



7. ISTARSKI POVIJESNI BIENNALE
THE 7th ISTRIAN HISTORY BIENNALE

***RELIGIO, FIDES,
SUPERSTITIONES...:
O VJEROVANJIMA I
POBOŽNOSTI NA
JADRANSKOM PROSTORU***

*RELIGIO, FIDES,
SUPERSTITIONES...:
FAITH AND PIETY
IN THE ADRIATIC AREA*

Zbornik radova / Conference Papers

Zavičajni muzej Poreštine – Museo del territorio parentino
Sveučilište Jurja Dobrile u Puli – Filozofski fakultet
Državni arhiv u Pazinu

7. ISTARSKI POVIJESNI BIENNALE

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o vjerovanjima i pobožnosti na jadranskom prostoru

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DONATIONES PRO REMEDIO ANIMAE AS TOTAL SOCIAL FACTS: A CASE STUDY FROM THE TWELFTH CENTURY MARGRAVIATE OF ISTRIA

Josip Banić

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The author analyzes Ulrich's donation charter to the Patriarchate of Aquileia from 1102 in connection with the social and political background to this princely endowment. It is argued that the battle between the supporters of the emperor and the pope during this seminal stage of the Investiture Controversy played a key role in the drawing up of this charter, a document that would change the course of Istrian history. The paper concludes with a brief description of the ritual aspect of this gift to the Church appending a new transcription of the charter and its translation into modern English.

Ključne riječi: donacije, borba za investituru, Henrik IV., Spanheim, Eppenstein, Weimar Orlamüde, Istra, Akvilejski patrijarhat, teorija darivanja, kasni srednji vijek

Key words: donations, Investiture Controversy, Henry IV, Spanheim, Eppenstein, Weimar Orlamüde, Istria, the Patriarchate of Aquileia, gift theory, High Middle Ages

A reputable group of regional notables gathered in the Aquileian basilica, the religious center of a large ecclesiastical province and the capital of a nascent church-state.* It was the year of our Lord 1102, November the sixteenth, and on this momentous Sunday one small region's course of history would change forever. A noble wedded couple decided to greatly endow the Church of Aquileia with their numerous possessions in Istria, a Holy Roman Empire's margraviate situated in the northern Adriatic. This princely donation was to be presented to the Aquileian patriarch for the salvation of the married couple's and their parents' souls, but the gift also transformed this Church into the largest estate owner in the Margraviate of Istria. What could have compelled these nobles to give up their family inheritance in such a decisive and immediate manner? Is the action to be sought only in the couple's perpetual concern over the future of their *animae* or can there be some other, complementary force that led to the drawing up of this seminal charter?

Inspired by the scholarship built upon Marcel Mauss' gift theory, this paper presents an investigation into the social and political background of this donation's protagonists in order to have a closer look at the intricate web of relations that stood behind this religious gift and determine if it influenced the donation and in what way.¹ Although numerous scholars dealt with this document, none has yet attempted such contextualization. Therefore, before embarking on this quest, a review of current scholarship on the matter is required.

* I would like to thank Reinhard Härtel for helping me locate the original document, Peter Štih for reading the earliest manuscript of the article and offering the much needed words of encouragement, Katalin Szende for having "blessed" my transcription and Cristian-Nicolae Gașpar, *magister optimus*, who helped me greatly with the translation of the charter.

1 First published as Marcel Mauss, "Essai sur le don: Forme et raison de l'échange dans les sociétés archaïques," *L'année sociologique* 1, 1923–1924, 30–186. I shall be citing from the English translation published as Marcel Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies*, trans. Ian Cunnison, London: Cohen & West, 1966.

The charter of donation that is the focus of this study is one of the most important sources for the history of Istria, the Patriarchate of Aquileia and even the counts of Gorizia. First published by Joseph Freiherr von Hormayr in 1808, the charter has since become a standard topos for medievalists dealing with these regions in the period of the Investiture Controversy.² For historians dealing with Istria, the reason for this document's popularity lies in the fact that numerous Istrian localities are mentioned for the very first time precisely in this charter. As it represents a sort of a birth certificate for several urban centers in northern Istria, numerous historians have, since the nineteenth century, occupied themselves with the ubication of the many toponyms mentioned in the charter.³ For the scholars studying the Patriarchate of Aquileia, the donation marks a decisive expansion of Aquileian possessions in Istria, a sort of an overture to the 1209 investiture by which the patriarchs were given jurisdiction over the entire peninsula.⁴ Finally, the charter presents the first mention of a noble identified as "from Gorizia",⁵ a toponymic surname of the later advocates of Aquileia, the counts of Gorizia, famous for their family tradition of waging wars against the Aquileian patriarchs.⁶

Notwithstanding the source's popularity among medievalists, the charter has not been re-edited since Hormayr. It was uncritically taken over by Pietro Kandler in his *Codice diplomatico istriano*, by Ivan Kukuljević-Sakcinski in *Codex diplomaticus regni Croatiae, Dalmatiae et Slavoniae* and by Franz Schumi in *Urkunden und Regestenbuch des Herzogtums Krain*.⁷ This is why the author of this paper offers a new edition of this seminal document.⁸ Moreover, since the charter features the Latin language that is difficult to understand at various points primarily due to the scribe's ignorance of the language and his overreliance

2 Joseph Freiherr von Hormayr, *Historisch-statistisches Archiv für Süddeutschland*, vol. 2, Frankfurt, 1808, 241–44.

3 E.g. Carlo de Franceschi, *L'Istria: Note storiche*, Poreč: Gaetano Coana, 1879, 99; Bernardo Benussi, *Nel Medio evo: Pagine di storia istriana*, Poreč: Gaetano Coana, 1897, (reprint Collana degli Atti 23, Rovinj: Centro di ricerche storiche Rovigno, 2004), 304, 362–63; Giovanni de Vergottini, *Lineamenti storici della costituzione politica dell'Istria durante il Medio Evo*, Trieste: Società istriana di archeologia e storia patria, 1974, 35, 77; Nada Klaić, *Povijest Hrvata u ranom srednjem vijeku* [The History of Croats in the Early Middle Ages], Zagreb: Školska knjiga, 1975, 462–63; Zdenko Balog, "Dvije isprave iz rane povijesti kontinentalne Istre – pokušaj ubiciranja spomenutih lokaliteta" [Two charters from the Early History of Continental Istria: An Attempt at the Ubication of the Mentioned Localities], *Buzetski zbornik* 31, 2005, 175–84; Peter Štih, *I conti di Gorizia e l'Istria nel Medioevo*, Collana degli Atti 36, Rovinj: Centro di ricerche storiche Rovigno, 2013, 59, fn. 29.

4 E.g. Pio Paschini, "Vicende del Friuli durante il dominio della casa imperiale di Franconia," *Memorie storiche forogiuliesi* 9, 1913, 282–83; Pio Paschini, *Storia del Friuli*, 3d ed., Udine: Arti grafiche friulane, 1975, 244; Heinrich Schmidinger, *Patriarch und Landesherr: Die weltliche Herrschaft der Patriarchen von Aquileia bis zum Ende der Staufer*, Graz: Hermann Böhlhaus Nachf., 1954, 74; Paolo Cammarosano, "L'alto medioevo: Verso la formazione regionale," in *Storia della società friulana: Il medioevo*, ed. Paolo Cammarosano, Tavagnacco: Casamassima, 1988, 74; Peter Štih, *The Middle Ages between the Eastern Alps and the Northern Adriatic: Select Papers on Slovene Historiography and Medieval History*, Leiden: Brill, 2010, 250.

5 In the original it is clearly written *Henricus de Goriza*, and not *de Gorizia* as was previously transcribed.

6 E.g. Therese Meyer and Heinz Dopsch, "Dalla Baviera al Friuli: L'origine dei conti di Gorizia e le prime vicende della dinastia in Tirolo, Carinzia e Friuli," in *Da Ottone III a Massimiliano I: Gorizia e i conti di Gorizia nel Medioevo*, ed. Silvano Cavazza, Mariano del Friuli: Edizioni della Laguna, 2004, 124.

7 Pietro Kandler, ed., *Codice diplomatico istriano* (hereafter: CDI), vol. 2, Trieste: Tipografia Riva, 1986, 241–42, n. 119; Ivan Kukuljević-Sakcinski, ed., *Codex diplomaticus regni Croatiae, Dalmatiae et Slavoniae*, vol. 2, Zagreb: Dragutin Albrecht, 1875, 6–8, n. 7; Franz Schumi, *Urkunden und Regestenbuch des Herzogtums Krain* (hereafter: URHK), vol. 1, Ljubljana: Narodna Tiskarna, 1882, 73–75, n. 67.

8 I followed the instructions as given in Paolo Cammarosano, *L'edizione dei documenti medievali: Una guida pratica*, Collana strumenti 3, Trieste: CERM, 2014, 29–41 and ff.

on notarial formulae, the author translated the charter into modern English. The translation is primarily meant for pupils and university students who are thus encouraged to read and analyze this remarkable historical source. Naturally, many experts in medieval Latin will without a doubt critique and comment on the translation, but as long as the charter is discussed and debated, the translation will have fulfilled its primary purpose.

Even though many historians wrote about the charter and cited its imperfect editions, no historian has thus far analyzed it in relation to the political and social background of the time. Bernardo Benussi, the champion of Istrian positivist historiography, was unfortunately heavily influenced by the nationalistic views characteristic of his time. In that way, Benussi wrote that the German prince did not like “our province” and therefore gave away the family inheritance in Istria and returned to “his” province (Thuringia in Germany).⁹ The same author also hypothesized that the donator was disappointed with the appointment of a new Istrian margrave, the office that he had, according to Benussi, wanted for himself, and therefore left the northern Adriatic.¹⁰ As shall be demonstrated, these opinions must be abandoned, primarily because no source exists that could support the opinion that the donator either did not like Istria or that he was in any way competing for the office of the Istrian margrave. Other than Benussi, only one other scholar, also from the era of positivist historiography, hypothesized as to why this donation happened. According to Hans Pirchegger, the donation was probably a trade by which the patriarch conferred upon the donors some rich properties for the duration of the couple’s lifetime.¹¹ Although the argument fits well into the theoretical paradigm famously elaborated by Mauss, there are no sources to support this hypothesis either. Since all the attempts to uncover additional motivation behind the drawing up of this charter fail due to the lack of historical sources, how can one proceed with this scholarly inquiry?

Contemporary historiography dealing with gifts and donations has made huge advancements since the days of Benussi or Pirchegger. The famous “*Essai sur le don*” did not immediately influence medievalists, but starting from the late 1950s a certain trend in the studies dealing with gift giving and ceremonious donations can be traced.¹² The concept of “gift-counter gift”, essential to Mauss’ study, by which every act of gift giving constitutes a social relation in which the gift must somehow be repaid to the donator, thus constituting a sort of obligation that perpetuates the social relation, was central to many studies.¹³ Al-

9 “[Ulrich II] era tanto poco affezionato al nostro paese, da rinunciare, nel 1102, ai suoi possedimenti istriani a favore di persona estranea, per andare a chiudere i suoi giorni nella sua prediletta Turingia!” B. Benussi, *Nel Medio evo*, 361–62.

10 Ibid., 373–74.

11 “Der Grund dieser Schenkung ist unbekannt; vielleicht war sie, wie sonst häufig, das Ergebnis eines Tausches: der Patriarch hatte ihm wohl für Lebenszeit reichen Besitz verliehen.” Hans Pirchegger, “Überblick über die territoriale Entwicklung Istriens,” in *Erläuterungen zum Historischen Atlas der österreichischen Alpenländer*. 1. Abteilung: *Die Landgerichtskarte*. Vol. 4, 1: *Kärnten, Krain, Görz und Istrien. Kärnten (Nachträge), Krain und Istrien*, ed. August von Jaksch et al., Vienna: Holzhausen, 1929, 490.

12 Philip Grierson, “Commerce in the Dark Ages: A Critique of the Evidence,” *Transactions of the Royal Historical Society* 9, 1959, 123–40. See also the bibliography in Florin Curta, “Merovingian and Carolingian Gift Giving,” *Speculum* 81, 2006, 671–77.

13 A very popular early account of the incorporation of the Mausean gift theory into the medieval studies is Georges Duby, *The Early Growth of the European Economy: Warriors and Peasants from the Seventh to the Twelfth Century*, trans. Howard D. Clarke, Ithaca: Cornell University Press, 1974, 48–57; Aron Yakovlevich Gurevich, *Categories of Medieval Culture*, trans. G. L. Campbell, London: Routledge & Kegan Paul, 1985, 215–58. Among more modern studies see for example

though many scholars centered their studies on the nature of relationships formed by various gift-giving practices amongst nobles or between rulers and their subjects, some authors focused exclusively on donations to churches and monasteries.¹⁴ These forms of gift giving, *donationes pro remedio animae*, can be conceptualized within the “gift-counter gift” scheme only partially. While the counter-gift provided by the religious institutions could take various forms, such as the right to continue enjoying the usufructs of the donated estates during the donor’s lifetime, or the conferment of the hereditary office of advocates over the donated lands to the donor’s family, the main favour churches and monasteries provided was the salvation of the souls.¹⁵ However, there was more to these donations than only this, albeit important, religious component. Gifts conferred upon the donors a special identity, providing them with “cosmological authentication” of their privileged status in the society and reaffirming their right to rule and govern.¹⁶ Furthermore, Barbara H. Rosenwein and Stephen D. White have successfully demonstrated how donations to specific religious institutions served as “social glue” between the donors, as forces binding diverse kin groups together into the various knots of the “tightly woven fabric” that constitutes the medieval society.¹⁷ Viewed from this angle, “the gift is essentially a classificatory mechanism, which establishes and maintains bonds between various allies, and delineates the enemy as the one to whom one does not give.”¹⁸ What surfaces from the existing scholarship on medieval gift-giving practices and donations to various religious institutions is that a gift is always a complex social phenomenon. According to Mauss, gifts are “total social facts” (*le fait social total*), actions that unite various dimensions of social life in a unique homogenous phenomenon.¹⁹ A donation to the Church thus synthesizes both religious, social, political, economic and legal implications.²⁰ This analytical concept is the main merit of Mauss’ work in medieval studies.²¹ Although this paper uncovers the various factors influencing

Stephen D. White, “Service for Fiefs or Fiefs for Service: The Politics of Reciprocity,” in *Negotiating the Gift: Pre-Modern Figurations of Exchange*, ed. Gadi Algazi, Valentin Groebner, and Bernhard Jussen, Göttingen: Vandenhoeck & Ruprecht, 2003, 63–98; Chris Wickham, “Compulsory Gift Exchange in Lombard Italy, 650–1150,” in *The Language of the Gift in the Early Middle Ages*, ed. Wendy Davies and Paul Fouracre, Cambridge: Cambridge University Press, 2010, 193–216.

- 14 Ilana F. Silber, “Gift-Giving in the Great Traditions: The Case of Donations to Monasteries in the Medieval West,” *European Journal of Sociology* 36, no. 2, 1995, 209–43. The classic study remains Barbara H. Rosenwein, *To Be the Neighbor of Saint Peter: The Social Meaning of Cluny’s Property, 909–1049*, Ithaca, N.Y.: Cornell University Press, 1989. I have been immensely inspired by Arnoud-Jan A. Bijsterveld, *Do ut Des: Gift Giving, Memoria, and Conflict Management in the Medieval Low Countries*, Hilversum: Verloren, 2007.
- 15 I. Silber, “Gift-Giving in the Great Traditions,” 215–18; C. Wickham, “Compulsory Gift Exchange,” 197.
- 16 Barry Schwartz, “The Social Psychology of the Gift,” *American Journal of Sociology* 73, no. 1, 1967, 1–11; Annette B. Weiner, *Inalienable Possessions: The Paradox of Keeping-While-Giving*, Berkeley: University of California Press, 1992, 9 and passim.; Neven Budak, “Foundations and Donations as a Link between Croatia and the Dalmatian Cities in the Early Middle Ages (9th–11th C.),” *Jahrbücher Für Geschichte Osteuropas* 55, no. 4, 2007, 483–90.
- 17 B. Rosenwein, *To Be the Neighbor of Saint Peter*, 13 and ff.; Stephen D. White, *Custom, Kinship, and Gifts to Saints: The Laudatio Parentum in Western France, 1050–1150*, Chapel Hill: University of North Carolina Press, 1988. The metaphor of a “tightly woven fabric” (orig. *un tissu si serré*) is taken over from Georges Duby, *La société aux XIe et XIIe siècles dans la région mâconnaise*, Paris: S.E.V.P.E.N., 1971, 170.
- 18 Andrew Cowell, *The Medieval Warrior Aristocracy: Gifts, Violence, Performance, and the Sacred*, Cambridge: D. S. Brewer, 2007, 7.
- 19 M. Mauss, *The Gift*, 36–37.
- 20 I. Silber, “Gift-Giving in the Great Traditions,” 225.
- 21 Cf. Patrick J. Geary, “Gift Exchange and Social Science Modeling: The Limitations of a Construct,” in *Negotiating the Gift: Pre-Modern Figurations of Exchange*, ed. Gadi Algazi, Valentin Groebner, and Bernhard Jussen, Göttingen: Vandenhoeck & Ruprecht, 2003, 129–40.

the 1102 donation to the Patriarchate of Aquileia that are not religiously motivated, it must be stressed that this gift was undeniably a “total social fact” and “to characterize such gifts as being predominantly politically or religiously inspired, represents a twentieth-century point of view, rather than a twelfth-century one.”²² With these theoretical observations in mind, the detective story unraveling the mystery of the 1102 donation may commence.²³

The *intitulatio* of the charter describes the donors as “husband and wife, Ulrich, the son of the late margrave also called Ulrich, and Adelaide.” The dating of the document helps with a more precise identification of these protagonists. A margrave of Carniola and Istria by the name of Ulrich is attested in the late 1050s and early 1060s.²⁴ According to the anonymous twelfth century chronicler known in historiography as “Annalista Saxo”, Ulrich, “the margrave of Carinthians” (*Odalricus marchio Carentinorum*), had a brother “Otto de Or-lagemunde” and married the Hungarian princess Sophie with whom he had a son, a certain Ulrich junior, and he died in 1070.²⁵ The same Ulrich is mentioned in the annals of Lampert of Hersfeld, his eleventh century contemporary, who also records his title as *marchio Carentinorum*, his marriage to Sophie and his death in 1070.²⁶ These near contemporary historical sources were sufficient for the positivist historians to conclude that the margrave Ulrich from the mid-eleventh century is in fact Ulrich I Weimar-Orlamünde, a Thuringian noble who inherited the Carniolan and Istrian margraviate from his father’s marriage to Hademoud Sempt-Ebersberg, the only heiress of the former Carniolan margrave, Eberhard II Sempt-Ebersberg.²⁷ According to this widely accepted theory, Ulrich “the son of the late margrave also called Ulrich” can only be Ulrich II Weimar-Orlamünde, the Ulrich junior mentioned by Annalista Saxo. This opinion is strengthened by the fact that Ulrich II was indeed married to Adelaide, the daughter of Ludwig the Springer (or Leaper).²⁸

In 2002, Walter Landi published an article in which he proposed a radically different

22 A. Bijsterveld, *Do ut Des*, 53.

23 “Like good detectives in a murder mystery, we may pose some elementary questions in the hopes of unraveling a complicated story: who, what, where, when, how and why.” Barbara H. Rosenwein, “Property Transfers and the Church, Eighth to Eleventh Centuries: An Overview,” *Mélanges de l’Ecole Française de Rome. Moyen-Age, Temps Modernes* 111, no. 2, 1999, 566–67.

24 In 1058 “In marcha Kreina et in comitatu Odelrici marchionis” Dietrich von Gladis and Alfred Gawlik, eds., *Heinrici IV. diplomata* (hereafter: DD. H. IV.), vol. 1, Monumenta Germaniae historica (hereafter: MGH), Diplomata regum et imperatorum Germaniae 6, Hannover: Hahnsche Buchhandlung, 1941, 54–55, n. 43. In 1061 “Odolricus marchio istriensis † signum manus prefatus marchio qui scribere nesciunt signum crucis fecit” CDI, vol. 1, 218, n. 103 (with a wrong date that should be corrected to 1061).

25 Klaus Nass, ed., *Die Reichschronik des Annalista Saxo*, MGH, Scriptores (in folio) (hereafter: SS) 27, Hannover: Hahnsche Buchhandlung, 2006, 405, 416.

26 Lampert of Hersfeld, “Annales,” in *Lamperti monachi Hersfeldensis Opera*, ed. Oswald Holder-Egger, MGH, Scriptores rerum Germanicarum in usum scholarum separatim editi (hereafter: SS rer. Germ.) 38, Hannover: Hahnsche Buchhandlung, 1894, 79, 112.

27 Eberhard II, the son of Ulrich I of Sempt-Ebersberg, was attested as the Carniolan margrave in 1040, “in marchia Creina in comitatu Eberardi marchionis.” URHK, 34, n. 27. According to the *Chronicon Eberspergense*, the only surviving heir of Ulrich I was her granddaughter Hademoud, the daughter of Williburga. Wilhelm Arndt, ed., “Chronicon Eberspergense,” in *Supplementa tomorum I, V, VI, XII. Chronica aevi Suevici*, MGH, SS 20, Hannover: Hahnsche Buchhandlung, 1869, 13. According to another family chronicle, the *Codex Traditionum Eberspergensium*, Hademoud, the daughter of Williburga, had a son Ulrich. Andreas Felix von Oefele, ed., “Codex Traditionum Eberspergensium,” in *Rerum Boicarum scriptores*, vol. 2, Augsburg, 1768, 26. Thus, the riddle was solved and the son of Hademoud has been identified as the same Ulrich *marchio Carentinorum* mentioned by Lampert of Hersfeld and Annalista Saxo.

28 K. Nass, *Die Reichschronik des Annalista Saxo*, 405, 547; Oswald Holder-Egger, ed., “Cronica Reinhardsbrunnensis,” in *Supplementa tomorum XVI-XXV*, MGH, SS 30, 1, Hannover: Hahnsche Buchhandlung, 1896, 521.

thesis. According to Landi, the margrave Ulrich attested in the eleventh century sources is actually an heir of none other than Eberhard II Sempt-Ebersberg, traditionally believed to have died without surviving heirs. According to this thesis, the Ulrich from the 1102 charter is the son of Ulrich, the count of Bolzano.²⁹ There are numerous problems with this thesis and the author of this paper will deal with them *in extenso* in a forthcoming paper. In the meantime, it will suffice to remark that the margrave Ulrich dies in 1070 and this is attested by several chroniclers. Landi's Ulrich, the putative son of Eberhard II, dies only in 1078. Furthermore, Landi's thesis is built upon the famous 1040 donation of Azica, a document that was successfully demonstrated to be a complete forgery created *ex novo* by the bishop of Poreč Bonifacius (1282-1305) and not an interpolated original.³⁰ Even if one accepts that Azica's donation may hide a glimpse of eleventh century reality, Landi still had to invent several new members of the Sempt-Ebersberg family in order to explain fully his thesis. Finally, Landi claims that the *professio legis* formula in the 1102 donation is the irrefutable proof that the donators could not have been from Thuringia as they profess to be living according to the Bavarian law.³¹ However, in the twelfth century, and even earlier, these formulae of *professio legis* denote local customs under which one is operating, not the distant origins of one's forefathers.³² As was neatly pointed out by Guterman:

Law gradually became localized, attached to regions. But during the ninth and tenth centuries this change from personality to territoriality was only partial. The laws of the regions were still known by the original national designation of a majority of the inhabitants. The old national laws were cited by name, but their contents had undergone great change.³³

Istria and Carniola developed under the margraves from the house of Sempt-Ebersberg, Bavarian nobility, and Ulrich I inherited the office from his maternal, Bavarian lineage. The Weimar-Orlamünde family thus adopted the laws of the region and the legal traditions of the family line through which they inherited the office of the margraves. There are similar examples from the Patriarchate of Aquileia confirming this practice. Poppo, the patriarch of Aquileia during the eleventh century, professed to be living according to the Roman law, even though he originated from the Bavarian noble house of Ottokars of Steyer.³⁴ Therefore, Landi's argument based on later forgeries, unproven assumptions and complete ignorance of several seminal contemporary sources is rejected.

Once the identity of the married couple has been established, their social ties and alliances with regional kinship groups are to be analyzed. As the donation took place during the great Investiture Controversy, one of the most important conflicts in European history,

29 Walter Landi, "Tra cognatio e agnatio: Sulla provenienza degli Udalrichingi di Bolzano, conti di Appiano," in *Geschichte und Region / Storia e regione: Adelige Familienformen im Mittelalter / Strutture di famiglie nobiliari nel Medioevo*, ed. Giuseppe Albertoni and Gustav Pfeifer, Innsbruck: Studien Verlag, 2002, 37-71.

30 Danilo Klen, *Fratrija: Feud opatiije sv. Mihovila nad Limom u Istri i njegova sela (XI - XVIII st.)* [Fratrija: The Fief of St. Michael's Monastery above the Lim Bay in Istria and its Villages (XI - XVIII cent.)], Rijeka: Historijski arhivi u Rijeci i Pazinu, 1969, 22-34.

31 "Qui professi sumus ex natione nostra lege vivere Baiuoriorum."

32 Simeon L. Guterman, "The Principle of the Personality of Law in the Early Middle Ages: A Chapter in the Evolution of Western Legal Institutions and Ideas," *University of Miami Law Review* 21, no. 2, 1966, 326-38, here 331.

33 Ibid, 338.

34 P. Štih, *The Middle Ages*, 287, fn. 84.

the battle between the Pope and the Holy Roman Emperor that split the European nobility between the supporters of Henry IV and the pro-papal forces, the first logical step would be to identify the couple's allegiance in regards to this seminal, contemporary rivalry.³⁵ Unlike many Thuringian and Saxon nobles, the Weimar-Orlamünde family traditionally supported emperor Henry IV. Ulrich I Weimar-Orlamünde (but II as Carniolan margrave) accompanied the forces of the young emperor on their expedition to Hungary in 1060s, earning thus, "for his faithful service" (*ob fidele servitium eius*) twenty royal *mansi* in Istria as a reward.³⁶ He also received properties from Istrian landowners who thus put themselves under his protection.³⁷ Moreover, Ulrich I married a Hungarian princess, Sophia, who was a kind of war trophy of the successful expedition.³⁸ Based on his father's allegiance, one could position Ulrich II alongside the supporters of Henry IV. However, his marriage to Adelaide does not fit this alliance. The daughter of Ludwig the Springer and the heir of the Ludowingian dynasty, Adelaide comes from a Thuringian family known for opposing Henry IV.³⁹ It may be hypothesized that the marriage between Ulrich II and Adelaide was meant to serve as a bond between the two noble houses with different allegiances towards the Holy Roman emperor, as marriage between the members of the opposing kinship groups was often a tool for establishing peace in the Middle Ages.⁴⁰ What can be concluded is that the marriage did not work. Ulrich II "repudiated" his wife and had no surviving children with her.⁴¹ This leaves Ulrich's political allegiance somewhat of a mystery, although him leaving his wife, who stemmed from a family of emperor's adversaries, along with his father's alliance with Henry IV, could lead towards the conclusion that the donor supported

35 A good overview is still Gerd Tellenbach, *The Church in Western Europe from the Tenth to the Early Twelfth Century*, trans. Timothy Reuter, Cambridge: Cambridge University Press, 1993.

36 DD. H. IV., 176–77, n. 135. The place names mentioned are: Buzet (*Puuiendi*), Lupoglav (*Lompaga*), Boljun (*Bangul*), Belaj (*Curtalla*), Letaj (*Lahaneuuit*), Sveti Martin (*sanctum Martinum*), Roč (*Ruz*), Brest (*Winstrum*) and Vrana (*Rana*). All of them, except Lupoglav and Brest, will be mentioned in the 1102 donation.

37 Only one such donation is known and only as a late fourteenth century regesta in the *Thesaurus Ecclesiae Aquiliensis* composed by Ulrich (*Odoricus*) de Susannis. According to this regesta, Artuik (*Artuicus*) from Piran and his wife Bona donated Kaštel (ital. Castelvenere) to Ulrich, the margrave of Istria, in 1061. That same Kaštel will be donated to the Church of Aquileia by Ulrich II in 1102. A vast majority of the documents available to de Susanis have been lost. Odoricus de Susannis, *Thesaurus ecclesiae Aquilejensis* (henceforth: TEA), ed. Giuseppe Bianchi, Udine: Trombetti-Murero, 1847, 227–228, n. 541.

38 See more in Marija Mogorović Crljenko, "Istarski markgrofovi iz obitelji Weimar-Orlamünde u konstelaciji odnosa Carstva i papinstva u doba borbe za investituru" [Istrian Margraves from the Weimar-Orlamünde Family in the Constellation of Relations between the Empire and the Papacy during the Investiture Controversy], *Godišnjak Njemačke narodnosne zajednice / VDG Jahrbuch* 10, 2003, 83–89.

39 Lutz Fenske, *Adelsopposition und kirchliche Reformbewegung im östlichen Sachsen: Entstehung und Wirkung des sächsischen Widerstandes gegen das salische Königtum während des Investiturstreits*, Göttingen: Vandenhoeck & Ruprecht, 1977, 81, 111–12; Ian Stuart Robinson, *Henry IV of Germany: 1056-1106*, Cambridge: Cambridge University Press, 2000, 248.

40 Gerd Althoff, *Family, Friends and Followers: Political and Social Bonds in Early Medieval Europe*, trans. Christopher Carroll, Cambridge: Cambridge University Press, 2004, 35–41, 90.

41 "Ludewicus desponsavit sibi filiam cuiusdam ducis Saxonie Udalrici, quam postea repudiavit." O. Holder-Egger, "Cronica Reinhardsbrunnensis," 522. "Odalricus de Uuimmar, Lodouuici comitis de Thuringia dudum gener, sed iam propter eius filie repudium inuisus." K. Nass, *Die Reichschronik des Annalista Saxo*, 547. Ingrid Würth is wrong to conclude that Ulrich II had children with Adelaide as Ulrich's allods in Thuringia would not have ended up as royal property ("Nos quoque, ad quos allodia supra dicti Ôlrici communi iudicio principum nostrorum devenerunt"). See the charter in Otto Posse and Hubert Ermisch, eds., *Urkunden der Markgrafen von Meißen und Landgrafen von Thüringen*, Codex diplomaticus Saxoniae regiae 1, 1, 2, Leipzig: Giesecke & Devrient, 1889, 37, n. 43. Cf. Ingrid Würth, "Die Grafen von Weimar-Orlamünde als Markgrafen von Krain und Istrien," *Zeitschrift des Vereins für Thüringische Geschichte* 56, 2002, 127.

the pro-Henrician forces during the Investiture Controversy.

While the donor's allegiance is not completely clear, there can be no doubt about the position of the Aquileian patriarch and the Church of Aquileia during the Investiture Controversy. This Church's link to the imperial court is traced back to the time of Charlemagne, the first emperor to grant privileges and immunities to Aquileia, the policy later adopted by Italian kings.⁴² The Ottonian and Salian emperors furthered this strategy by confirming the existing privileges and lavishly donating land and rights to the patriarchs of Aquileia.⁴³ By the time of the Investiture Controversy, this religious institution had thus become a stronghold of imperial forces, the very patriarchs being elected among the emperor's devoted allies. The patriarch who received the couple's gift in 1102 was Ulrich from the noble house of Eppenstein and his role during the Investiture Controversy is of great importance for gaining a deeper understanding of this donation.⁴⁴ Even during the conflict between Henry IV and the anti-king Rudolph, Ulrich Eppenstein fiercely supported the emperor. At the time, Ulrich was the abbot of Saint Gall, one of the cultural centers of the Holy Roman Empire. Nonetheless, Ulrich was "always in armor, waging war on King Rudolf most skillfully and unlike a monk" according to the annals of Berthold.⁴⁵ Once he was appointed the patriarch of Aquileia, the Eppenstein family became one of the strongest forces in the northern Adriatic region. The Eppensteins were the advocates of Aquileia; Henry Eppenstein, Ulrich's first brother, was the margrave of Istria and Liutold, the second brother, was the duke of Carinthia and the margrave of Verona.⁴⁶ Moreover, Henry IV donated the entire march of Carniola to the Patriarchate in 1093, thus continuing the long standing tradition of endowing the Aquileian Church.⁴⁷ Ulrich, one of the close advisors to Henry IV, even took upon himself the attempt at reconciliation between Henry IV and his rebellious son Henry V during the Easter of 1105, an attempt that ultimately failed.⁴⁸ As was well noted by Robinson "the emperor had placed the defense of the south-eastern frontier of the German kingdom firmly in the hands of his Eppenstein kindred."⁴⁹ The "holy Church of Aquileia",

42 Engelbert Mühlbacher, ed., *Pippini, Carlomanni, Caroli Magni diplomata*, MGH, *Diplomata Karolinorum* 1, Hannover: Hahnsche Buchhandlung, 1906, 233–34, n. 174, 234–36, n. 175. On Charlemagne's gifts to religious institutions see also Janet L. Nelson, "The Setting of the Gift in the Reign of Charlemagne," in *The Language of the Gift in the Early Middle Ages*, ed. Wendy Davies and Paul Fouracre, Cambridge: Cambridge University Press, 2010, 118–29. For the Patriarchate of Aquileia and its relations with the Carolingian rulers and Italian kings see e.g. P. Cammarosano, "L'alto medioevo," 59–80.

43 H. Schmidinger, *Patriarch und Landesherr*, 31–37; P. Cammarosano, "L'alto medioevo," 80–96.

44 On the patriarch Ulrich of Eppenstein, besides the already cited titles, see also I. Robinson, *Henry IV of Germany*, 188, 259, 285–89, 329; Werner Vogler, "Ulrich von Eppenstein, Patriarch von Aquileja und Abt von St. Gallen, und das Kloster Moggio im Friaul," *Zeitschrift für schweizerische Kirchengeschichte* 87, 1993, 83–103. The definitive monograph on the Eppenstein family remains Karl-Engelhardt Klaar, *Die Herrschaft der Eppensteiner in Kärnten*, Klagenfurt: Geschichtsverein für Kärnten, 1966.

45 "Semper loricator, bella non monachica sollertissimus astruxit." Berthold, "Annales," in *Annales et chronica aevi Salici*, ed. Georg Heinrich Pertz, MGH, SS 5, Hannover: Hahnsche Buchhandlung, 1844, 301.

46 I. Robinson, *Henry IV of Germany*, 259. See the Eppenstein family tree in Heinz Dopsch, "Origine e posizione sociale dei patriarchi di Aquileia nel tardo medioevo," in *Aquileia e il suo patriarcato: Atti del Convegno Internazionale di Studio (Udine 21-23 ottobre 1999)*, ed. Sergio Tavano, Giuseppe Bergamini, and Silvano Cavazza, Udine: Regione Autonoma Friuli-Venezia-Giulia. Deputazione di Storia Patria per il Friuli, 2000, 310.

47 DD. H. IV., 577–578, n. 432.

48 Georg Waitz, ed., *Annales Hildesheimenses*, MGH, SS rer. Germ. 8, Hannover: Hahnsche Buchhandlung, 1878, 52–53; I. Robinson, *Henry IV of Germany*, 329.

49 I. Robinson, *Henry IV of Germany*, 259.

mentioned in the *inscriptio* of the 1102 donation, may thus be conceptualized as the hub gathering pro-imperial forces. Donations to this anti-papal center, therefore, acted as “social glue”, binding together Henry’s supporters during a decisive fight against the papacy.

Yet another point needs to be clarified before moving to the next piece of the puzzle, the position of Burchard Moosburg, Ulrich’s putative rival. During Ulrich’s rule in Aquileia, the office of advocates was given to the Moosburg family, other loyal supporters of Henry IV.⁵⁰ Burchard Moosburg, the new advocate of Aquileia, was also made Istrian margrave and one finds him with this title from 1101 until 1106.⁵¹ During this time, Burchard loyally followed Henry IV throughout his final battles against his rebel son.⁵² The donation document mentions a *Conradus* as the advocate, but this Conrad is linked to the Moosburg family via marriage to Burchard’s daughter.⁵³ It cannot then be argued that Ulrich II Weimar-Orlamünde demanded the office of Istrian margrave for himself as he, logically, would not have bestowed the management of his family inheritance upon his rival. It is much more likely that Ulrich II supported his fellow imperial ally and wanted to complement Burchard’s power in the region, and that of the Aquileian Church, by endowing them with substantial landed property in Istria. So far the paper has shed light on the demonstrative and social aspects of the 1102 donation. Ulrich II positioned himself clearly along the anti-papal forces, entering the social network of Henry’s supporters gathered around the imperial stronghold of the northern Adriatic, the Patriarchate of Aquileia. Can this investigation uncover any additional dimensions of this remarkable case?

Counterfactual historical method can be employed here as the plausibility of the counterfactual in this case derives from the laws governing the succession of family property.⁵⁴ What would have happened had this donation not been made? As Ulrich II had no children, the only surviving heirs to the Weimar-Orlamünde possessions in Istria would be his close relatives, namely, the heirs of his late brother Poppo. This Poppo rarely appears in historical sources. One finds him in 1093 as *Poppo Istriensis marchio* among the benefactors of St. Paul’s Abbey in Lavanttal⁵⁵ and in the *Historia Welforum* as a “Popo marchio”, the son of Sophie and “one of Carinthia”.⁵⁶ This was enough information for the historians to conclude that this Poppo is none other than the first son of Ulrich I Weimar-Orlamünde, named after Poppo I, the supposed husband of Hademoud Sempt-Ebersberg, and thus the brother of the donor from the 1102 charter. Here is where the investigation becomes interesting. Poppo II was married to Richarda Spanheim and had two daughters with her, Sophie and Hedwiga, who would later marry into the family of the counts of Andechs and the

50 Cesare Scalon, ed., *Diplomi patriarchali: I documenti dei patriarchi Aquileiesi anteriori alla metà del XIII secolo nell’Archivio capitolare di Udine*, Udine: C.D.C., 1983, 25–26, n. 3.

51 B. Benussi, *Nel Medio evo*, 373–75.

52 I. Robinson, *Henry IV of Germany*, 293, 364–65 and fn. 136 for all the diplomas featuring Burchard.

53 P. Štih, *The Middle Ages*, 279.

54 As was keenly observed by Martin Bunzl, “the plausibility of the counterfactual is carried by the plausibility of the laws of mechanics from which it is derivable.” See more in Martin Bunzl, “Counterfactual History: A User’s Guide,” *The American Historical Review* 109, no. 3, 2004, 845–58, here 851.

55 Beda Schroll, ed., *Urkundenbuch des Benedictiner-Stiftes St. Paul in Kärnten*, Vienna: Karl Gerold’s Sohn, 1876, 9, n. 5; URHK, 70–71, n. 62.

56 Ludwig Weiland and Georg Heinrich Pertz, eds., “Historia Welforum Weingartensis,” in *Historici Germaniae saec. XII. 1*, MGH, SS 21, Hannover: Hahnsche Buchhandlung, 1869, 463.

counts of Bogen respectively.⁵⁷ The reason why Ulrich II could freely dispose of his Istrian property lies in the fact that his brother, Poppo II, was already dead at the time of donation, and Richarda, having almost immediately remarried, had waived all her rights over these possessions.⁵⁸ According to the Bavarian law, which was one of the laws of the region and the law of the regional German-speaking nobility, women, i.e. the daughters of Poppo II, could also inherit property.⁵⁹ Yet, Ulrich II was able to freely donate the family inheritance without any formal consent from Poppo's children.

There are two possible scenarios as to why this was the case. First, which is more probable, the ancient Bavarian law was not respected to the letter and Ulrich II, following his brother's death and the widow's new marriage, inherited the lands formerly under his brother's *potestas*. This would be contrary to the eighth century codified Bavarian law which puts daughters before the paternal collaterals in hereditary succession. However, since Poppo's daughters were only children at the time, it is possible that the possessions of Ulrich I reverted to his second son and not to his two granddaughters. These "distortions" and various "tamperings" with the ancient law codes are nothing exceptional in the Holy Roman Empire, especially during the period that was centuries removed from the original codification era in which the old law codes had been exposed to various different legal traditions.⁶⁰ Another scenario, less likely, is that the Weimar-Orlamünde kindred in Istria continued to be influenced by the law code of their Thuringian ancestors, the *leges Thuringorum*, according to which only male heirs could inherit the landed property.⁶¹ In that way, a process of legal transculturation ensuing from the marriage between Thuringian and Bavarian nobles resulted in the unclear fusion of the Bavarian and Thuringian inheritance law. Be as it may, Ulrich II freely disposed of his father's properties after his brother, the former margrave of Istria Poppo II, died and after Richarda Spanheim, Poppo's widow, remarried.

It remains an open question whether the children of Poppo II would have claimed, or tried to claim, their paternal grandfather's inheritance following the death of their uncle, Ulrich II. Once again, there are two possible scenarios. Had they not tried to claim their right over these properties, following the death of Ulrich II the Istrian allods would have

57 Ibid., 463. Würth, not familiarized with Slovenian historiography, wrongly concludes that *comes Poppo de Creine* was the son of Poppo II Weimar-Orlamünde. That Poppo is in fact a member of the counts of Heumburg (slov. Vovbržanski). See correctly in Peter Štih, "Kranjska v času Andeških grofov" [Carniola during the time of the Counts of Andechs], in *Große Andeško-Meranski. Prispévki k zgodovini Evrope v visokem srednjem veku*, ed. Andreja Aržen and Toni Aigner, Kamnik: Zveza kulturnih organizacij Kamnik, 2001, 12–13. Cf. I. Würth, "Die Grafen von Weimar-Orlamünde," 127–28.

58 I. Würth, "Die Grafen von Weimar-Orlamünde," 123; Andrej Komac, *Od mejne grofije do dežele: Ulrik III. Spanheim in Kranjska v 13. stoletju* [From March to Land: Ulrich III Spanheim and Carniola in the 13th Century], Ljubljana: Založba ZRC, 2006, 52; Ernst von Schwind, ed., *Lex Baiwariorum*, MGH, *Leges nationum Germanicarum* 5, 2, Hannover: Hahnsche Buchhandlung, 1926, 427, cap. 8 "de secundis nuptiis".

59 This is deduced from the chapter "De eo qui sine liberis moritur" that states "concerning him who dies without sons or daughters" (*De eo qui sine filiis et filiabus mortuus est*). E. von Schwind, *Lex Baiwariorum*, 429. See also Edith Ennen, *The Medieval Women*, trans. Edmund Jephcott, Cambridge, MA: Basil Blackwell, 1989, 33.

60 Hermann Krause, "Aufzeichnung des Rechts," in *Handwörterbuch zur deutschen Rechtsgeschichte*, vol. 1, Berlin: E. Schmidt, 1971, 258.

61 Claudius Freiherrn von Schwerin, ed., "Lex Thuringorum," in *Leges Saxonum et Lex Thuringorum*, MGH, *Fontes iuris Germanici antiqui in usum scholarum separatim editi* (Fontes iuris) 4, Hannover: Hahnsche Buchhandlung, 1918, 60–61, cap. 26–30.

had to pass on to the distant Thuringian nobility linked to the Weimar-Orlamünde family through marriage ties. By all means, these would have to be the same nobles that actually pressed their claims on Weimar-Orlamünde inheritance in Thuringia in 1112 after the death of Ulrich II, namely, the count palatine Siegfried of Ballenstedt.⁶² This noble was the child of Adalbert Ballenstedt and Adelaide Weimar-Orlamünde, but above all else, he was a member of a family traditionally opposing the power of Holy Roman emperors and customarily waging war against the Salian dynasty rulers.⁶³ Viewed from this angle, the 1102 donation could have been a tool to prevent such similar claims being perused in Istria. It is, however, unlikely that the Ballenstedt family would have been interested in Istrian properties, far away from their patrimonial possessions. There was, though, another family that would have been much more attracted to procuring these possessions: the nobles who received the office of Istrian margraves following the death of Henry IV- the Spanheims.

Richarda Spanheim was the daughter of none other than Engelbert I Spanheim, a powerful noble who abandoned the pro-imperial party and turned to the papacy during the key moments of the Investiture Controversy!⁶⁴ According to some contemporary accounts, he turned against Henry IV during the decisive battle against the Saxon rebels.⁶⁵ Engelbert's family monastery, St. Paul's Abbey in Lavanttal, was put under the protection of Pope Urban II to clearly demonstrate the family's allegiance.⁶⁶ Just as Aquileia functioned as a pro-imperial hub, so St. Paul's Abbey in Lavanttal can be conceptualized as a center connecting pro-papal forces. Moreover, Engelbert I was locked in a bloody feud with the Moosburgs as he imprisoned Magdeburg's imperial archbishop Berthold Moosburg, seeking payment for his freedom from the emperor, and even killed Berthold's brother.⁶⁷ Lastly, the Spanheims were warring against the Eppensteins. As these two family clans found themselves on completely opposite sides during the seminal conflict of their age, it comes as no surprise that there were tensions between the two dynasties.⁶⁸ The conflict continued following the death of Henry IV. In a document from 1120, the patriarch Ulrich, now an old man (*iam in senectute*), mentions that Engelbert II, Istrian margrave at the time and the son of Engelbert I, was burning some parishes across Aquileian Carniola.⁶⁹ The threat of the Spanheims trying to claim their kin's numerous estates in Istria, lands close to the territory of their enemies, the Eppensteins, is an important aspect of the 1102 donation.

The *donatio pro remedio animae* therefore had another dimension, one that was not articulated until this investigation. Namely, it served as a guarantee that the possessions

62 K. Nass, *Die Reichschronik des Annalista Saxo*, 547.

63 His father, Adalbert Ballenstedt rose against Henry IV during the Saxon rebellion in 1069 and 1073. L. Fenske, *Adelsopposition*, 80; I. Robinson, *Henry IV of Germany*, 64, 66, 74.

64 Peter Štih, "Rodbina koroških Spanheimov, prvih gospodov Kostanjevice" [The Family of Carinthian Spanheims, the First Masters of Kostanjevica], in *Kostanjevica na Krki 1252–2002. Vekov tek: Zbornik ob 750. obletnici prve listinske omembe mesta*, ed. Andrej Smrekar, Kostanjevica na Krki: Krajevna skupnost, 2003, 59.

65 August von Jaksch, ed., *Monumenta historica ducatus Carinthiae*, vol. 3: *Die Kärntner Geschichtsquellen 811–1202* (hereafter: MDC III), Klagenfurt: Ferd V. Kleinmayr, 1904, 186, n. 478; P. Štih, "Rodbina koroških Spanheimov," 59; I. Robinson, *Henry IV of Germany*, 259.

66 B. Schroll, *Urkundenbuch*, 79–80, n. 1. The document is reproduced online at <<http://monasterium.net/mom/AT-StiAStP/UK/1/charter>> [last accessed: 15th November, 2016]

67 MDC III, 184–185, n. 477.

68 P. Cammarosano, "L'alto medioevo," 93–96.

69 CDI, vol. 1, 254, n. 127.

in Istria would remain in the hands of the pro-imperial, Henrician forces. Interestingly, Bernardo Benussi imagined a war between Poppo II and Ulrich II during the Investiture Controversy period. However, he was wrong to see Poppo II as the champion of the “royal or Istrian” side and Ulrich II as the supporter of the “Aquileian” side of the conflict.⁷⁰ As was demonstrated, Poppo II married into a pro-papal family and endowed a papal institution whereas Ulrich II remained faithful to his father’s alliance and supported the allies of Henry IV. There is only one document that could speak in favor of an open war breaking out between the two brothers in Istria, the 1106 document in which the patriarch Ulrich commands the “margrave Ulrich” to destroy fort San Juan in Istria.⁷¹ The document is, according to Lenel, “undoubtedly a gross forgery.”⁷² However, no one has investigated why the forgery was made in the first place and why this specific date and people were used. Although it is impossible to conclude that the two brothers engaged in an open conflict, the Investiture Controversy definitely placed them on the opposite sides of the era’s seminal conflict.

This *donatio pro remedio animae* had a major effect on the future development of the Margraviate of Istria. Even though the Spanheims got the office of Istrian margraves, a development which should be linked more to the favor of the new king Henry V than to their family ties with Poppo II, no Spanheim was ever documented either in Istria or acting as the Istrian margrave.⁷³ One of the reasons, along the fact that not many sources pertaining to Istria survive from this period, definitely lies in the 1102 donation, an act that took away numerous possessions from the authority of the new Istrian margraves and neutralized the Spanheims’ power in the region. This weakness of margraves fueled the growth of local autonomies in various Istrian communities, strengthening the communal movement of coastal cities.⁷⁴ The donation also ushered in an era of the temporal rule of Aquileian patriarchs in the northern continental Istria, especially around Buzet, the *castrum* first given to Ulrich I and later donated to the Church by Ulrich II. As a matter of fact, Buzet will be the last Aquileian possession in Istria to fall to Venice in 1421, remaining loyal to the Patriarchate even after the entire Friuli surrendered to the *Serenissima*.⁷⁵ Ulrich II thus changed the fate of the region while making sure his father’s property remained in the hands of the traditional family allies, which he did ceremoniously.

Witnesses from Bavaria were summoned to join the crowd gathered from Istria and Friuli in the Aquileian basilica. Even a member of the Spanheim family, *Henricus de Goriza*, the brother of Engelbert II, was invited to witness the donation ritual.⁷⁶ There is a reason why Henry Spanheim was present among the witnesses during this act, a donation that

70 B. Benussi, *Nel Medio evo*, 372.

71 URHK, 76–79, n. 68.

72 “Ohne Zweifel eine grobe Fälschung”, Walter Lenel, *Venezianisch-Istrianische Studien*, Strassburg: Karl J. Trübner, 1911, 120, fn. 1.

73 B. Benussi, *Nel Medio evo*, 387–94.

74 G. de Vergottini, *Lineamenti*, 64–74.

75 I have written extensively on the fall of the Margraviate of Istria in my M.A. thesis. The thesis will be published in Croatian and Italian in the near future, but for now the only reference is Josip Banić, “Justice in Flux: The Introduction of Venetian Jurisdiction in the Former Margraviate of Istria (1420–1470)”, M.A. thesis, Budapest: Central European University, 2016.

76 See the family tree in P. Štih, “Rodbina koroških Spanheimov,” 73.

could ultimately hurt his own kin. Henry Eppenstein, the former margrave of Istria, the former advocate of Aquileia and brother of the patriarch Ulrich, was Henry Spanheim's godfather.⁷⁷ This spiritual bond was most probably the result of these families' attempt to stop the feuds resulting from their opposing alliances.⁷⁸ Henry of Gorizia was thus a link between the two rivaling kinship groups and his presence was needed to legitimize the donation. In front of these witnesses, twelve of whom put a handwritten sign on the document, Ulrich and his wife performed a traditional ritual of donation.⁷⁹ Several symbolic objects were used: a knife, cutting the ties between the donators and their property in Istria; a glove, the symbol of *potestas* over the land changing owners; a clod of earth and a branch of a tree, the *pars pro toto* representations of the donated land; and finally, a *festuca notata*, a twig with signs carved into it, an ancient symbol used in Frankish donation ceremonies since the early Middle Ages.⁸⁰ These objects were imbued with meaning during the liminal phase of the ritual, the point in which the donors performed a ceremonial gesture in front of the gathered crowd, transferring the objects to their new owner and officially renouncing their property.⁸¹ All the elements of the ritual, its solemn setting, the use of ancient symbols, the performance enacted in front of the witnesses, were also the means to perpetuate the permanence of the donation. Ulrich II also donated Oportelj (ital. Portole) to the Church of Aquileia, also in 1102, but the original charter is lost and only the regesta in the *Thesaurus Ecclesiae Aquileiensis* speaks of this parallel endowment.⁸² It is not known whether a similar ritual took place for that donation as well.

The paper unveiled various aspects of a popular donation charter by investigating the complex political and social relations that were the backdrop against which the document was created. The donation reveals itself as a total social fact in all its glory. Religious, social, legal and political aspects uniting in a unique lived experience, "symbolic alchemy" permeating the donation ritual and thus forging a new reality.⁸³ Ulrich II Weimar-Orlamünde ceremoniously identified himself as the supporter of the emperor, perpetuated the social ties with his imperial allies, saved the family inheritance from falling into the enemy's

77 Ibid., 65; K. Klaar, *Die Herrschaft der Eppensteiner*, 51.

78 This is also the opinion expressed in P. Štih, "Rodbina koroških Spanheimov," 65. See also G. Althoff, *Family, Friends and Followers*, 59–64, 77–78, 90.

79 Notwithstanding the current debates regarding "ritual" as an analytical concept, I find the term useful when properly defined. The definition I like to employ is the one used by Edward Muir, namely, an emotion evoking, repetitive and, to a degree, patterned communal activity that "constructs, maintains and[or] modifies society itself." Edward Muir, *Ritual in Early Modern Europe*, New Approaches to European History, Cambridge: Cambridge University Press, 1997, 6. See also Gerhard Jaritz, "Ritual and Performance," in *Handbook of Medieval Studies: Terms, Methods, Trends*, ed. Albrecht Classen, Berlin: Walter de Gruyter, 2010, 1559–63.

80 Jacques le Goff, *Time, Work and Culture in the Middle Ages*, trans. Arthur Goldhammer, Chicago: University of Chicago Press, 1980, 244–46, 258–60; A. Bijsterveld, *Do ut Des*, 63–82; Andreas Ludwig Jacob Michelsen, *Über die festuca notata und die germanische Traditionssymbolik*, Jena: Friedrich Frommann, 1856.

81 On the importance of gestures see e.g. G. Althoff, *Family, Friends and Followers*, 136–39; Jean Claude-Schmitt, "The Rational of Gestures in the West: A History from the 3rd to the 13th Centuries," in *Advances in Nonverbal Communication: Sociocultural, Clinical, Esthetic and Literary Perspectives*, ed. Fernando Poyatos, Amsterdam: John Benjamins, 1992, 77–95.

82 TEA, 224, n. 516.

83 "Gift exchange is the paradigm of all the operations through which symbolic alchemy produces the reality-denying reality that the collective consciousness aims at as a collectively produced, sustained and maintained misrecognition of the 'objective' truth." Pierre Bourdieu, *The Logic of Practice*, trans. Richard Nice, Stanford: Stanford University Press, 1980, 110.

hands and made ample provisions for the salvation of his soul. Needless to say, numerous Istrian charters from the medieval period still await similar analyses. Hopefully, the present study will inspire new research papers on medieval Istrian sources, studies that will be rooted within the contemporary theoretical and methodological frameworks and broadly contextualized.

Note on the transcription and translation

The document is preserved in original form. It is written on a piece of parchment roughly 45 centimeters wide and 55 centimeters long. The script is Carolingian minuscule, the language a heavily distorted version of Latin. Absolutely no interventions to the text regarding word forms have been made. Only the letter “u”, when standing for the letter “v”, was rendered as “v” and not an “u”. Capital letters were regularized and modern punctuation marks were added. As there are several cases of anacolutha, the English translation had to be slightly adjusted in order for the text to make sense.

Appendix 1.

1102 November 17, Aquileia

Ulrich II Weimar-Orlamünde and his wife Adelaide donate their possessions in the County of Istria to the Patriarchate of Aquileia

Original in Archivio di Stato di Venezia, Miscellanea atti diplomatici e privati, busta 1, document number 24 (A)

Previous editions: Joseph Freiherr von Hormayr, *Historisch-statistisches Archiv für Süd-deutschland*, vol. 2 (Frankfurt, 1808), 241–44; Pietro Kandler, ed., *Codice diplomatico istriano*, vol. 2 (Trieste: Tipografia Riva, 1986), 241–42, n. 119; Ivan Kukuljević-Sakcinski, ed., *Codex diplomaticus regni Croatiae, Dalmatiae et Slavoniae*, vol. 2 (Zagreb: Dragutin Albrecht, 1875), 6–8, n. 7; Franz Schumi, *Urkunden und Regestenbuch des Herzogtums Krain*, vol. 1 (Ljubljana: Narodna Tiskarna, 1882), 73–75, n. 67.

(SN)⁸⁴ In nomine domini Dei et salvatoris nostri Iesu Christi. Anno ab Incarnationis Eiusdem nostri redemptoris millesimo centesimo secundo, XV kalendis decembris, indictione X. Ecclesia sancte Marie Virginis et sancti Hermachore martiris Christi, patriarchatus sancte Aquilensis ubi nunc dominus Wodalricus vir venerabilis patriarcha preordinatus esse videtur.

Nos Wodalricus, filius quondam item Wodalricis marchionis, et Adeleita iugales, qui professi sumus ex natione nostra lege vivere Baioariorum, ipso namque viro meo mihi qui supra Adeleita consentientem et subter confirmantem, offertor et offertrix, donator et donatrix, ipsius sancte ecclesie altario proprium duximus, ut quisquis in sanctis hac venerabilibus locis ex suis aliquit contulerint rebus, iusta Auctoris vocem, in hoc seculo centuplum accipiat, insuper, et quod melius est, vitam possidebit eternam. Ideoque, nos qui supra iugales donamus et offerimus in eadem sancte Aquilensis ecclesie, pro anime nostre mercedis, i sunt ex integris cunctis, casis, castris, et capellis, et monasteriis, et villis, seu servis et ancillis, et omnibus rebus iuris⁸⁵ nostri quas habere et tinere visi sumus, et nobis pertinet in Comitatu Istriano per locis quas minaverimus, uel ubicumque invenire potueritis, excepto quod ante ponimus et in nostra reservamus potestate.

Illud quod dedimus fidelibus nostris. Hec enim Meginhardo dedimus Ronz cum suis pertinentiis. Adalberto dedimus duo castella cum suis pertinentiis quorum nomina sunt Cernogradus et Bellegradus. Adalberto minori dedimus Calisedum et piscationem in Lemno⁸⁶ cum suis pertinentiis. Et cum aliis omnibus rebus et familiis nobis pertinentibus in Comitatu Istriensis in eadem ecclesiam facimus traditionem, imprimis nominatim castrum Pinquent, et castrum Cholm, castrum Baniol, et castrum Vrana, et castrum Letai, et castrum Sancti Martini, et castrum Gosilach, et villa ubi dicitur Cortalba inter Latinos, castrum

84 The document starts with the signum notarile, but the graphic sign is almost completely faded. The notarial sign of this very notary, Waltilo, is reproduced from another document in Reinhard Härtel, "Namen und Symbole in Unterfertigungen," in *Personennamen und Identität: Namengebung und Namengebrauch als Anzeiger individueller Bestimmung und gruppenbezogener Zuordnung: Akten der Akademie Friesach "Stadt und Kultur im Mittelalter," Friesach (Kärnten), 25. bis 29. September 1995*, ed. Reinhard Härtel, Graz: Akademische Druck- u. Verlagsanstalt, 1997, 98.

85 *iuris* written above and between *rebus* and *nostris*.

86 The word is written as *Lemo* with a very short abbreviation sign over the letter e.

Veneris, villam Cuculi, et villam Mimiliani, et villam Cisterne, et villam Petre Albe, et villam Drauuie, et villam Marceniga, villam Cauedel, castrum Bulge, castrum Brisintina, villam Castan, castrum Castilioni, villam sancti Petri cum monasterii sancti Petri et sancti Michaeli, vel per aliis quibuscumque locis invenire potueritis de nostris iuris rebus in eodem Comitatu, tam in civitatibus quamque et de foris. In ipsis istis rebus i sunt tam casis cum sedeminibus, castris, capellis, monasteriis, villis, terris, aratoriis, vineis, campis, pratis, pascuis, silvis, salcetis, sacionibus, rivis, rupinis, hac palludibus tam in montibus quamque in planiciis, locis cultis et incultis, diuisis et indiuisis, sortitis et insortitis, una cum finibus, terminibus, hac cessionibus et usibus aquarum⁸⁷ aquarumque ductibus, et cum omni iuri adiacenciis et pertinentiis earum rerum per locas et vocabulas ab ipsis casis, et omnibus rebus pertinentibus, una cum predicta familia in integrum. Que autem istis ex integris cunctis, casis et omnibus rebus in eodem Comitatu⁸⁸ iuris nostris superius dictis, una cum accessionibus et ingressoras earum, seu cum superioribus et inferioribus suis qualiter superius legitur in integrum, ab ac die in eadem sancte aquiliensis ecclesie donamus et offerimus et per presentem cartulam offersionis ibidem abendum confirmamus faciendum. Exinde patriarcha Wodalricus, qui nunc est, vel qui pro tempore post eum in eodem patriarchatu ordinati fuerint et Deo servierint, ad eorum usum et sumptum, tam ipsi quamque subcessores eorum, faciendum ex frugibus earum rerum vel censum quibus exinde anue Dominus dederit quicquit voluerint pro anime nostre nostrorumque parentum mercedis. Insuper per cultellum, festucum notatum, uuantonem, et uuasonem terre, atque ramum arboris, et vestitura, et nos exinde foris expelimus, uuarpivimus et absasno fecimus, et ad eadem ecclesiam abendum reliquimus faciendum exinde partes ipsius ecclesie, vel cui parte ipsius ecclesie dederint iure proprietario nomine, quicquit voluerint, sine omni nostra et eredum ac proeredumque nostrorum contradictionem vel repetitionem.

Si quis vero, quod futurum esse non credimus, si nos ipsi iugales, quod absimus, aut ullus de heredibus hac proheredibus nostris seu quislibet homo opposita persona, contra hanc cartam ofersionis ire quandoque temptaverimus aut eam per quoduis ingenio infringere quesierimus, tunc adinservimus ad illam partem, vel contra quem exinde litem intulerimus, multa quod ex pena auri optimi unciis quinquaginta argenti ponderas centum et quod repetierimus avendicare non valeamus, sed presens anc cartam ofersionis eternis temporibus firma et stabilis permaneat atque persistat inconvulsa, cum stipulatione subnixa, et ad nos qui supra iugales et nostris heredibus hac proheredibus superscripta ofersio, ab omni homine defensare. Que si defendere non potuerimus, aut si aput eandem ecclesiam exinde aliquid per quoduis ingenium subtrahere quesierimus, tunc in duplum eadem offersionis ad predictam ecclesiam restituamus, sicut pro tempore fuerit melioratam, aut valuerint sub estimatione hominum, ibidem aut in consimilis locis et predicta familia in consimiles duplas personas. Et nec nobis liceat ullo tempore nolle quod voluimus, sed quod a nobis semel factum vel conscriptum est sub iusiurandum inviolabiliter conservare promittimus. Et bergamena cum hanc trementario de terra levavimus, me paginam Wartiloni, notarius, iudex, tradidi et scribere rogavi inqua etiam hic subter confirmans testibus que optulit

⁸⁷ *aquarum* written above and in between *usibus* and *aquarumque*.

⁸⁸ *comitatu* with an abbreviation sign above the letter o.

roborandam. Actum in supra scriptam civitatem Aquilegiam feliciter.

Signum (S) (S) manuum supra scripti iugales qui hanc cartam ofersionis scribere rogaverunt et ipse Wodalricus eum eadem iugale sue consensi ut supra.

Signum (S) (S) (S) (S) (S) (S) (S) manuum Wolveradi comiti, et Conradus advocatus, et Henricus de Goriza, et Adelberti de Ortempurg, Poppo, et Rodulfi germanus Gebahardus, Wodolscalcus, Baiuariorum rogati testes.

Signum (S) (S) manuum Cadulus, Gerardus, Iohannes, Poppo, Iohannes. Isti sunt Histrienses testes.

Signum (S) (S) manuum Adalgerus, item Adalgerus, Torengus. Isti sunt Forulienses testes.

[Ez]zo⁸⁹ dei gratia Petenensis episcopus manu sua subscripsit.⁹⁰

Ego qui supra Waltilo, notarius et iudex, scriptor huius cartule ofersionis, post tradita, complevi et dedi.

(SN)

89 Only the last two letters are visible, but the fact that Ezzo's successor, Peter, appears in an undated source, usually dated between 1090 and 1105, it seems likely that Ezzo was still the bishop of Pićan in 1102. Hence, the dating of the document published in C. Scalton, *Diplomi patriarchali*, 23–24, n. 2. and, with a very wrong date (1085), in CDI vol. 1, 234, n. 115, is to be corrected. More on Ezzo in Reinhard Härtel, "Die Rosazzer Quellen Und Die Grafen von Görz," *Mitteilungen Des Instituts Für Österreichische Geschichtsforschung* 111, 2003, 75–76.

90 Written with a different hand, obviously by Ezzo himself.

Appendix 2.

Translation

In the name of our God and Savior, Lord Jesus Christ. In the year one thousand one hundred and second of the incarnation of our Redeemer, on the sixteenth of November, tenth indiction. In the church of the Blessed Virgin Mary and Christ's martyr Saint Hermagoras, of the holy Aquileian Church's Patriarchate, where the venerable man master Ulrich holds the office of patriarch at the moment.

We, husband and wife, Ulrich, the son of the late margrave also called Ulrich, and Adelaide, who hereby state that, because of our origin, are living according to the Bavarian law, and as I, the aforementioned Adelaide, agreed with my husband and confirmed below, both as grantors and donors have brought our own property to the altar of this holy church, in the same way as it is said according to the words of the Almighty, that whoever from their own goods bestowed the holy and venerable places, would receive hundredfold in this world, but above all, what is better, they would gain eternal life. Therefore, we, the above mentioned husband and wife, donate and offer to the holy Church of Aquileia, for the redemption of our souls, namely, in entirety: houses, forts, chapels, monasteries, villages, servants and maids and all our property, that we lawfully have and hold and that belongs to us in the County of Istria, in the places we will name or wherever you might find them, aside from what we mention first and keep under our authority. That what we granted to the faithful. Namely, this we gave to Meginhard: Roč with its dependencies. To Adalbert we gave two fortified settlements with their dependencies named Črničgrad and Beligrad. To Adalbert the younger we gave Gradina and a fishery on the Mirna with their dependencies. All the other properties and subjects belonging to us in the County of Istria we surrender to the Church: first of all, the fortified town named Buzet, and the fortified town Hum, the fortified town Boljun, and the fortified town Vrana, the fortified town Letaj, and the fortified town Sveti Martin, the fortified town Kožljak, and a village that is among the Latins called Cortalba,⁹¹ the fortified town Kaštel, the village Kukov Vrh, the village Momjan, the village Šterne, the village Beli Kamen, the village Draguč, the village Marčenegla, the village Kubed, the fortified settlement Buje, the fortified settlement Grožnjan, the village Kostanjica, the fortified settlement Castiglione,⁹² and the village Sveti Petar with the monasteries of Saint Peter and Saint Michael, and all that may be found in whatever other place belonging to us in this County, in cities as well as outside of them. In these very properties there are houses with settlements, forts, chapels, monasteries, villages, arable lands, vineyards, meadows, grazing fields, forests, osier beds, cultivated lands, streams, cliffs, and swamps, as in hills so in plains, places cultivated and uncultivated, divided and undivided, allotted and unallotted, together with their borders and boundaries, with all the rights pertaining to the use of water and waterworks, and with all the rights over the dependencies and the vicinities of these properties, throughout the places and the estates mentioned, from the

91 Belaj (ital. Belai).

92 Once located between Buje and Grožnjan.

above mentioned houses and all the dependencies, along with the aforementioned subjects in entirety. This, moreover, in entirety, altogether with houses and all the above mentioned possessions belonging to us in this county, together with their gains and incomes, superiors and inferiors, as is written above, we donate and offer in entirety from this day onward to the holy Church of Aquileia, and by the present charter of donation we confirm that it should be and that it should be done in this way.

Therefore, [to] the present patriarch Ulrich, or whoever should be appointed in the future after him and serve God in this patriarchate, we have released to their benefit and expense, both to himself and his successors, to do whatever they should wish with the crops and incomes of these properties that the Lord might give them every year, from now on, for the salvation of our souls and those of our parents. In addition, by a knife, a stick, a glove and a clod of earth as well as a branch of tree and by investiture, from this moment we remove ourselves, waive all rights and desist the property, and we bequeath it to the said Church, to own and possess and from now on to do whatever it may please with the shares of the property of this Church, or to give a share in possession to whomever it might want, without any objection or reclamation from our side or that of our heirs or their heirs.

If, however, anyone, which we do not believe should happen, and if we, the very husband and wife, God forbid, or any of our heirs or their heirs, or whichever person standing in opposition, should at any time dare to act contrary to this donation charter, or should seek to annul it by fraud, in that case, for that party, or for those against whom we will file a suit in the future, we set the penalty of fifty ounces of finest gold, hundred silver pounds, and should we try to reclaim it, we should have no right to do so, but may this present charter of donation for all time and eternity remain valid and binding, and may it stand firm, and supported by our promise as far as we, the above mentioned husband and wife, our heirs and their heirs, shall defend the above written offering from any person. If we may not be able to defend it, or if we should wish to extract from the said Church anything in the future by any subterfuge, then we should pay compensation to the said Church double the amount of our donation in accordance with its increase in price and value in the meantime, we should make restitution either on the same location or in similar places and as for the subjects, twice their number of similar status. And may we never be able to deny our will at any time, but we promise under the sacrosanct oath to keep unbroken what we have once done and put in writing. And the parchment with this ink-glass we lifted from the ground and I gave this page to Wiltion, a notary and a judge, and asked him to put in writing this deed that he also confirmed and offered it to the witnesses for corroboration.

Done successfully in the above-mentioned city, Aquileia.

The handwritten sign of the above-mentioned couple who asked for this donation charter to be written, and the very same Ulrich [and] I, his very wife, have agreed to this as mentioned before. The handwritten sign of the count Ulrich, and the advocate Conrad, and Henry of Gorizia, and Adalbert of Ortenburg, Poppo, Gebhard the brother of Radulf, Wodolscalc, Bavarian witnesses whose presence was requested. The handwritten sign of Cadul, Gerard, Iohannes, Poppo, Iohannes. These are Istrian witnesses. The handwritten sign of Adalger, also Adalger, Toreng. These are Friulian witnesses.

Ezzo, by the grace of God the bishop of Pićan, signed by his hand.

I, the above mentioned Waltilon, notary and judge, the composer of this donation charter, after having handed it over for review,⁹³ completed it and surrendered it.

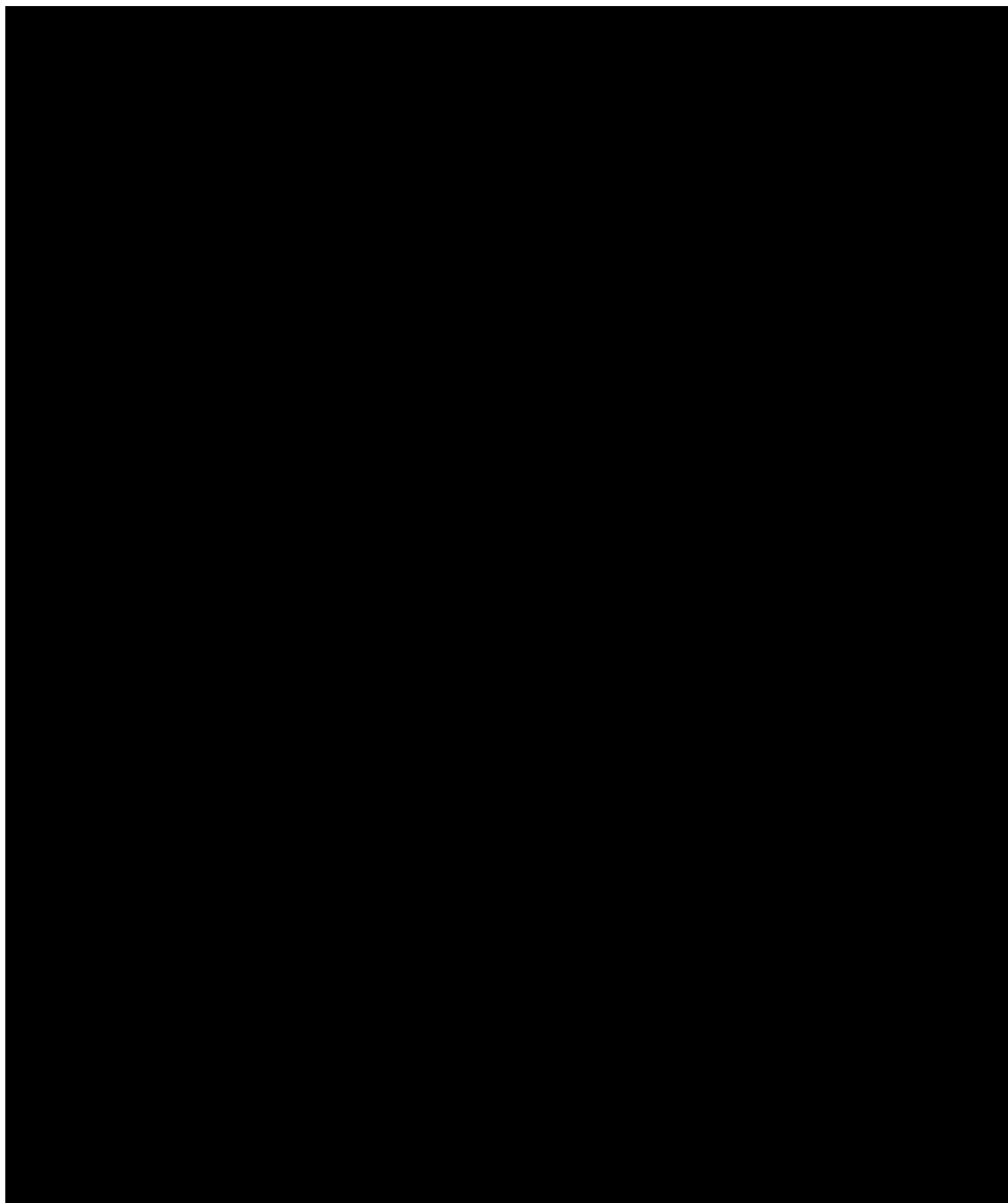
93 The line was translated in this way because of the specific notarial practice at the time. See more on this in Augusto Gaudenzi, *Le notizie dorsali delle antiche carte bolognesi e la formula "post traditam complevi et dedi" in rapporto alla redazione degli atti e alla tradizione degli immobili*, Rome: Reale Accademia dei Lincei, 1904.

Appendix 3.

Istrian toponyms (in order of appearance) in Croatian/Slovenian and Italian

Roč	Rozzo
Črnigrad	Castelnero (Cernigrad)
Beligrad	Castelbianco
Gradina	Calisedo
Mirna (river)	Quieto
Buzet	Pinguento
Hum	Colmo
Boljun	Bogliuno
Vrana	Vragna
Letaj	Lettai
Sveti Martin	San Martino
Kožljak	Cosliacco
Belaj	Bellai
Kaštel	Castelvenere
Kukov Vrh	Monte Cucco
Momjan	Momiano
Šterne	Sterna
Beli Kamen	Pietra Bianca
Draguč	Draguccio
Marčenegla	Marceniga
Kubed	Covedo
Buje	Buie
Grožnjan	Grisignana
Kostajnica	Castagna
Sv. Petar kraj Montrina	San Pietro a Montrino

Appendix 4.



SAŽETAK

***Donationes pro remedio animae* kao totalna društvena pojavnost:
studija slučaja Markgrofovije Istre u 12. stoljeću**

Autor analizira darovnicu kojom plemići Ulrik II. i njegova žena Adelaida doniraju akvilejskoj crkvi brojne posjede u Istri za spas svoje duše. Donacija je, inspirirana studijama Marcela Maussa, kontekstualizirana kao “totalna društvena pojavnost”, a prilog istražuje ostale, prethodno neotkrivene aspekte ovog dara. Autor istražuje suvremenu političku i društvenu pozadinu, usredotočujući se prvenstveno na položaj protagonista darovnice naspram dvaju ključnih saveza njihove ere, propapinskih i prohenrikovskih sila u vrijeme sukoba oko investiture. Prema tome se zaključuje da je Ulrik II. obdario duhovnu instituciju koja je okupljala proimperijalne sile, na čijem je čelu stajao vjeran i odvažan pristalica Henrika IV., Ulrik Eppenstein. Kako je Ulrik II. umro bez potomaka, jedini nasljednici obiteljskih imanja koje je ostavio Crkvi bila bi djeca njegova pokojnoga brata ili daleki rođaci u Tiringiji. Međutim, Ulrikov brat, Popon II., oženio se u obitelj Spanheim, plemiće koji su tradicionalno podržavali reformno papinstvo. Nakon Poponove smrti i preudaje njegove udovice, Ulrik II. donirao je posjede da bi onemogućio bilo kakva buduća potencijalna potraživanja nasljedstva, kako Spanheimima, papinskim pristalicama s uporištem u blizini Akvilejskog patrijarhata, tako i Ballenstedtima, rođacima u Tiringiji poznatim po pobunama protiv Henrika IV. Na taj se način otkrivaju novi aspekt poznate darovnice. Kako je dar sagledan kao “totalna društvena pojavnost”, zaključuje se da je Ulrik II. demonstrirao svoju odanost Henriku IV. u ključnom sukobu svoje ere, potvrdio svoj superiorni plemićki status bogatog plemića, pozicionirao se među proimperijalnim silama okupljenim oko Akvilejskog patrijarhata, osigurao da očeva imanja ne padnu u ruke neprijatelja Henrika IV. te se istovremeno obilno pobrinuo za spas svoje duše. Članak završava novom transkripcijom listine i prijevodom dokumenta na suvremeni engleski jezik.