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Dependencies in the Formulae in the Frankish Kingdom

1 Introduction

After the defeat of the Visigoths in 507 at Vouillé a new era began for Gaul south of the Loire. The Visigoths withdrew almost completely to Spain while the Franks, who already possessed the north of Gaul, now Francia, took over almost all of their territory. West and east of the Rhône there was the Burgundian kingdom, but that too was conquered by the Franks, in 532/534.[1] In this expanded Frankish realm we encounter subjected persons: slaves (*mancipia*) and *coloni*. What constituted their status? There is also the act of enfranchisement, which made a former slave free, but we also see that they could be attached to a church or monastery, hence still be in a state of dependency be it probably less oppressive. But was it a asymmetrical dependency? Was one party able to bar the other party from leaving the relation? Did the dependent people have occasion for agency?

2 The Sources

Our sources are the Formulae, collections of paragon texts, used as models to record legal deeds, which are found in the Frankish realm of the sixth and later centuries.[2] In several of these texts, references are made to Roman law or Roman law institutions, such as the recording of a legal act in the *gesta municipalia*. There are also phrases or terms which strongly suggest that some or many of these formulas were copies, adapted or not, of formulas used in the Roman empire, in any case in the west, by scribes and notaries. Such a practice of formula collections, in use by successive generations of scribes and notaries, is known for Egypt[3] and there is no reason to as-

1 For Italy it begins with the establishing of the Ostrogothic Kingdom in 489/493.

2 See for an extensive and thorough survey on the Formulae Harald Siems, *Handel und Wucher im Spiegel frühmittelalterlicher Rechtsquellen* (Hannover: Hahnsche Buchhandlung, 1992): 343–84; on their value for interest stipulations 646–53; also but with less references Alice Rio, *The Formularies of Angers and Marculf, Two Merovingian Legal Handbooks* (Liverpool: Liverpool University Press, 2008); Alice Rio, *Legal Practice and the Written Word in the Early Middle Ages, Frankish Formulae, c. 500–1000* (Cambridge: Cambridge University Press, 2009).

3 See Salvatore Riccobono, Vincenzo Arangio-Ruiz and Giovanni Baviera, eds., *Fontes iuris Romani antejustitiani*, vol. 3 (Florence: S.A.G. Barbera, 1968): nr. 108, P. Heidelberg 311, a formula of the sixth century, ed. Ernst v. Druffel, *Papyrologische Studien zum byzantinischen Urkundenwesen im Anschluss an P. Heidelberg 311* (Munich: C.H. Beck, 1915); Druffel compares this with the Ravennate papyri and

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sume that in other provinces such a tradition did not exist. Another source, viz. the royal court, is not likely and indeed rejected by Rio. She opts for local scribes since the subject matter reflects local practice.[4] Yet it is almost impossible to compare them to existing documents because what has been preserved are generally charters which establish land ownership, important for the church and monasteries.[5] And even if there were comparable documents, Rio assumes the models would have been adapted which makes it difficult if not impossible to link them.[6]

There are several collections which reach as to their contents back into the 6th century, all edited by Zeumer:[7] those of Angers (Andecavenses, *And.*), the diocese of Sens (Senonenses, *Sen.*) and Clermont-Ferrand (Arvernenses, *Arv.*). The Formulae Andecavenses, found in a manuscript of the early 8th century, mention in nr. 1 and 34 king Childebert (570–596) and their edition would therefore date from the 6th century.[8] The edition of the Formulae Senonenses distinguishes two collections: the Cartae Senonicae (with an Appendix) and the Formulae Senonenses recentiores (*Sen. rec.*). They are found in a manuscript of the 9th century. Zeumer concludes the first collection (Cartae Senonicae, *Sen.*) must have been edited between 768 and 775. The Appendix Cartarum Senonicarum (*App.*) may have been older. As to the second collection, the Cartae Senonicae recentiores, this dates from the early 9th century.[9] The Formulae Arvenses are found in a manuscript of the 9th century and were definitively drawn up in Arvernorum caput, i.e. Clermont-Ferrand. The text of the first formulae indicates a period around 532, when a rebellion of the Arvernenses was suppressed by the Franks.[10] Other collections I leave out because their texts, presumably taken from previous collections, may have been re-edited, like those of Marculf.[11]

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further deals with the institution on the *gesta municipalia* in Egypt. See further the commentary by Arangio-Ruiz in FIRA.

4 Rio, *The Formularies of Angers and Marculf* (n. 2): 8–9.

5 Rio, *The Formularies of Angers and Marculf* (n. 2): 4–5.

6 Rio, *The Formularies of Angers and Marculf* (n. 2): 26–27.

7 Karl Zeumer, *Formulae Merowingici et Karolini aevi accedunt Ordines iudiciorum dei* (Hannover: Hahn, 1886).

8 Zeumer, *Formulae Merowingici et Karolini* (n. 7): 1–25.

9 Zeumer, *Formulae Merowingici et Karolini* (n. 7): 182–226.

10 Zeumer, *Formulae Merowingici et Karolini* (n. 7): 26–31.

11 These are The Formulae Marculfi (Zeumer, *Formulae Merowingici et Karolini* [n. 7]: 32–106, Suppl. 107–9, Add. 110–12), the Formulae Marculfinae aevi Karolini, the Formulae Turonenses, die Formulae Salicae Bignonianae, die Formulae Salicae Merkelianae, die Formulae Salicae Lindenbrogianae, die Collectio Flaviniacensis, die Reichenauer Fornularsammlung und die Formulae Imperiales: see on these in detail Siems, *Handel und Wucher* (n. 2): 348–49.

3 The Language

They are drawn up in a Latin which Rio calls 'often strikingly unorthodox'. She mentions two possibilities, either the abnormalities reflect the spoken language, or the distortions are the result of the ignorance of the scribes of classical Latin. The discussion among philologists turns around the question whether written language was still the way to communicate or meant to exclude the lower classes.[12] To that question there is still no answer but in my opinion the formulae indicate that the written language was appreciated by the 'common people' to communicate, or else the formulae, which are meant for everyday life, would not have been written in this kind of Latin. Since the Latin of bishops of these centuries is excellent, demonstrating the quality of education in the upper stratum of society, it cannot be that there was no possibility at all to draw up formulae in good Latin. And the abbots we encounter in the formulae who were to supervise proceedings will have known Latin well or sufficiently too. Whence, then, the flaws in the texts? Rio assumes that the authors were ecclesiastical scribes and not lay notaries. She bases this on the provenance of the texts. They all come from ecclesiastical archives, but she does not exclude that their origin lay in a lay environment.[13] That is indeed most probable but that exacerbates the problem: if finally written in an ecclesiastical environment, which one (abbey, church)? and why was the Latin not improved like we see with the collection drawn up in the Carolingian period (*vide* the Formulae Marculfi)? Particularly as she suggests herself that they were used in such an environment. It remains an open question which calls for a philological analysis of the various Romance dialects in Francia. Could the formulae reflect the *lingua Romana rustica aut thiotisca* to which bishops in 813 refer when discussing the need to transferred their sermons for the rural people?[14] What *lingua* may that have been that sermons from the bishops' Latin had to be turned into? Was it the dialect Latin which we may assume existed? Does the language of the Formulae reflect that? If we compare that with Old-French or Provençal, there is a difference with the Formulae. But if the formulae originate in authentic documents, and if these

12 Rio, *The Formularies of Angers and Marculf* (n. 2): 18–20.

13 Rio, *The Formularies of Angers and Marculf* (n. 2): 10.

14 See Rosamond McKitterick, *The Carolingians and the Written Word* (Cambridge: Cambridge University Press, 1989): 8–9; Concilium of Tours, a. 813, MGH I, p. 288: XVII. *Visum est unanimitati nostrae, ut quilibet episcopus habeat omelias continentes necessarias ammonitiones, quibus subiecti erudiantur, id est de fide catholica, prout capere possint, de perpetua retributione bonorum et aeterna damnatione malorum, de resurrectione quoque futura et ultimo iudicio et quibus operibus possit promereri beata vita quibusve excludi. Et ut easdem omelias quisque aperte transferre studeat in rusticam Romanam linguam aut Thiotiscam, quo facilius cuncti possint intellegere quae dicuntur*. Although McKitterick refers to doubts whether *transferre* might mean translate, the connection with *lingua* makes clear that we are not dealing with simple abridgements. The language of the formulae could certainly be called a *lingua Romana rustica*, while *thiotisca* refers to the people (from *theodiscus*). This means that the formulae were drawn up in a local situation where the common people lived.

were drawn up in classic Latin, how is it possible that so many aberrations occur? If the distortions are not the result of ignorant scribes copying, the originals must already have been drawn up in a language which may at best be called a 'transitional' Latin, suggesting the transition from late Latin to the Romance vernaculars: orthography is often absent, the grammar is flawed. It would reflect the classic Latin be it in a degraded form. Or at some moment somebody rephrased the classic Latin in his vernacular so that his clients would understand the contents better. In any case, it seems to me more probable than other suggestions that they originated in formularies used by lay notaries. We do not know anything of them for the sixth to eight centuries in Francia but the contemporaneous prescriptions in the Lex Burgundionum to draw up documents presume the existence of a notarial praxis on local level, and in Ravenna around 600 there were public scribes (e.g. in Manchester, Latin MS 1). The latter may have remained of the municipal officials who once recorded the *gesta municipalia* or whatever remained of that administrative service. They may have gradually turned into notarial occupations.[15] We would have to assume in that case that in the lower ranks of the Church and in the monasteries the vernacular was also rule because otherwise the Latin would have been improved, as later happened with the Formulae Marculfi. It would mean it was a society with two languages for each social stratum. It would explain why these texts were formulated in this 'transitional' Latin and not corrected.

That brings the question, who were the people who used the formularies? Sometimes Franks are mentioned, but the overall impression is that they were the local inhabitants, the conquered Gallo-Romans, who would have spoken this Romance vernacular. It is probably a bit early to assume that the Franks had already taken to late Latin c.q. a Romance dialect when the Formulae started to be collected, viz. in the sixth century. That also argues for an origin of the formulae on local level.[16]

Did it matter that the Latin of these formulae is often far from correct? Rio thinks that read aloud the participants understood them well.[17] That is possible. She also assumes that it may also have sufficed to have drawn up a document of an act of which participants knew what it was about and which buttressed the testimony of witnesses. Their value lay in the actual documenting and in the document as such, the tangible and controllable proof of an act between individuals, the recording of the witnesses, and less in the contents of the document. There would always be witnesses as well, both to the act as to the drawing up of the document. Literacy and orality comple-

15 McKitterick, *The Carolingians* (n. 14): 10. It is the hypothesis of Wright that before 800 late Latin was early Romance, implying that Latin was pronounced in a different way, until under the Carolingians the pronuntiation of Latin was renewed, which made a different rendering of Romance necessary. But the problem here is the reverse: the Latin is written differently, presumably in the way it was spoken, in sources of an earlier date; unless they were all copied after that reform; *quod non*.

16 See the previous note 10.

17 Rio, *The Formularies of Angers and Marculf* (n. 2): 24.

mented each other.[18] Hence the Latin, orthography and grammar may not have been that important. The fact that the formularies attest the importance of documents confirm her assumption.

4 Their Function

What was their function? Rio has amply discussed the Formulae of Angers and Marculf in this respect. They testify to, so Rio, to a continuing interest in the written word.[19] That is certainly true but also a bit meager. For us the question what function the Formulae had for legal practice is important. Were they really blank texts, used for actual cases to produce a document? Rio discusses this too and concludes that they could have been used as such notwithstanding that there are no actual documents found which could be said to have been drawn up after such a form. We simply lack comparable cases. That is true too.

Still, I think more can be said. In a way the collections give us an answer. Those of Angers and Seine have a formula to draw up a legal and registered document, which reminds of the Late Antiquity *gesta municipalia*. There are formulae for the restoring of lost documents (the *apenna*) and there are many kinds of these documents (see below, under Cartae). There are formulae which regulate the gift to a church. There are references to possible claims of heirs. Any subjection to the power of another person (see the *obnoxiatio*) had to be documented or else the subjection was not valid (see the *vacuaturia*). Although there may not have remained archival records of these, it is indisputable that the formulae demonstrate the great importance attached to documents. Combine this with their setting: a country where towns have lost their former importance, a manorial system having taken over the land exploitation, life centered around churches, monasteries and the royal court, with as actors bishops, abbots and the king and his entourage. The administration has been reduced, but a minimum of registration has remained, probably in the cities, vide the texts about the *gesta municipalia*. Those with a bishop's seat will have provided some centre of literacy and administration. Taking merely these together and it is clear that already for these acts, in which the omnipresent church and monasteries had a interest to defend against heirs, also omnipresent, it was important to authenticate their acquisitions by way of documented transfers and documented gifts. Likewise rich private persons were interested in documenting their important transactions and testaments. Behind the churches and monasteries Rome towered. I assume that although we may not find corresponding documents in the archives of churches and monasteries of those times (as we have the Ravenna Papyri), or in other archives interesting

18 Rio, *The Formularies of Angers and Marculf* (n. 2): 24.

19 Rio, *The Formularies of Angers and Marculf* (n. 2): 22–23.

for private law, the interest in the formulae lay with the church and they used them for their own sake, and the same goes for private persons. Proof of the importance attributed by the church to such documents are the testaments of Remigius of Rheims, of Abbo and Vincent of Huesca which were most probably archived because they contain many gifts to the church; likewise the Ravenna papyri which were archived in the Ravenna church archives. McKitterick focuses on the later, Carolingian period for the importance of writing in the legal process, but also mentions that this interest was already existing long before.[20] Thus the Lex Burgundionum prescribes in several places that a document must be made (such as of judicial decisions, praef. 7). Important is also Lex Burgundionum 99 because this prescribes an authentification of the purchase of land, vineyard, plot of land, or a house, either by confirming this or by subscribing a document by at least three witnesses.[21] The confirmation may have referred to a sufficient number of witnesses, which apparently was the Burgundian way to authenticate.[22] Similarly manumissions were to be recorded by a document or by five or seven witnesses.[23] So it seems that on the whole documents were mandatory for Romans and optional for barbarians, but that in any case they had as function to testify that a legal act had been performed. Although the Burgundian realm did not include Angers or Tours, and probably also not Clermont-Ferrand, it is testimony to the use of written documents among the Roman population and there is no reason to assume that it was different in the Visigothic area where the Lex Romana Visigothorum was valid. The Formulae testify to that.

But if we consider the contents of the formularies, it seems that their function was not just to be a document of a legal act, to testify at a later moment to its having

20 McKitterick, *The Carolingians* (n. 14): 24.

21 See for a survey McKitterick, *The Carolingians* (n. 14): 60–75. Lex Burgundionum 99. *De venditionibus, quae sine testibus scribuntur. [1.] Si quis mancipium aut agrum aut vineam aut aream vel domum factam in quocumque loco comparaverit, iubemus, ut, si non fuerit firmata aut subscripta, pretium perdat; certe si loci illius consistentibus scriptura ipsa subscripta aut signata non fuerit, aut septem aut quinque testibus. [2.] Certe si quinque testes ad praesens inventi non fuerint, tres idoneos testes loci illius consistentes, quorum fama numquam maculata est, praecipimus subscribendos; certe si non, invalidam scripturam ipsam iubemus esse.*

22 Lex Burgundionum 60 [2]. *Ceterum si quis post haec barbarus vel testari voluerit vel donare, aut Romanam consuetudinem aut barbaricam esse servandam, si vult aliquid firmitatis habere quod gesserit, id est: ut aut scripturis legitimis, quod largiri cuicumque voluerit, teneatur, aut certe quinque ingenuorum testimonio, quod dimittere voluerit vel donare, robur accipiat et in eius, cui res deputata fuerit, iura commigret.*

23 Lex Burgundionum 88. *De libertatibus. Libertatis vero causa, quantum possessionis iure maior, tantum debet diligentius observari. Et ideo observandum est, ut manumittere volens aut per scripturam lege constantem servum, quem libertate donaverit, manumittat aut, si sine scriptura libertatem mancipio suo quicumque donare voluerit, non minus conlata manumissio quam quinque aut septem ingenuorum hominum testimonio roboretur.*

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taken place. The contents show also that the legal act was a ritual, a moment in which the real and ideal world of law fused and the real transcended, to return in its new consistence, with relations between humans and between humans and things set anew.[24] To the first category belong also dependencies. The formularies often prescribe how the ritual must proceed in order that the new relation is in order, and it serves to lay this performed ritual down in a document.

Another question is: by whom were the formulae made? According to Rio, in view of where they were found, scil. in ecclesiastical manuscripts, they were in their present state the work of ecclesiastical scribes. The Lex Burgundionum does not say who had to draw up the documents but in the Ravenna Papyri it is public scribes who do the job, so it seems unlikely that the church had taken over this task. There must have been as already set out some notariate in the form of public scribes who would have used such models. Hence their original form will have been designed and used by lay notaries.[25]

For whom precisely were the formularies meant? I mean this: in the 6th and 7th century there must still have been a division between the Gallo-Romans for whom the Roman law as comprised in the Breviary of Alaric applied south of the Loire and the Lex Romana Burgundionum for the Romans on both flanks of the Rhône, and the Franks who had their customary law. The formularies on manumission make the freedmen Romans, which means they were used by the Romans, and then the other formulae were for them as well. Where it concerns transfer of property and contracts, it is likely that the Franks also used the formularies, because we see this happening with the Ostrogoths in the Ravenna papyri regarding these legal acts. With the Burgundians there was a barbarian and a Roman way of making a record. But what with those formularies which deal with the law of persons? What 'nationality' would a freedman of a Frank have? Did the Franks use these formularies at all for their enfranchisements? It is a point we have to keep in mind. However, for the question of dependencies it does little matter.

5 Relations between Collections?

Another question in this context any scholar must pose: do formulae contain texts copied from another collection of formulae? In the context of this research this question is not dealt with. Indeed, the collections present texts on the same subjects, and this might be the result of copying. But equally this may have been caused by the fact that the matters dealt with were likely to have occurred everywhere. Moreover, in

24 Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973): 112.

25 Rio, *The Formularies of Angers and Marculf* (n. 2): 10. See for the survival and decline of the formulae and their use Rio, *The Formularies of Angers and Marculf* (n. 2): 13–17.

the case of copying we would expect similar spelling, language and phrasing and that is not the case, which pleads for different origins. Here the focus is on the contents of the formulae.

6 Dependencies in the Formulae

Dependencies are likely present in several formulae. Assuming that they represent the same social structure or at least similar social structures in the Frankish realm, and that formulae may have been copied, I shall deal with them according to subject matter and not according to source. Unless, of course, if it appears that there were significant differences.

7 Slavery

The first category of dependency, that of a strong asymmetrical dependency, is, as assumed, that of slavery. It should be attested by the enfranchisement formulae. In the Lex Burgundionum manumission may be attested in two ways: by writing or by witnesses: the Roman or the barbarian way. As McKitterick observes, the Burgundian Code values the document at the equivalent of seven witnesses.[26] Hence the importance of the formulae as model for a manumission document.

In *And.* 20 (R: *incipit ingenuitas a diae presente*) Ego declares that Tu will be an *ingenuus* from now on, as if he was born from *ingenui* parents, and that he will be no longer obliged to perform *servicium* or *obsequium* to the enfranchiser or his heirs. His freedom is protected by the church or monastery. In *And.* 23 (R: *incipit ingenuitas*) the Ego declares that the Tu is released from the yoke of *servitudo*, that he has no longer to perform *servicium*, and that he may lead the life of an *ingenuus*, with his *peculiare* which he may have or earn by work, as if born from *ingenui* parents. But the snag is that this only applies after the death of Ego, till then he has to perform service. Further, it seems that the protection of the church or monastery may cost him *obsequium*

26 McKitterick, *The Carolingians* (n. 14): 60–75, here 74. The example is Lex Burgundionum 60.2: *Ceterum si quis post haec barbarus vel testari voluerit vel donare, aut Romanam consuetudinem aut barbaricam esse servandam, si vult aliquid firmitatis habere quod gesserit, id est: ut aut scripturis legitimis, quod largiri cuicumque voluerit, teneatur, aut certe quinque ingenuorum testimonio, quod dimittere voluerit vel donare, robur accipiat et in eius, cui res deputata fuerit, iura commigret.* Lex Burgundionum 80: *Libertatis vero causa, quantum possessionis iure maior, tantum debet diligentius observari. Et ideo observandum est, ut manumittere volens aut per scripturam lege constantem servum, quem libertate donaverit, manumittat aut, si sine scriptura libertatem mancipio suo quicumque donare voluerit, non minus conlata manumissio quam quinque aut septem ingenuorum hominum testimonio roboretur; turam manumittens minorem numerum convenit adhibere.*

(cfr *Sen.* 44). *Sen.* 1 (R: *ingenuitas*) has the same elements as *And.* 23 and enumerates the faculties of a free man, amongst which that to choose one's protector (*defensione vel mundeburdo aecclesiarum aut bonorum hominum ubicumque se eligere voluerit*), i.e. to put oneself into a dependency relation. *App.* 3 describes an enfranchisement in the church where a *famulus* is enfranchised (*manomittere*) and formally liberated (*vendictaque liberare*). He belongs now to the Roman citizenship, as if born from *ingenui* parents and is not obliged to services on account of his enfranchisement. *Sen. rec.* 9 has been embellished and although having the rubric *ingenuitas*, deals with a *colonus*, about which below. In *Arv.* 3 (R: *libertatem*) the Ego liberates (*liberare*) the *ancilla* with her children, which he has *de alode*, viz. from his inheritance,[27] and declares them to be *bene ingenui* and released publicly (*absolutus in puplico*), that is, in the church before the bishop, from the yoke of his servitude (*de iugum servitutis meis*). The rest of the formula, which calls the Tu *mancipium*, cites the typical Roman law faculties of a free person: no *servicium*, no *letimonium*,[28] no *honus patronati*, no *obedientia* is required from Tu. The Ego in *Arv.* 4 (R: *item obsolutionem*) releases (*obsolvimus*) the *servus* Tu which he has acquired from the *alode* of his parents or by a cession, so that he entered the rank of *ingenui cives Romani*, and as in *Arv.* 3 no services etc. are required. The mention of *cives Romani* and of an *integra et plena libertas* we find in the *interpretatio* to Cod. Theod. 4.7.1 (Lex Romana Visigothorum 4.7.1), which may have served as inspiration. The constitution does not have that unlimited freedom. Was it a consequence of the mode of manumission, or was the status of freedman with *obsequium* to perform no longer existent? This point will return below.

The formulae of Arverna (Clermont-Ferrand) mention the word *alode*. Does this refer to property owned only by Franks who were vassals? But the freed slaves became Romans. Or does it refer to property owned without restrictions (as might be the case for property owned by freedmen) by Romans or Franks and should we not bother about this? The enfranchisements took place in a Church and, as in the other cases, is done for the salvation of the soul. Since the Church lived according to Roman law, it is possible that it imposed Roman law jargon on Franks if they manumitted in the Church. In any case, it is clear that here a contraposition of freedom and slavery

27 *Alode*, see Old French *aleu* (from Frankish *al-ôd, propriété complète): domain hérédité pour lequel l'hommage de vassalité était dû au seigneur; propriété, domaine.

28 According to Zeumer this phrase was inserted here; but it also figures in Sen 1 as *litimonio*. For the meaning see Du Cange: *Obsequium et servitium cui Litus vel Lidus erga dominum obnoxius est. Chartæ Ludovici Imper. et Caroli Calvi apud Hariulphum lib. 3. cap. 2. 7*. Du Cange: *Litus, lidus, ledus: Ascriptitius, servus glebæ. Glossæ interlineares Legis Salicæ: Litus, fiscalinus, vel sanctuarius, id est, qui in publicis, privatis, aut Ecclesiarum fiscis seu prædiis degit. Charta ann. 794. apud Henschenium ad Vitam S. Ludgeri Episc.: Id est, totam terram illam, quam Laudulfus Litus meus incolebat et proserviebat. Lex Longob. lib. 3. tit. 20. Carol. M. 83.: Aldiones vel aldiæ ea lege vivunt in Italia in servitute dominorum suorum, qua fiscalini vel Liti vivunt in Francia.*

is meant. *Arv.* 4 refers to the purchase of persons which proves that it concerns slaves.

That is not so clear in the formulae of Angers and Sens.[29] The term *ingenuus* is ambiguous. It may refer to freeborn persons, but in Late antique law texts it also designates the person who is free and not subjected to the *potestas* of another person, unlike the *filius familias* who is freeborn (*ingenuus*) but still *alieni iuris* due to being in the *potestas* of his *pater*. If one is not an *ingenuus*, services are due, which end with the enfranchisement. True, *And.* 20 and 23 say that the enfranchised will live as if born from *ingenui* parents, thus as if freeborn, but it applies also to the category of *filii* who are *alieni iuris*. *Sen. rec.* 9 is a warning that the *ingenuitas* may be given to such people. On the other hand, *App.* 1, which is a formula for a donation, mentions among the appurtenances of land *mancipia*, which term is usually applied to slaves, i.e., people who can be sold and bought.

It is clear that we are dealing here with the enfranchisement of slaves or, to be careful and not at once determinative, with people who are bound to do services to another person who releases them from these. Not that there were no slaves present in the sixth century. We find the term *mancipia* in the testaments of Abbo, a rich man from the Provence who died 739, and of Remigius of Rheims, who died in 533. Pope Gregory the Great asked in 595 Candidus, a bishop who went on a mission to Gaul, to buy English slaves of seventeen or eighteen years old *ut in monasteriis dati Deo proficiant*, to serve in monasteries, because he could not spend the Gallic solidi in Italy (ep. VI.10). These were without doubt obliged to do service and obsequities. The reason that I am careful in using the word slave here is the use of the words *ingenuus* and *ingenuitas*. The classic translation and meaning is 'freeborn', 'the state of being freeborn'. That is strange for the outcome of a manumission. It is of course flattering for a slave to hear that he will be as if born from freeborn parents but it is nonsense, he is not and he will according to classic Roman law be a freedman, subjected to *operae*, *obsequium* and limited in suing his manumitter. But is that law applicable here?

8 The Terms *ingenuus* and *ingenuitas*

It would indeed be wrong to apply without more the classic Roman law on these documents. The term *ingenuus* had got a second meaning in late antique legal texts. Apart from the *filius familias*, it refers to a person not subjected in public law to the *potestas* of another person. He was in the context of administrative law *alieni iuris*; in other respects he was *sui iuris*. It did not mean therefore that he was a slave or half-slave.

29 Sen. rec. 9 is a warning that the *ingenuitas* may be given to such people. On the other hand, App. 1, which is a formula for a donation, mentions among the appurtenances of land *mancipia*, which term is usually applied to slaves, i.e., people who can be sold and bought.

Slaves were also *alieni iuris* but at the same time basically non-persons in law, could be sold etc. The persons meant here were people who were free Roman citizens, who could marry legitimately, have legitimate children, could contract, have property, make testaments. The only restriction was that they had somebody else or an instance who exercised power over them. This power was also restricted: it comprised of being able to recall them at will to him or his place, and to demand particular services (e.g., a *colonus*: agricultural services; a *collegiatus*: municipal services; a *gynaecearius*: silk weaving). This position was called *condicio* and to distinguish it from the position (*condicio*) of, e.g., a town councillor or an ordinary citizen, called a *condicio deterior*. The general name for them was *condicionales*. It concerned several groups: *coloni* and those who worked in the imperial works or supplies, or in municipal services, and were indispensable. The other, better condition was not embellished with an adjective, there was no need for: you were an *ingenuus* or you were not. The persons of a *deterior condicio* could theoretically be released from their subjection but we know of only a few instances of this.

Considering the texts and the vocabulary it is clear, or at least it deserves serious consideration, that the enfranchisement deeds may not without more be compared to the classic manumission texts. If we assume that *ingenuitas* in them refers to the state of not being subjected to the power of somebody else, their field of application becomes wider, they may be applied to slaves but also to other people who are in some kind of subjection: the *condicionales*. Of these in the late fifth century only the *coloni* and the *collegiati* were present in the west. Reversely, such a use of the term *ingenuus* and *ingenuitas* would reflect a society in which dependency as criterium of the state of a person has replaced the classic division of freeborn, freedmanship and slavery. Was this indeed the case? Have we to read the *integra et plena libertas* of the *interpretatio* to Cod. Theod. 4.7.1 in this sense? (In Cod. Theod. 4.7.1 of 321 a manumission would release of all *condiciones*, including a *condicio deterior*.) How did the Church envisage slavery? Certainly a useful component of society and confirmed by the Council of Gangra of 340,[30] but there were slaves who were Christians too. What distinguished them in church from the free Christians, when the Pope calls himself *servus servorum*? Only this: that they legally have to serve others. Is it possible that such a change caused the use of these terms in deeds? For an answer we have also to look at deeds in which somebody becomes subjected: the *obnoxiationes*.

30 Conc. Gangrense: [. . .] *servos a dominis recedentes, et per hunc inusitatum regionis suae habitum sub specie religionis dominos contempsisse* [. . .], *and canon 3: Si quis servum, divini cultus praetextu, dominum contemnere doceat, et ab ejus obsequio discedere, nec ei bona fide et omni honore servire, anathema sit.*

9 The *obnoxiatio*

The second group of deeds concern *obnoxiationes*, 'submissions', a better term than 'self-sale',[31] although the deeds carry the rubric *vindicio* which must refer to the *venditio* not as an act of selling but as act of transfer of authority. There are quite a lot of them. In *And.* 2 (R: *hic est vindicio qui se ipsum vindit*) a thief who cannot pay himself the composition (*transagere non possum*) has to oblige (*inplecare*, *oblegare*) his entire (*integer*) *status* to service (*servicium*) to the victims. This is done in as far as he receives a sum from them (apparently to pay them as composition) in exchange for which they can demand from him whatever they like, just as with their other subjected persons (*de memetipso facere volueritis sicut et de reliqua mancipia vestra obnoxia*). They have full power over him. His relatives or other persons cannot act against this voluntary *vindicio* and if trying this, are fined. The same we find in *And.* 4 (R: *hic est vindicio de homine in esceno posito*), where the *mancipia* are also *originaria*. *And.* 9 (R: *incipit vindicio quem facit nam qui se ipso vindit*) is about the transfer of status for a loan. The transferee may do what he wants, even donate, sell or exchange him (*donande vindende seu conmutandi*). Again, was this actually possible or is it merely to indicate the fullness of authority of the transferee over the debtor? If the first was indeed the case, then in any case restricted for the duration of the loan. In *And.* 19 (R: *incipit vindicio*) it is hard times and an ensuing debt which force Ego to transfer his entire *status* to another person, entirely voluntarily, in exchange for a sum of money. Here the *mancipia* are *obnoxia*. Probably we have to read *mancipia* in *And.* 2, 4 and 19 not as synonym for slaves but as a general term for all persons *alieni iuris*. *And.* 25 (R. *incipit vinicio qui se ipsum vindit*) is slightly different. Ego transfers not only himself and presumably his wife but also his *peculiare*, house, land, vineyard, as possessed on the land of a villa in the land of Angers or elsewhere, and receives a price as agreed. The transferees are called *emptores*. Hence *vindicio* again means the wider sense of 'transfer of authority', because it comprises also possessions.

Rather different is *Arv.* 5 (R: *redemturia*). Ego is in custody on account of his fault and cannot redeem himself because he has no property or money. He has only his body and status (*formam et statum meum*) which he has as an *ingenuus* but now wants to transfer for this to Tu in *servitium*. Tu redeems him. This is done thus: Ego asks that his *carta patrociniale* of his *status*, in which he is an *ingenuus*, is transcribed to Tu or affirmed by Ego, so that he is now legally in the service (*servitium*) of Tu. Neither Ego nor his heirs or any other person may object to the present *carta patrociniale*, on penalty of a fine. Again the jargon is more Roman and correct, *redemptura* can indeed mean the same as *venditio*, but can also mean the taking over of a case. Remarkable is the *carta patrociniale*. It seems to be a document in which the act of submision has been laid down. If we may take the word *patrociniale* as a derivate

31 Used by Rio, *The Formularies of Angers and Marculf* (n. 2): 50.

from *patrocinium*, the relation would seem more that of patron and client than of master and slave.

Sen. 4 (R: *obnoxiatione*) deals with the same – penury, a loan, no possibility of repaying – yet the name focuses on the status effect. Here the terminology is stronger: *Propterea obnoxiatione de capud ingenuitatis meae in te fieri et adfirmari rogavi, ut, quicquid de mancipia tua originalia vestra facitis, tam vendendi, commutandi, disciplina inponendi, ita et de me ab hodierno die liberam et firmissimam in omnibus potestatem faciendi habeas*. – 'Because I have requested to make to you and confirm an *obnoxiatio* of my *ingenuitas* so that whatever you may do regarding your original slaves, as selling, exchanging, correcting, likewise in everything you have the free and firm power over me from today onwards'. His status of *ingenuitas* ends, the creditor may do with him similarly to what he does with his *mancipia originaria*, he may even exchange or sell him. *App.* 6 (R: *obnoxatio*) is a similar *obnoxatio*, now because a horse thief cannot pay and therefore, in order to escape the death penalty, pleads for *obnoxatio* from the horse owner.

The reverse of these *vindiciones* are the *vacuaturiae*. In *And.* 17 (R: *incipit vacuaturia*) the text is spoken by an official person. If someone has transferred his entire status to somebody else and his wife, but the *vindicio* cannot be found, i.d., the document of the transfer, then a *vacuaturia* is issued. If the *vindicio* document is found, it is declared void and useless; while this act, the *vacuaturia*, remains firm. Another *vacuaturia* (*And.* 18, R: *incipit item vacuaturia*), again done by an official, refers to a loan in exchange for which the beneficiary would submit his status and serve for a number of years; of which agreement a *caucio* was drawn up. If the document cannot be found, a *vacuaturia* is drawn up as if the lender had returned the loan.[32] It is more than a release or a deed of annulment.[33] *Vacuus* may also mean: without master, and that is precisely what the deed says. With debts, the debtor would receive his debt acknowledgement (chirograph) back upon payment of the debt.[34] Here, apparently, people had submitted themselves and then were released, the proof of the release lay in the return of the *obnoxiatio*, but they were not in possession of the deed of submission because it had not been returned. Hence they might still be claimed on basis of that. The *vacuaturia* is a substitute for the returned document, safeguards the freedom in a procedure and annuls the *vindicio* if it turns up later. The claimant will of course have had to prove that had fulfilled the conditions for release. He was a free person who had been subjected to somebody else, yet the only proof of this lay in a deed. And that deed was an *obnoxiatio* (see below, Form. And. 38).

32 *And.* 18: *Dum cognetum est, qualiter aliquos homo nomen illi aliquo homine nomen illo caucione inmissa habuit pro statum suum, quo ei beneficium fecit argento untias tantas, ut inter annis tantus, qualecumque ei servitium iniunxerita, ei facere debiret,* [. . .].

33 Rio, *The Formularies of Angers and Marculf* (n. 2): 63.

34 Receiving the chirograph was the best way to thwart off renewed claims.

Then, do these cases of *And.* 17 and 18 refer with *vindicio* to a real sale? The texts speak of subjection and rendering services, some rubrics say *vindicio*, there is in *Sen.* 4 an equalisation with slavery (selling or exchanging). Yet we are not dealing with the classic self-sale of a free man, because freedom lost could not be reinstated by merely returning the document of sale, whereas here it is the absence of that document which leads to an official act releasing the person from a subjection due to transfer of status.[35] The term *obnoxiatio* is known from late antique administrative law. If somebody was liable for a public charge, he had to acknowledge, *agnoscere*, that he was *obnoxius* for the charge.[36] In that context it implies that somebody is and remains a free person but submits himself in as far as the charge to the authority of the administration. It may impose the charge on him and check him, while he remains free.

More information provides *And.* 38 (R: *incipit caucio de homine*). Someone received a sum of money as loan (he has to return it) and in lieu of a pledge he pledges himself in that he transfers half of his status and will work for so many days per week whatever is imposed on him (*in loco pignoris emitto vobis statum meum medietatem, ut in unaquisque septem ad dies tantis qualecumque operem legitema mihi iunexris facere debiammus*). And when he has repaid his creditor, he will receive the *cautio*. If he does not do or do well what is imposed, he will be fined. This transfer of status seems more a kind of pledge or *antichresis*. The act resembles the *paramonè* known for the first to third century and later for the colonate. That was an agreement in which the debtor promised his creditor to work for him and put himself under his power, in lieu of paying interest. Such an agreement could, as any agreement, be dissolved.[37] It is definitively not slavery, yet it is an asymmetrical relation as are the other relations related above. Those are strong also because it is not in the power of the weaker parties to release themselves unless they fulfill their obligations. In *And.* 38 the debtor can release himself by paying the loan back.[38] *Sen.* 3 (R: *caucione*) is differently phrased but is the same.

We cannot therefore simply assume it concerns enslavements in which somebody loses his freedom. It concerns submissions in which persons remain free but become as it would have been termed in the fifth century *alieni iuris*, and become subjected in the same way as the *coloni originarii* in the sixth century in Italy and Gaul (be it

35 See Max Kaser, *Das römische Privatrecht*, vol. 1, *Das altrömische, das vorklassische und klassische Recht* (Munich: C.H. Beck, 1971): 292.

36 See Adriaan Johan Boudewijn Sirks, "Obnoxietas: Questions de responsabilité," in *XLVème Session de la SIHDA* (Miskolc: Gazdász Elasztik, 1993): 325–32, and Adriaan Johan Boudewijn Sirks, "Did the Late Roman Government Try to Tie People to Their Status or Profession?" *Tyche. Beiträge zur Alten Geschichte Papyrologie und Epigraphik*, vol. 8 (Vienna: Verlag A. Holzhausens Nfg., 1993): 159–75.

37 See Adriaan Johan Boudewijn Sirks, "The Colonate in the Later Roman Empire," *Tijdschrift voor Rechtsgeschiedenis* 90 (2022): 129–47.

38 Siems, *Handel und Wucher* (n. 2): 650 with note 644 doubts about the words *in loco pignoris* and presumes it rather refers to 'fremdbestimmten Diensten', 'an Stelle eines Pfandes'. But *antichresis* is precisely the services rendered instead of a pledge.

that the submission of these was hereditary). These submissions are the reverse of the enfranchisements we saw before in as far as somebody is subjected to the power of somebody else. There is a debt, either originating in a delict or crime where the culprit cannot pay the composition, or in a loan or debt, and in order to pay this, the debtor submits himself to the creditor and works for it. Status is a flexibel concept. It looks like 'Schuldsklaverei' but it is not slavery because, notwithstanding the used terminology, the indebted person does not become a slave. He loses only his *ingenuitas*. And in the case of *And.* 38 he loses it only for three days per week till he has repaid the loan. It does not mean that slavery did not exist. It did, but it is present in other texts (see hereafter).

Returning to the enfranchisements, these were, as the above makes clear, not for people subjected on basis of an *obnoxiatio* or *caucio*. Hence they must have concerned in the first place slaves and, likely, those subjected by the heredity of their status, viz. the *collegiati* and *coloni*, because these did not submit themselves to an *obnoxiatio*.

10 The *cartae*, Deeds

We have already seen several deeds. In *Sen.* 38, which describes the procedure to replace documents lost by fire by a new document (the *apennis*), a number of deeds are mentioned: *venditiones, donationes, cessiones, iudiciis, obnoxationes, cautiones, commutationes, cetera scriptura* by which *dominium* or *potestas* is acquired. *And.* 32 and 33 mention as the result of shipwrecking or burglary the loss of *strumenta cartarum vindicionis caucionis cessionis donacionis dotis conposcionalis pactis conmutacionis convenientis securitatis vacuaturias iudicius et noticias*. *Cartae agnationem* or *patrocinialae* are not enumerated but the list may not have been meant to be complete.

Slavery is clearly present in the *carta agnationem* of *Sen.* 6 (R: *carta agnationem*). Ego declares in this *aepistola agnatione* that a said woman wants to join his slave (*servo*) in marriage and that he may call her and her children into servitude (*servitio*). But he declares voluntarily that they may remain in freedom with their assets (*sub integra ingenuitate cum omni peculiare eorum*). Follows the typical faculties of freedom: making a testament, choosing a patron (which might be done by deed: *carta patrociniale*). A slave did not have these. Similar to the *carta agnationem* is the *epistola* of *And.* 59. It deals with the marriage of a free woman with a slave (*servo nostro*). His master and mistress do not want the woman become *in servicio* but remain, as the children born, in freedom (*ad ingenuetatem capitis eorum*). If they need to enter in service (*ad servicio caput eorum inclinatur*), the consent of master and mistress as of their heirs is required. Of the earnings of the woman gained during the marriage she may retain one-third. Of this decision a letter is issued (*And.* 59). The underlying rule is that of the senatusconsultum Claudianum. It was analogously applied to *coloni* and

other *condicionales*, but of that there is no trace in the formularies. What is called slavery here, is definitively slavery in the classic sense of the word.

Again another approach to the nature of the dependencies are other texts about slaves. In *Sen.* 9 (R: *notitia de servo*) a slave is bought and transferred on the market or elsewhere an his price it paid. Contrariwise, in *Sen.* 12 (R: *carta dinariale ante rege*) a slave deposits a coin before the king and according to the lex Salica he dismisses his slavery for freedom, which redemption the king confirms.

The references to the *cartae* (hence: *cartula*, 'chartre', charter) are the undeniable evidence of the purpose of the formulae: to provide musters for a whole range of legal acts. They demonstrate the wish and need for written documents and evidence the presence of some kind of notarial system.

11 The *coloni*

A separate group are the *coloni*. *Sen.* 20 (R: *Notitia de colonito*) is the formula to recall someone who has distanced himself from the place where he is attached to as *colonus* (the *colonaticum*). As basis for the claim serves the contention that his parents or his mother were *coloni*, so that he himself ought to be *colonus*. If the defendant cannot give a good reason why he is not in the *colonaticum* and the plaintiff recognises him, then he will be returned. Similar recall procedures are in *And.* 10 and in *Sen. rec.* 1. In *And.* 10 (R: *incipit iudicius*, *incipit noticia ad supradicto iudicio*) the denying defendant is interrogated about his *agnatio*, whether other relatives of him were in *servicium*. He denies to be obligated either by *agnatio* or by purchase (*conparato*; in the fourth century it was impossible to 'purchase' *coloni* without the land, but in the fifth it was possible).[39] Then the defendant must swear before twelve men that during 30 or more years he never performed services and resided as an *ingenuus*. *Sen. rec.* 1 (R: *notitia de colono evindicato*) is laconic about the proof, but detailed about the way an adjudicated *colonus* is returned to the *casa Dei*. The procedure in both cases devolved before an abbot, with an advocate of the monastery (by advocate will have been meant a person assisting the abbott, not a professional jurist). It is in *Sen. rec.* 2 (R: *carta sacramentale*) that the actual evidencing is described. The defendant's father is said to be a *colonus* from a villa of Saint X, that he owes *colonitium* to it and failed to be there. He denies this and says he is from a Frankish father and born by a Frankish mother. Apparently Franks could not be *coloni*. An assembly of twelve relatives (and if dead, twelve Franks) may deliver him from this predicament by an oath. *Sen. rec.* 4 is the complement to these two texts: it is the verdict given, in which the defendant acknowledged his own *colonitium* and is returned. *Sen. rec.* 5 is the parallel to *Sen. rec.* 1: it is the *vindictio*, the reclaim (*vindicatio*) of a *colona*. If her grandfather or father

39 The prohibition in Cod. Iust. 11.48.2 and 7 pr; the possibility in Ed. Theoderici 142.

was a *colonus* of that villa, she must be *colona* of it too and has mala fide deserted her *colonitium*. She may deny this and maintain that she has *ingenui* parents. She too may be saved by an oath of twelve relatives or, if dead, twelve Salic Franks.

Two other texts provide a little more information about the *coloni*. *Sen. rec.* 3 (R: *notitia de servo*) is about a fugitive slave, purchased by a *colonus* of a monastery from a Frank. It is the abbot who conducts the case and he presents the testimony of Frankish men that the *colonus* bought him to have him serve. Legally (*per lege*) he became the slave of the monastery. The verdict is formulated in *Sen. rec.* 6 where reference is made to a document of purchase.

With *colonitium* the obligation of being a *colonus* is meant, which consists in the first place of being present at a defined estate, in the formularies an estate of a monastery or church. This shows that these formularies were in the first place drawn up for clerical use. It implied rendering services (see above). The *colonitium* is established by the descendance from a father or grandfather *colonus*, or by birth from a *colona*. Counterproof is possible by either evidencing a different descendance or by belonging to the Franks;[40] or by evidencing that one had not delivered services for 30 years (actually the old Roman prescription of limitation); or by oath. A *colonus* could buy slaves but did not own them. This is not a decisive argument that a *colonus* was not a slave as well: in classical Rome slaves could buy slaves. But the *coloni* of the fifth century were free Romans and could own but his estate owner had to approve any alienation. There was a lien on his property and it was called *peculium*. That in the case of *Sen. rec.* 3 the slave became slave of the monastery may have been that he was now part of the *peculium*. It also explains why it is the abbot who sues and not the *colonus*. Remarkable is that we do not find an enfranchisement of a *colonus*, unless the enfranchisement formularies covered also *coloni*.

And. 40 is a gift formulary. The gift includes a farm with appurtenances as slaves (*mancipia tanta his nominibus illus et illus*). *And.* 46 is a formulary of a gift of land to the church. It includes slaves (*cum* [. . .] *mancipiis*). In *Sen.* 25 a dowry is described with slaves (*seo mancipias tantas his nominibus ill. et ill.*). Similarly the gift of land in *Sen.* 31 (R: *donatio ad casa Dei*) includes men and slaves (*hominibus* [. . .] *una cum mancipia tanta his nominibus ill.*). If the *homines* do not include the slaves (whose property value is indicated, as elsewhere, by having the individualised by their names), they may concern free men, bound to the land. *Sen.* 41 (R: *prologus de cessione*), a gift formulary, and 42 (R: *heredetoria*), a formulary for a testament, enumerate all kinds of landed property, and then also *peculium presidium utriusque genere sexus*, in which the heir succeeds. It is not, apparently, a description of slaves. It might concern the property of *coloni* or in any case of free people in a dependency relation. *App.* 1, a donation formulary, enumerates *terris mansis una cum superpositis domibus aedificiis utriusque generis sexus peculiis mancipiis ibidem commanentis tam*

40 Because they were the ruling military class?

ibidem quam et aliunde translatus. The *mancipia* must be slaves, but the preceding *peculia* which apparently belong to persons of both sexes might refer to free people whose property belong to the donator. His power over them may have been indicated by the *presidium*.

12 The Testament of Abbo

Until now we dealt with formulae and on basis of these, assuming they were modelled after real cases or formulated with real cases in mind, conclusions about dependency were made. But is there other information available which refer directly to dependencies in 'real life'? There is not much, the testament of Remigius does only mention slaves and *coloni*.[41] The only sizeable text dates from a later period and refers to Burgundian territory, but there is no reason why we may not apply it to the period and areas of the formulae. As indicated above, the terminology regarding dependency is not as clear as we would like it. We must assume that it was sufficiently clear to the contemporaries, they must have thought in different categories as we do. This text is the testament of Abbo, where various relationships are suggested. Drawn up in 739 AD, it concerns the many belongings of a rich man in the Provence.[42] The testament shows traces of Roman law. Abbo, a rich man, left all his possessions to the church of the monastery of Novalesa which he founded.[43] The testament mentions of course the real estate as detailed as possible. Next to houses, land like vineyards, *colonicae* are distinctly brought up.[44] Next to that the testament often says *una cum mancipiis, libertis, colonis, inquilinis, et seruis*, but not in connection with *colonicae* (except in c. 17: the *colonica* in the land of Vienne). In c. 20 the freedman Sigualdhas the *colonicae* in the Gironde in benefice; in c. 22 the freedmen Theudoald and Honorius and their heirs have the *colonicae* in the valley of the Gironde and in Realon; in c. 24 has the slave Marius the *colonica* in the place Baratier, and the freedman Baron-

41 See Alice Hanson Jones, Philip Grierson, John Anthony Crook, "The authenticity of the 'Testamentum S. Remigii'," *Revue belge de philologie et histoire* 35 (1957): 356–73.

42 For text and translation see Patrick Joseph Geary, *Aristocracy in Provence: The Rhône Basin at the Dawn of the Carolingian Age* (Philadelphia: University of Pennsylvania Press, 1985): 38–49.

43 It appears that a church was considered to be a legal entity capable of ownership and the *testamenti factio passiva*. Since it is not likely the church building itself, with church the congregation of a church will have been meant, analogously to the congregation of the inhabitants of a town, who were represented by their council; here the bishop was the representative.

44 In P.Ital. 13.8 of 553, a donation to the Ravennate Church, there are *colonicae*, neighbouring part of a group of *massae*; and in P.Ital. 3.II,1,11–13 a *colonia*, perhaps the same. If there is an economic difference between a *massa* and a *colonica*, it is likely that the first consisted of a group of farms managed together by a supervisor, while a *colonica* would be a self-managing farm, perhaps with *coloni originarii* who could not leave anyway. But we see with Gregory the Great that there were *massae* where the workers were also bound to their *massa*. See further next note.

tas the *colonicae* in the place Ubaye. The latter Abbo gave Barontas so that it would pertain to the church. Further in c. 25 the freedman Savina has the *colonicae* in Boresius in benefice; in c. 29 has the freedman Bertarius the *colonica* at Souribes: his children should have it (apparently Bertarius died) and it should pertain to the church; in c. 32 there are *colonicae* and land on which Abbo's mother transferred the freedman Maroaldus, his wife and sons from the place Geneva. According to Geary the basic agrarian unit was the *colonica* which might be isolated and might be administratively or fiscally attached to a distant estate.[45] Considering the *interpretatio* to Cod. Theod. 2.30.1 it is indeed possible that the combination of such a unit with a *colonus* was in those days a fiscal unit, the *colonus* providing the owner with the tax for it.[46] Certain is in view of the formulating of the testament that a *colonica* was indeed a separate agricultural unit. Considering the connection with *coloni* and that several were given *in benefitio*, it seems that they were run independently by *coloni* and that the beneficiaries enjoyed the revenues. The term *aspicere*, literally meaning 'to regard' and rendered by Geary as 'belong to', probably on basis of Du Cange who also gives *pertinere*. In that case the farm would already have been granted, or is granted to the church under the (existing) charge of a benefice. Another possibility is that Abbo had already donated the estate with reservation of usufruct for the freedman, eventually also his children (cfr. *Sen.* 15 and 32 *quamdiu advivo*).[47] Or it was already granted and transferred but retransferred with the obligation to pay a rent (*precaria*).[48] In that case the *aspicere* would refer to the rent. In this testament the term freedman (*libertus*) turns up several times, next to slaves (*mancipia*, *servi*) and *coloni*. Was the *libertus* always a former slave? Or could he also be a former *colonus*, who likewise in late Roman law was manumitted? It remains an open question.

13 Conclusion

It is clear that the old distinction between freeborn, freed and slaves, or between *honestiores* and *humiliores* no longer applied in sixth and seventh century Francia as is demonstrated by the formulae. The distinction is between *ingenuitas* and what I call

45 Geary, *Aristocracy in Provence* (n. 42): 20.

46 The *interpretatio* to Cod. Theod. 5.17.1 renders the *capitatio* by *tributa eius*. Does that refer to the poll tax? Or are these the taxes on land *coloni* owned privately? Cod. Theod. 5.19.1 allows for that. More likely, however, is the explanation suggested by the interpretation to Cod. Theod. 2.30.1, which forbids the seizing of slaves on the land because they provide by their work the *tributa*. The revenues were used for the tax on the land. It may imply that such units of land and *colonus* were considered tax units.

47 Jean Gaudemet, "Survivances romaines dans le droit de la monarchie franque du Ve au Xe siècle," *Tijdschrift voor Rechtsgeschiedenis* 23 (1955): 149–206, here 190.

48 Gaudemet, "Survivances romaines" (n. 47): 149–206, here 192.

with the previously used term *conditio deterior*, between not being subjected to the power of another and being subjected to a power which may order you to work anywhere at any time. Petot speaks of a 'hiérarchie de dépendence' and that is probably a good point of departure for further research.[49] Slaves could be released by an *ingenuitate*, the release of those in *obnoxiatione* by a *vacuaturia*; and probably *coloni* still by manumission. In Abbo's testament we have *colonicae* and farms, either given in benefice to freedmen or slaves. Those differences should still be examined. The basis of dependency changed. No longer the difference in social and legal status defined dependency and subjection, but subjection itself, expressed as being *alieni iuris*, equalled dependency and defined status.

49 Pierre Petot, "L'hérédité de la condition servile," in *Mélanges Ph. Meylan*, vol. 2 (Lausannne: Imprimerie Central, 1963): 15–19.