Threat and menace for stability: on the use of sanction clauses under the early Carolingians[1]

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Abstract

Despite the trend in the diplomatic studies to analyze source materials in terms of communication, sanction clauses have not been given due consideration. This paper attempts to reconsider various meanings of sanction clauses in royal documents at a time when those clauses were not fixed as an integral part of royal documents, focusing on their use in Charlemagne's royal diplomas, compared with those of his predecessors and successor. The analysis of source materials shows his peculiarity in the use of sanction clauses, especially those in his diplomas of immunity. Charlemagne's use of pecuniary sanction clauses in individual immunity privileges culminated in his general legislation of 803. This process was parallel with his other effort to avoid the risk of immunities hindering his royal government. Charlemagne's introduction of pecuniary sanction clauses was a part of his politics to stabilize the institution of immunity.

Introduction

Analyzing sources from the aspects of "communication" is now one of the indispensable approaches in diplomatic studies of medieval documents.[2] Diplomas and charters were issued and used not solely to guarantee legal rights, although it was the primary purpose. On the one hand, the issuing process of a diploma or a charter itself, for example, as to a diploma from a petition to its issuing out, is understood as communication, which was not only established between an issuer and a recipient, but also involved an intermediary and eyewitnesses.[3] On the other hand, texts of diplomas and charters are read as media or as communication tools. Diplomas, in particular, were equipped with various elements, which could convey political and ideological messages of the issuers across to their recipients, such as *intitulatio*,[4] *arenga*,[5] *narratio*,[6] epithets,[7] dating clauses,[8] as well as

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[2] Theo Kölzer, "Diplomatik," *Archiv für Diplomatik* 55 (2009): 405-24 (pp. 417-18).

[3] See most recently Mark Mersiowsky, *Die Urkunde in der Karolingerzeit. Originale, Urkundenpraxis und politische Kommunikation*, 2 vols., MGH Schriften, 60 (Wiesbaden, 2015), especially part 2, vol. 2, pp. 543ff.

[4] Herwig Wolfram, *Intitulatio I. Lateinische Königs- und Fürstentitel bis zum Ende des 8. Jahrhunderts*, Mitteilungen des Instituts für Österreichische Geschichtsforschung (hereafter MIÖG) Ergänzungsband, 21 (Graz – Cologne – Vienna, 1967); *Intitulatio II. Lateinische Herrscher- und Fürstentitel im neunten und zehnten Jahrhundert*, ed. Herwig Wolfram, MIÖG Ergänzungsband, 24 (Vienna – Cologne – Graz, 1973).

[5] Heinrich Fichtenau, *Arenga. Spätantike und Mittelalter im Spiegel von Urkundenformeln*, MIÖG Ergänzungsband, 18 (Graz – Cologne, 1957); Susanne Zwierlein, *Studien zu den Arengen in den Urkunden Kaiser Ludwigs des Frommen (814–840)*, MGH Studien und Texte, 60 (Wiesbaden, 2016).

[6] Brigitte Merta, "Recht und Propaganda in Narrationes karolingischer Herrscherurkunden," in *Historiographie im frühen Mittelalter*, ed. Anton Scharer and Georg Scheibelreiter, Veröffentlichungen des Instituts für Österreichische Geschichtsforschung, 32 (Vienna – Munich, 1994), pp. 141-57.

[7] Shigeto Kikuchi, "Representations of monarchical 'highness' in Carolingian royal charters," in *Problems and possibilities of early medieval charters*, ed. Jonathan Jarrett and Allan Scott McKinley, International Medieval Research, 19 (Turnhout,

visual elements and graphical symbols.[9] If diplomas were issued and handed out ceremonially and read out in regional assemblies at the time of conflict concerning the rights described in them, those messages could reach a wider audience.

Despite this tendency in the medieval diplomatics, studies of sanction clauses (or penal clauses, lat. *sanctio*, Germ. *Poenformeln*) in early medieval charters are still few. Like other topics of medieval diplomatics, basic research on early medieval sanction clauses has been conducted in the golden age of the diplomatics during the last decades of the nineteenth century and the first decades of the twentieth century.[10] A sanction clause is a term referring to one of the formulaic parts of a charter. In sanction clauses, issuers of charters threaten potential trespassers (including the issuers of the charter themselves!) of rights confirmed by these charters with various kinds of penalties. It was purposed with such clauses to guarantee charters more firmly and to prevent infringements on them. Diplomatic studies have defined two types of sanction clauses in early medieval charters, both of which had their origin in the ancient Mediterranean world. The first type is *poena spiritualis*, which threatens violators of rights with the wrath of God, angels, or saints, as well as anathema and temporary excommunication from the Church community. The second one is *poena saecularis*. In this case, the penalty for infringement was defined more concretely — fines in gold or silver, how much, to whom, in what ratio, etc. These two types of sanction clauses could be used together or separately. As details of penalties varied according to time, space, and categories of charters, one can gain an insight into a *Urkundenlandschaft*[11] as well as some aspects of the society of a specific region by analyzing sanction clauses.[12]

Though some scholars have dealt with *poena spiritualis*,[13] for example in the cultural context of cursing,[14] and others have reinterpreted sanction clauses in private charters,[15] we still lack studies on those in royal diplomas. This is not without reasons. In contrast to private charters, which recorded various transactions between two parties, and those documents issued by popes and bishops, which quite often had *poenae spirituales*, early medieval royal diplomas rarely contained sanction clauses: so rarely that later copyists interpolated such clauses or that later forgeries of early medieval charters were provided with sanction clauses because these clauses became much

2013), pp. 187-208.

[8] Heinrich Fichtenau, "»Politische« Datierung des frühen Mittelalters," in *Intitulatio II*, pp. 453-548.

[9] Mark Mersiowsky, "Graphische Symbole in den Urkunden Ludwigs des Frommen," in *Graphische Symbole in mittelalterlichen Urkunden. Beiträge zur diplomatischen Semiotik*, ed. Peter Rück, Historische Hilfswissenschaften, 3 (Sigmaringen, 1996), pp. 335-83; Peter Rück, "Die Urkunde als Kunstwerk," in *Fachgebiet Historische Hilfswissenschaften. Ausgewählte Aufsätze zum 65. Geburtstag von Peter Rück*, ed. Erika Eisenlohr and Peter Worm, elementa diplomatica, 9 (Marburg, 2000), pp. 117-39; Peter Worm, *Karolingische Rekognitionszeichen. Die Kanzlerzeile und ihre graphische Ausgestaltung auf den Herrscherurkunden des achten und neunten Jahrhunderts*, elementa diplomatica, 10 (Marburg, 2004); Mersiowsky, *Die Urkunde*, part 1, vol. 1, pp. 54ff.

[10] Theodor Sickel, *Lehre von den Urkunden der ersten Karolinger (751-840)*, Acta Karolinorum digesta et enarrata. Die Urkunden der Karolinger, 1 (Vienna, 1867), pp. 200-203; Arthur Giry, *Manuel de diplomatique. Diplomes et chartes. Chronologie technique. Élements critiques et parties constitutives de la teneur des chartes. Les chancelleries. Les actes privés* (Paris, 1894), pp. 565-67; Wilhelm Erben, *Die Kaiser- und Königsurkunden des Mittelalters in Deutschlands, Frankreich und Italien*, Handbuch der mittelalterlichen und neueren Geschichte, IV, I (Munich – Berlin, 1907) pp. 357-63; Fritz Boye, "Über die Poenformeln in den Urkunden des früheren Mittelalters," *Archiv für Urkundenforschung* 6 (1918): 77-148; Joachim Studtmann, "Die Pönformel der mittelalterlichen Urkunden," *Archiv für Urkundenforschung* 12 (1932): 251-374. Heinrich Fichtenau, "Forschungen über Urkundenformeln," *MIÖG* 94 (1986): 285-339 (pp. 321-23), gives a short survey of earlier works on the topic.

[11] Cf. Heinrich Fichtenau, *Das Urkundenwesen in Österreich. Vom 8. bis zum frühen 13. Jahrhundert*, MIÖG Ergänzungsband, 23 (Vienna, 1971); Reinhard Härtel, *Notarielle und kirchliche Urkunden im frühen und hohen Mittelalter*, Historische Hilfswissenschaften (Vienna – Munich, 2011), pp. 308-10.

[12] Cf. Boye, "Über die Poenformeln"; Studtmann, "Die Pönformel." I am preparing another paper on this topic.

[13] E.g. François Bougard, "Jugement divin, excommunication, anathème et malédiction. La sanction spirituelle dans les sources diplomatiques," in *Exclure de la communauté chrétienne*, ed. Geneviève Bührer-Thierry and Stéphane Gioanni, Haut Moyen Âge, 23 (Turnhout, 2015), pp. 215-38.

[14] Jeffrey A. Bowman, "Do Neo-Romans curse? Law, land, and ritual in the Midi (900-1100)," *Viator* 28 (1997): 1-32; Lester K. Little, *Benedictine Maledictions. Liturgical Cursing in Romanesque France* (Ithaca – London, 1993).

[15] E.g. Hans Werle, "Gold und Silber. Die Geldstrafen in den Pönformeln frühmittelalterlicher Urkunden des Klosters Lorsch," in *Recht und Wirtschaft in Geschichte und Gegenwart. Festschrift für Johannes Bärmann zum 70. Geburtstag*, ed. Marcus Lutter (Munich, 1975), pp. 53-63; Sho-ichi Sato, "La clause pénale dans les chartes mérovingiennes et son

more common in the course of the Middle Ages.[16] Therefore, Fritz Boye, whose detailed study on early medieval sanction clauses is still one of standard works, states that in the early Middle Ages, sanction clauses showed their cardinal importance in the sphere of private charters.[17]

In comparison with private charters, sanction clauses were used in early medieval royal diplomas rarely and only gradually. However, it is still worth dealing with a scanty number of testified examples of sanction clauses in royal diplomas to question how we can interpret such an exceptional use of those threatening clauses in the contemporary political or social context. This paper focuses on sanction clauses in royal diplomas and mandates from the early Carolingian age,[18] especially because we now have new editions of diplomas of the Merovingian kings, the Carolingian mayor of the palace, and Louis the Pious, which give us a more reliable basis for research than older editions did for earlier works.

1. Merovingian practices

There is no sanction clause in the genuine diplomas of Merovingian kings, as far as extant sources tell us.[19] Ingrid Heidrich notes that "a Merovingian diploma as a royal order or royal words didn't need such reinforcement."[20] In fact, the status of a royal diploma was higher than that of the others, as evident in chapter 59 of *Lex Ripuaria*.[21]

However, it is also known to scholars that in some types of royal documents, kings could threaten disobeyers of their orders with loss of royal favor with a sentence such as "si gratia nostra obtatis habere" (if you wish to be in our grace).[22] Among the extant genuine diplomas, two without *corroboratio*[23] have such sanction clauses. Both of them confirm the right of the abbey of St-Denis to get 100 solidi from the fiscal revenue in Marseille.[24] Peter Classen calls these documents related to toll-exemption "Frankish *tractoria*," which can be characterized as documents between royal diplomas and mandates.[25] Merovingian mandates were also equipped with such sanction clauses, as

implication," in *Herméneutique du texte d'histoire : orientation, interprétation et questions nouvelles*, ed. Sho-ichi Sato, Global COE Program International Conference Series, 6 (Nagoya, 2009), pp. 45-51.

[16] See the chronological table of royal diplomas with sanction clauses in: Studtmann, "Die Pönformel," pp. 355-74; Bougard, "Jugement divin," p. 219.

[17] Boye, "Über die Poenformeln," p. 145.

[18] Sanction clauses in Carolingian royal charter underwent a major change under Louis II of Italy. In the documents of this emperor, even in those not relating to immunity, we can find almost regularly *poena saecularis*. Erben, *Die Kaiser- und Königsurkunden*, pp. 358 and 361; Boye, "Über die Poenformeln," p. 139; Studtmann, "Die Pönformel," pp. 296-97; *Die Urkunden Ludwigs II.*, ed. Konrad Wanner, MGH Diplomata Karolinorum 4 (Hanover, 1994), pp. 33-36. I will discuss this phenomenon in another paper.

[19] Theo Kölzer, *Merowingerstudien II*, MGH Studien und Texte, 26 (Hanover, 1999), pp. 82-83. See also Studtmann, "Die Pönformel," pp. 289-90. According to Kölzer, an alleged sanction clause in the mandate of Chilperic I ("Si quis praecepta nostra contempserit, oculorum avulsione multetur") referred by Gregory of Tours (Cf. Studtmann, "Die Pönformel," p. 288) does not correspond to the practice of the chancery and may reflect Gregory's hate toward this king. *Die Urkunden der Merowinger*, ed. Theo Kölzer, 2 vols., MGH Diplomata (Hanover, 2001) (hereafter *DMer.*), vol. 1, p. xxiii.

[20] Ingrid Heidrich, "Titulatur und Urkunden der arnulfingischen Hausmeier," *Archiv für Diplomatik* 11/12 (1965/66): 71–279 (p. 143).

[21] *Lex Ribvaria*, ed. Franz Beyerle and Rudolf Buchner, MGH Leges nationum Germanicarum 3,2 (Hanover, 1954), c. 59, pp. 106-7, esp. clause 3, p .107: "Quod si testamentum regis absque contrario testamento falsum clamaverit, non aliunde quam de vita componat." Cf. Sickel, *Lehre*, pp. 6-9 and 201; Studtmann, "Die Pönformel," p 301.

[22] Erben, *Die Kaiser- und Königsurkunden*, p. 361. One can trace this type of legal sanctions back to the late Roman legislation. Rudolf Köstler, *Huldentzug als Strafe. Eine kirchenrechtliche Untersuchung mit Berücksichtigung des römischen und des deutschen Rechtes*, Kirchenrechtliche Abhandlungen 62 (Stuttgart, 1910), pp. 2-6. On sanction clauses in Merovingian edicts, see Studtmann, "Die Pönformel," p. 288. On the "Huld" (the German correspondence to the Latin *gratia*) with various pieces of evidence mainly from the tenth to the twelfth century, see Gerd Althoff, "Huld. Überlegungen zu einem Zentralbegriff der mittelalterlichen Herrschaftsordnung," *Frühmittelalterliche Studien* 25 (1991): 259–82.

[23] On the corroboratio in diplomas of Merovingian kings, see *DMer.*, p. xxiii. This formulary element was new in comparison with Roman imperial documents.

[24] *DMer.* no. 138, pp. 348-50 and no. 179, pp. 422-23. Cf. Studtmann, "Die Pönformel," p. 289-90; Heidrich, "Titulatur," p. 143.

[25] Peter Classen, *Kaiserreskript und Königsurkunde. Diplomatische Studien zum Problem der Kontinuität zwischen Altertum und Mittelalter Byzantina keimena*, kai meletai, 15 (Thessaloniki, 1977), pp. 147-48. Classen also counts *DMer.* no. 123, pp. 313-14, as such, but this document has no sanction clause. These "Frankish *tractoria*" must be distinguished from *tractoria* mentioned below, which had its origin in the late

evident in formularies which include models for royal documents.[26] The *formula* for royal *tractoria* in the *Formularies of Marculf*, which is in its form an order to regional officials about supply and accommodation for royal envoys, is an example.[27] Carolingian kings continued using this kind of sanction clauses in their mandates, as discussed below. A contrast between diplomas as a durable guarantee of legal rights and mandates as royal orders must be emphasized. A mandate must be interpreted in terms of the relationship between a king in person who could reward services for him and a recipient who, as his faithful agent, could expect such reward if he could fulfill the mandate.

By the way, charters of the Pippinids, or Arnulfings, have not received much attention in studies about sanction clauses, though they used sanction clauses in their charters before Pippin's ascension to kingship. The majority of their extant charters are about donation to religious institutions. Charles Martel and his ancestors used sanction clauses, both spiritual and pecuniary, in their almost all of their donation charters.[28] However, it should be noted that Charles Martel's protection letter for Boniface, which is written in the form of a mandate, does not contain any sanction clause.[29] This observation can be contrasted with the way referendaries of Merovingian kings used sanction clauses according to the types of royal documents.

However, after the notaries of Charles Martel, especially those of Carloman and Pippin as mayors of the palace, introduced Marculf's formularies for drafting documents of mayors of the palace, some changes can be observed. It seems that the character of their charters became more and more like royal diplomas. Their charters, except *placita*[30] and a letter to the abbot and monks of Flavigny,[31] now contain the *corroboratio* clause, which, generally with the announcement of sealing by the ring,[32] strengthens validity and stability of the document.[33] Before these two brothers, only the above-mentioned protection letter for Boniface issued by Charles Martel contains such a *corroboratio*.[34] In terms of sanction clauses, both mayors of the palace seem to have not used those formulaic factors for their documents in the same way as their predecessors anymore. None of Pippin's documents, including donation charters, contained sanction.

In the documents issued in the name of Carloman, however, we can find interesting examples, such as the two documents that were issued in favor of the abbey Stavelot-Malmedy: Carloman's donation charter, which Ingrid Heidrich dated a little earlier than the second document, and the *placitum*, which ended the conflict between Carloman and the abbey. Both documents contain a similar sentence in their sanction clauses.[35] In both cases, a future king (expected probably from the Merovingian dynasty)[36] is resorted to as a judge in case of a conflict in the future. This could be because these sentences with a character of *sanctio* were targeted mainly at Carloman himself and his descendants.[37] As he was (besides his brother) one of the virtual rulers of the kingdom at that time and his descendants would also take the same position later in the future, the one whose authority could prevent them from breaking the concord realized in these charters was a king who, even if theoretically, should be put upon them — that could be the condition agreed between

Antiquity.

[26] Köstler, *Huldentzug*, pp. 12-15; Studtmann, "Die Pönformel," pp. 288-89.

[27] Marculfi Formulae I, no. 11, in *Formulae Merowingici et Karolini aevi*, ed. Karl Zeumer, MGH Formulae (Hanover, 1886) (hereafter *MGH Form.*), p. 49.

[28] *Die Urkunden der Arnulfinger*, ed. Ingrid Heidrich, MGH Diplomata maiorum domus regiae e stirpe Arnulforum (Hanover, 2011) (hereafter *DArn.*), p. xxxiii.

[29] *DArn*. no. 11, pp. 26-28. It may be explained with its *corroboratio*. See below.

[30] *DArn*. no. 16, pp. 36-38, no. 18, pp. 41-42, and no. 22, pp. 48-50.

[31] *DArn*. no. 24, pp. 54-55.

[32] Cf. *DArn*. no. 17, pp. 39-41, which contains only Pippin's *subscriptio*.

[33] *DArn*., p. xxxi-xliii.

[34] *DArn*., p. xxvii.

[35] *DArn*. no. 15 (*villa Wasseiges*. [746/747?] 6. 6.), pp. 34-36, here p. 36: "Si quis vero, quod futurum esse non credo, contra hanc donationis nostre constitutionem facere presumpserit, iudicio successorum nostrorum regum eum relinquimus"; no. 16 (Düren, 747. 8. 15.), pp. 36-38, here p. 38: "Si quis vero aliquis de heredibus vel proheredibus nostris extiterit qui contra hanc donationem nostram facere voluerit successorum nostrorum regibus eum iudicandum relinquimus." Cf. *DArn*., p. xxxix.

[36] The possibility that they could expect a king from the Arnulfingian family cannot be excluded, but I deem it still unlikely around 747.

[37] Cf. Heidrich, "Titulatur," p. 113.

Carloman and the party of Stavelot-Malmedy. Therefore, these sanction clauses in Carloman's documents differed from those in the Merovingian royal documents and were similar in character to those in private charters in that they resorted to a king whose authority was a deterrent against possible violators of the rights described in the charters.

2. Mandates in the early Carolingian age

With regard to the royal documents of Pippin the Short after his enthronement of 751, there is no evidence that they were issued with sanction clauses. A change can be observed in the time of Charlemagne. First, in some mandates, Charlemagne threatened violators of royal orders with the loss of royal favor.[38] Joachim Studtmann notes that Charlemagne and Louis the Pious used the sanction clause threatening with the loss of royal favor continuously in the tradition of the Marculf's formularies.[39] However, some changes concerning sanction clauses can be observed in these mandates.[40] Sometime between 774 and 776, Charlemagne issued a mandate and ordered royal agents not to hinder agents of the abbey St-Denis from collecting customs in the *pagus* of Paris during the market of St-Denis. This mandate contains the sanction clause with which Charlemagne threatened those who violated the right of the abbey with a summons to the royal court, for which royal *missi* or counts were responsible. However, the ones who are threatened with the loss of royal favor in this mandate are these agents of the king. This double threatening in a sanction clause can be regarded as novel.[41] Furthermore, this mandate resembles a Merovingian "Frankish *tractoria*" mentioned above, but the former contains a *corroboratio* clause differently from the latter.

The other example is the so-called *Epistola in Italiam emissa*. This *litterae* (its self-definition found in its text) was a circular letter addressed to the secular officials, written in the form of a mandate.[42] According to its sanction clause, anyone among the officials who did not follow norms given by Charlemagne and was not willing to mend his manners promptly should be summoned to the royal court.[43] Hubert Mordek concludes that this *epistola* had its validity not only in Italy, but all over the kingdom. It is not easy to imagine that such Italians could have been sent or taken from

[38] *Die Urkunden Pippins, Karlmanns und Karls des Großen*, ed. Engelbert Mühlbacher, MGH Diplomata Karolinorum 1 (Hanover, 1906) (hereafter *DKar.*), no. 77, pp. 110-11 (an order to restore dispossessed property of the church of *Scoti* on Honau island); no. 172, pp. 230-31 (instruction to support Hildericus, who had to inquire the case of Farfa and restore its *iustitia*); no. 217, pp. 289-90 (instruction for counts concerning *Hispani*); *Capitularia regum Francorum*, ed. Alfred Boretius, MGH Capitularia regum Francorum 1 (Hanover, 1883) (hereafter *Capit.* 1), no. 29 (*Epistola de litteris colendis*), pp. 78-79; no. 75, p. 168 (instruction for abbot Fulrad of St-Quentin to mobilize his *homines*). See below on *DKar.* no. 88. However, not all the extant mandates of Charlemagne have sanction clauses. Heidrich, "Titulatur," p. 143, n. 333. Heidrich also counts *DKar.* no. 66 and no. 91 in this category, but I discuss these documents in the following section about diplomas.

[39] Studtmann, "Die Pönformel," pp. 291 and 301. Cf. Köstler, *Huldentzug*, pp. 16-17; Heidrich, "Titulatur," p. 143.

[40] Note that some of these mandates have *corroboratio* clauses, which does not accord with the observation of Studtmann about Merovingian documents. *DKar.* no. 88, pp. 127-28; no. 91, pp. 131-32; no. 172, pp. 230-31; no. 217, pp. 289-90.

[41] *DKar.* no. 88, pp. 127-28 = *Chartae Latinae Antiquiores. Facsimile-edition of the Latin charters prior to the ninth century*, ed. Albert Bruckner and Tiziano Dorandi, 1-49 vols. (Dietikon – Zurich, 1954-98) (hereafter *ChLA*), vol. 16, no. 621, pp. 12-15, here p. 13: "Si quis vero contra precepta anteriorum regum uel nostro aliquid facere aut contraire uoluerit, tunc missus noster uel comitis super noctes XXI ante nos per bannum nostrum uenire faciat in rationes contra misso sancti Dionisii et Folleradi abbatis. Similiter et si ullus telonearius vel aliquis homo ipsam inrumpere temptaverit, tunc missi nostri supradicti illum per fideiussores mittere faciant, ut ipse similiter ueniat infra noctes XXI ante nos in rationes. Taliter exinde agite, qualiter gratia nostra uultis habere." Studtmann noticed this example and the following one, but he did not comment on them further. Studtmann, "Die Pönformel," p. 291: "Gelengentlich wird auch in Form einer Pön gerichtliche Vorladung bestimmt."

[42] *Capit.* 1, no. 97, pp. 203-204. This letter is contained in the edition of capitularies, and Hubert Mordek calls it *Epistula capitularis*, confirming some characteristics of Frankish "capitularies" in it. Hubert Mordek, "Die Anfänge der fränkischen Gesetzgebung für Italien," *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, 85 (2005): 1-35 (p. 8). But we do not have to put the letter in this category of sources to interpret its practical significance. On the problems of the modern concept of "*capitularia*," see the contribution of Takuro Tsuda in this issue with reference to the earlier literature.

[43] *Capit.* 1, no. 97, pp. 203-204: "Si quis autem, quod absit, ullus ex vobis de [...] contradicere praesumpserit, sciat se procul dubio, nisi se cito correxerit, in conspectu nostro exinde deducere rationem…"

Northern Italy over the Alps to the royal court in Francia. However, if we follow Mordek, who dated this mandate in late 780, i.e., shortly before the king departed for Italy,[44] it would be convincing that disobedient Italian officials should be taken in front of the king who was in Pavia, Rome, or another Italian city. Regarding disobedient officials in Francia, they could be summoned after the return of the king, if not before his departure. In this sense, therefore, this threatening with the summons to the royal court was realistic. Furthermore, this mandate was corroborated by the royal seal, too.[45]

In the first decade of his sole rule of the Frankish kingdom after his brother Carloman died in 771, Charlemagne seems to have extended, or attempted to extend, the use of sanction clauses in his mandates. With this context in mind, further documents are analyzed in the next section.

3. Changes under Charlemagne: sanction clauses in privileges of immunity

Now we turn our attention to royal diplomas of Charlemagne. While the majority of diplomas do not contain any sanction clauses, there are some exceptions. It must be emphasized that all extant diplomas of Charlemagne which accompany sanction clauses are concerned with the immunity of religious institutions. The first document was issued on April 1, 772 for the church of Trier in the form of a mandate: royal agents are addressed in the second person, while the document is corroborated with a royal seal.[46] Its sanction clause threatens a violator of the immunity with the loss of royal favor, like other mandates, but also contains the *poena spiritualis*.[47] This combination was novel as far as we know from extant sources.[48] This type of immunity-privilege with the double sanction clause was issued again for the church of Metz on January 22, 775.[49] It should be noted that both of them were issued to confirm the immunity-rights of those churches given by earlier kings: they were written with preceding examples in hand, but with a newly introduced formula.[50]

[44] Mordek, "Die Anfänge," pp. 8-17.

[45] *Capit*. 1, no. 97, p. 204.

[46] *DKar*., no. 66, pp. 95-97.

[47] *DKar*., no. 66, p. 97: "ut quicunque hoc de iudicibus nostris aut quislibet refragare aut irrumpere vel emutare voluerit, iram dei omnipotentis et omnium sanctorum, ubi ipse pontifex vel abbates sui deserviunt, incurrat et gratia nostra nullo umquam tempore possit habere, sed magis a vobis vel a successoribus vestris sub integra emunitate omni tempore in omnibus consevetur, qualiter gratia nostra, ut diximus, vultis habere propicia."

[48] Erben, *Die Kaiser- und Königsurkunden*, p. 362. Though Heidrich, "Titulatur," pp. 142-43, regarded a diploma written with the name of Childeric III as the first diploma with this combination, the concerned diploma is now regarded as a forgery. *DMer*. no. 192, pp. 477-80. Both of the two Merovingian diplomas that Boye, "Über die Poenformeln," p. 142, n. 1, cited are also forgeries. *DMer*. no. 49, pp. 126-28 and no. 97, pp. 249-51. Some *formulae* in formularies written before the reign of Charlemagne contain this kind of combination, which are nevertheless shorter, for example: Marculfi Formulae I, no. 2 (*Cessio regis de hoc privilegium*), in *MGH Form*., pp. 41-43, here p. 42: "... et Dei iram inqurrat et notram offensam vel a fisco gravi damno susteneat."; Cartae Senonicae, no. 12 (*Carta dinariale*), in *MGH Form*., p. 190: "... memoratus ille [...] perennis temporibus cum Dei et nostra gratia valeat, Christo propitio, permanere bene inienuus atque securus"; Formulae Salicae Bignoniae, no. 1 (*Carta denariale*), in *MGH Form*., p. 228: " ... qui [...] perennis temporibus cum Dei et nostra gratia valead(!) permanere bene ingenuus adque secuorus." The latter two examples are not sanction clauses. On early medieval formularies, see Alice Rio, *Legal practice and the written word in the early Middle Ages. Frankish formulae, c. 500-1000*, Cambridge Studies in Medieval Life and Thought, Fourth Series, 75 (Cambridge – New York, 2009). Note that according to Theo Kölzer there is no genuine Merovingian diploma that was surely based on the *Formularies of Marculf*. *DMer*., p. xxvi. A diploma of Carloman, with which in 770 he gave immunity to Novalese, contains the following sanction clause: "nec, quod primitus est, dei iram incurrat et nostram offensam et a fisco grave damno sustineat." *DKar*. no. 52 (Neumagen, 770. 6. 26.), pp. 72-74, here p. 73. This clause is based on Marculfi Formulae I, no. 2. Note that only the 18th century copy of this diploma is known. As Charlemagne granted his privilege of immunity to the same abbey, he did not mention the diploma of his brother, nor use any sanction clause. *DKar*. no. 74, pp. 106-108. Charlemagne's diploma was based on Marculfi Formulae I, no. 3 (*Emunitate regia*), in *MGH Form*., pp. 43-44 (without a sanction clause). See also a *formula* in the Marculf's collection for a diploma confirming immunity which also lacks a sanction clause. Marculfi Formulae I, no. 4 (*Confirmatio de emunitatem*), in *MGH Form*., pp. 44-45.

[49] *DKar*. no. 91, pp. 131-32, here 132: "ut quicumque hoc de iudicibus nostris aut quislibet refragare aut irrumpere vel imutare voluerit, iram trine maiestatis vel omnium sanctorum, ubi ipse pontifex vel abbates sui deserviunt, incurrat et gratiam nostram nullo umquam tempore possit habere, sed magis a vobis vel successoribus vestris sub integra emunitate omni tempore modis omnibus consevetur, qualiter gratia nostra, ut diximus, vultis habere propiciam."

It must also be taken into account that Charlemagne's diplomas were generally not standardized in the 770s yet.[51]

Thereafter, Charlemagne issued, as far as we know, four privileges of immunity with pecuniary sanction clauses. With the sanction clause of the charter for the abbey St. Marcel in Châlon on April 30, 779, Charlemagne introduced the concrete penalty of 600 solidi for breaking the immunity. A violator of the right of immunity should pay two-thirds of the fine to the abbey and the rest to the fisc.[52] The amount of 600 solidi is not unusual in the Frankish legislation.[53] Unfortunately, though, we do not know the exact reason of the introduction of a pecuniary sanction clause, especially because we have little information about the situation of this abbey around this time: this diploma is the oldest and its confirmation by Louis the Pious in 835 is the second oldest genuine document about the abbey.[54] However, the diploma for St. Marcel is not a unique one. Three diplomas issued in the following years include similar sanction clauses with a pecuniary penalty of 600 solidi: for St. Martin in Tours in 782 and 796/800[55] as well as for the church of Cambrai, which is, as *deperditum*, mentioned in the diploma of Louis the Pious for the same church.[56] Charlemagne seems to have attempted to use this type of sanction clauses, offering better security against the violation of immunity.

It is well known that in 803 Charlemagne added a clause about immunity in the *leges*: should anyone violate an immunity right, he must pay a fine of 600 solidi.[57] Even if the above-mentioned

[50] On these diplomas, see Reinhold Kaiser, "Karls des Großen Immunitätsprivilegien für Trier (772) und Metz (775)," *Jahrbuch für westdeutsche Landesgeschichte* 2 (1976): 1-22 (pp. 9-22); Reinhold Kaiser, *Bischofsherrschaft zwischen Königtum und Fürstenmacht. Studien zur bischöflichen Stadtherrschaft im westfränkisch-französischen Reich im frühen und hohen Mittelalter*, Pariser Historische Studien, 17 (Bonn, 1981), pp. 79-80. Note that we must interpret at least the diploma for Trier in the context of the demolition of the so-called Merovingian *Bischofsherrschaft* or *-staat* and reestablishment of the *comitatus* in and around Trier. See also Hans Hubert Anton, "Verfassungsgeschichtliche Kontinuität und Wandlungen von der Spätantike zum hohen Mittelalter: das Beispiel Trier," *Francia* 14 (1986): 1–25 (pp. 17-21); Hans Hubert Anton, "Trier in der hohen und späten Karolingerzeit," in *Trier im Mittelalter*, ed. Hans Hubert Anton and Alfred Haverkamp, 2000 Jahre Trier, 2 (Trier, 1996), pp. 68-117 (pp. 70-71). Kaiser points out that the diploma for Trier contained besides the royal *corroboratio* additional confirmation by a bishop and royal *leudes*. Kaiser, "Karls des Großen Immunitätsprivilegien," p. 13; *DKar*. no. 66, p. 97: "... manu nostra signaculis infra decrevimus in dei nomine roborare et a pontifice vel a leudis nostris subter iussimus adfirmare." This is also a rare instance, though it could be an interpolation. Theodor von Sickel, "Beiträge zur Diplomatik. III. Die Mundbriefe Immunitäten und Privilegien der ersten Karolinger bis zum Jahre 840," *Sitzungsberichte. Akademie der Wissenschaften in Wien, Philosophisch-Historische Klasse* 47 (1864): 175-277 (pp. 226-27). However, if we can premise an active participation of the bishop of Trier, Weomad, and royal *leudes* in the issuing process of this diploma in the time of reduction of the episcopal power in and around Trier, we may assume that this diploma could have, if partly, character of a compromise between the bishop and the secular power and its agents in and around Trier. If it is true, then we can assume that the bishop could have an influence on the introduction of the *poena spritualis*, which was an element of contemporary private charters concerned with churches, in the royal diploma: with such spiritual threatening, Weomad may have hoped to protect the right of his church better which he could have secured despite the demolition of the *Bischofsstaat*.

[51] Mersiowsky, *Die Urkunde*, pp. 80-85.

[52] *DKar*. no. 123, pp. 171-73 = ChLA 17, no. 651, pp. 3-6, here p. 6: "Et si quis fuit dux vel comis domesticis vecariis seo qualiscumque iudiciaria potestate succinctus, indulgentiam bonorum aut bonitatem piorum aut christianorum aut regum, antecessorum nostrorum, ipsas inrumpere aut violare presumserit, soledus sexcentus numerum se cognuscat esse culpabilem, ita ut duas partes in archevum ipsius monastirii reddat et tercia parte ad fisci nostro sacello multa conponat..."

[53] Cf. Septem causam, c. vii: *De soledis DC*, in *Pactus legis Salicae*, ed. Karl August Eckhardt, MGH Leges nationum Germanicarum 4,1 (Hanover, 1962), p. 272: c. 1 – murder of a long-haired boy; c. 2 – beating a woman to death; c. 3 – murder of a pregnant woman of free status; c. 4 – murder of a count [*grafio*]; c. 5 – murder of a royal agent (*saceboro*) who is responsible to collect fines; c. 6 – murder of a Frank within four seats (*quattuor solia*) (in a house?); and c. 7: murder of a Frank by a Frank.

[54] *The cartulary of St.-Marcel-lès-Chalon 779-1126*, ed. Constance Brittain Bouchard, Mediaeval Academy books 102 (Cambridge, Mass., 1998), p. 2.

[55] *DKar*. no. 141, pp. 191-93 and no. 195, pp. 261-63. On these diplomas, see Georges Tessier, "Les diplômes carolingiens du chartrier de Saint-Martin de Tours," in *Mélanges d'histoire du moyen âge dédiés à la mémoire de Louis Halphen* (Paris, 1951), pp. 683–91 (pp. 684-85).

[56] *Die Urkunden Ludwigs des Frommen*, ed. Theo Kölzer, MGH Diplomata Karolinorum 2 (Wiesbaden, 2016) (hereafter *DLdF*.), no. 92, pp. 222-25: "Continebatur etiam in eodem praecepto domni et genitoris nostri, quod si quis dux, comes, vicarius seu quislibet ex iudiciaria potestate auctoritatem domni et genitoris nostri vel antecessorum regum inrumpere aut violare praesumpserit, soledos sexcentos culpabilis iudicetur, videlicet ut duae partes in archivum ipsius ecclesiae admittantur et tertiam fiscus regalis recipiat, ut nullus tale quid auderet perpetrare."

[57] *Capit*. 1, no. 39 (*Capitulare legibus additum*), c. 2, p. 113: "Si quis in emunitatem damnum aliquid fecerit, DC solidos componat." See Sickel, *Lehre*, pp. 201-202; Georg Waitz, *Deutsche Verfassungsgeschichte. Die Verfassung des Fränk-*

diplomas of Charlemagne in the last few decades of the eighth century may be exceptional with their sanction clauses in comparison with other royal documents concerning immunity,[58] we can esteem these documents as his effort to assure immunity rights of individual religious institutions more stably. It must be emphasized that sanction clauses themselves were exceptional among Charlemagne's diplomas. This effort would be crystallized into the legislation of 803[59] and here we can observe how a Frankish king legislated generally on the basis of earlier measures made in each concrete case.

Thus, theoretically, Charlemagne and Louis the Pious no longer needed to threaten with a pecuniary penalty in their individual diplomas of immunity anymore. Three of four diplomas of Louis the Pious, which contain the pecuniary sanction clauses, indeed confirm his father's diplomas of immunity with those clauses.[60] The only exception is the diploma for the abbey Farfa on April 28, 820, whose sanction clause threatens with a penalty of 600 solidi "secundum constitutionem domni et genitoris nostri Karoli imperatoris."[61] It is not clear why this abbey could obtain such a charter mentioning Charlemagne's legislation of 803,[62] especially when this abbey had already obtained a diploma confirming its immunity on August 4, 815, which did not contain any sanction clauses.[63] It may be related to the tension between the abbey and the Roman church. The papacy reached an agreement known as *Hludowicianum* with Louis the Pious in 817. This *pactum* contained confirmation of the papal rights in the Sabine, where the abbey was situated. As Marios Costambeys argues, "as the first half of the ninth century progressed, the source of interference in Farfa and its estates was increasingly identified with the papacy." In such a situation, Farfa may have hoped to assert their right more strongly once again by recalling the legislative authority of the Carolingian monarch.[64] Anyway, when Louis sent his mandate to his agents in Provence, Septimania and Aquitania to respect the right of immunity, the emperor threatened, not with a fine of 600 solidi, but with the

ischen Reichs, vol. 4, 2nd ed. (Berlin, 1885), pp. 303-305; François Louis Ganshof, "L'immunité dans la monarchie franque," in *Les liens de vassalité et les immunités*, Recueils de la Société Jean Bodin pour l'histoire comparative des institutions, 1 (Bruxelles, 1958), pp. 171-216 (p. 202); Paul Fouracre, "Eternal light and earthly needs. Practical aspects of the development of Frankish immunities," in *Property and power in the early Middle Ages*, ed. Wendy Davies and Paul Fouracre (Cambridge, 1995), pp. 53-81 (p. 65, without mention of sanction clauses).

[58] Studtmann, "Die Pönformel," p. 293; Ganshof, "L'immunité," p. 193, n. 67 and p. 202.

[59] Compare Studtmann, "Die Pönformel," p. 301.

[60] For sanction clauses in the diplomas of Louis, see *DLdF*., pp. lx-lxi. *DLdF*. no. 92, pp. 222-25 (cited above); no. 108 (Aachen, 816. 8. 30.), pp. 259-66, here p. 266 (for St. Martin in Tours): "Si quis autem in tantam prorumpere ausus fuerit audaciam, ut huius precepti nostri violator exstiterit, quemadmodum in preceptione domni et genitoris nostri continetur, non solum in offensam nostram lapsurum, verum etiam sexcentorum solidorum auri ad purum excocti se noverit pena multandum, ex qua duas partes rectores memorati monasterii, tertiam vero ius fisci recipiat." (cf. Formulae Imperiales, no. 29, in *MGH Form*., pp. 307-308); no. 126 (Aachen, 817. 7. 1.), pp. 320-23 (confirmation of no. 108). After the confirmation for St. Martin in Tours, Louis issued a mandate and ordered counts, their agents, and imperial *missi* to respect the right of immunity of the abbey. Those who should violate this right should pay the fine of 600 solidi and, in the worst case, be summoned to the imperial court (note that it is also one of the elements in sanction clauses which Charlemagne introduced!). *DLdF*. no. 109, pp. 267-68. When Louis the Pious confirmed Charlemagne's privilege of immunity for Triers in 816, the sanction clause discussed above was not cited any more. *DLdF*. no. 105, pp. 251-54.

[61] *DLdF*. no. 177, pp. 438-40, here p. 439: "Si quis vero ausu temerario contra hanc nostre auctoritatis iussionem venire presumpserit et eorum, que fieri prohibemus, contra predictum venerabilem monasterium facere temptaverit, sciat se secundum constitutionem domni et genitoris nostri karoli imperatoris ac nostram sexcentorum solidorum summa ad partem prefati monasterii esse multandum."

[62] Compare Studtmann, "Die Pönformel," p. 301, who construes it as "die offizielle Fixierung einer Satzung des fränkischen Königsrechtes" in Italian charters.

[63] *DLdF*. no. 71, pp. 174-76. The abbot Ingoald was in Aachen in August 815 personally and obtained, on the same day, one more charter confirming the property of the abbey. *DLdF*. no. 72, pp. 176-79. On April 28, 820, Ingoald was in Aachen and obtained three diplomas: *DLdF*. no. 177, pp. 438-40; no. 178, pp. 440-43; no. 180, pp. 445-47. On *DLdF*. no. 180, see below. Furthermore, Louis issued a mandate addressed to ecclesiastical and secular officials in favor of this abbey on the same day. *DLdF*. no. 179, pp. 443-45. We can guess that this abbey had a good relationship with the emperor.

[64] On Farfa, the Carolingians, and the papacy from 774 to the first half of the ninth century, see Marios Costambeys, *Power and patronage in early medieval Italy. Local society, Italian politics and the abbey of Farfa, c. 700-900*, Cambridge Studies in Medieval Life and Thought Forth Series, 70 (Cambridge – New York – Melbourne – Madrid – Cape Town – Singapore – São Paulo, 2007), pp. 301-44 (citation from p. 325). On the *Hludowicianum*, see Adelheid Hahn, "Das Hludowicianum. Die Urkunde Ludwigs d. Fr. für die römische Kirche von 817," *Archiv für Diplomatik* 21 (1975): 15-135 (with its edition pp. 130-35).

[65] *DLdF*. no. 205 (Aachen, 822. 3. 19.), pp. 506-508, here pp.

loss of royal favor. If anyone should violate the right, he should be punished by the local law.[65]

Besides these diplomas of immunity, there are two further diplomas, which Louis issued with sanction clauses.[66] The first one was issued between 814 and 821, maybe around 815, to confirm the *inquisitio* executed in 804 by the *missi* of Charlemagne in Istria. This diploma, addressed to patriarch Fortunatus of Grado, bishops, abbots, tribunes, and other *fideles* in Istria, borrowed its pecuniary sanction clause from the *notitia* recording the *inquisitio* of 804.[67] With the second diploma, Louis confirmed a settlement reached between abbot Ingoald of Farfa and bishop Sigoald of Spoleto through the intervention of bishop Heito of Basel, abbot Ansegis of St-Wandrille and count Gerold as imperial *missi*: the emperor threatened those who broke the contract with a fine agreed between the two parties.[68] Thus, in both cases, it seems not to have been Louis who took the initiative to incorporate sanction clauses into the imperial diplomas.

As this survey of sources shows so far, it was Charlemagne who used sanction clauses more actively than his predecessors and his son and his peculiarity can be found in documents concerning immunity. It is indeed already known that all the extant diplomas with pecuniary sanction clauses before Lothar I are those that are concerned with immunity, but historians seem not to have dealt with this fact properly.[69] We had better understand the development of sanction clauses in Carolingian diplomas as described above in regard to the immunity politics of the early Carolingians, especially that of Charlemagne.[70]

In the legislative activity of Pippin the Short, his effort to stabilize the institution of immu-

507-508: "… non tamen in hoc immunitas fracta iudicanda est et ideo non sexcentorum solidorum conpositione, set secundum legem, que in eo loco tenetur, multandus est is, qui fraudem vel damnum in tali loco convictus fuerit fecisse … Propterea precipimus atque iubemus, ut taliter exinde agatis, qualiter gratiam nostram vultis habere propiciam."

[66] Studtmann, "Die Pönformel," pp. 293-94 and 296, wrote that the diploma of donation granted by Loius for abbot Hilduin of St-Denis in 833 contained a *poena spiritualis* which was similar to that of *DKar*. no. 66 for Trier, though I cannot recognize such a sentence in this diploma. *DLdF*. no. 324 (Ver-sur-Launette, 833. 1. 20.), pp. 801-805.

[67] *DLdF*. no. 82 ([814-821, 815?]), pp. 200-202, here p. 202: "Et quicumque iudicatum, quod legati domni et genitoris nostri Iso presbiter et Cadola atque Aio comites per iussionem eiusdem domni et genitoris nostri inter vos constituerunt et primates populi vestri centum et septuaginta duo per sacramentum confirmaverunt, ut si aliqua contumacia violaverit, noverit se pena, que in ipso iudicatu conscripta est, esse multandum, id est novem libras auri ad palatium nostrum debeat solvere." On the *inquisitio* of *missi* sent by Charlemagne and his son Pippin of Italy in Istria, see Stefan Esders, "Regionale Selbstbehauptung zwischen Byzanz und dem Frankenreich. Die inquisitio der Rechtsgewohnheiten Istriens durch die Sendboten Karls des Großen und Pippins von Italien," in *Eid und Wahrheitssuche. Studien zu rechtlichen Befragungspraktiken in Mittelalter und früher Neuzeit*, ed. Stefan Esders and Thomas Scharff, Gesellschaft, Kultur und Schrift. Mediävistische Beiträge, 7 (Frankfurt am Main – Berlin – Bern – New York – Paris – Wien, 1999), pp. 49-112; Harald Krahwinkler, *...In loco qui dicitur Riziano... Zbor z Rižani pri Kopru leta 804 = Die Versammlung in Rižana/Risano bei Koper/Capodistria im Jahre 804*, Knjižnica Annales, 40 (Koper, 2004).

[68] *DLdF*. no. 180 (Aachen, 820. 4. 28.), pp. 445-47: "... et si iterum quelibet pars eam repetere presumeret parti, cui litem intulerit, pene nomine auri mancusios quinque milia componat. […] per quam decernimus atque iubemus, ut predicta pactuatio vel convenientia, que propter memoratam contentionem ordine quo diximus facta est, tam inter ipsos, qui presenti tempore sunt, quam inter successores eorum firma et stabilis omni tempore perseveret et a nullo episcopo vel abbate violetur vel convellatur, sciantque et certum habeant multam superius descriptam se debere componere, qui contra parem suum de predictis ecclesiis aut rebus ad eas pertinentibus causationem sopitam exsuscitare temptaverit."

[69] See, for example, Studtmann, "Die Pönformel," p. 292-93. He even tried to show that pecuniary sanction clauses could have been used in other *deperdita* diplomas which did not concern immunity. For this assumption, he cited chapters 28 and 43 in the third book of the so-called capitulary collection of Ansegis. *Die Kapitulariensammlung des Ansegis*, ed. Gerhard Schmitz, MGH Capitularia regum Francorum Nova Series 1 (Hanover 1996), p. 586: "Si quis per cartam ingenuitatis a domino suo legitime libertatem est consecutus, liber permaneat. Si vero aliquis eum iniuste inservire temptaverit, et ille cartam ingenuitatis suae ostenderit et adversarium se inservire velle comprobaverit, ille, qui hoc temptavit multam, quae in carta descripta est, solvere cogatur. Si vero carta non paruerit, sed iam ab illo qui eum inservire voluerit, disfacta est, wirgildum eius componat, duas partes illi, quem inservire voluerat, tertiam regi; et ille iterum per praeceptum regis libertatem suam conquirat." See also Ansegis 3, 43, pp. 591-92. Studtmann assumed that *carta ingetuitatis* mentioned here could be a royal diploma because the one whose freedom was threatened and whose certificate was destroyed maliciously could get his *libertas* back *per praeceptum regis*. However, a *carta ingenuitatis* here must have been a private charter issued by the *dominus* who freed his man, as the first sentence of the concerned text suggests. See also Formulae extravagantes I, no. 19 (It calls itself *ingenitatis kartula* in its text), in *MGH Form*., p. 545; Formulae Bituricensis, no. 9 (*Ingenuitas*), in *MGH Form*., p. 172. Both *formulae* contain pecuniary sanction clauses.

[70] Ganshof, "L'immunité," pp. 191-216, is still a useful survey of the Carolingian immunities.

[71] *Capit*. 1, no. 13 (*Pippini regis capitulare*, 754/755), c. 6, p.

nity around the middle of the eighth century is evident, though we do not know the details of his concrete measures.[71] Charlemagne attempted to overcome a disadvantage of the institution of immunity in March 779. In the ninth chapter of the *Capitulare Haristallense*, he ordered his *judices* and vassals, threatening them with the loss of *beneficium* or *honor* (a sanction clause!): they should bring to comital courts those thieves who fled into areas privileged with immunity rights.[72] It must be noted that just in the following month after this legislation Charlemagne issued the first privilege of immunity (as far as we know) with a pecuniary sanction clause for St. Marcel in Châlon.

The next "parallel" can be identified in 803. We have already seen that with the chapter 2 of *Capitulare legibus additum*, Charlemagne introduced into the general legislation the pecuniary penalty of 600 solidi for violation of immunity. However, this chapter contains a further measure, which could contribute to the maintenance of public peace instead of the existence of immunities: Should thieves, murderers, or other criminals flee into areas of immunity, counts should tell beneficiaries of immunity or their representatives to send these criminals back. Should they refuse to do so, they should be culpable to pay the defined fines, namely 15 solidi for the first negligence of the comital order, and 30 solidi for the second time. If they should not follow the order three times, then counts could enter in the areas of immunity to arrest the criminals, while the disobedient beneficiaries should be forced to pay the fine which the criminals should pay. If they answer the first comital inquiry that a criminal was within immunity but fled farther, they should swear firmly that they did not intend to let the criminal escape or harm anyone, and that, if any, they would satisfy the victim. Anyone who opposes counts entering in areas of immunity should be sent by the counts to the royal court to be judged. Such a person should pay a fine of 600 solidi, the same as that for violation of immunity.[73]

The Carolingians, like Charlemagne, did not intend to limit their own authority and power in the kingdom by privileging churches with immunity.[74] As Paul Fouracre formulated, "the grant of immunity was a means of exchanging earthly property for supernatural power."[75] According to David Bachrach, Charlemagne was conscious of "the practical utility of the immunity as a means of assuring the efficient mobilization of resources for military campaigns."[76] In this sense, it was meaningful and necessary for the monarchy itself to guarantee immunity rights more effectively. For this purpose, Charlemagne seems to have used sanction clauses. This effort was, however, intertwined with the other effort of the monarch to avoid the risk that immunities could hinder his royal government, as the chronologically parallel development of the use of sanction clauses and of

32: "Ut emunitates conservatae sint"; MGH Capit. 1, no. 14 (*Concilium Vernense*, 755. 7. 11.), c. 19, p. 36: "De emunitates. Ut omnes emunitates per universas ecclesias conservata sint."

[72] *Capit*. 1, no. 20, c. 9, p. 48: "Ut latrones de infra inmunitatem illi iudicis ad comitum placita praesentetur; et qui hoc non fecerit, beneficium et honorum perdat. Similiter et vassus noster, si hoc non adimpleverit, beneficium et honorem perdat; et qui beneficium non habuerit, bannum solvat." Carolingian immunities were not spaces of asylum. Barbara H. Rosenwein, Negotiating space. *Power, restraint, and privileges of immunity in early medieval Europe* (Ithaca, N.Y., 1999), pp. 227-28.

[73] *Capit*. 1, no. 39, c. 2, p. 113: "Si quis in emunitatem damnum aliquid fecerit, DC solidos componat. Si autem homo furtum aut homicidium vel quodlibet crimen foris committens infra emunitatem fugerit, mandet comes vel episcopo vel abbati vel vicedomino vel quicumque locum episcopi vel abbatis tenuerit, ut reddat ei reum. Si ille contradixerit et eum reddere noluerit, in prima contradictione solidis XV culpabilis iudicetur; si ad secundam inquisitionem eum reddere noluerit, XXX solidis culpabilis iudicetur; si nec ad tertiam consentire noluerit, quicquid reus damnum fecerat, totum ille qui eum infra emunitatem retinet nec reddere vult solvere cogatur, et ipse comes veniens licentiam habeat ipsum hominem infra emunitatem quaerendi, ubicumque eum invenire potuerit. Si autem statim in prima inquisitione comiti responsum fuerit, quod reus infra emunitatem quidem fuisset sed fuga lapsus sit, statim iuret quod ipse eum ad iusticiam cuiuslibet disfaciendam fugire non fecisset, et sit ei in hoc satisfactum. Si autem intranti in ipsam emunitatem comiti collecta manu quilibet resistere temptaverit, comes hoc ad regem vel ad principem deferat ibique iudicetur, ut, sicut ille qui in emunitatem damnum fecit DC solidos conponere debuit, ita qui comiti collecta manu resistere praesumpserit DC solidis culpabilis iudicetur." For this chapter, cf. Ganshof, "L'immunité," p. 199.

[74] Cf. Rosenwein, *Negotiating space*, here esp. pp. 99-134.

[75] Fouracre, "Eternal light," p. 80.

[76] David Bachrach, "Immunities as tools of royal military policy under the Carolingian and Ottonian kings," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanische Abteilung* 130-1 (2013): 1-36 (p. 13).

[77] Fichtenau, "Forschungen," p. 322.

legislative activities shows.

Conclusion

Scholars, especially diplomatists, who studied sanction clauses have focused mainly on the development of the clauses as a formulary part of medieval documents. Attempts have been made to describe the history of a formulary sentence, namely, its origin(s), formation, establishment, change, disappearance, etc. However, when we observe uses of such sentences by contextualizing them in various backgrounds from the standpoint of "communication", we can see some aspects of the past reality more clearly. This paper attempted to reconsider meanings of sanction clauses in royal documents at a time when those clauses were not fixed as an integral part of royal documents. Charlemagne seems to have used this kind of communication in the legal sphere cleverly and effectively, as it can be seen in his politics of immunity. Though Heinrich Fichtenau presumed that both the *poena spiritualis* and the *poena saecularis* in royal diplomas could be regarded in many cases as a sign of uncertainty of a period or of the weakness of the ruler,[77] we cannot link his unique use of them with Charlemagne's weakness.

Sanction clauses are expressions of threat and menace. They were certainly a part of communication between monarchs and their courts on the one side and those under their rule who cooperated or had to cooperate in the government of the kingdom on the other, when the latter could experience monarchical threat expressed in royal documents, now as recipients, or as listeners, if they were read out. Sanction clauses were tools with which monarchs could make people act along the line they directed. As such, they were not meaningless nor banal, so far as the sources discussed in this paper allow us to say. This paper is the first step to understanding the "culture of threats" — if I may think of such a phenomenon — in the Carolingian age.

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