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ROYAL JUSTICE AND THE COMITAL OFFICE IN EAST FRANCIA C. 814–C. 899

The comital office during the reign of Charlemagne, and particularly the duties of the counts as royal officials, has been the subject of a number of schematic surveys, which draw exhaustively on the capitularies of Charlemagne and retrospectively on those of Louis the Pious as well[1]. These studies have provided a very clear account of the intentions of the Carolingian imperial government with regard to the role that counts were to perform in the provision of justice for the ruler's free subjects up through 814. However, there has been considerably less work done on the actual provision of royal justice through the aegis of comital courts, either during Charlemagne's reign or thereafter[2]. This is particularly true of counts in the East in the lands that eventually comprised the realm of Louis the German, and the somewhat enhanced realm of his grandson, Arnulf of Carinthia, inclusive of Lotharingia.

With respect to these regions, scholars have devoted very little attention either to the way the comital office functioned in actual practice or even to how it was supposed to function in principle[3]. This is not to say that eastern counts have been ignored. Rather the scholarly focus has been on prosopographical rather than pragmatic institutional or administrative issues[4]. One central purpose of this essay, therefore, is to fill the substantial lacuna in the scholarship regarding the actual per-

1 See, for example, Helen M. Cam, Local Government in Francia and England: A Comparison of the Local Administration and Jurisdiction of the Carolingian Empire with that of the West Saxon Kingdom, London 1912; François L. Ganshof, Frankish Institutions under Charlemagne, Providence 1968, p. 26–34; Karl Ferdinand Werner, Missus – Marchio – Comes: Entre l'administration centrale et l'administration locale de l'Empire carolingien, in: Werner Paravicini, Karl Ferdinand (ed.), Histoire comparée de l'administration (IV^{e}–XVIII^{e} siècles), Munich 1980, p. 191–239; and Jennifer Davis, A Pattern for Power: Charlemagne's Delegation of Judicial Responsibilities, in: ead., Michael Mccormick (ed.), The Long Morning of Medieval Europe, Aldershot 2008, p. 235–246.

2 It is noteworthy, for example, that La guistizia nell'alto medioevo (secoli IX–X), 2 vols., Spoleto 1997 (Settimane di Studio del Centro Italiano di Studi sull'alto medioevo, 44) includes no articles on the role of the count in the provision of public justice. For brief treatments of actual comital duties in West Francia and Italy, see Janet Nelson, Dispute Settlement in Carolingian West Francia, in: Wendy Davies, Paul Fouracre (ed.), The Settlement of Disputes in Early Medieval Europe, Cambridge 1986, p. 45–64; and François Bougard, Laien als Amtsträger. Über die Grafen des Regnum Italiae, in: Walter Pohl, Veronika Wieser (ed.), Der frühmittelalterliche Staat. Europäische Perspektiven, Vienna 2009, p. 201–215.

3 However, see Warren C. Brown, Unjust Seizure: Conflict, Interest, and Authority in an Early Medieval Society, Ithaca 2001, who discusses some aspects of comital judicial procedure within the context of considering the economic and political aims of major ecclesiastical officials in Bavaria.

4 Typical in this regard is the recent study by Sophie Glansdorff, Comites in regno Hludowici regis constituti: Prosopographie des détenteurs d'offices séculiers en Francie orientale, de Louis

formance of their judicial duties by counts in the eastern kingdom from the reign of Louis the Pious (814–840) to that of Arnulf of Carinthia (887–899). Concomitantly, this essay also will consider the question of whether the capitularies regarding the provision of royal justice throughout the Carolingian Empire, which were issued during the early decades of the ninth century, continued to play a role in regulating the count's judicial duties during the mid and late ninth century in East Francia[5].

This study begins with a review of the historiography dealing with the comital office in the East before turning to the problem of the role played by counts as the king's judicial officials at the local level. The actual practice of royal justice through the aegis of the East Carolingian counts is examined in a range of source materials, including royal charters, so-called private charters, historiographical works, ecclesiastical legislation, letters, and a panygeric poem. These different genres of source materials provide both a royal perspective on the performance of their duties by counts, as well as more local perspectives of those whose lives were impacted by the actions of the counts.

Historiographical Background

Beginning in the 1930s, scholars pursuing what became known as the New Constitutional History sought to challenge the classical scholarly model that counts in the German-speaking lands were public officials, appointed by the king. In place of this image of royal government, scholars including Heinrich Dannenbauer, Otto Brunner, Heinrich Mitteis, and Walter Schlesinger asserted that in contrast with the West, the central organizing principle of the early medieval kingdom of Germany was *Herrschaft* (lordship), in which the nobles possessed legal authority separate from and equal to that of the ruler[6]. The power of the nobility, therefore, was not based on the delegation of public authority from the king but rather on autogenous lordship, with the concomitant claim that all non-nobles lived under the protection (German *Munt*) of either the ruler or a noble[7].

le Germanique à Charles le Gros 826–887, Ostfildern 2011, which provides an in depth examination of comital families but no information about the conduct of the comital office.

5 For a valuable synthesis of the scholarship dealing with the manuscript traditions of the capitularies as well as their distribution, see Philippe Depreux, Charlemagne et les capitulaires: formation et réception d'un corpus normatif, in: Rolf Grosse, Michel Sot (ed.), Charlemagne: les temps, les espaces, les hommes. Construction et déconstruction d'un règne, Turnhout 2018, p. 19–43. Also see the important collection of information regarding the project to publish a new edition of the Carolingian capitularies at capitularia.uni-koeln.de/en/ under the direction of Professor Karl Ubl.

6 Regarding this tradition, see Frantisek Graus, Verfassungsgeschichte des Mittelalters, in: Historische Zeitschrift 243 (1986), p. 529–589; and the more recent survey of the scholarship by David S. Bachrach, The Written Word in Carolingian-Style Fiscal Administration under King Henry I, 919–936, in: German History 28 (2010), p. 399–423.

7 The foundational works establishing the concept of autogenous *Herrschaft* were published by Otto Freiherr von Dungern, Die Entstehung der Landeshoheit in Österreich, Vienna 1910; and id., Adelsherrschaft im Mittelalter, Munich 1927. See the valuable discussion of this scholarly model by Werner Hechberger, Adel im fränkisch-deutschen Mittelalter: Zur Anatomie eines Forschungsproblems, Ostfildern 2005, p. 234–236.

According to the New Constitutionalist model of the comital office, as it became fully developed during the 1940s and 1950s, the count was not a public official in East Francia[8]. Rather, counts were depicted as the personal representatives of the king, who administered lands that belonged personally to the ruler, and oversaw his personal dependents. These latter came to known as the *Königsfreie* (king's free men)[9]. The *comitatus* in this model did not constitute specific geographical spaces within which the count held a governmentally constituted authority. Rather, according to the New Constitutionalists, the *comitatus* should be understood as the count's *Gefolgschaft*, that is his following, which was comprised of royal dependents living on scattered royal assets. Schlesinger coined the term *Streugrafschaften* to denote this type of comital jurisdiction[10].

The New Constitutionalist model, although challenged by some scholars, remained the dominant prism for understanding the Carolingian East in German historiography up through the early 1970s[11]. However, the publication by Hans Schulze of his study of the *Grafschaftsverfassung* in the lands east of the Rhine in 1973 fundamentally challenged and redirected the historiographical tradition[12]. Arguing largely on constitutional grounds, and drawing on both royal and local charters as well as the capitularies, Schulze demonstrated that counts in the Carolingian East were public officials, that they were appointed by the king, and that they had public duties within defined geographical regions. After a period of debate during the 1980s, spurred by Michael Borgolte's studies of Swabian counts, Schulze's arguments won general acceptance in German scholarship[13]. However, there never emerged in the

8 Adolf Waas, Herrschaft und Staat im deutschen Frühmittelalter, Berlin 1938; Walter Schlesinger, Die Entstehung der Landesherrschaft. Untersuchungen vorwiegend nach mitteldeutschen Quellen, Dresden 1941, p. XII, and 136–139; Elisabeth Ham, Herzogs-und Königsgut, Gau und Grafschaft im frühmittelalterlichen Baiern, Munich 1950; and Karl Bosl, Grafschaft, in: Hellmuth Rössler and Günther Franz (ed.), Sachwörterbuch zur deutschen Geschichte, vol. 1, Munich 1958, p. 369–371. For the enormous influence of Waas, see Ludwig Holzfurtner, Die Grafschaft der Andechser: Comitatus und Grafschaft in Bayern 1000–1180, Munich 1994, particularly p. 5–6.

9 Theodor Mayer, Die Königsfreien und der Staat des frühen Mittelalters, in: Das Problem der Freiheit in der deutschen und schweizerischen Geschichte, Sigmaringen 1955, p. 7–56; Heinrich Dannenbauer, Die Freien im karolingischen Heer, in: Aus Verfassungs- und Landesgeschichte. Festschrift zum 70. Geburtstag von Theodor Mayer, 2 vols., Lindau, Konstanz 1954–1955, vol. 1, p. 49–64; and id., Königsfreie und Ministeriale, in: Grundlagen der mitteralterlichen Welt, Skizzen und Studien, Stuttgart 1958, p. 329–353.

10 See the discussion of this issue by Peter Schmid, Regensburg: Stadt der Könige und Herzöge im Mittelalter, Kallmünz 1977, p. 204–230.

11 See, for example, Otto Stolz, Das Wesen der Grafschaft im Raume Oberbayern – Tyrol – Salzburg, in: Zeitschrift für bayerische Landesgeschichte 15 (1949), p. 68–109; Erich Freiherr von Guttenberg, *Iudex h. e. comes aut grafio.* Ein Beitrag zum Problem der fränkischen »Grafschaftsverfassung« in der Merowingerzeit, in: Festschrift für Edmund E. Stengel, Münster, Cologne 1952, p. 93–129; Wolfgang Metz, Gau und Pagus im karolingischen Hessen, in: Hessisches Jahrbuch für Landesgeschichte 5 (1955), p. 1–23; and id., Bemerkungen über Provinz und Gau in der karolingischen Verfassungs- und Geistesgeschichte, in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germ. Abt. 73 (1956), p. 361–372.

12 Hans K. Schulze, Die Grafschaftsverfassung der Karolingerzeit in den Gebieten östlich des Rheins, Berlin 1973.

13 See, for example, the observations by Roman Deutinger, Königsherrschaft im Ostfränkischen Reich. Eine Pragmatische Verfassungsgeschichte der späten Karolingerzeit, Ostfildern 2006,

German-language tradition a detailed treatment of the actual performance of their duties by counts, including their obligation to provide a forum for the judicial needs of the king's free subjects.

As the discussion of the comital office, itself, waned in German-language scholarship, there developed a wave of interest among Anglophone scholars in the East Carolingian world, which led inter alia to a consideration of the comital office[14]. However, rather than beginning with the Schulze consensus, British and US scholars have tended to read East Carolingian history through the prism of *Herrschaft* championed by the New Constitutional History[15]. Many studies published in English over the past quarter century have downplayed the importance of the Carolingian royal government in matters at the local level and insisted upon lordship as the proper prism through which to investigate the administration and provision of justice. As a consequence, ostensibly governmental activities, such as the organization of legal assemblies, have been presented as being under the control of local magnates, who did not hold offices, rather than in the hands of counts, who were appointed by the king and served the public or royal interest[16]. As will become clear, the wealth of contemporary sources does not sustain the interpretation of the royally appointed count as marginal in the administration and provision of justice, but rather as playing a central role.

The Comital Office and Legal Jurisdiction in East Francia

Writing with regard to the year 852, Rudolf of Fulda devoted considerable attention to Louis the German's progress throughout East Francia, dispensing justice in conjunction with his ecclesiastical and secular officials[17]. According to Rudolf, when Louis the German arrived at Erfurt, he decreed that »no count or subordinate official should take up anyone's case as an advocate within his own comital jurisdiction or district, though they might freely do so in the districts of others«[18]. As is evident from this passage, Rudolf takes for granted, and assumes that his audience would as well, that Louis the German's realm was divided into administrative districts under both counts and sub-comital officials, who were responsible for overseeing legal

p. 147–150. However, also see Erwin Kupfer, Karolingische Grafschaftsstrukturen im bayrisch-österreichischen Raum, in: Mitteilungen des Instituts für Österreichische Geschichtsforschung 111 (2003), p. 1–17.

14 Timothy Reuter, Germany in the Early Middle Ages, c. 800–1056, London 1991, played a very important role in this process.

15 Very prominent in the Anglo-phone tradition was Timothy Reuter, whose numerous studies emphasized the central role of lordship in understanding the early medieval German kingdom. See, for example, The Making of England and Germany, 850–1050: Points of Comparison and Difference, in: Alfred P. Smyth (ed.), Medieval Europeans. Studies in Ethnic Identity and National Perspectives in Medieval Europe, Basingstoke 1998, p. 53–70.

16 Typical in this regard is the work of Matthew Innes, State and Society in the Early Middle Ages: The Middle Rhine Valley, 400–1000, Cambridge 2000, p. 124 who argues, inter alia, »Comital power rested on illustrious presence and public performance, not instituted jurisdiction«.

17 Annales Fuldenses, ed. Friedrich Kurze, Hanover 1891 (MGH SS rer. Germ., 7), *anno* 852.

18 Ibid., *anno* 852, *nullus praefectus in sua praefectura aut quaestionarius infra quaesturam suam alicuius causam advocate nomine susciperet agendam, in alienis vero praefecturis vel quaesturis singuli pro sua voluntate aliorum causis agendis haberent facultatem.*

matters as agents of the king. What is at issue in Rudolf's text is not Louis the German establishing the system in his realm that was set out so clearly in the capitularies of his father and grandfather for both counts and their subordinate officials to exercise legal authority as an extension of royal justice. Rather, Louis the German was dealing with corruption in the already existing system, which was based on the institutions that had been established over the previous seventy years.

In considering the nature of comital legal authority, the phrases *in sua praefectura* used by Rudolf with respect to the counts, and *infra quaesturam suam* with respect to the *centenarii/vicarii* also serve as an explicit confirmation these royal officials held geographically defined jurisdictions. There is no sense in which *in sua praefectur* and *in alienis praefecturis* can be understood to refer to a supposed territorially diffuse *Gefolgschaften* of the count. Rudolf's observation regarding the territorial nature of the administrative district held by a count is mirrored in a charter issued by Louis the German in the previous decade on behalf of a priest named Dominicus. In this case, Louis granted fiscal property to the priest, which previously had been held by another cleric named Ratpero[19]. Of particular importance in the present context is that the word map, which provided the details about the location of this fiscal property at Lebenbrunn, draws attention to the territorial boundaries between the administrative jurisdictions of two counts, in this case identifying the Zöbernbach as the boundary between the districts (*comitatus*) governed by Counts Radpot and Richarius[20].

Comital Courts and Ecclesiastical Legislation

The thoroughgoing knowledge that comital courts functioned in the east within specified territorial boundaries, expressed by Rudolf of Fulda, also permeates a series of church councils held under the leadership of Louis the German and his successors. This can be seen quite clearly, for example, in the canons issued by the council of Mainz that was organized in 847 under the direction of King Louis and Archbishop Rabanus (847–856)[21]. The thirteenth canon of the council, for example, prohibited priests from attending comital legal assemblies for the purpose of pursuing litigation, with the exception of cases in which they were defending the rights of widows and orphans[22]. The bishops attending the synod at Mainz also reiterated in the seventeenth canon the long-standing prohibition, enunciated in numerous capit-

19 Die Urkunden Ludwigs des Deutschen, Karlmanns und Ludwigs des Jüngeren, ed. Paul Kehr, Berlin 1934 (MGH Die Urkunden der deutschen Karolinger, 1), Louis the German, nr. 38 and the commentary by Schulze, Grafschaftsverfassung (as in n. 12), p. 310.

20 Louis the German (as in n. 19), nr. 38, *iuxta rivolum qui vocatur Sevira in marca ubi Radpoti et Rihharii comitatus confiniunut*. Regarding the complex issues about identifying the sometimes dynamic boundaries of specific administrative jurisdictions, see Jens Schneider, Begriffe und Methoden der aktuellen Raumforschung, in: Sebastian Brather, Jürgen Dendorfer (ed.), Grenzen, Räume und Identitäten. Der Oberrhein und seine Nachbarregionen von der Antike bis zum Hochmittelalter, Ostfildern 2017, p. 341–358; and Theo Kölzer, Die Anfänge der sächsischen Diözesen in der Karolingerzeit, in: Archiv für Diplomatik 61 (2015), p. 1–37.

21 Capitularia regum Francorum, 2 vols., ed. Alfred Boretius, Viktor Krause, Hanover 1883–1897 (MGH Capitularia, 1–2), vol. 2, p. 173–184, nr. 248.

22 Ibid., p. 179, c. 13.

ularies, that poor free men (*pauperes*) shall not be oppressed by being summoned too frequently to comital *placita*. The bishops asserted instead that the summons of the free poor should be limited to those occasions »that are set out in the earlier capitulary of the king«[23].

The reference to the »earlier capitulary of the king« in the edict of the council of Mainz calls to mind Charlemagne's command that »*centenarii* shall not have frequent general assemblies because of the poor. (…) The poor, who are not involved in a legal case, shall not be summoned to those assemblies more than twice or three times a year«[24]. Louis the Pious issued a similar capitulary regulating comital courts in 817, commanding that »counts are not to oppress the poor through continuous *placita*«[25]. Louis added that it was not the role of the free poor to go to comital assemblies simply to serve as observers, but should only be summoned to plead in those cases regarding personal freedom and inheritance. The other exception allowed for the summoning of the free poor in those cases in which the count required their attendance at a *mallum* to give testimony in an inquest so that justice could be done in a case[26].

Given the importance accorded to capitularies by the bishops gathered at Mainz in 847 for establishing the framework in which comital courts were intended to operate, it is noteworthy that numerous scholars have made the untenable claim that the capitularies, as a whole, are of little value in understanding the reality of royal governance[27]. In the context of this essay, it is noteworthy that even scholars who accept the value of capitularies for understanding aspects of governance in the West, reject their application to the East on the assumption that they were neither disseminated nor produced there[28]. By contrast, the bishops gathered at Mainz alongside Louis the German took an entirely different view and treated royal capitularies as the legal basis for reiterating existing regulations on the holding of comital judicial assemblies.

In addition to drawing on royal capitularies to regulate who was to attend comital assemblies and whom the counts were permitted to summon and under what circumstances, the bishops gathered at Mainz also were concerned to limit the opportunities for counts, among other royal officials, to use their offices illegitimately for their personal gain. In the eighteenth canon of this council the bishops commanded: »That for the sake of the poor, whose care is our obligation, it is pleasing to us that neither bishops, nor abbots, nor counts, nor the counts' representatives, nor judges

23 Ibid., p. 180, c. 17: *et ut sepius non fiant manniti ad placita nisi sicut in dominico capitulari olim facto praecipitur*.

24 Capitularia (as in n. 21), vol. 1, p. 104, nr. 4: *Et centenarii generalem placitum frequentius non habeant propter pauperes. (…) ut his pauperes qui nullam causam ibidem non habeant non cogantur in placitum venire nisi bis aut ter in anno*.

25 Ibid., p. 135, c. 3.

26 Ibid.: *De ceteris vero inquisitionibus per districtionem comitis ad mallum veniant et iuste examinentur ad iustitias faciendum*.

27 For an exceptionally clear statement of this view, see Reuter, Germany (as in n. 14), p. 27.

28 For the rejection of the earlier model, and an emphasis on the importance of capitularies in Louis the German's kingdom, see Eric Golbberg, *Dominus Hludowicus serenissimus imperator sedens pro tribunal*: Conflict, Justice, and Ideology at the Court of Louis the German, in: Matthias Becher, Alheydis Plassmann (ed.) Streit am Hof im frühen Mittelalter, Bonn 2011, p. 175–202.

shall dare, in any way whatsoever, to attempt to take by force or to purchase in difficult circumstances or by trickery the property of the poor or less powerful. If any of these officials wishes to purchase something, he shall do this in a public assembly before appropriate witnesses and with a proper explanation[29].« This regulation of the behavior of counts, as well as other officials, including the requirement that such property transactions take place in a public assembly, also demonstrates continuity with numerous capitularies issued by Charlemagne and Louis the Pious[30].

The concern for the proper functioning of comital courts was raised again at the council of Worms, held at the command and under the supervision of Louis the German in 868[31]. In the thirty-fifth canon issued by this council, the bishops legislated with royal approval on proper judicial procedure, asserting that: »It is fitting that the life of an innocent man not be destroyed unjustly at the hands of accusers. Therefore, whenever there is an accusation against someone, he shall not be delivered to punishment before the accuser is presented before the accused, and judgment of the laws and the canons is considered so that if the person is found to be unworthy of making an accusation, the accused will not be condemned on the basis of his accusation[32].« As was true of Rudolf of Fulda, discussed above, the bishops gathered at Worms, as well as Louis the German, clearly took for granted the existence of a legal system in the kingdom, under the direction of counts, in which cases were brought against defendants, and testimony was heard. Moreover, the requirement for an investigation of the *sententia* of both the *leges* and the canons presupposes that the courts had the capacity to treat individuals, including both laymen and clerics, according to their own law, a point to which I will return below.

The broad-based legal jurisdiction of the counts, as contrasted with the supposed rule of counts only over their *Gefolgschaften*, is illuminated again in the statutes issued by the council of Tribur, assembled under the leadership of Archbishop Hatto of Mainz (891–913) and King Arnulf (887–899), the grandson of Louis the German, in May 895[33]. According to the surviving statutes published by the bishops, Arnulf began the assembly by promising that he would restore, insofar as they had been weakened, the legal force of the decrees of the canons as well as the decrees of his

29 Capitularia (as in n. 21), vol. 2, p. 248, c. 18: *propter provisiones pauperum, quorum curam habere debemus, placuit nobis, ut nec episcopi nec abates nec comites nec vicarii nec iudices nullusque ominino sub mala occasione vel malo ingenio res pauperum vel minus potentum emere aut vi tollere audeat. Sed quisquis ex eis aliquid conparare voluerit, in publico placito coram idoneis testibus et cum ratione hoc faciat.* See the discussion of this passage by Maximilian Diesenberger, Predigt und Politik im frühmittelalterlichen Bayern: Arn von Salzburg, Karl der Große und die Salzburger Sermones-Sammlung, Berlin 2016, p. 311.

30 See, for example, Capitularia (as in n. 21), vol. 1, p. 43, c. 16; p. 78, c. 22; p. 154, c. 2.

31 Die Konzilien der karolingischen Teilreiche 860–874, ed. Wilfried Hartmann, Hanover 1998 (MGH Concilia, 4), with the ascription to Louis the German at p. 261.

32 Ibid., p. 278: *Dignum est, ut vita innocentis non maculetur pernicie accusantium. Adeo quisquis a quolibet criminatur; non ante accusatus supplitio deputetur quam accusator praesentetur atque legum et canonum sententia exquiratur, ut si indigna ad accusandum persona invenitur, ad eius accusationem non iudicetur.*

33 Die Konzilien der karolingischen Teilreiche 875–911, ed. Wilfried Hartmann, Isolde Schröder, Gerhard Schmitz, Hanover 2012 (MGH Concilia, 5), p. 371 for Arnulf's role in organizing the synod.

predecessors which were contained in the capitularies[34]. As seen above with respect to the council of Mainz in 847, neither Arnulf nor the assembled bishops at Tribur were under the impression that the Carolingian capitularies from the earlier ninth century were immaterial or even moribund. Rather they were a fundamental element of living law. Indeed, the account of the acts of the synod records that among their first tasks, the bishops discussed the capitularies of earlier kings[35].

The importance of these older capitularies with respect to the legal duties of the count is revealed in the third canon of the council of Tribur where Arnulf and the bishops treated the problem of enforcing ecclesiastical sanctions on secular sinners. In this context, Arnulf, speaking in the first person, made clear his expectation that the counts aid the bishops in their efforts stating: »we command and by our authority enjoin upon all of the counts in our kingdom that after (the sinners) have been struck with anathema by the bishops and, nevertheless, are not turned toward the path of penance, that they shall be apprehended by the counts and brought before us so that those who do not stand in awe of divine justice, shall bear a human judgment[36].« Arnulf's utilization of the counts in this manner is consistent with the efforts of Charlemagne, Louis the Pious, as well as the West Frankish ruler Charles the Bald, in both capitularies and ecclesiastical statutes to integrate the secular and ecclesiastical judicial systems to help secure the moral reform of his realm[37].

In order to facilitate the cooperation between the bishops and counts, the council at Tribur sought to eliminate the possibility that the two sets of officials, lay and ecclesiastical, would hold their assemblies on the same day. The ninth canon of the council concerns the question: »if it should happen that the bishop and the count announce an ecclesiastical and a secular assembly on the same day«[38]. Perhaps not surprisingly, the episcopal assembly ruled that the count would have to postpone his assembly, and exercise his *bannum*, delegated to him by the king, to require all of the people, whom he had assembled at his *placitum*, to go to the bishop's assembly[39].

In this context it is to be noted that the bishops assembled at Tribur as well as King Arnulf expected that counts would regularly exercise their *bannum* and summon the *populus* within their area of jurisdiction to a comital *placitum*. This expectation is consistent with the contemporary letter sent by the bishops of Bavaria to Pope

34 Ibid., p. 371.

35 Ibid.

36 Ibid., p. 346: *praecipimus et auctoritate nostra iniungimus omnibus regni nostri comitibus, postquam ab episcopis anathemate excommunicationis percelluntur et tamen ad poenitendum non inclinantur, ut ab ipsis comprehendantur et ante nos perferantur, ut qui divina iudicia non verentur, humana sententia feriantur.*

37 See, for example, Capitularia (as in n. 21), vol. 1, p. 78, c. 16; Council of Mainz (806), c. 8 in Concilia aevi Karolini, vol. 1/1 (742–817), ed. Albert Werminghoff, Hannover 1906 (MGH Concilia, 2), p. 262; Council of Tours (813), c. 33, ibid., p. 290; and the preamble to the Council of Quierzy (857), which is included in Die Konzilien der karolingischen Teilreiche 843–859, ed. Wilfried Hartmann, Hanover 1984 (MGH Concilia, 3), p. 385. This requirement for counts to aid the bishops in the moral reformation of the lay population also was included by Ansegisus in his collection in book 2.6. See Die Kapitulariensammlung des Ansegis, ed. Gerhard Schmitz, Hanover 1996 (MGH Capitularia. Nova series, 1), p. 526–527.

38 Die Konzilien der karolingischen Teilreiche 875–911 (as in n. 33), p. 348: *De eo, si episcopus ecclesiasticum et comes saeculare placitum una die condixerunt.*

39 Ibid.

John IX (898–900) regarding the state of the church in Moravia, where they observed that alongside the ecclesiastical hierarchy, »our counts within the boundaries of this region continue the practice of holding secular legal assemblies, and correct what needs to be corrected, and no one opposes them«[40].

Comital Jurisdiction and Immunities

Scholars dealing with the question of comital jurisdiction have tended to ignore the information provided by immunity clauses in royal charters, presumably because these are thought to represent fossilized remains from an earlier age, or served as now moribund boilerplate[41]. However such an interpretation is not tenable given the reality that charters were not simply highly stylized documents produced in the rarified atmosphere of the royal chancery, but rather were the end result of lengthy negotiations between the king and the recipient that touched on all aspects of the document[42]. Moreover, these documents were not simply handed over to the recipients, but rather were read aloud in court, further reaffirming the importance of all of the clauses of the charter[43]. As a consequence, rather than mere boilerplate, immunity clauses asserted the contemporary concerns of both the recipients and the expectations of the ruler in real time, and can be seen to represent the appreciation of both sides regarding current institutional realities.

The value of immunity clauses for illuminating the judicial jurisdiction of counts can be seen, for example, in a comparison of the immunities granted to the monasteries of Prüm and Hersfeld, first during the reign of Louis the Pious and then during the reigns of his sons Louis the German and Lothair I. In February 815, Louis the Pious responded to the request of Abbot Tancrad of Prüm (804–829) that he renew the protections and immunities granted to the monastery by his predecessors[44]. The immunity granted by Louis was quite extensive, and freed Prüm from a wide range of fiscal exactions. In addition, the emperor granted that »no public judge or anyone possessing judicial authority« would in the future have the authority to hear legal cases, that is *ad causas audiendas*, or summon witnesses, that is *fideiussores tollendos* in any of the churches, fields, or other properties belonging to Prüm[45].

40 Ibid., p. 461: *Etiam et nostri comites illi terre confines placita secularia illic continuaverunt, et, que corrigenda sunt, correxerunt, tributa tulerunt, et nulli eis resisterun*t.

41 See the comment by Hartmut Hoffmann, Grafschaften in Bischofshand, in: Deutsches Archiv 46 (1990), p. 375–480, here p. 457.

42 See, in this context, Karl Heidecker, Communications by Written Texts in Court Cases: Some Charter Evidence (ca. 800–ca. 1100), in: Marco Mostert (ed.), New Approaches to Medieval Communications, Turnhout 1999, p. 101–126; and Mark Mersiowsky, Urkundenpraxis in den Karolingischen Kanzleien, in: Giuseppe De Gregorio, Maria Galante (ed.), La produzione scritta tecnica e scientifica nel Medioevo: libro e document tra scuole e professioni, Spoleto 2012, p. 209–241, with the discussion of the literature there.

43 This issue has been treated in detail for the West by Geoffrey Koziol, The Politics of Memory and Identity in Carolingian Royal Diplomas: The West Frankish Kingdom (840–987), Turnhout 2012.

44 Die Urkunden Ludwig des Frommen, 3 vols., ed. Theo Kölzer (MGH Die Urkunden der Karolinger, 2), Wiesbaden 2016, nr. 53.

45 Ibid.

However, the meaning of even such an apparently sweeping grant of a judicial immunity from comital oversight is not quite as clear as the charter would seem to present it. The original charter issued by Pippin I (751–768), which had been addressed to »all our bishops, abbots, dukes, counts, courtiers, agents, centenarii, and *missi*,« stated, »no public judge shall presume to hear cases, or demand judicial fines anywhere at any time *without our order or the command of our heirs* (emphasis added)«[46]. This additional clause makes clear the ongoing authority of the count to hear cases involving both the free and unfree dependents of Prüm, whenever the king decided to permit it.

When Charlemagne renewed Prüm's immunity in 775, he added a number of clauses, including forbidding local officials, who held judicial authority, from summoning witnesses, as well as freeing the dependents of the monastery from comital jurisdiction with regard to certain military taxes and duties[47]. The privilege of 775, however, keeps in place the limitation *absque iussione nostra vel heredum nostrorum*. Moreover, in 803 Charlemagne issued a blanket limitation on all ecclesiastical judicial immunities, stating that if someone committed either murder or theft within an immunity, or some other crime outside an immunity and fled into the territory of an immunist, the count was to *command* (*mandere*) either the bishop or abbot to return the guilty party to comital justice[48]. This was a significant limitation on the immunity not only of Prüm but also on all other ecclesiastical institutions holding judicial immunities from comital oversight.

Charlemagne's capitulary requiring that counts command bishops and abbots to return certain classes of criminals to royal justice, administered by the count, was included by Ansegisus in his collection of capitularies, which he produced during the reign of Louis the Pious, and which subsequently had a very broad diffusion across the Carolingian Empire[49]. When the bishops at the synod of Tribur in 895, discussed above, enjoined Arnulf to restore to their full authority any royal capitularies whose force had been weakened, a number of scholars have argued that they were referring to Ansegisus' collection[50]. Such a view is certainly very plausible given the large number of copies of the Ansegisus collection that were available in the Carolingian East in 895 and, indeed, long thereafter[51].

46 Die Urkunden Pippins, Karlmanns und Karls des Großen, ed. Engelbert Mühlbacher, Hanover 1906 (MGH Die Urkunden der Karolinger, 1), Pepin nr. 18: *nullus iudex publicus absque iussione nostra vel heredum nostrorum ad causas audiendo aut freda undique exigendum quoque tempore non praesumat ingredere*.

47 Ibid., Charlemagne nr. 108.

48 Capitularia (as in n. 21), vol. 1, p. 39, c. 2.

49 Ansegis (as in n. 37), nr. 3.26, p. 583.

50 With regard to the availability of Ansegisus' collection to the bishops at the synod of Tribur, see the comment by the editors of Die Konzilien der karolingischen Teilreiche 875–911 (as in n. 33), p. 372, nr. 203.

51 In this regard, see Hubert Mordek, Bibliotheca capitularium regum Francorum manuscripta: Überlieferung und Traditionszusammenhang der fränkischen Herrschererlasse, Munich 1995, p. 43–47, 124–125, 153–157, 714–716, 841–842 for copies of Ansegisus' collection that were produced in the ninth century in the East. There are an even greater number of 10th century copies of Ansegisus from eastern scriptoria, which points to the presence of a larger corpus of ninth-century texts than have survived up to the present. Also see the introduction to the new edition of Ansegisus' text in Die Kapitulariensammlung des Ansegis (as in n. 37), particularly p. 71–374.

Keeping in mind that even a seemingly broad-based immunity from the judicial authority of the count was limited in significant ways, it is useful to compare the immunity granted by Louis the Pious to Prüm with the one he issued to the monastery of Hersfeld in 820. In the latter case, as had been true at Prüm, Abbot Bunus (820–840) requested that Louis the Pious renew the privileges that Hersfeld had received from Charlemagne[52]. The *narratio* of the charter states that the original privilege had stated »no count or any other official holding judicial authority should presume to impose any levies in the *villae* or other properties of the monastery«[53]. Louis granted the request of Abbot Bunus, and renewed the monastery's privileges, including the prohibition on counts and other local officials from imposing levies on Hersfeld. However, Louis did not add any kind of judicial immunity, and the charter gives no basis for concluding that the dependents or properties of Hersfeld were freed from the normal judicial oversight and jurisdiction of the local counts.

When we look forward to the period after Louis the Pious' death in 840, we see once more the renewal of the immunities for both Prüm and Hersfeld. In February 841, Lothair I issued a charter on behalf of the monastery of Prüm and its abbot Marcward (829–853) in which he renewed the judicial privileges of the house, without making any changes to the basic structure of the royal judicial immunity[54]. Lothair's action can be contrasted with Louis the German's treatment of the monastery of Hersfeld. On 31 October 843, Louis the German issued two separate charters to Abbot Brunward (840–875), the first of which was a largely a word for word reiteration of Louis the Pious' privilege of 820, which did not include any judicial immunity[55]. However, the second privilege included a clause directed toward his counts which stated: »Therefore we command that neither you nor your subordinates nor your successors shall hear cases in the estates, churches, fields, or other possession (…) nor shall you summon witnesses[56].« Clearly there was a change in the status of the royal immunity held by Hersfeld, which now included at least some immunity from judicial oversight by local royal officials.

However, even the grant of an ostensibly complete immunity from comital legal jurisdiction did not ensure that ecclesiastical assets and dependents would be freed from the count's oversight. The danger of counts illegitimately violating ecclesiastical judicial immunities is illuminated quite clearly in a case involving the monastery of Corvey, which had been founded by Louis the Pious in 816. In June 833, while holding court at Worms, Louis the Pious issued a letter to Bishop Badurad (815–862) of Paderborn in his capacity as a *missus* operating in Saxony, noting that the king had

For the reception of Ansegisus' collection also see Takuro Tsuda, Was hat Ansegis gesammelt? Über die zeitgenössische Wahrnehmung der »Kapitularien« in der Karolingerzeit, in: Concilium medii aevi 16 (2013), p. 209–231.

52 Louis the Pious (as in nr. 44), nr. 182.

53 Ibid.: *neque comes neque ulla iudiciaria potestas in villis eorum vel rebus aliquid exactari praesumerent*.

54 Die Urkunden Lothars I. und Lothars II., ed. Theodor Schieffer, Hanover 1966 (MGH Die Urkunden der Karolinger, 3), Lothair I, nr. 56.

55 Louis the German (as in n .19), nr. 32.

56 Ibid., nr. 33: *Praecipientes ergo iubemus, ut neque vos neque iuniores aut successores vestri in villis aut curtes seu ecclesias aut agros vel reliquas possessiones ad causas audiendas (…) nec fideiussores tollendos*.

received complaints from Abbot Warin of Corvey (831–856)[57]. Louis stated, in part, that »certain counts wished to violate and break our aforementioned command in that they wish to compel both free and semi-free men living on the lands of this monastery to undertake military service and to detain them with regard to judicial matters, which we do not wish for them to do«[58]. In order to combat this problem, Louis commanded Bishop Badurad to take the royal letter to Corvey, and to summon the local counts there to hear the king's command on this matter. Moreover, Badurad was to inform the counts that if they wished to continue to have the king's grace, they would obey his commands and no longer infringe upon the military and judicial immunity enjoyed by the monastery of Corvey[59].

This case illustrates two important points. First, the counts in the region around Corvey regularly exercised their judicial authority and summoned the dependents of the monastery to their *placita*. If even the dependents of Corvey, who ostensibly were immune from comital jurisdiction, were subject to comital judicial action, it would seem very likely that all of the other people in the region were as well. Secondly, the system of royal oversight of comital officials through *missi*, which is found ubiquitously in the capitularies, would appear to have been operative in Saxony at this point.

The reason why the counts in this case violated the judicial immunity held by Corvey is not specified in Louis the Pious' letter to Bishop Badurad. One possibility, however, is the financial benefit that accrued to the counts for doing their job of providing justice for the people through the holding of comital *placita*. This financial benefit included not only the *fredus*, that is the fine which went to the holder of the court, but also the ancillary fees that were paid to the count by litigants[60]. Consequently, counts had very good reason to seek as much business as possible for their courts, and to ignore, insofar as they dared, the immunities of ecclesiastical institutions. This interest of the count to maximize the business conducted at his *mallum*, moreover, highlights the need for clearly drawn boundaries between the administrative jurisdictions of counts in order to avoid conflicts over the particular *mallum* that a free man was to attend.

In considering immunity clauses overall, it is clear that in the absence of a judicial immunity the dependents and the lands of ecclesiastical institutions would be subject to comital judicial authority. Another way of saying this is that all individuals and institutions without immunities were subject to comital judicial jurisdiction. In this context, it is important to emphasize that in contrast to the scores of surviving immunities issued to ecclesiastical institutions by the Carolingian kings in the Eastern realm throughout the ninth century, there is only one such surviving immunity is-

57 Louis the Pious (as in n. 44), nr. 330.

58 Ibid.: *quidam comites memoratum praeceptum nostrum infringere et convellere velint, in eo videlicet quod homines tam liberos quam et latos, qui super terram eiusdem monasterii consistunt, in hostem ire compellant et distringere iudiciario more velint, quod nolumus ut faciant.*

59 Ibid.

60 The *fredus* is mentioned in the Salian, Frisian, Saxon, and Alammanic law codes, as well as numerous capitularies. The citations to the relevant texts can be found in Jan Frederik Niermeyer, Mediae Latinitatis Lexicon Minus, Leiden 1997, p. 453–454. With respect to the additional fees paid by litigants, see Capitularia (as in n. 21), vol. 1, p. 77, c. 8; and p. 192, c. 15.

sued to a secular individual. This was Arnulf of Carinthia's well-known privilege for his *ministerialis* Heimo, which was issued in the spring of 888[61].

The *narratio* of this charter explains that Heimo requested from the king that he be granted legal jurisdiction over those of his properties that were located within the *pagus* of Grünzgau, where Margrave Arbo held the comital jurisdiction[62]. Arnulf agreed and commanded, in a manner very similar to numerous ecclesiastical immunities, that neither Arbo, »nor any other public judge or any other official holding judicial authority shall presume to act against our command, to detain any of his men, whether free or slave, to hear legal cases that are now subject to his authority, or to impose or inflict damages upon him through false pretexts«[63].

However, Heimo and his men were still subject to Margrave Arbo in matters pertaining to the public defense, and were required explicitly to help maintain the local fortifications and to defend them in case of enemy attack. In addition, Heimo, himself, was not free from comital oversight for his own legal actions. Instead, the privilege reads, »this same Heimo or his representative shall go to the public legal assembly of this aforementioned count, to have his own legal needs met, and to obtain justice«[64]. Moreover, the next clause states that, »if perhaps someone from the kingdom of the Moravians should come for the sake of justice, and if this concerns an issue that Heimo or his advocate is not able to correct, judgment in this matter will be settled effectively by this same count (Arbo)«[65]. As these clauses make clear, the grant of an immunity to Heimo was neither absolute, nor did it vitiate comital judicial authority in the region. Rather, the count's *mallum* continued to function, and Heimo, himself, was subject to its judgment, even though he had obtained the authority to hear the cases of his dependents on his own lands.

The Practices of Comital Justice in East Francia

The previous two sections have shed light on the normal expectation of the East Frankish kings as well as their bishops that counts possessed broad and territorially-based judicial jurisdictions throughout *Francia orientalis,* which were delegated to them by the ruler. Moreover, the jurisdictional competence of the counts that is delineated in the capitularies of Charlemagne and Louis the Pious would appear to have been valid in East Francia throughout the ninth century. This reality is illuminated in Rudolf of Fulda's history, in immunity clauses of royal charters, as well as in the explicit statements of the bishops at the councils of Mainz and Tribur that their

61 Die Urkunden Arnolfs, ed. Paul Kehr, Berlin 1940 (MGH Die Urkunden der deutschen Karolinger, 3), nr. 32.

62 Ibid.

63 Ibid.: *nec ullus iudex publicus vel ulla ex iudiciaria potestate persona ausu temerario contra hanc nostrae institutionis auctoritatem in easdem proprii sui iuris causas aut homines eius tam ingenuos quam servos ibidem habitantes distringendos vel ullas inlicitas occasiones seu ullius praessurae calamitatem ingerre vel exactare praesumat.*

64 Ibid.: *Ad publicum iam fati comitis mallum scilicet idem Heimo seu vicarius eius legem ac iustitiam exigendam vel perpetrandum pergat.*

65 Ibid.: *Et si forsan de Maravorum regno aliquis causa iustitiae supervenerit, si tale quidlibet est quod ipse Heimo vel advocatus eius corrigere nequiverit, iudicio eiusdem comitis potenter finiatur.*

deliberations were based on royal capitularies issued by previous kings. The focus in the last part of this study turns from the existence of territorially-based judicial jurisdiction to the actual practices and procedures of the comital *placita* in East Francia. The purpose here is to highlight the ways in which counts interacted with the individuals and communities whose legal rights they were obligated to protect and preserve.

Evidence from Royal Charters

To begin with an example from the late ninth century, Arnulf of Carinthia issued a command, whose date unfortunately has not survived, to the counts and other magnates of Swabia, who were not royal officials but rather merely wealth free men, instructing them to help the monastery of St. Gall recover its lost properties[66]. In order to facilitate this process, Arnulf commanded that »each of our counts and viscounts, in each of their comital jurisdictions or vicomital areas of jurisdiction, shall make inquiries of the rectors and advocates of this house, through the process of a formal legal assembly, regarding the properties belonging to this aforesaid monastery. If they wish to have our grace, they shall do this at once without any delay or neglect, taking oaths on the basis of the king's authority, and they shall not omit doing justice to this same monastery«[67]. Presumably, the *primates*, who also were addressed in this letter, were to aid the counts and the counts' subordinate officials in this effort.

It is notable that the charter specifies that these oaths were to be taken *ex regia potestate*. The use of the sworn oath in this case can be traced to the decision by Arnulf's grandfather, Louis the German, to issue a special privilege to St. Gall that granted the monastery the same protected status as that possessed by royal fiscal assets, so that its properties would be protected by the procedure of the sworn inquest[68]. What we see in this case, therefore, is St. Gall continuing to benefit from this privilege. The use of sworn testimony in this manner also demonstrates continuities with the capitularies of earlier Carolingian rulers, which had emphasized that oath-sworn testimony only was to be taken with regard to royal assets[69].

Turning back to the charter, it is clear that Arnulf considered it to be normal procedure that his counts and their subordinate officials had territorially defined areas of jurisdiction. This is made explicit in Arnulf's command that counts and subcomital officials were to hold detailed inquests in each of their areas of jurisdiction rather than summoning members of putative *Gefolgschaften* to provide testimony. Arnulf's expectations in this case were precisely the same as those which informed Rudolf of Fulda's description of the administrative districts of counts and subcomital officials across East Francia in 852, thereby demonstrating fundamental continuity from the reign of Louis the German to that of his grandson.

66 Arnulf (as in n .61), nr. 111.

67 Ibid.: *ut unusquisque comitum nostrorum vel vicariorum in singulis comitatibus et ministerii quicquid ad praefatum monasterium cause seu iuste mallationis ab advocato vel rectoribus eius fuerit perquirendum, statim ad presens sine contradictionis obstaculo vel neglectu cum iuramento ex regia potestate coacto, eidem monasterio iustitiam facere non omittat.*

68 Louis the German (as in n. 19), nr. 71.

69 See, for example, Capitularia (as in n. 21), vol. 1, p. 144, c. 1 and p. 148, c. 2.

In this context, Arnulf commanded that the counts and other royal officials first obtain information from the officials of St. Gall about properties located within their jurisdictions, and then to obtain further information about these properties by taking sworn testimony. Such a procedure was possible because of the authority of the count and subcomital officials to summon witnesses to a legal assembly. Here again, therefore, we can see the relationship between the inhabitants of the count's administrative jurisdiction, that is his *comitatus*, and the count, himself. The governmentally directed nature of this extensive legal process is made clear in the next clause. Here Arnulf commanded, »If anyone through obstinance or hostility should presume to oppose our command, we order each count and judge that this person be brought to our palace under the ban, and there condemned by the judgment of our just royal censure, let him learn that our power is not to be tested«[70]. In short, Arnulf's circular letter to the counts of Swabia offers a glimpse both at the procedures used in comital courts in Swabia, as well as at the governmental nature of the comital office.

The procedures set out by Arnulf for his counts and subcomital officials to follow, particularly with regard to the taking of testimony, are entirely consistent with those enunciated in the capitularies regarding the use of the inquest to settle property disputes in matters that touch on the royal interest[71]. The process of adjudication, however, is not spelled out in the royal command to the Swabian counts, likely because this was an order to initiate a procedure rather than the description of the proceedings of a trial. By contrast, a charter issued by Arnulf on behalf of a count named Meginhard in May 899 illuminates some specific aspects of workings of a comital court[72].

In this case, Meginward wanted to execute a property exchange with Bishop Erchanbald of Eichstätt (882–912), which, like all such exchanges, was an arrangement that required a royal license[73]. As part of the exchange process, it was necessary to carry out an inquest to determine, in part, whether the lay party actually had full legal possession of the property he wished to exchange. To this end, Meginward provided the details of how he had acquired his property, which are set out in the *narratio* of the charter. The count stated that the property he wished to exchange originally was held by two men named Gozbert and Diekter in the *pagus* of Swalafeld, which at that time was located within the administrative jurisdiction (*comitatus*) of Count Ernst. Gozbert and Diekter were summoned to that count's assembly, »and because they did not want to go to the *placitum* to plead their case, their property was taken from them in the legal assembly by the legal judgment of the people and

70 Ibid.: *Si autem ullus contra hoc decreti nostri preceptum aliquid obstinationis vel repugnationis inire presumat, iubemus unicuique comiti et iudici, ut cum banno nostro ad palatium nostrum distringatur, ut ibi iusto regiae censure diiudicatus iudicio sentiat nostram potestatem non esse tempnandam.*

71 See, for example, Capitularia (as in n. 21), vol. 1, p. 87, c. 2; p. 144, c. 1; p. 145, c. 2–3; p. 148, c. 2; and Capitularia (as in n. 21), vol. 2, p. 188, c. 2.

72 Arnulf (as in n. 61), nr. 175.

73 See in this regard, Philippe Depreux, The Development of Charters Confirming Exchange by the Royal Administration (Eighth-Tenth Centuries), in: Karl Heidecker (ed.), Charters and the Use of the Written Word in Medieval Society, Turnhout 2000, p. 43–62.

was handed over to the king«[74]. Subsequently, Arnulf granted this property to Meginward, who held it in allodial tenure and consequently was given permission to make the exchange with Bishop Erchanbold.

As this charter was not concerned with Count Ernst's *placitum* other than to confirm that the property in question legally belonged to Meginward, the *narratio* leaves out a great deal of information that would be helpful to know, such as why Gozbert and Diekter were summoned and why they refused to attend the count's legal assembly. What is clear, however, is that a judgment was issued against them through the legal decision of the *populus*, and that this decision was issued in the context of the count's *mallum*, which here can have no meaning other than his legal assembly. In addition, the nature of this assembly as an expression of royal justice is made clear by the fact that the confiscated property was handed over to the king, who in turn gave it to Count Meginhard. In sum, this brief report, although missing many details, shows how a judgment was reached when litigants refused a comital summons, and illuminates the role of the »people« in the judicial process, acting, however, under the authority of the count.

Evidence from Private Charters

One might expect that royal charters would provide an image of the successful functioning of the comital court in a manner that reflected positively on the king and the men whom he chose to act as his representatives and agents. By contrast, so-called private charters, which were crafted by scribes working for ecclesiastical office holders, might be expected to have the interests of their employers foremost in mind rather than attempting to present a positive impression of the agents of the royal government. The following example, from the reign of Louis the Pious, considers a comital legal assembly, held in 825, from the point of view of Rabanus Maurus during his tenure as abbot of Fulda (822–842). The portion of the proceedings that interested the scribe from Fulda concerned the property boundaries and possessions of the monastery of Hünfeld, a holding of the monastery of Fulda while Rabanus was abbot[75]. Because of its value in illuminating the legal practices at a comital *mallum*, the description of the proceedings are translated here in full.

A restitution of goods in a public assembly under Count Poppo:

> »In the year of the incarnation of our lord Jesus Christ 825, in the twelfth year of our most serene emperor Louis in the month of February on the tenth calends of the month of March, there was a public gathering with Count Poppo and the entirety of his *comitatus* within the boundaries of the *villa* called Geismar. And a large-scale inquest was undertaken in this same gathering regarding the boundaries of the monastery that is called Hünfeld. And each person at this assembly who was found (to have) some (property) within the boundaries of the monastery, either was shown to own this, each according to his own law,

74 Arnulf (as in n. 61), nr. 175: *et in publico mallo, quia ad placitum venire et illic regere noluerunt, legali populorum iudicio eis ablata et in regiam potestatem contracta est*.

75 Cf. the treatment of this text by Innes, State and Society (as in n. 16), p. 121–122.

> before the aforementioned count and the entire assembly, or that he held it unjustly and restored it and gave it back to the legates of Abbot Rabanus of the monastery of St. Boniface. Others there stated that they recognized that their hereditary properties were within these same boundaries and that they ought to be able to possess those properties that they were seen to possess up to the present day as benefices from the administrators of the monastery of St. Boniface. They ought therefore to possess them from this day forward, and restore without any damage those things that they held unjustly. These are those who gave up and restored whatever they held within these boundaries[76].«

The dominant figure in this account is Count Poppo, who had summoned all of the people from his area of jurisdiction, that is his *comitatus*, to attend a »public assembly«. As the witness list to this document makes clear, Poppo took testimony from 29 men regarding the properties of five men, against whom the monastery of Hünfeld had made claims. An additional 16 men are listed as witnesses to the restoration of property to Hünfeld. There is no overlap between the two lists of witnesses. Thus, the considerable number of individuals (45) who participated as witnesses in the property disputes involving Hünfeld, alone, makes clear that this was quite a large legal assembly that drew from a broad cross-section of the population living within the boundaries of Poppo's *comitatus*. The scribe from Fulda had no interest in transcribing the other cases heard in this assembly, or providing lists of witnesses, who participated in them.

When all of the information provided by the Fulda scribe is taken into account, we see a legal process that follows the same forms as those listed in the royal charters discussed above. First, we have a count exercising his authority, delegated to him by the king, to summon to a judicial assembly of all the men living under the count's legal jurisdiction, which is the only reasonable interpretation of the phrase *totius comitatus eius* in the context of this case. Secondly, we have a count exercising the authority delegated to him by the king in holding an inquest and taking testimony from 29 men, who actually had knowledge about the case recorded by the scribe from Fulda. It is noteworthy, however, that there is no mention of the count taking sworn testimony, as the property at issue was not part of the royal fisc, and Fulda was not granted the right to have a sworn inquest to defend its properties in the same manner as St. Gall, discussed above. Third, we have an assembly, under the leadership of the

76 Codex diplomaticus Fuldensis, ed. Ernst Friedrich Johann Dronke, Fulda 1850, nr. 456: *Restitutio bonorum in conventu publico sub Poppone comite: Anno ab incarnatione domini nostri Ihesu Christi DCCCXXV regni autem serenissimi imperatoris Hludowici XII. mense februario decimo kalendas martii factus est publicus conventus Popponis comitis et totius comitatus eius in terminis villae quae dicitur Geismari factaque est exquisitio magna in eodem convent de terminis monasterii quod nuncupator Hunafeld et quisquis in illo placito repertus fuerat aliquid sibi infra terminos eiusdem monasterii aut ad proprietatem vindicare aut iniuste retinere hoc secundum legem ipsorum coram supra nominato comite et omni conventu restituit atque legatis Hrabani monasterii sancti Bonifacii abbatis reddidit et confessi sunt ibi qui in eisdem finibus hereditates habere voluerint quia per beneficium praevisorum monasterii sancti Bonifatii usque ad hanc diem ea quae habere videbantur possiderent ac deinceps habere debuissent atque voluissent ut sine damno restituerent quod iniuste tenuerunt. Isti sunt qui dimiserunt atque restituerunt quicquid in finibus illis habuerunt.*

count, making legal judgments on the basis of this testimony. Moreover, each of the men involved in a dispute with Hünfeld had the judgment made *secundum legem ipsorum*, meaning that the assembly was able to distinguish among the legal claims of men, who lived under different laws. As seen above, this was the requirement that would be set some four decades later by the bishops gathered at the synod of Worms in 868, which demonstrates fundamental continuity between the judicial practices during the reigns of Louis the Pious and Louis the German. Finally, we have the restitution of property that was carried out under the supervision of the count's *missi*. This demonstrates not only the fact that the count had agents to carry out his will, that is an administrative apparatus, but that the enforcement of legal judgments confirmed by the count was also part of the count's governmental duties.

In light of the claims of some scholars that legal assemblies such as the one held at the *villa* of Geismar under Count Poppo's leadership were dominated by local magnates, it is worth noting that only six of the 45 men who witnessed the property disputes involving Hünfeld can be identified as local leading men. These six men appear as *maiores de natu*, a typical phrase used in a wide range of Carolingian texts to denote the good and the great, in another case involving the monastery of Fulda at a legal assembly overseen by Count Poppo in 827. This latter case purportedly brought together all of the leading men (*maiores de natu*) from Poppo's *comitatus*[77]. However, seven of the important local men from the 827 dispute do not figure at all in the court cases involving Hünfeld in 825[78]. As a consequence, rather than demonstrating the domination of property disputes by the great men of the locality, the witness lists from 825 indicate that only those men with information about the history of the properties in dispute were questioned by the count, and that these included six *maiores de natu*, and 23 other local free men.

The procedure as seen in the *placitum* summoned by Count Poppo in Thuringia is quite similar to that described in documents preserved in the cartulary of the monastery of St. Emmeram from the second and early third decade of the ninth century. For example, a text recounting events from 819 reports that it was a *missus* of a count named Gerold, called Wichelmus, who oversaw the return of property to St. Emmeram that had been taken, unjustly in view of the monastery, by two men named Anawanus and his brother Rihuvassus[79]. This procedure mirrors exactly the return of property to the Fulda under the supervision of Poppo's *missus*, as discussed above.

Another charter in St. Emmeram's cartulary records a legal proceeding held in 822, which details the steps taken by Count Hatto and his *missus,* named Hiltirochus, to address a complaint raised by Bishop Baturich of Regensburg (817–847) against a group of men near Cham[80]. This document, which is written entirely from the point of view of Baturich and the monks at St. Emmeram records that the bishop, accompanied by his huntsman Rodold and his *vicarius* Betto, went to Cham along with Hiltiro, »whom Count Hatto had send to this same place, namely Cham, so that he

77 Ibid., nr. 471.
78 Ibid.
79 Die Traditionen des Hochstifts Regensburg und des Klosters S. Emmeram, ed. Josef Widemann, 2nd ed., Aalen 1988, nr. 15.
80 Ibid., nr. 16.

might hear the case that the bishop had against those living nearby, who had usurped for themselves unjustly the property of St. Peter the Apostle and St. Emmeram the Martyr«[81]. Once there, Hiltiro took testimony from the bishop along with Rodold, Betto, and from the men against whom Baturich made his accusations. Then the count's *missus* accompanied by the bishop and his men rode around the entire property, and listened as Baturich, Rodold, and Betto stated the specific boundaries of the properties that they claimed belonged to the monastery of St. Emmeram. The document concludes by listing all of those who gave testimony, but notably does not provide any information about a judgment issued by Hiltiro or the recovery of the property for the monastery. The silence on this point permits the inference that the seven men against whom Bishop Baturich made his claims retained possession of the lands that they supposedly held *iniuste*. From an administrative perspective, it is clear that the count was able to delegate to his *missus* the authority to take testimony in his stead.

The procedure followed by Hiltiro, acting on behalf of Count Hatto, was markedly similar to that seen in the legal assembly held by Count Poppo. Hiltiro took testimony from both sides in the case, and then heard from witnesses. He also took an additional step of touring the entire property with the bishop's forester and *vicarius* to get their testimony about what they asserted should be the boundaries of the property claimed by Baturich. It would appear, however, that this all was in vain, at least from the perspective of the prelate, which suggests that high rank did not always win the day in judicial disputes.

In addition to adjudicating disputes, legal assemblies held by counts also served as a crucial forum for making agreements, particularly regarding property. As discussed above, the capitularies of both Charlemagne and Louis the Pious include numerous prohibitions on any transfers of private property to secular or ecclesiastical office holders being made in secret. Rather, such transfers of property had to be made in public in the presence of a legally constituted authority, such as the count or an official of the central government such as a royal missus. It is not surprising, therefore, that very large numbers of property donations made throughout the ninth century to monasteries, whose cartularies have survived, are recorded as having been made with some variation on the phrase *in mallo publico coram comite*[82]. One example, which can stand in for many, concerns an arrangement made by the *nobiles vires* Pezzi and Managolt in April 830, who sold woodlands located at Galenberg to the

81 Ibid.: *quem ipse Hatto comes miserat ad eundem Chambe locum, ut audiret, qualem ipse episcopus cum illis vicinis haberet rationem, qui commarcam sancti Petri apostolic et beati Emmerammi martyris iniuste sibimet usurpaverunt*.

82 See, for example, Die Alten Mönchslisten und die Traditionen von Corvey, ed. Klemens Honselmann, Paderborn 1982, nr. 6, 26, 27, 28, 31, 41, 43, 62, 63, 64, 98, 114, 139,163, 190; Die Traditionen des Hochstifts Freising (744–926), ed. Theodor Bitterauf, Munich 1905, nr. 381, 390, 396, 404, 530, 538, 539, 541, 544, 556, 567, 568, 569, 574, 592, 598, 599, 600, 602, 603, 614, 648, 661, 678, 684, 698, 701, 708, 739, 898, 899, 1032; Urkundenbuch der Abtei Sanct Gallen, vol. 1 (700–840), ed. Hermann Wartmann, Zürich 1863, nr. 144, 150, 160, 205, 230, 240, 277, 297, 302, 325; vol. 2 (840–920), Zürich 1866, nr. 446, 487, 567, 582, 639, 684; Urkundenbuch der Reichsabtei Hersfeld, vol. 1, ed. Hans Weirich, Marburg 1936, nr. 26, 35; Die Traditionen des Hochstifts Regensburg, (as in n. 79), nr. 32, 36, 96, 117, 126, 147; Codex diplomaticus Fuldensis (as in n. 76), nr. 302, 356, 387, 388, 389, 405, 408, 429, 450, 483, 508, 512, 628.

church of St. Mary at Freising in return for a horse and a monetary payment. Afterwards, according to the Freising cartulary, these men came to the comital *placitum* and confirmed in the presence of Counts Werinharius and Ogo that they had made this exchange[83].

Royal Justice and Comital Courts in Letters

The royal charters, discussed above, describe the activities of the comital court largely from the perspective of the king. The private charters illuminate the ways in which ecclesiastical office holders perceived the activities of counts as these impinged upon church interests. By contrast with both types of charters, a letter sent by Einhard, Charlemagne's courtier, to a count during the final decade of Louis the Pious' reign, provides some insight regarding the count's judicial role from the perspective of those who suffered judicial penalties[84]. In this letter, Einhard reported to the count that two free poor men (*pauperes homines*) had fled to his monastery at Seligenstadt. They had come to Einhard because they had been convicted of theft in the count's presence, and then were subjected to a fine, which was too heavy for them to bear. According to Einhard, the poor men had already paid part of the fine, but were unable to pay the rest at present, because of their poverty. Einhard therefore beseeched the count to show mercy »to the extent that is possible« so that these men would not be completely ruined for their crime of taking animals in a hunting preserve belonging to the king (*dominica foraste*)[85].

Einhard's letter to the count, whose name has not been preserved, provides a considerable amount of information regarding the course of events when a trial resulted in a conviction. First, it is noteworthy that the men were convicted in the presence of the count, but not by the individual actions of the count, himself, but rather by the court. This scenario is consistent with the procedures outlined in the capitularies that assigned to the *scabini* the role of issuing a judgment in an assembly over which the count presided[86]. Once these two men were convicted and a fine was imposed, they apparently were not required to pay it all at once, but rather paid what they could at the time. However, the fact that Einhard was moved to write on their behalf strongly suggests that the poor men, despite their inability to pay, were being hounded by the count's officials. Finally, Einhard's plea to the count to show mercy »to the extent that this was possible« indicates both that mercy was possible under royal justice, but that there were clear limits on the count's ability to use his judgment to grant mercy.

Another letter of Einhard shows that even for an associate of a high-ranking nobleman it was not always a straight-forward proposition to obtain justice from the local count. Sometime before 830, Einhard wrote to a count named Hruotbert asking for details about what the count had done in the case of Einhard's dependent Alaf-

83 Die Traditionen des Hochstifts Freising (as in n. 76), nr. 592.

84 Epistolae Karolini aevi, vol. 3, ed. Ernst Dümmler, Berlin 1889–1899 (MGH Epistolae, 5), p. 133, nr. 47.

85 Ibid.: *in quantum possibile est*.

86 See, for example, Capitularia (as in n. 21), vol. 1, p. 39, c. 10; p. 41, c. 8; p. 58, c. 7; p. 61, c. 2; p. 77, c. 13; and p. 99, c. 12.

rid[87]. Apparently, Hruotbert had already carried out an inquest (*inquisitio*) among the more truthful men (*veraces homines*), as required by the capitularies, and Einhard had brought the results of the inquest to Emperor Louis' attention[88]. According to Einhard, the emperor was surprised to find out that the case had not yet been resolved. Consequently, Einhard's letter was intended to spur Count Hruotbert to action in a case that should have been settled some time before[89].

In one final letter from Einhard we see the ways in which powerful men sought to ensure that the scales of justice were weighted in favor of themselves and their dependents. In this case, Einhard began his letter by emphasizing how much he relied upon the friendship (*amicicia*) (sic) of an unnamed count[90]. Einhard then noted that the advocate of his monastery at Seligenstadt was seeking to acquire possession of certain dependent laborers (*mancipia*) in the count's court, and added that he hoped his advocate might have the count's aid in this endeavor[91]. Einhard signed off by beseeching the count not only to help the monastery's advocate in this matter, but in another case as well, »so that you might merit having the aforementioned martyrs of Christ as your patrons and intercessors with God«[92]. In effect, Einhard was asking the count to intercede on behalf of Einhard's advocate in the court over which the count, himself, presided. This is precisely the kind of corruption that Louis the German sought to prohibit in his edict, discussed above, where the East Frankish ruler forbade counts and sub-comital officials from acting as advocates in court cases within their own jurisdictions.

Crime and Punishment

Einhard's letter on behalf of the *pauperes homines*, discussed above, points to an aspect of count's duties to provide justice that is far different from the one seen in either private or royal charters, namely the conviction of criminals and their punishment. One would not expect to find references to punishment in either royal or private charters, as these largely focused on questions relating to the disposition of property. But this does not entail that the majority or even a large part of the business conducted at a comital *mallum* actually concerned the disposition of landed assets. As we have seen, the bishops at the synod of Worms in 868 were very concerned about legal proceedings dealing with what we might term »criminal« cases, and especially that individuals might be executed without a proper trial. It is in this context that the assembled prelates mandated that counts follow appropriate legal proce-

87 Epistolae Karolini aevi, vol. 3 (as in n .84), p. 112, nr. 7.
88 Ibid. For the capitulary requirements that inquests involve the better and more truthful men, see Capitularia (as in n. 21), vol. 1, p. 144, c. 1; p. 145, c. 3; Capitularia (as in n. 21), vol. 2, p.187, c. 1; p. 188, c. 2; p. 192, c. 3.
89 Epistolae Karolini aevi, vol. 3 (as in n .84), p. 112, nr. 7.
90 Ibid., nr. 50.
91 Ibid.: *que presens advocatus noster N. coram vobis quesivit et (quae ipse sperat) posse adquiere, si vestrum adiutorium habuerit*.
92 Ibid.: *ut per hoc memoratos Christi martyres vestros apud Deum patronos atque intercessores habere mereamini*.

dures, including allowing the defendant to face his accuser, and compelling the court to make a decision regarding the character and likely veracity of the accuser.

The potential harshness of royal justice was given a literary expression in the well-known poem, »Carmen de Timone comite«, which was written circa 834 in honor of Louis the German, in his position as king of Bavaria[93]. The hero of the short poem is a count named Timo, who was appointed by Louis to provide justice. In particular, Timo is described as one who »returns the law to the good, and seeks out the evil with the law«[94]. The poet praises Timo by emphasizing that when he arrives, »he commands that the highwaymen be hung, and that the thieves have their faces branded with a permanent mark«[95]. The poet adds that the convicted had their noses cut off, a punishment depicted as dishonorable, while others lost a foot or a hand[96]. Such punishments are rarely encountered in narrative sources, and also do not figure in charters. However, the poem almost certainly reflects the experience of poorer men, and certainly of the unfree, whose punishments, as seen in the Frankish laws, were always harsher and more focused on corporal discipline, than those meted out to their »betters«[97].

Conclusion

In this study, I have sought to show that the East Frankish kings and their bishops expressed very clearly the reality that the administrative competence of the count included his jurisdiction in legal affairs over the free inhabitants of his *comitatus*, which comprised a bounded territory. This was demonstrated both in formal, prescriptive commands, in the wording of immunity clauses that specified the ways in which certain ecclesiastical institutions and their dependents were removed from comital oversight, as well as in Rudolf of Fulda's discussion in the »Annals of Fulda«. However, it also bears emphasis that immunity clauses were far from absolute, and counts continued to exercise jurisdiction over the free dependents of ostensibly immune ecclesiastical institutions, sometimes in a manner authorized by the government and sometimes illicitly.

In considering the organizing principles for the ongoing legal jurisdiction and competence of counts in East Francia, both Louis the German and Arnulf, as well as the bishops of the eastern kingdom, looked to the capitularies of Charlemagne and Louis the Pious for guidance. Arnulf, in particular, emphasized at the council of

93 Carmen de Timone comite, in: Poetae Latini aevi Carolini, vol. 2, ed. Ernst Dümmler, Berlin 1884 (MGH Poetae, 2), p. 120–124. See the useful discussion of this poem and its background by Brown, Unjust Seizure (as in n. 3), p. 1–5. Also see the detailed discussion of this poem, and its implications for the harshness of justice meted out by counts by Christof Paulus, Das Pfalzgrafenamt in Bayern im frühen und hohen Mittelalter, Munich 2007, p. 131–151.

94 Carmen de Timone comite, line 6: *Iura bonis reddens, iure malos quaciens*.

95 Ibid., lines 65–66: *Ergo comes veniens censet pendere latrones / Furibus et furvas semper habere genas*.

96 Ibid., lines 67–68: *Detruncare reis inhonesto vulnere nares / Iste pedem perdit, perdit et ille manum*.

97 See, for example, Pactus legis Salicae, ed. Karl August Eckhardt, Hanover 1962 (MGH Leges nationum Germanicarum, 4/1), p. 145, 40 § 1; Capitularia (as in n. 21), vol. 1, p. 147, nr. 60, c. 3; and ibid., p. 149, nr. 62, c. 11.

Tribur in 895 that it was his obligation to maintain the regulations set out in the capitularies of his predecessors, and to reinvigorate any of those that had fallen into desuetude. The fact that the episcopal council of Tribur issued three canons based on earlier ninth-century capitularies specifically dealing with the rendering of royal justice at the comital *mallum*, makes it clear that this aspect of the count's administrative burden was a live issue at the end of the ninth century.

When turning to the actual judicial practice in the comital *mallum*, as treated in a variety of sources, we see once again that the counts were acting in a manner consistent with their duty to provide royal justice to the king's subjects. However, it would be incorrect to conclude that royal justice always was impartial and consistently available to all on an equal basis. As Einhard's letter on behalf of his advocate, discussed above, makes clear, the good and great certainly sought to influence the court in their own favor. However, powerful magnates did not always win. Moreover, that judicial fairness was a matter of concern to the eastern kings is aptly illustrated in Louis the German's prohibition of counts or sub-comital officials acting as advocates in cases over which they were presiding. In a different vein, the bishops at the council of Worms in 868 were quite worried that individuals would be punished by counts without following proper procedure and affording the accused their legal rights. Their worries in this regard were consistent with the concerns expressed by a number of Carolingian writers earlier in the ninth century such as Alcuin, Walafrid Strabo, and Theodulf of Orleans[98]. Indeed, Einhard expressed a similar concern in his letter on behalf of the two poor men convicted of violating the royal forest *bannum*. The savagery with which punishments could be enforced by counts is illustrated in graphic terms by the poet of the »Carmen de Timone comite«.

In sum, royal justice in the count's legal assembly in East Francia was much like the other institutions of the Carolingian Empire. Although the king maintained significant control through the appointment of counts as royal judicial officials, he was compelled to delegate authority to men, whom the Carolingians, themselves, recognized were inherently susceptible to corruption. The system of justice through the institution of the comital court as conceptualized by the rulers of East Francia worked imperfectly, but it did serve in both theory and in practice to protect the interests of free men, including against the overweening ambition of their wealthier and more powerful neighbors.

98 See a discussion of this issue by Paulus, Pfalzgrafamt (as in n. 93), p. 143–144.