

## Feudalism in the twelfth century charters of the Low Countries

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### 1. The Low Countries: fallen from grace in the historiography of feudalism

When François-Louis Ganshof wrote his classic study of feudalism, he awarded a place of honour to the Low Countries because in his opinion feudalism had come into existence in the area between Loire and Rhine, the heartland of the Carolingian empire. Looking closer it turns out that he narrowed down even this selection, using most of all examples from the Low Countries. It is a bit suspicious that Ganshof thus turned his own part of Europe into the country of true feudalism, but he justified this by claiming that there are few other regions with so many explicit sources about feudal institutions during the High Middle Ages. Today's literature of feudalism stands in a sharp contrast with Ganshof's manual, as the Low Countries no longer have the leading part. In fact, some books leave them out of the story altogether<sup>1</sup>. The Mediterranean, or at least the Christian part of it, has become the centre of attention. This means that it was a good idea of the editors of this book to also include a paper on the Low Countries, because the difference between Ganshof and today begs for an explanation and, most of all, a look into the sources of feudalism in Flanders and Lotharingia. The latter will in this article be interpreted in the same way as in Ganshof's book, which means Lower Lotharingia, without the principalities of the Lower Rhine, i.e. „Brabant, Cambrai, Guelders, Hainault, Holland, Liège, Looz, Namur, etc”<sup>2</sup>.

Ganshof's book about feudalism is sometimes, and without justification, seen as a final work, whereas it was in fact rather provisional in nature. For example, his claims about Flanders and Lotharingia were, at the time of his first edition, not justified by historical literature. Even at the time of later editions not that much had changed. Didier published a study of feudal law in Hainault<sup>3</sup> and Génicot's monumental work about Namur also took feudalism into account<sup>4</sup>, but Flanders had not been the subject of a major study<sup>5</sup> and Didier and Génicot's books obscure the fact that the rest of Lotharingia also remained mostly unstudied, at least for the High Middle Ages. Ganshof did not remedy this himself and his examples reflect the gaps in the research. Flanders, Hainault and also Cambrai receive more than their share of attention, whereas the principalities of the Northern Low Countries, today's Netherlands, are remarkable by their absence (which is understandable because there are few texts about fiefs there<sup>6</sup>). Recent research about feudalism in Lotharingia has not made many

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<sup>1</sup> See e.g. ERIC BOURNAZEL and JEAN-PIERRE POLY, *Les féodalités*, Paris 1998.

<sup>2</sup> FRANÇOIS-LOUIS GANSHOF, *Qu'est-ce que la féodalité*, Paris 1982, p. 15 (this quote from the English translation, London 1952).

<sup>3</sup> NOËL DIDIER, *Le droit des fiefs dans la coutume de Hainaut au moyen âge*, Paris 1945.

<sup>4</sup> LEOPOLD GENICOT, *L'Économie rurale Namuroise au bas moyen âge*, Namur 1943-1982, 3 vol.

<sup>5</sup> Cf. GANSHOF himself: „On connaît fort mal ce qui a trait aux relations féodo-vassaliques en Flandre.” (FRANÇOIS-LOUIS GANSHOF, *La Flandre*, in: *Histoire des institutions françaises au moyen âge*, ed. FERDINAND LOT/ROBERT FAWTIER, I, Paris 1957, p. 373).

<sup>6</sup> See e.g. below paragraph seven. Older editions of Dutch charters are sometimes misleading, because the editors interpreted references to tenure as being feudal. See e.g.

advances, even though there are good studies about related aspects<sup>7</sup>, but feudalism in Flanders has been explored in several Belgian Ph. D. theses<sup>8</sup>. This means that the following pages are, for Lotharingia, anything but final and may remain too superficial, in part also because only the charter material has been consulted.

## 2. Flanders and Lotharingia: neighbours at a distance

The difference between the research about Flemish and Lotharingian feudalism is not unique, as in general the old county of Flanders is much better studied than its Lotharingian counterparts. Several factors may explain this, but the main one is that Flanders was way ahead of its neighbours and this is very visible in feudalism. In Flanders feudalism broke through around 1000<sup>9</sup>, the Lotharingian principalities, with the exception of Cambrai<sup>10</sup>, following at a later time. The charters reflect this. For example, from the second quarter of the twelfth century there are many charters about transactions concerning fiefs in Flanders, whereas these only appear later in the Lotharingian principalities<sup>11</sup>. In fact, the current edition of the charters of the county of Holland<sup>12</sup> mentions almost no transactions of fiefs there. Once again, this is only one element of a larger pattern, in which Flanders is the forerunner and the others lag behind. For example, the territorial expansion of Flanders had its last great moment in the mid eleventh century and thereafter the county would only lose territory, whereas many of the Lotharingian principalities were at the same time only in their infancy<sup>13</sup>. In short, Flanders and Lotharingia may have been geographical neighbours, but in terms of development they were removed from one another, with Hainault following much closer on the heels of Flanders than the others. The documentary situation is no exception to this. For the 'Dutch' principalities it is even possible to collect all charters in a single edition, which indicates their scarcity. A comparison may illustrate this. For the whole county of Holland, and this may be taken very broadly, as, for example, also imperial charters were included if

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PETRUS JOHANNES BLOK e.a., *Oorkondenboek van Groningen en Drente*, Groningen 1896, nr. 35, p. 25-26 (1170), where the use of the word *tenuit* leads the editors to assume that this text concerns a fief.

<sup>7</sup> An excellent article should be mentioned here: JEAN-FRANÇOIS NIEUS, *Du donjon au tribunal. Les deux âges de la pairie châtelaine en France du Nord, Flandre et Lotharingie (fin XI<sup>e</sup>-XIII<sup>e</sup> s.)*, in: *Le moyen âge* (113), 2006, p. 9-41, 307-336.

<sup>8</sup> RIK OPSOMMER, 'Omme dat leengoed es thoochste dinc van der weerelt.' Het leenrecht in Vlaanderen in de 14de en 15de eeuw, Brussels 1995, 2 vol.; DIRK HEIRBAUT, *Over heren, vazallen en graven. Het persoonlijk leenrecht in Vlaanderen, ca. 1000-1305*, Brussels 1997; DIRK HEIRBAUT, *Over lenen en families. Het zakelijk leenrecht in Vlaanderen, ca. 1000-1305. Een studie over de vroegste geschiedenis van het leenrecht in het graafschap Vlaanderen*, Brussels 2000. See also JEAN-FRANÇOIS NIEUS, *Un pouvoir comtal entre Flandre et France. Saint-Pol, 1000-1300*, Brussels 2005.

<sup>9</sup> HEIRBAUT, *Heren* (note 8), p. 25-26; HEIRBAUT, *Lenen* (note 8), p. 46-50.

<sup>10</sup> Cf. HEIRBAUT, *Lenen* (note 8), p. 47.

<sup>11</sup> One can see this easily when browsing through the *Thesaurus Diplomaticus*, CD-Rom, Turnhout, 1997, which contains about 6000 charters from the Southern Low Countries from the seventh until the twelfth century.

<sup>12</sup> ANTON KOCH, *Oorkondenboek van Holland en Zeeland tot 1299*, I, Eind van de 7de eeuw tot 1222, The Hague 1970.

<sup>13</sup> To see this, one can consult the articles about Flanders and the Lotharingian principalities in the volumes 2 and 3 of the *Algemene geschiedenis der Nederlanden*, Haarlem 1977-1983.

the count of Holland witnessed, we have 158 charters for the twelfth century<sup>14</sup>, whereas the Flemish count Thierry and his son Philip issued 289 charters during Thierry's reign of almost forty years<sup>15</sup>. The chronological gap between Flanders and Lotharingia was to a lesser extent also present in Flanders itself. In Imperial Flanders, acquired in the first half of the eleventh century, allodial property remained very important in noble patrimonies even in the thirteenth century<sup>16</sup>.

The difference between Flanders and Lotharingia goes deeper than the chronology. Because of its early development, feudalism in Flanders reached levels of complexity which were unknown in Lotharingia. One of these concerns the essence of Flemish feudal institutions, the proliferation of comital feudal courts. The Flemish *curia* already appears in the tenth century, but it only functioned as a feudal court from the eleventh on. From the middle of the twelfth century the *curia*'s workload expanded enormously. The counts of Flanders did not really have a plan for coping with this, but by ad hoc measures rather than by design a network of local feudal courts came into existence. In a first stage, in the 1150s and 60s, when the count acquired some counties and lordships of his vassals through escheat, his policy, in so far as it can be called that, was to leave their existing feudal courts intact and to send a pre- or proto-bailiff to replace him as its president. During the next two decades the count established new courts in his old domain by, once again, 'recycling' existing institutions, as castle garrisons which had become obsolete from a military point of view were transformed into local comital courts. Only in a third stage, from the end of the twelfth century, completely new courts were set up and this continued during the first half of the thirteenth century. The rise of local comital feudal courts in time led Flemish feudalism to more complexity, each of the local courts developing its own variant of the once unitary Flemish feudal law, which in its turn led to problems of conflicts of feudal laws within Flanders. Another element of the Flemish complexity is that, although the idea of hierarchy was very clear when the count was concerned<sup>17</sup>, for the others the feudal pyramid could be more of a web with cross-participations<sup>18</sup>.

Given its precocity, Flanders influenced developments in Lotharingia. This is most of all true for small Cambrai and for Hainault, in the latter case due to personal unions with Flanders (1051-1071, 1191-1278). Other principalities were also influenced by Flanders in many different ways. For Holland, one can point to Zeeland west of the Scheldt which the count of Holland held from Flanders. However, Flemish influence was far from absolute. For example, in Zeeland west of the Scheldt, Flemish overlordship did not stand in the way of a native feudal law, which had a lot of particularities<sup>19</sup>.

### 3. The sources of feudalism in Flanders and Lotharingia

No matter the differences between Flanders and Lotharingia, the sources of feudalism are alike. Needless to say, legislation is conspicuous by its absence, though the twelfth

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<sup>14</sup> KOCH, Oorkondenboek (note 12), I.

<sup>15</sup> T. DE HEMPTINNE and A. VERHULST, with L. DE MEY, De oorkonden der graven van Vlaanderen (juli 1128-1191), II/1, Brussels 1988 (vol II/2/1, 2001; vol. II/2/2 forthcoming).

<sup>16</sup> HEIRBAUT, Lenen (note 8), p. 37 n. 130.

<sup>17</sup> HEIRBAUT, Heren (note 8), p. 99-116.

<sup>18</sup> See e.g. the complexity of the feudal relationships of the castellan of Arras with the abbey of St Vaast (VAN DRIVAL, Cartulaire de l'abbaye de Saint-Vaast d'Arras rédigé au XIIe siècle par Guimann, Arras 1875, p. 241-243). Cf. for CAMBRAI, ARMAND D'HERBOMEZ, Chartes de l'abbaye de Saint-Martin de Tournai, Brussels 1898-1901, I, nr. 91, p. 92-94 (1162).

<sup>19</sup> Cf. HEIRBAUT, Lenen (note 8), p. 53-56.

century ends with the Feudal Charter of the count of Hainault<sup>20</sup> and there may have been feudal legislation in Flanders somewhat earlier<sup>21</sup>. The typically feudal documents of a later era are still absent in the twelfth century, apart from a few infeudation charters at the end<sup>22</sup>. In this case, at least for Flanders, there is more at play than the general documentary situation, as even in the thirteenth century lists and registers of fiefs, *aveus* and *dénombrements* are mostly lacking and when they can be found there are exceptional circumstances. For example, charters attesting the investiture and its conditions were mostly given to foreigners<sup>23</sup>.

The absence of typically feudal documents in Flanders has several explanation: the contingents which a vassal had to lead to the count's army were not fixed (the count could call all a baron's men to his army<sup>24</sup>) and neither could that vassal substitute a monetary payment for his service<sup>25</sup>, which made an administration of feudal relationships less necessary in Flanders. For changes in ownership, whether by transactions amongst the living or by death, the lord's intervention was needed, so he had, once again, less need to keep track of them. Most important of all was the gift by count William Clito of his reliefs to the Knights Templar in 1127, the Templars henceforth taking care of their collection by having their own personnel at the comital court<sup>26</sup>. The gift to the Templars had some other consequences, like the freezing of the maximum for the relief at 10 lb<sup>27</sup>. or the preference for an augmentation of an existing fief over the investiture with a new one, because in the latter case one would have to pay an extra 10 lb<sup>28</sup>. The count of Flanders inspired not only many of his own vassals, but also his neighbours to follow his example: the count of Hainaut in 1139<sup>29</sup>, the duke of Brabant in

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<sup>20</sup> LEOPOLD DEVILLERS, Chartes du comté de Hainaut de l'an 1200, reproduction des originaux avec introduction, traduction et notes, Mons 1898, p. 2-7.

<sup>21</sup> DIRK HEIRBAUT, Thirteenth century legislation on mortmain alienations in Flanders and its influence upon France and England, in: Law in the city, ed. ANDREW LEWIS, PAUL BRAND and PAUL MITCHELL, Dublin 2007, p. 56-57; DIRK HEIRBAUT, The quest for the sources of a non-bureaucratic feudalism: Flemish feudalism during the High Middle Ages (1000-1300), in: Le vassal, le fief et l'écrit. Pratiques d'écriture et enjeux documentaires dans le champ de la féodalité (XIe-XVe s.), ed. JEAN-FRANÇOIS NIEUS, Louvain-la-Neuve, 2007, p. 108-109.

<sup>22</sup> See JEAN-FRANÇOIS NIEUS, Et hoc per meas litteras significo. Les débuts de la diplomatie féodale dans le Nord de la France (fin XIIe-milieu XIIIe siècle), in: Le vassal, le fief et l'écrit (note 21), p. 73-74. Add to the references there: D'HERBOMEZ, Saint-Martin de Tournai (note 18), I, nr. 256, p. 163-165 (1191).

<sup>23</sup> HEIRBAUT, Quest (note 21), p. 104-107.

<sup>24</sup> DIRK HEIRBAUT, Flanders: a pioneer of state-oriented feudalism? Feudalism as an instrument of comital power in Flanders during the High Middle Ages (1000-1300)', in: Expectations of the law in the Middle Ages, ed. ANTHONY MUSSON, Woodbridge 2001, p. 27.

<sup>25</sup> HEIRBAUT, Quest (note 21), p. 101, esp. n. 24.

<sup>26</sup> HEIRBAUT, Quest (note 21), p. 102-104.

<sup>27</sup> HEIRBAUT, Lenen (note 8), p. 109-110.

<sup>28</sup> See for a later example, JEAN-MARIE DUVOSQUEL, La création d'un fief par le seigneur de Comines en 1269: Vlédéricq à Comines-France, in: Mémoires de la société d'histoire de Comines et de la région 13, 1983, nr. 1, p. 65-66 (1269). Outside Flanders vassals also received augmentations of their fief (JOSEPH HALKIN and CHARLES-GUSTAVE ROLAND, Recueil des chartes de l'abbaye de Stavelot-Malmédy, Brussels 1909, nr. 173, p. 319-320 (1133)).

<sup>29</sup> CHARLES DUVIVIER, Actes et documents anciens intéressant la Belgique, Brussels 1898-1903, II, nr. 16, p. 35-36 (1139).

1142<sup>30</sup>. In Hainaut this had somewhat the same results as in Flanders, like the freezing of the maximum, though this time at 60 s. instead of 10 lb<sup>31</sup>. Brabant still remains to be studied and it may very well be that differences with Flanders were greater, because the duke only gave to the Templars a share in the revenues of the reliefs<sup>32</sup>.

Another category of documents which is lacking are the domanial documents, though there are a few exceptions. In Flanders the 1187 *Gros Brief* containing the count's manorial revenues is an excellent source about *fief-rentes*, though it proves most of all that there was not much differentiating them from other fiefs<sup>33</sup>. Another interesting document is the *censier* of Guiman from around 1168 for the St Vaast abbey in Arras<sup>34</sup>. It is full of persons who have more than one liege lord or who were twice or more liege vassals of the abbey, which indicates that, in its original sense, liegeancy by then had become meaningless<sup>35</sup>.

In the absence of other sources, the researcher on feudalism in Flanders and Lotharingia has to turn to narrative sources and charters. Ganshof extensively used the *Gesta episcoporum Cameracensium*, Galbert of Bruges and Gislebert of Mons and one can add a few other sources, like Lambert of Ardres's *Historia comitum Ghisnensium*. This category of sources has several deficiencies. First of all, not for every principality and for every era does one have good and informative sources. Another problem is that in many cases the authors inform us about events which happened long before their own time, so that their reliability is suspect, if only for viewing the past with the eyes of their own time and thus using its terminology<sup>36</sup>. Even if they are contemporaries, the truth may still be distorted, Gislebert of Mons being a case in point. In his chronicle he shows himself to be an ardent supporter of his master, the count of Hainaut, and this diminishes his value as a source about feudal practices. For example, reading Gislebert one might have the impression that the count of Hainaut enjoyed rights over his vassals' castles which were as extensive as in Flanders, but in reality they were not and the chronicle is more an expression of the count's aspirations than of contemporary reality<sup>37</sup>.

The journal of Galbert of Bruges is an exception, because Galbert comes closer to being a neutral observer, but in his case there are other inconveniences. He wrote a journal

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<sup>30</sup> LAURENT DAILLIEZ, *Les Templiers en Flandre-Hainaut-Brabant-Liège et Luxembourg*, Nice 1978, nr. 17, p. 315-316 (1142).

<sup>31</sup> DIDIER, *Fiefs* (note 3), p. 231.

<sup>32</sup> For example, the amount of the relief was changed several times during the Middle Ages (PHILIPPE GODDING, *Le droit privé dans les Pays-Bas méridionaux du 12e au 18e siècle*, Brussels 1987, p. 160).

<sup>33</sup> DIRK HEIRBAUT, *The fief-rente: a new evaluation based on Flemish sources (1000-1305)*, in: *Tijdschrift voor rechtsgeschiedenis* 67, 1999, p. 1-37.

<sup>34</sup> About Guimann and his work, see ROBERT BERKHOFER, *Day of reckoning. Power and accountability in medieval France*, Philadelphia 2004, p. 75, 81-83, 108-111, 149-154.

<sup>35</sup> VAN DRIVAL, *Cartulaire* (note 18), *passim*.

<sup>36</sup> See e.g. the suspicions of Deutinger about the term *ligius* in Gislebert of Mons (ROMAN DEUTINGER, *Seit wann gibt es die Mehrfachvassalität*, in: *Zeitschrift der Savigny Stiftung für Rechtsgeschichte, Germanistische Abteilung* 119, 2002, p. 100 n. 75; see, however, also *infra* for another opinion).

<sup>37</sup> JEAN-MARIE CAUCHIES, *Les châteaux et le pouvoir en Hainaut*, in: *Châteaux-chevaliers en Hainaut au Moyen Age*, Brussels 1995, p. 29-37. See also MICHEL DE WAHA, *Du pagus de Brabant au comté de Hainaut. Eléments pour servir à l'histoire de la construction de la principauté*, in: *Annales du Cercle archéologique du canton de Soignies* 36, 1998, p. 72-73, 79-80; MICHEL DE WAHA, *Châteaux et construction territoriale en Hainaut*, in: *Châteaux-chevaliers en Hainaut*, p. 66-68.

because he was living in exceptional times with a murdered count, the extermination of the clan which murdered him and the Flemish civil war of 1127-1128, but because of that, his journal is not representative of normal practices. Nevertheless, it remains one of the most interesting texts about the Middle Ages one can read, as long as one does not forget that events which drove an early twelfth century cleric to keep a journal were, by definition, anything but ordinary<sup>38</sup>.

#### 4. Charters: too distorted, too late?

Fortunately for research, there are still charters, many of them for Flanders, fewer for the other principalities of the Southern Netherlands and even fewer for the Northern Netherlands. Diestelkamp's study of feudal law in Katzenelnbogen<sup>39</sup> has shown, once and for all, that charters are very good sources for studying feudalism in action. However, in the twelfth century charters for Flanders and Lotharingia many aspects of feudalism are absent. An example of this is 'feudal criminal law' (*Lehnstrafrecht*) with harsher punishments for vassals who had committed criminal acts towards their lord. Without the narrative sources one would remain completely ignorant about this aspect<sup>40</sup>. Most charters were issued to offer proof of a feudal transaction, but even then they are not perfect. The proceedings which took place were never described in full, which is understandable because they did not have to be. At first the lord's permission was sufficient, later the intervention of a feudal court, but then, if the right procedure had been followed, mentioning that was enough. Consequently, the researcher can only find snippets of the procedure which was followed. Only in Flanders during the second half of the twelfth century there are a few charters which contain somewhat more detailed information, though research of the terminology shows that more elaborate charters of the thirteenth century offer more details, but do not describe radically different proceedings<sup>41</sup>.

Even the incomplete view we find in the charters is distorted by other elements. One may think here of the specific goals of the persons concerned, but also of their legal character. This can be illustrated by the concept of *necessitas*<sup>42</sup> or *paupertas*<sup>43</sup>. The principle that a fief could be sold without the consent of one's relatives because of *necessitas* or *paupertas* appears in Lotharingia during the thirteenth century<sup>44</sup>, but in Flanders already in 1124, when the count of Guines gave his permission for alienations „*paupertate cogente*”<sup>45</sup>. However, it

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<sup>38</sup> DIRK HEIRBAUT, Not European feudalism, but Flemish feudalism. A new reading of Galbert of Bruges' data on feudalism in the context of early twelfth century Flanders (forthcoming).

<sup>39</sup> BERNHARD DIESTELKAMP, Das Lehnrecht der Grafschaft Katzenelnbogen. (13. Jahrhundert bis 1479), Aalen 1969.

<sup>40</sup> Cf. HEIRBAUT, Heren (note 8), p. 268-271.

<sup>41</sup> DIRK HEIRBAUT, De procedure tot overdracht van onroerende goederen in het oud-Vlaamse recht: enkele voorbeelden uit de dertiende eeuw, in: Handelingen van de Maatschappij voor Geschiedenis en Oudheidkunde van Gent 51, 1997, p. 37-59

<sup>42</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 373, p. 151-152 (1174).

<sup>43</sup> FRANÇOIS MORAND, Appendice au cartulaire de l'abbaye de Saint-Bertin, Paris 1867, nr. 45, p. 36-38 (1124). Both terms could be combined as in: „*paupertatis necessitate*” (ARMAND D'HERBOMEZ, Histoire des châtelains de Tournai de la maison de Mortagne. Preuves, in: Mémoires de la société historique et littéraire de Tournai 25, 1895, nr. 18, p. 22-23 (1191)).

<sup>44</sup> See for examples, DIDIER, Fiefs (note 3), p. 120-121.

<sup>45</sup> MORAND, Appendice (note 43), nr. 45, p. 36-38 (1124).

would be wrong to conclude from this that the so-called impoverishment of the nobility struck earlier in Flanders than elsewhere (one may think of Geoffrey of Bouillon who had to mortgage Bouillon to finance his participation in the first crusade) or even that the nobles were indeed getting poorer, as the sale sometimes happened because a good price was offered, not because one was destitute<sup>46</sup>. ‘Legal poverty’ can be very different from the real thing. Another element which is sometimes wrongly understood is that although *necessitas* and *paupertas* were linked to the lord’s consent, their main role was to ensure that the *laudatio parentum*, the family’s consent was no longer needed<sup>47</sup>.

Linguistic issues also have to be taken into account. Reading the twelfth century Latin charters, one is struck by the variety in the terminology. Homage for example can be *hominium* (the most popular term in the twelfth century<sup>48</sup>), *homagium*<sup>49</sup> or *hominagium*<sup>50</sup>. In Old French and Middle Dutch there was no confusion, as these languages used one and the same word, in Old French *houmage* and in Middle Dutch *manscepe*, but these vernacular terms appear only in the thirteenth century. Thus, our charters may, because of the language they use, give the impression of a terminological complexity which did not exist in reality. Unfortunately, the expression „*quod vulgo dicitur*”, as in: „*beneficium quod vulgo dicitur feodum*”<sup>51</sup>, is only helpful for the terminology concerning the relief<sup>52</sup>.

The differences between Latin and vernacular terminology and the greater precision of the latter are related to the presence of specialists of feudal law, the spokesmen of the feudal courts<sup>53</sup>. These operated through a series of questions by the lord, the court’s president, and

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<sup>46</sup> Cf. DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 632 (1178-1182; St Bavo Ghent) (as this volume has not yet been published, I have not only mentioned the date, but also the destinatory, as it is still possible that the numbering of the charters in this volume undergoes some small changes).

<sup>47</sup> HEIRBAUT, Lenen (note 8), p. 146-147; cf. DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 373, p. 151-153 (1174).

<sup>48</sup> FERNAND VERCAUTEREN, Actes des comtes de Flandre (1071-1128), Brussels 1938, nr. 111, p. 254-257; DUVIVIER, Actes (note 29), nr. 64, p. 131-133 (1187).

<sup>49</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 95, p. 155-157 (1146); JOSEPH-JEAN DE SMET, Cartulaire de l’abbaye de Cambron, Brussels 1869, II, nr. 8, p. 741-742.

<sup>50</sup> M. EVRARD, Documents relatifs à l’abbaye de Flône, Analectes pour servir à l’histoire ecclésiastique de la Belgique 23, 1892, nr. 24, p. 324-326 (1157). There are, of course, also the usual spelling variants, like *homynium* instead of *hominium* (De Hemptinne and Verhulst, Oorkonden (note 15), II/1, nr. 202, p. 313-315 (1150-1162)).

<sup>51</sup> AUBERTUS MIRAEUS and JOHANNES FOPPENS, Opera diplomatica et historica, Brussels 1723-1784 I, nr. 28, p. 515 (1087).

<sup>52</sup> „*debitum quod vulgo relevium dicitur*” (DUVIVIER, Actes (note 29), II, nr. 16, p. 35-36 (1139)). Most of these examples, however, concern reliefs for non-feudal tenures (e.g. „*quod vulgo relif dicitur*” (DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 109, p. 174-178 (1147)); cf. in Middle Dutch „*emptionem que vulgo dicitur cop*”, DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 186, p. 291 (1160).

<sup>53</sup> About the spokesmen, see DIRK HEIRBAUT, The oldest part of the Lois des pers dou castel de Lille (1283-1308/1314) and the infancy of case law and law reporting on the continent, Tijdschrift voor rechtsgeschiedenis 75, 2007, p. 139-152; DIRK HEIRBAUT, Who were the makers of customary law in medieval Europe? Some answers based on sources about the spokesmen of Flemish feudal courts, Tijdschrift voor rechtsgeschiedenis 75, 2007, p. 257-274; DIRK HEIRBAUT, Une méthode pour identifier les porte-parole des juridictions de droit coutumier en Europe du Nord au Haut Moyen Âge, fondée sur une prosopographie des porte-

his men, the court's members. More complex questions were only answered after some deliberation and by a spokesman. The role of the latter, a semi-professional specialist of feudal law, is well documented in Flanders at the end of the thirteenth century, but an 1122 and an 1148 charter prove that spokesmen were already present in the first half of the twelfth century:

1122: the count of Flanders to his barons: „*Domini, obtestor vos per fidem quam michi debetis, ite in partem et iudicio irrefragabili decernite, quid Ingelberto, quid monachis conveniat responderi. Qui euntes communicato consilio redeuntes, per Robertum advocatum (= Robert, advocate of Bethune) responderunt*”.<sup>54</sup>

1148: „*adiuratis baronibus meis... precepi (the countess of Flanders) ut quid abbacie et ecclesie, quid Helvino facere deberem... iudicarent. Communicato itaque consilio omnes unanimiter per Anselmum de Husdenio (= Anselm of Houdain) nobilem virum et dapiferum nostrum iudicaverunt*”.<sup>55</sup>

Unfortunately, the first texts written by these spokesmen themselves date only from 1276 and these were, so far, the only two twelfth century charters found, which expressly indicate the spokesman. However, around 1300 the spokesman is in Flanders always the first in the list of the charter's witnesses and the 1122 and 1148 charters apply the same rule<sup>56</sup>. More research is needed to confirm this and also to find out if and from what date this was also the case in other regions, but it is interesting to note that the charters sometimes contain more information than we give them credit for and that we have not yet exhausted all possibilities.

The charters which have come to us were written for churches and this is a final problem confronting us. Some goods are more popular objects of an enfeoffment than others. Going through the charter material it is as if tithes, parish churches and advowries were the most common, but this only means that monasteries were more interested in acquiring them. The monasteries' concerns also mean that feudalism appears in a negative way because a privilege or another document states that an advowry<sup>57</sup> or a mayorship<sup>58</sup> may not be enfeoffed. Another negative appearance of feudalism is a renunciation by a person who had claimed certain goods as his fief<sup>59</sup>.

In the northern part of Lotharingia negative appearances of feudalism were still as important as the few references to actual fiefs in the twelfth century<sup>60</sup>, but they show that fiefs existed, or at least were known, some time before they were acquired by churches and the

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parole de Cassel et de Lille autour de 1300, in: Les praticiens du droit du Moyen Âge à l'époque contemporaine. Approches prosopographiques (Belgique, Canada, France, Italie, Prusse), ed. VINCENT BERNAUDEAU, JEAN-PIERRE NANDRIN, BÉNÉDICTE ROCHET, XAVIER ROUSSEAU and AXEL TIXHON, Rennes 2008, p. 25-43.

<sup>54</sup> VERCAUTEREN, Actes (note 48), nr. 108, p. 247-251.

<sup>55</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr.111, p. 179-182.

<sup>56</sup> DIRK HEIRBAUT, The spokesmen of the medieval courts: unknown leading judges of customary law and makers of the first continental law reports (forthcoming).

<sup>57</sup> AMBROSIUS ERENS, De oorkonden der abdij Tongerlo, Tongerlo 1948-1952, I, nr. 4, p. 8-9 (1159); LUDOLF SLOET, Oorkondenboek der graafschappen Gelre en Zutphen, nr. 229, p. 224-225 (1118-1127).

<sup>58</sup> HALKIN and ROLAND, Recueil (note 28), I, nr. 261, p. 494-496 (1167).

<sup>59</sup> KOCH, Oorkondenboek (note 12), I, nr. 169, p. 317-319 (1174).

<sup>60</sup> For example, the count of Holland for the first time uses the words *feodum* and *beneficium* when deciding that an advowry should not be enfeoffed (KOCH, Oorkondenboek (note 12), I, nr. 169, p. 317-319 (1174).



charter material about them becomes abundant<sup>61</sup>. In fact, most of the time a fief becomes visible only when it is about to end its existence, when it is acquired by a church and becomes an allod or a non-feudal tenure. Only a chance reference may tell us something about its prior history, some fiefs already having been the object of several transactions amongst laymen before they ended up in the hands of the church<sup>62</sup>. Thus, fiefs were present some generations before the attestations of their existence become numerous, which explains the gap in Flanders between the breakthrough of fiefs around 1000 and the references to transactions concerning fiefs from the second quarter of the twelfth century. Given that for an alienation of a fief the lord's consent was necessary (though at first many vassals seem to have applied the principle that it is easier to ask forgiveness than to get permission), vassals first chose to sell or donate their allods. Many parts of Lotharingia were still at this stage in the twelfth century with transactions of fief being exceptional. In others, like Hainault, their breakthrough comes later than in Flanders. In Flanders, evolution had led to a crowding out of allods by fiefs in noble patrimonies. First of all, with every alienated allod, the percentage of fiefs grew. Even more important was the system of primogeniture, which was absolute, the *primogenitus* (the term only appears from the 1140's and becomes popular from the end of the century in Flanders and, to a lesser extent, Hainaut), inheriting all the fiefs, whereas non-feudal lands were divided equally amongst the children. This meant that the percentage of fiefs in his patrimony was much higher than in his father's and that it would be ever higher in succeeding generations. In time, an aristocratic family's patrimony became largely feudal, not because the number of fiefs had grown, but because non-feudal goods had been driven out. (Which also explains why fiefs had to be sold because of 'poverty'.) Flanders reached the point where fiefs became important in the second quarter of the twelfth century and lay allods are seldom mentioned in the thirteenth century. In Lotharingia this point was reached later, or not at all, because fiefs appeared later and inheritance rules were different. However, one should not exaggerate this. That fiefs became important within the patrimonies of fiefholders does not mean they came to dominate society as such<sup>63</sup>. The idea of a feudal society in Flanders, home to some of the biggest cities at this side of the Alps, can only be called absurd.

## 5. Entering the lord-man relationship

Neither in Flanders nor in Lotharingia, was the word *senior* used for the lord, as the term *dominus* had somewhat of a monopoly. However, for his man many terms can be used, but not *vassus* or *vassallus*, though these words were not unknown, as there were two persons in Flanders who are called *vassal* because it was a part of their name<sup>64</sup>. Apart from that, the terms are most of all *homo*<sup>65</sup>, but also *fidelis*<sup>66</sup> and, more exceptional, *miles*<sup>67</sup>. Many words are

<sup>61</sup> Cf. „*ex antiquo quibusdam hominibus in beneficium feodi nomine concessam*” (L. SLOET, Oorkondenboek (note 57), nr. 321, p. 317 (1167-1191)).

<sup>62</sup> E.g. GUILLAUME PIOT, Cartulaire de l'abbaye de Saint-Trond, Brussels 1870, I, nr. 62, p. 84-85 (1154) mentions that the donator had himself bought the fief from the previous heirs.

<sup>63</sup> Cf. GÉNICOT, Économie (note 4), p. 301 n. 1.

<sup>64</sup> VERCAUTEREN, Actes (note 48), nr. 110, p. 253-254 (1122); AUGUSTE VAN LOKEREN, Chartes et documents de l'abbaye de Saint Pierre au Mont-Blandin à Gand, Ghent 1868-1871, I, nr. 189, p. 165 (1177).

<sup>65</sup> E.g. DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 52, p. 90-92 (1139); DUVIVIER, Actes (note 29), II, nr. 53, p. 104-106 (1180).

<sup>66</sup> E.g. DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 758 (1183-1189; abbey of St Peter Ghent); HALKIN and ROLAND, Recueil (note 28), I, nr. 240, p. 477-479 (1159).

used for men of a higher status, most of all *baro*<sup>68</sup>, but also other words like *procer*<sup>69</sup>, *princeps*<sup>70</sup>, *primor*<sup>71</sup>, or *optimas*<sup>72</sup>, but, as with the word *miles* one should always look at the context to check whether it is justified to derive a feudal relationship from these terms. These specific words for the highest vassals are mainly a Flemish phenomenon<sup>73</sup>, and they are most popular in the count's charters, e.g. to distinguish his men from those of a simple lord<sup>74</sup>, though the count of Hainaut (under Flemish influence) also liked to set his barons apart<sup>75</sup>. A few terms may be specific for certain regions only, like the very enigmatic word *vavassor* in Flanders. The *vavassor* was not a rear-vassal, as some of these were called *vavassores*, but others were not<sup>76</sup>, whereas there were also *vavassores* who were tenants in chief<sup>77</sup>. The *vavassores* seem to have been the lesser vassals<sup>78</sup>, but some free non-feudal tenants were also called *vavassores*<sup>79</sup>. However, none of the words found necessarily has a feudal meaning. The context always has to be taken into account to determine whether a relationship was feudal or not. In some cases epitheta like *feodalis*<sup>80</sup>, *feodarius*<sup>81</sup>, or *feodatus*<sup>82</sup> leave no room for doubt, but the situation is not always that clear.

The charters with the most information about a lord-man relationship document the entrance of one territorial prince into the vassalage of another. The counts of Flanders had an exceptional position, because they seem to have been very conscious of hierarchy and therefore avoided becoming the men of others than kings or clerical princes<sup>83</sup>, whereas their 'peers' in Lotharingia only became concerned about this when the *Heerschildordnung* came

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<sup>67</sup> MICHÈLE COURTOIS, Chartes originales antérieures à 1121 conservées dans le département du Nord, Nancy 1981, I, p. 62-63; RAOUL NAZ, L'avouerie de l'abbaye de Marchiennes, Paris 1924, p. 20-22 (1038; see about this charter below).

<sup>68</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 255, p. 404-407 (1166).

<sup>69</sup> VERCAUTEREN, Actes (note 48), nr. 62, p. 147-148 (1113).

<sup>70</sup> WALTER PREVENIER, De oorkonden der graven van Vlaanderen (1191-aanvang 1206), Brussels 1964, II, nr. 33, p. 82-87 (1195).

<sup>71</sup> VERCAUTEREN, Actes (note 48), nr. 108, p. 247-251 (1122).

<sup>72</sup> VERCAUTEREN, Actes (note 48), nr. 98, p. 223-225 (1119-1120).

<sup>73</sup> The counts in the South of Flanders (about their relationship to Flanders, the definitive article is JEAN-FRANÇOIS NIEUS, 'Aux marges de la principauté: les «comtés vassaux» de la Flandre, fin Xe-fin XIIe siècle', in: VIe Congrès de l'association des Cercles francophones d'histoire et d'archéologie de Belgique, Mons 2002, p. 309-324) also used the term barons for their highest vassals (e.g. JEAN-FRANÇOIS NIEUS, Les chartes des comtes de Saint-Pol (XIe-XIII siècles), Turnhout 2008, nr. 12, p. 95-96 (1146-1149)).

<sup>74</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 178, p. 281-282 (1157-1159/1164).

<sup>75</sup> DUVIVIER, Actes (note 29), II, nr. 41, p. 78-81 (1174).

<sup>76</sup> VAN DRIVAL, Cartulaire (note 18), p. 260.

<sup>77</sup> Van DRIVAL, Cartulaire (note 18), p. 338.

<sup>78</sup> Cf. PREVENIER, Oorkonden (note 70), II, nr. 157, p. 337-345 (1201).

<sup>79</sup> DE LAPLANE, L'abbaye de Clairmarais, Saint-Omer 1864, nr. 6, p. 318-319 (1145).

<sup>80</sup> EDGAR DE MARNEFFE, Cartulaire de l'abbaye d'Afflighem et des monastères qui en dépendaient, Leuven 1894-1901, nr. 223, p. 301-303 (1196).

<sup>81</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 414, p. 209-210 (1176).

<sup>82</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 18, p. 42-43 (1132).

<sup>83</sup> HEIRBAUT, Flanders (note 24), p. 33-34; HEIRBAUT, Galbert (note 38).

into existence<sup>84</sup>. Likewise distinctions between the elite of the vassals, the barons and the others are found more in Flanders, but the peers of Flanders are not yet mentioned in twelfth century charters<sup>85</sup>. In the second half of the twelfth century there is another general growth in the awareness of hierarchy, as lords say that fiefs ‘descend’<sup>86</sup> or ‘move’<sup>87</sup> from them.

The men can be found in all social strata<sup>88</sup>, but burgesses are seldom mentioned in the sources and, if so, only at the end of the twelfth century<sup>89</sup>. For serfdom the situation was very different in Flanders and Lotharingia, as by the early twelfth century the *ministeriales* no longer existed as a distinct group in Flanders, the efforts of count Charles the Good to bring the Erembald clan back to serfdom going against the trend. There seems to have been no bar against serfs holding fiefs in Flanders, but they are found very exceptionally<sup>90</sup>. In Lotharingia the *ministeriales* still had a separate identity in the twelfth century<sup>91</sup>, but their situation was very diverse. Nevertheless, it was common for *ministeriales* to have fiefs<sup>92</sup> and they preferred to hold their offices as fiefs because these were hereditary<sup>93</sup>. Lords were not always willing to accommodate them and wanted offices to be held „*iure et lege ministeriorum et non iure benefitorum*”<sup>94</sup>, but they were more successful with this in the less developed North<sup>95</sup>. Understandably, *ministeriales* could be seduced away from their lords by giving them fiefs, hence a promise of a prince not to give fiefs to an abbey’s serfs, so that its authority over these persons would not be endangered<sup>96</sup>. It should be noted here that, although the *ministeriales* have been well studied for the Northern Low Countries, where early documents

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<sup>84</sup> D. HEIRBAUT, On and over the edge of the Empire: the counts of Flanders and Hainault and the election of the kings of the Romans (1000-1314), in: Königliche Tochterstämme, Königswähler und Kurfürsten, ed. ARMIN WOLF, Frankfurt 2002, p. 429-430. For example, even the bishop of Cambrai could hold a fief from the count of Hainaut (HEINRICH APPELT, Die Urkunden Friedrichs I., II (MGH, DD, F I/2), Hannover 1979, nr. 493, p. 417-418 (1165)).

<sup>85</sup> They are mentioned in narrative sources. In the thirteenth century they also appear in the charters because only then did they form a separate section of the Flemish *curia* (HEIRBAUT, Heren (note 8), p. 164-171).

<sup>86</sup> LUDO MILIS, De onuitgegeven oorkonden van de Sint-Salvatorsabdij te Ename voor 1200, Brussels 1965, nr. 43, p. 27-28 (1155).

<sup>87</sup> FÉLIX ROUSSEAU, Actes des comtes de Namur de la première race, 946-1196, Brussels 1936, nr. 21, p. 51-52 (1179).

<sup>88</sup> Cf. APPELT, Urkunden Friedrichs I. (note 84), IV, nr. 826, p. 31-33 (1182).

<sup>89</sup> Cf. HENRI DELABORDE e.a., Recueil des actes de Philippe-Auguste, roi de France, Paris 1916-2005, I, nr. 224, p. 268-274 (1188); RAOUL VAN CAENEGEM and LUDO MILIS, Kritische uitgave van de „Precepta” van graaf Filips van de Elzas voor de stad Gent (1178), in: Handelingen van de maatschappij voor geschiedenis en oudheidkunde van Gent 33, 1979, p. 99-115 (1178).

<sup>90</sup> HEIRBAUT, Heren (note 8), p. 75-79.

<sup>91</sup> DE MARNEFFE, Afflighem (note 80), nr. 111, p. 171 (1160); LÉOPOLD DEVILLERS, Chartes du chapitre de Sainte-Waudru de Mons, Brussels 1899-1913, nr. 22, p. 36-38 (1195).

<sup>92</sup> HALKIN and ROLAND, Recueil (note 28), I, nr. 143, p. 289-291 (1124).

<sup>93</sup> FRIEDRICH HAUSMANN, Die Urkunden Konrad III. und seines Sones Heinrich (MGH, DD, K III), Vienna 1969, nr. 40, p. 64-66 (1140).

<sup>94</sup> EMIL VON OTTENTHAL and HANS HIRSCH, Die Urkunden Lothars III. und Kaiserin Richenza (MGH, DD, Lo III), Berlin 1927, nr. 35, p. 57-59 (1131).

<sup>95</sup> SAMUEL MULLER, KLAAS HEERINGA e.a., Oorkondenboek van het Sticht Utrecht tot 1301, Utrecht-The Hague 1920-1959, I, nr. 462, p. 412-413 (1169).

<sup>96</sup> GÉNICOT, Economie (note 4), III, nr. 1A, p. 370-373 (1131).

are lacking, the situation in the South is less studied and, certainly for Flanders, Ganshof's book about the *ministeriales*<sup>97</sup>, has become completely obsolete. Another difference between Flanders and Lotharingia is the role of women. The female fiefholder, and even the *primogenita*,<sup>98</sup> is more prominent in Flanders and from an earlier date than in Lotharingia<sup>99</sup>, where there was more resistance to inheritance by women<sup>100</sup>.

The charters are sketchy about the ritual for becoming a lord's man and only a few mention it. Homage is the most important, while fealty is in many cases not even mentioned. Even the fief will be brought into the sphere of homage, as a vassal holds goods „*in feodum et in homagium*”<sup>101</sup>. The gesture of the hands, the *immixtio manuum* (the expression is not used) may be mentioned, but not the kiss, which can be found in Galbert's famous description of the homage and fealty by the Bruges vassals to William Clito in 1127<sup>102</sup>. Fealty is described as *fidelitas*<sup>103</sup>, but also as *fides*<sup>104</sup>. The distinction between *securitas* (negative obligations) and *fidelitas* (positive obligations) is found in narrative sources<sup>105</sup>, but not in charters. Fealty consists of a promise confirmed by an oath (Flanders and Hainaut<sup>106</sup>), or only the latter

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<sup>97</sup> FRANÇOIS-LOUIS GANSHOF, *Étude sur les ministériales en Flandre et en Lotharingie*, Brussels 1926. For the Northern Low Countries, see e.g. A.L.P. BUITELAAR, *De Stichtse ministerialiteit en de ontginningen in de Utrechtse Vechtstreek*, Hilversum 1993.

<sup>98</sup> DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/2/1, nr. 373, 151-152 (1174). For a *primogenita* in Hainaut, see LÉOPOLD DEVILLERS, *Mémoires sur les cartulaires de l'abbaye de Saint-Denis-en Broqueroie*, in: *Annales du Cercle archéologique de Mons* 10, 1871, nr. 26, p. 125-126 (1198).

<sup>99</sup> HEIRBAUT, *Lenen* (note 8), p. 63-64.

<sup>100</sup> In 1071 there is already Richilde of Hainaut holding Hainaut from Duke Geoffrey of Lotharingia and it is also foreseen that, if a heiress marries according to the advice of the bishop of Liège, the new overlord of Hainaut, her husband can hold Hainaut (LUDWIG WEILAND, *Constitutiones et acta publica imperatorum et regum*, (MGH, Const.), I, Hannover 1893, nr. 441, p. 649-650), but this was in very special and complex circumstances (FRANÇOIS-LOUIS GANSHOF, 'Note sur le rattachement féodal du comté de Hainaut à l'église de Liège', in: *Miscellanea J. Gessler*, Deurne 1948, p. 508-521). Female fiefholders and heiresses could be found in Lotharingia during the twelfth century (JOSEPH BARBIER and VICTOR BARBIER, *Histoire de l'abbaye de Floeffe de l'Ordre des Prémontrés*, Namur 1892, nr. 11, p. 8-9 (1134)), but in many cases female inheritance had to be expressly stipulated, whereas male inheritance was so natural that it is not even mentioned (PIERRE DE RAM, *Chronique des ducs de Brabant par Edmond de Dinter*, Brussels 1854-1860, II, p. 118 (1191); DEVILLERS, *Chartes Hainaut* (note 20), p. 2-7 (1200); Muller and Heeringa, *Oorkondenboek Utrecht*, I, nr. 527, p. 465-467 (1196)).

<sup>101</sup> STANISLAS BORMANS and EMILE SCHOOLMEESTERS, *Cartulaire de l'église de Saint-Lambert*, Brussels 1894-1900, I, nr. 54, p. 91 (1178).

<sup>102</sup> See HEIRBAUT, 'Galbert' (note 38).

<sup>103</sup> DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/2/2 (1190; abbey of St Bertin Saint-Omer); DUVIVIER, *Actes* (note 29), II, nr. 64, p. 131-133 (1187).

<sup>104</sup> VERCAUTEREN, *Actes* (note 48), nr. 30, p. 88-95 (1101); ROUSSEAU, *Actes* (note 87), nr. 25, p. 55-58 (1184).

<sup>105</sup> HEIRBAUT, 'Galbert' (note 38).

<sup>106</sup> DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/1, nr. 95, p. 155-157 (1146); D'HERBOMEZ, *Saint-Martin de Tournai* (note 18), I, nr. 156, p. 163-164 (1191); ROUSSEAU, *Actes* (note 87), nr. 25, p. 55-58 (1184).

(elsewhere<sup>107</sup>). Investiture with a fief follows after homage and fealty<sup>108</sup>, but it lacks a specific terminology<sup>109</sup> and detailed information is not provided, only the hands of the lord being mentioned<sup>110</sup>.

The new man could be a liege vassal, though liegeancy is seldom mentioned. The word *ligius*<sup>111</sup> or *legius*<sup>112</sup> already appears in the mid eleventh century in Namur, but not with a feudal meaning<sup>113</sup>. The first charter undisputedly putting it in a feudal context is an 1111 Flemish charter<sup>114</sup>, followed three years later by the ‘peace’ of Valenciennes in Hainaut<sup>115</sup>, but a part of the *Gesta episcoporum Cameracensium* written shortly after 1076 already describes John of Arras as a „*ligius miles*” of the count of Flanders<sup>116</sup>. Given this, it becomes more plausible that Gislebert of Mons indeed copied the word „*ligio*”<sup>117</sup> from the 1071 original charter, describing how the count of Hainaut’s allods came to be held from Liège, as Didier believes<sup>118</sup>. *Ligius/legius* is found in connection with *dominus*<sup>119</sup> and *homo*<sup>120</sup>, but also with *hominium*<sup>121</sup> and, only once, *feodum*<sup>122</sup>. The traditional meaning of allegiance, the duty to serve the liege lord against all others is certainly present<sup>123</sup>, but only in relations with foreign princes or lords. Within more organized Flanders allegiance had lost its meaning, as Flemings had to serve the count before anyone else anyway<sup>124</sup>. Therefore, Guiman’s *censier* has comital

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<sup>107</sup> MIRAEUS and FOPPENS, Opera (note 51), I, p. 194-195 (1198); EVRARD, ‘Documents’ (note 50), nr. 24, p. 324-326 (1157).

<sup>108</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 202, p. 314-315 (1150-1162). For more details, see HEIRBAUT, ‘Galbert’ (note 38).

<sup>109</sup> See e.g. DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, p. 313-315, nr. 202 (1150-1162).

<sup>110</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 202, p. 313-315 (1150-1162). For more information about investiture, see the article by DEPREUX in this volume.

<sup>111</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, p. 108-109, nr. 64 (1142).

<sup>112</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 111, p. 179-182 (1148).

<sup>113</sup> The count of Namur is „*legius advocatus*” of certain possessions of churches (ROUSSEAU, Actes (note 87), nr. 1, p. 90-91 (1047-1064). *Legius* in this case has to be translated as ‘paramount’ (JAN FREDERIK NIERMEYER, Mediae latinitatis lexicon minus, Leiden 1993, p. 612 quoting this charter).

<sup>114</sup> VERCAUTEREN, Actes (note 48), nr. 52, p. 131-133 (1111); HEIRBAUT, Heren (note 8), p. 102 n. 10 incorrectly has 1142.

<sup>115</sup> PHILIPPE GODDING and JACQUES PYCKE, La paix de Valenciennes de 1114, in: Bulletin de la Commission royale pour la publication des anciennes lois et ordonnances de la Belgique 39, 1979, p. 100-134.

<sup>116</sup> Gesta episcoporum Cameracensium continuatio. Gesta Lietberti episcopi, ed. LUDWIG BETHMANN, in: MGH SS 7, Hannover 1846, ch. 9, p. 493. For more details, see HEIRBAUT, Heren (note 8), p. 102.

<sup>117</sup> Gislebert of Mons, Chronicon Hanoniense, ed. LÉON VANDERKINDERE, Brussels 1904, ch. 8, p. 11.

<sup>118</sup> DIDIER, Fiefs (note 3), p. 30, esp. n. 68.

<sup>119</sup> PREVENIER, Oorkonden (note 70), nr. 10, p. 49-50 (1193).

<sup>120</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 111, p. 179-182 (1148).

<sup>121</sup> KOCH, Oorkondenboek (note 12), I, nr. 244, p. 407-412 (1200).

<sup>122</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 566 (1180; St Vaast abbey Arras).

<sup>123</sup> PREVENIER, Oorkonden (note 70), II, nr. 114, p. 253-258 (1199).

<sup>124</sup> HEIRBAUT, Flanders (note 24), p. 26-28.

vassals with at least four other liege lords<sup>125</sup> or vassals who held several liege fiefs from the same lord<sup>126</sup>. Liege referred to a fief for which the maximum relief had to be paid<sup>127</sup> and this was also true in other principalities like Hainaut<sup>128</sup>.

## 6. The consequences of the lord-man relationship

The charters do not contain much information about the rights and obligations of the parties. The well-known formula *auxilium et consilium* describes their mutual obligations<sup>129</sup>, but the man, in doing so, is 'serving' his lord, whereas the lord is only 'helping' him<sup>130</sup>. The inequality in their relationship means that the lord's part is glossed over. In fact, in Flanders the relation seems to have been almost one way, given the great power of the counts. Obligations of the count as feudal lord were meant either to enable the vassal's service (e.g. giving compensations for lost horses, see *infra*) or to enhance the count's control over him (standing surety, see *infra*).

The great power of the count of Flanders is very visible in the military obligations of the Flemings. First of all, military activities were from the eleventh century a monopoly of the count<sup>131</sup>. The counts may have had some trouble enforcing this at first, but it became a reality under count Philip of Alsace<sup>132</sup>. Moreover, the count could also forbid Flemings from serving a foreign prince<sup>133</sup>. Hence, the king of England ensured by treaty that the count promised not to confiscate the lands of those who served the king<sup>134</sup>. The freedom of the Flemings was limited in this, but the rights of their counts were not. A Flemish lord had to serve with all his men<sup>135</sup> for as long as the count needed them<sup>136</sup>. There was compensation for the damage sustained in the count's service<sup>137</sup>, but the vassal only received wages and food when fighting

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<sup>125</sup> VAN DRIVAL, *Cartulaire* (note 18), p. 241, 243, 331.

<sup>126</sup> VAN DRIVAL, *Cartulaire* (note 18), p. 243, 275.

<sup>127</sup> HEIRBAUT, *Flanders* (note 24), p. 28.

<sup>128</sup> DIDIER, *Fiefs* (note 3), p. 30-34, 51-52; cf. for Brabant Dailliez, *Templiers* (note 30), nr. 17, p. 315-316 (1142).

<sup>129</sup> H.P.H. CAMPS, *Oorkondenboek van Noord-Brabant tot 1312*, I, *De meierij van 's Hertogenbosch*, The Hague 1979, 1, nr. 83, p. 141-143 (1195); M. DILLO and G.A.M. VAN SYNGHEL, *Oorkondenboek van Noord-Brabant tot 1312*, II, *De heerlijkheden Breda en Bergen op Zoom*, The Hague 2000, 1, nr. 924, p. 122-125 (ca. 1198).

<sup>130</sup> KOCH, *Oorkondenboek* (note 12), I, nr. 244, p. 407-412 (1200).

<sup>131</sup> See JOZEF DE SMET, *De 'Paces Dei' der bisdommen van het graafschap Vlaanderen (1024-1119)*. Kritische studie en tekstuittgave, Leuven 1956 (unpublished Ph.D. thesis, Leuven University), p. 422-437; ROGER BONNAUD DELAMARE, *Les institutions de paix dans la province ecclésiastique de Reims au XIe siècle*, in: *Bulletin historique et philologique du comité des travaux historiques et scientifiques*, 1955-1956, p. 184, 192 (1042-1043; for the date, see De Smet, *Paces*, p. 178-197); DE SMET, *Paces*, p. 438-453; VERCAUTEREN, *Actes* (note 48), nr. 49, 125-126; Lambert of Saint-Omer, *Liber floridus*, ed. ALBERT DEROLEZ, Ghent 1968, p. 172 (1093-1094; for the date, see DE SMET, *Paces*, p. 214-234).

<sup>132</sup> HEIRBAUT, *Flanders* (note 24), p. 26-27.

<sup>133</sup> Cf. DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/1, nr. 233, p. 365-370 (1164).

<sup>134</sup> VERCAUTEREN, *Actes* (note 48), nr. 30, p. 88-95 (1101); De Hemptinne and Verhulst, *Oorkonden* (note 15), II/1, nr. 208, p. 321-325 (1163).

<sup>135</sup> Cf. DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), nr. 269, p. 424-427 (1167).

<sup>136</sup> Cf. VERCAUTEREN, *Actes* (note 48), nr. 30, p. 88-95 (1101).

<sup>137</sup> Cf. VERCAUTEREN, *Actes* (note 48), nr. 30, p. 88-95 (1101).

abroad<sup>138</sup>. The charters do not have much to say about military service in Lotharingia, apart from an 1127 text detailing the military obligations of the bishop of Liège for Bouillon, which he held from the archbishop of Reims<sup>139</sup>.

Flanders was also much more strict as far as castles were concerned. From the eleventh century the count could take and destroy adulterine castles<sup>140</sup>. For example, in 1142 the advocate of Thérouanne was condemned by the Flemish *curia* for having erected a castle in that city. As there had never been a fortress in that place, it had to be destroyed<sup>141</sup>. A few years later another knight was forbidden to build a castle<sup>142</sup> and even the powerful city of Ghent had to ask the count's permission for building fortifications. The count did not give his castles in fief<sup>143</sup>, as his castellans had to guard them for him, but had no rights to the castles themselves<sup>144</sup>. About castle guard little is known, though some garrisons are mentioned, like the one of Saint-Omer in 1127<sup>145</sup>. For the situation outside Flanders, even less is known. It has already been mentioned that the count of Hainaut had less rights over the castles in his county than Gislebert claims, though everywhere lords tried to keep as much power over their castles as possible. Hence, the abbot of Stavelot did not enfeoff the guardian of a castle with the castle itself, but with a *fief-rente* and precautions were taken for ensuring that it would be handed over to the abbey<sup>146</sup>. Castle-guard (*stagium*<sup>147</sup>) in Lotharingia is also absent from the charters.

The duty of a vassal to sit on the lord's court<sup>148</sup> receives less attention in historiography than his, admittedly more spectacular, military obligations, even though it was almost omnipresent, given that many charters about transactions of fiefs will mention the intervention of the feudal court<sup>149</sup> and that lords also asked their men's advice or presence as witnesses on other occasions<sup>150</sup>. The Flemish comital *curia* already acted as a feudal court in 1038<sup>151</sup>, the *curia* of Hainaut is not much younger<sup>152</sup> and lesser lords also had their own courts

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<sup>138</sup> Cf. VERCAUTEREN, Actes (note 48), nr. 30, p. 88-95 (1101).

<sup>139</sup> BORMANS and SCHOOLMEESTERS, Saint-Lambert (note 101), I, nr. 35, p. 56. See also BORMANS and SCHOOLMEESTERS, Saint-Lambert (note 101), I, nr. 75, p. 120 (1197).

<sup>140</sup> DE SMET, Paces, 438-453; Vercauteren, Actes (note 48), nr. 49, p. 125-126; Lambert of Saint-Omer (note 131), p. 172 (1093-1094; for the date, see DE SMET, Paces (note 131), p. 214-234).

<sup>141</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 64, p. 108-110 (1142).

<sup>142</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 150, p. 239-240 (1156).

<sup>143</sup> There were two exceptions due to special circumstances in the eleventh century: Oudenaarde (GUILLAUME PIOT, Cartulaire de l'abbaye d'Eename, Bruges 1881, nr. 3, p. 5-6 (1064)) and Tournai (Vercauteren, Actes (note 48), nr. 44, p. 119-120 (1110)).

<sup>144</sup> Cf. ALEXANDRE TEULET and HENRI DELABORDE, Layettes du trésor des Chartes, Paris 1863-1909, I, nr. 428, p. 180-181 (1195).

<sup>145</sup> GEORGES ESPINAS, Le privilège de Saint-Omer de 1127, in: Revue du Nord 29, 1947, p. 43-48 (1127).

<sup>146</sup> HALKIN and ROLAND, Recueil (note 28), I, nr. 173, p. 319-320 (1133). See also HALKIN and ROLAND, Recueil (note 28), I, nr. 165, p. 338-340 (1138).

<sup>147</sup> DEVILLERS, Saint-Denis-en Broqueroie (note 98), nr. 26, p. 125-126 (1198).

<sup>148</sup> VERCAUTEREN, Actes (note 48), nr. 108, p. 247-251 (1122); DILLO and VAN SYNGHEL, Oorkondenboek (note 129), 1, nr. 924, p. 122-125 (ca. 1198); DUVIVIER, Actes (note 29), I, p. 205-207 (1131); DEVILLERS, Chartes Hainaut (note 20), p. 2-7 (1200).

<sup>149</sup> See below.

<sup>150</sup> E.g. DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2, nr. 2, p. 14-17 (1128).

<sup>151</sup> Courtois, Chartes (note 67), I, p. 62-63; Naz, Avouerie (note 67), p. 20-22 (1038) (see about this charter below).

at an early date.<sup>153</sup> However, a detailed study of the first feudal courts still needs to be made. The *consilium* of the man did not only profit the lord, but also his peers. If one had not enough vassals of one's own for a full court, one could borrow some vassals from one's lord<sup>154</sup>, or if one's court was not wise enough to solve a legal problem on its own, one could ask the advice of the higher court<sup>155</sup>.

The obligation to sit on the court as a judge, was linked to the obligation to appear before the court when summoned. It even happened that a vassal was given a fief so that the feudal court would have jurisdiction over him<sup>156</sup>. The same also holds for the many infeudations which settled a quarrel<sup>157</sup>. However, this was also to the vassal's advantage, as he was judged there by his peers<sup>158</sup>. It should be stressed here that not every vassal had a right to a judgement by peers. If one had already been condemned once and had been reinstated in one's rights by the grace of the lord, a second felony led to a loss of the fief without a trial<sup>159</sup>.

Strange as it may sound, one of the best documented obligations of both lords and vassals, the duty to stand surety for one another is somewhat ignored in the historiography of feudalism. For the vassals it meant that at their lord's order they would guarantee his obligations towards a third party, either by helping the adversary, or by refusing to serve their lord for the duration of the conflict<sup>160</sup>, the latter sometimes being ensured by imprisonment<sup>161</sup>. Many treaties are witnessed by a prince's men who also act as 'influence pledges', but in Flanders in 1127-1128 the barons also guaranteed that the count would respect charters granted to the cities<sup>162</sup>. As surety of their lords, the vassals had no financial obligations. Yet, sometimes they could escape from their duties as pledges by a payment<sup>163</sup>. For once, the lords' activities are also well documented<sup>164</sup>. Lords also stood surety for their men because they could force a man to fulfil his obligations by seizing his fief<sup>165</sup> or, in the next generation, by refusing to invest the heir<sup>166</sup>.

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<sup>152</sup> Around 1060 (LÉOPOLD GÉNICOT, *Le premier siècle de la curia de Hainaut* (1060 env.-1195), in: *Le Moyen Âge* 53, 1947, p. 44-45).

<sup>153</sup> HENRI PLATELLE, *La justice seigneuriale de l'abbaye de Saint-Amand*, Paris 1965, nr. 2, p. 418-419 (1062-1076).

<sup>154</sup> DE SMET, *Cambron* (note 49), II, nr. 6, p. 355-356 (1196).

<sup>155</sup> DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/2/2, nr. 726 (1187; abbey of St Bertin Saint-Omer).

<sup>156</sup> DEVILLERS, *Saint-Waudru* (note 91), nr. 33, p. 59-61 (1196).

<sup>157</sup> E.g. THÉODORE LEURIDAN, *Les châtelains de Lille*, Lille 1873, nr. 25, p. 182-184 (1121).

<sup>158</sup> DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), nr. 269, p. 424-427 (1167); BORMANS and SCHOOLMEESTERS, *Saint-Lambert* (note 101), I, nr. 30, p. 48 (1107).

<sup>159</sup> DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), nr. 269, p. 424-427 (1167).

<sup>160</sup> VERCAUTEREN, *Actes* (note 48), nr. 30, p. 88-95 (1101); De Hemptinne and Verhulst, *Oorkonden* (note 15), nr. 269, p. 424-427 (1167); SIMON ERNST, *Histoire du Limbourg, suivi de celle des comtés de Daelhem et de Fauquemont, des annales de l'abbaye de Rolduc*, Liège 1837-1847, VI, nr. 73, p. 162-163 (1191); HALKIN and ROLAND, *Recueil* (note 28), I, nr. 135, p. 274-277 (1104).

<sup>161</sup> Cf. VERCAUTEREN, *Actes* (note 48), nr. 30, p. 88-95 (1101).

<sup>162</sup> DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/2, nr. 2, p. 14-17 (1128).

<sup>163</sup> DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/2, nr. 208, p. 321-325 (1163).

<sup>164</sup> PREVENIER, *Oorkonden* (note 70), II, nr. 7, p. 40-42 (1193); nr. 52, p. 119-124 (1196).

<sup>165</sup> DUVIVIER, *Actes* (note 29), II, nr. 26, p. 54-55. Cf. DUVIVIER, *Actes* (note 29), II, nr. 36, p. 71-72 (1172).

<sup>166</sup> ISIDORE DIEGERICK, *Inventaire analytique et chronologique des chartes et documents de l'ancienne abbaye de Messines*, Brugge 1876, nr. 8, p. 13-14 (1145).



A few other general obligations are mentioned like the duty to entertain the lord<sup>167</sup>. Feudal aids are, in spite of what Ganshof may claim, not found in twelfth century charters, as they are a later phenomenon. Besides, feudal aids were not very feudal because the vassal was only acting as an intermediary, collecting the payments of his subjects and handing them over to his lord<sup>168</sup>. Needless to say, many obligations were specific for a certain fief, like the duty to serve as a champion in a duel<sup>169</sup>. Officeholders had duties related to their office<sup>170</sup>, but as such they do not interest us here. More remarkable is that some vassals had to pay an annuity in money or in kind<sup>171</sup>, which was more typical of non-feudal tenure and, maybe therefore, was exceptional.

## 7. The fief

The previous paragraph may have exaggerated in stating that the lord's duties were lighter than his man's. After all, the lord also gave his man a fief. Originally it was called *beneficium*<sup>172</sup> or exceptionally *benefitium*<sup>173</sup> (a variant mostly limited to Stavelot<sup>174</sup>). More variety existed for *feodum*, the word which would eclipse *beneficium*. Almost always it is written as *feodum*<sup>175</sup>, but *feudum*<sup>176</sup>, *fiodum*<sup>177</sup>, *pheodum*<sup>178</sup>, *phiodum*<sup>179</sup>, *fyodum*<sup>180</sup> and *feodus*<sup>181</sup> or *pheodus*<sup>182</sup> also appear due to the preferences of certain scribes. For example, *fiodum* is generally used outside Flanders. If it appears in a Flemish charter, then the destinatory, the abbey of Affligem in Brabant, is to be blamed<sup>183</sup>.

<sup>167</sup> DELABORDE, Recueil (note 89), I, nr. 224, p. 268-274 (1188).

<sup>168</sup> HEIRBAUT, Heren (note 8), p. 233-238.

<sup>169</sup> VERCAUTEREN, Actes (note 48), nr. 105, p. 236-240 (1121); DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 666 (1183; abbey of Bergues-Saint-Winoc).

<sup>170</sup> D'HERBOMEZ, Saint-Martin de Tournai (note 18), I, nr. 256, p. 163-165 (1191).

<sup>171</sup> HALKIN and ROLAND, Recueil (note 28), I, nr. 205, p. 409 (1148); DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 808 (1163-1190; abbey of Cysoing).

<sup>172</sup> E.g. BERNARD DELMAIRE, L'histoire-polyptique de l'abbaye de Marchiennes (1116-1121). Étude critique et édition, Louvain-la-Neuve 1985, nr. 8, p. 106-107 (1135).

<sup>173</sup> E.g. JEAN-LOUIS KUPPER, Une conventio inédite entre l'évêque de Liège Théoduin et le comte Albert de Namur, in: Bulletin de la Commission royale d'histoire 145, 1979, p. 23-24 (1064).

<sup>174</sup> E.g. HALKIN and ROLAND, Recueil (note 28), nr. 168, p. 344-346 (1139).

<sup>175</sup> E.g. DE HEMPTINNE and Verhulst, Oorkonden (note 15), II/1, nr. 131, p. 213-215 (1151).

<sup>176</sup> E.g. JEAN-JOSEPH DE SMET, Cartulaire de l'abbaye de Tronchiennes, in: Recueil des chroniques de Flandre, I, Brussels 1837, nr. 7, p. 708 (1139).

<sup>177</sup> E.g. PIOT, Saint-Trond (note 62), nr. 35, p. 45-46 (1135).

<sup>178</sup> E.g. VERCAUTEREN, Actes (note 48), nr. 76, p. 173-174 (1115).

<sup>179</sup> Only once and in Affligem, an abbey which seems to have had a liking for variants (DE MARNEFFE, Affligem (note 80), nr. 84, p. 129-130 (1151)).

<sup>180</sup> Also only once (PIOT, Saint-Trond (note 62), nr. 52, p. 70-71 (1146)).

<sup>181</sup> E.g. DUVIVIER, Actes (note 29), II, nr. 26, p. 54-55 (1165).

<sup>182</sup> Once in DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 373, p. 151-153 (1174).

<sup>183</sup> E.g. DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 9, p. 28-29 (1130).

The first appearance of the term *feodum* is, generally, in charters which turn out to be forgeries, like a 961 charter of count Arnulf of Flanders<sup>184</sup>. If a prize were to be awarded for the most blatant forgery, it should go to a 1021 charter, which lists the fiefs held by the court officials of the bishop of Utrecht and which is replete with anachronisms<sup>185</sup>. More problematic is a Flemish charter of 1038, regulating the rights of the abbey of Marchiennes' advocate<sup>186</sup>. Its authenticity is disputed<sup>187</sup> and if one considers it to be a later confection, uncertainty remains, because it may then date from anywhere between 1038 and 1125<sup>188</sup>. Moreover, there is no doubt that the rights of the advocate were indeed regulated in 1038 and it seems likely that the text we now have, is the early twelfth century 'update' of the original charter, which does not solve the issue. It would be logical to suppose that the outdated word *beneficium* gave way to *feodum*, as in 1129 a charter for the abbey is at pains to state that one of its vassals held a rent „*non in feodum, sed in beneficium*”,<sup>189</sup> i.e. not hereditary<sup>190</sup>. Another element pleading against the authenticity of the term *feodum* in the 1038 charter is that the first Flemish charter containing *feodum* which is beyond doubt dates from 1093<sup>191</sup>. Given the importance of the 1038 charter not only for the local history of Marchiennes or the history of advowry, but also for the history of Flemish institutions (this charter is also the first one to mention the Flemish *curia* as a feudal court, though that is less of a problem as the account of the events is not disputed by historians) and of feudalism, an exhaustive study of its authenticity is needed.

An additional problem is that the next Flemish charters containing *feodum* are also under suspicion. This is certainly true for a 1067 charter for the abbey of Bergues-Saint-Winoc, which we have in a copy full of interpolations<sup>192</sup>. An appearance in a 1092 charter is suspect<sup>193</sup>, which leaves the already mentioned charter from one year later. Surprisingly, Cambrai (1081<sup>194</sup>) and Hainaut (1087<sup>195</sup>) seem, this time, to be ahead of Flanders, which is remarkable as from about 1116 *feodum* becomes more popular than *beneficium* in Flanders and the latter's decline begins. In the thirteenth century it is even no longer used there. One should point out here that *feodum* was used in practice long before it appears in the charters.

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<sup>184</sup> VERONIQUE LAMBERT, *De Oorkonden van het Sint-Donatianskapittel te Brugge, 9de eeuw-1300*, I, Brussels, 2008, nr., p. (961). See also about this charter ALBERT DEROLEZ, *De valse oorkonde van het Sint-Donatianskapittel te Brugge (961, juli 31)*, in: *Bulletin de la Commission royale d'histoire* 140, 1974, p. 431-499.

<sup>185</sup> KOCH, *Oorkondenboek* (note 12), I, nr. 73, p. 133-140.

<sup>186</sup> NAZ, *Avouerie* (note 67), p. 20-22; COURTOIS, *Chartes* (note 67), I, p. 62-63.

<sup>187</sup> A very good survey of the latest research can be found in STEVEN VANDERPUTTEN, *Fulcard's pigsty: Cluniac reformers, dispute settlement and the lower aristocracy in early twelfth-century Flanders*, in: *Viator* 38, 2007, p. 99 n. 49.

<sup>188</sup> When it is mentioned in another charter (VERCAUTEREN, *Actes* (note 48), nr. 119, p. 272-275).

<sup>189</sup> DELMAIRE, *Marchiennes* (note 172), nr. 5, p. 103-104.

<sup>190</sup> For this interpretation, see HEIRBAUT, *Lenen* (note 8), p. 20. Cf. MULLER and HEERINGA, *Oorkondenboek Utrecht* (note 95), I, nr. 514, p. 457-458 (1184).

<sup>191</sup> VERCAUTEREN, *Actes* (note 48), nr. 12, p. 38-41.

<sup>192</sup> ALEXANDRE PRUVOST, *Chronique et cartulaire de l'abbaye de Bergues-Saint-Winoc, Bruges 1875-1878*, p. 57-63. See about this charter, NICOLAS HUYGHEBAERT, *De meier van Zwevezele in de Miraculi Sancti Winnoci*, in: *Handelingen van het genootschap voor geschiedenis gesticht onder de benaming Société d'émulation te Brugge* 108, 1971, p. 219-220.

<sup>193</sup> VERCAUTEREN, *Actes* (note 48), nr. 11, p. 35-38.

<sup>194</sup> COURTOIS, *Chartes* (note 67), I, p. 115-118 and 119-121.

<sup>195</sup> MIRAEUS and FOPPENS, *Opera* (note 51), I, nr. 28, p. 515.

In fact, the 1087 charter contains the well-known expression: „*beneficium quod vulgo dicitur feodum*”<sup>196</sup> and the Cambrai charter from six years earlier uses the word in an ecclesiastical, not a feudal context (something typical for Cambrai<sup>197</sup>), which shows how pervasive the term was<sup>198</sup>.

Whatever the exact chronology of the appearance of the term *feodum* in the Flanders-Cambrai-Hainaut area, it was already well-known there at the end of the eleventh century, whereas in the rest of Lotharingia its appearance is a phenomenon of the first decades of the twelfth century<sup>199</sup>. An 1104 Stavelot charter is somewhat early<sup>200</sup>, as is an 1111 charter issued by the duke of Brabant<sup>201</sup>. The bishops of Liège and Utrecht act in the same year, both in 1131<sup>202</sup>. Because there are so few charters from other princes in the North and because feudalism was still less important there, it is not useful to look into their use of the word *feodum*. For example, its first appearance in a charter by the count of Holland comes as late as 1174<sup>203</sup>, but this is also the first charter of the count containing the word *beneficium*, so that this does not mean much. Very exceptionally another term than *feodum* or *beneficium* terms could have the meaning of fief, like *honor* (for fiefs with a certain importance<sup>204</sup>), *fiscus*<sup>205</sup> or *casamentum*<sup>206</sup>.

*Beneficium* and *feodum* could be used in all kinds of expressions, of which those indicating special customs for fiefs are the most relevant. *Ius feodi*<sup>207</sup> or *ius beneficii*<sup>208</sup> may be found, but also references to the *ius homini*<sup>209</sup>, the *mos curie*<sup>210</sup> or the *mos nobilium*<sup>211</sup>.

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<sup>196</sup> Cf. also „*feodum quam tenebat de beneficio*” (JACQUES LAURENT, Cartulaires de l’abbaye de Molesmes. Ancien diocèse de Langres, Paris 1907-1911, I, nr. 93, p. 98-99 (1095)).

<sup>197</sup> For its use in a purely secular and feudal context, see COURTOIS, Chartes (note 67), I, p. 199 (1111).

<sup>198</sup> For an example elsewhere, see Archives départementales du Nord (Lille), 1 H, 631/3137 (1115-1131).

<sup>199</sup> But in Luxemburg, which falls outside the area studied here, it was already used in 1083 (CAMILLE WAMPACH, Urkunden- und Quellenbuch zur Geschichte der altluxemburgischen Territorien bis zur burgundischen Zeit, Luxemburg 1935-1955, I, nr. 301, p. 445-449 (1083)).

<sup>200</sup> „*fiodo*” (HALKIN and ROLAND, Recueil (note 28), I, nr. 286, p. 531 (1104)).

<sup>201</sup> DE MARNEFFE, Affligem (note 80), nr. 19, p. 35-36, but this charter uses *fiodum* because it was written in Affligem, where *fiodum* was very popular (see above) and which was very close to Flanders.

<sup>202</sup> Utrecht: MULLER and HEERINGA, Oorkondenboek Utrecht (note 95), I, nr. 336, p. 308-309 (older charters using the term are falsifications, e.g. MULLER and HEERINGA, Oorkondenboek Utrecht (note 95), I, nr. 295, p. 272 (1119)); Liège: EVRARD, Documents (note 50), nr. 6, p. 292-293.

<sup>203</sup> KOCH, Oorkondenboek (note 12), I, nr. 169, p. 317-319 (1174).

<sup>204</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 551 (1173-1180; Cistercian order).

<sup>205</sup> VERCAUTEREN, Actes (note 48), nr. 44, p. 119-120 (1110).

<sup>206</sup> VAN DRIVAL, Cartulaire (note 18), p. 262 (ca. 1168); BORMANS and SCHOOLMEESTERS, Saint-Lambert (note 101), I, nr. 47, p. 29 (1096).

<sup>207</sup> VERCAUTEREN, Actes (note 48), nr. 98, p. 223-225 (1120); Halkin and ROLAND, Recueil (note 28), I, nr. 286, p. 319-320 (1133).

<sup>208</sup> HALKIN and ROLAND, Recueil (note 28), I, nr. 265, p. 501-503 (1173).

<sup>209</sup> JEAN-JOSEPH DE SMET, Codex diplomaticus abbatiae Ninoviensis, in: Recueil des chroniques de Flandre, Brussels 1841, nr. 52, p. 788-789.

There is no explicit reference to the feudal law of a certain principality or region until 1200, when the duke of Brabant granted a fief to the count of Holland „*iure brabantino*”.<sup>212</sup> Even for a reference to Flemish feudal law one has to wait until 1204 when a fief is granted „*ad consuetudinem Flandrie*”<sup>213</sup>, although Flemish feudal law is already referred to by Galbert of Bruges in 1127<sup>214</sup>. One has to keep in mind here that a reference to the law of a certain region was only necessary, when there could be doubt about the applicable law. Hence, even in the thirteenth century there were very few references of this kind<sup>215</sup>.

Many different types of goods could be held in fief and examples will be given in this paragraph, but it is more important to stress that they all illustrate one general principle: whatever could be a hereditament, i.e. whatever permanently produced an income and as such was valuable, could be given in fief<sup>216</sup>. Consequently, it is impossible to give a complete list of goods which could be the object of an enfeoffment and the following examples concerning Flanders are only meant to give the reader an impression. Needless to say, given that land was the source of riches, it was the most given in fief, going from counties<sup>217</sup> to smaller pieces of land<sup>218</sup>. The land could be a field<sup>219</sup>, a meadow<sup>220</sup>, an orchard<sup>221</sup>, a forest<sup>222</sup>, swampland<sup>223</sup>, waste land<sup>224</sup>, a stream<sup>225</sup> etc. Vassals could also hold buildings in cities<sup>226</sup>, castles<sup>227</sup>, sheep-

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<sup>210</sup> DE MARNEFFE, Afflighem (note 80), nr. 223, p. 301-303 (1196); NIEUS, Chartes Saint-Pol (note 73), nr. 8, p. 91-92 (1145).

<sup>211</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 182, p. 286-287 (1159).

<sup>212</sup> KOCH, Oorkondenboek (note 12), I, nr. 244, p. 407-412.

<sup>213</sup> KOCH, Oorkondenboek (note 12), I, nr. 272, p. 451-452.

<sup>214</sup> Galbert of Bruges, *De multro, traditione et occisione gloriosi Karoli comitis Flandriarum*, ed. JEFF RIDER, Turnhout 1994, ch. 56, p. 105-106.

<sup>215</sup> Most of them concern the abbey of Anchin, which was located on an island in the river Scarpe and its vassals held their fiefs either by the law of Flanders (Archives départementales du Nord (Lille), Series 1 H, 157/1995 (1255)) or by the law of Hainault (Archives départementales du Nord (Lille), Series 1 H, 140/1495 (1235)) as determined at the moment of investiture.

<sup>216</sup> Cf. DE LAPLANE, Clairmarais (note 79), nr. 36, p. 357 (ca. 1185).

<sup>217</sup> PREVENIER, Oorkonden (note 70), II, nr. 52, p. 119-124.

<sup>218</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 247 (1165).

<sup>219</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 83, p. 137-140 (1145).

<sup>220</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 751 (1189; abbey of St. Baafs; see for now CYRIEL VLEESHOUWERS, *De oorkonden van de Sint-Baafsabdij (819-1321)*, II, Brussels 1990, nr. 76, p. 82 (1189)).

<sup>221</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 247, p. 394-395 (1165).

<sup>222</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 663 (1183; abbey of our Lady Loos).

<sup>223</sup> EDMOND DE COUSSEMAKER, *Documents relatifs à la Flandre maritime, extraits du cartulaire de l'abbaye de Watten*, in: *Annales du Comité flamand de France* 5, 1860, p. 342 (1188).

<sup>224</sup> THIERRY DE LIMBURG-STIRUM, *Les bouteillers héréditaires de Flandre. Preuves Bruges*, s.d., nr. 8, p. 10-13 (1200).

<sup>225</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 246, p. 392-393 (1165).

<sup>226</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 326, p. 86-87 (1170).

<sup>227</sup> VERCAUTEREN, *Actes* (note 48), nr. 44, p. 119-120 (1110).

farms<sup>228</sup>, mills<sup>229</sup> and the like. The mills led to many conflicts due to disputes over water rights<sup>230</sup>. For some mills it was expressly stipulated that they could not be handed over to vassals because of their economic importance<sup>231</sup>. Another complication is that, like for some other buildings, the investiture with a mill did not necessarily mean that one's fief also included the land on which the mill stood<sup>232</sup>.

Persons were not only the subjects, but also the objects of infeudations, as serfs<sup>233</sup>, but also rearvassals were held in fief<sup>234</sup>. All kinds of rights were fiefs. The jurisdiction, the *comitatus*<sup>235</sup> could be, but the expansion of the count's power generally meant that high justice was in many cases reserved for the count and many vassals did not even have lower criminal justice<sup>236</sup>. On the other hand, it was also possible that a vassal did have the *comitatus* over land, but not the land itself<sup>237</sup>. Other rights of vassals include mill rights<sup>238</sup>, fishing rights<sup>239</sup>, tributes for land<sup>240</sup>, taxes paid by churches<sup>241</sup>, etc. Offices could be enfeoffed (cf. „*Ingelberti feodale ministerium est*“<sup>242</sup>), though an effort was made to keep offices and fiefs separated<sup>243</sup> and sometimes a mayorship or an advowry could not be enfeoffed<sup>244</sup>.

At first, *fiefs-rentes* seem to be a category apart, as they can be defined, following Bryce Lyon, as fiefs for which the object of the infeudation is a yearly income assigned on a source of revenue and whose instalments are actually paid in kind or in money by the lord of the fief<sup>245</sup>. The vassal holds the rent in fief, not the goods on which it is assigned. Thus, whereas a traditional fief consists of a source of income, a *fief-rente* is limited to that income, the vassal having no additional rights to its source<sup>246</sup>. Going through the references in Bryce Lyon's *From fief to indenture* one finds out that Flanders and Lotharingia have more than their share of them in the twelfth century<sup>247</sup>. In fact, Sczaniecki, another specialist of the *fief-*

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<sup>228</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 423, p. 223 (1176).

<sup>229</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 83, p. 137-140 (1145).

<sup>230</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 726 (1187; abbey of St Bertin Saint-Omer).

<sup>231</sup> VAN DRIVAL, Cartulaire (note 18), p. 56-58 (1012-1024).

<sup>232</sup> PIOT, Eename (note 143), nr. 43, p. 43-44 (1155).

<sup>233</sup> COURTOIS, Chartes (note 67), I, p. 62-63; NAZ, Avouerie (note 67), p. 20-22 (1038).

<sup>234</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 118, p. 193-194 (1149).

<sup>235</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 584 (1180; abbey of our Lady Voormezele).

<sup>236</sup> About this, see ANTON Koch, *De rechterlijke organisatie van het graafschap Vlaanderen tot in de 13de eeuw*, Antwerp 1951.

<sup>237</sup> VERCAUTEREN, Actes (note 48), nr. 110, p. 253-254 (1122).

<sup>238</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 838 (1190; abbey of Mont-Saint-Eloi).

<sup>239</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 246, p. 392-393 (1165).

<sup>240</sup> PAUL BERTIN, *La chronique et les chartes de l'abbaye de Maroeuil de l'ordre de Saint Augustin et de la congrégation d'Arrouaise*, s.l. 1959, nr. 22, p. 113-114 (1189).

<sup>241</sup> NIEUS, Chartes Saint-Pol (note 73), nr. 21, p. 106-107 (1150-1153).

<sup>242</sup> VERCAUTEREN, Actes (note 48), nr. 108, p. 247-252 (1122).

<sup>243</sup> Cf. PLATELLE, Justice (note 153), nr. 2, p. 418-419 (1062-1076).

<sup>244</sup> See above.

<sup>245</sup> BRYCE LYON, *From fief to indenture. The transition from feudal to non-feudal contract in Western Europe*, Cambridge (Mass.) 1957, p. 16.

<sup>246</sup> HEIRBAUT, Fief-rente (note 33), p. 5-6.

<sup>247</sup> LYON, Fief (note 245), p. 23-39.

*rente*, was even convinced that the *fief-rente* was born in the Low Countries<sup>248</sup>. The oldest *fief-rente* already appears in 1087<sup>249</sup> and it is already in money, like the two others which follow it<sup>250</sup>, but one *fief-rente* in kind<sup>251</sup> may go back to at least 1050<sup>252</sup>. Anyway, by the end of the eleventh century the *fiefs-rentes* in money already eclipsed the ones in kind. Given their nature and their flexibility one may well expect other rules to apply to *fiefs-rentes* than to 'ordinary' fiefs, but in reality no great differences existed between the two categories<sup>253</sup>. Hence, no special terminology was needed to distinguish them from one another.

Goods properly belonging to the church, like parish churches<sup>254</sup>, oblations<sup>255</sup> and, most of all, tithes<sup>256</sup> were very popular as fiefs, at least according to our sources, which tend to mention them only when they return to the church and lose their feudal character. In a few cases papal exhortations may have stimulated the vassal to alienate his fief<sup>257</sup>, but economic motives seem to have been more important, as vassals liked to mortgage their feudal tithes<sup>258</sup>. In fact, apart from the efforts of abbeys to acquire tithes, not that much distinguished them from other fiefs. They were, in general, alienated before the competent feudal court<sup>259</sup>, which also dealt with disputes about them<sup>260</sup>.

The situation in the principalities of Lotharingia was like in Flanders, with this difference that the sources show less variety and complexity. However, this does not matter, as the same principle applied: whatever could produce a steady income could be given in fief, but it could always happen that for an individual piece of land, an office or another hereditament, the ecclesiastical authorities, a lord or a donator had stipulated that it was not to be enfeoffed<sup>261</sup>.

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<sup>248</sup> MICHEL SCZANIECKI, *Essai sur les fiefs rentes*, Paris 1946, p. 25.

<sup>249</sup> BENJAMIN GUÉRARD, *Cartulaire de l'abbaye de Saint-Bertin*, Paris 1840, nr. 28, p. 202-203 (1087).

<sup>250</sup> GUÉRARD, *Saint-Bertin* (note 249), nr. 30, p. 205 (around 1093; see also: VERCAUTEREN, *Actes* (note 48), nr. 16, p. 52-53; nr. 32, p. 244 (1096)).

<sup>251</sup> ESPINAS, *Privilège* (note 145), p. 43-48 (1127).

<sup>252</sup> HEIRBAUT, *Fief-rente* (note 33), p. 13.

<sup>253</sup> HEIRBAUT, *Fief-rente* (note 33), p. 36-37.

<sup>254</sup> OSCAR BLED, *Regestes des évêques de Thérouanne*, I, Saint-Omer 1904, nr. 878, p. 169 (1182).

<sup>255</sup> DANIEL HAIGNERÉ, *Les chartes de Saint-Bertin, d'après le grand cartulaire de Dom Ch.-J. DEWITTE*, Saint-Omer 1886-1899, I, nr. 248, p. 113-114 (1165).

<sup>256</sup> FERDINAND VAN DE PUTTE, *Chronicon monasterii Aldenburgensis majus*, Ghent 1843, nr. 3, p. 86-87.

<sup>257</sup> THOMAS DUCHET and ARTHUR GIRY, *Cartulaire de l'église de Thérouanne*, Saint-Omer 1881, nr. 64, p. 53-54 (1180).

<sup>258</sup> PIOT, *Eename* (note 143), nr. 102, p. 84-85 (1196).

<sup>259</sup> E.g. DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/2/2, nr. 838 (1190; abbey of Mont-Saint-Eloi). Exceptionally, the bishop intervenes (DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/1, nr. 120, p. 195-197 (1149-1150)), but in most of these cases it turns out that he acts as the feudal lord, not as bishop (DUCHET and GIRY, *Thérouanne* (note 257), nr. 64, p. 53-54 (1180)).

<sup>260</sup> Cf. DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/2/1, nr. 333, p. 94-96 (1171).

<sup>261</sup> HALKIN and RoLAND, *Recueil* (note 28), I, nr. 161, p. 326-327 (1136); PIOT, *Saint-Trond* (note 62), nr. 62, p. 84-85 (1154).

Even in Flanders there were still vassals without fiefs at the end of the twelfth century, though understandably they are only known thanks to narrative sources<sup>262</sup>. Homage, however, is necessary for holding a fief, so that to hold in fief and to hold in homage are the same<sup>263</sup>. In Lotharingian charters *in hominium et feodum* crops up regularly<sup>264</sup>. The close link between fief and homage, with homage being done for a certain fief<sup>265</sup>, also means that an alienation of the fief generally leads to the end of the man-lord relationship<sup>266</sup>. Therefore, lords took care to ensure that enough of the fief was left to continue the relationship<sup>267</sup>, the count of Guines in Flanders already at the end of the eleventh century insisting that his men could only give to a certain abbey so much of their fiefs that their homage would not be lost by it<sup>268</sup>.

#### 8. Alienating the fief: from the lord's permission to the intervention of the peers?

As charters mostly pay attention to fiefs only when these are acquired by churches, one would be justified in thinking that a wealth of information is available about the alienations of fief. However, the charters give scant information, as more elaborate charters are a feature of the thirteenth century, with only a few exceptions<sup>269</sup>.

The charters concern first of all the lords. They are at pains to stress that their intervention is necessary<sup>270</sup> and that without it any alienation is invalid<sup>271</sup>. Nevertheless, it seems that, certainly at first, fiefholders tried to alienate their fiefs without asking their lords' permission<sup>272</sup>, which explains why these were so keen to defend their rights. The number of charters which give the impression of 'irregular' transactions declines sharply during the twelfth century, so that the lords seem to have been successful in this.

The lord's permission could be very hard to get, but in some cases he had given the vassal a license to do as pleased him<sup>273</sup> or he had granted a general license to a church to acquire fiefs from his vassals<sup>274</sup>, though sometimes with restrictions as to the value or the

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<sup>262</sup> Lambert of Ardres, *Historia comitum Ghisnensium*, ed. JOHANN HELLER, MGH SS 24, Hannover 1879, ch. 96, p. 607.

<sup>263</sup> Cf. DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/2/2, nr. 808 (1163-1190; abbey of Cysoing).

<sup>264</sup> DUVIVIER, *Actes* (note 29), I, p. 205-207 (1131); cf. GÉNICOT, *Economie* (note 3), III, nr. 1A, p. 370-373 (1131). See, however, for Lotharingia also the article by Patzold in this volume.

<sup>265</sup> VERCAUTEREN, *Actes* (note 48), nr. 111, p. 254-257 (1122); cf. DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/1, nr. 95, p. 155-157 (1146).

<sup>266</sup> DE LAPLANE, *Clairmarais* (note 79), nr. 36, p. 357 (ca. 1185).

<sup>267</sup> D'HERBOMEZ, *Saint-Martin de Tournai* (note 18), I, nr. 152, p. 159-161 (1190).

<sup>268</sup> MIRAEUS and FOPPENS, *Opera* (note 51), I, p. 367 (1097).

<sup>269</sup> E.g. DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/2/2, nr. 610 (1181-1182; abbey of Cysoing).

<sup>270</sup> FRANÇOIS-ALEXANDRE DUCHESNE, *Histoire généalogique de la maison de Béthune. Preuves*, Paris 1639, p. 50 (1190); D'HERBOMEZ, *Saint-Martin de Tournai* (note 18), I, nr. 156, p. 163-164 (1191); cf. DUVIVIER, *Actes* (note 29), I, p. 138-139 (1158).

<sup>271</sup> DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), nr. 814 (1163-1190; abbey of St Bertin Saint Omer); DUVIVIER, *Actes* (note 29), I, p. 124-126 (1164).

<sup>272</sup> DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/1, nr. 125, p. 203-205 (1150).

<sup>273</sup> E.g. DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/2/2, nr. 716 (1187; Margaret, castellan of Courtrai).

<sup>274</sup> D'HERBOMEZ, *Saint-Martin de Tournai* (note 18), I, nr. 152, p. 159-161 (1190); DE MARNEFFE, *Afflighem* (note 80), nr. 100, p. 155-157 (1156).

amount of the land which could be acquired or a general reservation against alienations which endangered the feudal service<sup>275</sup>. Founders and patrons of new cloisters used this technique<sup>276</sup>, but it was popular also with advocates<sup>277</sup>, which shows that not all of them were as bad as some clerks would want us to believe. As these general licenses could be just as important to an abbey as the gifts themselves, some abbeys had forgeries made<sup>278</sup>. In the absence of a general license, the vassal could have somewhat more trouble. In Flanders an agreement between Count Thierry and the bishop of Thérouanne first put forward the necessity of the lord's permission, but it also stated that lords could not object to an alienation: „*nisi iustam causam et rationabilem contradictionem opponant*”<sup>279</sup>, which indicates that lords hitherto could refuse their permission without reason. Poverty did not fall within the scope of this principle, as it concerned the family's agreement to the transaction, not the lord's, though poverty could always be an argument to sway the lord. A payment to the lord should be seen the same way, as the lord could still ask an arbitrarily high price for his permission<sup>280</sup>, the fixed tariff of ten percent for the alienation by the substitution of one fief-holder for another not yet existing at the end of the twelfth century<sup>281</sup>. The payment did not have to be in money, the vassal could also agree to hand over part of his fief to his lord in return for a free hand with the rest of it<sup>282</sup>. Friendship<sup>283</sup> or the lord's concern for his own soul<sup>284</sup> could also make a difference, but the lord really had no excuse when the vassal ensured that his interests would not be damaged, e.g. because he only alienated part of his fief and promised to serve as much as before<sup>285</sup>, or when he offered to hold one of his allods henceforth in fief from his lord<sup>286</sup>. However, all this concerns Flanders and it is not clear in the charters how, apart from general licenses, the Lotharingian fief-holders managed to get their lord's consent and one cannot just assume that they acted the same way. For example, they did not substitute an allod for the alienated fief in order to get the lord's permission<sup>287</sup>. Still, there is no doubt that in Lotharingia too a compensation of the lord was required<sup>288</sup>.

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<sup>275</sup> D'HERBOMEZ, Saint-Martin de Tournai (note 18), I, nr. 152, p. 159-161 (1190); MIRAEUS and FOPPENS, Opera (note 51), I, p. 367 (1097).

<sup>276</sup> VERCAUTEREN, Actes (note 48), nr. 11, p. 35-38 (1092).

<sup>277</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 261, p. 413-414 (1166).

<sup>278</sup> VERCAUTEREN, Actes (note 48), nr. 88, p. 197-202 (1119).

<sup>279</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 125, p. 203-205 (1150).

<sup>280</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 610 (1181-1182; abbey of Cysoing).

<sup>281</sup> There is no trace of it before the thirteenth century and Artois, a part of Flanders until 1191, had another tariff than Flanders (HEIRBAUT, Lenen (note 8), p. 149).

<sup>282</sup> A. FAYEN, Liber traditionum Sancti Petri Blandiniensis, Ghent 1906, nr. 193, p. 199-200 (1175).

<sup>283</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 761 (1189; abbey of St Nicolas Arrouaise).

<sup>284</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 348, p. 116-117 (1172).

<sup>285</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 751 (1189; abbey of St Baafs Ghent).

<sup>286</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 218, p. 339-340 (1163).

<sup>287</sup> See however for an exception, CAMPS, Oorkondenboek (note 129), I/1, nr. 85, p. 145-147 (1196).

<sup>288</sup> Cf. JACQUES LAVALEYE, Le 'liber mortuorum' de l'abbaye de Dillighem, in: Analecta praemonstratensia 2, 1926, p. 12-13 (1172).



The man did not only have to ask the permission of his mesne lord, but also of his higher lords<sup>289</sup>. However, here the selection by our sources deceives us, as they generally concern transactions which resulted in a fief no longer being one. If there was a simple substitution it stands to reason that only the mesne lord would have intervened (as was the case in the thirteenth century), because to him this made no difference. Moreover, when a substitution was involved, even the mesne lord could hardly object to a transaction, unless he could claim that his service would be endangered.

Apart from the lord, the family also had to agree to the transaction<sup>290</sup>. This *laudatio parentum* was needed because giving and even selling equalled disinheriting<sup>291</sup>. In the twelfth century the principle had not yet been established that only the closest heir had to intervene, but in Flanders the first steps towards it were already taken in the second half of the twelfth century because sometimes only the future heir acted<sup>292</sup>, or he was at least singled out<sup>293</sup>, sometimes even by the other members of the family who asked him to defend their interests<sup>294</sup>. As has already been mentioned, the rule that in the case of *paupertas* the *laudatio parentum* was no longer necessary is only documented for Flanders. The same holds for another technique to protect the family's interests, the right of pre-emption. A fiefholder had to offer his fief to his relatives before he could sell it to anyone else<sup>295</sup>. The offer could be made in private, but also by a general call to the relatives made in the local church<sup>296</sup>. The right of pre-emption disappeared in the thirteenth century because then the relatives had a right to substitute themselves for a buyer after the sale had been concluded. This evolution is already announced in 1171, when a man forgot to offer a fief to his relatives and they claimed the fief after the transaction, but with compensation to the buyer<sup>297</sup>.

Our sources are very sketchy about the formalities for transferring a fief from alienor to alienee. Moreover, they are very bewildering as very diverse terms are used and the focus is not always on the same elements of the procedure. In these circumstances it is natural to assume that there was no set pattern and that the confusion of the sources stands for a corresponding chaos in reality. However, the sources are also clear that everything happened according to a certain model, e.g. „*secundum morem curie*”<sup>298</sup> or „*ordine iudiciario*”<sup>299</sup>. Bringing together the disparate elements of many charters it is possible to reconstruct some kind of model of an ‘ideal’ procedure and this will be done in the next paragraph. However,

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<sup>289</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 610 (1181-1182; abbey of Cysoing).

<sup>290</sup> EVRARD, Documents (note 50), nr. 6, p. 292-293; DUVIVIER, Actes (note 29), nr. 41, p. 78-81 (1174).

<sup>291</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 373, p. 151-153 (1174).

<sup>292</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 260, p. 412-413 (1166); II/2/1, nr. 373, p. 151-153 (1174).

<sup>293</sup> PIOT, Eename (note 143), nr. 107, p. 88 (1199); Duchet and Giry, Théroutanne (note 257), nr. 77, p. 62-63 (1190).

<sup>294</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 591 (1181; abbey of Mesen).

<sup>295</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 610 (1181-1182; abbey of Cysoing).

<sup>296</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 610 (1181-1182; abbey of Cysoing).

<sup>297</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 333, p. 94-96 (1171).

<sup>298</sup> NIEUS, Chartes Saint-Pol (note 73), nr. 8, p. 91-92 (1145).

<sup>299</sup> DE MARNEFFE, Afflighem (note 80), nr. 113, p. 173-174 (1161).

this model has a limited function. It is meant to indicate common practices, but neither that ‘a’ model, nor ‘the’ model presented here was always followed. Given the sources used, it will conform more with reality in Flanders (and to a lesser extent Hainaut), most of all in the last decades of the twelfth century, and a comparison with thirteenth century charters shows that it may not be far off the mark, with the growing complexity being due to more information rather than to changes in the procedure itself<sup>300</sup>. For example, conspicuously absent from the twelfth century charters are the words of the oral formulas and oaths<sup>301</sup>. Another caveat is that twelfth century charters are in Latin, whereas texts in the vernacular, which are available for the thirteenth century, would be preferable, as they are more precise in their terminology<sup>302</sup>. Therefore, in the following paragraph only the most common term will be mentioned.

The transfer of the fief was preceded first by the offer to the relatives in case of a sale and then by the contract which justified the transfer. Essential for the latter was the intervention of the lord and of the feudal court over which he presided and which was composed of the peers<sup>303</sup>. However sometimes only the lord is mentioned, even though the peers were present<sup>304</sup>. Each step of the procedure was accompanied by questions by the lord-president of the court and answers by the peers-members<sup>305</sup>. The transfer was split up in two parts: first the vassal returned the fief to the lord, thereafter the latter invested the new owner. The first means that the vassal returns his fief to the lord (*reddere*<sup>306</sup>) and renounces his rights (*werpire*<sup>307</sup>) by throwing away a straw (*exfestucare*<sup>308</sup>, in Flanders and Brabant sometimes *festucare*<sup>309</sup>, or, only in Flanders, *defestucare*<sup>310</sup>) and speaking a ritual formula (*quitum*

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<sup>300</sup> HEIRBAUT, Procedure (note 41), p. 37-59.

<sup>301</sup> Cf. PREVENIER, Oorkonden (note 70), II, nr. 76, p. 168-170 (1197).

<sup>302</sup> For example, when the vassal returns his fief to the lord, in Latin there is a confusion of words like *donare*, *reddere*, *reportare*, *resignare* or *dare* are used, whereas the thirteenth century charters in Flanders during the thirteenth century have only *raporter* (in French) or *draghen* (in Dutch) (HEIRBAUT, Procedure (note 41), 47 n. 72).

<sup>303</sup> BARBIER, Floreffe (note 100), nr. 30, p. 16 (1155); DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 379, p. 161-163 (1174).

<sup>304</sup> Cf. JACQUES PYCKE, Actes des évêques de Noyon et de Tournai, forthcoming (1137; abbey of St Nicolas-des-Prés Tournai).

<sup>305</sup> Cf. DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 205, p. 317-318 (1162); DUVIVIER, Actes (note 29), II, nr. 53, p. 104-106 (1180).

<sup>306</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 692 (1186; abbey of Watten); DE SMET, Cambron (note 49), II, nr. 5, p. 354 (1186).

<sup>307</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 683 (1184; knights of St John); DUVIVIER, Actes (note 29), I, p. 124-126 (1164). Also popular was: *guerpire* (PREVENIER, Oorkonden (note 70), nr. 122, p. 273-274 (1199)). Less common variants are found in Lotharingia, e.g. *wurpire* (HERMAN JANSSENS, ‘De stichtingsoorkonden van de abdij van Averbode (1133-1139), gevolgd door enkele verdachte oorkonden uit de twaalfde eeuw’, *Analecta Praemonstratensia* 66, 1990, nr. 8, p. 46 (1174)).

<sup>308</sup> CHARLES LEBLOIS, Histoire de Harchies, *Annales du Cercle archéologique de Mons* 49, 1973-1975, nr. 1, p. 154 (1122); cf. DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 211, p. 328-329 (1163).

<sup>309</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 179, p. 282-283 (1159); DE MARNEFFE, Affligem (note 80), nr. 35, p. 61-62 (1122).

<sup>310</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 692 (1186; abbey of Watten).

*clamare*<sup>311</sup>), which may be strengthened by an oath<sup>312</sup>. His relatives and wife will, if necessary<sup>313</sup>, do the same<sup>314</sup>. The lord will follow this up by asking the court whether the alienor, his wife and his relatives are still entitled to the fief<sup>315</sup> and it will judge that they no longer are (*abiudicare*<sup>316</sup>). The fief is now in some limbo, in the hands of the lord who may do as pleases him<sup>317</sup>. Generally, the man will have foreseen this and will have handed over his fief to the benefit of his contract partner<sup>318</sup>, so that, if the lord decides to keep the fief (*retinere*<sup>319</sup>) he will have to pay a compensation. The most normal turn of events is that the lord will invest the new owner with the formalities depending on the situation (the fief remaining a fief<sup>320</sup> or becoming an allod<sup>321</sup> or a non-feudal tenure<sup>322</sup>). This is followed by a second judgement by the court recognizing the title of the new owner (*adiudicare*<sup>323</sup>). At first the lord's intervention was the most important, but gradually the focus shifted to the judgements of the court because they superseded anything else. If the court had judged one had no longer any claim to the fief or that one now owned it, it did not matter which formalities had exactly been followed<sup>324</sup>. This also explains why the charters do not contain detailed descriptions, as that was not necessary. The procedure described here had to take place in the courts of all the lords concerned<sup>325</sup>, at least if the transfer was not the result of a

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<sup>311</sup> PREVENIER, Oorkonden (note 70), II, nr. 76, p. 168-170 (1197). Or all kinds of other expressions, like „*ex ore suo sibi ipsi abiudicavit*” (DUVIVIER, Actes (note 29), II, nr. 41, p. 78-81 (1174)).

<sup>312</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 224, p. 349-350 (1163); ALPHONSE WAUTERS, *Analectes de diplomatique*, in: *Bulletin de la Commission royale d'histoire*, 1880, nr. 7, p. 35-37 (1125).

<sup>313</sup> See below for the role of women.

<sup>314</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 334, p. 96-97 (1171); CAMILLUS CALLEWAERT, *Chartes anciennes de l'abbaye de Zonnebeke*, Bruges 1925, nr. 27, p. 32 (1197). However, most charters only mention that the wife and relatives give their consent (e.g. BARBIER, *Floreffe* (note 100), nr. 11, p. 8-9 (1134)).

<sup>315</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 205, p. 317-318 (1162).

<sup>316</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 142, p. 228-229 (1150-1155); BARBIER, *Floreffe* (note 100), nr. 30, p. 16 (1155).

<sup>317</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 610 (1181-1182; abbey of Cysoing).

<sup>318</sup> VERCAUTEREN, *Actes* (note 48), nr. 105, p. 236-240 (1121); cf. JOACHIM VOS, *L'abbaye de Saint-Médard ou de Saint-Nicolas-des-Prés près Tournai*, II, *Cartulaire*, in: *Mémoires de la société historique et littéraire de Tournai* 12, 1873, nr. 50, p. 96-97 (1189).

<sup>319</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 610 (1181-1182; abbey of Cysoing). This essential element of the procedure is seldom mentioned.

<sup>320</sup> Unfortunately we have very few examples of that (PREVENIER, Oorkonden (note 70), II, nr. 83, p. 182-184 (1198)), as the charters which we have, tend to come from the archives of churches.

<sup>321</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 83, p. 137-140 (1145).

<sup>322</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 72, p. 120-121 (1144).

<sup>323</sup> Vos, *Saint-Médard* (note 318), nr. 58, p. 110 (1190).

<sup>324</sup> HEIRBAUT, *Procedure* (note 41), p. 52-53.

<sup>325</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 610 (1181-1182; abbey of Cysoing); EDMOND REUSENS, *Documents relatifs à l'abbaye norbertine de Heylissem*, in: *Analectes pour servir à l'histoire ecclésiastique de Belgique* 24, 1893, nr. 21, p. 214-215 (1171).

simple substitution of one vassal by another. Some formalities were done three times<sup>326</sup>, but it is not clear whether there was any obligation to do so.

## 9. Feudal succession and dower

For information about feudal successions genealogies (either contemporary or made by later historians) are better than charters, as the latter most of the time only mention that fiefs were indeed heritable: a fief was *hereditarium*<sup>327</sup> or held *hereditario iure*<sup>328</sup> and it was given not just to a man, but to a man and his heirs<sup>329</sup>. Very exceptionally, we are informed of a non-heritable fief, but then there are exceptional circumstances justifying this. Thus, in 1163 a certain Eustachius held a fief for his life only, but he was priest and it concerned a fief bought from an abbey, for which he did not have to serve the abbey and which would escheat to the abbey after his death<sup>330</sup>.

It is hard to derive from the charters when fiefs became heritable in Flanders and Lotharingia, given that, as has already been mentioned, fiefs will only appear in the charters a few generations after they have come into existence. However, it is clear that the *fief de reprise*<sup>331</sup>, an allod which had been converted into fief, played an important role in this. Unfortunately, there are very few charters of a *fief de reprise*. A well-known early example was the conversion of the allods of the count of Hainaut into a fief in 1071, but a charter of this has not been preserved, even though other transactions concerning Hainaut at that time were recorded in charters<sup>332</sup>. Most of the charters<sup>333</sup> about *fiefs de reprise* appear only at the end of the twelfth century and they were issued by the duke of Brabant, who used this technique to expand his power<sup>334</sup>. By then, this political use of the *fief de reprise* was already on the way out in Flanders<sup>335</sup>, although the 'treaty' of Heidenzee between Flanders and Holland for which the term *Diktat* would be more apt stipulated that in Zeeland west of the Scheldt, which the count of Holland held from Flanders, neither count could convert allods into fiefs held from him<sup>336</sup>. More common in Flanders during the twelfth century was the

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<sup>326</sup> PREVENIER, Oorkonden (note 70), II, nr. 93, p. 206-207 (1198); DE SMET, Cambron (note 49), I, nr. 9, p. 314-315 (1198).

<sup>327</sup> HALKIN and ROLAND, Recueil (note 28), I, nr. 143, p. 289-291 (1124).

<sup>328</sup> VAN DRIVAL, Cartulaire (note 18), p. 340-341 (1141); CHARLES DUVIVIER, Quelles étaient l'importance et les limites du pagus Hainoniensis jusqu'au XIe siècle, in: Mémoires et publications de la société des arts et des lettres du Hainaut, 2d series 9, 1863-1864, nr. 120bis, p. 566-567 (1142).

<sup>329</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 723 (1187; abbey of St Peter Oudenburg).

<sup>330</sup> VAN LOKEREN, Chartes (note 64), I, nr. 276, p. 159 (1163); cf. PIOT, Saint-Trond (note 62), nr 107, p. 146-147 (1184).

<sup>331</sup> The sources do not use this term.

<sup>332</sup> GANSHOF, Rattachement (note 100), p. 508-521.

<sup>333</sup> For the twelfth century, the important activity of the count of Hainaut is only documented in Gislebert of Mons (cf. DIDIER, Fiefs (note 3), p. 43).

<sup>334</sup> ERNST, Limbourg (note 160), VI, nr. 73, p. 162-163 (1191); DE RAM, Chronique (note 100), II, p. 118 (1191); CAMPS, Oorkondenboek (note 129), 1, nr. 83, p. 141-143 (1195); DILLO and VAN SYNGHEL, Oorkondenboek (note 129), 1, nr. 924 (ca. 1198); KOCH, Oorkondenboek (note 12), I, nr. 244, p. 407-412 (1200).

<sup>335</sup> See about the fief de reprise in Flanders, HEIRBAUT, Lenen (note 8), p. 34-40.

<sup>336</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 269, p. 424-427 (1167).

conversion of an allod into a fief as the price for the alienation of a fief<sup>337</sup>, which, once again, shows the time gap between Flanders and the others because this technique was to become popular later elsewhere, when it had already disappeared in Flanders<sup>338</sup>. The *fief de reprise* was an ad hoc affair determined by the balance of power between the lord and his new man. Hence, a specific terminology is lacking, as the charters only describe what happened: that a person had given his allod to a lord and that the latter had returned it as a fief<sup>339</sup>. However, the charters are clear about the heritable character of the new fief<sup>340</sup> and they may even contain a detailed arrangement<sup>341</sup> or refer to existing law<sup>342</sup>. Given that women could have allods, they could also agree to hold them as fiefs<sup>343</sup>, which may have been a channel for promoting the idea that women could hold fiefs, though it should be mentioned that, very exceptionally, it could happen that a woman was the recipient of a fief which the lord had created from his own lands<sup>344</sup>.

The specific rules of inheritance are only touched upon in the charters. The special place of the firstborn is mentioned<sup>345</sup>, the exclusion of daughters by a son<sup>346</sup>, of collaterals by children<sup>347</sup>, but not much more than that. However, even more absent is information about deviations from the rule and, if these are found, they concern offices in the early stages of their history<sup>348</sup>. More common are clauses that link the fate of one fief to another<sup>349</sup>, because sometimes a fief was given to enlist the support of a person in his quality as lord of a certain castle. Specifically Flemish is that in the second half of the twelfth century younger sons are holding fiefs and that in many cases their lord is their eldest brother<sup>350</sup>. This hints at a transformation of Flemish feudal law at the time. If, over the generations, fiefs come to

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<sup>337</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 237, p. 376-377 (1164); nr. 262, p. 414-415 (1156-1166).

<sup>338</sup> See e.g. for GUELDER, W.A. BEELAERTS VAN BLOKLAND, *De praktijk van het leenrecht in Gelderland*, Leiden 1910, p. 65.

<sup>339</sup> E.g. *allodium conferre et in feodum recipere* (CAMPS, Oorkondenboek (note 129), 1, nr. 83, p. 141-143 (1195)); *allodium donare et idem in feodum recipere* (DE RAM, *Chronique* (note 100), II, p. 118 (1191)).

<sup>340</sup> HALKIN and ROLAND, *Recueil* (note 28), I, nr. 143, p. 289-291 (1124).

<sup>341</sup> DE RAM, *Chronique* (note 100), II, p. 118 (1191).

<sup>342</sup> KOCH, Oorkondenboek (note 12), I, nr. 244, p. 407-412 (1200).

<sup>343</sup> PIOT, *Saint-Trond* (note 62), nr. 48, p. 63-64 (1144).

<sup>344</sup> Cf. DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/2, nr. 728 (1187; Margaret, castellan of Courtrai).

<sup>345</sup> Cf. DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 260, p. 412-413 (1166); PIOT, *Eename* (note 143), nr. 107, p. 88 (1199); DUVIVIER, *Actes* (note 29), nr. 74, p. 150-152 (1190). A Flemish charter even mentions a primogenita in 1174 (DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 373, p. 151-153).

<sup>346</sup> DE RAM, *Chronique* (note 100), II, p. 118 (1191); cf. DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 373, p. 151-153 (1174).

<sup>347</sup> DE RAM, *Chronique* (note 100), II, p. 118 (1191); cf. DELMAIRE, *Marchiennes* (note 172), nr. 12, p. 111-112 (1188); BORMANS and SCHOOLMEESTERS, *Saint-Lambert* (note 101), I, nr. 54, p. 91 (1187).

<sup>348</sup> PLATELLE, *Justice* (note 153), nr. 44, p. 325 (1119-1125).

<sup>349</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 318, p. 70-73 (1169); EDOUARD DE MOREAU, *Chartes du XIIe siècle de l'abbaye de Villers en Brabant*, Leuven 1905, p. 14 (1168); DUVIVIER, *Actes* (note 29), II, nr. 67, p. 137-138 (1188).

<sup>350</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 181, p. 285 (1159); II/2/2, nr. 677 (1184; abbey of Mesen).

dominate the patrimonies of the aristocracy because of an absolute primogeniture, the younger children will ultimately be left with nothing, which will cause problems of its own, in families and for society in general. In the end, absolute primogeniture has to give way by awarding the younger children part of the fiefs. However, Flemish charters are very confusing and not every younger son seems to have received a part of the fiefs. Only in thirteenth century sources does it become clear that this was due to the vagueness of Flemish feudal law at that time, which only ordered the eldest son to provide for his younger siblings. Thus, giving them a part of the fiefs was only one of his options<sup>351</sup>. Once again, Flanders is a forerunner, with Hainaut following on its heels, because fiefs for younger children were not unknown in twelfth century Hainaut, though they became a general phenomenon there only in the thirteenth century<sup>352</sup>.

An heir could only receive his predecessor's fief after the payment of a succession tax<sup>353</sup>, the „*debitum quod vulgo relevium dicitur*”<sup>354</sup>, for which, apart from *relevium*<sup>355</sup>, many other words are used, at least in Flanders. Most of them are also derived from *relevare*: *relevatio*<sup>356</sup> (the most popular term in Flanders<sup>357</sup>), *relevamentum*<sup>358</sup>, *relevamen*<sup>359</sup>, but also *relicum*<sup>360</sup> and *reliquia*<sup>361</sup> appear. The French plural *reliez* in one Flemish charter is the work of a French-speaking scribe<sup>362</sup>. As usual, the terminological variety only reflects the confusion of the scribes using Latin, as the vernacular knows more uniformity<sup>363</sup>. In Flanders, Hainaut and Brabant the prince had given his reliefs to the Knights Templar, which led to fixed maxima in money<sup>364</sup>, with fiefs which had less yearly revenues than the fixed amount only paying those revenues for one year<sup>365</sup>. However, there was also the relief consisting of a horse and its equipment, the „*proventus qui dicitur hergewede, provenientes ab hominibus a se*

<sup>351</sup> HEIRBAUT, Lenen (note 8), p. 68-87.

<sup>352</sup> DIDIER, Fiefs (note 3), 192, p. 195.

<sup>353</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 336, p. 98-99 (1171); cf. DEVILLERS, Saint-Waudru (note 91), nr. 33, p. 59-61 (1196).

<sup>354</sup> DUVIVIER, Actes (note 29), II, nr. 16, p. 35-36 (1139).

<sup>355</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/2/1, nr. 336, p. 98-99 (1171); DAILLIEZ, Templiers (note 30), nr. 17, p. 315-316 (1142).

<sup>356</sup> DUVIVIER, Actes (note 29), I, p. 74-79 (1143-1163).

<sup>357</sup> Also in Cambrai (ALPHONSE WAUTERS, Exploration de chartes et de cartulaires existants à la Bibliothèque nationale de Paris, in: Bulletin de la commission royale d'histoire 1875-1876, nr. 7, p. 186-187 (1167).

<sup>358</sup> VERCAUTEREN, Actes (note 48), nr. 129, p. 302-303 (1127-1128).

<sup>359</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 266, p. 420 (1166).

<sup>360</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 3, p. 18-19 (1128).

<sup>361</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 157, p. 254-255 (1157).

<sup>362</sup> DE HEMPTINNE and VERHULST, Oorkonden (note 15), II/1, nr. 69, p. 116-117 (1134-1143).

<sup>363</sup> The words *relief* (Old French) and *coepe* (Middle Dutch) have no competition there, however only *reliez* is already found in a twelfth century charter in a feudal context. Its Middle Dutch equivalent *cop* can also be found in the twelfth century, albeit in a non-feudal context (DE HEMPTINNE and VERHULST, Oorkonden (note 15), nr. 186, p. 291 (1160)) and only because a scribe thought it worthwhile though to have the vernacular term of the people accompany his Latin („*emptionem, que vulgo dicitur cop*”).

<sup>364</sup> See above.

<sup>365</sup> Cf. PRUVOST, Bergues-Saint-Winoc (note 192), 57-63 (1067, but in fact early twelfth century (HUYGHEBAERT, Zwevezele (note 192), 219-220)).

*inbenefitiatis*” as it is called in an Utrecht charter<sup>366</sup>. Historians have tried to give this right an origin in older customs and it may be so elsewhere, but it is remarkable that in Hainaut there is a wealth of information about it in the fourteenth century<sup>367</sup>, whereas no charter mentions it in the twelfth. Moreover, in Flanders the vassals never had to pay *hergewede*<sup>368</sup>.

The dower in fiefs shows as usual the differences between Flanders and Lotharingia with Hainaut, once again, being close to Flanders. In Flanders it breaks through in the middle of the twelfth century<sup>369</sup>, whereas in Hainaut it appears in the last decades of that century<sup>370</sup> and in the rest of Lotharingia charters about it are absent, two Brabant charters about a dower in fiefs concerning *fiefs de reprise*<sup>371</sup>. The difference between Flanders and the rest is of course caused by the earlier appearance of fiefs in Flanders, but it goes further than the chronology or the documentation. In Hainaut, according to the 1200 Feudal charter, the dower was not a customary dower. A woman only had a dower in her husband’s fiefs, when he had given her one<sup>372</sup>. In Flanders, however, the customary dower of one half in all likelihood goes back to the 1160’s<sup>373</sup>. Its influence was very profound, as in many charters of the second half of the twelfth century women were involved in transactions concerning fiefs because of their dower<sup>374</sup>. In fact, the count of Flanders established some local comital feudal courts because sometimes women, due to pregnancy or the care for many children at home, could not undertake a long voyage to the count’s *curia*<sup>375</sup>. Thus, an unforeseen consequence of absolute primogeniture was that women had to receive a dower in fiefs, which in its turn contributed to the establishment of local feudal comital courts and that would in the thirteenth century result in a splintering of the once unitary Flemish feudal law.

## Conclusion

As the previous paragraph and, in fact, this whole article show Flanders and Lotharingia do not really belong together. There is the forerunner Flanders (with Cambrai), Hainaut trying to follow and the others lagging behind, with the ‘Dutch’ principalities being very much to the rear, feudalism even being absent in the far north. In this context, it is hard

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<sup>366</sup> MULLER and HEERINGA, *Oorkondenboek Utrecht* (note 95), II, nr. 545, p. 10-11 (1200).

<sup>367</sup> NÖEL DIDIER, *Le droit de liget dans la coutume de Hainaut*, in: *Revue historique de droit français et étranger*, 1936, 476-522.

<sup>368</sup> The burgesses of Bruges, however, state in 1128 that the only obligation a new count of Flanders had towards the king of France was to gift him with a suit of armour (Galbert of Bruges (note 214), ch. 106, p. 150-152).

<sup>369</sup> HEIRBAUT, Lenen (note 8), p. 123-124.

<sup>370</sup> D’HERBOMEZ, *Saint-Martin de Tournai* (note 18), I, nr. 134, p. 135-137 (1183); nr. 141, p. 147-148 (1187); DUVIVIER, *Actes* (note 29), II, nr. 87, p. 176-178 (1194); nr. 129-131, p. 254-258; JEAN-PIERRE GERZAGUET, *Les chartes de l’abbaye d’Anchin (1079-1201)*, Turnhout, 2005, nr. 283, 358-359 (1195).

<sup>371</sup> DE RAM, *Chronique* (note 100), II, p. 118 (1191)); DILLO and VAN SYNGHEL, *Oorkondenboek* (note 129), I, nr. 924, p. 122-125 (ca. 1198).

<sup>372</sup> DEVILLERS, *Chartes Hainaut* (note 20), p. 2-7 (1200).

<sup>373</sup> HEIRBAUT, Lenen (note 8), p. 126.

<sup>374</sup> E.g. DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/2/2, nr. 542 (1179; priory of St Martin Vijve); nr. 781 (1187-1190; abbey of St Bertin Saint Omer).

<sup>375</sup> DE HEMPTINNE and VERHULST, *Oorkonden* (note 15), II/1, nr. 83, p. 137-140 (1145); cf. II/2/2, nr. 767 (1183-1190; abbey of Mesen). For the context, see HEIRBAUT, *Heren* (note 8), p. 172-189.

to see the area between Loire and Rhine as the original home of feudalism, as the centre of that home seems to have been a wasteland at first. Ganshof was wrong in this, but his critics are also wrong in ignoring Flanders and Lotharingia, as the charter material for Flanders and, to a lesser extent for Hainaut, is abundant and, for these two regions, the 'Ganshofian construct' should only be remodeled and completed, not destroyed. Moreover, in many ways the difference with the other principalities of the Low Countries is one of chronology and quantity. They were later and feudalism was to remain less important, but they partook from the same 'feudal toolbox' as Flanders and Hainaut. Keeping that in mind, one should still salute Ganshof for giving such a wonderful description of the 'common frame of reference' for feudalism in the Low Countries.