PROPERTY AND POWER IN THE EARLY MIDDLE AGES

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Introduction

Nine years ago, we completed the predecessor to this volume, *The Settlement of Disputes in Early Medieval Europe*.[1] The present book is the work of substantially the same group of people, and it starts from the same two premisses: first, that the early medieval period has to be understood in its own terms, not in those of the better documented periods before and after it, the late Roman Empire and the 'high' middle ages of the twelfth and thirteenth centuries; second, that its political and social structures are best appreciated, not through the study of laws and other normative texts, but through charters.

Although charters evidently relate to the world of written law, they are much closer than are laws to the daily practices of the men and women of the early middle ages. Indeed, they are as close as we can normally get to such practices, at least in so far as the latter involve the possession of land. In our previous book, we looked at the records of court cases and other disputes, as a guide to these practices at the point where they came closest to the world of law. In this one, we look at the relationship between landed property and political power. This is a huge topic; it cannot be encompassed in a single work, and we have not tried to. In addition, we are all nine years older and nine years busier; we have thought it best not to try to weld our work into a single line of argument, as was our intention in *The Settlement of Disputes*. The present book should, therefore, be seen as separate articles on a common theme, property and power, rather than as a homogeneous survey. At the core of the book, nonetheless, is a single set of presuppositions. This introduction will sketch some of them, as a framing for what follows; they will be picked up again in the

[1] Ed. W. Davies and P. Fouracre.

conclusion. As with the previous book, although these sections were drafted by individuals, they stand as an expression of the group approach.[2]

Historians, whatever their differences, tend to agree that in the early and central middle ages, land equalled power: that, within limits, the amount of land one controlled correlated with the amount of power one wielded. One of the main problems comes with working out how one got from the first to the second, for having land did not automatically generate power in pre-industrial society, any more than having money automatically generates power in industrial society. Close to automatically; but not quite. Different political systems produce different sets of procedures for moving from one to the other, then as now. And this is made more complex by the other main problem: of exactly how 'power' could be defined. What mattered most, local power or power in the framework of public politics (the world of kings and princes)?[3] What were the procedures which made it legitimate? This brings us into the arena where rules mattered, just as the last book did. But, again as in the last book, we will argue that local procedures, and the practical knowledge of how far one could go without losing the support of others, were more important than abstract legal norms.

Land, in a pre-industrial society, was the source of (very nearly) all wealth; put simply, wealth brought you power because it allowed you to reward armed men who in turn allowed you to acquire further wealth in a variety of ways and defend the wealth you had. Marc Bloch famously argued that, in a world where wages were impracticable – because coin was relatively uncommon and/or of too high a value for ordinary transactions, and because markets were too unreliable to be the medium for turning coin into food and clothing – the only ways of keeping these armed men were as an immediate retinue, who lived in one's hall and were fed from one's rents, or else as tenants, who lived on parts of one's estates and took the rents directly.[4] The first method was an impermanent procedure, for retainers sought

[2] The introduction was written by Chris Wickham and Timothy Reuter; the conclusion by Wendy Davies and Paul Fouracre.

[3] For a discussion which makes explicit the possible relationships between different kinds of power in the early middle ages see W. Davies, *Patterns of Power in Early Wales*.

[4] M. Bloch, *Feudal Society*, pp. 68–9.

to marry and settle down; the second immediately produced problems of control, for armed tenants might not be loyal for ever, and might be hard to uproot. Bloch's work focussed on what he called the 'feudal' period in the post-Carolingian world, roughly the tenth to thirteenth centuries, when the state was mostly weak and when most political power operated in a sort of zero-sum way: that is to say, the more land (and thus power) I control, the less you do. But he certainly, and rightly, regarded the earlier medieval period as one when money was equally – indeed, still more – hard to use; the same logic, which has come to be known as the 'politics of land', applied.

Even in the central middle ages, the issues were not as simple as that. Feudal lords were not Hobbesian individualists; they operated in a framework of rules, legitimations and rituals, which were complex enough to fill hundreds of pages in Bloch's work, and the works of many successors.[5] If your power was not capable of being legitimated, it did not exist; your armed men would not follow you, or not for long. But in the early middle ages, it was more complex still, for the local powers of landowners still stood in apposition to wider public powers wielded or granted by kings and princes, which together made up what we can call the 'state'. This was the arena in which fully legitimate power resided in the early middle ages; local lordship seems not to have had anything like the same authority that it came to do in eleventh- and twelfth-century France. But this does not mean it had none; only that the nature of political legitimation was, in the early middle ages, even more complex than later – as well as, in a period of very poor documentation, far more obscure.

THE EARLY MEDIEVAL STATE

Early medieval public power was paradoxical: both weak and strong. Even in the areas where it derived directly from the ruins of the Roman state, it was immeasurably poorer and weaker than that state, as the notorious poverty and sparseness of its surviving material culture (both standing buildings and

[5] See most recently H. Fichtenau, *Living in the Tenth Century*; G. Althoff, *Verwandte, Freunde und Getreue*; and G. Koziol, *Begging Pardon and Favor*; and on these and other works T. Reuter, 'Pre-Gregorian mentalities', *Journal of Ecclesiastical History*, 35 (1994). T. Bisson, 'The "feudal revolution"', *Past and Present*, 142 (1994), is an important new survey.

archaeological remains) bear witness. The Roman Empire provided a very clear set of means by which one could turn wealth into power. The state was independently wealthy, both as a landowner and, above all, thanks to its capacity to extract large proportions of the surplus of the Empire directly in tax.[6] Most of that tax was spent on a standing army; but the amount of wealth that regularly went through the state's coffers was so great that participation in public political activities was hugely profitable, outweighing even the enormous private wealth possessed by the richest late Roman aristocrats. Private wealth was, here, quite explicitly seen as an entry-permit into the arena of legitimate political activity, which was entirely restricted to members of the hierarchies of state officials, whether in central government or in the local government of the cities. The dominance by the senatorial aristocracy over their own private properties certainly could be extended in the direction of informal networks of patronage (*patrocinium*) over neighbours, some of which were pretty coercive; but this was never regarded as legitimate by public authorities. Even when patronage was sufficiently locally stable to constitute a normative framework in practice, it was never important enough to act as a *substitute* for public power.

Such was the situation up to the fifth century in the West – and indeed for many centuries to come in the Byzantine East. But, in the disruption of the invasion period, the tax base of the Western Empire collapsed; only fragments remained to benefit the Frankish kings in Gaul and the Visigothic kings in Spain, and in Britain and Lombard Italy not even that. Exactly how much taxation remained in the West in (say) 600 is disputed, more than ever in recent years; but the majority view is still that the last vestiges of the land tax were by that date fading fast.[7] Early medieval states were largely, and increasingly, based on landowning; in the relationships between kings and aristocrats, the zero-sum game could begin. And sprawling political systems like those of the Merovingian Franks were very hard to control in depth. What a local count, or bishop, or private

[6] The most interesting recent discussion of this topic is J. Haldon, *The State and the Tributary Mode of Production*.

[7] See the debate cited below by Paul Fouracre, in his nn. 4, 6, 18, 19.

landowner did in his locality was for the most part impossible to police, and most kings barely attempted to do so; indeed, except where their own interests were affected, they were perhaps not even concerned to.

Under these circumstances, private landowning might easily, and quickly, become the basis for a real local political authority that might rival that of kings. Already for the 570s and 580s Gregory of Tours could describe the brutal exercise of local private authority by lay aristocrats such as Rauching, and the feuding and private settlement engaged in by Tours nobles such as Sichar and Chramnesind.[8] In the next century, immunities from the activities of public officials, including judges, on ecclesiastical estates begin to appear as part of our earliest surviving charter material in Francia; such immunities, it has been often argued, are the original form of the local judicial power, based directly on landholding, that is so characteristic of the eleventh- and twelfth-century *seigneurie* in the world Bloch described. It has been further argued that public power was increasingly restricted to the level of rhetoric; only the military aggregation of the first three Carolingians, from Charles Martel to Charlemagne (714–814), reversed the trend, and even then only temporarily. In the end, the early medieval state would fail, utterly: it would be swallowed up in the steadily growing importance of private, local, landed power.

Much of this is a true picture, particularly of Francia. But it is incomplete; on its own it gives a false image of how power itself was constructed. Above all, it undervalues the continuing political force of wide-ranging public authority throughout the early middle ages:[9] until the late eleventh century in East Francia (slowly becoming what we call Germany); until after 1100 in northern Spain; until 1066 in England (and, in a different way, afterwards as well). Indeed, in Byzantium and at the level of the city state in northern Italy it never went away; and in the Celtic lands it was

[8] Gregory of Tours, *Decem Libri Historiarum*, V. 3 and IX. 9 (Rauching); VII. 47 and IX. 19 (Sichar and Chramnesind). The latter feud has had many surveys, notably J. M. Wallace-Hadrill, *The Long-Haired Kings*, pp. 121–47; E. A. James, '*Beati pacifici*: bishops and the law in sixth-century Gaul', in J. Bossy (ed.), *Disputes and Settlements*. For more on local mediations, see any of the articles in our own *The Settlement of Disputes*.

[9] See the survey by P. Fouracre, 'Cultural conformity and social conservatism in early medieval Europe', *History Workshop Journal*, 33 (1992); and P. Bonnassie's classic analysis (focussed on its breakdown), in *From Slavery to Feudalism in South-Western Europe*, pp. 104–31.

actually increasing. All the articles in this book in fact deal with societies where public authority had a real political presence, and are indeed devoted to explaining how it interfaced with local landed power. In this context, some remarks about how the ruler's power did indeed remain relevant as an independent political force and as a source of legitimacy need to be made.

The basis of this continuing public relevance was, as already said, landed wealth. The Merovingians and Carolingians, and the Visigothic and Lombard kings, all possessed immense landed resources, which did not necessarily decrease much across time. The kings of Italy were never generous with land until after 900; and, if the Frankish kings were, they seem to have been able to recoup their gifts through confiscation from the unfaithful until the later ninth century. Landed wealth did not bring in as much as taxation had done, but since the army was landed, there was less for rulers to spend it on; early medieval kings were at least rich by the standards of their time, with considerable reserves of treasure and other movables, and thus continued to be highly attractive as patrons. The king's court was a focus, then, in all the major continental kingdoms, throughout our period; tenth- and eleventh-century English kings gained a similar role (eleventh-century kings even taxed), and there are, as we shall see, signs in Wales of similar developments, at least on a local scale, after 950 or so. As a result, the power provided by office-holding remained of crucial importance; the prestige of royal courts meant that no-one could hope to achieve a widely recognized position through local dominance alone, however complete.[10] Even Rauching was a duke; indeed, at the end of his life he claimed Merovingian descent. Sichar was a royal *fidelis*, at least. The Merovingian court, despite its dangers (few major secular political figures died natural deaths in Gregory's time), remained a magnet for the high-stakes gamblers that Frankish aristocrats in all periods seem to have been. And, in Francia

[10] A counter-example is the local power of machtierns in ninth-century Brittany, which seems to have no central origin; but Brittany, with a central power brand new in that very century (and borrowed from the Franks, at that), can be regarded as an exception that proves the rule. See W. Davies, *Small Worlds*, pp. 163–87; J. M. H. Smith, *Province and Empire*, pp. 28–31. Leaders in many marginal and border areas had ambiguous legitimizations: but they all had some sort of claim to official authority. It is extremely difficult to identify any powerful political figures in the main early medieval kingdoms who were *only* private landowners.

and Lombard Italy for sure,[11] and elsewhere very probably, what local wealth provided was the right to try for this patronage – just as in the Roman Empire. Kings, despite their reputation, raised few from the dust.

This continued uninterrupted involvement in public power and office-holding in our period thus counterbalances the fact that kings and princes could only intervene locally with some difficulty: aristocracies *wanted* to keep links with public power. Indeed, the local dominance that lay aristocrats had was itself legitimized by office-holding, as dukes and counts and the like. This had one important result, which will recur in our material: that when kings wanted to grant protection to their other clients, churchmen, they granted them immunities from precisely this dominance of secular officials. Immunities were a sign of public strength, not public weakness. They had the disadvantage, from the ruler's point of view, of being irrevocable (at least, churchmen said they were, often vocally); but their appearance, as we shall see, tends to be a sign of the invasion of public authority, not its evasion. Here, as elsewhere, we need to understand the nature of early medieval political realities in their own terms, not those of other periods. The private justice of rural *seigneuries* or *signorie* in the eleventh century was indeed a sign of public weakness; but not all local judicial protections functioned in the same way. Local office-holding, the immunity and the *seigneurie* do, nonetheless, have one feature in common, the public legitimation of local landed power: a theme which permeates the whole book.

One further comment needs to be added in this context: the articles in this book are not all about Francia. This is not in itself surprising, but it does have one implication that is worth spelling out. General interpretations of the politics and society of the early and central medieval periods have long tended to be dominated by the history of Francia (and, when the latter split up in the late ninth century, by the history of France). This 'Francocentric' model, as we shall call it, has been influential partly because Francia was indeed the major polity in Western Europe under the Merovingians and Carolingians, and partly because of the prestige

[11] An admirable survey is G. Tabacco, 'La connessione tra potere e possesso nel regno franco e nel regno longobardo', *Settimane di studio*, 20 (1972).

and importance of at least three generations of historians writing in French. These are perfectly good reasons for its influence, in fact; but it is wrong to conclude from the dominance of the model that Frankish/French developments were 'normal', and that other areas were 'atypical' or 'peripheral'. In the period before 900, there were many different ways in which political and social structures developed in different parts of post-Roman Europe; those chosen by the Franks were simply associated with greater military success than some of the others. After 900, the Francocentric model is even more misleading, for it can easily be argued that the tenth- and eleventh-century collapse of public power in France, as immortalized by Georges Duby's book on the Mâconnais,[12] was itself atypical of developments in most of Western Europe: in Germany, England, Spain and even in parts of France itself. One can go too far in attacking this image of collapse, as is argued later in Chris Wickham's article; but it certainly cannot be generalized to the rest of the West. In this book, then, Francia is certainly a major focus of attention, but it is not the only one. We should like to replace the Francocentric model by a more complex picture, one which reflects more exactly the range of historical developments in the whole of Europe.

LAND LAW: WORDS AND THINGS

Two more specific questions need to be set out in an introductory way, before we move into our detailed research: the problem of land law; and the general history of the immunity. Why is land law a problem? Because it has hitherto been seen by too many historians simply as an issue of Roman survival into the early middle ages. This is not surprising, for continental Western European concepts of land tenure were indeed inherited, for the most part, directly from 'vulgar' Roman law.[13] But this does not mean

[12] G. Duby, *La société aux XI^e et XII^e siècles dans la région mâconnaise*. The general interpretation of the post-Carolingian epoch as one of 'feudal anarchy' pre-dates Duby's book by decades, if not centuries; but his book provided a detailed account of the breakdown of public power in tenth- and eleventh-century Burgundy which seemed to revalidate the interpretation in modern and highly sophisticated terms. As indeed it did; but for Burgundy, not for everywhere else in Europe as well.

[13] For some exceptions, see C. J. Wickham, 'European forests in the early middle ages', *Settimane di studio*, 37 (1989), at pp. 481–99. England, Ireland (but not Wales) and Scandinavia were also not areas of Roman land law.

that we can apply a simple, legalist, interpretation of the rules of land tenure directly to the early middle ages; we have to be more careful.

Our knowledge of 'vulgar' law and its early medieval Western analogues essentially goes back to Ernst Levy's masterpiece of 1953.[14] He showed with crystal clarity both how fourth- and fifth-century vulgar law, the legal practice of the late Empire, differed both from the 'classical' period of the jurists and from the reworking of juristic materials in Justinian's *Digest*; and, furthermore, what its internal logic as a legal system was. He went on to show that the main elements of Romano-Germanic property law derived from vulgar, not classical, Roman law. In particular, the sharp theoretical distinctions between different kinds of rights in land that were a crucial feature of classical law had become blurred in vulgar law, and this blurring continued into the early middle ages. The jurists distinguished between *dominium* (or *proprietas*), the absolute right to landed property, *possessio*, the actual physical control over that property at any one time, and *ius in re aliena*, limited rights in another's property (this in practice included many forms of tenancy). Vulgar law increasingly saw all these as forms of *possessio*, which became an umbrella term covering all landholding. It is not that late Roman or early medieval lawyers did not know quite well that ultimate ownership, simple possession and tenancy were different; it is just that, unlike the classical jurists, they saw no need to apply conceptual precision to the differences:

> Like plain people anywhere they found it difficult to think of possession unaccompanied by ownership or of ownership not embodied in possession. In the overwhelming majority of instances they saw possession and ownership coincide, and for more they did not care. If there was a sporadic case deviating from this standard, they felt confident that its particularities could be established in court.[15]

This common-sense attitude, a feature of very many societies, as Levy himself noted, was carried over without difficulty into

[14] E. Levy, *West Roman Vulgar Law. The Law of Property.*

[15] E. Levy, *West Roman Vulgar Law*, p. 62; see more generally pp. 61–7, 96–9. Even Levy, for all his concern for understanding the vulgar tradition in its own terms, could not avoid being moralistic about its ignorance; see, for example, *ibid.*, p. 71. For further discussion of late Roman law and its successors in the West, see most recently J. D. Harries and I. N. Wood (eds.), *The Theodosian Code*. The Byzantine Empire followed its own route, on the basis of the *Digest*.

the legislation of the Germanic kingdoms, and survived for a long time: the seisin of twelfth-century England is not that different.

Now, one could follow the implications of Levy's approach, and try to establish an internal legal logic for each early medieval system of land tenure, with a set of definitions for each of its classic elements, *proprietas* (or, later, *alodium*), *precarium*, *beneficium* (or, later, *feudum*), and all the different types of lease: definitions that would not be as sharp as a classical jurist would have made them, but would presumably have had force in courts. This is by and large what people do who interest themselves in early medieval land law. Sometimes they misread Levy, and claim that early medieval people could not *distinguish* between different forms of possession; this Levy certainly never thought, and indeed no one who looked closely at the above-mentioned primary elements of early medieval land tenure could seriously believe it. But even when they do not, they do follow Levy in looking for what one could think of as quasi-theory: for sets of rules, even if unarticulated, that governed transactions and could be drawn on, at least implicitly, in courts.

This is the point at which we differ from legal historians, even those as subtle as Levy. Levy knew well that practice did not necessarily follow theory, but he did not pursue the matter; not all other legal historians have even recognized it. Our researches on court cases, however, reveal arrays of local procedures and practical assumptions that are a world away from even the relatively common-sense distinctions of the authors of the average Germanic law code. Such practical assumptions were often normative: they could be drawn upon in argument, including public legal argument. We must never make the error of supposing that, when people departed from written law, they consciously deviated from publicly known normative restrictions. We should also not conceive of these local procedures and practical assumptions as simply an overriding law of essentially the same kind except for being unwritten. It would be better to see them as practical restrictions on human behaviour. The penalty for going beyond them was nonetheless well known: it was the loss of support from others, which would itself result in failure, whether in court or elsewhere. What mattered was the knowledge of acceptable local practice, including how far one

could go in manipulating it, as much, or more, than knowledge of any more abstract set of rules, written or otherwise.[16]

The workings of these practical procedures pervade the articles in this book. One particularly neat illustration of them can serve, however, as an introductory example; it is taken from Ian Wood's article on the *precaria* of the monastery of St Wandrille in the eighth century. Wood describes how Abbot Teutsind gave a *precarium* to Count Ratharius in 734 that was a textbook example of what such a gift should be in vulgar and Romano-Germanic law: a grant of usufruct of property in return for rent. This grant was sharply criticized by members of the community in later years, however. Why? Wood argues that, in other seventh- and eighth-century Frankish texts, *precaria* had taken on a new role: as one element in a network of gift-exchange between secular donors and churches. *Precaria* from churches were indeed very commonly, even by now normally, granted to the original donors to the church of the property in question, or else to near neighbours of the church and relatives of local monks – people in the friendship network of the church, that is. Teutsind's *precarium* was strictly legally valid, but it was not to someone in that network, so it was immoral. Wood is cautious about the detail of this interpretation, warning that it is circumstantial.[17] But, as an image of how early medieval societies worked in practice, it functions very well. The monks of St Wandrille were not interested in the legal theory of the *precarium*; they were interested in social relationships. The same tenurial form was right or wrong only in so far as it led, or did not lead, to relationships that benefited the monastery. Indeed, an 'unjust' *precarium* was not only wrong; it could be argued, in certain cases, to be invalid. The logical extension of this would, in the end, become the rules surrounding *beneficia* and fiefs, which were explicitly valid only in so far as they brought political

[16] See Davies and Fouracre, *The Settlement of Disputes, passim*. For the anthropological theory behind it, see P. Bourdieu, *The Logic of Practice*. Since our book, there have been some good applications of the same principles in works on central medieval France: S. D. White, 'Feuding and peace-making in the Touraine around the year 1100', *Traditio*, 42 (1986); *idem*, 'Inheritances and legal arguments in western France, 1050–1100', *Traditio*, 43 (1987); P. Geary, 'Vivre en conflit dans une France sans état', *Annales E.S.C.*, 41 (1986); Koziol, *Begging Pardon and Favor*; D. Barthelémy, *La Société dans le comté de Vendôme de l'an Mil au XIVe siècle*, pp. 652–706.

[17] See below, pp. 47–8.

loyalty; but, long before feudal law was formalized in these terms, the practical expectations of land grants of all kinds worked in a similar way.

This book, like its predecessor, will for these reasons not spend much time on legal rules. Some brisk, rough definitions will be found in the glossary; but, for the real meaning of social practices, readers will have to look at the specific contexts of the examples we set out. These contexts were more significant than legal theory, for all but the most diligently intellectual members of early medieval elites, and intellectuals were, as in many societies, in most cases pretty marginal to the patterns of events as they occurred on the ground.

IMMUNITIES

Immunities, which granted exemption from one or more of the operations of government and frequently by extension conferred the right to conduct these oneself, have often been seen as the capitulation of rulers in the face of 'over-mighty subjects', converting the *de facto* power inevitably associated with substantial property into fully legitimate power over localities. Immunities and related phenomena are touched on repeatedly in this volume, and are the main theme of several contributions. They will be discussed in detail later in the book; but they need preliminary introduction here too, to give them some conceptual and historiographical context.

Though the word *immunitas* or *emunitas* was used in late Roman government, the immunity was a phenomenon first seen in the Frankish kingdom;[18] there are no exact Visigothic, Lombard, Celtic or Anglo-Saxon analogues. The grant of *emunitas* by the ruler, who alone could grant it, meant freedom from taxation and/or the right to collect taxation from dependants. This was usually coupled with a prohibition of entry to the immune property against tax-collectors and other officials. By the mid-seventh century, however, when

[18] For its early history see the discussion by Paul Fouracre, below, pp. 56–60, which may be supplemented by A. C. Murray, 'Immunity, nobility and the edict of Paris', *Speculum*, 69 (1994). More general surveys with full bibliographies are provided by D. Willoweit, 'Immunität', in A. Erler and E. Kaufmann (eds.), *Handwörterbuch der Deutschen Rechtsgeschichte*, vol. 2, *Haustür–Lippe*, cols. 312–30, and C. Schmitt, H. Romer and Lj. Maksimović, 'Immunität', *Lexikon des Mittelalters*, vol. 4, *Erzkanzler-Hide*, cols. 390–3.

records of such grants begin to survive, they had taken on a wider meaning. The prohibition of entry was directed against officials who might enter the immunist's lands in order to hear lawsuits or to arrest accused or suspect persons. This does not necessarily mean that the immunist henceforth exercised judicial rights himself; it may be that he was responsible for bringing offenders before the courts and in return received the king's or count's share of fines. Even from the late ninth century onwards, by which time immunists certainly were providing their own courts, this financial aspect will have remained important, since such courts would have imposed mainly financial rather than corporal penalties.

The ninth and tenth centuries saw significant further developments. Carolingian grants of immunity became common rather than exceptional and began to cover more than the immunists' own lands; in East Francia and Italy in the tenth century, grants of immunity were often coupled with grants of full judicial and regalian rights (*districtus*, *bannus*), so that immunists came to look more and more like counts and to act more independently of the local count.[19] Yet it is important to note that the Frankish immunity was almost an ecclesiastical monopoly; grants to the laity are ill-attested and, where known of, small-scale.[20] Even the back-door approach through proprietary churches was closed. From Louis the Pious's reign (814–40) grants of immunity were no longer made to ecclesiastical bodies unless these had first been made over to the

[19] The formulation in the text above should not be taken as implying that all counties were contiguous closed territories, since in tenth-century Germany many were certainly not (as arguably already in ninth-century Germany); for the problems see T. Reuter, *Germany in the Early Middle Ages, c.800–1056*, pp. 92–3, 218–20; H. Hoffmann, 'Grafschaften in Bischofshand', *Deutsches Archiv für Erforschung des Mittelalters*, 46 (1990); and on 'banal immunity' see the references given by P. Fouracre, below, nn. 34–5.

[20] See the arguments adduced by Paul Fouracre, below, pp. 62–3. Most recently Murray, 'Immunity', at pp. 30–4, basing himself on Clothar II's *Edict*, cc. 13–15 (*MGH Capit.*, vol. 1, no. 9, pp. 22–3), has argued that late sixth-century Merovingians distributed immunities widely to powerful laymen as well as to ecclesiastics, as part of a law and order programme aimed at keeping down brigands and maintaining *pax et disciplina*. This interpretation cannot be discussed in detail here, but it should be said that Murray's reading does not receive much support from earlier Merovingian legislation, which appears to assume that law enforcement directed against brigandage will be carried out exclusively by public authorities. Even those living on ecclesiastical lands are not exempt from local courts, while provisions on the pursuit of *latrones*, especially across administrative boundaries, imply that this is normally the responsibility of 'state' officials (*agentes [publici], iudices*) and refer only once to the role of *potentes* in the suppression of brigandage. In any case, even if his early lay 'police' immunities did once exist, they have left no later traces.