

Chapter 6

PATERNAL UNCLES AND NEPHEWS

AGE DIFFERENCES BETWEEN brothers and the resulting takeover of their late father's duties by the elder brothers were associated with another, rarely noticed phenomenon. For obvious reasons elder brothers started their own families much earlier than the younger ones and, consequently, there must have been situations in which those younger brothers with time became legal guardians of their orphaned nephews. Thus they took over the care of the sons of those under whose power they had been not so long before. There were also situations in which the youngest brothers were of an age similar to that of their nephews, entered adulthood and became independent at more or less the same time. Given such complicated family relations, it is difficult to speak of clearly defined generational divisions. Complex relations resulting from age, and power balance among brothers, paternal uncles, and nephews were closely linked to property matters: to the order of inheritance and the rights to use the minors' share of the patrimony.¹ When speaking of fraternal relations, we therefore need to take a closer look at the relations between paternal uncles and nephews.

Paternal uncles—as the closet male relatives—were naturally called to take care of their underage nephews, not only when their father died, but also when he was absent, for example. Documents drawn up before setting out on a pilgrimage or military expedition, and containing dispositions in case of death, confirm that it was the brothers of the issuer that were the first to take care of his wife and children, and that they had the right to make use of the property until the issuer's progeny came of age. Probably the best-known example of a paternal uncle acting on behalf and in the interest of his brother's wife and children is Paul the Deacon, who appealed to Charlemagne himself to get a release of his brother Arichis, who had been deprived of his property and taken out of Italy as a hostage after Rotgaud's rebellion in 776.

We know that in many cases the bonds between paternal uncles and nephews were strong and were based on mutual loyalty. Documentary sources from various parts of the Carolingian realm repeatedly refer to cases when childless brothers bequeathed their property to their nephews. Something similar happened when a testator decided to give his estate to an ecclesiastical institution, though retaining the right of use. Such donations were often accompanied by a clause whereby after the death of the donor the

¹ Divisions of landed estates, sometimes quite complicated, among the deceased's brothers, children and nephews rarely left any trace in writing. This happened mostly when someone intended to dispose of his share, see e.g. MemLuc 5/2, no. 573 and no. 574, pp. 343–44, a. 840. These charters confirm that uncles and nephews may have used the property together, without dividing the family property into individual shares. However, the frequency of this phenomenon remains unknown.

right of use would pass to his brother's sons.² Sometimes, although the reasons behind this are unclear, donors listed their brothers' sons as first among their heirs.³ It was only in the case of premature, heirless death of nephews that the ownership or right of use of the property went to their father, that is the donor's brother.⁴ On the other hand, paternal uncles were sometimes designated by their nephews as executors of their last will or guarantors of an agreement they entered into.⁵ On rare occasions a nephew and a paternal uncle bequeathed their property to each other.⁶

Another form of support was the paternal uncles' patronage facilitating their nephews' careers. In such circumstances the bond between uncle and nephew became a shared fate: the two men shared not just successes, but also failures. There are many such examples; let us refer here to that of Hrabanus Maurus and his brother's son Gundram. Hrabanus was the tutor and guardian of the boy, who was sent to the monastery of Fulda to be educated there. It must have been mainly thanks to the influence of his uncle, the abbot of a powerful abbey, that Gundram was made a chaplain at Louis the German's court, only to lose the position after the defeat of Lothar I with whom Hrabanus sided against Louis the Pious's younger sons. Then, he was forced to settle in the Sölnhofen monastery.⁷ A few years later, Gundram appeared among Fulda monks travelling to Leo IV. In a letter to the pope Hrabanus Maurus asked for a blessing for his nephew.⁸ It should be noted at this point that in pursuing family strategies Hrabanus collaborated closely with his brother, Count Gundram. The latter, shortly after Louis the Pious's death, in 841 when the political situation was rather uncertain and his own career at risk, made a donation of family estates to Fulda, with which the family had been associated for generations and where his son Gundram was sent to be raised. The charter was received by none other than Gundram's brother, Hrabanus Maurus, serving as abbot of Fulda at the time.⁹ The donated estates, together with some additional land that was part of the monastery's

² In particular, the charters contain dispositions concerning the inheritance by ordained nephews of the rights to churches endowed by their paternal uncles, or the takeover by nephews of divine service in the churches in which their paternal uncles had served earlier, see e.g. TrFr, no. 317, pp. 271–72, a. 814.

³ Such a solemn choice of a brother's son as the most worthy of the inheritance among all relatives was made by a presbyter named Hrodheri, TrFr, no. 436, pp. 374–75, a. 820, Freising.

⁴ UstG2, no. 414, pp. 34–35 (= ChLA, vol. 104, no. 49).

⁵ See e.g. TrFr, no. 398, p. 339, a. 818.

⁶ See e.g. TrFr, no. 408, p. 351, a. 819.

⁷ On Hrabanus Maurus's family strategies and his family's links to the monastery of Fulda: Staab, "Wann wurde Hrabanus"; Staab, "La circulation des biens"; Innes, *State and Society*, 65ff.; Raaijmakers, *The Making of the Monastic Community*, 175–213; older literature in Aris and Bullido del Barrio, eds., *Hrabanus Maurus*.

⁸ The source reference is rather uncertain, the letter has been preserved only in a later summary, MGH Epp. *Epistolae Karolini aevi*, 3, p. 529.

⁹ *Codex diplomaticus Fuldensis*, no. 534, pp. 237–38.

endowment immediately returned to Gundram with a right of use.¹⁰ The chronological coincidence is in this case significant and must be interpreted as a deliberate attempt to maintain Gundram's and his family's position thanks to their links to Fulda and the influence of Hrabanus, its abbot and at the same time brother and uncle.

Scholars carrying out prosopographical analyses of the entries in monastic commemoration books point to a similar mechanism of mutual support within monastic communities. Alfons Zettler even speaks of "monastic dynasties" in monasteries like St. Gallen or Reichenau, in which the "legacy" was passed between brothers and nephews.¹¹ Prosopographical studies reveal a similar mechanism in the case of bishoprics. A well-known example comes from the history of the Bishopric of Konstanz, successively held in the ninth and early tenth centuries by paternal uncles and nephews. The case is all the more interesting given the fact that it illustrates another mechanism, that of building the collective identity of the family group by giving the same name (Solomon) in successive generations to sons intended for a career in the Church.¹² A similar phenomenon could be seen in the case of the family of Grimald of Weissenburg, Louis the German's influential chancellor, whose paternal uncle and brother served as successive archbishops of Trier.¹³ In Freising, too, in the first half of the ninth century the bishopric was held by Hitto and then by his brother's son Erchanbert from the powerful Housi family. In turn, the nephew of Erchanbert, probably not without his paternal uncle's help, was given the high dignity of royal notary at the court of Louis the German. Erchanbert's successor, Anno, passed the bishopric to Arnold, most likely his brother's son, who was succeeded towards the end of the ninth century by the dynasty of bishops of Konstanz mentioned earlier. Geneviève Bühner-Thierry's study devoted to the family ties of the bishops of Freising shows how kinship ties overlapped with community ties within the local Church. Worthy of note are the strategies, analyzed by Bühner-Thierry, of building a family memory as the memory of the bishopric, and of using this connection to strengthen the position of successive bishops. It should be noted, however, that there are no clear signs in the family policy pursued by the bishops of Freising of privileged treatment of agnate bonds: both Hitto and Erchanbert took into consideration collateral relatives in both the male and female lines.¹⁴ Bühner-Thierry stresses the significance of the bond between the paternal uncle and the brother's son (or, more broadly, the uncle-nephew relationship) as one of the most important kinship ties, of key significance to the property and commemoration strategies of the Bavarian elites. However, they were by no means unique in this respect.

¹⁰ *Codex diplomaticus Fuldensis*, no. 535, p. 239.

¹¹ Zettler, "Fraternitas und Verwandtschaft," 112–14.

¹² Biographies of three Bishops of Konstanz named Solomon: Maurer, *Die Konstanzer Bischöfe*, 66–119.

¹³ On Grimald's family see Hummer, *Politics and Power*, 178ff.; on Grimald's career, see first of all Geuenich, "Beobachtungen zu Grimald."

¹⁴ Bühner-Thierry, "Des évêques, des clercs."

Collaboration between an uncle and his brother's son was not always harmonious. Both normative and documentary sources bring evidence of tensions between relatives, erupting mainly because of rivalry over property.¹⁵ On the one hand sons, as the closest descendants, could take advantage of the law of propinquity and claim the inheritance from their father, but on the other hand, in disputes with their paternal uncles they were sometimes the weaker party, if only because of their age. Paternal uncles who took care of their brothers' underage sons were allowed to use their nephews' estates entrusted to their care formally only until the nephews came of age. However, for adult nephews enforcing their rights to the patrimony was not always easy and could last for years. In addition, under the law of propinquity paternal uncles could also make attempts to recover hereditary property belonging to their brothers' sons which had been donated for example to the Church. There were cases in which the claims were made by nephews demanding, after their paternal uncle's death, that their rights be respected. Such disputes, often brewing for years, were usually resolved amicably. The seemingly innocent sounding *formula* included in charters in which abbots or bishops granted the donor's nephews the right to use the donated estates were probably sometimes the finale of such conflicts.¹⁶ It is no coincidence that standard elements of donation formulas were a sanction directed against those among the closest relatives who would dare to challenge the legitimacy of the gift. In these formulas brothers are listed usually as those who might resort to such steps.¹⁷

15 Chronologically distant but noteworthy evidence of the weight of the phenomenon is a regulation from the *Edict of Rothari* (643) concerning a situation in which a paternal uncle (long. *barbas*) or another close relative accused his brother's sons of being illegitimate, that is questioned the fatherhood and consequently property rights resulting from it. In such cases the lawmaker demanded an oath of purification instead of a trial by combat, which was apparently a customary way of settling such disputes. The accuser's material motive is obvious in the light of the regulation in question: "Si quis de parentibus, id est barbas, quod est patrus, aut quicumque ex proximis dixerit de nipote suo aut consubrina doloso animo, quod de adulterio natus sit, nam non de certo patre: tunc ille, cui crimen mittitur, quaerat sibi liberos sacramentales, et praebeat sacramentum: quod filius legetimus sit et per lege res ipsas ad eum pertineat nec alteri eam per legem dimittere debeat; si hoc fecerit, habeat et fruatur, quia grave et impium videtur esse, ut talis causa sub uno scuto per pugnam dimittatur"; for documents confirming such disputes in the following centuries, see e.g. *I placiti del 'Regnum Italiae'*, no. 13, pp. 36–37, although this case concerned the peripheries of the Carolingian realm I refer to it as an illustration of the phenomenon: in a property dispute settled by the *comes palatinus* acting on behalf of King Pippin (Charlemagne's son and king of Italy) the abbot of the monastery of Farfa demanded a return of estates appropriated by one Liutprand, estates which his brother's son had received from his father and then gave to the Blessed Virgin Mary upon entering the monastery, cf. Costambeys, *Power and Patronage*, 121–22.

16 See e.g. TrFr, no. 363, p. 310, a. 816.

17 See e.g. UstG2, no. 389, p. 10, a. 844: "Si quis vero contra hanc traditionis cartulam venire teptaverit, aut frater meus Adalbertus aut aliquis nepotum meorum aut qualiscumque persona, in aerarium regis multa componat et conatus sui privetur effectui, firmaque et stabilis cartula hujus traditionis permaneat stipulatione subnexa."

The uneasy relationship between paternal uncles and their brothers' sons were reflected in the political divisions of the Carolingian realm. Cases of paternal uncles using their authority and greater power to eliminate the claims of their dead brother's offspring recur constantly in the history of the Carolingian dynasty: beginning with Charlemagne's policy towards his brother Carloman's orphans; through the actions of Louis the Pious against Bernard, the son of Pippin of Italy; the bitter rivalry between Charles the Bald and Pippin II of Aquitaine, and then also his brother Charles; to the conflicts involving Louis the German, Charles the Bald and Lothar I's sons.

The younger generation's uncertain future was to be regulated by Charlemagne's ordinance of 806 and then Louis the Pious's ordinance of 817 concerning the division of the empire's lands among the heirs. The *Divisio imperii* of 806 also contained a clause defining the rules under which Charlemagne's grandsons could inherit power from their fathers.¹⁸ The contents of the document suggest that to inherit the throne a nephew required acceptance of his paternal uncles. The fragment in question has been the subject of animated debates among scholars, who see in it evidence of a limitation of the sons' hereditary rights and interpret this as either an expression of the changes introduced by Charlemagne or, on the contrary, as evidence of the continued existence of relics of the ancient Germanic institution of "brotherhood" (*Brüdergemeinschaft*), which ensured a privileged position for paternal uncles.¹⁹ It appears that the source does not give us grounds for formulating such far-reaching conclusions: it only says that uncles should not oppose the ascent to the throne by their brother's son who had won acceptance of the political elites of a given kingdom. This obviously also indicates that such a risk did exist and that Charlemagne was well aware of it. Charlemagne's realism is in any case also evidenced by another fragment of the 806 capitulary, in which the emperor forbade his sons wrongfully to accuse and punish their nephews, be it by administering corporal punishment or by sending them to a monastery. At the same time, he ordered his grandsons to obey their fathers and paternal uncles in accordance with the law of kinship.²⁰ This is important evidence confirming the existence of a hierarchical model of power within the family, in which a nephew was obliged to obey his paternal uncle, who in turn was for the same reason to refrain from action to the detriment of his

18 MGH LL *Capitularia regum Francorum*, 1, no. 45, chap. 5, p. 128: "Quod si talis filius cuilibet istorum trium fratrum natus fuerit, quem populus eligere velit ut patri suo in regni hereditate succedat, volumus ut hoc consentiant patrum ipsius pueri et regnare permittant filium fratris sui in portione regni quam pater eius, frater eorum, habuit." See the commentary on this fragment of the *Divisio regnorum* in Kaschke, *Die karolingischen Reichsteilungen bis 831*, 312–14.

19 Beumann, "Unitas Ecclesiae—Unitas Imperii—Unitas Regni," 538ff.; Offergeld, *Reges Pueri*, 312ff.; Kaschke, *Die karolingischen Reichsteilungen bis 831*, 313ff.

20 MGH LL *Capitularia regum Francorum*, 1, no. 45, chap. 18, pp. 129–30: "De nepotibus vero nostris, filiis scilicet praedictorum filiorum nostrorum, qui eis vel iam nati sunt vel adhuc nascituri sunt, placuit nobis praecipere, ut nullus eorum per quaslibet occasiones quemlibet ex illis apud se accusatum sine iusta discussione atque examinatione aut occidere aut membris mancare aut excaecare aut invitum tondere faciat: sed volumus ut honorati sint apud patres vel patruos suos et obediens sint illis cum omni subiectione quam decet in tali consanguinitate esse."

brother's son. The ideal of kinship described in this chapter of the imperial capitulary came down to the honorary principle of mutual loyalty and respect. Just a few years later disregarding this principle with regard to Bernard sorely backfired on Louis the Pious.

It is also worth noting that one of the points in which the principles of the division of the empire defined by Louis the Pious in the 817 *Ordinatio imperii* differed from Charlemagne's dispositions of 806 was the limitation of the paternal uncle's powers with regard to their nephews in favour of the eldest among them as the *senior*. The eldest brother was given the right to decide independently the fate of his brother's orphaned sons, generally irrespective of the will of the other brothers, a change that had not only a political dimension.²¹ The change undermined the customary principle of collective custody of nephews and also struck at the traditional foundations of the family hierarchy.²² The solution proposed by Louis the Pious in 817 and insisted on by Lothar I was not accepted in the end, because it could not be accepted, as is evidenced by the later relations between paternal uncles and nephews within the Carolingian dynasty. In the Meerssen pact of 847 the brothers decided that the one who would survive all the others would have the right to claim obedience (*oboedientia*) from his brothers' sons, but formally he would not have any influence on the succession to their father's throne.²³ In practice, the extent to which a paternal uncle could influence his nephew's ascent to power depended on the power balance and political circumstances at a given moment.

In 857 Charles the Bald and his brother's son Lothar (II) concluded a pact in which they confirmed the agreements sworn a few years earlier by Charles and Lothar I. The rhetoric of the text is first of all to demonstrate peaceful intentions and readiness to provide mutual support by paternal uncle and nephew. However, behind this picture is a clearly defined hierarchical order of kinship, in which the position of the nephew is consistently defined as stemming from the inheritance of the father's rights and obligations, and from his paternal uncles' acceptance. Charles the Bald's and Louis the German's *bonitas* even became a condition without which Lothar II could not come into the inheritance from his father, and on their help and advice depended the stability of his power.²⁴ This echoed the decisions recorded half a century earlier in the *Divisio imperii*, whereby uncles were obliged to support their brothers' sons, but also had a right to assess their moral qualifications to claim the paternal legacy, while nephews were obliged to obey their paternal uncles. Significantly, when the agreement was concluded, Lothar II was 32 years old, while his paternal uncle was 34. Exercising their rights after the death of Lothar II, his paternal uncles arbitrarily divided the inheritance

21 MGH LL *Capitularia regum Francorum*, 1, no. 136, chap. 14, pp. 272–73.

22 More broadly see Kaschke, *Die karolingischen Reichsteilungen bis 831*, 344ff.

23 MGH LL *Capitularia regum Francorum*, 2, no. 204, chap. 9, p. 69; on the meeting at Meerssen see Schäpers, *Lothar I*, 495–502.

24 MGH LL *Capitularia regum Francorum*, 2, no. 268, pp. 293–95.

between themselves, disregarding the claims of Lothar's elder brother, Emperor Louis II.²⁵ In the light of the remarks above it comes as no surprise that in the disputes over this inheritance neither they nor the deceased's brother took into consideration the claims of Lothar II's illegitimate son, Hugh.

The situation was similar after the death of Louis the German (876), when Charles the Bald invaded the lands which under the law of inheritance were to fall to the deceased's firstborn son and namesake. According to Regino of Prüm's account, when the young Louis invoked the agreements guaranteeing the inviolability of his inheritance, agreements sworn by his late father and Charles, his paternal uncle replied that he concluded them with his brother and not with his brother's sons.²⁶ The description of the disrespectful or even offensive treatment of Louis as an unequal partner stems from the logic of the narrative: it precedes the story of the victory of the righteous Louis and the punishment of the haughty Charles. Leaving aside the considerations of the narrative, it is worth noting that Charles apparently based his belief in his superiority on his seniority and authority as a paternal uncle.

The division of the empire did not, of course, come down only to the question of rights stemming from kinship and customary inheritance rules, but here I have focused only on this particular aspect. Some legal historians have viewed the tensions between the royal uncles and their brothers' sons as traces of the ancient Germanic institution of "brotherhood", that is joint ownership of property by brothers and their resulting primacy in the order of inheritance, even before the deceased's sons. As has been said before, the concept does not hold up to criticism.²⁷ Scholars representing this view undoubtedly deserve credit for drawing attention to the relations between paternal uncles and nephews as key to the functioning of family groups. The significance of these relations stems from several factors.

The first and most important among them is the direct genealogical proximity of paternal uncles and nephews, and, as a consequence of this proximity, mutual rights and obligations which were of key importance to the stability and cohesion of the family group. Both good and bad relations between brothers and then nephews and paternal uncles influenced family strategies in successive generations. A conflict between the closest male relatives in the collateral line weakened all parties—they lost mutual support strengthening their position vis-à-vis other family groups with which they competed for prestige and influence. Decisions taken by paternal uncles to the detriment of their brothers' sons, expanding the former's property for example, may

25 *Annales Bertiniani*, a. 870, 108–15; three years earlier Louis the German and Charles the Bald had concluded an agreement concerning a possible future division of the inheritance from their nephews, MGH LL *Capitularia regum Francorum*, 2, no. 245, pp. 167–68; they were to carry it out fairly and justly, "sicut verus frater vero fratri per rectum esse debent."

26 *Reginonis abbatis Prumiensis Chronicon*, 111–22.

27 See above, pp. 54–56.

have turned out to be negative in the long run precisely because they destroyed the network of mutual obligations uniting family members. Property disputes between paternal cousins, recorded in the sources, were often a consequence of conflicts between their fathers.²⁸ They may have involved an extended family group, and may have led to divisions within the family and the break-up of the bonds uniting it.

28 An example can be a case settled by Charlemagne's *missi* in Freising in 802, when representatives of the bishopric filed a suit against a man named Reginpert who unlawfully held estates donated by his paternal cousin Keio to the monastery of St. Tertullian in Schlehdorf (TrFr, no. 186, pp. 178–79). Keio inherited the estates from his father Poapo, who should have come into them following a division of his late brother's property. As Poapo himself died before the division was carried out, his son Keio inherited the rights to his share. Having estimated which part of the property should have come to him, Keio donated it to the monastery. However, his paternal uncle Skatto did not accept the gift and without Keio's knowledge seized the estates and then bequeathed them to his son Reginpert. In the end Reginpert lost and the estates returned to the monastery. Warren Brown who has studied the charter is inclined to believe that Reginpert questioned the legal basis of the donation, because it had been made before the entire property was divided and Keio came into his share (Brown, *Unjust Seizure*, 87–88). I think, however, that this conclusion is too far-fetched. The source does not tell us anything about how Reginpert defended himself against the accusation and what arguments were used to persuade Reginpert to accept a ruling that was unfavourable to him. Yet the records of Reginpert's case do contain important information about the relations between a paternal uncle and his nephew. Not only did Keio clearly fail to obtain his uncle's consent to the donation, but he also made it against his will (if it had been otherwise, the property would have probably been divided as it happened in many other cases of donations made in similar circumstances and known to us from various sources). Moreover, the donation may have been a way of securing the property against attempts to seize it by the uncle which is not changed the fact that both men were members of the family of the monastery's founder. At that time a key role was played primarily by the protection of the powerful Bishop of Freising (Bishop Atto had earlier been abbot of the monastery), who brought the case against Reginpert and recovered the donated property, confirming the legitimacy of Keio's gift (TrFr, no. 187, p. 179).