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## Personal Status and Social Structure in Early Medieval Bavaria

**Abstract.** The social structure of the 8th c. Bavaria reveals a highly dynamic picture: by the age of the last two ruling dukes of the Agilolfing dynasty, Odilo and Tassilo III, a system of personal statuses had crystallised that can be reconstructed from legal sources and charters, on the one hand; and the development of Bavarian nobility and the manifestation of this process in legislation can be dated to this period, on the other. After outlining the political/historical background (I.); this paper intends to give an in-depth investigation of this issue: following comments on the concept of *libertas*, the legal status of freemen (*liberi*) and servants (*servi*) will be looked at in the mirror of *Lex Baiuvariorum* (II); then, the relation between the duke and ancient Bavarian *genealogiae*, the development of the layer of the *adalscalhae*, the birth of the Bavarian order of nobles and its appearance in the resolutions of the Council of Dingolfing, and the issue of Bavarian counties prior to the Carolingians seizing power will be exposed relying on legal and literary sources (III).

**Keywords:** Lex Baiuvariorum, libertas, early-medieval legal sources

I. With duke Hucbert the male line of the Agilolfing rulers reigning over Bavaria had terminated, and after his death Odilo from the Alemannian branch of the Agilolfing dynasty, son of the Alemannian duke, Gottfried ascended the Bavarian throne.<sup>1</sup> Having become the ruling duke of Alemannia around 680,

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Gottfried divided his country—like Theodo Bavaria—among his sons into sub-dukedom, and Odilo had been most probably granted the territories lying south of the Boden See and in the surroundings of Augsburg, which helped Pirmin to found the monastery in Pfungen with Odilo's support.<sup>2</sup> After their father's death, Odilo was ousted by his brother, Willihari from the territory, and probably Pirmin was forced to leave his monastery for the same reason. Between 709 and 712 the maior domus, Pippin II attacked Willihari several times, which was part of the intervention of the Franks in response to the conflict between the Bavarian and Alemannian branches of the Agilolfings, but in the course of this the maior domus did not contest the Agilolfing dynasty's demand for ruling over the Alemannian and Bavarian Dukedom. However, he definitely had a say in deciding who was to be raised to dukedom—through this act they considerably enhanced their power, which they could legitimise only after the uprising of Pippin III.<sup>3</sup> Odilo was able to take the duke's throne of Bavaria in 736.<sup>4</sup> Yet from the initial period of his reign between 736 and 739—the establishment of bishoprics by Bonifatius—only a charter on the founding of the church sanctified by bishop Vivilo in the honour of Virgin Mary has been left to us. No traces of the duke's contribution in the establishment of this monastery can be identified though. Reference to the duke in this charter is rather unique, and shows somewhat remote—perhaps opposition—approach to him,<sup>5</sup> which seems to be supported by the fact that a few years later a group of the Bavarian nobility appeared to be strong and resolute enough to expel the duke of Alemannian origin from Bavaria.<sup>6</sup> The opposition to Odilo can be most probably attributed to the Carolingian intervention implemented to further his ascension to the throne—just as earlier in the era of duke Hucbert, and later to reinforce the position of Odilo's son, Tassilo<sup>7</sup>—since the *Annales Mettenses*

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Nótári T.: *A salzburgi historiográfia kezdetei* (The Beginning of Historiography in Salzburg). Szeged, 2007. 180 sqq.

<sup>2</sup> Zöllner: *op. cit.* 128 sq.; Störmer, W.: *Adelsgruppen im früh- und hochmittelalterlichen Bayern. Studien zur bayerischen Verfassungs- und Sozialgeschichte 4*. München, 1972. 23 sq.

<sup>3</sup> Jahn, J.: *Ducatus Baiuvariorum. Das bairische Herzogtum der Agilolfinger*. Stuttgart, 1991. 124.

<sup>4</sup> Wolfram: *Die Geburt Mitteleuropas... op. cit.* 98.

<sup>5</sup> *Traditio Pataviensis* Nr. 2. *Quellen und Erörterungen zur bayerischen und deutschen Geschichte* (1930) Nr. 2. *In tempore duci Paiauariorum erat nomen eius, et annum unum fuit patria ista in sua potestate.*

<sup>6</sup> *Breves Notitiae* 8, 1, Lošek, F. (ed.): *Mitteilungen der Gesellschaft für Salzburger Landeskunde* 130. 1990.

<sup>7</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 127.

*priores* claims that Odilo was able to take dukedom owing to the generousness of Charles Martell.<sup>8</sup> At that time Charles Martell's wife was Swanahilt, a kin of Odilo, whom he had brought along from Bavaria in 725 together with Pilitrud. Most probably it was owing to Swanahilt's influence that until Charles Martell's death the Frankish Empire and Bavaria and Alemannia maintained peaceful relations. Over these territories the Frankish ruler extended his influence without the need to integrate them into the Frankish state. Regarding Charles Martell's death in 741, the author of the *Continuationes Fredegarii* note that he had withdrawn the neighbouring *regna* from his control.<sup>9</sup> Nevertheless, the protocol on the division of his country shortly before his death does not mention Bavaria at all<sup>10</sup> because it was allowed to remain an independent province not merged under Frankish supremacy—all the more as *Lex Baiuvariorum* guaranteed the rule over Bavaria to the Agilolfings.<sup>11</sup> It cannot be ruled out though—since Aquitania integrated into the *imperium* was not referred to in the protocol either—that external dukedoms were not mentioned at all during the division of the empire, and, albeit, eastern territories belonged to Carloman's competence, Pippin III quite often intervened in Bavarian affairs as early as during his brother's lifetime.

Taking all the above into account, a consistent and already static conflict between the Agilolfings and the Carolingians cannot be stated, otherwise Odilo could not have fled from the threat of the Bavarian opposition in 740/41 to the Frankish court, and it was only the succession discord among the Carolingians—when Carloman and mainly Pippin infringed the Agolfings' interests several times—that made the relation tenser.<sup>12</sup> From August 740 to March 741, Odilo stayed at the Frankish court after having been expelled by his enemies from Bavaria<sup>13</sup>—of the reasons for the expulsion and the identity of

<sup>8</sup> *Annales Mettenses priores* 33. (*Monumenta Germaniae Historica*, SS rer. Germ. 10. 1905.) ... *ipsum etiam ducatum suum, quod largiente olim Carolo principe habuerat.*

<sup>9</sup> *Continuationes Fredegarii* 21. (*Monumenta Germaniae Historica*, SS 2. 1888.)

<sup>10</sup> *Continuationes Fredegarii* 23.

<sup>11</sup> *Lex Baiuvariorum* 3, 1. (*Monumenta Germaniae Historica*, LL nat. Germ. 5, 2. Hannover, 1926.) *Dux vero, qui preest in populo, ille semper de genere Agilolvingarum fuit et debet esse, quia sic reges antecessores nostri concesserunt eis, qui de genere illorum fidelis rei erat et prudens, ipsum constituebat ducem ad regendum populum illum.* Cf. Wolfram: *Die Geburt Mitteleuropas...* *op. cit.* 387 sqq.; Störmer: *Adelsgruppen...* *op. cit.* 14 sqq.; About the *Lex Baiuvariorum* see Landau, P.: *Die Lex Baiuvariorum: Entstehungszeit, Entstehungsort und Charakter von Bayerns ältester Rechts- und Geschichtsquelle.* München, 2004.

<sup>12</sup> Jahn: *Ducatus Baiuvariorum...* *op. cit.* 130 sq.

<sup>13</sup> Wolfram: *Die Geburt Mitteleuropas...* *op. cit.* 98 sq.

the enemies nothing is said in the sources. However, it is not unfounded to assume that this firm action taken by the nobles' opposition must have been somehow related, on the one hand, to the approach engaged by Odilo, who ascended the Bavarian throne with the Franks' support, to most probably ignore the demands for power of the nobles who had major influence under the Bavarian Agilolfing branch; and, on the other, to the establishment of bishoprics by Bonifatius, considerably furthered by Charles Martell, and perhaps Pippin and Carloman. Later, the duke was forced to win over this opposition that took firm action by granting them allowances, and that is how Odilo's age could become the period of the evolution of Bavarian nobility.<sup>14</sup> During the last years of his rule, Charles Martell preferred Pippin, who appeared to be a more talented politician, to Carloman senior, and made him his co-ruler,<sup>15</sup> which led to attempts to take counter-action by his wife, Swanahilt and son, Grifo. However, once Grifo—whose succession claim to the eastern territories must have been considered to have good chances by Bonifatius too<sup>16</sup>—and Swanahilt had been ousted from power, the Frankish policy turned to Alemannia and Bavaria with imperialistic demands.<sup>17</sup>

Considering all the above, it is fully clear that Bavaria did not belong to the provinces intended to be divided by Charles Martell among his sons since Bavarian territories belonged neither *de iure*, nor *de facto* to the Carolingians' power, and the Frankish ruler did not want to deprive the Agilolfings of the power they were lawfully entitled to—although Bavaria maintained an alliance with the Frankish Empire, it did not constitute a sub-province or a subjected province thereof.<sup>18</sup> It was during the months spent at the Frankish court that Odilo acquainted with Charles Martell's daughter, Carloman's and Pippin's sister, Hiltrud, and they were engaged—most probably enjoying the support of Swanahilt, kin of Odilo, who desired to make dynastic relations between the Carolingians and the Agilolfings closer through this event too, and having Charles Martell's approval.<sup>19</sup> After Charles Martell's death on 22 October 741, however, Hiltrud had to leave the Frankish court.<sup>20</sup> Odilo returned to Bavaria before Charles Martell's death, and re-obtained his dukedom with the Frankish

<sup>14</sup> Jahn: *Ducatus Baiuvariorum...* *op. cit.* 173.

<sup>15</sup> *Annales Mettenses priores* 31. *Pippinus iam princeps factus ...*

<sup>16</sup> Bonifatius: *Epistolae* 48. (*Monumenta Germaniae Historica*, EE selectae 1. 1916.)

<sup>17</sup> Strömer: *Adelsgruppen...* *op. cit.* 38.

<sup>18</sup> Jahn: *Ducatus Baiuvariorum...* *op. cit.* 174 sqq.

<sup>19</sup> Wolfram: *Die Geburt Mitteleuropas...* *op. cit.* 98; Becher, M.: Zum Geburtsjahr Tassilos III. *Zeitschrift für bayerische Landesgeschichte* 52 (1989) 9 sqq.

<sup>20</sup> *Annales Mettenses priores* 33; *Continuationes Fredegarii* 25.

assistance, and in this sense it is well founded to deliberate the statement of the *Annales Mettenses priores* asserting that Odilo obtained his dukedom owing to Charles's generosity.<sup>21</sup> In the same year, in 741 Odilo's and Hiltrud's child, Tassilo was born.<sup>22</sup> Pippin and Carloman did not accept Charles Martell's succession ordinance that—upon Swanahilt's influence—granted Grifo share of inheritance from his empire.<sup>23</sup> Sources assert that even Frankish dignitaries were not willing to consent to the decision made on the queen's influence, and with their army Carloman and Pippin prevailed over Grifo and his mother, Swanahilt, who were seeking refuge in Laon, exiling the former to the monastery in Chèvremont, the latter to the monastery in Chelles.<sup>24</sup> Pippin and Carloman again divided the empire at Vieux-Poitiers,<sup>25</sup> which raised the number of consecutive divisions to three: Charles Martell's first division was revised by him at Swanahilt's advice; in the second division he ranked Grifo also among beneficiaries; and, then, the divisio by Pippin and Carloman at Vieux-Poitiers followed, which was, however, not generally acknowledged as shown by the uprising in Aquitania.<sup>26</sup>

Pippin's and Carloman's legitimacy seemed all the more questionable because Charles Martell exercised power since 737 also for lack of a legitimate ruler from the Meroving dynasty; and in terms of their rank his sons were not on a higher level either than the Alemannian, Aquitanian or Bavarian dukes, and the oath of allegiance of the latter bound them merely to *fidelitas* to Charles Martell—even Pippin made up for the lack of sacred legitimacy only through being anointed in 751.<sup>27</sup> Therefore, Pippin and Carloman cannot be considered legitimate and his all the more aggressive policy understandably evoked the opposition of the ruling dukes of the territories that were partly integrated in the Frankish Empire, partly lay outside it but belonged to the Frankish sphere of interest. Odilo and Aquitania's duke, Hunoald entered into a protection alliance through legates against the Franks,<sup>28</sup> which was joined by the Saxons and Alemanni too. After Pippin and Carloman defeated Hunoald

<sup>21</sup> *Annales Mettenses priores* 33. ... *ipsum etiam ducatum suum, quod largiente olim Carolo principe habuerat.*

<sup>22</sup> Reindel, K.: *Das Zeitalter der Agilolfinger (bis 788)*. In: Spindler, M. (Hrsg.): *Handbuch der bayerischen Geschichte I*. München, 1971. 124.

<sup>23</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 177.

<sup>24</sup> *Annales Mettenses priores* 32 sq.

<sup>25</sup> *Annales regni Francorum a. 742*. (*Monumenta Germaniae Historica*, SS rer. Germ. 6. Hannover, 1895.); *Annales Mettenses priores* 33.

<sup>26</sup> *Continuationes Fredegarii* 25; *Annales regni Francorum a. 742*.

<sup>27</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 179.

<sup>28</sup> *Annales Mettenses priores* 35.

in 742, they turned against the Alemannian duke, Theodbald, Odilo's brother, who had attacked them in the campaign against Aquitania.<sup>29</sup> The Frankish army getting across the Rhine and setting up a camp beside the Danube represented due threat to get the Alemannians to acknowledge Frankish *dicio* over them;<sup>30</sup> and it cannot be ruled out that the Frankish military force penetrated into Bavarian territories too.<sup>31</sup> The dukes opposing Pippin's and Carloman's claims for power found an ally in Grifo and Swanahilt, who had a considerable number of loyal men—with the latter Odilo could maintain fairly good relations through his wife, Hiltrut—and so an opposition covering the whole empire against Charles Martell's sons from his first marriage evolved. In this system of alliance Odilo's prestige can be hardly underestimated since his multiple kinship relations maintained with the Carolingians—established through Swanahilt, on the one hand, and Hiltrud, on the other<sup>32</sup>—could make him a worthy rival of Pippin and Carloman, similarly to the rivalry evolved a generation later between Tassilo and Charlemagne.<sup>33</sup> In addition to the description of the armed conflict between Pippin and Carloman and their brother-in-law, Odilo, ended with the Franks' victory, the sources expounded the reasons for the conflict: Odilo wanted to withdraw his country he had won owing to Charles Martell's generosity from the Carolingians' influence.<sup>34</sup> However, this act cannot be qualified a consistent deed against Frankish authority because in the 740's the Frankish *dicio* cannot be unambiguously considered the synonym of the power exercised by the Carolingians.<sup>35</sup> After the victory by the Franks, no reprisals were taken against Odilo—as stated in sources; keeping his duke's rank he could rule in Bavaria; all the more for he made his position firm and stable among the Bavarian nobles, who engaged an opposition initially, and in 744, perhaps in spite of Pippin's will, Carloman and

<sup>29</sup> *Annales Mettenses priores* 33; *Continuatioes Fredegarii* 25.

<sup>30</sup> *Continuatioes Fredegarii* 25.

<sup>31</sup> *Annales Alamannici a. 744* (*Monumenta Germaniae Historica*, SS 1. 1826.)

<sup>32</sup> *Continuatioes Fredegarii* 16.

<sup>33</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 184; Wolfram, H.: *Das Fürstentum Tassilos III., Herzogs der Bayern*. Mitteilungen der Gesellschaft für Salzburger Landeskunde 108. 1968. 159 sq.; Wolfram: *Die Geburt Mitteleuropas... op. cit.* 98 sq.

<sup>34</sup> *Annales Mettenses priores* 34; *Annales regni Francorum a. 743*; *Annales Altahenses maiores* 2. (*Monumenta Germaniae Historica*, SS 20. 1868.); *Annales Iuvavenses maximi a. 732*. (*Monumenta Germaniae Historica*, SS 30/2. 1934.); *Annales Sithienses a. 742*. (*Monumenta Germaniae Historica*, SS 13. 1881.); *Annales Lobienses a. 742*. (*Monumenta Germaniae Historica*, SS 13. 1881.); *Chronicon Vedastinum a. 743*. (*Monumenta Germaniae Historica*, SS 13. 1881.); *Continuatioes Fredegarii* 26.

<sup>35</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 187.

Odilo made a peace, fully acknowledging his duke's rights.<sup>36</sup> Thus, it can be stated that the military events in 743 by no means sowed the seeds of discord between the Carolingians and the Agilolfings extending to several decades; instead, they confirmed the legitimacy of Odilo's rule as a duke.<sup>37</sup> Slowly prevailing over his brother, Pippin strived to assert Frankish influence over Bavaria through several channels; for example, through actively intervening in the appointment of the Carantanian princes following Boruth, Cacatius and Cheitmar<sup>38</sup> and in ordaining Virgil bishop of Salzburg, who was later involved in a conflict regarding several issues with Bonifatius vested with archbishop's powers by Carloman in 743.<sup>39</sup>

The latter case is worth outlining briefly because it implies that the duke had a direct say in appointing bishops; yet there is no information on this right being regulated in one way or another. All the more since the development of Bavaria's church organisation and system of bishoprics reached the final stage only owing to Bonifatius's operation and that with the duke's considerable assistance. On 15 May 719, pope Gregory II (715–731) assigned missionary duties to Bonifatius without specifying any particular target area;<sup>40</sup> then, on 30 November 722, he ordained him bishop and directed him towards the countries and territories inhabited by Germans,<sup>41</sup> and later received his reports and replied his questions.<sup>42</sup> By the time of Gregory III (731–741)—although there had been no accurately determined diocese borders—the period of wondering bishops in Bavaria had ended, they were replaced by (abbot)bishops having a permanent seat, on the one hand.<sup>43</sup> In the year following his ascension to the throne, in 732 it was the pope himself who commissioned Bonifatius, who was made archbishop through having been granted the *pallium* although he did not obtain a definite *metropolia*, to restructure the Bavarian church organisation

<sup>36</sup> *Annales Mosellani a. 744.* (*Monumenta Germaniae Historica*, SS 16. 1859.); *Annales Sithienses a. 744.*

<sup>37</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 190.

<sup>38</sup> *Conversio Bagoariorum et Carantanorum 4.* (*Monumenta Germaniae Historica*, Studien und Texte 15. 1997.)

<sup>39</sup> *Conversio Bagoariorum et Carantanorum 2.* Cf. H. Löwe: Ein literarischer Widersacher des Bonifatius, Virgil von Salzburg und die Kosmographie des Aethicus Ister. *Abhandlungen der geistes- und sozialwissenschaftlichen Klasse* 11. 1951.

<sup>40</sup> Ph. Jaffé: *Regesta pontificum Romanorum.* Graz, 1956. 2157; Bonifatius: *Epistolae* 12.

<sup>41</sup> Jaffé 2160. 2161; Bonifatius, *epistolae* 17; 18; 19; 21; 25.

<sup>42</sup> *Bonifatius: Epistolae* 24; 26; Th. Schieffer: *Winfried-Bonifatius und die christliche Grundlegung Europas.* Freiburg i. Br. 1980. 149 sqq.

<sup>43</sup> Wolfram, H.: *Die Zeit der Agilolfinger. Rupert und Virgil.* In: Dopsch, H. (Hrsg.): *Geschichte Salzburgs I.* Salzburg, 1981. 136 sqq.

and, if necessary, to ordain bishops.<sup>44</sup> Bonifatius visited Bavaria as early as in 719;<sup>45</sup> then, between 733 and 735 at the invitation of duke Hucbert he paid a visit to all the Bavarian dioceses.<sup>46</sup> Pope Gregory III appointed Bonifatius his legate, and in his letter addressed to the bishops of Bavaria and Alemannia he instructed them to gather in a meeting at a location beside the Danube defined by Bonifatius.<sup>47</sup> Bonifatius finally determined four bishop's seats: Regensburg, Passau, Salzburg and Freising—these towns had attained a significant role not only as secular centres, their sacred legitimation was ensured—as far as Regensburg, Salzburg and Freising is concerned—by the operation of missionaries, Haimhrammus/Emmeram, Hrodbertus/Rupert and Corbinianus/Korbinian.<sup>48</sup> He did not acknowledge the (abbot)bishops who operated at these four seats as diocese bishops—without questioning their rank as bishops—and fulfilled their places by bishops ordained by him: John in Salzburg, Erembert in Freising, and Gaubald/Gaibald in Regensburg.<sup>49</sup>

In Passau, in spite of his reserves, he left Vivilo in his office, which was confirmed by the pope although this confirmation had some reproving over-tone.<sup>50</sup> In relation to Bonifatius nothing is said about Augsburg established a long time before setting up the Bavarian church organisation, and Säben ranked among Bavarian bishoprics later only; and the Bishopric of Eichstätt, which covered both Bavarian and Swabian territories, would be established only in 743/44.<sup>51</sup> The church organisation developed by Bonifatius soon became even more consolidated through maintaining local traditions. In Regensburg St Emmeram's relics were ceremonially placed; in 764 Tassilo had St Valentine's relics brought to Passau. In 765 bishop Arbeo placed the mortal remains of St Korbinian in Freising; finally, in 774, bishop Virgil arranged for paying honour to the relics of St Rupert and his companions in the dome of

<sup>44</sup> Jaffé 2239; *Bonifatius: Epistolae* 26; Schmidinger, H.: *Das Papsttum und die bayerische Kirche – Bonifatius als Gegenspieler Virgils*. In: Dopsch, H.–Juffinger, R. (Hrsg.): *Virgil von Salzburg. Missionar und Gelehrter*. Salzburg 1985. 94; Schieffer: *op. cit.* 153 sqq.

<sup>45</sup> *Vita Bonifatii auctore Willibaldo* 5. (*Monumenta Germaniae Historica*, SS rer. 1905.)

<sup>46</sup> *Vita Bonifatii* 6.

<sup>47</sup> Jaffé 2247; *Bonifatius: Epistolae* 44; Löwe, H.: *Bonifatius und die bayerisch-fränkische Spannung. Ein Beitrag zur Geschichte der Beziehungen zwischen dem Papsttum und den Karolingern*. In: Bosl, K. (Hrsg.): *Zur Geschichte der Bayern*. Darmstadt, 1965. 280 sq.

<sup>48</sup> Schmidinger: *op. cit.* 94.

<sup>49</sup> *Vita Bonifatii* 7; Reindel 1971. 229 sq.; Schieffer: *op. cit.* 180 sqq.

<sup>50</sup> *Bonifatius: Epistolae* 45; Jaffé 2251.

<sup>51</sup> Reindel: *Das Zeitalter der Agilolfinger... op. cit.* 230 sqq.



Salzburg.<sup>52</sup> Returning to the point of the duke's powers: it is known that until the dethronement of the Agilolfing dynasty in 788 the local council was chaired by the duke—since in Bavaria the archbishopric was set up only by pope Leo III (795–816) in 798, who raised Arn, bishop of Salzburg, Charlemagne's confidant to the archbishop's seat, and Salzburg to the function of archbishopric<sup>53</sup>—therefore, his power was close to the king's power, clearly demonstrated by the dating the charters of the period in accordance with the Bavarian duke's reign.<sup>54</sup>

**II.** With respect to *status libertatis* the separation based on the opposition of free-servant(slave) (*liber-servus*) was formulated already by Gaius, jurist in the 2nd c. AD;<sup>55</sup> and later this *divisio* was repeated by Charlemagne in *Capitularia missorum* pointing out that no third option, i.e., personal status should exist.<sup>56</sup> On the grounds of the above, it would be righteous to set out from the fact that the Bavarian legal system of the period adopted and provided for only these two statuses—well, in the sources there are numerous personal statuses in-between the above two. In the investigation of the concept of *libertas*, trends of research setting out primarily from German laws and using charters as basic sources constitute a kind of contrast, and it cannot be considered accidental that the former trend took up the cudgels for the so-called *Gemeinfreiheit* theory, and the latter developed and adopted the *Königsfreiheit* theory.<sup>57</sup> All German laws (*Volksrechte*) set out from dividing society into freemen (*liberi/ingenui*) and servants (*servus/ancilla/mancipium*)—accordingly, the earliest fragment of *Lex Romana Visigothorum*, which can be related to the name of king Eurich (466–484), imposes different punishments on *ingenuus* who

<sup>52</sup> Schmidinger : *op. cit.* 95.

<sup>53</sup> *Annales Iuvavenses maximi a. 798; Annales Iuvavenses maiores a. 798.* (*Monumenta Germaniae Historica*, SS 30/2. 1934.); Wolfram: *Die Geburt Mitteleuropas... op. cit.* 208.

<sup>54</sup> Wolfram: *Die Geburt Mitteleuropas... op. cit.* 387 sq.; H. Brunner: *Deutsche Rechtsgeschichte I.* München–Leipzig, 1961. 213 sq.

<sup>55</sup> Kuebler. B.: Gaius, *Institutiones* 1, 9. Leipzig, 1926.

<sup>56</sup> *Capitulare missorum* Nr. 58, 1. (*Monumenta Germaniae Historica*, Capit. 1–2. 1883–1897.)

<sup>57</sup> See Schmitt, J.: *Untersuchungen zu den Liberi Homines der Karolingerzeit.* In: Europäische Hochschulschriftenreihe III. 1977. 83. Frankfurt–Bern 1977. 1 sqq.; Kölber, G.: *Die Freien (liberi, ingenui) im alemannischen Recht.* In: Schott, C. (Hrsg.): Beiträge zum frühalemannischen Recht. Veröffentlichung des Alemannischen Instituts Freiburg i. Br. 42. Brühl 1978. 38 sqq.; H. Krause: *Die liberi der lex Baiuvariorum.* In: Albrecht, D.–Kraus, A.–Rendel, K. (Hrsg.): Festschrift für M. Spindler. München, 1969. 41 sqq.

remove boundary-stones and on *servus* who implement the same deed;<sup>58</sup> and accordingly “*Wergeld*” could be imposed for killed, or injured *liber/ingenuus*; however, for killing or injuring a *servus* only compensation for damage was stipulated.<sup>59</sup> The phrase *sive ingenuus sive servus* is used in *Lex Romana Burgundiorum* drafted before 506 and *Lex Romana Visigothorum* published in 506 as a natural expression.<sup>60</sup> (Alemannian laws clearly split even freemen into groups: *primus Alamannus, medianus Alamannus, minofletus*.<sup>61</sup>)

The term *liber/ingenuus* is interpreted exclusively by the root *fri/fri* in each German language and dialect,<sup>62</sup> which result can be attained mostly through translations. The Old German texts of the 8th-9th c. interpret both *liber* and *ingenuus* as *fri*;<sup>63</sup> e.g., the fragments from Mondsee from the late 8th c.<sup>64</sup> The Old Alemannian Benedictine *regula* from approx. 800;<sup>65</sup> the hymns from Murbach from the 9th c.;<sup>66</sup> the *capitulare* from Trier from the mid 9th c.<sup>67</sup> The *Abrogans-glossarium* drafted in the mid 8th c. interprets the word *liber* as *frihals*;<sup>68</sup> in Notker’s work *libertas* is covered by *frihalsi* and *friheit*; the Old Alemannian Benedictine *regula* use the phrase *frihals* in the sense of liberation. The terms *libertinus/libertus* are translated with terms *frilaz*, *fri*, *frigeling*, *frigilazzan* in the glosses.<sup>69</sup> From the *Lex Baiuvariorum* both the male and female forms can be identified regarding freed persons (*frilatz*,

<sup>58</sup> *Leges Visigothorum, tit. 274. (Monumenta Germaniae Historica, LL nat. Germ. 1, 1. 1902.)*

<sup>59</sup> C. Schott: *Freiheit und Libertas. Zur Genese eines Begriffs. Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung*, 104. 1987. 92.

<sup>60</sup> *Leges Burgundiorum* 2, 1; 4, 1. (*Monumenta Germaniae Historica, LL nat. Germ. 2, 1. 1892.*); *Lex Romana Visigothorum* 9, 14, 1.

<sup>61</sup> *Leges Alamannorum* 3, 21. (*Monumenta Germaniae Historica, LL nat. Germ. 5, 1. 1888.*)

<sup>62</sup> Grimm, J.–W.: *Deutsches Wörterbuch* 4, 1, 1. Leipzig, 1878. 94 sqq.

<sup>63</sup> See Schott: *Freiheit und Libertas... op. cit.* 97 sq.

<sup>64</sup> Hench, G. A. (ed.): *The Mondsee Fragments*. Straßburg, 1890. 45. *Frii / alvualtento*.

<sup>65</sup> Steinmeyer, E. (Hrsg.): *Die kleineren althochdeutschen Sprachdenkmäler*. Berlin, 1916. 199. *Quia. Sive servus! Sive liber! / Eigin steti danta edo scalch edo frier*.

<sup>66</sup> Sievers, E. (Hrsg.): *Die Murbacher Hymnen nach der Handschrift*. New York–London, 1972. 41. *redemptione liberi / urchauffe frige*.

<sup>67</sup> Steinmeyer, E. (Hrsg.): *Die kleineren althochdeutschen Sprachdenkmäler*. Berlin, 1916. 305. *Ut omnis homo liber potestatem habeat ... / That ein iouuelihc man frier geuualt hane ...*

<sup>68</sup> Bischoff, B.–Duft, J.–Sonderegger, S. (Hrsg.): *Die „Abrogans“-Handschrift der Stiftsbibliothek St. Gallen*. St. Gallen, 1977. 191. *libertas / frihalsi; libera / frihals*.

<sup>69</sup> Köbler, G.: *Althochdeutsch-lateinisches Wörterbuch*. Gießen, 1984. 191 sq.

*frilaza*).<sup>70</sup> Only in a rather narrow scope do German law (*Volksrecht*) provide points of reference for determining the concept of *liber/ingenuus*:<sup>71</sup> in one of the manuscripts of *Lex Salica* the glosses from Malberg attaches the explanation *frio falcino* (*Freienraub*) to kidnapping freemen (*ingenuus*).<sup>72</sup> Among Lango-bardian laws those enacted by Liutprand use the term *frea* at two points to name free woman;<sup>73</sup> and in *Edictus* (!) *Rothari* the term *fulcfree* (*volksfrei*) can be read several times; e.g., in the somewhat pleonastic compound *mulier libera fulcfree*.<sup>74</sup>

Searching for the earliest written records among the literary remains of the German language that can be used for the purposes of the investigation of this paper, it is possible to get to the Gothic nouns *freihals* and *frijei*, and the adjective *freis* left to us from the 4th c.<sup>75</sup> However, the relation between these words and the Latin terms *libertas/liber* can be demonstrated only through the *medium* of Greek because the translation of the Bible into Gothic was based on the Greek text.<sup>76</sup> At the same time, *libertas* can be undoubtedly matched with the terms *freihals/frijei* because the locus *sive liberi sive servi* is interpreted in Justinian's *Novellae* as *eite eleuteroi eite douloi*,<sup>77</sup> and, accordingly, the term *fratels* can be matched with *apeleutheros* and *libertus*.<sup>78</sup> It deserves special attention that the adiectivum *freis* and its derivatives show close links with the words *frijon* (*philein, apagan, amare, diligere*), *frijonds* (*philos, amicus*), *frijathwa* (*agape, dilecti, caritas*), which makes it absolutely clear that the German concept of freedom—as in numerous Indo-European languages<sup>79</sup>—might have originally belonged to the scope of concept of kinship/clan relations.<sup>80</sup>

<sup>70</sup> *Lex Baiuvariorum* tit. 5; 8, 10.

<sup>71</sup> Cf. G. v. Olberg: *Freie, Nachbarn und Gefolgsleute. Volkssprachige Bezeichnungen aus dem sozialen Bereich in den frühmittelalterlichen Leges*. Frankfurt a. M.–Bern–New York, 1983. 103 sqq.

<sup>72</sup> *Lex Salica* 67. (*Monumenta Germaniae Historica*, LL nat. Germ. 4, 2. 1965.)

<sup>73</sup> *Liutprandi Leges* 94; 120. (*Monumenta Germaniae Historica*, LL nat. Germ. 4. 1869.)

<sup>74</sup> *Edictus Rothari* 257. (*Monumenta Germaniae Historica*, LL nat. Germ. 4. 1869.)

<sup>75</sup> W. Streitberg: *Die gotische Bibel II: Gotisch-Griechisch-Deutsches Wörterbuch*. Heidelberg, 1971. 38 sq.

<sup>76</sup> Schott: *Freiheit und Libertas... op. cit.* 100.

<sup>77</sup> *Novellae Iustiniani* 5, 2. Berlin, 1928.

<sup>78</sup> Schott: *Freiheit und Libertas... op. cit.* 100 sq.; Köbler, G.: *Verzeichnis der lateinisch-gotischen und der gotisch-lateinischen Entsprechungen der Bibelübersetzung*. Göttinger Studien zur Rechtsgeschichte, Sonderband 16/17. Göttingen, 27.

<sup>79</sup> Walde, A.–Pokorny, J.: *Vergleichendes Wörterbuch der indogermanischen Sprachen II*. Berlin–Leipzig, 1975. 86 sq.

<sup>80</sup> Schott: *Freiheit und Libertas... op. cit.* 101.

Accordingly, those who belonged to the scope embraced by this concept—that is, to kinship/clan relations—could be considered protected, in spite of the fact that this social/legal process, and the process of changes in the meaning of the words cannot be followed up step by step.<sup>81</sup> In this case, kinship relations, as a matter of fact, cannot be construed as blood relationship *stricto sensu*, much rather a sort of belonging/alliance relation, which included, in addition to servants(slaves), the entourage. The social/clan structure developing during this process brought along as a natural consequence the evolution of subordination and superordination; and to qualify freemen it was required for a person to be able to be covered by the influence of the entity exercising power, that is, the state; i.e., such person should not be under control of another person (limiting freedom). Thus, the concept of freedom that shows close links with Roman law traditions is nothing else than the sine qua non of the development of statehood, which was instrumental in clearly separating the scope of subjects-at-law, that is, the direct addressees of state regulations and the persons that could not be considered subjects-at-law.<sup>82</sup>

As regards persons in free status, *Lex Baiuvariorum* reveals the following. The “*Wergeld*” for a free Bavarian person, either killed or unlawfully sold, was determined by law as one hundred and sixty *solidi*,<sup>83</sup> plus forty *solidi* to be paid to the *fiscus*.<sup>84</sup> Freemen were subject to the judicial power of the duke exercised by the *dux* through his counts (*comites*) and judges (*iudices*); therefore, it is not by chance that all statutory provisions regarding freemen—except for provisions on their personal protection—are set forth in the second part of *Lex Baiuvariorum* on matters to be handled by the duke.<sup>85</sup> On the other hand, statutory provisions—which set out from the ideal picture formed of the freemen who constituted the core of Bavarian *gens*—do not supply extended information on the rate of freemen in the society of the period.<sup>86</sup> The Bavarian army consisted mostly of freemen; at the same time, warriors included people of lower ranks (*homines minores*)<sup>87</sup> and servants (*servi*).<sup>88</sup> Each part of the army (*comitatus*) was headed by a count (*comes*), who controlled *centuriones*

<sup>81</sup> Dilcher, G.: *Freiheit*. In: Handwörterbuch zur deutschen Rechtsgeschichte I. Berlin, 1971. 1228 sqq.

<sup>82</sup> Schott: *Freiheit und Libertas... op. cit.* 104 sq.

<sup>83</sup> *Lex Baiuvariorum* 4, 28.

<sup>84</sup> Brunner: *op. cit.* 334.

<sup>85</sup> *Lex Baiuvariorum* tit. 2.

<sup>86</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 228.

<sup>87</sup> *Lex Baiuvariorum* 2, 4.

<sup>88</sup> *Lex Baiuvariorum* 2, 5.

and *decani*.<sup>89</sup> Bavarians in the status of freemen—after having handed over their share of the inheritance to their successors—were allowed to grant their property to the church, and the duke did not have the right to submit any reserve against it.<sup>90</sup> After taking into account the widow's rights, only male successors were vested with the right of succession; that is, by then the right of succession of the larger scope—of the clan—had been thrust in the background by the family right of succession;<sup>91</sup> the clan (*gens/Sippe*) included relatives even of the seventh grade; and originally right of succession extended to the same grade.<sup>92</sup> The significance of *gens* is demonstrated by the rule on cleansing oath since the twelve companions taking the oath had to come from the clan of the person taking the oath (*de suo genere*).<sup>93</sup>

Freemen were obliged to attend meetings serving public jurisdiction purposes (*placita/Ding*), arranged by the duke's *iudex* at the beginning or middle of each month.<sup>94</sup> Persons not in the status of freemen could obtain freedman/liberated status (*frilaz*) through being set free (*manumissio*).<sup>95</sup> However, it was possible to lose freedom, e.g., the *ingenua* who committed abortion was given by the duke into the service (*servitium*) of another free person.<sup>96</sup> If the assets of the person who caused damage did not cover the amount of blood money or compensation for damage such person had to enter the *servitium* of another person, and were obliged to settle the amount of the sanction in monthly or yearly instalments from the amount so acquired.<sup>97</sup> Once completing the above, he most probably regained freedom, which again confirms the picture developed about the possibility of mobility/transfers between statuses.<sup>98</sup> *Lex Baiuvariorum* provided the members of free but poor layers with the option of placing themselves and their property under the

<sup>89</sup> *Lex Baiuvariorum* 2, 5.

<sup>90</sup> *Lex Baiuvariorum* 1, 1.

<sup>91</sup> Jahn, J.: *Tradere ad Sanctum. Politische und gesellschaftliche Aspekte der Traditionspraxis im agilolfingischen Bayern*. Wehler, H. V.: *Gesellschaftsgeschichte* 1. 1988. 400 sqq.; Jahn: *Ducatus Baiuvariorum... op. cit.* 228.

<sup>92</sup> *Lex Baiuvariorum* 15, 10.

<sup>93</sup> *Lex Baiuvariorum* 8, 15.

<sup>94</sup> *Lex Baiuvariorum* 2, 14.

<sup>95</sup> Wolfram, H.: Salzburg, Bayern, Österreich. Die *Conversio Bagoariorum et Carantanorum* und die Quellen ihrer Zeit. *Mitteilungen des Instituts für österreichische Geschichtsforschung, Ergänzungsband*, 31. 1995. 146; *Lex Baiuvariorum* tit. 5. *De liberis, qui per manum dimissi sunt liberi, quod 'frilaz' vocant*.

<sup>96</sup> *Lex Baiuvariorum* 8, 18.

<sup>97</sup> *Lex Baiuvariorum* 2, 1.

<sup>98</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 229.

protection of a person with larger power and property; a similar kind of *commendatio* to the duke was also possible.<sup>99</sup> One of the provisions of *Lex Baiuvariorum* regards the members of the entourage of the (Frankish) king the king's vassals (*vassi*), who were also subject to the duke's *iurisdictio*,<sup>100</sup> but of these *vassi*—although their presence in Bavaria, and their increasing significance from duke Odilo's period cannot be ruled out—nothing is said in the sources regarding the period before 787, that is, the vassal's *commendatio* made by Tassilo before Charlemagne. Consequently, it can be assumed that this passage was included in the text of *Lex Baiuvariorum* after 788.<sup>101</sup> The significant social differences between freemen equal in theory were at some points taken into account in *Lex Baiuvariorum*; e.g., the leader of riots against the duke (*carmulum*)<sup>102</sup> was obliged to pay a penalty of six hundred, his companions two hundred, and people of low order (*minor populus*) but in freemen status joining them forty *solidi*.<sup>103</sup>

Contrary to freemen, servants (*servi*) were not entitled to *potestas* to make them able to dispose of themselves and their property. Although *Lex Baiuvariorum* provides for servants who had property (*facultates*),<sup>104</sup> in theory and generally they were subject to their lord's authority,<sup>105</sup> who was entitled to donate or devise them free from burdens. The campaigns of the duke outside the borders of the country were also good occasions for getting servants.<sup>106</sup> Their value was usually determined at twelve *solidi*; however, in the case that a servant was killed his lord was entitled to twenty *solidi*, that is, half of the "Wergeld" for a *libertinus*.<sup>107</sup> Similarly to freemen, servants did not constitute a legally homogenous group: the class of servants ranged from *mancipium* living in full dependence to *servus*, regarding whom *Lex Baiuvariorum* ran the risk to state that they would kidnap and sell a freeman, and consequently sanctioned this deed.<sup>108</sup> The Bavarian army included servants,<sup>109</sup> and *Lex Baiuvariorum* refers to the state of facts where it prohibits any relation

<sup>99</sup> *Lex Baiuvariorum* 4, 28.

<sup>100</sup> *Lex Baiuvariorum* 2, 14.

<sup>101</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 231.

<sup>102</sup> Cf. *Conversio Bagoariorum et Carantanorum* 5. ... *orta seditione, quod carmula dicimus.*

<sup>103</sup> *Lex Baiuvariorum* 2, 3.

<sup>104</sup> *Lex Baiuvariorum* 10, 1; 16, 6.

<sup>105</sup> *Lex Baiuvariorum* 1, 6.

<sup>106</sup> *Lex Baiuvariorum* 16, 11. 14.

<sup>107</sup> *Lex Baiuvariorum* 13, 9; 6, 12.

<sup>108</sup> *Lex Baiuvariorum* 16, 1; 9, 5.

<sup>109</sup> *Lex Baiuvariorum* 2, 5.

between a free woman and a man in servant status,<sup>110</sup> whereas a freeman was entitled to marry a servant woman (*ancilla*), although the successors were entitled to limited right of successions only.<sup>111</sup> The law adduces to the presence of servants (*servi*) in the duke's court<sup>112</sup> where they had the option to rise<sup>113</sup> as it is shown by the example of Tonazan and Ledi told concerning *cella Maximiliani* in *Libellus Virgilii*, which constitutes the core of *Breves Notitiae*.<sup>114</sup> It was just due to their border guarding duties that the members of *genealogia Albina* qualified *adalscalhae, exercitales homines*—and later *servi fiscalini*, or servants not deprived of their freedom—and several of them rose to church dignitaries' positions.<sup>115</sup> *Aldiones* who appeared in several cases as the subject of *traditiones* were at the same level with liberated/freedmen (*libertini*)<sup>116</sup> since also in Langobardian law successors of liberated parents qualified *aldiones*, and were clearly separated from servants,<sup>117</sup> especially when considering Langobardian *aldii ministeriales*, who fulfilled highly important (as it were administrative) functions.<sup>118</sup> It cannot be ruled out that this term was borrowed by Bavarian law from the Langobards.<sup>119</sup> Owing to their special status, only the duke's family could afford donating *aldiones*.<sup>120</sup>

**III.** *Lex Baiuvariorum* formally vested the duke from the Agilolfing dynasty, ordered and bound to be loyal by the Frankish king, with hereditary ruler's rights<sup>121</sup> but loyalty to the king and leading the Bavarian army did not involve the obligation to join the royal army unconditionally and at all times.<sup>122</sup> The

<sup>110</sup> *Lex Baiuvariorum* 8, 2. 9.

<sup>111</sup> *Lex Baiuvariorum* 15, 9.

<sup>112</sup> *Lex Baiuvariorum* 2, 10.

<sup>113</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 245.

<sup>114</sup> *Breves Notitiae* 3, 1 sqq.; 8, 1 sqq.

<sup>115</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 246 sq.

<sup>116</sup> *Traditio Frisingensis* Nr. 46a. 50. 58. 62. 63. (*Quellen und Erörterungen zur bayerischen und deutschen Geschichte*. Neue Folge 4–5. 1905–1909.)

<sup>117</sup> Mayer, E.: *Italienische Verfassungsgeschichte von der Gothenzeit bis zur Zunftherrschaft I–II*. Leipzig, 1919. I. 159 sqq.

<sup>118</sup> G. v. Olberg: *Freie, Nachbarn und Gefolgsleute. Volkssprachige Bezeichnungen aus dem sozialen Bereich in den frühmittelalterlichen Leges*. In: Schmidt-Wiegand, R. (Hrsg.): *Germanistische Arbeiten zur Sprach- und Kulturgeschichte II*. Frankfurt–Bern–New York, 1983. 80.

<sup>119</sup> Brunner: *op. cit.* 357.

<sup>120</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 248.

<sup>121</sup> *Lex Baiuvariorum* 3, 1; Wolfram: *Die Geburt Mitteleuropas... op. cit.* 387 sqq.; Störmer: *op. cit.* 14 sqq.

<sup>122</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 222.

duke must have undoubtedly been the landowner with the greatest property in his province; yet, rather scarce information is available on the administration of duke's estates and *villae publicae*, which also belonged to the duke's assets.<sup>123</sup> Bavarian dukes—similarly to Langobardian rulers and the Carolingians—sometimes divided their country into sub-dukedom among their sons as duke Theodo's example shows.<sup>124</sup> The duke played an active part in the Bavarian church too: he founded numerous monasteries and provided them with goods.

The scope of persons baptised by Rupert is defined in *Gesta Sancti Hrodberti confessoris* drafted after 793—which, however, goes back to *Vita Hrodberti* written by bishop Virgil in approx. 746/47<sup>125</sup>—as the duke and several of the nobles of the *gens* (*multi alii illius gentis nobiles viri*);<sup>126</sup> and in *Breves Notitiae* written between 798 and 800 as duke Theodo and Bavarian dignitaries (*proceres sui Baioarum*).<sup>127</sup> *Gesta Hrodberti* claims that Rupert was received by the duke himself and his entourage (*satellites*) in Regensburg,<sup>128</sup> but the term *satellites* denoting the entourage was replaced by the more colourless pronoun *sui* in chapter one of *Conversio Bagoariorum et Carantanorum* written in 870<sup>129</sup>—which is recognised as another variant of *Vita Hrodberti*.<sup>130</sup> So each of the above descriptions relates on the duke and his environment, entourage who received Rupert with due respect and being open to Christianity. Belonging to the duke's environment raised the members of the entourage to a higher social level; and, accordingly, the original *satrapes* were replaced by *nobiles* in

<sup>123</sup> Wolfram: *Die Geburt Mitteleuropas...* op. cit. 391.

<sup>124</sup> Jahn: *Ducatus Baiuvariorum...* op. cit. 76 sqq.

<sup>125</sup> Wolfram: *Salzburg, Bayern, Österreich...* op. cit. 228; Lošek, F.: *Die Conversio Bagoariorum et Carantanorum und der Brief des Erzbischoft Theotmar von Salzburg. Monumenta Germaniae Historica, Studien und Texte 15.* 1997. 26.

<sup>126</sup> *Gesta sancti Hrodberti confessoris* 4. (*Monumenta Germaniae Historica*, SS rer. Merov. 6. 1913.) *Quem vir Domini mox coepit de christiana conversatione ammonere et de fide catholica inbuere ipsumque vero et multos alios illius gentis nobiles viros ad veram Christi fidem convertit et in sancta corroboravit religione.*

<sup>127</sup> *Breves Notitiae* 1, 1. *Primo igitur Theodo dux Baiovariorum dei omnipotentis gratia instigante et beato Rudberto episcopo predicante de paganitate ad christianitatem conversus et ab eodem episcopo baptizatus est cum proceribus suis Baioarum.*

<sup>128</sup> *Gesta sancti Hrodberti confessoris* 4. *Hoc audiens praefatus dux, magno perfusus est gaudio obviamque illi cum satellitibus pergens et sanctum virum evangelicumque doctorem cum omni honore et dignitate, sicut decentissimum erat, in Radesbona suscepit civitate.*

<sup>129</sup> Wolfram: *Salzburg, Bayern, Österreich...* op. cit. 193.

<sup>130</sup> *Conversio Bagoariorum et Carantanorum* 1.



chapter nine of the 9th c. version of *Vita Corbiniani* written by Arbeo.<sup>131</sup> The *satellites*, and *satrapes* attended the duke's *consilia*,<sup>132</sup> and as *satrapes terrae* disposed of significant estates,<sup>133</sup> but sources do not give an answer to the question if they stayed permanently at the duke's court in Regensburg, or only for defined periods, or visited there occasionally.<sup>134</sup> The military nature of this entourage can be deduced from the specification *cohors*.<sup>135</sup> The duke might have assigned various duties to delegates (*missi*), e.g. supervising the operation of dioceses,<sup>136</sup> which institution developed later in the empire of the Carolingians.<sup>137</sup>

The duke's administration also included *centenaria*, *actores* subjected to the count's authority—a title used on one occasion as a synonym of count<sup>138</sup>—they administered the duke's benefices,<sup>139</sup> just as the *castaldia*, who appeared in the last phase of the age of the Agilolfings and bore a Langobardian function.<sup>140</sup> In addition to office holders, the duke's agents and the executors of his orders were provided with a relatively great elbow room and authority in the fulfilment of their military and administrative duties by the *Lex Baiuvariorum*<sup>141</sup> since both them and their successors were secured by the duke's protection, which was meant to ensure continuity from one generation to the other of those acting in the duke's administration.<sup>142</sup> If they died in war or while fulfilling their duties, their successors—whether freemen or servants—

<sup>131</sup> Arbeo, *Vita Corbiniani* B 9. (*Monumenta Germaniae Historica*, SS rer. Merov. 6. 1913.); Bosl, K.: *Der „Adelsheilige“*. *Idealtypus und Wirklichkeit. Gesellschaft und Kultur im merowingerzeitlichen Bayern des 7. und 8. Jahrhunderts, Gesellschaftsgeschichtliche Beiträge zu den Viten der bayerischen Stammesheiligen Emmeran, Rupert, Korbinian*. In: Prinz, F. (Hrsg.): *Mönchtum und Gesellschaft im Frühmittelalter*. Darmstadt, 1976. 381.

<sup>132</sup> Arbeo, *Vita Haimhrammi* 12. (*Monumenta Germaniae Historica*, SS rer. Germ. 1920.)

<sup>133</sup> Arbeo, *Vita Haimhrammi* 10.

<sup>134</sup> J. Jahn: Bayerische „Pfalzgrafen“ im 8. Jahrhundert? Studien zu den Anfängen Herzog Tassilos (III.) und zur Praxis der fränkischen Regentschaft im agilolfingischen Bayern. *Regio. Forschungen zur schwäbischen Regionalgeschichte*, 1: Früh- und hochmittelalterlicher Adel in Schwaben und Bayern. Sigmaringen 1988. 89 sq.

<sup>135</sup> Arbeo, *Vita Haimhrammi* 16.

<sup>136</sup> *Traditio Frisingensis* 104; Brunner: *op. cit.* II. 253.

<sup>137</sup> Jahn: *Ducatus Baiuvariorum...* *op. cit.* 225.

<sup>138</sup> Hauthaler, W. (Hrsg.): *Salzburger Urkundenbuch I*. Salzburg, 1910. 51.

<sup>139</sup> Brunner: *op. cit.* II. 169.

<sup>140</sup> *Traditio Frisingensis* 13; Mayer: *op. cit.* II. 256 sq.; Jahn: *Ducatus Baiuvariorum...* *op. cit.* 226.

<sup>141</sup> *Lex Baiuvariorum* 2, 13.

<sup>142</sup> Jahn: *Ducatus Baiuvariorum...* *op. cit.* 226.

could inherit their entire property, and the law gave reasons for this exceptionally protected status. None should hesitate to observe the duke's command!<sup>143</sup> Similarly, homicide committed on the orders of the duke resulted in no punishment; no revenge could be taken either on the perpetrator of the act or his successors.<sup>144</sup> All these benefits must have made the duke's service a highly favourable and advantageous option to any social layer.<sup>145</sup>

Bavarian *genealogiae*—which are treated under a separate title in *Lex Baiuvariorum*<sup>146</sup>—are topped by the Agilolfings as *summi principes*, who stood out among other *genealogie*, in addition to their hereditary duke's rank, for their blood money being four times the amount of the blood money of a Bavarian freeman, while the “*Wergeld*” of the members of other *genealogiae*—who were as it were the first (that is, had the highest rank) after the Agilolfings in Bavaria—amounted to double “*Wergeld*” the of a Bavarian freeman.<sup>147</sup> The “*Wergeld*” of the members of the *gens Agilolfingarum* was exceeded by the duke's “*Wergeld*”, which was determined by law as an amount equal to the amount of the “*Wergeld*” of his relatives plus one third thereof.<sup>148</sup> The double “*Wergeld*” of members of the *genealogiae* makes it possible to compare them both in terms of their social and political significance to the Longobard *primi*, who were also protected and provided the king's entourage; all the more since in the Bavarian legal system and social structure of the age of the Agilolfings several elements and comparable aspects of Longobard origin can be identified.<sup>149</sup> As regards the five *genealogiae* (Hosi/Huosi, Drazza/Trazza, Fagana, Hahilinga, Anniona<sup>150</sup>) specified in *Lex Baiuvariorum* it cannot be ruled out that somehow they reflect the stage of the Bavarian ethnogenesis where various Bavarian tribal groups having merged as Bavarian *gens* brought along the layer of their leaders, who were given a part in further political development.<sup>151</sup> Curiously, various sources of charters do not include each *genealogia*: from the age of the Agilolfings information is available only on the *genealogia Fagana*, and although certain members of the *genealogia Huosi*

<sup>143</sup> *Lex Baiuvariorum* 1, 7.

<sup>144</sup> *Lex Baiuvariorum* 2, 8. Cf. Mayer: *op. cit.* II. 208.

<sup>145</sup> Jahn: *Ducatus Baiuvariorum...* *op. cit.* 227.

<sup>146</sup> *Lex Baiuvariorum tit.* 3.

<sup>147</sup> *Lex Baiuvariorum* 3, 1.

<sup>148</sup> *Lex Baiuvariorum* 3, 1.

<sup>149</sup> Mayer: *op. cit.* II. 209 sq.; Jahn: *Ducatus Baiuvariorum...* *op. cit.* 233.

<sup>150</sup> *Lex Baiuvariorum* 3, 1.

<sup>151</sup> E. Klebel: *Bayern und der fränkische Adel im 8. und 9. Jahrhundert*. In: Beyerle, F.–Büttner, H.–Dienemann-Dietrich, I.: *Grundfragen der alemannischen Geschichte*. *Vorträge und Forschungen* 1. 1955. 196.

are referred to in the age of the independent Bavarian Dukedom, as a uniform *genealogia* they played an active political role only after the dethronement of the Agilolfings, and the Carolingians' having seized power. In addition to assuming political roles, the *genealogia Fagana* and the *genealogia Huosi* must have been the most significant landowners in Bavaria beside the duke. Since, however, the charters of the age of the Agilolfings and the Carolingians mention only the aforesaid two *genealogiae*, in contrast with the five *genealogiae* described in *Lex Baiuvariorum*, it can be declared that *Lex Baiuvariorum* presents archaic conditions that had become outdated by the 8th c.<sup>152</sup> On the other hand, sources include *genealogiae*—for example, the *genealogia Feringa*<sup>153</sup>—which were not entitled to *potestas* to enable them to dispose of their real estates in various legal transactions; instead of them the duke implemented *traditiones* since they were subjected to the duke as members of his entourage.<sup>154</sup>

On the grounds of all that, two kinds of the Bavarian *genealogiae* can be distinguished: on the one hand, the old *genealogiae* directly following, in terms of their nobility, the Agilolfings—called *Geschlechtsadel*, or *alter Geburtsadel* by Brunner,<sup>155</sup> who were provided with prioritised positions owing to both of their legal status and political role. On the other hand, the new *genealogiae* belonging to the duke's entourage, who fulfilled both military and administrative duties.<sup>156</sup> From among the new *genealogiae* subject to the duke it is worth mentioning the *genealogia Albina*, who fulfilled border guarding duties along the frontiers shared with the Slavs, and who represented the adverse actors versus bishop Virgil in the dispute evolved regarding *cella Maximiliani* and described in *Libellus Virgilii* and *Breves Notitiae*.<sup>157</sup> The members of this genealogy rose from the group of Bavarians in status of freemen for they executed services for the duke as *exercitales homines*; in Virgil's presentation, however, they were described as *servi*, in spite of the fact that he uses the category *genealogia* also in their case.<sup>158</sup> Between the more ancient *genealogiae* mentioned in the *Lex Baiuvariorum* and the Agilolfings, dynastic marriages might have been concluded because some members of the *genealogia Huosi* bore names typical of the Agilolfings (Egilolf, Odilo,

<sup>152</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 233 sq.

<sup>153</sup> *Traditio Frisingensis* Nr. 5.

<sup>154</sup> Brunner: 1971. I. 117. Cf. *Edictus Rothari* 177.

<sup>155</sup> Brunner: *op. cit.* I. 343. 348.

<sup>156</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 235.

<sup>157</sup> *Breves Notitiae* 8, 1 sqq.

<sup>158</sup> Jahn: *Ducatus Baiuvariorum... op. cit.* 246.

Lantfrid).<sup>159</sup> The Agilolfings and the *genealogiae* constituted the Bavarian nobility. The Bavarian *genealogia* can be compared to the Langobardian concept of *fara*, which was bound together also by blood relations as a military alliance.<sup>160</sup> The power of the *genealogiae* and the danger they implied to the duke's power are clearly demonstrated by the provisions of *Lex Baiuvariorum* that stipulate that the duke shall be entitled to adopt a judgment on dignitaries (*homines potentes*) who call the enemy into the country and surrender the *civitas*<sup>161</sup> (presumably the duke's seat, Regensburg) to them, and ignite riots.<sup>162</sup> Engaging a causistic approach, *Lex Baiuvariorum* probably would have not provided for these cases if it had not deemed there were reasonable chances for them to occur.<sup>163</sup>

*Lex Baiuvariorum* reached an important stage in Bavarian law-making at the Council of Dignolfing, which created the *novellae* transplanting changes in the social structure into the law. The Council of Dignolfing held with the participation of six bishops and thirteen abbots<sup>164</sup> can be dated to the seventies of the 8th c.; yet its date can be specified even more accurately. The date of the death of Wisurih, bishop of Passau attending the council (1 May 777) can be considered *terminus ante quem*.<sup>165</sup> The minutes of the council was signed as doyen by Manno, bishop of Freising, who was followed in his seat by Oadalhart very soon in 777;<sup>166</sup> and Fater, abbot of Kremsmünster ordained on 9 November 777 had not attended the synod yet. On the grounds of all the above it is reasonable to assume that the Council of Dingolfing must have been held in the first months of the year 777.<sup>167</sup> At the Council of Dingolfing, Tassilo and his advisors renewed some paragraphs of *Lex Baiuvariorum*, which enabled them to guarantee to the nobles, freemen and the duke's servants, i.e.,

<sup>159</sup> *Traditio Frisingensis* Nr. 19. 142. 184. 185.

<sup>160</sup> Paulus Diaconus, *Historia Langobardorum* 2, 9. *Monumenta Germaniae Historica*, SS rer. Lang. 1878.); Mayer 1919. I. 14 sq.; Jarnut, J.: *Agilolfingerstudien. Geschichte einer adligen Familie im 6. und 7. Jahrhundert*. Monographien zur Geschichte des Mittelalters 32. Stuttgart, 1986. 110 sqq.

<sup>161</sup> About the terms *civitas* and *oppidum* see Koller, F.: Die Anfänge der Salzburger Städte, *civitas* und verwandte Begriffe in den Salzburger Quellen. *Mitteilungen der Gesellschaft für Salzburger Landeskunde*, 128. (1988) 11 sqq.

<sup>162</sup> *Lex Baiuvariorum* 2, 1. 3. 5.

<sup>163</sup> Jahn: *Ducatus Baiuvariorum...* *op. cit.* 238.

<sup>164</sup> Abel, S.–Simson, B.: *Jahrbücher des fränkischen Reiches unter Karl dem Großen I–II*. Berlin, 1969. I. 54.

<sup>165</sup> Wolfram: *Die Geburt Mitteleuropas...* *op. cit.* 161; 502.

<sup>166</sup> *Traditio Frisingensis* Nr. 86.

<sup>167</sup> Jahn: *Ducatus Baiuvariorum...* *op. cit.* 512 sq.

the *adalscalhae*, (*nobiles et liberi et servi eius*) statutory protection already obtained during duke Odilo's period, and the right to law (*ius ad legem*),<sup>168</sup> which led to the rising of the *adalscalhae*, on the one hand; and the development of the independent *ordo* of nobles, on the other.<sup>169</sup> It was in this spirit that the Council of Dingolfing determined the necessity of the presence of three reliable noble witnesses required for demonstration by documentary evidence,<sup>170</sup> whereas *Lex Baiuvariorum* does not say anything of the personal status of witnesses.<sup>171</sup> Both Odilo—having learned his lesson from his earlier failure—and Tassilo made efforts to win over the loyalty of *nobiles* and *adalscalhae* through donating them inheritable estates, although they made this donation subject to discharging duties in the duke's service<sup>172</sup> and other services not specified.<sup>173</sup> It should be added that this ruler's practice can be compared to the oath of allegiance obtained from the royal *arimanni*, i.e., office holders, by the Langobardian king, Liutprand, whom he strived to bind to him through granting them estates and limited right of disposal of estates as a positive motivation.<sup>174</sup> Getting increasingly separated from freemen, prevailing over them and having maintained considerable political and economic influence for a long time, this layer fought for and achieved most probably at the Council of Dingolfing—as it were as a compromise entered into with duke Odilo, who re-obtained his rule with the assistance of the Franks but was unable to rule in the long run without the approval of the Bavarian dignitaries, and assumed by duke Tassilo—the legal formulation of their acknowledgement as an independent order of nobles.<sup>175</sup> The sources reflecting the conditions that prevailed in the first half of the 8th c. did use the term *nobilis*<sup>176</sup> but in several

<sup>168</sup> *Concilium Dingolfingense* 5. Hannover–Leipzig, 1906.

<sup>169</sup> Wanderwitz, H.: Quellenkritische Studien zu den bayerischen Besitzlisten des 8. Jahrhunderts. *Deutsches Archiv für Erforschung des Mittelalters*, 39 (1983) 68 sqq.; Jahn: *Ducatus Baiuvariorum...* *op. cit.* 250; 513; Wolfram: *Salzburg, Bayern, Österreich...* *op. cit.* 149.

<sup>170</sup> *Concilium Dingolfingense* 2.

<sup>171</sup> *Lex Baiuvariorum* 1, 1.

<sup>172</sup> Cf. *Traditio Frisingensis* Nr. 49.

<sup>173</sup> *Concilium Dingolfingense* 8.

<sup>174</sup> *Liutprandi notitia de actoribus regis* 5.

<sup>175</sup> Jahn: *Ducatus Baiuvariorum...* *op. cit.* 251; Strömer, W.–Mayr, G.: *Herzog und Adel*. In: Dannheimer, H.–Dopsch, H. (Hrsg.): *Die Bajuwaren von Severin bis Tassilo 488–788*. 1988. 157.

<sup>176</sup> *Gesta sancti Hrodberti confessoris* 1; Arbeo, *Vita Haimhrammi* 2. 3; *Vita Corbiniani* 37.

cases only as a hagiographic *topos*,<sup>177</sup> and by no means as a terminus technicus. *Lex Baiuvariorum* applies the term *nobilis* no more than on two occasions;<sup>178</sup> however, they do not help to demonstrate any consistency in the use of terms.<sup>179</sup>

As a matter of fact, it is possible to speak about nobles in Bavaria before Odilo's period as the duke himself and the *genealogiae* referred to in *Lex Baiuvariorum* undoubtedly belonged to the nobility but it was by the 8th c. that the nobility as a uniform and legally acknowledged layer had fully developed, and obtained their attributes that had existed before but became clear cut only now: giving noble names; possessing huge and sometimes geographically scattered estates; having the right of disposal of private churches, and making efforts to attain such rights; and having the right to take part in the duke's rule and governance.<sup>180</sup> After power had been seized by the Franks in Bavaria, Charlemagne's government was surprised to see and admit the Bavarian nobility's resolute insistence on keeping their rights, and the nobility—especially to ensure their estates—powerfully emphasised their privileges provided by their origin,<sup>181</sup> which clearly reveals that by the last phase of the Agilolfings' rule *genus nobilium* had unambiguously developed having privileges ensured by and enshrined in legal acts.<sup>182</sup>

The Council of Dingolfing confirmed the privileged “*Wergeld*” of the ruler, i.e., the duke, the servants, that is the noble servants, i.e., the *adalscalhae* (*servi principis qui dicuntur adalscalhae*),<sup>183</sup> who directly belonged to the duke's entourage and through that considerably rose on the social ladder, which justified their peculiarly contradicting personal status of being nobles and servants simultaneously that cannot be matched with any status in the Frankish legal system.<sup>184</sup> [To make the usual translation of *adalscalha* with the term *Edelknecht* somewhat relative,<sup>185</sup> it can be compared with the term *adalporo*—in *Notitia Arnonis* the word *adalporo* denotes the tax that the inhabitants of Reichenhall were obliged to pay to the duke as a kind of *census*

<sup>177</sup> Wolfram: *Salzburg, Bayern, Österreich...* *op. cit.* 233 sqq.

<sup>178</sup> *Lex Baiuvariorum* 18, 1; 21, 6.

<sup>179</sup> Wolfram: *Salzburg, Bayern, Österreich...* *op. cit.* 147.

<sup>180</sup> Jahn: *Ducatus Baiuvariorum...* *op. cit.* 252 sq.

<sup>181</sup> Cf. *Traditio Frisingensis* Nr. 13. 127.

<sup>182</sup> Cf. *Notitia Arnonis* 6, 23. *Mitteilungen der Gesellschaft für Salzburger Landeskunde*, 130. 1990.

<sup>183</sup> *Conc. Dingolf. 7*; Wolfram: *Die Geburt Mitteleuropas...* 335 sq.; 400 sq.

<sup>184</sup> Brunner: *op. cit.* I. 374. sk.

<sup>185</sup> Wolfram, H.: *Der heilige Rupert in Salzburg*. In: Zwink, E. (Hrsg.): *Frühes Mönchtum in Salzburg*. Salzburger Diskussionen 4. Salzburg, 1983. 85.

*dominicus*.<sup>186</sup> The base *-poro/-paro* can be related to the Greek word *phoros* meaning *tax*; therefore, *adalporo* might have meant the tax that the noble (*adal-*) was entitled to. On the grounds of the *adalscalha*-definition of the Council of Dingolfing (*servi principis*),<sup>187</sup> this term might have denoted the persons acting in the service of the noble, that is, the duke.<sup>188</sup> This interpretation is supported by the specification *servi (homines) dominici* used in *Breviarius Urolfi*,<sup>189</sup> which corresponds with *census dominicus* applied in *Notitia Arnonis*.<sup>190</sup> As the aforesaid tax was due and payable to the person whom these sources named *adal-* as a specification solely applied to him, that is, the duke, it is undoubted that the *adalscalhae* were meant to serve him.<sup>191</sup>] The *adalscalhae* were entitled to marry women of noble origin, which again clearly indicates mobility in the Bavarian society of the period;<sup>192</sup> upon Tassilo's fall in 788 and legitimised dethronement in 794,<sup>193</sup> the subjection of the *adalscalhae* to the duke terminated, and they became in terms of their name free servants, *barscalhae*, and in terms of their status freemen.<sup>194</sup>

The development and regulation of the personal status of the *adalscalhae*, which was logically not free from contradictions but was by all means unique and suited the purposes of the duke's rule, reveals the roots of the evolution of a peculiar Bavarian vassal's system somewhat ahead of the Frankish development, which later, however, due to the Franks' gaining dominance, came to a standstill and could not reach its fully developed stage.<sup>195</sup> The protection of persons representing the support of the duke's power was widened in legislation to the extent that in addition to the three capital offences set forth in *Lex Baiuvariorum*<sup>196</sup> the Council of Dingolfing introduced

<sup>186</sup> *Notitia Arnonis* 7, 6. ... *et hoc decrevit censum dare unusquisque homo, qui in Hal habitaret, quod barbarice dicitur adalporo ...*

<sup>187</sup> *Concilium Dingolfingense* 7.

<sup>188</sup> Wolfram: *Salzburg, Bayern, Österreich...* *op. cit.* 149 sq.

<sup>189</sup> *Breviarius Urolfi* 1, 21. 23. *Beiträge zur deutschen Sprach-, Geschichts- und Ortsforschung* 3, 11. 1854.)

<sup>190</sup> *Notitia Arnonis* 7, 6.

<sup>191</sup> Wolfram: *Salzburg, Bayern, Österreich...* *op. cit.* 150; Jarnut: *op. cit.* 79 sq.

<sup>192</sup> *Concilium Dingolfingense* 10.

<sup>193</sup> Cf. Kolmer. L.: *Zur Kommendation und Absetzung Tassilos III. Zeitschrift für bayerische Landesgeschichte*, 43 (1980) 297 sqq.; Wolfram, H.: *Das Fürstentum Tassilos III., Herzogs der Bayern. Mitteilungen der Gesellschaft für Salzburger Landeskunde*, 108 (1968) 159 sqq.

<sup>194</sup> Cf. *Traditio Frisingensis* Nr. 193; Wolfram: *Die Geburt Mitteleuropas...* 400; Jahn: *Ducatus Baiuvariorum...* *op. cit.* 255.

<sup>195</sup> Jahn: *Ducatus Baiuvariorum...* *op. cit.* 256.

<sup>196</sup> *Lex Baiuvariorum* 2, 1.

*homicidium*, the act of murdering persons with close ties to the ruler (*homo principis sibi dilectus*),<sup>197</sup> which was to guarantee the security and safety of the *adalscalhae*, on the one hand; and freemen and nobles who belonged to the duke's environment and administration, on the other.<sup>198</sup> Although the estates donated by the duke (*beneficia*) could be devised, re-donating them was subject to the duke's prior *consensus* and *licentia* since the ruler was entitled to exercise control over changes in estate conditions.<sup>199</sup> Whereas, the duke donated certain estates with rights of full disposal to persons loyal to him; e.g., being considered firm support of both Odilo and Tassilo, count Machelm was entitled to re-donate estates without the duke's prior consent.<sup>200</sup> The donations listed in *Notitia Arnonis* could be divided into the *traditiones* of Bavarian freemen and persons not having power over themselves (*homines potestatem non habentes de se*);<sup>201</sup> and, complying with the above in content, albeit, applying somewhat modified terminology, *Breves Notitiae* distinguishes between donations granted by nobles (that is, freemen) and commons (that is, those who had no power): *nomina et praedia fidelium virorum nobilium et mediocum*.<sup>202</sup> Similarly, the *traditiones* of Freising include the act of *ducalis consensus*: having fallen of the horse, in 772 Hiltiprant felt he would soon die, and applied for the duke's licence to donate his goods to the bishopric of Freising, and the duke gave Hiltiprant the licence owing to the kinship relation maintained with him and the services discharged by him.<sup>203</sup>

The counts in the period of the Carolingians fulfilled their *ministerium* under the king's commission, which they could of course not devise to their descendants.<sup>204</sup> Regarding Bavaria, however, sources mention counts even in the period of the Agilolfings. E.g., count Gunther, who founded the monastery of Otting in 749, and who is, therefore, recorded as the earliest count known by his name in Bavaria.<sup>205</sup> Now, in Gunther's lifetime, there was a count Grimbert acting in Bavaria;<sup>206</sup> from the list of witnesses in *Notitia Arnonis* count Immino

<sup>197</sup> *Concilium Dingolfingense* 9.

<sup>198</sup> Wolfram: *Salzburg, Bayern, Österreich...* *op. cit.* 143.

<sup>199</sup> Jahn: *Ducatus Baiuvariorum...* *op. cit.* 256; Wolfram: *Salzburg, Bayern, Österreich...* *op. cit.* 142.

<sup>200</sup> *Traditio Frisingensis* Nr. 74.

<sup>201</sup> *Notitia Arnonis* 6, 1. 4. 13.

<sup>202</sup> *Breves Notitiae* 14. *tit.*

<sup>203</sup> *Traditio Frisingensis* Nr. 49.

<sup>204</sup> Wolfram: *Salzburg, Bayern, Österreich...* *op. cit.* 156.

<sup>205</sup> *Notitia Arnonis* 6, 24; *Breves Notitiae* 13, 1 *sqq.*

<sup>206</sup> *Notitia Arnonis* 6, 6; *Breves Notitiae* 14, 4.



and count Eimo<sup>207</sup> and from *Breves Notitiae* count Ugo are also known by name.<sup>208</sup> Count Machelm, who several times granted donations to Bavarian bishoprics and the monasteries of Mondsee and Niederalteiched from his rich estates lying in the region of Traun between the Inn and Salzach in Upper Austria, often emphasised his kinship relations tying him to the duke's dynasty, yet as *comes* Machelm was referred to in sources only with regard to the districts of Mattigau and Rottachgau.<sup>209</sup> There were significant economic differences between counts: accordingly, it is possible to distinguish between *fortis*, *mediocris* and *minor comites*; the counts in the period of the Agilolfings, in addition to their *ministeria*, goods from the duke, disposed of *beneficia* they were granted by the duke.<sup>210</sup> The term *ministerium* highlights the royal, in Bavaria ducal, commission nature of counthood, under which the count discharged military and administrative duties.

The considerable increase in the occurrences of counts and judges in the sources in the period following 741 can be probably attributed to duke Odilo's ruler's programme striving to attain altered, more efficient governance, using methods both seen in the Frankish court and brought along from his home country, Alemannia; yet, in spite of the fact that count Gunther and count Machelm belonged to the duke's most reliable adherents, the existence of an integrated system of counties in the Agilolfings' Bavaria cannot be demonstrated by evidence.<sup>211</sup> *Lex Baiuvariorum* sets forth that a count (*comes*) was responsible for leading *comigatus*, a part of the Bavarian army; and in a non-military function for administering *placita*—then, on the other hand, the territory of competence of the count's jurisdiction is also named *comigatus* in the law, most probably because the inhabitants of this territory constituted the military unit led by the count.<sup>212</sup> The duties assigned to the judges (*iudices*) subject to the count's control, who were required to provide justice and comply with unbribability, were—as set out in *Lex Baiuvariorum*—to appoint dates of administration of law and to implement adjudication, and to carry out certain church administration acts, especially in the event of deeds causing damage to the church.<sup>213</sup>

<sup>207</sup> *Notitia Arnonis* 8, 8.

<sup>208</sup> *Breves Notitiae* 8, 15.

<sup>209</sup> Störmer: *op. cit.* 42 sqq.; *Traditio Pataviensis* Nr. 9.

<sup>210</sup> *Notitia Arnonis* 6, 24; *Breves Notitiae* 13, 10.

<sup>211</sup> Jahn: *Ducatus Baiuvariorum...* *op. cit.* 260.

<sup>212</sup> *Lex Baiuvariorum* 2, 5. 14.

<sup>213</sup> *Lex Baiuvariorum* 2, 14–18.

## Conclusions

Regarding relations between the Franks and Bavarians up to 780, a consistent anti-Carolingian attitude manifested by the Agilolfings cannot be claimed; these relations were determined by the current political constellation; in several cases, the members of the Agilolfing dynasty, e.g., Odilo and Tassilo, were able to take the throne of Bavaria, and make their power firm and stable only with the support of the Franks. As a matter of fact, relations between the Carolingians and Bavarians were not free from rivalry but this had not become fatal for the Bavarian duke before the dethronement of Tassilo III in 788 by Charlemagne. In Bavaria of the 8th c., numerous social processes can be explored and identified set forth in legal formulations that deservedly attract the legal historian's attention: among others the detailed regulation of *status libertatis* and the development of an independent order of nobles. The concept of freedom in German folk law—so in *Lex Baiuvariorum*—might have originally belonged to the scope of the concept of kinship/clan relations. In this case, kinship relations cannot be, of course, construed as blood relations in stricto sensu, much rather a kind of belonging/alliance relations, which might have included, in addition to servants(slaves), the entourage. It was the duke's entourage and the ancient Bavarian *genealogiae* that the Bavarian nobility developed from; their rights were confirmed by Odilo, who obtained the throne of Bavaria with the assistance of the Franks, as it were as his own legitimation; in the period of Tassilo they achieved that these rights and the guarantees thereof were set forth in written form at the Council of Dingolfing. It was at this time that the *adalscalhae* were granted further rights; acting in the duke's service they represented a peculiar Bavarian mixture of servant and noble statuses, and then, upon the termination of the independent Bavarian Dukedom, became in terms of their name free servants, *barscalhae*, and in terms of their status freemen.