based on certain similarities in terminology.<sup>4</sup> As illustrated in the case of Tassilo,<sup>5</sup> the vassal commended himself to his seigneur and then promised fidelity (*fidelitatem*). As we have seen above, the subjects also promised *fidelitatem*. Those who promise fidelity are called *fideles*. This term is applied not only to the ordinary subjects but also to the magnates who surround the king. That there are two usages for this term is freely admitted. The narrower usage, that where *fideles* is synonymous with *proceres*, with the magnates who are in the *servicium* of the king, is more common.<sup>6</sup> Indeed modern writers have overlooked the full importance of this narrow use of the term *fideles*. It is the conventional practice to describe as 'vassals' those who enter the service of a seigneur by the ceremony of commendation to which an oath of fidelity is frequently joined. This represents a perversion

<sup>1</sup> Dumas, 'Le Serment de fidélité à l'époque franque,' *Rév. belge de philol. et d'hist.*, XIV (1935), 405.

<sup>2</sup> Lot, 'Le Serment de fidélité à l'époque franque,' *Rév. belge de philol. et d'hist.*, XII (1933), 571, n. 5.

<sup>3</sup> *Ibid.*, p. 569.

<sup>4</sup> Dumas, *Rév. hist. de droit fr. et étr.*, IV<sup>e</sup> série, X (1931), 45-50, 292-296.

<sup>5</sup> *Annales Regni Francorum* (ed. by F. Kurze, Hannover, (1895), p. 14): 'Bique Tassilo venit, dux Baioariorum in vasatico se commendans per manus, sacramenta iuravit multa et innumerabilia, reliquias sanctorum manus imponens, et fidelitatem promisit regi Pippino et supradictis filiis eius, domno Carolo et Carlomanno, sicut vassus recta mente et firma devotione per iustitiam, sicut vassus dominos suos esse deberet.'

<sup>6</sup> Dumas, *op. cit.*, X (1931), 49, 50, who cites other authors. See also Brunner, *op. cit.*, II<sup>2</sup>, 14, n. 15; Lot, Pfister, Ganshof, *Les Destinées de l'empire en occident*, p. 311; Dahn, *op. cit.*, VII<sup>1</sup>, 190.

of the term 'vassal' which was applied in the Carolingian period not to all these *commendati* but rather only to a group within the *commendati* who had a particular and definite function the essence of which was skilled military service. The Carolingian term for all these *commendati* is *fideles*, the narrow usage referred to above. These men who serve the king in a real sense are his *fideles*, his 'faithful servants'.<sup>1</sup> Henceforth in this article I shall refer to *commendati* as 'faithful servants' unless the texts specifically mention *vassi*. It should be remembered, however, that there are cases where *fideles* was used in a broad sense to include all the subjects and not just men in royal service.

The *sicut per drectum debet esse homo domino suo* clause of the general oath of 802 and the *sicut Francus homo per rectum esse debet suo regi* clause of the general oath of 854 have led to a discussion of the terms *homo* and *dominus*. The similarity between these clauses and the *sicut vassus recta mente et firma devotione per iustitiam, sicut vassus dominos suos esse deberet* clause of Tassilo's oath<sup>2</sup> has been emphasized by Dumas;<sup>3</sup> *homo*, it will be remembered, was translated 'vassal' by Waitz, Flach, Guilhaumez, Dahn, Brissaud, Glasson, Declareuil, Pfister and Ganshof. That *homo* may mean vassal or *fidelis* in the narrow sense of faithful servant is not to be denied.<sup>4</sup> But it was a very elastic term. It could be applied to anyone who was under the control of another in greater or less degree. Slaves, servants, clients, tenants of wealthy landowners, dependents of all kinds were called *homines*.<sup>5</sup> In its widest use *homo* means 'man' in the generic sense.<sup>6</sup> In the case in hand, however, some kind of dependency is at stake, for the texts describe a man promising to be as faithful as a man should be to his *dominus*, his lord. In what sense is this term *dominus* to be understood? *Dominus* is the reverse of *homo*; it signifies a dominant person, but the measure of that domination is no more specific than the measure of subservience of *homo*. The *dominus* might be a master of subjects or a master of slaves<sup>7</sup> as well as the seigneur of faithful servants. The term may be only a 'courtesy title'<sup>8</sup>; for example, Arno of Salzburg speaks of the king as 'the lord, our seigneur' (*domni senioris nostri*).<sup>9</sup> But this courtesy title is not quite meaningless, as Dumas insists; it is applied only to men of power and prestige.<sup>10</sup> Given the various uses of these terms, however, one cannot assert that the use of the terms *fideltas* and *fideles*, and of *homines* and *domini* even when they are linked together necessarily imply the status of a 'vassal' or faithful

<sup>1</sup> For the justification of these assertions, see my *Fideles and Vassi in the Carolingian Empire* which I hope to publish shortly. <sup>2</sup> See above, pp. 285, n. 2; 286; 287.

<sup>3</sup> Dumas, *Rév. hist. de droit fr. et étr.*, x (1931), 293-297.

<sup>4</sup> M. Bloch, *La Société féodale, la formation des liens de dépendance* (Paris, 1939), pp. 224-225; J. Calmette, *La Société féodale* (4th ed., Paris, 1938), p. 31.

<sup>5</sup> Waitz, *op. cit.*, iv, 243-244; Fustel de Coulanges, *Les Origines du système féodal* (Paris, 1890), 249; Dahn, *op. cit.*, viii<sup>2</sup>, 169; Guilhaumez, *op. cit.*, pp. 51-52; Dumas, *Rév. hist. de droit fr. et étr.*, x (1931), 35-36, 42, 295; Petot, *Rév. hist. de droit fr. et étr.*, vi (1927), 71, 72; Bloch, *op. cit.*, p. 223.

<sup>6</sup> *Capitularia*, I (Boretius), 69, c. 7: 'corpus defuncti hominis.'

<sup>7</sup> As admitted by Dumas, *Rév. hist. de droit fr. et étr.*, x (1931), 35-41. Also Petot, *Rév. hist. de droit fr. et étr.*, vi (1927), 92, 93. <sup>8</sup> Lot, *Rév. belge . . .*, xii (1933), 572.

<sup>9</sup> *M.G.H., Concilia Aevi Carolini*, I (Werminghoff), 196.

<sup>10</sup> Dumas, *Rév. belge . . .*, xiv (1935), 416.

servant. Nor, on the other hand, do they preclude the possibility that we have here to do with the narrow obligation of personal service. The most one can say on the basis of this evidence is that the oaths might imply the *Diensteid* or they might not imply it. For certainty on either side, further evidence must be adduced.

Those who assert that the oath of fidelity of the subject is the same as that of the faithful servant or 'vassal' do not really maintain this identity. According to Waitz and Dahn, in 802 the subjects took a stronger oath than that which they had taken in 789; they bound themselves to be faithful as a 'vassal' would be to his seigneur. But, of course, they admit, the subject did not really become a 'vassal'.<sup>1</sup> As Flach says, the king wanted to be the seigneur of all his subjects: if not really their seigneur so far as the services he received from them was concerned, at least from the point of view of the fidelity which they swore to him.<sup>2</sup> What is the point of this curious ceremonial by which men promise to be as faithful as 'vassals' without really behaving like them, by which men promise to regard as their seigneur a man whom they do not really treat as such? The understanding of this paradox requires a greater capacity for working with abstractions than Carolingian men are commonly supposed to have had. Perhaps another interpretation of these oaths presents no such curious paradox to Carolingian and modern minds.

Despite the fact that Dumas imposes upon the 'vassal' as well as the mass of subjects a common oath which embodies complete servility before the domination of the ruler, he admits that there still remains a difference between the actual status of the subjects and that of the magnates who serve the king. This difference, however, is not found in the promises made, for Dumas cannot conceive of a more stringent oath of fidelity for the faithful servants than that which the subjects have already taken. Whatever their status may be, those who swear the oath of fidelity must consider that they belong to the king body and soul.<sup>3</sup> The difference between the subjects and the magnates, between the *fideles* in the broad sense and the *fideles* in the narrow sense, if it is not reflected in the substance of the oath, is, he says, apparent in the method by which the king receives the oaths. Certain *fideles* swear their oath at the palace in the presence of the king whom they see in flesh and blood. These are, of course, the magnates such as bishops, abbots, counts, and vassals. Not only do they swear to the king in person but they also add a special ceremony according to Dumas, to give concrete form to their oath, to explain their oath, commendation with the hands. Thus commendation is, for Dumas, merely a ritualistic gloss on the essential act, the oath of fidelity.<sup>4</sup> The mass of the subjects, however, do not see the king who receives their oaths through an intermediary, a *missus* or count. Accordingly, the subjects lack the sentiment of giving themselves body and soul to the king, even if according to

<sup>1</sup> Waitz, *op. cit.*, iii, 298; Dahn, *op. cit.*, viii<sup>2</sup>, 396; viii<sup>2</sup>, 26, 28. Brunner, i<sup>2</sup>, 80, in agreement with this.

<sup>2</sup> Flach, *op. cit.*, I, 121, n. 1: 'Il vise à être le seigneur de tous ses sujets, sinon au point de vue des services, du moins au point de vue de la foi jurée.'

<sup>3</sup> Dumas, *Rév. hist. de droit fr. et étr.*, x (1931), 49.

<sup>4</sup> For a discussion of various theories as to the relationship between Carolingian commendation and fidelity, see my *Fideles and Vassi in the Carolingian Empire*, Appendix I.

Dumas, they make the same promise as the magnates.<sup>1</sup> The latter, however, who have sworn their fidelity personally to the king feel bound to him 'non pas plus étroitement, mais plus sérieusement' than those who do not swear in person to the king<sup>2</sup> and accordingly render more service than the ordinary subjects. This distinction requires a high degree of abstraction of men who are described in the same sentence as 'portés au concret.' Would it not be strange if such men, sensitive to status or situation so far as the form of the oath is concerned,<sup>3</sup> failed to recognize in the content of the oath those obvious differences of obligation which status makes and which no one denies, not even those who argue for identity between the subjects' oath and the *Diensteid*?

What do the oaths themselves suggest? In the oath of 789<sup>4</sup> the subject was to promise his lord king Charles to be faithful all the days of his life *without deceit and ill-will* (*partibus domini mei Caroli regis . . . quia fidelis sum et ero diebus vitae meae sine fraude et malo ingenio*). This is surely a negative way to phrase the obligation of fidelity.<sup>5</sup> The subject hardly gives himself over body and soul to the king; he rather promises not to be a traitor. The emphasis is upon loyalty and security for the king rather than upon devoted service to the master. This impression is confirmed by the instructions given to the *missi* who are ordered to obtain oaths of fidelity at about this time, perhaps in fact the very oath whose formula has survived.<sup>6</sup> The king is concerned with obtaining an expression of loyalty to counteract the evil effects of the conspiracy. After indicating the various classes of people who are to swear the oath, the king then specifies the procedure to follow in those cases where men refuse to, or fail to, take the oath.<sup>7</sup> The king then instructs his *missi* to give what amounts to a royal apology to disgruntled subjects for infractions of the law, infractions which took place without the wish or command of the king. This humbleness of the king accords ill with a request for a declaration of body and soul devotion. No, the oath of 789 is only a promise not to be disloyal.

The oath of 802 is unquestionably more specific in character. Does it involve the subject in a tighter bond and increase his responsibilities toward the king? I think not. In addition to the *sicut per dicitum debet esse homo domino suo* clause, the exact import of which cannot be definitely determined by itself, we have again in one formula the promise to be loyal *without deception and ill-will* (*absque fraude et malo ingenio*),<sup>8</sup> a promise not to be disloyal. To be sure, in the second formula this phrase is missing and the subject only promises to be faithful to the lord emperor Charles (*domno Karolo piissimo imperatori . . . fidelis sum*), but this negative approach is maintained throughout the instructions which surround this oath.<sup>9</sup> The *missi* are to announce publicly what obligations are involved in

<sup>1</sup> Dumas, *Nouv. rév. hist. de droit fr. et étr.* XLIV (1920), 194-197; Dumas, *Rév. hist. de droit fr. et étr.*, x (1931), 46-49, 297-304.

<sup>2</sup> *Ibid.*, p. 49: 'Ces hommes, portés au concret, se sentaient liés non pas plus étroitement, mais plus sérieusement envers un maître qu'ils approchaient de temps à autre qu'envers un maître qu'ils n'avaient jamais vu et à qui ils n'avaient juré leur foi que par l'intermédiaire d'un *missus*.'

<sup>3</sup> *Ibid.*, p. 297, n. 1.

<sup>4</sup> See above, p. 284.

<sup>5</sup> Lot, *Rév. belge . . .*, XII (1933), 571.

<sup>6</sup> See above, p. 284.

<sup>7</sup> *Capitularia*, I (Boretius), 66-67, c. 1-4.

<sup>8</sup> See above, p. 285, n. 2.

<sup>9</sup> As Mitteis, *op. cit.*, p. 53, rightly remarks in connection with the oath of 802.

this oath of fidelity so that all may understand that they are not by reason of any enmity to introduce enemies into the king's realm and that they are not to consent to nor to keep silent about any act of infidelity.<sup>1</sup> The *missi* are to explain to the people that the oath of fidelity involves the following obligations: each man is to live with all his strength and intelligence in accordance with God's commandments, for the emperor cannot care for and correct all his people individually; no one is through perjury, fraud, deceit, seduction, or bribery to take possession of a serf of the lord emperor or of his land or of anything belonging to him; no one is to keep or conceal any unfree fugitives from the fisc; no one is to commit fraud, rapine, or injury upon the holy churches of God or upon widows, orphans, or travellers because the emperor has taken them under his protection and guardianship; no one who holds a benefice from the emperor is to ruin it or try to convert it into his own property; no one shall dare to disobey the order of the emperor to serve in the army; no one is to disobey the command or order of the emperor or to interfere with his work, or to behave contrary to his wish and his commands; no one shall refuse to pay the census or other payments due the emperor; finally, no one shall interfere with or seek to corrupt the course of justice.<sup>2</sup> Can one follow Fustel de Coulanges in saying that this oath with these obligations implies a very tight bond of obedience, a subjection without reserve, not just the negative subjection involved in not violating the law but a positive obligation to obey all the orders of the sovereign; in short, subjection of soul and body, of mind and acts?<sup>3</sup> No, the subjects quite naturally promise to be obedient to the king, but the chief emphasis is placed upon their *not interfering* with his government, his commands, his property, his taxes, his army, and his courts. In this oath Charlemagne is not calling for any real service such as he could expect from the magnates and such as he could not expect from the mass of subjects. It is well to recall here that even those who argue the identity of the two oaths recognize that the actual consequences of the oath are different when sworn by subjects as opposed to magnates. Charlemagne is really asking only for an oath of loyalty, not an oath of service.<sup>4</sup> The same may surely be said of the oath of 854 which says only that the swearer will be faithful to Charles from this day forth so far as he knows how, just as a Frankish man should be to his king (*Karolo . . . ab ista die inante fidelis ero, secundum meum savirum, sicut Francus homo per rectum esse*

<sup>1</sup> *Capitularia*, I (Boretius), 92, c. 2: 'Et ut omnes traderetur publice, qualiter unusquisque intellegere posset, quam magna in isto sacramento et quam multa comprehensa sunt, non, ut multi usque nunc extimaverunt, tantum fidelitate domno imperatori usque in vita ipsius, et ne aliquem inimicum in suum regnum causa inimicitiae inducat, et ne alicui infidelitate illius consentiant aut retiaciat, sed ut sciant omnes istam in se rationem hoc sacramentum habere.'

<sup>2</sup> *Capitularia*, I (Boretius), 92, 93, c. 3-9; Fustel de Coulanges, *Les Transformations . . .*, pp. 250-252; Mitteis, *op. cit.*, p. 53.

<sup>3</sup> Fustel de Coulanges, *Les Transformations . . .*; pp. 254-255. Brissaud, *op. cit.*, p. 70, is even more extravagant: 'The detailed commentary that Charlemagne took care to have made on the formula of 802 is a catechism of the duties of chivalry.' Brunner, II<sup>2</sup>, 82, places strong emphasis on the responsibilities incurred by the subject.

<sup>4</sup> In agreement with Mitteis, *op. cit.*, p. 54 who calls it an *Untertaneneid* as opposed to the *Vasaleneid*.

*debet suo regi*).<sup>1</sup> Indeed the substitution of *regi* for *domino* in the *sicut* clause diminishes if anything the flavor of 'vassalage' which might be presumed to have permeated the subject's oath.

In conclusion, then, the oaths of 789, 802, and 854, far from binding the swearer body and soul, pledge him only to be loyal to the king, to refrain from interfering with the government, and to obey such commands as he may receive from the king. That these commands would not be of the kind given by the king to the magnates who actually surrounded him hardly needed to be said by men who, little given to abstract ideas, attached themselves rather to the concrete. The mass of subjects could not actually serve the king in anything but a limited way. He was usually far away from most of them, and they were debarred by their numbers and by their poverty from attendance upon him. If they could not be expected to render the service of magnates who actually served the king, how could they be expected to have the sentiments toward the king which would come only from personal contact with him? Something less than intense personal devotion was enough for the king's purposes and so something less than a 'vassal' oath, a *Diensteid*, is required of all the subjects.

If this be so, then the subject's oath is hardly adequate for those who are actually in the king's service. If the line of argument presented here be correct, one would expect to find not only this oath which embodies the lighter responsibilities of a subject, but also an oath which embodies the heavier responsibilities of the narrower group of royal servants, in other words, a duality of oaths. The champions of the duality of oaths, Lot and Petot, said that no texts of this second oath have survived;<sup>2</sup> Lot admitted that it was possible that the two oaths differed little in form, though the parties to the oath would know how to interpret it.<sup>3</sup> Dumas seized these admissions with enthusiasm and suggested that this failure to survive has a good reason: the second oath never existed!<sup>4</sup> Undoubtedly, the failure to find a second oath differing in form from the first oath would call into question the theory of a duality of oaths though it would not necessarily destroy it.

However, the case of the duality of oaths is stronger than Petot and Lot knew; they somehow failed to recognize the existence of an oath sworn by the king's servants, an oath which bears every indication of appropriateness for the persons swearing it, and which differs in a major way from that sworn by all subjects. The *fideles* in the narrow sense were often called upon to swear an oath of fidelity,<sup>5</sup> sometimes at the time of commendation into service, sometimes without commendation. The earliest surviving oath sworn by them dates from 858 when Charles the Bald, faced by the danger of rebellion on the part of a section of his magnates,<sup>6</sup> called upon those *fideles* who joined him at Kiersy for an oath.<sup>7</sup> The

text of this *sacramentum fidelium*<sup>1</sup> runs as follows: 'Quantum sciero et potuero, Domino adiuvante absque ulla dolositate aut seductione et consilio et auxilio secundum meum ministerium et secundum meam personam fidelis vobis adiutor ero, ut illam potestatem, quam in regio nomine et regno vobis Deus concessit, ad ipsius voluntatem et ad vestram ac fidelium vestrorum salvationem cum debito et honore et vigore tenere et gubernare possitis; et pro ullo homine non me inde retraham, quantum Deus mihi intellectum et possibilitatem donaverit.' This may be translated: 'As long as I shall be able and as long as I shall know how, God willing, without treachery or deceit, I shall be a faithful helper to you with counsel and with aid in accordance with my office and my person so that you can govern and hold with honor and strength and with your due that power which God has given to you with the realm and with the royal name, in accordance with His will and for your salvation and the salvation of your faithful followers; and I shall not turn from you to any other man as long as God gives me intelligence and ability.' The essential phrases for our problem are embodied in the clause: 'I shall be a faithful helper with counsel and aid in accordance with my office and my person' (*et consilio et auxilio secundum meum ministerium et secundum meam personam fidelis vobis adiutor ero*). Here is no mere oath of loyalty though loyalty is clearly embodied in the oath; much more is involved than in the subject's oath.<sup>2</sup> The magnate promises to be a faithful helper (*fidelis adiutor*); he will help with his counsel and his assistance (*consilio et auxilio*); his specific service will depend quite naturally upon his office and his person or status (*secundum meum ministerium et secundum meam personam*). This is an obvious servant's oath (*Diensteid*) which, quite apart from the method employed in swearing it, carries in its content a clear indication that the swearer must render service. The swearer, a *fidelis* or magnate, a 'vassal' according to common modern usage, is one whose counsel the king might well seek and whose assistance the king might welcome. He resorts to the religious sanction of an oath to make certain the reception of them.

The ideas embodied in this oath are anything but exceptional. If the earliest actual oath containing them dates from 858, there is ample evidence to indicate that similar oaths embodying these responsibilities were sworn by the *fideles* both before and after 858.<sup>3</sup> In 851 Lothair, Charles, and Louis met at Meerssen and came to a series of agreements. Among other things each brother promised to help the others, with aid and counsel (*et consilio et auxilio adiuvet*);<sup>4</sup> furthermore, the brothers ordered that their *fideles* (an interesting example of the technical, narrow use of the term) should be faithful and obedient, true helpers and assist-

<sup>1</sup> See above, p. 286.

<sup>2</sup> Lot, *Fidèles ou vassaux?*, p. 241; Petot, *Rév. hist. de droit fr. et étr.*, vi (1927), 96, n. 3.

<sup>3</sup> Lot, *Rév. belge* . . . , xii (1933), 576. <sup>4</sup> Dumas, *Rév. belge* . . . , xiv (1935), 409.

<sup>5</sup> Fustel de Coulanges, *Les Transformations* . . . , pp. 238, 245.

<sup>6</sup> Lot, Pfister, Ganshof, *Les Destinées de l'empire*, p. 522; E. Dümmler, *Geschichte des Ostfränkischen Reiches*, I (Leipzig 1887), 422.

<sup>7</sup> Brunner, II<sup>o</sup>, 78; Dumas, *Rév. hist. de droit fr. et étr.*, x (1931), 312-314; Mitteis, *op. cit.*, p. 60.

<sup>1</sup> *Capitularia*, II (Krause), 296.

<sup>2</sup> *Contra*, Brunner, II<sup>o</sup>, 80-81; Dumas, *Rév. hist. de droit fr. et étr.*, x (1931), 313.

<sup>3</sup> Mitteis, *op. cit.*, pp. 59-65, has indicated a number of cases where the *consilium et auxilium* phrase is used.

<sup>4</sup> Mitteis, *op. cit.*, p. 60; *Capitularia*, II (Krause), 72, c. 3: 'Ut unusquisque fideliter suum parem . . . et consilio et auxilio adiuvet, ut regnum, fideles, prosperitatem atque honorem regium debite valeat obtinere.' 74: 'sciatis, quia unusquisque nostrum paratus est, ut suum fratrem . . . et infra patriam et foris patriam . . . et consilio et auxilio sic adiuvet, sicut frater fratri per rectum facere debet.'



tants with counsel and aid.<sup>1</sup> Despite the precautions taken by Charles the Bald in 858 the rebellion took place and Louis the German marched into West Francia to aid the rebels and seize the country himself. The attempt to unseat Charles failed, however, and once Louis had left the country, Charles proceeded to try the rebels, the chief of whom was Wenilo, archbishop of Sens. Wenilo was charged among other things with seeking to lead into treason bishops who owed the king a promised debt of fidelity with counsel and aid.<sup>2</sup>

In addition to the oath of the magnates in 858 there have survived the formulae for several other oaths sworn by magnates. In 872 the bishops who gathered at Gondreville around Charles the Bald, made a profession of fidelity while the laymen there, less fearful of oath-swearing, swore fidelity to Charles.<sup>3</sup> In 876 after his elevation to the imperial dignity, Charles the Bald received at Pavia the oaths of fidelity of the bishops, abbots, counts, and other *optimates* of the Italian realm.<sup>4</sup> The same oath was sworn by the magnates of Francia, Burgundy, Aquitaine, Septimania, Neustria, and Provence who met Charles later in 876 at Ponthion.<sup>5</sup> When in 877 Louis II was raised to the kingship, the bishops commended themselves to him and professed that they would be faithful to him with counsel and aid in accordance with their knowledge and ability and according to their office; the abbots, *primores* of the realm, and royal vassals commended themselves to him and promised fidelity in the accustomed manner on oath.<sup>6</sup> In all of

<sup>1</sup> *Capitularia*, II (Krause), 73, c. 6: 'Ut nostri fideles . . . sic sint nobis fideles et oboedientes ac veri adiutores atque cooperatores vero consilio et sincero auxilio ad ista peragenda, quae praemisimus, sicut per rectum unusquisque in suo ordine et statu suo principi et suo seniori esse debet.'

<sup>2</sup> Mitteis, *op. cit.*, p. 61; *Capitularia*, II (Krause), 452, c. 9: 'Wenilo in eo consilio et tractatu fuit, ut episcopi qui mihi fidei promissae debitores erant et consilium atque auxilium manu propria confirmatum ferre debuerant, deficerent et ad fratris mei Hludowici obsequium et subditionem se verterent.'

<sup>3</sup> *Capitularia*, II (Krause), 342:

'Professio episcoporum

Quantum sciero et potuero adiuvente Domino consilio et auxilio secundum meum ministerium fidelis vobis adiutor ero, ut regnum, quod vobis Deus donavit vel donaverit, ad ipsius voluntatem et sanctae ecclesiae ac debitum regium honorem vestrum et vestram fideliumque vestrorum salvationem habere et obtinere et continere possitis.

'Sacramentum laicorum

Quantum sciero et potuero adiuvente Domino consilio et auxilio fidelis vobis adiutor ero, ut regnum, quod habetis ad Dei voluntatem et sanctae ecclesiae et vestrum honorum atque ad vestram salvationem continere possitis, et quod Deus adhuc vobis concesserit, acquirere et contra omnes homines defendere valeatis.'

<sup>4</sup> Mitteis, *op. cit.*, p. 63, n. 162; *Capitularia*, II (Krause) 100: 'Sic promitto ego, quia de isto die in antea isti seniori meo, quamdiu vixero, fidelis et obediens et adiutor, quantumcumque plus et melius sciero et potuero, et consilio et auxilio secundum meum ministerium in omnibus ero absque fraude et malo ingenio et absque ulla dolositate vel seductione seu deceptione et absque respectu alicuius personae, et neque per me neque permissum neque per literas, sed neque per emissam vel intromissam personam vel quocumque modo vel significatione contra suum honorem et suam ac ecclesiae atque regni sibi commissi quietem et tranquillitatem atque soliditatem machinabo, vel machinanti consentiam, neque aliquod unquam scandalum movebo, quod illius praesenti vel futurae salutis contraria vel nociva esse possit. Sic me Deus adiuvet et ista sanctorum patrocinia.'

<sup>5</sup> *Capitularia*, II (Krause), 348.

<sup>6</sup> *Annales Bertiniani* (ed. by G. Waitz, Hannover, 1883), p. 138: 'Et episcopi se suasque ecclesias illi [Hludowico Balbo] ad debitam defensionem et canonica privilegia sibi servanda commendaverunt,

these formulae one finds the same emphasis on faithful service with aid and counsel in accordance with the swearers' office and position. Indeed, the king as the *missi* of Charles the Bald say, carries on his government with the aid and counsel of his *fideles*;<sup>1</sup> and Carloman promises his bishops in 882 that he will respect their privileges and the rights of their churches so long as they are faithful helpers with aid and counsel.<sup>2</sup>

It is abundantly evident, then, that there are in the ninth century two oaths of fidelity differing in content one from the other. The subject's oath calls for obedience and loyalty to the ruler. The oath of the *fideles* who serve the king calls for a promise of service with aid and counsel. That the same duality of oaths existed earlier is highly probable;<sup>3</sup> the obvious difference between the ordinary subject and the royal servant which makes reasonable a difference of oaths precedes the ninth century. Next to nothing is known about the content of Merovingian oaths, but the little that is known accords easily with the assumption of dual oaths. Gregory of Tours remarks that oaths were gathered in the *civitates* to the effect that men would be faithful to Gunthram the king and his nephew Chlotair II.<sup>4</sup> Very likely Gregory was paraphrasing the oath itself; the similarity with the oath of 789 which called merely for fidelity without fraud and deception<sup>5</sup> should be noted. Furthermore, a formula of Marculfe indicates that the subject promised *fidelitatem* and *leudesamio*.<sup>6</sup> The latter word is connected

profitentes secundum suum scire et posse et iuxta suum ministerium consilio et auxilio illi fideles fore; abbates autem et regni primores ac vassalli regii se illi commendaverunt et sacramento secundum morem fidelitatem promiserunt.'

The *professio* of the bishops is also given: *ibid.*, p. 139; *Capitularia*, II (Krause), 365; Mitteis, *op. cit.*, p. 64, n. 168: 'Ego ille sic profiteor: De ista die et deinceps isti seniori et regi meo Hludowico, Karoli et Hyrmentrudis filio, secundum meum scire et posse et meum ministerium et auxilio et consilio fidelis et adiutor ero, sicut episcopus recte seniori suo debitor est, in mea fide et meo sacerdotio.'

<sup>1</sup> *Capitularia*, II (Krause), 280, c. 8: 'Et sciatis, quia senior noster, sicut subinde voluit, Deo gratias nunc ad bonum effectum perduxit et rogavit fideles suos, ut sine ulla mala suspicione de illius iracundia aut animi commotione communiter quaerant et inveniant atque describant hoc, quod ille secundum suum ministerium facere debet et quae facere illum non condeceant; et ubicunque inventum fuerit, quod fecit, quod facere non debuit, paratus est ut cum Dei adiutorio et fidelium suorum consilio hoc, quam citius cum ratione et possibilitate emendare poterit, emendet et inante corrigat et correctae custodiat et, quod facere debuit, quod ad salutem et honestatem illius pertinuit, et aliquid minus fecit, hoc cum Dei adiutorio et fidelium suorum consilio et auxilio, facere quam citius cum ratione et possibilitate poterit, faciat.' In 856.

<sup>2</sup> *Capitularia*, II (Krause), 370: 'in hoc, ut vos mihi secundum Deum et secundum seculum sic fideles adiutores et consilio et auxilio sitis, sicut vestri antecessores boni meis melioribus praedecessoribus extiterunt, secundum seire et posse.' In 888 Eudes made a similar promise; *Capitularia*, II (Krause), 376.

<sup>3</sup> In agreement with Mitteis, *op. cit.*, pp. 25-26.

<sup>4</sup> *Gregorii Turonensis Opera* (ed. by W. Arndt and B. Krusch in *M. G. H., Scriptores Rerum Merovingicarum*, I, Hannover, 1885), lib. VII, c. 7, p. 295; (ed. by R. Poupardin, *Collection de textes pour servir à l'étude . . . de l'histoire*, Paris, 1913), lib. VII, c. 7, p. 259: 'exegentes sacramenta per civitatis [sic] . . . ut scilicet fideles esse debeant Gundrammo regi ac nepoti suo Chlothario.'

<sup>5</sup> See above, p. 284.

<sup>6</sup> Marculfe, lib. I, c. 40 (ed. by K. Zeumer, in *M. G. H., Legum Sectio V, Formulae Merovingici et Karolini Aevi*, Hannover, 1882, p. 68): The king orders the count: 'ut omnes paginis vestros, tam Francos, Romanos vel reliqua natione degentibus, bannire et locis congruis per civitates, vicos et

with *leudes*, the Germanic equivalent of *fideles*, which is used in two ways, a wide usage meaning all the subjects and a narrow usage meaning the important persons who surround the king and serve him, his magnates.<sup>1</sup> Like the term *homo* with which it has been identified,<sup>2</sup> *leude* was an indefinite enough term and the *leudesamio* accordingly may have involved no more subjection than that required of the *homo* in the oath of 802<sup>3</sup> with which it is natural to compare it, that is, subjection of a man to his lord without this being in any sense the intimate relationship established by commendation or an imitation of "vassalage." In contrast to these references merely to fidelity and subjection in the subject's oath, there is opposed the promise known to have been made by at least one group among those who served the king in person, the antrustions. These armed guards promised fidelity and *trustem*,<sup>4</sup> a term which means *adjutorium*.<sup>5</sup> Thus, like the Carolingian *fideles*, the antrustions promise to be not only faithful but also helpful.

If one class of royal servants would make a promise of service over and above mere loyalty, it is not unreasonable to suppose that other royal servants made similar promises to the Merovingian king. A distinction between the content of the subjects' oath and that of the servants' oath would have been thoroughly compatible with the difference in status between ordinary subjects and magnates in Merovingian as well as in Carolingian times.<sup>6</sup>

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castella congregare faciatis, quatenus . . . fidelitatem precelso filio nostro vel nobis et leudesamio per loca sanctorum vel pignora . . . debiant promittere et coniurare.'

<sup>1</sup> Roth, *Geschichte des Beneficialwesens*, pp. 276-312; Dumas, *Rév. hist. de droit fr. et étr.*, x (1931), 42, n. 1, 49, n. 2, 50, n. 1 cites a number of other authors; Mitteis, *op. cit.*, p. 25. Contra, A. Dopsch, 'Die *Leudes* und das Lehenswesen,' *M. O. I. G.*, xli (1926), 35-43, who believes that the term is restricted to *commendati* of a military sort who have obtained lands from the fisc. Lot in Lot, Pfister, and Ganshof, *Les Destinées de l'empire*, p. 661, n. 119 accepts Dopsch's argument though in the same work, p. 311, in a portion published perhaps earlier he expressed the older view. The oath which all subjects took certainly did not make them in any sense members of this restricted class.

<sup>2</sup> Brunner, n<sup>2</sup>, 77, 80; Dumas, *op. cit.*, x (1931), 46; Levillain, cf. Petot, *Rév. hist. de droit fr. et étr.*, vi (1927), 95, n. 2. <sup>3</sup> See above, p. 285, n. 2.

<sup>4</sup> Marculf, I, c. 18 (ed. Zeumer, p. 55): 'noster veniens libi in palatio nostro una cum arma sua in manu nostra trustem et fidelitatem nobis visus est coniurasse.'

<sup>5</sup> Lot in Lot, Pfister, Ganshof, *Les Destinées de l'empire*, p. 658, n. 98; Brunner, n<sup>2</sup>, 134, n. 20; Mitteis, *op. cit.*, p. 20; P. Guilhiermoz, *op. cit.*, p. 62. *Trustis* does not mean merely *fidelitas*; Lot in Lot, Pfister, Ganshof, *op. cit.*, p. 648, n. 31; also Dumas, *Rév. hist. de droit fr. et étr.*, x (1931), 48, n. 2; and *Rév. hist. de droit fr. et étr.*, xiv (1920), 199, n. 2.

<sup>6</sup> In a rather recent article F. L. Ganshof, 'Benefice and Vassalage,' *Cambridge Historical Journal*, vi (1939), 171, n. 113, expresses his agreement with Lot over the duality of oaths: 'The distinction between the oath of the vassal and the oath of a subject must be maintained. The reply of M. Dumas . . . though extremely learned and admirably constructed, is not, in my opinion, convincing.' Ganshof believes, however, that the subjects' oath of 802 has been affected by vassalage (*ibid.*, vi, 171-172): 'There has been taken over from the concept of vassalage all that could give additional binding force to an act which confirmed the duties and obligations of a subject towards his sovereign. We cannot of course go farther than this and conclude that the oath conferred on all subjects the quality of a vassal of the emperor.'

## A LIST OF THE NORMAN COMMUNES, 1189-1223

By SIDNEY R. PACKARD

AN accurate list of the Norman communes would seem to be an essential preliminary for any real discussion of their nature and organization. It was confidently expected, in 1929, that such a list could be constructed for the period of transition under Richard, John, and Philip Augustus.<sup>1</sup> Actually, however, in spite of much additional work in the whole field in the interim,<sup>2</sup> the task has proved exceedingly difficult if not downright impossible. There is, on the one hand, no substantial agreement as to the distinguishing characteristics of a commune<sup>3</sup> and, on the other, no possibility of complete identification due to the lack of materials or, when the materials do exist, to their fragmentary nature.<sup>4</sup>

Prolonged contact with the sources, such as they are, has made it evident that a *burgus* was often found in connection with a manor<sup>5</sup> or a forest,<sup>6</sup> that burgage tenure could exist apart from a commune and frequently did,<sup>7</sup> that manors and villages could have mayors,<sup>8</sup> that men could and did account for themselves at

<sup>1</sup> S. R. Packard, 'The Norman Communes under Richard and John, 1189-1204,' p. 232, note 7, in *Anniversary Essays in Mediaeval History by Students of Charles Homer Haskins*. Charles H. Taylor and John L. La Monte, eds. (Boston, 1929), pp. 231-254.

<sup>2</sup> See S. R. Packard, 'Les communes normandes au temps de Philippe-Auguste,' *Travaux de la semaine d'histoire du droit normand tenue à Guernesey du 8 au 13 juin 1938* (Caen, 1939), pp. 433-452; also S. R. Packard, 'The Norman Communes Once More, 1189-1223,' *The American Historical Review*, XLVI, No. 2, Jan., 1941, pp. 338-347.

<sup>3</sup> Professor Carl Stephenson has demolished the traditional Luchaire-Giry theory (largely military and feudal) and appears to stress municipal self-government as the essential characteristic of the commune (*Borough and Town* (Cambridge, 1933), pp. 185, 215-219); Professor James Tait seems to emphasize tenure, seals, and councils (*Medieval English Borough* (Manchester, 1936), *passim*); Dr Charles Petit-Dutaillis points out the inconsistencies of Viollet and even of Luchaire, endorses the 'collective seignory' idea, and tells us that the communal oath was the only indispensable factor ('La concession de commune en France,' in *Comptes rendus des séances de l'Académie des inscriptions et belles lettres* (1936), *passim*; *L'essor des états d'occident* (Paris, 1937), pp. 7-8). Dr Petit-Dutaillis, however, has not yet told us why one group was allowed to swear the communal oath while another was not, or why one group was willing or eager to do so while another was not. Nor do the sources help us much. Cf. L. Delisle ed., *Cartulaire normand de Philippe-Auguste, Louis VIII, Saint Louis, et Philippe-le-Hardi* (Caen, 1852), No. 27 (1194), in *civitatibus, in castellis, et in villis* with *ibid.* No. 209 (ca 1210), *civitates et castra*; one would expect the communes to be included in both cases.

<sup>4</sup> The best available definition of a medieval town, leaving the question of communal status entirely aside, will hardly allow specific and accurate identification (*Cambridge Medieval History*, vi [Cambridge, 1929], p. 523).

<sup>5</sup> Latouche, 'Un aspect de la vie rurale dans le Maine au xi<sup>e</sup> et xii<sup>e</sup> siècle,' *Moyen Age*, XLVI (1937), pp. 44 ff.

<sup>6</sup> Many of the small Norman communities which possessed burgage tenure were closely associated with the Norman forests as may be seen in Delisle, *Cartulaire normand*, *passim*, and in Thomas Stapleton, ed., *Magni Rotuli Scaccarii Normanniae* (London, 1840-44), *passim* (especially in the *tabula Normanniae* in vol. 1).

<sup>7</sup> See Group III in the list of Norman communes as compiled below.

<sup>8</sup> R. Génestal, *L'histoire du droit public normand* (Caen, 1928), p. 137; Tait, *English Borough*, pp. 250-251; cf. H. S. Bennett, *Life on the English Manor* (Cambridge, 1937), *passim*; see also H.-François Delaborde, ed., *Recueil des actes de Philippe-Auguste* (Paris, 1916), i, No. 271.