

ARTICLE

The *scabini* in historiographical perspective

Alice Hicklin 

Royal Holloway, University of London

Correspondence

Alice Hicklin, CONNEC International Building,
Royal Holloway, University of London, Egham,
Surrey TW20 0EX, UK.
Email: alicehicklin@gmail.com

Funding information

Horizon 2020 Framework Programme, Grant/
Award Number: 649307

Abstract

The introduction of the *scabini*, men who served as judgement finders, has long been connected to judicial reform enacted by Charlemagne. By the thirteenth century, the term *scabini* had become synonymous with legal culture and courts from Norway to Hungary and beyond. This article will trace the *scabini* from historiographical debates over their provenance, to their introduction under Charlemagne, why and how this change was enacted, their duties and the impact of the reform on terminology and the writing of documentary texts. This touches on keystones of changing historiographical perspectives of the Carolingians: from nineteenth-century views of a 'Germanic' past that privileged collective judgement to twentieth-century emphasis on the written word as a mode of governance and the relationship between Charlemagne and the aristocracy, and recent attention to the function of capitularies in tenth-century western Europe. It will explore the alleged disappearance of the *scabini*, a development that is connected in scholarship to nothing less significant than debates concerning the feudal revolution, before considering areas for future study.

The research for this article was conducted at Freie Universität Berlin and funded by the 'After Empire: Using and Not Using the Past in the Crisis of the Carolingian World, c.900–1050' HERA project, receiving funding from the European Union's Horizon 2020 research and innovation programme under grant agreement no. 649307.

This is an open access article under the terms of the Creative Commons Attribution-NonCommercial-NoDerivs License, which permits use and distribution in any medium, provided the original work is properly cited, the use is non-commercial and no modifications or adaptations are made.

© 2020 The Author. History Compass published by John Wiley & Sons Ltd

1 | INTRODUCTION

The introduction of the class of men known as *scabini*, who served in law courts with a function akin to an early medieval 'grand jury' (Davis, 2015, p. 52), has long been connected to judicial reforms enacted by Charlemagne in the heyday of the Carolingian empire. No contemporary document outlines their responsibilities or status, and we know little of their duties or relative importance to local courts. More sporadic appearances in the written record followed their frequent appearance in capitularies and diplomas issued around the turn of the ninth century, until the twelfth century, when *scabini* became synonymous with legal culture and courts from Norway to Hungary and beyond.

This article will trace the *scabini* through historiography from debates over their provenance, to their introduction under Charlemagne, why and how this change was enacted, their duties and the impact of the reform on terminology and the writing of documentary texts. Such analysis touches on many of the keystones of changing historiographical perspectives of the Carolingians altogether: nineteenth-century views of a 'Germanic' past that privileged collective judgement, twentieth-century emphasis on the written word as a mode of governance and the relationship between Charlemagne and the aristocracy, and very recent attention paid to the function of capitularies in ninth- and tenth-century western Europe. It will explore the attention paid to identifying the *scabini* and the terminological flexibility (or otherwise) in such documents. Finally, it will turn to the alleged disappearance of the *scabini* across the early medieval west, a development that is connected in scholarship to nothing less significant than debates concerning the feudal revolution, before considering areas for future study.

1.1 | The *scabini*: a 'Germanic' past?

The etymology of the term *scabini* had by the nineteenth century become the subject of intense interest. The most persuasive suggestion remains that of Jacob Grimm (1828, pp. 775–776), that the term derived from *scapan*, referring to the giving of something—in this case, the giving of the law, though other roots were proposed including Greek and even Hebrew (outlined in Waitz, 1882, p. 392 n. 1). In line with contemporary historiographical interests, a great deal of energy went into establishing the provenance of the *scabini*. Consequently, the term features in all the voluminous compendia of legal history produced in the long nineteenth century, whether in French (Beauchet, 1886; Brissaud, 1898; Chénon, 1926; Déclareuil, 1789; Fustel de Coulanges, 1885, 1888, 1892; Glasson, 1887–1903; Viollet, 1890–1903), German (Bethmann-Hollweg, 1868; Brunner, 1887; Ficker, 1868; Hermann, 1881; Savigny, 1834; Sickel, 1885; Sohm, 1871; Unger, 1842; Waitz, 1882–5) or Italian (Besta, 1927; Pèrtille, 1896; Salvioli, 1927). Their emergence was typically pinpointed to the vestiges of Roman law, pre-historic Germanic collective judgement or a mixture of both, within perceived immalleable institutional and legal-constitutional frameworks of justice. While some argued for the importation of the *scabini* into Francia from Italy following Charlemagne's conquest of Lombardy, a case put forward most fully by Heinrich Brunner (1887), the discovery of earlier Frankish evidence, and the identification of some of the earliest Italian pieces of evidence as forgeries, secured the *scabini*'s provenance west and north of the Alps. In fact, the earliest written appearance of the term *scabini* dates to a Saint-Bertin text of the 740s, some three decades before Charlemagne's accession in 774.¹ This document has attracted little attention (but see Rio, 2009, p. 126 n. 153); other usages of the term in formularies and charters dated to the 760s–1980s are better known. The term was therefore *nota neologism* created during the reign of Charlemagne, and those responsible for its appearance in the royal lexicon probably borrowed a term from the heartlands of the Pippinid dynasty.

Ink spilled on the subject during this period, too, focused on questions of the role and place of the *scabini* in collective judgement, placing them within taxonomies of individuals responsible for making judicial decisions. While fundamental, for the present-day reader, these debates are now less useful. Firstly, the corpus of material comprises thousands of pages of (at times) cantankerous scholarly disagreement since weakened by a combination of some

newly discovered and some since-discredited evidence. Secondly, documentary evidence is often treated as a secure basis for broader extrapolation, accurately depicting static practices that could account for temporally and geographically broad areas and at times objective, unfiltered evidence for governance.

While historiographical trends have changed, the perceived locus of the *scabini* has not: scholars since the eighteenth century have agreed that Charlemagne personally carried out this change. In theory, the introduction of the *scabini* into the constellation of judicial authorities meant freemen no longer had to shoulder the burden of attending multiple courts every year as ad-hoc judgement finders, in Francia—but not Italy—known as *rachymburgi*. This has been interpreted by some as part of movement towards a professional judiciary from the time of Saleilles (1889), but the short-term political ramifications are clear. Firstly, the change brought an end to fines paid to the counts for non-attendance, which some have seen as a deliberate blow struck to comital power (Estey, 1947). Secondly, the *scabini* tied judgement finders and local judicial procedures to the royal court in the course of more pervasive judicial reforms that realigned and reframed kingship and justice.

1.2 | The *scabini*, Charlemagne and the written word

How Charlemagne implemented this reform has not been established. The *scabini* first appear in direct connection with the king's authority in four documents dated to around the early 780s; any court-led change must therefore have begun early in his reign and been adopted fairly rapidly.² The manner and means of their introduction became a focal point for historians of Charlemagne's governance in the earlier and middle twentieth century (Althoffer, 1938; Estey, 1948).

We nevertheless cannot tie their introduction to a particular moment in time, and no extant text provides a holistic view of their duties. That such a legislative document ever existed is by no means certain or even necessary. Yet in what is often taken to be the definitive publication on the topic in Anglophone scholarship, Francis Estey assumed that a capitulary for the *scabini* had been produced and then lost to time (1951, p. 119). Similarly, François Ganshof reasoned that since no surviving capitulary delineated the duty of the *scabini*, either the relevant document was lost or—to Ganshof's mind more likely—the order was promulgated verbally and 'only the particular points concerned with its execution were promulgated and afterwards published in a capitulary' (1965, p. 51). While the connection between Charlemagne and the introduction of the *scabini* to centrally promulgated documents is not in dispute, by trapping the *scabini* in the amber of the late eighth century, we cannot see the profundity of the change across the burgeoning empire, nor how royal and non-royal perceptions of the *scabini* may have developed over time. With that in mind, let us now turn to the envisioned duties of these men.

Like descriptions of the *rachymburgi* before them (outlined in Althoffer, 1938), a small number of capitulary stipulations dominate modern descriptions of the role of the *scabini* 'on the ground' (for instance Harding, 2002, p. 35; Riché, 1983). *Scabini* appeared most frequently in stipulations regarding either the regularity of their attendance at courts or their presence within the entourage of counts or *missi*. These stipulations are not uniform, however. A number state that a specific quantity of *scabini* was required or permitted to be in the entourage of such men: three, seven and twelve, respectively.³ But a plethora of duties were demanded of the *scabini*. The capitulary stipulations known as those 'for the *missi*'/Capitulare *missorum* required *scabini* to swear an oath to the emperor on the commencement of their position, and subsequently, *missi* were ordered to record their names in a book.⁴ In other surviving capitulary texts from across the later eighth to later ninth centuries, the *scabini* were ordered to confirm inheritance plans, to hear cases of men displaced by viking raids alongside the count, to call assemblies, to collect fines for criminal misdemeanours and to carry out corporal punishment, alongside the judgement of other disputes and criminal hearings.⁵

The *scabini* are also mentioned in a number of documentary texts dating from the eighth century onwards, of which capitularies form a part, but not the whole. Relatively few Carolingian royal diplomas and records of dispute hearings from the later eighth and ninth centuries refer to *scabini*, but where they do appear they are in all but one

case found in connection with disputed property, or disputed rights to property, where draftsmen recorded *scabini* finding in favour of ecclesiastical institutions, almost always alongside a count or *missi* to whom they were directly answerable. In several cases they had previously adjudicated local disputes, during which their judgement had been challenged, an action that necessitated subsequent assemblies held in the presence of the king. The majority of these date to Charlemagne's rule, but there are scattered later examples in the ninth century.

In Italy, the duties of the *scabini* were visibly different from the middle ninth century, and earlier in some areas. As north of the Alps, the *scabini* initially slotted in the amongst pre-existing lay and clerical judgement finders were drawn from amongst secular landowners and were illiterate (Bougard, 1995; Ficker, 1872). As the ninth century went on, however, some *scabini* took on the role of notaries. Secondly, there is evidence by the later ninth century that the title of *scabini* became a hereditary title passed on from father to son (Bougard, 1995).

1.3 | Terminology and practice

However the *scabini* were introduced under Charlemagne, the term had a patchy impact across the empire, and it is difficult to say whether their introduction impacted on practice—and not just terminology—even in areas where changes in vocabulary can be observed (cf. Weitzel, 1985, for a particularly sceptical view). This terminological discrepancy and its impact on our understanding of the *scabini* present a particularly complex historiographical knot, bringing us to the heart of the ever-mutating relationships between textual designation, political and social identity, so ably and influentially laid out by Susan Reynolds (1994, 1997). In the case of the *scabini*, this impinges on the semantic profundity of the reform allegedly instituted by Charlemagne.⁶ Here, non-royal charters that mention *scabini* or similar group scan add nuance to the picture. These are preserved in diverse archives and forms: in single sheets, monastic cartularies, town records or copied into manuscripts.

While draftsmen in some areas adopted the term, albeit inconsistently, elsewhere agencies continued to use alternative preferred regional terminology to describe men performing the same or similar functions. In the heartlands of Frankish royal power, the *scabini* appear at least on the surface to have replaced the *rachymburgi*.⁷ Another term with a disputed vernacular linguistic root, the selection criteria for these men and their origins, rights and duties were also the subject of marked interest in the nineteenth century (Bethmann-Hollweg, 1868; Eichhorn, 1808; Gengler, 1875; Grimm, 1828; Pardessus, 1839; Savigny, 1834; Siegel, 1857; Sohm, 1871; Thonissen, 1882; Waitz, 1882–5; and Weiske, 1836, to name but a few). But *rachymburgi* continued to appear in documentary texts on their own, with other judgement finders and alongside the *scabini* into the tenth century.

In the Midi and southern Gaul, draftsmen preferred *iudices* (Beaudoin, 1888, p. 196). Looking west to Brittany, Wendy Davies (1986, p. 78) noted that those responsible for the documents collated in the Redon cartulary used multiple terms to describe individual named men, such as *scabinus* and *iudex*, sometimes within a single document. In Italy, terminological change was similarly slow and inconsistent (Bougard, 1995; Bruyning, 1985; Ficker, 1872), and while many Lombard *lociservatores*, Spoletan *sculdasci* and Luccan *locopositi* gave way to *scabini*, relationships between members of panels of judges and the presiding authority over them were perhaps opaque at the time and certainly are so now (Bougard, 1995).

Agencies responsible for producing charters and documentary texts throughout Charlemagne's kingdom—and throughout those of his successors—continued to use diverse terminology, and records of decisions record combinations of *scabini*, *iudices* and *bonihomines*.⁸ *Bonihomines*, like *scabini*, fulfilled a number of duties. They attended judicial courts as witnesses, intervened on behalf of participants, provided advice and at times served as judges (Bourin, 2003; Davies, 2018; Nehlsen-von Stryk, 1981). In the south, *bonihomines* are in evidence working as valuers and assessors. All such activities were, too, the preserve of *scabini*.

Individuals given the above labels were therefore presented in ways that at times suggest high degrees of terminological flexibility. While Robert-Henri Bautier (1943) considered each term to represent different and distinct entities, his view remains an outlier, perhaps with the exception of Lucas Bruyning's study of Italy (1985). Estey (1951),

in contrast, argued that in the south of the Carolingian empire, the *scabini* were synonymous with those described as *iudices*, and that those called by the older terms of *bonihomines* and *rachymburgi* were, in effect, *scabini* whose drafting agencies had simply not caught up to the new Carolingian rebranding. Yet he also asserted that the *scabini* were themselves drawn from amongst *bonihomines*, suggesting at least some contemporary differentiation in their conceptualization. According to Ganshof (1965), the *iudices* were simply *scabini* under a different name, while Barbero (2004) believed *iudices* effectively operated as an umbrella encompassing a number of terms under a single designation.

Local evidence therefore casts doubt on the extent to which the term was universally understood or accepted by contemporaries, and many have consequently concluded that the term *scabini* was in effect little more than a rebranding. Certainly, some of those who had served as *rachymburgi* before were now *scabini*. But the central change was the ties of loyalty made between judicial assessors to the ruler, and the apparent introduction of a lifelong role for these men in the service of justice. These tensions between concepts, terms and practice become less paradoxical if we follow the lead of Paul Fouracre (1995): the *scabini* were perhaps not expected to replace or become a clearly defined institution. Rather, they were a part of a broader change to the way justice was presented and conceptualized around the turn of the ninth century, in which those responsible for local judicial decisions and maintenance were more closely tied to the centre under a number of different and overlapping titles that represented not institutions, but activities.

1.4 | The disappearance of the *scabini*

The remainder of this article will interrogate the widely accepted notion that the *scabini* disappeared with the fragmentation of the Carolingian empire (Estey, 1955; Weinberger, 1982), suggesting that debate over the evidence for the decline of the term in specific contexts has, firstly, erroneously expanded conclusions drawn from regional evidence to a broader stage. Secondly, even on a regional level the evidence is perhaps less secure than has been assumed. The disappearance of the term *scabini* from the Mâcon region and the cartulary of the monastery of Cluny became a cornerstone of debates surrounding the so-called *mutation féodale* in the middle decades of the twentieth century, and the alleged changes it brought to western European society. As is well known, these documentary sources were of vital importance in historians' efforts to understand the changes of the eleventh century specifically, and the middle ages generally (Rosenwein, 1989).

In 1928, François Ganshof argued that the term *scabini* disappeared alongside those referring to other judgment finders (specifically the *bonihomines*) from the mid-tenth century onwards. The regular assessors who replaced them were men who owed their position and status to the count, rather than to a transregional power. No longer free or independent, these men were more or less forced to attend the court in their role as the count's followers. Known as the *fideles*, to Ganshof they signalled a fundamental change to the balance of power in the local courts, symptomatic of the growing tendency for political fragmentation. In Ganshof's view, this change happened subtly: courts fundamentally changed their character without attracting the attention of participants or scribes. In this way, almost unnoticed, the ancient *malluspublicus* became the feudal court. While his evidence was more or less restricted to Burgundy, Ganshof applied his findings to other areas in Francia, and continued to argue for this interpretation, in both English and French, for several decades (e.g. Ganshof, 1965, 1971). Others pressed Ganshof's conclusions further, arguing that the disappearance of the *scabini* represented conscious and deliberate efforts made by the counts to gain greater local power at the expense of the centre (Bautier, 1943; Bongert, 1949). Francis Estey, whose contributions to our understanding of the *scabini* represent some of the most substantial since the turn of the century, also followed Ganshof. In his PhD thesis, Estey comments that both *scabini* and *bonihomines* became the count's men in a process that was both gradual and unnoticed (1948).

Georges Duby (1947, 1953), in contrast, asserted that notarial vocabulary certainly changed around 940, but that this reflected scribal preferences. To Duby, the scribes who adopted the term *fideles* continued to use it as their

term of choice until the beginning of the eleventh century. Yet the change in terminology had limited impact, and in a number of publications (1953, and see the role of the Macon documents as summarized by Duby himself in his memoirs, 1991), Duby challenged many aspects of Ganshof's argument. Firstly, he argued that the relationship between the count and court assessors had changed prior to this point and that terminology was therefore reflecting a change that had already happened, rather than vice versa. Secondly, Duby noted that the membership of this class of men did not change and that the change was therefore less one of profound alteration to the composition of the court, and instead a rebranding. In essence then, Duby's argument asserts the same as that now widely accepted for the introduction of the *scabini*; terminology changed, but personnel did not.

Tilling different soil, historians of contemporary Italy reached the same conclusion based on a similar pattern of evidence, albeit distributed more broadly: the *scabini* disappeared in the tenth century. In contrast, however, this was attributed to growing royal power rather than its fragmentation, and attempts to bring judges under royal control, during the reigns of Berengar I and Hugh of Provence in particular (Bougard, 1995, p. 154). We see that before 928, the term *scabini* is used regularly in the archive for Lucca. Fast forward 2 years, however, and in 930, we see four men previously described as *scabini* now termed *iudices*, first identified by Ficker (1872, p. 18). There are archives where the change appears to have happened earlier: in Pavia, the term *scabini* dropped out of usage from the 880s.

Duby's arguments have perhaps been more readily accepted than Ganshof's maximalist views of the Carolingian polity, though the former has perhaps come in for greater criticism. In particular, the failure of Duby and his circle to consider the textual and literary possibilities of charters outside their (alleged) legal functions (Cheyette, 2002; Evergates, 1997). Yet while Ganshof and Duby disagreed on much, in the case of the *scabini*, their apparently opposing views are in reality not so different. Both agree that by the later tenth century, the 'Carolingian' aspects of comital courts were much diminished, and whether the shift in terminology is a retroactive measure to reflect changed circumstances, or the means of change itself, does not affect the fact that there was a change. Both, too, as contributors whose importance cannot be underestimated to the historiographical landscape, cast a long shadow. Since their focus is predominantly what replaced the *scabini* who 'disappeared', Ganshof and Duby consequently curtailed a historiographical line of inquiry. This is perhaps why so many historians remark that the *scabini* in some sense *belonged* to the ninth-century Carolingian empire, and its distinctive concepts of law, justice and the regulation of society. Wendy Davies (1988, p. 149; 1992, p. 74) twice mentions that 'the characteristic Carolingian term *scabini*', Estey (1948, p. 12) defines a *scabinus* as a 'ninth-century Carolingian judge', Alan Harding (2002, p. 35) calls them 'the Carolingians' other great contribution to the legal order', Lupoi (2000, p. 208) refers to them as belonging to 'a different historical period, the late Carolingian eighth century' and other examples could be enumerated.

2 | AN ALTERNATIVE VIEW

Though representations certainly changed over time, the *scabini*, in fact, did not disappear. By the thirteenth century, the term was all but ubiquitous, used as a synonym for judgement finders from Hungary to Norway, often but not always closely connected to communes or towns.⁹ Some have seen this emergence of the term on a broader stage as evidence of a transformation of a continuous institution (Monier, 1924; Vanderkindere, 1874), while others argued for a complete dislocation between the *scabini* of the Carolingian era and the homonymous judgement finders of the towns of later medieval Europe (Pirenne, 1893, 1895). But in the course of such debates, evidence for the intervening centuries between Carolingian introduction and later ubiquity has rarely been mentioned.

Yet the term is used to refer to judgement finders in a number of diplomas belonging to the subsequent dominant dynasties in East Francia: under the Ottonian and Salian royal dynasties, one can find royal diplomas and records of dispute hearings containing the term sporadically. Nor is this practice limited to north of the Alps, but several survive that were issued in Italy into the eleventh century and beyond.¹⁰ Remarkably, before the turn of the millennium, we find the term *scabini* only in documentary sources, but after the year 1000, we begin to encounter

scabini in narrative texts, too, suggesting a diversification in conceptualization of these men, which spread as the eleventh and twelfth centuries progressed.¹¹ The term also appears in records of decrees promulgated, and non-royal law-codes. Areas of local usage existed continuously throughout the central middle ages, both north and south of the Alps.

Finally, capitularies continued to be copied during this period. One of the most interesting examples from this period is the appearance of the *scabini* in a tenth-century prologue added to a single manuscript including Charlemagne's capitulary known as *Capitularelegibusadditum/Capitulary adding to the laws*, issued in 803.¹² This text records the following:

In the name of Christ begin the recently discovered *capitula legis* of emperor Charles in the third year of our most merciful lord emperor Charles. In this year these *capitula* were made and authenticated by count Stephen, to make them known in the city of Paris in the *mallum publicum* and to have them read in the presence of *scabini*... And everyone consented as one, that they wanted to observe for all time in posterity, and all *scabini*, bishops, abbots, and counts affirmed below with their own hand (trans. Faulkner, 2016, p. 113).¹³

As Thomas Faulkner (2016) has noted, while a number of scholars took this as evidence of Carolingian practice, it seems rather more likely that the text reflects assumptions regarding the promulgation of capitularies held by the person responsible for drafting the text: in this case, a scribe operating in northern Francia. While on the one hand the text endorses the sense that the *scabini* were deemed to be characteristically Carolingian; on the other, it also demonstrates that individuals responsible for compiling and copying such texts were at least aware of the term, its meaning and the position of the *scabini* within the constellations of judicial authorities.

More broadly, the continued reproduction and recompilation of capitulary stipulations offer new and exciting avenues for research, building on the work of, amongst others, SörenKaschke and Britta Mischke (2019), Karl Ubl (2016)¹⁴ and Steffen Patzold (2019). The availability of capitularies concerning the *scabini* could well have continued to effect communication between those in the upper echelons of society, and the healthy continuation of many capitularies concerning *scabini* points to some relevance and meaning to those responsible for copying such texts.

3 | CONCLUSION

It is almost a truism in scholarship that the *scabini* were the creation of Charlemagne in the course of his great series of legal reforms. But while the voluminous scholarship on the *scabini* might suggest their role—and perceptions of their role in ninth- and tenth-century western Europe—are thoroughly understood, there is still much to say about this class of men, their status and the connotations of the term in early and central medieval society. New research can begin by asking different questions of the evidence, including those of audience and interpreted audience, of how capitularies informed contemporary conceptions of justice, and how—and why—draftsmen selected their terminology.

ACKNOWLEDGEMENT

I would like to thank David Bachrach for commissioning this article and the anonymous reviewers for their thoughtful comments and suggestions. Any errors that remain are mine. Open access funding enabled and organized by Projekt DEAL.

ORCID

Alice Hicklin  <https://orcid.org/0000-0002-9511-964X>

ENDNOTES

- ¹ *Diplomata Belgica ante annum millesimumcentessimascripta*, ed. Gysseling & Koch, 1950, no. 15A, p. 32.
- ² These are: 23 February 780, Digne, Provence: *Cartulaire de l'abbaye de Saint-Victor de Marseille* no. 31 (s. xi/xii), ed. Guérard (1857) p. 45; 16 December 781, [Quierzy], DD K I 138 (s. xii), ed. Boretius, (1883), pp. 188–89; 1 January 781/ October 782 × 31 December 791/31 May 783, DD K I 148 (s. xii); ed. Boretius (1883), pp. 200–2; 3 June 783, Schwannheim, *Codex Laureshamensis*, no. 228 (s. xii), ed. Glöckner (1933), vol. 2, p. 31.
- ³ Seven: *Capitulare missorum*, c. 803, C I no. 40, ed. Boretius (1883) p. 116; *Capitulare pro lege habendum Wormatiense*, 829 C II no. 193, ed. Boretius and Krause (1897), p. 19; Three/Four: 825/6 *Legationis Capitulum*, C I no. 152, ed. Boretius (1883), p. 310; Twelve: 819 *Capitula de iustitiisfaciendis*, C I no. 144, ed. Boretius (1883), p. 295.
- ⁴ *Capitulare missorum*, 803 C I no. 40, ed. Boretius (1883), p. 116.
- ⁵ Inheritance: *Capitulare legi Ribuariæ additum*, c. 805 C I no. 41, ed. Boretius (1883), p. 118; vikingraids: *Edictum Pistense* 864, C II no. 273 ed. Boretius and Krause (1897), p. 313; fines: *Capitulare legibus additum*, 803 C I no. 39, ed. Boretius (1883), p. 114; corporal punishment: *Capitulare legibus additum* 803, C I no. 39, ed. Boretius (1883), p. 114; inheritance: *Capitulare Aquisgranense* 809, C I no. 61, ed. Boretius (1883), p. 148; holding court: *Pippinicapitulare Italicum* 800 × 10, C I no. 102, ed. Boretius (1883), p. 210; *Concessio generalis*, C I no. 159822/3, ed. Boretius (1883), p. 320.
- ⁶ The historiography of this subject is naturally too expansive to begin to summarise here, but see Abels (2009), in this journal, for a useful starting point.
- ⁷ The arguments on this subject presented at length by Weitzel (1985) will be treated in a forthcoming study.
- ⁸ For broader discussion of the different terminologies used for judgement finders, see Davies and Fouracre, 1986, and the useful glossary edited by Jane Carpenter in the same volume.
- ⁹ For individuals described as *scabini* at Stavern and Kampen in south-west Norway in 1293 see *Urkundenbuch des Stadt Lübeck*, Vol. 1, ed. Techen, pp. 541–2 and 544.
- ¹⁰ For instance: D O I 52, issued in 942 at *Vuegesata*, s. x (ed. Sickel, 1879, p. 135); D O I 80, issued in 946 at an unknown location, s. xii (ed. Sickel, 1879, p. 159); D H II 247, issued in 1012 at Nierstein, s. xi (p. 248); D H II 467, issued in 1022 at Campo di Pietra, s. xii (ed. Bresslau, Bloch, & Holtzmann, 1900–1903, p. 595); D H III 372a, issued in 1056 at Trier, s. xiii (ed. Bresslau & Kirsch, 1926, p. 509); D Lo III 34, issued in 1131 at Lüttich, s. xii (ed. von Ottenthal & Hirsch, 1927, p. 57).
- ¹¹ E.g. *Chronica monasterii Watinensis*, ch. 13 (ed. Holder-Egger, 1883, pp. 168–9).
- ¹² ed., Boretius, 1883, no. 39, p. 112).
- ¹³ In Christi nomine incipiunt capitula legis imperatoris Karolini per inventa anno tertio clementissimi domini nostri Karoliaugusti. Sub ipso anno haec capitula facta sunt et consignata Stephano comiti, ut haec manifestafecisset in civitate Parisius mallopublico et ipsa legere fecisset coram illis scabineis; quod ita et fecit. Et omnes in uno consenserunt, quod ipsi voluissent omni tempore observare usque in posterum etiam omnem scabineum, episcopi, abbatis, comitis manu propria subfirmaverunt. Capitula que in lege Salicamittenda sunt.
- ¹⁴ The forthcoming editions of capitularies and the work of Karl Ubl and others available at <https://capitularia.uni-koeln.de/> [accessed 10 March 2020] is of special importance.

REFERENCES

- Abels, R. (2009). The historiography of a construct: “feudalism” and the medieval historian. *History Compass*, 7, 1008–1031. <https://doi.org/10.1111/j.1478-0542.2009.00610.x>
- Althoffer, B. (1938). *Les scabins (Doctoral dissertation)*. Nancy: Société d'impressions typographiques.
- Barbero, A. (2004). *Charlemagne. Father of a Continent*. Berkeley: University of California Press.
- Bautier, R.-H. (1943). *L'Exercice de la justice publique dans l'Empire carolingien. École nationale de chartes. Positions des thèses soutenues par les élèves de la promotion de 1943*. Nogent-le-Retrou: Daupeley-Gouverneur.
- Beauchet, L. (1886). *Histoire de l'organisation judiciaire en France: époque franque*. Paris: A. Rousseau.
- Beaudouin, E. (1888). *La participation des hommes libres au jugement dans le droit franc*. Paris: L. Larose.
- Besta, E. (1927). *Storia del diritto italiano*. Milan.
- Bethmann-Hollweg, M. A. (1868). *Der Civilprozess des gemeinen Rechts* (Vol. 4). Bonn: Adolph Marcus.
- Bongert, Y. (1949). *Recherches sur les cours laïques du 10e au 13e siècle*. Paris: A & J Picard.
- Boretius, A. (1883). *Capitularia regum Francorum*, MGH LL II (Vol. 1). Hanover: Hahn.
- Boretius, A., & Krause, V. (1897). *Capitularia regum Francorum*, MGH LL II, vol. Hanover: Hahn.

- Bougard, F. (1995). *La justice dans le royaume d'Italie: de la fin du VIIIe siècle au début du XIe siècle*. Bibliothèque des Écoles Françaises d'Athènes et de Rome, 291. Rome: École française de Rome.
- Bourin, M. (2003). Les *boni homines* de l'an mil. In C. Gauvard (Ed.), *La justice en l'an Mil (actes du colloque du 12 mai 2000)*, *Historie de la justice* 15. Paris: La Documentation Française.
- Bresslau, H., Bloch, H., & Holtzmann, R. (Eds.) (1900–1903). *Die Urkunden Heinrichs II. und Arduins (Heinrici II. et Arduini Diplomata)*, MGH, *Diplomata regum et imperatorum Germaniae* 3. Hannover: Hahn.
- Bresslau, H., & Kehr, P. (Eds.) (1926). *Die Urkunden Heinrichs III. (Heinrici III. Diplomata)*, MGH, *Diplomata regum et imperatorum Germaniae* 4. Hannover: Hahn.
- Brissaud, J. (1898). *Manuel d'histoire du Droit français. (Sources. Droit public, droit privé)*. 2 vols. Paris: A. Fontemoing.
- Brunner, H. (1887). *Die Herkunft der Schöffen. Mitteilungen des Instituts für österreichische Geschichtsforschung*, 8, 177–87, repr. in *id.*, (1984). *Forschungen zur Geschichte des deutschen und französischen Rechtes. Gesammelte Aufsätze*. Stuttgart: J. G. Cotta.
- Bruyning, L. F. (1985). Lawcourt proceedings in the Lombard kingdom before and after the Frankish conquest. *Journal of Medieval History*, 11, 193–214. [https://doi.org/10.1016/0304-4181\(85\)90024-7](https://doi.org/10.1016/0304-4181(85)90024-7)
- Chénon, E. (1926). *Histoire générale du droit français public et privé des origines à 1815* (Vol. 2). Paris: Soc. Anonyme du Recueil Sirey.
- Cheyette, F. L. (2002). Georges Duby's Maconnais after fifty years: reading it then and now. *Journal of Medieval History*, 28, 291–317. [https://doi.org/10.1016/S0304-4181\(02\)00021-0](https://doi.org/10.1016/S0304-4181(02)00021-0)
- Davies, W. (1986). People and places in dispute in ninth-century Brittany. In W. Davies & P. Fouracre (Eds.), *The Settlement of Disputes in Early Medieval Europe* (pp. 65–84). Cambridge: Cambridge University Press. Repr. in *eadem*, (2009). *Brittany in the Early Middle Ages: Texts and Societies* Pt. VII pp. 65–84. Routledge: London
- Davies, W. (1988). *Small Worlds: The Village Community in Early Medieval Brittany*. London: Duckworth.
- Davies, W. (2018). *Boni homines* in northern Iberia: a particularity that raises some general questions. In R. Balzaretto, J. S. Barrow, & P. Skinner (Eds.), *Italy and Early Medieval Europe. Papers for Chris Wickham* (pp. 60–72). Oxford: Oxford University Press.
- Davis, J. R. (2015). *Charlemagne's practice of empire*. Cambridge: Cambridge University Press.
- Déclareuil, J. (1789). *Histoire générale du droit français des origines à 1789*. Paris: Librairie du Recueil Sirey.
- Duby, G. (1947). *Recherches sur l'évolution des institutions judiciaires pendant le Xe et le XIe siècle dans le sud de la Bourgogne. Le MoyenÂge*, 53, 15–38 and 149–94, repr. in *idem* (8619290301973). *Hommes et structures du MoyenÂge, Le savoir historique* 1 (pp. 7–60). Paris: Moulon.
- Duby, G. (1953). *La société aux XIe et XIIe siècles dans la région mâconnaise. Bibliothèque générale de l'École Pratique des Hautes Etudes* 6. Paris: l'École des Hautes Études en Sciences Sociales.
- Duby, G. (1991). *L'histoire continue*. Paris: Odile Jacobs.
- Eichhorn, K. (1808). *Deutsche Staats- und Rechtsgeschichte, auch zum Gebrauche bey Vorlesungen* (Vol. 1). Göttingen: Vandenhoeck & Ruprecht.
- Estey, F. N. (1947). The meaning of "Placitum" and "Mallum" in the capitularies. *Speculum*, 22, 435–439. <https://doi.org/10.2307/2856874>
- Estey, F. N. (1948). *The scabini and local courts (Unpublished doctoral dissertation)*. Princeton: Princeton University.
- Estey, F. N. (1951). The *scabini* and the local courts. *Speculum*, 26, 119–129. <https://doi.org/10.2307/2852086>
- Estey, F. N. (1955). The *fideles* in the county of Mâcon. *Speculum*, 30, 82–89. <https://doi.org/10.2307/2850040>
- Evergates, T. (1997). The feudal imaginary of Georges Duby. *The Journal of Medieval and Early Modern Studies*, 27, 641–660. <http://users.clas.ufl.edu/burt/medieval%20cinema%20recommended/george%20duby%20feudal%20imag.pdf>
- Faulkner, T. (2016). *Law and Authority in the Early Middle Ages: The Frankish Leges in the Carolingian Period*. Cambridge Studies in Medieval Life and Thought, Fourth Series No. 104. Cambridge: Cambridge University Press.
- Ficker, J. (1868–1874). *Forschungen zur Reichs- und Rechtsgeschichte Italiens* (Vol. 1–4). Innsbruck: Wagner.
- Ficker, J. (1872). *Forschungen zur Reichs- und Rechtsgeschichte Italiens* (Vol. 3, 1). Innsbruck: Wagner.
- Fouracre, P. J. (1995). Carolingian justice: the rhetoric of improvement and contexts of abuse. *La giustizia nell'altomedioevo, secoli V-VIII, 771–803*, repr. in *idem* (2012). In *Frankish History: Studies in the Construction of Power*. Variorum: Ashgate.
- Fustel de Coulanges, N. D. (1885). *Recherches sur quelques problèmes d'histoire*. Paris: Hachette.
- Fustel de Coulanges, N. D. (1888). *Histoire des institutions politiques de l'ancienne France: La monarchie Franque*. Paris: Hachette.
- Fustel de Coulanges, N. D. (1892). *Les transformations de la Royauté pendant l'époque carolingienne, revu et complété par C. Jullian*. Paris: Hachette.
- Ganshof, F. L. (1928). Contribution à l'étude des origines des cours féodales en France. *Revue historique de droit français et étranger, ser. 4*, 7, 644–665.
- Ganshof, F. L. (1965). The impact of Charlemagne on the institutions of the Frankish realm. *Speculum*, 40, 47–62. <https://doi.org/10.2307/2856463>

- Ganshof, F. L. (1971). *The Carolingians and the Frankish Monarchy: Translated from the French by Janet Sondheimer*. London: Longman.
- Gengler, H. G. (1875). *Germanische Rechtsdenkmäler: Leges, Capitularia, Formulae*. Erlangen: Andreas Deichert.
- Glasson, E. D. (1887–1903). *Histoire du droit et des institutions de la France* (8 vols. Paris: F. Pichon).
- Glöckner, K. (Ed.) (1933). *Codex Laureshamensis: Kopialbuch 1 Oberrhein-, Lobden-, Worms-, Nahe- und Speiergau*. Darmstadt: Historische Kommission für den Volksstaat Hessen.
- Grimm, J. (1828). *Deutsche Rechts-Alterthümer*. Göttingen: Dieterich.
- Guérard, B. E. C. (1857). *Cartulaire de l'abbaye de Saint-Victor de Marseille*. Paris: Lahure.
- Gysseling, M., & Koch, A. C. F. (Eds.) (1950). *Diplomata Belgica ante annum millesimum centesimum scripta*. Brussels: Belgisch Interuniversitair Centrum voor Neerlandistiek.
- Harding, A. (2002). *Medieval Law and the Foundations of the State*. Oxford: Oxford University Press.
- Hermann, E. (1881). *Über die Entwicklung des altdeutschen Schöffengerichts. Eine rechtsgeschichtliche Untersuchung, Untersuchungen zur deutschen Staats und Rechtsgeschichte 10*. Breslau: Breslau Koebner.
- Holder-Egger, O. (Ed.) (1883). *Chronica monasterii Watinensis*, MGH SS (Vol. 14, pp. 161–174).
- Kaschke, S., & Mischke, B. (2019). Capitularies in the Carolingian period. *History Compass*, 17, n.p.
- Lupoi, M. (2000). *The origins of the European legal order*. Cambridge: Cambridge University Press.
- Monier, R. (1924). *Les institutions judiciaires des villes de Flandre des origines à la rédaction des coutumes*. Lille: Bresle.
- Nehlsen-von Stryk, K. (1981). *Die boni homines des frühen Mittelalters unter besonderer Berücksichtigung der fränkischen Quellen*, Freiburgerrechtsgeschichtliche Abhandlungen, NF 2. Berlin: Duncker and Humblot.
- Pardessus, J. M. (1839/40). Fragment d'un commentaire inédit de la loi salique. *Bibliothèque de l'école des chartes*, 1, 409–429.
- Patzold, S. (2019). Capitularies in the Ottonian realm. *Early Medieval Europe*, 27, 112–132. <https://doi.org/10.1111/emed.12316>
- Pèrtille, A. (1896). *Storia del diritto italiano, dalla caduta dell'Impero romano alla codificazione* (Vol. 6). Torino: Unione tipografico-editrice.
- Pirenne, H. (1893). L'Origine des constitutions urbaines au Moyen Âge. *Revue Historique*, 53, 52–83.
- Pirenne, H. (1895). L'Origine des constitutions urbaines au Moyen Âge (Suite 1 et 2). *Revue Historique*, 57, 57–98. and 293–327.
- Reynolds, S. (1994). *Fiefs and Vassals. The Medieval Evidence Reinterpreted*. Oxford: Clarendon Press.
- Reynolds, S. (1997). *Kingdoms and Communities in Western Europe 900–1300* (2nd ed.). Oxford: Oxford University Press.
- Riché, P. (1983). *Les Carolingiens. Une famille qui fit l'Europe*. Paris: Hachette.
- Rio, A. (2009). *Legal Practice and the Written Word in the Early Middle Ages: Frankish Formulae c. 500–1,000*. Cambridge studies in medieval life and thoughts 4th series, 75. Cambridge: Cambridge University Press.
- Rosenwein, B. H. (1989). *To Be the Neighbor of Saint Peter: The Social Meaning of Cluny's Property, 909–1049*. Ithaca: Cornell University Press.
- Saleilles, R. (1889). Du rôle des scabins et des notables dans les tribunaux carolingiens. *Revue Historique*, 40, 286–304.
- Salvioli, G. (1927). *Storia della procedura civile e criminale* (Vol. 2), *Storia del diritto italiano* 3. Milan: Ulrico Hoepli.
- Savigny, F. L. (1834). *Geschichte des römischen Rechts im Mittelalter* (Vol. 1). Heidelberg: Mohr.
- Sickel, T. (1879). *Die Urkunden Konrad I., Heinrich I. und Otto I. (Conradi I., Heinrici I. et Ottonis I. Diplomata)*, MGH, *Diplomata regum et imperatorum Germaniae 1*. Hannover: Hahn.
- Sickel, W. (1885). Die Entstehung des Schöffengerichts. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung*, 6, 1–85. <https://doi.org/10.7767/zrgga.1885.6.1.1>
- Siegel, H. (1857). *Geschichte des deutschen Gerichtsverfahrens* (Vol. 1). Gießen: J. Ricker.
- Sohm, R. (1871). *Die Fränkische Reichs- und Gerichtsverfassung* (Vol. 1). Weimar: Hermann Böhlau.
- Thonissen, J. J. (1882). *L'organisation judiciaire, le droit penal et la procedure pénale de la loi salique: précédés d'une étude sur toutes les classes de la population mentionnées dans le texte de cette loi*. Brussels: F. Hayez.
- Ubl, K. (2016). Recht in der Region: die Rezeption von "leges" und "capitula" im karolingischen Alemannien. In J. Dendorfer, H. Maulhardt, J. R. Regnath, & T. Zotz (Eds.), *817 – Die urkundliche Ersterwähnung von Villingen und Schwenningen: Alemannien und das Reich in der Zeit Kaiser Ludwigs des Frommen, Veröffentlichung des Stadtarchivs und der Städtischen Museen Villingen-Schwenningen 39* (pp. 207–233). Ostfildern: Thorbecke.
- Unger, F. W. (1842). *Die altdeutsche Gerichtsverfassung*. Göttingen: Dieterich.
- Vanderkindere, L. (1874). *Notice sur l'origine des magistrats communaux et sur l'organisation de la marque dans nos contrées au moyen age*. Brussels: F. Hayez.
- Viollet, P. (1890–1903). *Histoire des institutions politiques et administratives de la France* (Vol. 1). Paris: L. Larose and Forcel.
- von Ottenthal, E., & Hirsch, H. (Eds.) (1927). *Die Urkunden Lothars III. und der Kaiserin Richenza (Lotharii III. Diplomata nec non Richenzae imperatricis Placita)*, MGH, *Diplomata regum et imperatorum Germaniae 8*. Hannover: Hahn.
- Waitz, G. (1882–5). *Deutsche Verfassungsgeschichte* (Vol. 2, 3rd ed.). Kiel: Schwers.

- Weinberger, S. (1982). Cours judiciaires, justice et responsabilité sociale dans la Provence médiévale: IXe-XIe siècle. *Revue historique*, 267, 273–288.
- Weiske, J. (1836). *Hochverrath und Majestätsverbrechen: Das crimen majestatis der Römer*. Leipzig: G. J. Göschen.
- Weitzel, J. (1985). *Dinggenossenschaft und Recht: Untersuchungen zum Rechtsverständnis im fränkisch-deutschen Mittelalter*. Cologne: Böhlau.

AUTHOR BIOGRAPHY

Alice Hicklin received her PhD in 2016 and has most recently joined Royal Holloway (University of London) as a post-doctoral researcher specializing in canon law and its intersection with secular justice, on the ERC-funded project 'Connected Clerics: Building a Universal Church in the Late Antique West (380–640 CE)'. Prior to this, she was a post-doctoral researcher on the HERA-funded project 'After Empire: Using and Not Using the Past in the Crisis of the Carolingian World, c.900–1050', based at the Freie Universität Berlin.

How to cite this article: Hicklin A. The *scabini* in historiographical perspective. *History Compass*. 2020;18:e12624. <https://doi.org/10.1111/hic3.12624>