Legislation, Genre and Politics in Late Carolingian Italy: the Ravenna Constitutions

Introduction

To modern historians late-ninth-century Italy has always seemed a dark place, characterised by political and social disintegration as the Carolingian dynasty lost its exclusive grip on royal power. To some extent this sense of decay is informed by a decline in the amount of evidence available for studying contemporary politics and society.[1] The problem is posed not so much by the paucity of narrative sources (a fact of life for historians interested in almost any period of early medieval Italy), nor by a drop in the survival rates of charters, the bedrock of local histories, which continue at a steady rate.[2] Rather, it is the sharp decline (and ultimate demise) of the legislative documents known as capitularies which has seemed more telling.

Capitularies were legislative texts that recorded the decisions reached by kings in discussion with their leading men, and communicated them to the wider political community.[3] The almost complete absence of these quintessential governmental

[1] O. Capitani, *Storia dell'Italia medievale, 410-1216* (Rome and Bari, 1986), p. 126; G. Arnaldi, *Natale 875. Poetica, ecclesiologica, cultura del papato altomedievale* (Rome, 1990), p. 25; G. Albertoni, *L'Italia Carolingia* (Rome, 1997), pp. 55-8.

[2] C.J. Wickham, 'Lawyers' Time: History and Memory in Tenth- and Eleventh-Century Italy', in *idem*, *Land and Power. Studies in Italian and European Social History, 400-1200* (London, 1994), pp. 275-93.

[3] The classic study was F.L. Ganshof, *Recherches sur les capitulaires* (Paris, 1958); most recently see M. Geiselhart, *Die Kapitulariengesetzgebung Lothars I.* (Frankfurt, 2002); M. Innes, 'Charlemagne's Government', in J. Story (ed.), *Charlemagne: Empire and Society* (Manchester, 2005), pp. 71-89; C.

instruments in the later Carolingian period seems, superficially, to betoken increasing institutional and political frailty, and to signal the atrophy of royal legal activity, one of the primary peacetime functions of early medieval kings.[4] The capitulary tradition held on more tenaciously in Italy than elsewhere, reflecting the kingdom's precociously literate legal culture. Nevertheless, after Louis II's capitulary of 866, we have only four such documents from the next three decades: two from the short reign of Charles the Bald in 876, and then two more from the post-Carolingian rulers of Italy, Guy and Lambert of Spoleto, in 891 and 898. This group of texts represents the tail end of the capitulary tradition not only in Italy, but indeed throughout the empire: after the death of Charles the Bald in 877 there are only two west Frankish capitularies, both from the reign of Carloman II in 883-4.[5] This meagre haul is no mere accident of survival, and represents a huge drop in absolute numbers of texts by comparison with the era's most prolific legislators: some 100 capitularies are attributed to Charlemagne (768-814) alone, with roughly 50 each from the reigns of

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Pössel, 'Authors and Recipients of Carolingian Capitularies, 779-829', in R. Corradini, R. Meens, C. Pössel and P. Shaw (eds.), *Texts and Identities in the Early Middle Ages* (Vienna, 2006), pp. 253-74 (which, inter alia, questions the link between capitularies and assemblies).

[4] For the significance of lawmaking, see above all P. Wormald, '*Lex scripta* and *verbum regis*. Legislation and Germanic Kingship from Euric to Cnut', in P. Wormald, *Legal Culture in the Early Medieval West* (London and Rio Grande, 1999), pp. 1-43, esp. p. 41; originally published in P.H. Sawyer and I.N. Wood (eds.), *Early Medieval Kingship* (Leeds, 1977); P. Wormald, *The Making of English Law: King Alfred to the Twelfth Century. Vol. I. Legislation and its Limits* (Oxford, 1999), esp. pp. 29-70.

[5] A. Boretius and V. Krause (eds.), *Capitularia regum Francorum*, 2 vols. (MGH Leges section III, Hanover, 1883-97), vol. 2, nos. 286-7. These figures do not include royal *promissiones* and other such sources; as they are intended to be impressionistic, I will sidestep at this stage the problems of classification that our texts present.

Louis the Pious (814-40) and Charles the Bald (840-77). The dwindling of royal legislative activity at the tail end of Frankish domination in Italy provides the focus for this article. Using a case-study based on a group of documents from the year 882, my aim is to discuss and re-evaluate aspects of the relationship between royal legislation and politics in a period when both are conventionally considered to have been in the throes of disintegration. We must begin, however, by rehearsing some preliminary points about early medieval legislation.

The reduction in the rate of capitulary production has been interpreted as symbolising not simply a corrosion of the mechanics of Carolingian government, but also a malaise in deeper political structures, because the act of lawgiving was one of the fundamental prerogatives and expected functions of early medieval kings. The promulgation of written law, a tradition inherited from the late Roman Empire and enthusiastically adopted by the barbarian rulers of late antiquity, was taken up in turn by the Carolingian dynasty and used to shape the identities of the peoples (Franks and others) over which they ruled. Many of the so-called 'ethnic' lawcodes of the barbarian peoples were revised and reissued by the Carolingians, and in some cases put into writing for the first time.[6] Capitularies were a subtly different kind of law: recent historians have often preferred to define them more as statements of intent than as legislation per se.[7] Yet it is abundantly clear that the worlds of the barbarian lawcodes and the capitularies did coincide, particularly in Italy, where capitularies

[6] Wormald, '*Lex scripta*'; R. McKitterick, *The Carolingians and the Written Word* (Cambridge, 1989), pp. 37-40; Wormald, *Making of English Law*, esp. pp. 29-70.

[7] M. Becher, *Eid und Herrschaft. Untersuchungen zum Herrscherethos Karls des Großen* (Sigmaringen, 1993), p. 15.

were simply added to manuscripts as a direct continuation of 'ethnic' Lombard law.[8] Because of this, in Italy above all, the caesura in the capitulary tradition in the last years of the empire represents a rupture in a much longer continuum of written legislation and has been taken to indicate not only the absence of effective royal government, but also the growing fragility of an entire political system.[9]

Conventional discussions of the capitularies depend on modern historians' confidence in the classification of legal texts and their functions, a taxonomy originally devised by nineteenth-century editors. Yet one of the most characteristic aspects of these texts is their great formal variety.[10] Recent research thus counsels against too rigid a categorisation, and the precise function and constitutive force of capitularies is hotly debated. While some historians argue that their written-ness was crucial both practically and ideologically, others have contended that oral promulgation was the constitutive element, and that the surviving written texts (almost none of them

[8] Wormald, *Legal Culture*, p. xiii.

[9] J.L. Nelson, *Charles the Bald* (London and New York, 1992), pp. 261-2; cf. Wormald, '*Lex scripta*', p. 23. This periodisation was enshrined in the standard edition of the early medieval laws of Italy: F. Beyerle (ed.), *Leges Langobardorum, 643-866* (2nd ed., Witzenhausen, 1962).

[10] See H. Mordek, 'Karolingische Kapitularien', in H. Mordek (ed.), *Überlieferung und Geltung normativer Texte des frühen und hohen Mittelalters* (Sigmaringen, 1986), pp. 25-50. For debate over the definition of capitularies see: Ganshof, *Recherches*, p. 12; F. Ganshof, *Frankish Institutions Under Charlemagne* (Providence, 1968); R. Schneider, 'Schriftlichkeit und Mündlichkeit im Bereich der Kapitularien', in P. Classen (ed.), *Recht und Schrift im Mittelalter* (Sigmaringen, 1977), pp. 257-79, at pp. 259-62; H. Mordek, 'Kapitularien und Schriftlichkeit', in R. Schieffer (ed.), *Schriftkultur und Reichsverwaltung unter den Karolingern* (Opladen, 1996), pp. 34-66, at p. 34; Pössel, 'Authors and Recipients', p. 267.

originals) were of secondary importance.[11] Adding to the uncertainty is the fact that the construction of many of the surviving documents reveals close similarities with other classes of text. Many share features with records of church councils, whose structure had a clear influence on their origins and development.[12] Some show the influence of epistolary form, and several include one or more of the authenticating formulas normally associated with royal charters.[13] The reception of these documents also highlights this blurring of genres: although some manuscripts appear to have been constructed specifically as lawbooks, capitularies were often excerpted and repackaged with a disparate range of other types of material, including theology and history.[14] On close inspection, then, the boundaries between capitularies and other types of text begin to look permeable, and traditional categorisations start to dissolve

[11] See for example R. Schneider, 'Zur rechtlichen Bedeutung der Kapitularientexte', in *Deutsches Archiv* 23 (1967), pp. 273-94; Schneider, 'Schriftlichkeit und Mündlichkeit'; A. Bühler, 'Wort und Schrift im karolingischen Recht', in *Archiv für Kulturgeschichte* 72 (1990), pp. 275-96; R. McKitterick, 'Zur Herstellung von Kapitularien: Die Arbeit des Leges-Skriptoriums', *Mitteilungen des Instituts für Österreichische Geschichtsforschung* 101 (1993), pp. 3-16; F. Bougard, *La justice dans le royaume d'Italie de la fin du VIIIe siècle au début du XIe siècle* (Rome, 1995), pp. 20-9; Mordek, 'Kapitularien und Schriftlichkeit'.

[12] J.E. Story, 'Carolingian Northumbria and the Legatine Mission of 786', in B.E. Crawford (ed.), *Conversion and Christianity in the North Sea World* (St. Andrews, 1998), pp. 93-107, at pp. 99-102.

[13] In general see H. Krause, 'Königtum und Rechtsordnung in der Zeit der sächsischen und salischen Herrscher', in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 28 (1965), pp. 1-98, who argues strongly that charters were intimately bound up with law and legislation; cf. T. Reuter, 'The Origins of the German *Sonderweg*? The Empire and its Rulers in the High Middle Ages,' in A. Duggan (ed.), *Kings and Kingship in Medieval Europe* (London, 1993), pp. 179-211, at pp. 194-5.

[14] See the works cited at n. 11.

at the edges. This suggests that we should be prepared to imagine a cluster of overlapping legal genres, which had their own identities and are therefore often studied in isolation, but which sometimes converged with each other in particular circumstances.[15]

These two related contexts (the definition of capitularies as a genre, and their general application to the study of political history) provide the background against which this article's case-study is set. Questioning the traditional classification of capitularies encourages us to set aside assumptions about the meaning of the genre as a whole, and to consider instead the significance of individual texts in context. Accordingly, the main body of this article will focus quite tightly on some hitherto under-valued evidence for royal legislative activity in Italy during the 880s which appears to straddle the accepted genre barriers. The texts we will be discussing are a series of six charters issued at Ravenna in 882 by the last Carolingian emperor and ruler of Italy, Charles III 'the Fat' (879-88).[16] The fact that these diplomas contain legislative material, and have a legislative tone, makes them unusual. Historians have long acknowledged this: in 1942 Edmund Stengel dubbed them the 'Ravenna constitutions'

[15] These remarks are not meant to imply that there was no contemporary awareness of capitularies as a genre, evidence for which is collected by Pössel, 'Authors and Recipients', p. 268.

[16] On Charles the Fat in Italy, see now A. Zettler, 'Der Zusammenhang des Raumes beidseits der Alpen in karolingischer Zeit – Amtsträger, Klöster und die Herrschaft Karls III.,' in H. Maurer *et al* (eds.), *Schwaben und Italien im Hochmittelalter* (Stuttgart, 2001), pp. 25-42; S. MacLean, *Kingship and Politics in the Late Ninth Century: Charles the Fat and the End of the Carolingian Empire* (Cambridge, 2003), pp. 91-6, 178-85; S. MacLean, '"After his death a great tribulation came to Italy…" Dynastic Politics and Aristocratic Factions after the Death of Louis II, c. 870-c. 890', *Millennium-Jahrbuch* 4 (2007), pp. 239-60, at 250-6.

in recognition of their peculiar legal content.[17] Nevertheless, although they have been mined for information by historians of medieval social status, they have not previously been studied *as* texts.[18] Even historians specifically interested in the debate over the forms and functions of Carolingian legal documents have ignored them, presumably because of the editorial decision to publish these texts in the MGH series of royal charters and not that of capitularies. My aim is to reconstruct the contexts which influenced their form and content and thus to unlock their potential to tell us not only about legislative aspirations and attitudes to written and oral law, but also political circumstances and royal self-representation.[19] Ultimately, this will allow us to reflect on some broader issues regarding the capitulary genre and its demise.

The Ravenna constitutions

No capitularies are known to have been produced south of the Alps during the decade or so which separated the Italian reign of Charles the Bald (875-77) from that of Guy of Spoleto (888-94). Karlmann (877-79) and Charles the Fat, whose reigns cover this

[17] E.E. Stengel, 'Karls III. verlorenes Privileg für Amorbach und der italienische Ursprung seiner Fassung', in his *Abhandlungen und Untersuchungen zur mittelalterlichen Geschichte* (Cologne and Graz, 1960), pp. 264-75 at p. 267, originally published in *Quellen und Forschung aus italienischen Archiven und Bibliotheken* [hereafter *QFIAB*] 32 (1942). See also G. Diurni, *Le situazioni possessorie nel medioevo. Età Longobardo-Franca* (Milan, 1988), pp. 164, 230-5; Bougard, *La justice*, pp. 52-3.

[18] G. Tabacco, *I liberi del re nell' Italia carolingia e postcarolingia* (Spoleto, 1966), pp. 67-87.

[19] Two particularly notable examples of this approach are: F. Manacorda, *Ricerche sugli inizii della dominazione dei Carolingi in Italia* (Rome, 1968); J.L. Nelson, 'Translating Images of Authority: the Christian Roman Emperors in the Carolingian World,' in M.M. Mackenzie and C. Roueché, *Images of Authority* (Cambridge, 1989), pp. 194-205; reprinted in her *The Frankish World, 750-900* (London and Rio Grande, 1996).

period, were thus the only kings of Italy between the Frankish conquest of 774 and the end of the empire in 888 who failed to begin their reigns by issuing a capitulary as a means of signalling a claim to traditions of legitimate kingship and as a promise of good government.[20] Yet other sources suggest that links between the monarchy and the legal traditions of the Italian realm remained active during the 880s. There is good evidence, as François Bougard has shown, that Charles the Fat's reign saw an increase in the number of royal judges, and a standardisation of the ways that disputes were settled and recorded.[21] It is a matter for debate whether these developments were the outcome of a royal policy, or rather a consequence of autonomous notarial activity. Either way, it is worth noting that Charles's reign also witnessed the revived political centrality of the city of Pavia, the old Lombard capital and centre for the organisation of royal justice, which had lost some of its exclusivity under his predecessors.[22] Furthermore, Charles took an unusually prominent interest in judging *placita* (dispute hearings), either personally or through his *missi* (royal emissaries).[23]

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[20] Bougard, *La justice*, p. 52; G.V.B. West, 'Studies in Representations and Perceptions of the Carolingians in Italy, 774-875', University of London PhD thesis (1998), p. 230.

[21] F. Bougard, 'La justice dans le royaume d'Italie aux IXe-Xe siècles', in *Settimane di studio del centro italiano di studi sull' alto medioevo* [hereafter *Settimane*] 44 (1997), pp. 133-78, at pp. 153-5; Bougard, *La justice*, pp. 307-10; building on the classic study of G. Mengozzi, *Ricerche sull'attività della scuola di Pavia nell'alto medio evo* (Pavia, 1924).

[22] C. Brühl, *Fodrum, Gistum, Servitium Regis. Studien zu den wirtschaftlichen Grundlagen des Königtums im Frankenreich und in der fränkischen Nachfolgestaaten Deutschland, Frankreich und Italien vom 6. bis zur Mitte des 14. Jahrhunderts* (Cologne, 1968), pp. 401-6 gives statistics for each reign.

[23] See C. Manaresi (ed.), *I placiti del 'regnum Italiae'* 3 vols. (Rome, 1955-60), vol. 1, nos. 88-96 and Appendice, 92bis; Bougard, 'La justice', pp. 148, 153. On *placita* in general, see C.J. Wickham, 'Land

The significance of this was not so much procedural as political. Because kings could be idealised as guarantors of justice, Charles's involvement in *placita* signalled his adherence to the conventional apparatus of Italian rulership. The holding of judicial assemblies before the great and the good of the realm created a sense of the king's legitimacy and renewed his association with the political community: it served, in the words of Bougard, as a recurring 'ritual of auto-affirmation.'[24] This evidence for the persistence of links between the royal court and the dispensing of justice should thus be read primarily as revealing a series of political statements or postures rather than as a way of calibrating institutional change. These postures provide the immediate context for our legislative charters, the Ravenna constitutions.

Charters were by their very nature legal documents, sanctioning as they did grants of land and privileges (often judicial) to favoured followers.[25] Strictly speaking, however, they were not normally legislative instruments. Charter formulas were, moreover, very sensitive to changes in the wider social and political environment: apparently small peculiarities in their wording can provide good evidence for significant political developments.[26] This is why the idiosyncrasies of the 'constitutions' of 882 are so useful. The documents in question were issued between February 13-15 for the bishops of Reggio, Verona, Arezzo, Cremona and Bergamo,

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Disputes and their Social Framework in Lombard-Carolingian Italy, 700-900', in W. Davies and P. Fouracre (eds.), *The Settlement of Disputes in Early Medieval Europe* (Cambridge, 1986), pp. 105-24.

[24] Bougard, 'La justice', p. 153.

[25] See above all Krause, 'Königtum und Rechtsordnung'.

[26] See for example C. Insley, 'Where did all the Charters go? Charters and the "New Politics" of the Eleventh Century', *Anglo-Norman Studies* 24 (2002), pp. 109-27.

and for the monastery of Brugnato.[27] These diplomas have the absolutely orthodox formulaic apparatus one would expect in royal charters of the period. Four of the six are identical, other than the names of the beneficiaries, while the variations in the other two are very slight: all six were designed, it is clear, according to a common template. After the introductory formulas, the template continues with a narrative which outlines how the free living on the churches' lands were being unjustly oppressed by counts and other officials. However, rather than proceeding to issue a simple grant of immunity and protection, as one would normally expect, the text then specifies three short legal regulations concerning the *arimanni* (an old Lombard term for the free). Respectively, the clauses' terms:

i) prohibit counts and other royal representatives from unfairly imposing upon the *arimanni* and others on church land, especially when conducting courts;

ii) instruct lords (*patroni*) that they should escort freemen off their (the lord's) land when they have been summoned to the comital court;

iii) attempt to make illegal any claims to land based on charters which have not first been validated by a court hearing, thereby protecting all (free) possessors.

These regulations, especially the first two, are similar to those often found in charters of immunity.[28] However, three main features make it clear that these documents were quite different in content from normal privileges of immunity, and indeed had a lot in

[27] P. Kehr (ed.), *Die Urkunden Karls III.* (MGH Diplomata regum Germaniae ex stirpe Karolinorum ii, Berlin, 1936–7), nos. 47, 49-53.

[28] See for instance Kehr (ed.), *Die Urkunden Karls III.*, no. 111.

common with capitulary legislation. Firstly, in both subject matter and wording, the clauses have direct precedents in the mainstream of the capitulary tradition, and manuscripts of previous capitularies which featured similar clauses were copied and circulated in late ninth-century Italy.[29] Indeed, the charters appear to refer directly back to earlier capitularies by lamenting how contemporaries were 'ignoring the prohibitions of our predecessors.' These older texts sit just below the horizon, informing the content and tone of our Ravenna charters and potentially influencing the way they were understood. Secondly, it is striking that the legislative clauses were intended to be generally applicable: the provisions were to be 'promulgated everywhere [*generaliter promulgata*]' within the kingdom of Italy.[30] We can furthermore be confident that this actually happened. Not only do we have six examples of the charter issued simultaneously, all authorised by known royal notaries, but we also know that now-lost copies issued for several other Italian churches once existed.[31] This general character clearly distinguishes these texts from the normal

[29] For example Boretius and Krause (eds.), *Capitularia*, vol. 2, nos. 193, c. 5 (Louis the Pious, 829); and 215, c. 4 (Louis II, 856). For further discussion of the textual precedents see Tabacco, *I liberi*, p. 81; Diurni, *Le situazioni possessorie*, p. 234. For an example of a relevant legal manuscript, see Wolfenbüttel, Blankenb. 130, described by H. Mordek, *Bibliotheca capitularium regum Francorum manuscripta* (Munich, 1995), pp. 920-43. See also A. Bühler, 'Capitularia relecta. Studien zur Entstehung und Überlieferung der Kapitularien Karls des Großen und Ludwigs des Frommen', in *Archiv für Diplomatik* 32 (1986), pp. 305-501.

[30] Some historians, following E. Dümmler, *Geschichte des ostfränkischen Reiches*, 3 vols. (2nd edition, Leipzig, 1887-8), vol. 3, p. 185 believe the provisions to have applied only on the lands of the recipient institutions throughout the empire, but the geographical specificity of the text '(in toto regno Romanorum et Langobardorum et ducatus Italiae, Spoleti et Tusciae') makes this unlikely.

[31] For example, T. Sickel (ed.), *Die Urkunden Ottos des II. und Ottos des III.* (MGH Diplomata regum et imperatorum Germaniae II/i-ii, Berlin, 1888-93), Otto II, no. 253 suggests Luni had one of these

format of royal charters, whose terms were only applicable to the recipient. The distinction is illustrated by Louis II's charter for the church of Piacenza which served as a direct verbal model for the Ravenna template and which also contained some of the latter's legislative material, but which specified the clause in question as pertinent only to the Piacenza immunity and not the whole realm.[32]

Thirdly and finally, we can demonstrate that contemporaries understood these diplomas not only as privileges to individual churches, but also as generally applicable legislative acts. The capitularies of Guy of Spoleto and his son Lambert, issued in 891 and 898 respectively, were constructed self-consciously in the Carolingian tradition, both in form and rhetoric, and both contained clauses which echoed the legislative charters of Charles the Fat.[33] Tellingly, Guy's legislation repeated verbatim a clause from the Ravenna constitutions, namely that concerning the necessity for pre-validated charters to support any claim to land.[34] In his circle at least, the constitutions of 882 were interpreted as part of the main tradition of royal legislation.[35]

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charters (cf. Kehr, *Die Urkunden Karls III.*, no. 53a); while the Ravenna diplomas' use as a model of K. Wanner (ed.), *Ludowici II Diplomata*, (Fonti per la storia dell'Italia medievale, Antiquitates iii, Rome, 1994), no. 56 implies that the bishop of Piacenza must also have been a recipient.

[32] Wanner (ed.), *Ludowici II Diplomata*, no. 56. The importance of this distinction is underlined by Wormald, '*Lex scripta*', p. 3. See also McKitterick, *Carolingians and the Written Word*, p. 30.

[33] Boretius and Krause (eds.), *Capitularia*, vol. 2, no. 224, cc. 1, 3; no. 225, c. 6.

[34] *Ibid*, vol. 2, no. 224, c. 5. The charters' provisions did not appear under Charles the Fat's name in the later legal compilation known as the *Liber Papiensis*: this, however, was not comprehensive and cannot be used as a guide to perceptions of royal legislation in the ninth century.

[35] Note also the Ravenna text's description of itself as 'institutio', a term more commonly used to refer to capitularies than charters (J. Niermeyer, *Mediae Latinitatis Lexicon Minus* (Leiden, 1976), p. 546);

Working from a different perspective, Giovanni Tabacco studied this material in detail and concluded that the charters represented evidence for a lost capitulary.[36] However, the mechanisms by which a capitulary's provisions might somehow seep into several contemporary charters in this way seem obscure. The more likely explanation, given all the unusual features outlined so far, is that the charters themselves were intended to be the legislative tools of the emperor. The Ravenna constitutions further our appreciation of the fluidity of contemporary legal genres and the potential treachery of modern categorisations. These were certainly royal charters. Charters had fixed formulas of authentication in a way that, as a rule, capitularies did not, and contemporary handbooks (formularies) were compiled to assist in their correct design. Later kings also issued confirmations of the Ravenna charters as if they were individual privileges.[37] At the same time, they were designed

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and the drafters' emphasis on the agreement of all present, including 'our spiritual father the supreme Roman pontiff and universal pope, the lord John [VIII]', and 'most of the venerable bishops and the people', which went well beyond the conventional. For the stress on consent as a key feature of legislative texts see J.L. Nelson, 'Legislation and Consensus in the Reign of Charles the Bald', in her *Politics and Ritual in Early Medieval Europe* (London, 1986), pp. 91-116, esp. p. 108; and Pössel, 'Authors and Recipients'. Diurni, *Le situazioni possessorie*, p. 282 notes also the unusually high value of the penalty clause (100 pounds of gold).

[36] Tabacco, *I liberi*, pp. 67-87, esp. p. 80. Later discussions follow Tabacco: Diurni, *Le situazioni possessorie*, pp. 234-5; A. Castagnetti, 'Arimanni e signori dall'età postcarolingia alla prima età communale', in G. Dilcher and C. Violante (eds.), *Strutture e transformazioni della signoria rurale nei secoli X-XII* (Bologna, 1996), pp. 169-285 at pp. 172-4.

[37] L. Schiaparelli (ed.), *I Diplomi di Berengario I* (Fonti per la Storia d'Italia 35, Rome, 1903), no. 74; L. Schiaparelli (ed.), *I Diplomi italiani di Ludovico III e di Rodolfo II* (Fonti per la storia d'Italia 37, Rome, 1910), Louis III, nos. 2, 7; Sickel (ed.), *Die Urkunden Ottos des II.*, no. 252.

to have (and were understood as having) general legislative force in ways which diverged from the intention of standard royal diplomas.[38]

Character: legislation and legal force

In view of these peculiarities, it is worth asking what pointers the legislative charters of 882 might give concerning the issuing and reception of legislation. Hamstrung by the relative dearth of original texts, historians have long argued over the precise significance of the form and intention of Carolingian capitularies. Debate has focused on what originals may have looked like, whether or not they were kept and consulted as written legal guides, and whether they were legally constituted in oral or written form.[39] Although this debate has considered the handful of capitularies which survive with charter-like authenticating formulas, the information provided by the Ravenna group from 882 has not been taken into account because, as already mentioned, these documents were not included in the standard edition of the capitularies. Yet their relevance to the discussion is clear, particularly as two of the charters (those for Arezzo and Cremona) survive as originals, highly unusual for Carolingian legislative material. As such, they are worth taking seriously as evidence for the giving and receiving of law in the late ninth century.

One point worth making in this respect is that these documents survived not only as parts of the recipients' archives. Stengel, investigating a peculiar charter issued by

[38] Cf. C.G. Mor, 'Dai "capitularia" alle "constitutiones" (per la storia dell'idea imperiale nel secolo XI)', in *Studi storici in onore di Gioacchino Volpe*, 2 vols. (Florence, 1958), vol. 2, pp. 645-64, esp. p. 651.

[39] See above, n. 11.

Henry II in 1016 for the German monastery of Amorbach, traced the main features of the diplomatic back to a now-lost privilege drawn up for the abbey by Charles the Fat. Due to its distinctiveness, he argued convincingly that the template was based on the wording of the Ravenna constitutions of 882, and that the most likely time for the promulgation of the Amorbach text was in spring of that year, as Charles travelled north across the Alps to take over the kingdom of his recently-deceased brother.[40] One incidental implication of this argument is that Charles the Fat's chancery must have kept copies of the Ravenna legislative template, which supports the view that its unusual form owed its existence to the initiative of the king and his advisers. Charters of confirmation were normally composed on the basis of copies retained and brought to court by the beneficiary. It was sometimes specified that copies of capitularies, on the other hand, should be retained in the (elusive) palace archive.[41]

Some historians, most consistently Reinhard Schneider, have argued that many capitularies were originally issued with charter-like authenticating formulas.[42] Were this the case, however, it seems difficult to explain why so few of the large corpus have survived with formulas of subscription, dating and so on. In the case of the Ravenna constitutions it would seem likely that the purpose of this deployment of established forms of written authentication was less to validate the royal provenance of the legislation than, for reasons which will become clear, to ensure that copies were kept by the beneficiary churches. The closest precedents were the so-called

[40] Stengel, 'Karls III. verlorenes Privileg'.

[41] See McKitterick, 'Zur Herstellung von Kapitularien'.

[42] Schneider, 'Zur rechtlichen Bedeutung', esp. pp. 274-81 (listing around 16 such texts); Schneider, 'Schriftlichkeit und Mündlichkeit', pp. 265-70.

'Constitutiones de Hispanis' issued by a succession of earlier ninth-century rulers, which contained legislative material in a semblance of charter form.[43] Copies of these texts were ordered to be kept in various church archives spread throughout the Spanish March, as well as in the royal palace. The demand may not have been universally heeded, since the text of Louis the Pious's version (to take one example) survives only in a single late cartulary.[44] Charles the Fat's decision to embed legislative exhortation in the body of royal privileges anticipated this problem and ensured that his legal pronouncements would be inserted directly into the archival records of the institutions he was evidently most concerned to reach, namely the major churches of Italy.

The traffic was not, however, all one way, with the court issuing commands to the bishops and having them followed automatically. Our texts also provide rare evidence for the reception of Carolingian legal stipulations. As mentioned, four of the charters are worded identically; but the examples from Reggio and Brugnato differ slightly by transposing the generally applicable regulations of the other charters into a register much more favourable to the churches themselves. Instead of recording the duty of church patrons to escort their freemen to comital courts, for example, they

[43] Boretius and Krause (eds.), *Capitularia*, vol. 1, nos. 76 (Charlemagne), 132, 133 (Louis the Pious); vol. 2, no. 256 (Charles the Bald). The latter was included in G. Tessier *et al* (eds.), *Recueil des actes de Charles II le Chauve* (Paris, 1943-55), no. 46. See Schneider, 'Schriftlichkeit und Mündlichkeit', pp. 268-9; and for context C. Chandler, 'Between Court and Counts: Carolingian Catalonia and the *aprisio* Grant, 778–897', in *Early Medieval Europe* 11 (2002), pp. 19-44.

[44] Mordek, 'Kapitularien und Schriftlichkeit', pp. 59-60. Clearly, the differing archival practices common in Italy and southern Aquitaine must also be remembered here.

insist on the subjection of the free to church jurisdiction.[45] It is therefore not surprising to find that these two charters were the only ones to have been composed outside the chancery by scribes working on behalf of the beneficiaries.[46] Whether or not this kind of selective hearing, or perhaps negotiation of opt-outs, is indicative of the way legislation was generally understood in the ninth century is not easy to say. In any case, these features highlight the differences between early medieval legislation and modern statute law: sovereign pronouncements such as Acts of Parliament can be ignored or transgressed, but the documents in which they are recorded can hardly be openly altered in this way. Even more so than modern legislation, Carolingian royal law was, from beginning to end, fragile, negotiated and open to manipulation by powerful regional interests.

Content: Kingship and the free in the late ninth century

The content of the legal clauses themselves is also interesting. This is the only direct evidence for written legislative activity in the reign of Charles the Fat: so why these three clauses dealing with the free, and not others? The exact meaning of free status is difficult to establish: where, for instance, are the lines to be drawn between

[45] Tabacco, *I liberi*, pp. 82-5. There are clear precedents for the encroachment of powerful patrons on the free status of lesser landholders: Boretius and Krause (eds.), *Capitularia*, vol. 1, no. 73, cc. 6-9 (from 811); R. Balzaretti, 'The Monastery of Sant'Ambrogio and Dispute Settlement in Early Medieval Milan', in *Early Medieval Europe* 3 (1994), pp. 1-18

[46] This was not in itself unusual in the later ninth century: see P. Kehr, *Die Kanzlei Karls III.* (Berlin, 1936).

aristocrats, rich freemen and 'normal' freemen?[47] Here, however, we are less concerned with free status *per se* than with its role in Italian political discourse. Tabacco has convincingly argued that the Ravenna constitutions reveal an attempt to maintain the notion of a direct link between the freemen of the Italian realm and its king which had been one of the cornerstones of royal power since the Lombard period.[48] The charters deal with one of the fundamental obligations of the free, namely to attend royal courts (others being to work on the kingdom's infrastructure and to serve in the army), and specifically address the concern that counts and 'patrons', presumably bishops, were interfering in the relationship between freemen and the emperor. The prevailing reading of this kind of interference is that it reveals the terminally compromised position of royal government in late ninth-century Italy as the free progressively came under the influence of rapacious lay or ecclesiastical aristocrats, rendering them all but useless as agents of the king.[49] Some historians have argued that the Ravenna constitutions in particular reveal an advanced stage of

[47] For a useful survey of concepts and earlier historiography see F. Staab, 'A Reconsideration of the Ancestry of Modern Political Liberty: the Problem of the So-Called "King's Freemen" (*Königsfreie*)', in *Viator* 11 (1980), pp. 51-69.

[48] Tabacco, *I liberi*, esp. pp. 68-9, 85-7. See also S. Gasparri, 'La questione degli arimanni', in *Bullettino dell'istituto storico italiano per il medio evo* 87 (1978), pp. 121-53; Castagnetti, 'Arimanni e signori', pp. 172-4.

[49] See above all V. Fumagalli, 'Le modificazioni politico-istituzionali in Italia sotto la dominazione carolingia', in *Settimane* 27 (1981), pp. 293-317. More nuanced models are offered by S. Gasparri, 'Strutture militari e legami di dipendenza in Italia in età Longobarda e Carolingia', in *Rivista storica Italiana* 98 (1986), pp. 664-726, esp. pp. 717-20; P. Bonacini, 'Giustizia pubblica e società nell'Italia carolingia', in *Quaderni Medievali* 31/32 (1991), pp. 6-35.

this process in which the links between a weakened royal court and increasingly disordered local society were in the final stages of collapse.[50]

I would argue that our charters' rhetoric should not be interpreted so literally. Their narrative of unjust exaction and oppression is a commonplace which appears regularly in charters and capitularies throughout the Carolingian period. Although a coherent case can be made for the incorporation of the free into lordly clientèles during the ninth century (and the constitutions do assume that the free are living under the influence of 'patroni'), the existence of very similar structures in eighth-century Italy suggests that the phenomenon was far from novel.[51] In reality, lesser freemen always had something of an ambiguous position, inevitably coming under the influence of locally-powerful nobles while at the same time retaining notional ties to royal service. Paradoxically, the existence of clientèles may actually have regularised the 'public' duties of freemen, stabilising rather than undermining their value to rulers who by necessity accessed local society through regional powerbrokers.[52] Therefore, rather than reading them as a simple index of the progressive weakening of the Carolingian grip in Italy, we should seek a more specific context for the charters' clauses.

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[50] For example, Delogu, 'Vescovi, conti e sovrani nella crisi del regno Italico (ricerche sull'aristocrazia Carolingia in Italia III)', in *Annali della scuola speciale per archivisti e bibliotecari dell'Università di Roma* 8 (1968), pp. 3-72, at p. 59; J.P. Delumeau, *Arezzo. Espace et sociétés, 715-1230* (Rome, 1996), pp. 162, 167, 185-6, 230-1. Cf. Diurni, *Le situazioni possessorie*, pp. 177-8.

[51] C. Wickham, 'Aristocratic Power in Eighth-Century Lombard Italy', in A.C. Murray (ed.), *After Rome's Fall: Narrators and Sources of Early Medieval History* (Toronto, 1998), pp. 153-70.

[52] Bonacini, 'Giustizia pubblica', p. 34. Gasparri, 'Strutture militari', pp. 688-712 shows the basic continuities of these structures from the Lombard to the Carolingian period.

The death of the heirless Louis II in 875 had inaugurated a protracted wrangle for power in Italy which lasted until the succession of Charles the Fat in 879. Charles the Bald of West Francia (875-7) and Karlmann of Bavaria (877-9) struggled for control of the realm, and in the process created deep divisions within the north Italian aristocracy.[53] As largely absentee rulers, one important commodity for which these kings competed was the loyalty of the powerful northern episcopate. In attempting to secure their support, Charles the Bald ruled that Italian bishops were to become standing royal representatives (*missi*) in their own dioceses. Karlmann subsequently built on this provision by making comprehensive grants of jurisdiction to individual prelates, cementing their dominance in and around the cities of the kingdom.[54] The tensions associated with the accession of a new king usually necessitated a renegotiation of the privileges enjoyed by members of the political community under his predecessors, and the disputes of the Italian kingdom since 875 meant that this was especially pertinent when Charles the Fat took over in late 879. The rights which had been conceded to the bishops by the new king's predecessors were such that a clarification and restatement of royal claims to association with the freemen under episcopal influence was essential.

Moreover, the extension of bishops' jurisdictional rights in the later 870s had clearly affected the status of their immunities. The Ravenna constitutions reveal that kings

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[53] Delogu, 'Vescovi, conti e sovrani', pp. 21-31; MacLean, '"After his death"', pp. 243-50.

[54] Charles: Boretius and Krause (eds.), *Capitularia*, vol. 2, no. 221, c. 12; Tabacco, *I liberi*, p. 42; *idem*, 'L'ambiguità delle istituzioni nell'Europa costruita dai Franchi', in *Rivista storica Italiana* 87 (1975), pp. 401-38, at p. 416. Karlmann: P. Kehr (ed.), *Die Urkunden Ludwigs des Deutschen, Karlmanns und Ludwigs des Jüngeren* (MGH Diplomata regum Germaniae ex stirpe Karolinorum 1, Berlin, 1932-4), Karlmann, no. 24; Bougard, *La justice*, pp. 198-203, 253-69.

like Charles the Fat still felt able to intervene in immunities like those enjoyed by the Italian bishops. Even as he explicitly limited the authority of royal agents, Charles simultaneously laid out limits on the immunity-holders. The *patroni* were expected to escort their freemen to the (comital) *placitum*, so the royal reach was still meant to be felt within the bishops' jurisdictions: this was not a simple parcelling up and devolving of 'state' powers. At the same time, the rights of the churches as immunity holders were re-affirmed: there was something in this for the *patroni* as well. Evidently kings, immunity-holders, and their respective agents did not always agree on what the terms of an immunity actually were. All this suggests that the reigns of Charles the Bald and Karlmann had opened up a kind of debate about the meaning of Italian immunities and the authority of bishops within them, a debate which Charles the Fat now sought to enter and resolve by means of the legal-political posturing revealed in the Ravenna constitutions.[55] The provisions of the Ravenna clauses on the free are better understood as a response to these relatively short-term circumstances than as a straightforward window onto an assumed structural malaise.[56]

The effectiveness of this posturing depended on Charles's ability to have the constitutions accepted as a statement of, and claim to, royal legitimacy. The very act of claiming a direct link to the *arimanni*, and advertising the ruler's duty to protect them, was a gesture which self-consciously sat within the traditions of Italian kingship. The point is illustrated by a *placitum* of 832 in which some men defended

[55] The whole subject of ninth-century immunities deserves re-evaluation, especially in the light of B.H. Rosenwein, *Negotiating Space: Power, Restraint and Privileges of Immunity in Early Medieval Europe* (Manchester, 1999).

[56] Although Tabacco, *I liberi*, pp. 78-9 rightly stresses that bishops were not the only audience.

their claim to free status by saying that they wished to be judged in the court of the king, not that of the local lord.[57] They regarded access to royal justice as a badge of their status, and Charles's legislation on this very point re-asserted the notional responsibilities of the Italian king towards the *arimanni*.[58] The use of this Lombard term for those holding free status (deriving originally from the word for a warrior) was itself significant. It had essentially lain dormant during the ninth century and was not utilised in any of the extant Carolingian capitularies: in fact, it virtually never featured in Carolingian political discourse at any level. It did not resurface in 882 by chance, but must have been carefully chosen by the drafters of the Ravenna template to invoke the unmistakable overtones of Lombard tradition.[59] Although it contains no direct analogies to the terms of the 882 legal clauses, it is striking that many of the references to the *arimanni* in pre-Frankish Lombard law were likewise concerned to define their judicial status.[60] Charles and his advisers, whose active involvement in the legal life of the kingdom we have already noted, must have known of these connotations, especially as Carolingian law was treated in Italy as a continuation of Lombard legislation. Regulating the position of the *arimanni* was one of the things

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[57] R. Volpini, 'Placiti del "regnum Italiae" (secc. IX-XI). Primi contributi per un nuovo censimento', in P. Zerbi (ed.), *Contributi dell'istituto di storia medioevale*, vol. 3 (Milan, 1975), pp. 245-520, at p. 450.

[58] Tabacco, *I liberi*, esp. pp. 68-9, 85-7.

[59] Tabacco, *I liberi*, p. 80 attributes its adoption to episcopal influence. Cf. P. Toubert, 'La liberté personnelle au haut moyen age et le problème de *arimanni*', in *Le Moyen Age* 73 (1967), pp. 127-44, esp. pp. 140-4.

[60] Gasparri, 'La questione', pp. 126-7. The phrase 'regnum Romanorum et Langobardorum' used in the charters to describe the territories where they applied was not part of the normal contemporary vocabulary of political geography, and hence also suggests a backwards-looking reference to legal tradition.

that kings of Italy traditionally did, and one of the king's aims was presumably to signal his sensitivity to the political traditions of his new kingdom. Projecting this kind of reassuring image was especially appropriate in early 882 as he was poised to take control of the east Frankish realms of his recently-deceased brother, which may have prompted fears of renewed absenteeism.

The charters' third clause, that concerning the validation of claims to land, has a significance beyond what it tells us royal attitudes to the free in the early 880s. It has long been appreciated that in or around the year 880 the recording of Italian court hearings underwent a significant change, becoming much more codified.[61] To what extent changes in record reflected changes in procedure is a matter which remains very much up for debate.[62] However, it is clear that one of the new standard forms involved parties bringing 'pre-emptive' cases to court: they turned up not to pursue litigation but simply to read out a charter and have its validity confirmed in anticipation of potential future disputes. This, as Bougard has pointed out, corresponds closely with the provision made in our charters, and repeated by Guy in his capitulary, that claims to land had to be made on the basis of pre-validated diplomas.[63] Caution is required here: the change in record may mask an underlying continuity of practice which Charles was simply acknowledging rather than reforming. Either way, this evidence shows that even texts whose primary purpose

[61] Wickham, 'Framework', pp. 117-18.

[62] Recently addressed by C. Wickham, 'Justice in the Kingdom of Italy in the Eleventh Century', in *Settimane* 44 (1996), pp. 179-255, at pp. 182, 188.

[63] Bougard, *La Justice*, pp. 312-13.

was probably political and ideological could still have a genuine relationship with actual legal structures and processes.[64]

Context: the Ravenna assembly and the image of the emperor

Having considered the legislative character and content of the constitutions, we turn finally to the issue of why the king might have promulgated them in this way. One possible answer, as we have seen, is the specificity and perhaps urgency of the problems they addressed, which made the existence of a permanent record in church archives desirable. However, the promulgation of written law had connotations beyond the purely practical. In fact, practical considerations were often secondary: many of the standard reference points of early medieval legal practice were rooted, even in the Carolingian period, in customary non-written norms.[65] In committing the Ravenna constitutions to writing, Charles and his advisers were clearly doing something quite unusual, given the comparative rarity of Italian capitularies since the 850s. To understand why, we must reconstruct the context of their promulgation. If, as we have seen, the content of the laws suggest an attempt on the king's behalf to advertise his appropriation of the traditions of Italian kingship, we must also take into account the audience for which these claims were intended.

As our texts specify, the context was a major assembly held at Ravenna either side of 12 February 882 in the presence of Pope John VIII. The meeting had been called,

[64] J. Hannig, *Consensus fidelium: Frühfeudale Interpretationen des Verhältnisses von Königtum und Adel am Beispiel des Frankenreiches* (Stuttgart, 1982) argues for the exclusively ideological function of capitularies; Pössel, 'Authors and Recipients', p. 269 provides a critique.

[65] Wormald, '*Lex scripta*'; H. Nehlsen, 'Zur Aktualität und Effektivität germanischer Rechtsaufzeichnungen', in Classen (ed.), *Recht und Scrift*, pp. 449-502.

according to a contemporary papal letter, to enable discussion 'of the progress of the holy church and the state of the empire.'[66] The date of the assembly was significant: Charles had been anointed emperor by John in Rome on 12 February 881, exactly one year previously. Early medieval kings were alert to the significance of anniversaries, whether they referred to important dates in their own reigns or feasts in the sacred calendar, and often manipulated them to gain political capital.[67] The place also had important resonances: not only was Ravenna one of the capitals of the late Roman empire, replete with extant imperial architecture, but it had also served as the venue for Charles's own coronation as king of Italy in January 880.[68] We do not know what ceremonies were performed to commemorate the anniversary of Charles's imperial consecration, although Carolingian rulers were fond of marking such occasions with public crown-wearings.[69] In any case, the setting makes more intelligible an act of lawmaking such as that witnessed by our charters. Law-giving, and particularly the promulgation of written law, was a gesture closely associated in early medieval political thought with imperial status. In Einhard's *Life of Charlemagne*, for example, the eponymous hero's first act after being crowned emperor is to revise the laws of his

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[66] E. Caspar (ed.), *Registrum Johannes VIII. Papae* (MGH Epistolae 7, Berlin, 1928), no. 297.

[67] See in general M. Sierck, *Festtag und Politik. Studien zur Tagewahl karolingischer Herrscher* (Cologne, Weimar and Vienna, 1995).

[68] Notker, *Erchanberti Breviarium Continuatio*, ed. G.H. Pertz (MGH Scriptores 2, Hanover, 1829), pp. 329-30. Ravenna was also a significant choice for a display of papal authority, as John sought to reassert his claims over the city following a period of independence: D. Arnold, *Johannes VIII. Päpstliche Herrschaft in den karolingischen Teilreichen am Ende des 9. Jahrhunderts* (Frankfurt, 2005), pp. 192-8.

[69] C. Brühl, 'Fränkischer Krönungsbrauch und das Problem der "Festkrönungen"', *Historische Zeitschrift* 194 (1962), pp. 265-326.

peoples.[70] Charles the Fat, Charlemagne's great-grandson, knew Einhard's work and sought to imitate his illustrious predecessor in various ways, such as by affixing imitative lead bulls to his imperial charters.[71]

The venue, timing and scale of the Ravenna assembly therefore served to re-affirm Charles's status as a legitimate emperor, and the issuing of the constitutions on that occasion underlined the point. An imperial gesture of this kind was made even more appropriate by two other items on the agenda at the Ravenna assembly in February 882. One was the papal confirmation of Charles's recent choice of candidate to fill the see of Geneva.[72] The control of this bishopric was an ongoing point of conflict in the rebellion of the usurper Boso of Vienne, whose uprising had threatened the very basis of Carolingian rule in 879-80. This revolt had a specific Italian dimension since Boso had once been Charles the Bald's main representative south of the Alps, and his wife was Louis II's daughter. Boso's mother-in-law, the Empress Engelberga, had been taken into custody by Charles the Fat precisely to prevent him from activating his Italian connections, and the emperor did not feel safe enough to release her until autumn 882. Geneva itself, furthermore, lay in a strategically crucial region to whose

[70] Einhard, *Vita Karoli*, ed. O. Holder-Egger (MGH Scriptores rerum Germanicarum in usum scholarum, Hanover, 1911), c. 29, p. 33. See also Wormald, *Making of English Law*, pp. 45-9.

[71] Kehr, *Die Urkunden Karls III.*, pp. lxii-lxiv. On Charles the Fat and Charlemagne see MacLean, *Kingship and Politics*, pp. 199-229. In addition to this general resonance, in ninth-century Italy the issuing of capitularies may have been an act confined exclusively to emperors, as opposed to kings, though the evidence for such a distinction is not all that clear: see Bougard, *La justice*, pp. 51-2.

[72] Caspar (ed.), *Registrum Johannes VIII.*, no. 292.

control the kings of Italy had a serious claim.[73] This was, in other words, no ordinary episcopal succession.

The second and perhaps even more pressing issue was the presence in Ravenna of Guy II (the future king) and Guy III, dukes (*duces*) of the central Italian duchies of Spoleto and Camerino. These powerful figures had long been a source of anxiety for the papacy, and in 882 they stood accused once again of seizing lands which rightfully belonged to Rome. There are signs that this time John VIII was especially upset, since according to a bargain struck with Charles the Bald in 876 the pope had a claim to control Spoleto and Camerino himself. The *duces*, on the other hand, saw themselves as royal representatives in central Italy and Rome, a position which had been upheld, much to John's chagrin, by King Karlmann in the period 877-9. Charles the Fat initially tried to steer a middle course in the dispute but soon took John's side, making concessions to the pope in 880 and 881 to secure his imperial coronation.[74] The emperor backed this up at the February 882 assembly in Ravenna by having the dukes publicly reinvest the pope with certain important lands which they were

[73] For further details on all this see S. Airlie, 'The Nearly Men: Boso of Vienne and Arnulf of Bavaria', in A. Duggan (ed.), *Nobles and Nobility in Medieval Europe* (Woodbridge, 2000), pp. 25-41; S. MacLean, 'The Carolingian Response to the Revolt of Boso', in *Early Medieval Europe* 10 (2001), pp. 21-48, esp. p. 43.

[74] Detailed discussion of these events can be found in E. Hlawitschka, 'Die Widonen im Dukat von Spoleto', *QFIAB* 63 (1983), pp. 20-92, esp. pp. 76-81. On the politics of the region see now M. Costambeys, *Power and Patronage in Early Medieval Italy: Local Society, Italian Politics and the Abbey of Farfa, c. 700-900* (Cambridge, 2007).

accused of having usurped.[75] Some of the most exalted and self-important expressions of early medieval rulership were made at times of political tension, such as during the trial or dispossession of powerful nobles.[76] The fact that the Ravenna assembly in 882 was the venue for action against Boso and for the humiliation of the powerful Guys, as well as for a celebration of the anniversary of the emperor's coronation, provides a good context for a display of righteous emperorship which included, as reflected in our charters, an imperial act of lawgiving.

If the Ravenna constitutions represent the residue of a ceremonially-expressed act of self-legitimation by the emperor, we must remember that this was a performance tailored to specific audiences. One was evidently made up of the powerful Italian bishops, whose political influence had been crucial in determining the course of the political strife of 875-9, and who had to be kept on-side. Yet the message was also important to get across to the secular aristocracy assembled to witness the dispossession of Guy II and Guy III. If our texts' focus on the *arimanni* was meant to invoke traditions of Italian kingship which advertised an ideological bond between the king and the political community, their context shows how this was partly informed by an attempt to isolate the central Italian *duces* from that community. Charles's attempt to curb the power of the Guys, on whose co-operation he depended for political influence in central Italy, and whose power threatened that of the papacy, was audacious, risky, and by no means guaranteed to succeed. The emperor needed

[75] We only know of this from Caspar (ed.), *Registrum Johannes VIII.*, no. 304, John's complaint that the lands had not been returned some weeks later.

[76] See for example D.A. Warner, 'Ideals and Action in the Reign of Otto III', in *Journal of Medieval History* 25 (1999), pp. 1-18.

to call upon all available resources so that the *duces*' potential supporters would go home convinced. His legitimacy as king of Italy and his status as emperor had to be highlighted as clearly as possible.[77]

Conclusions

We are now in a position to summarise what these charters have to tell us about the nature of Carolingian legislation and about the historical context that produced them. To begin with the latter, it must be reiterated that we learn more about intentions than impact from texts like these. If the central Italian dukes and their followers were impressed by Charles's rhetorical display of authority, the effect was temporary at best. Guy II rebelled again in 883, and this time Charles had to resort to military force to enforce his will on the recalcitrant *dux*.[78] This highlights the provisional and unstable nature of Carolingian politics, and of the ideologies which underpinned the dynasty's power. Royal authority had to be constantly renegotiated and restated,

[77] The fact that the constitutions were explicitly intended to apply in Spoleto was a statement in itself. It is also possible to hypothesise that the papal-imperial pact was renewed by Charles at the same time, another highly imperial act that also served to limit the power of the Guys in central Italy. If so, it may be no coincidence that Otto I issued his version of this treaty, the magnificent purple charter known as the Ottonianum, exactly 80 years later on 13 February 962. See E.E. Stengel, 'Die Entwicklung des Kaiserprivilegs für die römische Kirche 817-962', in *Historische Zeitschrift* 134 (1926), pp. 216-41; Hlawitschka, 'Die Widonen', pp. 60-80; T.F.X. Noble, *The Republic of St. Peter. The Birth of the Papal State, 680-825* (Philadelphia, 1984), pp. 299-322; T. Sickel (ed.), *Die Urkunden Konrad I., Heinrich I. und Otto I.* (MGH Diplomata regum et imperatorem Germaniae i, Hanover, 1879-84), Otto I, no. 235 (= MGH Constitutiones no. 11); W. Georgi, 'Ottonianum und Heiratsurkunde 962/972', in A. von Euw and P. Schreiner (eds.), *Kaiserin Theophanu. Begegnung des Ostens und Westens um die Wende des ersten Jahrtausends*, 2 vols. (Cologne, 1991), vol. 2, pp. 135-60.

[78] Kurze (ed.), *Annales Fuldenses, s.a.* 883, 884, pp. 100-1.

employing strategies which included the type of ideological statements made at Ravenna in 882. The circumstances which led to the production of our texts dissipated very quickly: Guy III of Spoleto and Pope John VIII, the principal protagonists of the dispute in which the emperor was trying to intervene, both died (the latter violently) at the end of 882, and subsequent popes were less inclined to push so hard for direct control of the central Italian duchies.[79] As important as these documents may have been at the time of promulgation, the political agenda of which they were a part changed quickly and unpredictably. They provide a snapshot of political processes rather than (as most historians have wished to believe) penetrating insights into deep political structures. With this in mind it is hard to assess the impact of Charles's attempts to claim the allegiance of the *arimanni*. It is nevertheless suggestive that he was able to assemble large north Italian armies from mid-882 onwards;[80] and that, as we have seen, one of his pronouncements was connected in some way to procedural changes in the *placita*. If nothing else, we can at least conclude that the political culture of Carolingian Italy remained intact even as (with hindsight) the end of the empire approached.

As regards the questions of legal genre raised by our documents, we have already seen how the use of charter form may have reflected Charles's attempt to ensure that his prescriptions were preserved in the archives of the major churches of Italy, the position of whose freemen he was anxious to regulate. Other, complementary, explanations are also available. For example, it has been argued that some legislative

[79] Despite his subsequent rebellion, Guy II seems to have been much less aggressive in defence of his claims than his namesake: Hlawitschka, 'Die Widonen'.

[80] Regino, *Chronicon*, ed. F. Kurze (MGH SRG, Hanover, 1890), *s.a.* 882, p. 119.

documents were given authenticating formulas in order to signal their particularly imperial character and exalted function: the surviving sample includes treaties with the Venetians and divisions of the realm, and the Ravenna constitutions might be read as part of this putative tradition.[81] But as already mentioned the number of such texts is small, and so we may do better to interpret our legislative charters as products of a culture clash. Discounting the short reign of his incapacitated and largely absentee brother and predecessor Karlmann, Charles the Fat was the first east Frankish/German king of Italy to seriously engage with the politics of the transalpine realm. This circumstance led to a stark juxtaposition of styles of rule. The practice of politics in east Francia was not as infused with the use of the written word as it was elsewhere in the empire: although charters were used there extensively, no written capitularies survive from east of the Rhine. While we have indirect evidence that kings like Louis the German and Charles the Fat did make pronouncements which were evidently concerned with the same topics we find in written capitularies, the implication is that these were, as a rule, delivered orally.[82] Viewed in this context, the Ravenna constitutions could be seen as the consequence of an encounter between east Frankish

[81] P. Classen, 'Die Verträge von Verdun und von Coulaines 843 als politische Grundlagen des westfränkischen Reiches', in *Historische Zeitschrift* 196 (1963), pp. 1-35, at pp. 14-15; Schneider, 'Schriftlichkeit und Mündlichkeit', pp. 266-71; Mordek, 'Kapitularien und Schriftlichkeit', p. 58. Interestingly, the most self-consciously imperial legislative document of the tenth century, a constitution of Otto III, was couched, unusually, in orthodox charter form: Mor, 'Dai "capitularia" alle "constitutiones"'.

[82] For example Kurze (ed.), *Annales Fuldenses, s.a.* 852, pp. 42-3; *s.a.* 882, p. 99. For commentary see T. Reuter, *Germany in the Early Middle Ages c.800-1056* (London and New York, 1991), pp. 84-9; W. Hartmann, *Ludwig der Deutsche* (Darmstadt, 2002), pp. 151-2; E.J. Goldberg, *Struggle for Empire: Kingship and Conflict under Louis the German, 817-876* (Ithaca, 2006), pp. 186-230. Some treaties involving east Frankish kings were, however, committed to writing.

styles of rulership and the literate royal legal tradition of Italy. In this respect it may be no coincidence that the Ravenna documents, whose content looks backwards to the main body of the Carolingian capitulary tradition, formally anticipate the concise charter-like 'constitutions' of the Saxon Ottonian rulers of late tenth- and eleventh-century Italy. These were generally snappy one-off legislative acts which emphasised the will of the ruler using rhetorical flourishes borrowed from the imperial lexicon of Late Antiquity, and as such struck a rather different note to the sprawlingly repetitive and consensus-soaked language of the capitularies.[83]

All that said, it may be preferable to downplay the apparently innovative aspects of our texts, and instead to see their peculiarities as 'normal'; in other words as a confirmation of the great variety of form in Carolingian legislative documents. The Ravenna constitutions represent an improvised response to a particular political situation which highlights the malleable nature of Carolingian political traditions. Indeed, much of the documentation produced by Carolingian courts can be seen as a series of improvisations reflecting contingent political strategies, rather than as more or less imperfect versions of the ideal types reified by historians. This conclusion helps us to deconstruct the traditional generic classifications to some extent. Kings had at their disposal a spectrum of textual genres with which to engage the political and legal cultures of their realms. While it would be misleading to claim that modern categories have no value at all (after all charters and capitularies were contemporary

[83] On the transition see Mor, 'Dai "capitularia" alle "constitutiones"' (though he does not discuss the Ravenna constitutions); and F. Bougard, 'La loi: perception et usages', in P. Toubert and P. Bonnassie (eds.), *Hommes et sociétés dans l'Europe de l'an mil* (Toulouse, 2004), pp. 291-306 (which places these issues very clearly in a wider context).

textual categories), our texts do indicate that legal genres could and did merge into each other when circumstances dictated. Capitularies, and indeed charters, had permeable boundaries, sensitive to the environment in which they were produced. Our texts thus illustrate the fact that Carolingian capitularies were not simply legislation in the modern sense, issued in an attempt to add to a pre-existing impersonal body of law, but were often *pièces d'occasion*. As such, they demand to be studied not only as a genre but also as individual texts whose immediate significance we may miss unless we study them in their specific contexts.[84]

The increasingly formulaic and repetitive nature of the surviving capitularies from late-ninth-century Italy suggests that their function was symbolic as well as pragmatic and that they were issued by new kings primarily as restatements of the moral basis of traditional kingship and guarantees of good government.[85] They reflected a particular world-view and encoded a discourse of authority and hierarchy which was intended to shape the identity of the king and the political community under him.[86] If by this time the genre had a consistent aim it was as much to reinforce the moral political discourse that underpinned Carolingian power as to tinker with formal legal structures. The most important factor in the vanishing of the capitularies was therefore surely not institutional decay but the demise in 888 of the dynasty which had fostered this discourse. In a post-888 world where political legitimacy was a

[84] Pössel, 'Authors and Recipients', pp. 254-5.

[85] Bougard, *La justice*, pp. 25-9; West, 'Representations and Perceptions', p. 230. The appearance in the same period of large compilations of earlier capitularies suggests that the bishops who owned them continued to buy into this political discourse: Bühler, 'Capitularia relecta'; McKitterick, 'Zur Herstellung'; Bougard, *La justice*, pp. 30-43; Wormald, *Making of English Law*, pp. 54-70.

[86] On this theme see above all Pössel, 'Authors and Recipients'.

commodity fought over between dynasties, rather than within one, the rules of the game and the way that it was played decisively changed.[87]

Traditional reconstructions of Carolingian legal culture were pegged to an interpretation of capitularies as managerial or administrative documents which regulated the hierarchical structures of the Frankish state: it was the supposed collapse of these structures at the end of the tenth century that created the conditions for the 'Feudal Revolution' and the emergence of a much more devolved and fluid legal environment throughout western Europe in the eleventh.[88] Yet the intense scrutiny to which ninth-century judicial procedures have recently been subjected reveals not so much a formal body of regulations controlled and adjusted by the king and his agents as a world of 'substantive legalism' not dissimilar to that described by historians of the eleventh century.[89] This was a world in which the metaphorical statute book was

[87] See eg. MacLean, '"After his death"', pp. 256-9. It is interesting that the last capitularies of all were issued by Guy and Lambert, the only post-888 royal claimants who could not boast Carolingian blood: on their ancestry see E. Hlawitschka, 'Waren die Kaiser Wido und Lambert Nachkommen Karls des Großen?', in *QFIAB* 49 (1969), pp. 366-86.

[88] For historiographical discussion, see M. Innes, *State and Society in the Early Middle Ages: the Middle Rhine Valley 400-1000* (Cambridge, 2000), pp. 1-12; W.C. Brown and P. Górecki (eds.), *Conflict in Medieval Europe: Changing Perspectives on Society and Culture* (Aldershot, 2003).

[89] Innes, *State and Society*, p. 137; M. Costambeys, 'Disputes and Courts in Lombard and Carolingian Central Italy', *Early Medieval Europe* 15 (2007), pp. 265-89; M. Innes, 'Practices of Property in the Carolingian Empire', in J.R. Davies and M. McCormick (eds.), *The Long Morning of Medieval Europe: New Directions in Early Medieval Studies* (Aldershot, 2008), pp. 247-66; drawing on (for example) S.D. White, 'Inheritances and Legal Arguments in Western France, 1050-1150', *Traditio* 43 (1987), pp. 55-103; S.D. White, *Custom, Kinship and Gifts to Saints: the Laudatio Parentum in Western France, 1050-1150* (Chapel Hill, 1988), pp. 71-80.

less important than custom, coercion and compromise, and in which legal procedures and arguments were deeply embedded in wider social and political relationships. Our interpretation of the Ravenna constitutions illustrates how, just as much as litigants negotiating the *placita*, rulers issuing legislation also moved in this complex world of more-or-less-well-defined legalism. As we have seen, royal legislation did reflect genuine attempts to influence the social realities of the Carolingian Empire; but for kings and emperors of all statures, the promulgation of law was at least as important as a strategy designed to serve wider political and ideological purposes.[90]

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[90] For encouragement and assistance of various kinds I am indebted to Marios Costambeys, Erich Frčena, John Hudson, Matthew Innes, Paul Kershaw, Christina Pössel, Julia Smith and (in particular) Geoff West