Chapter 5

FRATERNAL RELATIONS IN THE CONTEXT OF LAW AND SOCIAL PRACTICE

SO FAR I have been examining models of fraternal relations shaped by the Church's teachings as well as the values associated with them. In this part I will try to confront these models with testimony documenting the everyday reality of fraternal relations. This is by no means an easy task.

Among ninth-century descriptions of dramatic fratricidal rivalry between members of the Carolingian dynasty can be indicated many examples of the collaboration between and shared vicissitudes of brothers. Adalhard and Wala, relatives of no less a figure than Charlemagne; Rudolph and Conrad of the House of Welf, brothers of the Empress Judith; the Bosonids Hubert and Boso, brothers-in-law of Lothar II—these are just some of the better-known examples of interconnected careers. Brothers supported each other in their efforts to obtain the highest dignities as well as earthly and eternal possessions; they worked together to strengthen the position of their family and together bore the consequences of their actions. However, in addition to these almost exemplary models of fraternal solidarity, there are also references testifying to rifts between brothers, to efforts to pursue one's own plans against the will and interests of one's brothers, and even to betrayal. This happened for example in 776, when the leader of the anti-Frankish revolt, the Lombard Duke Rotgaud, and his brother Felix gave their lives, resisting Charlemagne till the end, while the third brother sided with the invader in order to keep his hereditary estates and position.[1]

Authors of narrative sources rarely give any details concerning the nature of the relations between brothers; if they do so, they usually use recurrent narrative patterns to describe them. These references tell us little about individual motivations, nor do they make it possible to describe complex patterns of behaviour defining socially accepted and condemned actions of brothers with regard to each other and their milieu. In order to overcome these limitations, there is a need for use evidence hitherto used only sporadically, that of diplomatic sources. A comparison of information included in private charters, court records, and *pro memoria* notes, as well as legal norms recorded in codes of customary laws or royal capitularies, will make it possible to demonstrate how everyday behaviour was influenced by various, sometimes contradictory values, how and why models of behaviour changed, and what results were produced by going beyond the established patterns of collaboration, subordination, or repression within fraternal groups. I will explore sources from different parts of the Carolingian empire,

1 MGH DD Karolinorum 1, no. 214, pp. 286–87.

looking in them for answers to the question concerning the local changeability of these patterns and factors contributing to the emergence of differences.

Mutual Rights and Obligations of Brothers

Property Rights

We have already discussed the reasons why scholars traditionally accept the view concerning the egalitarian nature of male siblings in the early Middle Ages. The theory that equality among brothers was a constitutive feature of the group has determined the way other aspects of the relations between them are viewed as well. It should be stressed once again that the belief in the equal status of brothers stems primarily from an analysis of normative sources which contain information about the rules of inheritance. Yet division of the inheritance is an extremely important, but not the only element defining fraternal relations. Findings by cultural anthropologists, sociologists, and psychologists provide us—by way of comparison—with indications concerning many other factors that may have influenced relations among brothers. The source base, dominated as it is by all kinds of property-related transactions and limiting the scope of the research questions that can be asked, forces us to focus on legal and economic questions, although it should bear in mind that this reveals only one detail of a complex picture.

This part of the analysis should begin with a discussion of several general issues associated with the inheritance system among brothers. After the closest ancestral relatives (parents) and descendants (issue), brothers were the third group in line to inherit. This order is confirmed both by normative sources (collections of customary laws and royal legislation) and by evidence of charters from various parts of the Carolingian realm. Yet, while codes of barbarian laws compiled between the sixth and the ninth centuries list other, clearly hierarchical groups of more distant relatives after brothers, relatives with clearly defined property rights and mutual obligations, in ninth-century documentary sources is noticeable a dichotomous division between ancestral relatives, descendants, and collateral relatives to the second degree according to the Germanic method of calculation (i.e. nephews) on the one hand, and more distant relatives on the other. The inheritance rights of the closest relatives and the resulting obligations were precisely defined in charters, with the obligations being ascribed to specific individuals. More distant relatives were treated as one uniform group (*coheredes*), with a general inheritance right, or were not mentioned at all. Worthy of note is the fact that ninth-century charters feature a standard term to refer to hereditary property: *hereditas paterna vel fraterna*, pointing to two basic sources of hereditary possessions at the disposal of a free man.

We can conclude on this basis that second-degree kinship was universally regarded in the ninth century as the boundary of the immediate family, with all the consequences of this state of affairs: members of this group were expected to show absolute loyalty, to collaborate, and their right to inherit from each other was not questioned. While reading documentary sources, we can see that in this particular group family solidarity

was manifested in the strongest possible manner, as was a sense of responsibility for the fate of female relatives and underage children. Representatives of this small group of closest relatives could also oppose arbitrary disposition of the inheritance, and inheritance claims under the law of propinquity were difficult to challenge. This division was by no means new: it corresponded to a distinction present in customary laws, for example the Salic law, where the most immediate family was defined with reference to the bond of brotherhood.[2] What is characteristic of situations described in documentary sources is the fact that in the ninth century the boundary of second-degree kinship of Germanic computation (that is children of brothers or possibly sisters) defined a group beyond which efforts were made to limit inheritance claims of more distant relatives in a variety of ways. Obviously, this does not mean that such claims were not recognized as legitimate at the time—on the contrary, charters indicate that it was precisely the legitimacy of such claims that was the most serious problem for testators.

An interesting testimony (though difficult to interpret owing to its unclear provenance) to legal sanctioning of the commonly recognized boundary between close and distant relatives is a chapter of a capitulary attributed to Charlemagne and dealing with the period at the end of which an estate passed to the possessor by prescription.[3] According to this regulation, the prescription principle did not apply in the case of hereditary property, and heirs up to the third degree of kinship (unfortunately, it is not known how this was calculated) could claim their share regardless of how long another person (relative) had held the property.

The conclusions that can be drawn from an analysis of the diplomatic sources suggest caution when considering the thesis that individuals in the period functioned in a wide and amorphic circle of cognate kin. The phenomenon cannot be observed in the charters from various parts of Carolingian Europe (which, obviously, does not give us grounds to question it in general). Family strategies took into account primarily relations determined by the second degree of kinship, with a domination of agnate bonds. The end of the eighth century and the ninth century produced many last wills with detailed property dispositions. They present us with a more structured order of inheritance in the case of patrimony. According to a frequently recurring model, when the deceased left no closer heirs, the first to inherit were his parents, followed by brothers and brothers' sons, and in the absence of those, by sisters and sisters'

2 This is suggested e.g. by title 58 of the law (*De chrenecruda*), analyzed by Modzelewski, *Barbarian Europe*, 114ff.

3 The regulation is among several decrees from different manuscripts and difficult to attribute and date, combined into one group and attributed (quite arbitrarily) by the editors of the capitularies to Charlemagne. It has survived to our times in a late (eleventh century) Italian manuscript containing the *Liber Papiensis*, Mordek, *Bibliotheca capitularium*, 246, 248. MGH LL *Capitularia regum Francorum*, 1, no. 105, chap. 16, p. 219: "Inter duos fratres anni curricula non computetur, sed semper equaliter dividant, quia de uno patre et matre nati sunt. Et haec curricula usque ad terium sequantur gradum."

sons, followed by maternal uncles and their progeny.[4] Usually, at the end the testator indicated an ecclesiastical institution.[5] Obviously, the source material concerns unique situations, when, for example, a monastery was to be the recipient of the property and representatives of this particular institution were interested in drawing up and preserving a will as well as precise description of the order of inheritance. For this reason only a small and probably non-representative sample is available, on the basis of which is it hard to draw definite conclusions regarding the dominant inheritance practice. The privileged position of brothers and their sons, that is the male collateral line, is clear, although in the period sisters and their children, too, are a clearly distinguished group, listed immediately after the brothers in the order of inheritance. Sometimes—a fact that certainly should be noted—in the order of inheritance brothers and their sons were ahead of the daughters of the owner of the property, being listed right after his male descendants.[6]

After the death of the head of the family, the inheritance was usually divided by the closest descendants, that is the deceased's children of one or successive marriages. The problem is that, although this principle is beyond doubt, we generally do not have any documents that would tell us how exactly the property was divided among the sons (and daughters). The limited written evidence—for example, copies of agreements documenting the division of the inheritance among brothers, preserved in the collections of *formulae*—is without information that would allow us to specify in greater detail the circumstances in which the agreements originated (whether they were a consequence of a conflict or whether for some reason an uncontested division was documented).[7] The lack of sources probably has a simple explanation: the divisions were carried out among the closest relatives on the basis of oral agreements, and in divisions of the inheritance among brothers the formally binding principle was, as has already been said, that of the equality of all male heirs from a lawful marriage (I deliberately leave aside the problem of illegitimate descendants, to which I will return later).[8] It was only when a son was excluded from the inheritance or a share due to another son was

4 Some figures showing the share of brothers in the inheritance on the basis of documents from St. Gallen see Goetz, "Coutume d'héritage," 219ff.

5 An example of a precise regulation of the order of inheritance is a donation by a certain Ruadpert for the monastery of St. Gallen, in which he listed no fewer than seven kin groups with a right to inherit from him the right to use the property before it passed to the monastery (the donor's mother, children, his brother, his brother's sons, his sisters, their sons, his maternal uncle's sons), UstG2, no. 538, pp. 151–52, a. 868 (= ChLA, vol. 107, no. 33).

6 UstG2, no. 540, pp. 153–54, a. 868 (= ChLA, vol. 107, no. 36).

7 *Cartae Senonicae*, in MGH LL *Formulae Merowingici et Karolini aevi*, no. 29, pp. 197–98; *Formulae Salicae Merkelianae*, in MGH LL *Formulae Merowingici et Karolini aevi*, no. 21, p. 249.

8 What is significant is the justification of the equality of shares from the already-mentioned undated Italian capitulary (MGH LL *Capitularia regum Francorum*, 1, no. 105, chap. 16, p. 219), in which the legislator says explicitly that it stems from being born of the same mother and father (i.e. it concerns full brothers).

expanded, owing to some exceptional circumstances,[9] or there was (or was predicted) a conflict over the division that sources were created: such circumstances prompted those concerned to record testamentary dispositions in writing—although these must have been exceptional cases.

Divisions of the inheritance were of crucial significance not only when it came to defining relationships within the family, but also to the self-determination of every heir as a member of the fraternal (family) group. The awareness that the property to be inherited by a man was part of a bigger whole—the heritage to which all brothers were entitled—was expressed in the language of the sources. Characteristically, in commonly used documentary *formulae* the allodial estate was defined as the share a brother got following a division among all brothers ("quicquid contra fratres suos in propriae hereditatis partem tulit,"[10] "res mea que da germanis meis in sorte obvinet"[11]) and was clearly separate from estates acquired individually from third parties (*adquisitio*, *conquesitum*) and from the property inherited from the mother. Similarly, if a father had adult sons with their shares following a division of the inheritance, the share that remained in his hands was described as a share *contra filios*. It was commonly believed (at least by the clerks drawing up the charters) that defining the status of property was inextricably linked to defining the group that could make claims to that property on account of the law of propinquity. The feeling that one had at one's disposal a part of a whole, existing as a legal entity also after its actual division among the members of the group entitled to the inheritance, remained very much alive also among successive generations of heirs. Thus the fraternal bond was closely linked (it may even be said that it was considered equivalent) to an awareness of sharing the property inherited from the ancestors. This enables us better to understand the resistance to disposing of the patrimony—for this not only deprived family members of their property rights, but also struck at the very root of the symbolic ties within a kin group.

No reflection on the ownership structure among brothers can leave out the problem of the joint use of property, often referred to as the undivided property of brothers, that is, a form of collective ownership under which the brothers jointly managed their patrimony. When speaking of such undivided property jointly held by brothers in the early Middle Ages, it must be noted that we are not dealing here with a precisely defined legal institution. Normative texts which mention undivided property held by brothers do not specify what is behind such a concept. In legal provisions joint undivided property was usually defined by means of a descriptive formula whereby brothers lived together on their hereditary estate.[12] Diplomatic sources say little about the circumstances of the

9 Such cases are confirmed by document sources, e.g. *I placiti del 'Regnum Italiae'*, no. 13, p. 36–37.

10 TrFr, no. 413, p. 354.

11 MemLuc 5/2, no. 424, p. 255 (= ChLA, vol. 74, no. 38); no. 464, p. 278 (= ChLA, vol. 75, no. 28).

12 See, e.g., *Edictum Rothari*, in *Le leggi dei Longobardi*, chap. 167, p. 46; *Liutprandi leges*, in *Le leggi dei Longobardi*, chap. 70, p. 162; chap. 74, p. 164; cf. MGH LL *Capitularia regum Fancorum*, 1, no. 165, chap. 6, p. 330; MGH LL *Capitularia regum Francorum*, 2, no. 218, chap. 1, pp. 94–95.

emergence of joint property and the status of undivided property. In other words, it is not known why an estate was not divided and sometimes even whether the fact that brothers were acting as a group jointly making ownership decisions did indeed mean that a division had not taken place in the past. That is why in the following analysis I will use the concept of undivided property in a general sense, that is with reference to all estates jointly managed by brothers. We will not settle whether the joint use of hereditary property was derived from Roman co-ownership or other (Germanic?) legal traditions, which could be described (rather arbitrarily) as joint ownership. In this period there is no source confirming such distinctions.

I should begin by describing the most typical situation in which brothers became owners of undivided property. An estate remained temporarily undivided when a father, before his death, did not divide his property among his sons or when only the eldest of them had begun to live independently. The time between the death of the testator and the moment the brothers came into their shares of the inheritance was, from the point of view of the family group, one of the most difficult moments. Divisions of property, although formally based on the principle of equality among brothers, were in fact associated with the necessity of deciding which part of the property should be inherited by whom (if the father had not clearly expressed his will before his death). The divisions were not carried out according to some strictly defined abstract rules (everyone getting an equal share), but were a result of negotiations among brothers, sometimes turning into conflicts, which occasionally were long-lasting. The emergence, course, and intensity of these conflicts were influenced by the circumstances of the testator's death. The situation was different when the father left a will (oral or written) more or less precisely describing the rules of the division, and different again when death occurred suddenly or the father's divisions were questioned by the sons. Normative sources contain evidence showing that such conflicts among brothers, often born of different mothers and differing considerably in age, were a serious social problem.

In the customary law of the Alemanni and also in the royal laws of the Carolingian era, can repeatedly be found provisions prohibiting brothers from squandering their shares of the property before the inheritance was divided.[13] Presumably this was about combating a fait accompli policy pursued by some heirs, that is the practice of appropriating and then disposing of a part of the inheritance to the detriment of other brothers before the value of the legacy was established. In documentary sources we also find references to inheritance division being delayed, although we do not know the reasons behind such decisions. There were cases when one of the brothers died before the division was carried out, which further complicated matters.[14]

In exceptional cases the fact that the property remained undivided may have resulted from an heir being unwilling to come into his share. Such a situation is described in Lothar I's Italian capitulary promulgated in 825. Lothar condemned in it those who shied

13 *Leges Alamannorum*, chap. 85 (88), p. 149.

14 See, e.g., TrFr, no. 186, pp. 178–79, a. 802.

away from taking their share in the family inheritance located within the borders of the Kingdom of Italy. This concerned particularly those cases in which one brother chose an ecclesiastical career, while another brother—despite the fact that the inheritance had been divided—refused officially to take possession of the share due to him.[15] Such conduct—unworthy, according to the ruler—was prompted by a reluctance to fulfil military duties associated with land ownership. According to the law, a landowner was obliged to report for military duty in the province in which his estates were situated. However, in the analyzed situation no one responded to a call to arms: the clergyman was for obvious reasons exempted from military duty, while his secular brother was not formally the owner of his share of the patrimony and so did not feel obliged to do military service.

Such a behaviour on the part of the brothers may have been caused by several factors. From the point of view of the magnates (the so-called *Reichsaristokratie*), doing military service where their estates were located was a troublesome duty. Estates granted by rulers (and not only rulers) to their own people in remote parts of the growing Carolingian realms as well as marriage alliances between families from distant provinces meant that many families had their property spread over a vast area. This prompted fathers to divide their property among their sons according to a geographical principle: thus emerged separate estates controlled by various branches of one family. A good example of such a strategy was the inheritance policy of Count Eberhard of Friuli (d. 867).[16]

However, the problem did not only concern magnates linked to the court, but also lower-status families (for example, minor royal vassals or local aristocrats) acquiring landed estates thanks to Charlemagne's policy of military expansion. This particular group was clearly the addressee of Lothar I's capitulary. The considerable mobility of the Carolingian elites before the divisions of the empire became consolidated meant that descendants of owners of estates located somewhere on the peripheries of Carolingian Europe were not eager to tie their fate to this or that particular piece of land they had inherited. For this meant that they had to remain—permanently or temporarily—in provinces far away from the political centre and give up the possibility of a career at the side of a ruler or another influential protector. Worse still, they were forced to carry out military duties—not necessarily profitable but always dangerous—on the frontier.

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15 MGH LL *Capitularia regum Francorum*, 1, no. 165, chap. 4, p. 330: "Precipimus de his fratribus qui in nostris et Romaniae finibus paternae seo maternae succedunt hereditati, si contigerit quod unus eorum ecclesiasticae miliciae sit mancipatus, et iccirco is qui seculariter militare debuerat, ut se ad defensionem regni nostri subtrahat, in nostris finibus partem substantiae in portionem suscipere dissimulaverit, idcirco ut nequeat constringi: ubicumque comis suus cum invenerit, licentiam distringendi ei concedimus. Ita ut primum fideiussores donet usque ad placitum suum, ut bannum nostrum conponat; si vero fideiussores non invenerit, tam diu sub custodia per comitem teneatur, quousque aut fideiussores inveniat, aut bannum nostrum solutum habeat."

16 Analyzed in La Rocca and Provero, "The Dead and Their Gifts."

It was no coincidence that Lothar I's ordinance concerned the Kingdom of Italy: the lands had been conquered by Charlemagne half a century earlier. After 774 there emerged on the Italian Peninsula a new, Frankish elite, associated with King Pippin's court in Pavia. The material basis for its existence in the captured provinces was provided by vast landholdings, granted by the ruler mainly from estates confiscated from those Lombard magnates who did not want to accept the new ruler. The death of King Bernard in 818 brought with it a decline of Pavia as a centre of power and then a restriction of the autonomy of the former Kingdom of the Lombards by Louis the Pious. As a result, Italy became a rather unattractive place for ambitious sons of the Frankish conquerors. On the other hand, representatives of Lombard families who managed to hold on to their position during the reigns of Kings Pippin and Bernard were just as hostile as the Franks—if not more hostile—to Lothar I's rule and his military plans. Thus members of both groups had important reasons to look for possibilities of benefitting from their hereditary estates without taking on the associated responsibilities. Aware of this resistance and wanting to avoid undermining the military potential of the kingdom entrusted to him, Lothar ordered his *comites* to use force with regard to persons shying away from accepting their inheritance and fulfilling the related obligations.

The following chapter of the same capitulary contains just as interesting a piece of information about brothers keeping their property undivided in order to avoid military service.[17] Lothar I changed the existing rule whereby, when brothers managed their property jointly, only one of them had to report for military duty. The young emperor ordered that from then on only one brother was to remain at home to manage the estate. The other brothers, no matter how many there were, were to take up arms whenever they were summoned by the ruler. If the brothers quarrelled over which one of them was to remain at home, the dispute was to be resolved radically: all brothers without exception were to take part in the military expedition. Interestingly, the same rule was expanded to include nephews. This would suggest undivided property of paternal uncles and nephews or undivided property being maintained in successive generations. Given the scarcity of the available evidence, it is impossible to determine whether joint property also meant that married brothers lived together.

Lothar's capitulary is extremely valuable testimony, for it reveals property strategies employed to pursue objectives that went beyond narrowly defined economic interests. It also demonstrates the motivation of members of family groups

17 MGH LL *Capitularia regum Francorum*, 1, no. 165, chap. 6, p. 330, Lothar I's Italian capitulary of 825: "De fratribus namque qui simul in paterna seo materna hereditate communiter vivunt, nolentes substantiam illorum dividere, hac occasione ut unus tantum eorum in hostem vadat, volumus ut si solus est vadat; si autem duo sunt, similiter; si tres fuerint, unus remaneat: et si ultra tres numerus fratrum creverit, unus semper propter domesticam curam atque rerum communium excolentiam remaneat. Si vero inter eos aliqua inter eos aliqua orta fuerit contentio, quis eorum expeditionem facere debeat, prohibemus ut nemo illorum remaneat." Lothar's decision was confirmed forty years later by his son, Louis II, in a capitulary promulgated before an expedition against the Saracens, MGH LL *Capitularia regum Francorum*, 2, no. 218, chap. 1, pp. 94–95.

making collective decisions concerning their legal situation. However, the exceptional circumstances in which the source originated (threat of a war, internal crisis in the Kingdom of Italy, and reorganization of power structures in this territory) suggest caution in approaching the information included in it. The behaviour patterns condemned by Lothar I emerged in response to an uncertain situation in a restless province of the Carolingian realm, rather than as a universally accepted response to coercion on the part of the ruler. Nor do we know how current these behaviour patterns were—whether they were isolated incidents prompting the monarch to undertake preventive measures or whether we are dealing with a common phenomenon and an attempt to reverse a dominant trend.

Given the multiplicity of individual situations and complex circumstances that may have led to division of property being abandoned (or delayed), it is difficult to formulate unequivocal conclusions concerning the practice of joint management of hereditary property by brothers. Long-term joint management of hereditary estates must have had mainly an economic justification. This may have been the case of owners of small landed estates, for whom fragmentation of property below a certain level meant not only pauperization but even loss of personal status (the boundary between freedom and bondage was very thin in the case of owners of small estates). Indirect evidence suggests that the tendency to maintain property undivided may have been more evident among groups with a lower status. However, documentary sources demonstrate irrefutably that joint property existed also among wealthy landowners.[18]

At the same time it must be kept in mind that division of hereditary property may have involved only a part of the property, with the other part remaining—for various reasons—undivided, jointly held by all brothers entitled to the inheritance. Charters feature characteristic *formula* in which the entire hereditary property is described generally as divided and undivided property (for example, "tam divisa inter nos, quam etiam ea, que in commune adhuc habere videmur; omnia partita et non partita; quicquid proprietatis habeam divisum seu indivisum," etc.[19]). Again, we usually do not know what factors led to a given part of the patrimony being excluded from division—perhaps this was determined by practical considerations (the nature of the estates, their number and form of use), perhaps other factors were at play, for example one part of the property being intended to be a pious donation in exchange for prayers of intercession for the souls of dead family members. Sometimes joint donations happened, when brothers were about to take possession of their inheritance—for example right after their father's death, when a donation for the soul of the deceased was part of the process of redefining

18 See e.g. TrFr, no. 436, pp. 374–75, a. 820, brothers Isanhart and Otolh.

19 *Chartularium Sangallense*, no. 187 (= ChLA, vol. 100, no. 17) a. 805 (800–806?), donation of two brothers, Wago and Chadaloh, sons of *comes* Perahtold, for the abbey of St. Gallen; UStG2, no. 386, p. 6, a. 843 (= ChLA, vol. 104, no. 31), donation formula: "quicquid proprietatis … visus sum habere, sive ex paterna hereditate seu ex adquisito, sive divisum habeam cum meis coheredibus seu indivisum."

the ownership structure within the group.[20] Finding an answer to the question about the motivation behind such decisions is difficult, because only written acts of donations of joint property to monasteries and churches are available, and in such charters for obvious reasons the commemorative aspect comes to the fore.

Documentary sources also record situations in which only some of the brothers acted together, jointly holding their part of the property acquired after the division of the inheritance between them and the other brothers.[21] Again, the reasons behind such decisions remain unclear. We can only surmise that in such circumstances the fact that some brothers held joint property may have been determined by their age (the elder brothers had received their share of the inheritance earlier, the younger ones had come into their share only after their father's death and had not divided it among them), having different mothers (full brothers may have been more inclined to cooperate than stepbrothers), or the existence of factions, as it were, among brothers. It is also worth noting that joint action may have had rather mundane motives, for example, purely economic ones. This may explain the common phenomenon of pairs of brothers appearing in tenancy agreements concluded with representatives of large ecclesiastical institutions. In the Italian bishopric of Lucca, known for its abundance of sources, two brothers appeared in the ninth century as tenants of the bishop's estates in nearly forty cases.[22] Wherever sources shed some light on those social groups that usually remain in the shadow, there are examples of the economic collaboration of brothers as well; this concerns, for example, free and unfree peasant families, in which brothers and their families lived off one farm. Inventories and lists of possessions, including those that were the subject of various transactions, featured the name of one brother (in the "x et germani/fratres eius" formula) as an element identifying one peasant family. In such cases the brother mentioned by name was probably treated as the head of the group, which may have been composed of both underage and adult members.[23]

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20 TrFr, no. 226, p. 209, a. 806. Donation of *comes* Droant's three sons, made in the presence of their mother and relatives, for St. Corbinian, patron of the Bishopric of Freising, with the proviso that the brothers may modify it, provided the modification is not to the detriment of the bishopric; a similar intention must have been behind the renewal of their father's donation for the Bishopric of Freising by the brothers Eio and Alphart, TrFr, no. 323, pp. 276–77, a. 814.

21 UstG2, no. 487, pp. 103–4, a. 855/861 (= ChLA, vol. 106, no. 28).

22 See e.g. MemLuc 5/2, no. 301, pp. 177–78 (= ChLA, vol. 72, no. 13); no. 411, p. 249 (= ChLA, vol. 74, no. 26); no. 418, p. 252; no. 522, p. 312 (= ChLA, vol. 76, no. 39); no. 524, pp. 313–34 (= ChLA, vol. 76, no. 41); no. 634, pp. 377–78; no. 664, p. 399; no. 668, pp. 401–2; no. 670, p. 402; no. 680, pp. 407–8; no. 681, p. 408; no. 685, p. 410; no. 687, pp. 411–12; no. 696, p. 417; no. 697, pp. 417–18; no. 714, p. 429; no. 715, p. 430; no. 738, p. 444; no. 796, pp. 482–83 (= ChLA, vol. 82, no. 27); no. 830, pp. 503–4 (= ChLA, vol. 83, no. 12); no. 893, pp. 545–46 (= ChLA, vol. 84, no. 29); no. 901, p. 551 (= ChLA, vol. 84, no. 39); no. 904, pp. 552–53 (= ChLA, vol. 84, no. 42); no. 909, pp. 555–56 (= ChLA, vol. 84, no. 47); no. 921, pp. 563–64; no. 1012, p. 625; no. 1015, pp. 626–27.

23 For example, inventories of the estates of the Bishopric of Lucca, second half of the ninth century or beginning of the tenth century, *Inventari altomedievali*, no. XI/1, pp. 207–46. A more extensive formula can be found in Charles III's document for Abbot Fulbert (a. 884), which features the names of five boys: "nec non et eorum parentes tam fratres quam sorores utriusque sexus desuper commanentes et etiam qui de his supra dictis servis nostris ex fiscis copulatas sibi habent uxores," MGH DD regum Germaniae ex stirpe Karolinorum 2, no. 94, pp. 153–54.

In the case of a jointly owned property, any donation required consent of all brothers. The very act of ownership transfer could be performed by one brother on behalf of all the others, and all brothers could be held individually responsible for fulfilling the terms and conditions of the agreement. If one brother failed to fulfil the agreement (for example, he made claims to part of the property donated together with the brothers), he had to bear the consequences proportionally to his share in the undivided property that had been donated.[24] It should be noted that the brothers retained their rights to make decisions about their share of the property, even if the property had not been divided among all brothers and was treated as a whole. The observation is all the more important given that the definition of undivided property adopted by scholars assumes joint property rights of all brothers with no place for the individual exercise of rights to a part of that property. Yet in the practice known from ninth-century sources there are situations in which one brother donated his share in jointly held property without division of that property, that is, he in fact transferred to the recipient his right to his share in the still undivided property, usually with the consent of all the other brothers. Donations of this type were in most cases intended for ecclesiastical institutions, with the donor retaining a lifetime right of use and transfer of that right to his heirs in the second generation (usually to his brothers and brothers' sons). Such donations of estates jointly held by brothers could be revised after the death of one of the brothers. As the situation changed, the surviving brothers could demand that the inheritance be divided between them and the recipient of the donation.[25] However, this sometimes gave rise to conflicts.[26]

Yet in most cases sources provide us with information about individuals severally holding property obtained from a division of their inheritance among brothers, acquired by their own effort or inherited from their mothers and more distant relatives. That brothers held property separately did not exclude collective decisions concerning that property. Documentary sources mention, for example, joint pious donations and other property transactions concerning estates owned by each brother separately, regardless of how they came into possession of these estates.[27]

The practice of several brothers simultaneously making donations from their separate estates to the same ecclesiastical institution may have been motivated by many factors. Among them the biggest role was probably played by joint strategies for building the position of the family group through ties with a powerful monastery or bishopric. Confirming these ties by means of collective grants of land by brothers

24 UstG2, no. 486, p. 102, a. 861.

25 This happened, for example, in 830 in Freising, when after the death of his brother Kerold a man name Kernod asked the bishop for a division of the property held with his brother and to separate his share from the share which Kerold had donated to the Church; in this particular case the division did not give rise to any conflict, TrFr, no. 599, pp. 512–13, see Brown, *Unjust Seizure*, 158, f. 2.

26 See e.g. TrFr, no. 362, p. 309: in 816 a certain Krimheri on his deathbed gave his share of the property jointly held with his brother to the church of St. Martin in Neritinga (Nörting), but his brother kept this property to himself, until an intervention by the Bishop of Freising.

27 See e.g. TrFr, no. 321, pp. 274–75, a. 814, where two brothers jointly donate what they owned "tam de alode quam de conparato seu de qualibet adtracto," which suggests that the donation concerned their entire property, not only the part acquired through inheritance.

also served to secure the durability of such donations. The available diplomatic sources include clauses featuring mutual promises of their inviolability, promises made by brothers to each other. Joint granting of property to an ecclesiastical institution, with the proviso that the heirs (children or brothers and nephews of the donors) would retain the right of use, made it possible to limit the risk of claims being subsequently made to that property under the law of propinquity. However, it should be noted once again that our way of seeing these practices is distorted by the one-sided nature of the available sources, a vast majority of which recorded the flow of property between lay individuals and ecclesiastical instructions.

Similarly, the need to guarantee the durability of a donation to an ecclesiastical institution meant that consent had to be obtained from brothers for every disposition of property that was part of the patrimony, even if the property had been divided. Documentary sources speak explicitly of negotiations with brothers before a pious donation, sometimes even of the brothers' participation in the legal act.[28] The practice of calling one's brothers to be witnesses to property transactions, and of publicly announcing their consent and renunciation of their claims, is known from dozens of references in charters from across Carolingian Europe. It should be noted that the practice was common, despite the fact that formally royal legislation, both Carolingian and pre-Carolingian, guaranteed inviolability of donations made to ensure salvation of the soul, irrespective of the will of the other interested parties.[29] A similar explanation can be provided for the frequent presence of brothers among guarantors (*fideiussores*) confirming the legitimacy of donations and guaranteeing their inviolability.[30]

A similar meaning could also be found in the practice—studied in great detail, especially for the later period—of the so-called *laudatio parentum*, expanding the supernatural benefits stemming from a pious donation to include a broader circle of heirs.[31] The formulas of such gifts often list, in addition to the donor, his parents and children as well as siblings, especially brothers, as recipients of supernatural graces

28 TrFr, no. 329, pp. 281–82, a. 814: a cleric named Rihpald made a *pro anima* donation for the Cathedral of Saint Mary in Freising in exchange for receiving the church in Pipurc as his benefice. The decision was made after a discussion with his brothers and relatives, with Rihpald donating his share with his brother Ermperht (Tunc enim ego Rihpald et frater meus Ermperht accessimus ad altare sanctae Mariae, traditionem et confirmavimus traditionis proprie hereditatis mee partem). Ermperht does not appear as an advocatus, and his presence by Rihpald's side is clearly associated with his renunciation of his inheritance rights to the donated property.

29 See e.g. *Liutprandi leges*, in *Le leggi dei Longobardi*, chap. 6, p. 130; *Ahistulfi leges*, in *Le leggi dei Longobardi*, chap. 12, pp. 254–56; MGH LL *Capitularia regum Francorum*, 1, no. 39, chap. 6, pp. 113–14, a. 803; MGH LL *Capitularia regum Francorum*, 2, no. 136, chap. 6, p. 282, a. 818–19. The inviolability clause was also expanded to include all property transactions which featured an ecclesiastical institution as one of the parties and which were carried out with the consent of the potential heirs and in accordance with the applicable procedure, see *Ahistulfi leges*, chap. 16, p. 258.

30 TrFr, no. 528, pp. 452–53; no. 574, p. 493.

31 White, *Custom, Kinship, and Gifts*; see also e.g. Rosenwein, *To Be the Neighbor*.

received in exchange for such generosity.[32] On the one hand, such endowments were associated with fulfilling moral obligations by immediate kin, that is taking care of the repose of their relative's soul and remembering the relative in their prayer, and on the other they were a form of securing the inviolability of donations. Including living brothers among people in whose intention the donation was made must have meant that they had expressed their prior consent to conveying ownership to the ecclesiastical institution. This also secured the donation against any claims to the property made by the brothers or their direct heirs. Obviously, this concerned primarily allodial estates: the patrimony, which the owner could not fully dispose of as he wished. The situation was different in the case of property acquired thanks to an individual's own efforts or inherited from his mother: such property remained entirely at the disposal of the owner, who did not have to take into account the opinion of his kin.

Depending on each other, brothers were at the same time at the greatest risk of conflicts caused by rivalry over limited material possessions. Obviously, such possessions diminished with every division of the inheritance or pious donation. The fear of property disputes was expressed in elaborate documentary *formula* confirming, in a variety of ways, the brothers' mutual acceptance of decisions concerning hereditary estates. Such tensions may have been behind some cases, known to us from charters, in which brothers tried together to regain or at least to be granted the use of the property given to ecclesiastical institutions by other members of their group. An example is the case of two brothers who in 816 humbly asked the bishop of Freising to grant them the use of a church donated to the bishopric by their father and brother, not mentioned by name.[33] The bishop agreed, but under certain conditions: he obliged the brother who had negotiated the agreement to do all he could to prevent the other brother from violating its terms. This was to be guaranteed by a high bond. Securing such agreements with a surety was not a common practice, and in this respect the case is absolutely unique. The situation described in the charter may have been just the last stage of a longer dispute in which the two brothers, deprived by their father and a third brother of their right to a part of their hereditary property, questioned the donation and acted to the detriment of the bishopric. The surety was to provide an additional guarantee that the brother who was absent when the agreement was concluded (we do not know why, but his very absence is meaningful) would not put forward his claim again. The inside story of the whole case remains unclear: it is unknown whether, when the father and the third brother were making the donation, the remaining two brothers were still minors or whether they had a different mother.

Speaking of property strategies pursued by brothers, I cannot leave out the question of personal links between brothers and wealthy protectors. Vassalage in Frankish society and other societies of the Carolingian realm has been the subject of intensive research.

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32 TrFr, no. 406, p. 350; no. 420, p. 360.

33 TrFr, no. 364, p. 311.

However, even a sketchy discussion of concepts relating to the role of vassalage and various clientelist bonds in the politics, economy, and society of early medieval Europe goes far beyond the framework of the present study. Therefore I will present only just a few topics stemming directly from source evidence, being fully aware, however, that this evidence cannot be treated as a basis for generalizations.

In the Carolingian era, a temporary beneficial holding of land (usually for life) in exchange for providing services to the owner of that land was an important way of building one's material status. The differences in the material status of persons entering into such agreements suggest that the main criterion behind them was not so much social background, but usefulness—above all military usefulness—of the party accepting such a temporary grant. Among vassals (I use the term with the reservation that "vassal" and "vassalage" do not exhaust all the complexity of similar forms of personal relations within the Carolingian realm) there are both representatives of the highest elites of the empire and members of the lower strata differing little or not at all from ordinary tenants with regard to their material status. Although in both cases we encounter the same terminology, the social situations to which the terminology refers are very different. This means that every time must be precisely defined both the kind of relations between the lord and the vassal, and the personal status of the latter. This is made more difficult, if not impossible, by the use of a single model to explain the mutual relations and the consequences for both sides.

The above distinction is hugely important in the analysis of cases in which vassalage encompassed members of one group of brothers. The situation was different in aristocratic families, in which the position of their various members was built on strong foundations (allodial estates, family ties), and the bond of vassalage, especially with the rulers, was above all an element of the families' political strategies; it was also different among minor vassals, for whom holding even small benefices was a *sine qua non* condition of not just maintaining their position in society but sometimes their very existence.

Rarely do we come across a situation in the sources in which several brothers simultaneously can be identified as vassals. Usually, brothers pursued different, though in most cases complementary, career paths (mostly a secular and an ecclesiastical path). It is worth taking a closer look at the case described in Einhard's letter, sent around 833 to an unnamed *comes*.[34] Einhard was interceding for two brothers who, as a result of the conflict among the sons of Emperor Louis the Pious, were at risk of losing their jointly held benefice located on both sides of the Rhein. The estate they sought to retain was located on the right bank of the river and, following the divisions among the emperor's sons carried out after the imprisonment and dethronement of the old emperor, found itself within Louis the German's domain. The unlucky brothers had to face a dilemma they could not solve on their own: how to retain the entire

34 MGH Epp. *Epistolae Karolini aevi*, 3, no. 29, p. 124; see an analysis of the letter in a political context in Kasten, *Königssöhne*, 308ff.

benefice, if claims to the land that was part of it could be made by two quarrelling rulers (or even three, including the imprisoned Louis the Pious). As a result of growing tensions between Louis the German and Lothar I, who aspired to exercise power over his brothers, both rulers looked with hostility at vassals who, as holders of estates in both parts of the Carolingian realm, were forced to manoeuvre between the competing suzerains. The brothers on whose behalf Einhard spoke tried to find a way out of this impasse and proposed a truly Solomon-like solution. They asked Lothar to consent to a division of the benefice into two parts—the Rhein would mark a boundary between them—and to allow each brother separately to swear an oath of fidelity and promise to serve the ruler reigning on a given bank of the river. Thus the brothers would be able to retain together the entire property they had held before. As the letter suggests, however, neither Louis the German nor Lothar I were willing to agree to such an arrangement, which prompted the brothers to try to get the support of Einhard, an elderly but still respected and influential figure.

The case of these two unnamed brothers is important to us for two reasons. First of all, it confirms the practice of two brothers jointly holding one, undivided *beneficium*. As we can guess, this was associated with the need to swear allegiance by both brothers and their joint acceptance of the obligation to provide service to the lord (in this case probably Louis the Pious). It also confirms, however, that the brothers saw no obstacles that would prevent them from serving two lords. They clearly must have believed that this did not threaten their joint property strategies, based on mutual trust and collaboration. At the same time, however, the story demonstrates how the bonds of brotherly loyalty overlapped with other forms of personal obligations based on fidelity. Had Lothar and Louis accepted the solution proposed in the letter, then in the case of a conflict between them the vassal brothers would have faced the dramatic choice between loyalty to each other and obligations to their overlords. To whose favour the scales would have turned we can only guess. Yet there is no doubt that both brothers were determined to preserve their entire property: in the end they decided to ask Emperor Lothar himself for mercy and sought support among the highest placed individual at the court. Obviously, their behaviour was rational in 833, when no one could suspect how deep a political rift would be caused by the disagreements between the royal brothers. Ten years later such a move would have been impossible.

Einhard's letter brings us into the world of great politics, the victims of which also included representatives of a group not playing an active part in those politics, that is vassals holding small estates and medium landowners. It sheds a different light on the accusations made by contemporary critics of the policy pursued by Lothar and his brothers, namely that vassals were forced to commit perjury, that is to pledge allegiance to many lords or to unwittingly break the oath of allegiance. However, political divisions also had far-reaching social consequences, including the risk of brothers-german facing each other in a fratricidal conflict. Thus the words of ninth-century authors, writing with dismay about fraternal blood being shed on the fields of Fontenoy, were not just a

metaphor describing a clash between members of one political community; they could be understood very much literally.[35]

A moment of key significance to the relations among brothers and within the family as a whole came with the death of one of the siblings. Diplomatic sources bring a lot of evidence documenting the process of redefining property relations among brothers in such circumstances. If a brother died childless, the other brothers were the first to inherit from him. The inheritance encompassed the deceased's share in the patrimony as well as the property he had acquired in his lifetime or had come into it following bequests from third parties. Details of the divisions are not completely clear; it seems that every brother of the deceased had an equal share in the inheritance (significantly, the charters I know do not feature cases of divisions of the inheritance between legitimate brothers and natural brothers, although—as has been mentioned earlier—customary laws did provide for such situations).[36] In the case of stepbrothers with different mothers, the status of the estates inherited by the deceased from his mother and from his father differed: the property from the mother was inherited only by the deceased's brothers-german, while the patrimony was inherited by all brothers.

When one brother died, mutual property-related obligations among the remaining brothers needed to be regulated, and from the point of view of a researcher this is an exceptionally good moment to take a look at how such relations looked in practice. In principle our picture of property relations among brothers, based as they were on inheritance customs within the family group and formal-legal links with other partners, especially the Church, is incomplete. For the relations among brothers were sometimes regulated also by formal agreements, no different from those concluded with third parties. For example, in sources originating from Italy we can find cases of brothers granting each other loans secured against part of the patrimony obtained after customary divisions of the inheritance. The consequences of such agreements affected legal heirs, even if the heirs were not members of the family.

Sometimes these agreements are of very detailed and complex nature and provide in advance for the contracting parties to be able to prove their rights in court. In Lucca a certain Magno obtained from his brother a loan of 45 solidi secured against his hereditary landed estates from inheritance divisions with his other brothers. According to the terms of the contract, Magno and his heirs were obliged to pay back the loan, within thirty days of being called to do so, to any heir of the borrower or anyone to whom enforcement of this right would be transferred *pro anima* and who would present the relevant charter ("ille homo cui tu hanc pagina pro anima tua ad exigendum et dispensandum dederis, et ea nobis in judicio ostiderit"); this obligation was confirmed

35 In *Song of the Battle of Fontenoy* (Angilbertus, *Versus de bella quae fuit acta Fontaneto*, 138) an eyewitness to the battle, Angilbert, painted a dramatic picture of the clash, in which a brother faced a brother and an uncle faced a nephew: "Bella clamat, hinc et inde pugna gravis oritur, / frater fratri mortem parat, nepoti avunculus."

36 For examples of divisions of property by brothers after the death of one of them with a clear emphasis that the shares in the inheritance are to be equal, see e.g. TrFr, no. 186, pp. 178–79, a. 802.

in another document issued after his brother's death—upon which the pledge passed to the executor of the deceased's will and his heir, Bishop of Lucca.[37]

In addition to matters concerning the order of inheritance of estates and obligations, charters from across the Carolingian empire contain references to actions—closely linked to the process—taken by brothers to ensure that their deceased brother would be remembered in prayers. They often feature examples of gifts for the soul of a deceased brother. Although in most cases such evidence is laconic and, apart from general stereotypical formulas, does not explain the donor's individual motivation, it can be assumed that such gifts were offered usually in the following situations: when the donor inherited some other property from the deceased; when the deceased had obligated his brother to make such a gift; and, finally, when there was a strong emotional bond between the brothers or the circumstances of the deceased brother's death required special posthumous assistance from the living. All these factors may have been at play simultaneously, although the last one eludes us almost completely. Only rarely can be observed details like those from a charter drawn up in Freising in 840, when a man named Ermbert gave the Church a substantial part of a forest for the soul of his brother who had been killed (that is, his death was sudden and quite dangerous in terms of the salvation of his soul).[38] In the first case mentioned above, that is when a brother became his brother's heir, the moral obligation arose with the coming into the inheritance of the deceased's property. This way of thinking about the relation between the deceased and his heir is illustrated by a well-known passage from Dhuoda's *Liber manualis*:

> Pray for your father's relatives, who have bequeathed him their possessions by lawful inheritance. You will find who they were, and their names, written down in chapters toward the end of this little book. Although the Scripture says, "A stranger luxuriates in another's goods," it is not strangers who possess this legacy. As I said earlier, it is in the charge of your lord and father, Bernard. To the extent that these former owners have left their property in legacy, pray for them. And pray that you, as one of the living, may enjoy the property during a long and happy lifetime. For I think that if you conduct yourself towards God with worthy submission, the loving One will for this reason raise up these fragile honors for your benefit. If through the clemency of almighty God, your father decides in advance that you shall receive a portion of these estates, pray then with all your strength for the increasing heavenly recompense to the souls of those who once owned all these.[39]

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37 See e.g. MemLuc 5/2, no. 424, pp. 254–55, a. 819 (= ChLA, vol. 74, no. 38) and no. 464, p. 278, a. 824.

38 TrFr, no. 635, p. 540.

39 Transl. Dhuoda, *Handbook for her Warrior Son*, 205. Dhuoda, *Manuel*, lib. 8, chap. 14, pp. 318–20: "Ora pro parentibus genitoris tui, qui illi res suas in legitima dimiserunt hereditate. Qui fuissent, uel quae nomina eorum, in capitulis huius libelli, in fine, inuenies conscripta. Et licet Scriptura dicat: 'In bonis alienis gaudet alter'; tamen eorum, ut praedixi, haereditates non extranei, sed tuus possidet dominus et pater B[ernardus]. In tantum quod illi remanserunt, ora pro possidentes; ora ut eius uiuens multo fruaris feliciter tempore. Credo enim quod si digne et humiliter erga eum certaueris, pium tibi ex hoc augebit incrementum fragilitatis dignitatum suarum. Si, concedente prius clementia omnipotentis Dei, tuus genitor aliquid exinde tibi iusserit largiri, in quantum ualueris per amplius, ora ut illi merces adcrescat ex eorum animabus quorum cuncta fuerunt."

The situation was slightly different when brothers made each other the executors of their last wills. They acted as executors either on the basis of a decision of the testator expressed directly (also in writing) or under a customary law as the closest relatives.[40] Obviously, for scholars the unequivocal situations are those in which references to brothers as executors appear in testamentary dispositions or if there are references to the function transferred to them in a different manner (for example, as a result of a public declaration of will[41]). In other cases, when we encounter a gift offered on behalf of a deceased's brother, we have to rely on conjectures. The meaning of testamentary clauses obliging brothers to fulfil the deceased's will was twofold. On the one hand, this was a natural choice, as it were, for the testator, who imposed the duty on his closest relatives, who, after all, were his heirs as well. On the other by making his own brothers the executors of his dispositions, the testator lowered the risk of them making groundless claims to the inheritance: it seems the very disposition of property before death could not have happened without prior acceptance from the brothers. By fulfilling the deceased's last will the brothers confirmed their consent, for example, to a part of the patrimony being given to ecclesiastical institutions and incurring a kind of moral obligation to the deceased.

Last wills also contain concrete arrangements indicating how the deceased testator's brothers can take over the property intended by the deceased for the Church without the risk of the deceased losing the benefits of prayers of intercession said for him by representatives of the ecclesiastical institution receiving the property. This usually required the brothers to pay a specific sum in exchange for the land, a sum that was to be earmarked for remembering the deceased in prayers.[42] In addition, carrying out testamentary provisions was usually spread over time, sometimes over many years, to enable brothers to collect sufficient sums to buy out the estates intended as pious donations.[43] A failure to fulfil such a condition on time was regarded as renunciation of claims to the estates, which from then on became formally the unquestionable property of the monastery or church receiving the donation. Sometimes the amounts required were considerable, and the deceased's brothers were not willing or were unable to raise them. In such cases the inheritance was divided in accordance with the testator's will, without taking into account his brothers' claims. This is evidenced by charters in which executors selling the estates clearly noted that they were doing so because the deceased's brother or brothers had failed to fulfil the conditions of his last will and had not bought out the estates on time.[44]

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40 See e.g. TrFr, no. 343, p. 293, a. 815, where a brother acted on behalf of the deceased, who had not managed to make the gift before his death.

41 TrFr, no. 372, pp. 316–17, a. 817. On his deathbed Liutfrid made his brother Anno the executor of his will, in the presence of relatives and after consulting them; similarly: TrFr, no. 303, p. 262, a. 812.

42 See, e.g., UstG2, no. 499, p. 114, a. 864.

43 For more, see Pieniądz, "Relacje między rodzeństwem," 206–7.

44 See, e.g., MemLuc 5/2, no. 239, p. 139, a. 792.

The presence of the testamentary formulae discussed above is important from the point of view of the property strategies of family groups. This is because the documents show the social and legal mechanisms making it possible to reconcile the religious need to obtain prayerful intercession in exchange for property donated to the Church, and the need to secure the family's material interests. Acts of donation must have been a result of prior negotiations; they were a confirmation of arrangements concerning the property dispositions of a family member. That the testators acted in collaboration with their immediate families is in any case also evidenced by the names of brothers listed among the witnesses of these charters.

It is worth noting that this is an attempt to resolve a contradiction between two co-existing normative systems. Reconciling inheritance principles rooted in customary law and the Christian need to take care of one's own and one's relatives' eternal salvation required a compromise. We know far less about how such a compromise worked in practice: that this was not always an effective solution is evidenced by echoes of property disputes resulting from attempts by brothers to recover, under the law of propinquity, estates donated to the Church.

The preserved documentary sources do not make it possible to determine the scale of the conflicts between the deceased's brothers and those who acquired hereditary estates, but such conflicts must have occurred. Customary law norms may have continued to be the basis of siblings' claims to the inheritance (especially the patrimony) under the principle of propinquity. As many studies of charters from various parts of Europe—carried out especially for the tenth and the following centuries—have demonstrated, disputes arising in such situations were a frequent motive prompting church institutions to conclude tenancy agreements with the deceased donor's brothers or to hand over the property in question to them for temporary use. Such documents must have been used primarily to secure future purchasers of the property against claims from a living brother or his heirs, who might have invoked the law of propinquity when making their claims to the inheritance.

It should be stressed, however, that conclusions concerning the complexity of mutual relations can be drawn usually only on the basis of indirect evidence. There are very few cases when, for example, testators openly refer to unlawful appropriation of property, which had been donated by them, by their brother, or to the brother disposing of the property contrary to prior arrangements. In such a situation, transfer of such property—or, rather, the right to such property, if the testator was not actually in possession of it when writing his last will—meant shifting to the recipient of the gift (for example, an ecclesiastical institution) the burden of recovering it. There are generally no situations in which one brother is openly excluded from the inheritance, although we can suspect that some *pro anima* donations were made to deprive brothers of their inheritance. There are also cases in which a share of the inheritance intended for the testator's brother is disproportionately small in comparison with the testator's entire property. This obviously does not have to mean that in each such case the brother was excluded from the inheritance, as some property dispositions may have been made orally or recorded in separate documents.

The act of donation for the soul of the deceased brother and/or on his behalf (under the deceased's last will or on the basis of a decision of his brother, the heir) sometimes accompanied the funeral ceremony, constituting an important element of it. The charters from the archives of the bishopric of Freising contain several extremely valuable *notitiae* with descriptions of funeral ceremonies.[45] The very act of property donation took place in public, in the presence of relatives, in the church in which the deceased's body was placed and where the exequies for his soul were celebrated. The deceased's brother would ceremonially approach the altar to place on it the donation charter, subsequently taken by legal representatives of the Church—in this case representatives of the bishop of Freising. The incorporation of a public act of donation, carried out in a sacred space, into the funeral rites had at least a twofold meaning: on the one hand it was both religious and prestigious, as an act confirming the establishment of a special bond between the donor and the recipient (and thus—through the religious community—with God himself),[46] and on the other it was pragmatic: a donation made in such circumstances was hard to question. It is also obvious that ceremonial gestures made during the deceased's last journey were of psychological significance to the whole family group and the milieu in which the group functioned. Were they also an expression of emotional bonds among brothers? This must remain a matter of conjecture. Similarly, it is impossible to determine the role of this factor in the case of all other commemorative practices, from funding masses for the souls of departed brothers to composing elaborate epitaphs in their honour.[47]

Property matters are closely linked to the brothers' choice of a career. Documentary sources display a certain pattern, suggesting the existence of well-thought-out strategies enabling a group of brothers to enjoy the benefits both of their earthly property and of a clerical career. This phenomenon is particularly evident among families functioning in the immediate milieu of powerful church institutions, linked by a dense network of relations to their local communities. An analysis of these practices is interesting primarily because it shows brothers as a collective entity acting together, and together bearing the responsibility for fulfilling the obligations resulting from their strategy. Obviously, the circumstances in which brothers made decisions concerning their career paths are unknown. It is impossible to say to what extent these decisions were spontaneous, and to what extent they resulted from arrangements among family members or from pressure exerted by elder brothers on younger ones. That these were in the end effective strategies from the point of view of the interests of the group is demonstrated by the amount of evidence confirming rather similar patterns followed in various parts of the Carolingian realm.

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45 TrFr, no. 861, p. 681, a. 860; no. 447, pp. 382–83, a. 821.

46 Angenendt, "Cartam offerre super altare"; on the sacral meaning of this gesture in a later period see Beyer, "Urkundenübergabe am Altar," see also Zeller, "Writing Charters."

47 See e.g. the epitaph composed by Hrabanus Maurus in honour of his brother Gundram and his wife, *Epitaphium Gundramni*, 238.

The most frequently recurring way of pursuing such fraternal strategies was the joint donation of some of the family estates to a church institution with the right to use such estates to be retained by the brother who opted for a career in the Church. In some donation charters brothers explicitly mentioned the name of the one among them who was to take possession of the property, provided he was ordained. Detailed dispositions also specified the way in which family foundations were to be managed: the founder or founders pointed to a circle of the closest kin—especially brothers and nephews—from among whom successive administrators (e.g. abbots) were to be selected.[48] Of similar strategic significance were oblations of underage siblings decided by their elder brothers (I will return to this topic later). It would be ahistorical, of course, to try to separate religious and material motives in such cases. What is important for the present analysis is the fact that brothers acted together, co-deciding the fate of one among them, in accordance with the interest of the whole group.

Sometimes brothers who were clergymen and those who were laymen together managed estates that were church endowments. This applied not just to foundations that remained their family's property, but also to churches belonging, for example, to a bishopric and were used by brothers under an agreement. Whenever an agreement mentions that the rights were inherited by the brothers from their father or relatives, we can suspect that it is a family foundation donated in the past *pro anima*, but with a hereditary right of use. What is more interesting for the purpose of the present analysis than the origins of such rights is taking a closer look at the brothers who had such rights. Such observations show that if only one brother was a clergyman, brothers who were laymen could be a party to such an arrangement too. It is obvious that a clergyman was responsible for the proper performance of the divine service, but the condition of Church property and its management were the joint responsibility of all brothers, who as a group also had to bear the consequences of any negligence.

Interesting testimony is provided by the detailed records of a case heard in Lucca in 853 by a court presided over by representatives of Emperor Louis II. The imperial *missi* adjudicated a dispute between Bishop Jeremiah of Lucca and three brothers, Belisarius, Samuel, and Ansuald, who, under a tenancy contract concluded with the bishop in 844, had been the second generation holding the church of St. Mary and St. Gervasius by the walls of Lucca, and who were accused of neglecting their duties stemming from the provisions of the contract and thus diminishing the property of the bishopric. Only one of the brothers was a clergyman (Belisarius). There was another side to the matter, associated with the policy pursued by Jeremiah's predecessor, Bishop Ambrose, who was accused of acting to the detriment of the bishopric and of the ruler. What is important to this analysis is the fact that the records clearly point to the brothers' co-responsibility for the condition of the property entrusted to them. In any case the tenancy contract

48 See, e.g., MemLuc 4, no. 96, p. 152, a. 786 (= ChLA, vol. 38, no. 1099); MemLuc 5/2, no. 932, pp. 570–71, a. 884.

was concluded with both brothers mentioned by name, and the third brother, who was referred to in the contract but was not of age yet at its conclusion, after coming of age publicly confirmed his will to enter into the contract. In its ruling of the imperial court imposed a high fine of 400 solidi on all three brothers collectively, a fine provided for in the contract.[49]

Beginning with the second decade of the ninth century, in various sources there are references to cases of a layman serving as the legal representative (*advocatus*) of his ordained brother.[50] The practice of appointing such a representative spread in the ninth century under Charlemagne's legislation. Around 802 the emperor made it mandatory for the empire's biggest ecclesiastical institutions—bishoprics and monasteries—to have a secular legal representative.[51] With time such representatives, referred to as *advocati*, began to act also on behalf of the lower clergy. Although there is some difficulty in precisely describing their competences, their responsibilities clearly included representing clergymen in matters not concerning their pastoral duties or Divine Service, that is matters including those associated with the management of the property of a given ecclesiastical institution and disputes concerning their endowments. In the case of both *advocati* of large monasteries and legal representatives acting on behalf of ordinary priests from provincial churches, the dignity was not to be despised as a source of profits (a share in the income from ecclesiastical property, informal use of some of that property, etc.) and prestige.

Significantly, what comes to the fore in studies of the origins of the institution of ecclesiastical *advocati* is primarily the problem of using the dignity to build a political position and property-based foundations of the power of magnates, especially in the post- Carolingian period.[52] Yet the analysis of documentary sources indicates that the function of legal representative of clergymen was treated, also among moderately wealthy people, as a useful tool in the pursuit of their strategies of building their families' material and social positions. Pairs of brothers in which the secular brother was a legal representatives of the ordained brother appear in property transactions. They define the terms and conditions of the use of the property constituting the endowments of the churches entrusted to their care, and grant or change estates that are their joint or separate property. As an *advocatus*, the secular brother also retained indirect influence on decisions, and not only relating to property, taken by his ordained brother, as his legal counsel and as a family member.

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49 *I placiti del 'Regnum Italiae'*, no. 57, pp. 198–205; see also Eldevik, *Episcopal Power*, 148–50.

50 TrFr, no. 173, p. 168, before 802 (early reference!); no. 366, p. 312, a. 816; no. 399, pp. 340–41, a. 813; *I placiti del 'Regnum Italiae'*, no. 45, pp. 147–51, a. 825–40, Milan.

51 MGH LL *Capitularia regum Francorum*, 1, no. 33, chap. 13, p. 93.

52 So far there has been no modern and exhaustive study of the development of the institution of ecclesiastical legal representatives in the early Middle Ages; among older studies, see Senn, *L'institution des avoueries*, Wood, *The Proprietary Church*, 328–38, and Wood, "The Significance of the Carolingian Advocate."

The natural bond of kinship between brothers and the resulting shared property interests were thus considerably strengthened. The overlapping of obligations stemming from kinship sanctioned by the royal legislation and the formal legal relationship stemming from the lay brother acting as a legal representative of the ordained brother is an interesting example of the interpenetration of two normative orders in social practice. The fraternal bond, which may have been loosened somewhat following one of the brothers' vows of loyalty pledged to a guardian and superior (e.g. a bishop) from outside the family was not weakened, but was redefined on a new basis. The interference of brothers serving as legal representatives in property interests of clergymen (also in cases when the property became a gift and was formally owned by an ecclesiastical institution and used by the family only temporarily) thus became sanctioned by law in the eyes of the Church, at the same time serving to build ties between the family and the ecclesiastical institution. As *advocati ecclesiae*, brothers of clergymen enjoyed additional benefits going beyond earthly dimensions—by becoming, though under special conditions, part of the organizational order of the local Church.

The overlapping and interpenetration of these two ways of thinking about the bonds uniting brothers are perfectly illustrated by the relations between the two brothers Kerold and Kernod, who, in 825, in Freising jointly changed the earlier decisions concerning their property.[53] Keeping their property undivided, the brothers, one of whom, Kerold, was ordained deacon, initially made mutual donations, each from his share of the hereditary property, thereby making each other their own heirs. Yet after some time and in circumstances unknown to us they decided to change this disposition and divide the property. Kerold gave his share to the bishop of Freising, at the same time entrusting himself to his care. Kernod took part in all stages of the establishment of the new legal status: first, as Kerold's brother, he revoked the earlier life agreement with his brother, and then, as his legal representative, he assisted in donating Kerold's share in the inheritance to the bishopric. In this case it was possible to cleverly combine the customary property rights of brothers with the need to fulfil the obligations to the ecclesiastical lord.

Brothers' cooperation and loyalty were put to a special test in conflict situations, both when the disputes occurred within the family and when they were with third parties (the sources document mainly conflicts with ecclesiastical institutions). There are many cases in the sources, in which brothers act together to defend their property interests.[54] Acting together made sense in two ways: it stemmed from the closest kin's

53 TrFr, no. 519, pp. 442–43; Bührer-Thierry, "Des évêques, des clercs," 254.

54 UstG2, no. 438, pp. 57–58, a. 855 (= ChLA, vol. 104, no. 28); TrFr, no. 423, p. 362, a. 819; *I placiti del 'Regnum Italiae'*, no. 33, pp. 103–6, a. 822, Lucca; no. 51, pp. 169–73, a. 847, Lucca; no. 52, pp. 173–75, a. 848, Lucca; no. 68, pp. 246–48, a. 865, Como; no. 93, pp. 337–39, a. 884, Caorso (Piacenza); no. 105, pp. 381–84, a. 897, Pomaro (Piacenza).

duty to support each other, such as in the case of a joint oath before a court, but, above all, it strengthened the negotiating position in out-of-court negotiations accompanying conflict resolution.[55] Thus there are known cases in which one party comprised, for example, three brothers, supported additionally by more distant relatives, usually sons and nephews.[56] It should be noted, however, that the principle of loyalty was not always observed; court records contain traces of disputes between brothers—cases of one brother acting to the detriment of another or testifying against him were rare, but it did happen.[57]

Help in the Face of Danger: Revenge, Compensation, and Joint Oaths

In discussions on the internal organization and nature of family relations in early medieval European societies much attention is traditionally devoted to the problem of joint responsibility for actions of each family member and joint duty to retaliate for the harm done to any member of the group. The individual is seen primarily as part of a group, seeking to satisfy all their needs and exercise all their rights within this group, and building their identity also with reference to the group.

Early medieval legal sources are rewarding in such studies, as they contain plenty of detailed information about mutual family relations, networks of obligations and imperatives, methods of resolving conflicts and of establishing hierarchies. The most difficult problem arises, as has been mentioned earlier, when trying to refer the conclusions based on their analysis to the practice of (sometimes) several centuries later. While in the case of property relations we can speak of an excess rather than a shortage of diplomatic sources making such comparisons possible, when we examine topics like vengeance or co-responsibility for payment of compensation, the situation is much more difficult. Eighth- and ninth-century evidence of family revenge, although frequent, is usually equivocal (we do not know, for example, what motivated various individuals—was it really family solidarity?). We learn next to nothing about payment of reparation and *wergild*, and there is little available evidence of relatives jointly swearing an oath.

Medieval European codes of customary laws consistently confirm the right and duty of relatives to take revenge on the person who has made an attempt on the life or health

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55 See e.g. TrFr, no. 358, pp. 305–6, a. 816.

56 TrFr, no. 258, p. 231, a. 807; *I placiti del 'Regnum Italiae'*, no. 57, pp. 198–205.

57 TrFr, no. 466, pp. 398–400, in 822 the imperial *missi* settled a case in which claims to a church in Holzhusun (Holzhausen), the property of the Bishopric of Freising, were made by a man named Adaluni. The list of witnesses called by the judges and giving their testimony against him under oath opens with Adalduni's brother, Regindeo. However, it is not known whether Regindeo gave his testimony of his own will, or whether he was forced to do so. The latter is suggested by Regindeo's later presence among guarantors in the case. (I do not agree with Warren Brown, *Unjust Seizure*, 147–48, who sees in Regindeo's actions signs of a conflict within Adaluni's family). Incidentally, there was another side to the story: the church had been granted by the bishop as a benefice to none other than his own brother, the cleric Deotperht. In this case the bishop's family interests were neatly intertwined with the interests of the bishopric entrusted to him.

of a member of their family group.[58] As in the case of the order of inheritance, in this case, too, the order of honouring such an obligation reflected the hierarchy of kinship: the closer the kinship, the stronger the obligation. Thus it is obvious that those who should be the first to fulfil that obligation were the closest male kin, i.e. ancestral relatives and descendants of the victim, then the victim's relatives in the collateral line: in other words, father, sons, and then brothers. Legal sources rarely make a distinction between various individuals belonging to the closest circle of the avengers; rather, they speak generally about the closest relatives. The accounts that are difficult to interpret, introducing a clear distinction between successive circles of avengers, include title 62 of the Salic law (*Pactus*) and title 68 of the supplement to the *Pactus Legis Salicae*.[59]

Codes of customary laws demonstrate that the codifiers sought to limit the extent of bloody revenge by replacing it with reparation paid by the perpetrators or, in the case of murder, with *wergild*. I leave aside at this point the discussion about the origins of monetary compensation for a crime and about the role of rulers in spreading such a solution. What is important in the present analysis is that the *wergild*, that is, money paid in lieu of revenge, was accepted and divided not by an individual but the entire group which was obliged, through of the bonds of kinship, to avenge any of its wronged members. This principle was obviously observed also in a group of brothers, all adult members of which were treated as a collective entity responsible for the defence of the group's honour. The decision to abstain from bloody revenge on the perpetrator and his family was not taken individually but at least should have been a result of an agreement among all brothers who were of age.

Obviously, these conclusions based on an analysis of normative sources which present a picture intended by the lawmaker. It is not known whether brothers indeed appeared jointly in a feud, because evidence from sources other than legal sources is not only rare but often also enigmatic. What can be said for sure is that, regardless of whether all brothers

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58 The problem is discussed extensively by Karol Modzelewski, "Zemsta, okup i podmiot," 109–29. See also above, p. 128, n. 92. Feud as a social phenomenon and a conflict resolution method sanctioned by law has attracted a lot of interest among medievalists in recent years. As a result of their research it is known that revenge as a form of enforcing one's rights functioned in social practice throughout the Middle Ages and later became legitimized, also symbolically, and played an important role in the strategies of winning and holding on to power. These findings require a revision of the pattern firmly established in historiography according to which elimination of revenge testifies, as it were, to a "modernization" of European societies in the Middle Ages. On revenge see Miller, *Bloodtaking and Peacemaking*; Meyer, "Freunde, Feinde, Fehde"; Hyams, *Rancor and Reconciliation*; Fletcher, *Bloodfeud*; Barthélemy, Bougard, and Le Jan, ed., *La vengeance, 400–1200*; Büchert Netterstrøm and Poulsen, eds., *Feud in Medieval and Early Modern Europe*; Throop and Hyams, ed., *Vengeance*; Tuten and Billado, eds., *Feud, Violence and Practice*.

59 The interpretative difficulty stems from the unclear description of the recipients of the *wergild*: in addition to the victim's son/sons there is also the mother (it is not clear whether she is the mother of the victim or the victim's sons) as well as paternal and maternal relatives (again, it is unclear whether the author meant the mother of the victim and thus his maternal uncles, or the mother of his sons, that is his brothers-in-law). Karol Modzelewski is inclined to agree that the *mater* is the victim's wife (*Barbarian Europe*, 111–13).

were physically involved in asserting their honorary rights, the obligation concerned all of them and could pass from generation to generation until satisfaction was obtained by means of violence or peaceful settlement. The disgrace resulting from failing to fulfil the obligation to exact revenge affected all brothers; refusing to observe traditional principles and giving up revenge meant that honour was lost, not only by an individual but by all brothers. The moral obligation to take revenge stemmed also from a belief in the danger from supernatural forces threatening those who would shy away from this obligation. The violation of the sacred order with bloodshed had to be met with a response, and the deceased could regain peace provided the blood of the murderer or someone among his kin was shed as well. What might be a faint echo of these ideas of the relationship between the world of the living and the world of the dead is, apparently, a very archaic practice, described in the Lombard *Edict of Rothari*, of killing a murdering slave on a victim's grave.[60]

The principle of joint responsibility was applicable also when it was one of the brothers who committed a crime for which he could be avenged by his victim's family. In such a case all brothers were obliged jointly to support him in collecting the resources to pay for avoiding revenge, as far as their financial situation enabled them to do so. What this obligation involved and how it was to be fulfilled is illustrated by title 68 of the Salic law, *De chrenecruda*, analyzed in detail by Karol Modzelewski.[61] To put it briefly, a person guilty of murder could apply for help in paying the *wergild* to members of his family, beginning with his father and brothers, and ending with more distant relatives from his father's and mother's families. Those distant relatives could refuse, provided they observed a ritual, and shifted the responsibility to other, wealthier relatives. However, the possibility of refusal applied only to those distant relatives; the regulation in question does not say that the father or brothers could apply it as well. Although drawing conclusions *ex silentio* is always risky, in this case it seems it would not be an exaggeration to say that they could not evade their obligation in this way.

Documentary sources rarely mention instances of bloody revenge exacted by brothers. It is therefore impossible to tell how common the phenomenon was. Efforts by successive rulers, supported by the authority of the Church, to eliminate feud from social life and to replace it with the payment of reparation and *wergild*, must have contributed to a reduction in the extent of armed feuds. Charlemagne and his successors even resorted to criminal sanctions against those who insisted on settling family scores by means of the sword. Refusing to accept reparation provided for by royal laws or assaulting an enemy who had already compensated the family for his deed and had undergone penance could lead to rather unpleasant consequences for the avengers: from imprisonment to high fines.[62]

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60 *Edictum Rothari*, in *Le leggi dei Longobardi*, chap. 370, p. 98.

61 Modzelewski, *Barbarian Europe*, 114–15.

62 MGH LL *Capitularia regum Francorum*, 1, no. 20, chap. 22, p. 51 (Capitulare Haristallense, a. 779); no. 26, chap. 31, p. 70 (Capitulatio de partibus Saxoniae); MGH LL *Capitularia regum Francorum*, 2, no. 193, chap. 8, p. 20 (Capitulare Wormatiense, a. 829); MGH LL Concilia 4, no. 31, chap. 10, p. 369 = MGH LL *Capitularia regum Francorum*, 2, no. 268, chap. 10, p. 336 (capitulary of Charles the Bald, a. 869). Analogous provisions appeared in the legislations of other rulers at least from the seventh century, see e.g. *Edictum Rothari*, in *Le leggi dei Longobardi*, chap. 143, pp. 38–40.

Yet bloody revenge as a form of resolving conflicts still remained the ultimate measure used by the closest relatives, including brothers, to take revenge on their opponents. Such a case—exceptionally outrageous—was mentioned by Hrabanus Maurus in his correspondence with Bishop Humbert of Würzburg. A church was profaned in the diocese of Würzburg when a man forced his way inside and, in front of the altar, killed the murderer of his brother and all the murderer's relatives who had sought refuge in the church.[63] Hrabanus told Humbert to present the case of the blasphemer before the synod and to accuse him of shedding innocent blood. Unfortunately, the letters have not survived in their entirety; only a summary from a later reference is known. It is impossible to draw far-reaching conclusions on the basis of this one, uncertain note, but it does testify to the existence of revenge in society's life and confirms that feud encompassed not just the perpetrator but all his kin. Moreover, in this case the behaviour of the murderer and his family indicates that they expected ruthless revenge if they sought refuge in a church, which was seemingly safe because it was protected by the law of asylum. The details of this particular story are unknown, but the actions of the avenger suggest that the will to fulfil an honorary obligation to his brother overcame the fear of God's wrath and concerns for his own salvation; nor did it prevent him from breaking the sacred law guaranteed by the king's authority.[64]

Such a way of thinking about family obligations was shared by all groups in society, including the political and intellectual elites. This is evidenced by bloody feuds between magnates, feuds caused and driven by revenge. Regino of Prüm mentions the murder of Count Rodulf (Raoul) of Cambrai (d. 896), son of Count Baldwin I Iron Arm of Flanders (d. 879) and probably Judith, daughter of Charles the Bald, which was committed by Count Herbert of Vermandois (d. 907), son of Pippin of Vermandois and grandson of the wretched King of Italy Bernard (and great-great grandson of Charlemagne). Herbert would be killed by a man of Count Baldwin II of Flanders (d. 918), Rodulf's (Raoul's) brother. Like his lord, the man was named Baldwin (we do not know whether the two men were related).[65] Although in this case the murderer was not killed personally by his victim's brother, the chronicler suggests that this was an act of revenge for this death. The murder of Rodulf (Raoul) and the death of Herbert were part of bitter rivalry between the two families—rivalry that can be considered as a family vendetta.

The brothers' right and duty of revenge also had a reverse side: brothers, like parents and children, were at great risk of revenge on the part of a person or relatives of a person who had been harmed by one of them. A way of preventing the conflict from escalating was to bring about an agreement with the victim or his family and pay a for

63 MGH Epp. *Epistolae Karolini aevi*, 3, p. 525.

64 Charlemagne forbade the prosecution of a man who had taken refuge in the narthex of a church, MGH LL *Capitularia regum Francorum*, 1, no. 39, p. 113; Louis the Pious ordered that anyone committing a murder in a church be punished by death, MGH LL *Capitularia regum Francorum*, 1, no. 136, pp. 281, a. 818–19.

65 *Reginonis abbatis Prumiensis Chronicon*, p. 73.

the harm done. This method of solving conflicts which were a threat to the social order was supported by rulers with their legislation and by the church authorities. However, such a way out was not always possible or desirable. In particular, in cases when the social status of the parties differed, bloody revenge on the part of an avenger higher up on the social ladder could be more profitable for him in a situation in which the main value at stake was honour. At the same time, using law for violent purposes became a manifestation of power.

This also applied to kings. The terms of family vendetta help to interpret the actions of Lothar I, who ordered the blinding of the brother and the killing of the another brother and the sister of Bernard of Septimania (d. 844), accused of defiling the imperial bed—that is, of an outrageous attack on the foundations of the sacred order.[66] Worthy of note is the fact that scholars' frequent understanding of family revenge as a private duty, contrasted with the public pursuit of one's cause within the justice system, is unknown to the authors of early medieval sources. This distinction, introduced by nineteenth-century legal historians, makes the understanding of the essence of revenge even more difficult. If we look at the conduct of political elites in this period, it would be hard to point to a moment when violence used to maintain order and legitimized by the state (the ruler) ended and "private" revenge began. In any case, revenge was not usually an irrational and spontaneous outburst of aggression: the avenger's actions were governed by strictly defined rules enabling him to punish the perpetrator in public and recover honour lost. In this sense, no matter how paradoxically this may sound, bloody revenge may have played a constructive role as well.

In cases resolved without bloodshed, it is very rarely known how a settlement was reached. In most cases we have to be satisfied with information that the wronged party decided to accept the *wergild*.[67] This is what increases the value of a letter written in the second quarter of the ninth century by Einhard concerning the case of two brothers, Williramn and Otbert, servants of the Church of Mainz, who had escaped to seek the protection of Saints Marcellinus and Peter from the monastery Seligenstadt (Obermühlheim).[68] Einhard appealed to a man named Marchard, referred to as *vicedominus*, to grant Williramn and Otbert's request and spare their brother, who had committed murder. Williramn and Otbert pledged to pay the *wergild* (*weregeldum*) for the victim. In this case the status of both brothers is uncertain, but they must have

66 *Annales Bertiniani*, pp. 2, 9.

67 One of the few examples in which the recipient of reparation for murder was the victim's surviving brother is the case of deacon Anspert from Milan. In 857 Anspert, following the intercession of Archbishop Angilbert of Milan, obtained from Emperor Louis II a confirmation of his ownership of estates he had received from Ansprand as reparation for the death of his brother. The formula used by the scribe, "quasdam res super quendam hominem nomine Ansprandum vicerat pro interfectionis scelere," seems to suggest that the property was granted to him by a court and not through an out-of-court settlement. Interestingly, claims were made to that property by some unspecified individuals (Ansprand's kin?) and the imperial confirmation was to protect Anspert against those claims, MGH DD Karolinorum 4, no. 25, pp. 113–14.

68 MGH Epp. *Epistolae Karolini aevi*, 3, pp. 133–14.

been free men, because otherwise they would not have been able to pay the *wergild* themselves. It seems they were men of inferior position, linked to the Mainz Church by a bond of subordination, perhaps as tenants, perhaps as *commendati* (free men of low condition which do labour services and receive protection under an agreement with the landowner). Presumably Marchard appeared in the case as the one who either was to seek justice on behalf of the Church of Mainz or had the power to stop the spiral of revenge between the families—but anyway, one does not exclude the other. What is important for us is the fact that we are dealing with an unequivocal confirmation of the *wergild* being treated as the price for the perpetrator's life and, secondly, of co-responsibility of brothers for the deeds of one of them. Williramn and Otbert declared that they themselves would pay the price demanded *pro fratre suo*; they also decided to undertake a clearly risky journey to Obermühlheim (if Einhard writes that they "escaped" to seek the protection of the holy martyrs). There is insufficient evidence to say whether the two brothers escaped from their village to Obermühlheim, fleeing Marchard's anger or trying to avoid the revenge of the murdered man's relatives.

Worthy of note in the story of the three brothers is the strategy adopted by Williramn and Otbert. They sought the protection of an influential magnate as mediator leading to an amicable resolution of the conflict. They sought not just earthly help, but also that of the saints whose remains had been laid to rest in Obermühlheim. As in the case from Würzburg discussed earlier, the Church became an intermediary, a guarantor of security and refuge for those who were at risk of customary revenge because of crimes committed by their closest kin. Obviously, as in the Würzburg example, this protection was not necessarily always effective, yet in the period ecclesiastical institutions were, not only for the elites, an important point of reference, both in matters concerning religious life and in broadly defined social relations traditionally regulated by customary laws.

We need to bear in mind that men of the Church were children of a society in which the ideas of crime and just revenge for it were the foundation of the moral order. Thus the killing of the murderer of a close relative could not be viewed the same as just any murder. It was prompted by a moral imperative whereby the offender's impunity would have been not just an insult to the victim's relatives, but would have become dangerous to the foundations of the sacred social order and the collective sense of justice. The victim's relatives, especially his closest relatives, such as sons or brothers, thus had no choice: renunciation of revenge not only brought disgrace upon themselves and members of their kin group, but also had negative consequences for the stability of the entire social order.

That as late as the turn of the ninth century renouncing revenge was seen as testimony of exceptional qualities of the Christian spirit is evidenced by Liudger of Münster's *Vita of St. Gregory of Utrecht*.[69] In it, the hagiographer described the tragic fate of Gregory's two stepbrothers (of the same mother), murdered by robbers on a journey. Gregory was in charge of the bishopric of Utrecht at the time. The murderers

69 *Liudgeri Vita Gregorii*, 63–79; Wood, *The Missionary Life*, 100–12.

were caught and brought to Utrecht, where they were to be executed. And here begins an extremely interesting passage in which Liudger describes Gregory's magnanimity:

> It appeared to them [the rulers] right that they [the murderers] be immediately punished by the most cruel death, but they concluded out of respect and love for Gregory, their [the victims'] elder brother, that he might be comforted after the death of his loved ones, were they to order that their killers and murderers be brought to him so that he, to compensate for and ease his pain, could have them die the death he wished. And so they did so, ordering that two of them be handed over to him, for they thought by the flesh, according to the foolish wisdom of this world, which knows not that it is pious to forgive one's enemies.

The holy man, obeying Jesus's teachings, forgave the killers, had them bathed, clothed, and fed and then set them free, telling them to sin no more. But he did not stop at that.

> He also had them escorted, warning them with paternal love to be prudently and from all sides wary of his other relatives.[70]

This brief passage contains a wealth of information about systems of values, ways of seeing fraternal relations, and fraternal obligations. Above all, in the opinion of those around him, Gregory had an indisputable right to take revenge—but this revenge was to be not just a punishment for the perpetrators' offence. It is clear that Gregory, as a clergyman, could not shed the murderers' blood himself, but personally condemning the murderers of his stepbrothers to death and perhaps even watching their execution were regarded as a perfectly understandable form of recompense and were even meant to bring comfort to him after his loss. Interestingly, those in whose power the perpetrators were (we do not exactly how many were caught) decided to send only two of them to Gregory: they gave a life for a life.

Liudger condemns this way of thinking about revenge, as for him it testifies to a lack of knowledge of God's truths and to a sinful, earthly perception of the laws governing the world. Nevertheless, for Liudger Gregory's renunciation of revenge is a heroic deed, a refusal to follow an existing and socially accepted pattern of behaviour. It is yet another piece of evidence of his holiness. Significantly, the author had his protagonist warn the

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70 *Liudgeri Vita Gregorii*, 74: "Et licet digni haberentur omni poena et crudelissima ac subita morte, tamen ob reverentiam et amorem senioris et communis fratris eorum domni Gregorii cogitabant, ut eum aliquid in hoc consolarentur post mortem carorum, si ipsos homicidas et interfectores eorum ad eius dominium et praesentiam pervenire facerent, ut ad satisfactionem et mitigationem doloris sui, quali vellet morte, ipse eos interfici iuberet. Quod et fecerunt, duos ex illis ei praesentari iubentes, carnaliter duntaxat cogitantes secundum stultam sapientiam seculi huius, quae inimicis pie parcere non novit. Ipse vero, ut erat vir spiritualis, doctus a domino Iesu Christo et sancto euangelio eius, in quo didicerat scriptum: 'Diligite inimicos vestros; benefacite his qui oderunt vos, ut sitis filii Patris vestri, qui in caelis est,' spiritaliter eos et gratanter suscepit, cogitans utrumque, et de sua salute sempiterna et de fratrum interfectorum absolutione exemploque posteris profuturo, et iussit eos absolvi et balneari, vestibus indui mundis atque cibis refici. Tunc ad se ductis praecepit, dicens: 'Ite in pace te cavete, ut non ulterius tale malum perpetretis, ne deterius vobis aliquid contingat'. Et iussit eos in pace deduci, admonens paterna caritate, ut a ceteris propinquis suis caute se custodirent undique et provide."

murderers against his own relatives. This is another example of going beyond the rules set by the customary law: this that particular brother not only forgave the murderers of his brothers, not only had them as guests in his home, fed, and clothed them, but also, in a way, acted against his own relatives, telling those who deserved to be punished by death to protect themselves from their just revenge.

We are dealing with an extraordinary example of the direct confrontation between two systems of values. Obviously, the hagiographer's narrative had to be based on a clear juxtaposition of the spiritual and the earthly, yet the dividing line between these two spheres also set the boundary between two incompatible normative systems which clashed in society at the time. The spread and gradual internalization by individuals of Christian teaching on the rejection and renunciation of revenge inevitably led to a profound conflict of values. After all, not all who had lost their brothers were blessed with the grace of sainthood. The need to resolve this psychologically and socially difficult situation may explain the lenience shown by Gregory to those murderers who were prompted to shed blood by family revenge, which was regarded as just by social norms. The phenomenon is very clear also in early medieval penitential books.[71] According to a penitential dated to the eighth century and connected with Theodore, archbishop of Canterbury (d. 690), a man who shed blood avenging his brother death should do penance for just three years, while any other murderer, even one avenging the death of a more distant relative, had to subject himself to the most severe penance for seven or ten years, just like other murderers. It has to be noted, however, that the author had some doubts about this principle, for he quoted another interpretation according to which both situations should be treated in the some way and murderer should do penance for ten years).[72] In the so-called *Penitential of (Pseudo)Cummian*, from the eighth century, the avenger is required to do penance for three years, like other killers, but if he offers recompense to the victim's relatives, the penance period is shortened by half.[73] In another penitential, sometimes attributed to the Venerable Bede, the period of absolute penance for killing in revenge of shedding one's brother's blood was limited to just one year (in addition, milder penance were imposed on certain days for three years).[74] Hrabanus Maurus's penitential, too, and then Regino of Prüm's compilation *De ecclesiasticis disciplinis* feature instructions (probably borrowed from earlier penitentials) according to which avengers were obliged to do penance that was much less severe than that for other sinners guilty of murder.[75]

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71 Meens, "Penance and Satisfaction."

72 *Discipulus Umbrensium*, in Schmitz, *Die Bussbücher*, chap. 4, 1–2, p. 548: "1. Si quis pro ultione propinqui hominem occiderit, peniteat similiter [sicut] ut homicida VII vel X annos. Si tamen reddere vult propinquis pecuniam aestimationis, levior erit penitentia i. e. demedio [dimidio] spatio. 2. Qui occiderit hominem pro vindicta fratris sui [sui fehlt] III annos peniteat, in [alio loco] X annos dicitur peniteat [penitere dicitur]." About the dispute over the dating of this penitential see Charles-Edwards, "The Penitential of Theodore"; see also Meens, *Penance in Medieval Europe*, 89ff.

73 *Excarpsus (Cummaeani)*, in Schmitz, *Die Bussbücher*, chap. 6, 27, p. 625.

74 *Excarpsus Bedae*, in *Die Bussbücher*, chap. 2, 3, p. 657.

75 Regino Prumiensis, *De ecclesiasticis disciplinis*, col. 290.

In addition to such an approach to vengeance, however, there was another common tendency, which gradually and completely came to dominate the thinking about murders committed in revenge, in moralists' writings. All cases of bloodshed were treated as an equally heavy burden on the killer's conscience and required the same penance. Many an early medieval clergyman admonished the faithful to leave the revenge for the wrong done to them to God, interpreting this evangelical imperative in a specific manner: God was not only a terrifying apocalyptic Judge, but became an avenger in the literal sense of the word, as the Father who would pay back those who had dared to act against His law and against His children. The paradox of blood feud in early medieval society thus lies in the fact that it should be eliminated from society's life as it was against God's law, but as inevitable retaliation it was seen, at least to some extent, as revenge on the part of supernatural forces for violating the law. The command to leave revenge to God was interpreted literally: the avenger was sinful not just because he had shed another human being's blood, but also because he had dared to usurp the rights of God himself.

Custody Rights over Women (Sisters, Widows) after their Father's Death

The joint responsibilities of brothers included caring for their unmarried sisters and underage brothers. The status of the latter will be discussed later; here I will dwell on brothers' relations with sisters. Under the customary law, custody of sisters included representing them in legal proceedings (as women they did not have full legal capacity) and all care duties associated with securing their future, primarily by managing their property, arranging a suitable marriage befitting their position, or providing for them appropriately, if for some reason marriage was out of the question. Formally, with regard to their sisters, brothers had rights analogous to paternal rights, as is confirmed above all by normative sources. As guardians they had, like their father, a full and unlimited right to decide to whom their sister's hand should be given and to use all means of coercion if she broke the established norms of conduct—including the right to kill her.[76] Obviously, as a result of the rise of Christianity these principles became less severe; nevertheless, brothers' duties to control their sisters continued to be inextricably linked to the obligation to protect the family's reputation and honour, which determined the position of the whole group. As legislator kings did not try to question these powers, despite the fact that they glaringly contradicted the Church's teachings. In order to solve this problem somehow, in the first half of the eighth century Liutprand, King of the Lombards, even resorted to moral blackmail: in one of his edicts he noted that although a father or brother could marry his daughter or sister off to whomsoever they wished, even if she were still underage according to the Church's teaching, the king allowed this only because he did not believe that close relatives could allow any harm to be done to her.[77]

76 See, e.g., *Edictum Rothari*, in *Le leggi dei Longobardi*, chap. 196, p. 56; chap. 197, p. 56.

77 *Liutprandi leges*, in *Le leggi dei Longobardi*, chap. 12, p. 134: "quoniam ista licentia ideo dedimus, eo quod credimus, quod pater filiam aut frater sororem suam doloso animo aut contra rationem cuiquam homini dare non debeant."

Other sources contain isolated references demonstrating the practical side of such custody. Last wills quite often contain clauses with detailed regulations concerning who should take care of the testator's sisters and daughters, and how this should be done. An example is the ninth-century testament of one Donato of Milan,[78] in which he bequeathed to his wife a quarter of a farmstead and a slave, provided she did not remarry. She was also to receive half of the movable property remaining after the sons had been allocated their share to be spent on pious works for his and her souls. The testator's two daughters were to remain in the care of their brothers, who were to provide for them until the day of their marriages, when each should receive 90 *denarii* from the brothers as well as a suitable dowry. The father also set the amount to be paid for his daughter's *mund* (that is, custody right), which his sons could demand from their sisters' fiancés—this was to be no more than four *denarii*. Similar provisions can be found in charters drawn up on the other side of the Alps. Brothers also had custody of their widowed sisters, who could, if they wished, return to their family home after their husband's death, especially when from the marriage there were no children requiring maternal care. Widowed sisters had much more freedom than maidens. They could, for example, choose another husband, although it was their brothers who remained party to the marital arrangements and received the customary gifts presented by the fiancé to the woman's guardians.[79]

However, the legal sources, which outnumber all others, present a static and not very nuanced picture of the relations between brothers and the sisters in their care. It is obvious that, as in the relations between brothers, a key role was played by the siblings' age, their emotional bonds, having the same mother, and other factors unknown to us. For example, although formally all adult brothers equally shared the responsibility for their sisters' fate, when after the death of their father each brother received his share of the patrimony, a decision had to be made about with which brother the sisters were going to live, that is, who was going to profit from the sisters' part of the property. Unfortunately, we know next to nothing about the mechanisms of this decision-making process, so important to the internal organization and stability of the family group.

The custody shared by all adult brothers also applied to widowed mothers. As women, the mothers were not independent in legal terms, and they could remain in the care of their sons, provided the sons were of age at the death of their father. Such a choice was regarded as natural, and a widow in the care of her sons retained a degree of freedom. Documentary sources do mention donations made by women with their sons' consent, but nearly just as often did widows act independently. In any case, the situation of a widow could differ substantially depending on the balance of power

78 *Codex Diplomaticus Langobardiae*, no. 181, cols. 306–7.

79 *Edictum Rothari*, in *Le leggi dei Longobardi*, chap. 199, p. 58; under the Salic Law (*Lex Salica*, title 79, p. 126; *Pactus legis salicae*, chap. 44, pp. 168–73), when a widow decided to remarry, the *reipus*, i.e. ring money, could be collected only by her relatives. Her late husband's brothers were excluded from this, unless they did not participate in the division of property of the woman's husband. On the origins and significance of this custom, see Modzelewski, *Barbarian Europe*, 123–24.

among the sons from successive marriages, on her own financial status, etc. Brothers' joint custody of their mother is confirmed by donations made for them. Even more frequent are references to mothers being granted the right to use the property donated to ecclesiastical institutions until the end of their life.

The Status of Underage Brothers and Stepbrothers

As has already been said when discussing the subject of fraternal hierarchies, an important role among brothers was played by the birth order. It gave rise to special rights and obligations of elder brothers with regard to younger ones, especially those who were not yet of age. Although normative sources do not confirm directly the differences in the legal status of underage and elder brothers, this is a clear conclusion to be drawn from documentary sources. Elder brothers were obliged to take care of their younger brothers, especially when they were orphaned by their father before they came of age. It can be presumed that elder brothers' custodial rights of their underage brothers corresponded to paternal rights, as was the case with regard to women and other members of the family without full legal capacity.

A description of a model relationship between brothers with a considerable age difference can be found in Dhuoda's *Liber manualis*. In the initial part of the book the author devoted some attention to the bond that should link William, her firstborn teenage son, and his newborn brother. Entrusting the infant to her elder son, the mother asked him to take care of his upbringing: "and when your little brother, whose name I do not even know as yet, has received the grace of baptism in Christ, do not be slow to teach, encourage and love him, to rouse him to go from good to better. When he shall have reached the age of speaking and reading, show him this little volume, this Handbook which I have written and composed in your name. Urge him by reading, for he is your flesh and your brother."[80] Thus William was to share the responsibility for the fate of his younger brother with his father (it should be noted that Dhuoda mentioned her husband Bernard's public duties, driving him away from fulfilling his obligations to his family; in this sense William was to become his father's replacement, so to speak). Of course it is moral guidelines, which not necessarily translated into brothers' actual altruistic behaviour. Nevertheless, Dhuoda's work shows society's expectations with regard to brothers or, rather, how ideal relations between them were imagined.

Following Janet Nelson,[81] we can also ask whether Dhouda's concern did not stem partly from a fear that the elder brother might shy away from properly fulfilling his role. Aware that the relations between the brothers were not always easy, the mother

80 Transl. Dhuoda, *Handbook for her Warrior Son*, 71. Dhuoda, *Manuel*, lib. 1, chap. 7, p. 116: "fratremque tuum paruulum, cuius modo inscia sum nominis, cum baptismatis in Christo acceperit gratiam, insinuare, nutrire, amare, ac de bono in melius prouocare ne pigeas, atque hunc codicellum Manualis a me comprehensum, et in tuo nomine conscriptum, cum perfectum loquendi uel legendi acceperit tempus, illi ostende, et admone legendo; caro enim et frater tuus est."

81 Nelson, "The Search for Peace," 93.

may have had grounds to be worried about the future of her younger son. This may be indirectly indicated by the biblical quotation included in the narrative. To justify the duty of care for the younger brother, Dhuoda quoted the words apparently uttered by Judah, one of Joseph's brothers, when he urged the other brothers to sell the boy to itinerant merchants instead of killing him (Gen. 37:27): "caro enim et frater tuus est" ("he is your brother, your own flesh"). Referring to the story of Joseph in such a context does not seem accidental and may constitute a hidden admonition directed at William as the elder son.

The (uncertain) data on life expectancy compared to men's average age at marriage as well as the average duration of a marriage indicate that situations in which elder brothers took over the father's custodial duties with regard to their underage siblings were hardly rare and may have been common.[82] Parents often did not live to see their children live to adulthood (especially those from successive marriages), and the age difference between children may have been over ten years or more. This had far-reaching consequences, and not just legal consequences. It is impossible to speak about siblings as a generationally uniform group. Age difference between brothers made the relations between the eldest and the youngest more like son–father subordination rather than a relationship of equality and partnership. Obviously this may have led to the emergence of age groups among siblings, groups that were more or less internally integrated in a variety of ways. In families from various cultures developmental psychologists and anthropologists have found a common phenomenon of a stronger emotional bond (in both a positive and negative sense) and a greater inclination to cooperate among siblings of similar age.[83] This did not have to concern siblings from successive marriages only: identical divisions may have arisen among full brothers as well.

Documentary sources confirm that when there were several adult brothers in a family, after the death of their father they had the collective custody of their younger brothers. This custody encompassed such matters as satisfying the basic needs of the younger siblings. Unfortunately, there is only very limited information about the subject, nor do the sources tell us anything about how details of care of the younger brothers were decided, when the family property was divided, and with whom they were to stay. For example, did the oldest brother have any special obligations to underage brothers? The matter is clear only in situations when brothers jointly managed their patrimony and shared a home. Yet establishing which brother physically cared for the underage

82 For the early Middle Ages opportunities for such studies are very limited owing to the structure of the available sources; I can refer only analyses carried out for a later period, which means that the data should be treated as only approximate, see e.g. Herlihy, *Medieval Households*; Hinde, *England's Population*; Jonker, "Estimation of Life Expectancy in the Middle Ages"; Jonker, "Estimation of the Life Expectancy of Tenants in the Middle Ages." On the methodological problems in such studies, see Guzowski, "Metody badań demograficznych." I would like to thank Piotr Guzowski for his bibliographical suggestions and valuable remarks concerning demography in the early and high Middle Ages.

83 For a useful overview of research and discussion on this topic see Sanders, *Sibling Relationships*.

brother was of considerable practical significance. The guardian's rights included supervising the part of the property that fell to the minor, and he thus profited from that property until the younger brother (or brothers) came of age. At the same time, while living under the same roof and fulfilling paternal duties with regard to the child may have given rise to emotional bonds, it also strengthened the dependence of the younger on the elder brother, which was of considerable significance in a society in which loyalty and readiness to help among kinsfolk were some of the most important factors determining the success of individuals.

We can guess that the scant sources hide a considerable variety of models followed, depending on specific circumstances and local customs. The situation must have been different for an underage brother whose widowed mother was still alive, for brothers who had not divided their patrimony among themselves, and for brothers separated by a considerable age difference. Similarly, we can only guess how the relations between elder brothers and their younger brothers from his father's successive marriages looked. An example that comes to mind is the well-documented case of stepbrothers born about thirty years apart, Lothar I and Charles the Bald. Although interesting in many respects (we will return to it), it cannot, obviously, be regarded as representative.

Based on the available sources, it can be established that elder brothers had a decisive say in matters concerning the future of their younger brothers and their property. Yet controlling the property and person of an underage brother did not mean that they had a right to make arbitrary decisions. In the case of hereditary parts of the property which fell to minors, written laws obliged their legal guardians (in this case brothers) to obtain their consent to dispose of the property, and to observe the principle of equal share in the division of the inheritance.[84] As is usually the case with normative sources, it is hard to tell to what extent such regulations were a simple confirmation of a customary principle existing even before the codification, and to what extent they testify to the ruler's interference in the existing relations in order to protect the interests of underage orphans. Legal sources tell us nothing (or next to nothing) about power relations within a fraternal group of formally equal heirs. The situation is similar with narrative sources: even if they do mention the relations between brothers who were of age and those who were not at the moment of the death of their father, the references are usually linked to specific political events, which at a given moment influenced the relations in the ruling family and political elites. Therefore it is difficult to draw any general conclusions on their basis.[85] A slightly better analysis of these relations can be

84 MGH LL *Capitularia regum Francorum*, 1, no. 105, chap. 16, p. 219.

85 An example is a reunion, mentioned in the *Annals of Saint Bertin* under the year 856, of Lothar I's sons in Orbe, during which they were to divide their patrimony. Louis (II) and Lothar (II) were also to make a decision to allocate a share to their underage brother, Charles, against the will of some magnates who demanded that the boy should be destined for priesthood, and thus be eliminated from the rivalry over power. To what extent these magnates acted on their own and to what extent they put into practice Lothar's plans must remain unresolved. What matters to us is the fact that formally both elder brothers jointly decided their younger brother's fate (*Annales Bertiniani*, 47); Schäpers, *Lothar I*, 666ff.

carried out on the basis of diplomatic sources, although here, too, there are considerable limitations to possible conclusions.

We usually encounter groups of brothers with considerable age differences in charters dealing with property transactions, in which elder brothers act as legal representatives of minors. Such references appear, for example, in testamentary dispositions or in situations when siblings acted together in property disputes with other individuals. Examples of this kind are known from many regions of Carolingian Europe, and generally they do not differ with regard to the way in which the rights of the elder brothers are presented. In most cases, the elder brothers acted as a collective entity, jointly representing the whole group, including its youngest members. Documentary sources do not mention any age-based hierarchical distinctions within such groups. We can only speculate whether, for example, the order in which the names of the brothers are listed reflected their birth order. The only clear distinction is a division into adult and underage members of the group; strictly speaking, it concerned not so much age as age-related legal capacity.

Care of younger brothers included providing for them and supporting them in situations in which a minor would become a party to a dispute. Elder brothers acted as legal representatives, and this is one of the few exceptions to the general principle whereby one free man could represent another free man in court. Interestingly, royal legislation sought to limit this law only to relations between brothers, which means that when a minor did not have a brother (or paternal uncle), the role of legal guardian should be played by a representative of the ruler. This is evident in, for example, eighth-century Lombard legislation, as well as in legal practice in the region in the eighth and ninth centuries.[86] Probably in this case the lawmakers intended to eliminate possible abuses by more distant relatives acting as legal guardians of orphaned minors.

Although children did not take an active part in legal proceedings, transactions, and contracts concerning their ownership and concluded on their behalf by their elder brothers, these could be questioned when they became of age. The application of this principle is indirectly evidenced by charters confirming donations made on behalf of a minor, that is in documents issued after the minor came of age and attained full legal capacity.[87] That ecclesiastical institutions sought to have earlier property dispositions confirmed in writing in this manner is an important indication. The phenomenon testifies to the fact that the relations within a group of brothers were dynamic, evolving

86 However, we do not always know how the guardians were designated; e.g. in 864 in Milan there was a case of three underage brothers represented before the count's court by their *tutor*, probably not related to them (or at least the source does not mention any kinship), *I placiti del 'Regnum Italiae'*, no. 66, pp. 237–42.

87 See e.g. TrFr, no. 469, pp. 401–2, a. 822, a presbyter named Salomon renewed and confirmed a donation made with his elder brother when he was still a minor; cf. *I placiti del 'Regnum Italiae'*, no. 57, pp. 198–205, with a reference to a public confirmation of the will to enter into a tenancy agreement concluded by the elder brothers of a younger brother who at the time of concluding the agreement was not yet of age.

as the personal status of its members changed, and it shows a possible divergence of interests between younger and elder brothers. There is also some limited evidence of the methods used to secure the interests of minors during the time they remained in the care of their brothers. They included contracts formulating terms and conditions under which a brother acting as the guardian of a minor could make use of the minor's property. If the child died, the contract became invalid.[88] Such contracts must have improved the quality of the care of orphans, but at the same time they show us that elder brothers' altruism towards their younger brothers required this kind of formal-legal strengthening (though we do not know how often).

A harmonious coexistence of elder and younger members of a group of brothers, treated as a desirable state and moral imperative, often remained an unattainable ideal. It could be said that tensions and divisions within such a group were its inherent feature, as was a sense of community and need for collaboration. They were not mutually exclusive; which aspect came to the fore at a given point was determined by many factors. Dependence and subordination of the younger brothers to the will and authority of the elder brothers, combined with limited resources for which the brothers inevitably had to compete, led to more or less open attempts to encroach on the rights of the weakest among them. Such a risk appeared both in relations between brothers as between nephews and paternal uncles, that is nephews' closest male relatives who were obliged to provide care. As has been mentioned earlier, kings' decrees ordered that the rights of minors be respected on pain of punishment, and in extreme cases they provided for a takeover of legal custody of a minor and his property by the ruler himself. An examination with documentary sources makes it possible, although rarely, to describe the circumstances in which the rights of younger brothers were infringed upon.

The references in charters usually concern situations in which a younger brother, after coming of age, sought to enforce his property rights or to have decisions annulled that were forced on him in his childhood—decisions with far-reaching consequences for his entire life. In the case of attempts to recover their due share of the inheritance, younger brothers found themselves in a particularly difficult position: they were forced to act against their own family, which, in a situation in which relatives were the most important source of support for individuals in many crucial situations in life, was by no means easy. The limited surviving evidence demonstrates the significance of support from third parties—though such support was not disinterested. This happened in the case of Isanhart, a cleric, son of Saxo, who in 818 gave his hereditary property (or, as can be concluded from the context, his rights to that property) to the bishop of Freising.[89] After the death of his father, Isanhart did not get his share of the inheritance because he was still a child, and his brothers, taking advantage of the situation, seized the entire property for themselves. Many years later (when the charter was issued, Isanhart was twenty years old), following the advice of the bishop himself, he decided to make claims

88 See e.g. MemLuc 5/2, no. 866, pp. 529–30, a. 876 (= ChLA, vol. 84, no. 3).

89 TrFr, no. 403, pp. 347–48.

to his patrimony. In exchange for the bishop's support Isanhart devoted himself to his service and gave his property to the Church, reserving to himself the right of use for life. Interestingly, in the charter Isanhart appears with his mother Tunna, who confirms his decisions against his brothers. Her presence in an act directed against her son's brothers suggests that those brothers came from an earlier marriage.

In this case, obtaining the bishop's support was key to even beginning to try to recover part of the inheritance—the price, however, was the loss of full ownership of the recovered property. Apparently, Isanhart had no hopes for victory in the battle against his own family without winning a powerful protector capable effectively to support his claims. Isanhart may have also taken his brothers to court, having been persuaded to do so by the bishop. Worthy of note is the fact that under royal legislation, such a gift to the Church from undivided property was fully legal, and the ecclesiastical institution receiving the gift acquired with it inheritance rights and could pursue its claims to the gift with the support of the king's representatives.[90]

Isanhart's case also highlights the complex questions of the relations between the children of successive marriages and the stepmother. The problem has already been analyzed by Brigitte Kasten;[91] it should only be noted at this point that, given the diversity in age of successive progeny, the role of the stepmother in establishing relations within a group of brothers must have been important. Often she acted as the executor of her late husband's last will and made dispositions concerning his property. Tensions in the relations with the adult sons from previous marriages easily arose when the widow was able to dispose of the part of property owed to his underage children. At the same time, the matter of providing for the widow became an important duty of her (adult) sons or stepsons, formally exercising legal custody over her.[92] This complex network of mutual obligations and dependence relations among adult and underage sons from the various marriages, the widow, and more distant relatives resulted in many situations in which conflicts of interest arose. In the case of Isanhart we can only surmise that, after becoming a widow, his mother was deprived by her adult stepsons of any influence on property matters, and that she found not enough support to claim her rights to the inheritance due to her child.

The efforts of successive wives to secure an appropriate place for their sons among a formally equal group of brothers probably were not always doomed to failure. The most spectacular examples of actions taken by a mother to enforce the principle of equality of her son to his brothers is the policy pursued in the 820s by Judith, the wife of Louis the Pious. Obviously, this case cannot be treated as representative; nevertheless, it does illustrate the strategies used by women who found themselves in such a situation. Judith

90 MGH LL *Capitularia regum Francorum*, 1, no. 136, chap. 6, p. 282.

91 Kasten, "Noverca venefica"; Kasten, "Stepmothers in Frankish Legal Life."

92 Charters regularly mention brothers (sons) ensuring for their widowed mothers the right to use the property for life; on the property status of widows see Santinelli, *Des femmes éplorées?*, especially 323–56; featuring Italian examples, with remarks on commemorative practices are La Rocca, "I segni di distinzione," and La Rocca, "Donare, distribuire, spezzare."

sought at all cost to win the favour of the eldest of little Charles's stepbrothers, Lothar (I), and to bind the two to each other by means of a network, as dense as possible, of dependence. To this end the emperor and his wife persuaded Lothar to assume the role and duties of the boy's godfather.[93] It was not without reason that the motif of a double, spiritual and physical, bond uniting brothers appeared in Nithard's *Histories* as an argument against Lothar's policy towards his younger brother.[94] Being a brother, Lothar also became Charles's spiritual father, so he served the role of the boy's father in its religious sense, and after the death of Louis the Pious he would also perform the role in its earthly dimension. His aggressive policy towards his godson was seen as a violation not just of an elder brother's inherent obligations to his younger brother, but also of the bond of spiritual fatherhood, that is violation of an obligation to God himself.

In addition to the right to manage the property belonging to minors in their care, adult brothers also had the right to decide on the choice of a career in the Church on behalf of the youngest members of the family. In documentary sources, there are examples of brothers who jointly sent their younger brother as an oblate to a monastery, and jointly donated property to the ecclesiastical institution on that occasion. This was the case of four brothers who offered land to the St. Gallen monastery for their parents.[95] The donation included a share from their hereditary property; it was to pass to the monastery with the fifth brother, Keraloh, not yet of age at the of drawing up of the charter, retaining the right to use the land. The elder brothers transferred the boy into the care and power of the abbot, wishing him to remain in the monastery until the end of his life. In this case, what comes to the fore in the source is the elder brothers' religious motivation. However, we need to bear in mind that the charter, drafted by the monks, tells us nothing about the circumstances in which Keraloh's brothers took the decision. Whether an underage candidate for monastic life had anything to say in the matter is highly doubtful: in such cases elder brothers assumed paternal rights and exercised them in accordance with the interests of the group.[96]

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93 Schäpers, *Lothar I*, 121–24.

94 *Nithardi Historiarum libri IV*, lib. 2, chap. 2, p. 14; the relationship between Charles and Lothar is an excellent example of using the bond of spiritual kinship in conflicts within the dynasty: twenty years after Charles's baptism Lothar became the godfather also of his daughter (*Annales Bertiniani*, 42, a. 853). This act was to seal the alliance between the stepbrothers, directed against Louis the German, who in the 850s turn from Charles the Bald's closest ally into his main rival. Thus Charles and Lothar were doubly bound to each other by spiritual kinship.

95 *Chartularium Sangallense*, no. 234, a. 816/818 (= ChLA, vol. 101, no. 12).

96 This incapacitation, as it were, of underage brothers forced to enter a monastery because their elder brothers wished them to do so is illustrated also by narrative sources. An interesting example is the *Vita* of St. Germanus, the abbot of Grandval, written towards the end of the seventh century but read and copied also in the ninth century. As a monk in Remiremont, St. Germanus ordered that his underage brother Numerian be brought to the monastery to be prepared by him personally for monastic life ("cupiens de saeculi actibus ad instituta sanctorum patrum vel regulam monachorum et sanctae vitae conversationes adducere"), *Vita Germani abbatis*, 35; Réal, *Vies de saints*, 478.

The sources indicate that the practice of sending the youngest brothers to a monastery had at least three justifications. In addition to obvious religious considerations, what may have been behind such decisions was a desire to strengthen the bond between the group and a given Church institution: in the case of private monasteries a need to maintain control over them. However, there are known cases when one of the objectives was to eliminate an underage brother from the inheritance or at least to reduce his share. An example of a dispute that erupted for that reason—and reached as far as the Roman *curia*—is known from a letter written by Pope Nicholas I.[97] A certain Lambert, son of Atho, appealed to the pope because, under the will of his father and through his local bishop, he was made a monk before the age of eleven, which was against the law. The boy's father intended in this way to guarantee that his son would one day become abbot of the family's monasteries. However, the matters took an unexpected turn, because the adult brothers deprived the underage monk of his rightful share in the inheritance from his parents. After coming of age, Lambert demanded an annulment of the vows taken under duress, prematurely and without all the formalities required by law, and a restitution of the property seized by his brothers.[98]

The complexity of the relations within groups of brothers was increased by the presence of siblings with just one parent in common. As has already been said, it seems that in early medieval families marriages lasted relatively briefly, whether because of the age difference between the spouses or high maternal mortality, and remarriages following a spouse's death were frequent, as a result of which there may have been children from several successive marriages in one family group. The equality of stepbrothers was confirmed by customary laws. For example, the eighth-century laws of the Bavarians clearly explained the rules of inheritance: all sons from successive relationships with free women inherited each from his mother and in equal shares from the father, irrespective of the size of the mother's property.[99] The way this particular regulation was formulated is interesting. It seems that the intention of the legislator was primarily to avoid any controversy among stepbrothers if their wealth status differed. If so, we are dealing with information shedding light on the mechanism behind the emergence of wealth differences among siblings.

In practice, it is not known to what extent the principles of equality of all brothers were respected. Yet there is some evidence showing that there was an awareness of power imbalance between younger and elder progeny from successive marriages. One way of avoiding discrimination against the youngest children may have been for their father in his last will to entrust them to an influential protector or at least to clearly confirm their rights. Evidence of such actions, although rare, has survived, shedding some faint

97 MGH Epp. *Epistolae Karolini aevi*, 4, no. 132, pp. 652–54, dated to the 850s–860s.

98 Lambert's case is discussed in a broader context of the situation of oblates by De Jong, *In Samuel's Image*, 91ff.

99 *Lex Baiwariorum*, chap. 10, 9, p. 428: "Ut fratres hereditatem patris aequaliter dividant. Quamvis multas mulieres habuisset et totae libere fuissent de genealogia sua quamvis non aequaliter divites, unusqisque hereditatem matris suae possedeat, res autem paternas aequaliter dividant."

light on this sphere of family relations, usually hidden with embarrassment. Such scarce sources that exist include two ninth-century charters, preserved in a formulary from the monastery of St. Gallen, concerning a donation made by a father for his youngest, still underage, son and the precarial confirmation of the son's obligations stemming from the donation. The motives behind the issuing of the charter were clearly explained: the father did this so that his son would not be disinherited in the future by his elder sons by a different wife.[100] Significantly, the same charter contains a decision that if on the death of his father that son was not yet of age, he and his property were to be taken care of by his paternal or maternal uncle, or by more distant relatives and friends. The father clearly wanted to prevent any of his elder sons from performing the role. The concise charter illustrates the dramatic tension that must have been present in the family: a split so deep that the father was ready to openly attribute dishonourable intentions to his sons in their attitude to their stepbrother. Moreover, the father decided to strengthen his will by mutual transferring of a very valuable gold belt studded with precious stones or a valuable horse to be a guarantee of the irrevocability of the dispositions recorded in the document. As the charter has survived in a formulary, devoid of features making it possible to identify the persons appearing in it and establish its provenance, the causes of this family conflict are unknown. We have to be satisfied with a conclusion that not only did such situations occur in practice, but that there were also socially accepted methods of preventing the escalation of conflicts among brothers. The question to what extent they were effective must remained unanswered.

Closing this part of the analysis, it is necessary to discuss the relations within another group of stepbrothers, namely those who had the same mother. This is not an easy task, as the ninth-century sources rarely provide us with information that would unequivocally identify such family connections. Given the domination of the patrilineal family model, successive marriages of widows and the relations between their children from these marriages—less significant to inheritance—were not mentioned as often as the relations between children of one father. It seems that this is also a result of seeing these bonds as less important to the social order: they were not backed by a system of rights and mutual obligations that were attributed to the children of one man. The weakness of the sources prevents us from formulating further-reaching conclusions, yet even on the basis of the limited evidence available it is possible to formulate a hypothesis that the relations among siblings with the same mother depended largely on the status of the mother, that is on whether references to familial ties in the female line were beneficial to her children. The woman was not always only a passive participant in such family politics. In this case, probably like in no other, her personal influence on her children determined the relations among them.

Interesting examples are provided by sources slightly later than those analyzed so far, primarily from the tenth and eleventh centuries.[101] I will refer here to just one

100 MGH LL *Formulae Merowingici et Karolini aevi*, nos. 13 and 14, p. 405.

101 Santinelli, *Des femmes éplorées*, 248ff.

example from the turn of the tenth century, concerning the social elite and rivalry for power going on within it. The case is that of the progeny of an illegitimate daughter of Lothar II and Waldrada, Bertha (d. 925). She was the wife of Theobald of Arles, and, after his death in 895, of Adalbert of Tuscany (d. 915). She had at least two sons from her first marriage, Hugh (d. 947) and Boso (d. ca. 938), and two from the second, Guy (d. 929) and Lambert (d. after 938). It seems that during their mother's lifetime the relations among the sons from both marriages were not close but they were at least neutral. After her death, however, a bitter conflict erupted among them over the crown of Italy: the sons from both the first and second marriage laid claims to their mother's property, which in this case included the March of Tuscany briefly ruled by Bertha almost independently as Adalbert's widow. What is important for us are two issues. First, all the sons regarded themselves as rightful heirs of their mother, which confirms the relevance of the rules enshrined in customary laws; and secondly in their fight for power each group of brothers did not fail to emphasize their blood ties to their mother, but their members did not identify themselves with their stepbrothers. Each of the groups pursued its own political strategy, which eventually led to a clash. After becoming king of Italy, Hugh of Provence did not hesitate to remove his stepbrother Lambert, Margrave of Tuscany, and replace him with Boso; his kinship with Guy did not stop him from entering into an incestuous marriage with his widow Marozia. Obviously, this is an exceptional case, both because of the status of the family and because of the political circumstances of the rivalry among the brothers. Nevertheless, it illustrates well the different ways in which siblings treated each other depending on the kind of the bonds of kinship uniting them. Worthy of note is the fact that growing up together did not matter: Hugh's and Boso's own sister, Ermengarde (d. 932), was raised far away from them, at the Spoleto court of her stepfather Adalbert, together with her younger stepbrothers. Yet years later she became a faithful ally of Hugh and Boso.[102]

It is difficult to confront the relations among Bertha's children with the evidence from the hagiographical source mentioned earlier. Nevertheless, it is worth referring to it, if only because of the fact that there are very few accounts concerning the relations among children of one mother born from her successive marriages. The above-mentioned *Vita of St. Gregory of Utrecht* from the turn of the ninth century[103] describes the relations among his stepbrothers by different fathers. The wealth and position of the sons from his mother's first marriage to Alberic were, according to the hagiographer, much higher than those of the children from her second marriage. Consequently, the younger brothers, clearly insufficiently wealthy, went into the service of their elder stepbrothers and with them settled in those parts of the Frankish kingdom in which Alberic's sons were granted property by the king. In this case, the sons from both marriages maintained close relations with each other, although these were relations between unequal parties. Even if the fraternal bond was recognized by both parties

102 Lazzari, "La rappresentazione di legami."

103 *Liudgeri Vita Gregorii*, 74.

(and gave rise to mutual obligations), the difference in status of the fathers meant that the younger brothers were forced to become personally subordinated to the elder brothers, probably as vassals. This obviously gave them a position and secured their living, but also strengthened the elder brothers' power over them. As the *Vita* shows the younger brothers had to obtain permission from the elder brothers to return to their place of birth. Incidentally, the description illustrates one of the mechanisms behind the emergence of clientelist circles around magnates, circles in which close blood ties were sometimes combined with obligations to serve and support that had a different basis.

Legitimate and Natural Brothers

When speaking of relations among brothers within the early medieval family group, it is impossible to leave aside the problem of illegitimate children. The meaning of the term in the early Middle Ages differs from that given to it in contemporary sociology and law, which is why it requires a short explanation. In the sources the term is used generally to refer to children born in a relationship not regarded as legitimate marriage, that is one in which not all procedures required by customary law or religion had been followed or were regarded as not quite lawful for some reason. That last distinction is particularly important in this period, because this was a time when the doctrine of Christian marriage as a monogamous and indissoluble relationship spread among the wider circles of societies in Carolingian Europe.

The subject of the transformation of marriage as an institution as well as the existence of overt and hidden polygyny in the early Middle Ages goes beyond the scope of the present study. It is, however, a research area that has been very intensely explored in recent years by historians who have revised many views well established in historiography concerning the forms and functioning of marriages and marriage-like relationships in the period (for example, criticism of the *Friedelehe* theory, change in the way of viewing concubinage, appreciation of the importance of the social role of exchange of goods relating to marriage, etc.).[104] References to illegitimate children in sources can be interpreted in different ways. They may be children born from relationships existing in parallel to legitimate marriages. We can speak of the existence of more or less overt forms of polygamy (a man had one wife and at the same time maintained more or less openly sexual relationships with other women). In such cases stepbrothers from each of these relationships may have grown up under one roof, within extended family group. The sources provide us only with indirect information about such relationships. This is not particularly surprising, given the aversion of clergymen—who made up most of authors of the sources—to them. The most frequently cited and the best explored example of such an extended family is Charlemagne's household with sons from successive marriages and from lower-status relationships

104 For more recent studies, representing various research trends and schools, from the vast literature on the subject, see Reynolds, *Marriage in the Western Church*; Saar, *Ehe—Scheidung—Wiederheirat*; Esmyol, *Geliebte oder Ehefrau?*; Bougard, Feller, and Le Jan, eds., *Dots et douaires*; Karras, "The History of Marriage."

(concubinages) growing up together.[105] Obviously, the king's family cannot be taken as a representative example; yet it is nevertheless significant. Throughout the ninth century the growing pressure exerted by the clergy to eliminate all forms of polygamy was not conducive either to the very existence of such relationships or to the survival of their traces in written sources.

Another type of relationships producing offspring that may have been regarded as illegitimate was concubinage, understood either as relationships with free women maintained without completing the procedures required for marriages, or relationships with mistresses who were not free, relationships that could not be transformed into marriages without a change in the woman's status. Making a detailed distinction between the status of such relationships, not to mention establishing the circumstances in which they originated, is very difficult on the basis of usually laconic sources. However, the lack of clarity does not always lie in the scarcity of the sources. It may be partly caused simply by the fact that such a distinction simply did not exist in the conceptual system of the society. As Ruth Mazo Karras rightly points out, historians' desire to unequivocally define each of the socially acceptable forms of relationships between a man and a woman in a distant period, and to classify them under one of two opposing categories of marriage and non-marriage (concubinage), is a consequence of a presentist approach to these institutions. Interpretation problems also stem from the variety of legal systems co-existing in Carolingian Europe, systems in which the legal consequences of such relationships and status of children born of them were defined differently.[106]

The third group of relationships producing illegitimate offspring comprised marriages which for various reasons were not socially accepted or were deemed illegitimate after they had taken place. They included primarily marriages between blood relatives and relatives by marriage considered incestuous under church law, as well as bigamous relationships, started when the previous spouse, for some reason abandoned by the husband, was still alive.

Despite strong criticism on the part of the Church, there are non-marital relationships both among the highest elites and the ruling dynasty, and among the lowest strata of society. At least until the eighth century, and perhaps even later, the progeny from such relationships enjoyed some rights, provided they were publicly acknowledged by their father. However, over a period of over a century, normative sources record changes occurring in the status of this group of children under the impact of the Church's teachings. An important example of how the principles of Christian morality permeated customary legal systems is the already cited chapter of the law of Bavarians, under which illegitimate sons (significantly born of a slave woman) did not inherit from their father, but could receive only what their legitimate brothers were willing

105 McKitterick, *Charlemagne*, 88ff.

106 An example is the situation of people born in non-marital relationships for whom vulgar Roman law was the personal law: Tate, "Inheritance Rights"; Van de Wiel, "Les différentes forms de cohabitation."

to give them.[107] In justifying this regulation the lawmaker invoked the Old Testament law: Sarah's words spoken to Abraham, asking him to get rid of the son of the slave woman Hagar, Ishmael (Gen. 21:10), referred to in St. Paul's Epistle to the Galatians (4:30). We should bear in mind that the interpretation of the figure of Ishmael as an opponent of the legitimate son Isaac, personifying negative qualities of soul and body, occupied an important place in the theological thought of the day. However, in this particular case emphasis was not so much on the negative traits of the illegitimate son, excluding him from the inheritance, but on the fact that he could not enjoy rights comparable to those of his legitimate brothers. What he could receive should come not from the law but from his brothers' Christian charity. Thus, although the author of the analyzed regulation did not deny the existence of a biological bond linking legitimate and illegitimate brothers (after all, he calls them brothers, *fratres*), the bond, stemming from a shared origin, did not translate into any property rights. On the other hand, the chapter is an interesting example of a way out of a conflict between two contradictory normative systems. Although the lawmaker denied illegitimate children their right to the inheritance as contradicting the tenets of Faith, at the same time he did impose on legitimate brothers a moral duty of providing for such children. Whether before the introduction of this law illegitimate children of the Bavarians had any customary inheritance rights is hard to conclude *ex silentio.*

Generally speaking, sources originating in the eighth and ninth centuries lack unequivocal evidence confirming illegitimate children's rights to a share in the inheritance. They are mentioned openly by just one normative source, which, however, comes from before the period in question: a 643 edict by the King of the Lombards, Rothari. *Filii naturales* are treated in it as a category of heirs with a share in the inheritance proportionally smaller than that of the sons from a lawful relationship, and taking possession of their share of the inheritance did not formally depend on their siblings' will.[108]

What is evident in documentary sources and, above all, in politics, is the survival of the customary principle whereby illegitimate progeny acknowledged by the father was treated as part of the family group. Consequently, the father felt obliged to provide for them. Few ninth-century charters mention the granting of specific estates to this group of children, estates secured either by obtaining consent from legitimate heirs[109] or by entrusting the illegitimate offspring with the land granted to them to the Church.[110]

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107 *Lex Baiwariorum*, chap. 15, 9, pp. 428–29: "Si vero de ancilla habuerit filios, non accipiant portionem inter fratres, nisi tantum quantum ei per misericordiam dare voluerint fratres eius, quia in vetere lege scriptum est: 'Non enim erit heres ancille cum filio libere'. Tamen debent misericordiam considerare, quia caro eorum est."

108 *Edictum Rothari*, in *Le leggi dei Longobardi*, chaps. 154–162, pp. 42–44.

109 TrFr, no. 450, p. 385, a. 821.

110 TrFr, no. 634, pp. 538–59, a. 839; no. 1033, pp. 777–78, a. 899; see also TrFr, no. 466, pp. 385–86, a. 821, where a father was supported in his efforts to provide for his illegitimate son by his brother.

However, it is almost certain that in the ninth century, with the growing Christianization of the institution of marriage and the establishment of the principle of its absolutely monogamous nature, the property rights of natural offspring, stemming from the very fact of acknowledging fatherhood, gradually become forgotten. In that period material provisions, and thus the fate of illegitimate sons, depended in solely on the good will or, to use the Christian language of the sources, charity of the father and stepbrothers born in a legitimate marriage. What is also worthy of note is the fact that the gradually changing socio-economic circumstances, especially the growing significance of land ownership as a prerequisite for individuals and family groups maintaining their social position, led to a situation in which the narrowing of the circle of heirs by revoking the rights of all extramarital children acknowledged by the father was in the interest of family groups. In this respect the Church's instructions may have turned out to be answering to society's needs.

The change in the situation of illegitimate progeny is also evidenced by negative opinions about individuals with such a status. From the turn of the eighth century the accusation of being an illegitimate child became a tool constantly used to discredit an opponent in political rivalry. Suffice it to point to attempts by Emperor Louis the Pious's entourage to challenge the rights of his nephew, Bernard, son of Pippin of Italy, to the Lombard throne on account of his illegitimacy, or the slightly earlier discrediting of Pippin the Hunchback, Charlemagne's eldest son, for daring to rebel against his father. A critical moment in which the models of family relations were redefined—which undermined the position of illegitimate children—was, it would seem, the beginning of the ninth century.[111]

However, we should not lose sight of the simple fact that a society's life cannot be easily described by legal definitions alone. The legal situation of illegitimate brothers depended largely on the relations within a given family, on the emotional bonds among the brothers and, finally, on shared interests. These matters are not well reflected in the sources, which is why they basically remain outside scholarly observation. The few examples that can be cited come mostly from the highest circles of power of the Carolingian realm. Perhaps the best known and the best documented example is that of the relations between Louis the Pious and his illegitimate stepbrothers Drogo (d. 855) and Hugh (d. 844). Removed from the court after Louis the Pious's ascent to the throne and forced to take monastic vows, with time they became some of the emperor's

111 It should be noted, however, that the accusation of illegitimacy which in the ninth century became a permanent part of the political weaponry used in power games by members of the Carolingian dynasty, was not always a sufficient argument to hinder the career of a potential candidate, also among the rulers. Its efficacy was limited and depended on a combination of other political factors. Illegitimacy did not prevent Arnulf of Carinthia (d. 899), the son of King Carloman and grandson of Louis the German, from ascending the throne; the situation was similar in the case of Arnulf's son, Zwentibold (d. 900), King of Lotharingia. In any case the process of defining the criteria of legitimate and illegitimate birth was not yet completed in the ninth century despite efforts on the part of the clergy and they were used quite freely, especially when the matter concerned property rights etc. See Kasten, "Chancen und Schicksale."

most important and most loyal associates. Hugh, the abbot of the great imperial abbeys, served as Louis's archchancellor, while Drogo was given the honourable dignity of Archbishop of Metz, and it was he who held the emperor as he breathed his last breath and who accompanied Louis to his grave.

We can only surmise that relations among stepbrothers with different status may have looked different, depending on many factors. Relations must have been different among children growing up under one roof; different in the case of progeny conceived in a relationship functioning in opposition to a legitimate marriage, or born of low-status women; and relations may also have changed depending on age. Given the scarcity of the sources, it is also impossible to say what made individuals acknowledge their biological brothers as kin, with all the consequences of this state of affairs. Undoubtedly, being born of the same parent was not enough, as can be seen in the case of Engeltrude (d. ca. 872), Boso's (d. 874–878) wife, and her illegitimate son and daughters born in the marriage. This case is absolutely unique, because it was the woman who was in an extramarital relationship, and because of the status achieved by her illegitimate son, Godefred. We learn about the son, conceived as a result of a love affair between Engeltrude and her husband's vassal, when the daughters born in the marriage pursued their claims to the inheritance from their mother, questioning Godefred's right to it.[112] The daughters felt no bond with their stepbrother, although he was clearly accepted by their mother's kinsfolk.

Free and Unfree Brothers

Hidden polygamy, accepted especially among the elites, was conducive to situations in which, in addition to legitimate offspring from lawful marriages there were also children from other relationships with women of varying status, including unfree women. Children of a slave woman inherited her legal status, unless the father decided to acknowledge them and, if he was her owner, liberated them. However, the fate of such children depended entirely on his will. Unfortunately, nothing is known about the relations between such children and their brothers and sisters born in a marriage.

In addition to this group of unfree children of free fathers, the sources mention sons who lost their free status following court judgements. These were judgements in cases in which the unfree (half-free) status of their mothers had been proved.[113] As has been said earlier, according to the law children inherited the status of their mother, even if the

112 MGH Epp. *Epistolae Karolini aevi*, 5, no. 129, pp. 114–15, Pope John VIII's letter to Archbishop Liutbert of Mainz, a. 878. Significantly, Godefred is referred to as *spurius*, a term which in Roman law denoted a child who was born of a relationship regarded as illegitimate (adulterous, incestuous etc.) and who could not be acknowledged by the father (fatherless). This is the meaning of the term cited by Isidore of Seville in his *Etymologies* (*Isidori Hispalensis Episcopi Etymologiarum*, lib. 9, chap. 5, 24).

113 See e.g. *I placiti del 'Regnum Italiae'*, no. 34, pp. 106–8, a. 822, Milan, where the judges confirmed the unfree status of Luba the wife of one Dominic, and their six children; on this case see Panero, *Schiavi, servi e villani*, 52; Balzaretti, *The Lands of Saint Ambrose*, 410–14.

father was free and formally acknowledged the children as his own. A question arises, however, as to how it was possible to marry an unfree woman without being aware of her legal status? Although there is no unequivocal explanation of the circumstances in which such marriages were contracted, we can venture an answer on the basis of similar cases concerning legal status.

Court records from the ninth century contain many references to proceedings before royal courts concerning the unfree origins of individuals as well as of entire groups of peasants and smallholders. Most of them come from northern Italy, although this was by no means a regional specificity. Charges of this type were mostly brought by representatives of large monasteries seeking to tie dependent peasants to the land and impose duties on them usually performed by unfree men. Such proceedings sometimes lasted for years. A loss meant that the entire peasant family was automatically given unfree status, and it is not surprising that those concerned tried whatever they could to refute the charges. Sometimes the parties referred to decades-old documents substantiating their testimony. The basic evidence in such cases was witness testimony, and here veritable court duels took place: both sides sought to obtain favourable evidence and, in spite of appearances, the peasants were not necessarily doomed to failure. They often were able to appeal court verdicts, and to challenge the credibility of the witnesses for the suing party or the veracity of the charters submitted by it. However, in most cases the accusers achieved their objective: they were able to prove the unfree status of the party sued.[114]

The fear of losing their status of free men sometimes prompted individuals to try to kill their closest relatives, because they could become inconvenient witnesses. In 803 Charlemagne ordered that those who would kill their father, mother, uncle, or another relative for such a reason should be punished by death. The descendants and relatives of the parricide, apparently regarded as accomplices by the legislator, were to be turned into slaves. The accusation of such a murder could be refuted only by a positive outcome of an ordeal by fire.[115] The law may have been promulgated in response to a specific situation the ruler or his officials had to deal with, and which required a decisive counteraction owing to its shocking nature.

The number of documented status cases confirms that among the rural population, tenants, and even small landowners, establishing the legal status of an individual was not necessarily easy.[116] The similarity of the property situation between free peasants and dependants or serfs, the practice of mixed marriages, serfs holding the land traditionally worked by free peasants and the other way round, facilitated the mixing of formally separate groups. The unfree (or free) status of a peasant family may have come to be gradually forgotten, especially when the land the family was working had

114 Panero, *Schiavi, servi e villani*, 52–57; Balzaretti, *The Lands of Saint Ambrose*, 427–39.

115 MGH LL *Capitularia regum Francorum*, 1, no. 39, chap. 5, p. 113.

116 Historians have a problem with delineating the border between freedom and slavery in the early Middle Ages, as there is a variety of forms of personal dependence and the terminology of sources is far from unambiguous; see Rio, *Slavery after Rome*.

changed hands. There were also cases of unfree peasants who escaped and began a new life, passing themselves off as free men and, for example, holding land as tenants (the landowners even included special clauses in the tenancy agreements to protect themselves from claims, in case the tenant turned out to be a fugitive). On the other hand, free peasants and tenants serving wealthy landowners, in exchange for a grant of land and protection, were willing to renounce such burdensome attributes of freedom as obligatory military service, a decision that made their situation similar to that of unfree men. The legal status of peasants working his land did not interest the owner until the moment he decided to increase the peasants' burdens when the peasants shied away from their duties, or when they intended to leave their farmsteads.

In the light of these remarks it is easy to understand that a free man may have—sometimes even unwittingly—married a woman who was formally unfree. This concerned primarily the lower social strata, smallholders, free peasants and tenants. If a woman had her unfree origin proven, her family could find itself in a very difficult situation. As unfree, that is without legal personality, the descendants of such a relationship lost their right to inherit from their free father. Moreover, even the legitimacy of their mother's marriage could be questioned by the woman's owner under the customary law. The Church did order that the legitimacy of marriages of the unfree be respected, yet in practice the decisive say in such situations was that of the servile woman's owner.

In such dramatic situations, in order to provide for their unfree children free fathers sometimes decided to transfer some land to the lord of their wives and children—this concerned mostly ecclesiastical institutions—provided they were guaranteed the use of that land. Such a strategy made it impossible (or at least difficult) for the rightful heirs of the man, including his free sons, if such sons were to appear in the future, to reclaim the property meant to support their unfree kin. The few known source references suggest that the endowment for children born of an unfree mother was based primarily on the property acquired by their father thanks to his own efforts and not on his father's patrimony. According to the law, relatives were not allowed to make claims to this part of the inheritance under the law of propinquity, provided it was lawfully disposed of by the owner.

An example of such a case is the fate of a man named Haicho, who in good faith married a free woman who bore him male heirs. The woman, as it later turned out, was a slave of the monastery of St. Gallen ("tunc temporis libera fuit, postea vero ab Emilone advocato ad impsum monasterii sancti Galli in servitium adquisita"). Trying to protect his two sons of this relationship from the misery of servile status, Haicho, guided by parental love ("propter conpassionem genitorum"), decided to endow them with his property. However, as unfree men, the two brothers could not become owners of that property. So the father gave his property to the monastery, with the proviso, however, that his sons would not be removed from it and that the duties associated with the land

could not be increased.[117] A very similar motive guided a certain Hiltini who made a similar donation to the bishopric of Freising, thinking about his three sons born of a slave mother. The charter openly pointed to the cause-and-effect relationship between the legal status of the boys and the donor's intentions—in short, he gave the property to the monastery because he could not bequeath it to his sons. In exchange he was given a landed estate owned by the bishopric, with his sons retaining the right to possess it for life.[118]

What is important in the context of the present analysis is the fact that Haicho's and Hiltini's free progeny born of successive marriages would have had the full right to inherit from them, without taking into account their elder, unfree brothers. How the relations between such stepbrothers would have looked is hard to say. It is known, however, that unfree descendants were, at least in some cases, treated as members of the family, and any grants to them were made for them with the consent of their father's closest free relatives. This is suggested by limited but telling evidence revealing, for example, that a paternal uncle pledged to provide for his nephews born of a slave woman.[119] This is an important observation given the fact that normative sources, especially customary laws, point to the existence of a sharp distinction between free and unfree men. However, concrete life situations sometimes did not reflect the letter of the law, and in practice the situation of unfree children may have differed considerably. It is very likely that a key role was played in such cases by psychological factors such us the emotional bond uniting family members. Unfortunately this area of family life remains inaccessible to us.

117 UstG2, no. 447, p. 65, a. 856 (= ChLA, vol. 105, no. 36).

118 TrFr no. 1033, pp. 777–78, a. 899.

119 *Collectio Sangallensis*, in MGH LL *Formulae Merowingici et Karolini aevi*, no. 8, pp. 401–2; no. 9, pp. 402–3.