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The significance of the Carolingian advocate

Abstract

This article argues that ninth-century advocates in the Frankish world deserve more attention than they have received. Exploring some of the wealth of relevant evidence, it reviews and critiques both current historiographical approaches to the issue. Instead of considering Carolingian advocates as largely a by-product of the ecclesiastical immunity, or viewing advocacy as a Trojan horse for a subsequent establishment of lordship over monasteries, the article proposes a reading of ninth-century advocacy as intimately linked with wider Carolingian reform, particularly an interest in promoting formal judicial procedure.

Introduction

The advocate is a common figure in the documentary material of late eighth and ninth-century Frankish Europe. However, with the exception of a single German monograph published in 1985, ninth-century advocacy has been relatively overlooked in recent historiography. It has received attention chiefly in discussions of the mechanics of the ecclesiastical immunity, and beyond that, in terms of its relationship with central medieval advocacy (*Vogtei* in German), a phenomenon of great significance in twelfth- and thirteenth-century Europe.¹

This is an unsatisfactory state of affairs. Concentrating on advocates in the context of the immunity leads astray, because although advocacy was connected with immunity, it was not derivative of it. Correspondingly, arguments for continuity between Carolingian and post-Carolingian advocacy fall short because they fail to situate Carolingian advocacy fully in its contemporary context. This article hopes to show both that ninth-century advocates should be studied on their own terms, and that it is fruitful to do so.

Since so little has been written on advocates in English, a schematic definition of what they did, drawn from the Frankish capitularies, provides useful initial orientation.

Advocates were secular legal representatives for those who could or should not represent themselves, notably clerics.² All bishops, abbots and abbesses were commanded to have advocates ‘learned in the law, who cherish justice, peaceful and tractable’, and a surviving text even gives a flavour of the appointment procedure.³ Advocates’ duties were varied, but essentially revolved around a dual responsibility. Firstly, they represented clerics at secular courts, particularly the count’s and king’s *placita*.⁴ Secondly, they had judicial obligations relating to the dependents of the churches they represented. Required to hand over the guilty to the count, they were conversely given responsibility for reclaiming dependents who fled to fiscal land.⁵ In view of such duties, it is unsurprising that kings sometimes worried about advocates. *Missi* were enjoined to ensure advocates were doing their duty: if they were not, and refused to change, they were to be ‘removed from their position, and replaced by those more worthy’.⁶

I The importance of the Carolingian advocate

Beyond this broad-brush outline, three aspects of Carolingian advocacy deserve to be better appreciated: that advocacy was a Carolingian innovation, that it was simultaneously widespread, local and effective, and that advocates sometimes demonstrably had considerable legal expertise.

Advocacy as Carolingian innovation

Contrary to what is sometimes assumed, advocates do not appear in pre-Carolingian sources. Just two Merovingian diplomas mention them, and both are later forgeries.⁷ Hübner's catalogue of dispute charters includes references to pre-Carolingian ecclesiastical 'representatives' (*Vertreter*), but these are actually either *agentes* or *actores* in the original, or refer to Carolingian-period sources. This diplomatic disjuncture is further confirmed by narrative texts like Flodoard's *Historia remensis ecclesiae* which drew on original, now lost archival material.⁸ In fact, just two pre-751 Frankish documents mention *advocati*, of which one was issued by the soon-to-be king Pippin in 748, and the other, drawn up in 728, probably uses the term in a different, less technical sense than that common later.⁹ *Actores* seem to have been fairly *ad hoc* appointments, and when any detail is known, signified people of a higher status than ninth-century advocates: for example, the eighth-century Reims *actor* Achabbus, though otherwise unknown, was doubtless an important man, for he worked 'as much in Francia as beyond the Loire'.¹⁰

Advocates are equally conspicuous in their absence from early formularies: just one *formula* of Marculf's collection includes the phrase 'or advocate'.¹¹ Likewise, there is but a single passing reference in an obscure Merovingian council, never cited in the ninth century.¹² Though hard to prove, innocent 'updating', or interpolation, is a distinct possibility in both cases, not least since both council and formulary have relatively late manuscript transmission. Early monastic rules referred to *provisores*, mediating the outside world, but there is no evidence that this practice was at all systematised, certainly not as part of some central initiative, and anyway applied only to monks.¹³ In practice, pre-Carolingian clerics and abbots routinely represented themselves in judicial settings.

That precedents for advocacy were as scanty intellectually as in practice is demonstrated by the arguments of the only Carolingian writer to articulate a position on the issue, Archbishop Hincmar of Reims (d.882). Hincmar was very keen on advocates in general, and his *Quaterniones*, written in 868 for Charles the Bald, is the most important exposition of the logic of Carolingian advocacy.¹⁴ Hincmar's position was that clerics were liable to secular courts for certain matters, but had to be represented there by advocates. We will return to the substance of these views later; for the moment, what matters is the struggle he had mustering evidence to support either stage of his argument.

Though Hincmar often used Roman law, on this occasion his efforts were markedly strained. Roman law, though fundamentally ambivalent about clerics' relationship with secular courts, demanded personal attendance for certain matters: Maassen observed long

ago that it would be impossible to prove by Roman law that secular courts have no jurisdiction over clerics.¹⁵ Hincmar dealt with this in his *Quaterniones* through highly selective citation. Quoting the Theodosian Code XVI.2.23 as proof that bishops and other clergy should not attend court, he omitted with an abbreviating ‘etc’ (*et reliqua*) the final clause which stated that criminal actions of priests should be heard by secular judges.¹⁶ A second ‘et reliqua’ obscured the final clause of the clause’s *interpretatio*, again about criminal priests’ liability to secular courts.¹⁷ A final Hincmarian ‘et reliqua’ veiled the clause in Sirmondian Constitution III which limited clerical exemption to purely ecclesiastical matters.¹⁸ Finally, not bothering with ‘et reliqua’, Hincmar omitted an important qualifying passage from Sirmondian Constitution VI.¹⁹ In each instance, he assuredly knew the full text. The first he himself cited elsewhere, and all four are copied into a contemporary Reims manuscript, Paris, Bibliothèque Nationale, Lat.12445, very closely associated with Hincmar, where one was even given a gloss.²⁰ Hincmar’s reputation for untrustworthiness with texts would appear well deserved.²¹

Secondly, the Roman law Hincmar cited in the *Quaterniones* specifically to prove that clerics needed advocates proved nothing of the sort. The meaning of Theodosian Code XVI 2.38, from which Hincmar triumphantly concluded ‘It is clearly shown in this decree, that... clerics must present advocates to the judges, not themselves’, remains elusive, and must have baffled Hincmar’s listeners, and probably Hincmar too.²² Hincmar did know one piece of Roman law which could have supported his argument, the *interpretatio* of Novel 35 of Valentinian, stating that bishops accused of serious crimes

might be represented by *procuratores*. Included in the Paris manuscript, Hincmar cited it elsewhere, glossing ‘misso procuratore’ as ‘id est dato pro se avvocato’.²³ It seems likely that he had this text in mind on other occasions too.²⁴ However, he did not use it in the *Quaterniones*. Perhaps its reference to *procuratores* was not explicit enough - or perhaps he did not want to draw attention to it, for it also clearly states that a layman might force a cleric personally to attend a secular court.²⁵ Tacitly admitting the fragility of the evidence, Hincmar was sometimes constrained to insert his own qualifications to Roman law.²⁶

The same lack of purchase is true of Hincmar’s characterisation of canon law as in favour of advocates, the splendidly vague ‘following the holy canons and decrees of the pontiffs of the see of Rome’.²⁷ In opposition to much imperial tradition, there was plenty of canon law to suggest that clerics should not personally attend secular courts. One of Hincmar’s favourites was Carthage c.15 (as the Dionysio-Hadriana canon law book numbered it), ‘that priests should not go to public courts’.²⁸ Some canon law went further still, explicitly stating that all clerics’ cases should be settled by church courts; and no pre-Carolingian canon law envisaged whole-scale ecclesiastical representation before secular courts. Hincmar knew all this perfectly well, and so, just as with Roman law, sometimes added ‘clarificatory’ clauses to his citations to justify advocacy.²⁹ When he did find conciliar support, he made the most of it. Not only did Hincmar quote the two Roman councils of 826 and 853 which reflected a Carolingian position on advocates, he also seems to have played a role in distributing them. There are only three early manuscripts

of the 853 council, and both non-Italian ones are linked to Hincmar. One is the already-mentioned Paris Lat.12445, in which glossed extracts from the 826 Roman Council are followed immediately by Valentinian's Novel, already copied into the manuscript but repeated here.³⁰ Perhaps it was precisely their comments about advocacy that most interested Hincmar in these councils, helping him justify a concept essentially without pre-Carolingian precedent.³¹

From kingdom to locality

Advocacy was an innovation in practice and, despite Hincmar's efforts to prove the contrary, balancing between incompatible canon and Roman law, also in theory. Yet it was startlingly quick to spread. As we have seen, no source refers to ecclesiastical advocates before the mid-eighth century, but they appear thereafter in cases of dispute or as witnesses to charters across the Frankish kingdom, in monastic and episcopal archives, royal and non-royal documents, from Burgundy, the Loire valley, the Mediterranean coast, the Picard plain, the Île de France, the middle and lower Rhineland, Alsace, and Alemannia, and throughout northern Italy.³² Further comparative work could be usefully be undertaken exploring differences within these archives; the point here is simply that they all talk of advocates in approximately similar fashion. Bishops did not always use advocates, an inconsistency which merits closer scrutiny, but nevertheless often they did.

The surviving charter material can be compared with (predominantly monastic) Carolingian-period formularies, some of which put real emphasis on the advocate.³³ Nor

does this merely mark a shift in diplomatic practice, since Carolingian hagiography and even polyptychs also refer to advocates.³⁴ This relative homogeneity is reflected in the wide distribution of the capitularies which demanded that advocates be appointed. After all, most of the important texts were distributed through Ansegis's collection of capitularies, whose modern editor commented 'It would hardly be an exaggeration to assume that Ansegis was available in every decent library in the Frankish kingdom'.³⁵ While it is true that advocates appear in charters before they are mentioned in capitularies, that simply implies that capitularies were only one conduit of reform, not its definition. The simultaneity of the evidence, together with proof that the court took an interest and advocacy's connection with other aspects of Carolingian reform (discussed below), strongly suggests that advocates were part of a court-centred initiative.

This did not stop them from acquiring strong local roots: quite the contrary. Advocates were required to have hereditary property in the *comitatus*, or 'county', of their office, making sure they were part of the local community.³⁶ Charters from Prüm, St Gall, St Martin Tours and Lucca reveal a *de facto* heritability, corroborating the impression of a locally established position.³⁷ Ninth-century advocates might have been related to important people, but capitularies associate them with people of relatively modest status, like *centenarii* and *vicarii*.³⁸ Their rewards were not extravagant - fifty *bunnaria* at St Bertin, a couple of *mansi* at St Rémi, a few *curticellae* at San Salvatore, Brescia – making them that lower level of the elite which normally escapes our view.³⁹

Being an advocate nevertheless involved real and serious responsibilities. Though often advocates are visible simply playing the role of witnesses, a considerable body of evidence shows them in action at secular courts. For example, the charters of St Bénigne in northern Burgundy preserve a series of mid-ninth-century notices, showing Alcaudus, an advocate of the bishop of Langres acting for St Bénigne, prosecuting a case before *missi dominici* at three court sittings, two at *Luco Villa* and one at *Curtavonus*.⁴⁰ Scaptolf, an advocate of Farfa, is similarly attested at work in a variety of courts in early ninth-century Tuscany, speaking for the monastery in six disputes.⁴¹ A text from St Mihiel, on the Meuse near Verdun, preserves indications of a similar situation. In Lothar I's writ of 841, the royal *missus* Wolmod was sent to investigate claims of stolen land, to be accompanied, as he visited the counts of the surrounding region, by the monastery's advocates.⁴² St Mihiel's advocates were evidently allocated an important, and eminently practical role in the Meuse valley.⁴³

Evidence of when things went wrong shows how pervasive advocates had become. In November 870, Bishop Hincmar of Laon, embroiled in a dispute over the villa of Poilly, complained about a procedural irregularity.⁴⁴ Apparently, his opponent Ansgarius had not summoned Hincmar's (un-named) advocate to the *mallum* court, but had instead confronted Teduin, one of Hincmar's men, at the royal court. Hincmar's advocate had dutifully jumped up to complain, but was immediately expelled from the palace, and Teduin, though he lacked the authority to do so, was forced on pain of death formally to give up the land.⁴⁵ Hincmar argued that this deviant procedure rendered the settlement

invalid. It is not the prominence of a bishop's advocate which is significant, since that is well attested in the mid-ninth century, for example at Reims, Freising, Langres, Soissons, and in other evidence relating to Laon.⁴⁶ Rather, what is interesting is that not having an advocate could potentially make a difference at a practical level. Bishop Hincmar's complaint was not watertight, but it was worth making: there was a rule to be breached, as his opponents accepted.⁴⁷

This impression that the rules about advocates were taken into account, even if not always observed, is confirmed by a capitulary of 861. King Charles the Bald addressed the mis-interpretation of an earlier capitulary, which stated that advocates were to pay the fine for those who refused good money. It meant, clarified the king, that the advocate paid the level of fine suitable for the person who had committed the infringement, not the level appropriate for an advocate.⁴⁸ Evidently someone somewhere had attempted, however polemically or ill-advisedly, to put into practice rules about advocates.

Legal expertise

All this suggests that we have to take the formal norms about advocacy transmitted in capitularies seriously. That impression is only confirmed when we turn to the manuscripts in which those capitularies were transmitted, which imply that contemporaries took these norms seriously too, and that at least some advocates built up a considerable degree of legal expertise, as can be demonstrated through the examination of one particular manuscript, Paris Bibliothèque Nationale, Lat.4632.

This late ninth-century collection of laws and capitularies came, judging from palaeographical evidence, from around St Amand in modern-day Belgium.⁴⁹ St Amand was a major northern Frankish monastery, particularly noted for its celebrated liturgical manuscript production, so there is no reason to regard the manuscript as *sui generis*.⁵⁰

Lacking illumination, the manuscript's contents give the impression of a practical handbook: *Lex Ribuaria* in the A recension (incomplete), *Lex Salica* in the common *Karolina* version, *Lex Alamannorum* in the B recension, and a small selection of six capitularies. The only remarkable feature is its colophon:

*'I Autramnus unworthy lay advocate wrote this book in the church of St Stephen in the villa called Templovía'.*⁵¹

Most attention paid to this manuscript has focussed on the otherwise unknown Autramnus's lay status. He may not have written it all, but he certainly wrote a bit of it and claimed responsibility for the finished product, a level of involvement often hard to demonstrate for laymen at a relatively low social level.⁵² However, what matters here is that Autramnus was an advocate, and consideration of the contents of Paris Lat.4632 suggests a professional interest in Carolingian law. It is hard to imagine a clearer case of an advocate's legal handbook.⁵³ The capitularies Autramnus had copied into his manuscript were highly relevant for his duties, for example the *Capitulare legibus additum*, here headed *Capitulare quae in legem salicam mittenda sunt*, the *Capitulare missorum* of 803, and the *Capitula legibus addenda* of 818/9.⁵⁴ These capitularies were

widely distributed, but including them nevertheless implies an intelligent choice. The point is made clearer by one particularly unusual excerpt: a single chapter from the *Capitula legi addita* of 816, dealing with the need to judge people by their own law, was copied on fol.37r to make sense of the multiple laws in the manuscript, apparently reflecting not the model but the compiler's choice.⁵⁵

Perhaps Autramnus was exceptional in his inclinations. But his counterpart and approximate contemporary, the advocate Adalmar at St Martin Tours, was described as 'learned in law'.⁵⁶ And though there is no other colophon like Autramnus's, advocates would have found many other manuscripts from around the same region useful.⁵⁷ For example, Autramnus's manuscript shows similarities to Paris Bibliothèque Nationale Lat. 4628, of similar date and provenance, with the same three laws and a similar range of capitularies, some rearranged in similar ways.⁵⁸ It has already been suggested that this manuscript was written for a secular official. Perhaps, like Autramnus's manuscript, it was intended for an advocate.⁵⁹

There emerges from this manuscript evidence a subtle, but persistent Reims connection. Admittedly, Autramnus's manuscript is in a St Amand hand, but so is Vatican, Biblioteca Apostolica Vaticana, Reg. Lat. 994, probably written at Reims.⁶⁰ Autramnus's manuscript can moreover be linked through its contents to a group of Reims-associated manuscripts. The extract on ff 32r-v of c.7 from the *Capitula Francica*, on how to reclaim slaves, is found arranged in this way in just two other manuscripts, both with Reims connections.⁶¹

The *Capitula legibus addenda* on fols.37r-38r also has links with Reims manuscripts.⁶² Autramnus's manuscript shares two 'additional chapters' in its *Lex Salica* redaction uniquely with St Petersburg Gosudarstvennaja Publičnaja Biblioteka im. M.E. Saltykova Ščedrina, Q. V. II, 11, again with strong Reims connections.⁶³ Finally, Paris Lat.4628, connected with Autramnus's manuscript, has independent Reims links of its own.⁶⁴ Given this persistent Reims connection, and Archbishop Hincmar's interest in both the written law and in advocates, might we suspect his hand here in designing and promulgating an advocate's collection throughout the province, as he did with other legal collections?⁶⁵

Plausible as the idea is, it remains speculation. Not only is the evidence fairly slippery, Hincmar was in any case not necessarily involved with every single one of the very numerous Reims manuscripts produced during his long archepiscopate. Anyway, demonstrating advocates' legal expertise by identifying manuscripts suitable for their use only goes so far. It would be hard to distinguish a count's manuscript from an advocate's by its content alone - but the approach could equally easily underestimate advocates' contact with the written law. There is no obvious reason why advocates, who probably received training in monasteries or cathedrals, could not have made use of the manuscripts to be found there, even those with ecclesiastical codicological context, making all legal manuscripts, potentially, advocates' manuscripts.⁶⁶

II Carolingian advocates and the immunity

In summary, although ecclesiastical advocacy was an innovation in practice and theory, there is reason to believe both that the practice was embedded in the localities of the Frankish empire, and that contemporaries, not least the advocates themselves, took an interest in the theory. A profoundly local elite was reading the capitularies, at least in the region around Reims, and can be seen acting upon them. Carolingian reform had in this concrete instance made a difference on the ground.

If this has not been fully appreciated, it is because historians since Senn have tended to frame their thinking about advocates rather rigidly in terms of the Carolingian immunity, considering them pre-eminently as agents of this judicial privilege, responsible for policing and other duties within immune areas.⁶⁷ As a result, the recent shift in thinking about the immunity, away from an institutional and towards a cultural reading, has thereby reduced overall interest in advocates.⁶⁸ This is unfortunate, but perhaps is the first step towards a better understanding of Carolingian advocacy, because approaching advocates via the immunity alone was never really justified.⁶⁹

As we have seen, most Carolingian discussion of advocacy related to the representation of clerics before the courts, neither directly related to nor justified by the immunity. Moreover, the issue of advocacy seems to have been used in contemporary arguments with no direct bearing on immunity. For example, the word *advocatus* and its declinations never appears in Pseudo-Isidore's Decretals in a technical sense, even though a good proportion of the collection's material is concerned with clerical and particularly

episcopal jurisdiction. The explanation is perfectly simple: following the grain of much canon law, the Pseudo-Isidorian team argued that ecclesiastical cases should never, under any circumstances, appear before a secular court.⁷⁰ For Pseudo-Isidore, and to a lesser extent Benedict Levita, there was therefore no need for advocates.⁷¹ Given Hincmar's prominence, and indeed the demonstrable prevalence of advocates, we could perhaps read into Pseudo-Isidore's silence a contestation of advocacy, as part of wider disputes over ecclesiology in the ninth century.⁷²

These arguments were primarily about clerics, not monks, but parallel points could be advanced concerning monasteries too. Given that some monasteries had advocates before they were granted an immunity charter, it seems plausible that they considered advocates as more than just part of the mechanism of the immunity.⁷³ For example, in the course of the community's struggles with its founder Liudger's family in the 860s, a monk of Werden in the lower Rhineland composed a new life of this Liudger. An apparently artless reference to an otherwise wholly unattested advocate contemporary with the saint served subtly to project the monastery's separate (legal) identity back to its inception. As we shall see, having an advocate did not necessarily imply unconstrained independence, but it did imply separate existence, and the royal charter that confirmed the community's victory in 877 duly included a grant of an advocate.⁷⁴ The monastery of Nantua in the Jura perhaps shared Werden's point of view. When Lothar I granted it to Lyons in 852, he also issued a separate charter, confirming the monastery's right to have its own advocate, who was to 'summon or respond' just as he had done when the monastery was

under the direct control of the king.⁷⁵ Doubtless practical advantages were bestowed by such a grant, but we might also suppose that for this community, the right to have an advocate was primarily a symbolic affirmation of its continued separate existence.

Of course, this is not to deny that some advocates played a role in spaces defined by an immunity. After all, some late ninth-century diplomata explicitly link the two, and some possible advocates' legal handbooks include administrative jottings.⁷⁶ Rare complaints taken to a secular court about breach of an ecclesiastical immunity often involved advocates, too.⁷⁷ Nevertheless, the bulk of the evidence concentrates on advocates acting in public settings, not within an immune jurisdiction. Just two accounts, both from early tenth-century Alemannian Zürich, show more or less unambivalently an advocate holding an internal court.⁷⁸ Conversely, there are a number of records of disputes conducted within a church's jurisdiction in which advocates are conspicuously uninvolved. A list, which could easily be extended, includes material from Gorze near Metz,⁷⁹ St Rémi of Reims,⁸⁰ St Martin at Tours,⁸¹ St Stephen at Dijon,⁸² and Redon in Brittany.⁸³

Since the capitulary evidence is distinctly ambiguous about who exactly meted out punishments on church land, talking only of *iudices* and *vicedomini*, and anecdotal evidence suggests those holding monastic land in benefice routinely dealt out justice to the inhabitants, perhaps a variety of people were involved.⁸⁴ That is what a letter of Hincmar of Reims implied, declaring that ecclesiastical *actiones* should be dealt with by

provosts and archpriests, while the *cura villarum* should be managed ‘through most faithful laymen’, a phrase which could denote advocates, but need not.⁸⁵

III The function and significance of the Carolingian advocate

In view of what contemporaries thought was important about advocacy, the surviving evidence for its practice, and the de-institutionalised understanding of the immunity, an approach which defines advocates primarily in terms of the immunity is not adequate. Instead of viewing the advocate through an institutional prism, I would like to suggest that a dialectic between two processes was responsible for the emergence of systematic ecclesiastical advocacy. The first was a renewed insistence on the separation of sacred and secular, a constant bracketing of the church. The second was a desire to make public events and courts in particular as formal as possible, stemming from a Carolingian horror of the *ad hoc*. These two inspirations lay at the heart of Carolingian reforming efforts. Closely linked, they nevertheless generated points of tension, particularly clerical attendance at secular court and the exercise of power over clerical dependents, as we can see.

The count’s *placitum* was constructed in the ninth century as the key point of contact between king and locality.⁸⁶ All disputes and legal transactions of any significance were supposed to be held in a formal setting, within a formal hierarchy, according to certain norms: the count must not be drunk, should judge the cases of widows first, and so forth. However, this emphasis on the *mallum* court’s importance for integrating Carolingian

society ran directly contrary to canon law's prohibition on clerical attendance at public courts.⁸⁷ This did not escape contemporaries. The 'public court' in Carthage c.15, which clerics were to avoid, was glossed 'in mallo' in at least one ninth-century manuscript.⁸⁸ Hincmar and others made that equation quite explicit, and Carolingian church reform, keen to implement older canon law, explicitly declared that clerical attendance at the *mallum* was not permitted.⁸⁹

Meanwhile, and even as it accumulated property, the Frankish church was charged with working through prayer for the salvation of the people. Its growing lands were often given formal immunity, but the concept mattered more than the institution, signifying that the church and world were to be kept separate for the sake of effective, peaceful prayer.⁹⁰ The count and his agents were not supposed to busy themselves on church land, since counts and others marching in would undermine ecclesiastical peace and tranquillity. Yet for clerics to manage directly issues of justice, the epitome of worldliness, would clash with reform ideals.

These two issues, of clerical attendance at court and of jurisdiction over church lands, ran parallel to a third, the use of church resources by the king for military service.⁹¹ All three were about integrating two carefully differentiated social fields into a particular political configuration. However, each was resolved in a different way. Most straightforward, though increasingly controversial, was the pragmatic, and strongly institutionalised,

solution to the harnessing of church land: formalised borrowing by the king while recognising the church's rights via regulated payment, the *precaria de verbo regis*.⁹²

The advocate's role was to resolve the problem of clerical attendance at secular courts, essentially the point of Hincmar of Reims's *Quaterniones*. Hincmar impressed on the king the importance of the prohibition on summoning clerics before secular judges. However, he allowed an exception for cases concerning property (*possessiones*), since property was undeniably a matter of royal concern and jurisdiction, and his conception of what related to property was broad, elided with Roman civil law in general.⁹³ Hincmar argued that in such cases, clerics were to be answerable to secular courts via advocates. This compromise arrangement was not Hincmar's invention, he merely attempted to find justification for it. It was not without criticism, but judging from the rest of the evidence, it was the perspective which carried the day at least in the later ninth century.⁹⁴

The least important of these three issues was the practical maintenance of order on church lands. As secular administrators of church property within the immunity, advocates allowed the clergy to keep their hands clean without surrendering control of the property, particularly in relation to questions of justice. However, this seems to have operated for the most part at a theoretical level. How far advocates were in practice involved in managing church lands is difficult to make out. Perhaps it mattered just as much that they provided a support to a particular way of thinking the integration between church and

secular world, as that they actually got their hands dirty with the trivial details of estate management.

In short, considering advocacy in terms of immunity is reductive, because advocacy and immunity were parallel, not derivative, aspects of Carolingian reform. The product of an emphasis on formality and procedure combined with an ambivalently bipartite view of society, advocacy in turn helped bring both emphasis and distinction into being by enacting them out. The representation by advocates of clerics and monks at secular courts simultaneously marked them out as different, and the courts as formal, rule-bound and important. Advocacy accordingly testifies to a vision of how society should be arranged, a vision it contributed to promoting, right across the entire Frankish world and within a relatively short period of time.⁹⁵ Such success encourages historians to take seriously Carolingian efforts to frame power, both religious and secular.

IV Carolingian and post-Carolingian advocacy

These observations have implications for the second major context in which Carolingian advocacy is discussed, its relation to later forms of advocacy. Advocacy played an enormously important role in central medieval (German) history as a kernel of territorial principalities, and an eponymous ninth-century practice presents an obvious starting point for enquiry.⁹⁶ The argument has tended to revolve around whether traces of lordship, the hallmark of later advocacy, can be detected in Carolingian advocacy: hence Dohrmann used the St Gall material to see whether ninth-century advocates were already turning

legal representation (*Rechtsvertretung*) into a relation of lordship (*Herrschaftverhältnis*).⁹⁷ His conclusion was that they were, so Carolingian advocacy, though less developed, was essentially the same as later advocacy.⁹⁸

Impressively grounded empirically, such a conclusion must still be questioned. A superficial critique would reiterate that exclusive concentration on monastic advocates is potentially misleading, since ninth-century advocacy, as we have seen, concerned bishops and clerics just as much as monks. Equally, while it is certainly true that later lords of monasteries called themselves ‘advocates’, this could simply be because the patristic references to Christ as an advocate in heaven ensured that *advocatus* never lost its underlying sense of ‘representative’, making it a useful Latin term for expressing an unprecedented relationship. Finally, it seems unlikely that lords trying to control monasteries in the eleventh century wormed their way into power using a ninth-century technical meaning as cover, not least given the chronological break between Carolingian advocates, fading out in the course of the tenth century, and new advocates, emerging in detail only from the mid-eleventh century.⁹⁹

More fundamentally, though thinking about lordship is certainly important, we must always try and work out its specific historical form, rather than asking whether advocates were ‘already’ in a position of lordship.¹⁰⁰ As it happens, Carolingian sources do tell us about how aristocrats dominated monasteries in a way approximately analogous to later conditions. Such domination was essentially about patronage: the necessity of making

contact with someone who had the king's ear generated a particular sort of aristocratic control over monasteries and other church lands. These arrangements were often relatively informal and undefined, such as that Hincmar set up for the protection of Reims's vulnerable lands near Worms, or the counts of Troyes's protection of Montier-la-Celle.¹⁰¹

Gradually, the Carolingians did develop a more formal relationship between senior political figures and monasteries through the innovation of titular abbacy.¹⁰² That this had absolutely nothing to do with advocacy is shown by remarkably forthcoming late ninth-century evidence from St Martin Tours. The community's powerful lay abbots were not always popular, but they could be useful, as a charter from count (later king) Robert in 892 demonstrates.¹⁰³ Facing problems with a recalcitrant benefice-holder, the provost came together with Adalmar the advocate to inform Robert, *comes et abbas*, that they were about to take their complaint to the king. Robert took this as a personal slight, 'since I am their abbot, and it's my duty to do justice to people, rather than allow injustice to be done by them.'¹⁰⁴ He asked the advocate for details of the dispute, and lent on the right people to restore the land in question. Count Robert was not the only lay abbot to use advocates: lay abbacy and advocacy clearly represented two separate registers of secular relations with the church.¹⁰⁵ If we want to find evidence for monastic lordship in the ninth century, it is the patronage of lay abbots that we should investigate, not advocacy.¹⁰⁶

The final point is a methodological one. When Carolingian advocacy was conceived primarily in terms of immunity, tension with attempts to excavate the origins of later medieval advocacy was only apparent, because immunities themselves were given a role in the emergence of post-Carolingian political formations. The conflict between the two accounts was easily resolved by constructing a narrative, the aristocratic takeover of the immunity from within.

Recent scholarship has nuanced, if not flatly contradicted, the idea of the Carolingian immunity as the seed of anarchy within the system, transcending the constitutional approach by re-appraising what it meant to contemporaries. Something similar can be done for advocacy. If we no longer see advocacy as umbilically tied to ecclesiastical immunity, but rather reflecting together with the immunity contemporary priorities, arguments and initiatives, then the question of whether Carolingian advocacy was at the root of later advocacy simply loses its sense. Advocacy took its meaning from its place within an evolving ideological system. In the post-Carolingian world, that system ceased to exist, not least in terms of how the church was integrated into wider political and ideological structures. Carolingian advocacy was therefore inherently and fundamentally different from later advocacy. Even if eleventh- and twelfth-century advocates did approximately similar things, they inhabited a wholly different world, and the search for origins or continuity - at this level - can tell us nothing.

Conclusion

The aim of this article is not to close a debate about advocacy, but to open one. Carolingian advocacy ties directly into several key issues for the study of ninth-century society: dispute settlement, literacy, the relationship between sacred and profane, local elites, ritual, the integration of the locality into the centre, and the significance and impact of the Carolingian reforms, intellectually and on the ground. It is far too important to ignore. Studies of charters and other texts in conjunction with manuscripts would doubtless produce fresh insights into this most neglected ninth-century *ministerium*. The key, as with so many other ninth-century phenomena, is first of all to assess it in its full context. Not only is this the only way to understand what was going on, it is also the precondition for establishing how things subsequently changed.¹⁰⁷

¹ W.Dohrmann, *Die Vögte des Klosters St Gallen in der Karolingerzeit* (Bochum, 1985), has a thorough introduction to earlier historiography (most of which concentrates on the post-Carolingian period). The classic French study of F.Senn, *L'institution des avoueries ecclésiastique* (Paris, 1903), now shows its age. F.Bougard, *La Justice dans la royaume d'Italie* (Rome, 1995) gives an excellent though brief synopsis of French and Italian work, pp. 264-269. The articles in *L'Avouerie en Lotharingie*, Publications de la Section historique de l'Institut grand-ducal 98 (1984) mostly have a focus on the later period. There is no substantial and little incidental treatment in English. The path-breaking W.Davies and P.Fouracre (eds.), *Property and Power* (Cambridge, 1995) discusses the advocate only in the context of the immunity (as exemplified in the glossary, p. 272). W.Brown, *Unjust Seizure: conflict, interest and authority in an early medieval society* (London, 2001) has perhaps the fullest recent Anglophone discussion, though symptomatically confined to a footnote (p. 75, n.6).

² Advocates appear, though less systematically, representing other people, such as widows and even counts. These advocates would repay further study, but fall outside the remit of this article.

³ *Capitularia regum Francorum*, ed. A. Boretius, MGH, *Capitularia* (Hannover, 1883), I, n.33, c.13, p. 93; n.34, c.18, p. 101; n.35, c.58, p. 104; n.61, c.11 p. 149; n.62, c.22, p. 151. *Formulae merovingici et karolini aevi*, ed. K. Zeumer, MGH, *Leges V* (Hannover, 1886), p. 216, from Paris Bibliothèque Nationale, Lat. 4627, fols.135v-136r.

⁴ Attending the count's *placita*: *Capitularia* I, n.144, c.2 p. 295; cf. *Capitularia* II, n.273, c.32, p. 324. Representing clerics: *Capitularia* I, n.136, c.10, p. 283.

⁵ *Capitularia* I, n.20, c.9, p. 48 (779, the first reference to advocates in the capitularies); *Capitularia* II, n.260, c.7, p. 273; n.278, c.3, p. 344. Reclaiming: *Capitularia* I, n.148, c.3, p. 300.

⁶ *Capitularia* I, n.44, c.12, p. 124; n.50, c.3, p. 137; n.86, c.3 and c.5, p. 185; n.40, c.3, p. 115.

⁷ *Die Urkunden der Merowinger*, ed. T. Kölzer, MGH, *Diplomata regum Francorum e stirpe Merovingica*, 2 vols (Hannover, 2001), I, nos. 64 and 69.

⁸ R. Hübner, 'Gerichtsurkunden der Fränkischen Zeit', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germ. Abt* 27 (1893), pp. 1-151. Flodoard, *Historia Remensis Ecclesiae*, ed. M. Stratmann, MGH, *Scriptores* 36 (Hannover 1998) (henceforth *HRE*) II c.5, Somnacius; II c.10, Reolus; II c.17, Tilpin, all using *agentes/actores*. *Advocati* appear only after Archbishop Wulfarius (812-816).

⁹ *Die Urkunden der Arnulfinger*, ed. I. Heidrich (Bad Münstereifel, 2001), nos. 13 and 18, also available at <http://www-igh.histsem.uni-bonn.de/anmeldung.asp>. The man called an *advocatus* in n.13 was probably a count, and so more important than ninth-century advocates.

¹⁰ '[T]am in Francia quam etiam trans Ligerim', *HRE* II 17, pp. 169-170.

¹¹ *Formulae Marculfi Liber I*, n.36, in Zeumer, ed., *Formulae*, p. 66.

¹² Council of St Jean de Losne 673, *Conciliae Galliae* ed. C. Munier, 2 vols (Turnhout, 1963), II, c.3, p. 315, 'nisi per advocatum'.

¹³ See for a discussion A. Diem, *Das monastische Experiment* (Münster, 2005), pp. 217-8.

¹⁴ In addition to his *Quaterniones* (PL 125 col.1035-1060) and the associated *Rotula* and *Admonitio* (PL 125 col.1060-1065, 1065-1070), Hincmar mentioned advocates in *De Presbyteris Criminosus* (PL 125, col.1093-1110) c.29; his second *Capitula Episcoporum*, ed. P. Brommer, MGH *Leges*, *Capitula*

Episcoporum, 3 vols (Hannover, 1984-2005), II, pp. 45-70, at p. 61; *De villa Noviliaco*, ed. H.Mordek, 'Ein exemplarischer Rechtsstreit: Hinkmar von Reims und Neuilly-Saint-Front', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kan. Abt.* 83 (1997), pp. 86-112; *Collectio de Ecclesiis et Capellis*, ed.M.Stratmann, MGH Leges, Fontes iuris germanici 14 (Hannover, 1990), p. 104; *Annales Sancti Bertini*, ed.F.Grat, *Annales de Saint-Bertin* (Paris, 1964), p. 150 (J.Nelson's translation, *The Annals of Saint-Bertin* (Manchester, 1991), p. 150, is slightly inaccurate); a letter about the priest Hunold (PL 126, col.253); the Douzy *Libellus Expostulationis*, ed. W.Hartmann, MGH Concilia 4 (Hannover, 1998), pp. 420-487, p. 424 and p. 445; and a letter to the clerics of Laon, ed. G.Schmitz, 'Wucher in Laon. Eine neue Quelle zu Karl dem Kahlen und Hinkmar von Reims', *Deutsches Archiv* 37 (1981), pp. 529-558, at p. 558. The *Quaterniones* survives only in Berlin SB Phill.1764, but was once more widely-spread, since it was used by the compiler of the late eleventh-century *Collection in 74 Titles* (see P.Brommer, *Capitula Episcoporum*, I p. 24). A new edition is promised by the MGH.

¹⁵ As paraphrased by G.Schmitz, 'Die Appendix Dacherianae Mettensis, Benedictus Levita und Hinkmar von Laon', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 92 (2006), pp. 147-206, here p. 168.

¹⁶ PL 125, 1045. The passage is discussed in H.Fuhrmann, *Einfluß und Verbreitung der pseudoisidorischen Fälschungen: von ihrem Auftauchen bis in die neuere Zeit*, 3 vols (Stuttgart, 1972), III, pp. 120-1. Omitted: 'exceptis, quae actio criminalis ab ordinariis extraordinariisque iudicibus aut illustribus potestatibus audienda constituit'.

¹⁷ Omitted: 'Sane si quid opponitur criminale, ad notitiam iudicis in civitate, qua agitur, deducatur, ut ipsius sententia vindicetur, quod probatur criminaliter fuisse commissum'.

¹⁸ Omitted: 'quantum ad causas tamen ecclesiasticas pertinet, quas decet episcopali auctoritate decidi'.

¹⁹ Omitted: 'his manentibus, quae circa eos sanxit antiquitas'.

²⁰ Hincmar of Reims used the omitted part in *De Jure Metropolitanorum* (PL 126, col. 209). The gloss on fol.188r is 'contentio inter clericos iudicio epi terminat...' (last letters lost through cropping). The passages cited above are copied on fols.188r, 195v, and 196r. For Hincmar's link with this manuscript, see

L.Böhringer, 'Der eherechtliche Traktat im Paris lat 12445: einer Arbeitshandschrift Hinkmars von Reims', *Deutsches Archiv* 46 (1990), pp. 18-47.

²¹ See H.Fuhrmann, 'Fälscher unter sich: zum Streit zwischen Hinkmar von Reims und Hinkmar von Laon', in M.Gibson et al. (eds.), *Charles the Bald: court and Kingdom* (Oxford, 1981), pp. 237-254.

²² E.Magnou-Nortier, *Code Théodosien livre XVI et sa réception au moyen âge* (Paris, 2002) discusses the difficulty of interpreting this decree, p. 158, n.123. The relevant part is '...ut quaecumque de nobis ad ecclesiam tantum pertinentia specialiter fuerint impetrata non per coronatos sed ab advocatis eorum arbitrato et iudicibus innotescant et sortiantur effectum'.

²³ *De Presbyteris* (PL 125 col.1108-9), c.29. The *interpretatio* is copied in full in Paris Lat.12445, fol.201r.

²⁴ *Contra* Schmitz, who thinks he meant Theodosian Code XVI 2.38 (p. 553, n.101), Hincmar probably had the Valentinian text in mind in Schmitz, 'Wucher' p. 558, and, *contra* M.Stratmann following Schmitz, in *Collectio de Ecclesiis et Capellis*, p. 104 (cf. n.214).

²⁵ The Novel declares 'sin vero petitor laicus, seu in civili seu in criminali causa, cuiuslibet loci clericum, adversarium suum, si id magis eligat, per auctoritatem legitimam in publico iudicio respondere compellat', all faithfully copied in Paris Lat.12445, fol.199r.

²⁶ Eg. following a citation of Roman law and a Pseudo-Leo text based on Roman law, both calling for personal clerical attendance, Hincmar clarified 'videlicet, non per se, sed per advocatum...', Douzy *Libellus Expostulationis*, p. 445.

²⁷ *Quaterniones*, PL 125, col. 148, 'secundum sacros canones, ac decreta sedis Romanae pontificum. Cf similar references in material from the Council of Douzy 871, ed. W.Hartmann, MGH Concilia 4 (Hannover, 1998), p. 445 and p. 495; and in Schmitz, 'Wucher', p. 558.

²⁸ 'Ut presbyteri publica iudicia non adeant', the heading for Carthage c.15. The headings, omitted in the PL 67 edition of the Dionysio-Hadriana, occur in many manuscripts, for instance Munich Bayerische Staatsbibliothek Clm 14508, fol.136, from late-ninth-century Reims. Hincmar used Carthage c.15 in the *Collectio de Ecclesiis*, *Quaterniones* (and associated *Rotula* and *Admonitio*), *De Presbyteris*, *De Causa Teutfridi* (PL 125, col.1111-1116) and in his Douzy *Libellus Expostulationis*, p. 445.

²⁹ For example, qualifying a sequence of citations, ‘Caeterum de rebus et mancipiis, et mancipiorum commissis, episcopi ex ecclesiis nobis commissis, vel de proprietatibus clericorum, advocatos dare secundum consuetudinem non abnuimus’ (*Rotula*, PL 125, col.1061).

³⁰ For the 826 synod, T.Noble, ‘The Place in Papal History of the Roman Synod of 826’, *Church History* 45 (1976), pp. 434-454: as Noble observes, the clauses on advocacy either derive from capitularies or have no model (p. 452). Citation in *De presbyteris criminosis*, c.21 and c.30. Manuscripts of the 853 Council (ed.W.Hartmann, MGH Concilia 3, (Hannover, 1984), n.32, pp. 311-3): Vatican BAV lat.1342 (s.IX), a series of eighteenth-century copies, Paris BnF. lat.12445 and Berlin Staatsbibliothek, Preußischer Kulturbesitz, Phill.1741.

³¹ Cf. Schmitz, ‘Wucher’, who comes to similar general conclusions, p. 554; and G.Schmitz, ‘Hincmar von Reims, die Synode von Fismes 881 und der Streit um das Bistum Beauvais’, *Deutsches Archiv* 25 (1979) p. 463-486, for another instance of Hincmar’s remarkable legal inventiveness.

³² This generalisation is based on a trawl of the MGH Diplomata, Chartes et Diplômes relatifs à l’histoire de France, the charters published in *I Placiti del ‘Regnum Italiae*, ed. C.Manaresi (Rome, 1955-60) (with particular reference to charters from Lucca, Novalesse, Farfa, San Ambrogio of Milan, San Salvatore of Brescia, San Vincenzo, and Nonantola); and on the published cartularies from Autun, St Bénigne Dijon, and Mâcon; St Martin Tours and Fleury; Nîmes and Narbonne; St Bertin; St Denis and St Germain des Prés; Fulda and Werden; Wissembourg and St Gall. All of these mention advocates occasionally, some often (Dohrmann’s study of St Gall’s charters counted 180).

³³ Notably *Formulae Senonenses recentiores* (which also has the text for the appointment of an advocate) and *Formulae Sangallenses miscellanae*: Zeumer, *Formulae*, pp. 211-226 and pp. 378-389.

³⁴ For a discussion of the *Vita Liudgeri*, see below, pp. 000. The *Vita Galli*’s reference to advocates is discussed in Dohrmann, *Vögte*, pp. 53-4 and pp. 69-70. References can be found in the polyptychs of St Bertin, Saint Rémi and Brescia (see n.39), and of Prüm, ed I. Schwab, *Das Prümer Urbar* (Düsseldorf, 1983), p. 200.

³⁵ *Die Kapitulariensammlung des Ansegis*, ed.G.Schmitz, MGH, Capitularia regum Francorum, nova series (Hannover 1996), p. 2. Extracts concerning advocacy were included in Ansegis's collection from the following capitularies: *Capitularia* I, nos.40, 44, 61,136, 141 and 148.

³⁶ *Capitularia* I, n.77, c.14, p. 172.

³⁷ For Prüm, see *Urkunden- und Quellenbuch zur Geschichte der allluxenburgischen Territorien bis zur burgundischen Zeit*, ed.C.Wampach et al. (Luxembourg, 1935-), I, n.83, p. 78; another advocate had the same name in 943. For father-to-son succession at St Martin, see J-P.Brunterc'h, 'Un monde lié aux archives : les juristes et les praticiens aux IXème et Xème siècles', in *Plaisir d'archives, recueil de travaux offerts à Danièle Neirinck* (Mayenne, 1997) pp. 409-427, at p. 421, n. 10. For Lucca, see *I Placiti*, ed. Manaresi, n.111, p. 412, and Bougard, *La justice*, p. 267.

³⁸ As suggested by Dohrmann, *Vögte*, p. 146. H.Hummer, *Politics and power in early medieval Europe: Alsace and the Frankish Realm, 600-1000* (Cambridge, 2005) has similar suggestions relating to Wissembourg advocates, p. 200. Association: eg. *Capitularia* I, n.25, c.4, p. 67; n.73, c.2, p. 165; n.141, c.19, p. 290.

³⁹ *Diplomata Belgica*, eds. M. Gyselling and A.Koch, 2 vols (Brussels, 1950) I, n.37, p. 68. *La Polyptque de Saint-Rémi de Reims*, ed.J.-P.Devroey (Reims, 1984), p. 57. Bougard, *La Justice*, p. 266, n. 49. For local elites, see P.Erhart and J.Kleindinst, *Urkundenlandschaft Rätien* (Vienna, 2004), especially pp. 83-90 on Folcwin.

⁴⁰ *Chartes et documents de Saint Bénigne de Dijon*, eds.G.Chevrier and M.Chaume, 2 vols (Dijon, 1943-86) I, nos. 76 (866), 78 (867), and 84 (869).

⁴¹ *I Placiti*, ed. Manaresi, nos.13-14, 21-3, and 27 (Scaptolf also appears in n.28, but not in an official capacity). The presidents of the court include a duke, royal *missi* and a count of the palace.

⁴² *Die Urkunden Lothars I. und Lothars II*, ed.T.Schieffer, MGH, Diplomata Karolorum 3 (Munich, 1979), p. 156.

⁴³ There are comparable instances elsewhere too: Charles the Bald issued a similar charter for Charroux c.870, as Arnulf did for St Gall c.891.

⁴⁴ *Die Streitschriften Hinkmars von Reims und Hinkmars von Laon 869-871*, ed. R. Schieffer, MGH Concilia 4.1 (Hannover 2003), pp. 366-408.

⁴⁵ For identification of Teduin, *HRE* III c.22, p. 295.

⁴⁶ Laon: *HRE* III c.18, p. 256. Freising: *Die Traditionen des Hochstifts Freising*, ed. Th. Bitterauf (Munich, 1905) has an incomplete index, but note n.240 (806x810), concerning a group of episcopal advocates, as well as nos.183-6 (Lantfrid) and 331-2 (Sindeo). Langres: see n.40 above. Reims: Mordek, 'De Villa Noviciliaco', p. 107 and *HRE* III c.10, p. 210 and c.26, p. 340.

⁴⁷ Hincmar of Reims argued that the procedure was legitimate, because Teduin, who held the land, did not need an advocate, so 'legaliter conquisitum est' (PL 126, col.504).

⁴⁸ *Capitularia* II, n.271, p. 302. Hincmar of Reims echoed Charles's concern, emphasising that fines levied on clerics were to be paid through advocates, not by them: Schmitz, 'Wucher', p. 558.

⁴⁹ In the absence of a completed Paris catalogue, and since B. Bischoff, *Katalog der festländischen Handschriften des neunten Jahrhunderts: mit Ausnahme der wisigotischen* (Wiesbaden, 1998) goes only as far as Paderborn, see H. Mordek, *Bibliotheca capitularium regum Francorum manuscripta: Überlieferung und Traditionszusammenhang der fränkischen Herrschererlasse* (Munich, 1995), pp. 516-8, R. McKitterick, *The Carolingians and the written word* (Cambridge, 1989), pp. 59-60 and P. Wormald, *The Making of English Law* (Oxford, 2001), p. 60.

⁵⁰ For St Amand and its manuscripts, see R. McKitterick, 'Carolingian book production: some problems', in *The Library*, 12 (1990), pp. 1-33. Paris Bibliothèque Nationale, Lat. 18238, a St Amand Ansegis manuscript might repay further study in this context. For St Amand sacramentaries, J. Deshusses, 'Chronologie des grands sacramentaires de Saint-Amand', *Revue Bénédictine* 87 (1977), pp. 230-7.

⁵¹ '...ego enim auttrannus indignus advocatus laicus scripsi hunc librum in ecclesia sancti estefani in villa nomine templovia.' Paris Lat.4632, fol.59v. A villa of this name was in the possession of Marchiennes in 877: see *Recueil des chartes de Charles le Chauve*, ed. G. Tessier, Chartes et Diplômes relatifs à l'histoire de France, 3 vols (Paris, 1943), II, n.435.

⁵² Eccard *marchio* of Friuli famously commissioned a collection from Lupus of Ferrières: O.Müsch, *Der Liber Legum des Lupus von Ferrieres* (Frankfurt, 2001). For lay ownership of manuscripts in general, see McKitterick, *The Carolingians*, pp. 244-261.

⁵³ As P.CH.Boeren, 'Quelques remarques sur les manuscrits de la loi Salique', *Tijdschrift voor Rechtsgeschiedenis* 22 (1954) pp. 33-67 argued, p. 51.

⁵⁴ Fols.29v-31r, *Capitularia* I, n.39 (transmitted in over fifty manuscripts). fols.31r-32r, *Capitularia* I n.40 (around fifty manuscripts); fols.32v-37r, *Capitularia* I, n.139 (thirty three manuscripts).

⁵⁵ *Capitularia* I, n.134, c.2; no other manuscript has just this chapter.

⁵⁶ Brunterc'h, 'Un monde', pp. 414-5.

⁵⁷ In particular, Bamberg Stadtbibliothek Jur. 35, Nürnberg Stadtbibliothek, Cent. V, App. 96; Paris Bibliothèque Nationale Lat. 4995; Paris Bibliothèque Nationale Lat. 10754; St Petersburg Gosudarstvennaja Publicnaja Bibliotheka Q V II 11; Vatican Biblioteca Apostolica Vaticana, Pal. Lat.773; Wolfenbüttel Herzog August Bibliothek, Aug. 4.50.2; and Wolfenbüttel Herzog August Bibliothek. Gud.299. All are from northern France or western Germany, with similar contents.

⁵⁸ For example, a similar arrangement of *Capitularia* I, n.40 (otherwise comparable only with Paris Bibliothèque Nationale, Lat.10753).

⁵⁹ R.McKitterick, 'Some Carolingian lawbooks and their function' in P.Linehan and B.Tierney (eds.), *Authority and Power: studies on Medieval Law* (1980), pp. 13-27 suggests that the manuscript belonged to a royal official in the northern part of the kingdom (p. 25). McKitterick, *Written Word* has a seminal discussion of Frankish legal manuscripts and their possible uses, in particular pp. 59-60 (mentioning this manuscript).

⁶⁰ G.Schmitz, 'Das Konzil von Trosly (909): Überlieferung und Quellen', *Deutsches Archiv* 33 (1977), pp. 341-434, at p. 387.

⁶¹ *Capitularia* I, n.104, similarly in Cologny Bibliotheca Bodmeriana, Bodmer 107 and Paris Bibliothèque Nationale Lat. 9654. The latter comes from the region of Metz, and is probably tenth-century, but H.Mordek *Bibliotheca* describes it as the *Schwesterhandschrift* of Vatican BAV Pal. Lat.582, a Reims

manuscript. J-P.Poly, 'Le sac de cuir: La crise de l'an mil et la première renaissance du droit romain,' in J. Krynen and A. Rigaudière (eds.), *Droits savants et pratiques françaises du pouvoir (XIe-XVe siècles)* (Bordeaux, 1992), pp. 48-62, suggests a Reims connection for the Coligny manuscript; and it can be linked to Nürnberg SB. Cent V App. 96 and Vatican BAV Reg. 1036, both with Reims associations.

⁶² Only Paris BN Lat. 10758, its derivative Paris BN Lat. 4628A (and its copy Paris Lat.4631), and Séléstat Bibliothèque Humaniste 14 (104) also have *Capitula legi Salicae addita* (*Capitularia* I n.142). H.Mordek, 'Weltliches Recht im Koster Weißenburg/Elsaß. Hinkmar von Reims und die Kapitulariensammlung des Cod. Séléstat, Bibliothèque Humaniste, 14 (104)', in M.Borgolte and H.Spilling (eds.), *Litterae medii aevi. Festschrift für Johanne Autenrieth zu ihrem 65. Geburtstag* (Sigmaringen 1988), pp. 69–85 identifies all these as Reims manuscripts.

⁶³ The St Petersburg MS is closely related in terms of *Capitularia* I, n.104, c.3, to four manuscripts: i. Coligny Bodmer 107 (s.IX^{ex}) possibly from Reims; ii.Nürnberg Cent V App 95 (s.IX), closely linked to Paris BnF. lat. 9654/Vatican BAV. Pal. lat.582, Paris BnF lat.4626, lat.4629, and lat.4995, all with Reims links; iii.Vatican, BAV. Reg. lat. 1728 (s.IX^{ex}), linked to the Reims group of Ansegis; iv. Vatican, BAV. Reg. 1036 (s.XV) linked in complex ways to most of the manuscripts mentioned above.

⁶⁴ Its *Capitularia* I, n.140 includes a *Zusatzcapital*, found in four other manuscripts of which the oldest is Séléstat BM 14 (104) (Reims, s.IX). Its arrangement of *Capitularia* I, n.156 strengthens its links to the other three, of which one, Paris Lat.4995, is itself potentially an advocate's manuscript.

⁶⁵ See J.Nelson, 'Legislation and Consensus in the Reign of Charles the Bald', in P. Wormald (ed.), *Ideal and Reality in Frankish and Early Anglo-Saxon Society: Studies presented to J. M. Wallace-Hadrill*, (Oxford, 1983) pp. 202-22, at p. 206, n.18.

⁶⁶ Brunterc'h, 'Un monde', p. 424. Cf. D.Ganz, 'Temptabat et scribere; Vom Schreiben in der Karolingerzeit', in R.Schieffer (ed.), *Schriftkultur und Reichsverwaltung unter den Karolingern* (Opladen, 1996), pp. 13-33, noting that secular witnesses to a St Germain des Près 791 charter show signs of a St Germain script, and perhaps had had some schooling from St Germain.

⁶⁷ F. L.Ganshof, 'L'immunité dans la monarchie Franque', *Receuil de la société Jean Bodin I* (1958), pp. 171-216, 'un personnage associé de façon constante à l'immunité', p. 204; cf. M.Parisse, *Allemagne et Empire au Moyen Âge* (Paris, 2002), '[L'avouerie] n'existerait pas sans l'immunité', p. 90.

⁶⁸ For example, B.Rosenwein, *Negotiating Space: power, restraint and privileges of immunity in early medieval Europe* (Ithaca, 1999) has no reference to advocates.

⁶⁹ For pre-Senn views, see G.Waitz, *Deutsche Verfassungsgeschichte*, 6 vols, (Kiel, 1880), IV, pp. 371-400.

⁷⁰ <http://www.pseudoisidor.mgh.de> (accessed 05 September 2008). Letter I of Pontianus is typical, accurately glossed in Italian manuscripts *ut sacerdotes a secularibus non arguantur*, (Letter I of Anacletus has similar material). For the decretals Fuhrmann, *Einfluß* remains fundamental; more recently, K.Zechiel-Eckes, 'Zwei Arbeitshandschriften Pseudoisidors', *Francia* 27 (2000), pp. 205-10.

⁷¹ Benedict Levita's collection (new edition in progress at www.benedictus.mgh.de (accessed 05 September 2008), older editions available through the site) slightly sharpens the capitularies' tone on exempting clerics from secular jurisdiction, eg in I c.378 adding 'cleric' to the Epitome of Julian's prescription that no one can bring monks or nuns to civil judgment. Though not ignoring advocacy altogether, Benedict generally omits capitularies relating to advocates and immunity, and in III c.392 even redefines them as optional.

⁷² Hincmar of Laon's occasional reticence to use advocates (in spite of his complaint discussed above) perhaps points in this direction: see *Annales Sancti Bertini*, ed. Grat, p. 150.

⁷³ H.Dubled, 'L'avouerie des monasteres en Alsace au Moyen Age', *Archives de l'église d'Alsace* 10 (1959) pp. 1-88 points out that Wissembourg did not have an immunity until the tenth century, but had advocates nevertheless (pp. 5-6). St Gall acquired formal immunity only early in the ninth century but had advocates before this point.

⁷⁴ H.Nottarp, 'Das Ludgersche Eigenkloster', *Historisches Jahrbuch* 37 (1916) pp. 80-98 for the historical context. The *vita* is edited by W. Diekamp, *Die Vitae Sancti Liudgeri*, Die Geschichtsquellen des Bistums Münster 4 (Münster, 1881); here c.36, p. 105. For the charter, *Die Urkunden Ludwigs des Deutschen, Karlmanns und Ludwigs des Jüngeren*, ed. P.Kehr, MGH, *Diplomata regum Germaniae ex stirpe*

Karolinorum 1 (Berlin, 1932), n.6, pp. 340-2. Later interpolation was aimed at who appointed this advocate, not his existence.

⁷⁵ Schieffer, *Die Urkunden Lothars I*, n.121 (852), pp. 278-9.

⁷⁶ Louis the German's charters for Kempten (Kehr, *Die Urkunden Ludwigs des Deutschen*, n.66), for Altaich (n.80, and Neuenheersee (n.137), among others. Wolfenbüttel HAB. Gud.299 and Paris BnF.lat.4995 both have administrative jottings.

⁷⁷ Some 'breach of immunity' disputes: i. St Maurice, Vienne, ed. M.Thévinin, *Textes relatifs aux institutions privées et publiques aux époques mérovingienne et carolingienne* (Paris, 1887) n.96 (863), dispute handled by advocate; ii. Caune, ed. J.Vaissette, *Histoire Générale de Languedoc*, 2 vols (Toulouse, 1876), II, n.167, pr.p. 341 (865), advocate not involved but dispute handled in synod; iii. Narbonne monastery, ed.Thévinin, *Textes* n.128 (933), dispute handled by *mandatarius* (common synonym for *advocatus* in the south).

⁷⁸ *Urkundenbuch der Stadt und Landschaft Zürich*, ed. J.Escher (Zürich, 1888-1957), n.189 and n.199.

⁷⁹ *Cartulaire de l'abbaye de Gorze*, ed. A. d'Herbomez (Mettensia 2, Paris, 1898), n.78 (886).

⁸⁰ The Courtisols dispute, in Devroey, *La Polyptyque*, pp. 28-9. An advocate Gauzfred signs as a witness but strikingly played no other part.

⁸¹ Thévinin, *Textes*, n.89, transl. J.Nelson, 'Dispute settlement in Carolingian West Francia', in W.Davies and P.Fouracre (eds.), *The Settlement of disputes in early medieval Europe* (Cambridge, 1986), pp. 56-7. Another dispute in 890 is ed. E.Favre, *Eudes, comte de Paris* (Paris, 1893), p. 239-240.

⁸² St Stephen Dijon, *Chartes de l'abbaye de Saint-Etienne de Dijon*, ed.J.Courtois (Paris, 1908), n.24 (early tenth-century).

⁸³ An 892 Redon charter shows the abbot himself presiding over a local court: W.Davies, *Small Worlds* (London, 1988), p. 196.

⁸⁴ Eg. *Capitularia* I, n.82, c.5, p. 181: the 'dominus eiusdem emunitatis' or his representative (perhaps an advocate?) is to hand over miscreants. The *Capitulare de Villis* discusses *iudices*' powers to discipline the *familia*, via the holding of 'regular audientia' (*Capitularia* I, n.32, c.56, p. 88). Counts exhorted to contact

vicedomini before entering an immunity: *Capitularia* I, n.39, c.2, p. 113. In the *Miracula Vedastini*, count Adelard gives St Vaast land to a *fidelis* Liuthard, who begins to exercise judicial power (MGH *Scriptores* 15, p. 400). I am preparing an article touching on the Laon evidence.

⁸⁵ *HRE* III, c.18, p. 257.

⁸⁶ For royal assemblies, see T.Reuter, 'Assembly Politics in Western Europe from the Eighth Century to the Twelfth', in P.Linehan and J. L. Nelson (eds.), *The Medieval World* (London and New York, 2001), pp. 432-50.

⁸⁷ Defined at the Council of Mainz 813 as one of the many *negotia saecularia* ('in placitis saecularibus disputare'), ed. A.Werminghoff, MGH *Concilia* 2.1, 2nd edition (Hannover, 1997) p. 264.

⁸⁸ Reims, Bibliothèque Municipale 671, fol.72v. The manuscript itself is pre-Hincmar, but the gloss, though hard to date, may be late ninth-century. K.Zechiel-Eckes, *Die Concordia Canonum des Cresconius* (Frankfurt, 1992) associates the manuscript with a group of others: Cologne DS 117 (IX, Eastern France), Paris BnF lat 3846 (IX.in, St Amand), and Cologne DS 115 (IX.in, Cologne), all similarly glossed, but I have not been able to confirm whether they all share this particular gloss.

⁸⁹ See *HRE* III c.26, p. 335 and Hincmar's *Capitula Episcoporum* II c.21, p. 57. Regino does much the same in his *Libri Duo de Synodalibus Causis*, ed. F.Wasserschleben (Lipsen, 1840), II, c.111: 'in seculari iudicio, id est in comitis placito'. *Admonitio Generalis*, in *Capitularia* I n.22, cc. 28 and 38, p. 56, that clerics should not be judged by laymen; and c.73, p. 60 that monks should not go to *secularia placita*. This was repeated in Ansegis *Capitularia*, I, c.69, p. 469, and in other capitularies: *Capitularia* I n.23, c.30, p. 64; n.28, c.11, p. 75; n.29, intro, p. 79; n.33 c.17, p. 94. A capitulary in the now lost Metz, Bibliothèque Municipale 226 explicitly stated that monks should not go to *mallum* courts.

⁹⁰ Eg *Die Urkunden Karls III*, ed. P.Kehr, MGH, *Diplomata regum Germaniae ex stirpe Karolinorum* 2 (Berlin, 1937), n.133. Concern about keeping the two spheres separate was pervasive: eg. Council of Mainz 813, p. 263, complaining about those 'qui dicunt se saeculum reliquisse, et adhuc saeculum sectantur'.

⁹¹ Demonstrating ecclesiastical disquiet, Julianus Pomerius's phrase about church land being the *vota pauperum* took off in the Carolingian period, included in councils (from Aachen 816 to Fîmes 881),

Ansegis and Pseudo-Isidore. See D.Ganz, 'An ideology of sharing', in Davies and Fouracre (eds.), *Property*, pp. 17-30, at pp. 24-6.

⁹² See on this, G.Constable, 'Nona et decima: an aspect of Carolingian Economy', *Speculum* 35 (1960) pp. 224-250, and more recently, Hummer, *Politics*, pp. 76-103.

⁹³ In *De Presbyteris*, Hincmar adds 'pro causa pecuniaria, quae alio nomine in regulis sacris civilis causa vocatur' to the original Valentinian novel. *Causa pecuniaria* also appears in his *Quaterniones*, glossing *civilis causa*. In the Theodosian Code, *causa civilis* is opposed to *negotia ecclesiastica* (XVI.2.23), but in Novel XXXV of Valentinian, to *criminalis causa*.

⁹⁴ Astonishingly, the only systematic study of jurisdiction over the clergy remains A.Nissl, *Der Gerichtsstand des Clerus im Fränkischen Reich* (Innsbruck, 1886), highlighting the ambiguity of both theoretical position and actual evidence. The issue merits further investigation.

⁹⁵ For a recent study of this vision, see R.McKitterick, *Charlemagne: the formation of a European identity* (Cambridge, 2008).

⁹⁶ G.Tellenbach, *The church in western Europe from the tenth to the early twelfth century* (Cambridge, 1993), pp. 297-300 offers a succinct English-language review of central medieval advocacy.

⁹⁷ Dohrmann, *Vögtei*, p. 1.

⁹⁸ Dohrmann, *Vögtei* agrees with O.Brunner, 'dass Vogtei zu jeder Zeit Schutz und Schirm bedeutet hat' (p. 226).

⁹⁹ For significant re-appraisal of the earliest German material, that of St Maximin, on which most accounts rely, see T.Kölzer, *Studien zu den Urkundenfälschungen des Klosters St Maximin vor Trier*, Vorträge und Forschungen Sonderband 36 (Cologne, 1989), particularly pp. 261-81. Episcopal advocates remain fairly well-attested in the mid to late tenth century, but monastic ones much less so. Much work remains to be done here.

¹⁰⁰ For a thoughtful critique of a *Herrschaft*-concept, L.Kuchenbuch, 'Abschied von der Grundherrschaft?', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germ. Abt.* 121 (2004), pp. 1-99.

¹⁰¹ *HRE* I c.20, p. 111; III c.26. The property in this area had been restored by Louis the German (*HRE* III, c.10). Cf. *HRE* III, p. 333 for Gerard, ‘defensor et tutor’ of Reims’s land in Provence. For Montier-la-Celle, *Recueil des actes de Charles II le Chauve*, ed. Tessier, n.201, ‘monasterium sub tuitione et mundeburdo ex longo tempore constat esse comitis...’.

¹⁰² See F.Felten, *Äbte und Laienäbte im Frankenreich* (Stuttgart, 1980), pp. 281-3.

¹⁰³ *Recueil des actes Robert I et Raoul, rois de France*, ed. J.Dufour (Paris, 1978), Appendix, n.37. For lay abbacy at St Martin, see H.Kessler, ‘A lay abbot as patron: Count Vivian and the First Bible of Charles the Bald,’ *Settimane* 39 (1992), p. 647-75.

¹⁰⁴ *Ibid*, ‘ego sum eorum abba et ego debeo de aliis justiciam facere, quanto magis injustitiam ab aliis factam consentire debeam’.

¹⁰⁵ Einhard sent an advocate of his monastery to an unnamed count, to request support in reclaiming *mancipia*, ed.E.Dümmler, MGH, *Epistolae* 5 (Berlin, 1899), pp. 105-145, n.50, p. 134. R.Petit, ‘L’avouerie de l’abbaye de Stavelot du IXe au XIIe siècle’, in *L’avouerie*, pp. 129-159 sees them as mutually exclusive, p. 135, in spite of J.Halkin and C.-G Roland (eds.), *Recueil des Chartes de l’abbaye de Stavelot*, 2 vols (Brussels, 1909-1930) I, n.49 (905) showing a lay abbot co-operating with an advocate.

¹⁰⁶ Cf. however Hummer, *Politics*, p. 209-26.

¹⁰⁷ I should like to thank all those who have long patiently tolerated my interest in advocates, particularly Rosamond McKitterick, Thomas Faulkner and Emma Hunter, as well as EME’s anonymous referees for their most helpful comments.