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THE IMMUNITY IN CAROLINGIAN ITALY*

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Any study of a problem associated with the development of Italian feudalism — such as the problem of the immunity — must attempt to deal with the question of origins, and for the origins of most Italian feudal institutions it is well to go back first to the Lombard period. A study of the Lombard laws and charters for this purpose has prompted the conclusion that, although some of the roots of feudalism can be found among the institutions known to Lombard Italy, feudalism proper had not developed there. The Lombards were certainly acquainted with a type of personal vassalage in the *gasindium* relationship — a relationship which appears more frequently in the later Lombard laws than in the earlier[1] — and they were also acquainted with the grant of benefices in return for past services to the king and presumably in return for implicit future services, even military. In addition, private jurisdiction must also have been developing, at least on a small scale, if we can judge from its prohibition in the laws of Ratchis.[2] Nonetheless, vassalage, benefice-holding, and independent jurisdiction have not combined to form that socio-political system which we know as feudalism.

If feudalism is not to be found among the Lombard institutions, can it be found among the institutions introduced by the Franks following their conquest of the Lombard kingdom in the late eighth century? The feudal relationship had recently emerged in Gaul as a means of solving the military problems of the Carolingian rulers[3] and with the extension of Frankish control over northern and central Italy and the substitution of a Frankish ruling class for the former Lombard, one might expect the introduction of feudal tenure into the landholding system.

Such, however, does not seem to have been the case, although a number of new developments can be traced in Lombard Italy under Frankish domination. Charlemagne played his role in Italy not as a Frankish emperor but as King of the Lombards and accordingly he deliberately chose to act as a Lombard king. The Lombard Laws remained in effect, although they were supplemented by a number of Italian capitularies issued by Charlemagne and his successors in Italy.[4] As a result, the political and economic system of Carolingian Italy was based pri-

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[1] Liutprand 62; Ratchis 10, 11, 14. *Leges Langobardorum*, ed. F. Bluhme, *Monumenta Germaniae Historica, Leges*, IV (Hanover, 1869).

[2] Ratchis 10 and 11.

[3] Fustel de Coulanges, *Histoire des institutions politiques de l'ancienne France: Les origines du système féodal*, 6th ed. (Paris, 1892); Marc Bloch, *La société féodale*, 2 vols. (Paris, 1939–40); C. Stephenson, "The Origin and Significance of Feudalism," *American Historical Review*, XLVI (1941), 788–812; F. L. Ganshof, *Feudalism* (London, 1952).

[4] *Capitularia italica* of Charlemagne, Pippin and Lothair. *Capitularia Regum Francorum* in *Monumenta Germaniae Historica, Legum Sectio*, II (Hanover, 1883–1897), Vol. I ed. Alfred Boretius, Vol. II ed. Alfred Boretius and Victor Krause. The *Liber Papiensis*, subtitled "Lex a longobardorum et francorum regibus edita" (edited in the *Leges Langobardorum, M.G.H., Legum* IV), also contains a version of the Carolingian capitularies as collected in this eleventh-century law book.

marily on the old Lombard customs as modified gradually by the introduction of a number of Frankish institutions. This fusing of Lombard and Frankish institutions continued throughout the period of Frankish domination and was still in progress in the year 962 when the Saxon Otto brought Italy under German domination in a revived Holy Roman Empire. Nonetheless, although Italian institutions show an increasingly feudal character under Frankish rule, the development of a real feudalism in Italy occurred only after Frankish rule had been replaced by German.[5]

A number of developments in Carolingian Italy tended in this direction, however. Among these developments was the continuing use of the benefice (*beneficium*) to reward the loyal followers of the king, the granting of immunity (*emunitas*) to some of the specially favored benefices, and the spread of the practice of commendation (*fidelitas, commendatio*). When these three elements (benefice, immunity, and commendation) have combined — as they did in the post-Carolingian period — then the true (jurisdictional) fief had come into existence.

This paper is primarily concerned with the grant of immunity which the Carolingian rulers of Italy ceded with some of their land grants. The cession of a form of immunity — at least immunity from the payment of certain fiscal exactions — was evidently known among the Lombards, at least in the later days of their kingdom, if we can judge from a charter which Aistulf granted to the church of St Lawrence, Bergamo, in 755.[6] However, although the immunity may have been known to the Lombards, its use was very much extended by the Franks under whom it came to have two forms, the "greater" and the "lesser."[7]

As it developed in the law of the Late Roman Empire, immunity (*aemunitas*,

[5] Carlo Guido Mor, a recent writer who has dealt extensively with the subject of Italian feudalism, has said in his *L'età feudale*, 2 vols. (Milan, 1952), that the Italian fief comes into existence only with the fusion of three elements: immunity, benefice, and commendation. For the purpose of tracing this fusion, Professor Mor finds it possible to begin his survey with the year 887 (the end of the direct Carolingian dynasty in Italy) and end it with 1024. P. S. Leicht, in his *Studi sulla proprietà fondiaria nel medio evo* (Verona-Padua, 1903) and "Il Feudo in Italia nell'età Carolingia," *I problemi della civilità carolingia*, Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo, I (Spoleto, 1954), and in many other works, regards vassalage as a Lombard institution and fief-holding as a post-Carolingian development. The two institutions are combined in the eleventh century during the reigns of the Salian emperors. The true development of Italian feudalism is thus late, Professor Leicht postponing the appearance of its most advanced characteristics to the fourteenth century. For a treatment of the development of Italian feudalism in the area around Milan under the Ottos, see Cinzio Violante, *La società milanese nell'età precomunale* (Bari, 1954), pp. 135–165. For the development of the benefice in Carolingian Gaul, see Louis Halphen, *Études critiques sur l'histoire de Charlemagne* (Paris, 1921), pp. 266–270.

[6] This charter, granted by King Aistulf to the church of St Lawrence, Bergamo, in 755, recites that it is confirming an earlier grant made by Aribert (652–661). The word "immunity" does not appear and the exact meaning of the grant is obscure but the document seems to be ceding to the church (and thus to the men who dwell on its land) immunity from tribute, and it enjoins all public officials (dukes, counts, gastalds, and royal stewards) to observe the terms of the decree. See Giulio Porro-Lambertenghi, *Codex Diplomaticus Langobardiae*, in *Monumenta Historiae Patriae*, XIII (Turin, 1873), XV (c. 33).

[7] The distinction between the lesser and greater immunity is modern, for even the term "immunity" had no fixed meaning to the Carolingians. The important thing was that a charter should cite a number of specific rights or privileges to be enjoyed by a certain individual, ecclesiastical establishment, or estate.

immunitas, emunitas) was exemption from certain public burdens (*munera sordida*) extended to religious institutions or persons by the Christian emperors. The same use of the term continued under the barbarian rulers of Italy but there it became fused with an essentially Germanic concept so that to be "immune" was regarded as being *in mundio* or under the protection (*mundium*) of the king. In practice the grant usually conveyed a specific type of immunity from the interference of state officials and might have economic, military, and jurisdictional aspects. The grant of immunity in effect allowed the immunist to exercise certain functions on behalf of the state, but so long as the grant was of the lesser immunity type this concession was not a delegation of the state's sovereign powers; instead, the immunist became for all practical purposes one of the officials of the state.[8]

The lesser immunity conveyed exemption from the entry of royal officials for the purpose of holding court or of implementing the regular activity of the courts (such as taking sureties or enforcing distraint) or for the exaction of tribute. The immunist's property and dependents were still subject to the jurisdiction of the regular courts and were still liable for the same tribute as before the grant, but the immunist himself now acted in the place of the royal officials and was responsible for seeing that his dependents appeared before the proper courts and he was responsible for collecting the tribute on behalf of the state. Occasionally immunity from the interference of public officials for the purpose of requiring the performance of public works or military service was also bestowed, and we must presume that the immunist was also responsible for requiring these services from his dependents on behalf of the state. In addition, the grant of the lesser immunity might also convey the right of *inquisitio*, the right to use the inquest procedure to determine the rights (especially the property rights) of the immunist. For the sake of clarity, we will consider first the lesser immunity without the inquest although it should be kept in mind that the inquest might form one of the characteristics of the lesser immunity any time after the middle of the ninth century.

Exemption from the interference of royal officials can be illustrated by a number of charters. We have already noted that a kind of immunity was granted in the mid-eighth century by the Lombard Aistulf (confirming a supposed mid-seventh century grant of Aribert) to the church of St Lawrence, Bergamo. This was a kind of lesser immunity, since the church was promised that it was to be free from all exactions for public use except those which had been customary, and with regard to the collection of the customary exactions the church's property was to be immune from the entry of any public official. In the words of the charter, "no duke, count, gastald, or other agent of ours shall dare act contrary to this our order and precept."[9]

[8] Giuseppe Salvioli (*Storia delle immunità delle signorie e giustizie delle chiese in Italia* [Modena, 1888]) argues that at first immunity extended only to the enclosed portions and the non-free residents of a privileged holding and later to the entire holding and all residents regardless of their status. See also Carlo Guido Mor, *L'età feudale*, II, 193–197, and 223, note 1, and Leicht, *Studi sulla proprietà fondiaria*, pp. 163–175.

[9] Porro-Lambertenghi, *Codex Diplomaticus Langobardiae*, XV, c. 33.

Shortly after the appearance of the Franks in Italy, the monastery of Our Holy Saviour in Brescia petitioned Charlemagne, king of the Franks and Lombards, that the monastery should be considered under the protection of the crown (*sub emunitatis nomine*) and that no public official should be allowed to enter the holdings of the monastery for the purpose of holding hearings, exacting tribute or public works,[10] or for the purpose of requiring oathhelpers or assessing public tribute. The petition is granted in these words:

> No one in pursuit of his judicial authority shall presume to enter any of the estates or other properties legally possessed by this monastery for the purpose of hearing judicial suits or exacting fines or enforcing distraint or for raising oathhelpers or requiring public exactions at any time, but this monastery shall enjoy immunity together with the cession of all fines. . . .[11]

The same privileges had been granted to the monastery of Farfa in 775 and to the monastery of Novalese in 779, and would be bestowed on the monasteries of St Vincent at Volturno and of Monte Cassino in 787, and upon the possessions of the churches of Modena in 782, of Aquileia in 792, and of Grado in 803.[12]

In 881[13] a charter of Charles the Fat cited a petition from the bishopric of Cremona in which it was stated that the predecessors of Charles the Fat — Charles the Great, Louis the Pious, Lothair I and Louis II — had ceded immunity to this church; the petition requested that the privilege be confirmed. The grant was made that "no agent, public magistrate or any other person may do anything contrary [to this charter] but the rectors of the aforesaid church may hold their possessions in our *mundium* and under our immunity."[14]

[10] That such an exemption from the exaction of public work was not absolute, however, is indicated by one of Pippin's capitularies issued between 782 and 786: "Concerning the restoration of churches or the making of bridges or the restoration of streets, this shall be done by all means just as was the ancient custom, and immunity (*emunitas*) shall not be claimed nor any other excuse succeed in this matter" (*Capitularia Regum Francorum*, I, No. 91 [Capitulary of Pippin, king of Italy, 782–786], cap. 4).

[11] *Diplomatum Karolinorum*, I, in *Monumenta Germaniae Historica* (Hanover, 1906), no. 135, pp. 185–186.

[12] *Ibid.*, no. 125, pp. 174–175; no. 133, pp. 183–184; no. 157, pp. 212–213; no. 158. pp. 213–216; no. 147, pp. 199–200; no. 175, pp. 234–236; and no. 200, pp. 269–270. It is interesting to note that charter no. 175, issued in 792, already carries an introductory description of Charles as serene and august emperor.

[13] The charters for the Lombard and Carolingian periods are to be found in a variety of publications. The most convenient collection is that of Porro-Lambertenghi issued as Vol. XIII of the *Historiae Patriae Monumenta* and covering the period from 712 to 1000. For the Italian charters of Charlemagne, however, the *Diplomata Karolinorum*, I (all published), *Monumenta Germaniae Historica* (Hanover, 1906), is to be preferred, as are the following volumes of the *Fonti per la Storia d'Italia*, edited for the Istituto Storico Italiano by Luigi Schiaparelli, where applicable: *Codice diplomatico longobardo*, 2 vols. (Rome, 1929–33), covering the period 568–744; *I diplomi di Berengario I* (Rome, 1903), covering the period 888–924; *I diplomi di Guido e di Lamberto* (Rome, 1906), covering the period 889–898; *I diplomi italiani di Lodovico III e di Rodolfo II* (Rome, 1910), covering the period 900–925; and *I diplomi di Ugo, di Lotario, di Berengario II e Adalberto* (Rome, 1924), covering the period 926–961.

[14] Porro-Lambertenghi, *Codex Diplomaticus Langobardiae*, CCXCIX, c. 509. Evidently this charter was at least temporarily lost for it was re-issued in virtually the same words in 883 (*ibid.*, CCCXXIII, c. 544). The validity of such grants of immunity as are cited in these examples is confirmed by a

In 898 a new element was added to the grant of lesser immunity ceded by Berengarius I to the church of Modena when that church, its properties and dependents were exempted not only from the intervention of the public officials for the purpose of holding court, assessing fines, exacting tribute, hospitality or public works, or for the purpose of raising oathhelpers, enforcing distraint, or taking pledges, but also the church and its properties were exempted from the entry of public officials for the purpose of exacting military service.[15]

In 911 Berengarius I issued a type of charter which would become increasingly common as the depredations of the Hungarians forced the people, under the leadership of the church, to take measures for their own protection, especially through the construction of castles. This charter, issued in July 911, permitted the citizens of Novara, under the leadership of their bishop, to build a castle; the charter then guaranteed immunity from the interference of public officials for fiscal or judicial purposes to those dwelling within the fortification.[16]

Whether or not it was customary to grant immunity to individuals and their property is not clear, since relatively few charters issued to individuals have survived. We do have an example of such a practice, however, from the year 911, when Berengarius I extended the royal immunity to a man and the possessions he had inherited from his father, to his children, and to his dependents. This type of immunity was the same as the lesser immunities considered in the preceding examples: the man's property was to be immune from the entry of royal officials for the purpose of collecting tribute or for exacting judicial or other public service.[17] Also, between 902 and 913, the same ruler issued a charter to one of his faithful followers in which that *fidelis* was permitted to build a castle and there to enjoy immunity from the fiscal interference of the royal officials as well as from the judicial interference of the royal officials except in the presence of the royal *missi*.[18] In similar wise Berengarius I permitted the church of Aquileia to fortify a castle. He then granted it immunity from the interference of public officials for fiscal purposes, for the exaction of public works, or for judicial purposes, *except* that the inhabitants must appear before the marquis' court three times a year.[19]

The illustrations of the lesser immunity just cited are but a few examples from the many Carolingian charters which repeat the general characteristics of the grant as noted above.[20]

capitulary of Pippin issued at Pavia in 787: ". . . those granted immunity (*emunitates*) by the will of our lord already mentioned ought to be preserved thus in all things, just as was the command of our lord, King Charles" (*Capitularia Regum Francorum*, I, No. 94 [Pavian Capitulary of Pippin, October 787], cap. 8).

[15] L. Schiaparelli, *I diplomi di Berengario I*, XXIV, 72–74 (7 December 898).

[16] *Ibid.*, LXXVI, 209–210 (19 July 911).

[17] *Ibid.*, LXXVIII, p. 213 (19 August 911). Cf. the charter granted by Louis III in 901 (L. Schiaparelli, *I diplomi italiani di Lodovico III e di Rodolfo II*, VIII, 25–26).

[18] L. Schiaparelli, *I diplomi di Berengario I*, XXIV, 249–250.

[19] *Ibid.*, CXXXVII, 353 (25 March 922). Cf. the charter of Louis III in 901 to the church of Asti in which the church is to be immune from the interference of public officials unless they (the officials) have a legal judgment (L. Schiaparelli, *I diplomi italiani di Lodovico III e di Rodolfo II*, XIII, 42).

[20] Other grants of a similar immunity from the interference of public officials were made in 888 by Berengarius I to the monastery of Bobbio (L. Schiaparelli, *I diplomi di Berengario I*, I, 5), to the monastery of St Mary of Sesto in Friuli (*ibid.*, II, 10–11), to the monastery of St Mary of Gazo in 890 (*ibid.*, VII, 31–33), to the monastery of Nonantola between 896 and 899 (*ibid.*, XXIX, 85–88), to the city of Bergamo in 904 (*ibid.*, XLVII, 138–139), to the church of Asti in 904 (*ibid.*, LI, 148), to a castle built by a deacon in Nogara in 906 (*ibid.*, LXV, 177–178), to the monastery of Capodistria in 908 (*ibid.*, LXVI, 179–180) where immunity is described as "*remota totius publice potestatis inquietudine*," in 911 to a castle constructed by the bishop of Reggio-Emilia (*ibid.*, LXXV, 207–208), to a castle in Novara in 911 (*ibid.*, LXXVI, 209–210), a very limited immunity in 912 to the castles built by the church of Padua (*ibid.*, LXXXII, 221–222), in 912 to the monastery of St Mary Theodota (Pavia), and its castles (*ibid.*, LXXXIV, 225–226), to a public road constructed as a defense against the Hungarians by the bishop of Pavia between 911–915 (*ibid.*, CIII, 268–269), in 916 to a castle constructed by the monastery of St Julia, Brescia (*ibid.*, CX, 282); Lambert to bishopric of Benevento-Siponto in 897 (charter lost but available through a later document of Otto I) (L. Schiaparelli, *I diplomi di Guido e di Lamberto*, V, 108), Louis III in 900 to the church of Arezzo (L. Schiaparelli, *I diplomi italiani di Lodovico III e di Rodolfo II*, II, 7), to the bishopric of Reggio-Emilia in 900 (*ibid.*, IV, 14–15), in 901 to the church of Aretina (*ibid.*, VII, 23–24), to the church of Vercelli in 901 (*ibid.*, X, 32–33), to the church of Cremona and its two towers in 902 (*ibid.*, XIX, 55), to the church of Novara in 905 (*ibid.*, XXI, 60); Rudolph II to the church of Cremona in 924 (*ibid.*, V, 110), to the monastery of St Zeno in Verona in 924 (*ibid.*, VII, 115), to the church of Padua in 924 (*ibid.* IX, 121–122); Hugh in 926 to the monastery of St Zeno, Verona (L. Schiaparelli, *I diplomi di Ugo, di Lotario, di Berengario II e di Adalberto*, I, 4–5), in 928 to the monastery of St Theodoric (Vienne) relating to Italian properties (*ibid.*, XVI, 47), in 928 to the monastery of Saint-Oyen-de-joux (Vienne) also relating to Italian properties (*ibid.*, XVII, 49), to the church of Trieste in 929 (*ibid.*, XXII, 67–68); Hugh and Lothair to canons of Modena in 933 (*ibid.*, XXXVI, 119), to the monastery of Our Holy Saviour, Tolla (*ibid.*, XL, 124), to the monastery of St Flora, Arezzo in 938 (*ibid.*, XLIV, 149), in 941 to the monastery of St Victor, Cellano (*ibid.*, LVIII, 174), in 942 to the church of Padua (*ibid.*, LXII, 183–184), in 943 to the monastery of St Benedict, Monte Cassino (*ibid.*, LXVI, 199), briefer versions of same charter (*ibid.*, LXVII, 200 and LXVIII, 207), to a *fidelis* in 943 (*ibid.*, LXXI, 211); Lothair to St Justina, Piacenza, in 948 (*ibid.*, VII, 266); Berengarius II and Adalbert in 951 to the monastery of Senatore, Pavia (*ibid.*, III, 298), to the monastery of St Michael in Barrea, Sulmona in 953 (*ibid.*, VIII, 315), in 958 to citizens of Genoa (*ibid.*, XI, 327); and Adalbert in 961 to canons of Arezzo (*ibid.*, II, 345). See also grants involving the inquest cited below.

Just as immunity from the entrance of royal officials for fiscal and judicial purposes can be traced back to the Lombard period, so too the use of the inquest can also be traced back to the Lombards. Our information from the Lombard period is, it is true, not very extensive; however, we do have one good example of the use of the inquest procedure as a royal prerogative from the reign of the Lombard King Liutprand and the tone of the document in which this example is contained indicates that the use of such an inquest was not unusual.[21] Most of our evidence

[21] Among the materials, mainly charters, collected together by Luigi Schiaparelli in his *Codice diplomatico longobardo* there is included the transcript of an inquest conducted by Gunteram, a royal notary of King Liutprand, in 715. The inquest was held to determine the respective claims of the bishoprics of Siena and Arezzo to certain churches and monasteries in the territory of Siena. A number of witnesses, mostly ecclesiastics, were interrogated and their replies recorded by the notary under the heading, "Statement of individual priests whom I, the notary Gunteram, at the command of my most excellent lord King Liutprand, interrogated (*inquisibi*)." The replies are given under oath taken on the four Gospels and the cross. The next document recorded by Schiaparelli is the judgment rendered by the bishops of Fiesole, Pisa, Florence, and Lucca on the basis of the inquest conducted by Gunteram, who is here described as the *missus* of King Liutprand. The document cites the names of the bishops present in judgment , lists the numerous churches, baptisteries, and monasteries in controversy, summarizes briefly the chief arguments of the bishops representing Siena and Arezzo, and continues that an inquest has been held: "fecimus ipsam inquisitionem et manus de

concerning the inquest, nonetheless, comes from the Carolingian period, and in the absence of fuller evidence to the contrary we must presume that the Franks brought the inquest procedure with them as an instrument of the royal power and introduced (or re-introduced) its use into Italy.

The inquest developed in Frankish Gaul as a procedure supplementary to that ordinarily provided by the folk law. Proof at Frankish law — as well as in most other barbarian law — depended on the production of oathhelpers by the parties to a suit. The oathhelper was not a witness in any sense of the word: he did not swear to facts that he knew — he swore with his fellow oathhelpers to the purity of the oath taken by his party to the suit. Such an oath depended upon an oathhelper's knowledge of the character of the party whose oath he was supporting in court — it did not depend upon his knowledge of the facts at issue and he was thus not a witness. Nonetheless the Franks (as well as the Lombards[22]) did know the use of witnesses in court. These were attesting witnesses and their activity was formally recognized in the laws. The validity of most contractual proceedings — whether a marriage contract, the sale of livestock or land, or an agreement regarding future disposal of property — depended upon the publicity with which the act was performed. Thus, should a contest of an individual's rights be brought, he could produce formal witnesses to the act. Such witnesses were not chance witnesses but had been deliberately invited either in advance or at the time of the act to bear witness to the proceedings. Such witnesses were thus "experts" in the sense that it was their business to observe the act and the proceedings leading up to it.

The use of another type of witness appeared during the late Merovingian period and developed during the Carolingian period. In this case witnesses were called because of their presumed knowledge of certain facts. Since the use of such witnesses was not according to the customary law of the people, their use had to be associated with the exercise of the royal prerogative. If the use of oathhelpers could not produce a satisfactory decision in the king's court, the king might summon a number of credible persons who presumably had some knowledge of the facts and, having placed them on oath, he or his representative would then put certain questions to them which they were to answer truthfully (and accordingly the procedure of investigation by questioning is called an inquest, *inquisitio*).

ipsos presbiteros, qui nunc vivi sunt et eorum qui transierunt, sed et epistola iudici Senensium civitatis sive episcoporum ecclesie Senensium relegere, ubi continebatur, quod omnis sacratio in suprascriptas dioceas, baptisteria, et monasteria adque oraculas per presulem sancte Aretine ecclesiae omnis in tempore perficiebatur." The judgment goes to Arezzo and the bishop of Siena is enjoined from entering that property thereafter. (L. Schiaparelli, *Codice diplomatico longobardo*, I, 61–82).

The inquest procedure seems to be well established here — there is no indication that it is a novelty. Although the controversy concerns church land, the inquest was ordered by King Luitprand and conducted by the king's notary. The persons called and placed on oath are lesser churchmen whose position gave them an intimate knowledge of the antecedents of each of the properties in dispute. This is not an inquest of neighbors but rather an inquest conducted among those parties most likely to have knowledge of the matters in controversy.

[22] Rothair 224, 360; Liutprand 79; Ratchis 8. The optimates who affixed their signatures to the edict issued by King Rothair in 643 were also, in a sense, attesting witnesses.

This procedure seems to have taken two forms: each of the sworn witnesses might individually be asked questions to elicit his personal knowledge of the affair, or the sworn witnesses might collectively be asked to answer a certain question (in this latter case those sworn, the "*iurati*," form a single body to which the name "jury" was eventually to be given).

The right to hold such an inquest was at first held only by the king, but eventually he came to delegate the right to certain others. Hence we find that the royal *missi*, who act as itinerant justices, might use the inquest procedure and occasionally the right was even conferred upon the counts to be used in determining royal rights.[23] It was simply one step further in this process of delegation to cede to those churches and monasteries under royal protection the right to use the same inquisitorial procedure to determine their rights.[24]

In Italy the inquest took two forms. Both of these were proceedings conducted primarily for the purpose of collecting information, whether information of a civil sort such as determining traditional rights to the possession of property or information of a criminal type to learn about the possible commission of crimes in a particular area. The first type of inquest, to determine traditional rights, was extended almost immediately after the establishment of Frankish rule in Italy to certain churches and monasteries under the royal protection. The extension of the use of this kind of inquest as a special concession from the king can be traced from the Carolingian charters and will be considered later.

The use of the inquest to secure information regarding the commission of crimes seems to have been a device used by the royal justices to initiate criminal proceedings in circumstances where the injured party was evidently reluctant to bring a charge. In other words, the Carolingian justices used a kind of presentment jury for the purpose of bringing indictments. Such a procedure is outlined in a capitulary issued by Charlemagne's son, Pippin, acting in his capacity as king of Italy, in 782:

> Every judge shall cause credible men throughout his district (*civitas*) to swear by the judgment of God concerning how many they have seen — even if outside the manor and its neighboring holdings — who are known to be involved in homicide, theft, adultery, or illicit unions, that no one may conceal them.[25]

The same law then provides for a type of proof which differs in some respects

[23] *Capitularia Regum Francorum, Capitulare missorum*, 786.

[24] The best treatment of the development of the use in court of witnesses placed on oath and of the *inquisitio* is to be found in several works by Heinrich Brunner. The fuller treatment is to be found in his *Die Entstehung der Schwurgerichte* (Berlin, 1872), although in this work Brunner is interested in developments in France, Normandy, England, and Denmark almost exclusively and he concentrates on the period after 1100. More pertinent to the investigation pursued in this paper is "Zeugen- und Inquisitionsbeweis der Karolingischen Zeit," originally published in *Sitzungsberichte der phil.- hist. Klasse der Wiener Akademie*, 1865, but reprinted in *Forschungen zur Geschichte des deutschen und französischen Rechtes* (Stuttgart, 1894), pp. 88–247. In this work, Brunner considers the use of witnesses in Salic and Lombard law, as well as in Carolingian law. See also Arthur Engelmann, *et al.*, *A History of Continental Civil Procedure*, Continental Legal History Series, VII (London, 1928), 158–161, 184–185.

[25] *Capitularia Regum Francorum*, No. 91, cap. 8.

from the old compurgation; this is the use of what seems to be a kind of recognition jury for the purpose of determining guilt in a criminal suit. Accordingly, it is provided that if one man charges another with some offense and the matter cannot be proved by compurgation in the usual fashion, then the accuser may point out those persons who have a knowledge of the crime and the judge shall call these men, place them on oath, and then inquire of them concerning the crime. If guilt is then determined by this method, the penalty to be applied is determined by the old Lombard Law.[26]

That the Carolingian rulers of Italy used the inquest to determine their own rights can be illustrated from the surviving record of an inquest held in northern Italy about 835 to determine possession of certain properties disputed between the Frankish ruler (now emperor) and the church of Massalia:

Report of an inquest conducted by the agents (*missi*) Anspert and Ambrose and the gastald Gausus into a matter of our lord, the emperor, concerning the manor (*curtis*) Lemunta over which manor there was a quarrel between Angelbert, an agent of our lord the emperor, and John, archpresbiter of the church of Massalia . . . There is a certain holding (*casale*) in that place which is called Conni whence those men who lived around that place were put on oath that whatever they knew about the matter they would speak truly.[27]

Some time between 841 and 847 the Emperor Lothair I ceded a charter to the bishop of Bergamo in which it was granted that in case of controversy over the church's property an inquest should be held of suitable men from the surrounding area to determine the rightful properties of the bishopric:

Be it known to all our faithful that the man Agenus, bishop of Bergamo, has entreated our highness concerning the properties of the church of the blessed martyrs, Alexander and Vincent, which is known to be under his episcopal jurisdiction, that we concede that an inquest be held in certain counties and places lest the aforementioned church suffer a diminution of its properties because of an invasion by evil men. Acquiescing in this petition because of our mercy, we order these letters of our authority to be issued by which we concede and order, should the necessity arise concerning the properties of the aforementioned see, that an inquest shall be held among those suitable men dwelling round about who are familiar with those places where the properties lie and also with the properties of its baptisteries, churches and hospitals, lest it lose that which it has acquired justly and legally through the invasion and unjust claim of evil men.[28]

A full statement of the developed lesser immunity (including immunity from the entrance of the royal officials and the grant of the right of inquest) can be found in a charter granted in 883 by Charles the Fat to the church of Bergamo. This charter cites a number of property grants presumably made to the church of Bergamo by the Lombard kings and it indicates that the church had enjoyed immunity and the right of inquest since the days of Charlemagne.

. . . we decree that whatever the ancient emperors and kings [those who have ruled from the time of Charlemagne up to the present] . . . conferred by charter or testament upon the church of Bergamo . . . shall remain perpetually in its legal power, firmly and incontestably, in this and in future time. And no count or public magistrate or gastald or any other person shall enter into the monasteries, hospices, churches, baptisteries, principal places, oratories, or any other possession wherever located in the kingdom of Italy, which from the time of the great Charles up to the present time is recognized to belong to the said church of Bergamo, or into whatever property divine piety wishes to add hereafter. No official of the higher or lower political authority (*superioris aut inferioris reipublicae procurator*) may cause a meeting to be held for judicial purposes, nor may he exact fines or require hospitality or works, or take oathhelpers involuntarily, nor may he annoy the clerks of that church in their persons or in their holdings, nor may he distrain by the power of command the men of that church—free tenants (*ingenuous libellarios*) as well as slaves—in their possessions or holdings, nor may he presume to demand any public functions or returns or illegal services or works—as up until now has been exacted from the slaves of that church near Lake Como, nor may he dare to impose exactions in addition. . . . no one in our kingdom may require exactions of any kind or take annual gifts of any sort from the properties of the above-mentioned church in any county or public office whatever, nor may he dare levy anything more than is customary; but all unjust customs having been repulsed and extinguished, it is permitted to that venerable man and to his officers and successors in that aforementioned church together with all their subjects to be under our immunity . . .

We order and decree by every means that wherever the already mentioned church is known to hold the legal investiture from the time of the aforesaid great Charles, if anyone attempts to cause it diminution or divestment, it is not necessary for the aforesaid bishop or his successors in that church to offer any proof to those acting against it, but if it is necessary, let an inquest be made by oath through the good faith of those countrymen living round about, in order that the truth may be made plainly clear. Moreover, he who has been found and proved to be a violater of this our order, we concede that he may clear himself by payment of the penalty for immunity, which is twenty pounds of gold in the case of this church.[29]

In 891 King Guy (who for a time disputed the right to rule with Berengarius I) granted that the church of Modena be confirmed in the possession of all those properties which a royal inquest should determine belonged to it. The charter also bestowed a greater immunity — to be discussed below — on this church and its property.[30] A similar situation developed in 892 with regard to the monastery of St Christina near Corteolona.[31]

The grant to private or ecclesiastical institutions of the use of the inquest to establish title to property when documents supporting such claims were lacking is possibly related to a general weakening of the royal power in the late ninth and early tenth centuries (during which time the Italian throne was ordinarily disputed by two or three claimants at once) which coincided with a series of Hungarian invasions from the east and with the threat of Saracen raids from the west. We have already noted that one result of this threat to the security of the penin-

[26] See also Brunner, "Zeugen- und Inquisitionsbeweis," pp. 108–109.

[27] Porro-Lambertenghi, *Codex Diplomaticus Langobardiae*, CXXVI, cc. 223–224.

[28] *Ibid.*, CLXIV, cc. 280–281.

[29] *Ibid.*, CCCXX, cc. 537–540. In 903 the monastery of Bobbio also secured the right of inquest to determine its property rights (L. Schiaparelli, *I diplomi di Berengario I*, XL, pp. 117–119 [11 September 903]). The use of the royal inquest to determine respective property rights in a controversy among the churches of Milan, Pavia, Piacenza, Reggio, and Cremona occurred some time between 916 and 924 during the reign of Berengarius I. The document containing the record of this inquest has not survived, but a reference to it made by a twelfth-century writer clearly indicates that the royal inquest was still being used in the tenth century (*ibid.*, No. 45, p. 424).

[30] L. Schiaparelli, *I diplomi di Guido e di Lamberto*, XI, 31 (22 November 891).

[31] *Ibid.*, XV, 40 (29 June 892).

sula was the development of local methods of defense organized under the leadership of the higher clergy, defense characterized by the construction of castles. In spite of castle building and local military service, however, the Hungarian raids were destructive of much property. In fact, these barbarians not only raided fields and carried off crops and livestock but also sacked manor houses and monastic establishments, stripping such buildings of their valuables and burning the buildings as they withdrew. As a result of these depredations, many individuals, churches, and monasteries not only lost heavily in movable property and buildings, but they also lost many documents including a number of land charters. The early tenth-century rulers of Italy, Berengarius I and Louis III, took cognizance of this situation by re-issuing charters, especially to the churches and monasteries. These new charters ordinarily gave the institution in question a claim to those properties to which its right of possession was confirmed by the holding of an inquest of those living in the vicinity. Under oath, these "good men of the community" were asked to say whether the church's or monastery's claim to a particular property was a fact of long standing. Thus, in 901 Louis III issued a charter to the church of Vercelli enabling it to recover possession of those properties for which it lost documents during the Hungarian invasions. The means of establishing the church's right of possession was the holding of an inquest of the magistrates (judges) and "good men living in the vicinity" (*iudicum recordatione aut hominum bonorum circumquaque manentium*). Louis III then bestowed a limited immunity upon the church of Vercelli and took it under his protection.[32]

Likewise, in 901 Louis III confirmed the privileges and possessions of the church of Bergamo, documents for which had been lost during the Hungarian invasions. Again, the means for establishing title was an inquest of the magistrates and of the "good men living in the vicinity."[33] In 902 Berengarius I allowed the church of Parma to make good its claim to properties the charters for which had been lost in a fire by an inquest of the neighbors and others living round about (*per vicinos et circummanentes*).[34] In another charter, issued to the church of Parma a few days later, Berengarius allowed the church to defend itself through the use of the inquest in suits arising over properties claimed by the church for which the documents had been lost in the fire.[35] The canons of Parma were granted similar charters in the following year.[36]

[32] L. Schiaparelli, *I diplomi italiani di Lodovico III e di Rodolfo II*, x, 32–33 (28 March 901).

[33] *Ibid.*, xi, 35 (25 March 901).

[34] L. Schiaparelli, *I diplomi di Berengario I*, cxxx, 337 (26 September 920).

[35] *Ibid.*, cxxxi, 340 (October 920).

[36] *Ibid.*, cxxxiv, 345 (19 February 921) and cxxxv (20 February 921). Further examples of the inquest can be found in the following charters: granted by Berengarius I in 888 to the monastery of Bobbio (*ibid.*, i, 5), to the monastery of St Mary of Gazo in 940 (*ibid.*, vii, 31–33), in 894 to the bishopric of Mantua (*ibid.*, xii, 41–46), in 898 to the church of Modena (*ibid.*, xxiv, 72–74), to St Mary, Theodota (Pavia) in 899 (*ibid.*, xxvii, 79–83), to the monastery of Bobbio in 903 (possibly because the grant of a similar charter in 888 had been followed by a period during which Berengarius' claim to the throne had been disputed by a certain Guy and the monks to make certain their claim had secured a charter from Guy in 893) (*ibid.*, xli, 121–122); Guy to the monastery of Bobbio in 893 (L. Schiaparelli, *I Diplomi di Guido e di Lamberto*, xx, 53); by Lambert to the monastery of Bobbio in 896 (*ibid.*, v, 85), to the church of Modena in 898 (*ibid.*, xi, 99); Louis III to the bishopric of Reggio-Emilia in 900 (L. Schiaparelli, *I diplomi italiani di Lodovico III e di Rodolfo II*, iv, 14–15), to the church of Aretina in 901 (*ibid.*, vii, 23–24), to St Mary Theodota in 901 (*ibid.*, ix, 28–29); Rudolph II to the city of Bergamo in 922 (*ibid.*, ii, 99); Hugh to the church of Parma in 926 (L. Schiaparelli, *I diplomi di Ugo, di Lotario, di Berengario II e di Adalberto*, iii, 12–13), to the monastery of St Mary, Gazo, in 928 (*ibid.*, xii, 38–39), to a man and his two sons in 928 (*ibid.*, xiii, 40), to a man, his wife and dependents in 938 (*ibid.*, xiv, 41–42), to the monastery of St Peter in Cielo d'Oro, Pavia (*ibid.*, xx, 54–63), in 931 to the churches of St Anthony and St Victor, Piacenza (*ibid.*, xxvii, 80); Hugh and Lothair in 932 to the monastery of St Mary Theodota, Pavia (*ibid.*, xxx, 92), in 941 to the monastery of St Vincent, Volturno (*ibid.*, lix, 177), to the church of Reggio-Emilia in 942 (*ibid.*, lxiii, 188), to St Anthony, Piacenza in 943 (*ibid.*, lxv, 195), to the church of St John Domnarum in 947 (*ibid.*, lxxxiii, 246); Berengarius II and Adalbert to the monastery of St Vincent, Volturno (*ibid.*, iv, 303–304), and to the abbey of Leo, Florence, in 958 (*ibid.*, x, 324).

The immunity described in the preceding examples bestowed upon the immunist the right to act on behalf of the state in certain important areas such as, for example, in the collection of tribute due the crown or in bearing responsibility for seeing that the immunist's men performed their judicial obligations and sometimes also their military obligations. The estate was immune from the intervention of royal officials on the assumption that the immunist would take the place of the royal officials. On occasion, however, the grant of immunity might go further than simply empowering the immunist to act in place of the royal officials and the estate became a kind of jurisdiction of its own. The simplest form of this greater immunity was the cession to the immunist of the regalia or fiscal returns, as a result of which the immunist did not collect the tribute on behalf of the state but rather collected it for himself. However, when the greater immunity had developed to its fullest extent, the immunist would exercise the right to hold his own court and his estate would constitute a territorial jurisdiction. This did not occur under the Frankish rulers of Italy, however, and such territorial jurisdiction did not develop until the close of the tenth century.[37]

It is true, nonetheless, that churches and manorial lords holding church lands had had a kind of domestic jurisdiction from a much earlier time. In the so-called Second Mantuan Capitulary, issued by Pippin probably in 787, it is clearly stated that lesser clerics shall come first under the jurisdiction of the bishop's court, and only then, if the bishop is unable to render justice, shall the

[37] For the later development of such territorial jurisdiction see an unpublished paper by Catherine Boyd, "Italian Feudalism Reconsidered," read before the annual meeting of the American Historical Association in 1955. See also Leicht, *Studi sulla proprietà fondiaria*, p. 164.

Venice may constitute an exception to this general statement that territorial jurisdiction did not develop until the close of the tenth century. In order to give evidence to the Carolingian claim that Venice was part of the territory under Carolingian control, Charlemagne and his successors formalized the fact of virtual Venetian independence by the grant of treaties or charters enumerating the special privileges of the duchy. A charter ceded by Guy in 891 confirmed the possessions of Venice as recognized by Charlemagne (but did not mention a pact made with Venice a few years earlier by Berengarius I [L. Schiaparelli, *I diplomi di Berengario I*, iii, 13–25, 7 May 888]), and recognized certain privileges. These privileges constituted the grant of a greater immunity and included the right that the Venetians be allowed to conduct their own business, collect their own tolls, and handle their own legal disputes concerning property by means of twelve jurors elected from the county. Whether the use of the *elected* jurors from the vicinity was an adaptation of the inquest procedure or was an extension of the use of *scabini* is not clear (L. Schiaparelli, *I diplomi di Guido e di Lamberto*, pp. 24–25 [20 June 891]).

injured party (accompanied by a representative of the bishop) seek justice from the royal courts.[38] The same capitulary provided that the agricultural dependents of an ecclesiastical establishment should receive justice from their patron or lord, whether that patron or lord was the ecclesiastical establishment itself or a freeman holding a benefice from the church.[39] But something more than jurisdiction over clerical or servile dependents came eventually to be provided for in the greater immunity.

We find an example of the grant of exemption from the collection of labor services and tribute on behalf of the state ceded to the church of Como in 855. In that year the men of Como petitioned Louis II to recognize the exemption which they claimed had been ceded to them earlier by Louis' Lombard and Carolingian predecessors. The "traditional" rights of Como were being ignored by the royal officials and thus a new charter guaranteeing these rights was sought. Louis granted the request:

> We order that no administrative or judicial official shall presume to impose his authority upon them [the men of Como] nor may he dare do anything to this church contrary to these concessions made to the bishop of that venerable place, nor may he dare molest them at any time [for the performance of] any public work or the exaction of any tribute or any public watch, nor may he presume to disturb them, but whatever our fisc could expect to have thence becomes through our concession for the usefulness of the church itself.[40]

Here it is clearly stated that whatever fiscal returns the royal treasury could ordinarily expect from the church's properties would now pertain to the church itself and the men of the church were to be exempt from the performance of public works or military service.

Another charter of similar nature was granted in 881 by Charles the Fat to the monastery of St Mary Theodota in Pavia. Here we find the now familiar prohibition of the entry of public officials for the purpose of holding court, exacting tribute or public works, requiring hospitality, taking oathhelpers, or enforcing distraint upon any of the men of the monastery, whether slave or free. In addition, it is stated that "whatever our fisc could expect to collect from that monastery we solemnly and perpetually cede to that blessed monastery itself."[41] What seems to be another version of the same charter adds that the monastery and its property shall be under the royal protection and that "if it is necessary, the truth of any suit concerning its properties and dependents can be proved through the royal inquest."[42]

In 906 Berengarius I issued a charter to a certain deacon of Nogara permitting

[38] *Capitularia Regum Francorum*, Vol. I, No. 93, Cap. 1.

[39] *Ibid.*, No. 93, cap. 5.

[40] Porro-Lambertenghi, *Codex Diplomaticus Langobardiae*, CLXXXIX, cc. 317–318.

[41] *Ibid.*, CCCV, c. 517.

[42] *Ibid.*, CCCVI, c. 519. In 894, in reply to a petition from the bishop of Mantua, Berengarius I granted a charter which provided that the bishopric be taken under the royal protection, that the city of Mantua be immune from the interference of the royal officials, and that in addition the right of "public money" in Mantua be given to the bishopric. Whether this grant of "public money" meant the right to coin money or to collect the public revenues is not clear but the second explanation is the more likely (L. Schiaparelli, *I diplomi di Berengario I*, XII, 41–46 [21 November 894]).

him to build and fortify a castle. The charter detailed how the castle was to be constructed, guaranteed immunity from the interference of public officials, and in addition, provided that the immunist was to collect for himself any exactions ordinarily due the public fisc from this town and might hold a public market from which all the tolls and market dues would be owed to him.[43]

In 916, because of the damages caused by the Hungarians, Berengarius I ceded to the church of Cremona all the rights of the fisc in the county of Brescia and on an adjacent manor. In addition, the church of Cremona was granted an immunity over the territory surrounding the city of Cremona for a distance of five miles within which the royal officials might not enter for any reason, whether to hold court, enforce judicial decisions, collect exactions, or for any other purpose. The church, its people, and its castles were then taken under the royal protection.[44]

In 928 King Hugh ceded what is described as the complete public power to the churches of the Holy Saviour and St Mary of Parma. The exact rights which such a grant implied are not mentioned, perhaps because it was unnecessary to do so since all were included. Bishop Sigefred and his successors should have:

> . . . totam illam publicam functionem, que ab aliquo exactore publico, de omnibus rebus illis de quibus iam nominatus Sigefredus episcopus et sui successores, qui pro tempore fuerint, iuste et legaliter Deo donante aliquam firmitatem a liberis hominibus acquirere potuerunt et que per consuetudinem atque antiquum usum exigi solet, videlicet a comite vel vicecomite a sculdasio vel decano a saltario vel vicario vel ab alio aliquo. . . .[45]

In 939 the kings Hugh and Lothair confirmed to the monastery of Bobbio the extensive gifts made to it by Lombard and Carolingian kings. In addition, the charter ceded to the abbot of the monastery (who is also described as the king's faithful count) and to his successors in that county and territory the "pure and mixed imperium" (*merum et mistum imperium*).[46]

In 945 King Lothair confirmed to the church of Mantua the right to coin

[43] *Ibid.*, LXV, 177–178 (24 August 906). In 908 Berengarius I issued a charter to the church of Ceneda in which he granted to the church a gate or port in the town wall together with certain tolls on river and in the forest ordinarily due the royal fisc (*ibid.*, LXVII, 182 [5 August 908]). Some time between 902 and 913 the same king issued a charter to his *fidelis* Lupo permitting him to build a castle, construct a mill, and to enjoy certain fishing rights. These structures and the holding upon which they were located were to enjoy immunity from interference of the royal officials and the right to hold market there. The royal officials might enter for no purpose, nor could a public investigation be made of the immunist's disposition of the funds he collected within his holding (*ibid.*, XCIV, 249–250). Some time between 911 and 915 Berengarius I issued a similar charter to the church of Novara allowing it the privilege of erecting a number of castles which were to enjoy immunity from the interference of the public officials and the right to collect dues from their own markets without liability to a public investigation (*ibid.*, CII, 267–268). Between 912 and 915 Berengarius I ceded to a subdeacon of Pavia the right to hold a market in his castle and to collect everything due to the fisc (plus immunity) (*ibid.*, CVI, 274).

[44] *Ibid.*, CXII, 288–289 (1 September 916).

[45] L. Schiaparelli, *I diplomi di Ugo, Lotario, Berengario II e di Adalberto*, XV, 45–46. Although the charter does not so enumerate them, a number of the other charters ceded by Hugh or by Hugh and Lothair describe the rights of "*districtum*" and "*teloneum*" as being among the other rights ceded (*ibid.*, III, 12–13; IV, 16–17; XXIV, 72; XXV, 75; XXVI, 78).

[46] *Ibid.*, LI, 155 (20 March 939).

money for Mantua, Verona, and Brescia. However, there is nothing in this charter which would indicate that the right to coin money was regarded as a part of the royal immunity.[47]

In 948 King Lothair ceded to the church of Trieste a more complete "greater immunity" than is found anywhere else in these pre-Saxon charters:

> We grant [to the bishop and his successors, our *fideles*] all the things of our kingdom, the *districtum* and public justice together with all else which belongs to our public authority, whether within the walls of the city of Trieste or outside the walls up to a distance of three miles, including the whole circuit of the city wall with its three gates. And we order that no greater or lesser personage in our kingdom shall dare exercise any public function however slight within the aforesaid city of Trieste or outside, up to a distance of three miles.[48]

Such are the characteristics of the immunity as it developed in Carolingian Italy. It should be noted that the authors of the Carolingian charters were little concerned with any distinction between "lesser" and "greater" immunity — rather the important thing seemed to be the grant of the royal protection and the specific rights which went along with that protection. Modern scholars, however, have concluded that, whether the Carolingians and their immediate successors realized it or not, the immunity had undergone a drastic evolution during the period. The lesser immunity continued to appear, but it was supplemented by a kind of immunity which goes far beyond the original form. Whereas in the lesser immunity the immunist acted on behalf of the state (and thus was, in a sense, an official of the state), when a greater immunity was bestowed, the state in a sense abdicated a part of its rights (fiscal, military, or judicial) on behalf of the immunist. Thus, the immunist who enjoyed a greater immunity acted on his own behalf and not on behalf of the state — his territory had become a jurisdiction of its own and the immunist enjoyed a position not far removed from that of an independent ruler.

The spread of the use of the greater immunity contributed toward the development of that peculiarly Italian form of feudalism in the tenth century characterized by the fusion of immunity, benefice, and vassalage. The resulting product, however, was the creation of a feudal "system" where the term "system" is even more a misnomer than is ordinarily the case with feudalism and in the long run Italian feudalism would be noted for its extreme variety, for its refusal to adhere to any pattern, and for the creation of a number of independent principalities. However, it should be noted that Italian feudalism did not develop as an almost exclusive prerogative of the military order of society — as a matter of fact, military service never formed an essential ingredient of Italian feudalism — but

[47] *Ibid.*, I, 250 (27 May 945).

[48] *Ibid.*, XI, 277–278 (8 August 948). Other grants of the greater immunity were made by Hugh to the church of Parma in 926 (*ibid.*, III, 12–13), to the church of Asti in 926 (*ibid.*, IV, 16–17), in 926 to the bishopric of Treviso (*ibid.*, VI, 25), to the church of Parma in 929 (*ibid.*, XXIV, 72), also to the church of Parma in 930 (*ibid.*, XXV, 75), and again to Parma in 930 (*ibid.*, XXVI, 78); by Hugh and Lothair to a certain count in 940 (*ibid.*, LIII, 160–161), in 943 to the [illegible]ch of Parma (*ibid.*, LXXIV, 218); by Berengarius II and Adalbert to the church of Mode[illegible]a (*ibid.*, II, 295), and to the monastery of St Antimo, Siena (*ibid.*, V, 306).

rather a great variety of people and institutions were able to acquire benefices for which they secured special immunities. Thus we have seen that it was not only the military retainers who got benefices in Carolingian Italy (although many more retainers probably got benefices than we have documents for); churches, monasteries, hospices, and other ecclesiastical institutions, as well as cities and private (non-aristocratic) individuals, also got benefices of many sorts: agricultural land, forest land, navigation rights, or the right to build town walls, gates, or castles.

The use of the inquest spread in Italy in the tenth century and promised to become an accepted characteristic of the immunity. The immunity itself carried over into the Saxon period and coalesced (under royal impetus) with the institutions of benefice-holding and vassalage to form a kind of feudalism, albeit with characteristics somewhat different from the Frankish variety. In this process of continued evolution, the inquest tended to drop out and disappear.[49] The *inquisitio* would reappear with the revival of Roman law and with the Inquisition, but this later inquest was of a different type and apparently had no connection with the Frankish institution. Thus the early transplantation of the inquest into Italian soil produced no such lasting effects as did the somewhat later introduction of the same institution into England, where it became the ancestor of Henry II's presentment and recognition juries.

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[49] Francesco Calasso (*Medio evo del diritto* [Milan, 1954], p. 210) considers the *inquisitio* to have been merely one aspect of the personality of law principle (an inquest of the old men of the community to determine what law a man should be judged by). Since the inquest was a practice associated with personality of law, it was inevitable that its use should disappear with the revival of Roman law concepts of the territoriality of law. Thus, although many Germanic customs influenced the *fonti* of Italian common law, the *inquisitio* was not one of them.