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RITUALS, RIGHTS AND RELATIONSHIPS: SOME GIFTS AND THEIR INTERPRETATION IN THE FULDA CARTULARY, C. 827

Rituales, derechos y relaciones: algunas donaciones y su interpretación en el cartulario de Fulda, c 827

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ABSTRACT: This article analyses a cluster of legal documents concerning newly cleared woodland between the river Fulda and its minor tributary the Haune, copied into the earliest Fulda cartulary which was completed in 828. It elucidates the complex interactions between local landholders of varying status, the monks of Fulda and their claims to spiritual patronage and tenurial right, and the public world of legal ritual and county meetings which were central to the exercise of power in the Carolingian world. It argues that the legal rituals recorded in charters were simultaneously attempts to define and regulate the relationships between different social actors (individuals, groups and institutions) as well as to transfer rights over property. Historians need to pay particular care to the mechanisms of transmission, as the archival record was carefully constructed to meet immediate needs, and it may obscure the extent to which relationships and the rights embedded in them were matters of interpretation. As well as raising epistemological and methodological questions about the nature of the charter evidence, this discussion also sheds light on the nature of land claims and clearances, and the relationship between internal colonisation and the crystallisation of ecclesiastical and political structures under Carolingian rule, topics which parallel the concerns of much recent work on early medieval Iberia. Finally, it is argued that if charters are read not of passive records of abstract rights

but as active attempts to interpret social relations, they can shed some light on the identities and interests of landowners of relatively modest means, and place them at historiographical centre stage.

Keywords: Land clearance. Legal ritual. Land tenure. Charters. Carolingian empire. Monastic estates.

RESUMEN: Este artículo analiza un grupo de documentos legales copiados en el primer cartulario de Fulda, que se completó en 828, referentes a las áreas de bosque recientemente roturadas entre los ríos Fulda y su tributario el Haune. Ese corpus permite poner de manifiesto las complejas interacciones entre propietarios locales de diversos estatus, los monjes de Fulda y sus reclamaciones de patronazgo espiritual y derechos sobre tenencias de tierras, y el mundo público de rituales legales y encuentros presididos por el conde que eran centrales en el ejercicio del poder en el mundo carolingio. El argumento es que los rituales legales recogidos en los documentos eran al mismo tiempo intentos de definir y regular las relaciones entre actores sociales diferentes (individuos, grupos e instituciones) y de transferir derechos sobre la propiedad. Los historiadores necesitan prestar particular atención a los mecanismos de transmisión y a cómo el registro archivístico fue cuidadosamente construido para unas necesidades inmediatas, lo que puede oscurecer el hecho de que las relaciones y derechos en ellos relatados eran el resultado de una interpretación. Además de estas cuestiones epistemológicas y metodológicas sobre la naturaleza de la evidencia escrita, esta discusión debe a su vez arrojar luz sobre la naturaleza de las reclamaciones de tierras y de las roturaciones de bosques, así como sobre las relaciones entre colonización interna y la cristalización de estructuras políticas y eclesiásticas bajo el dominio carolingio, aspectos que poseen paralelos con recientes trabajos sobre la Península Ibérica altomedieval. Finalmente, se plantea si los documentos escritos deben ser leídos no como registros pasivos de derechos abstractos sino como instrumentos activos en la interpretación de las relaciones sociales, que pueden hablarnos de las identidades e intereses de propietarios relativamente modestos y situarlos en el centro del interés historiográfico.

Palabras clave: Roturación. Ritual legal. Tenencia de tierras. Imperio carolingio. Dominios monásticos.

SUMMARY: 0 Introduction: charters, rituals and relationships. 1 Land claims between the Haune and the Fulda, 801-827. 2 *Captura*: from land-claim to clearance to cultivation. 3 The context of dispute: the Fulda cartulary and the creation of a monastic landscape. 4 Herimot, Berehart and the meanings of gift.

0 INTRODUCTION: CHARTERS, RITUALS AND RELATIONSHIPS

Over the past four decades, the study of charters –legal documents of property transfer and dispute settlement– has transformed our understanding of early medieval Europe. In a series of studies, historians have begun to reveal how power was exercised in the «small worlds» that were the building blocks of post-Roman societies, and uncovered

the workings of the «gift economies» that revolved around major monastic houses that created and preserved our documentary canon¹. Scholars have worked with charters in a variety of ways, but a common focus has been the internal logic of social practice, and so the historiographical agenda has moved away from older approaches privileging abstracted and normalising terms of external formal hierarchy. Inspired since the 1970s by the insights of legal anthropology, one strand of research has focused on records of dispute settlement, revealing conflict as a recurrent process which could nonetheless take a wide variety of forms inviting comparative analysis; others have studied the networks revealed by documents of property transfer, unpacking patterns of property interest and collective action both between individual landowners, and revolving around ecclesiastical institutions; and these approaches, pioneered by Anglo-American historians in the 1970s and 1980s, have interacted fruitfully with an older *Annaliste* tradition of regional monographs elucidating *la terre et les hommes*, and drawn freely on German traditions of regional history².

The achievements of this broad spectrum of work have been above all methodological, in developing new techniques of analysis allowing them to interrogate long known but apparently rebarbarative charter collections. Unsurprisingly, given the structuralist/materialist bent of the antecedents for charter-based social history, epistemological questions about the nature of the charter collections as historical evidence has received only passing attention; much scholarship has taken charters at face value, as relatively disinterested descriptions of relationships and rights, which primarily need filtering for the effects of formulaic scribal standardisation³. Carefully contextualised case-studies, however, have tended to demonstrate that the impression they create of once-and-for-all transfers of property rights, and black-and-white cut-and-closed resolutions to legal conflict, mislead: charters and the legal transactions they record need reading as part of ongoing processes whereby relationships were reaffirmed and renegotiated⁴. Such a

¹ For me as for most scholars of my generation to two touchstones were DAVIES, W. *Small Worlds. The Village Community in Early Medieval Brittany*. London, 1988 and ROSENWEIN, B. H. *To Be a Neighbor of St Peter. The Social Meaning of Cluny's Property, 909-1049*. Ithaca, 1989, along with DAVIES, W. and FOURACRE, P. (eds.). *The Settlement of Disputes in Early Medieval Europe*. Cambridge, 1986.

² On conflict scholarship, see BROWN, W. and GORECKI, P. «What Conflict Means. The Making of Medieval Conflict Studies on the United States, 1970-2000». In BROWN, W. and GORECKI, P. (eds.). *Conflict in Medieval Europe. Changing Perspectives on Culture and Society*. Aldershot, 2003, pp. 1-36, with bibliography; for networks of landowner collective action, DAVIES, *Small Worlds*, and for networks of giving, ROSENWEIN, *St. Peter*; for the *Annaliste* legacy BISSON, T. N. «La terre et les homes. A programme fulfilled?». *French History*, 2000, vol. 14, pp. 322-345.

³ For a monumental demonstration of what can be achieved by systematic comparison of material in this way, see WICKHAM, Ch. *Framing the Early Middle Ages. Europe and the Mediterranean, 400-800*. Oxford, 2005, esp. parts II and III.

⁴ ROSENWEIN, *St Peter*, was the major break through here, but for a brilliantly provocative recent study see KOZIOL, G. *The Politics of Memory and Identity in Carolingian Royal Diplomas. The West Frankish Kingdom (840-987)*. Leiden, 2012. At points Koziol seems to link his argument about the ritual/performative nature of charters to a historiography postulating a disjuncture between documentary record and social practice, related to other polarities (clerical:law and written:oral); such polarities have been broken down, however, in much other recent work, and the point about an immediate ritual/performative context is arguably stronger if the point is that these rituals and performance actually effected changes in the distribution of material resources.

reading brings documents –habitually seen in a dominant strand of medieval scholarship as somehow more «reliable» and less slippery than historical or literary narratives– into the realm of representation rather than record, in that they emerge as giving an interested slant rights and relationships designed to support a particular case⁵. In a world where winning at law rested primarily on winning public support for your account of how contested rights and relationships had developed, rather than on formal rules of proof and process pursued through professionalised argument, documents were themselves part of a process whereby a binding narrative that underwrote present arrangements was created⁶. The initiatives whereby a variety of individuals and institutions sought to shape and manipulate the documentary record and its preservation thus emerge as crucial; crucial not only to the exercise of power in early medieval society, but also in determining how later generations could view that society⁷. This essay thus seeks to ask: to what extent were charters primarily concerned with the negotiation of relationships between different social actors (individuals, groups, institutions), and to what extent did they effect the actual transfer of resources between them? How open to divergent understandings by different parties were those legal rituals? To what extent were charters themselves attempts to shape interpretation, with the ability to store and access charters thus determining the ability to control understandings of relationships between different social actors, and rights over resources?

Asking these questions poses a problem about charters as sources. It also problematises the relationship between the «small worlds» of the charters and the grand narratives that still dominate most readings of Europe's early medieval past, by querying the extent to which we can see the charters as passive witnesses to a mute material world. Whether our grand narratives are understood in often criticised but still defended terms of migration, conversion and post-Roman political and economic collapse, or in a newer discourse of ethnogenesis, Christianisation and late antique transformation, they have remained oddly disconnected from recent work on social practice and the experience of power. One reason for this lack of connection may be that these newer discourses involve a shift in emphasis from structure to identity, and thus put the construction new models of community centre stage in a way that presents human agency as relatively

⁵ See e.g. GEARY, P. «Monastic Memory and the Mutation of the Year 1000». In FARMER, S. and ROSENWEIN, B. *Monks and Nuns, Outcasts and Heretics. Essays in honour of Lester K Little*. Ithaca, 2000, pp. 19-36; BROWN, W. «Charters as Weapons. On the role played by early medieval dispute records in the disputes they record». *Journal of Medieval History*, 2002, vol. 28, pp. 227-248.

⁶ The key break through on early medieval «substantive legalism» remains WHITE, S. D. «Inheritance and Legal Arguments in western France, 1050-1150». *Traditio*, 1987, vol. 43, pp. 55-103, with further discussion for different times and places by e.g. BOWMAN, J. *Shifting Landmarks. Property, Proof and Dispute in Catalonia around the Year 1000*. Ithaca, 2003; BROWN, W. «The Use of Norms in Disputes in Early Medieval Bavaria». *Viator*, 1999, vol. 30, pp. 15-40; COSTAMBEYS, M. «Disputes and Courts in Lombard and Carolingian central Italy». *Early Medieval Europe*, 2007, vol. 15, pp. 265-289; HUDSON, J. «Court Cases and Legal Argument in England, 1066-1166». *Transactions of the Royal Historical Society*, 2000, vol. 10, pp. 91-115; INNES, M. «Practices of Property in the Carolingian Empire». In DAVIES, J. and McCORMICK, M. (eds.). *The Long Morning of Medieval Europe. New Directions in Early Medieval Studies*. London, 2008, pp. 227-246.

⁷ BROWN, W.; COSTAMBEYS, M.; KOSTO, A. and INNES, M. (eds.). *Documentary Culture and the Laity in the Early Middle Ages*. Cambridge, 2012.

abstracted and lacking a specific material context. This is itself an aspect of *the* profound historiographical problem for our generation, namely relating the new cultural and social history of the experience of power to a «deep history» of structures which embraces a broadened material world inclusive of climate, communication, diet, environment, even the physical aspects of mind, as well as more traditional economic and political process⁸. But it has created a disjuncture, and one which is easily, but mistakenly, approached in terms of opposition: charter-based case-studies can be all too easily conceived as «tests» as to whether narrative or normative claims –themselves now unpacked in their textual contexts with dazzling sophistication– were «true» or not⁹. In fact, as this study will aim to show, the charters which are our sources for social interactions need to be treated with the same kind of interpretative care and flair as a saint's life or a chronicle: as we have seen, charters are not merely passive descriptions of an objective material reality. What's more, it will be argued that realising this enables us to reconnect with the agency of individuals of a different kind from the literary impresarios that are the staple fare of much «texts and identities» historiography, and to place that agency in a structural context that allows us to reach a more three-dimensional view of cultural and social transformation.

The basis of this argument will be a case-study of a small cluster of charters concerning a single locality in the «wild east» of the Carolingian Empire: the wooded uplands between the River Fulda and its minor tributary the Haune. In this region, cultural, political and social developments in the eighth and ninth centuries are normally understood in terms of a grand narrative of christianisation and «Carolingianisation»: formal ecclesiastical structures were created through the activities of Boniface and his followers in the middle of the eighth century and consolidated with the growth of major monastic foundations under royal patronage through into the ninth, whilst the region's political life, hitherto loosely tied to the Frankish world through the personal allegiance

⁸ The impact of the «new cultural and social history» is perhaps best exemplified by the «Texts and Identities» networks, formal and informal, that are shaping the work of emerging scholars across Europe: see for example the run of recent publications in the series *Forschungen zur Geschichte des Mittelalters* published by the Österreichische Akademie der Wissenschaften, masterminded by Walter Pohl. But the potential of a structural history that complements rather than opposes such developments is monumentally demonstrated by WICKHAM, *Framing*, whilst the structural agenda needs to be broadened in the light of the questions asked in an idiosyncratic by SMAIL, D. L. *On Deep History and the Brain*. Berkeley, 2008. One might indeed usefully ask about the lessons for early medievalists of Smail's earlier work, on later medieval documents but with a broad interpretative agenda embracing subjectivities and identities: *The Consumption of Justice. Emotions, Publicity and Legal Culture in Marseille, 1264-1423*. Ithaca, 2003, and *Imaginary Cartographies. Possession and Identity in Late Medieval Marseille*. Ithaca, 1999.

⁹ On a personal level, this became clear to me from the reception of my first book, INNES, M. *State and Society in the Early Middle Ages. The middle Rhine valley, 400-1000*. Cambridge, 2000; see e.g. the review by MURRAY, A. C. in *American Historical Review*, 2001, vol. 107, pp. 923-924, or the discussion of mine and others work by CHANDLER, C. J., «Review Essay. Regnum and Regna. Studies of Regions within the Carolingian Empire». *The Heroic Age*, 2009, vol. 12 [<http://www.heroicage.org/issues/12/chandler.php> accessed 20/3/2013]. For a more recent attempt to clarify the point, arguing that the normative discourses of capitularies and chronicles need to be read against the cultural and social assumptions evident in the charters, rather than through a modernising lens which prejudices what rulers ought to have been attempting, see INNES, M. «Charlemagne, Justice and Written Law». In RIO, A. (ed.). *Law, Custom and Justice in Late Antiquity and the Early Middle Ages*. London, 2011, pp. 155-200.

of leading aristocrats, was remodelled with the emergence, by the ninth century, of Carolingian counts¹⁰. As we shall see, hand in hand with these changes went the large-scale transfer of title to land to major ecclesiastical foundations, the development of more intensive forms of estate management to support the abbots and counts who now ruled the region, and a multi-faceted process of internal colonisation through land claim and clearance, some planned by aristocratic and ecclesiastical lords but some undertaken by smaller owners and settlers. The charters allow us to focus on processes which were physical and material –the carving out of new settlements and the reshaping of the landscape– but also implicated in a public world of legal ritual, legal ritual which regulated property rights and social status and so determined the ability to access and control economic resources. A major new study has discussed the texts –both literary and documentary– emanating from Fulda in terms of the creation of community and the construction of identity¹¹: can we adopt similar interpretative concepts to elucidate the activities of the small landowners whose relationship to Fulda was becoming ever closer and more complex? Asking this question of the evidence for internal colonisation taking place in the context Carolingian political and religious expansion beyond the Rhine may suggest new approaches to the not dissimilar Iberian evidence, where the interaction between colonisation and political and religious expansion stands similarly centre stage¹².

1 LAND CLAIMS BETWEEN THE HAUNE AND THE FULDA, 801-827

Our knowledge of social relations and land tenure in this region comes from a series of charter collections made at the abbey of Fulda under the abbacy of Hraban

¹⁰ Rather oddly, given the centrality of regional monographs to medieval social history, there is no modern study of this region in the Carolingian period: rather, it tends to be treated in the context of the region around the middle Rhine and Main, owing to the links between the aristocracies of the two regions and the similar geographical overlap of the two major document collections, from Lorsch and Fulda. One result of this can be to flatten local difference, something of which my earlier work, *State and Society*, is certainly guilty; this current study is an attempt to highlight the particularities of the more easterly region and so deepen our comparative understanding: cf. WICKHAM, *Framing*, pp. 393-401. On social and economic development in the context of recent historiographies of Christianisation and Carolingianisation see now WOOD, I. «Before and After Mission. Social Relations across the middle and lower Rhine in the seventh and eighth century». In WICKHAM, Ch. and HANSEN, I. L. (eds.). *The Long Eighth Century. Production, Distribution and Demand*. Leiden, 1998. For two classics of German historiography, both using this region to argue for a particular view of early medieval society, see SCHLESINGER, W. *Die Entstehung des Landesherrschaft*. Darmstadt, 1969² [1941], and BOSL, K. *Franken um 800. Strukturanalyse einer fränkischer Königsprovinz*. Munich, 1969.

¹¹ RAAIJEMAKERS, J. *The Making of the Monastic Community of Fulda, c. 744 to c. 900*. Cambridge, 2012.

¹² My reading of the Carolingian evidence has been particularly stimulated by recent studies of the «frontier» in medieval Iberia eg. JARRETT, J. «Settling the King's Land: *aprisio* in Catalonia in perspective». *Early Medieval Europe*, 2010, vol. 18, pp. 320-242, ESCALONA, J. and REYNOLDS, A. (eds.). *Scale and Scale Change in the Early Middle Ages: Exploring Landscape, Local Society and the World Beyond*. Leiden, 2011. These new approaches are confirming the classic questioning of the historiography of *reconquista* as voiced by e.g. MANZANO MORENO, E. «The Creation of a Medieval Frontier. Islam and Christianity in the Iberian Peninsula, eighth to eleventh centuries». In POWER, D. and STANDEN, N. (eds.). *Frontiers in Question. Eurasian Borderlands 700-1700*. London, 1998.

Maur, and completed in 828. These comprised of copies of original documents, and were organised by geographical area, or *pagus*; the individual collections concerning the *pagi* of the middle Rhine valley survive in the original, and we possess an early modern transcript covering the region further east along the rivers Fulda, Werra and Saale; both can be checked against a heavily abridged twelfth century register of the Fulda cartulary series as a whole¹³. The compilation of the Fulda cartularies was in part a response to the rapid growth of the abbey's property holding in the decades since its foundation in 744. Whilst initially Fulda primarily received land along the middle Rhine and its tributaries, recruiting monks and winning patronage from the wealthy social circles in this region, by the last decades of the eighth century the abbey began to receive a steady stream of donations from the its immediate hinterland, far further east and in a region where social and tenorial structures were still crystallising under the dual influence of Carolingian rule and the establishment of an institutional church¹⁴. Even a cursory glance at the material for Fulda's two «catchment areas» reveal significant differences in territorial development: the transmitted fascicules dealing with the middle Rhine reveal a landscape where *pagi* had clear boundaries and were consistently used to locate settlements and properties, further east such labels as used less routinely, and charters frequently located property within more localised settlement areas (the Aschfeld, the Gozfeld, the Tullifeld, the Buchwald, all on occasion referred to as *pagi*) rather than the larger geographical units (the *pagi* of the Grabfeld and the Saalegau) which defined the «official geography» of the region¹⁵.

One enigmatic notice in the collection of the charters from the Grabfeld deals with a dispute between the Abbey and a number of men who had been making clearances in the

¹³ A modern edition of this material up to the year 802 is provided by STENGEL, E. E. *Urkundenbuch der Kloster Fulda*. Marburg, 1913-1958, 2 vols. hereafter cited as UBF. The completion of Stengel's editorial work for the ninth century and later material is urgently needed, but in the meantime one can consult the older transcriptions by DRONKE, E. F. J. *Codex diplomaticus Fuldensis*. Kassel, 1850, hereafter cited as CDF, and *Traditiones et antiquitates Fuldensis*. Fulda, 1844. The essays in STENGEL, E. E. *Abhandlungen und Untersuchungen zur Hessische Geschichte*. Marburg, 1960, are the best exploration of the complexity of the material; most recently, on the processes of production and preservation, see HUMMER, H. «The production and preservation of documents: the evidence of cartularies». In BROWN, COSTAMBEYS, KOSTO and INNES (eds.), *Documentary Culture*, pp. 189-230. An indispensable *Hilfsmittel* with Carolingian Fulda traditions (lists of monks as well as charters) is the famous *Fulda-Werke*, SCHMID, K. (ed.). *Die Klostergemeinschaft von Fulda imfrüheren Mittelalter*. Munich, 1978, 3 vols. in 5: this pioneering use of IT is a reminder of how much potential digital interrogation of complex traditions has, and it is odd that the digitalisation agenda has tended since –with some exceptions– to focus on making texts available online rather than undertaking systematic data analysis.

¹⁴ See FRIESE, E. «Studien zur Einzugsbereich der Kloster von Fulda». In SCHMID (ed.). *Klostergemeinschaft*, II: iii, pp. 1003-1269.

¹⁵ For *pagus* in the middle Rhine as a territorial rather than political unit see INNES, *State and Society*; the evidence for the region beyond the Rhine is most conveniently assembled in the Geschichtliche Atlas von Hessen, map 8a, accessible online via the University of Marburg: <http://cgi-host.uni-marburg.de/-hlg/atlas/id.cgi?ex=inhalt&page=1¤t=15&id=15>. Although much of the scholarship attempts to fit this data into a defined administrative geography, with the smaller *pagi* subunits of the Grabfeld and Saalegau, the usage in the charters is far less consistent that this might suggest, and non-*pagus* labels (*silva Bochonia*, which is on some occasions mutated into *pagus Bochonia*) are used also.

area known today as Kiebitzgrund, but referred to in our documents as *Swarzesmuore*, literally «the Black Moor»¹⁶. Situated between the river Fulda –the major artery joining central Germany to Saxony in the middle ages– and its minor tributary the Haune, our area stands midway between two major early medieval abbeys, Fulda itself, around 20 km to the south, and Hersfeld, where the Haune joins the Fulda. To this day the area remains sparsely populated upland, much of it wooded, with population even today concentrated in four settlements of no more than a few hundred souls, along the small river that drains it, the Schwarzbech; the nearest centre of population, today as in medieval times, is Hünfeld, on the east bank of the Haune a few kilometres to the south.

Our dispute had erupted as the charter collection was being compiled, and was resolved at a public assembly of Count Poppo and the «better born of his county (*comitatus*)», and held in the *Swarzesmuore*, probably at modern Großenmoor. The notice recording the dispute, however, also rehearses an earlier, undated, stage of interactions between Fulda and settlers on the *Swarzesmuore*, as well as documenting the resolution of the complaints brought to Poppo, whilst the charter collection also contained an earlier document, from 801, demonstrating how Fulda acquired claims to newly cleared land in the locality¹⁷.

Let us summarise the contents of these terse documents. Firstly, in March 801 Waldo and his associates (*socii mei*) –13 named men– gave «as alms» to Fulda a land claim (*captura*) within the *villa* of Burghaun (on the west bank of the Haune, north of Hünfeld)¹⁸. The document then outlines the bounds of the gift had been made, moving seamlessly towards vernacular Old High German as it does so, before confirming that the gift transferred title (*dominium*) over the *captura*, with immediate effect¹⁹. It is witnessed by 6 men (the first a priest), none of whom are amongst the donors, and written up by the monastery's chief scribe Racholf. Michael Gockel's careful reconstruction of the places named in the boundary clause, and the areas topography and subsequent tenurial history, demonstrates that this gift related to a large area of several square km between the Haune and the Fulda –the *Swarzesmuore* of the 827 dispute– where clearances were being made as a group venture by property owners with interests in Burghaun itself²⁰.

Evidently this largely unsettled area was at this date seen as uncultivated territory attached to Burghaun, the only substantial settlement in the locality; Fulda had received

¹⁶ For the topography and local history see above all GOCKEL, M. «Die Träger von Rodung und Siedlung in Hünfelder Raum in der Karolingerzeit». *Hessisches Jahrbuch für Landesgeschichte*, 1976, vol. 26, pp. 1-26.

¹⁷ CDF471 for 827 and its prehistory; UBF275 for 801.

¹⁸ UBF275.

¹⁹ On the phenomenon of boundary clauses and the vernacular see GEARY, P. «Land, Language and Memory in Europe, 700-1100». *Transactions of the Royal Historical Society*, 1999, vol. 9, pp. 169-184.

²⁰ GOCKEL, «Hünfeld Raum» is the best case study on Carolingian land-clearances, but see also STAAB, F. *Untersuchungen zur Gesellschaft am Mittelrhein in der Karolingerzeit*. Wiesbaden, 1975, pp. 313-331; for a wider interpretative framework the key is WICKHAM, Ch. «European Forest in the Early Middle Ages: Landscape and Land Clearance». In *Settimane di Studio dell'Centro Italiano di Studi sull'Alto Medioevo*, 1989, pp. 479-548, reprinted in WICKHAM, Ch. *Land and Power. Studies in Italian and European Social History, 400-1200*. London, 1994, pp. 155-200.

two gifts, of unspecified size, in the locality in the decades immediately before 801²¹. Typically Carolingian charters from eastern Francia divided the countryside into villa-units, with a heavily settled and cultivated core, the *villa* proper, surrounded by a less heavily exploited but economically and legally dependent mark (*marca*). Whilst in densely settled regions like the Rhine valley, these units might correspond to a village and its immediate hinterland, further east marks could be large areas of uncultivated land. In our area, such units were most clearly defined when they were claimed as royal property, and frequently then gifted en block to favoured monasteries such as Fulda, in whose hands they subsequently became administrative centres for the extensive estates which underwrote ecclesiastical wealth²². *Villae* made up of small parcels of individual property belonging to private landowners were characteristically less clear in their territorial definition beyond the Rhine than further west, where a Roman administrative and tenurial grid had been the baseline for early medieval development: in the Fulda cartulary the sections dealing with the densely settled middle Rhine region have more defined local units than those concerning our area. Here, private charters typically adopt the standard mental model of *villa*, *marca* and *pagus* in locating property, but frequently we hear of new claims on cleared land (*captura*) which have to be situated in relation to physical geography rather than territorial units, or we read of a named place (*locus*), sometimes within another *villa* or *marca*, sometimes just within a *pagus*. This must reflect a topography of some established *villa* centres, interspersed with scattered settlements, some of them small and new.

Between the Haune and the Fulda, further colonisation continued after the 801 gift, again apparently undertaken by local landowners, and again apparently with an element of collective endeavour. A short notice –copied in the cartulary as a preface to the account of the 827 hearing– names individuals who made gave Fulda their *captura* in the *Swarzesmuore*, listing the counter-gifts they received from the monks²³. Eight named men, six of whom had been amongst those making the 801 gift²⁴, received moveable gifts from the monks: four golden objects²⁵ and a sword; a sword and a woollen cloak; a sword and a woollen cloak; a sword; a cow; another sword; an ox; and finally a horse and a cloak and a sword and a pig. A further six men, so the notice claims, gave their rights but would accept no counter-gift: none of these half dozen correspond with any of the

²¹ UBF183, on the banks of the Haune, looks like a small clearance; UBF442, by bishop Gunter in 780x802, is trickier, giving property of unspecified nature and size in two *villae*, *Heigenfeld* and *Burchonen*, the latter surely Burghaun, and the former I cannot identify but assume is nearby?

²² For *villa-marca* see COSTAMBEYS, M.; INNES, M. and MACLEAN, S. *The Carolingian World*. Cambridge, 2011, pp. 229-241; our big marks further east may have been initially units of tributary exaction centred on lordly centres which primarily ended up in royal or ecclesiastical hands by our period, which would make sense of the evidence hinted at by INNES, M. *State and Society in the Early Middle Ages. The middle Rhine valley 400-1000*. Cambridge, 2000, pp. 73-77, 157-159, which deserves fuller discussion; such a hypothesis would certainly work for the cases of Rasdorf and Hünfeld (cited by INNES and treated by GÖCKEL, «Hünfeld Raum»).

²³ CDF471, 1st section.

²⁴ The two who were not listed in 801 are Adalrich and Erphung. There are no obvious common elements with the names of 801 donors, reducing the possibility that they are heirs of now deceased owners.

²⁵ The text has *inaures*.

801 donors, as is shown in table 1. We are told that further named individuals, styled «our [Fulda's] *servi*», had then begun to work the land-claim.

This notice of gift-giving was written from a Fulda viewpoint –«our *servi*», «the lord abbot Hraban»– and with hindsight –it lists Herimot receiving an ox, then adding that he had now seized (part of?) the *captura*. It was indeed Herimot whose complaint was heard at the 827 public assembly. Before the assembled notables (subsequently styled «noble men», *nobiles homines*), Herimot and another named individual, Berahart, said that for some time they had held a small share²⁶ in the *captura*; but, so the notice tells us, their acquisitions were then examined; they were pacified as Abbot Hraban gave them two oxen, two woollen and linen cloaks, and two swords; they then withdrew their claim; and Fulda's ultimate title was restated, for it was agreed that no others had a share in this *captura*. The record closes with a formal record of the public legal rituals whereby four other named individuals²⁷ withdrew their claims alongside Herimot and Berehart, in the presence of 2 monks and 21 other witnesses who gave their subscriptions. The witnesses appear to have been a carefully selected mixture of individuals whose social standing made them frequent witnesses, and more local men with long-term interests in the disputed locality: six of the witnesses are amongst those who had earlier surrendered interests in the locality to Fulda.

Table 1.- Those with claims in our area, 801-827.

	801 donors to Fulda	Donors to Fulda before 827, with countergift received	Claims settled by Abbot Hraban in 827, with gifts given in settlement	Witnesses to settlement
Walto	X	4 golden objects and a sword.		
Altolf	X	A cow.		Now a monk.
Otrih	X	A horse and a cloak and a sword and a pig.		X
Beratgar	X	Nothing.		
Matto	X	A sword.		
Farolf	X	'and his brothers': A sword and a woollen cloak.		X
Meginbald	X			
Otto	X			X
Amanolf	X			X
Theoro	X	Nothing.		
Herimot	X	An ox.	An ox, a woollen and a linen cloak, and a sword.	

²⁶ They use the intriguing diminutive *portiunculam*.

²⁷ Presumably those other men whose claims in the *captura* had earlier been negated; one of them numbered among the original 801 donors.

	801 donors to Fulda	Donors to Fulda before 827, with countergift received	Claims settled by Abbot Hraban in 827, with gifts given in settlement	Witnesses to settlement
Megis	X			
Lanolt	X			
Lungan	X		X	
Adalrih		A sword and a woollen cloak.		
Erphung		A sword.		X
Dagabert		Nothing.		
Reginbert		Nothing.		
Erpwart		Nothing.		
Wolfacar		Nothing.		
Berechart			An ox, a woollen and a linen cloak, and a sword.	
Munihelm			X	
Attaman			X	
Nidgar			X	

2 CAPTURA: FROM LAND-CLAIM TO CLEARANCE TO CULTIVATION

In Carolingian charters from this region, *captura* is the term consistently used to refer to land which was being subjected to new claims of individual ownership as it was cleared and brought into direct, intensive cultivation. As a rule, individual *capturae* might be specified as lying within a particular mark, or in a geographical location (on the banks of a named river, for example), but they are rarely said to lie within existing *villa*-units. The scale of an individual *captura* is difficult to gauge except on those exceptional occasions –as our case is– where bounds were given, and there clearly was variation in scale, with the area claimed by Fulda in our 801 and 827 charters –more or less equivalent to a whole mark of the type granted wholesale by royal authority elsewhere– at one extreme. Gifts of *capturae* very rarely appear to be newly cleared fields or enclosures near existing centres of settlement: Fulda scribes used a standard Franco-Latin terminology, *bifangum*, to refer to such incremental clearance, which is evident right across the areas where the abbey held lands. Whilst the usage of *captura* had some overlap with *bifangum*, and sometimes referred to newly created holdings, most frequently the terminology of *captura* seems to apply to larger endeavours to create new settlement, rather than to extend existing cultivation. When the spread of an individual landowner's interests is evident from multiple gifts in a single charter, or a run of gifts over a number of years, *capturae* are only rarely situated in the same *villa* or *marca* as other, established, property. These land claims evidently played a significant role in supporting the class of free proprietors so evident in the charters from our region: the ability to claim, clear and cultivate new land

gave these owners –like some of their Catalan and Iberian counterparts– options which delayed their «entrapment» under lordly jurisdiction²⁸.

The ubiquity of land claims of this type indicates a significant degree of genuine internal colonisation, and in a landscape like ours between the Haune and the Fulda – much of it heavily wooded to this day– this process must have involved genuine clearance, bringing new land under the plough. That said, even in a sparsely populated area that was relatively underdeveloped even in early medieval terms, the process of making a *captura* was also implicitly a process of creating rights in property. We should therefore avoid taking the implication of our sources of «clean» clearance in an empty landscape too literally, as is shown by the archaeology of Fulda itself, whose claims to be founded in «a wooded place in a waste of vast wilderness» need to be read as a rhetorical trope²⁹. We have unfortunately little insight into the rituals whereby claims were articulated and rights legitimated, although the gift-giving glimpsed in our case involved highly symbolic objects (swords, cloaks and golden jewellery) and animals (cattle, pigs and oxen) whose precise meaning invites speculation, and the marking of bounds seems to have been ceremonialised (Otrih is noted as having circled the *captura*); we certainly have no narratives reworking the memories of such rituals to justify current arrangements, such as were produced in early medieval Iceland³⁰. This of course is precisely because this was not an empty landscape new to man, but one which –though lightly exploited, primarily for hunting, wood and pasture– was understood in terms of the rights exercised by nearby residents, claims and rights which were articulated through property law. And, in a society ruled by aristocrats and monks who were the local representatives of distant kings, these rights were not embedded in the social memory of the rituals of land-taking performed by the semi-legendary ancestors as in Iceland, or in claims to be to privileged colonists expanding a political frontier under royal protection as in Iberia, but through the humdrum medium of written legal documents; written legal documents whose production and preservation was increasingly seen by the Fulda monks as their responsibility as they became the institution of record for the region³¹. The frequency with which *captura* were gifted to Fulda may, indeed, have been driven by the desire of local owners to procure a written record guaranteeing the status of their claim as individual property abstracted from collective rights in waste and wood. Fulda, after all, as an undying institution brought with it property rights of a different order from those held by merely mortal owners, but might allow its patrons to enjoy the fruits of their generosity whilst they lived, whilst simultaneously protecting property from the cycle of counterclaim, contestation and inheritance. Gifting a claim to Fulda was thus a way of registering that claim, even if in the long run that registration had its price.

²⁸ Cf. e.g. FREEDMAN, P. *The Origins of Peasant Servitude in Medieval Catalonia*. Cambridge, 1989, pp. 56-88.

²⁹ HAHN, H. «Eihloha. Sturm und das Kloster Fulda». *Fuldischer Geschichtsblätter*, 1980, vol. 56, pp. 50-82, and now RAAIJEMAKERS, J. *The Making of the Monastic Community of Fulda, c. 744 to c. 900*. Cambridge, 2012, pp. 26-30.

³⁰ For Iceland see above all PALSSON, H. and EDWARDS, P. *The Book of Settlements: Landnámabók*. Manitoba, 1972, with important analysis by CALLOW, C. «Putting women in their place? Gender, landscape and the construction of Landnámabók». *Viking and Medieval Scandinavia*, 2011, vol. 7, pp. 7-28.

³¹ On this latter development see now HUMMER, «The production and preservation of documents».

Whilst royal gifts of whole territories may imply that uncultivated land pertained in some general sense to regalian public authority, royal claims tend only to be direct and immediate where they link to more concerted exploitation, through a royal *villa* or other centre, or where they underpin claims of ownership on the part of an ecclesiastical institution which had been given royal property in a locality³². Where this was not the case, the charters make a practical assumption of some collective claim over uncultivated land within a *villa's* hinterland by those who held land within that *villa*, that is of common rights within the *marca*. In our case-study, for example, the initial 801 charter attempts to use Roman law terminology to express these claims, gifting Fulda the title (*dominium*) over a large land claim (*captura*) made by 14 «associates» (*socii*). Nine of the 14 801 donors reoccur a quarter of a century later when Fulda's rights over land within the area were reasserted. The close correlation between those giving in 801 and those subsequently confirming, disputing and confirming Fulda's claims up to 827, a sense of collective claim and collective action, even if we need to accept that community was not consensual and could be a locus of conflict. None of these individuals—with the exception of two, Herimot and Berehart, whom the Abbot of Fulda had to come to terms with in 827 when they disputed the monastery's rights—occur frequently in the very full run of charters from the Grabfeld as actors or witnesses: their horizons and presumably their interests are focused on Burghaun alone. Indeed, Waldo, the author of the 801 grant and granted pride of place again in the gift-giving recorded in the 827 notice—where he is listed first and alone received golden jewellery as well as a sword—appears in only these two charters, and his profile is not atypical. Of the twenty individuals who have some form of claim acknowledged in the 827 notice, eight had been parties to the initial 801 gift but little else, whilst a further six make their only appearance in any charter in 827; aside from Herimot (who appears in over 30 charters: table 2) and Berehart (10: table 3), none of the others appear more than a good half dozen occasions³³. Given the gap between the 801 gift and the subsequent episodes of claim and dispute, it seems probable that Fulda had gone out of its way to recover as many as possible of the parties in the 801 charter, firstly to reaffirm a gift now subject to potential dispute through further gift-giving, and subsequently to testify to and witness the resolution of that dispute. Witnessing implied social standing within the broader locality, and the well-to-do owners who are characteristically donors or frequent witnesses had interests of varying sizes scattered across several settlements. The lack of wider witnessing from those involved in our charters strongly suggests that these individuals were locals of relatively humble but proudly free status, whose gifts, testimonies and subscriptions was important precisely because they enjoyed some sort of collective rights based on their residence and ownership.

Collective action may also have been important in allowing figures of relatively humble status, with no apparent interests beyond a single settlement, the wherewithal

³² This phenomenon underpins the theory of the 'king's free men', which structures GOCKEL's reading of these documents; this theory has lost ground, for a variety of reasons, and actually sits ill with the status of those active in these charters, as I hope my discussion shows. See STAAB, F. «A Reconsideration of the Ancestry of Modern Political Liberty. The Problem of the so-called "King's Freeman" (Königsfreie)». *Viator*, 1980, vol. 11, pp. 51-69; and SCHULZE, H. K. «Rodungsfreiheit und Königsfreiheit. Zu Genesis und Kritik neuerer Verfassungsgeschichtlicher Theorien». *Historische Zeitschrift*, 1974, vol. 219, pp. 529-550.

³³ See FRIESE, «Einzugsbereich».

to make a *captura*. In our charters there is no allusion to a dependent labour force undertaking conscripted colonisation, of a type that ecclesiastical landowners such as Fulda could sometimes practise³⁴. The absence of references to an apparatus of cultivation and exploitation in our charters is striking: compare the near contemporary gift by Count Poppo of a *captur* on the banks of the River Lütter, farmed by 13 named unfree dependents (*mancipia*)³⁵. Even if not all landowners were as wealthy of Poppo, property gifts in this region did normally involve the transfer of named *mancipia*: in most cases, our scribes give a list of male names (most often a handful, but sometimes tens) that is given, in a stated location, with no further boundary clauses or description. These were not classic «slave gangs»³⁶. Cases in which individual female *ancillae* or male *mancipia* are given legal freedom on condition of a symbolic annual payment to the Fulda monks in commemoration for their former master also include stipulations as to the continued holding of a smallholding (in this context normally referred to as a *beneficium*) simultaneously passed to Fulda. This must confirm that the *mancipia* of our documents were settled, along with their families, on defined holdings, and that transfer of rights over the one was seen as by default involving transfer of rights over the other: when landowners spoke of transferring individual *mancipia* the gift of the individual was understood as shorthand for a wider household and its holding. Poorer landowners may have largely relied on their own labour, perhaps explaining those relatively few cases where cultivated land makes an appearance as the object of donation, with specifications of individual fields or meadows, as well as the odd transfer of inventoried tools and livestock³⁷. Our clearances at the *Swarzesmoure* thus seem to have been made by modest landowners acting collectively with their peers or, where they made individual claims, presumably by mobilising their own labour and that of any household members, whether free or dependent, who were available.

Against this background, the successive stages of activity start to make sense, for the terminology of *captura* was applied to waste and wood as it underwent a series of

³⁴ For a case study of how monastic colonisation might work, see NITZ, H.-J. «The Church as Colonist: the Abbey of Lorsch and Planned *Waldhufen* Colonisation in the Odenwald». *Journal of Historical Geography*, 1983, vol. 9, pp. 105-126. «New build» of this type was important in the development of Fulda's internal economy, where more intensive/«manorialised» estates were located on the sites of royal gifts of territorial blocks which were subsequently colonised: see WEIDINGER, U. *Untersuchungen zur Wirtschaftsstruktur des Kloster Fulda in der Karolingerzeit*. Munich, 1991, and «Untersuchungen zur Grundherrschaft des Kloster Fulda in der Karolingerzeit». In ROSENER, W. (ed.). *Strukturen der Grundherrschaftimfrühen Mittelalter*. Göttingen, 1989, pp. 247-265.

³⁵ CDF466, the location is modern Poppenhusun in the Rhön.

³⁶ Compare, who whilst not postulating classical gang slavery does stress direct seigniorial management, criticising Wickham, and myself, who both rest of German historiography; Banaji's counterexamples relate to the planned colonisation undertaken by Fulda, as revealed by Weidinger. *Servi*, and dependents rendering *servitium*, only appear in the context of monastic domains in this region, and even then as the exception not the rule: STAAB, *Gesellschaft*, pp. 250-286, 313-371, though dealing primarily with the middle Rhine not our region, remains a useful overview of the east Frankish charter evidence.

³⁷ Though we need to be careful: the frequency with which *capturae*, and holdings worked by *mancipia*, appear in our charters may be a reflection of the greater disposability of these assets as opposed to directly exploited «inland»/«home farms». Frustratingly, donations of all an individual's property tend to be far less detail about the nature of that property, often specifying «all that I have» and then simply listing locations.

developments prior to its becoming a standard plot farmed by a dependent household, or direct by an owner-proprietor. Waste and wood thus first became *captura* when a land-claim was registered, presumably above all through the establishment of bounds: this brought the land under more direct ownership than had previously been the case and so created new property rights, of the type we see being transferred in 801 when Fulda was gifted the title (*dominium*) to a bounded area, most of it evidently still waste and wood. Within a *captura* of this type, physical clearance might proceed, as seems to have been taking place within the *Swarzesmoure* prior to 827 through a variety of parties.

3 THE CONTEXT OF DISPUTE: THE FULDA CARTULARY AND THE CREATION OF A MONASTIC LANDSCAPE

It is no accident that our picture of this complex process, and the multiple interactions it involved, is so vivid in this particular case. The final stages whereby Fulda had its title confirmed and began planned colonisation in the *Swarzesmoure* took place exactly as Fulda's scribes were compiling their charter collection, and so this was a live case as our documentary picture was archivally frozen in the form in which it was transmitted to the present. Recent studies of archival practices have begun to emphasise the extent to which the collection and compilation of cartularies involved processes of editing and selection, thereby mediating our ability to access and understand the pragmatics of document use in its original context. The *Swarzesmoure* documents –and in particular the notice outlining the 827 case and its resolution– bear the hallmarks of the type of «dossier» that has been identified as typical of documentary practice in Carolingian and post-Carolingian society: it is in essence a confection of interlinked episodes, in keeping with the annotation, appending and expansion of existing documents, and the physical connection of related documents, that is becoming increasingly well evidenced³⁸. We should perhaps imagine the note of gift-giving recording public acknowledgement of Fulda's claims in the *Swarzesmoure* as an appendix to the 801 charter –the overlap of witnesses, and the fact that cartulary compilation meant those monks with archival responsibilities had the 801 gift to hand as the 827 case unfolded, suggest that the one consciously spoke to the other. We should also note that both texts, as they survive, are tinged with hindsight, whilst the boundary clause to the 801 charter seems to define the *Swarzesmoure* of 827, creating the suspicion that the cartulary text may be been interpolated so as to provide current claims with a firm historical basis. We know that monastic archives might contain pragmatic notices listing those who had sworn oaths or similar on specific occasions, and that such notices, once their immediate probative use had passed and their original context was forgotten, might easily pass into oblivion and be excluded by later cartulary compilers: it is worth speculating whether the first stage of the 827 notice rested on precisely such a list, originally kept with the 801 charter and

³⁸ See BROWN, COSTAMBEYS, KOSTO and INNES (eds.), *Documentary Culture*, esp. HUMMER, «The production and preservation of documents» and INNES, M. «Archives, documents and landowners in Frankish society», pp. 152-188 and «On the material culture of legal documents: charters and their transmission in the Cluny archive, ninth to eleventh centuries», pp. 283-320.

designed to show the public acknowledgement of that gift, now worked up as part of a dossier prepared by Fulda's monastic archivists to support their case in 827. The account of the public meeting held before Count Poppo was appended, and then an account was added of the public rituals whereby Abbot Hraban made peace with those whose claims had been contested at law, and secured public acknowledgement of his abbey's rights, which was finally attested by witnesses.

The currency of our documents for Fulda's cartulary compilers is underlined by the evident links between the *Swarzesmoure* case and a second dispute recorded in unusual and enigmatic detail in the cartulary: the conflict between Fulda and local landowners around Hünfeld which came to a head two years before our dispute³⁹. The final stages of this «great dispute» (*magna contentio*) over the boundaries of the monastery at Hünfeld were played out before public assembly (*publicus conventus*) of Count Poppo «and all of his *comitatus*»⁴⁰ held at Geismar on 20th February 825. Evidently local landowners were cultivating holdings in the vicinity of Hünfeld which they treated as their own property, but Fulda was claiming ownership of all land within defined boundaries, effectively territorialising its rights. Count Poppo's assembly had ruled that anyone who had appropriated or unjustly retained property within the boundaries should restore it to Fulda before Poppo and the assembly according to the law, but representatives of Fulda reported that property which ought to be held *in beneficium* from Fulda was being treated as inherited: those «unjustly holding» such property could return it immediately «without blame». The charter lists those landowners who made such returns before Count Poppo and named witnesses, before recording a second witness list of the actual reinvestiture of the property concerned in the presence of Count Poppo's representatives.

This dispute ultimately rested on Fulda's assertion –and perhaps extension by redefinition– of a royal gift of 782, in which Charlemagne had given Hünfeld and the surrounding area to Fulda⁴¹. It erupted in the 820s because of the abbey's intensive redevelopment of the site. By 815 at the latest, Charlemagne's gift had become a monastic cell dependent on Fulda, eclipsing the nunnery at nearby Milz, which had been gifted in 799 to Fulda by its aristocratic founders, scions of the dominant family in the region in the eighth century⁴². Hünfeld was one of a series of dependent monasteries through which Fulda reshaped the cultural and social landscape in which it was located, creating a matrix of local administrative and religious centres which made the extended Fulda

³⁹ CDF456; GOCKEL, «Hünfeld Raum», importantly locates this in the context of the territorial development of Fulda's rights; see also now RAAIJEMAKERS, *Fulda*, pp. 175-213.

⁴⁰ The usage here is fascinatingly slippery, in that *comitatus* reads more as the group of local men who made up Poppo's *publicus conventus* than a territorial term; later in the document it becomes «the *conventus* of Count Poppo»; it is equivalent to the *maiores natu de comitatu eius* of our document, CDF471. We do not have to look back to Tacitus or notions of the *comitatus* as warband (there is no indication whatsoever that this group was understood as Poppo's private/personal following as opposed to a public body ruling the locality over which he presided): we are in the first generation of a new system of rule through public meetings presided over by the count, before the advent of formal territorial jurisdiction.

⁴¹ MGH DCharlemagne 139.

⁴² On Milz see GOCKEL, M. «Zur Verwandtschaft der Abtiss in Emhilt von Milz». In BEUMANN, H. (ed.). *Festschrift für Walter Schlesinger*. Marburg, 1974, vol II pp. 1-70, and BOSL, K. *Franken um 800. Strukturanalyse einer fränkischer Königsprowinz*. Munich, 1969.

monastic confederation the structuring institution for the region's society⁴³. This did create conflict with other institutions: the rights of the cell at Hünfeld, and at nearby Rasdorf –likewise gifted to Fulda by Charlemagne in 781 and redeveloped as a monastic cell– over surrounding settlements were only confirmed after a complex dispute involving the bishopric of Würzburg⁴⁴. Moreover, the creation of such centres, and the need to sustain their inmates –by the early 830s over 30 monks and over a dozen oblates were housed at Hünfeld– both facilitated and necessitated a programme of intensive and planned internal colonisation. Hence the outbreak of conflict with small-time local owners who had previously presumably developed and minded plots in the wood and waste along the Haune without coming into conflict with the monks or contesting their claims to ultimate title. Indeed, by the time of our disputes Hünfeld monks were playing a significant role as administrators of Fulda's estates in the surrounding area: most likely the *Swarzesmoure* documents, like others concerning the vicinity, were produced by Hünfeld monks, and likewise stored on site, in an arrangement which may help explain the complex fascicule structure of the Fulda cartulary.

Territorial boundaries between the *Swarzesmoure* on the one hand, and Hünfeld on the other, may have been far from clear cut: the resolution of an important dispute in 815 between Fulda and Würzburg had concluded that Hünhan, otherwise unattested in the early medieval evidence and around a kilometre or so south of modern Burghaunen, was among those settlements that owed an annual due (*cens*) to the monks at Hünfeld⁴⁵. The claims implicit and obligations explicit in this arrangement clearly did impinge on those active in the *Swarzesmoure*: Otto, who had been party to the 801 gift to Fulda, was among those evicted from their *captura* in 825 on the grounds that title belonged to the Hünfeld monks, and the same man witnessed Abbot Hraban's final coming to terms with the *Swarzesmoure* claimants in 827, whilst no fewer than 7 of the *Swarzesmoure* claimants witnessed the legal rituals whereby Otto and his Hünfeld neighbours withdrew their claims and acknowledged Fulda's victory in 825⁴⁶.

Even though the *Swarzesmoure* clearances did not abut on the Hünfeld *monasterium* quite as directly as those involved in the «great dispute» of 825, it was in part at least subject to colonisation by monastic *servi*. Read in the context of developments of Hünfeld, our *Swarzesmoure* records demonstrate the knock-on effects of Fulda's programmes for the smalltime landowners who found themselves more immediate neighbours of the monks than hitherto. At Hünfeld Fulda's claims rested on a royal gift whose territorial implications had subsequently been tested and proven at law, so the transmitted document uses the standard invective of appropriation and unjust retention in castigating Fulda's opponents. In fact, the available evidence –not least the account of the 825 public assembly at which Fulda's rights were asserted– suggests strongly that what had taken place was not so much the taking of property that had hitherto been unambiguously and wholly Fulda's, but the monastery's vigorous assertion of its title to all property within a wide territorial area,

⁴³ RAAIJMAKERS, *Fulda*.

⁴⁴ *Württembergische Urkundenbuch* I, nos. NB and NC, accessible online via www.wubonline.de. Like most of the disputes and diplomata of Louis the Pious transmitted in the Fulda archive, this needs further analysis.

⁴⁵ As n. 44 above.

⁴⁶ Namely Altolf, Amanolf, Erphung, Iungman, Herimot, Lungan and Attaman.

where internal colonisation was bringing the monks into conflict with local cultivators. Beneath the rhetoric of expropriation, the 825 document effectively gives owners with interests within the boundaries of Hünfeld a last chance to acknowledge Fulda's territorial rights without suffering further consequences (*sine damno*), by acquiescing in the agreed legal narrative that all property within bounds had been acquired *in beneficium*⁴⁷ from the monks and ultimately belonged to them. At *Swarzesmoure*, on the other hand, the surviving documentation does not use any rhetorical invective. Instead, we have a detailed account of Fulda attempting to come to terms with those with claims in the wood and waste, giving gifts whose acceptance tacitly acknowledged the monastery's claims, for in receiving these gifts local owners were withdrawing their claims on *Swarzesmoure*, whose bounds one of them perambulated. Given that Fulda had documentary claims that much the same owners had, earlier as a group, gifting title to clearance within stated bounds in this area, the making of further gifts to those with claims and clearances at *Swarzesmoure* might even be seen as a public demonstration of the monks' ultimate title, *dominium*, within the territory: a re-enactment of the original gift in the light of a quarter-century's further clearance and cultivation.

4 HERIMOT, BEREHART AND THE MEANINGS OF GIFT

Did the outbreak of «hot» conflict at law at nearby Hünfeld provoke Fulda to seek public acknowledgement of the claims implicit in the 801 charter, and come to terms with local owners before further quarrels arose? If this was the aim of the initial gift-giving to those with claims at *Swarzesmoure*, it failed, on account of Herimot pursuing his claim further, leading to the holding of another public assembly, this one the 827 meeting of Count Poppo and the «better born of his *comitatus*» at *Swarzesmoure* itself. It is no accident that alone of those local landowners mentioned in the *Swarzesmoure* documents, Herimot had sufficient social standing to figure regularly amongst those witnessing property transfers in the Grabfeld over a significant timespan (see table 2)⁴⁸.

⁴⁷ Which in this context, of course, means a fixed lease embedded in a social relationship and with a nominal rent: historiographical debate around «feudalism» continues to distract attention from the ubiquity of the concept. See now FOURACRE, P. «The use of the term *beneficium* in Frankish sources: a society based on favours?». In DAVIES, W. and FOURACRE, P. (eds.). *The Languages of Gift in the Early Middle Ages*. Cambridge, 2010, pp. 62-88.

⁴⁸ See the entries in SCHMID, *Klostergemeinschaft*, for a summary of activities. Our Herimot is probably not the same man as 812 and 816 in the middle Rhine; his first witness appearance is therefore 819. The run of witnessing is continuous right through to the last decades of the ninth century and beyond, with no obvious large gaps or gifts by third parties in commemoration/in alms for Herimot, such as might normally signify a death (as our Herimot was not a direct donor towards Fulda most likely such deathbed gifts were made to a different institution whose records do not survive): we cannot be sure when the career of our Herimot ends, although the witness appearances of men named Herimot is in general less frequent by the middle decades of the ninth century. One puzzle most remain the identity of our man with the 801 Burghaundonor in UBF275: the claim in the 827 documents and overlap between names suggest that if this is not the same man (and the gap in witnessing makes this unlikely) he must be an immediate ancestor whose Burghaun interests were inherited by our Herimot. If the 801 document is not our Herimot could he be the same man who witnesses three other gifts of clearance in 789?

Herimot's own property interests are difficult to track down: he made no gifts to Fulda so we lack direct evidence. He first appears in a public assembly chaired by Count Poppo in 819, and his witnessing crosses the Grabfeld, but with particular frequency around Nordheim and Sundheim in the Rhön, near modern Mellrichstat and around 40 kilometres east of Fulda. The geographical patterning of Herimot's activities underlines the extent to which Fulda –which Herimot visited to witness solemn gifts on at least 4 occasions– and its monastic dependencies –he also witnessed at Hammelburg, Rasdorf and Rohr– were central places increasingly structuring local patterns of sociability. But Herimot himself was not a patron of Fulda, and his activities were defined by the influence –and underpinning wealth– which meant that he was a regular attender of the assemblies and meetings which defined public life in the Grabfeld, even when this took him well beyond the immediate locale in which he had personal interests: his geographical «range» is over 60 km from Hammelburg on the Saale to Rasdorf and Hünfeld, and a similar distance from Fulda east to Rohr beyond the Werra⁴⁹. Although Herimot did not witness the Geismar assembly resolving the «great dispute» over Hünfeld, he did travel to Hünfeld to see Poppo's legates witness the resolution of the quarrel: his decision, within two years of this event, to assert his inherited interests in the *Swarzesmoure*, contesting the full extent of Fulda's claims, suggests that he was anxious not to lose out as Hünfeld owners had, even though our area was a good day's ride from the Rhön villages where he appears most frequently. Certainly Herimot –perhaps unlike the others with claims on the *Swarzesmoure*– had the contacts and standing to force Hraban to come to terms: it is interesting that whereas the Hünfeld dispute boiled over at a public assembly at nearby Geismar, Herimot was able to prevail on Poppo, Hraban and his peers to hold a special meeting in the *Swarzesmoure* to hear his claims.

Table 2.- Herimot's witnessing activity to 840.

				CDF no
4.11.819	Reginolt gives Fulda all he has, including listed <i>mancipia</i> , at 4 <i>villae</i> in Grabfeld and 3 other <i>villae</i> .	In the <i>conventus publicus</i> at the <i>villa</i> of Sundheim in the presence of the count and his judges.	Herimot is 3 rd from last witness (Otrih is last); Count Poppo leads.	388
24.3.821	Helmrih gives Fulda, in alms for his brothers, a quarter of <i>Triesbach</i> .		Herimot is 3 rd from last witness; Count Poppo leads.	393
21.6.821	Wolfmunt gives Fulda, in alms for Ruadrada, 11 named <i>mancipia</i> in Grabfeld and the <i>beneficia</i> Ruadrada had granted them.		Herimot is 2 nd witness.	394

⁴⁹ Although he made no gifts to Fulda, there is not necessarily evidence that he was close to Count Poppo either –he did not witness Poppo's sole gift to Fulda, CDF466, made on an occasion where he witnessed other charters drawn up on the same day at the same meeting, which may be significant– and whilst he does appear in public assemblies within the count, he is not an ever present: we should probably see him as a well-to-do landowner with sufficient means to keep himself independent of Hraban's Fulda certainly, and Count Poppo probably, these being the two major patrons in the region.

26.12.822	Regingund gives to Fulda.		Herimot witnesses.	402
16.4.823	Lustrata and her sister Sahsinna, <i>ancillae</i> of Christ, give Fulda all their property in <i>Eschinabach</i> , that is (named) <i>mancipia</i> with their effects, keeping a life-interest.	Hammelburg.	Herimot is 3 rd lay witness; Abbot Hraban and monks present.	409
4.9.823	Otfrid gives Fulda all his property, including named <i>mancipia</i> , at <i>Altenstet</i> and <i>Grezzistet</i> in Grabfeld.	Fulda.	Herimot is 7 th witness to charter; separate local witnesses to <i>vestitura</i> .	420
8.1.824	Trudhilt gives Fulda a <i>servus</i> in the Gozfeld, and receives back the life interest.	Nordheim.	Herimot is 5 th witness.	423
8.1.824	Blidhilt gives Fulda an <i>ancilla</i> in the Grabfeld, and receives back the life interest.	Nordheim.	Herimot is 5 th witness.	424
8.1.824	Inguhilt gives Fulda arable land and 4 named <i>mancipia</i> in Ostheim.	Nordheim.	Herimot is 5 th witness.	425
8.1.824	Wigger gives Fulda a field at Sundheim in Tullifeld.	Sundheim.	Herimot is 5 th witness.	426
15.4.825	Engilind gives all she has at <i>Craffa</i> by the Fulda, with two named <i>mancipia</i> .	Monastery of Rasdorf.	Herimot is 9 th witness.	432
5.6.824	Ermanolt gives Fulda land and <i>mancipia</i> in Wormsgau.	Fulda.	Herimot is 2 nd last witness.	435
5.6.824	Egilhart gives Fulda land at <i>Gerinesheim</i> in Grabfeld.	Fulda.	Herimot is 1 st witness. NB there is a run of gifts made at Fulda on 5.6.824 but Herimot does not witness all.	439
5.6.824	Hahger gives Fulda all his property at Westheim in Tullifeld.	Fulda.	Herimot is 1 st witness.	441
22.10.824	Berehart and his wife Hadaburg give Fulda a clearance in the mark of Marisfeld in Grabfeld.	Monastery of Rohr.	Herimot is the 2 nd witness.	453
17.2.825	Germunt gives Fulda his property, including 16 named <i>mancipia</i> , at Marisfeld in Grabfeld.		Berehart is 1 st witness, Herimot 3 rd .	455
20.2.825	'Great dispute' over boundaries of monastery at Hünfeld and actions those men who had unjustly taken land from the monastery.	<i>Publicus conventus</i> of Count Poppo 'and all his county (<i>totius comitatus eius</i>)' at Geismar.	Herimot is not a witness at Geismar but is a witness of the <i>revestitura</i> at Hünfeld, which takes place before 2 representatives of Count Poppo.	456

15.4.825	Sigilouga <i>ancilla dei</i> gives Fulda land and named <i>mancipia</i> and Rasdorf and Wulfrichshusun in Grabfeld.	Monastery of Rasdorf.	Herimot is 9 th witness.	458
17.2.826	Germunt gives Fulda all his property in Marisfeld, plus three <i>ancillae</i> who are to pay an annual <i>cens</i> but be free of all other <i>servitium</i> .	Fulda.	Berehart the 1 st lay witness; Herimot the 3 rd . Same date and place as Count Poppo's donation, CDF465.	466
8.5.827	Hrihart and his wife Altburga give Fulda a large estate with livestock and 2 named <i>mancipia</i> , at <i>Weitahu</i> in Tullifeld.	Sundheim.	Herimot is 5 th witness.	473
22.7.830	Trudhilt <i>sanctimonialis</i> gives Fulda four <i>mancipia</i> in Sulzfeld in Tullifeld.	Tullifeld.	Herimot is 1 st witness.	481
6.7.837	Waldarniu gives Fulda all she has at Marisfeld in Grabfeld.		Herimot is 1 st witness.	498
12.8.837	Ercanbraht gives Fulda all property at Marisfeld.		Herimot is 4 th from last witness.	499
12.8.837	Rihbald gives Fulda all property at Altheim in Grabfeld.		Herimot is 4 th from last witness.	500
12.8.837	Elisbun gives Fulda all her livestock in Grabfeld.		Herimot is 4 th from last witness.	501
13.8.837	Count Burgrat gives Fulda the villa known at <i>Motten</i> in the Grabfeld in the <i>silva Bochonia</i> , plus named <i>mancipia</i> at <i>Sala</i> .		Herimot is 1 st witness.	502
2.10.838	Thetrata, Ewich and Witerba give Fulda all their property at 12 named places in Grabfeld and Gozfeld, including named <i>mancipia</i> .	Fulda.	Herimot is 4 th witness.	520
	Notice in which Ruadbot gives Fulda all his livestock.		Herimot is 1 st witness.	540

The dense run of charters from the Grabfeld in the 820s –many but by no means all witnessed by Herimot– allows us not only to glimpse the itinerary of public assemblies attended by men of means from across a wide region, but also to sense the complex negotiations of status and interest within this broad grouping. The complexity of these interactions is underlined by the career of Berehart, who advanced claims parallel to Herimot's own against Fulda in 827 (see table 3). As with Herimot, although Berehart apparently had inherited interests in the Burghaun area, this was not his home region: his property and witnessing clusters a good 50 kilometres to the east, on the east bank of the Werra and the edge of the Thüringer Wald, and in particular at Marisfeld (near modern

Meiningen)⁵⁰. In contrast to Herimot, Berehart's rise seems to have owed much to his relationship with Fulda: his first appearance, in October 824, comes when along with his wife he gives the monks newly cleared land at Marisfeld, in a charter written up at Rohr, a nearby monastic dependency of Fulda, and just five months later Berehart and his wife made a further donation, of all their property in the *villa*. This patronage of Fulda developed hand in hand with that of another Marisfeld owner, Germunt, whose gift of February 825 was witnessed by Berehart; in spring 826 both Germunt and Berehart were at Fulda as Germunt gave further Marisfeld property then, having been ordained a priest, his share of two clearances in the Grabfeld and two in the Saalegau; on this latter occasion, Berehart made a further and final Grabfeld gift. This pattern is typical of the Grabfeld charters from these years, which show Fulda building on a dominant position in the villages between the Saale and the Werra through precisely by allying with particular factions and families within them, leveraging the importance of the monastery and its dependencies as social centres regularly visited by local landowners of standing. Whereas Herimot –who witnesses the majority of Berehart's charters– was independent enough to attain influence without embarking on extensive patronage of Fulda, Berehart has a well-to-do local owner whose visibility rests primarily on his giving to Fulda, alongside an associate who ended up being ordained and so presumably acquiring a social and religious niche through Fulda's patronage.

Table 3.- Berehart in the Fulda charters.

Date	Transaction	Enacted at ?	Comments	CDF no
22.10.824	Berehart and his wife Hadaburg give Fulda a clearance in the mark of Marisfeld in Grabfeld.	Monastery of Rohr.	Herimot is the 2 nd witness.	453
17.2.825	Germunt gives Fulda his property, including 16 named <i>mancipia</i> , at Marisfeld in Grabfeld.		Berehart is 1 st witness, Herimot 3 rd .	455
18.3.825	Berehart and his wife Hadaburg gives Fulda all their property in the villa and mark of Marisfeld in the Grabfeld.	Marisfeld.	Witnesses look like locals from Marisfeld; Herimot not present.	457
17.2.826	Germunt gives Fulda all his property in Marisfeld, plus three <i>ancillae</i> who are to pay an annual <i>cens</i> but be free of all other <i>servitium</i> .	Fulda.	Berehart the 1 st lay witness; Herimot the 3 rd . Same day and place as Count Poppo's gift, CDF465.	466

⁵⁰ The nature of Berehart's claims in the Burghaun locale is unclear: no-one of his name witnesses the 801 gift, UBF275, nor is he named in the first tranche of gift-recipients in CDF471. On both occasions a Beretgar is mentioned, who do not appear in the main drama of 827, so the most natural assumption is that Berehart had inherited claims from Beretgar.

22.3.826	Germunt, now a priest, gives Fulda a holding at <i>Strewa</i> in <i>Hruadhelmbusun</i> , and a third of a clearance at <i>Calbacha</i> , both in Grabfeld, and in Saalegau a 9 th of a clearance at <i>Chinzibucruogo</i> , and 6 th part of a clearance at <i>Uzzunaha</i> , portions agreed with his two sisters.	Fulda.	Berehart 6 th witness.	467
22.3.826	Berehart gives Fulda his property at Wolfheim in Grabfeld.	Fulda.	Same date, place and witnesses at CDF467, above.	468
827	Berehart claims he has interests in <i>captura</i> of <i>Swarzesmoure</i> , withdraws claim and given gifts by Abbot of Fulda.	Initial complaint brought by Herimot in county meeting at Großenmoor.	Herimot also makes complaint and also bought off.	471
20.8.838	Three gifts of property at Marisfeld to Fulda –one by Widerolt and Altmann with usufruct retained, one by Wideralt of Beretgar's estate in alms for Beretgar, one by Fruohanger and his wife Hruadan of a third of their property.	Fulda.	41 witnesses to <i>vestituras</i> hared by all 3 transactions, with Berehart 8 th .	517-19

That Berehart, for all his extensive and recent patronage of Fulda, could be called upon by his contact Herimot to engage in a form of «class claim» over the *Swarzesmoure*, distant from his core interests, must underscore the complexity of the social relationships between Grabfeld landowners and Fulda. Indeed, a close look at the counter-gifts offered by Fulda to Herimot and Berehart suggests that what was at stake in 827 was as much status –status tied up in the definition of the relationship between these landowners and the monks– as property. When Abbot Hrabán had sought public acknowledgement of the monks' rights in *Swarzesmoure*, only two did not receive a sword: Herimot, who received an ox, and Altolf (by 827 a monk and so debarred from carrying arms) who received a cow (Berehart was amongst those who received no gift). The disjuncture between social standing, as evidenced by the charter witnessing, and these gifts is startling.

The careful recording of Hrabán's gifts hints at their symbolic importance as public statements of status and obligation. On a humbler level, Hrabán's gifts recall the great play made by contemporary historical writers on Imperial gift-giving. Hincmar of Rheims, for example, commented on gift-giving as a means of cementing social relationships and setting codes of behaviour amongst a ruling elite at court, whilst Einhard similarly commented on Charlemagne's gifts to those who served in his palace, which made the familiars of the court an immediately identifiable group⁵¹. Probably the most vivid account, though, is that of Notker of St-Gallen, who in a set piece describes the subtle gradations of status at work as the Emperor gave gifts to all in his service «according to

⁵¹ For references and discussion INNES, M. «A place of discipline. Aristocratic Youth and Carolingian Courts». In CUBITT, K. (ed.). *Court Culture in the Early Middle Ages*. Leiden, 2003.

each individual's *ordo*», with sword-belts and precious vestments for the most noble, Frisian cloaks for the lesser ranks, and those who served in the household receiving humbler garments of knives⁵². The Fulda scribes delineation of different types of cloak, and the striking gift of golden jewellery to Walto, the author of the original gift to Fulda in the area, perhaps echo this careful calculus. The swords received by all bar Herimot and the monk Altolf spoke to the free status of these men, and more besides: Fulda, like other major monasteries, was a centre for the manufacture of the top quality wargear which increasingly differentiated those able to enter aristocratic clienteles and perform public service from the nominally free with their more homespun armaments. A similar significance should be attached to the horse given to Otrih alone, particularly favoured for having performed the ceremonial rounding of the clearance⁵³. The meaning of the three gifts of livestock –the pig received by Otrih in addition to his sword, cloak and horse, plus Herimot's ox and Altolf's cow– is harder to decode: if they were insults, making mocking claims of low status, why did Otrih receive the pig in addition to the horse and why were oxen amongst the second round of gifts made to Herimot and Berehart at the conclusion of the dispute? It may well be that in the specific context of a land clearance such livestock had a local symbolism, for example the ox as a plough beast perhaps alluding the act of bringing land into cultivation.

Evidently, to the more local landowners who had interests alongside Herimot in the *Swarzesmoure* clearance, status-affirming gifts of swords and cloaks, even golden jewellery and a horse, from Fulda provided reassurance that handing over property claims did not endanger their personal freedom. Above all, these gifts spoke to a proud claim to be free men able to engage in public activity. Indeed, in that the swords and cloaks were of Fulda manufacture, received from Hrabán's hand, receiving these gifts might also have involved entering into the patronage of Fulda. For men like these –none of whom had wide interests or witnessed frequently, or beyond the immediate vicinity– such patronage was the most effective way of keeping a toehold in the public world. Their lot immediately invites comparison with a contemporary landowner and neighbour of Herimot's in Nordheim in the Rhön, one Gundhart. Gundhart appears just half a dozen times as a charter witness, clustered in a series of donations in this one locality in 824: had we only the charters, who would appear as a minor supporting figure alone⁵⁴. However, one of Einhard's letters is a petition to Abbot Hrabán, explaining the sorry lot of Gundhart. Gundhart is Hrabán's «man»: he had entered into a formal patronage relationship with Hrabán, but one that did not involve a property donation (Gundhart makes no gift to Hrabán in any of our charters) or undermine his status as an independent owner, and which had in all probability involved the giving of gifts paralleling those we see in 827. He is due to serve in the royal army on Hrabán's behalf, but dare not go for his

⁵² NOTKER, *Gesta Karoli Magni*, in HAEFELE, H. (ed.). *Monumenta Germaniae Historica Scriptores rerum Germanicarum in usum scholarum separatim editi*. Hanover, 1959, II.21, p. 92.

⁵³ On the symbolism of gifts of this kind see the evidence assembled by COSTAMBEYS, INNES and MACLEAN, *The Carolingian World*, pp. 278-285.

⁵⁴ CDF423-5, 435, all also witnessed by Herimot. CDF379, from 819, and involving a slightly different area, may be the same Gundhart, as may CDF559, slightly later; there are no other instances of an individual with this name.

involvement in this public world has also embroiled him in a dispute in which concerns about honour might lead to violence being done against him, for he is in a feud (*faidosus*) with Count Poppo: Einhard petitions Hraban that Gundhart be excused military service, and allowed instead to pay a fine⁵⁵.

Without such contextual detail, we can only guess at what expectations and pressures about honour jealously guarded and vigorously defended fed into Herimot's decision to take Fulda to law in 827, and Berehart's support for Herimot so soon after giving such large endowments to the monastery. Nonetheless, for a figure with Herimot's reach to receive no status-affirming favour from Hraban surely indicates some level of coolness, perhaps even an affront serious enough to mobilise public opinion, in the shape of other claimants such as Berehart, and the «better born of the county» anxious to interrogate Fulda's claims. We can certainly understand why Hraban, seeking to reach terms and renew friendship with an influential attendee at comital assemblies and a significant recent patron, gave gifts which could not be taken as insults or slights: Berehart and Herimot received woollen and linen cloaks and swords as well as oxen at the end of the dispute.

Gifts of sword, horses and other high status moveable are mentioned, from time to time, in Carolingian charter collections, but seldom with the level of detail we have in our case, nor as part of an unfolding narrative involving the meaning of ritual being contested and then the ritual re-enacted to a new script. Whilst the casual references for such countergifts of moveables against property which are our normal fare look and feel like the tip of a much bigger iceberg, we lack systematic analysis as to why moveables are mentioned in some cases –because of their probative value, or an immediate local significance?– but ignored in most. The taciturn nature of our evidence owes something to its formulaic nature, and perhaps more to the mechanisms of its survival. Typically cartulary compilation involved ripping dossiers of linked and annotated documents apart, producing a more stately listing focusing on standard charters of gift, sale and exchange, devoid of context and lacking the revealing details of episodic narrative. In our case, however, the complex process of dossier compilation was taking place precisely as the Fulda cartulary was being made, meaning that our documentary confection was at hand as Fulda's monastic archivists made their cartulary, and so was copied in full, even down to gifts and countergifts that only had meaning because they were a matter of immediate comment. Had these details not been «live» it is arguable that we would have a far less revealing documentary footprint, perhaps just the 801 gift and maybe a short standardised notice of the 827 public meeting stating that Fulda's case won the day and recording the witnesses to the final resolution. In other words, here we get a frozen snapshot of a fluid documentary situation, revealing a complexity in the interactions between Fulda and local landowners in the *Swarzesmoure* that would be invisible were we dependent on a more standard transmission.

This snapshot reveals the impossibility of separating the property rights over land that are the apparent object of our charter evidence from the personal relationships

⁵⁵ Einhard, Letter 42, in DUTTON, P. *Charlemagne's Courtier: The Complete Einhard*. Peterborough, Ont, 1998.

between those who had interests in the land. After all, land itself was not moveable, and its fruits were produced through the legal coercion of other humans; ownership was a cultural and social construction as well as a physical reality, especially in a landscape being reshaped by clearance and colonisation, processes which themselves involved establishing new rights in places where others had old claims. In such a context, to give land to another individual or institution was fundamentally to make a public statement about the nature of your relationship with that individual or institution: property rights over land cannot be separated from the personal relationships between those who had interests in it. To quote an ethnology of a different peasant society «when we describe rights of ownership, or of use, or of tenancy, we are talking about relationships between people. Rights imply duties and liabilities, and these must attach to people. A hectare cannot be sued at law, nor is a boundary dispute a quarrel with a boundary»⁵⁶.

This much is partly true of most pre-modern societies, and particularly true of early medieval societies lacking a formal apparatus of professional law, as opposed to a «substantive legalism» rooted in the shared culture of the property owning classes. Even the ritual forms through which property rights and personal relationships were played out were relatively standard across much of early medieval Europe. But their specific meanings were subject to variations over time and space which might support comparative analysis. After all, our cases come from the heyday of Carolingian rule, when royal legislation attempted to distinguish between licit and illicit forms of gift, especially where holders of sacerdotal and public office were concerned. Pious gifts to monks, and honourable gifts between individuals, were promoted as normative and status-defining social rituals, but the active soliciting or forcible requirement of gift was forbidden. Our documents and the public meetings they record speak to an agreed «public transcript», presenting legal action in terms of a dominant ideology of disinterested pious gift and self-interested unjust seizure, but owing to its unusual transmission our document also reveals a hidden register of gift-giving in moveables which related more problematically to the «public transcript» of social relations: a world of gifts calibrated to acknowledge status and preserve honour, about which Carolingian legislation was famously ambiguous⁵⁷.

⁵⁶ DAVIS, J. A. *Land and Family in Pisticci*. London, 1973, p. 73.

⁵⁷ See most recently INNES, «Charlemagne, Justice and Written Law», with references.