



Pergamon

Journal of Medieval History 28 (2002) 227–248

Journal of
**Medieval
History**

www.elsevier.com/locate/jmedhist

Charters as weapons. On the role played by early medieval dispute records in the disputes they record

Warren Brown *

Division of Humanities and Social Sciences, California Institute of Technology, Pasadena, CA 91125, USA

Abstract

This paper seeks to shed more light on how written records were used during the Carolingian period by examining the role played by records of property disputes in the disputes they record. In it I argue that dispute records were important tools that clerical scribes could use to further their church's interests, to undermine the interests of their opponents, and to help their church take advantage of changes in the regional political landscape. My examples come from the Bavarian cathedral church at Freising in the first decades of the ninth century. These charters indicate that Freising's scribes crafted their dispute records to enhance the image of their church and bishop, to undermine the image and reputation of their opponents, and to help the Freising community realise what it saw as its property rights. They also sought to take advantage of Charlemagne's recent conquest of Bavaria by appealing as much as possible to the sympathies of Carolingian judicial authorities. In addition, the scribes used their dispute records to create useful histories for their church's property, to mask potentially competing histories, and to reward landholding kindreds who allied themselves with Freising's interests by guaranteeing them a positive written memory. © 2002 Elsevier Science Ltd. All rights reserved.

Keywords: Early medieval Europe; Carolingians; Charters; Literacy; Dispute resolution; Church property

The study of charters from the early Middle Ages has gone through something of a flowering in the last few decades.¹ This is especially true of the so-called 'private charters'—those archival documents below the level of royal or papal diplomas that

* Tel.: +1-626-395-4482; fax: +1-626-405-9841.

E-mail address: wcb@hss.caltech.edu (W. Brown).

¹ The following abbreviations are used in the notes: *Lex B*=*Lex Baiuvariorum*, ed. Ernst von Schwind, *Monumenta Germaniae Historica, Leges nationum germanicarum* V, 2 (Hanover, 1926); *TF*=*Die Tra-*

record the property rights of churches, monasteries, and lay aristocratic kindreds.² Social historians in particular have turned to these records to get at the world that narrative sources such as chronicles and annals leave invisible. Some, for example, have used charters to help them build pictures of local aristocracies and to illuminate aristocratic family and kindred consciousness. Others have used them to uncover the property relationships that bound early medieval landholders to ecclesiastical institutions such as monasteries or cathedral churches.³

Charters have especially attracted the attention of people interested in conflict and the exercise of power. Early medieval charter collections frequently contain accounts of disputes over rights or property between churches and laymen, or between churches and other churches, disputes that were handled at courts, out of court, or some combination of the two. The surviving records of such disputes have allowed dispute historians to get close to actual disputing practices and to build nuanced pictures of the interaction between laws, judicial institutions, and extra-judicial processes such as compromise or feud. It is hardly surprising, therefore, that charters have come to play a critical role in efforts to re-write the history of power in the early Middle Ages, i.e., to understand how strong early medieval rulers such as Charlemagne made their power felt and how European societies functioned in times when royal power was weak or absent.⁴

ditionen des Hochstifts Freising, ed. Theodor Bitterauf, 2 vols (Munich, 1905). I would like to thank the following people for their input on drafts of this essay: Caspar Ehlers, Helmut Flachenecker, Patrick J. Geary, Jason Glenn, Piotr Górecki, and Hans Hummer. I would also like to acknowledge the comments and suggestions made on early versions of this work by participants in the Eighth Annual Symposium in Medieval, Renaissance and Baroque Studies, 'Memoria', University of Miami, February 1999 and the 34th International Congress on Medieval Studies, Kalamazoo, Michigan, May 1999.

² I use the term charter, following *The settlement of disputes in early medieval Europe*, ed. Wendy Davies and Paul Fouracre (Cambridge, 1986), 270, to mean any document that records the transfer or confirmation of property rights or privileges, or any other kind of transaction. This definition provides an easily accessible label for all documents of this kind, whether first-person records issued at the scene of a transaction or later third-person summaries. See also *Charters and the use of the written word in medieval society*, ed. Karl Heidecker (Utrecht studies in medieval literacy, 5, Turnhout, 2000), 2–3; Olivier Guyotjeannin, Jacques Pycke, and Benoît-Michel Tack, *Diplomatique médiévale* (Turnhout, 1993), 25. On charters in general see Heinrich Fichtenau, *Das Urkundenwesen in Österreich vom 8. bis zum frühen 13. Jahrhundert* (Vienna, 1971); *Settlement of disputes*, 1–5; Rosamond McKitterick, *The Carolingians and the written word* (Cambridge, 1989), 77–134.

³ Select examples of this historiography include Georges Duby, *La société aux XIe et XIIe siècles dans la région mâconnaise* (Paris, 1953); Wilhelm Störmer, *Früher Adel. Studien zur politischen Führungsschicht im fränkisch-deutschen Reich vom 8. bis 11. Jahrhundert*, 2 vols (Stuttgart, 1973); Friedrich Prinz, *Frühes Mönchtum im Frankenreich. Kultur und Gesellschaft in Gallien, den Rheinlanden und Bayern am Beispiel der monastischen Entwicklung (4. bis 8. Jahrhundert)*, 2nd ed. (Darmstadt, 1988); Barbara H. Rosenwein, *To be the neighbor of Saint Peter. The social meaning of Cluny's property, 909–1049* (Ithaca, N.Y., 1989); Régine Le Jan, *Famille et pouvoir dans le monde franc (VIIe-Xe siècle). Essai d'anthropologie sociale* (Paris, 1995); Hans Hummer, 'Monastic property, family continuity and central authority in early medieval Alsace and southern Lotharingia' (Ph.D. dissertation, University of California, Los Angeles, 1997).

⁴ See *inter alia* Stephen D. White, 'Feuding and peace-making in the Touraine around the year 1000', *Traditio*, 42 (1986), 195–263; *Settlement of disputes*; Patrick J. Geary, 'Living with conflicts in stateless France: a typology of conflict management mechanisms, 1050–1200', in: *Living with the dead in the*

Another strand of research has approached charters from a different but complementary direction. This scholarship—part of a larger effort to understand the development of ‘pragmatic literacy’ in medieval Europe—has focused on how charters were used by the people who wrote and kept them.⁵ Seen from this perspective, early medieval charters have proven to be both particularly interesting and particularly problematic. During much of the Merovingian period, charters recording transactions or dispute settlements appear to have retained the dispositive character of late-Roman *cartae*; produced in the course of a transaction, they served in and of themselves as legal proof of the transaction’s validity because they followed certain formulas and because they were signed by the principals and witnesses and by the notaries who wrote them. By the Carolingian period, however, it becomes much less clear what purpose charters were serving, especially in the regions north of the Alps. In the course of the late eighth and ninth centuries records were increasingly drawn up, not on the spot by independent notaries, but rather after the fact by scribes from the church or monastery involved in the transaction or settlement. At the same time, they became less formulaic; at their most extreme they simply summarised what had happened and gave a list of the witnesses.⁶ Such summary notices seem to have fulfilled several functions whose importance varied according to individual circumstance: they evoked and symbolised the oral statements, public acts and ceremonial displays that made a transaction binding, they preserved the names of witnesses for future reference in case of a dispute, and they helped protect a transaction from challenge with the weight of the church or monastery’s sacred authority. Perhaps most important, they guarded the memory of those who had given property to the church or monastery. That memory upheld the donor kindred’s claim to the prayers of the recipient community and the favour of community’s patron saint. At the same

middle ages (Ithaca, N.Y., 1994), 125–160; Thomas N. Bisson, ‘The ‘feudal revolution’’, *Past and Present*, 142 (1994), 6–42; Dominique Barthélemy and Stephen D. White, ‘Debate: the ‘feudal revolution’. Comment 1, comment 2’, *Past and Present*, 152 (1996), 196–223; Timothy Reuter, Chris Wickham, and Thomas N. Bisson, ‘Debate: the ‘feudal revolution’. Comment 3, comment 4, reply’, *Past and Present*, 155 (1997), 177–225; Warren Brown, *Unjust seizure. Conflict, interest, and authority in an early medieval society* (Ithaca, N.Y., 2001); Hummer, ‘Monastic property’; Matthew Innes, *State and society in the early middle ages. The middle Rhine valley, 400–1000* (Cambridge, 2000); Adam J. Kosto, *Making agreements in medieval Catalonia. Power, order, and the written word, 1000–1200* (New York, 2001).

⁵ See Hagen Keller, ‘Träger, Felder, Formen pragmatischer Schriftlichkeit im Mittelalter. Der neue Sonderforschungsbereich 231 an der Westfälischen Wilhelms-Universität Münster’, *Frühmittelalterliche Studien*, 22 (1988), 388–409 as well as the annual reports on the project in the same journal through v. 34 (2000); McKitterick *Carolingians and the written word; The uses of literacy in early medieval Europe*; ed. Rosamond McKitterick (Cambridge, 1990); *Pragmatic literacy, east and west, 1200–1330*, ed. Richard Britnell (Woodbridge, 1997); *Charters and the use of the written word*.

⁶ This development took place at different rates in different parts of Europe. It seems to have begun earliest—from the end of the eighth century—in the regions east of the Rhine; in the west charters retained their dispositive character into the tenth century. See Georges Declercq, ‘Originals and cartularies: the organization of archival memory (ninth–eleventh centuries)’, in: *Charters and the use of the written word*, 161–166; Wendy Davies and Paul Fouracre, ‘The role of writing in the resolution and recording of disputes’, in: *Settlement of disputes*, 211. Late antique notarial traditions persisted in Italy throughout the early Middle Ages; see Chris Wickham, ‘Land disputes and their social framework in Lombard–Carolingian Italy, 700–900’, in: *Settlement of disputes*, 112.

time it obliged the donors' descendants to defend the community's rights to the donated property in order to protect their ancestors' souls.⁷ To go beyond this and say with any certainty that the content of a written record in the ninth century offered by itself legal proof is difficult. Surviving references to charters being produced at court hearings place them on equal footing with oral testimony; they do not give them any clear priority.⁸

The question of what purpose written records served forms part of what I have chosen to call the study of 'pragmatic memory', that is, the ways written records were used to forge useful pasts for the needs of an institution's present and future. People working on this problem have asked, among other things, how churches and monasteries structured their archives, and especially how and why these archives were transformed into bound copies or cartularies.⁹ The earliest cartularies appeared in the ninth century in what would become the east Frankish kingdom, first in Franconia and Bavaria and then in Alsace. Like the documents they contain, these early charter collections served a variety of purposes: to facilitate access to documents and protect them from loss, to assert church property claims in the face of uncertainty created by political upheaval (such as Charlemagne's conquest of Bavaria or the division of the Frankish Empire under Charlemagne's grandsons), to preserve for sacral purposes the memory of property donors and other benefactors, and to tell the histories of how bishops and abbots protected and advanced the interests of their churches or monasteries. Each cartulary combined some or all of these purposes in ways shaped by the circumstances of their production. One thing they all share in common, however: each reflects a conscious or unconscious effort to select and organise information from the past for the needs of the present; each reflects an effort to select and organise information from the present for the possible needs of the future.¹⁰

⁷ Declercq, 'Originals and cartularies', esp. 160–165; Fichtenau, *Urkundenwesen*, 56–87; Peter Johaneck, 'Zur rechtlichen Funktion von Traditionsnotiz. Traditionsbuch und früher Siegelurkunde', in: *Recht und Schrift im Mittelalter*, ed. Peter Classen (Sigmaringen, 1977), 131–162. For the earliest charter evidence from Anglo-Saxon England see Susan Kelly, 'Anglo-Saxon lay society and the written word', in *Uses of literacy*, 36–62.

⁸ Davies and Fouracre, 'The role of writing', 212–213; Paul Fouracre, 'Placita' and the settlement of disputes in later Merovingian Francia', in *Settlement of disputes*, 36–37; Fichtenau *Urkundenwesen*, 58–59. A typical example of the ambiguity surrounding charters in disputes comes in a record from the cathedral church at Freising from the year 806. A cleric called before a court to defend his rights to a Freising benefice did so by producing his original charters (*cartas traditionis*) and displaying 'the true witnesses written in them': TF 227; Brown, *Unjust seizure*, 184.

⁹ Like the term 'charter', I use the term 'cartulary' in its widest sense to mean a collection of charter copies, including both what is called in German a *Kopialbuch*, that is, collected copies of first-person documents, and the *Traditionsbuch*, which can contain primarily third-person notices or a mixture of both first-person and third-person records. See the literature cited in n. 2 above.

¹⁰ Fichtenau, *Urkundenwesen*, 73–87; Johaneck, 'Zur rechtlichen Funktion'; Stephan Molitor, 'Das Traditionsbuch. Zur Forschungsgeschichte einer Quellengattung und zu einem Beispiel aus Südwestdeutschland', *Archiv für Diplomatik. Schriftgeschichte. Siegel- und Wappenkunde*, 36 (1990), 61–92; Patrick J. Geary, *Phantoms of remembrance. Memory and oblivion at the end of the first millennium* (Princeton, 1994) 81–114; Hummer, 'Monastic property'; Declercq, 'Originals and cartularies'. See also the critique of Geary's argument offered by Laurent Morelle, 'The metamorphosis of three monastic charter collections

In this essay, I want to take a closer look at the point where conflict, charters, and ‘pragmatic memory’ come together, in order to say something more about the purposes written records could serve in the Carolingian period. To do so, I will focus on dispute charters. Written records of property disputes, like the cartularies into which they were copied, were highly sensitive to context and circumstance; the dynamics of individual conflicts, the particular character of relationships between the institution that produced the records and its competitors, and the institution’s own imperatives all left their mark on the way dispute records were written and on the information they contain. In some cases, however, the evidence goes beyond passive reaction and suggests active intent, that is, that the people who wrote the records saw them as tools that they could deliberately shape to achieve pragmatic goals. To be specific: church scribes could use charters to provide their church and its community with memories of disputes that were immediately useful. By selecting what information to write down and how to write it down, they could help protect their church’s rights and enhance its image, both in the face of immediate local challenge and in reaction to larger-scale political change. At the same time, they could preserve accounts of disputes that could help their community in the future, and mask competing stories that posed a threat to the community’s short- or long-term interests. Dispute records could form part of the process of negotiating with opponents, with a positive description of an opponent serving as a reward for compromise. A carefully constructed record could even limit the effectiveness of a royal court by transforming the memory of what the court had done. In short, clerics could use not only cartularies but also individual dispute records to help them shape useful pasts for the perceived needs of their presents and futures.

To make this case, I turn to a time and place where we have both a rich lode of dispute charters and where both local conflict and political change shaped how these charters were written: Bavaria in the first decades of the ninth century. My evidence comes from the earliest cartulary of the cathedral church at Freising, in what was then western Bavaria.¹¹ The Freising cartulary is among the earliest and richest of the surviving East Frankish charter collections. Begun in the 820s, it contains transcriptions of some 700 property records from the Freising cathedral archives that reach back to the 740s. The cartulary combines many of the purposes I discussed above. According to its compiler, a Freising priest named Cozroh, it was assembled to protect the Freising archives from loss and to facilitate access to the records. At the same time it aimed to preserve the memory both of property donors and of the deeds done by the bishops of Freising on behalf of their church and its property.¹²

in the eleventh century (Saint-Amand, Saint-Riquier, Montier-en-Der)’, in *Charters and the use of the written word*, 171–204.

¹¹ Freising now lies ca. 25 km NNE of Munich.

¹² Munich, Bayr. Hauptstaatsarchiv, Hochstift Freising Lit. 3a. Cozroh gives his reasons for compiling the collection in a prologue: TF, 1, 1–2. One section of the cartulary is missing; the records it contained have nonetheless survived, albeit without witness lists, in a twelfth-century copy made by the Freising sacristan Conrad; Munich, Bayr. Hauptstaatsarchiv, Hochstift Freising Lit. 3c. See Joachim Jahn, ‘Virgil, Ardeo und Cozroh. Verfassungsgeschichtliche Beobachtungen an bairischen Quellen des 8. und 9. Jahr-

The Freising cartulary makes this investigation possible not only because it contains a large number of accurate charter copies but also because it covers a particularly interesting and conflict-laden period in Bavaria's history. In 788 Bavaria, which had been governed for generations by dukes from the Agilolfing kindred, was conquered by Charlemagne. At the Synod of Frankfurt in 794, the Frankish king forced the last Agilolfing duke, Tassilo III, to renounce his family's rights in Bavaria and to accept monastic exile. Over the decades that followed, Charlemagne integrated Bavaria into his greater Frankish kingdom.¹³ As the ninth century dawned, therefore, the Bavarian churches and the Bavarian landholding aristocracy found themselves adjusting to a new ruler whose attitudes and priorities differed from those of his Agilolfing predecessors, and to a new set of political and judicial institutions. These attitudes and institutions posed a threat to some Bavarians but benefited others; they worked to the advantage, in particular, of the Bavarian bishops. We can observe how the see of Freising reacted to the opportunities presented it by the Carolingian conquest in part through the ways that Freising clerics constructed their records of property disputes as they tried to manipulate their new political environment to their best advantage. By this I do not mean that the clerics created gross forgeries, that is, deliberately false documents.¹⁴ Freising's scribes told their truth, i.e., the stories of disputes that they thought would best preserve their rights and put their church and their bishop in the best possible light. Sometimes they told a story of a dispute that was radically different from someone else's story. At other times they carefully managed the information contained in their records so that the records both masked any possible threats to Freising's interests and represented Freising's relationships with the people around it in the ways that best suited Freising's needs.

1. Competing stories

When the Freising priest Cozroh copied the Freising archives into his charter collection, he included accounts of two important property disputes involving Freising that were aired at formal judicial hearings headed by Charlemagne's agents in the years 802 and 804 respectively. The accounts of these two disputes stand out from the other dispute records in the Freising collection because in both cases, Cozroh copied two different records of the same court hearing written by two different scribes. In each case, one of the records was written by a notary attached to one

hundreds', *Mitteilungen der Gesellschaft für Salzburger Landeskunde*, 130 (1990), 201–291; Geary, *Phantoms*, 9–96; Declercq, 'Originals and cartularies', 154–156.

¹³ See Brown, *Unjust seizure*, 11–17; Roger Collins, *Charlemagne* (Toronto, 1998) 77–88; Herwig Wolfram, *Die Geburt Mitteleuropas. Geschichte Österreichs vor seiner Entstehung. 378–907* (Vienna, 1987).

¹⁴ *Fälschungen im Mittelalter*, 5 vols (*Monumenta Germaniae Historica Schriften*, 33. Hanover, 1988).

of Charlemagne's legates (*missi*) in Bavaria, Archbishop Arn of Salzburg.¹⁵ The other was produced by a scribe from Freising. All of the accounts present themselves as official records; they follow the so-called *placitum* form, a formulaic pattern for narrating the actions of judicial assemblies that was imported into Bavaria from the Frankish west in the late eighth century.¹⁶ The content of the accounts, however, differs markedly depending on who wrote them. The accounts produced by the archbishop's notary describe the disputes in line with the legate's interests; they do not appear to particularly favour one party over the other. The records of the same disputes written by Freising's scribes, however, represent them from a flagrantly partisan point of view. In the first example, from the year 802, Freising's scribe tried both to politicise a property dispute between his church and a lay landholder by playing up to Carolingian authority, and to cast the dispute's outcome in such a way that his church and his bishop appeared in the best possible light. At the same time, his record reveals the see of Freising manoeuvring to take advantage of the court's attitude towards church property rights and to undermine the competing attitude represented by its opponent.

To show how Freising hoped to achieve the latter goal in particular, I need to provide some broader context. This particular dispute pitted two different ideas of church property rights against each other, one that belonged to the old Bavaria and one that belonged to the new. Long-standing tradition in Agilolfing Bavaria had given people who donated property to churches and monasteries—whether pre-existing or that they themselves had founded—considerable control over the property they had donated. While the recipient church held formal title to the property, the donor and his family continued to use and to develop the property and quite frequently passed their use rights down to their heirs. The Bavarian bishops invariably acquiesced in these arrangements. Not only did their *de jure* title to property donated to their own cathedral churches give them the expectation of ultimate *de facto* control if and when the donor kindred died out; their consent to such arrangements involving other churches and monasteries helped them to extend their ecclesiastical authority and influence geographically in a period when the boundaries of Bavaria's dioceses had yet to be clearly defined.¹⁷

¹⁵ On Arn and his career see Brown, *Unjust seizure*, 102–123; Heinz Dopsch, 'Die Zeit der Karolinger und Ottonen', in: *Geschichte Salzburgs. Stadt und Land*, ed. Heinz Dopsch, I/1 (Salzburg, 1981), 157–228 and esp. 157–173; Herwig Wolfram, 'Arn von Salzburg und Karl der Grosse', in: *1200 Jahre Erzbis-tum Salzburg. Die älteste Metropole im deutschen Sprachraum. Beiträge des Internationalen Kongresses in Salzburg vom 11. bis 13. Juni 1998* (Mitteilungen der Gesellschaft für Salzburger Landeskunde, Ergän-zungsband 18, Salzburg, 1999) 21–32 and *Geburt Mitteleuropas*, 206–210.

¹⁶ The *placitum* form begins with a statement that one or more office-holding authority figures were in residence in a given place for the purpose of settling disputes. It then describes the plaintiff's accusation, the defence by the accused, an inquisition carried out by the heads of the assembly, and finally the assembly's judgement and the witnesses. For the history of the form and its possible variations see Brown, *Unjust seizure*, esp. 102–123; Fichtenau, *Urkundenwesen*, 75; the articles by Fouracre, Nelson, and Wick-ham in *Settlement of disputes*; Herwig Wolfram, *Salzburg Bayern, Österreich. Die Conversio Bagoariorum et Carantanorum und die Quellen ihrer Zeit* (Vienna, 1995) 186–187.

¹⁷ Brown, *Unjust seizure*, 41–52.

Charlemagne's conquest of Bavaria, however, brought with it an understanding of property gifts based on canon law that contradicted this tradition and permitted the Bavarian bishoprics to control donated property immediately, without having to take the donor kindred's expectations into account. The surviving records tell us that judicial courts headed by Carolingian officials in Bavaria consistently interpreted property gifts to mean that the Bavarian bishops enjoyed *de facto* as well as *de jure* control of property donated both to the cathedral churches themselves and to other churches and monasteries that lay within their dioceses. Nevertheless, dispute after dispute in the Freising cartulary shows that heirs or relatives of property donors continued to claim control of property based on their old customary rights, rights which stood in opposition to the canonical rights wielded by the see of Freising.¹⁸

The particular dispute at issue here concerned property belonging to a monastery that had been founded in 763 at Scharnitz, in modern-day Tyrol. The monastery was established and endowed with property by a man named Reginperht, his brother Irminfrid, and several of their relatives. The bishop of Freising participated in the foundation, and the Agilolfing Duke Tassilo III lent it his consent. Shortly after its foundation, the monastery was moved north to the village of Schlehdorf. The early history of the Scharnitz–Schlehdorf monastery, as it is now known, is typical of Agilolfing-era foundations. The founders forged a close and co-operative relationship with the see of Freising. Freising supplied the monastery with abbots, first Arbeo and then Atto, who were themselves connected to the founding kindred and who later became bishops of Freising.¹⁹ The founders nonetheless wielded a great deal of influence over both the monastery's spiritual direction and the disposition of its property. This was true above all of the chief founder Reginperht; it also applied to other kindred members who gave property to the monastery in the course of the eighth century but continued to use it or arranged to pass it on to their descendants.²⁰

In the late summer of 802, however, a dispute erupted between Atto, now bishop of Freising, and the son of Reginperht's brother Irminfrid, a man named Lantfrid. The dispute concerned property that Irminfrid had given the monastery at the time of its foundation; it was aired at a judicial assembly held at Freising and headed by

¹⁸ Brown, *Unjust seizure*, 40–52 and 73–101; Joachim Jahn, *Ducatus Baiuvariorum. Das bairische Herzogtum der Agilolfinger*, (Monographien zur Geschichte des Mittelalters, 35, Stuttgart, 1991), 291–300 and 'Tradere ad sanctum. Politische und gesellschaftliche Aspekte der Traditionspraxis im agilolfingischen Bayern', in: *Gesellschaftsgeschichte. Festschrift für Karl Bosl zum 80. Geburtstag*, ed. Ferdinand Seibt (Munich, 1988), 400–416. For the development of canon law governing episcopal property rights see also Wilfried Hartmann, 'Der rechtliche Zustand der Kirchen auf dem Lande: die Eigenkirche in der fränkischen Gesetzgebung des 7. bis 9. Jahrhunderts', in *Cristianizzazione ed organizzazione ecclesiastica delle campagne nell' alto medioevo: espansione e resistenze* (Spoleto, 1982), 397–441; Barbara H. Rosenwein, *Negotiating space. Power, restraint, and privileges of immunity in early medieval Europe* (Ithaca, N.Y., 1999).

¹⁹ Brown, *Unjust seizure*, 43 n. 29 and n. 31; Jahn, *Ducatus*, 414 and 422, Störmer, *Früher Adel*, 2, 331 and 361.

²⁰ Reginperht gave his consent when Atto became abbot of Schlehdorf in 764; in 772 he accompanied Atto to Rome to obtain the relics of St. Tertullian for the monastery. In a Freising charter of 776 (TF 77), both Atto and Reginperht are described as the authorities who could grant out a benefice of Schlehdorf property. See Brown, *Unjust seizure*, 42–44; Jahn, *Ducatus* 408–448.

the imperial legates Archbishop Arn of Salzburg and Bishop Adalwin of Regensburg.²¹

According to the account of the hearing written by Arn's notary,²² Bishop Atto's advocate charged that the defendant Lantfrid had unjustly usurped properties that his father Irminfrid had given to the church at Scharnitz. The legates then carried out an inquiry. They found that Irminfrid, who by then must have been dead, had made his original gift on the condition that if he should have any sons they should receive a share of his property.²³ They also found, however, that Lantfrid had tried to take not only the part of his father's property he was due but also the rest of his father's property, which should have gone according to the strict terms of Irminfrid's gift to the church at Scharnitz.²⁴ In other words, Lantfrid apparently assumed not only that he had a right to inherit a share of his father's property, but also that he still had a right to hold the rest of the property that his father had given to the church at Scharnitz.

Bishop Atto, despite his longstanding co-operative relationship with Lantfrid's kindred, saw things differently. All of Irminfrid's gift, in its entirety, formed the target of Atto's suit. Atto apparently based his claim to the property on his rights under canon law as bishop of Freising and abbot of Schlehdorf. Once Irminfrid had died, the property he had given belonged to the church at Scharnitz which itself now belonged to the monastery at Schlehdorf. Atto controlled the monastery at Schlehdorf both as abbot and as bishop of Freising. The property therefore lay under his direct jurisdiction; Lantfrid held it unjustly.

That Freising's position hinged on framing the dispute in these terms emerges clearly from the account of the dispute written by Freising's scribe.²⁵ Whereas the

²¹ TF 184ab. For a thorough discussion of this case and the differences between the two written descriptions of it see Jahn, *Ducatus* 438–441.

²² TF 184b was written by a *notarius* named Bertharius, who shows up in the Bavarian records five times between 802 and 804, four times in the Freising collection and once in a notice from the cathedral church at Passau. Each time he appears together with Arn. Bertharius' trans-diocesan connection with Arn has led scholars to label him an archiepiscopal notary; see Wolfram, *Geburt Mitteleuropas*, 209; Fichtenau, *Urkundenwesen*, 76 n. 13, 79 and n. 30.

²³ As required by the Bavarian Law; see *Lex B C.* I/1. This condition is clearly laid out in the original Scharnitz foundation charter TF 19 (763). Neither account of Freising's dispute with Lantfrid, however, says whether the court looked at the foundation charter; both indicate that the information was collected orally from witnesses.

²⁴ Lantfrid is described as trying to take not only the portion of the property due him as Irminfrid's son but also 'his portion' from the property belonging to the 'altar of St. Peter' in Scharnitz (*Lantfridus requirere aptabat portionem suam de ipso altare Sancti Petri in praefato loco Scarantia*) meaning the property that belonged to the church at Scharnitz, which was dedicated to St. Peter; see Jahn, *Ducatus*, 441. The *missi* decided that Lantfrid should return 'that portion of his father' (*ipsa portione patris sui*) while keeping his own share; this has led me to conclude that he had originally tried to keep all of his father's original gift to the church at Scharnitz.

²⁵ TF 184a was written by a scribe named Horskeo. Horskeo, who appears as scribe in 12 Freising charters over the period 772–802, seems to have belonged to an inner circle of clerics who carried out the main work of the Freising episcopal chancery; see Hubert Glaser, 'Bischof Arbeo von Freising als Gegenstand der neueren Forschung', in: *Vita Corbiniani. Bischof Arbeo von Freising und die Lebensgeschichte des hl. Korbinian*, ed. Sigmund Benker, Franz Brunhölzl and Hubert Glaser (Munich, 1983), 44.

account written by Arn's notary says that Irminfrid had given the disputed properties to the church at Scharnitz, the Freising account states unequivocally that Irminfrid gave them to the monastery at Schlehdorf.²⁶ 'Freising's version moreover casts Lantfrid himself as a quarrelsome and greedy usurper. It admits that Irminfrid had made his original gift with a provision for possible sons. Lantfrid, however, 'acting contentiously' (*contentiose agens*), had exceeded his rights by trying to take more than his share.

In addition, Freising's scribe tried to capitalise on the presence of Carolingian authority by having a Carolingian king involved in the original transaction. The Freising account states that both Duke Tassilo and Charlemagne's father King Pippin had given their consent to Irminfrid's gift.²⁷ According to the original Scharnitz foundation charter (which survives in the Freising cartulary), the endowments took place with the permission of Duke Tassilo only; there is no mention of any participation or consent by Pippin.²⁸ It is very unlikely that Atto, as abbot of Schlehdorf, would not have known this. Nevertheless, Freising's scribe inserted Pippin's permission into the record, making Lantfrid's usurpation appear as an affront not only to the see of Freising and its rights but also to Carolingian authority.²⁹

The imperial legates agreed with Bishop Atto's position, but only up to a point. After carrying out their inquiry, they arranged a settlement between the two parties. According to Arn's notary, the legates and the two disputing parties

decided amongst themselves that Lantfrid would offer to return the portion of his father without harm to himself, without having to pay the penalty or the fine due the emperor or the fine due for violating [Freising's] immunity, and to retain his portion, and to agree concerning that half of the altar of St. Peter [i.e., the church at Scharnitz], that he would not claim any more from the properties of that holy church of God for his portion. This was done under this condition, that if he wished to make any further claim concerning this matter, he would be obliged to pay every fine.

Horskeo wrote TF 184a at the orders of another cleric, 'the unworthy Adalperht', whose affiliation is a bit harder to determine. Adalperht was involved in the production of only two Freising records, TF 184a and TF 186, both produced on the same day at the same place. He appears, therefore, like the notary Bertharius, only in connection with Archbishop Arn. Unlike Bertharius, however, Adalperht only shows up when Arn is dealing with Freising. He may well have been a Freising cleric; a priest Adalperht and a cleric Adalperht are attested at Freising from 769. The pro-Freising nature of TF 184a strongly inclines me to see him as a member of the Freising clergy.

²⁶ Whereas Bertharius' TF 184b says that Lantfrid had 'unjustly usurped property of the church of St. Peter in the place called Scharnitz...which his father Irminfrid had given', Horskeo's TF 184a states that Lantfrid 'unjustly possessed property of St. Peter from the monastery called Schlehdorf which the above mentioned Irminfrid... had given to that monastery'.

²⁷ TF 184b: 'which his father Irminfrid had given in the time of Bishop Joseph with Duke Tassilo's permission.' TF 184a: '...which his father Irminfrid had given to God and St. Peter at that above mentioned monastery in the time of the lord King Pippin and Duke Tassilo and with their consent.'

²⁸ TF 19.

²⁹ Jahn, *Ducatus* 439.

Arn and his colleagues thus recognised Irminfrid's provision for possible sons and prevented Bishop Atto from extending his grasp over all of Irminfrid's original gift.³⁰ Nevertheless, the legates agreed with Atto on a fundamental level: they upheld the exact terms of Irminfrid's original donation, and thus Atto's assertion of *de facto* control over the property Irminfrid had given the monastery, over Lantfrid's customary expectations of control over all of his father's holdings.

Arn's notary described the settlement of the dispute as a compromise negotiated by the two disputing parties with the legates' mediation. Freising's scribe, however, cast the settlement in a very different light. According to him, the legates

together with those who were present at the court, considering [Lantfrid's] stupidity and so that he might escape without heavy penalty into the mercy of the holy church of God and of the lord emperor, asked the venerable bishop Atto and made an arrangement with him, that he [Lantfrid] might offer to return to him, without the required compensation, the above mentioned properties of the holy church without harm and also without the penalty required by the royal immunity and without a royal fine. This was done under the condition that he [Lantfrid] would claim nothing further from the above named church and that he would try to claim nothing further for himself from the above mentioned properties.

This presents matters with an aggressive pro-Freising and pro-Carolingian slant whose net effect is to demean Lantfrid and exalt Bishop Atto. The court allowed Lantfrid to return the disputed property to Atto without paying any fines not because he had some justice on his side, but rather because it recognised his foolishness and wanted to keep him in the good graces of the church and of Charlemagne. The legates did not mediate the agreement between the two parties but rather presented it to Atto in the form of a request, which the bishop graciously agreed to because of his duty to be merciful. Moreover, the outcome of the hearing appears as a Freising victory. There is no distinction made in the final settlement between the property that Lantfrid could legitimately keep and that which he had to return. Lantfrid is represented as giving up his claims to all of the properties under discussion.³¹

In short: Freising's scribe cast his description of this dispute to appeal as much as possible to a norm that enjoyed the support of Carolingian authority, namely, that property given to a monastery standing under his bishop's jurisdiction became the bishop's property *de facto*, not just *de jure*. The scribe tried to undermine any further legitimacy Lantfrid might have enjoyed by casting him as quarrelsome and contentious. Moreover, he tried to buttress Freising's case by appealing—somewhat outrageously—to Carolingian sensibilities. Finally, the scribe described the settlement in a way that differs from the story told by Arn's notary in two important respects. First, he presented his bishop rather than the imperial legates as the key to the settle-

³⁰ This part of the story is confirmed by a brief notice in the Freising collection (TF 185) recording Lantfrid's formal return of the property after the hearing; the notice shows that Lantfrid returned only a part of what Freising had originally demanded.

³¹ This is a patently false claim as the notice TF 185 cited in n. 30 above shows.

ment; he cast Bishop Atto as someone whose rights were injured but whose mercy permitted a graceful end to the dispute. Second, the scribe represented Lantfrid as giving up his claims to all of the disputed properties, rather than to his father's portion alone.

Did Freising's record of this dispute serve any concrete purpose? Joachim Jahn has suggested that it was designed to influence Charlemagne's legates; he calls the version written by Arn's scribe the 'official' record of the proceedings and Freising's version a 'bill of indictment' (*Anklageschrift*) prepared by Freising to strengthen its case before a Carolingian court.³² Freising's version, however, presents a finished case rather than a list of charges. It appears, therefore, to represent an effort to shape the record of events after the fact. Not only did it exalt the bishop of Freising in a way that the mediated compromise described by Arn's notary does not, it also preserved in writing a basis for Freising to realise its own claims on that part of the Scharnitz property which the compromise described by Arn's notary had allowed Lantfrid to keep.

There is no sign that Freising ever tried to act on its version of the Lantfrid dispute. In the second double-record case in the Freising cartulary, however, we do have evidence that Freising exploited its own version of events. A later record shows Freising using its history of a dispute settlement to undermine a compromise brokered by Arn of Salzburg and successfully claim property that the compromise had given its opponent.

This dispute pitted Bishop Atto against Abbot Liutfrid of the monastery at Chiemsee over control of six churches.³³ The matter was aired in January of 804 at a judicial assembly headed by Arn, a count, and two judges. As in the Lantfrid case, Arn's notary produced a record of this hearing.³⁴ According to his version of events, Bishop Atto's advocate sued Abbot Liutfrid, claiming that the abbot was unjustly holding the six churches (located at Willing, Berbling, Mietraching, Tattenhausen, Högling, and a now unknown location called 'Perch').³⁵ The abbot denied the charge. Then the archbishop and the other members of the court launched an investigation. They found that Chiemsee's first abbot had in fact wrongfully appropriated the churches.³⁶ Next, representatives from both parties got together and worked out a compromise. Chiemsee would keep four of the disputed churches (at Willing, Berbling, Mietraching, and Tattenhausen), as well as their tithes. Freising would receive from Chiemsee the remaining two churches (at Högling and 'Perch'), plus a say in what Chiemsee did with its tithes. The record ends with the injunction, 'let there be

³² Jahn, *Ducatus*, 438.

³³ TF 193ab.

³⁴ TF 193a, written by Bertharius.

³⁵ See Bitterauf's notes to TF 193.

³⁶ 'Then Bishop Arn and those who were with him...found how the foreigner Tuti Grecus, an Irish bishop, had appropriated that parish and the churches in violation of canonical norm'. 'Tuti Grecus'=Dobdagrecus, the Irish companion of Virgil of Salzburg and the first abbot of Chiemsee; see Jahn, *Ducatus*, 147.

peace and unshakeable concord between them in the future without any conflict or contention.’

The other record of this dispute in the Freising cartulary was written by an unknown scribe. The way it describes the dispute, however, makes it very clear that it represents a pro-Freising point of view. It not only presents a different outcome that worked more to Freising’s benefit; it also makes the abbot of Chiemsee out to be an enemy of Charlemagne’s regime. This version states that the dispute was aired before the same court and that Freising levelled the same charge against the abbot of Chiemsee. However, only four churches are given as under dispute, not six. They are the churches at Willing, Mietrachung, Högling, and ‘Perch’. The two churches that are missing are two that Chiemsee received as its share of the compromise in the version written by Arn’s notary: the churches at Berbling and at Tattenhausen. The record next charges that the disputed churches had originally belonged to Freising, but that Duke Tassilo and his wife Liutpirg had unjustly taken them away.³⁷ The duke and duchess had also robbed Freising of many other things because of the hatred they bore for Atto’s predecessor as bishop of Freising, Arbeo. The ducal couple hated Arbeo, alleges the record, because he was ‘more faithful to the lord king Charles [i.e., Charlemagne] and to the Franks than to them.’

After having thus charged Chiemsee with benefiting from Duke Tassilo’s malice towards a pro-Carolingian bishop of Freising, the record describes the hearing’s outcome. As in the first version, Freising was found to have the more just claim. There was, however, no compromise; the court judged instead that the churches ought to be returned to Bishop Atto. Abbot Liutfrid is represented as accepting this result. The abbot returned three of the churches (Willing, Högling, and ‘Perch’), including one that the record written by Arn’s notary had awarded him as part of the compromise (Willing). The fourth (Mietrachung), which Arn’s notary had likewise awarded to Chiemsee, remained with Chiemsee in this account as well. Not because of any compromise, however; the notice describes Abbot Liutfrid as holding on to the church because he wanted another inquiry.³⁸ There is no mention of concord or peace.

In short, in this patently pro-Freising record of the dispute Chiemsee is represented not only as having infringed on Freising’s property rights but also as having benefited from the actions of an enemy of the Carolingians. Moreover, Freising’s version simply did not mention two of the four churches that Freising had to give up in the account written by Arn’s notary. This left the door open for another attempt to claim them later. Freising’s scribe also presented the other two of these churches in such a way as to make a future claim possible; according to him, the court had awarded

³⁷ This attack on the Duchess Liutpirg mirrors the way Carolingian court historiography made her responsible for Duke Tassilo’s behaviour; see the *Annales Regni Francorum*, ed. Reinhard Rau, in: *Quellen zur karolingischen Reichsgeschichte*, I (Ausgewählte Quellen zur deutschen Geschichte des Mittelalters, V. Darmstadt, 1987) 788, 54.

³⁸ ‘They did not wish to return the church at Mietrachung, asking that they be given time for a better inquiry.’

one of them to Freising while Abbot Liutfrid himself had requested another hearing on the second.³⁹

Twelve years later, Freising succeeded in making good its claim to one of these properties. A notice from the year 816 proclaims Freising's final victory in its battle for property at Berbling, one of the two places given to Chiemsee in the record written by Arn's notary but not mentioned in Freising's version.⁴⁰ The date is significant; it is five years after Archbishop Arn of Salzburg had stopped overseeing disputes in Bavaria.⁴¹ The notice records the grant by Atto's successor Bishop Hitto of property in Berbling to a Count Oadalschalk as a benefice, in exchange for the count's gift to Freising of his own property there. It begins:

Let it be known to the many residing in the bishopric of St. Mary [i.e., Freising], how the venerable lord Bishop Hitto recovered, with great labour, the property of the house of St. Mary in the place called Berbling, which Abbot Hephilo unjustly held and which had unjustly been handed over to his monastery in the place called Chiemsee in the time of the duchess Liutpirg. But now that has been recovered by the testimony of truthful and good men which had been taken away by the enemies of the house of St. Mary.

Hitto's successful effort to claim the property at Berbling for Freising is represented in the way left open by the Freising record of the 804 court hearing: Chiemsee had received the property unjustly with the consent of Duke Tassilo's wife Liutpirg. In other words, Hitto justified his assertion of control over the property in terms of his church's history of the original dispute. When he did so, however, he directly violated the terms of the compromise settlement recorded by Arn of Salzburg's notary. I suspect it is no accident that he did so after Arn himself had left the judicial scene.

The record does not say exactly how Bishop Hitto got hold of the property at Berbling, beyond its reference to 'the testimony of truthful and good men.' It appears that Hitto may have exploited the interests of the family or families propertied around Berbling. There was certainly a *quid pro quo* in his arrangement with Count Oadalschalk. Freising had its title to the disputed property at Berbling secured in the form of the written benefice grant to Oadalschalk; it also gained ultimate title to Oadalschalk's own property there. Oadalschalk in turn had Chiemsee's former holdings in Berbling united to his own for his lifetime use. Hitto also managed to get at least one other person from the area to abandon Chiemsee and ally himself with Freising.

³⁹ Jahn, 'Virgil', 231–33 suggests as he does for the Lantfrid case TF 184ab that Freising's version represented an attempt to influence the *missi* before the court hearing. The attempt to play to Carolingian sympathies certainly supports this idea. Here as in TF 184, however, the fact that Freising's re-write presents a finished case rather than a set of charges indicates an effort to influence events after the fact, possibly by appealing to other Carolingian office-holders after Arn's withdrawal from judicial activity in 811; see n. 41 below.

⁴⁰ TF 368.

⁴¹ Arn of Salzburg appears in a judicial capacity for the last time in the Freising charters in TF 299 (811).

One of the witnesses to the record, Paldachar, appears as the last witness to the 804 record written by Arn's notary, which had explicitly awarded the church at Berbling to Chiemsee.

The timing of Freising's second effort to claim the property at Berbling offers a clue to when Freising might have produced its record of the original 804 hearing. Both the account of the hearing written by Freising's scribe and the one written by Arn's notary look like they were produced at the time of the hearing; both follow the narrative pattern characteristic of *placitum* reports and both contain extensive witness lists.⁴² It is impossible to say for certain that they were produced at the same time, however, because we do not have the originals; we have only copies, which do not include any palaeographical information. I suspect—although I cannot prove it—that Freising's account was written later than the version written by Arn's notary. Arn's notary produced a cluster of documents preserved in the Freising cartulary that all fall in the date range 802–804. I think it fairly certain, therefore, that he wrote his record of the Chiemsee case at the time of the hearing in 804. Freising's account, however, fits neatly with the story told by the Berbling record of 816. This fact suggests that Freising may have produced its written description of the hearing in or just before 816, rather than in 804, to buttress its effort to claim the Berbling property.

My arguments here leave open the question why Freising kept doubled records both of this dispute and the Lantfrid dispute discussed above. It would seem more logical for Freising, having produced its own records that worked to its advantage, to have simply let the records produced by Arn's notary quietly disappear. I do not have an easy answer to this question. The Freising cartulary itself only hints at some possible explanations for the Lantfrid case. The two different descriptions of Freising's dispute with Lantfrid do not appear together in the cartulary.⁴³ One—the version produced by the Freising scribe—was placed in a group of documents concerning the monastery at Schlehdorf.⁴⁴ The version written by Arn's notary was placed much earlier in the cartulary, next to two other dispute records that he also wrote. One of these is his version of the Chiemsee dispute.⁴⁵ It is possible that Freising's

⁴² See n. 16 above.

⁴³ When Cozroh compiled the Freising cartulary, he grouped the individual records by episcopal reign. Within each reign—unlike his nineteenth century editor Bitterauf, who tried to order the records chronologically—Cozroh apparently followed the organisation of the archives themselves. He separated records of gifts written in the first person from third-person notices, and placed documents with related content next to each other. See the literature cited in n. 12 above.

⁴⁴ TF 184a=Freising, Hochstift Lit. 3a fol. 164' no. 198. The record is preceded by seven records of property gifts to Schlehdorf made by members of the founding kindred over the period 776–804 (TF 295, 179, 75, 76a, 199, 77, 177), as well as a gift made by Atto himself (as abbot of Schlehdorf) in 772 on behalf of two men (TF 45a). TF 184b is followed by a record (TF 186) of a second dispute over Schlehdorf property resolved at the same court as the Lantfrid case on the same day and written by the Adalperht who had ordered Horskeo to write up Freising's version of the Lantfrid case. See Jahn, 'Virgil', 289–290.

⁴⁵ TF 184b=Freising, Hochstift Lit. 3a, fol. 140 no. 138. This record is preceded by two other records that Bertharius wrote describing disputes overseen by Arn of Salzburg involving Freising. One (TF 193a) is his version of the Chiemsee dispute. The second (TF 197) concerns a dispute between Freising and the monastery at Tegernsee aired at a judicial hearing in 804. Preceding these are three other documents

version of the Lantfrid dispute made its way into the Schlehdorf archives, while the other was kept with Freising's records of disputes resolved at Arn's courts, until both sets of records were copied by Cozroh into the Freising cartulary.⁴⁶ It is also possible that the Freising clerics did not 'lose' the documents produced by Arn's notary because they feared or respected Arn himself. Not only does the Freising cartulary contain several other dispute records written by the archbishop's notaries; it goes out of its way to advertise Freising's connections to Arn—who was trained as a cleric at Freising—by prominently displaying two charters in which Arn plays an important role.⁴⁷

2. When an enemy becomes a friend

The evidence I have presented so far is unusual; one rarely finds early medieval dispute charters describing single disputes from different perspectives. There is also useful information to be gained, however, from the far more typical dispute records in the Freising collection that contain the only surviving accounts of the disputes they deal with. The evidence these charters offer is often subtle and hard to interpret. Nevertheless, it suggests that they, too, did more than simply passively record events—that the records and the scribes who wrote them played an active part in Freising's disputes with its landholding neighbours.

The most important evidence supporting this conclusion comes from the information the records contain, the information they do not contain, and the ways that their stories are packaged. Freising's scribes made deliberate choices about the information they included in their dispute records. What they said and how they said it depended on the quality of Freising's relationships with its opponents at the time the records were written. If a dispute left Freising and its opponent in a hostile relationship, the scribe reporting the dispute generally said nothing about the

that concern the Scharnitz–Schlehdorf monastery—the foundation charter of 763 (TF 19), a charter recording the monastery's move to Schlehdorf and naming the first abbots (TF 53), and a renewal in 772 (TF 45b) of the gift Atto had made to Schlehdorf on behalf of two men that same year and placed by Cozroh with the other group of Schlehdorf documents listed above. See Jahn, 'Virgil', 287.

⁴⁶ I now find this explanation more plausible than the one I put forward in *Unjust seizure*, 77n. 10, to the effect that it may have been the relatively neutral TF 184b that was preserved in the Schlehdorf archives while the pro-Freising TF 184a remained at Freising. On reflection, I suspect that the dispute reports written by Bertharius remained together in the Freising archives. The Schlehdorf archives most likely came to Freising after the monastery became a Freising *Eigenkloster*; see Jahn, *Ducatus*, 446–448. It is unfortunately not possible to speculate about the doubled versions of the Chiemsee case, because Freising's version survives only in the twelfth century copy made by the Freising sacristan Conrad. I cannot conclude anything useful from the position of the record in Conrad's codex because Conrad freely rearranged the records he copied.

⁴⁷ The first of these charters, TF 11 (758) records how Arn's father Haholt dedicated his son to a clerical career at Freising. Cozroh placed the record in a separate and highly visible spot at the beginning of his collection, between the table of contents and his prologue (Hochstift Freising Lit. 3a, fol. 1a), and titled it in red ink. The second charter, TF 142 (791), is the only other one that Cozroh titled in red ink; it describes Arn's first recorded appearance as a *missus* in Bavaria. See Brown, *Unjust seizure*, 33 and 68.

opponent's relationship to the property under dispute or about the nature of his claim to it. He might further undermine the opponent's image by characterising him somehow as a bad or troublesome person. If a dispute ended in reconciliation, however, the scribe would cast Freising's former opponent in a positive light and present him as someone whose actions were reasonable and justified. In one case, we can watch Freising's representation of its opponents change over time. The way the picture changes suggests that Freising's written characterisation of its adversaries formed part of a negotiating process that turned the adversaries into allies.

Most Freising dispute records—especially those that do not follow the structure of the formal *placitum* report—say next to nothing about Freising's opponents or their motives. The opponents are identified simply by name, sometimes with the label 'certain man' (*quidam homo*) attached.⁴⁸ For example, a short Freising notice produced between 806 and 811 records a property dispute between the Freising arch-priest Ellanod and two men named Herirach and Perhtwic.⁴⁹ The dispute concerned a field with a house, a barn, and an orchard on it that had belonged to a certain Wicperht. The notice says nothing about Herirach and Perhtwic or about the reasons for their claim to the field; it states simply that the dispute was heard by a count and a judge and that Herirach and Perhtwic handed over the field to Ellanod and his advocate.

The lack of detailed information in these records does not necessarily mean that Freising's scribes were deliberately suppressing information. We are, after all, dealing with an age where a man's name told everything about him. One need only look at the famous *Hildebrandlied*, a Germanic heroic poem fragment copied into a Fulda manuscript around the year 800, to see this. When the father Hildebrand son of Heribrand unknowingly meets his son Hadubrand on the battlefield, he asks who his ancestors were:

Name but one, the others I will know, Youth, in the kingdoms all the kindreds are known to me.⁵⁰

The sound and syllable repetition in the names shows how Hildebrand could claim to identify a kindred by names alone; repeated name pieces and sounds linked one member of a kindred to another and to the kindred's heroic tradition.⁵¹ Freising scribes, therefore, could simply have assumed, with a good deal of reason, that any-

⁴⁸ The phrase *quidam homo* appears regularly in the charters, not only to characterise Freising's opponents in disputes but also to describe parties to perfectly amicable transactions. See Wilhelm Störmer, *Adelsgruppen im früh- und hochmittelalterlichen Bayern* (Studien zur bayerischen Verfassungs- und Sozialgeschichte, 4, Munich. 1972), 11–12.

⁴⁹ TF 245.

⁵⁰ *Das Hildebrandlied*, ed. and trans. Georg Baesecke (Halle, 1945). The English translation used here comes from *Readings in medieval history*, ed. Patrick J. Geary, 2d ed. (Peterborough, Ontario, 1997), 111.

⁵¹ On early medieval naming patterns and early medieval prosopography in general see Störmer, *Früher Adel*, 1, 36–37; Karl Ferdinand Werner, 'Important noble families in the kingdom of Charlemagne', in: *The medieval nobility. Studies on the ruling classes of France and Germany from the sixth to the twelfth century*, ed. Timothy Reuter (Amsterdam, 1979), 149–53.

one who read a document (or heard it read) would automatically know who the disputants were and the issues that lay behind the dispute, at least for the span of a few generations. In the case of the dispute over Wicperht's field mentioned above, for example, it takes only a glance to notice the inversion involved in the names Wicperht and Perhtwic and come to the conclusion that the two challengers were Wicperht's sons, or at the very least relatives. They apparently felt that they had a legitimate kinship claim to their father's property, a view that Freising's scribe did not share.⁵²

Some other cases, however, indicate that the amount of information in a dispute record and the way that information was packaged could be subject to deliberate design—and that the design depended on the opponent's ultimate relationship with Freising. To begin with, in cases where a relationship began and remained hostile, Freising's scribes could rob their opponents of their identity altogether. A case from around 791 provides a nicely drastic example.⁵³ A priest named Tutilo and some of his relatives built a church on their property, which they had Bishop Atto of Freising consecrate. The kinsmen gave the church and everything pertaining to it to Freising for the benefit of the souls of a list of named relatives. Tutilo then received the church back as a lifetime benefice from Freising. Shortly afterwards, some unspecified persons tried to take the church away from Tutilo. The challengers do not even merit having their names recorded. They are simply described as 'certain someones' (*eos quidam* [sic]), who 'wished to expel the priest Tutilo from that church.' The challengers are left nameless and faceless; they are represented instead as just some people who unjustly tried to take control of the church.

On other occasions, scribes went out of their way to blacken an opponent's image by describing him as quarrelsome and belligerent. A record produced sometime between 806 and 811, for example, tells how a priest named Arperht had given property to Freising for the salvation of his soul.⁵⁴ After Arperht made this gift, he asked that it be given as a benefice to two priests named Simon and Jacob. On Arperht's death, a certain 'most contentious' (*contentiosissimus*) Salomon came forward and claimed that Arperht had actually given the property to him. Salomon took this claim before a judicial assembly headed among others by Archbishop Arn. After witnesses swore an oath on relics, Salomon's claim was denied. The record gives no details about the reasons for Salomon's claim. The fact that the three principals shared Old Testament names strongly suggests that they were all related to each other and that Salomon felt he had a kinship claim on the disputed property.⁵⁵ The

⁵² Geographical identification in the Freising charters seems also to have operated on this principle. The identification of donated or disputed property is often so vague that the scribes must have relied on common knowledge to ensure that everyone knew what property was being discussed; See Jahn, *Ducatus*, 381.

⁵³ TF 143ab.

⁵⁴ TF 247.

⁵⁵ The three principals, as well as the original donor Arperht, appear to have belonged to a large kin group propertied in the Bavarian Isengau that had a marked preference for Old Testament names. The priests Jacob and Simon turn out, according to the later record TF 345 (815), to have been Arperht's nephews. This makes it fairly certain that Salomon felt he had a kinship claim on the disputed property. See Brown, *Unjust seizure*, 96–97; Störmer, *Früher Adel*, 1, 42–43 and *Adelsgruppen*, 82 and 121–36.

scribe who wrote the record, however, simply described Salomon as looking for a fight, in much the same way as the scribe who wrote Freising's account of the Lantfrid case discussed above presented Lantfrid as 'acting contentiously.'

When Freising's relationship with an opponent changed from a hostile to a positive and ongoing one, the opponent's side of the story became admissible. Writing down the issues underlying a dispute in such cases placed Freising's former opponent in a positive light and justified his behaviour. We can watch such a transformation take place in Freising's records of an affair that began sometime between 807 and 808, and ended in 819. The story unfolds over two charters.⁵⁶ The first, from 807/808, tells us that Bishop Atto reached a compromise agreement with two brothers named Patto and Tetti over part of an estate. Bishop Atto convinced the brothers to drop their claim to the property in exchange for property elsewhere and a horse with a lance and a shield. The notice does not mention the basis for the brothers' claim or their relationship to the disputed property. Their claim must, however, have had some merit to force the bishop to buy them off.

The second record tells us that the matter resurfaced in 819. In marked contrast to the first record, here the complete story of Freising's dispute with the brothers leaps into view. We now learn that Patto and Tetti had originally sued Freising over property given to Freising by their ancestors. The brothers had claimed that among the properties in the original gift had been mixed property belonging to them that the unnamed donor had not been legally entitled to give. Bishop Atto had stepped in and compensated them with other property. Now, in 819, the brothers came to Atto's successor Bishop Hitto and took counsel with him for the protection of their souls. They then gave the property that Bishop Atto had given them back to Freising for their souls' salvation, 'lest the house of St. Mary be in any way defrauded or damaged because of them.' The brothers would continue to use the property for their lifetimes; after their deaths it would revert to Freising. The record remarks gratuitously that this decision to follow good counsel and protect their souls was pleasing to everyone.

In this second record, the brothers entered a positive and enduring relationship with the see of Freising on two levels: in this world through their property and in the next world through Freising's prayers. The written record that memorialises this positive relationship reflects the negotiations that must have led to the agreement. Each party made concessions to the other. The brothers admitted that they had originally injured Freising and returned the property Bishop Atto had given them. Freising's scribe in turn recorded the causes and relationships lying behind the brothers' original challenge to Freising's property rights, thus placing their actions in a more positive light. Moreover, the scribe bathed the brothers' final actions in the glow of church approval, ensuring that they would be remembered as the church's benefactors and allies.⁵⁷

⁵⁶ TF 268ab and TF 423.

⁵⁷ Two other Freising records similarly indicate that admitting the reasons for an opponent's claim belonged to the process of forging or maintaining a positive relationship with him. In TF 240 (806–810) Bishop Atto settled a dispute with one of his own advocates, Einhard, over two *colonias* belonging to

3. Conclusions

The evidence I have presented here indicates that Freising's dispute charters were more than just records of events; they were important constituent parts of the disputes they recorded. On the one hand, they reflected both the particular dynamics of individual conflicts and the larger landscape of political power surrounding the Freising cathedral church. On the other, the scribes who wrote them could actively use them as tools—and at times even as weapons—to tell the story of a dispute that would best work to Freising's advantage and to the disadvantage of Freising's opponents.⁵⁸ In the Lantfrid case, Freising's scribe cast the dispute in terms of a norm governing gifts of property to churches that benefited Freising and that enjoyed the sympathy of Carolingian authority. The scribe's narrative effectively masked the existence of a competing norm that would have justified Lantfrid's behaviour and that had the sanction of long-standing custom and Freising's own past co-operation. The scribe further undermined Lantfrid by characterising him as quarrelsome and foolish and his actions as violating an agreement sanctioned by a Carolingian king. Finally, he presented the end of the dispute in a way that—in contrast to the record of the same dispute produced by the royal legate's notary—made the bishop of Freising the most important actor in the settlement and left room for Freising to claim control over all rather than part of the property under dispute. Freising's account of the Chiemsee case likewise sought to play to Carolingian sympathies and undermine the legitimacy of Chiemsee's position, this time by casting Chiemsee as the beneficiary of Agilolfing malice towards a pro-Carolingian bishop of Freising. At the same time, it too contradicted the record of the dispute written by the royal legate's notary. Instead of describing a compromise that gave something to both sides, Freising's narrative awarded total victory to Freising. The record thus told a story that made it possible

the church at Schwindkirchen that someone else was holding as a benefice. Einhard, backed by Freising's other advocates, claimed that his father had originally given the disputed property to the church at Schwindkirchen, but he could not back up his claim 'either in writing or with witnesses'. Bishop Atto agreed to compensate Einhard with a benefice of equivalent property elsewhere. The account of the dispute reflects the fact that Einhard ended up in a positive and ongoing relationship with Freising, both as advocate and as a benefice holder. Not only does it openly reveal (and fail to contradict) the reasons for Einhard's claim; it goes out of its way to say how appropriate and pleasing all parties found the settlement. In TF 358 (816), Bishop Hitto contended with a cleric named Frumolt and his brother Cozolt over a church at Frauenvils that they claimed had been partly built on their patrimony. The record contradicts this assertion with the sentence, 'This was not so, because their ancestors had given that church a long time previously for the salvation of their souls.' The brothers eventually agreed to renounce their rights to the church and to give all of Frumolt's property in Frauenvils to Freising. Bishop Hitto then returned the church and the property to Frumolt as a benefice. The record reflects the positive quality of the settlement. Although it assigns the ultimate right to Freising, it openly admits the kinship basis of Frumolt's claim.

⁵⁸ See the similar comment made by Morelle about charters at the monastery of Saint-Amand in the eleventh century: 'it was at Saint-Amand that written documents were used more as the weapons of the monks, the charter collection its arsenal that had to be filled with ammunition. Without written records the community feels vulnerable and disarmed...': Morelle, 'The metamorphosis of three monastic charter collections', 199.

for Freising to achieve its ultimate goals. Years later Freising's own history of its dispute with Chiemsee, combined with the co-operation of other people whose interests coincided with Freising's, helped the bishop of Freising realise his church's rights as he understood them.

The shorter single notices of property disputes in the Freising cartulary also played important roles in the disputes they recorded. These records gave Freising's clerics a way to create and preserve useful images of their relationships with their neighbours. When disputes ended in hostile relationships, the records said very little and frequently surrounded Freising's adversary with hostile rhetoric. When a dispute ended in a positive relationship, the record cast Freising's former opponent in a correspondingly positive light by revealing his motives and by using positive language to describe his actions. The notices thus insured that the Freising community would remember which individuals and kindreds were its enemies and which were its friends.

These dispute records highlight the fact that kinship relationships to donated property were an important point of tension between Freising and its neighbours. In any dispute involving donated property, information about an opponent's kindred and his relationship to the original property donor was potentially dangerous. It was precisely such relationships that under the old Bavarian norms governing property gifts posed the greatest threat to Freising's *de facto* control over donated property. It is striking that Freising's dispute records almost always leave this information out. When landholders or landholding kindreds decided to ally themselves with the see of Freising and its interests, however, it was apparently not only safe but also important to reveal such information. When both sides reached a settlement that left them in a lasting co-operative relationship, Freising's scribes freely volunteered information about an opponent's identity and the nature of his claim. The amount of information they included could form part of the negotiations that led to a positive settlement. When the brothers Patto and Tetti sought to reconcile themselves with Freising by returning the property they had earlier been compensated with, their relationship to the disputed property and the reasons for their actions came out in the open; Freising's scribe represented them as reasonable men with comprehensible claims. In other words, as the price for their concession the brothers received a written guarantee that Freising would remember them positively as its benefactors and allies.

The Freising dispute charters thus add another piece to our picture of how written records could be useful in the early ninth century. Writing was a powerful tool. Those who wielded it could construct and filter the past for the purposes of the present or the future in an immediately pragmatic way, in individual documents as well as at the level of archive or cartulary. Whether or not dispute charters—or the cartularies they were later copied into—were ever used to support a claim at a court, the creative effort that scribes put into constructing them is our best evidence that the stories they told were important.⁵⁹ The stories were important first because they

⁵⁹ Rosamond McKitterick has made a similar comment about forgery: 'a society which can produce a

guarded the positive memory both of the church that wrote and kept them and of the church's allies. Second, they preserved arguments that could be pulled out years later to influence events and justify a church's actions. Moreover, in cases where little or no information was given about the church's opponents or their relationship to disputed property, the church's record of a dispute provided the disputed property with a past of the church's making. The history of the property would begin at the moment the church wrote its record. As the kindred that had originally donated the property died out, any competing histories would gradually die with them; only the church's story would remain.

As with cartularies, so too with individual dispute records: such activity became pronounced when an institution had to react to crisis or change. In Freising's case, the way the scribes constructed their narratives reveals the cathedral church community deploying written records in order to master a new political environment. Freising's clergy tried to manoeuvre through and take advantage of the changes in the landscape of power that accompanied Charlemagne's conquest of Bavaria, in part by using writing to manage how disputes were understood and to manage Freising's own image. In particular, the conflict between local and Carolingian attitudes towards gifts of property to churches provoked Freising's scribes to cast property disputes as much as possible in terms that would appeal to Carolingian officials and that would thus benefit their church.

These conclusions in turn suggest another way to understand whom the audience might have been for early medieval charters. On the one hand, the stories were written for the consumption of the clerical community that produced them; they provided that community with useful histories and arguments and with a means to enhance their church's image. On the other, they were written for the consumption of the people who were connected to the church through property. For the church's allies charters provided a written guarantee that they would be remembered in a positive light by an institution that could contribute in a very real way to their salvation. For those opponents who remained unrepentant, the records provided a written guarantee of bad memory, or in extreme cases of no memory at all.

Warren Brown is Assistant Professor of History at the California Institute of Technology, having graduated as a doctoral student at UCLA in 1997. He has published *Unjust seizure. Conflict, interest and authority in an early medieval society* (Cornell U. P., 2001).

'forgery'...is one essentially appreciative of literacy and the power of the written word': McKitterick, 'Conclusion,' in: *Uses of literacy*, 326.