Charlemagne's throne in the gallery of the octagon of the palace chapel at Aachen. The throne, which is approached by a staircase with six steps consists of four stone pillars supporting the sopora, i.e. the base on which the chair is raised. The chair is made of oak planks encased in slabs of white marble. The side pieces are curved to provide elbow rests. The back, rounded at the top, consists only of an upper part; the space below is filled by an upright wooden plank.

Installed in the seclusion of the royal (later imperial) loggia, the throne faced the main altar, which was visible through the centre opening of a three-part bay formed by two marble pilasters and two marble columns. Charlemagne could thus follow the Mass and liturgical offices. For an even clearer view, the bronze grilles, made at Aachen, which barred the lower part of the bay could be opened at the centre. The throne, like the chapel as a whole, dates from the late eighth or early ninth century.
IX. The impact of Charlemagne on the institutions of the Frankish realm

While the decisive influence of Charlemagne on the institutions of the Frankish monarchy is well known, what is more obscure and what is here to be discussed in detail is the manner in which Charlemagne wielded this influence.1

This was done chiefly through the capitularies which were decrees divided into articles (capitulum) by which the Carolingian monarchs issued legislative and administrative provisions. Traditionally called constitution, decretum, edictum, etc., they were more recently known as capitula or capitularies.2 From the capitularies through which Charlemagne exerted the most influence on Frankish institutions, we have selected a few which form an important group and which are extensive ordinances, generally issued at times of crisis, most often at the gatherings of a great assembly. Though generally concerned with religious problems, they deal with numerous other matters. Their object seems to have been twofold: on the one hand, a correct enforcement of traditional rules which had been unfortunately neglected; on the other hand, adaptation of these rules to new circumstances which often involved the creation of new regulations.

Let us deal first with the capitulary of Hersfeld, the oldest decree to which the name of capitularis has been applied and which was published in 779. Its elaboration closed a period of very serious political crises: the disastrous expedition to Spain in 778, the violent Saxon revolt of the same year which saw the enemy at Deutz opposite Cologne, and the fear of an anti-Frankish uprising in Aquitaine and in Septimania. Prepared in the assembly that gathered at the palace of Hersfeld on the Moselle and promulgated by the king, this capitulary reorganised the most important public institutions and introduced considerable reform.3 It dealt with purely ecclesiastical matters as well as with administrative and judicial subjects which involved the functioning of several institutions. Both
have spoken. So it was that from assemblies gathered in October 802, and probably from commissions of experts formed to implement the work of these assemblies, came out in 803 at least four capitularies which made complete the action of the programmatic capitulary of Marschi 802. The first made additions to all the national laws in force within the Frankish realm. The second revised the Lex Riburiana. Several articles of a third one were meant to enforce the rules issued in the programmatic capitulary which had been too general to be effective. A fourth one contained instructions to be carried out by missi dominici. 29 It is also most likely that in the beginning of 806 a capitulary, a fragment of which is still preserved, strengthened the authority of several clauses of the capitulary of Thionville by incorporating them in the national laws. 30

If these great capitularies and the provisions which completed them played such a capital role in Charlemagne’s action on the institutions of the Frankish monarchy, we must grant nearly the same importance to shorter but more numerous capitularies issued in less solemn or less dramatic circumstances. In most of the capitularies the provisions deserving to be qualified as legislative are scarce. The articles of those capitularies, instead of taking a normative form, are more often shaped as administrative decisions made for a group of given cases, or as orders or interdictions to the agents of the state obliging or forbidding them to act in a certain way. 31 From the frequent repetition of these orders and interdictions we may infer that they were often badly obeyed; nevertheless we may perhaps believe that occasionally the constant repetitions produced some good results. 32

In certain cases very important decisions taken by Charlemagne in the field of institutions do not appear in the capitularies. There is, for instance, no article in any capitulary through which Charlemagne created the stabini (Fr. échelons, Germ. Schöffen), those men forming the permanent body of assessors to the county court known as the mallius. In the capitularies they meet them only in connection with their duties or their appointment. 33 In the field of military matters we have no article of a capitulary enacting that, in case of war, a certain number of men “economically feeble” should be grouped together in order to equip one of them to serve in the army: we find only the means of applying this rule in 869, 807, and 808. 34 Either the capitularies concerning these matters have disappeared or provisions dealing with them were never cast in the shape of articles. What probably happened is that Charlemagne, reaching a general decision, made it known verbally and that only the particular points concerned with its execution were promulgated and afterwards published in a capitulary. 35

Among the decisions of Charlemagne concerning the institutions of the Frankish realm were several that proved to be inadequate and that had results far below what the king had expected. In regard to the impact of these decisions upon institutions I have previously noted the “failure of Charlemagne”, 22 and I still think the term “failure” is correct. Though in many cases the immediate results of these decisions were disappointing, ultimately these decisions proved to be important and a few even remained in existence, though of course not without alteration, long after Charlemagne and the Carolingians.

From the group of institutions strongly influenced by Charlemagne—central institutions of the realm, regional administrative institutions, judicial institutions, manorial institutions, military institutions, vassalage, coinage, weights, and measures—I have chosen the judicial institutions to illustrate what has been described. Their object was to secure for each individual the possibility of having his rights recognised, established, and protected, and to ensure the respect for law, a prevailing concern of Charlemagne. 26

Within the judicial institutions I shall limit my discussion to the organisation, leaving out the substance of law, the system of evidence, and the course of procedure once the law suit was begun. Even within judicial organisation I shall not go beyond the ordinary court, that is the county court or mallius, and only occasionally shall I refer to the judicial assizes of the missi dominici or to the palace court.

Arbitrary actions liable to affect people’s lives or their possessions were prohibited. To hang a man, even when he seemingly was caught in the act, was forbidden on pain of severe penalty even if it concerned a serf; regular judicial procedure had to be applied even if it be the summary procedure of flagrante delicto. 29 The Frankish judicial procedure concerning goods apparently belonging to no one was introduced in Bavarian law to forbid in Bavaria the appropriation of goods that might have been lost by someone or stolen from him. 30 The emperor’s concern for equity stretched out to those who had been condemned to death but to whom mercy had been granted; their person and their goods legally acquired after the granting of pardon had the benefit of protection by the law courts. 31

There is no contradiction between this concern and the anxiety with which Charlemagne, especially during the last years of his reign, saw the increase in the number of cases in the law courts. 32 The overcrowding of the court roll at the Palace caused him a particular anxiety. 33 He did not seem to realize that this overcrowding was the result of the extended competence imprudently given to the Palace court, especially by the programmatic capitulary of 802 and the others which followed. 34 No efficient measures were adopted to improve this situation. 35

Charlemagne’s wish not to see the number of cases brought before the courts continuously increase was in accordance with his character. He had a natural inclination towards permanence and durability which determined so many aspects of his policy. This state of mind influenced him to fix
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dares beyond which complaints likely to have a repercussion on landed property might not go back. One might not contest a seizure existing at the time of the death of Pippin III. With certain exceptions, the limitation in Bavaria, at least for the assesses of the missi, was set at the date of the accession to the throne of duke Tassilo III, who was later dismissed.  
The counts and the inferior agents of the royal authority often seem to have lacked zeal in the practice of their judicial duties, especially when it concerned plaintiffs whose reactions were less to be feared than those of powerful persons of high rank. Charlemagne reacted vigorously against this tendency. The counts were not allowed to postpone a session in order to go hunting or to indulge in some other enjoyment. They must deal diligently with the suits of the churches and of the miserables personae, that is of poor people, widows and orphans. The number of times such instructions were formulated or involved in capitularies and other official texts, reveals a most unsatisfactory enforcement of these rules.  
Owing to the ill will of the accused, the plaintiff might experience great difficulty in getting his case judged; indeed the time allowed for appearance in court by most of the national laws was long and respite could easily be renewed or extended. In the cases, however, where the lex Ribaria was applicable, the capitulary revising this law reduced the number of necessary summonses, and also, I think, the delays, and by a more efficient intervention of public power compelled the indicted to appear.  
The repression of certain offences became increasingly important to Charlemagne, and especially since 862 occupied a greater place in his capitularies. These offences entailed condemnation to an exclusively penal fine such as the bannum of 60 solidi or to an arbitrary punishment, either corporal or death. I allude in particular to highway robbery, homicide, encroachments on churches, and on miserables personae, perjury, incest, and certain cases of revenge or fapia. In such cases justice could be obtained without difficulty before the Palace court or before the assesses of the missi dominii. But before the malius, or county court, a plaintiff who had been wronged, or his representative, had normally to be present and to act; in the cases which have just been quoted, there was not always such a plaintiff, and there were even cases when it was impossible that there could be one. In those cases it seems likely that the count himself acted as the plaintiff. There is no written evidence indicating at what time Charlemagne authorised him to do so.  
The principal reform which Charlemagne introduced in the judicial institutions changed the composition of the county court, the malius. At the beginning of Charlemagne's reign as well as under his Merovingian and Carolingian predecessors, this court was presided over by the count or by an inferior officer of justice, the vicarius or centenarius, or perhaps already sometimes by a deputy (missi) of the count, the future viscount (vicomtes). And so it remained. The chairman was assisted by assessors generally listed in the texts under such vague terms as juges or inhabiteurs of the count, and homi homines (honorable men). A group of these assessors versed in the customary law had the extremely important task of 'finding' the judgment. In the texts these men are often called rabihurij (French: 'rabbiner'). They had no permanent status and were most likely designated by the chairman for each session. The free men belonging to that section of the county where the malius sat were bound to be present at all the meetings, a burden that could be very heavy.  
Charlemagne at first appears to have replaced the occasional assessors with permanent ones qualified for this task, who by experience acquired a sounder knowledge of the customary law and whose functions became official. They were the scabini, which we have already mentioned. They sometimes were still called by the traditional name of rabihurij or by such general terms as homi homines and magnifici vini, 'men of great importance' or even by the more technical name of indici, 'judges'. We first meet the scabini in the northern parts of the realm where they probably were created before 724 from there they spread throughout the northern regions and soon afterwards functioned throughout other parts of the realm. The oldest dated texts where they appear are of 780, 781 and 782. The first one shows them playing their role in an assise held by missi dominici in Provence; the second one shows them on duty in the region of the lower Saône, acting in a malius as a normally constituted judicial body; the third one shows them acting as assessors of missi dominici in eastern Francia; in the fourth one, they are in that same year 782, mentioned as assessors of the county in a malius of the region of the Moselle. In several capitularies, including that of Thièvillon, there is talk about them and about their ministerium, their official function. We learn that at least seven scabini had to be present at all the judicial meetings. The scabini were appointed by the count, in the presence of the free men of the area, or by the missi dominici. They had to be chosen from the juges or juges, that is to say the free men of the county (juges), who were law-abiding and virtuous and had not been condemned to death and pardoned. They were supervised by the missi dominici to whose attention the careless secalini and those guilty of more serious mistakes were pointed out, and by whom they were likely to be scolded or dismissed.  
Remaining faithful to his usual concern for the protection of free men in humble circumstances, Charlemagne first set a limit of two or three, and later of three per annum as the number of judicial meetings (placet) of the malius at which the free men were required to be present. It seems that the part of the capitulary by which this measure was taken has been preserved, but the date of its publication is unknown; a capitular must of 805 applies the rule and the capitulary of Thièvillon of 825 refers to it. There was, I believe, some difficulty in enforcing this decision in view of
the number of times Charlemagne and later his son Louis the Pious had to repeat in their capitularies the prohibition to summon the paganes, if they were neither party nor witness, to more than three placentia generalia a year. Besides the scabini, persons of high rank and vassals of the count could be summoned to sit as assessors.

Both reforms were introduced into Italy. In the Frankish realm proper the two of them, but especially the creation of scabini, resulted in judicial practices that survived the Regnum Francorum and lasted several centuries. The creation of the scabini shows how much Charlemagne took to heart the correct application of the law. It was not merely sufficient to secure permanent and better informed assessors, but the count and those entitled to serve as substitutes for him as chairman of the court had to have a part in the application of the law. Both chairman and assessors had to keep to the law. Probably the strict order issued in the programmatic capitulary of 802 enjoining the ‘judges’ (iudices) to judge according to the written text of the law was intended for the chairman and the assessors: the immediate aim was to remove arbitrary procedure and judgment by binding those who sat in court to follow those parts of the law that had been written down or would be written down in the future.

With the same end in view and in compliance with the rule of personality of the law, it was expected that the parties should make known their national law and that the presiding officer should know which national law was applicable to the case and be familiar with it. The counts and the lesser officers of justice were ordered in capitularies issued after 802 to secure an earnest knowledge of the law which normally was applicable to the cases submitted to the court over which they presided. These measures, far from removing all the difficulties that arose from the existence and from the binding character of various national laws, nevertheless eased the search for means to solve them when they would arise.

We must note another provision made late in Charlemagne’s reign in 810 intended to produce, at least in the most serious cases, less hazardous rulings by the county courts. The trials that could affect personal freedom or real property were allowed to be judged in the missus only if the count himself was presiding and not if it was a vicarius or a centenarius, who was intellectually and morally less to be trusted. A similar prohibition had probably been made shortly before regarding trials that could end with condemnation to death. This reform was introduced into Italy that same year by a capitulary of Pippin. Both in Francia and in Italy a case had to be postponed, if necessary, in order to be submitted to the missus when the count could be present or to the forthcoming assises of the missus dominici, unless of course it could be tried at the Palace Court. Already in 811 it was necessary to renew the prohibition that lower officers of justice could not preside over the missus in the three cases just men-

tioned. These lower officers evidently did not want to comply with this reform, it does not seem to have been amongst the effective ones that Charlemagne tried to carry out.

During his whole reign Charlemagne was very much concerned not only about the zeal and the dignified behaviour of the counts, the vicarii, and the centenarii in discharging their judicial duties, but also about their honesty and independence. The admonitia generalis of 790 and the capitularia missoria of the same year forbade them to accept presents and to bend to the will of powerful men. This charge repeated emphatically in the programmatic capitularies of 802 was frequently reiterated by the emperor in the following years. The missi were to see that the prohibition was obeyed. The counts were to be responsible for the honesty and the uns选出的 their vicarii and centenarii sitting as judges. Even the missi themselves in their judicial functions were reminded to resist the all so frequent temptation to corruption. These orders and interdictions were meant not only for those who presided over the courts and the assizes but also for the assessors, especially the scabini.

We meet in the capitularies regulations concerning the dignified behaviour expected from the parties and witnesses to a case; we also see that it was forbidden to anyone to be present in arms at the missus or at the assizes of the missi. While the reason for these regulations is obvious, it is not so easy to understand another that appears for the first time in the programmatic capitulary of 802 in which it is forbidden to defend before a court a party whose case is unjust; he who transgresses this interdiction is committing an act of infidelity to the emperor. Most likely this prohibition was directed at some influential character who might use his authority or other means to protect a culprit and spare him a sentence, rather than being directed at those who gave counsel to the defendant. This prohibition repeated several times and in various forms shows what difficulties its application met.

While it should be noted that articles of capitularies ordered places to be well maintained where the missus might at any time meet and stipulated the existence of a prison and of gallows, what is more important is that Charlemagne, out of his longing for permanence and security, a fact to which his whole action on institutions bears testimony, attached great importance to the authority of the res judicata. Two regulations were made during the imperial period of his reign to have the people abide by this rule. The first suppressed every attempt to submit once more to a missus a case which had previously been the subject of a final judgment; such an attempt became an offence liable to a reduced damnatio fine which was 15 solidi or 15 strokes with a stick. The regulation was even considered sufficiently important to be made a part of the national law. In the same connection the plaintiff or his representative who refused to acknowledge a judgment but did not dare to indict the scabini
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For having knowingly passed a false judgment was, according to a provision in the capitation of Thiéouville, to be put in custody. He might be discharged only if he accepted the judgment or decided to indict the scribes. Under certain precautions, however, leave might be granted to bring the case before the king. If the king agreed to hear the case, the proceedings against the scribes would then take place before the Palace court which entailed a new remedy at law.25

The account just given is somewhat uneven; it does not flow with that systematic pace so pleasant to observe in many studies on the history of institutions and of law. The reason for this is that I have tried to follow closely the actions of Charlemagne in reforming the institutions of the Regnum Francorum, particularly some of the judicial institutions, the development of which, except perhaps in 802–4, was rarely systematic. Charlemagne very simply put his religious faith and his respect for the law above all other considerations; he fully realised his responsibilities as the head of an important state and later as emperor in the West; he did his best to make the realm's institutions achieve their maximum efficiency while still safeguarding the rights and property of his subjects. I have endeavoured to show what methods Charlemagne used and how he tried to apply them to judicial institutions. I hope to have succeeded in unravelling at least a few threads out of this complicated skein.26

NOTES


1. I refer to an article "Les traits généraux du système d'institutions de la monarchie franque", in H paragone dell'Antichita al Medio in Occidente (= SACI, IX), Spoleto, 1962, translated above, Ch. VI.


3. MGH Cap., 1, no. 20. For the historical circumstances surrounding the capitation of Herstal, see my article "Une crise dans le royaume de Charlemagne. Les années 778 et 779", Mélanges Charles Galliard, Lausanne, 1944.

4. MGH Cap., 1, nos 22, 23 (Duplicatio legisique ecclesiae) and 24 (Breviarium missarum aquitaniae). On the importance of the Admonitio generalis see L. Halmehn, Charlemagne et l'Empire carolingien, 2nd edn (Paris, 1949), 209–10, and my article "L'Eglise et le pouvoir royal sous Pépin III et Charlemagne", in La Charte aux rois de l'Empire Occidental et i loro rapporti con Roma sino all' 800 (= SACI, viii), Spoleto, 1960, 103–5, and below, Ch. XI.

5. cf. ibid. Oeuvres, Ut parvis et concordia et omnium iuris omnibus populo christianorum inter episcopos, abbates, canones, indices et annates ubique de maioribus et minoribus personas, quas vel de sine pace placet... The quotations from the Bible are in the order where they appear: Matt. xiii, 23 and 24; Lev. xix, 18; Matt. x, 9; John, xiii, 55; 1 John, iii, 13.

6. MGH Cap., 1, no. 28 and MGH Oeuvres, ii (ed. A. Werninghoff), no. 19, G. In Werninghoff's edition the capacity is published on pp. 165–171, whereas other important documents about the council of Frankfurt are published on the preceding pages (A–F). See also my article "Observations sur le Synode de Frantfort de 794", in Miscellanea historica in honorem A. De Meyer, 1, Louvain and Brussels, 1946.

7. That critical period see my "Note sur deux capitulaires non datés de Charlemagne", in Miscellanea historica in honorem L. van der Essen, 1 (Brussels and Paris, 1947).


10. MGH Cap., 1, no. 33. The title Capitulaires municipaux generale given by the editor does not correspond to the nature of the document; see my Recherches sur les capitulaires, 32 and n. 207 (If as were die Kapitularen, 84 and n. 207).


12. See my article "Le programme de gouvernement impérial de Charlemagne", in Revue des Lettres, Actes du congrès international de Strasbourg pour le Millénaire, Ravenne 4–11 November 1962 (Facco, 1965), translated above, Ch. V.

13. c. ii–ix of the capitation.

14. c. i and ii of the programmatic capitulary, Annals Lorschhemesics, 802 (ed. G. H. Perle, MGVI, i, p. 38), and Capitulaires municipaux of the same year (see following note).

15. Rather than use the edition of Borcini, MGH Cap., 1, no. 34 (Capitulaires municipaux spéciaux), one should use the superior edition of W. A. Eckhardt, "Die kapitulare missarum speziell von 802", Deutsches Archiv für Erforschung des Mittelalters, xcii, 1960.

16. It was a double capitation; one section was merely ecclesiastical, the other, general. MGH Cap., 1, nos 43 and 44, and my commentary, Recherches sur les capitulaires, 71–6 (Was waren die Kapitularen?, 144–16, Capitulary of Herstal, see above p. 145.

17. "Capitulary of reform" is the translation of the French expression "Capitulaires de réformation" which I used in my book mentioned in the preceding note, p. 44, n. 169 (= p. 73, n. 169: "Réformcapitulaires"); the second part of the expression I borrowed from the "ordonnances de réformation" of the Ancien Régime in France.

18. That state of uncertainty and of anxiety can easily be detected in the proemium of the Paris Regnius of 6 February 806 (see following note). On the circumstances which created that uncertainty, see two important articles by H. Beumann: "Novum imperium. Studien zur Kaiserliche Karls des Grossen", Historische Zeitschrift xxxvi (1958) and W. Schlevogt, "Kaiserzeit und..."
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I do not want to adopt a definite position regarding the views of these authors on other aspects of their subject.


20. Capitulare legum additum; Capitulare legum Ribaurei additum; Capitulare Aquigunae; Capitulare missorium; MGHI Cap., t, nos. 39, 41, 77, 40. On the date of the 77, see my article "Zur Datierung eines Aachener Kapitulare Karls des Großen," Annalen des historischen Vereins für den Niederland, civ-clv (1914).

21. Capitula post annum 805 additum, chiefly c. iii; MGH Cap., t, no. 55.


23. See my book mentioned in the previous note, 91-93 (= 139-241).

24. Capitulare missorium (803), c. iii; Capitulare Aquigunae (809), c. i and x; Capitulare missorium Aquigunae primum (809), c. xiii, xxi (in the important manuscripts of the group Paris lat. 954 and Vatic. Pat. 382), xxvii; Capitulare missorium italicum (I am doubtful about the Italian origin attributed to this capitulary by Boreius), of 802-810 (dated in that way by C. De Clercq, La législation religieuse franque de Charlemagne (Louvain and Paris, 1915), 181; that date corresponds with the results of my own research); Capitulare inerti annis (805-815), c. i and ii; Pippinii capitulare italicum (805-810), c. iv (provisions of Frankish law, introduced into Italy); MGH Cap., t, nos. 40, 61, 62, 89, 86, 102.

25. Capitula de canis diversis (806), c. ii and iii (on the date see my article "Observations sur la date de deux documents administratifs émanant de Charlemagne", MIOG, xxvit (1945): Memoria de exercitio in Calidria Occidentali prorsusando (807), c. ii; Capitulare missorium de exercitio prorsusando (808), c. i; MGH Cap., t, nos. 49, 48, 10.

26. The legal acts accomplished orally were the only ones considered to be essential; the written form given to them was only a matter of publication; see A. Duurs, "La parole et l'écriture dans les capitulaires carolingiens," in Mélanges d'histoire du moyen âge dédiés à la mémoire de Louis Halphen (Paris, 1951), and my Recherches sur les capitulaires, 18-21 (= W. waren die Capitularen, 33-49).


28. We meet a very strong expression of that concern in c. 1 of the programmatic capitulary of 802, MGH Cap., t, no. 13.

29. Capitula cum primitis constituta (808), c. ii, MGH Cap., t, no. 52.

30. Capitulare Batauricum (probably 803), c. vi, MGH Cap., t, no. 69. The rule introduced in Bretonian law, that of the res porteria in the Lex Ribaurei, c. lxxxvii (lxxv), ed. F. Beyerle and R. Buchner, MGH Legal, p. 128.

31. Capitulare Aquigunae (809), c. i and ii, MGH Cap., t, no. 61.

32. Capitulare missorium Aquigunae primum (809), c. ii; Capitulare traducta cum voto comitiis, episcopis et abbatibus (811), c. iii; Boreius, Capitularia, t, nos. 62 and 71.
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M. Thévenin, Textes, no. 67, pp. 80–1). The circumstances described in the notitia seen in 819 to have been considered normal; this permits us to use that case as evidence for the last years of Charlemagne’s reign.

40. Excellent expositions of the reforms made by Charlemagne in the composition of the mallet and in the periodicity and character of its judicial meetings, are those of H. Brunner and C. von Schwerin, Deutsche Rechtsgeschichte, ii (2nd edn, Munich and Berlin, 1928), 266–301, of R. Schroeder and H. von Künsberg, Lehrbuch der deutschen Rechtsgeschichte, 7th edn, Berlin and Leipzig, 1932), p. 52–82, of H. Conrad, Deutsche Rechtsgeschichte, 1 (2nd edn, Karlsruhe, 1963), 140–2. I do not, however, agree with all the opinions of those learned authors; my opinion differs from theirs particularly in the part played by the free men present at the judicial meetings of the mallet.

41. See e.g.: Formulanæ Salicae Bignoniæ (first years of Charlemagne’s reign), no. 11; Formulanæ Salicae Merkitiaæ (same period), no. 18 and 42; Cartæ Semanæ (same period), nos 13, 20, 30, 31; pp. 379–7, 248, 257, 194, 202, 207.

42. See e.g., Formulanæ Merkitiaæ, no. 16, the supplement to no. 28, and no. 29; MGH Formular, pp. 247, 252.

43. See below, same page.

44. I.e., Formulanæ Semanæ recentiores (end of Charlemagne’s reign or that of Louis the Pious), nos 1, 4, 6; MGH Formular, pp. 211, 213, 214.

45. Histoires et magnifici vers, see e.g., Formulanæ Semanæ recentiores, nos 1 and 32. MGH Formular, pp. 211–15. Persons sitting in the court other than the scabini might have been included in those appellations. In texts of the south of Gaul and after Charlemagne’s reign the word is commonly used for the regular assessors of the count, in the mallet; e.g.: Hitt. gén. de Languedoc, ed. Privat, ii, 1 (Tours, 1868), 32–70 (793), no. 57, cols. 134–5 (812), no. 39, cols. 287–8 (813), no. 150, cols. 306–8 (818) (M. Thévenin, Textes, nos 98, 88, 91, for the texts of 821, 832, 848); Thévenin, Textes, no. 71 (834). See R. H. Baurier, ‘L’exercice de la justice publique à l’empire carolingien’, in École nationale des chartes, 1953, 145–4; G. Sicard, ‘Sur l’organisation judiciaire carolingienne en Languedoc’, in Études historiques et paléographiques de N. Didier (Paris, 1960), 293–9. Whereas Baurier considers the indices as different from the scabini, Sicard does not take a personal stand about that problem. We incline to the belief that those indices were scabini under another name.

46. Formulanæ Salicae Bignoniæ, supplement to no. 7 (generally considered as prior to 774; R. Buchner, ‘Die Rechtsquellen’, ‘Beihet’ zu Wattenbach-Levison, Deutschlands Geschichtsquellen im Mittelalter. Vorzeit und Kavolinger (Weimar, 1931), 53: C. Lamasson et ille vigaran infantes vir ille comite in ille mallet publico una cum lapidibus scabinis, qui in lapidum mallet redivex. . . . MGH Formular, p. 250.

47. See e.g., Formulanæ Lutetiae-Bregnanæ (last years of the eighth century), nos 19 and 21; MGH Formular, pp. 280–2.


49. Capitalis missorium (803), c. vii: Ad ulsum ad plactum bonum, a dei qui canam

50. Capitalis missorium (803), c. viii: De semitarum vel carminibus qui nos in ultimam semitorum adscibere nos non nossem volunt. . . . MGH Formular, p. 250, (provision of Frankish law introduced and codified in Italy: MGH Cap., no. 45, 44, 61, 62, 93, 102. The missorium, the public office of the scabini, is quoted in c. xxvii of the Capitularia Augustinianorum of 809 and is xxvi of the Capitalis missorium Augustinianorum primum, at least in the text of the manuscript belonging to the Imperial group Paris lat. 9634 and Vatic. Palat. 582.

51. Capitalis missorium (803), c. iii: Ut nisi nostri scabini, advocati, notarius per singula loca eleborum vel coram munibus, quando reverso fuerint, eum scripta deferant. MGH Cap., no. 809, c. viii: Ut indices, avdocati, praepositi, centenarii, scabini, quales meliores invenerint posuerunt et Deum item, constituantur ad una ministeria egressa (the manuscript Paris lat. 9495), after tempus, has the following text: canam manus judeum eumque ad papam plactum bonum et constituantur ad una ministeria egressa; MGH Cap., nos 49, 61, 62. On the exclusion of those who had been condemned to death and afterwards pardoned: Capitalis missorium, c. xi and Capitalis missorium Augustinianorum primum, c. xxviii.

52. Capitalis missorium (803), 813; MGH Cap., no. 80, c. i: Ut non sint comites nostri iuridici cum missis ad eum missu loco cum scabini; c. vi: De praevi centenarii vel scabini et testum omissa, qui non proferre loco ultima non recta testimonia detestavit.

53. This is strongly stressed in the programmatic capitulary of 802 (MGH Cap., no. 31), in the passage of the 'ultima Lanuviana where the despatch of missus in the year 802, was treated (MGH, ii, 1, p. 38), and in several other texts, amongst them c. xxvi of the Capitalis missorium generalis of Thionville
13. Capitula missorum (803), c. xx: see above, n. 49. Capitula missorum generale of Thionville, (803), the conclusion at the end of c. xvi, after the passage quoted in the preceding note: ... Et ut sciscio non fiant manum mali placita, nisi quam hominum, nisi sint in alio capitulare praeceptum in ista inquisitione; MGH Cap. 1, nos 40 and 44.

W. A. Eckhardt, Kapitulareaussemeing, pp. 19-21, seems to have rightly identified the older capitulary to which Charlemagne referred in 803 with a fragment of a capitulary included in the collection of Gherhard, bishop of Liège, probably compiled in 866; Eckhardt’s edition p. 92 (— MGH Cap. 1, no. 104, c. iv): (Ut comites et) centuriae generalium placitum frequentius non habeant proper panisperne; sed cum illos super quaesum intus patientes, et cum maioribus modum testimonii necessarium frequentior placitum tenentur; ut illi panisperne, qui multum causam habendum non habent, non cogetur in placitum venire, nisi sit uter in anno. That fragment of a capitulary does not mention the scabinis and quotes only the maioris naivum (— men of high rank by their birth) as assessors; perhaps we may be allowed to believe that the capitulary had been issued at a time when the institution of the scabinus, though existing, had not yet been generalised.

14. Capitula Aquinagrumana (809), c. v: see also the text quoted above, n. 49. Capitula missorum Aquinagrunense privum (809), c. xii: Ut mitias ad placitum venire cogetur nisi qui castra habet ad querendum, exceptis scabinis (the manuscripts of the group Paris Lat. 6034 and Vatic. Palat. 52. add this: et vasariis comitiis); Capitula missorum italicum (see above, n. 24), (802-810), c. xii: Ut per placita non fiant bunmites liberi homines, exceptus si aliqua proelium super aliquem viserit aut certe si scabinus iam index non fuerit; et pro hoc condonat illi panisperne non fiant; MGH Cap. 1, nos 61, 62, 69. Two capitulaires refer explicitly to the rule issued by Charlemagne, first an ‘Italian’ capitulary of Pippin the Younger, ibid., no. 102, c. xiv, relates to the enforcement of the rule in Italy: ... Et inveniun hominem nullam placitum faciunt custodes, postquam illia tristia custodia placitam quaestitio sit, nisi forte contingat ut aliqui aliquem accusat: excepto illos scabinos qui cum indicibus recedere debent; secondly the capitula missorum of Louis the Pious belonging to the group of 818-819, ibid., no. 141, c. xiv: De placitis siquidem quos liberi homines observare debent constituto senatoris nostri potestas observanda atque tenenda est, ut videlicet in anno tria solummodo generalia placita observant et nullius eos amplius placita observare compellatis, nisi forte quibus est accusatium fuerint aut aliun accusaverit et ad testimonia pereminent versus fuerit. Ad eam vero, quod centuriae tenant non aliun venire indebatur, nisi qui et initiat, aut indicat et testificat.

15. See texts quoted in nn. 49, 13, 14.


17. We believe that this expresses the full significance of c. xxi of the programmatic capitulary of 802 (MGH Cap. 1, no. 53): Ut indices non numquam scriptum legem recipiant, non sequens arbitrium comitum. The written texts of the leges covered only part of each of the national laws which were applicable in the capitation.
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62. *Pippini capitulare italicum* (810), MGH Cap., 1, no. 102, c. xiv; *Ut ante vicarii nullas criminalis actio diffinatur, nisi tamen leviores causae quae facile possunt ducrandi*; et nullus in eorum indicis aliquis in servitio hominum conquitit; sed per fidem revindicatur usque in praesentiam comitum. The interdiction to judge a case of real property is not explicitly expressed; we believe, however, that it is expressed implicitly, because cases of that type certainly might not be considered as leviores causae quae facile possunt ducrandi.

63. *Capitula de instituti fisciendi* (911), MGH Cap., 1, no. 80, c. iv; *Ut nullus homo in plato centenarii nox ad mortem, nox ad libertatem amnem amittam aut ad vex rehenditas vel mancipia indicent, sed in praesentia comitum vel missorum nosterum indicent*; c. viii; *... Ceteris vero minus minus quosque centum plactus sumus habendis et institutis faciundis*; ...

64. Some instances, posterior to the reign of Charlemagne, can be found of meetings of the *bullae*, held under the chairmanship of lower officers of justice, when cases were judged that belonged to the exclusive competence of the count; Alainch and Chevalier Gallica Christiana Novissima (1853), Marseille, no. 51, cols. 41-2 (844) (= B. Guérard, Cartulaire de l'abbaye de Saint-Victor de Marseille, 1, Paris, 1857, no. 26, pp. 32-4; Thevenin, Textes, no. 82); G. Desjardins, Études de Droit privé au Xe, au Xe et au XIIe siècle, Bibliothèque de l'École des Chartes, xxiv (1863), P. J. no. VI, p. 167 (864) (date worked out by F. Lott, Fdéles en Vaisance (Paris, 1904), pp. 164-5, n. 4). It is however much more important to note that the semantic evolution of the words *bullae bis* and *bullae scribae* is a key to the study of the missorium offices, in the tenth and eleventh centuries including the rights to condemn to death) can only be explained in a satisfactory way by the fact that *vicarii* and *centenarii* would in Carolingian times have largely preserved the judicial competence which Charlemagne had tried to take away from them. See C. E. Perrin, "Sur le sens du mot "centena" dans les chartes loraines du moyen âge," *Archives Latines de mediae aevi* = *Bullietin du Cange*, v (1929-30), 26-30; M. Geraud, "L'organisation administrative du comté de Poitou au Xe siècle et l'avancement des châtelains et des châtelaines," *Bullietin de la Société des Antiquaires de Puy-de-Dôme*, 1953, 451, 445-7; J. Richard, "Aux origines du Charolaïs," *Annales de Bourgogne*, xxvii (1961), 86. Hirsch thought that the interdictions made by Charlemagne to the lower officers of justice did not apply to the judgment of persons apprehended red-handed; we are inclined to agree with that opinion, though the arguments put forward to support it are very feeble; *Die hohe Gerichtsbarkeit im deutschen Mittelalter* (Darmstadt, 1958, reprint of the edition of 1922), 119-3.

65. *Admonitio generalis*, c. lxi (annibus); *Dux caput legationis edictionis*, c. xxiii; *programmatic capitular of 802*, c. i and *Annales Lusitaniensis*, 802, MGH SS., 1, p. 38; *Capituli missorum de 803*, c. xv; *Capituli Aquasgratia* (809), c. vii; *Capituli missorum Aquasgratiae primum* (809), c. xvii; *Capituli missorum Aquasgratiae primum* (810), c. vii; *Capituli inerti annis* (805-811), c. i; *Capituli missorum et constabulis selectis* (813) c. x; Boethius, *Capitularia*, 1, nos 22, 23, 31, 49, 61, 62, 64, 78, 86. *Programmatic capitular of 802*, c. xxv; see also c. xi, viii. *Capituli inerti annis* (805-813), c. ii. See n. 63.


68. Most of the texts quoted in p. 65 apply implicitly to the *capituli*. c. xvii of the *Capituli Aquasgratiae* of 809 and c. ii of the *Capituli inerti annis* quote the capituli explicitly.

69. *Capituli missorum* (804), c. xv and xvi; *Capituli missorum Aquasgratiae primum* (809), c. xvi; *Capituli per missorum vagabundum facienda* (805-815), c. i, MGH Cap., 1, nos 40, 62, 67.

70. c. xix. The text is corrupt and difficult to understand; however, I believe there is no doubt about the meaning of this article.

71. *Capituli legibus additum* (804), c. ix; *Capituli de missorum officiis* (815), c. v; perhaps *Capituli missorum* of Nijmegen (865), c. viii (implicitly); MGH Cap., 1, nos 39, 66, 46.

72. *Capituli Aquasgratiae* (809), c. xii; *Capituli missorum Aquasgratiae primum* (809), c. xxx (with the various readings of some manuscripts); ibid., 1, nos 61 and 62.

74. *Capituli legibus additum* (804), c. xi; *Ex quibus causas indicet recreetur in nullo praeceptoribus quique testibus cessantur fuerit, aut quandoque solido comprimant, aut quandoque titulis ab alias quae causam prius indicaverant accipiant*; c. vii of the *Capituli a miseri aequaria fuit* of 802, probably had the same bearing, though it did not yet include: a punitive sanction: *Ut nullus contra rectum indium aut indicate acquaeum*; ibid., 1, nos 39 and 59.

73. *Capituli missorum generale* of Thibouville (805), ibid., 1, no. 44, c. viii; *De clamatoribus vel combatitio qui nec missorum saldornum adquiescere nec blasphemare velant antiqua consuetudo servatur, ille est in casu deudendi reddendus donec non dabo faciat. Et si ad palatium pro huc re reclamaverit et litteras deliterunt, nos quidem eos evadere nec tamen in iure possent: sed cum custodia et cum ipsi litteris litteris pariter ad palatium nostrum revindicare, ut ibi discrimen sit dignum est* The text of the manuscripts Paris Lat. 6944 and Vatic. Palat. 582 is slightly different, but only as far as the form is concerned. Putting the unwilling clamator into custody was perhaps an old legal rule that had passed into disuse and was now revived by Charlemagne.

74. I have tried, as much as possible to keep this article in the form of the oral lecture which it was originally. In several parts, however, I have more fully discussed certain statements. As a matter of course I have added footnotes, endeavouring to limit their number and to make them as short as possible. I wish to express my thanks to my friends Professor Breyce D. Lyon, of the University of California (Berkeley), and Mrs Mary L. Lyon, who had the kindness to read my manuscript and suggested a series of useful corrections. I am most grateful to them for the trouble they have taken about it.