Traces of Orality in Written Contexts. Legal Proceedings and Consultations at the Royal Court as Reflected in Documentary Sources from 12th-century Germany

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Introduction

When we deal with the oral world of the Middle Ages we face the problem that we are looking for a reality which can not directly be deduced from contemporary written source material. The intensive historical and philological research of the last decades has worked out this problem very clearly.[1] Even though this research provided us with a broad spectrum of methodological facilities the foreshortened perspective of our perception of the mediaeval world will, however, remain one of the key problems of mediaeval history in general. We should nevertheless try to stick to our written sources as closely as we can. If we want to go beyond the written documents and deal with problems concerning the spoken word reflected by them it is first necessary to give a convincing explanation of these documents in the context of their historical background.

From this point of view the problem of the present study can be charaterized as follows: especially for the period between the 10th and the 13th century, that means the span of time after the Early Germanic law codifications and the Carolingian capitularies and before Eike von Repgowe's *Sachsenspiegel*, we know

[1] Cf. Michael T. Clanchy, *From Memory to Written Record. England 1066-1307*, 2nd ed. (Oxford: Blackwell, 1993) ; Hanna Vollrath, "Oral Modes of Perception in Eleventh-Century Chronicles", in Alger N. Doane and C. Brown Pasternack, eds., *Vox intexta. Orality and Textuality in the Middle Ages* (Madison and London: University of Wisconsin Press, 1991), pp. 102-111, Michael Richter, *The Oral Tradition in the Early Middle Ages* (Turnhout: Brepols 1994); Hans-Werner Goetz, *Moderne Mediävistik. Stand und Perspektiven der Mittelalterforschung* (Darmstadt: Wissenschaftliche Buchgesellschaft), 1999, pp. 339-365; and Michael Richter, "Die 'Entdeckung' der Oralität der mittelalterlichen Gesellschaft durch die neuere Mediävistik," in Hans-Werner Goetz, ed., *Die Aktualität des Mittelalters* (Bochum: Winkler, 2000), pp. 273-285. Michael Richter draws the conclusion that a closer look to the oral world of the Middle Ages would cause a complete change of our impression of the period ("Die Beschäftigung mit mündlicher Kultur im Mittelalter hat Zukunft. Sie wird das traditionelle Bild der Vergangenheit nachhaltig bereichern. Sie wird weniger ereignisgeschichtlich, weniger oberschichtlieh orientiert sein, als es lange Zeit üblich war", p. 284). – Cf. also the "Utrecht Studies in Medieval Literacy," e. g., Karl Heidecker, ed., *Charters and the Use of the Written Word in Medieval Society* (Turnhout: Brepols, 2001).

hardly anything about public life in the councils and law courts of the *regnum Teutonicorum*. Judicial and administrative life took place in a sphere that was almost entirely dominated by the spoken word. With respect to this fact we must admit that intimate aspects of mediaeval life will remain inaccessible to us. Even beyond the span of time from the 10th to the 13th century we have to differentiate very carefully between descriptive and normative sources to get a reliable and consistent picture of this oral world. Especially, the major part of the specific regulations and provisions reflected in Eike von Repgowe's codification of the Saxon customary law from the first half of the 13th century should be neither generalized nor uncritically be projected on the preceding centuries.

With regard to the multifarious relationship between orality and literacy it seems to be useful to add some further remarks on our perception of the oral culture of the Middle Ages and the sources this study is based on. As in most other cases of scientific research there are different ways of approaching the subject matter and dealing with the problems that derive from it. I became aware of the interdependence between orality and literacy when I analysed the general problem of mediaeval acting representatives. In this context I looked at counts and vice-counts as well as at kings and those who acted as representatives of kings and rulers in the High Middle Ages.[2] When we analyse the itineraries of the contemporary elites we see that mediaeval government was based on personal networks. This observation led the German scholar Theodor Mayer to the description of mediaeval society as a 'Personenverbandstaat' as opposed to the modern state based on anonymous institutions and civil servants. In the Middle Ages, however, the personal presence of kings and rulers was a conditio sine qua non for the people's loyalty and those who governed had to keep travelling. On the one hand this caused an impressive mobility. On the other hand the intensification of government, the expansion of the spaces under control and the increasing mobility with the frequent absence of monarchs and princes made it necessary for them to duplicate their person and to have some of the administrative work done by representatives. This duplication must have been an integral part of everyday governmental practice. Nevertheless, the phenomenon of representation is reflected in our written sources very rarely and mostly in cases when contemporaries disagreed on how the representation should be delegated and how duties and competences should be divided between the one who was represented and the one who acted as his representative. A second problem is that in most of the cases reflected in the written documentation we are confronted with different conceptions of government and administration, while the concrete realization of these conceptions remains more or less hidden under the significant silence of the sources. There was no reason to pass information about everyday administration to the following generations.

When I looked through the chronicles and the documentary sources from the

[2] Cf. Detlev Kraack, "Von namenlosen Vizegrafen und verkappten Vizekönigen. Widerstreitende Herrschaftskonzeptionen und Herrschaftspraxis unter Friedrich I. Barbarossa" (Habilitationsschrift, Technische Universität Berlin) (Berlin, 2000), to be published.

span of time between the 10th and the 12th century with special regard to vice-counts and representatives of the king, I realized that the interdependence of orality and literacy had to be analysed from at least two different perspectives: on the one hand I carefully examined the usage of written documents in a society that was generally based on orality and on the other hand I looked at the spoken word and direct speech reflected in written sources.

During my research I made some astonishing observations that are worth being reflected on in this context, because they are of overriding importance. Before going into further detail we should, however, once again underline the fact that there are only relatively few cases through which we can gain insight into the matter. In most of these cases we are confronted with the mutual relationship between the spheres of orality and literacy.[3] The reciprocity of orality and literacy is reflected in at least three different respects that are sometimes even interwoven with each other. Firstly, our perception of the oral word of the past is completely based on written sources. The knowledge that can be deduced from a study of these sources is, therefore, foreshortened and often unconsciously or even intentionally narrowed by those who fixed information by writing it down and who passed the written documentation on to the following generations. Secondly, some of these sources bear witness to the use of written documents in situations that were generally characterized by the spoken word and by the use of the vernacular. The written documents served as evidence for legitimation or for the authentic conservation of information. Most of these documents may have been regarded as useful to claim one's rights in judicial litigations. Other written sources reflect elements of originally direct speech in the vernacular translated into Latin and mostly embedded in situations of communication that were either fictitious or at least reconstructed from memory. Usually it is worth looking at the structure of the written documentation, as we gain insight into the different procedural horizons interwoven with each other, when the documents were written down. From time to time it is even possible to extract reliable information about solving judicial and procedural problems from documents that turn out to be partly forged or entirely fictitious.

With respect to written sources in general and to the use of documents in the context of orality, we have to ask for the circumstances out of which these sources emerged, for their concrete use, and for the ways through which they have been handed down to us. In this context, we should pay special attention to the interests of the persons who were involved in these circumstances, those who functioned as *intervenientes*, those who were favoured by the arrangements, and those who had the documents written down in the end. The fact that our sources were almost without exception written by clerics and that they reflect the world from the perspective of the powerful causes a lasting distortion of our perception of the mediaeval world. Just to give an example we can refer to a prominent type of

[3] Cf. Franz H. Bäuml, "Verschriftlichte Mündlichkeit und vermündlichte Schriftlichkeit," in Ursula Schaefer, ed., *Schriftlichkeit im frühen Mittelalter* (Tübingen: Narr, 1993), pp. 254-266.

source: Whoever tries to interpret royal charters from the perspective of the supplicants and of the recipients of these charters or from the perspective of those who were affected by the arrangements, will make astonishing observations, ask new questions and answer these questions in a way that differs from the explanations given in traditional manuals of constitutional and administrative history. While royal charters are generally interwoven with the dignity of royal pathos and contain only the filtered and edited results of judicial and administrative controversies and decisions, normally we do not learn much about how these decisions were taken and what controversies preceded them. The influence of the people in attendance, the anonymous and mute *populus*, is almost completely ignored in this kind of source. In reality, judicial and administrative decisions might often have been preceded by discussions and controversies that did not leave any traces in the written documentation. The findings of decisions, judgements and sentences should nevertheless be seen as a complex process involving people and groups with common interests who had to make compromises, who had to integrate even the accuser and the defendant, and in the end to reconcile the community as a whole.[4]

Of course, we should be careful not to awaken anachronistic ideas, but when we combine the pieces of information scattered in the written sources we get the impression that the notion of the mediaeval world as depicted in the preceding explanations is thoroughly well-founded. On the basis of these general observations it should be much easier to go into further detail. In the following we will restrict ourselves to the analysis of some selected documents from the 12th century, as these sources automatically stimulate questions concerning the problems and difficulties indicated above.

Count Berthold of Hamm as *advocatus* of the monastery of Prüm (ca. 1100) – oral traditions vs. written evidence

We will start our investigation with the analysis of a document from the very beginning of the 12th century. This document draws our attention to some of the general problems that were outlined above. It reflects the quarrels between the monastery of Prüm in the High Lothringian duchy and a local nobleman, called Berthold of Hamm (*Bertoldus de Ham*), who functioned as the monastery's advocate (Latin *advocatus*/German '*Vogt*').[5] Dietrich von Gladiss, who published

[4] Cf. Hanna Vollrath, "Fürstenurteile im staufisch-welfischen Konflikt von 1138 bis zum *Privilegium Minus*. Recht und Gericht in der oralen Rechtswelt des früheren Mittelalters," in Karl. Kroeschell and A. Cordes, eds., *Funktion und Form. Quellen- und Methodenprobleme der mittelalterlichen Rechtsgeschichte* (Berlin: Duncker & Humblot, 1996), pp. 39-62.

[5] Cf. *Die Urkunden Heinrichs IV. / Heinrici IV. Diplomata*, part II (1077-1106), ed. Dietrich von Gladiss (Weimar: Böhlau, 1959), pp. 647-650, n. 476 [DHIV 476] (ca. 1102-1104) (edition according to the *liber aureus* of the monastery of Prüm, fol. 80'). Cf. also Hanna Vollrath, "Rechtstexte in der oralen Rechtskultur des früheren Mittelalters," in Michael Borgolte, ed., *Mittelalterforschung nach der Wende* (Historische Zeitschrift, Beiheft [N.S.] 20), (München, 1995), pp. 319-348, pp. 332-334, and pp. 344-345, Ernst Pitz, "Diplom und Registereintrag.

the document in the edition of the charters of the emperor Henry IV in the series of the *Monumenta Germaniae Historica*, characterized it as "a document of doubtful validity." It seems to be a kind of draft for a royal charter written by a scribe from the monastery of Prüm, as we may conclude from the *intitulatio* and from the detailed *narratio* of the document. Taking this into consideration it is an important fact that the document has been handed down to us only indirectly in a cartulary of the monastery, the famous *liber aureus* from the 12th century. The validity and the authenticity of the document as a whole may be doubted, because some elements that can normally be found in the *eschatocol*, the concluding part of a royal charter, like a list of witnesses, other means of corroboration or authentication, and the dating are not given in this copy. Nevertheless, the document can be dated indirectly to the years between 1102 and 1104 as we may summise from the persons mentioned in its context. We do not know whether the monks had special reasons not to present their draft to the royal chancery to get it drawn up in the form of an authentic royal charter.[6] Perhaps this project failed as it was outstripped by the violent revolt of the king's son and Henry IV's deposition by his own son in 1104/05 and by the following troubles.

Even though the document as a whole doubtlessly reflects the conflict from the monastic point of view and should, therefore, be looked upon critically, the controvers dealing with procedural questions reported in it may be regarded as authentic because the monks had no reason to invent or add these passages.[7]

In the years before the court trial reflected in this document there had been repeated quarrels between the monastery of Prüm and Berthold, count of Hamm, who functioned as the administrating advocate of the monastery's territory as we may conclude from the *narratio* of the document. The clerics chose legal

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Über normative und prozessuale Interpretation von Papst- und Königsurkunden und ihre Abhängigkeit von der Form der Überlieferung," in Christel Meier, Dagmar Hüpper, and Hagen Keller, eds., *Der Codex im Gebrauch* (München: Fink, 1996), pp. 101-107, p. 106; and Bernhard Diestelkamp and E. Rotter, *Die Urkundenregesten zur Tätigkeit des deutschen Königs- und Hofgerichts bis 1451*, vol. I: *Die Zeit von Konrad I. bis Heinrich VI., 911-1197*, (Köln and Wien: Böhlau, 1988), pp. 114-116, n. 164. With special regard to the constitutional problems reflected in the document cf. Hans Hirsch, *Die hohe Gerichtsbarkeit im deutschen Mittelalter* (Prag: Verlag der Gesellschaft zur Förderung Deutscher Wissenschaft, Kunst und Literatur in Böhmen, 1922, reprint Köln and Graz: Böhlau, 1958), pp. 135-137; and Egon Boshoff, "Untersuchungen zur Kirchenvogtei in Lothringen im 10. und 11. Jahrhundert," *Zeitschrift der Savigny-Stifung für Rechtsgeschichte (Kanonistische Abteilung)*, 66 (1979), pp. 55-119, pp. 107-108.

[6] Cf. Gladiss, *Urkunden*, pp. 647-648: "Mit welcher Absicht diese Aufzeichnung ursprünglich hergestellt wurde, läßt sich mit Sicherheit nicht sagen. Von einem ausgefertigten Diplom kann man bei dem gänzlichen Mangel eines Eschatokolls nicht ohne weiteres sprechen. ..., dürfte die Annahme auf einen vom Empfänger verfaßten Entwurf, der der Kanzlei zur Unterfertigung und Beglaubigung eingereicht werden sollte, die größte Wahrscheinlichkeit für sich haben. Die Gleichzeitigkeit der Aufzeichnung möchten wir jedenfalls nicht in Abrede stellen."

[7] Cf. Vollrath, "Rechtstexte," p. 333. Hanna Vollrath argues that the charter is a very indicative source and especially with regard to the contemporary description of the judicial procedures of high validity.

proceedings and brought an action against Berthold to the royal court.[8] They complained about his inappropriate administration and about his offences against the monastery and the people of its territory. King Henry IV summoned the litigant parties to a session of the royal court. They were cited to Münstereifel (*novum monasterium*), the central place in the north-east of the monastery's territory, where the court session would be held under the presidency of the king's son Henry (who succeeded his father some years later), and in the presence of high ecclesiastical dignitaries and secular princes of the realm.[9] At the beginning of the trial Wolfram, the abbot of Prüm monastery, brought forward an extended complaint about Berthold's offences. With respect to the mutual relationship between orality and literacy it should be underlined that Wolfram's *proclamatio* is inserted into our document in direct speech as if it was held in Latin.[10]

To corroborate what he brought forward, Wolfram presented a series of royal charters that granted the monastery's privileges. The series of these documents, which were read to the public and interpreted, went back to Carolingian times and started with a charter of Pippin the Younger, the father of Charlemagne.[11] The claims of the monastery's party were made known to the public.[12] It

[8] Cf. Gladiss, *Urkunden*, in the *narratio* of the document: ... *notum esse volumus, quod Wolframmus abbas Prumiensis et congregatio sancti Salvatoris dolens abbatiam iniusta advocatorum et subadvocatorum, maxime autem Bertoldi de Ham et filiorum eius insolentia vexari, sepe clementiam nostram et principum nostrorum id ipsum lacrimabiliter proclamans adiit, donec* ... (p. 648, l. 19-23).

[9] Cf. Gladiss, *Urkunden*, still in the *narratio* of the document: ..., *donec timore et amore dei et isa iusticia compulsi filium nostrum Henricum regem et episcopum Traiectensem, Cuonradum et Henricum comitem palatinum aliosque quamplurimos principes nostros convenire ad novum monasterium [= Münstereifel] ipsius abbatis precepimus pro iusticia inter eos examinanda et iniusticia prohibenda* (p. 648, l. 23-26).

[10] Cf. Gladiss, *Urkunden*, still in the *narratio* of the document: ... *Ventum est ad diem, abbas iterum et fratres sui eandem proclamationem faciunt, quam huic carte iussimus annotari, quatenus ex iniusticie consideratione clarius eluceat decretum iusticie: 'Deo et vobis, domini et principes, proclamamus, quod advocatorum et subadvocatorum, maxime vero Bercdolfi de Ham et filiorum eius tanta super familiam et res ecclesie sancti Salvatoris excrevit insolentia, ut ipse B[ertholdus], publice exactores suos super loca et villas nostras ponat et servicium suum per totum annum, ubi neque censum neque ullam omnino excepta advocatia proprietatem habet vel habuit, prout sibi videtur, constituat et quasi debitum exigat. Unde coacti exactores sui loca nostra predonum vice circu[m]euntes placitis iustis et iniustis peticionibus minis, postremo invasionibus ad ultimam homines nostros pauperiem redegerunt et exire de patria et hereditate sua mendicandi coegerunt causa. Super hec vero omnia ipse hospitia in curtibus nostris et in domibus familiarum singulis, quotiens vult, accipit, post filii eius et servi, deinde subadvocati et venatores de rebus nostris et familie, quantum sibi et suis libet, singuli accipientes et ex toto abbatiam devastantes'* (p. 648, l. 26-39).

[11] Cf. Gladiss, *Urkunden*, still in the *narratio* of the document: ... *Proclamatione facta, filio nostro et regni principibus cause abbatis compatientibus et indignatione et clamore B[ertholdi] et filiorum eius crudelissimam iniusticiam quasi uno ore increpantibus, lectis etiam et expositis in audientia cunctorum omnibus testamentis signatis a Pippini regis tempore ipsius ecclesie conditoris, que predicte ecclesie et advocatorum officium et iura continebant,* ... (p. 648, l. 39-43).

[12] Cf. Peter Johanek, "Zur rechtlichen Funktion von Traditionsnotiz, Traditionsbuch und früher

is easy to imagine that it was not only the fact that the clerics were able to bring the charters forward, but that it was also the reading out itself which can be seen as a public performative act and as a constitutive element of legal proceedings.[13] Apart from this remarkable information we should focus our attention on the reaction of Berthold, who was confronted with this documentary evidence and with its presentation to the audience. He laughed about the charters and rejected them because he did not accept them as pieces of evidence. As every literate person could easily prepare such documents and bring them forward, he demanded the oral consultation of local witnesses instead.[14] In addition, Berthold declared that he himself would take over the task of designating these witnesses. According to his opinion this procedure would guarantee an adequate judgement, because only local people could have the special knowledge requested in this context. He proclaimed that he would only accept the results of such an oral inquisition.[15]

Before the participants of the court session could go into further detail and discuss single aspects of the abbot's complaint they had to deal with this procedural question. In this context the question of whether they would accept written evidence or restrict themselves to oral inquisition played a decisive role. As we would have expected, the abbot and his brethren rejected Berthold's proposals and wanted to participate at least on equal terms in the designation of the witnesses. After a while, however, they accepted the count's requirements, probably because they did not want to risk a total failure of the trial.[16]

The members of the royal court could not start to deal with the complaint of the accusing party until they had fixed the procedure for the trial. According to the detailed account of our document, Berthold of Hamm seems to have had a very

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Siegelurkunde," in Peter Classen, ed., *Recht und Schrift im Mittelalter* (Sigmaringen: Thorbecke, 1977), pp. 131-162, p. 132: The documents were made 'landeskundig' (known to the local people).

[13] Cf. Johanek, "Zur rechtlichen Funktion," p. 155, with regard even to the time of Henry IV: "Es ist noch nicht die Urkunde, die die Partner eines Rechtsgeschäftes bindet, sondern immer noch in erster Linie die Rechtshandlung und ihre Publizität, ihre Landeskundigkeit."

[14] Cf. Vollrath, "Rechtstexte," p. 324, regarding the difficulties to integrate the written evidence fixed in charters into the oral world of medieval judicial life.

[15] Cf. Gladiss, *Urkunden*, still in the *narratio* of the document: ... , *ipse [sc. Bertholdus] adhuc in pertinacia obfirmatus et irridens testamenta dicensque penna cuiuslibet quelibet notare posset, non ideo suum ius amittere / deberet, tandem ad sue defensionis arma confugiens ius voluntarium solus hoc modo sibi constituit, ut servientes sepe fate ecclesie, quos ipse eligeret et nominaret, ius illud, quod ipsi dicerent et sacramento firmarent, illud ipse probaret et sequeretur.* ... (p. 648, l. 43 - p. 649, l. 3).

[16] Cf. Gladiss, *Urkunden*, still in the *narratio* of the document: ... *Huic conditioni abbas primum fortiter repugnavit; videbatur enim esse periculosum, ut relictis testamentis sequeretur sacramentum eorum, qui datis manibus illi vel ab eo suscepto beneficio propter timorem sui vel rerum suarum illi adherebant. Victus tamen eius importunitate et amicorum vix suscepto consilio hac conditione concessit, ut eorum, qui iuraturi erant, dimidiam partem ipse abbas, dimidiam partem B[ertholdus] nominaret. Qui rursum, nisi solus ipse cunctos nominaret, propositum reprobavit, abbate denique satis faciente inportunitati eius consensu suo,* ... (p. 649, l. 3-9).

strong position in the first part of the trial, while the examination of the local witnesses brought forward results that weakend the position of the advocate. These witnesses enforced the position of the abbot and the monastery's party. They restricted the activities of the administrator to a fixed number of court sessions, and in addition they fixed his revenues and reduced his competences as well.[17]

These results seem to be a complete reversal of Berthold's strong position at the beginning of the trial. Apart from that it is improbable that the count did not know what would follow when he proposed the procedure for the trial. From this point of view the case as a whole remains mysterious, but it reveals that the members of the royal court aimed to take local conditions into account and to accept local people's decisions. As we will see, the story had not yet come to an end. Although Berthold and his sons waived their claims and confirmed their renunciation, the litigations continued even in the generation of Berthold's successors, when the problem was brought to court again and when the present document was written down. To repel the advocate's claims and to restrict his rights in a legal way (*legali iure*) the case required a public act in front of the king's court and the consensus of the *curia*. There was, however, no need to write anything down. The abbot of the monastery chose some kind of interim provisional solution that was suitable to neutralize the position of Berthold's successor by stirring up the concurrence of one of his relatives. He engaged the brother of the former advocate to take over the monastery's administration. Until the 'final' hearing of the case this seems to have been a suitable way to claim the monastery's rights. From this perspective we have to ask why the public renunciation of Berthold and his sons at Münstereifel was not binding.[18]

With regard to the general questions raised at the beginning of this study we should, therefore, take a closer look at the procedure of the trial. It has to be underlined that the series of royal charters presented by the abbot as a piece of evidence was not accepted by the accused and that even the presider of the royal

[17] Cf. Gladiss, *Urkunden*, still in the *narratio* of the document: ..., *quos B[ertholdus] nominavit, processerunt et, sicut unquam rectius a maioribus suis acceperant vel ad memoriam verius revocare poterant, advocatorum iura per singulas villas diligenter predixerunt et predicta reverenter sacramento sanxerunt. Hec sunt, que predixerunt et iuraverunt: Nullus subadvocatus* ... (p. 649, l. 9-12) ... *Hec sunt advocatorum iura et officia et hec condicio inter predictum abbatem Wolframmum Prumie et ipsius loci advocatum Berthdolfum de Ham et filios eius et omnes post eos advocatos a filio quidem nostro et principibus nostris constituta et laudata, a servientibus autem ecclesie iurata, que omnia ab ipso filiisque suis bene sunt laudata, sed in multis postea male servata* (p. 650, l. 10-14).

[18] Cf. Gladiss, *Urkunden*: *Post mortem enim patris iunior filius in beneficio eius successit, qui rursum proiecto iure per vias patris incessit. Quod iterum abbas sepius proclamans et quasi inconsolabiliter dolens, cum aliud non poterat, donum beneficii fratri eius B. videlicet usque ad audientiam nostram nostrorumque principum protraxit, ubi pertinatia tanti mali patris et fratris ab omnibus, qui aderant, intellecta cum iure legali negare ei posset. Consilio tamen nostro rogatuque non modico ibi in presentia nostra recepit, sed tali conditione ipso laudante et vix impetrante, ut, si quicquam de his, que laudata a patre et a servientibus ecclesie fuerant iurata, ipse vel quisquam post eum infringeret, non aliud iudicium quam proscriptionem tocius beneficii, quod ab ecclesia teneret et exspectaret* (p. 650, l. 14-22).

court agreed to what Berthold brought forward and shared his point of view. Apart from that we learn that written documents presented to the court were brought forward to the public by showing them, reading them, and interpreting them, a threefold act of visual and acustic judicial performance. Nevertheless, the charters were rejected and not accepted as legal pieces of evidence. The oral examination of local witnesses was prefered instead, and we may assume that the contemporaries could even have expected this procedure. One may ask why the abbot and his brethren brought forward the series of royal documents when they should have known that it would be difficult, if not impossible, to prove their claims in this way.[19] As the vivid description of the trial's procedure fixed in the *liber aureus* is interwoven with the interpretation of its results from the point of view of the monastery, it turns out to be difficult to differentiate between the different horizions of the document's *narratio*. Although it seems to be impossible to answer central questions concerning this trial I would like to present some further reflections about the case that might bring our interpretation forward.

A closer look at the relationship between oral and written elements shows that the report of the quarrels over the administration of the monastery's territory as reflected in our document comprises at least three chronological levels. The point of reference for all that follows consists of the repeated complaints of the clerics about Berthold's administration. This constellation provides the background for the session of the royal court at Münstereifel, which is reported in detail. In this context the clerical scribe lets the abbot bring forward an impressive *proclamatio* in direct speech, and he informs those who read the document about the procedure and the results of the trial. It is not until the end of the document that we learn that it was written down at least some years later when the abbot and his brethren tried to restrict the administrator's competences and to reject the presumptuous claims of Berthold's son, who succeeded the father in his office. In this situation it may have seemed to be sufficient to the clerics to have their own rights and the competitive claims of the administrator written down in the way these rights were attested by the local witnesses. In this respect our example resembles cases presented in the studies of Peter Johanek about the judicial relevance of written evidence in monastic traditions, cartularies and copy books.[20] According to Johanek's observations; royal charters were not the only kind of written evidence that could be brought forward in legal trials. The transitional period of time that passed before written documentation made its way and replaced oral evidence was

[19] Cf. with a careful answer given to this question Vollrath, "Rechtstexte," p. 338: "Daß Klöster und Kirchen sich Urkunden ausstellen ließen, weil sie *hofften*, damit ihre Rechte besser sichern zu können, besagt keinesfalls, daß diese Rechtssicherung im Streitfall auch funktionierte. Urkunden waren der Versuch, Autorität ohne physische Präsenz aus der – zeitlichen oder räumlichen – Ferne auszuüben. Sie stellten in sich den Versuch der Transpersonalität dar. Die gesamtkulturellen Umstände des früheren Mittelalters mit den personenverbandlichen, primär kleinräumigen Ordnungen standen diesem Versuch entgegen. Die Annahme, daß Urkunden, wie alle anderen Rechtstexte auch, eine nennenswerte *Funktion* in der oralen Rechtswelt gehabt haben, scheint daher problematisch."

[20] Cf. Johanek, "Zur rechtlichen Funktion."

much more extended than one would have expected. Apart from that, the accurate account of the abbot's *proclamatio* and the detailed description of the rights and duties of the administrator (*advocatorum iura et officia*), which is given for the single possessions and villages of the monastery's territory, indicate that there had perhaps been some written documents before a clerical scribe took over the task of writing down the draft that was handed down to us in the *liber aureus*. We may assume that these documents contained some significant pieces of information, but after their contents had been included in the report of the present document there was no reason to keep them any longer. We do not know anything about the form of these means of temporary memory nor do we know the language in which they were written down. In this context one should perhaps ask once again for the reason why the clerics had the matter written down in the form of such a document. Perhaps a closer look at contemporary forged documents and other forms of "pragmatical writing" that were used at the monastery of Prüm at that time can help to answer these questions.[21]

A court trial presided over by Henry the Lion, duke of Bavaria, in 1176 as reflected in the traditions of the convent of Reichersberg

The vivid picture of the mutual interdependence between orality and literacy as reflected in the document from the monastery of Prüm can be completed by additional material from chronicles and documentary sources of the 12th century. In this context I would like to focus the attention on a passage from the written documentation (*Traditionskodex*) of the convent of Reichersberg on the Inn river.[22] This document resembles the *narratio* of the document that came down to us in the *liber aureus* of the monastery of Prüm. The document reflects a quarrel between the convent and the noble family von Stein (Latin *de Lapide*) about the exchange of some possessions. The quarrel was settled by arbitration (Latin *per misericordiam* / contemporary German *nach Minne*) at a session of the ducal court

[21] Cf. for example a fictitious 'charter of Charlemagne' concerning the advocate's rights ("Karl der Große erneuert und bestätigt dem Kloster Prüm die Bestimmungen über die Rechte und Pflichten der Vögte in den Villen Revin, Fymai und Fépin an der Maas") – which was forged in the first half of the 12th century and which has also come down to us copied in the *liber aureus* of the monastery of Prüm (fol. 60'); *Die Urkunden Pippins, Karlmanns und Karls des Großen / Pippini, Carlomanni. Caroli Magni Diplomata*, ed. Engelbert Mühlbacher (Hannover: Hahn, 1906, reprint München: Monumenta Germaniae Historica, 1979), pp. 378-388, n. 261 (Bribuaria [sic!], 800 December 10). – Concerning the connection between the forged document and the trial at Münstereifel cf. also Boshoff. "Untersuchungen." p.107, note 246: "Ob die auf den Namen Karls des Großen gefälschte Vogteiregelung ... in Zusammenhang mit diesem Konflikt [i.e. the conflict between the monastery and Berthold of Hamm] entstanden ist, wäre noch zu untersuchen."

[22] *Die Urkunden Heinrichs des Löwen*, ed. K. Jordan (Weimar: Böhlau, 1949), pp. 161-163, n. 106 [DHdL 106] (1176 March 14). Cf. also Peter Classen, "Der Prozeß um Münsteur (1154-1176) und die Regalienlehre Gerhochs von Reichersberg," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Germanistische Abteilung)*, 77 (1960), pp. 324-345.

in 1176, which was held under the jurisdiction of Henry the Lion, who functionned as duke of Bavaria at that time. In this document we find detailed information about the court session, about the controversies between the litigant parties, about gestures as well as about procedural questions and about the role of the duke, who presided over the trial. We are informed about written evidence that was brought forward by the clerical party and about difficulties that were caused by local Bavarian toponyms, when a member of Henry's retinue, who was obviously of Saxon origin and background, was told to read the document concerned.[23] The monastic scribe's description of this scene does not seem spectacular, but it shows that written evidence had to be brought to the public audience as correct and as authentic as possible. Somebody had to read the document out loud and distinctly to render it a relevant legal piece of evidence.

Even the examination of local witnesses was a common means of investigation all though the 12th century. It was proposed by Berthold of Hamm in Münstereifel and by Henry the Lion,[24] and it was directed by the emperor as well. This can be proved by a royal charter from 1152 in which Frederick I Barbarossa instructed some members of his household to conduct such an investigation and to give a written report to the royal court.[25] This information gives us a better understanding of how extensive sets of data and complex facts could be kept for a long time, handed down to posterity or transported even by unlearned persons without any special knowledge about the facts concerned.

Conclusion – literacy did not simply replace orality

To conclude, we should not surrender to the complex interdependence of orality and literacy in judicial circumstances. All through the 12th century and even

[23] Cf. Jordan, *Urkunden*: *Qui statim ut surrexit a prandio, in auribus omnium legi fecit privilegium, sed quia capellanus suus, cui ad legendum oblatum erat, inpedicius legebat ob ignorantiam prediorum, que ibi ex nomine designabantur, decanus tunc eiusdem cenobii Wicmannus iussus legit aperte et distincte ad intelligendum* (p. 162, l. 13-17).

[24] Cf. Jordan, *Urkunden*: *Ad quam inquisitionem faciendam destinavit comitem Rapotonem, dominum Erchenpertum, Albertum de Hut. Quod et illi statim in Pentecosten conpleverunt et concambio adiudicatum ecclesie confirmaverunt* (p. 163, l. 30-33).

[25] Cf. *Die Urkunden Friedrichs I. / Friderici I. Diplomata*, ed. Heinrich Appelt, vol. I (Hannover: Hahn, 1975), pp. 14-16, n. 8 [DFI 8] (1152 [April/May], Paderborn): ... *Ad precidendas occasiones dissensionum ..., misimus nuntios nostros R[icherum] decanum Aquensem et A. scultetum et Macelinum mar[e]scalcum nostrum, qui diligenti inquisitione perquirerent, quid iuris dominus G[oswinus] in curia Marnensi ex advocatia, que ad regnum pertinet, habere deberet, et veritatem rei scripti attestatione nobis representarent* (p. 15, l. 22-28). Cf. also Diestelkamp and Rotter, *Urkundenregesten*, pp. 234-235, n. 304; Karl J. Leyser, Friedrich Barbarossa – Hof und Land, in Alfred Haverkamp, ed., *Friedrich Barbarossa. Handlungsspielräume und Wirkungsweisen des Staufischen Kaisers* (Sigmaringen: Thorbecke, 1992), pp. 519-530, pp. 524-525, and Timothy Reuter, "Mandat, Privileg und Regierungspraxis. Überlegungen zur Regierungstechnik im Zeitalter Friedrich Barbarossas" (protocol of a lecture held to the Konstanzer Arbeitskreis, Sektion Hessen, 5. Dezember 1993 in Gießen [p. 12] – to be published).

beyond it it was not necessary to write down judicial sentences and *placita* to render them valid, as we may conclude from a branch of the *Chronica Slavorum* of Helmold of Bosau from the second half of the 12th century.[26] Some *Holzati*, members of the Saxon ethnic group that settled north of the river Elbe in the diocese of Lübeck (*Lubeca*), quarreled with the bishop of Lübeck because they refused to pay certain taxes. In the end, they succeeded in claiming their rights in front of the court of Henry the Lion, duke of Saxony, and they asked for a charter that would corroborate their claim. When the members of the ducal chancery demanded a certain amount of money for the document the Holzati withdrew their request. For these illiterates written evidence had a certain significance, but it was not worth paying such a high price for it. Nevertheless, we observe a growing number of cases in which litigants tried to get written evidence to claim their rights with regard to imminent quarrels. In 1160, for example, Bishop Eberhard of Bamberg asked Frederick Barbarossa at a royal court held in Pavia to issue a royal charter on the basis of a judicial decision that had been taken three years earlier in Bamberg.[27] In this whole period written documents never simply replaced oral evidence. Both remained closely connected to each other, even until today.

[26] Helmold von Bosau, *Chronica Slavorum*, ed. Bernhard Schmeidler, 3rd ed. (Hannover: Hahn, 1937), *lib.* I, *c.* 92: ... *Et ne succedentium forte pontificum innovatas paterentur angarias, rogaverunt [sc. Holzati], hoc ducis atque pontificis sigillo firmari. Cumque notarii iuxta morem curie marcam requirerent auri, gens indocta resiliit, et negotium mansit imperfectum* (p. 181, l. 21-25).

[27] Cf. *Die Urkunden Friedrichs I.*, ed. Heinrich Appelt, vol. II (1979), pp. 119-121, n. 305 [DFI 305] (Bamberg, 1157 July / Pavia, 1160 February 14): ... *Non multo autem post, altero videlicet anno secunde expeditionis nostre in Italiam pene iam expleto prenominatus familiaris noster Eberhardus Babenbergensis episcopus debitam ecclesie sue gerens sollicitudinem nostram clementiam [Paviae] deprecatus est, ut scripto mandari preciperemus sententiam, ne forte processu temporis memorie excideret aut minus auctoritatis haberet. Nos igitur tam per nos quam per nobilissimos proceres ac principes nostros facti non immemores iustis petitionibus dilecti et fidelis nostri Babenbergensis episcopi, qui pacis et belli tempore constanter nobis adfuit, libenter adquievimus ac presenti adnotatione et sigilli nostri auctoritate perpetui roboris firmitatem sententie prelibate contulimus concordantibus in eiusdem sententie assertione simul et attestatione, qui presentes in ipsa felicissimi nominis nostri expeditione aderant et actioni interfuerant. Regenoldo excancellario iam archicancellario in Italia et adhuc Coloniensis ecclesie electo, Ottone et Friderico palatinis de Witelinespach, et aliis quam pluribus* (p. 120, l. 29-41). – Cf. also Diestelkamp and Rotter, *Urkundenregesten*, pp. 286-287, n. 372.

ORAL HISTORY OF THE MIDDLE AGES
THE SPOKEN WORD IN CONTEXT

Edited by Gerhard Jaritz and Michael Richter

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VOLUME 3

Oral History of the Middle Ages
The Spoken Word in Context

Edited by Gerhard Jaritz and Michael Richter

Krems and Budapest 2001

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Cover illustration: The wife of Potiphar covets Joseph: "... erat autem Joseph pulchra facie et decorus apectu: post multos itaque dies iecit domina oculos suis in Ioseph et ait dormi mecum." ("... And Joseph was [a] goodly [person], and well favoured. And it came to pass after these things, that his master's wife cast her eyes upon Joseph; and she said, Lie with me."), Gen. 39: 6-7 (KJV). Concordantiae Caritatis, c. 1350. Cistercian abbey of Lilienfeld (Lower Austria), ms 151, fol. 244v (detail). Photo: Institut für Realienkunde des Mittelalters und der frühen Neuzeit (Krems an der Donau).

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Table of Contents

Preface 7

Michael RICHTER, Beyond Goody and Grundmann 11

Tom PETTITT, Textual to Oral: the Impact of Transmission
on Narrative Word-Art 19

Előd NEMERKÉNYI, Fictive Audience. The Second Person Singular in the
Deliberatio of Bishop Gerard of Csanád 39

Katalin SZENDE, Testaments and Testimonies. Orality and Literacy
in Composing Last Wills in Late Medieval Hungary 49

Anna ADAMSKA, The Kingdom of Poland versus the Teutonic Knights:
Oral Traditions and Literate Behaviour in the Later Middle Ages 67

Giedrė MICKŪNAITĖ, Ruler, Protector, and a Fairy Prince:
the Everlasting Deeds of Grand Duke Vytautas
as Related by the Lithuanian Tatars and Karaites 79

Yurij Zazuliak, Oral Tradition, Land Disputes, and the Noble Community
in Galician Rus' from the 1440s to the 1460s 88

Nada ZEČEVIĆ, Λέξις γλυκεῖα. The Importance of the Spoken Word
in the Public Affairs of Carlo Tocco
(from the Anonymous *Chronaca dei Tocco di Cefalonia)* 108

John A. NICHOLS, A Heated Conversation:
Who was Isabel de Aubigny, Countess of Arundel? 117

Tracey L. BILADO, Rhetorical Strategies and Legal Arguments:
'Evil Customs' and Saint-Florent de Saumur, 979-1011 128

Detlev KRAACK, Traces of Orality in Written Contexts.
Legal Proceedings and Consultations at the Royal Court
as Reflected in Documentary Sources from 12th-century Germany 142

Maria DOBOZY, From Oral Custom to Written Law:
The German *Sachsenspiegel* 154

Martha KEIL, Rituals of Repentance and Testimonies
at Rabbinical Courts in the 15th Century 164

Michael GOODICH, The Use of Direct Quotation
from Canonization Hearing to Hagiographical *Vita et Miracula* 177

Sylvia SCHEIN, Bernard of Clairvaux's Preaching of the Third Crusade
and Orality 188

Michael BRAUER, Obstacles to Oral Communication in the Mission
of Friar William of Rubruck among the Mongols 196

Elena LEMENEVA, From Oral to Written and Back: A Sermon Case Study 203

Albrecht CLASSEN, Travel, Orality, and the Literary Discourse:
Travels in the Past and Literary Travels
at the Crossroad of the Oral and the Literary 217

Ulrich MÜLLER and Margarete SPRINGETH, "Do not Shut Your Eyes
if You Will See Musical Notes:" German Heroic Poetry
("*Nibelungenlied*"), Music, and Performance 236

Jolanta SZPILEWSKA, Evoking Auditory Imagination:
On the Poetics of Voice Production in
The Story of The Glorious Resurrection of Our Lord (c. 1580) 248

Jens T. WOLLESEN, Spoken Words and Images
in Late Medieval Italian Painting 257

Gerhard JARITZ, Images and the Power of the Spoken Word 277

List of Contributors 295

Preface

Oral culture played an instrumental role in medieval society.[1] Due to the lack of any direct source evidence, however, research into the functions and importance of oral communication in the Middle Ages must confront a number of significant problems. Only indrect traces offer the opportunity to analyze phenomena that were based on or connected with the spoken word. The 'oral history' of the Middle Ages requires the application of different approaches than dealing with the 20th or 21st century.

For some decades Medieval Studies have been interested in questions of orality and literacy, their relationship and the substitution of the spoken by the written word.[2] Oral and literate culture were not exclusive and certainly not opposed to each other.[3] The 'art of writing' was part of the 'ars rhetorica' and writing makes no sense without speech.[4] Any existing written statement should also be seen as a spoken one, although, clearly, not every oral statement as a written one. Authors regularly wrote with oral delivery in mind. 'Speaking' and 'writing' are not antonyms.

It is also obvious that "the use of oral communication in medieval society should not be evaluated . . . as a function of *culture populaire* vis-à-vis *culture savante* but, rather, of the communication habits and the tendency of medieval man

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[1] For the late Middle Ages and the early modern period, cf. Willem Frijhoff, "Communication et vie quotidienne à la fin du moyen âge et à l'epoque moderne: réflexions de théorie et de méthode," in *Kommuniation und Alltag in Spätmittelalter und früher Neuzeit*, ed. Helmut Hundsbichler (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1992), p. 24: "La plupart de gens vivait encore pour l'essentiel dans une culture orale et les procédés d'appropriation des idées passaient de préférence par la parole dite et écoutée, quand bien même on était capable d'une lecture visuelle plus ou moins rudimentaire."

[2] See Marco Mostert, "New Approaches to Medieval Communication?" in *New Approaches to Medieval Communication*, ed. Marco Mostert (Turnhout: Brepols, 1999), pp. 15-37; Michael Richter, "Die Entdeckung der 'Oralität' der mittelalterlichen Gesellschaft durch die neuere Mediävistik," in *Die Aktualität des Mittelalters*, ed. Hans-Werner Goetz (Bochum: D. Winkler, 2000), pp. 273-287.

[3] Peter Burke calls the construct of "oral versus literate" useful but at the same time dangerous: idem, "Mündliche Kultur und >Druckkultur< im spätmittelalterlichen Italien," in *Volkskultur des europäischen Spätmittelalters*, eds. Peter Dinzelbacher and Hans-Dieter Mück (Stuttgart: Alfred Kröner Verlag, 1987), p. 60.

[4] Michael Clanchy, "Introduction," in *New Approaches to Medieval Communication*, ed. Marco Mostert (Turnhout: Brepols, 1999), p. 6.

to share his intellectual experiences in the corporate framework."[5] Oral delivery was not "the sole prerogative of any socioeconomic class."[6]

For all these reasons, it is important to analyze the extent of and context, in which 'speech acts,' auditive effects, and oral tradition occur in medieval sources .[7] Research into the use of the spoken word or references to it in texts and images provides new insight into various, mainly social, rules and patterns of the communication system. It opens up additional approaches to the organization and complexity of different, but indispensably related, media in medieval society, and their comparative analysis.[8]

The spoken word is connected with the physical presence of its 'sender.' Speech may represent the authenticity of the given message in a more obvious way than written texts or images. Therefore, the use of 'speech acts' in written or visual evidence also has to be seen in context with the attempt to create, construct, or prove authenticity. Moreover, spoken messages contribute to and increase the lifelikeness of their contents, which may influence their perception by the receiver, their efficacy and success. Being aware of such a situation will have led to the explicit and intended use and application of the spoken word in written texts and images – to increase their authenticity and importance, too.

If one operates with a model of 'closeness' and 'distance' of communication with regard to the level of relation of 'senders' and 'receivers,' then the 'speech acts' or their representation have to be seen as contributors to a 'closer' connection among the participants of the communication process.[9] At the same time, however, speech might be evaluated as less official. One regularly comes across 'oral space'

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[5] Sophia Menache, *The Vox Dei. Communication in the Middle Ages* (New York and Oxford: Oxford University Press, 1990), p. 19.

[6] Ibidem, p. 21. Cf. also Jan-Dirk Müller, "Zwischen mündlicher Anweisung und schriftlicher Sicherung von Tradition. Zur Kommunikationsstruktur spätmittelalterlicher Fechtbücher," in *Kommunikation und Alltag in Spätmittelalter und früher Neuzeit*, ed. Helmut Hundsbichler (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1992), p. 400: "Offensichtlich sind schriftliche und nichtschriftliche Tradierung von Wissen weiterhin relativ unabhängig voneinander, nachdem die Schrift längst dazu angesetzt hat, Inseln der Mündlichkeit oder praktisch-enaktiver Wissensvermittlung zu erobern. Die Gedächtnisstütze kann die Erfahrung nicht ersetzen, sondern allenfalls reaktivieren. Sie ist sogar nur verständlich, wo sie auf anderweitig vermittelte Vorkenntnisse stößt."

[7] Cf. W.F.H. Nicolaisen, ed., *Oral Tradition in the Middle Ages* (Binghamton: Center for Medieval and Renaissance Studies, 1995).

[8] See, esp., Horst Wenzel, *Hören und Sehen, Schrift und Bild. Kultur und Gedächtnis im Mittelalter* (Munich: C.H. Beck, 1995), passim.

[9] See also Stefan Sonderegger, ">Gesprochen oder nur geschrieben?< Mündlichkeit in mittelalterlichen Texten als direkter Zugang zum Menschen," in *Homo Medietas. Aufsätze zu Religiosität, Literatur und Denkformen des Menschen vom Mittelalter bis in die Neuzeit. Festschrift für Alois Maria Haas zum 65. Geburtstag,* eds. Claudia Brinker-von der Heyde and Niklaus Largier (Bern et al.: Peter Lang, 1999), p. 665: "Jedenfalls darf man sich bewußt bleiben, daß auch in den Texten des deutschen Mittelalters die Reflexe gesprochener Sprache eine bedeutende Schicht ausmachen, die besonders dann immer wieder hervortritt, wenn es um einen direkten Zugang zum Menschen geht, um einVerstehen aus unmittelbarer Partnerschaft heraus ..."

that has become institutionalized or more official by the application of 'written space.'[10] Simultanous employment of such different levels and qualities of messages must often have had considerable influence on their efficacy.[11]

The papers in this volume are the outcome of an international workshop that was held in February, 2001, at the Department of Medieval Studies, Central European University, Budapest. Participants concentrated on problems of the occurrence, usage, and patterns of the spoken word in written and visual sources of the Middle Ages. They dealt with the role and contents of direct and indirect speech in textual evidence or in relation to it, such as chronicles, travel descriptions, court and canonization protocols, sermons, testaments, law-books, literary sources, drama, etc. They also tried to analyze the function of oral expression in connection with late medieval images.

The audiovisuality of medieval communication processes[12] has proved to be evident and, thus, important for any kind of further comparative analysis of the various levels of the 'oral–visual–literate,' i.e. multimedia culture of the Middle Ages. Particular emphasis has to be put on methodological problems, such as the necessity of interdisciplinary approaches,[13] or the question of the extent to which we are, generally, able to comprehend and to decode the communication systems of the past.[14] Moreover, the medievalist does not come across any types of sources in which oral communication represents the main concern.[15] Instead, she or he is confronted, at first glance, with a great variety of 'casual' and 'marginal' evidence.

We would like to thank all the contributors to the workshop and to this volume. Their cooperation made it possible to publish the results of the meeting in the same year in which it took place. This can be seen as a rare exception, at least in the world of the historical disciplines. The head, faculty, staff, and students of the Department of Medieval Studies of Central European University offered various help and support. Special thanks go to Judith Rasson, the copy editor of

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[10] This, e.g., could be well shown in a case study on the pilgrimage to Santiago de Compostela: Friederike Hassauer, "Schriftlichkeit und Mündlichkeit im Alltag des Pilgers am Beispiel der Wallfahrt nach Santiago de Compostela," in *Wallfahrt und Alltag in Mittelalter und früher Neuzeit*, eds. Gerhard Jaritz and Barbara Schuh (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1992), pp. 277-316.

[11] Cf. Bob Scribner, "Mündliche Kommunikation und Strategien der Macht in Deutschland im 16. Jahrhundert," in *Kommunikation und Alltag in Spätmittelalter und früher Neuzeit*, ed. Helmut Hundsbichler (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1992), pp. 183-197.

[12] Wenzel, *Hören und Sehen*, p. 292.

[13] Cf. Ursula Schaefer, "Zum Problem der Mündlichkeit," in *Modernes Mittelalter. Neue Bilder einer populären Epoche*, ed. Joachim Heinzle (Frankfurt am Main and Leipzig: Insel Verlag, 1994), pp. 374 f.

[14] Frijhoff, "Communication et vie quotidienne," p. 25: "Sommes-nous encore en mesure de communiquer avec la communication de jadis?"

[15] Michael Richter, *Sprache und Gesellschaft im Mittelalter. Untersuchungen zur mündlichen Kommunikation in England von der Mitte des elften bis zu Beginn des vierzehnten Jahrhunderts* (Stuttgart: Anton Hiersemann, 1979), p. 22.

this volume, who took particluar care with the texts of the many non-native speakers fighting with the pitfalls of the English language.

Budapest, Krems, and Constance
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Gerhard Jaritz and Michael Richter