

Authors and recipients of Carolingian capitularies, 779–829¹

The papers in this volume study texts not as passive reflections of identities but as active means to create or shape them. For these kinds of studies, it is, first of all, important to know a text's author, as well as who else might have influenced its contents or informed its outlook. Such questions do not affect only narrative or literary sources: the longest-standing controversy regarding Carolingian capitularies centres on the issues of authorship and influence.² Capitularies were decrees, collections of chapters on a wide range of legal, administrative or pastoral topics, which were to be sent out from the centre into the regions of the Carolingian empire. They provide us with the most plentiful, if not – as will become apparent – easily interpretable, evidence of Carolingian government.³ The classic view of Carolingian government 'from the capitularies' was developed by François-Louis Ganshof, but his privileging of normative texts has since come under fire from a number of different directions. On the one hand, Hermann Nehlsen argued that capitularies cannot be used as evidence for the reality of Carolingian government because there is not sufficient evidence to prove their actual implementation and use.⁴ On the other hand, historians influenced by anthropological work have criticised Ganshof's use of capitularies on a more fundamental level. They have questioned his assumptions regarding the nature of early medieval government which allowed him to generalise from capitularies' chapters to an anachronistic structure resembling a modern state, working by the delegation of royal power along institutionalised hierarchies of officials.⁵ The capitularies' value as evidence is therefore still being debated.⁶

Regarding the authorship (in the widest sense) of capitularies, the question has been whether the capitularies were drafted and issued by the ruler and his advisers alone, or whether the numerous

¹ An earlier version of the first part of this paper was presented to the Earlier Middle Ages seminar at the Institute of Historical Research, London, whose members I thank for their comments and reactions. I would also like to express my gratitude to the participants of 'Text & Identities' who listened patiently and responded constructively to my thoughts on Carolingian capitularies over a number of years. I am deeply indebted to them for their good suggestions, helpful references, and above all their encouragement and friendship. The final version of this article was prepared whilst I was holding the 'Past & Present' Postdoctoral Research Fellowship at the Institute of Historical Research, London in 2003–4, and I would like to thank both the Past & Present Society and the IHR for their support.

² Hubert Mordek's synthesis, *Karolingische Kapitularien*, in: *Überlieferung und Geltung normativer Texte des frühen und hohen Mittelalters*, ed. Hubert Mordek (*Quellen und Forschungen zum Recht im Mittelalter* 4, Sigmaringen 1986) 25–50 still summarises the dominant current view. The introductory sections of Thomas Buck, *Admonitio und Praedictio. Zur religiös-pastoralen Dimension von Kapitularien und kapitulariennahen Texten* (*Freiburger Beiträge zur mittelalterlichen Geschichte* 9, Frankfurt 1997) 507–814 provide a brief historiographical survey of capitulary scholarship with an exhaustive bibliography. All capitularies will be cited after the following editions: *Capitularia regum Francorum* 1 (ed. Alfred Boretius, MGH LL 2, 1, Hannover 1883) and *Capitularia regum Francorum* 2 (ed. Alfred Boretius/Victor Krause, MGH LL 2, 2, Hannover 1897); apart from the *Admonitio ad omnes regni ordines*, which will be cited after the *Collectio capitularium Ansegisi/Die Kapitulariensammlung des Ansegisi* (ed. Gerhard Schmitz, MGH *Capitularia* NS 1, Hannover 1996) 521–541.

³ See for example François-Louis Ganshof, *Frankish Institutions under Charlemagne* (Providence 1968).

⁴ Hermann Nehlsen, *Zur Aktualität und Effektivität germanischer Rechtsaufzeichnungen*, in: *Recht und Schrift im Mittelalter*, ed. Peter Classen (*Vorträge und Forschungen* 23, Sigmaringen 1977) 449–502.

⁵ See for example Matthew Innes, *State and Society in the Early Middle Ages. The Middle Rhine Valley, 400–1000* (Cambridge 2000), in particular his comments on Ganshof at 5–6.

⁶ This uncertainty surrounds early medieval law in general, see for example Patrick Wormald, *The Making of English Law. King Alfred to the Twelfth Century 1: Legislation and Its Limits* (Oxford 1999).

references to the *consensus fidelium* meant firstly that the empire's leading magnates had their say in them; secondly, they were seen as having had their say; and thirdly, that there were institutional structures which provided the opportunities for them to do so.

Because of the uncertainty surrounding both the processes of capitulary promulgation as well as the workings of Carolingian government, the question of the 'consensus of the faithful' turned into a discussion of who the Carolingian "Träger der Staatsgewalt"⁷ were: which groups legitimately held public power in the empire and were part of its 'legislative'.⁸ Historians' opinions regarding capitularies therefore have thus been influenced by their views on the political make-up of the Carolingian empire. Notably François-Louis Ganshof, believing in the absolute power of the ruler as apparent in the royal *bannum*, argued that, particularly under Charlemagne, the *consensus fidelium* was only a formality by which those consenting bound themselves to obey the *capitula* in question.⁹ Historians like Dieter Hägermann and Gerd Tellenbach saw the rise of the Carolingian dynasty as a result of their cooperation with certain parts of the Frankish aristocracy. Attributing Charlemagne's successful reign to a skillful maintaining of that merging of royal and aristocratic interests in the campaigns to expand the realm, these scholars insisted that *consensus* and *imperator cum fideles* were meaningful terms, and that even the great Charles depended on his ecclesiastical and lay elites' support and cooperation to govern his realm.¹⁰

In this article, I want to explore these much-discussed issues from a new angle, concentrating above all on the form of the internal evidence of the capitularies. The debate on the *consensus fidelium*, and the significance that capitularies thereby acquired in models of Carolingian government, meant that the study of these texts has to a large extent been dominated by questions arising out of their supposed legislative function: by whose legislative authority were they issued, what was the texts' status, what was their 'constitutive' form (oral or written), how effective were they? Scholars with as different viewpoints as François-Louis Ganshof and Reinhard Schneider have tried to reconcile the capitulary texts' form, their often seemingly hotch-potch collections of chapters, with their ideas of what legislation should have looked like.¹¹

The sense that the internal order of chapters might make, or the logic behind a group of capitularies issued together, have thus remained largely unexplored. Of course, in most cases we lack sufficient information about the circumstances of a capitulary's production and its authors to reconstruct the reasoning behind a particular text. Nevertheless, the information gained from looking at a number of capitulary texts as complete units and deliberate products of minds at work (rather than, on the one hand, studying isolated chapters, or, on the other, measuring capitularies against

⁷ Dieter Hägermann, Zur Entstehung der Kapitularien, in: Grundwissenschaften und Geschichte. Festschrift für Peter Acht, ed. Waldemar Schlägl/Peter Herde (Münchener Historische Studien, Abt. Geschichtliche Hilfswissenschaften 15, Kallmünz 1976) 12–27, at 12.

⁸ Hubert Mordek, Unbekannte Texte zur karolingischen Gesetzgebung. Ludwig der Fromme, Einhard und die Capitula adhuc conferenda, in: Deutsches Archiv 42 (1986) 446–470, at 435 writes of the "unverzichtbare Mitwirken der geistlichen und weltlichen Magnaten bei der königlichen Legislative".

⁹ François-Louis Ganshof, Recherches sur les capitulaires (Paris 1958) 29–37; id., Frankish Institutions 16: "*Consentire* was both to give a compulsory recognition of a disposition, whether a general rule or particular measure, as being consistent with the law and also to pledge oneself to comply with it; it was one aspect of the subject's duty of obeying the royal *bannum*."; ibid. 23: "even when it gave its *consensus*, the assembly only played a consultative role." See also Wilhelm A. Eckhardt, Art. "Kapitularien", in: Handwörterbuch zur deutschen Rechtsgeschichte 2, ed. Adalbert Erler/Ekkehard Kaufmann (Berlin 1978) 623–629.

¹⁰ Hägermann, Zur Entstehung der Kapitularien; Gerd Tellenbach, Die geistigen und politischen Grundlagen der karolingischen Thronfolge. Zugleich eine Studie über kollektive Willensbildung und kollektives Handeln im neunten Jahrhundert, in: Frühmittelalterliche Studien 13 (1979) 184–367. See also Werner Affeldt, Das Problem der Mitwirkung des Adels an politischen Entscheidungsprozessen im Frankenreich vornehmlich des 8. Jahrhunderts, in: Aus Theorie und Praxis der Geschichtswissenschaft. Festschrift für Hans Herzfeld zum 80. Geburtstag (Berlin/New York 1972) 404–423.

¹¹ Ganshof tried to make capitularies shape up to his legislative ideas with his classification system, and Schneider with his insistence that, in spite of the evidence, 'charter-like' features in capitularies should be seen not as exceptions, but as the rule. See Reinhard Schneider, Schriftlichkeit und Mündlichkeit im Bereich der Kapitularien, in: Recht und Schrift im Mittelalter, ed. Peter Classen (Vorträge und Forschungen 23, Sigmaringen 1977) 257–279, at 270.

anachronistic standards of ‘legislation’) can give some indications as to possible processes of production, as well as of dissemination. Ten years ago, Rudolf Pokorny argued for a more ‘inductive’ approach to capitulary studies, looking at each text individually and trying to answer questions on the basis of those findings rather than working from assumptions on capitularies in general.¹²

In the first section of this article, I shall explore what information such an approach can render regarding the question of the identity of the author(s). However, if we want to look at these texts as not merely reflecting but shaping identities, we also have to think about their intended audience: the recipients whose identities the author(s) tried to influence. Again, the view of capitularies as ‘legislation’ has resulted in attention being focussed on the authors, the processes of production and the distribution of power between the possible contributing elements of king, royal advisers and aristocracy. Reception, in the form of the manuscript tradition and of references to capitularies in contemporary sources, has been examined only in the light of whether or not capitulary ‘legislation’ proved effective and was treated as secular law. If we want to study texts not only as reflections of identities but as active tools in constructing them, we need to consider that the capitularies’ form might have been deliberately shaped with the texts’ recipients in mind. The second section therefore explores how the internal order of at least some capitularies can be understood as influenced by the chains of communication along which the contents were intended to travel from the centre into the localities.

However, how far can those writing texts really have hoped to shape other people’s (their readers’ or listeners’) identities? Whose words would people have admitted as ‘authoritative’ when it came to their ideas about who they were? At the end of this article, I suggest that an approach based on a number of social psychological concepts on leadership and group identity might open up new and productive questions to explore where the consensus-debate has stalled.

THE RELATIONSHIP BETWEEN CAPITULARIES AND ASSEMBLIES

The first issue to be examined when searching for the identity of capitularies’ authors is most scholars’ implicit assumption that capitularies were closely linked to the general assemblies called by the emperor. In an article originally published in 1983, Janet Nelson wrote (regarding Charles the Bald’s capitularies) that “[t]o see why any particular topic was the subject of a capitulary, we have to understand the text as the residue – all that survives – of the proceedings of an assembly.”¹³ This association of capitularies with regnal assemblies is due to the fact that, whenever capitularies do mention the context of their production, it was an assembly, as in the *Ordinatio Imperii* of 817:

¹² Rudolf Pokorny, Eine Brief-Instruktion aus dem Hofkreis Karls des Großen an einen geistlichen Missus, in: Deutsches Archiv 52 (1996) 57–83, at 78: “Man hat bislang wohl allzusehr ‘deduktiv’ im Lichte prinzipieller Alternativkonzeptionen über Genese und Funktion von Rechtstexten das Feld der Kapitularienüberlieferung vermessen und den in der Kapitularienedition vorgefundenen Texten dabei eine prinzipiell gleichartige Genese unterstellt. Ein stärker ‘induktives’ Vorgehen, ein Durchleuchten der einzelnen Texte unter der Fragestellung, wer eigentlich zu wem spricht, wer eine königliche Rechtssatzung im heute noch faßbaren Text als vermittelnde Instanz formal bereits überformt haben könnte, mag durchaus eine vielgestaltigere Wirklichkeit zum Vorschein bringen, die dennoch nicht durch jene letztlich leicht defätistischen Gesamturteile wie ‘Regellosigkeit’ oder ‘Willkür im Formalen’ charakterisiert werden mußte.”

¹³ Janet L. Nelson, Legislation and consensus in the reign of Charles the Bald, in: *Ideal and Reality. Studies in Frankish and Anglo-Saxon Society* presented to John Michael Wallace-Hadrill, ed. Patrick Wormald/Donald Bullough/Roger Collins (Oxford 1983) 202–227, reprinted in Janet Nelson, *Politics and Ritual in Early Medieval Europe* (London 1986) 91–116, at 100 (cited after the reprint). In the more recent historiography, assemblies are not even mentioned explicitly, so strong is the assumption of their close connection with capitulary promulgation, as the place where the *fideles* consented. See e.g. Buck, *Admonitio und Praedicatio* 35, who – though discussing the historiography of capitularies, including of their production – does not mention assemblies until he remarks on the blurred distinction between canons and capitularies, and that similarly in the sources “lassen sich die Synoden von den Reichsversammlungen weltlichen Charakters überhaupt nur schwer trennen.”

*Cum nos in Dei nomine anno incarnationis Domini octigentesimo septimo decimo ... annoque imperii nostri quarto, mense Iulio, Aquisgrano palatio nostro more solito sacrum conventum et generalitatem populi nostri propter ecclesiasticas vel totius imperii nostri utilitates pertractandas congregassemus...*¹⁴

Assemblies provided the venues for discussions, and capitularies are assumed to record the resulting decisions. There is plenty of evidence for discussions taking place at assemblies, and of documents, including capitularies, being produced in preparation or as a result of these.¹⁵ Thirty years ago, Hubert Mordek discovered a text with the title *De his capitulis interrogandum est*, clearly indicating that these chapters were the agenda for a debate yet to be held.¹⁶ From Charlemagne's reign there survives a similar document which furthermore makes it explicit who was to be consulted: it was headed *Cum primis conferenda*.¹⁷ Even more significantly, in some capitulary clauses matters are explicitly postponed until the *fideles* could be consulted.¹⁸ Some chapters, furthermore, were explicitly described as reactions to issues or cases that had been brought to an assembly. The heading given the first of the capitularies issued at Worms in 829¹⁹ in many manuscripts was *Hec sunt capitula que aliqui ex missi nostris ad nostram notitiam detulerunt anno XVI imperii nostri*.²⁰ There is thus significant support in the texts themselves for the assumed link between assemblies and capitularies. However, as most chapters were phrased as general provisions, we do not generally know what lay behind their inclusion in a capitulary. Franz Felten compiled a list of possible reasons for a provision's appearance in a normative or prescriptive text, which reflects most scholars' thinking on the processes of capitulary production, because most capitularies contain rather hotch-potch collections of not obviously related issues, it is generally assumed that their clauses were the result of the ruler reacting to circumstances.²¹ Both Felten and Nelson were concerned with 'how far rules reflected social reality',²² how – in our case – capitulary chapters related to real eighth- or ninth-century cases, concerns and counsel. In the context of assemblies and capitularies, the question is how far, and in what way, capitularies reflected the business conducted at the assembly with which they were associated. They were not meant as minutes of assemblies – although, as always with capitularies, there is an exception to prove the rule: the capitulary of 794 was unique in recording (at least some of) the events of the synod of Frankfurt, and not just the rules or instructions which resulted from its debates.²³

¹⁴ Cap. 1, nr. 136, ed. Boretius 270. Another example, this time dating to Charlemagne's reign, is provided by the capitulary of Herstal (a. 779): *Anno feliciter undecimo regni domni nostri Karoli gloriosissimi regis in mense Martio factum capitulare, qualiter, congregatis in unum sinodali concilio episcopis, abbatibus virisque inlustribus comitibus, una cum piissimo domino nostro secundum Dei voluntatem pro causis oportunitis consenserunt decretum*. (Cap. 1, nr. 20 Forma communis, ed. Boretius 47).

¹⁵ For more examples, see Hägermann's list (Zur Entstehung der Kapitularien 19–23).

¹⁶ Mordek, *Unbekannte Texte zur karolingischen Gesetzgebung*.

¹⁷ Cap. 1, nr. 51, ed. Boretius 138f.

¹⁸ Early in 829, Louis ordered a temporary arrangement regarding the status of ecclesiastical lands, which is to be in place till a general assembly could decide on the issue: ... *usque dum nos ad generale placitum nostrum cum fidelibus nostris invenerimus et constituerimus, qualiter in futurum de his fieri debeat*. (Cap. 2, nr. 188 c. 1, ed. Boretius/Krause 9).

¹⁹ Cap. 2, nr. 191, ed. Boretius/Krause 12–14.

²⁰ This particular form is to be found in the manuscript Gotha, Forschungsbibliothek Memb. I 84, fol. 408rb. All information on capitulary manuscripts is taken from Hubert Mordek, *Bibliotheca capitularium regum Francorum manuscripta. Überlieferung und Traditionszusammenhang der fränkischen Herrschererlasse* (MGH Hilfsmittel 15, München 1995) 146.

²¹ Franz Felten, *Konzilsakten als Quellen für die Gesellschaftsgeschichte des 9. Jahrhunderts*, in: *Herrschaft, Kirche, Kultur. Beiträge zur Geschichte des Mittelalters. Festschrift für Friedrich Prinz zu seinem 65. Geburtstag*, ed. Georg Jenal/Stephanie Haarländer (Monographien zur Geschichte des Mittelalters 37, Stuttgart 1993) 177–201, at 195: a) the ruler had heard of a bad practice or abuse for the first time; b) a bad practice or type of abuse had become so frequent and widespread that the ruler finally decided to do something about it; c) the ruler, for reasons of his own, wanted to combat a current and usual practice; d) for certain reasons, that particular point in time seemed favorable for introducing measures against an existing practice to which the ruler had been wanting to put an end for some time.

²² Nelson, *Legislation and consensus* 99.

²³ Chapters 1–3 and 55–56 of the capitulary of the synod of Frankfurt of 794 report how, and in what order, the assembly's business was conducted. Chapter 3, for example, describes how Tassilo, the former Bavarian duke, had to confess to his guilt of treason against the Frankish kings whilst standing *in medio sanctissimi ... concilii*. (Cap. 1, nr. 28 c. 3,

The connection between an issue raised and debated at an assembly and a capitulary chapter should not be imagined as necessarily direct or straightforward. Take for example a chapter of the capitulary of Herstal, which ruled on what should happen if somebody did not want to accept a payment instead of retaliating violently for injury done to him or his family.²⁴ The chapter went on to include in its provision those who refused to pay the *precium* in the first place: *Simili modo et qui pro faida pretium solvere noluerit nec iustitiam exinde facere...* As such a price can only be accepted once it has been offered, this chapter could logically have been arranged not in the order in which it was published but the other way round, approaching the subject matter chronologically. That it did not do so might indicate that it was a reaction to a complaint about people refusing to accept payments which had been brought to an assembly. Whether or not this is an accurate reconstruction of its origin, this chapter serves to remind us that issues raised and debated at assemblies appeared in capitularies in a developed form; additional facets could appear in discussions and further questions be raised. If problems were brought to the emperor, a solution needed to be worked out – what, for example, was to be done with a count who was found to neglect his judicial duties? The solution published in the capitulary of Herstal was to order the *missi* who were sent to investigate him to live off his lands for the time it took them to make up for his negligence.²⁵

In a capitulary issued at Nijmegen in 806, chapter 17 prohibited the practice of buying produce cheap at harvest time in order to sell it at a profit when the prices had risen.²⁶ The next chapter provided the context for this by mentioning a famine which had affected areas of the realm that year: *Consideravimus itaque, ut praesente anno, quia per plurima loca fames valida esse videtur*²⁷ These two chapters were preceded by six *capitula* (chapters 11–16 of the capitulary), which contained no further royal decisions or instructions, but definitions of usury, cupidity, avarice and filthy lucre.²⁸ We have here a good example of how the issue in question, a famine, *might* have been developed by the ruler and his advisors, combined perhaps with concerns which had been occupying court intellectuals, and resulted in the end in eight capitulary chapters.

Such thematic clusters of chapters occur quite regularly in capitularies.²⁹ There are also extant a number of completely thematic capitularies, such as the *Capitulare de villis*, which concerned the running of royal estates,³⁰ two capitularies which contained Charlemagne's orders exclusively on military matters,³¹ and a capitulary of Louis the Pious which dealt with the discipline of the palace at Aachen.³² The subject matter of these capitularies was obviously not determined by what issues had been raised or decided at a specific assembly, but either chapters on a certain theme had been collected over a period of time and perhaps from a number of assembly debates and other discussions (this might have been the case with the *Capitulare de villis*), or a decision had been made to send out a text concerned with only this one theme due to immediate need (such as the military capitulary concerning raising the army in the aftermath of a famine).

ed. Boretius 74) See also *ibid.*, c. 56, ed. Boretius 78: *Commonuit etiam [imperator] ut Aliquinum [that is, Alcuin] ipsa sancta synodus in sua consortio sive in orationibus recipere dignaretur ... Omnis namque synodus secundum ammonitionem domni regis consensit et eum ... receperunt.*

²⁴ Cap. 1, nr. 20 c. 22, ed. Boretius 51: *Si quis pro faida precium recipere non vult, tunc ad nos transmissus, et nos eum dirigamus ubi damnum minime facere possit.*

²⁵ Cap. 1, nr. 20 c. 21, ed. Boretius 51

²⁶ Cap. 1, nr. 46 c.17, ed. Boretius 132: *Quicumque enim tempore messis vel tempore vindemiae non necessitate sed propter cupiditatem comparat annonam aut vinum, verbis gratia de duobus denariis comparat modium unum et servat usque dum iterum venundare possit contra dinarios quatuor aut sex aut amplius, hoc turpe lucrum dicimus...*

²⁷ Cap. 1, nr. 46 c.18, ed. Boretius 132.

²⁸ E.g. Cap. 1, nr. 46 c.11, ed. Boretius 132: *Usura est ubi amplius requiritur quam datur...*

²⁹ Another example are the first five chapters of a capitulary of Charlemagne which dealt with brigands, *latrones*: how they should be found and interrogated, what should be done with a free person accused of being a brigand, how such a person could clear themselves of the accusation, and what should happen if a *latro* fled into an area which had been granted judicial immunity. (Cap. 1, nr. 82 cc.1–5, ed. Boretius 180–181).

³⁰ Cap. 1, nr. 32, ed. Boretius 83–91.

³¹ Cap. 1, nr. 50, ed. Boretius 137–138 and nr. 74, ed. Boretius 166f.

³² Cap. 1, nr. 146, ed. Boretius 294.

The results of assembly debates therefore underwent processes of selection and redaction before some of them ended up in capitularies. However, the connection between capitularies and assemblies might well have been even less direct in many cases. Although capitularies mention assemblies as the context of their production when they do so at all, only four capitularies of Charlemagne, and eleven of Louis the Pious (issued at five different assemblies) actually do state they were promulgated at an assembly. About a further four for Charlemagne, and five for Louis the Pious seem to have been issued at assemblies, mostly by their association with capitularies which explicitly state that they were. For the vast majority, however, we simply do not know in what contexts they were produced. This is the case for ca. 40 capitularies of Charlemagne, and about 16 of Louis the Pious.³³

On the other hand, we know that some capitularies were definitely not issued at assemblies. The agendas for debates are of course assumed to have been produced beforehand. In his treatise *De ordine palatii*, Hinemar wrote that lists of chapters to be discussed and decided were presented to the *proceres* when they arrived for the assembly, so that it did not look as if they had been called together for no reason.³⁴ But even capitularies recording decisions could be issued outside assemblies. As mentioned above, in the first chapter of a capitulary issued early in 829, Louis the Pious ordered that ecclesiastical property was temporarily to be treated in the same way as the royal fisc for the purposes of legal disputes, until the emperor and his *fideles* could decide the matter at the next general assembly.³⁵

Not every collective decision mentioned should be taken as evidence of an assembly, either. The so-called *Capitulum in pago cenomannico datum*³⁶ recorded a decision which had been taken *una cum consultu fidelium nostrorum*. Its subject matter was a particular local problem of the *pagus* of Le Mans, and the royal order regarding it seems to have been made whilst the emperor was still in the area, but no assembly is known to have been held there.³⁷ The *fideles* who advised the emperor in this case must either have been part of the usual royal entourage or local magnates in attendance on the visiting ruler.

Capitularies of indisputable significance were also issued outside assemblies: if the rubric preserved in some manuscripts for the two capitularies of Thionville³⁸ is correct in stating that the texts were issued in the fifth year of Charlemagne's *imperium* and before Christmas, they must have been published just before the assembly which was held in Thionville after Christmas, in January or February 806.³⁹ Charlemagne's *Admonitio generalis* was also not produced in connection with an assembly. It

³³ Charlemagne: explicitly at assemblies: capitularies nr. 20, 27, 28, 77 (perhaps also nr. 21, 26, 29, 45, 52, 54); not at assemblies: nr. 22, 23, 31, 51, 58, 71, 72, 74 (perhaps also nr. 43 and 44). Louis the Pious: explicitly at assemblies: nr. 134, 135, 136, 137–140, 185, 191–193 (perhaps nr. 142); not at assemblies: nr. 145, 186, 188. The numbers vary according to what evidence you accept as implying production at assembly, and of course due to which texts you admit as capitularies at all.

³⁴ Hinemar, *De ordine palatii* 7 (ed. Thomas Gross/Rudolf Schieffer, MGH *Fontes iuris Germanici antiqui* 3, Hannover 1980) 90–92: *Proceres ... ne quasi sine causa convocari viderentur, mox auctoritate regia per denominata et ordinata capitula, ... eis ad conferenda vel ad considerandum patefacta sunt.*

³⁵ Cap. 2, nr. 188 c.1, ed. Boretius/Krause 9: *Volumus, ut omnes res ecclesiasticae eo modo contineantur, sicut res ad fiscum nostrum contineri solent, usque dum nos ad generale placitum nostrum cum fidelibus nostris invenerimus et constituerimus, qualiter in futurum de his fieri debeat.*

³⁶ Cap. 1, nr. 31, ed. Boretius 81f.

³⁷ The capitulary is not dated securely, but assumed to have been issued in 800 because Charlemagne might have passed through the *pagus* of Le Mans on his way from Rouen to Tours. In that year, assemblies seem to have been held in Tours in May and in August in Mainz; another just before the former is therefore unlikely. Irrespective of whether 800 is the correct date or not, *quando in Caenomanico pago fuimus* would have been an unusual description of an assembly location, as these were – of necessity – called at more precisely denoted sites, mostly royal palaces. If 800 is the correct date, the *fideles* present might have been those gradually joining the royal train *en route* to the Tours assembly.

³⁸ Cap. 1, nr. 43 and 44, ed. Boretius 121–126.

³⁹ The manuscript Vatican, Biblioteca Apostolica Vaticana, Pal. lat. 582, fol. 19v transmits the following heading for nr. 43: *AD TEOTONEM UILLAM FUIT DATUM IN ANNO V IMPERII ANTE NATALE DOMINI* (also to be found in the related manuscript Paris, BN lat. 9654). However, another manuscript, Wolfenbüttel, Herzog August Bibliothek, Blank-

was written in the form of a letter to the lay and ecclesiastical *optimates*, and sent out with the royal *missi*:

*Quapropter et nostros ad vos direximus missi, qui ex nostri nominis auctoritate una vobiscum corrigerent quae corrigenda essent. Sed et aliqua capitula ex canonicis institutionibus quae magis nobis necessaria videbantur, subiunximus ...*⁴⁰

There is therefore no contemporary evidence supporting the assumption that assemblies were the only legitimate, or usual, context of capitulary promulgation: not only agendas or memoranda for *missi* were produced outside assemblies, but also capitularies containing detailed provisions of obviously high status. The favouring of assemblies over other contexts of promulgation by historians is not founded on the evidence but a result of interpreting capitularies as legislation, because of the question of the *consensus fidelium* and perhaps related, unconscious associations between legislation and legislative assemblies.

The findings of this brief exploration of some aspects of capitularies' internal structures – both regarding the (potentially multiple) processes of chapters' selection and redaction, as well as the non-requirement of the assembly as legitimating forum – show, firstly, that we ought to take into account the existence of the different ways (as well as the different contexts) in which these texts came into being, traces of which can sometimes be recovered by looking at the texts' internal order and the interrelatedness of chapters. However, more importantly, it also follows from this that the context of production is not sufficient to explain the form capitularies took. Once we have rid ourselves of the legalistic paradigm and the oversimplistic straightforward association of capitularies with assemblies, it is unnecessary to attribute significance exclusively to promulgation processes. In the following, therefore, I want to propose a different angle from which light might be shed on capitulary texts' form, which in turn might aid our understanding of their function: the intended recipients.

CHAINS OF COMMUNICATION

We have found that a capitulary was not necessarily the “residue – all that remained”⁴¹ of one assembly's debate but could be the result of processes of redaction and selection which took into account the debates and events at a number of assemblies, and probably discussions and developments outside assemblies, too. Furthermore, just as a capitulary did not have to be the result of one assembly, an assembly did not have to result in one capitulary: it could produce none, or more than one, and it is the latter case that I want to explore.

There are a number of occasions, not all of them assemblies, at which a group of capitularies seems to have been issued simultaneously: the texts refer to one another, or have rubrics which link them, and are closely associated in the manuscript tradition. Two capitularies of Charlemagne, called by Boretius *Capitulare legibus addendum* and *Capitulare missorum* respectively and dated to 803, were not only transmitted together in 41 of their nearly 50 manuscripts, but in nine of these their chapters were numbered continuously, so that they in effect became one text.⁴²

The group of capitularies that I want to examine here, however, is one associated with a winter assembly of Louis the Pious which took place in Aachen after Christmas 818.⁴³ The first capitulary of the group, named the *Prooemium generale* by Boretius, was not divided into chapters and did

enburg 130, fol. 79r dates the capitulary to 806: *CAPITVLARE DOMINICVM DATUM ANNO DOMINI DCCCVI AD THEODONIS VILLAM ANNO IMPERII DOMNI KAROLI VI* (Mordek, *Bibliotheca* 786, 567 and 924 respectively).

⁴⁰ Cap. 1, nr. 22 c. 1, ed. Boretius 53. It also included an eschatocol in which it was called a *legationis edictum*: *Anno dominicae incarnationis DCCLXXXVIII. indictione XII. anno XXI. regni nostri actum est huius legationis edictum in Aquis palatio publico. Data est haec carta die X. Kalendas Aprilis.* (ibid., ed. Boretius 62).

⁴¹ Nelson, *Legislation and consensus* 100.

⁴² Of 50 manuscripts containing the *Capitulare legibus addendum* (Cap. 1, nr. 39) 41 also transmit the *Capitulare missorum* (Cap. 1, nr. 40). These statistics are based on information provided by Mordek, *Bibliotheca*.

⁴³ Cap. 1, nr. 137–140, ed. Boretius 273–288.

not contain any provisions, but made known to all *fideles* how and why the emperor had called an assembly:

... accersitis nonnullis episcopis, abbatibus, canonicis et monachis et fidelibus optimatibus nostris, studuimus eorum consultu sagacissima investigare inquisitione qualiter unicuique ordini, canonicorum videlicet, monachorum et laicorum, iuxta quod ratio dictabat et facultas suppetebat, Deo opem ferente consuleremus.⁴⁴

There follows, however, not one capitulary but three: the capitularies' authors decided to spread the provisions over three separate documents. Given that the Prooemium repeatedly mentions three *ordines* of monks, canons and laymen, we might expect that to have been a clue to the division of the texts, but it clearly does not apply. Can we deduce another reasoning behind the order and arrangement of the texts and their chapters?

The capitularies in question (Boretius nr. 138–140) refer to one another, and the first of them mentions chapters contained in the other two texts as *adnotata subter*, 'noted down below': the capitularies were thus envisaged as a group of written texts, and in a certain order.⁴⁵ This order was adhered to in a large number of the extant manuscripts, and in many of them the texts were also followed by a further capitulary (nr. 141) which explicitly ordered the implementation of some of their provisions. In that text, the chapters of nr. 138–140 were referred to as *nuper a nobis constitutum*, 'lately decreed by us'.⁴⁶ Boretius called this text *Capitulare missorum* and dated it to 819, assuming that it had been issued not long after the group of capitularies of the 818/819 winter assembly.

These four texts have played a significant role in the historiography of capitularies not due to their length, or the significance of their provisions, but because Boretius used them as the basis for his system of classification. He proposed three types of capitularies which dealt with mostly secular subject matter: *capitularia legibus addenda* (based on nr. 139), *capitularia per se scribenda* (based on nr. 140) and *capitula missorum* (nr. 141). To these types he ascribed different legal significance and validity, ranging from the solemn additions to the 'national' law codes in the form of *capitularia legibus addenda*, to the largely administrative instructions of the capitularies for the *missi dominici*. This typology has been much criticised since its publication,⁴⁷ mostly because historians found it too rigid to apply to the diverse forms of capitularies. They had to conclude that most capitularies were *capitula mixta*, capitularies mixing provisions which – according to Boretius' classification – would have belonged to different types.⁴⁸ However, Boretius' typology still exerts influence over the current historiography, not least because it is embodied in his MGH-edition.⁴⁹ I do not, however, intend to engage here in the debate about Boretius' typology, but only to use the evidence on which it was based to suggest a different approach. For the names for his capitulary types, Boretius drew on the headings given to them in the manuscripts:

nr. 138: *HAEC CAPITULA PROPRIAE AD EPS. UEL AD <OR>DINES QUOQUE ECCLESIASTICOS PERTINENTIA QUALITER NON SOLUM OBSERUARE SED ETIAM SIBI SUBIECTIS UEL COMISSIS FACIENDA PERDOCERE DEBENT*⁵⁰

⁴⁴ Cap. 1, nr. 137, ed. Boretius 274.

⁴⁵ Cap. 1, nr. 138 c. 14, ed. Boretius 278: ... *qualiter constitui et ordinari nobis placuerit aliis capitulis subter adnotauimus...*; *ibid.*, c. 15, ed. Boretius 278: ... *similiter in subter adnotatis capitulis insertum esse dinoscitur...*

⁴⁶ See for example Cap. 1, nr. 141 cc. 5, 11 and 12, ed. Boretius 289 and 290 respectively.

⁴⁷ Gerhard Seeliger, *Die Kapitularien der Karolinger* (München 1893), remains the most detailed and incisive critique of Boretius' writings.

⁴⁸ Ganshof, *Recherches* 16, introduced the term *capitularia mixta*. See also Eckhardt, *Kapitularien* 625, and Schneider, *Schriftlichkeit und Mündlichkeit* 260.

⁴⁹ See e.g. Buck, *Admonitio und Praedicatio* 27: "Daß wir kaum ein Kapitular einer der oben genannten Gruppen [Boretius' three types or a division into either ecclesiastical or secular capitularies] ohne Abstriche zuordnen können, es also 'meist' mit Mischformen zu tun haben, tut der Tatsache keinen Abbruch, daß die vor allem von Boretius herbeigeführte terminologische Klärung gleichwohl einen ersten erkenntnismäßigen Anhalt im Umgang mit dieser diffusen, ja ungriffigen Stoffmasse bietet."

⁵⁰ Copenhagen, Kongelige Bibliotek Gl. Klg. Saml. 1943, 4^o, fol. 86vb. Mordek, *Bibliotheca* 192–194, dates this manuscript to the late ninth century, but suggests that its exemplar was probably produced in a scriptorium close to the court because of some of the texts uniquely transmitted here.

nr. 139: *INCIPIUNT CAPITULA que legibus addenda sunt, que missi et comites habere et ceteris nota facere debent*⁵¹

nr. 140: *ITEM INCIPIUNT ALIA CAPIT. QUAE PER SE SCRIBENDA ET AB OMNIBUS OBSERUANDA SUNT*⁵²

It is immediately obvious that Boretius only used parts of these headings for the secular types, and disregarded it completely in the case of the *Capitulare ecclesiasticum* (nr. 138). For the latter, the majority of manuscripts contain the heading cited above (or a variant form of it) in which it is described as ‘chapters which pertain to bishops and other ecclesiastical orders (*ordines*), which they not only should observe themselves but also teach to those subordinate and entrusted to them’. This was reflected in the capitulary’s contents: most of the chapters concerned bishops, monks, canons and priests. A number of the clauses about priests also involved the bishops to whose authority the priests of a diocese were subjected (*subiecti*), and the last eight chapters dealt with issues relating to the conduct of laypeople, the people entrusted (*commissi*) to the bishops’ spiritual care.

We can use the heading of the next capitulary (nr. 139) in a similar way as a key to the text. The first part, chapters 1–15, dealt with broadly judicial and legal matters, such as the fines to be paid for injuring a priest in church (cc. 1–2) or the punishment for abducting a widow (c. 4), as well as procedures for property transactions (c. 6) and meetings of the count’s *mallus* (cc. 12–15). These were relevant to the counts in their role as the highest judicial authority of their *comitatus*, and to the *missi dominici* because a significant (and often in their instructions emphasised) part of their missions was to ensure and supervise that justice was done by the count and his subordinates, and to hear cases themselves.⁵³

These first 15 chapters could also have made sense in a capitulary *legibus addenda* according to Boretius’ typology because, although they did not refer to the *leges* explicitly, they at least dealt with what Boretius saw as proper subject matter for legislation: criminal law and judicial procedure. Chapters 16 to 21 of the capitulary, however, fit his type less well. Provisions about respecting the instructions given in royal letters (c. 16), the abolition of unjust (because only recently imposed) tolls (c. 17), and monetary reform (cc. 18–19) should, according to Boretius, have been included in the next capitulary, the *Capitula per se scribenda*, because they were not matters of *Volksrecht* but concerns of the ruler, dealing with royal authority and resources. But these chapters were appropriate in a capitulary for counts and *missi*, who in other capitularies were explicitly charged with the announcement, implementation and supervision of such measures and matters.⁵⁴ This capitulary, therefore, expressed the centre’s view of the roles of counts and *missi* as sometimes complementary, sometimes alternative agents of the higher levels of justice in the localities, and also as the channels of communication through which information from the centre was disseminated throughout the realm – these were chapters ‘to have, and to make known to others’.

In Boretius’ typology, the next capitulary (nr. 140), the *Capitula per se scribenda*, was to deal with *Königsrecht* – and to a certain extent it did. The chapters include one on benefices (c. 3), another on forests (c. 7), and instructions about what to do with unfree dependents who fled from their lord’s estate to a royal vill (c. 6). That the gathering together of royal concerns was not the reasoning behind this text, however, is not only shown by the fact that such chapters were also contained in the

⁵¹ Copenhagen, Kongelige Bibliotek Gl. Klg. Saml. 1943.4°, fol. 91va.

⁵² Paris, BN lat. 2718, fol. 108r. The manuscript was written around 830 and a product of the *Leges*-scriptorium (Mordek, Bibliotheca 422–423).

⁵³ See e.g. Cap. 1, nr. 33 c.1, ed. Boretius 92; *ibid.*, nr. 141 c. 1, ed. Boretius 289, or *ibid.*, nr. 151 c. 2, ed. Boretius 308; also Astronomer, *Vita Hludowici imperatoris* 23 (ed. Ernst Tremp, MGH SS rer. Germ. in us. schol. [64], Hannover 1995) 354: *Eodem anno [814] generalem conventum Aquisgrani habuit per universas regni sui partes fideles ac creditarios a latere suo misit, qui equi iuris tenaces existentes perversa corrigerent omnibusque congruum ius equo libramine penderent.*

⁵⁴ See e.g. the capitula missorum (Cap. 1, nr. 141 c. 12, ed. Boretius 290) issued not long after the 818/819-group, which explicitly order the implementation of some of their chapters: *De nova moneta et de falsa moneta et de dispectu litterarum nostrarum et de latronibus coerendis vel puniendis et de faldis pacandis, de homicidiis prohibendis, de periuriis et falsis testibus conpescendis, de his omnibus vel caeteris his similibus hoc quod modo constituimus omnibus adnuntietur et in futurum observetur.* Counts and *missi* are also entrusted with similar tasks in the *Admonitio ad omnes regni ordines*, c. 18 (money), c. 19 (unjust tolls), ed. Schmitz 535–537.

previous capitulary, as we saw earlier, but also by the inclusion of chapters which did not actually affect the emperor, of which the first chapter is an example. Discussing *mancipia* which had fled from their lord into somebody else's power, it makes no reference to the emperor as either affected party or authority to appeal to in case of dispute; indeed a possible scenario in which the emperor would have been affected was discussed later in the capitulary in chapter 6.⁵⁵

What the provisions of the *capitula* – discussing unfree dependents, different kinds of lands and landholding, and ninth and tithes to be paid from produce and livestock – had in common, seems rather to have been the fact that all these issues concerned landowners. Continuing our focus on the target audiences mentioned in the capitulary headings, the *omnes* who were to observe the *capitula per se scribenda* could be read in contrast to the splitting up of bishops on the one hand, and counts and *missi* on the other, in the previous two texts and be taken to signify that this capitulary affected all magnates, lay and ecclesiastical, because all were landholders.

The idea of bishops, counts and *missi dominici* as links in the chains of communication connecting the emperor with (specific parts of) the population in the localities is also reflected in other capitularies. In chapter 4 of the *Admonitio ad omnes regni ordines*, Louis the Pious addressed the bishops. As part of his admonition to them, he elaborated some of their duties, which serve to explain how they were in a position to pass on information from the centre to the localities: responsible for the spiritual care of those in their diocese, they were to show them the way of life (*iter vitae*) by living example and through preaching, and to supervise the religious communities in their *parrochia*.⁵⁶ The bishops' mediating function is therefore a result of their place in the ecclesiastical hierarchy as developed by the Carolingians.⁵⁷ Thus the next chapter (c. 5) dealt with priests, but it was still addressed to bishops:

*De sacerdotibus vero ad vestram curam pertinentibus magnus adhibere studium, ut qualiter vivere debeant et quomodo populis ad suam portionis curam pertinentibus exemplo et verbo prosint, a vobis cum magna cura edoceantur, admoneantur et id ut facere studeant, vestra pontificali auctoritate constringantur.*⁵⁸

The bishops were to pass on the emperor's admonitions to the priests of their diocese "whose care pertained to them".

An example from Charlemagne's reign demonstrates how that emperor treated the counts as answerable for what went on amongst the lay population of their *comitatus*. In a capitulary issued in 811, the emperor started by separating bishops and abbots from the counts and addressing them individually (*singulariter*) (c. 1). This is indeed reflected in the order of the chapters: chapters 2–4 deal with secular issues, chapters 6–13 concern religious matters. In between the two sections was a transitional chapter (c. 5), aimed at both counts and bishops, asking in what ways ecclesiastics impeded laymen, and *vice versa*, in the carrying out of their offices (*ministeria*). In the first, secular, section of the capitulary, the emperor asked (c. 2) what the causes were of one man refusing to help another in the marcher regions or in the army where he should do whatever was useful for the defence of the *patria*. Chapter 3 whence came the frequent disputes in which one man claimed from another whatever he saw that his peer possessed.⁵⁹ Though counts were not being criticised directly, these

⁵⁵ Cap. 1, nr. 140 c. 1, ed. Boretius 287: *De forcapitiis. Si mancipia dominos suos fugerint in alienam potestatem, ut propter hoc nullam praemium accipiat ille in cuius potestate fuerint inventa...*; *ibid.*, c. 6, ed. Boretius 288: *De mancipia in villas dominicas confugientibus. Si cuiuslibet mancipia in villam nostram confugerint...*

⁵⁶ *Admonitio ad omnes regni ordines* c. 4, ed. Schmitz 523f.: *Sed quoniam scimus, quod specialiter pertineat ad episcopos, ut primum ad sacrum ministerium suscipiendum iuste accedant et in eodem ministerio religiose vivant et tam bene vivendo quam recte praedicando populis sibi commissis iter vitae praebeant et ut in monasteriis in suis parrochiis constitutis sancta religio observata fiat... curam impendant.*

⁵⁷ See the article by Carine van Rhijn in this volume.

⁵⁸ *Admonitio ad omnes regni ordines* c. 5, ed. Schmitz 524f.

⁵⁹ Cap. 1, nr. 71, ed. Boretius 161: *Cap. 1. In primis separare volumus episcopos, abbates et comites nostros et singulariter illos alloqui. 2. Quae causae efficiunt, ut unus alteri adiutorium praestare nolit, sive in marcha sive in exercitu ubi aliquid utilitatis defensione patriae facere debet. 3. Unde illae frequentissimae causationes, in quibus unus alteri quaerit, quicquid parem suum viderit possidentem. 4. De eo quod quilibet alterius hominem ad se fugientem suscipit. 5. Interrogandi sunt, in quibus rebus vel locis ecclesiastici laicis aut laici ecclesiasticis ministerium suum impediunt.*

(highly leading and largely rhetorical) questions carry the implication that they had been neglecting their duties, such as to ensure peace and justice in their *ministeria*.⁶⁰ For the purposes of his government and administration, Charlemagne treated lay society as similarly hierarchical as the ecclesiastical orders.

Other capitularies did not make explicit an internal order of chapters according to addressees, but there were a number in which ecclesiastical and secular chapters were separate, such as the capitulary of Herstal.⁶¹ Its first six chapters dealt with episcopal concerns and duties in which we can again see the reflection of both ecclesiastical hierarchy and channels of communication. Two clauses affecting both laymen and ecclesiastics (chapter 7 about tithe, and chapter 8 about murderers seeking asylum in church) represented the transition from the ecclesiastical to the second, largely secular, part of the text. This division could, of course, have had a number of possible causes: it could be the result of an intentionally thematic arrangement of *capitula*, or of the assembly having split into a lay and an ecclesiastical section to debate the relevant issues. But even if the internal order of this capitulary was influenced by such reasons, the effect, an organisation of clauses which reflected to whom they were addressed, was the same. There is, furthermore, a stray *capitulum* in the latter part of the capitulary which concerns ecclesiastical lands, the position of which in the secular section can be justified if we consider that it was addressed to those who held those lands *de verbo nostro*, in other words, to the ruler's lay followers who had been granted church lands by him.⁶²

In the same way, thematic capitularies such as the *Capitulare de villis* (nr. 32) on the running of royal estates, or the *Capitulare Bononiense* (nr. 74) which dealt exclusively with military matters, could also be seen as having been tailored to a certain audience of recipients. This is perhaps also implied by a chapter of the *Admonitio ad omnes regni ordines*, which refers to *capitula* 'given to those counts in whose *ministeria* money was minted'.⁶³

I therefore propose that, firstly, the form of at least some capitularies was influenced – and in some cases determined – by who the intended recipients of the text were, and secondly, that the intended audience for the instructions contained in a capitulary was not necessarily synonymous with the recipients of the text, but that the texts were intended for the use of bishops, counts, *missi* and other magnates, who passed this information on in their respective *ministeria* to those whom it concerned.

We know very little about how copies of capitularies were disseminated,⁶⁴ but in the few instances in which explicit instructions were given in the texts, a similar structure of chains of communications linking the emperor with the localities through the agency of bishops, counts and *missi* is evoked. Possibly at the end of an assembly, Charlemagne entrusted the chapters edited by Boretius as nr. 54 to the bishops, abbots and counts who were going home soon, to make them known *per singula loca* and try and observe their provisions. Incidentally, the recipients of this capitulary were also to take over these duties in neighbouring areas of *optimates* who had gone on campaign.⁶⁵ This might suggest that the magnates indeed represented the usual channels of information (at least in

⁶⁰ For Louis' reign, see the *Admonitio ad omnes regni ordines* c. 6, ed. Schmitz 526: *Vobis vero comitibus dicimus vosque commonemus, quia ad vestrum ministerium maxime pertinet, ut ... vos ipsi in ministeriis vestris pacem et iustitiam faciatis ...*

⁶¹ Cap. 1, nr. 20, ed. Boretius 47–51. Other capitularies which seem to have an ecclesiastical and a secular section include *ibid.*, nr. 33 (cc.10–24 ecclesiastical/religious; cc. 25–40 secular), ed. Boretius 93–99.

⁶² Cap. 1, nr. 20, *Forma langobardica*, c. 14, ed. Boretius 50: *De rebus vero aecclesiarum, que usque nunc per verbo domni regis homines seculares in beneficium habuerunt, ut inantea sic habeant, nisi per verbo domini regis ad ipsas ecclesias fuerint revocatas...*

⁶³ *Admonitio ad omnes regni ordines* c. 18, ed. Schmitz 536: *...iuxta illam constitutionem, sicut in capitulis, quae de hac re illis comitibus dedimus, in quorum ministeriis moneta percutitur, constitutum est.*

⁶⁴ See the discussion in Rosamond McKitterick, *Zur Herstellung von Kapitularien: Die Arbeit des Leges-Skriptoriums*, in: *MIÖG* 101 (1993) 3–16.

⁶⁵ Cap. 1, nr. 54, ed. Boretius 141: *Capitula quae volumus, ut episcopi, abbates et comites qui modo ad casam redeunt per singula loca eorum nota faciant et observare studeant, tam infra eorum parrochias et missaticos seu ministeria eorum conviciantium qui in exercitu simul cum equivoco nostro perrexerunt.*

the direction from the centre outwards), which a locality lacked in the absence of its bishop, abbots, counts and *missi*.⁶⁶

I do not here want to re-establish the assumption of an automatic link between assemblies and capitularies by virtue of their dissemination, having rejected one by virtue of their production. It seems likely, however, that any texts finished in time for an assembly would have been published there, and handed out to be disseminated by the participants. However, we also have a lot of evidence for dissemination through *missi*; and ironically, one of the cases in which this would have happened was probably when capitularies were actually the result of an assembly and its discussions: the actual text and the necessary numbers of copies might well have been produced after most of the assembly participants had already left for home. That the *missi* had a great share in the dissemination of capitularies is evidenced by such headings as that of the so-called *Capitulare legibus addenda* of 818/819 discussed above, and also one of Charlemagne: *Haec capitula missi nostri cognita faciant omnibus in omnes partes*.⁶⁷ The connection between capitularies and *missi* is also made in some of the chapters themselves. The first chapter in a capitulary of Charlemagne for Aquitanian *missi* refers to an “edict which our lord and father Pippin instituted and which we subsequently ordered to be kept and implemented through our *missi*.”⁶⁸ In the last years of his reign, he issued a capitulary which ended with an injunction to his subjects to observe the chapters in this and other capitularies if they wanted to keep the oath of fidelity they had sworn to him, and continued: *de istis autem capitulariis atque de aliis omnibus, quae a multis annis missimus per regnum nostrum, volumus nunc pleniter per missos nostros scire, quid ex his omnibus factum sit...*⁶⁹ Capitularies are here described as being sent out into the realm, just like the *missi dominici* who are now ordered to check whether their provisions were being followed.⁷⁰

Quite a large number of capitularies might thus perhaps be called *capitula missorum*: not because – as Boretius defined them – they contained only administrative instructions for the *missi*, but because it seems that the *missi* were the recipients of many of the texts, which they then had to make known to those who were to receive the contents. Many capitularies were branded *capitula mixta* by Boretius and those following his classification and reasoning, because they contained provisions on legal matters as well as chapters which were clearly aimed at the *missi*. Indeed there are a number of capitularies which only towards the end of the text mention *missi* and contain orders concerning their tasks. In the first four chapters of the capitulary called by Boretius *De iustitiis faciendis* and dated by Mordek to 811,⁷¹ the reopening of cases settled during the reign of Pippin was prohibited, disputes between bishops, abbots, counts and other *potentiores* were ordered to be settled in the presence of the emperor, and it was confirmed that the *centenarius*’ court should not rule on cases regarding people’s status, involving claims of property or *mancipia*, or on crimes which might incur the death penalty.⁷² After these provisions on legal procedure, legislation-like enough to warm the hearts of Boretius and his followers, came the nine remaining chapters, which dealt not as much with the doing of justice, but ordered *missi* to inspect royal benefices and inquire about income from royal

⁶⁶ About twenty years later, Louis the Pious concluded his *Admonitio ad omnes regni ordines* 24, ed. Schmitz 540f., with instructions on the dissemination of capitularies: *Volumus etiam, ut capitula, quae nunc et alio tempore consultu fidelium nostrorum a nobis constituta sunt, a cancellario nostro archiepiscopi et comites eorum de propriis civitatibus modo aut per se aut per suos missos accipiant et unusquisque per suam diocesim ceteris episcopis, abbatibus, comitibus et aliis fidelibus nostris transcribi faciant et in suis comitatibus coram omnibus relegant, ut cunctis nostra ordinatio et voluntas nota fieri possit.*

⁶⁷ Cap. 1, nr. 67, ed. Boretius 156f. Heading taken from the manuscript Vatican, Biblioteca Apostolica Vaticana, Chigi F. IV.75, fol. 84r; cf. Mordek, *Bibliotheca* 762.

⁶⁸ Cap. 1, nr. 24 c. 1, ed. Boretius 65: *De illo edicto quod dominus et genitor noster Pippinus instituit et nos in postmodum pro nostros missos conservare et implere iussimus...*

⁶⁹ Mordek, *Bibliotheca*, Anhang nr. 13, 40, 990.

⁷⁰ Louis the Pious issued a *commemoratio missorum* (Cap. 1, nr. 151, 3, ed. Boretius 309) in 825 in which we read that he wanted all the *missi* to know *quia ad hoc constituti sunt, ut ea quae per capitula nostra generaliter de quibuscumque causis statuimus per illos nota fiant omnibus et in eorum procuracione consistent, ut ab omnibus adimpleantur.*

⁷¹ Mordek, *Bibliotheca* 1089.

⁷² Cap. 1, nr. 80 cc. 1, 2 and 4, ed. Boretius 176.

lands, and also gave detailed instructions about the meetings the *missi* were to have with the counts in their *missatica*.⁷³ The order of chapters in these capitularies in which instructions to the *missi* only appeared at the end could reflect to whom they were addressed, and how they were to be made use of by their recipients: if *missi* were in charge of the text, they had to pass on the contents of the first chapters to whoever was affected by them, whereas the second part was targeted at the *missi* themselves, specifying their missions, of which the announcement of the other chapters was only one part.⁷⁴

Another example which demonstrates more clearly how such capitularies could be *capitula missorum* is a text dated to 802 and called *Capitulare missorum generale* by Boretius but renamed the ‘Programmatic capitulary’ by François-Louis Ganshof. It, too, contained very detailed and indeed programmatic provisions on matters involving bishops, abbots, monks, counts, judges and the general populace, but these were framed by chapters at the beginning and the end of the text which linked it to the *missi*. In a long first chapter, the emperor explained how he had chosen the *missi* from amongst the *optimates*, and what their missions were throughout the realm:

*Primum cap. De legatione a domno imperatore directa. Serenissimus igitur et christianissimus domnus imperator Karolus elegit ex optimatibus suis prudentissimis et sapientissimos viros, tam archiepiscopis quam et reliqui episcopis simulque et abbates venerabiles laicosque religiosos, et direxit in universum regnum suum, et per eos cunctis subsequentibus secundum rectam legem vivere concessit.*⁷⁵

In the last chapter, the theme of the *missi*’s close association with the capitulary was taken up again when the emperor instructed them to find out for him how his decrees were being kept by everybody.⁷⁶ This capitulary was clearly not meant to be of relevance only to the *missi*, but they were its intended recipients: they were sent out with it into the realm where it served them both as a letter of reference, explaining what they were authorised and instructed to do, as well as containing all the relevant detail of their mission: what they had to make known, and what other tasks they had to fulfill.⁷⁷ We are witnessing here alternative systems of communication between emperor and locality, and of the publication of capitularies: those published at assemblies (such as the *Admonitio ad omnes regni ordines*) were received and disseminated by the *proceres* who had attended the assembly, but many other capitularies were sent out with the *missi dominici* (although there would have been overlap between the personnel of the two groups).

Looking at the intended recipients of capitularies, and the uses to which the texts were to be put by them, cannot provide a key to all texts as we lack the necessary information in many cases, and because some of the texts were clearly not organised primarily according to the targeted recipients and disseminators.⁷⁸ However, thinking about the identities of authors and recipients, and how these were represented in capitulary texts, is an important addition to our exploration of capitularies which has been hindered for too long by the legalistic paradigm. In the remaining sections of this paper, I want to draw out some further implications of the study of the identities of authors and recipients in capitularies from the information provided by the internal evidence of the texts’ form.

⁷³ Cap. 1, cc. 5–7, 10, 12, ed. Boretius 177.

⁷⁴ Other examples of capitularies in which explicit instructions to *missi dominici* appear only towards the end include nr. 49, ed. Boretius 135–136 (*missi* are mentioned only in the last of the four chapters) and nr. 69, ed. Boretius 158f. (*missi* referred to in cc. 6–9).

⁷⁵ Cap. 1, nr. 33 c. 1, ed. Boretius 91f. The chapter is much longer and elaborates on the facets of the *missi*’s duties to ensure justice, right wrongs, and correct the behaviour of counts and the populace in general.

⁷⁶ Cap. 1, nr. 33 c. 40, ed. Boretius 98: *Novissime igitur ex omnibus decretis nostris nosse cupimus in universo regno nostro per missos nunc directos, ... qualiter unusquisque in suum ministerium vel professione nostrum bannum et decretum habeat conservatum...*

⁷⁷ *Missi dominici* were instructed to introduce themselves and their duties in their *missatica*, see e.g. Cap. 1, nr. 151 c. 2, ed. Boretius 308: *Primo ut conventum in duobus aut tribus locis congregenti ubi omnes ad eorum legationem pertinentes convenire possint; et omnibus generaliter notum faciant, qualis sit eorum legatio...* The ‘Programmatic capitulary’, nr. 33, would have been suitable for such an occasion.

⁷⁸ The organising principle behind two of the capitularies issued at Worms in 829, for example, seems to have been a grouping of religious and ecclesiastical matters in Cap. 2, nr. 191, and of secular issues in nr. 192, both of which include chapters addressed to counts and *missi* (ed. Boretius/Krause 12–14; 14–17).

CAPITULA REGIS

To begin with the question of authorship: we found that involvement of an assembly was clearly no constitutional requirement for the production of capitularies. This is not to say that assemblies and their debates did not influence some capitularies, or were in turn influenced by the issues raised in these texts. It is merely the direct, automatic and simplistic link which should not longer be assumed. This also means that the question of the meaning of the *consensus fidelium* is more complex than has often been thought, and cannot be answered merely on the basis of the capitulary evidence. It needs to be put into a more general context of other contemporary ideas and texts, and I intend to pursue this question elsewhere. For the purposes of this article, I want to concentrate on the more direct implications for the question of authorship, and the related issue of how far capitularies can be examined for questions about identities.

It is likely that we shall never know who exactly wrote which capitulary: there simply is no extant information of that level of authorship. Historians have speculated that the presence of particular scholars at court makes it likely that they influenced capitularies to a greater or lesser extent; both Alcuin and Hincmar of Reims have been proposed as possible authors for the *Admonitio generalis* and a number of Charles the Bald's capitularies respectively.⁷⁹ However, it should be borne in mind that not all capitularies are written in a style which necessarily implies the involvement of the leading scholars of their age. Many capitulary clauses are rather terse and laconic, and contain little or no rhetorical flourishes or allusions to the Bible, canon law or other texts, legal or not; therefore less exalted members of the royal chancery or chapel may easily have functioned as secretaries/notaries/writers – as well as scribes – for at least some of the texts produced or reworked at court or during/after assemblies.⁸⁰

Furthermore, once we admit a range of legitimate contexts and processes of production (that is, acknowledge the absence of a single 'constitutional' and/or 'constitutive' procedure), our perspective on authorship has to change accordingly. We are no longer searching for one or two people, or a relatively stable group, who – once identified – can be posited to have produced other capitularies, too, but are dealing with potentially many authors, some regulars, others who contributed only once, who proposed parts of capitularies or whole texts, which were further discussed, changed, rejected, amalgamated. The participation of bishops and the royal confirmation and dissemination of synodal proceedings have so far received most attention (though here, too, there remains much to be worked out regarding the relationships between such texts, as between assemblies and synods);⁸¹ Arnold Bühler takes the most extreme position, arguing not only that many capitularies consist partly or wholly of chapters authored by synods or individual clerics, but also that the *consensus fidelium* was mostly a *consensus episcoporum*.⁸² But other capitularies also show non-ecclesiastical com-

⁷⁹ For Alcuin, see Friedrich-Carl Scheibe, Alcuin und die *Admonitio generalis*, in: *Deutsches Archiv* 15 (1959) 221–229; for Hincmar see Nelson, *Legislation and consensus* 96–97.

⁸⁰ The occasional diplomatic features (such as the dating clause of the *Admonitio generalis*) seem to me to speak for chancery scribes' involvement in the production of capitularies, but see also the discussion in McKitterick, *Zur Herstellung*, and for the older literature: Wilhelm A. Eckhardt, *Die Capitularia missorum specialia von 802*, in: *Deutsches Archiv* 12 (1956) 498–516, at 508–509.

⁸¹ See e.g. Hubert Mordek's and Gerhard Schmitz's discussion of the first of the two new capitularies they identified in the codex München, Bayerische Staatsbibliothek Clm 19414. The text seems to consist of 39 chapters formulated by an episcopal synod and four final chapters in which the emperor speaks. As Mordek and Schmitz show, this combination of episcopal and royal precepts occurred in quite a number of capitularies. They suggest that it reflects the different stages of the text's production: Hubert Mordek/Gerhard Schmitz, *Neue Kapitularien und Kapitulariensammlungen*, in: *Deutsches Archiv* 43 (1987) 361–439, at 366–372. Compare, however, Pokorny, *Brief-Instruktion* 78f., note 93.

⁸² Arnold Bühler, *Capitularia relecta. Studien zur Entstehung und Überlieferung der Kapitularien Karls des Großen und Ludwigs des Frommen*, in: *Archiv für Diplomatik* 32 (1986) 305–501, at 419–432. Note 66, 429–430, contains a list of capitularies which are 'of wholly clerical origin'. See also on the capitulary recording the decisions of the synod of Frankfurt 794 the article by Philippe Depreux, *L'expression statutum est a domno rege et sancta synodo* annonçant certaines dispositions du capitulaire de Francfort (794), in: *Das Frankfurter Konzil von 794. Kristallisationspunkt karolingischer Kultur I: Politik und Kirche*, ed. Rainer Berndt (Quellen und Abhandlungen zur mittelrheinischen Kirchengeschichte 80, Mainz 1997) 81–101.

mittees at work, for example the so-called *Capitula legi Salicae addita* of around 820, in which the decisions of a group of people are recorded (*iudicatum est ab omnibus; iudicaverunt omnes*). The emperor seems not to have been amongst them, as chapter 7 postpones a decision until he has been asked (or undertaken an investigation?).⁸³

Individual input is attested also. Jonas of Orleans was probably the author of the extant chapters recording the results of the council of Paris in 829.⁸⁴ Benedict of Aniane habitually had his sleeves full of *scedula* filled with individual requests, but perhaps also more general suggestions for improving the Christian realm⁸⁵ – after all, many capitulary chapters give the impression that they were generalised reactions to specific cases and grievances.⁸⁶ Rudolf Pokorny, on the basis of his detailed ‘inductive’ analysis of a letter fragment found in the codex 228 of the Biblioteca de la Universidad in Barcelona, identifies a number of probable characteristics of its author, such as his membership of Charlemagne’s court circle and detailed knowledge of ecumenical councils.⁸⁷ Producing a text in the king’s name or on his business still allowed its author a certain leeway for idiosyncratic phrasing or emphases. Important for our discussion is also Pokorny’s suggestion that this might account for the lack of formal unity amongst texts such as capitularies, including changes between first and third person in the phrasing of provisions.⁸⁸ Einhard also claims angelic input into Louis’ capitularies: the archangel Gabriel appeared to a blind man in the church at Seligenstadt, and told him *complura capitula* which Einhard was to present to the emperor. Einhard, however, added a further level of textual redaction: his notary Ratleig presented the chapters to him in a *libellus*, but Einhard ‘amended’ them and had written them anew for the emperor’s eyes (*emendatumque ac noviter scriptum imperatori ... obtuli*); he clearly had no problem with editing even angelic instructions.⁸⁹

Despite this now more complex field of collective or individual, regular or one-time authors, freeing the study of capitularies from the straightjacket of legalistic requirements also enables us to identify a common thread of a different kind running through them. Instead of defining capitularies as legislation, that is, as rendered what they are by particular methods of promulgation, I want to propose that we should see as the lowest common denominator of all texts found in capitulary collections the royal sponsorship of a text, specifically of its publication and dissemination. With this as our main criterion, a new definition could be that a capitulary was a text which received the ‘capitulary treatment’, had been sent out into the regions from the royal court (in the ways discussed above, either with counts and bishops or *missi*), and with royal authority attached to it in some way.

Seeing the actual methods of publication and dissemination as crucial takes into account the contemporary perception, which in turn explains the variety of texts incorporated into ‘capitulary’ collections. A number of texts would be arriving in the locality carried by somebody coming from court (be he a *missus* or a local magnate), and loose leaves of parchment (of the kind Ansegisus de-

⁸³ Cap. 1, nr. 142, ed. Boretius 292–293, at 293: *Quia nullum de ecclesiastico aut beneficiario vel alterius personae servo discretionem lex facit, si ita ecclesiastici vel beneficiarii servi sicut liberorum tradi aut dimitti possunt, ad interrogationem domni imperatoris reservare voluerunt.*

⁸⁴ The relevant historiography is summarised in the discussion by Alain Dubreucq in the introduction to his edition of Jonas’ *Le Métier de roi/ De institutione regia* (ed. Alain Dubreucq, Sources chrétiennes 407, Paris 1995) 35–42.

⁸⁵ Ardo, *Vita Benedicti Abbatis Anianensis et Indensis* 35 (ed. Georg Waitz, MGH SS 15, 1, Hannover 1887) 200–220, at 215: *Omnes siquidem qui aliorum passi incommodis imperialia petebant suffragia, cum ad eum accederent, alacriter susceptos osculabatur, eorumque querimonia in scedulis impressas tempore oportuno offerebat imperatori. Ex quibus adsuetus aliquoties serenissimus imperator mapulam manicasque eius palpans reperiebat repertasque legebat atque ut utilius noverat decernebat; propter oblivionem quippe talibus in locis eas ferre solitus erat.*

⁸⁶ For an incisive demonstration of general provisions in capitulary chapters originating in very specific and local problems, see Nelson, *Legislation and consensus* 99.

⁸⁷ Pokorny, *Brief-Instruktion*, especially 73–78. One likely candidate, according to Pokorny, is Angilbert of St-Riquier.

⁸⁸ Pokorny, *Brief-Instruktion* 77f.

⁸⁹ Einhard, *Translatio et miracula sanctorum Marcellini et Petri III*, 13 (ed. Georg Waitz, MGH SS 15, 1, Hannover 1888) 238–264, at 252f. My thanks to Matthew Innes for this reference.

scribes)⁹⁰ were probably kept in various people's *armaria*, without necessarily a distinction being made between the different kinds of texts. *Missi* admonished counts to keep and re-read their *capitula*,⁹¹ but many texts during the Carolingian period were divided into chapters, and all royal missives, including capitularies, had prestige because of their royal connections. When collected into codices, mixing of the general with the particular and personal could occur due to this overriding reason for the texts' preservation, as attested by Ansegis' appendices.⁹² Despite the variety of the texts sent out, dealing with different topics, structured in different ways, written in different styles, perhaps looking differently (we do not know whether all or only some had protocols and eschatocols, etc), capitularies were perceived above all as royal. Thus Hincmar in his *De ordine palatii* talks of the *capitula christianorum regum et progenitorum suorum*,⁹³ and Ansegis's secondary criterion for organising his collection (after the attempted division into ecclesiastical/secular matters) was the issuing emperor, Charlemagne or Louis the Pious.⁹⁴ Carolingian rulers always cited capitularies as their 'predecessors' or their 'father's/grandfather's'.⁹⁵ In the Reichenau catalogue of the early 820s, a codex is described as containing the Alemannic law as well as *capitula domni Karoli et domni Hludowici imperatorum*⁹⁶ whereas the synod whose decisions are recorded in one of the newly-discovered texts published by Mordek and Schmitz cites a provision *in capitulario dominico*.⁹⁷

With royal sponsorship as the minimum criterion for capitularies, it is likely that these texts had royal approval, at most representing the royal view of the subjects covered in them, and at least a view supported by the ruler. Regarding the identity of recipients, capitularies – both their contents as well as the format itself – therefore can be seen as promoting and embodying the centre's view of those involved in governing the realm: capitularies contain strong messages about the roles, duties and goals of those who were to receive them, as (politically active) royal representatives or (obedient) royal subjects. This view of political relationships between the king and those who received his capitularies was stated explicitly in Louis the Pious' *Admonitio ad omnes regni ordines*:

*Sed quamquam summa huius ministerii in nostra persona consistere videatur, tamen et divina auctoritate et humana ordinatione ita per partes divisum esse cognoscitur, ut unusquisque vestrum in suo loco et ordine partem nostri ministerii habere cognoscatur. Unde apparet, quod ego omnium vestrum admonitor esse debeo et omnes vos nostri adiutores esse debetis.*⁹⁸

The following chapters elaborate the tasks allotted to the various *ordines*. The essence of the ideas presented there, however, had already been contained in earlier capitularies: the very idea of capitularies, texts sent out from the centre to those who were to implement them throughout the

⁹⁰ Ansegis, *Collectio capitulorum*, Praefatio, ed. Schmitz 432–433: *Sed quia in diversis sparsim scripta membranulis per diversorum spatia temporum fuerant, ne oblivione traderentur ... placuit mihi praedicta in hoc libello adunare quae inventi potui capitula praedictorum principum iussa descripta...*

⁹¹ See the so-called *Capitula a missis dominicis a comites directa* (Cap. 1, nr. 85, ed. Boretius 183–184, at 184): *Nos autem admonemus vos, ut capitularia vestra relegatis ...*

⁹² On Ansegis' method of arranging the chapters he found and an analysis of his appendices, see Schmitz's introduction to his edition, especially 15–22.

⁹³ Hincmar, *De ordine palatii* 3, ed. Gross/Schieffer 48.

⁹⁴ Ansegis, *Collectio capitulorum*, Praefatio, ed. Schmitz 433.

⁹⁵ See for example Louis' Worms capitulary nr. 191 c. 5, ed. Boretius/Krause 13, referring to Ansegis: *capitulare bonae memoriae genitoris nostri*, or an Italian capitulary of Lothar, dated 832, nr. 201 c. 13, ed. Boretius/Krause 62: *secundum capitulare genitoris nostri*. For Charles the Bald's manner of citing from Ansegis' collection, see especially the capitulary issued at Quierzy in January 873; Cap. 1, nr. 278 c. 3: *in capitulari avi et patris nostri continetur*; c. 8: *per capitula avi et patris nostri*; c. 10 (also 11 and 12): *Volumus, ut secundum capitulare avi et patris nostri...* (ed. Boretius/Krause 343, 346, 345).

⁹⁶ Paul Lehmann, *Mittelalterliche Bibliothekskataloge Deutschlands und der Schweiz* 1. Die Bistümer Konstanz und Chur (Münster 1918) 247.

⁹⁷ Mordek/Schmitz, *Neue Kapitularien und Kapitulariensammlungen* 367 and 407.

⁹⁸ *Admonitio ad omnes regni ordines* 3, ed. Schmitz 523. On this capitulary, see Olivier Guillot, *Une ordination méconnue: le Capitulaire de 823–835*, in: Charlemagne's Heir. New Perspectives on the Reign of Louis the Pious, ed. Peter Godman/Roger Collins (Oxford 1991) 455–486; id., *L'exhortation au partage des responsabilités entre l'empereur, l'épiscopat et les autres sujets vers le milieu du règne de Louis le Pieux*, in: *Prédication et propagande au Moyen Age. Islam, Byzance, Occident* (Penn-Paris-Dumbarton Oaks Colloquia 3, 1983) 87–110.

realm, was part of the redefinition of locally powerful people as royal representatives and office-holders (such as counts, *vassi* or *missi*).⁹⁹

Jürgen Hannig took this argument to extremes, claiming that capitularies, in contrast to the *leges*, were not pragmatic and should not be seen as ‘the ruler’s response to current circumstances’, but as part of an ideological programme.¹⁰⁰ Firstly, according to Hannig, the promulgation of capitularies itself was part of the realisation of the Carolingians’ *Selbstverständnis* as Christian rulers: an action which showed them as guarantors of public peace, defenders of the church and protectors of widows, orphans and *pauperes*. Secondly, Hannig argues that capitularies were a weapon in an ideological war waged against aristocrats’ autonomous legitimacy as power-holders by the Carolingians in their effort to expand their own authority.¹⁰¹ As a response to this threat of increasing claims of, and real gains in, royal and imperial power, the lay aristocracy bolstered their position by hijacking one part of the ideology of Christian kingship (the idea of the *consensus fidelium*) with so much success that it became a real requirement of rule by the time of Louis the Pious’ sons.

As Hannig is bound to an older conceptualisation of ruler and aristocracy as necessarily opposed, he is unable to resolve the contradiction in his arguments between capitularies as royal tools in a vigorously-fought ideological war on the one hand, and, on the other, their containing, from the start, an element of royal ideology successfully used by the aristocracy. To be able to take into account that the *consensus fidelium* was an idea propagated in some of the earliest capitularies (such as that of Herstal whose *inscriptio* was cited above), to allow that these royal texts always included ‘attractive opportunities for self-interpretation’¹⁰² for the aristocracy, it is necessary to acknowledge that royal and aristocratic interests were clearly not always necessarily antagonistic. Indeed, it is hard to see how capitularies could have propagated an ideology as strongly opposed to the interests of its recipients as Hannig’s ‘ideological warfare’ implies. Hannig suggests that capitularies fulfilled this function by cutting out the aristocratic mediators between king and *populus*, for example by the introduction of a direct oath of fidelity to the king, but he ignores the fact that the people never would have heard about these royal measures if it had not been for the cooperation of those intermediaries. Neither does Hannig discuss how effective he believes capitularies to have been. On the one hand, he suggests that they were, as the lay aristocracy felt the royal threat to their position, but, on the other, he seems to imply the opposite when he argues that capitularies came to be ‘taken over’ by those whose power they were supposed to curtail.

This contradiction at the heart of Hannig’s arguments, why the pro-royal and supposedly anti-aristocratic ideology of capitularies at the same time offered roles and identifications attractive to its recipients, is caused by the fact that he does not see that ideas of consensus were an integral part of capitularies because capitulary provisions depended on the recipients’ cooperation in their implementation. As scholars such as Janet Nelson and others have shown, Carolingian royal power was not inversely proportionate to aristocratic power (as Hannig’s idea of an ‘ideological war’ implies), nor independent of it; rather royal and aristocratic power were interdependent. The king relied on those powerful in the regions and localities to extend his area of influence by carrying orders and ideas from the centre into the provinces of the empire. Those acting as his agents could in turn benefit from the access to supra-regional resources offered by royal patronage. The ideological element of capitularies is that they were part of the centre’s attempts to define this relationship of interdependence in a way that favoured (an at least conceptual) royal superiority.

⁹⁹ See Innes, *State and Society*, especially 180–195, 260–261.

¹⁰⁰ Jürgen Hannig, *Consensus fidelium. Frühfeudale Interpretationen des Verhältnisses von Königtum und Adel am Beispiel des Frankenreiches* (Monographien zur Geschichte des Mittelalters 27, Stuttgart 1982) 164.

¹⁰¹ Jürgen Hannig, *Consensus fidelium* 164: “Das Aufsetzen von Kapitularien gehört ... zum Selbstverständnis des karolingischen Herrschers. Er verwirklicht seine Aufgaben in der Aussendung von Kapitularien, die sich eher als Objektivierung und Ausprägung der ‘Regierungsprogrammatische eines christlichen Herrschers’ erschließen lassen, denn als konkrete und reale ‘Gesetze’. ... In ihrer Eigenschaft als ‘Programmschriften des karolingischen Königtums’ sind die Kapitularien zugleich auch politisch-ideologisches Kampfmittel der ‘Reichszentrale’ gegen die genuinen Herrschaftsrechte des Adels ...”

¹⁰² Jürgen Hannig, *Consensus fidelium* 228.

By linking the king and those whom he wanted to act as his representatives, capitularies themselves embodied the cooperation necessary for Carolingian government to extend beyond the palace and the areas under immediate royal control. As much as capitularies were sent out and determined by the royal will, their very existence, as well as their contents, reflected the realities of power. Hannig's arguments fail because, although he is right about capitularies' exclusively royal nature, he presupposes a royal ideology unconstrained by how the Carolingian's power worked in reality. Carolingian ideology needed to encourage continued royal-aristocratic cooperation. However, at the opposite end from Hannig's royal-aristocratic antagonism, historians such as Hägermann, who emphasised their interdependence, project it onto capitularies and argue for joint authorship in the form of the *consensus fidelium*. Can we find a way in which capitularies can be seen both as utterly royal documents and at the same time as encouraging cooperation? In the final section of this article, I want to introduce a number of concepts from social psychology which throw up new questions to be asked of the Carolingian material and can perhaps suggest more fruitful avenues for future research. This will only be a brief exploration: I intend to pursue questions of the Carolingian aristocracy as a social group in more detail elsewhere.

THE CONSEQUENCES OF SOCIAL IDENTITY

Cooperation, common goals, and collective action towards achieving the latter are characteristics of behaviour amongst members of a group. The dissemination of capitularies, as well as other collective activities such as regnal assemblies or military campaigns, can be seen as ways in which the Carolingian rulers sought to create a particular social identity (of capitulary recipients, of those interacting and cooperating with the king at court, during assemblies and on campaign), making those on whom implementation of royal will and policy rested into a group whose identity was defined by being connected to royal authority, to the ruler chosen by God, and to the fulfilling of God-given duties. To examine the possible workings of such processes, we have to think about how group membership is defined.

Whereas few people would dispute that Matfrid of Orléans or Bernard of Septimania were Carolingian aristocrats, the criteria for membership of this social group, the very shape of the group itself, is far from clear and undebated. This is most obvious if we think about those at its blurred edges: who can say whether people such as the more or less local players studied by Matthew Innes¹⁰³ or Adalbert, Notker's informant on Charlemagne's military exploits,¹⁰⁴ or Thegan, *chorepiscopus* of Trier and despiser of social upstarts,¹⁰⁵ were considered part of the aristocracy (by everybody?)? The answer varies according to our definition of aristocracy made for purposes of analysis: the contemporary Carolingian one has proven to fluid to recover.¹⁰⁶ Tellenbach's concept of a *Reichsaristokratie*

¹⁰³ Innes, *State and Society*.

¹⁰⁴ Notker Balbulus, *Gesta Karoli Magni* (ed. Hans F. Haefele, MGH SS rer. Germ. NS 12, Berlin 1959) praefatio lib. II, 48.

¹⁰⁵ In his preface to Thegan's *Gesta Hludowici imperatoris*, Walahfrid Strabo called Thegan a *vir nobilis* (in the context of his apology for Thegan's diatribe against 'new men' raised from serfdom to high office aimed at Ebo, archbishop of Reims), but he also comments on the work's *rusticitas*. Ernst Tremp has worked out Thegan's network of friends and informants, which, though not merely local, puts him in the ranks of provincial contacts and supporters of supra-regional actors rather than amongst the Carolingian political elite. Thegan is thus a likely example of somebody who might (only) *at particular occasions* have found himself included in the group of the politically active, although he clearly felt himself called upon to write a work addressed to members of this group. See Thegan, *Gesta Hludowici imperatoris* (ed. Ernst Tremp, MGH SS rer. Germ. in us. schol. [64], Hannover 1995) 168 (for Walahfrid) and 1–5, 9–11, 14–22 (for Tremp's comments on Thegan).

¹⁰⁶ Paul Fouracre, *The Origins of the Nobility in Francia*, in: *Nobles and Nobility in Medieval Europe: Concepts, Origins and Transformations*, ed. Ann Duggan (Woodbridge, 2000) 17–24, at 17: "Any review of work on the early medieval nobility quickly reveals that historians use the term 'nobility' to refer to an elite which was open, imperfectly defined, and subject to regional variation. With regard to the Frankish nobility, one can apply a series of normative statements about its origins and nature, but any general observations must always be qualified, or even contradicted, in the light of particular case studies."

has proven so useful to many different historians because its criterion of supraregional activity is one we are actually, at least to some extent, able to check in the sources at our disposal.¹⁰⁷

These findings accord with the social psychological theory that, unless the criteria for group membership are formulated explicitly (for example by law), groups are not defined by a check-list of characteristics which each group member has to share in order to be considered a member. Rather, group identity is represented in the minds of its members in the form of an ideal group member who embodies the group: the group prototype. It is similarity to this group prototype which negotiates group membership. In other words, groups are defined at their core, not their edges. A prototypical member of the Carolingian aristocracy might have come from a well-known family, owned land and been generally wealthy, might have taken part in military campaigns, enjoyed royal patronage, himself patronised others and ecclesiastical institutions, been well-connected with other important group members. All these properties were shared by many of the Carolingian elites, but the idea of a prototype permits us to capture the flexibility of how these criteria were applied. There were no hard and fast rules about which, and how many, of these characteristics had to be present in order for somebody to be considered a member of the Carolingian aristocracy (how rich? how much land? how close to the ruler?), or which weighed more than others (was *Königsnähe* more important than descent?). Theoretically, each group member could be similar to the prototype in a different way: one person included primarily on the grounds of his personal skill and royal service, another due to his family's position in a particular region. Some subgroups, such as clerics, were unable to share some properties, powerful women very few at all. A prototype is a 'fuzzy' set of attributes which enables a fluidity in – or perhaps the absence of – the 'definition' of a group. With changing contexts, different aspects and attributes can be emphasised or de-emphasised. This makes sense if one bears in mind that it is not the 'purity' of a group's membership which is the ultimate goal, but the continued existence of the group.

To shape a group's identity one therefore has to affect its prototype. We need to explore the consequences of social self-categorisation by prototype a little further to understand how this might be done, and what advantages this could have held for the Carolingian rulers.

The concept of a group prototype comes from the most influential model of group processes in social psychology today, based on social identity theory and its further development, self-categorisation theory.¹⁰⁸ These put great emphasis on people's own representations: the groups studied are psychological groups, that is, those whose members share a common social identification as group members (in contrast to analytical social groups posited by sociologists, for example). Self-categorisation theory argues that when people feel they are group members, they 'categorise' themselves as such, which has psychological effects on their behaviour. To understand these effects of self-categorisation we have to branch out briefly into category theory, on which the idea of social categorisation by prototype is based.

Categorisation is perhaps the most essential of cognitive processes, the simplification of perception necessary for an individual to make sense of the otherwise unmanageable multitude of stimuli he or she receives.¹⁰⁹ We use it everytime we think of something as a *kind* of thing: categorisation "accentuates similarities between objects within the same category and differences between stimuli in different categories",¹¹⁰ enabling us to render situations meaningful. Accordingly, categorising oneself as a group member leads to increased emphasis – in one's own mind – on those aspects of one's personality, behaviour, circumstances which one represents as those most typical of the group. Self-cat-

¹⁰⁷ On Tellenbach's concept, as well as other aspects of aristocratic identity, see Stuart Airlie, *The Aristocracy*, in: *The New Cambridge Medieval History 2, c. 700-c. 900*, ed. Rosamond McKitterick (Cambridge 1995) 431–450. Also Timothy Reuter, *The medieval nobility in twentieth-century historiography*, in: *Companion to Historiography*, ed. Michael Bentley (London/New York 1997) 177–202.

¹⁰⁸ For a clear introduction to both social identity and self-categorisation theories, see Michael A. Hogg/Dominic Abrams, *Social Identifications. A Social Psychology of Intergroup Relations and Group Processes* (London/New York 1988).

¹⁰⁹ For an introduction to category theory, see George Lakoff, *Women, Fire and Dangerous Things. What Categories Reveal about the Mind* (Chicago/London 1987).

¹¹⁰ Hogg/Abrams, *Social Identifications* 19.

egorisation as a group member is thus truly a process of self-identification, because it psychologically and actually leads to greater similarity (identity) with the group prototype.

According to self-categorisation theory, social self-categorisation is the psychological basis of group behaviours because it de-emphasises idiosyncratic preferences and leads to greater conformity with group prototypical ones: when social identity is salient, that is, when a person identifies with a group, conduct and perception are ‘depersonalised’, producing “normative behaviour – conformity to the ingroup prototype.”¹¹¹ Experiments have shown that self-categorisation as a group member is enough to make fellow members of the group appear more attractive than non-members.¹¹² This liking on the basis of common group membership is called social attraction (in contrast to personal attraction based on idiosyncratic criteria).¹¹³

The prototype of a self-inclusive social category is likely to be relatively positive, because people strive for positive self-identifications: we tend to associated positive things with groups to which we feel we belong in order to feel good about ourselves.¹¹⁴ Different levels of similarity to the prototype structure the group by creating a hierarchy amongst group members: in the absence of other factors, the most prototypical members of the group are the most socially attractive to those identifying with it.¹¹⁵ The most prototypical member of a group is thus, to a certain extent, the natural group leader, and it is certainly of advantage to any leader to be considered prototypical.¹¹⁶ Prototypicality lends a leader a very practical kind of legitimacy: the most prototypical member is justified simply by his or her embodiment of the group (although there are, of course, limits to this as there are to legitimacy based on any other source). As the embodiment of the behaviour to which the other group members strive to conform, the most prototypical member first only appears to have and is expected to have, but then as a result actually has, social influence over fellow group members. A prototypical leader can influence the group without having to use coercive force, promise rewards or threaten punishments.

Applying these ideas to our Carolingian problem, in order to have the greatest possible influence over the group, the Carolingians would have had to shape the prototype, by being not only group members but the most prototypical ones. If looked at from this angle, the Carolingian family could be seen as having risen amongst the Merovingian elites, becoming ever more prototypical in a group which valued power, wealth, royal offices and military successes. The group they were trying to shape as rulers was thus not one which they had created, but one of which they had been part. Karl Ferdinand Werner showed that the Carolingian nobility was not a Carolingian creation, but that a substantial part of the Merovingian aristocracy survived because it was they who had brought the Carolingians to power.¹¹⁷ It was therefore easier for the Carolingians to shape the group prototype and in that way to affect the internal structure of the group, than to influence group membership. Furthermore, not all elements of the group prototype were up for shaping: social groups acquire meaning in contrast to others (an ‘us’ requires a ‘them’), and the salient social comparison can be relatively stable, such as perhaps that between the dominant and the dominated. The Carolingian input into the group prototype might thus theoretically have excluded certain members of the group,

¹¹¹ Michael Hogg, From prototypicality to power: a social identity analysis of leadership, in: *Advances in Group Processes* 18 (2001) 1–30, at 8.

¹¹² See for example Michael Hogg/Louis Cooper-Shaw/David Holdsworth, Group prototypicality and depersonalised attraction in small interactive groups, in: *Personality and Social Psychology Bulletin* 19 (1993) 425–465.

¹¹³ For an introduction, see Hogg/Abrams, *Social Identifications* 106–112. The best larger survey is Michael Hogg, *The Social Psychology of Group Cohesiveness. From Attraction to Social Identity* (New York/London/Toronto 1992).

¹¹⁴ Hogg/Abrams, *Social Identifications* 21 and 23 with further references.

¹¹⁵ Hogg, *From prototypicality to power* 8–11.

¹¹⁶ See Michael Platow/Alexander Haslam/Margaret Foddy/Diana Grace, Leadership as the outcome of self-categorisation processes, in: *Leadership and Power. Identity Processes in Groups and Organisations*, ed. Daan van Knippenberg/Michael Hogg (London/Thousand Oaks/New Delhi 2003) 34–47; Hogg, *From Prototypicality to Power*.

¹¹⁷ Karl Ferdinand Werner, Important noble families in the kingdom of Charlemagne – a prosopographical study of the relationship between king and nobility in the early Middle Ages, in: *The Medieval Nobility. Studies in the Ruling Classes of France and Germany from the Sixth to Twelfth Centuries*, ed. Timothy Reuter (Amsterdam/New York/Oxford 1979) 137–202.

but in effect created a subgroup (of Carolingian-ideology-compliant aristocrats) within the social category of power holders.

The prototype-shaping most apparent in the capitularies centres on extending the social identity's relevance: capitularies delineate which areas of a power-holder's behaviour and activities are touched by his (rarely her – all women but queens and abbesses seem excluded) identity as a member of the group-of-Christian-power-holders-with-the-emperor-at-its-apex, and they are near all-encompassing. Certain aspects of an aristocrats' home life were not covered, but the Christian themes of justice and marriage, and the royal concern with property, meant that capitulary provisions certainly did intrude into this sphere. Certainly all public uses of power were included. This was an extension of the activities to which the identity dominated by the Carolingians is supposed to apply, and thus an attempted extension of the sphere of their influence.

Individuals belong to many different groups, and thus have many social identities (as members of ethnic, family, friendship, faith, etc groups). Capitularies promoted a particular social identity (of which the Carolingians were in charge) of their recipients, in order to extend and increase its salience, as just discussed. It was the identity to be activated whenever engaged in the exercise of (God-given) power, not just when actually engaged in interaction with other group members, but it was also (implicitly and explicitly) to be considered more important than other group memberships. The prohibition of sworn associations can be seen as an instance of this.¹¹⁸ Regarding bishops and abbots (clerical power holders), the Christian aspect of Carolingian rule which capitularies proclaim was both the expression of a reality in which they were part of a governmental hierarchy as much as of the ecclesiastical, but could also be seen as a competition for their most salient social identity: even if the clerical one could never be openly derogated, it could be made less relevant in a significant part of their activities.

So far, this discussion has treated the Carolingians as continuing to be group members even after their ascent to the kingship. This is debatable: there is plenty of evidence that the Carolingian kings and emperors clearly “stood outside, and above, the aristocratic group”.¹¹⁹ Most Carolingian image-building that we know of, in the ceremonial form such as of anointings and crown-wearings, or the written one, for example the *Annales regni francorum*, emphasised the emperor's distinctiveness: leaders, of course, want to be considered *not* interchangeable with others, need a unique identity.

Nevertheless, as we saw above, there are benefits for leaders to be seen as a fellow group member, “one of us”, especially if it is as the most prototypical one. Only a group member can mobilise the others to cooperate in the achievement of shared goals in the most efficient way (by social influence) and only a group member can affect the group prototype. As mentioned above, social identities are constructed through social comparison, by differentiation from other groups: therefore no outsider can define a group, especially not the identity of a socially dominant category such as the Carolingian elites under consideration here.¹²⁰ The social psychological concepts discussed here argue that the Carolingians could not have defined a social identity for the capitulary recipients if they were not themselves seen as part of this group. Louis the Pious in his *Admonitio ad omnes regni ordines* developed the idea of a group to whom God had entrusted the care and government of others, of which the Carolingian emperor was firmly part, but in which, at the same time, he very clearly occupied the central and most important position: the chosen amongst the chosen. Analysed in terms of the social psychological concepts we have been discussing, the *Admonitio ad omnes regni ordines'* first chapters formulate the social identity of divinely-appointed power-holders and the Carolingians' extreme prototypicality amongst them.

¹¹⁸ See for example the Capitulary of Herstal, Cap. 1, nr. 20, c. 14 and 16, ed. Boretius, nr. 20, 50f., and the *Capitulare missorum generale* issued at Thionville in 805, Cap. 1, nr. 44, c. 9 and 10, ed. Boretius 124.

¹¹⁹ Janet Nelson, *Peers in the early Middle Ages*, in: *Law, Laity and Solidarities. Essays in Honour of Susan Reynolds*, ed. Pauline Stafford/Janet Nelson/Jane Martindale (Manchester/New York 2001) 27–46 at 28.

¹²⁰ The identity of a socially inferior group might have certain elements which are imposed on its members by outside definition at the hands of more dominant groups, such as social comparison with particular more powerful groups. In such a case, members' representations of their social identity is likely to focus on those aspects which they feel they can influence.

This tension between emphasising both a unique and a shared identity is a problem for all leaders.¹²¹ For the Carolingians, it is particularly apparent in the capitularies, and – I would argue – at the bottom of the *consensus*-controversy. Most capitulary clauses are unadorned royal commands, but the language of consensus speaks of collective action towards shared goals. It is perhaps significant that by the 820s, the emperor's prototypical group member's role as *admonitor* was being explicitly elaborated. Possibly it was felt amongst the circle of 'capitulary authors' that his group membership needed to be emphasised and addressed.

This language of consensus, of the emperor as part of a group of divinely-appointed power-holders, should not be dismissed as mere propaganda. Although the Carolingian emperor was in many ways not a *primus inter pares*, in some ways, he was: in his membership of the group of divinely-chosen power-holders, but also of kin networks, as warrior, as Christian. When talking about identities, it is important to bear in mind that our self-concept is made up of a multitude of personal and social identities which become relevant (and affect our behaviour and perception) in different contexts. Some of them can even be contradictory. The Carolingian emperor's social identities should not be ignored because many of the sources we read put relatively greater emphasis on his uniqueness.

Ideology in texts might therefore not be as unrelated to reality as Hannig seems to suggest. For one, group identities cannot be imposed by just anybody: they have to be founded on – at least at the time – convincing claims of group membership. This allows us to formulate a middle way between seeing capitularies either as straightforward instructions or as ideological tools. Identity-shaping was a significant part of capitularies' *raison d'être*, but that does not mean they were not practical: they shaped a common identity of power-holders as royal helpers and kept them informed at the same time, with both aspects reinforcing each other. Certain aspects of the forms of capitulary texts (and accordingly the texts' status), might therefore be best understood not as a reflection of the identity of the author(s) but as a negotiation between the group identity projected by the author(s) and the actual nature of the people whose collective identity and behaviour they were trying to shape.

¹²¹ See Hogg, *From prototypicality to power* 16–21.