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begun to swing back towards stabilization, we may deprecate this haste that brought disaster. It was perhaps not impossible, if the Gracchi had stepped into their father's place in the counsels of the Senate, that their energy and vision, strengthening and broadening the policy of reconstruction, would have achieved lasting results for the imperial rise of Rome. At least, our examination of the preceding seventy-five years shows the traditional strength as well as the new weakness of the Senate, and we may approach the Gracchan problems with better understanding of the senatorial case.¹⁴⁴ The development of the subject lies in further study of the senatorial groups throughout the century to this point where the balance is so precarious that groups may sway the issue of government and a pair of strong tribunes determine the fate of Rome and Italy.¹⁴⁵

¹⁴⁴ Compare Cobban's study of the position in Sultan times: *Senate and Provinces* (78-49 B.C.).

¹⁴⁵ See Schur, *Scipio Africanus* (cf. McDonald, *J.R.S.* xxviii (1938), 153 seq.); Gelzer, *Die Nobilität der römischen Republik*; Münzer, *Röm. Adelsparteien*; Bloch and Carcopino, *Hist. rom.* II, 171 seq.

II. BENEFICE AND VASSALAGE IN THE AGE OF CHARLEMAGNE

By F. L. GANSHOF

A NUMBER of important studies have been published in recent years on the subject of benefice and vassalage during the early Middle Ages,¹ and it may consequently be worth while to re-examine some of the problems raised by the origin and early development of these two institutions. I have dealt elsewhere² with the circumstances which tended towards their union early in the eighth century, under the early Carolingians. In this article I hope to indicate at least the principal features of the history of benefice and vassalage during the reign of Charlemagne.³ The influence which Charles exercised on the public and private institutions of the Frankish state was so definite and far-reaching as fully to justify the limitation of the subject-matter of my inquiry to the space of a single reign.⁴ Unfortunately the lack of adequate sources, though less serious than for the preceding period, renders the

¹ A. Dopsch, *Die wirtschaftlichen und sozialen Grundlagen der europäischen Kultur-entwicklung* (Vienna, 2nd ed., 2 vols., 1923, 1924; translated as *The Economic and Social Foundations of European Civilization*, London, 1937); "Benefizialwesen und Feudalität" (*Mitteilungen des Österreichischen Instituts für Geschichtsforschung*, t. XLVI, 1932); "Wirtschaft und Gesellschaft im frühen Mittelalter", in the *Tijdschrift voor Rechtsgeschiedenis*, t. XI. The two last of these works have been republished in the series of *Beiträge zur Sozial- und Wirtschaftsgeschichte. Gesammelte Aufsätze. Zweite Reihe* (Vienna, 1938), edited by E. Patzelt.—Mgr. E. Lesne, *Histoire de la propriété ecclésiastique en France* (4 tomes in 6 vols., Paris, 1910-38), particularly t. II, fasc. 1 et 2 (1922, 1926).—F. Lot, "Origine et nature du bénéfice", in *Anuario de historia del derecho español*, 1933, and chapter xxv ("Les transformations de la société franque: avènement du régime vassalique") of F. Lot, C. Pfister, and F. L. Ganshof, *Histoire du Moyen Age* (ed. G. Glotz), t. 1: *Les destinées de l'Empire en Occident de 395 à 888* (Paris, 1928-34).—H. Mitteis, *Lehnrecht und Staatsgewalt* (Weimar, 1933).—H. Krawinkel, *Untersuchungen zum fränkischen Benefizialrecht* (Weimar, 1936), *Feudum* (Weimar, 1938; these works are published in the series of *Forschungen zum Deutschen Recht*). Marc Bloch's book, *La société féodale. La formation des liens de dépendance* (Paris, 1939), reached me too late for me to use it in this article.

² "Note sur les origines de l'union du bénéfice avec la vassalité" (in *Études d'histoire dédiées à la mémoire de Henri Pirenne par ses anciens élèves*, Brussels, 1937).

³ In order to confine the length of this article within manageable limits, I have tried to keep to the conclusions that seem to be clearly indicated by the texts, and have avoided, as far as I have been able, the discussion of difficult questions of interpretation. In a later article, dealing in particular with the work of Dr Krawinkel, I hope to discuss at greater length a number of points that require more detailed consideration.

⁴ One can also use several texts of the beginning of the reign of Louis the Pious which clearly refer to conditions of a few years before. The scope of the article is limited to the Frankish state in the strict sense of the word; evidence regarding the state of society in Italy will only be used in so far as it throws light on conditions north of the Alps. There is a short but extremely valuable study of early feudal relationships in Italy by P. S. Leicht, "Gasindi e Vassalli", in *Rendiconti della Classe di Scienze morali, storiche e filologiche*, R. Accademia Nazionale dei Lincei, 1927.

task of tracing their history a somewhat difficult one. Although the capitularies contain a relatively large number of provisions that deal specifically with these institutions, we have very little information as to how they worked in practice. The narrative sources, with the exception of two or three texts, tell us little or nothing. We have to fall back on the evidence of charters, though even these only rarely, when dealing with a dispute or legal proceeding, throw some light on the subject. This is what we might in any case expect, for the essential feature of the entry of a person into vassalage or of the gift of a benefice was the oral act, and not any embodiment of it in writing.

Although it is impossible to study the institutions of benefice and vassalage in the age of Charlemagne quite independently of each other, it will be most convenient to begin by examining certain of the features that more especially characterize vassalage, and in particular direct vassalage to the king.

The first point which it is important to notice is the high rank and position in Frankish society that belonged to the *vassi dominici*, the respect and consideration that was accorded to them in virtue of their quality. It is this right to the respect and consideration of other men that is described as *honor* in the texts.⁵ The royal vassals were liable to lose it if they committed certain wrongful acts, and the loss of it must be regarded as a very severe punishment. Their importance in Frankish society is to be explained by the fact that the *vassi dominici* were in particularly close relations with the king. In the capitularies of Charlemagne they are mentioned from the first by the side of the counts, the official representatives of the royal power, and they were exposed to the same kind of penalties⁶ if they failed to fulfil the duties that the law

⁵ It is clear that the word *honor*, as used when speaking of the royal vassals, did not indicate a public function of any kind. This can be seen by comparing cap. ix (*forma communis*) of the Capitulary of Herstal of 779 (A. Boretius, *Capitularia regum Francorum*, t. 1, Hanover, 1888, no. 20) with cap. xxiv of the *Capitulare missorum generale* of 802 (*ibid.* no. 33). The first of these texts runs as follows: "Ut latrones de infra immunitatem illi iudicis ad comitum placita praesententur; et qui hoc non fecerit, beneficium et honorem perdat. Similiter et vassus noster, si hoc non adimpleverit, beneficium et honorem perdat"; the second: "Si quis autem presbiter sive diaconus, qui post hoc in domo sua secum mulieres extra canonicam licentiam habere presumerit, honorem simul et hereditatem privetur usque ad nostram presentiam." See also cap. ix of the *Capitulare missorum Italicum* of 802-10 (*ibid.* no. 99; on the date, cf. C. De Clercq, *La législation religieuse franque de Clovis à Charlemagne*, Louvain, 1936, pp. 217-20), cap. x of the *Capitulare Italicum* of Pepin of 802-10 (*ibid.* no. 102; on the date, cf. De Clercq, *op. cit.* pp. 218-19), cap. ix of the *Divisio Imperii* of 817 (*ibid.* no. 136), and cap. xxvi of the *Admonitio ad omnes regni ordines* of 823-5 (*ibid.* no. 150).

⁶ *Capit. Haristal*, cap. xxi (*ibid.* no. 20): "Si comis in suo ministerio iustitias non fecerit, misso nostro de sua casa soniare faciat usque dum iustitiae ibidem factae fuerint; et si vassus noster iustitiam non fecerit, tunc et comes et missus ad ipsius casa sedeant et de suo vivant quousque iustitiam faciat."

imposed upon them.⁷ They were subjected to the jurisdiction of the *missi*,⁸ just as were the counts and the holders of immunities, who were also in a particularly close relationship of dependence on the king. Like the counts and the bishops and abbots, whom Charles always regarded as public officials, they were compelled to pay additional levies and contributions on the occasion of any public calamity.⁹ They had the same rights of free lodging in the winter as had other royal officials when engaged on the king's service,¹⁰ and for the same reason. Like the counts, *centenarii*, and palatine officers (*ministeriales*), who also were in a directly dependent position on the king, they had to appear before his tribunal and not before the ordinary public courts¹¹ if they should be accused of a breach of the royal monopoly of hunting rights in his "forests".¹²

The royal vassals were employed in any and every branch of the king's service. Like the counts and other magnates,¹³ they acted as assessors in the palatine court.¹⁴ They were entrusted, as were the counts, with the duty of carrying out royal acts, such, for instance, as the grant

⁷ That this is the sense in which the phrases *iustitias* and *iustitiam facere* must be understood is indicated by a comparison of the provision just cited with other texts, of which the most explicit are cap. iv and cap. viii of the *Capitulare Saxonicum* of 797 (*ibid.* no. 27), cap. xxv of the *Capitulare missorum generale* of 802 (*ibid.* no. 33), cap. vi of the *Capitulare legi ribuarie additum* (*ibid.* no. 41), and capp. vii-ix of the *Capitulare de latronibus* of 804-13 (*ibid.* no. 82). The expression was of a general character and was susceptible of varied applications; one cannot assume that a vassal exercised judicial powers from the fact that he is enjoined *iustitias facere*.

⁸ See cap. ix and cap. xxi of the Capitulary of Herstal (cited above, notes 5 and 6).

⁹ Cf. the *Capitulare episcoporum* of 769-800 (*ibid.* no. 21; on the date, see De Clercq, *op. cit.* pp. 159-60): "Comites vero fortiores libram unam de argento aut valentem, mediocres mediam libram; vassus dominicus de casatis ducentis mediam libram, de casatis centum solidos quinque, de casatis quinquaginta aut triginta unciam unam."

¹⁰ Cf. cap. iv of the *Capitulare Papiense* of Pepin of 787-8 (*ibid.* no. 94; on the date, see De Clercq, *op. cit.* pp. 165-7): "De episcopis, abbatibus, comitibus seu vassis dominicis vel reliquis hominibus qui ad palatium veniunt aut inde vadunt vel ubicumque per regnum nostrum pergunt... Et quando hibernum tempus fuerit, nullus debeat mansionem vetare ad ipsos iterantes, in tantum quod ipsi iniuste nullam causam tollant..."

¹¹ *Capitulare missorum generale* of 802 (*ibid.* no. 33), cap. xxxix: "Ut in forestas nostras feramina nostra nemine furare audeat... Si quis autem comis vel centenarius aut bassus noster aut aliquis de ministerialibus nostris feramina nostra furaverit, omnino ad nostra presentia perducantur ad rationem. Caeteris autem vulgis, qui ipsum furtum de feraminibus fecerit, omnino quod iustum est componat, nullatenusque eis exinde aliquis relaxetur..."

¹² On the royal *foresta* see C. Petit-Dutaillis, "De la signification du mot 'forêt' à l'époque franque", in the *Bibl. de l'École des Chartes*, t. LXXVI, 1915, and M. Prou, "La forêt en Angleterre et en France", in the *Journal des Savants*, 1915.

¹³ In charters embodying judgements given by the palatine court the status of the assessors is not always indicated; generally some general term such as *optimates*, *fideles*, or *proceres* is used.

¹⁴ Cf. E. Mühlbacher, *Die Urkunden der Karolinger*, t. 1, Hanover, 1906, no. 65 (undated, probably 772): "Tunc nos una cum fidelibus nostris, id est Hagino, Rothlando, Wichingo, Frodegario comitibus necnon et vassis nostris Theoderico, Berthaldo, Albwino, Frodberto, Gunthmaro taliter visi fuimus iudicavisse..."

of an estate to an abbey.¹⁵ They might be appointed to act as assessors in courts held by *missi dominici*.¹⁶ They might even be, and in practice often were, employed as *missi dominici* themselves. This was a function fulfilled chiefly, at least up to 802, by those *vassi* who were in permanent residence at the Palace.¹⁷

Although we have no precise information regarding the number of these royal vassals, the frequency and the fashion¹⁸ with which they are mentioned in the capitularies indicates clearly that it must have been considerable, and certainly more considerable in the reign of Charles than in that of Pepin. In every part of the kingdom they must have formed groups of trustworthy persons on whose support the king could rely. They were the more necessary since the normal machinery of administration, consisting of counts and inferior officials, was numerically quite inadequate. Particularly in the non-Frankish areas conquered by Charlemagne and his father, such as Aquitaine,¹⁹ Italy²⁰ and Bavaria,²¹ was the number of royal vassals very large.²² Of all the subjects—

¹⁵ *Ibid.* no. 116, note (dated 776) = E. Stengel, *Urkundenbuch des Klosters Fulda*, t. 1, i (Marburg, 1913), no. 83 (dated 777). The formalities involved in the grant of some property to the abbey of Fulda by the king are carried out by two counts and "Finnoldum atque Gunthramnum, vasallos dominicos".

¹⁶ Dom Devic and Dom Vaissette, *Histoire générale de Languedoc* (ed. Privat, t. 11, Toulouse, 1875), Preuves, no. 6 (act of 782): "Cumque residerent missi gloriosissimo atque scellentissimo dompno nostro Carolo rege Francorum in Narbona civitate... et per ordinatione de suos missos, id est... et vassis dominicis, id sunt Rodestagnus et Abundancius et iudices..." The examination of the parties to the dispute and the judgement are the work of "ipsi missi et iudices et vassi dominici".

¹⁷ *Annales Laureshamenses*, a. 802 (ed. G. H. Pertz, in *Mon. Germ. Hist., Scriptores*, t. 1, pp. 38-9): "Eo anno demoravit domnus Caesar Carolus apud Aquis palatium quietus cum Francis sine hoste; sed recordatus misericordiae suae de pauperibus, qui in regno suo erant et iustitias suas pleniter abere non poterant, noluit de infra palatio pauperiores vassos suos transmittere ad iustitias faciendum propter munera, sed elegit in regno suo archiepiscopos et reliquos episcopos et abbates cum ducibus et comitibus, qui iam opus non abebant super innocentes munera accipere..."

¹⁸ The extracts from capitularies given in the notes to this article all clearly imply the existence of an appreciable number of royal vassals in every part of the Frankish kingdom, for the dispositions regarding them have a quite general character.

¹⁹ Astronomus, *Vita Hludowici imperatoris*, c. 3 (ed. G. H. Pertz, *M.G.H., Scriptores*, t. 11, p. 608): "Ordinavit autem per totam Aquitaniam comites, abbates, necnon alios plurimos quos vassos vulgo vocant, ex gente Francorum... eisque commisit curam regni prout utile iudicavit, finium tutamen, villarumque regiarum rura provisionem..."

²⁰ Leicht, *op. cit.* (see above, n. 4). See also below, n. 109.

²¹ *Annales regni Francorum*, a. 788, original version (ed. F. Kurze, Hanover, 1895), p. 80: "Quod et Tassilo denegare non potuit, sed confessus est postea ad Avaros transmisisse, vassos supradicti domni regis ad se adortasse et in vitam eorum consiliasse..."

²² We even hear in 802 of Saxon *vassi* in Francia: "De illis Saxonibus qui beneficia nostra in Francia habent, quomodo an qualiter habent condita" (*Capitularia missorum specialia*, cap. xi, in Boretius, *Capitularia*, t. 1, no. 34; this capitulary consists of instructions to the *missi* in Francia, in the strict sense of the word, Neustria, and a part of Burgundy). If Hincmar is to be believed, Charlemagne granted the domain of Neuilly-Saint-Front, a possession of the church of Rheims, as a benefice to a Saxon vassal ("De villa Noviliaco", in *M.G.H., Scriptores*, t. xv, p. 1168).

*fideles*²³—of the king, the *vassi dominici* were those who most clearly deserved this title.²⁴

Amongst the royal vassals certain groups can be distinguished. The clearest division is that between those whom the texts term *casati*, those who have received a benefice from the king, and the *non casati*, those who have not. The distinction is made already at the beginning of Charles's reign in the Capitulary of Herstal, and there is nothing to suggest that at that moment the position of *vassus dominicus casatus* was a more usual one than that of *vassus non casatus*.²⁵ The latter class consisted of those who formed the immediate entourage of the king, living normally at court but frequently employed for special missions, such as the tours of inspection of the administration. They were maintained directly by the king, and their incomes were subject to his discretion. They were regarded by contemporaries as less favourably situated than the *vassi casati*, who were in a much more enviable position.²⁶ This was certainly their own sentiment, and towards the end of the reign it appears that a royal vassal who had satisfactorily fulfilled his duties could always look forward to the grant of a benefice in some part of the Empire. Once he had received a benefice, he would take up his residence on it; it was only rarely that a *vassus casatus* continued to work in the Palace.²⁷ Many of the *vassi casati*, unlike the *non casati*, must have been quite wealthy persons; some of them already possessed private

²³ *Fidelis* has under Charlemagne only the general meaning of "subject", a person bound to loyalty to the king and observing this loyalty. This can easily be seen by examining a series of royal diplomas, which describe many people whom there is not the slightest reason to suppose were bound to the king by ties of vassalage as *fideles*; see Mühlbacher, *op. cit.* t. 1, nos. 172 (of 791), 181 (of 797), 187 (of 799), 194 (of 785-800), 205 (of 807), 210 (of 809), 212 (of 811), 213 (of 811), 216 (of 812). In Italy we hear of *fideles nostri discurrantes* (e.g. Mühlbacher, *op. cit.* no. 111, dated 776), who appear to be men charged with some particular mission; cf. Leicht, *op. cit.* pp. 298-300.

²⁴ It often happens, of course, that the *fideles* of the texts were in fact royal vassals, but this we only know through some special mention in the text, as, for example, from the fact that they are specified as *fideles* holding benefices from the king; cf. cap. xviii of the *Capitularia missorum* of Nijmegen of 806, cap. ix of the *Capitularia missorum de exercitu promovendo* of 808, cap. xx of the *Capitularia* of Aachen of 802-13 (Boretius, *Capitularia*, t. 1, nos. 46, 50 and 77; on the date of the last, see De Clercq, *op. cit.* pp. 217-18). No doubt it was such cases that largely accounted for the evolution of the word *fidelis*, which in the latter part of the ninth and even more in the tenth century came simply to mean "vassal".

²⁵ In cap. ix (*forma communis*) of the *Capit. Herstal.* (Boretius, *op. cit.* no. 20, dated 779) there are provisions for the punishment of a royal vassal who refused to give up a robber to justice: "Similiter et vassus noster, si hoc non adimpleverit, beneficium et honorem perdat; et qui beneficium non habuerit, bannum solvat."

²⁶ Cf. the text of the *Annales Laureshamenses* cited above, p. 150, n. 17.

²⁷ Cf. cap. vii of the Capitulary of Boulogne of 811 (Boretius, *op. cit.* no. 74): "De vassis dominicis qui adhuc intra casam serviunt et tamen beneficia habere noscuntur..."

sources of income,²⁸ and the aggregate revenues from their benefices, their *precariae*,²⁹ and their allodial property must often have been large.³⁰ But we have very little information as to the way in which the royal vassals, whether invested or not with public offices,³¹ were provided with benefices—or in the south of Gaul were rewarded by means of the system known as *aprisio*.³²

Looked at from the purely legal point of view, the status of a royal vassal was essentially the same as that of the vassal of any other lord. Royal vassalage was simply a particular type of vassalage, but it differed from other types by virtue of the high rank and honour accorded to the vassals of the king. This can best be seen by comparing their position with that of non-royal vassals.³³ The instructions given to the *missi* in

²⁸ Cf. cap. vi of the *Breviarium missorum Aquitanicum* of 789 (*ibid.* no. 24): "Quomodo illis beneficiis habent condictiones provideant vel suos proprios", and cap. x of the *Capitularia missorum specialia* of 802 (*ibid.* no. 34): "De illis hominibus qui nostra beneficia habent distructa et alodes eorum restauratas..."

²⁹ The *precaria* was a particular form of tenure distinct from ordinary domanial tenure (*mansus*). It was Roman in origin, being styled *praecarium* in Roman legal texts. In the sixth, seventh and eighth centuries it appears as a grant of lands either revocable *ad nutum* or, as became more and more the custom, made for life. It might either involve the payment of a *census*, generally of a nominal character, or even be free; the modesty of the payments it entailed perhaps explains the term *beneficium* sometimes applied to it. There were several types of *precariae*, but it is unnecessary to give the details here; certain of the characteristics of the institution developed and altered in the course of the eighth and ninth centuries, but its essential character remained unchanged. On *precariae* from the sixth to the eighth centuries, cf. E. Lesne, *op. cit.* t. I, 1910, pp. 321 sqq.

³⁰ Cf. the text of the *Capitulare episcoporum* of 769–800 cited above, p. 149, n. 9.

³¹ Cf. however a charter of Echternach of 775–84 (Mühlbacher, *op. cit.* t. I, no. 184=C. Wampach, *Geschichte der Grundherrschaft Echternach im Frühmittelalter*, t. I, ii, Quellenband [Luxemburg, 1930], no. 92): "...insola...quem Widgarius et Autgarius per nostrum beneficium tenuerunt", and another of the same abbey of 777–97 (Mühlbacher, *op. cit.* no. 185=Wampach, *op. cit.* no. 93): "...villam nostram que dicitur Duouendorf...quam Geraldus vassus noster usque nunc per beneficium nostrum tenuit". On the benefices granted to counts, see below, p. 167.

³² The *aprisio*, which was ratified by a royal grant, conferred on those who enjoyed it the full powers of a landed proprietor over the soil, but these powers came to an end on the death of the king (*Herrenfall*, or in this case *Thronfall*), and could of course be terminated in case of infidelity; cf. Brunner-von Schwerin, *Deutsche Rechtsgeschichte*, t. II (Munich and Leipzig, 1928), pp. 346–8. An excellent example of this type of grant is that of a *fidelis* John, who, after becoming a vassal of Charlemagne, received in 795 a grant of property, in the *pagus* of Narbonne, of which he had made an *aprisio*: "...in manibus nostris se commendavit...et petivit nobis...ut ipsum villarem...concedere fecissemus. Nos vero concedimus ei ipsum villarem...quantum ille cum homines suos...occupavit vel occupaverit vel de heremo traxerit...vel aprisione fecerit" (Mühlbacher, *op. cit.* t. I, no. 179). After the death of Charlemagne, John commended himself to Louis the Pious and obtained from him a regrant of the property he had acquired by *aprisio* (diploma of Louis of 815 in Bouquet, *Recueil des historiens des Gaules et de la France*, t. VI, p. 472).

³³ These non-royal vassals, even non-royal *vassi casati*, are a comparatively ancient institution; cf. my "Note sur les origines de l'union du bénéfice avec la vassalité" (cited above, p. 147, n. 2), p. 175, n. 2. Mitteis (*op. cit.* p. 123) is wrong in assuming that cap. XIII (*forma communis*) of the Capitulary of Herstal of 779 proves that churches and abbeys now had also their own vassals. The second part of the phrase in question

789, for example, regarding the exaction of a general oath of fealty, make a clear distinction between the rank of the royal and the non-royal vassal.³⁴ The royal vassals take the oath in the same manner as the bishops, abbots, counts, "vidames", archdeacons, and canons, who are all grouped together as forming the most important elements in the state and society. The vassals of other lords are grouped with the rest of the inhabitants of each county; they are amongst the *vulgum pecus*.³⁵ It is worthy of note that amongst the non-royal vassals are included a certain number of serfs.³⁶ This indicates clearly that the status of a private *vassus* was a relatively humble one, a conclusion which is reinforced by an examination of the very limited number of circumstances in which a vassal could unilaterally denounce the agreement that bound him to his lord.³⁷ His position can have been little better than that of a servant liable to be punished and dishonoured by his master.

("Et sit discretio inter precarias de verbo nostro factas et inter eas quae spontanea voluntate de ipsis rebus ecclesiarum faciunt": Boretius, *Capitularia*, t. I, no. 20) deals with *precariae* freely granted by churches, but there is nothing to prove that these were granted to their vassals.

³⁴ Boretius, *op. cit.* no. 25; on the date, see De Clercq, *op. cit.* p. 179.

³⁵ Cap. II: "Quomodo illum sacramentum iuratum esse debeat ab episcopis et abbatibus sive comitibus vel bassis regalibus necnon vicedomini, archidiaconibus adque canonicis." Cap. IV: "Deinde advocatis et vicariis, centenariis sive fore censiti presbiteri atque cunctas generalitas populi, tam puerilitate annorum XII quamque de senili, qui ad placita venissent et iussionem adimplere seniorum et conservare possunt, sive pagenses, sive episcoporum et abbatissuarum vel comitum homines et reliquorum homines, fiscilini quoque et coloni et ecclesiasticis adque servi, qui honorati beneficia et ministeria tenent vel in bassalatico honorati sunt cum domini sui et caballos, arma et scuto et lancea, spata et senespasio habere possunt; omnes iurent. Et nomina vel numerum de ipsis qui iuraverunt ipsi missi in brebem secum adportent; et comites similiter de singulis centenis semoti, tam de illos qui infra pago nati sunt et pagansales fuerint quamque et de illis qui aliunde in bassalatico commendati sunt..." In the phrase "episcoporum et abbatissuarum vel comitum homines et reliquorum homines", the word *homo* is clearly used in more general sense than "vassal" (cf. below, p. 171, n. 114); the *homines* are all those in some personal relationship of dependence towards bishops, (abbots), abbesses, counts and other persons, so that the word *homines* is inclusive of not only *vassi*, but of many other persons besides.

³⁶ Cap. IV, the passage running "adque servi...habere possunt". The employment of serfs on confidential missions is not unknown in the reign of Charlemagne. The king himself sometimes made use of them, though the practice was disapproved of by contemporaries, or at all events by the clergy. Adrevald, in the *Miracula Sancti Benedicti*, I, 18 (ed. de Certain, Paris, 1858), describes how the occupation and organization of Italy after the conquest absorbed all the available elements of the Frankish aristocracy, and how in consequence the king "quibusdam servorum suorum, fisci debito sublevatis, curam tradidit regni; atque in primis Rahonem, Aurelianensibus comitem praefecit, Biturigensibus Sturminium, Arvernis Bertmundum, aliisque ut ei visum est, locis alios praeposuit". Saint-Benoît-sur-Loire had much to complain of in the violent acts of its count Raho; Adrevald explains them "ut eius debitum exposcebat naturae".

³⁷ Cap. XVI of the Capitulary of Aachen of 802–13 (Boretius, *op. cit.* t. I, no. 77): "Quod nullus seniore suum dimittat postquam ab eo accipit valente solido uno, excepto si eum vult occidere aut cum baculo caedere vel uxorem aut filiam maculare seu hereditatem ei tollere." There is a similar provision in a fragment published by Boretius (*ibid.* no. 104) as cap. VIII of the *Capitula Francica*: "Si quis seniore suum dimittere voluerit et ei approbare potuerit unum de his criminibus: id est primo

Even amongst the private vassals various classes can be distinguished. There were some vassals who were supported directly by their lord, so immediately dependent on him that even their arms belonged to him and were kept in his custody.³⁸ Others, who, once they had received benefices, resided on them and supported themselves from their revenues, found themselves much more independent and no doubt lived much easier lives.³⁹ Often the vassals were strangers to the regions

capitula si senior eum iniuste in servitio redigere voluerit; secundo capitula si in vita eius consiliaverit; tertio capitula si senior vassalli sui uxorem adulteraverit; quarto capitula si evaginato gladio super eum occidere voluntarie occurrerit; quinto capitula si senior vassalli sui defensionem facere potest postquam ipse manus suas in eius commendaverit et non fecerit, liceat vassallum eum dimittere. Qualecunque de istis quinque capitulis senior contra vassallum suum perpetraverit, liceat vassallum eum dimittere."

³⁸ The humble position of these *vassi non casati* appears also from the fact that they were not allowed to leave their master once they had received from him the equivalent of one *solidus* for their maintenance. One is reminded of the poor man who entered into a bond of vassalage because he had nothing with which either to clothe or feed himself and who is mentioned in Formula 43 of the collection of Tours (Zeumer, *Formulae Merovingici et Karolini aevi*, Hanover, 1886, p. 158; this formula should probably be dated from the beginning of the Carolingian period). Cf. also cap. x of the Capitulary of Boulogne of 811 (Boretius, *Capitularia*, t. 1, no. 74): "Constitutum est ut nullus episcopus aut abbas aut abbatisa vel quislibet rector aut custos ecclesiae bruniam vel gladium sine nostro permissu cuilibet homini extraneo aut dare aut venundare praesumat, nisi tantum vassallis suis. Et si e venerit ut in qualibet ecclesia vel in sancto loco plures brunias habeat quam ad homines rectores eiusdem ecclesiae sufficiant, tunc principem idem rector ecclesiae interroget, quid de his fieri debeat."

³⁹ E. F. Dronke, *Codex diplomaticus Fuldensis* (Kassel, 1850), no. 83: a donation in 785 by a private person of property in Alsace, including: "quantumcumque in ipsa marca homini meo Baturico condonavi in beneficium cum omni adiacentia, ad ipsum beneficium pertinet, totum et integrum, in ipsa marca Onchysashaim vinea una quem ipse in beneficio habuit". T. J. Lacomblet, *Urkundenbuch für die Geschichte des Niederrheins*, t. 1, Düsseldorf, 1840, no. 4: a donation by a count in 794 of land situated in the Ysselgouw, including: "unum agrum quem Hildigerus ingenuus homo, in meo beneficio ante habuit". C. Wampach, *op. cit.* t. 1, ii, Quellenband, no. 111: a grant in *precaria* by the abbey of "rem nostram quam vasallo nostro Fulcoido antea prestatum habuimus". T. Bitterauf, *Die Traditionen des Hochstifts Freising*, t. 1, Munich, 1905, no. 257 (of 807): "Notitia qualiter domnus Atto episcopus in beneficium praestabit ecclesiae in loco qui dicitur Tankiricha suo homine cui nomen Uuldarrich. Ipse enim Uualdalrrich se ipsum tradidit in servitium Attonis episcopi seu domui sancte Mariae usque ad finem vite suae. In hoc enim ipsum beneficium accepit ut fideliter in servitio domui sancte Mariae permansisset et si aliter aliquid fecisset, privatus de ipso beneficio permansisset." *Brevium exempla ad describendas res ecclesiasticas et fiscales* (in Boretius, *Capitularia*, t. 1, no. 128), capp. 17-22: a list entitled "De beneficiariis qui de eodem monasterio beneficium habere videntur"; each article indicating what is held in benefice of the abbey of Wissembourg contains the words "habet in beneficium". *Capitulare missorum de exercitu promovendo* of 808 (*ibid.* no. 50), cap. iv: "De hominibus comitum casatis isti sunt excipiendi... Episcopus vero vel abbas duo tantum de casatis et laicis hominibus suis domi dimittant."—*Servitium* in the Freising extract must be understood as "service", meaning that Udalric entered into vassalage; "serfdom" would not be possible in this context. One may compare an analogous use of the word *servitium* in Regino of Prüm, *Chronicon* (ed. F. Kurze, Hanover, 1890), a. 787, where the account of the submission of Tassilo (cf. below, p. 156, n. 46) is reproduced almost word for word from the *Annales regni Francorum*, but *servitium* is used for *vassaticum* without changing the sense ("tradens se manibus eius ad servitium"). As for the *beneficiarii* of Wissembourg, it seems to be *vassi casati* who are in question and not those holding *precarias* of the church, since these have already been dealt with in the preceding section.

where they settled;⁴⁰ many of them were probably pure adventurers, who were engaged by their lords because their physical strength made them suitable for service as *armati homines*.⁴¹

Taking everything into consideration, we may say that private vassals occupied in general a rather low position in society, a position not much higher than that which they had occupied in the early days of the institution. Only the grant of benefices to some amongst them had improved the condition of a section of the class. The royal vassals were sharply distinguished from private vassals because of the particularly "honourable" character of this service, since the service was directly rendered to the king. Amongst the royal vassals a position of special importance was reserved for the *vassi dominici*, who had been rewarded by grants of benefices. And at least towards the end of the reign it seems that a yet higher rank was being elaborated, that of the *proceres*, personages of great importance who were bound to the king by the tie of vassalage and who occupied the highest place in the hierarchy of the class of vassals.⁴²

We have very little information before the reign of Charlemagne as to the precise form of the act by which a tie of vassalage was created. The earliest clear account of such an act is that given in the original version of the *Annales regni Francorum* of the submission of Duke Tassilo of Bavaria in 757. For the first time we meet there, in a clear and indisputable fashion, the fact—though not the name—of homage by *immixtio manuum*, which was the act of commendation by the vassal, and the oath of fealty, taken by the vassal on the relics of saints, which accompanied and completed it.⁴³ If the account of the ceremony in the *Annales regni Francorum* is taken from a contemporary source,⁴⁴ it would indicate that

⁴⁰ See above, p. 153, n. 35: "tam de illos qui infra pago nati sunt et pagensales fuerint quamque et de illis qui aliunde in bassalatico commendati sunt".

⁴¹ It is no doubt such vassals as these *armati homines* that persons entering the Church sometimes wished to retain. Charlemagne objected to the practice (*Capiula de causis cum episcopis et abbatibus tractandis* of 810-11, cap. viii, in Boretius, *Capitularia*, no. 72 [on the date, see De Clercq, *op. cit.* pp. 213-14]: "Miramur unde accidisset ut si qui se confitetur seculum reliquisset neque omnino vult consentire ut ipse a quolibet secularis vocetur, armatos homines et propria vellit retinere").

⁴² Thegan, *Vita Hludovici imperatoris*, c. 12 (ed. G. H. Pertz, *M.G.H., Scriptores*, t. II, p. 593): "Eodem tempore venit Bernhardus, filius fratris sui Pippini, et tradidit semetipsum ei ad procerem et fidelitatem cum iuramento promisit. Suscepit eum libenter domnus Hludovicus." The reference is to Bernard, King of Italy, who declared himself a vassal of Louis the Pious in 814.

⁴³ *Annales regni Francorum*, a. 757 (ed. Kurze, pp. 14-16): "Ibique Tassilo venit, dux Baioariorum, in vasatico se commendans per manus, sacramenta iuravit multa et innumerabilia, reliquias sanctorum manus inponens, 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."

⁴⁴ In my previous article (cited above, p. 147, n. 2), pp. 186-7, I assumed that this was the case. G. Monod (*Études critiques sur les sources de l'histoire carolingienne*, Paris, 1898, pp. 106-10) believed that the original version of the Royal Annals for the

the main features of the ceremony are earlier than the period with which we are immediately concerned, but if, as is possible, the passage relating to Tassilo was fabricated in 788 in connection with his condemnation in that year,⁴⁵ it would be only under Charlemagne that homage and the oath of fealty make their appearance. In any case, other texts of the period⁴⁶ prove that in the reign of Charlemagne these were the acts that a person had to perform in order to enter into a relationship of vassalage to another.⁴⁷

Having now examined the chief problems connected with the institution of vassalage in the Frankish state during the reign of Charlemagne, we can turn to the question of benefices, which since the middle of the eighth century were being more and more freely granted to vassals, and in particular to royal vassals, in order to assure their maintenance and to provide them with the necessary means of fulfilling the services due from them.⁴⁸

years 741-88 was composed in 788-9, but that although not strictly contemporary it was compiled with the help of notes and annals as well as from the recollections of the compiler. M. L. Halphen (*Études critiques sur l'histoire de Charlemagne*, Paris, 1921, pp. 8-9) regards the annals for the years 741-58 inclusive as strictly contemporary with the events they describe, but that a few slight changes were made later. Cf. the criticism of these views by M. W. Levison in the *Neues Archiv*, t. XLV, 1924, p. 391.

⁴⁵ This possibility was suggested to me by my friend and colleague Dr Bonenfant, Professor at the University of Brussels, and would be in complete agreement with the views of Monod as to the date of the compilation of the first part of the annals. Monod had already noted the attention paid in them to everything concerning Tassilo, and suggested that the downfall of the last of the national dukes and the suppression of the duchy of Bavaria might have been the occasion of their compilation.

⁴⁶ *Annales regni Francorum*, a. 787 (ed. Kurze, p. 78; original version): "Tassilo venit per semetipsum, tradens se manibus in manibus domni regis Caroli in vassaticum"; a. 788 (p. 80): "Tunc dominus rex Carolus congregans synodum ad iamdictam villam Ingilnheim, ibique veniens Tassilo ex iussione domni regis, sicut et ceteri eius vassi; et coeperunt fideles Baioarii dicere quod Tassilo fidem suam salvam non haberet. . . ." Mühlbacher, *op. cit.* t. I, no. 179: charter of 795 (see above, p. 152, n. 32).—*Capitulare missorum in Theodonis villa datum secundum generale* of 805 (Boretius, *Capitularia*, t. I, no. 44): "De iuramento, ut nulli alteri per sacramentum fidelitas promittatur nisi nobis et unicuique proprio seniori, ad nostram utilitatem et sui senioris."—Fragment of a capitulary, published as cap. VIII of the *Capitula Francica* (*ibid.* no. 104; see above, p. 153, n. 37).—Astronomus, *Vita Hludovici imperatoris* (cf. above, p. 150, n. 19), c. 21, p. 618, on the subject of the position of Wala immediately after the accession of Louis the Pious: "Qui tamen citissime ad eum venit et humillima subiectione se eius nutui secundum consuetudinem Francorum commendans subdidit."—Thegan, *Vita Hludovici imperatoris* (see above, p. 155, n. 42).—*Annales regni Francorum*, a. 814 (ed. Kurze, p. 141), apropos of a struggle between several pretenders to the Danish throne: "Quo facto Herioldus rebus suis diffidens ad imperatorem venit et se in manus illius commendavit, quem ille susceptum in Saxoniam ire. . . iussit."—Bouquet, *Recueil des historiens des Gaules et de la France*, t. VI, p. 472; act of 815 (cf. above, p. 152, n. 32, in fine): ". . . in manibus nostris se commendavit".

⁴⁷ I have made no attempt to discuss here the forms of service that could be demanded of a vassal, since, apart from military service and temporary functions fulfilled by royal vassals, our information on these points is so slight that even a short account of them is scarcely possible.

⁴⁸ See my article cited above, p. 147, n. 2.

We must first deal with one particular but most important class of benefice: those possessions of the Church which had been usurped on a very large scale under Charles Martel, Carloman I and Pepin III, and distributed by the heads of the Frankish state to their vassals. In some cases from the first, but in most cases by virtue of a subsequent regularization of their position, these possessions had come to be regarded as benefices held of the mayor of the Palace and later of the king, and at the same time as *precaria* held of the church to which they rightfully belonged. Charlemagne seems to have envisaged the possibility of a definitive settlement and consolidation of this type of what we may call "mixed" benefice. In the early part of his reign, in the capitulary promulgated at Herstal in 779,⁴⁹ he issued certain regulations on the matter. In place of the relatively high figure for the *census* that had been decided in the time of St Boniface, he substituted a very small fixed *census*, the aim of which went no farther than maintaining the recognition of the claims of the Church to ownership.⁵⁰ The loss of revenue to the church, deprived both of the property itself and of the income from it, was to be made good by the payment of extra tithes, the "ninth". There grew up in addition an obligation of contributing to the maintenance of the church⁵¹—cathedral, abbey or collegiate church—which was the nominal possessor of the benefice, including the maintenance of any parish churches that might belong to it and the repair of its monastic buildings or episcopal residences.⁵² In view of the frequency with which these provisions were repeated in the course of the eighth

⁴⁹ Boretius, *Capitularia*, t. I, no. 20, cap. XIII (*forma communis*): "De rebus vero ecclesiarum, unde nunc census exeunt, decima et nona cum ipso censu sit soluta; et unde antea non exierunt, similiter nona et decima detur; atque de casatis quinquaginta solidum unum, et de casatis triginta dimidium solidum, et de viginti trimisse uno. . . ." Cap. XIV of the *forma langobardica* is more explicit: "De rebus vero ecclesiarum, que usque nunc per verbo domini regis homines seculares in beneficium habuerunt, ut in antea sic habeant, nisi per verbo domni regis ad ipsas ecclesias fuerint revocatas. Et si inde usque nunc ad partem ecclesiae decima et nona exivit, et nunc in antea faciat; et insuper ad illas ecclesias de L casatos solido uno reddat, de triginta medio solido, de XX trimisse uno; et qui usque nunc alium censum dedit, in antea sicut prius fecit ita faciat. Et unde usque nunc nullum censum exivit, et ipsa res ecclesiae sunt, censentur, et ubi non sunt, scribantur."

⁵⁰ The nominal character of these payments can be seen by comparing them with those of the time of St Boniface, which amounted to 12 *denarii* for each family of tenants (*Die Briefe der Hl. Bonifatius und Lullus*, ed M. Tangl, no. 60, p. 123 [dated 745]).

⁵¹ The Council of Frankfurt of 794, cap. XXVI (Boretius, *Capitularia*, t. I, no. 28): "Ut domus ecclesiarum et tegumenta ab eis fiant emendata vel restaurata qui beneficia exinde habent."—*Capitula e canonibus excerpta*, cap. XXIV (*ibid.* no. 78): "Quicumque beneficium ecclesiasticum habet, ad tecta ecclesiae restauranda vel ipsas ecclesias omnino adiuvet." The capitulary of which this provision forms a part was perhaps promulgated after the Councils of 813.

⁵² Lesne, *op. cit.* t. II, ii, pp. 313 sqq.

and ninth centuries,⁵³ one may conclude that there was great difficulty in securing their observance.

To the number of these benefices that existed from the time of Charlemagne's predecessors a few were no doubt added during his reign,⁵⁴ particularly during the early part of it.⁵⁵ But the chief feature of his policy was not to increase the number of these "mixed" benefices, but to give them a definitive character and to put an end to the efforts that were made by the Church to recover them. Hence the clear distinction made in the Capitulary of Herstal between the benefices described as *precariae de verbo nostro factae* and those granted voluntarily by the churches (*eas quae spontanea voluntate de ipsis rebus ecclesiarum faciunt*); only those of the latter class were declared to be revocable by the churches that had granted them.⁵⁶ Although Charlemagne no doubt

⁵³ E.g. *Caroli epistola in Italiam missa* of 779-81 (Boretius, *Capitularia*, t. 1, no. 97; for the date, see De Clercq, *op. cit.* pp. 161-2); Council of Frankfurt (see above, p. 157, n. 51), cap. xxv; Italian capitulary of Pepin of 802-10, cap. vi (Boretius, *op. cit.* no. 102).

⁵⁴ Some traces of the practice can be found in the texts; cf. d'Herbomez, *Cartulaire de l'abbaye de Gorze*, Paris, 1898, nos. 12, 13 (both dated 770); Prou and Vidier, *Recueil des chartes de l'abbaye de Saint-Benoît-sur-Loire*, t. 1, Paris, 1907, no. 19. The date of this last is 835, but it refers to events that took place at the end of the reign of Pepin III and the beginning of that of Charlemagne. The first of these texts deals with properties held in benefice of the church of Metz, which are distinguished from simple grants in *precariam* (e.g. "rem illam...quam Beto ad partem Sancti Stephani delegavit, et ipse modo per precariam tenet, seu et sortem illam in ipsa villa, quam Nebolungus per beneficium Sancti Stephani vel nostrum tenere videtur..."); the second is concerned with a domain "quam nunc per beneficium Sancti Stephani vel nostrum Fredelaigus, vassus domini Carolimanni regis, per precariam nostram tenere videtur" and of another "quam Godfridus, similiter homo dominicus per beneficium Sancti Stephani vel nostrum per precariam tenere videtur". In the third text, Louis the Pious restores to the abbey of St-Benoît a part of a domain that had been usurped by the Crown and given in benefice to a royal vassal; the latter, and no doubt other vassals after him, had retained it after Pepin had restored the *villa* to the abbey.

⁵⁵ This was the view of M. Pöschl, *Bischofsgut und Mensa episcopalis*, t. 1, Bonn, 1908, pp. 122 sqq., and it seems to be correct. It is possible that the passage in the *Gesta abbatum Fontanellensium*, cap. xv (ed. Loewenfeld, Hanover, 1886, pp. 44-5), relating to abbot Guy (753-87) refers in part to the reign of Charlemagne; certain "res ecclesiae...quas ipse regis hominibus ad possidendum contradidit" are mentioned in it. It is safer not to use four charters of *precaria* that figure in the *Gesta Aldrici* (ed. Charles and Froger, Marners, 1889, pp. 179-85), and which mention *precariae verbo regis*, since their authenticity is very doubtful. Further information relating to the secularization of Church property under Charlemagne will be found in Lesne, *op. cit.* t. II, i, pp. 65 sqq. Save where Italy is concerned, however, the evidence quoted is generally rather late and its value is often open to question. See also above, p. 151, n. 23.

⁵⁶ Boretius, *Capitularia*, t. 1, no. 20, cap. xiv, *forma langobardica*, the first part (see above, p. 157, n. 49) and the last: "Et sit discretio inter precarias de verbo dominico factas et inter eas quas episcopi et abbates et abbatissae eorum arbitrio vel dispositione faciunt, ut liceat eis, quandoquidem eis placuerit, res quas beneficiaverint ad partes ipsius ecclesiae recipere, facientes ut unusquisque homo ad causa Dei in honore Deo fideliter et firmiter deserviat." It seems that one must make the same distinction in cap. xlv, *in fine*, of the *Gesta abbatum Fontanellensium* (p. 45) where the author, writing of the year 787 and of the possessions of the abbey of St Wandrille, distinguishes between those "quae ad usus proprios fratrumque stipendia pertinere videntur", those which "in beneficiis relaxati sunt", the domains that abbot Guy "regis hominibus contradidit", and those "que sub usufructuario aliis concessit".

made a certain number of restitutions,⁵⁷ he always treated benefices granted from the possessions of the Church simply as a variety of the ordinary royal benefice.⁵⁸ In many cases the usurpations must have been of a complete character, and the particular nature of the benefice have disappeared.⁵⁹

The study of the problems connected with benefices held by vassals is a difficult one, for under Charlemagne the word *beneficium* was not only used to describe the form of lay tenure with which we are concerned and the ecclesiastical benefice, but also was very frequently applied to the *precaria*.⁶⁰ It is necessary, therefore, in examining the texts, to eliminate all those which do not quite clearly and indisputably refer to vassal benefices.⁶¹

⁵⁷ He seems to have made relatively important restitutions to the abbey of St Wandrille (*Gesta abbatum Fontanellensium*, cap. xvi, p. 47), probably between 802 and 806, under Abbot Gervold. Perhaps some sort of restitution is indicated in a charter of Gorze of 795 (*Cartulaire de l'abbaye de Gorze* [cited above, p. 158, n. 54], no. 35), by which a certain Sigerannus declares that the church of Jouy-aux-Arches (dept. Moselle, arr. Metz, cant. Gorze) belonging to the abbey "...per beneficium tenui et postea spontanea voluntate...per meum gladium vobis reddidi"; after this restitution he takes the property back as a *precaria*.

⁵⁸ *Capitularia missorum specialia* of 802 (Boretius, *Capitularia*, t. 1, no. 34; cf. above, p. 150, n. 22), cap. x: "De illis hominibus qui nostra beneficia habent distructa et alodes eorum restauratas. Similiter et de rebus ecclesiarum." *Capitulare missorum* of Nijmegen of 806 (*ibid.* no. 46), cap. xviii: "Consideravimus itaque ut praesente anno...ut omnes episcopi, abbates, abbatissae, obtimates et comites seu domestici et cuncti fideles qui beneficia regalia tam de rebus ecclesiae quamque et de reliquis habere videntur..."

⁵⁹ This was evidently the case for the property restored in 835 to St-Benoît-sur-Loire; see above, p. 158, n. 54.

⁶⁰ On the word *beneficium* as applied to the early ecclesiastical benefice, see E. Lesne, "Les diverses acceptions du terme 'beneficium' du VIII^e au XI^e siècle", in the *Revue historique de droit français et étranger*, 1924. On *beneficium* as used to mean a *precaria*, see the Capitulary of Herstal, *forma langobardica*, cap. xiv (above, p. 158, n. 56). *Beneficium* might also designate other forms of tenure, as for example that of a "maire" (cf. cap. x of the *Capitulare de villis*, in Boretius, *op. cit.* no. 32), and even, in an exceptional case of a holding not for a fixed rent but for a fixed proportion of the produce, that of a simple cultivator of the soil (cf. cap. xviii of the *Capitula ecclesiastica* collected by Ansegisus of 800-13, in Boretius, *op. cit.* no. 81; on the date, see De Clercq, *op. cit.* pp. 201-2). Sometimes it is quite impossible to say precisely what form of tenure the word is being used to describe, as in certain diplomas of Charlemagne (e.g. Mühlbacher, *op. cit.* t. I, nos. 90, 121, 144, of the years 775, 779, 782) and in private charters (e.g. Wartmann, *Urkundenbuch der Abtei Sankt Gallen*, t. 1, Zurich, 1863, no. 116, of the year 788).

⁶¹ The use of the word *beneficium* as applied to a *precaria* is extremely common. I may cite a few examples, grouped according to the modern source from which they are taken. Albanès and Chevalier, *Gallia Christiana novissima*, Marseille; Valence, 1899, no. 42 (780); Beyer, Eltester and Goerz, *Urkundenbuch zur Geschichte der...mittelrheinischen Territorien*, t. 1, Koblenz, 1860, nos. 21, 23, 30, 33 (767-87); Bitterauf, *op. cit.* t. 1, nos. 38, 42, 48, 96, 139, 171, 182, 195, 240, 247, 273, 278, 287, 295, 296, 300, 315, 317, 320 (770-814); Devic and Vaissete, *op. cit.* t. II, Pièces justificatives, no. 15 (802); Dronke, *op. cit.* nos. 68, 87, 99, 117, 118, 209, 213 (788-803); *Gallia Christiana*, t. XII, Instrumenta ecclesiae Turonensis, no. 12, cols. 15-19 (813); K. Glöckner, *Codex Laureshamensis*, t. 1, Darmstadt, 1929, no. 14 (790); B. Guérard, *Cartulaire de l'abbaye de Saint-Bertin*, Paris, 1841, nos. 47, 50, 52, 54 (802-11); d'Herbomez, *op. cit.* nos.

The vassal benefices that figure in our sources are, as a general rule, landed estates. This is true both of benefices granted by the king and those granted by private persons.⁶² Their size naturally varied greatly according to circumstances. Sometimes we meet with grants of whole domain (*villa*) by the king,⁶³ but as frequently the grants are of fractions of a domain,⁶⁴ or only of several *mansi*.⁶⁵ There is some reason to believe that four *mansi* may have been regarded, at least in the west of Gaul, as the minimum size for a benefice held of a private person, and that twelve *mansi* may have been the usual benefice held by a vassal bound to serve as a mounted soldier. Certainly the possession of the former of these, towards the end of Charles's reign, entailed on its holder the obligation of personal military service,⁶⁶ which we know was required of a vassal;⁶⁷ the possession of the latter obliged their holder, particularly if he was a vassal holding them as a benefice, to serve with a *brunea*, that is, as a mailed and mounted soldier.⁶⁸ Very large benefices, particularly those held of the king by *vassi dominici*, were no doubt in part regranted as benefices to sub-vassals.⁶⁹ Benefices, however, were not

21, 22, 29, 30, 33, 34, 37, 38, 39, 42, 43, 44 (775-811); Lacomblet, *op. cit.* t. I, no. 21 (801); Stengel, *op. cit.* t. I, nos. 56, 58 (772); Wampach, *op. cit.* t. I, ii, nos. 90, 98 (784-89); Wartmann, *op. cit.* t. I, nos. 57, 60, 104, 109, 110, 113, 120, 135, 151, 158, 177 (770-804). This list could be greatly expanded without much difficulty.

⁶² See, further, particularly nn. 71, 76, 97 and the *Gesta abbatum Fontanellensium*, cap. xv (p. 15): in 787 "in beneficiis vero relaxati sunt mansi integri numero 2120, medii 40, manoperarii 235, qui simul iuncti fiunt 2395, alii 156; habent ipsi molendina 24". Cf. also Mühlbacher, *op. cit.* t. I, no. 184 (= Wampach, *op. cit.* t. I, ii, no. 92), of 775-84, which relates to a whole island being given as a benefice.

⁶³ Cf. the second text cited above, p. 152, n. 31, and the texts that refer to *villae* granted as benefices to counts (cited below, p. 167, nn. 97-100). These cases seem to be those referred to in cap. vi of the *Capitulum missorum* of Nijmegen of 806 (Boretius, *Capitularia*, t. I, no. 46): "Auditum habemus qualiter et comites et alii homines qui nostra beneficia habere videntur comparant sibi proprietates de ipso nostro beneficio et faciant servire ad ipsas proprietates servientes nostros de eorum beneficio et curtes nostrae remanent desertae et in aliquibus locis ipsi vicinantes multa mala paciuntur." These royal benefices in which the *curtis* has been deserted as a result of usurpations are probably whole *villae*, in which the *curtis* was the centre of exploitation; as a result of the loss of the lands attached to it, it would cease to perform any useful function and fall into decay.

⁶⁴ Cf. for example the diploma of 835 for St-Benoît-sur-Loire (cited above, p. 158, n. 54).

⁶⁵ *Capitulum missorum de exercitu promovendo* of 808 (Boretius, *op. cit.* no. 50), cap. 1: "Ut omnis liber homo, qui quatuor mansos vestitus de proprio sive de alicuius beneficio habet. . . ." *Beneficium* is applied here, apparently, to any type of benefice, including that of a vassal.

⁶⁶ The text cited in the preceding note goes on to prescribe that the aforesaid free man "ipse se praeparet et per se in hostem pergat, sive cum seniore suo si senior eius perrexerit, sive cum comite suo".

⁶⁷ See below, pp. 168-9.

⁶⁸ *Capitulum missorum in Theodoni villa datum secundum generale* of 805-6 (Boretius, *op. cit.* no. 44; on the date, see De Clercq, *op. cit.* pp. 207-8), cap. vi: "De armatura in exercitu, sicut antea in alio capitulum commendavimus, ita servetur, et insuper omnis homo de duodecim mansis bruneam habeat; qui vero bruniam habens et eam secum non tulerit, omne beneficium cum brunia pariter perdat."

⁶⁹ Capitulary of Boulogne of 811 (*ibid.* no. 74), cap. vii: "De vassis dominicis qui adhuc intra casam serviunt et tamen beneficia habere noscuntur, statutum est ut

necessarily limited to landed estates; abbey, for example, were often granted by the king on this type of tenure.⁷⁰

The nature of the rights of both parties over their benefices at the time of Charlemagne is abundantly illustrated by the capitularies. These are full of dispositions of every kind regarding property held of the king. One meets with injunctions to the holders not to cultivate their benefices badly, not to neglect them in any way, and not to exploit them for the benefit of their private possessions.⁷¹ The maintenance of the *familia* on them in case of famine was an obligation on the tenant.⁷² There is at least one disposition directed expressly against those who tried to use the *familia* in order to increase the value of their private possessions and those who attempted to assimilate the *beneficium* to their own allodial property.⁷³ The king did not lose interest in a benefice once he had granted it away, but kept a watchful eye on it to see that those who were in possession did not exceed their rights over it as tenants. The vassals, in fact, like those who held a *precaria*, had little more than the usufruct of their benefice.⁷⁴ The distinction between the *beneficium* and the *proprietas* or *alodis*, the property of which a person was truly owner, is very clearly made in the capitularies.⁷⁵

quicumque ex eis cum domno imperatore domi remanserint vassallos suos casatos secum non retineant, sed cum comite cuius pagenses sunt ire permittat."

⁷⁰ That this was the case under Charles Martel and Pepin III is common knowledge; it is confirmed incidentally by a diploma of Charlemagne, probably of 782-3 (Mühlbacher, *op. cit.* t. I, no. 148). An Italian capitulary of Pepin, probably of 787 (Boretius, *op. cit.* no. 95; on the date, see De Clercq, *op. cit.* p. 165), suggests that the practice persisted under Charlemagne: "(cap. vi) De monasteria et senedochia qui per diversos comites esse videntur, ut regales sint; et quicumque eas habere voluerint, per beneficium domno nostro regis habeant." It seems probable that the dispositions mentioned here were of a general character, though in this Capitulary only their application in Italy is in question.

⁷¹ *Duplex legationis edictum*, a. 789 (Boretius, *Capitularia*, no. 23), cap. xxxv: "Ut missi nostri provideant beneficia nostra quomodo sunt condita et nobis renuntiare sciant" (cf. cap. v of the *Capitulum Aquitanicum* of Pepin III of 765, in Boretius, *op. cit.* no. 18). *Breviarium missorum Aquitanicum*, a. 789 (*ibid.* no. 24), cap. vi: "Quomodo illis beneficiis habent conditos provideant vel suos proprios." *Capitulum missorum generale*, a. 802 (*ibid.* no. 33), cap. vi: "Ut beneficium domni imperatoris desertare nemo audeat, propriam suam exinde construere." *Capitularia missorum specialia*, a. 802 (*ibid.* no. 34), cap. xi (see above, p. 150, n. 22). Capitulary of Aachen, a. 802 (*ibid.* no. 77), cap. iv: "Ut hi qui beneficium nostrum habent, bene illud immelliorare in omni re studeant; et ut missi nostri hoc sciant." See also below, p. 173, n. 117.

⁷² Council of Frankfurt of 794 (Boretius, *op. cit.* no. 28), cap. iv: "Et qui nostrum habet beneficium, diligentissime praevideat, quantum potest Deo donante, ut nullus ex mancipiis ad illum pertinentes beneficium famen moriatur. . . ." *Capitulum missorum* of Nijmegen of 806 (*ibid.* no. 46), cap. xviii enjoins on all those who hold a benefice of the king (see above, p. 159, n. 58) ". . . unusquisque de suo beneficio suam familiam nutrire faciat et de sua proprietate propriam familiam nutriat, et si Deo donante super se et super familiam suam, aut in beneficio aut in alode, annonam habuerit et vendundare voluerit, non carius vendat nisi. . . ."

⁷³ Same capitulary, cap. vi (see above, p. 160, n. 63).

⁷⁴ See the texts indicated above, p. 159, n. 61.

⁷⁵ *Capitulum missorum* of Nijmegen of 806 (Boretius, *op. cit.* no. 46), cap. xviii; see above, p. 161, n. 72.

The proprietor of a royal benefice was not the tenant, but the king.⁷⁶ In charters dealing with royal benefices the two types of rights are even more sharply opposed to one another than in the capitularies. What a vassal holds in benefice are *res proprietatis nostrae*, and the serfs or *coloni* attached to a benefice belong to the king.

If we have described in some detail the position of royal benefices, the reason is that our knowledge of them, thanks to the comparative abundance of the sources, is much greater than is our knowledge of private benefices. But it does not seem seriously open to question that the same legal state of affairs obtained in private benefices as in those held of the king. It is certain, for example, that ecclesiastical lords regarded themselves as proprietors of the benefices granted by them to their vassals,⁷⁷ and the same naturally holds good for lay seigneurs.⁷⁸

⁷⁶ *Capitulaire de iusticiis faciendis*, a. 811 (Boretius, *op. cit.* no. 80; on the date, cf. De Clercq, *op. cit.* pp. 215-17), cap. v: "Ut missi nostri diligenter inquirent et describere faciant unusquisque in suo missatico, quid unusquisque de beneficio habeat vel quot homines casatos in ipso beneficio"; cap. vii: "Ut non solum beneficia episcoporum, abbatum, abbatissarum atque comitum sive vassallorum nostrorum sed etiam nostri fisci describantur, ut scire possimus quantum etiam de nostro in unuscuiusque legatione habeamus." Italian Capitulary of Pepin, probably of 787 (*ibid.* no. 95), cap. vi; see above, p. 161, n. 70.—A diploma of Charlemagne for Fulda of 779 (Mühlbacher, *op. cit.* t. I, no. 127 = Stengel, *op. cit.* no. 90): "... donatumque in perpetuum esse volumus quasdam res proprietatis nostrae, hoc est in pago Wormacinsae, quas fidelis noster Otakarus per nostrum beneficium visus est habuisse, id est in Mogontia civitate mansos xxx et v et mancipia lxvi et xvi lidos et vineas ad ipsum beneficium pertinentes." The rights of proprietorship of the king over the benefices held of him and over the male and female serfs attached to these benefices are affirmed in a series of judgements pronounced in the course of certain legal disputes regarding benefices in the Autunois, principally at Perrecy and Baugy, which were held by members of the family of the Nibelungen (Prou and Vidier, *op. cit.* t. I, nos. 9-13, 16, 17; a. 796-821). No. 9 (776) is especially characteristic: "veniens Moyses, advocatus Hildebranno comite, die Martis, Botedono villa, mallavit hominem aliquo nomine Dodono, quod servus erat domno Karolo de suum beneficium, de villa quae dicitur Jovo [Jeu]", and further on "recredidit quod servus erat domno Karolo rege de iamdicta villa Jovo". On these disputes, see L. Levillain, "Les Nibelungen historiques et leurs alliances de famille" (in *Annales du Midi*, 1937), pp. 343-57.—Bitterauf, *op. cit.* t. I, no. 166 a: a donation made by Helmo in 793 to the church of Freising of property that he held in benefice of the king: "... ipse Helmoni... pro mercede domni regis manibus suis tradidit ad supradicto domo Sanctae Mariae..."—Mühlbacher, *op. cit.* t. I, no. 206; Charlemagne confirms in 807 an exchange of property between the church of Würzburg and count Audulf, the bishop granting "praedicto viro Audulfo glorioso comiti ad partem nostram.... Similiter et in compensatione huius meriti dedit iam dictus Audulfus comis per nostrum comiatum de eius beneficio suprascripto viro Agiluardo venerabili episcopo."

⁷⁷ It is clearly implied by the *Gesta abbatum Fontanellensium*, cap. xv, where the *mans* which "in beneficiis relaxati sunt" are classified with those which "ad usus proprios fratrumque stipendia pertinere videntur" in the list of the possessions of the abbey. It is also implied by the inventory of property conceded in benefice that appears in the description of a part of the possessions of the abbey of Wissembourg in the *Brevium exempla* (see above, p. 154, n. 39). See also a charter of 796-7 in Wampach (*op. cit.* t. I, ii, no. 111), in which a benefice conceded to a vassal is described as "rem nostram, quam vasallo nostro Fulcoldo antea prestatum habuimus".

⁷⁸ It appears to be implied by two dispositions of a general nature that at once follow

The question of the rights of lord and vassal over a benefice is bound up with the question of the duration of the rights of the vassal. There is no evidence to show that under Charlemagne any modification took place in the state of affairs that obtained in the time of the early Carolingians. The benefice still remained a grant made purely for the lifetime of the recipient.⁷⁹ No doubt there were a number of cases, one may even say a relatively large number of cases, in which the same benefice remained in the hands of a single family during two or even three generations.⁸⁰ But this was manifestly only a question of *fact*, which had not yet necessarily produced any changes in the sphere of *law*. So far as concerns the custom of *Herrenfall*, as it is called by German historians, by which the concession of a benefice ended with the death of the grantor, and which appears to have been anterior to the time of Charlemagne,⁸¹ we have one explicit testimony to its existence during his reign. It is true that the text in question is not concerned with a benefice properly speaking, but with a tenure by *aprisio* in Southern Gaul, but we have already seen that the two tenures are analogous to one another,⁸² and there is no reason to doubt that the custom of *Herrenfall* applied also to benefices in the strict sense of the word.

Amongst the most important questions that concern the benefice, that of its union with vassalage is one that must chiefly demand our attention. I am not concerned here with the union as a matter of fact, with the general and widespread custom both of the king and of private lords of granting benefices to their vassals. This union of fact dates from the reign of Carloman I and Pepin III,⁸³ and was maintained and developed, though without taking on any exclusive or necessary character,

and complete each other in the *Capitulaire de iusticiis faciendis* of 811-13 (Boretius, *Capitularia*, t. I, no. 80), cap. v: "Ut missi nostri diligenter inquirent et describere faciant unusquisque in suo missatico, quid unusquisque de beneficio habeat vel quot homines casatos in ipso beneficio"; cap. vi: "Quomodo beneficio condita sunt, aut quis de beneficio suo alodem comparavit vel struxit." See also cap. iv of the *Capitula de causis diversis* of 807, in *fine* (see below, p. 170, n. 111).

⁷⁹ See my article cited above, p. 147, n. 2.

⁸⁰ Such was the case for the domains of Baugy and Perrecy, held in benefice under Charlemagne by two generations of Nibelungen (see above, p. 162, n. 76, and Levillain, *loc. cit.*). Another example is given, for northern Italy, by a diploma of Charlemagne for the church of Aquileia of 811 (Mühlbacher, *op. cit.* t. I, no. 214): "quidam fidelis noster nomine Landola per nostrum tenuit beneficium et post eius discessum Benno filius eius, deinde Bono hactenus tenere visus fuit...."

⁸¹ On this question I am of the same opinion as U. Stutz ("Römerwergeld" und "Herrenfall", in *Abhandl. der Preuss. Akad. der Wissenschaften*, Phil.-hist. Klasse, 1934), as against that of H. Mitteis (*op. cit.* p. 137 sqq., and in the *Historische Zeitschrift*, t. CLII, 1935, pp. 566-72).

⁸² Brunner and von Schwerin, *op. cit.* t. II, pp. 346-8. The case is that of the vassal John, who on the death of Charlemagne came to do homage to Louis the Pious and obtain from him the regrant of the property he held by *aprisio* (cf. above, p. 152, n. 32).

⁸³ See my article cited above, p. 147, n. 2.

under Charlemagne. Evidence, both implicit and explicit, is plentiful in capitularies and charters as to its existence.⁸⁴ What I am concerned with is the union in law of vassalage and benefice, a union of a type that produces some juridical effect.⁸⁵ The existence of the custom of *Herrenfall*, the fact that the concession of a benefice ended if the relationship of vassalage was brought to an end by the death of the lord, implies to some extent this union in law. But can one go farther and say that under Charlemagne the evidence is sufficient to prove a closer union between the two institutions of vassalage and benefice?⁸⁶

The answer to this question must be in the affirmative, at least so far as the later part of the reign is concerned. After the Imperial coronation in 800, it seems as if Charlemagne made a larger use than formerly of the institution of vassalage in the organization of the State. The close union of benefice and vassalage is clearly apparent in the instructions given in 806 to the *missi* at Nijmegen. When dealing with offences of which royal vassals might be guilty, and in particular with attempts to appropriate royal benefices, the emperor declared that this was a breach of the oath of fealty that the vassals had sworn to him.⁸⁷ In other words, a respect for the terms on which a benefice was held was explicitly recognized as an element in the pact of fealty between the *vassus dominicus* and the king, his lord.

Other texts testify to an even closer union between the two institutions. The service of vassalage was treated as being the immediate reason for the grant of a benefice, so that if the service ceased to be rendered, the reason for the grant disappeared and the grant itself was revoked. That this was the actual position is implicit in the fact that confiscation of the benefice was regarded as one of the sanctions which came into force if the obligations of vassalage were neglected.⁸⁸ There are two texts that seem to

⁸⁴ Cf. what has been said above, pp. 151 *sqq.*, on the subject of *vassi casati*.

⁸⁵ In the sense indicated by Mitteis, *op. cit.* pp. 129 *sq.*

⁸⁶ Mitteis (*op. cit.* pp. 149–50) is prepared to admit it for the later part of the reign.

⁸⁷ *Capitulare missorum* of Nijmegen (Boretius, *Capitularia*, t. I, no. 46), cap. VII: "Audivimus quod aliqui reddunt beneficium nostrum ad alios homines in proprietatem, et in ipso placito dato pretio comparant ipsas res iterum sibi in alodem; quod omnino cavendum est, quia qui hoc faciunt non bene custodiunt fidem quam nobis promissam habent. Et ne forte in aliqua infidelitate inveniantur; quia qui hoc faciunt, per eorum voluntatem ad aures nostras talia opera illorum non perveniunt."

⁸⁸ It is of course necessary, as Mitteis (*op. cit.* pp. 147–51) has very rightly pointed out, not to confuse the confiscation of a benefice as a punishment for a failure to fulfil the specific obligations of vassalage with the confiscation of a benefice as a punishment for some breach of the law. To the second class of offences belong those provided against in the Capitulary of Herstal of 779 (Boretius, *Capitularia*, no. 20), cap. IX (refusal to surrender a robber), the Italian Capitulary of Pepin of 782–6 (*ibid.* no. 91), cap. VII (failure to fulfil legal obligations, *iustitias facere*, and so on; see above, p. 149, n. 7), the Capitulary of Boulogne of 811 (*ibid.* no. 74), cap. V (failure of a royal vassal to take part in a campaign when called upon to do so).

indicate the existence of such a sanction.⁸⁹ One of these is an article in a capitulary promulgated at Aachen between 802 and 813.⁹⁰ It has in view, apparently, the case of a royal vassal who, while engaged in the fulfilment of his services within the Empire, meets with some resistance. He calls to his aid another royal vassal, who is bound to come to his assistance by virtue of the fealty which he owes to their common master. If he does not respond, he is to lose his benefice, which will be given to another vassal who will fulfil his obligations properly. Although this measure is one that only concerns royal vassals, I am inclined to see in it simply the application of a more general rule which extended to all types of vassalage. For in a private charter of 807, by which the bishop of Freising grants a benefice to one of his vassals, it is expressly stipulated that the benefice shall be confiscated if the vassal does not faithfully carry out his service.⁹¹ On the basis of these two texts, we can, I think, affirm that at the close of the reign of Charlemagne the union in law of the two institutions of benefice and vassalage was already an accomplished fact.

It is often said that it was under Charlemagne that benefice and vassalage began to be incorporated in the administrative machinery of

⁸⁹ One might at first glance cite as a third relevant text cap. VI of the *Capitulare missorum generale* of Thionville of 805–6 (Boretius, *op. cit.* no. 44; see above, p. 160, n. 68). But this is really only another case of confiscation following some breach of the "common law", like those cited in the preceding note.

⁹⁰ Capitulary of Aachen of 802–13 (*ibid.* no. 77), cap. XX: "Et si quis de fidelibus nostris contra adversarium suum pugnam aut aliquod certamen agere voluit, et convocavit ad se aliquem de comparis suis ut ei adiutorium praeberet, et ille noluit et exinde negligens permansit, ipsum beneficium quod habuit auferatur ab eo et detur ei qui in stabilitate et fidelitate sua permansit." Mitteis (*op. cit.* pp. 149–50) believes that this text has in view all vassals, and, arguing that the Carolingian vassal was the "peer" of his lord, he would interpret the provision as declaring that when a lord demands the aid of his vassals for a private war ("Fehde"), a vassal refusing his aid will lose his benefice. It therefore proves the existence of a legal bond between benefice and vassalage, since it is an example of the confiscation of the benefice as a punishment for the failure to fulfil the service required of a vassal. This interpretation, in my view, is incorrect. In the first place, I do not believe that in a capitulary of Charlemagne a vassal would be described as the peer (*compar*) of his lord; the examples cited by Mitteis, which in any case only refer to the word *par*, and not *compar*, are irrelevant. And secondly, and more important, if Charlemagne had promulgated a provision with the meaning that M. Mitteis attributes to it, it would have been tantamount to encouraging the practice of private warfare, a supposition which is quite irreconcilable with the emperor's efforts for the maintenance of *pax*. The truth is that the provision is concerned with a person appealing for help to one of his *compares*, that is, to another person of the same group. This group, in my view, can only be that of the royal vassals; *fideles* of the king, who have received benefices from him, can scarcely mean anything else. The appeal for help made by one of the royal vassals to other *vassi dominici*, endowed with benefices in the same region as himself, is justified because the vassal is acting in the king's service. And it is because the benefice is granted in return for services that the confiscation of it is justified if its holder does not go to the assistance of his *compares*.

⁹¹ Bitterauf, *op. cit.* t. I, no. 257; see above, p. 154, n. 39.

the Frankish state. Certainly, in the years that followed, these institutions were to exercise a considerable influence over the transformations that the Frankish monarchy and its successors were to undergo. It is therefore worth while attempting to discover how far the ascription to Charlemagne of their introduction into the fabric of the state is correct.

We have seen already how Charlemagne, even at the beginning of his reign, was accustomed to use his vassals for every variety of mission and service.⁹² We know also that during the epoch of the early Carolingians, and probably even earlier, the royal vassals were primarily soldiers.⁹³ But during the later part of Charles's reign, the years that followed his coronation as emperor, the duties of the royal vassals, both military and otherwise, underwent great developments. The importance of the *vassi dominici* became so considerable, and their role in upholding the personal authority of the monarch became so essential, that strict measures had to be taken to ensure the maintenance amongst them of the good relations necessary to secure their efficient co-operation in the royal service. The *missi* were entrusted with the duty of seeing that these good relations were maintained amongst the vassals, just as they were bound to see that good relations reigned amongst the other representatives—bishops, abbots, counts, abbesses—of the royal power. A capitulary of 802 gives us formal evidence on this point,⁹⁴ and the severe punishment that was to follow the failure of a royal vassal to respond to a demand for assistance from another *vassus dominicus*⁹⁵ is further evidence of it. The emperor took measures to secure the safety of his vassals. In 810 or 811 he went so far as to place them on the same level as the *missi*. The severest penalties were decreed against any person who attempted at the head of an armed band to prevent a *missus* or a royal vassal from fulfilling the terms of his mission. Death or, if the attempt had been made in ignorance of the rank of the person attacked, the *bannum*—the heavy royal fine of 60 *solidi*—were the commonest penalties.⁹⁶

⁹² See above, pp. 148-9.

⁹³ See my article cited above, p. 147, n. 2.

⁹⁴ *Capitularia missorum specialia*, a. 802 (Boretius, *Capitularia*, t. I, no. 34), cap. xviii (only in the text for the two *missatica* whose centres are given by Boretius as Paris and Rouen): "Ut diligenter inquirant inter episcopos, abbatis sive comites vel abbatissas atque vassos nostros qualem concordiam et amicitiam ad invicem habeant per singula ministeria, an si aliqua discordia inter ipsos esse videtur, et omnem veritatem in eorum sacramento nobis exinde renuntiare non neglegent."

⁹⁵ See above, p. 165, n. 90.

⁹⁶ Fragments of lost capitularies, preserved in the collection of Ansegisus (Boretius, *op. cit.* no. 70, where they are dated 810-11), cap. 1: "Si quis super missum dominicum cum collecta et armis venerit et missaticum illi iniunctum contradixerit aut contradicere voluerit, et hoc ei adprobatur fuerit, quod sciens contra missum dominicum ad resistendum venisset, de vita componat: et si negaverit, cum XII suis iuratoribus se idonei faciat; et pro eo quod cum collecta contra missum dominicum armatus venit ad

The severity of these punishments is an indication of the position held by the royal vassals in the structure of the State.

One important aspect of the development of royal vassalage is the entry of the counts, that is, of those who were most characteristically territorial officials, into the system. This development does not belong entirely to the years subsequent to the Imperial coronation; one meets with it at the beginning of Charles's reign,⁹⁷ and even during that of his father.⁹⁸ But from the year 800 onwards the benefices held by counts become a regular object of legislation in the capitularies, which suggests that the practice had suddenly become a general one.⁹⁹ The benefices in question were those that the king disposed of at his pleasure; they were not necessarily even situated in the county of the recipient.¹⁰⁰ It is not possible to say whether the regular landed endowment of the count—the *ministerium*, the *res de comitatu*—which certainly goes back at least to the reign of Charlemagne, was already held as a benefice,¹⁰¹ but I am inclined to believe that it was.

resistendum, bannum dominicum componat. Simili modo domnus imperator, de suis vassis iudicavit. Et si servus hoc fecerit, disciplinae corporali subiaceat." It does not appear to me possible to regard the penultimate sentence as anything else than an assimilation of the position of the *vassi dominici* to that of the *missi dominici*. It cannot be understood as a particular provision making the stated penalties applicable also to criminal *vassi dominici*; the penal clauses, of a very general character (they are introduced by the phrase *si quis*), make no distinctions as to the rank of guilty persons, and are aimed impartially at any who break the law on this point, royal vassals as well as other men. A particular disposition is necessary only in the case of unfree men.

⁹⁷ Mühlbacher, *op. cit.* t. I, no. 177 (donation of a domain to the church of Utrecht in 777): "quantumcumque Wiggerus comes ibidem per nostrum beneficium tenuit". Devic and Vaissète, *op. cit.* (new ed.), t. II, Preuves, no. 6 (see above, p. 150, n. 16; act of 782): "Tunc Milo comis in suum responsum dixit: Ipsas villas senior meus Karolus rex michi eas dedit ad beneficio..." Mühlbacher, *op. cit.* t. I, no. 154 (donation of the domain of Marolles to St-Germain-des-Prés in 786): "...villam nostram... vel sicut moderno tempore Autbertus comes per nostrum beneficium tenere videtur". Bitterauf, *op. cit.* t. I, no. 166a (see above, p. 162, n. 76; act of 793): "Et reliqua confinia et loca per circuitum quae Keroldus comes ibidem habere in beneficio domni regis videbatur..."

⁹⁸ See p. 186 of my article cited above, p. 147, n. 2.

⁹⁹ Boretius, *Capitularia*, no. 46 (806), capp. vi, xviii (see above, nn. 63 and 58); no. 80 (811), cap. vii (see above, n. 76). Cf. also the diploma of 807 for the church of Würzburg cited above, p. 162, n. 76.

¹⁰⁰ This can be seen particularly in the charters of St-Benoît-sur-Loire (Prou and Vidier, *op. cit.* t. I, nos. 12, 13 and 16), where one sees, in 818 and 819, counts Childebrand II and Nibelung II appearing in a legal case before the *mallus* of Autun that concerned the benefices of Perrecy and Baugy, which they held in Autunois. The count of Autun, who presided over the *mallus*, was a certain Thiery. Cf. Levillain, *op. cit.* particularly pp. 346 and 361; M. Chaume, *Les origines du duché de Bourgogne*, t. I, Dijon, 1925, p. 546; and above, pp. 162 and 163, nn. 76 and 80.

¹⁰¹ This landed endowment of the count is referred to, for the *pagus Tornacensis*, in a diploma of Louis the Pious of 20 November 817, which deals with the cession of a piece of land to the church of Tournai in order to enlarge the cloister of the canons (*Recueil des historiens des Gaules et de la France*, t. vi, p. 509; cf. H. Pirenne, "Le fisc royal de Tournai", in *Mélanges d'histoire du moyen âge offerts à M. Ferdinand Lot*, Paris, 1925): "...id est de proprio fisco nostro in eodem loco de terra habente in

A very remarkable feature of the period is that not only royal vassalage but even private vassalage had already found a place for itself in the political framework of the monarchy. It was utilized both in the military and judicial spheres of government.

Military service, it is well known, was limited to those who could dispose of a certain amount of land. But from this limitation all vassals to whom benefices had been conceded, and whoever their lord might be, were exempt.¹⁰² To this rule only very rare exceptions were made. In 808 the counts were authorized to leave at home two beneficed vassals (*vassi casati*) to guard the women and their houses, and two more in each of their counties for the king's service; each bishop and each abbot might leave behind two vassals for the service of the church. In 811 each lord was authorized to leave behind two of his vassals.¹⁰³ The vassals normally rejoined the army under the leadership of their lord, but the sub-vassals of the king¹⁰⁴ were bound to take part in military expeditions even if their lords were retained in the interior for home service; in this event, they came under the command of the count of their *pagus*.¹⁰⁵ Moreover, in

circuitu perticas LXXXIV necnon et in eodem loco de fisco nostro quem Werimfredus in beneficium habet, perticas XCIX similiter et de fisco nostro quem Hruoculfus comes in ministerium habet, perticas XXXII." On the endowment of the office of count, see E. Lesne, *op. cit.* t. II, ii, pp. 234 sqq. (with a documentation later than the reign of Charlemagne).

¹⁰² *Memoratorium de exercitu in Gallia occidentali praeparando*, a. 807 (Boretius, *op. cit.* no. 48), cap. I: "In primis quicumque beneficia habere videntur, omnes in hostem veniant." *Capitula de causis diversis* (*ibid.* no. 49; nos. 48 and 49 probably form only a single text), cap. III: "De Frisionibus volumus ut comites et vassalli nostri, qui beneficia habere videntur, et caballarii omnes generaliter ad placitum nostrum veniant bene praeparati..." Cf. also the second *Capitulare missorum generale* of Thionville, cap. VI (see above, p. 160, n. 68).

¹⁰³ *Capitulare missorum de exercitu promovendo*, a. 808 (Boretius, *op. cit.* no. 50), cap. IV: "De hominibus comitum casatis isti sunt excipiendi et bannum rewardiare non iubeantur: duo qui dimissi fuerunt cum uxore illius et alii duo qui propter ministerium eius custodiendum et servitium nostrum faciendum remanere tussi sunt. In qua causa modo praecipimus, ut quanta ministeria unusquisque comes habuerit totiens duos homines ad ea custodienda domi dimittat, praeter illos duos quos cum uxore sua; ceteros vero omnes secum pleniter habeat vel, si ipse domi remanserit, cum illo qui pro eo in hostem proficiscitur dirigat. Episcopus vero vel abbas duo tantum de casatis et laicis hominibus suis domi dimittant." *Capitulare Bononiense*, a. 811 (*ibid.* no. 74), cap. IX: "Et quia nos anno praesente unicuique seniori duos homines quos domi dimitteret concessimus, illos volumus ut missis nostris ostendant, quia his tantummodo heribannum concedimus."

¹⁰⁴ *Capitulare missorum de exercitu promovendo*, a. 808, capp. I, IV (see above, pp. 160, 168, nn. 65 and 103). *Capitulare Bononiense*, a. 811 (Boretius, *op. cit.* no. 74), cap. IX: "Quicumque liber homo inventus fuerit anno praesente cum seniore suo in hoste non fuisse, plenum heribannum persolvere cogatur..." See also below (p. 175, nn. 122 and 123) the provisions forbidding vassals from abstaining from taking part in an expedition on the pretext that their lords had not been called to participate in it.

¹⁰⁵ *Capitulare Bononiense*, a. 811, cap. VII (see above, p. 160, n. 69). Other provisions of the capitulary (Boretius, *op. cit.* no. 74) show equally clearly the essential part played by the military service due from the vassals in the Carolingian state; cap. V (penalties against a royal *vassus casatus* whose *pares* are called up on a military expedition and who does not come himself), cap. IX (penalties against vassals who have not accom-

each county it was a royal vassal who was charged with the duty of collecting and bringing to the base the baggage and food-supply of the troops.¹⁰⁶ We can see from these examples how far the institution of vassalage was used in the composition and structure of the Frankish army at this epoch.

Judicial duties, less important than their military duties, were imposed on at least some of the royal vassals. We have seen already that it was customary for the *vassi dominici* to take part in the proceedings of the Palace court and in the *placita* of the *missi*.¹⁰⁷ Similar judicial duties were extended to the vassals of the counts, at least during the later years of the reign. At some time after 803, and at latest in 809, it was decided that in the ordinary sittings of the *mallus*—those which were not *placita generalia*—the vassals of the count who was at the head of the *pagus* should take their place beside the *scabini*.¹⁰⁸ This fact was to have important consequences in the transformations subsequently undergone by the *mallus* over a large part of France.

The double role that we see assigned to the vassals, even to the non-royal vassals, in the functioning of the State explains the measures taken by the sovereign to ensure the regular functioning of the institution. Such measures as those already described, which limited to the narrowest minimum the number of circumstances in which a vassal could leave his lord,¹⁰⁹ tended evidently to give to the ties of vassalage a character of permanence and stability indispensable to their military usefulness.

panied their lord to the army and against the lords and counts who have acquiesced in their abstention; permission for each lord to leave two vassals at home), cap. XI (obligations of lords in the matter of naval expeditions). See also the *Capitulare missorum de exercitu promovendo* of 808 (*ibid.* no. 50), cap. V (measures of the same character as those in cap. V of the Capitulary of Boulogne), cap. IX (no penalties against vassals who have not gone because they have been retained in the interior).

¹⁰⁶ *Memoratorium de exercitu in Gallia occidentali praeparando*, a. 807 (Boretius, *op. cit.* no. 48), cap. III: "Omnes itaque fideles nostri capitanei cum eorum hominibus et carra sive dona, quantum melius praeparare potuerint, ad conductum placitum veniant. Et unusquisque missorum nostrorum per singula ministeria considerare faciat unum de vassallis nostris, et praecipiat de verbo nostro, ut cum illa minore manu et carra de singulis comitatibus veniat et eos post nos pacifice adducat, ita ut nihil exinde remaneat et mediante mense Augusto ad Renum sint."

¹⁰⁷ See above, pp. 149–50 and nn. 14 and 16.

¹⁰⁸ *Capitulare Aquisgranense*, a. 809 (Boretius, *op. cit.* no. 61), cap. V: "Ut nullus alius de liberis hominibus ad placitum vel ad mallum venire cogatur, exceptis scabinis et vassis comitum, nisi qui causam suam aut quaerere debet aut respondere." The vassals of the counts are not yet named amongst the assessors at ordinary *placita* in the *Capitulare missorum* of 803 (*ibid.* no. 40), cap. XX.

¹⁰⁹ See above, p. 153, n. 37. To the provisions reproduced in this note, cap. XI of the Capitulary of Mantua of 802–3 (*ibid.* no. 90; on the date, see De Clercq, *op. cit.* p. 219) must be added: "Ut nullus quilibet hominem Langobardiscum in vassatico vel in casa sua recipiat, antequam sciat unde sit vel quomodo natus est; et qui aliter fecerit, bannum nostrum componat." The object of this provision seems to have been to prevent the Franks established in Lombardy from receiving into vassalage dependent Lombards (*gasindi* or even vassals) who might have left their lords without authorisation.

The measures drafted in 806 in connection with the projected partition of the Empire had evidently this same object in view. In order to maintain the strictness of the bond of vassalage, the vassals were forbidden to abandon their lord or commend themselves to a second lord.¹¹⁰ When in 807 the emperor ordered the *missi* to draw up for each county a description of all the benefices in it, not only those in the hands of royal vassals but also those held by other vassals,¹¹¹ one of his objects was certainly to form some idea of the territorial endowments of the class that formed the most important element in the army. Vassalage and benefice were well on the way to becoming, in union with one another, a public institution in the common law of the Empire.

It seems very probable that this strong development of vassal and beneficial relationships and their incorporation into the organization of

¹¹⁰ *Divisio regnorum* (Boretius, *op. cit.* no. 45), cap. VIII: "Similiter precipimus, ut quemlibet liberum hominem qui dominum suum contra voluntatem eius dimiserit et de uno regno in aliud profectus fuerit, neque ipse rex suscipiat neque hominibus suis consentiat ut talem hominem recipiant vel iniuste retinere praesumant"; cap. IX: "Quapropter precipiendum nobis videtur ut post nostrum ex hac mortalitate discessum homines uniuscuiusque eorum accipiant beneficia unusquisque in regno domini sui et non in alterius, ne forte per hoc, si aliter fuerit, scandalum aliquid possit accidere. Hereditatem autem suam habeat unusquisque illorum hominum absque contradictione, in quocunque regno hoc eum legitime habere contigerit"; cap. X: "Et unusquisque liber homo post mortem domini sui licentiam habeat se commendandi inter haec tria regna ad quemcunque voluerit; similiter et ille qui nondum alicui commendatus est." That these articles must be read in conjunction with one another is shown by the context and is confirmed by the use of the words *quapropter* and *et*. They apply to vassals in general. Cap. VIII is directed towards preventing the arbitrary desertion of lords by their vassals; such desertion would be facilitated by the possibility of taking as a second lord the subject of one of the other kings. Cap. IX is not only directed towards preventing intrigues within another kingdom by the intermediacy of vassals who might have received benefices in it, as they could retain their allodial possessions there. Its chief object was to prevent the possibility of a vassal, living in one kingdom and whether *casatus* in it or not, from receiving a benefice and becoming a vassal in another kingdom; this system of cross-vassalage and duality of allegiance would seriously compromise the solidity of the tie between vassal and lord, and create the scandalum which it was the object of this measure to prevent.

¹¹¹ *Capitula de causis diversis*, a. 807 (Boretius, *op. cit.* no. 49), cap. IV: "Volumus itaque atque praecipimus ut missi nostri per singulos pagos praevidere studeant omnia beneficia quae nostri et aliorum homines habere videntur, quomodo restaurata sint post annunciationem nostram sive destructa. Primum de ecclesiis... Similiter et alia beneficia, casas cum omnibus appenditiis earum et laboratu sive adquisitu; vel etiam quid unusquisque, postquam hoc facere prohibuimus, in suum alodem ex ipso beneficio duxit vel quid ibidem exinde operatus est. Qualiter autem sit, hoc unusquisque vicarius singulis comitatibus in suo ministerio simul cum nostris missis praevideat, et sicut ipse hoc coniurare valeat, totum sicut invenerit in brevem mittat, et ipsos breves nobis deferant. Et omnes hii qui in ipsa beneficia habent, una cum nostris missis veniant, ut scire possimus qui sint aut qui suum beneficium habeat conditum aut destructum. Similiter et illorum alodes praevideant, utrum melius sint constructi ipsi alodi aut illud beneficium; quia auditum habemus, quod aliqui homines illorum beneficia habent deserta et alodes eorum restauratos." Cf. also the *Capitula de iustitiis faciendis* of 811 (*ibid.* no. 80), cap. V: "Ut missi nostri diligenter inquirent et describere faciant unusquisque in suo missatico, quid unusquisque de beneficio habeat vel quot homines casatos in ipso beneficio."

the State was linked up with the formula adopted in 802 by Charlemagne for the new oath which all his subjects were compelled to take to him as emperor. As compared with the formula of 789, it appears to have taken on a character quite unnecessarily long and complicated. But its real connection is less with the oath of 789 than with the oath of vassalage. This can be seen by comparing it with the oath attributed to Tassilo in 757 by the *Annales regni Francorum*, and which, even if it was not in fact taken by Tassilo, is none the less a genuine oath of vassalage. The parallels between the two formulas are quite remarkable;¹¹² the very terms of the oath of vassalage have been introduced into the oath of fealty imposed on all subjects of the Empire,¹¹³ the only difference being that the phrase "sicut *vassus* dominos suos esse deberet" has become "sicut...debet esse *homo* domino suo". This change was obviously necessary, since the technical term "vassal" had to be replaced by a more general word which signified a person dependent on another and which could be applied in all strictness to the whole body of the emperor's subjects.¹¹⁴ But otherwise there has been taken over from the concept

¹¹² *Duplex legationis edictum* of 789 (Boretius, *Capitularia*, no. 23), cap. XVIII: "De sacramento fidelitatis causa, quod nobis et filiis nostris iurare debent, quod his verbis constare debet: '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.'" *Capitularia missorum specialia* of 802 (*ibid.* no. 34), in fine: "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 dictionem debet esse homo domino suo. Sic 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." Variant: "Item aliud. 'Sacramentale qualiter repromitto ego: domno Karolo piissimo imperatori, filio Pippini regis et Berthanae, fidelis sum, sicut homo per dictionem 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.'"—For the oath of Tassilo, see above, p. 155, n. 43.

¹¹³ On the meaning of the oath of fealty taken by subjects in the Carolingian State, see F. Lot, "Le serment de fidélité à l'époque franque" (in the *Revue belge de philologie et d'histoire*, t. XII, 1933). He shows there very clearly, contrary to the opinion of M. A. Dumas ("Le serment de fidélité et la conception du pouvoir du 1^{er} au XI^e siècle", in the *Revue historique de droit français et étranger*, 1931), that the distinction between the oath of a vassal and the oath of a subject must be maintained. The reply of M. Dumas ("Le serment de fidélité à l'époque franque", in the *Revue belge de philologie et d'histoire*, t. XIV, 1935), though extremely learned and admirably constructed, is not, in my opinion, convincing.

¹¹⁴ The word *homo* in the language of Carolingian administration could have several meanings. Normally, when there is no qualification indicating some particular relationship of the person mentioned to some other person or institution, it can be translated by "man" or "subject". Such is the case, for example, in the *Capitula missorum in Theodonis villa datum secundum generale* (Boretius, *Capitularia*, no. 44), cap. VI (see above, p. 160, n. 68), in the *Capitula missorum de exercitu promovendo* of 808 (*ibid.* no. 50), capp. III, VI (referring to *homines*, in general, who have not fulfilled their military duties), and in the *Capitula de rebus exercitalibus in placito tractanda* of 810-11 (*ibid.* no. 73; on the date, see De Clercq, *op. cit.* pp. 213-15), cap. X (referring to *homines*, in general, who have killed their parents). Placed in relation to some other physical

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.¹¹⁵ Nor even, in spite of the great body of legislation relating to vassalage that we have already passed in review, can we conclude that Charlemagne transformed the Frankish monarchy into anything resembling a feudal state.¹¹⁶ What is true and important, for the general constitutional history

or moral person (*homo alicuius*), the word *homo* implies a notion of dependence, without it being always possible to determine the precise nature of this dependence. Such is the case, for example, in cap. xiv (*forma langobardica*) of the Capitulary of Herstal of 779 (*ibid.* no. 20; cf. above, p. 158, n. 56), where *homines* of churches are referred to as having received *precariae* which were not conceded *verbo regis*, and in cap. iv of the *Capitula a misso cognita facta* of 802-13 (*ibid.* no. 59; on the date, see De Clercq, *op. cit.* pp. 223-4): "Nullus homo alterius clericum aut hominem recipiat in sua potestate"; there is an analogous example in cap. iiii of the *Capitula per missos cognita facienda* of 803-13 (*ibid.* no. 67): "Ut nullus conparet caballum, bovem aut iumentum vel alia, nisi illum hominem cognoscat qui ei vendidit, aut de quo pago est vel ubi manet aut quis est eius senior." The word is used in the same sense in canon 9 of the Council of Frankfurt of 794 (*ibid.* no. 28), where Bishop Peter of Verdun proposes that "suus homo ad Dei iudicium iret" to rebut an accusation. In cap. v of the *Capitulare de iustitiis faciendis* of 811 (*ibid.* no. 80) the *missi* are instructed to undertake a survey of the benefices in each *missaticum* and to note in it "quot homines casatos in ipso beneficio [habeat]"; these *homines casati* may be either *vassi casati* or dependents of an inferior status occupying agricultural tenures (*mansi* or parts of *mansi*). The latter are certainly the persons referred to in the *Capitulare missorum Aquisgranense primum* of 809 (*ibid.* no. 62), cap. xviii: "De mercatis ut in die dominico non agantur, sed in diebus in quibus homines ad opus dominorum suorum debent operari", and in other texts.

The status of vassal, if it happens to be that of the *homo* of a lord or even of another *homo*, or of a *liber homo* who is not explicitly placed in some relationship to a lord, can only be recognized from some element in the context. Frequently it is shown by the fact that the *homo* is in possession of a benefice; e.g. the *Capitula missorum specialia* of 802 (*ibid.* no. 34), cap. x: "De illis hominibus qui beneficia nostra habent distructa et alodes eorum restauratas"; *Capitulare legi ribuarie additum* of 803 (*ibid.* no. 41), cap. vi: "Similiter et de beneficio hominis, si forte res proprias non habuerit, mittatur in bannum usque quo rex interrogetur"; *Capitulare missorum Niumagae datum* of 806 (*ibid.* no. 46), capp. vi, vii (see above, pp. 160, 164, nn. 63, 87); *Capitula de causis diversis* of 807 (*ibid.* no. 49), cap. iv (see above, p. 170, n. 111); *Capitulare missorum de exercitu promovendo* of 808 (*ibid.* no. 50), capp. i, iv, v (see above, pp. 160, 168, nn. 65, 103; cap. v: "De hominibus nostris et episcoporum et abbatum, qui vel beneficia vel talia propria habent, ut ex eis secundum iussionem in hostem bene possunt pergere..."); *Capitulare Bononiense* of 811 (*ibid.* no. 74), cap. ix (see above, p. 168, n. 104); *Gesta abbatum Fontanellensium*, cap. xv (see above, p. 158, n. 55); the charters of 785, 794 and 807 in Dronke, *op. cit.* no. 83; Lacomblet, *op. cit.* t. 1, no. 4; and Bitterauf, *op. cit.* t. 1, no. 257 (see above, p. 154, n. 39).

As to the expression *dominus suus*, it is true that it is not exclusively used to designate the relationship of a lord to a vassal, but it none the less implies that the person to whom it refers has a *dominus*, and it may be applied to the lord of a vassal. The general sense of the word allowed of its retention when the general oath taken by all subjects was constructed on the basis of that taken by the vassal to his lord.

¹¹⁵ The distinction between the two conceptions was clearly made by G. Waitz, *Deutsche Verfassungsgeschichte*, t. iii², pp. 297-8.

¹¹⁶ As appears to be implied by section 3 of Chapter 4 of Book iv of Fustel de Coulanges, *Les transformations de la royauté pendant l'époque carolingienne* (Paris, 1891), pp. 611 *sqq.* The title "L'Empire de Charlemagne est déjà un état féodal" is not that of Fustel de Coulanges, but that of his editor Camille Jullian.

of Western Europe, is that Charlemagne, in particular towards the close of his reign, incorporated in a far-reaching degree the institutions of vassalage and benefice united to one another into the structure of a State constructed on totally different foundations.

The system of legal relationships based on the ties of vassalage and the grant of benefices, which already under Charlemagne had come into existence, began even at this early date to undergo certain changes. It was both through and because of the beneficial element in the combination that these changes began to take place.

In the first place, it must be noted that there were in existence certain very serious dangers that threatened the rights of the proprietors of property conceded in benefice. Many of the capitularies, and particularly those of the ninth century—for during the later years of Charlemagne the decline in the power of the Frankish monarchy had already begun—prove that the holders of benefices were constantly occupying the rights of the king over these benefices, or over fractions of these benefices, or over the men depending on these benefices.¹¹⁷ Others prove that the lands given in benefice by the king were often neglected or badly exploited; the frequency with which measures designed to put an end to these abuses have to be repeated in the capitularies is a proof of their persistence.¹¹⁸ A condition which was often imposed by donors of land to an ecclesiastical establishment, that the substance of their gift should not be conceded in benefice,¹¹⁹ indicates that the same abuses existed on lands held of the Church as on those held of the king. It is important to grasp the real

¹¹⁷ *Capitulare missorum generale* of 802 (Boretius, *op. cit.* no. 33), cap. vi (see above, p. 161, n. 71); *Capitularia missorum specialia* of 802 (*ibid.* no. 34), cap. x: "De illis hominibus qui nostra beneficia habent distructa et alodes eorum restauratas"; *Capitulare missorum Niumagae datum* of 806 (*ibid.* no. 46), capp. vi, vii (see above, pp. 160, 164, nn. 63, 87); *Capitula de causis diversis* of 807 (*ibid.* no. 49), cap. iv (see above, p. 170, n. 111); *Capitula a misso cognita facta* of 802-13 (*ibid.* no. 59), cap. iiii: "Qui beneficium domni imperatoris et aeclesiarum Dei habet nihil exinde ducat in suam hereditatem, ut ipsum beneficium destruat"; *Capitulare missorum Aquisgranense primum* of 810 (*ibid.* no. 64), cap. xiv: "De beneficiis destructis et alodis restauratis"; *Capitulare de iustitiis faciendis* of 811 (*ibid.* no. 80), cap. vi: "Quomodo eadem beneficia condicta sunt aut quis de beneficio suo alodem comparavit vel struxit." See also above, p. 160, n. 71.

¹¹⁸ *Capitulare missorum Aquisgranense primum* of 809 (*ibid.* no. 62), cap. ix: "De beneficiis nostris non bene condictis." See also cap. ix of the *Capitulare missorum Aquisgranense alterum* of 809 (*ibid.* no. 63), the *Capitulare missorum Aquisgranense secundum* of 810 (*ibid.* no. 65), and above, p. 161, n. 71.

¹¹⁹ Mühlbacher, *op. cit.* t. 1, no. 149: donation of 783 to the church of St Arnulf of Metz: "... ut iam fatam villam numquam presumant alicui beneficio tribuere neque per precariam, ut fieri adsolet". Wartmann, *op. cit.* t. 1, no. 155: donation of 799 to the abbey: "... ita dumtaxat ut pro anima Crimoldi ad ipsum monasterium iure perpetuo possideatur, nec cuiquam qualibet modo in beneficium concedatur". Parallel cases will be found in the same work, nos. 164 (802), 170 (802), 176 (803), and 216 (813-16).

state of affairs revealed by these provisions. The true master of a benefice was no longer the proprietor, but the tenant who held the land. It was difficult, and often it was quite impossible, to do anything against him. His rights were destined in the future to go on expanding, just as those of the proprietor were destined to contract.

The first signs of yet another fundamental change are already visible during the reign of Charlemagne. In the relationship which we have been studying, the personal element, the tie of vassalage, is always the essential feature; the benefice is quite a secondary element in the relationship, and is in reality only a form of the maintenance that a lord was bound to provide for his vassal. But already during this period it is becoming plain that almost the sole motive determining a person to enter into a relationship of vassalage with another is the prospect of receiving a benefice from him. There is in existence a charter of 807 in which this idea is so clearly expressed that we are justified in stating it in the most general terms.¹²⁰ The desire for benefices was so great among the vassals that they were prepared even to commend themselves to a second lord in the hope of receiving one or more benefices from him. It was this plurality of allegiance, which was contrary to the essential principle of vassalage and which made it impossible for a lord to control his vassals, that ruined the whole system when it finally became the general practice towards the close of the ninth century. Under Charlemagne it was strictly forbidden; one of the chief provisions of the *Divisio regnorum* of 806 was the prohibition of a vassal in one kingdom from holding a benefice in another,¹²¹ and although there were no doubt several reasons for this prohibition, the chief one was to prevent the creation of double vassalages which would give rise to the *scandalum* of dual allegiance.

But there was one even graver result of the extension that took place at this time of the institution of vassalage and its union with that of the benefice. We have already seen how these institutions had been introduced into the body corporate of the Frankish State in the hope that it would derive fresh strength from them. This hope was to prove in vain, and the influence of the institutions in question was to form one of the chief factors in the dissolution of the Carolingian Empire.

The manner in which these institutions were going to influence public relations in the future can already be seen from two capitularies of 810/11 and 811. In the first of these, which is devoted to military

¹²⁰ Bitterauf, *op. cit.* t. I, no. 257; see above, p. 154, n. 39.

¹²¹ See above, p. 170, n. 110. But a vassal in one kingdom could hold private property in another, since the possession of such property did not involve the special relationship of vassalage to another lord.

affairs,¹²² there are two articles dealing with men who have failed to fulfil the military service to which they are bound. Some declared themselves vassals of King Pepin of Italy or of King Louis of Aquitaine, and when the men of their county were called up they refused to join them, on the pretext that they would have to serve under their proper lord. Others refused to join the contingents of the county on the ground that their lord had not been called up, and that they could not leave him; there were even some ingenious persons who commended themselves as vassals to lords whom they knew were not going to be called up at all. In the Capitulary of Boulogne of 811¹²³ we hear of the vassals of royal vassals who were detained for home services, and who would have remained with their lords and refrained from joining the army if they were not expressly ordered to do so by the emperor.

These measures indicate already the existence, at the close of Charlemagne's reign, of a conflict between the personal obligations of a vassal towards his lord and his obligations as a subject towards the emperor. They even show that men were already using their obligations as vassals as a pretext for refusing to fulfil their obligations as subjects. If it was still possible, as long as Charlemagne was alive, to hold in check to some degree the vicious consequences for the State that this situation was bound to produce, it was no longer possible during the reigns of his successors. From this failure there was to result a still further series of changes in the functioning and the reciprocal relationships of vassalage and benefice, as well as on their action on the structure of society and the State.¹²⁴

¹²² *Capitula de rebus exercitalibus in placito tractanda* of 810-11 (Boretius, *op. cit.* no. 73), cap. VII: "Sunt etiam alii qui dicunt se esse homines Pippini et Chluduici et tunc profitentur se ire ad servitium dominorum suorum, quando alii pagenses in exercitum pergere debent"; cap. VIII: "Sunt iterum et alii qui remanent et dicunt quod seniores eorum domi resideant et debeant cum eorum senioribus pergere, ubicumque iussio domni imperatoris fuerit. Alii vero sunt qui ideo se commendant ad aliquos seniores, quos sciunt in hostem non profecturos."

¹²³ Boretius, *op. cit.* no. 74, cap. VII (see above, p. 160, n. 69). The lack of enthusiasm shown by many vassals in fulfilling their military obligations appears clearly in cap. V: "Quicumque ex his qui beneficium principis habent parem suum contra hostes communes in exercitu pergentem dimiserit et cum eo ire vel stare voluerit, honorem suum et beneficium perdat." Cap. IX shows us non-royal vassals also evading military service, often with the complicity of their lord or of the count; see above, p. 168, n. 104.

¹²⁴ The subject of this article was that studied in my seminar for medieval history at the University of Ghent during two terms of the academic year 1938-39; Mlles. Sevens, Snissaert and Van Tongerlo, MM. Aernouts, De Bruyne, Maertens, Thijs, Van de Voorde and Van Kerrebroeck, took part in the researches it entailed. Some aspects of it were made the subject of a paper read at the Journées d'Histoire du Droit at Dijon on 30 May 1939. The translation is the work of Mr P. Grierson, to whom I am indebted for a series of notes and corrections in the text.