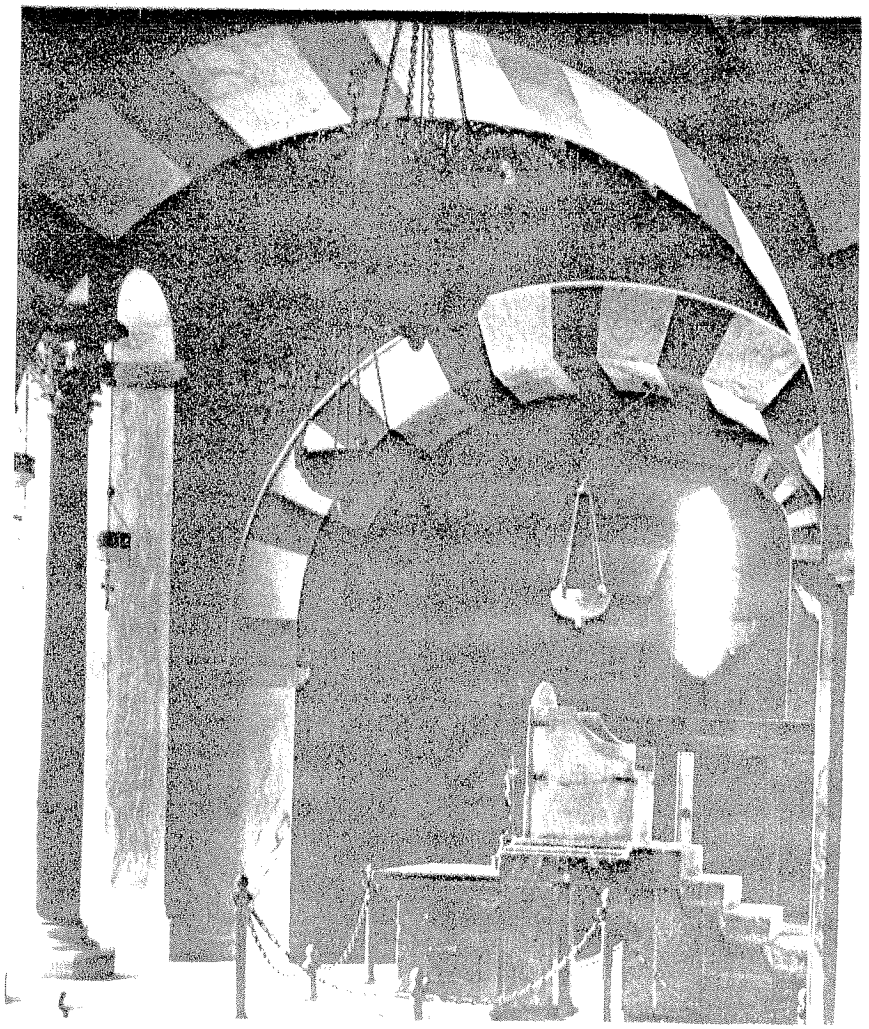

*Charlemagne's throne in the gallery of the octagon of the palace chapel at Aachen.* The throne, which is approached by a staircase with six steps consists of four stone pillars supporting the *mensa*, i.e. the base on which the chair is raised. The chair is made of oak planks encased in slabs of white 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) logia, 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.

F. L. Ganshof

# The Carolingians and the Frankish Monarchy

Studies in Carolingian History

*Translated by Janet Sondheimer*

Longman

There is record of draft copies (but not of *the* draft copies) in the reign of Louis the Pious (Bresslau, op. cit., I, 2nd edn. 163).

71. See above, n. 52.
72. For example the count Richard, *villarum suarum provisorem,* mentioned by the Astronomer, *Vita Hludowici,* vi (MGH *SS,* II, 610), who held office in the reign of Charlemagne (794). This must surely be the count Richard who in 787 was ordered with the abbot of Jumièges, to make a 'description' of the landed possessions of St Wandrille (see above, n. 55).
73. MGH *Cap.,* I, no. 85: introduction, *Nunc autem admonemus vos ut capitularia vestra relegatis et quaeque vobis per verba commendata sunt recolatis* . . . c. vii: *Deinde ut istam epistolam et saepius legatis et bene salvam faciatis, ut ipsa inter nos et vos in testimonium sit, utrum sic factum habeatis sicut ibi scriptum est aut non habeatis* . . .
74. A conclusion parallel to the one reached by Redlich, op. cit., 65, and A. de Boüard, II, 130, in the matter of Charlemagne's preference for written documents as instruments of proof.
75. There is no specimen diploma of appointment to a countship among the *Formulae Imperiales* (see above, n. 20). Numbers 13, 14, and 15 of the *Formulae Marculfinae aevi carolini* (MGH *Formulae,* 119–20), although relating to the consecration of a bishop or the appointment of a count, merely reproduce Merovingian formulae, with slight modifications, and do not come into the picture.
76. For the lists required at the oath-taking see above, p. 130. A list of 180 persons who took the oath of fidelity in an Italian county has come down to us (MGH *Cap.,* I, no. 181); if this list dates from the reign of Charlemagne, which is not certain, the directions given in the *capitulare missorum* of 792–3 have not been followed.
77. See above, p. 131.
78. See e.g., MGH *Cap.,* I, no. 64, c. i; ibid., c. xiii and no. 74, c. iv; no. 80, c. ii.
79. Ibid., nos. 85, c. iv and 58. cf. above, p. 129.
80. See above, n. 39.
81. The basic ideas developed in this article formed the subject of a paper read to the Legal History Section of the Ninth International Congress of the Historical Sciences held at Paris in 1950. In the discussion which followed helpful remarks, for which I am most grateful, were made by Professors C. G. Mor, of the University of Modena, G. Tessier, of the Ecole des Chartes, and F. Vercauteren, of the University of Liège, who was in the chair.



# 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 *constitutio, decretum, edictum,* etc., they were more recently known as *capitula* or *capitulare.*[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 Herstal, the oldest decree to which the name of *capitulare* 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 Herstal on the Meuse 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 March 802. The first made additions to all the national laws in force within the Frankish realm. The second revised the *Lex Ribuaria*. 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*.[20] 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.[21]

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.[22] 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.[23]

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 *scabini* (Fr. *échevins,* Germ. *Schöffen*), those men forming the permanent body of assessors to the county court known as the *mallus*. In the capitularies we meet them only in connection with their duties or their appointment.[24] 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 806, 807, and 808.[25] 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.[26]

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 or Charlemagne',[27] 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.[28]

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 *mallus,* 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

dates beyond which complaints likely to have a repercussion on landed property might not go back. One might not contest a seisin existing at the time of the death of Pippin III. With certain exceptions, the limitation in Bavaria, at least for the assizes of the *missi*, was set at the date of the accession to the throne of duke Tassilo III, who was later dismissed.[36]

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 *miserabiles personae*, that is 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.[37]

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 respites could easily be renewed or extended. In the cases, however, where the *lex Ribuaria* 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.[38]

The repression of certain offences became increasingly important to Charlemagne, and especially since 802 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 *miserabiles personae*, perjury, incest, and certain cases of revenge or *faida*. In such cases justice could be obtained without difficulty before the Palace court or before the assizes of the *missi dominici*. But before the *mallus*, 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.[39]

The principal reform which Charlemagne introduced in the judicial institutions changed the composition of the county court, the *mallus*.[40] 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 (*missus*) of the count, the future viscount





(*vicecomes*). And so it remained. The chairman was assisted by assessors generally listed in the texts under such vague terms as *pagenses* (inhabitants of the *pagus*), and *boni homines* (honourable men).[41] 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 *rachimburgii* (French: '*rachimbourgs*').[42] 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 *mallus* sat were bound to be present at all the meetings, a burden that could be very heavy.[43]

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 *rachimburgii*[44] or by such general terms as *boni homines* and *magnifici viri*, 'men of great importance' or even by the more technical name of *iudices*, 'judges'.[45] We first meet the *scabini* in the northern parts of the realm where they probably were created before 774;[46] from there they spread throughout the northern regions[47] 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 assize held by *missi dominici* in Provence; the second one shows them on duty in the region of the lower Seine, acting in a *mallus* 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 count in a *mallus* of the region of the Moselle.[48] In several capitularies, including that of Thionville, 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.[49] The *échevins* were appointed by the count, in presence of the free men of the area, or by the *missi dominici*. They had to be chosen from the *pagenses*, that is to say the free men of the county (*pagus*), who were law-abiding and virtuous and had not been condemned to death and pardoned.[50] They were supervised by the *missi dominici* to whose attention the careless *scabini* and those guilty of more serious mistakes were pointed out, and by whom they were likely to be scolded or dismissed.[51]

Remaining faithful to his usual concern for the protection of free men in humble circumstances,[52] Charlemagne first set a limit of two or three, and later of three per annum as the number of judicial meetings (*placita*) of the *mallus* 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 *capitulare missorum* of 803 applies the rule and the capitulary of Thionville of 805 refers to it.[53] 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 *pagenses*, if they were neither party nor witness, to more than three *placita generalia* a year.[54] Besides the *scabini*, persons of high rank and vassals of the count could be summoned to sit as assessors.[55]

Both reforms were introduced into Italy.[56] 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 entreating 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.[57]

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.[58] 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.[59] 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 *mallus* 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.[60] A similar prohibition had probably been made shortly before regarding trials that could end with condemnation to death.[61] This reform was introduced into Italy that same year by a capitulary of Pippin.[62] Both in *Francia* and in Italy a case had to be postponed, if necessary, in order to be submitted to the *mallus* when the count could be present or to the forthcoming assizes of the *missi 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 *mallus* in the three cases just mentioned. These lower officers evidently did not want to comply with this reform;[63] it does not seem to have been amongst the effective ones that Charlemagne tried to carry out.[64]





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 *admonitio generalis* of 789 and the *capitulare missorum* 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 *capitulare* of 802 was frequently reiterated by the emperor in the following years. The *missi* were to see that the prohibition was obeyed.[65] The counts were to be responsible for the honesty and the unselfishness of their *vicarii* and *centenarii* sitting as judges.[66] Even the *missi* themselves in their judicial functions were reminded to resist the all too frequent temptation to corruption.[67] 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*.[68]

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 *mallus* or at the assizes of the *missi*.[69] 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 where it is forbidden to defend before a court a party whose cause is unjust; he who transgresses this interdiction is committing an act of infidelity to the emperor.[70] 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.[71]

While it should be noted that articles of capitularies ordered places to be well maintained where the *mallus* might at any time meet[72] and stipulated the existence of a prison and of gallows,[73] 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 *mallus* a case which had previously been the subject of a final judgment; such an attempt became an offence liable to a reduced *bannum* 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.[74] In the same connection the plaintiff or his representative who refused to acknowledge a judgment but did not dare to indict the *scabini*

for having knowingly passed a false judgment was, according to a provision in the capitulary of Thionville, to be put in custody. He might be discharged only if he accepted the judgment or decided to indict the *scabini*. 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 *scabini* would then take place before the Palace court which entailed a new remedy at law.[75]

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 802–3, 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.[76]

## NOTES

* Lecture delivered at the annual meeting of the Mediaeval Academy of America held at Princeton, New Jersey, 25 April 1964, and printed *Speculum*, XL (1965), 47–62.

1. I refer to my article 'Les traits généraux du système d'institutions de la monarchie franque', in *Il passagio dell' Antichità al Medievo in Occidente* (= *SSCI*, IX), Spoleto, 1962, translated above, Ch. VI.
2. See my *Recherches sur les Capitulaires* (Paris, 1958), 3–7, or the German edition *Was waren die Kapitularien?*, Trans. W. A. Eckhardt (Darmstadt and Weimar, 1958) 13–18.
3. MGH *Cap.*, I, no. 20. For the historical circumstances surrounding the capitulary of Herstal, see my article 'Une crise dans le règne de Charlemagne. Les années 778 et 779', *Mélanges Charles Gilliard*, Lausanne, 1944.
4. MGH *Cap.*, I, nos 22, 23 (*Duplex legationis edictum*) and 24 (*Breviarium missorum aquitanicum*). On the importance of the *Admonitio generalis* see L. Halphen, *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 *Le Chiese nei regni dell'Europa Occidentale e i loro rapporti con Roma sino all' 800* (= *SSCI*, VII), Spoleto, 1960, 104–5, and below, Ch. XI.





5. c. lxii. *Omnibus. Ut pax sit et concordia et unanimitas cum omni populo christiano inter episcopos, abbates, comites, iudices et omnes ubique seu maiores seu minores personas, quia nihil Deo sine pace placet.* . . . The quotations from the Bible are in the order where they appear: Matt. v, 23 and 24; Lev. xix, 18; Matt. v, 9; John, xiii, 35; 1 John, iii, 10.
6. MGH *Cap.*, I, no. 28 and MGH *Concilia*, II (ed. A. Werminghoff), no. 19, G. In Werminghoff's edition the capitulary 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 Francfort de 794', in *Miscellanea historica in honorem A. De Meyer*, I, Louvain and Brussels, 1946.
7. For that critical period see my 'Note sur deux capitulaires non datés de Charlemagne', in *Miscellanea historica in honorem L. van der Essen*, I (Brussels and Paris, 1947).
8. It is sufficient to refer to É. Amann, *L'époque carolingienne*, vol. VI of *Histoire de l'Eglise*, ed. A. Fliche and V. Martin (Paris, 1937).
9. Jurisdiction over members of the clergy: c. VI, XXX, XXXIX. Weights and measures: c. IV. Coinage: c. V.
10. MGH *Cap.*, I, no. 33. The title *Capitulare missorum generale* given by the editor does not correspond to the nature of the document; see our *Recherches sur les capitulaires*, 52 and n. 207 (*Was waren die Kapitularien?*, 84 and n. 207).
11. The work that should now be consulted is R. Folz, *Le couronnement impérial de Charlemagne* (Paris, 1964), 178–87.
12. See my article 'Le programme de gouvernement impérial de Charlemagne', in *Renovatio Imperii. Atti della giornata internazionale di Studio per il Millenario, Ravenna 4–5 Novembre 1961* (Faenza, 1963), translated above, Ch. V.
13. c. ii–ix of the capitulary.
14. c. I and ii of the programmatic capitulary, *Annales Laureshamenses*, 802 (ed. G. H. Pertz, MGH *SS*, I, p. 38), and *Capitulare missorum* of the same year (see following note).
15. Rather than use the edition of Boretius, MGH *Cap.*, I, no. 34 (*Capitularia missorum specialia*), one should use the superior edition of W. A. Eckhardt, 'Die capitularia missorum specialia von 802', *Deutsches Archiv für Erforschung des Mittelalters*, XII, 1956.
16. It was a double capitulary: one section was merely ecclesiastical, the other, general. MGH *Cap.*, I, nos 43 and 44, and my commentary, *Recherches sur les capitulaires*, 73–4 (= *Was waren die Kapitularien?*, 114–16). Capitulary of Herstal, see above p. 143.
17. 'Capitulary of reform' is the translation of the French expression '*Capitulaire de réformation*' which I used in my book mentioned in the preceding note, p. 44, n. 169 (= p. 73, n. 169: '*Reformkapitularien*'); 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 *prooemium* to the *Divisio Regnorum* of 6 February 806 (see following note). On the circumstances which created that uncertainty, see two important articles by H. Beumann: '*Nomen imperatoris*. Studien zur Kaiseridee Karls des Grossen', *Historische Zeitschrift* CLXXXV (1958) and W. Schlesinger: 'Kaisertum und

Reichsteilung. Zur *Divisio Regnorum* von 806', in *Forschungen zu Staat und Verfassung. Festgabe für Fritz Hartung* (Berlin, 1958), reprinted in W. Schlesinger, *Beiträge zur deutschen Verfassungsgeschichte des Mittelalters*, I (Göttingen, 1963). I do not want to adopt a definite position regarding the views of those authors on other aspects of their subject.

19. Boretius, *Capitularia*, I, no. 45 and *Annales Regni Francorum* (806), ed. F. Kurze (Hanover, 1895), p. 121.
20. *Capitulare legibus additum; Capitulare legi Ribuariae additum; Capitulare Aquisgranense; Capitulare missorum;* MGH *Cap.*, I, nos 39, 41, 77, 40. On the date of no. 77, see my article 'Zur Datierung eines Aachener Kapitulars Karls des Groszen,' *Annalen des historischen Vereins für den Niederrhein*, CLV–CLVI (1954).
21. *Capitula post annum 805 addita*, chiefly c. iii; MGH *Cap.*, I, no. 55.
22. My *Recherches sur les capitulaires*, 79–85 (= *Was waren die Kapitularien?*, 123–30).
23. See my book mentioned in the previous note, 91–93 (= 139–41).
24. *Capitulare missorum* (803), c. iii; *Capitulare Aquisgranense* (809), c. i and xi; *Capitulare missorum Aquisgranense primum* (809), c. xiii, xxii (in the important manuscripts of the group Paris lat. 9654 and Vatic. Palat. 582), xxviii; *Capitulare missorum italicum* (I am doubtful about the Italian origin attributed to this capitulary by Boretius), of 802–810 (dated in that way by C. De Clercq, *La législation religieuse franque de Clovis à Charlemagne* (Louvain and Paris, 1936), 381: that date corresponds with the results of my own research); *Capitulare incerti anni* (805–813?), c. i and ii; *Pippini capitulare italicum* (806–810), c. iv (provisions of Frankish law, introduced into Italy); MGH *Cap.*, I, nos. 40, 61, 62, 99, 86, 102.
25. *Capitula de causis diversis* (806), c. ii and iii (on the date see my article 'Observations sur la date de deux documents administratifs émanant de Charlemagne', *MIÖG*, LXII, 1954); *Memoratorium de exercitu in Gallia Occidentali praeparando* (807), c. ii; *Capitulare missorum de exercitu promovendo* (808), c. i; MGH *Cap.*, I, nos 49, 48, 50.
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. Dumas, '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 (= *Was waren die Kapitularien?*, 35–40).
27. 'L'échec de Charlemagne', *Académie des Inscriptions et Belles Lettres. Comptes rendus des séances*, 1947, translated below, Ch. XIII; 'Het falen van Karel de Grote', *Verslag over de algemene vergadering van het Historisch Genootschap gevestigd te Utrecht*, 1948.
28. We meet a very strong expression of that concern in c. i of the programmatic capitulary of 802, MGH *Cap.*, I, no. 33.
29. *Capitula cum primis constituta* (808), c. ii, MGH *Cap.*, I, no. 52.
30. *Capitulare Baiwaricum* (probably 803), c. vi, MGH *Cap.*, I, no. 69. The rule introduced in Bavarian law, was that of the *res porprisa* in the *Lex Ribuaria*, c. lxxviii (lxxv), ed. F. Beyerle and R. Buchner, MGH *Leges*, p. 128.
31. *Capitulare Aquisgranense* (809), c. i and ii, MGH *Cap.*, I, no. 61.
32. *Capitulare missorum Aquisgranense primum* (809), c. ii; *Capitula tractanda cum comitibus, episcopis et abbatibus* (811), c. iii; Boretius, *Capitularia*, I, nos 62 and 71.





33. *Capitulare de villis* (771–800), c. xxix and lvii; *Capitulare missorum Aquisgranense primum* (810), c. i; *Capitulare missorum Aquisgranense secundum* (810), c. viii; Boretius, *Capitularia*, I, nos 32, 64, 65.
34. See the article translated above Ch. V (quoted in n. 12 of this present article), ('Le programme', 83–85), and also the two articles quoted n. 27, 'The failure of Charlemagne', Ch. XIII below, ('L'échec', 252), 'Het falen van Karel de grote', 42. See also my article 'La fin du règne de Charlemagne. Une décomposition', *Zeitschrift für Schweizerische Geschichte*, XVIII (1948), 449–50, translated Ch. XII below, and nn. 53 and 54.
35. Charlemagne divided the competence of the Palace court into sessions presided over by the emperor and those presided over by the counts palatine; *Capitulare de iustitiis faciendis* (811), c. ii (MGH *Cap.*, I, no. 80). However, this reform does not seem to have brought forth a serious change for the better.
36. Pippin: *Capitulare missorum* (803), c. ix; *Capitulare de iustitiis faciendis* (811), c. i; MGH *Cap.*, I, nos 40 and 80. However in 811 Charlemagne introduced a reservation in his newly issued capitulary: certain cases of seisin prior to Pippin's death might be submitted to him and he would take a decision (probably in the Palace court). A few charters of the early years of Louis the Pious's reign, indeed show that the seisin existing in the time of Pippin III was one of the grounds upon which trials that affected real property and property of serfs were judged. See F. Bougaud and J. Garnier, *Chronique de l'abbaye de Saint-Bénigne de Dijon, suivie de la chronique de Saint-Pierre de Bèze* (Dijon, 1875), pp. 250–1, (815) (= M. Thévenin, *Textes relatifs aux institutions privées et publiques aux époques mérovingienne et carolingienne* (Paris, 1887), no. 115); E. Pérard, *Recueil de plusieurs pièces curieuses servant à l'histoire de Bourgogne* (Paris, 1664), p. 14 (815); M. Prou and A. Vidier, *Recueil des Chartes de l'abbaye de Saint-Benoît-sur-Loire*, I (Paris, 1900), no. XVI (819).— Tassilo: *Capitulare Baiwaricum* (probably 803), c. viii; MGH *Cap.*, I, no. 69.
37. *Duplex legationis edictum* (789), c. xvii; Programmatic capitulary of 802, c. i; *Capitulare missorum generale* of Thionville (805), c. ii; *Capitula de causis diversis* (806), c. i; MGH *Cap.*, I, nos 23, 33, 44, 49. In the articles of capitularies which have been mentioned, the orders of Charlemagne are clearly expressed. The following articles of other capitularies simply imply the existence of those orders: *Capitulare Baiwaricum*, probably of 803, c. iii; *Capitula a missis dominicis ad comites directa*, probably of 806 (according to W. A. Eckhardt, *Die Kapitulariensammlung Bischof Ghaerbalds von Lüttich* (Göttingen, 1955), pp. 33–7), c. ii; *Capitulare missorum Aquisgranense primum* (810), c. xx; MGH *Cap.*; I, nos 69, 85, 64. The capitulary of Mantua (781), c. i, introduced the same rule in Italy, ibid., no. 90; this makes it probable that Charlemagne gave his first orders about the matter prior to the year when such a provision appeared for the first time in a 'Frankish' capitulary that has been preserved.
38. *Capitulare legi Ribuariae additum* (803), c. vi MGH *Cap.*, I, no. 41. This article corrects the *lex Ribuaria*, 36 (32) *De manire*, ed. Beyerle and Buchner, pp. 87–8.
39. We know a case of the year 819 when after an homicide had been committed, it was expected that the count himself would make a complaint and, in so doing, institute a trial (Dom Devic and Dom Vaissete, *Histoire générale de Languedoc*, ed. Privat, II, Toulouse (1875), Preuves, no. 49, cols. 123–4 =

M. Thévenin, *Textes*, no. 67, pp. 80–1). The circumstances described in the *notitia* seem 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 *mallus* 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), 296–301, of R. Schroeder and E. von Künszberg, *Lehrbuch der deutschen Rechtsgeschichte*, (7th edn, Berlin and Leipzig, 1932),179–82, of H. Conrad, *Deutsche Rechtsgeschichte*, I (2nd edn, Karlsruhe, 1962), 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 *mallus*.
41. See e.g.: *Formulae Salicae Bignonianae* (first years of Charlemagne's reign), no. 13; *Formulae Salicae Merkelianae* (same period), nos 18 and 42; *Cartae Senonicae* (same period), nos 20, 38, 51; pp. 232–3, 248, 257, 194, 202, 207.
42. See e.g., *Formulae Salicae Merkelianae*, no. 16, the supplement to no. 28, and no. 29; MGH *Formulae*, pp. 247, 252.
43. See below, same page.
44. e.g., *Formulae Senonenses recentiores* (end of Charlemagne's reign or that of Louis the Pious), nos 1, 4, 6; MGH *Formulae*, pp. 211, 213, 214.
45. *Boni homines* and *magnifici viri*, see e.g., *Formulae Senonenses recentiores*, nos 1 and 3; MGH *Formulae*, pp. 211–13. Persons sitting in the court other than the *scabini* might have been included in those appellations. In texts of the south of Gaul during and after Charlemagne's reign the word *index* is commonly used for the regular assessors of the count, in the *mallus*; e.g.: *Hist. gén. de Languedoc*, éd. Privat, II, Preuves, no. 6, cols. 47–50 (782), no. 10, cols. 57–8 (791), no. 57, cols. 134–5 (821), no. 39, cols. 287–8 (852), no. 150, cols. 306–8 (858) (= Thévenin, *Textes*, nos 68, 88, 93, for the texts of 821, 852, 858); Thévenin, *Textes*, no. 71 (834). See: R. H. Bautier, 'L'exercice de la justice publique dans l'empire carolingien', in *Ecole Nationale des Chartes. Positions des thèses soutenues par les élèves de la promotion de 1943*, 14–15; G. Sicard, 'Sur l'organisation judiciaire carolingienne en Languedoc', in *Etudes historiques à la mémoire de Noël Didier* (Paris, 1960), 293–9. Whereas Bautier considers the *iudices* as different from the *scabini*, Sicard does not take a personal stand about that problem. We incline to the belief that those *iudices* were *scabini* under another name.
46. *Formulae Salicae Bignonianae*, supplement to no. 7 (generally considered as prior to 774; R. Buchner, 'Die Rechtsquellen'; 'Beiheft' to Wattenbach-Levison, *Deutschlands Geschichtsquellen im Mittelalter. Vorzeit und Karolinger* (Weimar, 1953), 53: *Cum resedisset ille vigarius inluster vir illo comite in illo mallo publico una cum ipsis scabinos, qui in ipsum mallum resedebat* . . . MGH *Formulae*, p. 230.
47. See e.g., *Formulae Salicae Lindenbrogianae* (last years of the eighth century), nos 19 and 21; MGH *Formulae*, pp. 280–2.
48. J. H. Albanès and U. Chevalier, *Gallia Christiana Novissima*. III. *Marseille* (Valence, 1899), no. 42, cols. 34–5 (= B. Guérard, *Cartulaire de l'abbaye de Saint-Victor de Marseille*, I (Paris, 1857), no. 31), 23 February 780, Digne





(France, Basses-Alpes): . . . *missi domni nostri Karoli, regis Francorum et Langobardorum seu et patricii Romanorum, id est Viernarius et Arimodus, una cum rationesburguis dominicis* . . . (5 names) . . . , *scabinas lites, scabinos ipsius civitatis*. The terminology was not fixed. (2) MGH *Diplomata, Karol.*, I, no. 138, 16 December 781: . . . *inter Ripheronem comitem vel suos escapinios in pago Tellauo, in mallo publico qui vocatur Turcarias*. The *pagus* mentioned in the text, was the 'Talou', located immediately to the north of the *pagus* of Rouen (France; Seine Maritime). (3) K. Glöckner, *Codex Laureshamensis*, II (Darmstadt, 1933), no. 228, p. 31, 3 June 782, Schwanheim (Bundesrepublik Deutschland, Land Hessen): '. . . *venerunt missi domni regis Richardus et Guntramnus comes* . . . *cum prefatis scabinis et testibus*. . . .' (4) MGH *Diplomata Karol.*, I, no. 148: '. . . *una cum scabinis et testibus Moslinses*. . . .'

49. *Capitulare missorum* (803), c. xx: *Ut nullus ad placitum banniatur, nisi qui causam suam quaerere aut si alter quaerere debet, exceptis scabineis septem qui ad omnia placita praeesse debent; Capitulare missorum generale* of Thionville (805), c. viii; *De clamatoribus vel causidicis qui nec inditium scabinorum adquiescere nec blasfemare volunt* . . . ; *Capitulare Aquisgranense* (809), c. v: *Ut nullus alius de liberis hominibus ad placitum vel ad mallum venire cogatur, exceptis scabinis et vassis comitum, nisi qui causam suam aut quaerere debet aut respondere; Capitulare missorum Aquisgranense primum*, (809), c. xiii; *Capitulare missorum italicum* (on this capitulary, see above, n. 24) (802–810), c. xii; *Pippini capitulare italicum* (806–10), c. xiv (provision of Frankish law introduced and enforced in Italy); MGH *Cap.*, I, nos 40, 44, 61, 62, 99, 102. The *ministerium*, the public office of the *scabini*, is quoted in c. xi of the *Capitulare Aquisgranense* of 809 and in c. xxii of the *Capitulare missorum Aquisgranense primum*, at least in the text of the manuscripts belonging to the important group Paris lat. 9654 and Vatic. Palat. 582. See below n. 50.
50. *Capitulare missorum* (803), c. iii: *Ut missi nostri scabinios, advocatos, notarios per singula loca elegant et eorum nomina, quando reversi fuerint, secum scripta deferant*; *Capitulare Aquisgranense*, (809), c. xi: *Ut iudices, advocati, praepositi, centenarii, scabinii, quales meliores inveniri possunt et Deum timentes, constituantur ad sua ministeria exercenda* (the manuscript Paris Lat. 4995, after *timentes*, has the following text: *cum comite et populo elegantur mansueti et boni*); *Capitulare missorum Aquisgranense primum* (809), c. xxii (text of the manuscripts of the group Paris Lat. 9654 and Vatic. Palat. 582): *Ut iudices, vicedomini, prepositi, advocati, centenarii, scabinei boni et veraces et mansueti cum comite et populo eligentur et constituantur ad sua ministeria exercenda*; MGH *Cap.*, I, nos 40, 61, 62. On the exclusion of those who had been condemned to death and afterwards pardoned: *Capitulare Aquisgranense*, c. i and *Capitulare missorum Aquisgranense primum*, c. xxviii.
51. *Capitula incerti anni* (805–813), MGH *Cap.*, I, no. 86, c. i: *Ut non sint comites nostri tardi causas nostras ad indicandum nec eorum scabini*; c. ii: *De pravis centenariis vel scabinis et testimonia mala, qui non prevident recta inditia nec recta testimonia testificant*.
52. This is strongly stressed in c. i of the programmatic capitulary of 802 (MGH *Cap.*, I, no. 33), in the passage of the *Annales Laureshamenses* where the despatch of *missi* in the year 802, is treated (MGH., *SS*, I, p. 38), and in several other texts, amongst them c. xvi of the *Capitulare missorum generale* of Thionville

(805) (MGH *Cap.*, I, no. 44): *De oppressione pauperum liberorum hominum, ut non fiant a potentioribus per aliquod malum ingenium contra iustitiam oppressi, ita ut coacti res eorum vendant aut tradant. Ideo haec et supra et hic de liberis hominibus diximus, ne forte parentes contra iustitiam fiant exhereditati et regale obsequium minuatur et ipsi heredes propter indigentiam mendici vel latrones seu malefactores efficiantur. . . .*

53. *Capitulare missorum* (803), c. xx: see above, n. 49; *Capitulare missorum generale* of Thionville, (805), the conclusion at the end of c. xvi, after the passage quoted in the preceding note: . . . *Et ut saepius non fiant manniti ad placita, nisi sicut in alio capitulare praecepimus ita servetur;* MGH *Cap.*, I, nos 40 and 44. W. A. Eckhardt, *Kapitulariensammlung*, pp. 19–21, seems to have rightly identified the older capitulary to which Charlemagne referred in 805 with a fragment of a capitulary included in the collection of Gherbald, bishop of Liège, probably compiled in 806; Eckhardt's edition p. 92 (= MGH *Cap.*, I, no. 104, c. iv): *⟨Ut comites et⟩ centenarii generalem placitum frequentius non habeant propter pauperes; sed cum illos super quos clamant iniuste patientes, et cum maioribus natu et testimoniis necessariis frequenter placitum teneant; ut hi pauperes, qui nullam causam ibidem non habent, non cogantur in placitum venire, nisi bis aut ter in anno.* That fragment of a capitulary does not mention the *scabini* and quotes only the *maiores natu* (= 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 *scabini*, though existing, had not yet been generalised.

54. *Capitulare Aquisgranense* (809), c. v: see the text quoted above, n. 49; *Capitulare missorum Aquisgranense primum* (809), c. xiii: *Ut nullus ad placitum venire cogatur nisi qui causam habet ad querendam, exceptis scabinis* (the manuscripts of the group Paris Lat. 9654 and Vatic. Palat. 582 add to this: *et vassallis comitum*); *Capitulare missorum italicum* (see above, n. 24), (802–810), c. xii: *Ut per placita non fiant banniti liberi homines, excepto si aliqua proclamacio super aliquem venerit aut certe si scabinus aut iudex non fuerit; et pro hoc condemnati illi pauperes non fiant;* MGH *Cap.*, I, nos 61, 62, 99. Two capitularies refer explicitly to the rule issued by Charlemagne: first an 'Italian' capitulary of Pippin 810, ibid., no. 102; c. xiv relates to the enforcement of the rule in Italy: . . . *Et ingenuos homines nulla placita faciant custodire, postquam illa tria custodiant placita quae instituta sunt, nisi forte contingat ut aliquis aliquem accuset; excepto illos scabinos qui cum iudicibus residere debent;* secondly the *capitulare 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 constitutio genitoris nostri penitus observanda atque tenenda est, ut videlicet in anno tria solummodo generalia placita observent et nullus eos amplius placita observare compellat, nisi forte quilibet aut accusatus fuerit aut alium accusaverit aut ad testimonium perhibendum vocatus fuerit. Ad caetera vero, quae centenarii tenent non alius venire iubeatur, nisi qui aut litigat, aut iudicat aut testificatur.*

55. See texts quoted in nn. 49, 53, 54.

56. See nn. 49 and 54.

57. We believe that this expresses the full significance of c. xxvi of the programmatic capitulary of 802 (MGH *Cap.*, I, no. 33): *Ut iudices secundum scriptam legem iuste iudicant, non secundum arbitrium suum.* The written text of the *leges* covered only part of each of the national laws which were applicable in the





*Regnum Francorum* (as K. A. Eckhardt stressed it rightly in the 2nd edition made by him of H. Planitz, *Deutsche Rechtsgeschichte* [Graz and Cologne, 1961], 33). Charlemagne intended to extend largely the written text of the laws; however, the results of the decisions reached with that aim by the Empire's assembly of October 802 at Aachen and of the measures taken for applying these decisions remained extremely limited. Very important parts of the laws remained customary and oral; the judges still had plenty of possibilities to judge *secundum arbitrium suum*.—E. Kaufmann, in his remarkable book *Aequitatis Iudicium* (Frankfurt, 1959), 57, believes that the rule, though it first appears in a capitulary of Charlemagne, may be much older; but he does not give any valid argument to uphold his opinion.

58. This is, we believe, the meaning of c. vi of the *Capitulare missorum* of 802, at least in the form intended for the *missaticum* A, (Aquitaine), ed. W. A. Eckhardt (see above, n. 15), p. 501 (= MGH *Cap.*, I, no. 34, in the 'apparatus criticus' below p. 100): *De legibus mundanis, ut unusquisque sciat qua lege vivat vel iudicat.*

59. Collection of articles of capitularies, some of them revised, intended for the *missi* of 806, W. A. Eckhardt, *Kapitulariensammlung*, p. 85, c. xxi (= MGH *Cap.*, I, no. 35, c. xlviii): *Ut comites et iudices confiteantur qua lege vivere debeant et secundum ipsam iudicent* (according to W. A. Eckhardt, op. cit., p. 30, a corrupt reproduction of the text quoted n. 58); *Capitula omnibus cognita facienda* (802–813), c. iv: *Ut comites et vicarii eorum legem sciant ut ante eos iniuste neminem quis iudicare possit vel ipsam legem mutare; Capitulare missorum* (802–813), c. iii: *Comites quoque et centenarii et ceteri nobiles viri legem suam pleniter discant sicut in alio loco decretum est;* MGH *Cap.*, I, nos 57 and 60. It seems probable that when Charlemagne and his councillors required the counts, their subordinates and their deputies to know their own national law, they rightly or wrongly considered that this law, more often than not, would be also the national law of most of those under their jurisdiction: consequently it would be the law which they would have to supervise when their assessors applied it to most cases submitted to their court.

60. *Capitulare missorum Aquisgranense primum* (810), c. iii: *Ut ante vicarium et centenarium de proprietate et libertate iudicium non terminetur aut adquiratur, nisi semper in praesentia missorum imperialium aut in praesentia comitum; Capitulare missorum Aquisgranense secundum* (810), c. xv: *De res et mancipia ut ante vicariis et centenariis non conquirantur;* MGH *Cap.*, I, nos 64 and 65.

61. This is suggested by the fact that in the same year, the article of a capitulary introducing that provision of Frankish law into Italy, mentions explicitly the interdiction to judge the *criminales actiones*, as well as trials about freedom (see following note).—One generally admits that the interdiction was not applicable to the count's deputy, the viscount (*vicecomes*), when there was one. There are several *notitiae* of later years in the ninth century, where one meets a viscount acting as a chairman of the *mallus* with the same judicial competence as the count: Devic and Vaissete, *Hist. gén. de Languedoc*, éd. Privat, II, Preuves, no. 150, cols. 306 8 (858) (= Thévenin, *Textes*, no. 93), E. Germer-Durand, *Cartulaire de l'église cathédrale de Notre-Dame de Nîmes* (Nîmes, 1874), no. 1 (876), no. 8 (898) (= Thévenin, *Textes*, nos 107, 114); cf. W. Sickel, *Der fränkische Vicecomitat*, 1907, 53 4, 57 9, Brunner-von Schwerin, *op. cit.*, II, 231.

62. *Pippini capitulare italicum* (810), MGH *Cap.*, I, no. 102, c. xiv: *Ut ante vicarios nulla criminalis actio diffiniatur, nisi tantum leviores causas quae facile possunt diudicari; et nullus in eorum iudicio aliquis in servitio hominem conquirat; sed per fidem remittantur usque in praesentiam comitis.* 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 causas quae facile possunt diudicari.*
63. *Capitula de institiis faciendis* (811), MGH *Cap.*, I, no. 80, c. iv: *Ut nullus homo in placito centenarii neque ad mortem, neque ad libertatem suam amittendam aut ad res reddendas vel mancipia iudicetur, sed ista in praesentia comitis vel missorum nostrorum iudicentur;* c. viii: *. . . Ceteris vero mensibus unusquisque comitum placitum suum habeat et iustitias faciat. . . .*
64. Some instances, posterior to the reign of Charlemagne, can be found of meetings of the *mallus,* held under the chairmanship of lower officers of justice, when cases were judged that belonged to the exclusive competence of the count: Albanès and Chevalier *Gallia Christiana Novissima.* III, *Marseille,* no. 51, cols. 41–2 (845) (= B. Guérard, *Cartulaire de l'abbaye de Saint-Victor de Marseille,* I, Paris, 1857, no. 26, pp. 32–4, = Thévenin, *Textes,* no. 80); G. Desjardins, *Evêques de Rodez au IXe, au Xe et au XIe siècle,* Bibliothèque de l'Ecole des Chartes, XXIV (1863), P. J. no. VI, p. 167 (864) (date worked out by F. Lot, *Fidèles ou Vassaux* [Paris, 1904], pp. 114–15, n. 4). It is however much more important to note that the semantic evolution of the words *vicaria* in the west of France and in Burgundy, *centena* in Lorraine (which in the tenth and eleventh centuries included the right 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 lorraines du moyen âge,' *Archivum Latinitatis medii aevi = Bulletin du Cange,* V (1929–30), 26–30; M. Garaud, 'L'organisation administrative du comté de Poitou au Xe siècle et l'avènement des châtelains et des châtellenies', *Bulletin de la Société des Antiquaires de l'Ouest,* 1953, 431, 443–7; J. Richard, 'Aux origines du Charolais.' *Annales de Bourgogne,* XXXV (1963), 88. H. 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), 191–3.
65. *Admonitio generalis,* c. lxiii (*omnibus*); *Duplex legationis edictum,* c. xxii; programmatic capitulary of 802, c. i and *Annales Laureshamenses,* 802, MGH *SS.*, I, p. 38; *Capitulare missorum* of 803, c. xv; *Capitulare Aquisgranense* (809), c. vii; *Capitulare missorum Aquisgranense primum* (809), c. xvii; *Capitulare missorum Aquisgranense primum* (810), c. vii; *Capitula incerti anni* (805–813), c. i; *Capitula e canonibus excerpta* (813) c. x; Boretius, *Capitularia,* I, nos 22, 23, 33, 40, 61, 62, 64, 78, 86.
66. Programmatic capitulary of 802, c. xxv; see also c. xi, xiii. *Capitula incerti anni* (805–813), c. ii. See n. 65.
67. *Capitulare Aquisgranense* (809), c. vii. See n. 65.





68. Most of the texts quoted in n. 65 apply implicitly to the *scabini*; c. xvii of the *Capitulare Aquisgranense* of 809 and c. ii of the *Capitula incerti anni* quote the *scabini* explicitly.
69. *Capitulare missorum* (803), c. xv and xvi; *Capitulare missorum Aquisgranense primum* (809), c. xvi, *Capitula per missos cognita facienda* (805–813), c. i, MGH *Cap.*, I, nos 40, 62, 67.
70. C. ix. The text is corrupt and difficult to understand; however I believe there is no doubt about the meaning of this article.
71. *Capitulare legibus additum* (803), c. iv; *Capitula de missorum officiis* (810), c. v; perhaps *Capitulare missorum* of Nijmegen (806), c. viii (implicitly); MGH *Cap.*, I, nos 39, 66, 46.
72. *Capitulare Aquisgranense* (809), c. xiii; *Capitulare missorum Aquisgranense primum,* (809), c. xxv (with the various readings of some manuscripts); ibid., I, nos 61 and 62.
73. *Capitulare Aquisgranense* (802–803), ibid., I, no. 77, c. xi.
74. *Capitulare legibus additum* (803), c. x: *Si quis causam iudicatam repetere in mallo praesumpserit ibique testibus convictus fuerit, aut quindecim solidos componat, aut quindecim ictus ab scabinis qui causam prius iudicaverunt accipiat.* c. vii of the *Capitula a misso cognita facta* of 802, probably had the same bearing, though it did not yet include a punitive sanction: *Ut nullus contra rectum iudicium audeat iudicare quicquam.* ibid., I, nos 39 and 59.
75. *Capitulare missorum generale* of Thionville (805), ibid., I, no. 44, c. viii; *De clamatoribus vel causidicis qui nec iuditium scabinorum adquiescere nec blasfemare volunt antiqua consuetudo servetur, id est ut in custodia recludantur donec unum e duobus faciant. Et si ad palatium pro hac re reclamaverint et litteras detullerint, non quidem eis credatur nec tamen in carcere ponantur: sed cum custodia et cum ipsis litteris pariter ad palatium nostrum remittantur, ut ibi discutiantur sicut dignum est* The text of the manuscripts Paris Lat. 9654 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.
76. 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 Bryce D. Lyon, of the University of California (Berkeley), and Mrs Mary 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.