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What Did *Comitatus* Mean in the Ottonian-Salian Kingdom?

A New Look at an Old Question

The *Comitatus* as a Territorial Office or a *Streugrafschaft*?, p. 130. – The Use of *Comitatus* to Denote a Territorial Office, p. 135. – The Use of *Comitatus* to Denote Fiscal Assets, p. 137. – The Use of *Comitatus* to Denote a Count's Duties, p. 143. – *Comitatus* and Immunities, p. 145. – Conclusions, p. 149.

ABSTRACT: Hartmut Hoffmann's seminal essay 'Grafschaften in Bischofshand' made clear that the grants of *comitatus* to episcopal authorities by Ottonian and Salian rulers from the later tenth to the early twelfth century did not provide the basis for the emergence of ecclesiastical polities during the later twelfth and thirteenth century. However, in discussing the transfer of these *comitatus* Hoffmann assumed that each grant consisted of the royal judicial *bannum*, previously held by a count. On the basis of this assumption, Hoffmann revived the model of a scattered county (German *Streugrafschaft*) first developed by Walter Schlesinger in the context of the New Constitutional History, which denied the existence of public or governmental authority in early medieval Germany. Hoffmann, by contrast, accepted that the Ottonian and Salian kings did exercise public/governmental authority but saw the *comitatus* in this period as divorced from the territoriality of the earlier Carolingian period in which a count's judicial *bannum* was exercised over a circumscribed area, usually coterminous with one or more *pagi*. However, when one examines the grants of *comitatus* discussed by Hoffmann, it is clear that this term was polyvalent in meaning. In some cases, it is evident that rulers transferred to bishops the royal judicial *bannum*, as Hoffmann argued. In other cases, the grant of a *comitatus* did not entail the transfer of the *bannum* but rather of royal fiscal assets. As a consequence, it is possible to reject Hoffmann's assumption that the identification in the sources of a *comitatus* spread across several *pagi* necessarily entailed the existence of a *Streugrafschaft* whose holder exercised the judicial *bannum* and, in turn, Hoffmann's views regarding the deterritorialization of a count's administrative and judicial authority over a *pagus* or *pagi* with specific boundaries. Ultimately, these findings permit a reopening of the question regarding the fate of the Carolingian-style comital office that was based on the specific and circumscribed territory of a *pagus* or *pagi*, and whether this type of office actually disappeared under the later Ottonians or even under the Salians.

In his exceptionally influential article 'Grafschaften in Bischofshand', Hartmut Hoffmann provided what has become the basic account of the royal grant of counties (German, *Grafschaften*) to bishoprics and monasteries by the later Ottonian and Salian kings¹. In the course of this lengthy study, Hoffmann provides an in-depth catalogue of the grant of 58 *comitatus* (German, *Komitat*) to 26 ecclesiastical institutions (mostly

¹ HARTMUT HOFFMANN, *Grafschaften in Bischofshand*, in: *Deutsches Archiv für Erforschung des Mittelalters* 46, 1990, pp. 375–480.

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bishoprics) by Otto III (983–1002), Henry II (1002–1024), Conrad II (1024–1039), Henry III (1039–1056), and Henry IV (1056–1106). In so doing, Hoffmann provided the source-based underpinning for Leo Santifaller's rather cursory treatment of this subject in his study of the so-called Imperial Church System².

On the basis of the information developed from royal and private charters as well as narrative works, Hoffmann drew several conclusions that were at odds with previous scholarship. The most important of these differences with the established scholarly narrative was that the grant of *comitatus* to bishoprics, as well as to a small number of abbeys and convents, cannot be understood as the basis for the development of *de facto* independent ecclesiastical polities during the course of the thirteenth century. He pointed out that very few of the 58 *comitatus* in his catalogue were located within the territories of later medieval ecclesiastical polities. In this context, Hoffmann also observed that many *comitatus* appeared in the hands of counts even after they ostensibly had been granted to ecclesiastical institutions, and consequently called into question the idea that the royal grant of *comitatus* to bishops was directed in some way against the secular "nobility", i. e. "gegen den Adel"³.

Moreover, Hoffmann insisted on the public or governmental nature of the *comitatus* in the later Ottonian and Salian period and argued that only the king could grant a *comitatus* to a church⁴. In his view, the term *comitatus* in both charters and narrative sources always meant the same thing, that is *Bannimmunität*. As such, the holder of each of the 58 *comitatus* discussed in the catalogue enjoyed the delegation of the royal authority in judicial affairs, and the *comitatus*, itself, was always to be understood as an office with an associated bundle of rights and authority over a specified territory⁵. Crucially, however, Hoffmann insisted that the structure and organization of the *comitatus* from the later tenth to the early twelfth century was fundamentally different than that of the preceding Carolingian period. The latter, he argued, was based on the more or less coterminous *Gau/pagus* and *comitatus* in which the count exercised his governmental jurisdiction over a large, contiguous district⁶. By contrast, in Hoffmann's view the *comitatus* of the Ottonian and Salian periods had lost the territorial connection with

² LEO SANTIFALLER, *Zur Geschichte des Ottonisch-Salischen Reichskirchensystems*, Vienna²1964, pp. 105–115. See the review of the literature regarding the imperial church construct by JOHN ELDEVİK, *Bishops in the Medieval Empire. New Perspectives on the Church, State, and Episcopal Office*, in: *History Compass Journal* 9/10, 2011, pp. 776–790.

³ HOFFMANN, *Grafschaften* (as note 1), p. 479.

⁴ See the criticism of Hoffmann's views in this regard by DIETMAR WILLOWEIT, *Rechtsgrundlagen der weltlichen Herrschaft geistlicher Fürsten im Mittelalter*, in: *Annali dell'Istituto storico italo-germanico* in Trento 30, 2004, pp. 171–188, particularly pp. 174–175.

⁵ *Ibid.*, pp. 460–461.

⁶ *Ibid.*, pp. 457–460. In this context it is noteworthy that Hoffmann follows the model of comital organization set out by HANS K. SCHULZE, *Die Grafschaftsverfassung der Karolingerzeit in den Gebieten östlich des Rheins* (Schriften zur Verfassungsgeschichte 19), Berlin 1973, which emphasized the status of the county as a governmentally organized district with the count as chief government official, who was appointed by the king.

a specific *Gau* and instead was comprised of small territorial pieces located within numerous *Gaue*. Some of these *comitatus* were quite small in Hoffmann's view, and comprised just a complex of properties, while others were quite large⁷.

Hoffmann's insistence on the dramatically different structure of the tenth and eleventh century *comitatus* than that seen in the ninth century was based on his view that *comitatus* could have only one meaning, i.e. legal and administrative jurisdiction transferred to its holder through the delegation of the royal *bannum*. As Hoffmann states explicitly: "The extent to which the county of the eleventh century was a territorial body that was created by historical accidents is demonstrated by the terms chosen to depict its extent in charters of Henry III for Halberstadt, i.e. *comitatum in pago X et in pago Y vel in quibuscumque locis situs sive determinatus*"⁸. If *comitatus* here means only *bannum*, then one could certainly accept Hoffmann's point, i.e. the jurisdiction in *pagus* x or *pagus* y, or in whichever places it might be determined to be.

However, Hoffmann does not devote attention in his study to demonstrating the validity of the crucial assumption that *comitatus* only had one meaning in the tenth and eleventh century. Indeed, as Hoffmann recognized, Walter Schlesinger offered a very different interpretation, suggesting that the grant of a *comitatus* to a church might refer not to jurisdiction, but rather to fiscal assets⁹. Hoffmann rejected this suggestion, claiming that Schlesinger offered no specific evidence to support this interpretation and asserted that one would search in vain for any such evidence. In particular, Hoffmann argued that there are only a small number of examples in which fiscal assets were granted alongside a *comitatus* but in those cases, "this was specifically stated in the documents and was obviously not the norm"¹⁰. But Hoffmann did not actually address Schlesinger's point here, because the issue was not whether other fiscal goods were listed alongside a *comitatus*, but rather whether the term *comitatus*, itself, was used by the authors of royal charters as well as other contemporary written works to denote fiscal property *tout court*.

⁷ HOFFMANN, *Grafschaften* (as note 1), pp. 457–460.

⁸ *Ibid.*, p. 458: "Wie sehr dann die Grafschaft des 11. Jahrhunderts eine durch historische Zufälle entstandene Gebietsmasse ist, zeigt die Formulierung, die in Heinrichs III. Diplomen für Halberstadt gewählt wurde, um ihre Ausdehnung zu beschreiben."

⁹ WALTER SCHLESINGER, *Die Entstehung der Landesherrschaft* (Sächsische Forschung zur Geschichte 1), Darmstadt 1964, p. 200.

¹⁰ HOFFMANN, *Grafschaften* (as note 1), p. 376: "aber das wird in den Urkunden dann auch eigens gesagt und war offensichtlich nicht die Regel." The examples that Hoffmann cited were *Die Urkunden Heinrichs II. und Arduins*, in: *Die Urkunden der deutschen Könige und Kaiser*, vol. 3, ed. HARRY BRESSLAU (MGH DD 3), Hanover 1900–1903, Henry II, nr. 178; *Die Urkunden Konrads II.*, in: *Die Urkunden der deutschen Könige und Kaiser*, vol. 4, ed. HARRY BRESSLAU (MGH DD 4), Hanover 1909, nr. 178; *Die Urkunden Heinrichs III.*, in: *Die Urkunden der deutschen Könige und Kaiser*, vol. 5, ed. HARRY BRESSLAU – PAUL KEHR (MGH DD 5), Berlin 1931, nr. 77; and *Die Urkunden Heinrich IV.*, in: *Die Urkunden der deutschen Könige und Kaiser*, vol. 6, ed. DIETRICH VON GLADISS – ALFRED GAWLIK (MGH DD 6), Berlin et al. 1941–1978, nr. 424.

The answer to the question of whether *comitatus* always had the same meaning in the Ottonian and Salian periods or was rather polyvalent in meaning is of fundamental importance in our interpretation of the administrative competencies of counts holding *comitatus* as well as of ecclesiastical office holders, who received *comitatus*. At stake is whether the political and particularly the administrative structure of the East Frankish/German kingdom under the Ottonians and Salians was basically Carolingian in nature, or whether the largely seamless network of *pagi* divided into administrative districts under the authority of the count had disappeared at some point in the later ninth or early tenth century¹¹. To help illuminate this question, the following study is divided into three parts. The first addresses the historiographical controversies regarding the nature and structure of the *comitatus* in East Francia. The second section turns to a consideration of examples of the *comitatus* in the Ottonian-Salian kingdom treated by Hoffmann to determine whether the sources permit the conclusion that *comitatus* had only one meaning from the tenth to the early twelfth century, or whether the term can be understood as polyvalent. The final section considers the relationship between the royal *bannum* held by a count within a *comitatus* and the grant of an immunity to a church from this *bannum* and what this relationship entails for our understanding of royal government and administration under the Ottonian and Salian rulers of Germany.

THE *COMITATUS* AS A TERRITORIAL OFFICE OR A *STREUGRAFSCHAFT*?

The scholarly controversies regarding the administrative structure of the *comitatus* in East Francia and the early medieval German kingdom are bound inextricably to the historiographical tradition of the New Constitutional History (*Neue Verfassungsgeschichte*) that developed in the inter-war period¹². Among the key arguments made by scholars in this tradition were that the concept of “public authority” is anachronistic with regard to the German-speaking lands in the early medieval period, that the king was in a constant struggle for power with a nobility, whose lordship over land and people was autogenous, and that the great majority of people within the German kingdom were unfree, living under the protection (German *Munt*) of the nobility. There was

¹¹ On the basic structure of the East Frankish comital system, see DAVID S. BACHRACH, Royal Justice and the Comital Office in East Francia, c. 814–c. 899, in: *Francia* 46, 2019, pp. 1–24 and the literature cited there.

¹² For this historiographical tradition, see FRANTISEK GRAUS, Verfassungsgeschichte des Mittelalters, in: *Historische Zeitschrift* 243, 1986, pp. 529–589; HANS-WERNER GOETZ, Die Wahrnehmung von ‘Staat’ und ‘Herrschaft’ im frühen Mittelalter, in: STUART AIRLIE et al. (eds.) *Staat im frühen Mittelalter* (Denkschriften. Österreichische Akademie der Wissenschaft, Philosophisch-Historische Klasse 334 / Forschung zur Geschichte des Mittelalters 11), Vienna 2006, pp. 39–58, here p. 39; STEFFEN PATZOLD, Die Bischöfe im karolingischen Staat. Praktisches Wissen über die politische Ordnung im Frankenreich des 9. Jahrhunderts, in: *ibid.*, pp. 133–162; and DAVID BACHRACH, The Written Word in Carolingian-Style Fiscal Administration under King Henry I. 919–936, in: *German History* 28, 2010, pp. 399–423.

no room in this societal model for counts exercising government authority over the king's free subjects in geographically defined districts, despite the frequent and explicit references to just such a system in both Carolingian capitularies as well as in royal and private charters produced in East Francia and the early German kingdom. In order to address this obvious contradiction between the New Constitutional theory of societal organization and a straight-forward reading of the available source materials, scholars including Adolf Waas, Theodor Mayer, Heinrich Dannenbauer and Walter Schlesinger argued for the existence of two novel constructs, neither of which was explicitly attested in the sources.

The first of these models, which was based on nothing other than scholarly imagination, was the concept of the king's free men (German *Königsfreie*). According to this idea, all of the free people below the level of the nobility (Latin *ingenui, liberi*), who are mentioned ubiquitously in contemporary sources, were not really free, but only enjoyed a kind of quasi freedom because of their service to the king, usually in a military capacity¹³. The concept of the king's free was demonstrated to be a scholarly fantasy during the 1970s and has ceased to be relevant in the scholarship regarding the German-speaking lands for more than a generation¹⁴.

The second concept developed by scholars in the New Constitutional tradition was the model of the scattered or dispersed county (German *Streugrafschaft*) in which counts exercised authority over royal estates and the royal dependents living there. Such "counties" were not public or governmental institutions in which office holders exercised royal jurisdiction over contiguous geographical spaces connected with a *pagus*. Rather, as the name implies, scholars in the New Constitutional tradition envisioned these *Streugrafschaften* as congeries of royal fiscal assets that were scattered over a wide area, often in numerous *pagi*, whose holders were denoted as counts. These counts, in turn, governed the direct dependents of the king who lived on these royal estates. The

¹³ See, for example, THEODOR MAYER, Die Königsfreien und der Staat des frühen Mittelalters, in: Das Problem der Freiheit in der deutschen und schweizerischen Geschichte (Vorträge und Forschungen 2), Sigmaringen 1955, pp. 7–56; HEINRICH DANNENBAUER, Die Freien im karolingischen Heer, in: HEINRICH BÜTTNER et al. (eds.), Aus Verfassungs- und Landesgeschichte. Festschrift zum 70. Geburtstag von Theodor Mayer, 2 vols., Sigmaringen 1954–1955, vol. 1, pp. 49–64; and HEINRICH DANNENBAUER, Königsfreie und Ministeriale, in: ID., Grundlagen der mittelalterlichen Welt. Skizzen und Studien, Stuttgart 1958, pp. 329–353.

¹⁴ The model of the *Königsfreien* was demolished in a systematic manner by JOHANNES SCHMITT, Untersuchungen zu den liberi homines der Karolingerzeit (Europäische Hochschulschriften 3/83), Frankfurt a. M. et al. 1977, who built on earlier studies by HERMANN KRAUSE, Die Liberi der lex Baiuvariorum, in: DIETER ALBRECHT et al. (eds.), Festschrift für Max Spindler zum 75. Geburtstag, Munich 1969, pp. 41–73, and ECKHARD MÜLLER-MERTENS, Karl der Grosse, Ludwig der Fromme und die Freien. Wer waren die liberi homines der karolingischen Kapitularien (742/743–832)? Ein Beitrag zur Sozialgeschichte und Sozialpolitik des Frankenreiches (Forschung zur mittelalterlichen Geschichte 10), Berlin 1963. For a thorough historiographical survey of the rise and fall of this concept, see FRANZ STAAB, A Reconsideration of the Ancestry of Modern Political Liberty. The Problem of the So-Called 'King's Freeman' ('*Königsfreie*'), in: Viator 11, 1980, pp. 51–69.

leading figure in developing and popularizing the model of the *Streugrafschaft* was Walter Schlesinger, who first suggested the concept in 1941, and subsequently reiterated this model in numerous studies, including the second edition of 'Die Entstehung der Landesherrschaft', published in 1964. It is this second edition that Hoffmann cites and then rejects, as mentioned above¹⁵. However, as we will see, in contrast to the concept of the *Königsfreie*, the model of the *Streugrafschaft* was not entirely without foundation despite the fact that its starting premises were not based in reality. Indeed, as we will see, there is ample evidence from the Carolingian period that authors used the term *comitatus* to refer to fiscal assets, which were assigned to a count who held the royal jurisdiction over a specific territorial district.

In an early challenge to Schlesinger's conception of East Francia as a patchwork of *Streugrafschaften* interspersed with the allodial holdings of autogenous nobles, Wolfgang Metz demonstrated through an analysis of private charters that the Carolingian rulers successfully established a seamless network of *Gaue* (*pagi*) in the region of Hesse, which were stable geographically contiguous districts. In addition, Metz showed that the Carolingians established an administrative structure of counties (*comitatus*) that were superimposed upon these *Gaue*, although not always on a one-to-one basis. In short, Metz argued for two separate systems of regulating space in the Carolingian East, the first purely geographical, and the second administrative¹⁶. Subsequently, Hans Schulze built on the insights developed by Metz and argued that the Carolingians successfully developed a system of geographically contiguous administrative jurisdictions throughout East Francia, with counts serving as the primary royal officials¹⁷. Schulze's findings were confirmed in the Rhine-Main region, Bavaria, and Lower Lotharingia by Franz Staab, Peter Schmid, and Ulrich Nonn, respectively¹⁸.

¹⁵ WALTER SCHLESINGER, *Die Entstehung der Landesherrschaft. Untersuchungen vorwiegend nach mitteleuropäischen Quellen* (Sächsische Forschung zur Geschichte 1), Dresden 1941, p. xii and pp. 136–139; second edition (Darmstadt 1964), pp. 200–203 (as note 9). Subsequent scholars, who drew on Schlesinger's model, include SABINE KRÜGER, *Studien zur sächsischen Grafschaftsverfassung im 9. Jahrhundert* (Veröffentlichung der Historischen Kommission für Niedersachsen und Bremen 2 / Studien und Vorarbeiten zum Historischen Atlas Niedersachsens 19), Göttingen 1950, particularly pp. 35–43; ELISABETH HAM, *Herzogs- und Königsgut, Gau und Grafschaft im frühmittelalterlichen Baiern*, Munich 1950; and KARL BOSL, s. v. Grafschaft, in: HELLMUTH RÖSSLER – GÜNTHER FRANZ (eds.), *Sachwörterbuch zur deutschen Geschichte* 1, Munich 1958, pp. 369–371.

¹⁶ WOLFGANG METZ, *Gau und Pagus im karolingischen Hessen*, in: *Hessisches Jahrbuch für Landesgeschichte* 5, 1955, pp. 1–23; ID., *Bemerkungen über Provinz und Gau in der karolingischen Verfassungs- und Geistesgeschichte*, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 73, 1956, pp. 361–371.

¹⁷ SCHULZE, *Die Grafschaftsverfassung* (as note 6), *passim*.

¹⁸ FRANZ STAAB, *Untersuchungen zur Gesellschaft am Mittelrhein in der Karolingerzeit* (Geschichtliche Landeskunde 11), Wiesbaden 1975; PETER SCHMID, *Regensburg. Stadt der Könige und Herzöge im Mittelalter* (Regensburger historische Forschung 6), Kallmünz 1977; ULRICH NONN, *Pagus und Comitatus in Niederlothringen. Untersuchungen zur politischen Raumlagerung im früheren Mittelalter* (Bonner historische Forschung 49), Bonn 1983.

Schulze's views regarding the seamless nature of the Carolingian comital system in East Francia were challenged, however, by Michael Borgolte with regard to the regions of Swabia that were located south of the Bodensee and west of the Schwarzwald. Borgolte argued that a close analysis of the presence or absence of the phrase *in pago X in comitatu comitis Y* in private charters, principally those preserved at the monastery of St. Gall, made it possible to distinguish between those districts where there were counts holding royal offices, and those regions in which an autogenous nobility exercised lordship (German *Herrschaft*) in a manner consistent with the models set out in the tradition of the New Constitutional history. In addition, Borgolte argued for the existence of distinct royal fiscal districts, which were treated as counties, i. e. *Streu-grafschaften*¹⁹. In a pair of detailed review articles, however, Hans Schulze demonstrated the numerous internal inconsistencies in Borgolte's analysis of the comital structure in Swabia²⁰. Schulze's critique of Borgolte's claims regarding the supposed existence of allodial counties held by autogenous nobles and *Streu-grafschaften* largely have been sustained²¹.

Neither Schulze nor Borgolte, however, addressed directly the semantic field of the term *comitatus* as they both took for granted its basic meaning as the jurisdiction of a *comes*, whether this was a governmental office, an allodial lordship, or a fiscal district. In a wide-ranging review of the scholarly literature dealing with the general problem of the so-called *Grafschaftsverfassung*, Thomas Zotz emphasized this lacuna in the work of both Schulze and Borgolte, and specifically criticized them for taking such a narrow view of the range of meanings that attached to the term *comitatus*. Zotz argued that scholars had to integrate into their discussion of counts and counties an understanding

¹⁹ MICHAEL BORGOLTE, *Geschichte der Grafschaften Alemanniens in fränkischer Zeit* (Vorträge und Forschung, Sonderband 31), Sigmaringen 1984.

²⁰ HANS K. SCHULZE, Grundprobleme der Grafschaftsverfassung. Kritische Bemerkungen zu einer Neuerscheinung, in: *Zeitschrift für Württembergische Landesgeschichte* 44, 1985, pp. 265–282; ID., Die Grafschaftsorganisation als Element frühmittelalterlichen Staatlichkeit, in: *Jahrbuch für Geschichte des Feudalismus* 14, 1990, pp. 29–46.

²¹ See, for example, ULRICH NONN, Probleme der frühmittelalterlichen Grafschaftsverfassung am Beispiel des Rhein-Mosel-Raums, in: *Jahrbuch für westdeutsche Landesgeschichte* 17, 1991, pp. 29–42; LUDWIG HOLZFURTNER, Die Grafschaft der Andechser. Comitatus und Grafschaft in Bayern 1000–1180 (*Historischer Atlas von Bayern* II/4), Munich 1994; MATTHIAS BECHER, Rex, Dux und Gens. Untersuchungen zur Entstehung des sächsischen Herzogtums im 9. und 10. Jahrhundert (*Historische Studien* 444), Husum 1996; ROLAND W.L. PUHL, Die Gaue und Grafschaften des frühen Mittelalters im Saar-Mosel-Raum. Philologisch-onomastische Studien zur frühmittelalterlichen Raumorganisation anhand der Raumnamen und der mit ihnen spezifizierten Ortsnamen (*Beiträge zur Sprache im Saar-Mosel-Raum* 13), Saarbrücken 1999; and more recently DAVID S. BACHRACH, The Benefices of Counts and the Fate of the Comital Office in Carolingian East Francia and Ottonian Germany, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 136, 2019, pp. 1–50. However, cf. ERWIN KUPFER, Karolingische Grafschaftsstrukturen im bayrisch-österreichischen Raum, in: *Mitteilungen des Instituts für Österreichische Geschichtsforschung* 111, 2003, pp. 1–17; and MANFRED JEHL, Gau, Grafen und Grafschaft im Frühmittelalter. Über das Scheitern retrospektiver Rekonstruktion, in: *Jahrbuch für fränkische Landesforschung* 75, 2015, pp. 13–45.

that the term *comitatus* in the Carolingian period could refer to the office and duties of the *comes*, to the district in which the *comes* exercised his office (*ministerium*), and also to the assets that were attached to the *ministerium* of the count that gave him the economic wherewithal to carry out his duties²². Moreover, drawing on Carolingian capitularies as well as charters, Zotz was able to show that many counts in Carolingian Empire held royal fiscal assets outside of the districts in which they exercised their jurisdiction, and the term *comitatus* frequently was used to denote these assets²³. In sum, Zotz substantiated Schlesinger's suggestion, discussed above, that the grant of a *comitatus* to a church might entail the transfer of fiscal assets rather than an office or a district over which a count exercised his jurisdiction. However, the elimination of the construct of the *Königsfreie* and the generally accepted view that Carolingian counts exercised judicial authority over the king's free subjects within a specific district meant that Schlesinger's conception of a Carolingian *Streugrafschaft*, as detailed above, was untenable.

It is notable that in his treatment of the question of the meaning of the term *comitatus* in the Ottonian-Salian period, Hoffmann did not address the scholarly controversy set out here, or Zotz's conclusions regarding the variety of meanings attached to *comitatus* in the Carolingian period, although he does cite Hans Schulze's basic study from 1973. Rather, starting from his *a priori* position that *comitatus* necessarily meant only jurisdiction (*bannum*), particularly with regard to judicial affairs, Hoffmann asserted, as discussed above, that the Ottonian-Salian *comitatus* was fundamentally different than that found under the Carolingians. Whereas the former were territorially compact districts, largely coterminous with the *pagus*, in Hoffmann's view the *comitatus* of the eleventh and early twelfth century frequently consisted of scattered elements. Ironically, in making this argument Hoffmann revived Schlesinger's model of the *Streugrafschaft*, but now conceptualized this scattered county as being comprised of the count's *bannum*, principally judicial in nature, over individuals living within disparate territories as contrasted with Schlesinger's view of the count's delegated *Herrschaft* over royal fiscal assets and concomitantly over the royal dependents living on these lands²⁴. The difference between the ideas of Hoffmann and Schlesinger rests fundamentally on the basis of the authority held by the count. For Hoffmann, this authority was public in nature. By contrast, Schlesinger rejected the distinction between public and private, which he believed was not available in the tenth century. In his view, the authority of the count derived from the ruler's lordship (*Herrschaft*), which was not distinguishable from the *Herrschaft* exercised by other magnates. It remains to be tested whether Hoffmann's understanding of the Ottonian-Salian *comitatus* can be sustained on the basis of the relevant source material.

²² THOMAS ZOTZ, *Grafschaftsverfassung und Personengeschichte. Zu einem neuen Werk über das karolingerzeitliche Alemannien*, in: *Zeitschrift für die Geschichte des Oberrheins* 136, 1988, pp. 1–16, here p. 2.

²³ *Ibid.*, pp. 11–12.

²⁴ HOFFMANN, *Grafschaften* (as note 1), pp. 456–460.

THE USE OF *COMITATUS* TO DENOTE A TERRITORIAL OFFICE

It is well understood that in the Carolingian and Ottonian periods, the principle duties of counts were to provide a forum for the resolution of legal conflicts among the king's subjects as well as to mobilize the men of their *comitatus* to undertake a range of military responsibilities on behalf of the ruler²⁵. To carry out these duties, it was necessary both for the count to know which individuals lived under his jurisdiction, and for those individuals to know under whose comital jurisdiction they lived. The fundamental logic of the territorialization of the count's office under these circumstances was illuminated by scholars treating regions throughout East Francia, as discussed above²⁶. As we have seen already, the territorial expression of the count's jurisdiction is made abundantly clear in the ubiquitous appearance in both royal and private charters of the expression *in pago X in comitatu comitis Y*.

In this context, a number of the *comitatus* granted by Ottonian and Salian rulers to churches, which are treated by Hoffmann in his study, unmistakably deal with the transfer of comital authority, that is the *bannum*, within a defined territorial space. In 1007, for example, King Henry II issued a charter on behalf of the bishopric of Cambrai granting the *comitatum Chameracensem* to Bishop Erluin (995–1012)²⁷. It should be emphasized here that, although Hoffmann does not specify this point, the grant by Henry concerned the territorial district outside of the walls of the city, i.e. the *pagus* of Cambrai. Already in 948, Otto I had granted comital authority within the walls of Cambrai to Bishop Fulbert (934–956)²⁸. The two keys to interpreting Henry II's charter as the grant of a territorial office are the statement by the king that Erluin and his successors subsequently were to hold royal jurisdiction, i.e. *pannos*, and even

²⁵ BACHRACH, Royal Justice and the Comital Office in East Francia (as note 11), pp. 1–24; Id., Royal Justice, Freedom, and Comital Courts in Ottonian Germany, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 137, 2020, pp. 1–51, and the literature cited in these two studies.

²⁶ For a different perspective on territorialization that de-emphasizes fixed administrative boundaries and instead focuses on modes of the representation of the count's power within a territory, see MICHEL MARGUE, *Au nom du comte. Quelques réflexions sur les modes d'inscription du pouvoir comital dans l'espace Lotharingien (X^e-XII^e siècle)*, in: GENEVIÈVE BÜHRER-THIERRY et al. (eds.), *Genèse des espaces politiques IX^e-XII^e siècle. Autour de la question spatiale dans les royaumes Francs et post-Carolingiens*, Turnhout 2018, pp. 149–169. However, Margue does not address the fundamental problem of contemporaries knowing which people were under the jurisdiction of which officials.

²⁷ MGH DD Henry II (as note 10), nr. 142.

²⁸ The grant of comital authority within the walls is recorded c. 1024 by the author of the *Gesta Episcoporum Cameracensium*, ed. LUDWIG C. BETHMANN (MGH SS 7), Hanover 1846, book 1, chapter 71. See the English translation of this text in: *Deeds of the Bishops of Cambrai. Translation and Commentary*, ed. BERNARD S. BACHRACH et al., London et al. 2018. There is no surviving royal charter from Otto I detailing this grant of comital authority to the bishop. However, the claim by the author of the 'Gesta' that Otto I had transferred the monastery of St. Gery to the bishop's control is supported by a charter issued by the king in 948, see *Die Urkunden Konrad I., Heinrich I., und Otto I.*, in: *Die Urkunden der deutschen Könige und Kaiser*, vol. 1, ed. THEODOR VON SICKEL (MGH DD 1), Hanover 1879–1884, Otto I, nr. 100.

more importantly that they were to have the authority to choose the count, i. e. *comitem eligendi* within this *comitatus*²⁹. The entire focus in this charter concerns the transfer of the administrative authority of the comital office. In 948, the impetus for the grant of comital authority by Otto I had been the ongoing conflict between Bishop Fulbert and the current count Isaac³⁰. By contrast, in 1007, the delegation of comital authority to Bishop Erluin away from Count Arnulf of Valenciennes appears to have been the need to consolidate authority over military matters in the district around Cambrai in the hands of an official on site³¹.

Another clear example of the transfer of a territorial comital jurisdiction can be seen in a charter issued by Otto III on behalf of the diocese of Würzburg in 1000. In this case, the king granted to Bishop Henry I (996–1018), “the *comitatus* called Waldsassen and Rangau, located in the province which is called East Francia.”³² Otto’s grant of these two *comitatus* included all legal jurisdiction, which is described fulsomely as “every required judicial assembly, and our complete jurisdiction, and imperial law, and judgement of judgments.”³³ The king added that “we are not excepting anything regarding these matters (judicial affairs) which counts or any mortal was accustomed to have with regard to judicial assemblies.”³⁴ Finally, Otto added that Bishop Henry and his successors “shall appoint the counts whom they wish.”³⁵ Just as at Cambrai, it is clear that Otto was delegating to Bishop Henry royal judicial authority over discrete and contiguous territorial units, namely *comitatus* covering the *pagi* of Rangau and Waldsassen, and also the power to appoint whomever he wished as count within these territories.

A third clear example of the grant of comital authority to a bishop within a specified territory appears in Otto I’s charter on behalf of the bishop of Chur, issued in 960. In this instance, the king granted to Bishop Hartpert (951–972) “the valley of Bergell, and entire extent of authority in judicial assemblies pertaining up to this time to this *comitatus*.”³⁶ The king then added a considerable range of fiscal revenues, including a variety of taxes and tolls, as well as the *beneficia* held by the previous count named Bernhard³⁷. Otto II renewed this grant almost verbatim in 976. However, Otto III expanded upon the grant by adding an immunity from comital jurisdiction to all of the assets of the diocese in the valley of Bergell, ostensibly to bring the

²⁹ MGH DD Henry II (as note 10), nr. 142.

³⁰ Gesta Episcoporum Cameracensium (as note 28), book 1, chapter 66 and 71.

³¹ Ibid., book 1, chapters 111–112.

³² Die Urkunden Otto des III., in: Die Urkunden der deutschen Könige und Kaiser, vol. 2, 2, ed. THEODOR SICKEL (MGH DD 2, 2), Hanover 1893, nr. 366.

³³ Ibid.: *cum omni districto placito et banno nostro imperiali lege et iudicium iudicio*.

³⁴ Ibid.: *nihil de his quae comites sive aliquis mortalium de placitis habere debuerunt excipientes*.

³⁵ Ibid.: *quos velint comites ponant*.

³⁶ MGH DD Otto I (as note 28), nr. 209: *vallem quoque Pergalliae cum omni districtione placiti et panni batenus ad comitatum pertinentis*.

³⁷ Ibid.

rights of Chur in line with those of other dioceses in the kingdom, i.e. *sicut mos est in aliis episcopis nostri regni*³⁸. Subsequent renewals of these royal privileges to Chur by Henry II, Conrad II, Henry III, and Henry IV reiterate both the status of Chur as a *comitatus* and the provision of an immunity from comital jurisdiction³⁹. Curiously, Hoffmann himself did not see this as a ‘normal’ grant of a county because the charter distinguished between what he describes as *Hoheitsrechte* (sovereign rights), particularly judicial authority, and also a variety of “economic incomes”.

THE USE OF *COMITATUS* TO DENOTE FISCAL ASSETS

Although Hoffmann insisted that the term *comitatus* always meant *bannum* and that the transfer of a *comitatus* to a church necessarily entailed the transfer of comital judicial jurisdiction, a number of the examples he discusses cannot be understood in this way on the basis of a straight-forward reading of the texts. The misidentification of *comitatus* as the judicial *bannum* over specific territories is quite clear, for example, in a series of grants made to Bishop Meinwerk of Paderborn (1009–1036). In a charter issued in 1011, King Henry stated that he was granting “the *comitatus* that count Hahold held while he was living, which was situated in these places.”⁴⁰ There follows a list of seven *pagi* names and nine property names. Following the list, Henry assured Bishop Meinwerk and his successors that “they shall have from this time forward free authority to do whatever is pleasing to them with regard to this *comitatus* and all of its assets (*utilitates*), for their own benefit and or the benefit of the church.”⁴¹ Notably, there is no mention in this charter of any royal authority connected with the *comitatus*, i.e. *bannum* nor is there any mention that the bishop of Paderborn was to have the authority to name his own count.

Another, similar grant, issued in May 1021, does not survive independently, but was copied into the *vita* of Bishop Meinwerk by his biographer⁴². According to the

³⁸ Die Urkunden Otto des II., in: Die Urkunden der deutschen Könige und Kaiser, vol. 2, 1, ed. THEODOR SICKEL (MGH DD 2, 1), Hanover 1888, nr. 124; MGH DD Otto III (as note 32), nr. 48. Notably, the reissue of privileges by Otto III was preceded by a royal inquest to determine whether previous royal commands had been fulfilled. For a general background on the use of inquests by Carolingian and Ottonian kings to safeguard ecclesiastical assets, see DAVID S. BACHRACH, *Inquisitio as a Tool of Royal Governance under the Carolingian and Ottonian Kings*, in: *Zeitschrift der Savigny Stiftung für Rechtsgeschichte. Germanistische Abteilung* 133, 2016, pp. 1–80.

³⁹ MGH DD Henry II (as note 10), nr. 114; MGH DD Conrad II (as note 10), nr. 224; MGH DD Henry III (as note 10), nr. 34; MGH DD Henry IV (as note 10), nr. 77.

⁴⁰ MGH DD Henry II (as note 10), nr. 225: *comitatum, quem Hahold comes, dum vixit, tenuit, situm scilicet in locis [...]*.

⁴¹ *Ibid.*: *debinc liberam habeant potestatem de eodem comitatu eiusque utilitatibus quicquid eis placuerit faciendi ad eorum tamen utilitatem ecclesiae [...]*.

⁴² *Vita Meinwerki episcopi Patherbrunnensis*, ed. FRANZ TENCKHOFF (MGH SS rer. Germ. 59), Hanover 1921, chapter 172. For the evidentiary value of this text, despite its composition in the mid-twelfth century, see TIMOTHY REUTER, *Property Transactions and Social Relations Between Rulers, Bishops, and*

transcribed charter, Henry II granted to Meinwerk a certain *comitatus* previously held by Count Liudolf, with its main seat in Imbshausen, which was located across five *pagi*. The grant of this *comitatus* was made under the condition that neither Meinwerk nor any of his successors would grant it to a member of the bishopric's military household (*miles*) or someone from outside of the diocese as a *beneficium*. Rather, "a *ministerialis* of this same church, who was there at the time, was to be in charge of this *comitatus* and was to make use of its assets to support the reconstruction of this church, whose walls were to be supported and whose roofs were to be repaired."⁴³

In discussing the first of these grants Hoffmann argues that the *comitatus* of the now dead Count Hahold was a *Streugrafschaft*, albeit one about which no clear conclusions have been reached about either its composition or origin⁴⁴. With regard to the second of these grants, Hoffmann argues that the requirement that a *ministerialis* of Paderborn holds this *comitatus* refers to an office (German *Amt*), while recognizing that the purpose of the grant was to provide funding for the reconstruction of the cathedral church at Paderborn⁴⁵. Of considerable importance in both grants by Henry II is that neither makes any mention of the transfer of the royal *bannum* to the bishop nor of the right of the bishop to appoint a count to exercise royal authority within the *comitatus*, i.e. points that are emphasized in the charters for Cambrai, Würzburg, and Chur. Instead, both charters emphasize the control that the bishops were to have over the resources (*utilitates*) that were being granted in the context of the transfer of the *comitatus*. The meaning of *utilitates* in this context is made quite explicit in the 1021 grant, in which the author of the 'Vita Meinwerki' stressed that the purpose of the grant was to provide resources for the reconstruction of the cathedral church.

This emphasis on the *utilitates* of the *comitatus* also can be seen in two other charters issued by Henry II and Conrad II on behalf of Paderborn in 1021 and 1033, respectively. In the first of these grants Henry stated that Meinwerk was to receive the *comitatus* which Count Dodico held, while he was alive, in unnamed places in the *pagi* of Hessigau, Nettegau, and Itergau such that he and his successors would have the full power over this *comitatus* and could do whatever they wished with its *utilitates* for

Nobles in Early Eleventh-Century Saxony. The Evidence of the Vita Meinwerki, in: WENDY DAVIES – PAUL FOURACRE (eds.), *Property and Power in the Early Middle Ages*, Cambridge 1995, pp. 165–199.

⁴³ Vita Meinwerki (as note 42), chapter 172: *alicui suo militia vel extraneo eundem comitatum in beneficium dandi, sed ministerialis ipsius ecclesie, qui pro tempore fuerit, presit predicto comitatui ac de eius utilitatibus provideat ad restaurationem constructionis ipsius ecclesie, ut inde muri relevantur, tecta reparentur* [...]. On the meaning of *miles* in this period as a professional fighting man and not as a vassal, see DAVID S. BACHRACH, *Milites and Warfare in Pre-Crusade Germany*, in: *War in History* 22, 2015, pp. 298–343. On the use of benefices by bishops to maintain military households for service in the royal army, see DAVID S. BACHRACH, *Warfare in Tenth-Century Germany*, Woodbridge 2012, pp. 85–92.

⁴⁴ HOFFMANN, *Grafschaften* (as note 1), p. 427.

⁴⁵ *Ibid.*, p. 428.

the benefit of themselves and for the benefit of the church⁴⁶. No mention is made of the royal *bannum* or of appointing a count. Twelve years later, Conrad returned to Meinwerk the *comitatus* previously held by Dodico, which had in the meantime been taken from Paderborn⁴⁷.

In his charter, Conrad explained that while still new at being king (*rudes adhuc in regno*) he had been persuaded by the unjust advice of the archbishop of Mainz to take away the *comitatus* from Paderborn. Now, however, he was going to return the entire *comitatus* to Meinwerk. The *comitatus* is described as once being held by Count Bernhard, which may permit the conclusion that this *comitatus* first had passed through the hands of this count before ending up with Archbishop Bardo of Mainz (1031–1051). The *comitatus* being returned to Meinwerk was somewhat enhanced over that previously held by Dodico, in that it included places in the *pagus* of Brukertergau as well as the *pagi* of Hessigau, Nettegau, and Itergau. Of particular importance in the present context, however, is Conrad II's insistence that in order to avoid any conflict between Mainz and Paderborn, he intended to make up for the loss of the *comitatus* once held by Bernhard by giving to Archbishop Bardo the *comitatus* which was located in the *pagus* of Cluuinga. To this end, the king ensured "that neither of the churches would suffer a loss in any way with regard to the aforementioned properties that were subject to an inquest on their behalf."⁴⁸

The use of an inquest in this manner to ensure that churches did not suffer any material losses while engaged in an exchange of properties dates back to the reign of Louis the Pious. The Carolingian and Ottonian rulers routinely conducted inquests to determine whether the properties being offered by the two sides were equal in value⁴⁹. The emphasis here by Conrad II on avoiding any losses to either of the churches, and his explicit mention of the fact that properties had been subject to an inquest, i. e. *rebus inquisitis*, makes clear once again that the *comitatus* held by Meinwerk, Dodico, Bernhard, Mainz, and then Meinwerk again consisted of fiscal assets and was not a *Streu-grafschaft* comprising the royal *bannum* over disparate pieces of three or four *pagi*.

Similar to the situation at Paderborn, the grant of *comitatus* by Ottonian and Salian kings to the bishopric of Hildesheim also consisted of fiscal assets rather than the reassignment of comital authority over specific districts to the bishop. The first of these grants, originally made by Otto III, in a now lost charter, and reconfirmed by Henry II in 1013 again specifically focuses on the resources that were being transferred

⁴⁶ MGH DD Henry II (as note 10), nr. 439: *comitatum quem Dodico comes, dum vixit, tenuit, situm scilicet in locis Hessiga, Netga, Nibterga [...] eo videlicet tenore rationis ut prefatus episcopus Meinweri sui que successors [...] debinc liberam habeant potestatem de eodem comitatu eiusque utilitatibus quicquid placuerit faciendi ad eorum tamen utilitatem ecclesiae [...]*.

⁴⁷ MGH DD Conrad II (as note 10), nr. 198.

⁴⁸ Ibid.: *ut neutra ecclesiarum illarum aliquod de predictis rebus sibi inquisitis aliquo modo patiatur detrimentum*.

⁴⁹ DAVID S. BACHRACH, Royal Licensing of Ecclesiastical Property Exchanges in Early Medieval German. Ottonian Practice on Carolingian Foundations, in: *Viator* 48, 2017, pp. 93–114, and the literature cited there.

to the bishop in order to facilitate a large-scale undertaking, in this case maintaining and garrisoning a fortress. According to the *narratio* of the charter, Bishop Bernward (993–1022) had sought special permission (*ius speciale*) from Otto III to build a fortification along the Aller River to defend his diocese against attacks by the Slavs⁵⁰. Otto had responded by assigning to Hildesheim the “*comitatus* located around this fortification in the *pagus* of Astuala, which had been held by Dietrich, once the palatine count, and after him his son Sirus,” and did so on the basis of *beneficiarium ius*, which simply means with the rights of one who holds an asset as a benefice⁵¹. Henry, in turn, confirmed the grant of the *comitatus* as a *beneficium* and added, “no one with any judicial authority shall presume to do anything in this property against the command or will of this one (Bernward). Rather, let whomever he wishes have and administer this same *comitatus* by our grace.”⁵²

The status of this *comitatus* as consisting of fiscal assets rather than the royal *bannum* over an unspecified territory is made clear by several factors. First, the whole purpose of the grant was to provide assets to Bishop Bernward so that he could build, maintain, and garrison a fortification. The use of royal resources in this manner was commonplace under the Ottonians, and very large numbers of royal strongholds were supported by extensive fiscal assets⁵³. Second, and just as importantly, Henry’s grant of an immunity from external authority, i.e. *nullus iudiciaria potestate* is clear evidence that the king was not assigning the comital *bannum* over this district to the bishop because counts did not need an immunity from comital authority. In this context, the grant of the judicial *bannum* would have provided the bishop with an additional source of income through the *fredus* paid at the *placita* under Bernward’s supervision. However, the lack of a reference to the transfer of the *bannum* rules out the concomitant transfer of this source of income. Third, scholars have not been able to identify a territorial *comitatus* within the *pagus* of Astuala. The concomitant effort to transpose the supposed territorial *comitatus* around the fortress of Mundburg to the nearby *pagus* of Flutwiddegau is based on nothing other than special pleading regarding the ostensible family connections between the count palatine Dietrich and Bishop Bernward, which are, at best, exceptionally tenuous⁵⁴. In this context, the phrase, “let whomever he wishes have and administer this same *comitatus* by our grace” is not a license from the king for Bernward to appoint a count, as Hoffmann would have it, but rather, as seen

⁵⁰ For background, see DAVID S. BACHRACH, *The Foundations of Royal Power in Early Medieval Germany. Material Resources and Governmental Administration in a Carolingian Successor State*, Woodbridge 2022, p. 136. For the location of the fortress, see WOLFGANG MEIBYER, *Lag Bischof Bernwards Mundburg in Wienhausen?*, in: *Nachrichten aus Niedersachsens Urgeschichte* 71, 2002, pp. 47–52.

⁵¹ MGH DD Henry II (as note 10), nr. 259: *comitatum circumiacentem illud castellum in pago Astuala, quod olim Thidericus palatinus comes posteaque filius eius Sirus habuerat [...]*.

⁵² *Ibid.*: *ut nullus iudiciaria potestate quid in eo contra illius iussum seu votum agere presumat, verum quicumque ipse velit ut eundem comitatum nostra largitione habeat et regat.*

⁵³ BACHRACH, *Foundations of Royal Power* (as note 50), particularly chapter five.

⁵⁴ HOFFMANN, *Grafschaften* (as note 1), pp. 405–406.

above with regard to Bishop Meinwerk of Paderborn, a royal grant to the bishop to pick his own man to administer these fiscal assets, and perhaps also to serve as the commander of the *castellum*.

The next surviving grant of a *comitatus* to Hildesheim took place in 1051, when Henry III reassigned to Bishop Azelin (1044–1054) the *comitatus*, which had been held by Brun, his son Liudolf, who was also the step-brother of King Henry, and Liudolf's son Eckbert, all of whom were named as *comites*. This *comitatus*, which was labelled a *beneficium*, was located in six named *pagi*, and also within eleven named *publicis aeclesiarum parrochiis*⁵⁵. Hoffmann describes this as a large, but widely scattered county⁵⁶. However, once more there is no mention in the charter of Azelin receiving the *bannum*, any mention of comital duties, such as providing for the judicial needs of the people living in this “county”, nor any mention of the bishop naming a count to exercise this authority. Moreover, it is not clear what it would mean to have the royal *bannum* as a count in “public parishes of the church”. It seems rather more likely that the reference here is to the governmental possession of the tithes of these churches, and consequently to revenues rather than the count's military or judicial *bannum*⁵⁷.

We see the same problem with interpreting *comitatus* as the royal *bannum* in the grant made by Henry IV to Bishop Hezilo of Hildesheim (1054–1079) in 1068. As his father had done earlier, Henry IV transferred to Hildesheim a *comitatus*, in this case held previously by Count Frederick and his son Conrad as a *beneficium* from the king, which was located in three named *pagi* as well as in four named *publicis aeclesiarum parroecochiis*⁵⁸. Once more there is no mention of any of the factors that made clear the grant of the royal *bannum* over a territory to Cambrai, Würzburg, and Chur. But Henry does insist that Hezilo and his successor shall enjoy usufruct (*fruantur*) of this *comitatus* without any interference from anyone. The lack of reference to the exercise of any kind of authority, the absence of any reference to naming a count, and the emphasis on usufruct all point toward the identification of this particular *beneficium* of a *comitatus* as productive assets.

Yet another clear example of the grant of fiscal assets under the name *comitatus* can be seen in Henry III's charter on behalf of the bishopric of Basel in May 1041. The *narratio* of the charter emphasizes the king's concern about the poverty of the bishopric, stating “because we have seen the excessively humble and tenuous state of the bishopric of the church of Basel, we have determined to console its poverty to a certain extent from the assets in our legal possession.”⁵⁹ Thus, the entire context of the grant of the *comitatus* concerns the provision of royal property to alleviate the church's poverty rather than the grant of royal authority over a territorial district. The

⁵⁵ MGH DD Henry III (as note 10), nr. 279.

⁵⁶ HOFFMANN, *Grafschaften* (as note 1), p. 407.

⁵⁷ On this issue, see BACHRACH, *Foundations of Royal Power* (as note 50), particularly chapter four.

⁵⁸ MGH DD Henry IV (as note 10), nr. 206.

⁵⁹ MGH DD Henry III (as note 10), nr. 77: *Inde vero quoniam sancte Basiliensis ecclesie episcopatum nimis humilem tenuemque conspeximus, paupertati eius de bonis nostri iuris aliquantum consulere decrevimus.*

grant, itself, consisted of “a certain *comitatus* of our property called Augusta, located in the *pagi* of Augustgau and Sosgau.”⁶⁰ Henry III then added that the grant of the *comitatus* came with all of its appurtenances, i. e. *cum omni pertinencia* such that Bishop Dietrich (1041–1055) and his successors shall have the free authority of holding it or granting it as a benefice or of doing anything else that they wished that would be of benefit to the church⁶¹.

At every step along the way, the charter makes clear that the *comitatus* consisted of assets, that is *proprietas*, which were intended to alleviate the poverty of the church. Hoffmann accepts that the wording of the charter points to its identification as “district of fiscal goods” but then goes on to add that “it probably was largely coterminous with a judicial district.”⁶² However, there is nothing in this charter that points to the granting of judicial authority to the bishops of Basel or any other aspects of the comital *bannum*. Moreover, as Hoffmann, himself, recognizes, the comital authority in Sosgau was not held by the bishop, but rather by Count Rudolf, as seen in Henry III’s confirmation in June 1048 of the possessions previously granted to the cathedral chapter⁶³.

The examples adduced thus far show the use of the term *comitatus* either to denote the grant of the royal *bannum* over a specific district or to identify fiscal assets that previously had been assigned to a count to support the performance of his duties. In some cases, however, we can see that the term is used in both ways at the same time. In his history of the archbishopric of Bremen, Adam discussed the jealousy of Archbishop Adalbert I (1043–1072) regarding the authority enjoyed by Bishop Adalbero of Würzburg (1045–1085) such that he “had no equal within his diocese as he held, personally, all of the *comitatus* of his diocese and the bishop even ruled the *ducatus* of his province.”⁶⁴ Although this was an exaggeration, the bishops of Würzburg had received the *comitatus*, in the sense of the comital *bannum*, over two *pagi* from Otto III, as seen above, and clearly still held them in the late eleventh century when Adam wrote. As a consequence, according to Adam, Archbishop Adalbert then sought to gain for his church “all of the *comitatus* that seemed to have any jurisdiction within his diocese.”⁶⁵ Thus far, Adam is using *comitatus* to denote the *bannum* assigned to a count to exercise authority over the people within a specific district. This sense of the term is quite clear from Adam’s decision to identify the *comitatus* with the term *iurisditio*.

⁶⁰ Ibid.: *quondam nostre proprietatis comitatum Augusta vocatum in pagis Ongestgonue et Sosgoune situm.*

⁶¹ Ibid.: *quatinus predictus Theodericus episcopus suique successors liberam de eodem comitatu potestatem habeant tenendi inbeneficiandi vel quicquid sibi ad utilitatem prelibate ecclesie placuerit inde faciendi.*

⁶² HOFFMANN, *Grafschaften* (as note 1), p. 384: “Das könnte darauf hinweisen, daß es sich um einen Reichsgutbezirk handelt, der sich wahrscheinlich weitgehend mit einem Gerichtsbezirk deckte.”

⁶³ MGH DD Henry III (as note 10), nr. 219.

⁶⁴ Adam of Bremen, *Gesta Hammaburgensis ecclesiae Pontificum*, ed. BERNHARD SCHMEIDLER (MGH SS rer. Germ. 2), Hanover 1917, book 3, chapter 46, p. 188: *ipse cum teneat episcopate suo neminem habere consortem, ipse cum teneat omnes comitatus suae parrochiae, ducatum etiam provinciae gubernat episcopus.*

⁶⁵ Ibid.: *omnes comitatus, qui in sua dyocesi aliquam iurisdictionem habere videbantur.*

However, at this point both Adam and the royal charter issued by Henry IV's regents in 1057, including Adalbert himself, appear to use *comitatus* in a different sense, namely the resources assigned to a count. According to Adam, Fivilgau, which the archbishop acquired from the king, had been held up to this time by Duke Gottfried of Saxony and then by his son Count Ekbert. The *comitatus* in Fivilgau was supposed to have paid out 1,000 pounds of silver each year – the word used is *pensio* – of which amount the count paid 200 pounds of silver to the church and became a member of the church's military establishment (*miles*)⁶⁶. The amount of money involved is likely exaggerated to a considerable extent, and it is not clear from the text whether this was the situation that prevailed before Adalbert obtained the *comitatus* or was the situation once he obtained the *comitatus*, which Adam asserts the archbishop held for ten years⁶⁷. What is clear is that Adam has moved from discussing the *iurisditio* associated with the *comitatus* to the value of the *pensio* that was associated with the *comitatus*.

Separately, the charter issued in Henry IV's name states that the king granted to Bremen and Archbishop Adalbert "a certain *comitatus* belonging to us, namely in the *pagi* of Hunesga and Fivilga with all of their associated rights and assets, just as our ancestors had them [...] for the use of the church."⁶⁸ The discussion in this charter appears to be much more connected to Adam's reference to the 1,000 pounds of silver that comes from the *pensio* of this *comitatus* than it does to Adam's discussion of the *iurisditio* over the *pagus*. The remainder of the charter reinforces this impression, as the royal grant also included a license for Archbishop Adalbert to establish two markets within this same *comitatus* with associated mints and tolls⁶⁹. Finally, and crucially, the charter grants an immunity from any external judicial official (*iudex*) or fiscal official (*exactor*), who are forbidden to oppose the archbishop's will (*libitum*) with regard to this royal grant. The grant of an immunity from external authority would not have been necessary for Adalbert were he holding a *comital* office. However, such an immunity would be of benefit to protect the assets and rights just granted to the archbishop from external harassment.

THE USE OF *COMITATUS* TO DENOTE A COUNT'S DUTIES

As seen above with regard to the grants of the *comitatus* to Chur and Würzburg, Otto III specifically noted in his charters that the bishops henceforth were to exercise judicial authority within specific territorial limits. As such, the grant of the *comitatus* can be understood to have referred both to the transfer of the *bannum* associated with the

⁶⁶ Ibid.

⁶⁷ Ibid. With regard to the royal revenues in this period, see BACHRACH, Foundations of Royal Power (as note 50), particularly chapter two; as well as ID., Toward and Appraisal of the Wealth of the Ottonian Kings of Germany. 919–1024, in: Viator 44, 2013, pp. 1–28.

⁶⁸ MGH DD Henry IV (as note 10), nr. 18: *quondam nostri iuris comitatum scilicet in pagis Hunesga et Fivilga cum eodem iure omnique utilitate, quam antecessores nostri habuerunt [...] ad usum eiusdem ecclesie [...]*.

⁶⁹ Ibid.

count's office as well as to a specific comital function, i. e. the provision of justice. In his charter for the bishopric of Paderborn, issued in January 1001, Otto III renewed and confirmed "the *comitatus* that currently was possessed by the see over five named *pagi*."⁷⁰ This grant was repeated almost verbatim by Henry II just two years later⁷¹. In his discussion of this charter, Hoffmann found it necessary to explain why, according to his model, Paderborn had the royal *bannum* over these five *pagi* in 1001, when Henry II and Conrad II ostensibly made new grants to Paderborn of the *comitatus* in these same five *pagi*, as discussed above. Rather than dealing with this apparent contradiction, Hoffmann concluded that "[p]robably one should not press the wording of the charters too hard in this case."⁷² Notably, he cites the work of Peter von Polenz, who argued that this charter revealed the existence of a *Streugrafschaft* under the control of the bishop of Paderborn⁷³. On this basis Hoffmann concludes that in this case, the *comitatus* and the *pagus* no longer aligned, and so the grant of the *comitatus* in these five *pagi* in 1001 did not prohibit the later grant of different *comitatus* in these same *pagi* by later kings⁷⁴.

However, when we consider in detail the clauses that follow the statement that the king has granted the *comitatus* in these five *pagi* to Paderborn, the need to contrive a *Streugrafschaft* in 1001 is eliminated. The complete statement of the grant is as follows:

"We renew and confirm the *comitatus* now held by the see over the *pagi* called Paterga, Aga, Trevesga, Auga, and Soretfelt for the tithes pertaining to the monastery of Corvei and with regard to property of clerics, if any of them should die without an heir, and this same church is also granted the *comitatus* with regard to three *mansi* in Duisburg and in Dortmund and with regard to the *forestis* which begins at the Dalke River and heads through *Ardennam* and Senne up to the road which leads to Heerse."⁷⁵

The text makes quite explicit that the *comitatus* in question relates to four different matters. The first of these consists of the tithes within these five *pagi* that are owed to the monastery of Corvey, located about 50 kilometers to the east of Paderborn. In this context, Otto II and Otto III previously had granted a number of privileges to Corvey regarding the right to collect its own tithes as well as broad-based rights to all of the tithes within specific *pagi*⁷⁶. The *comitatus* in this case appears to be the authority

⁷⁰ MGH DD Otto III (as note 32), nr. 387.

⁷¹ MGH DD Henry II (as note 10), nr. 45.

⁷² HOFFMANN, *Grafschaften* (as note 1), p. 426: "Wahrscheinlich darf man hier den Wortlaut der Diplome nicht gar zu sehr pressen."

⁷³ PETER VON POLENZ, *Landschafts- und Bezirksnamen im frühmittelalterlichen Deutschland. Untersuchungen zur sprachlichen Raumerschließung*, vol. 1: Namentypen und Grundwortschatz, Marburg a. d. Lahn 1961, p. 243.

⁷⁴ HOFFMANN, *Grafschaften* (as note 1), p. 426.

⁷⁵ MGH DD Otto III (as note 32), nr. 387: *renovamus et confirmamus iam habitae sedi comitatus super pagos Paterga, Aga, Treveresga, Auga, Soretfelt dictos pro decimis Novae Corbeiae ad monasterium pertinentibus et de proprietate clericorum, si quis sine herede illorum obierit, eidem ecclesiae concessa et de tribus mansis in Tuisburg et in Trutmannia et de foresto quod incipit de Dellina flumine et tendit per Ardennam et Sinede usque in viam quae ducit ad Herisiam.*

⁷⁶ MGH DD Otto II (as note 38), nr. 81, 139; MGH DD Otto III (as note 32), nr. 37, 169.

over the collection of the tithes. The second matter addressed here is the right to the property of those clerics who died without heirs. This property, under normal circumstances, would go to the king following a judicial process, as is evidenced by royal charters that discuss the acquisition of properties in this manner⁷⁷. Consequently, *comitatus* in this case appears to refer to the duty, normally performed by the count, to hold a legal proceeding to determine the rightful disposition of the property of the deceased cleric. Given the nature of the privilege from Otto III to Paderborn, it seems likely that the property acquired from clerics without heirs would go to this church. The third matter involves the straight-forward disposition of property, i.e. the three *mansi* which were held as part of a *comitatus*, that is the assets assigned to support the performance of the comital office. The final matter treated in this charter concerns authority within a royal preserve, denoted as a *forestis*, where usufruct rights over timber, pastage, and hunting were reserved to the king unless granted to a recipient through a special license⁷⁸. In this case, the term *comitatus* is being used as a synonym for *bannum*, thus giving to Paderborn the license to exercise royal rights within this particular *forestis*. These four matters do not pertain to the broad exercise of comital authority over the five *pagi* in question, nor do they add up to a *Strenggrafschaft* within these five *pagi* in which the bishops of Paderborn or their designated officials acted as counts over the populations living in unspecified communities. Rather, in this charter, Otto III granted to the bishop of Paderborn a number of delineated responsibilities, which otherwise would have been performed by counts, as well as certain material benefits that were associated with these responsibilities.

COMITATUS AND IMMUNITIES

In his discussion of the grants of *comitatus* to bishoprics and monasteries, Hoffmann touches only briefly on the topic of immunities over the course of his lengthy article before coming to the conclusion that a *comitatus* was necessarily a *Bannimmunität*. However, Hoffmann does not address at any point the pressing issue of the distinction between an immunity held by a church from comital authority and the grant of a comital *bannum* to a church. In the first case, the dependents as well as the assets of bishops, abbots, and abbesses were freed from any interventions by comital authorities, or others holding the royal *bannum*, often characterized as *quilibet iudiciaria potestate constitutus*. As a consequence, it was the church that received the profits of justice associated, above all, with the *fredus* as well as fines resulting from the failure to perform military

⁷⁷ See, for example, MGH DD Otto I (as note 28), nr. 54, 343; MGH DD Otto II (as note 38), nr. 96; MGH DD Otto III (as note 32), nr. 96, 138; MGH DD Henry II (as note 10), nr. 14, 125, 127. The overall subject of *bona vacantia*, or the rights of the government to the assets of those who die either intestate or without known heirs needs more attention for the German kingdom.

⁷⁸ For the development of royal 'forest' rights, see the discussion by ERIC J. GOLDBERG, *In the Manner of the Franks. Hunting, Kingship, and Masculinity in Early Medieval Europe* (The Middle Ages Series), Philadelphia (PA) 2020; and BACHRACH, *Foundations of Royal Power* (as note 50), pp. 172–179.

service and other royal duties, including the provision of hospitality, the feeding of the horses of parties traveling on the king's business, the maintenance of roads and fortifications, as well as other *munera publica*⁷⁹. It is in this context that both Ottonian and Salian kings frequently affirmed that the newly acquired properties of churches would also be included within the immunity that the bishopric or monastery already held⁸⁰. As seen above, a number of grants of *comitatus*, in the sense of fiscal assets, also included the grant of an immunity from comital authority.

Crucially, under the Ottonians and Salians, the grant of an immunity to a church did not give the bishop, abbot, or abbess any authority over any individual, who was not already a dependent of the church. These individuals, as well as their properties, remained under the jurisdiction, that is the *bannum*, of the count in whose *comitatus* they lived⁸¹. The count had extensive responsibilities within his *comitatus*. He had to hold numerous *placita* to hear the cases of the king's free subjects. This duty, in turn, required the recruitment and supervision of subordinate officials, i.e. *vicarii/centenarii* to hold lower-level legal assemblies, as well as maintaining relationships with the leading men at the local level for the purpose of recruiting *scabini* to serve as fact finders⁸². Counts were responsible as well for the mobilization of men within the *pagus* to serve on expeditionary campaigns, for ensuring that local fortifications and transportation networks were maintained, and also for leading the men of his district in defense against outside attacks. Other duties included cooperating with fiscal officials and sometimes taking over responsibility for collecting taxes and tolls as well as for the protection of royal *forestae*⁸³.

⁷⁹ STEFAN ESDERS, The Church as a Governance Actor in a Period of Post-Imperial Transition. Delegation of Fiscal Rights and Legal Change in 10th Century Churrætia, in: *Medieval Worlds* 10, 2019, pp. 17–45.

⁸⁰ See, for example, MGH DD Otto I (as note 28), nr. 11, 14, 317; MGH DD Otto II (as note 38), nr. 156, 210, 230; MGH DD Otto III (as note 32), nr. 16, 44, 48, 52, 83; MGH DD Henry II (as note 10), nr. 25, 29, 36, 47, 58; MGH DD Conrad II (as note 10), nr. 110, 172; MGH DD Henry III (as note 10), nr. 12, 173, 287; MGH DD Henry IV (as note 10), nr. 18, 29, 139, 154, 156. The draft editions of the charters of Henry V have been made available by the Monumenta Germaniae Historica at this URL: <https://data.mgh.de/databases/ddhv/toc.htm> (last accessed: 08/08/2024); see there Henry's charters nr. 99, 111.

⁸¹ DAVID S. BACHRACH, Immunities as Tools of Royal Military Policy under the Carolingian and Ottonian Kings, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 130, 2013, pp. 1–36.

⁸² THOMAS KOHL, Villae Publicae und Taufkirchen. Ländliche Zentren im süddeutschen Raum der Karolingerzeit, in: PETER ETTTEL (ed.), *Zentrale Orte und zentrale Räume des Frühmittelalters in Süddeutschland*, Mainz 2013, pp. 161–174; BACHRACH, Royal Justice and the Comital Office in East Francia (as note 11), pp. 1–24; ID., Royal Justice, Freedom, and Comital Courts in Ottonian Germany (as note 25), pp. 1–51; ID., Continuity of Carolingian Judicial Institutions in Ottonian Lotharingia. The Case of the Scabini, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 138, 2021, pp. 1–28. These matters require further research for the Salian period.

⁸³ BACHRACH, Foundations of Royal Power (as note 50), particularly chapters two and three.

So the question naturally arises why bishops or abbots would have wanted to take on these additional responsibilities, particularly given Hoffmann's own conclusion, discussed above, that the grants of *comitatus* to churches by the Ottonians and the Salians did not provide the basis for the ecclesiastical polities that began to emerge in the twelfth century. Certainly, the assumption of the comital office brought with it financial benefits, i.e. the *comitatus* in the sense of fiscal assets assigned to counts as well as the *fredus* collected from comital *placita*. However, many churches obtained these types of assets without the bishops, counts, or abbesses performing the duties of counts. In his examination of the forged immunities produced by Bishops Hildebold (978–998) and Burchard (1000–1025) of Worms, Thomas Kohl sheds light on this question, making clear that prelates were concerned not only about obtaining resources but also about protecting them from interference by secular authorities and gaining an advantage over their ecclesiastical competitors⁸⁴.

The initial tranche of forgeries produced by Bishop Hildebold were intended to address two concerns. The first of these was to extend the immunity of the church from comital intervention in judicial affairs to a broad district in the region around Wimpfen in Elsenzgau, where Worms already possessed significant property. Notably, Hildebold was very concerned to define the specific territorial spaces in which the count's *bannum* was prohibited because, contrary to the suggestion of Hoffmann, the jurisdiction of the local count, in this case the Salian Otto, ran throughout the *pagus*. Secondly, Hildebold's forgeries were intended to buttress and expand the rights of Worms in Lobdengau, where the monastery of Lorsch possessed extensive properties, and to gain control over much of the Odenwald⁸⁵.

Henry II's grant of two *comitatus*, in the sense of the royal *bannum*, in the two *pagi* of Lobdengau and Wingartheiba, to Bishop Burchard of Worms in 1012 can be understood in this context. The conflict between Worms and Lorsch over properties and rights in these two *pagi*, and particularly over usufruct of the Odenwald, dated back to the reign of Otto I, who issued a formal finding in favor of Worms in 970, although this charter subsequently was illicitly modified by Bishop Hildebold⁸⁶. In 1007, Henry II issued a confirmation of this now modified charter, which codified the expanded rights of the church of Worms in Lobdengau⁸⁷. In 1011, Bishop Burchard sought and obtained from Henry II comital authority in Lobdengau as well as the neighboring *pagus* of Wingartheiba, located to the east, where the monastery of Lorsch held extensive properties⁸⁸. Burchard's perspicacity in gaining comital authority in these two *pagi* paid dividends the next year as Lorsch sought to use documentary records of its own to assert its property rights in Lobdengau. When King Henry com-

⁸⁴ THOMAS KOHL, Religious Exemption, Justice, and Territories Around the Year 1000. The Forgeries of Worms, in: *Medieval Worlds* 6, 2017, pp. 217–230.

⁸⁵ *Ibid.*, pp. 221–225, and note 15 for the list of forged charters.

⁸⁶ MGH DD Otto I (as note 28), nr. 392.

⁸⁷ MGH DD Henry II (as note 10), nr. 128.

⁸⁸ *Ibid.*, nr. 226, 227.

manded Count Poppo of Lobdengau to undertake an inquest into the claims of the two churches, Poppo did so under the ultimate authority of Bishop Burchard. It is not surprising that although Abbot Poppo of Lorsch (1006–1018) had a representative at the inquest, Burchard was able to vindicate his claims ⁸⁹.

The effort by Bishop Burchard to gain comital authority in the two *pagi* of Lobdengau and Wingartheiba was not driven by a desire to establish an ecclesiastical territorial principality of the type seen in a fully developed form in the thirteenth century. Indeed, the church of Worms under Hildebold and Burchard did not seek to gain the comital office within Wormsgau, itself, but rather simply sought to strengthen their immunity against comital intervention in the judicial affairs of their dependents ⁹⁰. The purpose of seeking the *comitatus* in the *pagi* of Lobdengau and Wingartheiba was to strengthen the position of the church of Worms vis-à-vis the claims of the monastery of Lorsch.

When we consider the small number of clear examples of the grant of *comitatus*, in the sense of the royal *bannum*, discussed above, it is also possible to discern factors other than a desire of the prelate to create a territorial principality. In the case of Chur, the episcopal seat as well as the valley of Bergell in which it was located, were all part of the larger administrative district of Raetia, which had a lengthy history dating back to the period of Charlemagne ⁹¹. The initial grant in favor of Chur by Otto I, made in 951, is not discussed by Hoffmann but illuminates in important ways the subsequent history of the bishops' exercise of the royal *bannum*. In 951, as he was preparing for his first Italian campaign, Otto transferred to Bishop Hartpert of Chur (951–972) “the entire fisc from this same *comitatus* of Chur, just as this fisc had pertained up to this point to the royal treasury and royal power, with all legal authority to undertake inquests with regard to this same fisc.” ⁹² Otto took these assets from the control of his son Liudolf, who was the duke of Swabia as well as count in Raetia. This was the first in a lengthy series of grants to Chur that were meant to facilitate the movement of royal armies through the Alps to Italy and to deal with Muslim raiders, who had established themselves La Garde-Freinet (Fraxinetum), near Saint-Tropez ⁹³.

Otto's substantial expansion of the grant of fiscal assets as well as regalian rights to Bishop Hartpert in 960, discussed above, took place in the context of the preparations for his second Italian campaign (961) ⁹⁴. Thus, the grant of comital authority to

⁸⁹ This case is treated in detail in BACHRACH, *Inquisitio as a Tool of Royal Governance* (as note 38), pp. 67–69.

⁹⁰ BACHRACH, *Royal Justice, Freedom, and Comital Courts in Ottonian Germany* (as note 25), pp. 33–35.

⁹¹ See the discussion by ESDERS, *The Church as a Governance Actor* (as note 79), pp. 17–45.

⁹² MGH DD Otto I (as note 28), nr. 139: *omnem fiscum de ipso Curiense comitatu, sicuti actenus ad regale pertinebat cameram et potestatem, cum districtione iusta ad eundem fiscum inquirendum*. This text is treated by ESDERS, *Church as a Governance Actor* (as note 79), p. 34.

⁹³ BACHRACH, *Immunities as Tools of Royal Military Policy* (as note 81), pp. 19–22.

⁹⁴ For the background, see DAVID S. BACHRACH, *Warfare in Tenth Century Germany*, Woodbridge 2012, chapter two.

the bishop of Chur can be understood as an element of royal military policy, which enabled Hartpert to harness all of the resources of the district, including not only those of the church, but also of the broader population within the valley of Bergell. The king benefitted from being able to have a single individual in charge of logistics for the royal army. This is similar to the logic, as discussed above, for Henry II's decision to reassign the *comitatus* of the *pagus* around the walls of Cambrai to Bishop Erluin. By contrast, Archbishop Adalbert's efforts to gain control over both the fiscal resources assigned to counts within his diocese and also the *iurisdictio* within these *comitatus*, as Adam of Bremen put it, had nothing to do with royal military objectives or, indeed, royal interests at all. Adalbert was focused on the establishment of the independent power of the archbishopric and also on the expansion of the power of his family. However, his actions in this regard were possible only because the archbishop served as a regent for the young Henry IV. Adalbert found no ecclesiastical imitators until the twelfth century⁹⁵.

CONCLUSIONS

Hartmut Hoffmann's remarkable finding that the grant of *comitatus* to churches by the Ottonians and Salians did not provide the basis for later ecclesiastical polities opens the way toward reconsidering the nature of the comital office under the later Ottonians, and particularly under the Salians. I have argued elsewhere for the fundamentally public and governmental nature of the comital office under the Ottonians, with an emphasis on the continuation of Carolingian-style duties of counts through the end of Henry II's reign in 1024. In this context, we find in both royal and private charters throughout the Ottonian period the ubiquitous use of the phrase *in pago X in comitatu comitis Y* to define the location of a property⁹⁶. It was this same formula, combined with the assumption of the territoriality of the comital office in Carolingian capitularies as well as in contemporary narrative sources, which led scholars including Metz, Schmid, and Nonn to argue for the frequent, although not universal, overlap of the territorially contiguous *pagus* or *pagi* with the *bannum* of a particular count within his *comitatus*.

It is notable, therefore, that we see the same ubiquitous use of the formula *in pago X in comitatu comitis Y* in Salian royal charters as well as in private charters produced dur-

⁹⁵ HEINZ-JOACHIM SCHULZE, Die Grafen von Stade und die Erzbischöfe von Bremen-Hamburg vom Ausgang des 10. bis zur Mitte des 12. Jahrhunderts, in: HANS-ECKHARD DANNENBERG – HEINZ-JOACHIM SCHULZE (eds.), Geschichte des Landes zwischen Elbe und Weser, vol. 2 (Schriftenreihe des Landschaftsverbandes der ehemaligen Herzogtümer Bremen und Verden 8), Stade 1995, pp. 1–21.

⁹⁶ With regard to the assumption of the territoriality of the comital office in narrative sources, see the discussion by ERIC J. GOLDBERG, *Dominus Hludovicus Serenissimus Imperator sedens pro tribuna*. Conflict, Justice, and Ideology at the Court of Louis the German, in: MATTHIAS BECHER – ALHEYDIS PLASSMANN (eds.), Streit am Hof im frühen Mittelalter (Super alta perennis 11), Göttingen 2011, pp. 175–202, here p. 192.

ing the eleventh and early twelfth century. Hoffmann's argument for the break-down in the connection between the *pagus* and *bannum* of a single count under the Ottonians and Salians was based entirely on his assumption that grant of a *comitatus* necessarily entailed the grant of the royal *bannum* over a district. Thus, a *comitatus* that spread over multiple *pagi* must have entailed, in Hoffmann's view, the existence of a *Streugrafschaft*. But, as we have seen, there is no necessity to interpret *comitatus* in this way, and consequently no basis, at least in cases presented by Hoffmann, for seeing a decoupling of the *pagus* and the count's office. Rather, the term *comitatus* appears to have the same broad semantic field under the Ottonians and Salians as it did under the Carolingians, as demonstrated by Zotz.

A related issue, which Hoffmann does not address, concerns the hundreds of grants of immunities to churches by the Ottonian and Salian kings, which detail their freedom from comital intervention primarily in judicial affairs, but also in regard to matters such as the collection of tolls and taxes, the mobilization of labor for construction projects, and the mobilization of a church's dependents for military service⁹⁷. As scholars such as Walter Goffart and Sandy Murray made clear decades ago, immunities from comital authority, which bishops, abbots, and abbesses routinely sought up through the end of the eleventh century, only make sense if counts exercised a broad-based territorial jurisdiction⁹⁸.

Yet another issue that ought to impinge upon our understanding of the structure and nature of the comital office during the long eleventh century concerns the duty of the king to provide for the judicial needs of his free subjects, and their obligations in turn to the *res publica* under the leadership of the king. As discussed above, the theory of the king's free (*Königsfreie*) was rendered obsolete by the 1970s. However, historians of the German kingdom, even half a century later, have not reintegrated the free into their analyses of politics and administration. The story remains focused on the efforts of ecclesiastical and secular magnates to secure the futures of their families⁹⁹.

The origins of these magnate families, which were becoming established in the first half of the twelfth-century, often are traced to the very same transfers of *comitatus*

⁹⁷ For the Ottonian period, see BACHRACH, Immunities as Tools of Royal Military Policy (as note 81), pp. 1–36; and for the Salian period, see ID., The Advocate's Office and Royal Justice in East Francia and the German Kingdom, c. 800–c. 1125, forthcoming in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung.

⁹⁸ Although the works of WALTER GOFFART, Old and New in Merovingian Taxation, in: Past & Present 96, 1982, pp. 3–21, ALEXANDER CALLANDER MURRAY, Immunity, Nobility, and the "Edict of Paris", in: Speculum 69, 1994, pp. 18–39, and ID., The Merovingian Immunity Revisited, in: History Compass 8, 2010, pp. 913–928, focus on the Merovingian period, their insights about what an immunity was, and why an immunity was granted are relevant to the Carolingian, Ottonian, and Salian periods as well.

⁹⁹ For a critique of this tradition, see STEFFEN PATZOLD, Die Kontroverse über die 'mutation féodale' aus deutscher Perspektive, in: HANS-WERNER GOETZ (ed.), Kontroversen in der jüngeren Mediävistik, Cologne 2023, pp. 242–395; and for a paradigmatic recent example of this type of scholarship, see JONATHAN R. LYON, Princely Brothers and Sisters. The Sibling Bond in German Politics. 1100–1250, Ithaca (NYC) 2013.

from a count to a church treated in detail by Hoffmann¹⁰⁰. But the story of how we get to the new-style government and politics of the Staufen era remains murky. When we remove the assumptions of the New Constitutional historians regarding autogenous lordship, an inherent conflict between ruler and nobility, the supposed anachronism of public authority, and the political irrelevance of the free population, it becomes possible to ask both when and how the German kingdom moved from a system of office-holding counts exercising the governmental authority of the king to a quilt work of largely autonomous lordships, which characterized the German kingdom from the later twelfth century to Napoleon's conquests of the nineteenth. These are questions worthy of scholarly interest.

¹⁰⁰ BENJAMIN ARNOLD, *Princes and Territories in Medieval Germany*, Cambridge 1991.