

## King Otto IV's Donation of the Margraviate of Istria to the Patriarchate of Aquileia: Augsburg, 13<sup>th</sup> of January, 1209

*The author analyzes the donation charter issued by King Otto IV during the Diet of Augsburg to Patriarch Wolfger and the Church of Aquileia, bestowing upon the recipient the temporal jurisdiction over the Margraviate of Istria. The charter has remained unedited and unknown to historiography to this day, fostering some erroneous interpretations of the events and circumstances that led to this fateful event in January of 1209. First, the author explicates the context surrounding the issuing of this donation charter, showing that newly recognized King Otto IV had much to gain from allying with Patriarch Wolfger. Second, the charter is analyzed from a diplomatic point of view, showing that the document, preserved only as a vidimus from 1303, is indeed authentic. The author concludes by viewing the donation through analytical lenses of Marcel Mauss's theory of the gift. The paper ends with the critical edition of the charter and its translation into contemporary English.*

**Key words:** Patriarchate of Aquileia, Istria, Holy Roman Empire, Otto IV, 13<sup>th</sup> century, diplomatics, gift.\*

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The following abbreviations are used in the text: ASV = Archivio di Stato di Venezia; MGH = Monumenta Germaniae historica; DD = Diplomata regum et imperatorum Germaniae; SS = Scriptores (in folio); SS rer. Germ. = Scriptores rerum Germanicarum in usum scholarum separatim editi; Dt Chron. = Deutsche Chroniken.

## Introduction: A Fateful Donation and a Necessitous Pawning

It was the 25<sup>th</sup> of April, 1303, when Patriarch Ottobono dei Razzi, the incumbent head of the Church of Aquileia, concluded a lucrative deal with a certain *Paçanus* of the Florentine Capponi society.<sup>1</sup> The cash-starved prelate had decided to pawn no less than eleven original charters issued by the Roman kings and emperors to the Patriarchate of Aquileia, most of these privileges still being adorned with the precious golden seals of their distinguished auctors. This pawning was just one of the numerous measures that the newly ordained patriarch was forced to undertake in order to amass the required amount of money the pay at least a part of the gargantuan debt that his Church had accrued to the Holy See.<sup>2</sup> Even though he parted with eleven treasured original charters on which the lion's share of his Church's temporal jurisdiction was based upon, Ottobono tasked his chancellor, the notary Meglioranza of Thiene, to make *in extenso* copies of all the pawned documents lest their memory and contents be lost for good.<sup>3</sup> The result of the copying of the pawned documents is a particularly long scroll consisting of eight sown together pieces of parchment that is today held in Archivio di Stato in Venice.<sup>4</sup>

This valuable document preserves not only the story of Ottobono's original pawning, but also of the contents of the eleven imperial and royal privileges issued to the Patriarchate of Aquileia.<sup>5</sup> Among the pawned charters are document such as King Henry IV's donation of the Duchy of Friuli to Patriarch Sigehard from 1077, the birth certificate of the temporal ecclesiastical principality of Aquileian Church, and Emperor Frederick I's confirmation charter issued to Patriarch Ulrich II, confirming the old donations of his royal and imperial predecessors.<sup>6</sup> The majority of the charters, however, concern Aquileian prerogatives over Istria. Patriarch Ottobono thus pawned the original *magna carta* of his Church's lordship over this region. Out of six of the pawned charters that deal with Istria, five are well known and already edited documents: Henry IV's original donation of the County of Istria to Patriarch Sigehard from 1077, a donation that was subsequently revoked by the same king; Otto IV's donation charter issued to Patriarch Wolfger in Cremona in 1210; Emperor Frederick II's con-

1 On Ottobono, see Luca Gianni, "Ottobono (dei) Razzi da Piacenza (?–1315): Patriarca di Aquileia," in: *Nuovo Liruti: Dizionario biografico dei friulani*, vol 1: *Il Medioevo*, ed. Cesare Scalon, Udine 2006, <https://www.dizionariobiograficodefriulani.it/razzi-dei-ottobono-da-piacenza/> (accessed: 6<sup>th</sup> of June, 2022). On the Capponi society, see Donata Degrassi, "I rapporti tra compagnie bancarie toscane e patriarchi d'Aquileia (metà XIII secolo – metà XIV secolo)," in: *I Toscani in Friuli*, ed. Alessandro Malcangi, Florence 1991, 169–199.

2 Pio Paschini, "Bertrandiana," *Memorie storiche forogiuliesi*, 30, 1934, 227–228.

3 On Meglioranza of Thiene, see Martina Cameli, *Registri e abbreviature di Meglioranza da Thiene, notaio dei patriarchi di Aquileia (1304–1313, 1321?–1323, 1324?–1334)*, Rome 2009, 17–21.

4 ASV, Miscellanea atti diplomatici e privati, box 10, doc. 333 [25<sup>th</sup> of April, 1303].

5 See appendix 2 for the entire list of charters copied in the 1303 document together with the references to their critical editions.

6 Heinrich Schmidinger, *Patriarch und Landesherr: Die weltliche Herrschaft der Patriarchen von Aquileia bis zum Ende der Staufer*, Graz 1954, 57–67.

firmation of Duke Otto of Merania's renunciation of his rights over the Margraviate of Istria issued to Patriarch Berthold in 1230; and two confirmations of regalian rights over Istrian communes issued by the same Frederick II to Patriarch Berthold in 1232 and 1238.<sup>7</sup> However, there is one document that has thus far neither been identified nor edited: Otto IV's original donation of the Margraviate of Istria to Patriarch Wolfger promulgated during the Diet of Augsburg on the 13<sup>th</sup> of January, 1209.

The present paper focuses on this unedited charter, analyzing its contents and contextualizing it within a broader interpretative framework of both Otto IV's and Wolfger's reigns. The results of both diplomatic and contextualist analyses show that the charter in question is indeed an authentic document, issued, among other reasons, in order to forge a strategic alliance between the newly crowned King Otto IV and Wolfger, a brilliant diplomat and a distinguished supporter of Otto IV's former enemy, King Philip. As such, the donation charter is interpreted within Marcel Mauss's theoretical framework of gift giving and the concept of total social fact – phenomena that are simultaneously “juridical, economic, religious, and even aesthetic and morphological”.<sup>8</sup> The paper concludes with the critical edition of the unedited charter and its translation into contemporary English.

## The Context of the Donation

Otto IV assumed the reins of *Imperium Romanorum* in extremely controversial circumstances. Originally an anti-king brought by the nobility that rebelled against the lawfully elected Philip of Swabia, Otto had spent ten years waging military and diplomatic battles against his regal archenemy before he was finally recognized as the sole *rex Romanorum* in November of 1208.<sup>9</sup> The events that led to this recognition were, however, gory and scandalous. On the 22<sup>nd</sup> of June, 1208, King Philip of Swabia had been heinously murdered in his chambers by Bavarian Count Palatine Otto VIII of Wittelsbach together with the brothers of House Andechs – Ekbert the bishop of Bamberg and Henry the margrave of Istria.<sup>10</sup> Even though its precise motifs remain unclear to this day, the regicide provided wide open door for Otto to assume the king-

7 See appendix 2.

8 Marcel Mauss, *The Gift: The Form and Reason for Exchange in Archaic Societies*, London 2002, 3, 100–101. See also, Ilana F. Silber, “Gift-Giving in the Great Traditions: The Case of Donations to Monasteries in the Medieval West,” *European Journal of Sociology*, 36/2, 1995, 225.

9 Bernd Ulrich Hucker, *Kaiser Otto IV.*, Hannover 1990, 22–102; Bernd Ulrich Hucker, *Otto IV.: Der Wiederentdeckte Kaiser*, Frankfurt am Main–Leipzig 2003, 61–180; Stefanie Mamsch, “Der deutsche Thronstreit (1198–1208): Konkurrenz – Konflikt – Lösungsversuche,” in: *Otto IV.: Traum vom Welfischen Kaisertum*, ed. Bernd Ulrich Hucker et al., Petersberg 2009, 49–56.

10 Oswald Holder-Egger – Bernhard von Simson (eds.), *Die Chronik des Propstes Burchard von Ursberg*, MGH SS rer. Germ. 16, Hannover–Leipzig 1916, 89–90 (hereafter: *Chronicon Urspergense*); Eduard Winkelmann, *Philipp von Schwaben und Otto IV. von Braunschweig*, vol. 1, Leipzig 1873, 464–479, 536–541; Hucker, *Otto IV.*, 143–159.

ship as the sole unchallenged monarch.<sup>11</sup> For this reason the incumbent archbishop of Mainz summoned an official imperial Diet at Frankfurt in the coming November where the new, universally acknowledged king of the Romans was recognized.<sup>12</sup> It was at this solemn stage that King Otto IV proclaimed the murderers of his predecessor Philip guilty of high treason and stripped of their imperial fiefs and titles, an act that aimed to clearly demonstrate to all the princes that he was not personally involved in the affair and that he wholly condemned the act of regicide.<sup>13</sup> The Margraviate of Istria was thus left vacant, and Otto IV bestowed it upon the incumbent duke of Bavaria, Ludwig I of Kelheim.<sup>14</sup> In order to quell the flames of conflict and usher in an era of

- 11 Three interpretations regarding the motives of the murder are put forward, the traditional one based on the contemporary chronicle of Burchard of Ursberg and originally argued by Winkelmann (see previous footnote) and two alternative ones argued by Bernd Ulrich Hucker and Alois Schütz, respectively. According to the first, it was the affront to Otto VIII's honor that provoked the assassination as King Philip broke off the engagement between his daughter Kunigund and the Count Palatine; Hucker, however, argued that this does not explain the involvement of the Andechs brothers and that there was, in fact, a wider conspiracy helmed by House Wittelsbach that sought to crown Duke Henry of Brabant as the new king. Bernd Ulrich Hucker, "Der Königsmord von 1208: Privatrache oder Staatsstreich?," in: *Die Andechs-Meranier in Franken: Europäisches Fürstentum im Hochmittelalter*, Mainz 1998, 111–128. Alois Schütz, "Henrik Istrski in njegova povezava s kraljevim umorom v Bambergu / Heinrich von Istrien und der Königsmord von Bamberg," in: *Große Andeško-Meranski: Prispelki k zgodovini Evrope v visokem srednjem veku / Die Andechs-Meranier: Beiträge zur Geschichte Europas im Hochmittelalter*, ed. Andreja Eržen – Toni Aigner, Kamnik 2001, 130–131 argues that Otto VIII and the Andechs brothers were acting upon the instructions of (anti-)King Otto IV, although this interpretation garnered little support in historiography. Knut Görich, *Die Staufer: Herrscher und Reich*, 4<sup>th</sup> ed., Munich 2019, 85; Jan Keupp, "Der Bamberger Mord 1208: Ein Königsdrama?," in: *Philipp von Schwaben: Ein Staufer im Kampf um die Königsherrschaft*, Göttingen 2008, 122–142; Bernd Schneidmüller, *Die Welfen: Herrschaft und Erinnerung (819–1252)*, 2<sup>nd</sup> ed., Stuttgart–Berlin–Köln 2000, 254, all do not embrace either Hucker's or Schütz's theses.
- 12 Ludwig Weiland (ed.), "Braunschweigische Reimchronik," in: *MGH, Dr. Chron.*, vol. 2, Hannover 1877, 539, l. 6388–6394; Oswald Holder-Egger (ed.), "Cronica Sancti Petri Erfordensis moderna," in: *Monumenta Erphesfurtensia saeculi XII. XIII. XIV.*, MGH, SS rer. Germ. 42, Hannover–Leipzig 1899, 206; *Chronicon Urspergense*, 96; Georg Heinrich Pertz (ed.), *Arnoldi Chronica Slavorum*, MGH, SS rer. Germ. 14, Hannover 1868, 286 (book 7, chap. 14); Adolf Hofmeister (ed.), *Ottonis de Sancto Blasio Chronica*, MGH rer. Germ. 47, Hannover–Leipzig 1912, 83 (sub anno 1208); Georg Waitz (ed.), *Chronica regia Coloniensis*, MGH SS rer. Germ. 18, Hannover 1880, 183; Winkelmann, *Philipp von Schwaben*, vol. 2, 127–130; Hucker, *Otto IV.*, 168–170 for the Diet at Frankfurt.
- 13 "[C]um ob enormes excessus Henrici quondam marchionis Ystrie, quos ipse nomine criminis lese maiestatis in decessore nostro domino Philippo commisit, Marchia Carniole et Ystrie cum Comitatu et universis pertinenciis suis, et tam feudum quam alodium et omnis honor suus, in generali curia nostra Frankenfuort per sententiam principum sibi fuerunt abiudicata et ad dominium Imperii Marchia Ystrie libere et absolute sit addita." Document 1 in the appendix. Schneidmüller, *Die Welfen*, 254.
- 14 "Item feoda que interfectores regis Philippi marchio Hystrie et palatinus comes de Wittingispahc ab Imperio tenuerunt sepedicto duci [Bavariae Lodewici] et heredibus suis concedimus." Franz Michael Wittmann (ed.), *Monumenta Wittelsbacensia: Urkundenbuch zur Geschichte des Hauses Wittelsbach*, vol. 1: *Von 1204 bis 1292* (Munich 1857), 9–11 (doc. 3). See also Hubertus Seibert, "Kaiser Otto IV., die Welfen und das Herzogtum Bayern (1198–1212)," in: *Otto IV.: Kaiser und Landesherr*, ed. Bernd Ulrich Hucker – Jörg Leuschner, Salzgitter 2009, 35–36, including the facsimile of the original privilege.

harmony between the recently warring parties, the newly ordained king pronounced a land peace (*lex pacis*) and organized a second imperial diet two months later, in January of 1209, this time in Augsburg and featuring the embassies from the lands of *Regnum Italicum* as well.<sup>15</sup> It was at this second diet that Wolfger of Erla, the former bishop of Passau and the current patriarch of Aquileia, once again brought up the question of the Margraviate of Istria.

Wolfger was an able diplomat, a person of high repute enjoying confidence of both King Philip as well as his predecessor Emperor Henry VI.<sup>16</sup> He was a key figure in negotiations to release Richard of Lion Heart, a prisoner of Duke Leopold of Austria of House Babenberg.<sup>17</sup> Moreover, contemporary chroniclers assign him a seminal role in negotiating a peace between Pope Celestine III and Emperor Henry VI in 1195.<sup>18</sup> Following the death of Patriarch Pellegrin II (15<sup>th</sup> of May, 1204), Wolfger was invested as the new head of the Church of Aquileia, an appointment that had already been in preparation for some months and supported by Pope Innocent III.<sup>19</sup> At the very beginning of his reign in Aquileia, Wolfger concluded an important pact with the neighboring Republic of Venice and established amicable relations with his new ordained protector, the counts of Gorizia, hereditary advocates of Aquileian patriarchs.<sup>20</sup> Pope Innocent III even directed Wolfger to a diplomatic mission with King Philip, urging the newly ordained Aquileian patriarch to dissuade “the duke of Swabia” from helping the excommunicated bishop of Worms.<sup>21</sup> Wolfger travelled to King Philip in late spring of 1206 where he procured the

- 15 Philip Jaffé (ed.), “Chounradi Schirensis Annales,” in: *MGH, SS*, vol. 17, Hannover 1861, 632 (sub anno 1209); *Chronicon Urspergense*, 97–98; Hofmeister, *Otonis de Sancto Blasio*, 83–84 (sub anno 1208); Winkelmann, *Philipp von Schwaben*, vol. 2, 134–136; Hucker, *Otto IV.*, 173–175; Hucker, *Kaiser Otto IV.*, 105–110 for *Landfrieden* policies.
- 16 On Patriarch Wolfger, see Pio Paschini, “Il patriarcato di Wolfger di Ellenbrechtskirchen,” *Memorie storiche forogiuliesi*, 10, 1914, 361–413 (hereafter: “Il patriarcato di Wolfger 1”); Reinhard Härtel, “Folchero da Erla (?–1218): Patriarca di Aquileia,” in: *Nuovo Liruti*, vol. 1, <https://www.dizionario-biografico.it/folchero-da-erla/> (accessed: 6<sup>th</sup> of June, 2022).
- 17 Bettina Pferschy-Maleczek (ed.), *Die Urkunden Heinrichs VI. für deutsche Empfänger*, preliminary edition (16<sup>th</sup> of February, 2020), doc. BB 285, <https://www.mgh.de/de/die-mgh/editionsprojekte/die-urkunde-heinrichs-vi> (accessed: 6<sup>th</sup> of June, 2022); Egon Boshof, “Zentralgewalt und Territorium im Südosten des Reiches um die Wende vom 12. zum 13. Jahrhundert,” in: *Wolfger von Erla: Bischof von Passau (1191–1204) und Patriarch von Aquileia (1204–1218) als Kirchenfürst und Literaturmäzen*, ed. Egon Boshof – Fritz Peter Knapp, Heidelberg 1994, 27; Uwe Meves, “Das literarische Mäzenatentum Wolfgers und die Passauer Hofgesellschaft um 1200,” in: *Wolfger von Erla*, 227.
- 18 Anton Chroust (ed.), “Historia de expeditione Friderici imperatoris,” in: *Quellen zur Geschichte des Kreuzzuges Kaiser Friedrichs I.*, MGH SS rer. Germ. N.S. 5, Berlin 1928, 109; Paschini, “Il patriarcato di Wolfger 1,” 363; Boshof, “Zentralgewalt,” 28.
- 19 Jean Paul Migne (ed.), *Patrologia Latina*, vol. 215, Paris 1853, cols. 383–385. *Poppo praepositus Aquileiensis*, Wolfger’s heir in Passau, was in Salzburg already in September of 1203. Andreas von Meiller, *Regesten zur Geschichte der Salzburger Erzbischofe*, Vienna 1866, 181 (doc. 50). Paschini, “Il patriarcato di Wolfger 1,” 366–367; Boshof, “Zentralgewalt,” 37.
- 20 Reinhard Härtel (ed.), *I patti con il patriarcato di Aquileia 880–1255*, *Pacta veneta* 12, Rome 2005, 71–80; Paschini, “Il patriarcato di Wolfger 1,” 375–376.
- 21 Migne, *Patrologia Latina*, vol. 215, cols. 630–633; Paschini, “Il patriarcato di Wolfger 1,” 380–381.

regal investiture of the imperial *regaliae* of his Church, a solemn privilege with the added clause that patriarchs of Aquileia, as Italian princes, need neither journey to Germany to receive their regalian investiture nor may they be ordered to do so by the incumbent monarchs.<sup>22</sup> As an *amicus communis* of both King Philip and his archenemy Pope Innocent III, Wolfger was among the embassy that was sent to Rome to negotiate a peace treaty “between the Church and the Empire”.<sup>23</sup> In the end, Wolfger was successful: on the 30<sup>th</sup> of November, 1207, at the Diet of Augsburg, a peace between the Papacy and the Empire was on the horizon.<sup>24</sup> According to the contemporary chronicler of Cologne, it was the patriarch of Aquileia who played a seminal role in these peace negotiations.<sup>25</sup> For his many diplomatic successes, Wolfger was aptly rewarded by King Philip: on the 6<sup>th</sup> of October, 1207, he and his Church were gifted with Monselice in the March of Verona.<sup>26</sup> Soon thereafter, Patriarch Wolfger was appointed King Philip’s official legate in Italy with the task of making all the necessary provisions for the upcoming crowning in Rome, a plan that was thwarted by Philip’s murder.<sup>27</sup>

All of the above shows that Wolfger was a figure of considerable repute and stature, respected both by the papacy and by the late King Philip. During the Diet of Augsburg that Wolfger attended in person along with his Friulian entourage, he received no less than five royal privileges. The king 1) confirmed the temporal jurisdiction of the Patriarchate of Aquileia over the Duchy of Friuli; 2) confirmed the possessions and jurisdictions of Aquileian chapter; 3) invested the incumbent patriarch with the regalian rights by issuing the identical charter, *mutatis mutandis*, as King Philip did in 1206; 4) instituted Wolfger as his official imperial legate in Italy, just as King Philip had done before him; and finally, 5) donated the Margraviate of Istria after he had made Duke Ludwig relinquish it back to the Empire.<sup>28</sup> The focus now turns to the text of this last and by far the most rewarding of the five promulgated charters.

22 Andrea Rzhacek – Renate Spreitzer (eds.), *Philippi regis diplomata / Die Urkunden Philipps von Schwaben*, MGH DD 12, Wiesbaden 2014, 284–286 (doc. 126); Paschini, “Il patriarcato di Wolfger 1”, 382.

23 *Chronicon Urspergense*, 88–89; Paschini, “Il patriarcato di Wolfger 1”, 384.

24 Waitz, *Chronica regia Coloniensis*, 225 (sub anno 1207); Paschini, “Il patriarcato di Wolfger 1”, 386.

25 Waitz, *Chronica regia Coloniensis*, 182 (sub anno 1207).

26 Rzhacek – Spreitzer, *Philippi regis diplomata*, 355–359 (doc. 156); Paschini, “Il patriarcato di Wolfger 1”, 386.

27 Johann Friedrich Böhmer (ed.), *Acta Imperii selecta*, Innsbruck 1866, 625–626 (doc. 915, with a wrong date of March 23 instead of May 23); Paschini, “Il patriarcato di Wolfger 1”, 388.

28 1) edited in Eduard Winkelmann (ed.), *Acta Imperii inedita*, vol. 1, Innsbruck 1880, 14–15 (doc. 22); a better edition, featuring the facsimile of the pseudo-original is available on *Fontes Istrie medievalis*, vol. 4, doc. 1209\_W1, [https://fontesistrie.eu/1209\\_W1](https://fontesistrie.eu/1209_W1) (accessed: 6<sup>th</sup> of June, 2022). 2) is edited in Carlo Buttazzoni, *Del patriarca Volchero e delle agitazioni politiche a suoi tempi*, Trieste 1871, 41–44. 3) is still unedited, a 15<sup>th</sup>-century copy is featured in ASV, Consultori in iure, ms. 345, fols. 7v–8r (or 3v–4r according to old pagination). 4) is now edited in Andrea Rzhacek – Renate Spreitzer (eds.), *Die Urkunden Ottos IV.*, preliminary edition (April of 2022), doc. BFW 259, <https://www.mgh.de/de/die-mgh/editionsprojekte/die-urkunden-ottos-iv> (accessed: 6<sup>th</sup> of June, 2022). 5) is hereby edited in the appendix.

## Diplomatic Analysis

From a diplomatic point of view, the donation charter is a document composed by a scribe dubbed "OC" by Paul Zinsmaier, the author of the most detailed monograph on King Philip's and Otto IV's charters.<sup>29</sup> The same scribe also worked in the chancellery of King Philip, composing documents from 1198 to 1208, including the already mentioned two charters issued to Patriarch Wolger in 1206 and 1207 (dubbed PhA by Zinsmaier).<sup>30</sup> As such, OC exemplifies well Otto IV's practice of simply continuing to employ the chancellery staff of his regal predecessor, a convention that resulted in marked similarity in the style and structure of Philip's and Otto's charters.<sup>31</sup>

The donation opens with a standard formula of trinitary *invocatio*, (*In nomine—individue Trinitatis*) and proceeds with standard *intitulatio* (*Otto quartus—semper augustus*). An elaborate *arenga* follows focusing on the monarch's need to protect the churches and uphold their rights, featuring typical OC (PhA) formulae.<sup>32</sup> The subsequent *publicatio* is somewhat unique (*Ad noticiam—transimitti volumus*) as it features the verb *transmitti* instead of the usual *pervenire*.<sup>33</sup>

*Narratio* that follows is very long and detailed (*cum ob—nobis demonstravit*), retelling the entire story of how the Margraviate of Istria and Carniola passed from Henry of Andechs to Duke Ludwig of Baviara: the former margrave of Istria took part in the act of high treason against King Philip's and was therefore stripped of all of his fiefs, allods and honors during the Diet of Frankfurt when Otto IV invested the Duke with the same Margraviate. However, having arrived at the Diet of Augsburg, Patriarch Wolfger of Aquileia protested this investiture, arguing in front of the princely audience that the Margraviate of Istria ought to pertain to his Church by way of "an old donation of august King Henry III (!)" (*ex antiqua donatione Henrici regis augusti tercii*, should be *imperatoris augusti tercii*, because as a king Henry was the fourth, not the third of his name). These old privileges, in plural, were then shown to the audience, swaying the public opinion in Wolfger's favor.

The *narratio* features an apparent grammatical incongruence: it states that Henry's "March of Carniola and Istria together with the County and all of its dependencies, as well of his fiefs and allods and all his honors", were stripped off (plural: *sibi fuerunt abiudicata*), but that only the March of Istria was "unreservedly and in entirety placed under the jurisdiction of the Empire" (singular: *Marchia Ystrie libere et absolute sit addita*). Since this line is verbatim repeated in the well-known 1210

29 Paul Zinsmaier, *Die Urkunden Philipps von Schwaben und Ottos IV. (1198–1212)*, Stuttgart 1969, 87–91.

30 Ibid., 12–19.

31 Ibid., 59–60.

32 Ibid., 58 fn. 211. On these types of *arengae*, see Heinrich Fichtenau, *Arenga: Spätantike und Mittelalter im Spiegel von Urkundenformeln*, Graz–Cologne 1957, 76–79.

33 Zinsmaier, *Die Urkunden*, 89.

Cremona charter, it has puzzled many historians who offered different solutions and interpretations.<sup>34</sup>

Franz Schumi, one of the editors of the 1210 charter, simply emended the first verb from plural into singular (*sibi fuerit abiudicata*), thus tacitly arguing that the two marches formed a distinct jurisdictional complex that Henry of Andechs had lost and Duke Ludwig of Bavarian subsequently gained.<sup>35</sup> Thus, the reading that Otto IV bestowed both Carniola and Istria to Patriarch Wolfger was born and it was subsequently appropriated by the likes of Walter Lenel, Pio Paschini, Heinrich Schmidinger and even Bernd Ulrich Hucker.<sup>36</sup>

Ljudmil Hauptmann, who used Schumi's emended edition of the 1210 charter, argued that Henry of Andechs lost the Margraviate of Istria and the March of Carniola, but that only the former returned to the *potestas* of the Empire and was subsequently bequeathed to Duke Ludwig, whereas the latter went back to the Patriarchate of Aquileia that owned Carniola by way of Henry IV's 1093 donation charter; Henry of Andechs would thus hold Carniola not from the Empire, but from the patriarchs of Aquileia whom he served as a deputy.<sup>37</sup>

Milko Kos argued against Hauptmann's thesis, correctly stating that the original act of donation – the bestowal of the Margraviate of Istria to Patriarch Wolfger – had happened already in January of 1209 (*actum*), but that the privilege confirming and registering this donation was issued only in May of 1210 in Cremona (*datum*).<sup>38</sup> Thus, Kos hypothesized that there must have been a first redaction of the donation charter that had been composed already in January of 1209 but was never officially issued; only in May of 1210 was this old draft reworked into an official charter and finally

34 The famous Cremona charter has been edited *in extenso* four times: First by Buttazzoni, *Del patriarca Volchero*, 45–48 based on a copy (of a copy) from 1482 registered in ASV, Consultori in iure, ms. 366/3, fols. 23v–24v, a copy of extremely poor quality featuring many blank spaces, “emendations,” and omissions; Second by Vincenzo Joppi (ed.), *Aggiunte inedite al codice diplomatico istro-tergestino del secolo XIII*, Udine 1878, 9–12 (doc. 1) based on the 1303 *vidimus*; then by Winkelmann, *Acta Imperii inedita*, 50–52 (doc. 55) also based on the 1303 copy, and finally by Franz Schumi, *Archiv für Heimatkunde*, vol. 1, Ljubljana 1882–1883, 41–43, taking over Winkelmann's edition and tacitly emending it without consulting any manuscript. It remains a mystery why both Joppi and Winkelmann, both of whom personally consulted the long scroll featuring eleven copies transcribed by Meglioranza of Thiene in the State Archive in Venice, decided to edit only the 1210 charter and completely omit the original 1209 donation, not even mentioning its existence in the comments.

35 Schumi, *Archiv*, 41.

36 Walter Lenel, *Venezianisch-Istrianische Studien*, Strassburg 1911, 131, 176; Paschini, “Il patriarcato di Wolfger I,” 390–391; Schmidinger, *Patriarch und Landesherr*, 89, 142; Hucker, *Kaiser Otto IV.*, 440.

37 Ljudmil Hauptmann, *Nastanek in razvoj Kranjske* [The origins and development of Carniola], Ljubljana 1999, 88–89 (originally published in German as “Krain,” in: *Erläuterungen zum Historischen Atlas der österreichischen Alpenländer*, vol. 1/4, part 2, Vienna 1929, 309–484).

38 Milko Kos, “Postanek in razvoj Kranjske” [The origin and development of Carniola], *Glasnik Muzejskega društva za Slovenijo*, 10, 1929, 32–35. The difference between *actum* and *datum* was famously, and in great detail, explicated by Julius von Ficker, *Beiträge zur Urkundenlehre*, vol. 1, Innsbruck 1877, 128–226, chaps. 85–129.

issued to Patriarch Wolfger.<sup>39</sup> This opinion stemmed from Winkelmann's comments on the 1210 charter and it was subsequently accepted by Zinsmaier.<sup>40</sup> According to Kos, the original draft dealt only with Istria and hence the verbs in the singular, but in the final redaction, issued in Cremona in 1210, Carniola was inelegantly and clumsily added to the donation, thus resulting in the discrepant plural and singular subject-verb agreement.<sup>41</sup>

None of these scholars knew about the hereby edited 1209 donation, a fact that renders implausible a lion's share of their hypotheses, especially the detailed analyses of Walter Lenel who, unfortunately, never bothered to consult the manuscript containing the 1303 *vidimus*.<sup>42</sup> While Kos was right, as shall be shown below, that the 1210 charter documents (more precisely, re-documents) a charter that had been enacted in January of 1209, he was subsequently wrong in dubbing the Cremona charter a final version of a hypothesized draft made during the Diet of Augsburg.

Andrej Komac, who largely followed Kos's interpretations, noted the plural form of the old privileges that Wolfger demonstrated to the princely audience (*privilegiis autenticis ipsi ecclesie collatis*).<sup>43</sup> Komac correctly argues that before 1209 there was only one privilege regarding the rights of the Church of Aquileia over Istria, the 1077 donation charters issued by Henry IV to Patriarch Sigehard, a donation that was subsequently revoked when Sigehard's successor Henry pledged his oath of fealty to Pope Gregory VII amidst the Investiture Controversy.<sup>44</sup> The other privileges that Wolfger presented, argues Komac, must have been the two charters that the same Henry IV issued to the Patriarchate of Aquileia but that concerned the March of Carniola: the 1077 donation (also subsequently revoked due to the same reasons as above) and the 1093 re-donation issued to Patriarch Ulrich of Eppenstein.<sup>45</sup> Therefore, concluded Komac, Patriarch Wolfger did not receive only the Margraviate of Istria in January of 1209, but the March of Carniola as well, a region that had been under the *de facto*

39 Kos, "Postanek," 34.

40 Winkelmann, *Acta Imperii inedita*, 51–52; Zinsmaier, *Die Urkunden*, 89.

41 Kos, "Postanek," 33–34.

42 Cf. Lenel, *Venezianisch-Istrische*, 174–178. The most popular thesis by which the 1209 donation of Istrian margraviate would be "officially certified" only with the issuing of the Cremona charter is also no longer tenable. Cf. Paschini, "Il patriarcato di Wolfger 1," 392; Heinz Dopsch, "Origine e posizione sociale dei patriarchi di Aquileia nel tardo Medioevo," in: *Aquileia e il suo patriarcato*, ed. Segio Tavano – Giuseppe Bergamini – Silvano Cavazza, Udine 2000, 302, fn. 71.

43 Andrej Komac, *Od mejne grofije do dežele: Ulrik III. Spanheim in Kranjska v 13. stoletju* [From March to Land: Ulrich III and Carniola in the 13<sup>th</sup> century], Ljubljana 2006, 66–69.

44 Dietrich von Gladiss – Alfred Gawlik, *Heinrici IV. diplomata / Die Urkunden Heinrichs IV.*, MGH DD 6, Hannover 1941–1978, 387–389 (doc. 295), also edited, including the facsimile of the manuscript, in *Fontes Istrie medievalis*, vol. 3, doc. 1077\_HIV, [https://fontesistrie.eu/1077\\_HIV](https://fontesistrie.eu/1077_HIV) (accessed: 6<sup>th</sup> of June, 2022). For the details regarding the revocation of this donation, see Peter Štih, *The Middle Ages between the Eastern Alps and the Northern Adriatic: Select Papers on Slovene Historiography and Medieval History*, Leiden–Boston 2010, 259–261.

45 Gladiss – Gawlik, *Heinrici IV. diplomata*, 389–390 (doc. 296) and 577–578 (doc. 432); Komac, *Od mejne*, 67.

jurisdiction of House Andechs.<sup>46</sup> While Komac presents sound argumentation regarding the plurality of privileges that Wolfger presented during the Diet of Augsburg, his interpretation still unjustly underplays the importance of 1093 donation of Carniola to the Patriarchate of Aquileia.

Finally, it was Peter Štih who managed to put all the pieces of the puzzle together, essentially reviving Hauptmann's old thesis.<sup>47</sup> Namely, based on the detailed reading of the Cremona charter, Štih concluded, very much like Hauptmann did, that Henry of Andechs lost both the Margraviate of Istria and the March of Carniola at the Diet of Frankfurt in November of 1208, the former returned to the Empire, the latter to the patriarchs of Aquileia who held the region by way of Henry IV's 1093 donation. Štih concludes that only Istria was donated to Patriarch Wolfger in 1209 and that the possession of Carniola was merely confirmed by the Cremona charter as "the counts of Andechs ruled in Carniola as the patriarch's deputies, not as margraves appointed by the king."<sup>48</sup>

Štih's argumentation is fully compatible with the 1209 charter hereby edited. Consequently, there is no mistake in plural and singular subject-verb agreement: Henry of Andechs lost all of his fiefs and benefices (plural), but only the March of Istria is the object of the 1209 donation, hence all the subsequent singular forms (*Marchia Ystrie—sit addita; eandem Marchiam; questionem de predicta Marchia; nos eam [dictam Marchiam]—donavimus, tradidimus atque concessimus*; etc.).

The *dispositio* (*Nos itaque—ecclesie confirmamus*) features the clauses of Duke Ludwig's renunciation of Istrian margraviate, King Otto's subsequent donation of the said Margraviate to Patriarch Wolfger, and the confirmation of this grant in writing. The accumulation of verbs in this part of the charter is also a recognized characteristic of OC.<sup>49</sup>

A *sanctio* follows (*Statuentes et—passo persolvatur*), prescribing a fine of a thousand pounds of gold to anyone who would dare act against this donation charter, a half of which paid to the royal treasury, the other to the Church of Aquileia. This *sanctio temporalis* also betrays OC as the composer of the charter as it features his characteristic employment of phrase in *sue presumptionis penam*.<sup>50</sup>

The *corroboratio* (*Ut autem—precipimus consignari*) detailing the appendment of Otto IV's golden seal features more standard characteristics of OC: the words *evum*, *bullā*, and *consignari*.<sup>51</sup>

The eschatocol opens with the lengthy list of witnesses, featuring no less than twenty-five persons of which nine bishops, including Wolfger's successor in Passau, Bishop Manegold, eight secular potentates, including Duke Ludwig of Bavaria and Count Maynard of Gorizia, the advocate of Aquileian patriarchs, and eight Friulian and Gorizian notables, the majority of them members of Wolfger's entourage.

46 Komac, *Od mejne*, 68.

47 Štih, *The Middle Ages*, 262–264

48 Ibid., 264.

49 Zinsmaier, *Die Urkunden*, 89.

50 Ibid., 89.

51 Ibid., 14.

A standard *signum*-line (*signum domini—regis invictissimi*) is followed by a *recognitio* of Bishop Conrad of Speyer acting on behalf of the Archbishop Siegfried of Mainz, the archchancellor of Germany (*Ego Conradus—archicancellarii recognovi*). The charter closes with an *actum* (*Acta sunt— eius XI*) featuring the solemn *datatio chronica* given by the year of Christ's incarnation (*anno Dominice incarnationis*) and the years of Otto's kingship (*regnante domino Ottone quarto Romanorum rege gloriosissimo*), followed by a *datum* (*Data apud—indictione XII<sup>a</sup>*) featuring the *datatio topica* (*apud Augustam*), the name of the protonotary, and the rest of the *datatio chronica* expressed in Roman style (*id[ib]us ianuarii*) together with the indiction.

The dating elements and the styling of the *datatio* require additional comments. Namely, the *anno Domini* dating, that is 1208, does not concur either with the year of Otto IV's reign (11<sup>th</sup> = 12<sup>th</sup> of July 1208–11<sup>th</sup> of July 1209) or the indiction, both of which point to 1209. More importantly, the Diet of Augsburg was held in January of 1209, so there is no reason to doubt that the charter was indeed enacted and given in that year. Interestingly, the same erroneous *anno Domini* dating, 1208 instead of 1209, is featured in the 1210 Cremona charter, in 1209 confirmation of the Duchy of Friuli (a formal forgery, but based on an authentic charter), in 1209 confirmation of the possessions of the chapter of Aquileia, and even the February 1209 charter issued in Ulm to the Church of Buchau, preserved in the original.<sup>52</sup> Zinsmaier attributed two of these charters, those issued in Ulm and Cremona, to the same author, OC, whereas he could not identify the compiler of the other two documents.<sup>53</sup> Based on the same erroneous dating, it seems safe to assume that OC was the original composer of the two other charters issued to the Church of Aquileia during the Diet of Augsburg in 1209 as well. Therefore, the erroneous *anno Domini* dating stems from OC, not the subsequent copyists. The wrong date was then copied in catalogues of privileges made by the scribes of patriarchal chancellery and these regesta were subsequently included in the famous *Thesuari claritas* of the Church of Aquileia in the final quarter of the 14<sup>th</sup> century.<sup>54</sup>

52 For the Cremona charter see fn. 34; for the confirmation of the Duchy of Friuli see fn. 28 and Zinsmaier, *Die Urkunden*, 109, 134; for confirmation of the possessions of the chapter of Aquileia, Buttazzoni, *Del patriarca Volchero*, 41–44; Ulm charter is best edited in Rzhacek – Spreitzer, *Die Urkunden Ottos IV.*, preliminary edition (April of 2022), doc. BFW 264.

53 Zinsmaier, *Die Urkunden*, 90–91, 105, 109.

54 “Transcriptum privilegii Ottonis quarti qualiter Dux Bavarie per diffinitivam sententiam cessit Marchionatum et Comitatum Istrie et qualiter dictus Ottho Wolchero patriarche et ecclesie Aquilegensi in plena curia confirmavit, MCCVIII.” ... “Item privilegium de Marchionatu Istrie et Carniole concessum per Ottonem imperatorem in MCCVIII cum bulla aurea.” Giuseppe Bianchi (ed.), *Thesaurus ecclesie Aquileiensis*, Udine 1847, 235 (doc. 596), 340 (doc. 1161). Paschini, “Il patriarcato di Wolfger 1,” 392, fn. 2 claimed that the document to which these regesta refer had not been preserved. This opinion can now be wholly rebuked as the regesta refer to the 1209 donation charter hereby edited. On *Thesauri claritas*, see Giovanni Battista Corgnani, “Intorno al *Thesauri Claritas*: Appunti,” *Memorie storiche forogiuliesi*, 35–36, 1939–1940, 11–35.

The adjective *gloriosissimus* in this superlative form in the dating line, featured both in the charter hereby edited as well as in the Cremona charter of 1210, however, remains a unique feature.<sup>55</sup> This anomaly can be explained by Meglioranza da Thiene's erroneous transcription of the original charters as both the 1209 donation of the Margraviate of Istria and the Cremona charter survive only as inserts in the 1303 lengthy scroll discussed at the beginning.<sup>56</sup>

The diplomatic analysis therefore supports the conclusion that the 1209 donation hereby edited is indeed an authentic document issued by King Otto IV on the Ides of January during the Diet of Augsburg, compiled by OC as identified by Zinsmaier, and originally adorned with the king's golden seal.<sup>57</sup>

### The Mystery of the Cremona Charter

These results give rise to new questions regarding the famous Cremona charter. Namely, the 1210 Cremona privilege is a verbatim copy of the hereby edited donation with only the words “king,” “kingly” and “kingship” being replaced by the new imperial vocabulary as Otto IV was crowned emperor of the Holy Roman Empire in Rome on the 4<sup>th</sup> of October of 1209.<sup>58</sup> The list of witnesses is also identical with only Bishop Siegfried's of Augsburg title being correctly updated from *electus* to *episcopus* (officially consecrated in February of 1209).<sup>59</sup> Thus, Winkelmann's and Kos's arguments that the Friulian and Gorizian witnesses listed in the Cremona charter were not present during the enactment of the original donation in January of 1209 must be abandoned.<sup>60</sup> The *recognitio* was this time signed by the archchancellor of Italy, instead of Germany as was the case in 1209 donation. The *actum* remained identical in Cremona charter, but the *datum* changed to *Data apud Cremonam per manus Walterii imperialis aule prothonotarii, VIII idus maii, indictione XIII*. Kos's old thesis that the Cremona charter simply documents an already completed legal procedure finds full confirmation in light of these new findings. The question, however, remains: why was the same charter issued twice in a timespan as short as sixteen months?

The answer to this question lies in two mutually complimentary factors: first there was the aggrandized symbolic potency accorded to Otto IV's new standing and rank

55 Ibid., 89.

56 The copy from 1482 most certainly stems either from Meglioranza da Thiene's 1303 *vidimus* or its later copy, not from the pawned original. Cf. Buttazzoni, *Del patriarcha Volchero*, 45–48.

57 As Meglioranza da Thiene introduced the document: “Item privilegium domini Ottonis imperatoris bulla eius aurea bullatum cuius tenor talis est...” Similarly described in *Thesuari claritas*: see fn. 54.

58 For the imperial coronation, see Winkelmann, *Philipp von Schwaben*, vol. 2, 198–201; Hucker, *Otto IV*, 189–196.

59 Christian Hillen, “Siegfried III.,” in: *Neue Deutsche Biographie*, ed. Hans Günter Hockerts, vol. 24, Berlin 2010, 342–343.

60 Winkelmann, *Acta Imperii inedita*, 52 (doc. 55), note 3; Kos, “Postanek,” 34.

following his solemn imperial coronation in Rome; second was the newly crowned emperor's need for allies following his break-up with Pope Innocent III and the prospect of war in Italy against Frederick II of House Hohenstaufen.<sup>61</sup> This explains why a second privilege according imperial protection was issued to the Chapter of Aquileia in March of 1210, and why a new solemn donation charter was issued to Patriarch Wolfger two months later, essentially confirming the 1209 donation from a more elevated and authoritative position of sovereignty, that of the emperor of the Holy Roman Empire.<sup>62</sup> It was a way of Otto IV guaranteeing that his falling out with the papacy and his assumption of imperial authority would not in any way be detrimental to the Church of Aquileia, at least as long as he could count on Patriarch Wolfger's support.

### Conclusion: No Such Thing as a Free Gift

The 1209 donation had profound effects on the historical development of Istria. As the patriarchs of Aquileia assumed reins over the entire region, a new balance of power had to be negotiated with the urban communes that developed civic institutions and assumed autonomous government similar to their neighbors across the Adriatic.<sup>63</sup> Whereas Wolfger was very moderate in his attempts at establishing lordship over these communes, his successor Berthold of House Andechs was much more aggressive.<sup>64</sup> Finally, when the two pillars of the Church of Aquileia, the patriarchs and their advocates, the counts of Gorizia, went to war against each other in 1260s, many of these communes, first of them Poreč, voluntarily subjected themselves to Venice, thus ushering a new period in Istrian history.<sup>65</sup> The entire development is essentially a direct outgrowth of this fateful Otto IV's donation charter.

But there were also immediate consequences and effects of this solemn donation that were of extreme importance. "The act of giving" writes Maurice Godelier interpreting Marcel Mauss, establishes "a relationship of solidarity because the giver shares what he has, or what he is, with the receiver; and relationship of superiority because the one who receives the gift and accepts it places himself in debt of the one who has given it" – essentially, gift-giving engenders a "difference and an inequality of status between

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61 The declaration of war was Otto IV's appointment of Dipold of Schweinspünt as the duke of Spoleto in early February of 1210. Winkelmann, *Philipp von Schwaben*, 230–247; Hucker, *Otto IV.*, 204–214.

62 Buttazoni, *Del patriarca Volchero*, 52–53 (under the wrong date of 1209 instead of 1210 that both corresponds to the given indiction and Otto IV's itinerary).

63 Giovanni De Vergottini, "Momenti e figure della storia istriana nell'età comunale," *Atti e memorie della Società istriana di archeologia e storia patria*, 54, 1952, 7–17.

64 Giovanni De Vergottini, *Lineamenti storici della costituzione politica dell'Istria durante il Medio Evo*, 2nd ed., Trieste 1974, 75–98.

65 Katja Puppe, "Der lange Weg nach Istrien: Die venezianische Unterwerfung der Halbinsel, vornehmlich am Beispiel Kopers (1279–1349)," PhD diss. (Leipzig 2017), 33–48.

donor and recipient,” a hierarchy that “the gift expresses and legitimizes.”<sup>66</sup> This summary of Mauss’s interpretative framework for gift-giving analyses is fully applicable to Otto IV’s donation charters promulgated to Patriarch Wolfger in January of 1209.

Bearing in mind the patriarch’s reputation and diplomatic skills, having a person of Wolfger’s standing as an ally would prove highly beneficial for the newly recognized King Otto IV. Moreover, the Church of Aquileia was an ecclesiastical principality that controlled important roads leading from German into Italian lands, the so-called “eastern door to Italy,” and Otto IV was certainly aware that a trip to Rome for imperial coronation was forthcoming and necessary.<sup>67</sup> Thus, the five charters issued to the Church of Aquileia, of which by far the most important one was the bestowal of the Margraviate of Istria, were meant to promote bonds of friendship between new allies, both of whom could count on each other’s valuable support in the future.<sup>68</sup> As demonstrated by Mauss and Godelier, the donor’s presence is inextricably embodied in the bestowed gift, a force that continually upholds the power “over the thing given and though it over the recipient who accepts it.”<sup>69</sup> Otto IV’s gifts thus tied the Patriarchate of Aquileia closer to the Empire as the incumbent head of the ecclesiastical principality publicly acknowledged, by receiving these donations in front of the princely audience gathered at the Diet of Augsburg, that his fiefs and secular prerogatives stem from the largesse of the kings and emperors.

Of seminal importance is also the effect of the donation of Istrian margraviate to Otto IV’s two principal allies in the south of the Empire: Duke Ludwig of Bavaria and Count Maynard of Gorizia.<sup>70</sup> The duke was almost immediately remunerated for his loss of Istria by way of Otto IV’s confirmation of settlement between Ludwig and Bishop Otto of Freising by which the former was accorded a substantial share of Munich’s incomes, boosting the ducal power in the striving city and its area.<sup>71</sup> Count Maynard did not only procure a market privilege for his seat of power in Gorizia, but the donation of the Margraviate of Istria to the Church over which his house held hereditary rights of advocacy opened fully the door to Gorizian further penetration in

66 Maurice Godelier, *The Enigma of the Gift*, trans. Nora Scott, Cambridge 1999, 12. For an exemplary application of this analytical framework in medieval studies, see, among a vast number of studies, Stephen D. White, “Service for Fiefs or Fiefs for Service: The Politics of Reciprocity,” in: *Negotiating the Gift: Pre-Modern Figurations of Exchange*, ed. Gadi Algazi – Valentin Groebner – Bernhard Jussen, Göttingen 2003, 63–98.

67 Reinhard Härtel, “Il Friuli come ponte tra Nord e Sud,” in: *Comunicazione e mobilità nel Medioevo: Incontri fra il Sud e il Centro dell’Europa (secoli XI–XIV)*, Bologna 1997, 495–518.

68 Similar interpretations, albeit without references to gift theory, have already been offered. See, e.g., Paschini, “Il patriarcato di Wolfger 1,” 390–391; Lenel, *Venezianisch-Istrische*, 130; Schmidinger, *Patriarch und Landesherr*, 89; Dopsch, “Origine e posizione,” 302. All of the above simply read the donation as “purchasing” Wolfger’s support, whereas I argue that the five charters did much more than that.

69 Godelier, *The Enigma* 44–45.

70 Seibert, “Kaiser Otto IV.,” 31–32.

71 Ibid., 36; Hucker, *Kaiser Otto IV.*, 657 (doc. 1).

Istria, a process that started in the late 12<sup>th</sup> century with Count Enghelbert's strategic marriage to Countess Matilda of Pazin.<sup>72</sup> The donation of the Margraviate of Istria thus bolstered not only the relations with Patriarch Wolfger, but also with the hereditary advocates of the Church of Aquileia, Otto IV's principal allies in the Duchy of Carinthia, the House of Gorizia.

There was, however, more to these gifts than mere "purchase" of loyalty and support. Gift-giving, as a total social fact, simultaneously establishes and reinforces the identities of the actors, bestowing upon the generous donors the "cosmological authentication" of their "privileged position in the socio-political structure at large."<sup>73</sup> This "religious legitimization" is tied to the identity of the donee: by endowing institutions traditionally favored by specific social groups the donor clearly projects his identity and (the desired) inclusion in the same group.<sup>74</sup> The Patriarchate of Aquileia was traditionally favored and amply gifted by Roman kings and emperors, from Charlemagne's era up to Otto's immediate predecessor Philip: partaking in the olden tradition of privileging the Church of Aquileia was thus one of the ways in which the new King of the Romans could legitimate his position.<sup>75</sup> That this imitation of past kings and emperors of the Holy Roman Empire was of extreme importance to Otto IV is mirrored, among other things, in his promulgated charters that featured phrases such as "imitating our most serene predecessors" and "wanting to follow in the footsteps of our predecessors".<sup>76</sup>

In conclusion, the "symbolic alchemy" produced by Otto IV donation of the Margraviate of Istria to Patriarch Wolger and his Church at the Diet of Augsburg in 1209 was multifaceted, a total social fact that simultaneously performed a variety of actions: both establishing bonds and hierarchical relations with the Church of Aquileia, promoting strategic alliances between the Crown and important political figures in the South of the Empire – Patriarch Wolfger and Count Maynard of Gorizia –, as well as establishing and legitimizing royal identity by "following in the footsteps" of past kings and emperors who had so lavishly endowed the Church of Aquileia.<sup>77</sup>

72 Seibert, "Kaiser Otto IV.," 31; Peter Štih, *I conti di Gorizia e l'Istria nel Medioevo*, Rovinj 2013, 55–58.

73 Silber, "Gift-giving," 224 (quotations); Andrew Cowell, *The Medieval Warrior Aristocracy: Gifts, Violence, Performance, and the Sacred*, Cambridge 2007, 9–10.

74 Silber, "Gift-giving," 220, 224 (quotation).

75 Schmidinger, *Patriarch und Landesherr*, 22–82 remains the most detailed account of all the royal and imperial donations, at least up to Otto IV's period.

76 Zinsmaier, *Die Ukrunden*, 99–100. An extremely detailed account of Otto IV's employment of imperial symbolism is provided in Hucker, *Otto IV.*, 558–631.

77 Pierre Bourdieu, *The Logic of Practice*, trans. Richard Nice, Stanford 1980, 110 (first quotation).

### Appendix 1: Critical Edition of the Charter

Regestum: King Otto IV, on the behest of Wolfger, the patriarch of Aquileia, and other princes gathered at the Diet of Augsburg, accepts the resignation of the Margraviate of Istria from Duke Ludwig of Bavaria, and donates the same Margraviate to Patriarch Wolfger and the Church of Aquileia.

Place and Date: Augsburg, 13<sup>th</sup> of January, 1209.

Source: Venice, Archivio di Stato di Venezia, Miscellanea atti diplomatici e privati, box 10, doc. 333: a *vidimus* made by notary Meglioranza of Thiene on the 25<sup>th</sup> of April, 1303, and inserted as one of the eleven charters copied on a long scroll (= B). The original is lost as it was pawned to a certain *Paçanus* of the Florentine Capponi company by Patriarch Ottobono on the same 25<sup>th</sup> of April, 1303.

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In nomine sancte et individue Trinitatis.

Otto quartus divina favente clemencia Romanorum rex et semper augustus.

Regalis excellencie titulos digne extollimus decenterque exornamus cum nos ea que in dampnum ecclesiarum redundare videntur inhibemus et ab omni, in evum ambiguita[ti]s<sup>a</sup>, nota regie equitatis norma elidimus.

Ad noticiam itaque omnium presentis etatis et in omni siccessione<sup>b</sup> posteritatis hominum transmitti volumus quod, cum ob enormes excessus Henrici quondam marchionis Ystrie, quos ipse nomine criminis lese maiestatis in decessore nostro domino Phylippo commisit, Marchia Carniole et Ystrie cum Comitatu et universis pertinenciis suis, et tam feudum quam alodium et omnis honor suus, in generali curia nostra Frankenfuort per sententiam principum sibi fuerunt abiudicata et ad dominium Imperii Marchia Ystrie libere et absolute sit addita, nos eandem Marchiam nobis et Imperio vacantem tunc dilecto fideli nostro Ludowico duci Bawarie iure feudali concessimus.

Procedente vero tempore, dilectus princeps noster Wolfkerus patriarcha Aquilegensis ad curiam nostram apud Augustam accedens in presencia principum questionem de predicta Marchia nobis movit, et quod ex antiqua donatione Henrici regis augusti tercii ecclesie Aquilegensis pertineret privilegiis auctenticis ecclesie sue collatis evidentissime in publico curie nostre presentibus principibus nobis demonstravit.

Nos itaque manifestam sue assertionis advertentes veritatem, ne occasione nostra tanti honoris pariterque utilitatis beneficio privari videretur Aquilegensis ecclesia, ad instanciam precum nostrarum universorumque principum prefatus dux sepe dictam Marchiam sine omni contradictione in manus nostras resignavit, et nos eam, ab omni impetitionis nota ab ipso absoluta, Aquilegensis ecclesie cum omni honore et universis pertinenciis et omni iure Imperiali libere et absolute possidendam in perpetuum donavimus, tradidimus atque concessimus.

a *sic* ambiguitas B; ambiguitatis *em.* Banić.

b *sic* B: *pro* successionem.

Et sicut rite et racionabiliter in presentia principum nostrorum hanc donationem nostram a nobis factam recognoscimus, sic quoque eam presentis scripti nostri autentico ipse ecclesie confirmamus.

Statuentes et regio edicto firmiter precipientes ut nulli unquam persone alte vel humili, ecclesiastice vel seculari, licitum sit hanc nostre donationis seu confirmationis divinalem paginam infringere vel ei aliquo temeritatis ausu obviare.

Quod qui facere presumpserit, in sue presumptionis pena[m]<sup>c</sup> mille libras auri examinati componat, quorum medietas fisco nostro, reliqua vero medietas iniuriam passo persolvatur.

Ut autem hec donatio seu confirmatio nostra in omne evum inviolabiliter observatur, presentem exinde paginam conscribi et bullam nostram auream apponendo precipimus consignari.

Testes autem huius rei sunt: Oddo Frisigensis episcopus, Menegoldus Pataviensis episcopus, Artuicus Estedensis episcopus, Conradus Ratisponensis episcopus, Conradus Brixienensis episcopus, Reinhardus Curiensis episcopus, Fridericus Tridentinensis, Synridus Augustensis electus, Iohannes Cameracensis episcopus, Ludevicus dux Bavarie, Meynardus comes Goricie, comes palatinus de Tuingen, comes Albertus de Tyrol, comes Ulricus de Eppan, comes Egeno de Ulmo, comes Albertus de Eberstain, comes Burcardus de Manesveld, burggravius Madeburgensis, Stephanus decanus, Henricus archidiaconus, Fridericus de Cauriaco, Azelinus Tarvisiensis, Bernardus de Strasowe, Valterusbertoldus, Wolkerus de Dorenberch, Iohannes de Çucula et alii quamplures.

Signum domini Ottonis quarti Romanorum regis invictissimi.

Ego Conradus Spirensis episcopus et regalis aule cancellarius vice domini Syfridi Maguntinensis sedis archiepiscopi et tocius Germanie archicancellarii recognovi.

Acta sunt autem hec anno Dominice incarnationis millesimo ducentesimo octavo, regnante domino Ottone quarto Romanorum rege gloriosissimo, anno regni eius XI. Data apud Augustam per manus Walteri prothonotarii, id[ib]us ianuarii, indictione XII<sup>a</sup>.

### Translation into Contemporary English

In the name of the holy and undivided Trinity.

Otto the Fourth, by the grace of divine clemency king of the Romans and always august.

We becomingly honor the titles of royal excellence and adorn it appropriately as we curb that what appears to be overflowing to the detriment of churches, and when we expel it by royal sign from every known standard of equity in this world of uncertainty.

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c sic pena B; penam em. Banić.

Therefore, we wish it to be conveyed to the notice of all people in the present age and in all the successions of posterity that, due to the immense enormities committed by Henry, the former margrave of Istria, who personally committed the crime of high treason against our predecessor, Lord Philip, and who was sentenced by the judgment of the princes during our general Diet of Frankfurt, and deprived of both the March of Carniola and Istria together with the County and all of its dependencies, as well as of his fiefs and allods and all his honors, and since the March of Istria could therefore be unreservedly and in entirety placed under the jurisdiction of the Empire, we relinquished that very March, free for us and the Empire to dispose of, to our dear devotee Ludwig, duke of Bavaria, by feudal entitlement.

As the time passed by, however, our dear prince Wolfger, patriarch of Aquileia, arrived at our Diet of Augsburg and voiced a complaint in the presence of princes regarding the aforesaid March and, having conveyed the authentic privileges of his Church publicly in front of our Diet to the present princes, he most clearly showed that it [the March of Istria] belonged to the Church of Aquileia by way of an old donation of the august King Henry III.

We, therefore, took into consideration the obvious truth of his assertion, and – lest the Church of Aquileia appear to be deprived of a privilege of such high esteem and of equally great value on our account, [and seeing that] the aforesaid duke, at the appeal of our request and of all the princes, resigned the aforementioned March in our hands without any contradiction – we have donated, surrendered, and granted it to the Church of Aquileia with all the honors and all the dependencies and every imperial right, cleared from every possible claim related to it, to possess in perpetuity freely and unreservedly.

And just as we duly and soberly acknowledge in the presence of our princes this donation that we have issued, so too we confirm it to the very Church by the writing of our present authentic charter.

We decree and by regal edict expressly order that no person, whether of high or low status, ecclesiastic or lay, is ever allowed to breach this divine charter of our donation or confirmation, or to oppose it by any sort of reckless audacity.

Whoever shall presume to do this shall pay a thousand pounds of weighed gold in the punishment of their presumption, half of which will be paid to our treasury, the other half, however, to the injured party.

In order that this donation or confirmation of ours be inviolably observed in every age, we thus order the present charter to be composed and authenticated by the appending of our golden seal.

The witnesses to this deed are: Otto the bishop of Freising, Menegold the bishop of Passau, Hartwig the bishop of Eichstädt, Conrad the bishop of Regensburg, Conrad the bishop of Bressanone, Reinhard the bishop of Chur, Frederick [the bishop of] Trento, Siegfried the bishop elect of Augsburg, John the bishop of Cambrai, Ludwig the duke of Bavaria, Maynard the count of Gorizia, the count palatine of Tübingen,

Count Albert of Tirol, Count Ulrich of Eppan, Count Egeno of Ulten, Count Albert of Eberstein, Count Burchard of Mansfeld, the burgrave of Magdeburg, Stephan the dean, Henry the archdeacon, Frederick of Caporiacco, Anselm of Treviso, Bernard of Strassoldo, Valterberthold, Folker of Doremberch, John of Zuccola and many others.

The sign of Lord Otto the Fourth, the most invincible king of the Romans.

On behalf of Siegfried the archbishop of Mainz and the archchancellor of entire Germany, I, Conrad, the bishop of Speyer and the chancellor of the royal court, attested to this charter.

This was, moreover, enacted in the year of the Lord's incarnation one thousand two hundred and eighth, during the reign of lord Otto the fourth, the most glorious king of the Romans, in the eleventh year of his kingship.

Given at Augsburg by the hand of Walther the protonotary, on the Ides of January, twelfth indiction.

**Appendix 2: List of documents copied in the 1303 charter  
(Archivio di Stato di Venezia, Miscellanea atti diplomatici  
e privati, box 10, doc. 333 [25<sup>th</sup> of April, 1303].**

|                                                                                                                                                           |                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| 1) Henry IV's donation of the County of Istria to Patriarch Sigehard from 1077                                                                            | Gladiss – Gawlik, <i>Heinrici IV. diplomata</i> , 387–389 (doc. 295)                                                                          |
| 2) Henry IV's donation of the Duchy of Friuli and village Lucinico to Patriarch Sigehard from 1077                                                        | Gladiss – Gawlik, <i>Heinrici IV. diplomata</i> , 384–385 (doc. 293)                                                                          |
| 3) Frederick I's confirmation charter issued to Patriarch Ulrich II in 1180                                                                               | Heinrich Appelt (ed.), <i>Friderici I. diplomata / Die Urkunden Friedrichs I.</i> , MGH DD 10, Hannover 1975–1990, 354–356 (doc. 791)         |
| 4) Philip's donation of Monselice issued to Patriarch Wolfger in 1207                                                                                     | Rzihacek – Spreitzer, <i>Philippi regis diplomata</i> , 355–359 (doc. 156)                                                                    |
| 5) Otto IV's donation of the Margraviate of Istria to Patriarch Wolfger issued in 1209                                                                    | Appendix 1                                                                                                                                    |
| 6) Otto IV's confirmation of the donation of the Margraviate of Istria to Patriarch Wolfger issued in 1210                                                | Winkelmann, <i>Acta Imperii inedita</i> , 14–15 (doc. 22); Joppi, <i>Aggiunte</i> , 9–12 (doc. 1)                                             |
| 7) Frederick II's confirmation charter issued to Patriarch Wolfger in 1214                                                                                | Walter Koch (ed.), <i>Friderici II. diplomata / Die Urkunden Friedrichs II.</i> , MGH DD 14, Hannover–Wiesbaden 2002–2017, 109–112 (doc. 220) |
| 8) Frederick II's confirmation that Duke Otto of Merania relinquished all of his claims to the Margraviate of Istria issued to Patriarch Berthold in 1230 | Böhmer, <i>Acta Imperii selecta</i> , 260–261 (doc. 295)                                                                                      |
| 9) Frederick II's confirmation charter specifically regarding the rights over Istria issued to Patriarch Berthold in 1232                                 | Joppi, <i>Aggiunte</i> , 19–23 (doc. 6)                                                                                                       |

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| 10) Frederick II's promulgation and confirmation of the peace treaty signed between Patriarch Berthold and the Commune of Koper issued in 1238                                                                                              | Jean Louis Alphonse Huillard-Bréholles (ed.), <i>Frederici secundi historia diplomatica</i> , vol. 5/1, Paris 1857, 242–244 |
| 11) Frederick II's confirmation charter regarding the patriarch's rights in cities and towns electing their own officials (primarily although not explicitly referring to Istrian communes) issued to Patriarch Berthold of Andechs in 1220 | Koch, <i>Frederici II. diplomata</i> , 254–256 (doc. 760).                                                                  |

## SAŽETAK

**Donacija Markgrofovije Istre kralja Otona IV.  
Akvijskom patrijarhatu: Augsburg, 13. siječnja, 1209.**

Autor raščlanjuje donacijsku ispravu koju je izdao kralj Oton IV. akvijskom patrijarhu Wolfergu i njegovoj crkvi tijekom imperijalnog sabora u Augsburgu u siječnju 1209. godine, poklanjajući svjetovno pravo nad Markgrofovijom Istrom. Ova je javna isprava dosada ostala neobjavljena i u potpunosti nepoznata historiografiji, iako je njen prijepis sačuvan u istom svitku kojega su bili konzultirali povjesničari poput Eduarda Winkelmanna i Vincenza Joppija, no koji zbog nekog razloga nisu na tu ispravu obratili pažnju. Autor prvo rasvjetljuje tradiciju isprave koja je sačuvana kao *vidimus* iz 1303. godine koji se danas čuva u Državnom arhivu u Veneciji u fondu *Miscellanea atti diplomatici e privati*, u kutiji deset, kao dokument pod rednim brojem 333. Potom se raščlanjuje širi kontekst unutar kojega je došlo do izdavanja ove isprave na saboru u Augsburgu, donoseći kratak osvrt na položaj auktor, kralja Otona IV., i recipijenta, čuvenog i vještog diplomata Wolfgera od Erle, bivšeg biskupa Passaua i podržavatelja Otonovog protivnika kralja Filipa Švapskog. Slijedi diplomatska analiza isprave koja utvrđuje da se radi o autentičnoj ispravi čiji je tekst kompilirao stanoviti pisar "OC" koji je radio u kancelariji Filipa Švapskog te potom, od siječnja 1209. do svibnja 1212., kod kralja i potom cara Otona IV. U zaključnom se dijelu rada darovnica sagledava kroz interpretativnu prizmu teorije o dar koju je izvorno predstavio Marcel Mauss. Na taj se način zaključuje da je darovnica bila "totalni društveni čin" (*fait social total*) koja je istovremeno sadržavala međusobno nerazmršive političke, društvene, ekonomske i religijsko-simboličke čimbenike. Izdajući ovu darovnicu, Oton IV. ušao je u novo savezništvo s akvijskom crkvom i patrijarhom Wolfergom koje je istovremeno hijerarhijski definirao, podčinivši recipijente im svom liku kraljevskog donatora. Ista je darovnica također išla u prilog grofu Majnardu Goričkome, advokatu akvijske crkve i jednom od glavnih podržavatelja Otona IV. na jugu Carstva. Na kraju, darovnica je legitimirala Otonov novi kraljevski status pred biranom publikom okupljenom na saboru u Augsburgu, postavljajući novog glavaru Svetog Rimskog Carstva u direktan odnos s bivšim slavnim kraljevima i carevima koji su također doticali Akvijski patrijarhat. Rad završava kritičkim izdanjem isprave i njenim prijevodom na suvremeni engleski jezik.

**Ključne riječi:** Akvijski patrijarhat, Istra, Sveto Rimsko Carstvo, Oton IV., XIII. stoljeće, diplomatika, dar.